



# water & sanitation

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Department:  
Water and Sanitation  
**REPUBLIC OF SOUTH AFRICA**

**DRAFT POLICY**

**WATER AND SANITATION SERVICES ON PRIVATELY OWNED LAND**

**2022**

**Version 1**

## **PREFACE**

This policy has been drafted in recognition of the many people residing on privately owned land in South Africa who have not had access to a basic potable water supply system or the use of a basic sanitation facility. The scope and content of this policy result from extensive consultative processes and lengthy discussions around the realities and challenges faced at grass roots level.

Ensuring the provision of water services to residents on privately owned land encompasses a wide range of activities, many of which require government policy guidance. This policy will focus on impact-oriented outcome, namely access to a safe and potable water supply and sanitation, supported by appropriate health and hygiene practices, targeted for people living on privately owned land currently out of municipal distributing network.

This policy sets out to define the Department of Water and Sanitation's (DWS) responsibility in regulating and supporting the provision of water services to residents living on privately owned land. The policy defines privately owned land and the need for a policy of this nature against the background of the many "backlog" residents living on privately owned land in South Africa.

The policy contains a problem statement, legislative context, purpose and scope, objectives, principles, roles and responsibilities and includes considerations to be implemented. The policy aims to provide direction on matters ranging from access and redress to integrated planning, health and environmental impacts, technical considerations and financial approaches to ensuring water services to residents living on privately owned land are all dealt with in the content of the document and also serve as a basis for the development of relevant protocols and tools for the realisation of the policy's objectives.

DIRECTOR-GENERAL  
DEPARTMENT OF WATER AND SANITATION

## **ACKNOWLEDGEMENTS**

The following stakeholders contributed to the compilation of this policy and their participation is sincerely appreciated:

- DEPARTMENT OF WATER AND SANITATION (DWS) REGIONAL OFFICES
- DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS
- DEPARTMENT OF HUMAN SETTLEMENTS
- DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT
- SEPARTMENT OF MINERAL RESOURCES AND ENERGY
- SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION
- ASSOCIATTION FOR RURAL ADAVANCEMENT

DRAFT

## EXECUTIVE SUMMARY

Privately owned land is any land that is *not* public land, or any land controlled or leased by the State, but a land that is owned or under the control of a single private individual or entity or group of private individuals collectively (and includes tribal and communal owned land). Ownership of private land is a “bundle of rights” defining a relationship between private individual/s or entities *with* regard to land and not a direct relationship between private individual/s or entities and land. In common law, ‘real tangible immovable property’ is the combination of interests in land and improvements thereto and ‘real property’ rights are rights relating to the land - these rights include ownership and usage - and private landowners can grant rights to persons or entities in the form of leases, licenses and servitudes.

Ensuring provision of water services to residents living on privately owned land involves more than the provision of infrastructure - the most important requirement for safe water supply and sanitation is providing access to a potable water supply and also safely disposing of human excreta. Also crucial is the way people think and behave and whether they have hygienic and healthy habits. Health improvement is a broader process aimed at the individual, the home and the community, which must include health and hygiene education as well as sustainable improved toilet and water supply facilities.

A census study is yet to be done to determine how many of these people residing in the privately owned land do not have access to a basic level of water service. The farm owner is responsible for providing water services to the farmworkers. The mechanism for enabling such provision is the Water Services Intermediary concept as captured and introduced within the Water Services Act (Act 108 of 1997). Unfortunately, landowners who may want to fulfil the functions of a Water Services Intermediary (WSI) often do not receive sufficient guidance and/or support from the WSAs. This has led to the WSI concept being narrowly adopted thus far.

The driving force behind this policy document is the legal obligation placed on Water Service Authorities (SFWS; 2003) to ensure that the service needs of all people living within their municipal jurisdiction, are addressed. Where people are unable to access water and sanitation services directly, it is the duty of the WSA to either provide these services directly, or to facilitate the delivery of such service provision via third parties.

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.

This policy, therefore, defines DWS’s obligations in regulating and supporting the provision of water services to residents living on privately owned land and establishes basic principles to be

applied in achieving access to water-related infrastructure, the establishment of institutional arrangements, financial and internal and external coordination mechanisms and implementation responsibilities; and must therefore be applied to achieve sustainable and equitable water supply and sanitation provision to residents living on privately owned land.

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, 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 under DWS's mandate as a sector leader. This includes guiding the creation of a standard, conducive and procedurally just administrative and institutional environment, aligned with other legislation, for the appropriate provision of water services to residents living on privately owned land.

The policy principles contained in the document should be applied across households, in rural and urban areas, and whether water services are provided for individual private land households or provided as a system for an entire private land community. These principles emphasise that basic water and sanitation services are a human right, must be equitable, sustainable, embrace principles of collaboration and integrated development, include community and stakeholder participation, and promote improved health and environmental integrity.

DWS is mandated as the sector leader 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 this policy is implemented at the national and regional levels so that the objectives of this policy can be achieved.

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

The policy also proposes various funding mechanisms that should be explored and some of the current funding that should be amended to help with the implementation of various policy positions. Although the Municipal Infrastructure Grant (MIG) policy prescript is under the auspices of it being a conditional grant and its formula is for infrastructure development to deal with the issue of poverty alleviation and it seeks to improve access to basic water and sanitation services for poor communities. The application of this policy should not necessitate any substantial changes in national sector legislation, but may require changes to funding mechanisms and policies, e.g., the MIG formula and cater for operation and maintenance. It must be noted that there are other grants available for WSAs for the provision of water and sanitation and the operation and maintenance of the infrastructure thereof, including municipal generated revenues. It is also vital that national government departments play their role in cooperative action and for this inter-sectoral co-operation at provincial and local level to be repeated so as to build the multi-disciplinary approach which is essential to the successful implementation of this policy.

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 reinforce the role of local government as the implementers of service provision either directly or through other appropriate local mechanisms.

## GLOSSARY OF TERMS

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

<b>Term</b>	<b>Reference</b>	<b>Definition</b>
<b>“Water Services Authority”</b>	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.
<b>“Water Services Provider”</b>	SFWS (2003)	A Water Services Provider (WSP) is: <ul style="list-style-type: none"> <li>• Any person who has a contract with a WSA or another WSP to sell water to, and / or accept wastewater for the purposes of treatment from, that authority or provider; and / or</li> <li>• Any person who has a contract with a WSA to assume operational responsibility for providing water services to one or more consumers or end users within a specific geographic area; or</li> <li>• A WSA that provides either or both of the above services itself.</li> </ul>
<b>“Water Services Intermediary”</b>	SFWS (2003)	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.
<b>“Basic Water Services ”</b>	SFWS (2003)	A basic water supply service and/or a basic sanitation service.
<b>“Basic Water Supply Facility ”</b>	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).
<b>“Basic Water Supply Service”</b>	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.
<b>“Basic Sanitation Facility”</b>	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.
<b>“Basic Sanitation Service”</b>	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.
<b>“Indigent”</b>	National Sanitation Policy (2016)	Indigent means —lacking the necessities of life. The definition of indigent from the National Framework for a Municipal Indigent Policy outlines sanitation as one of the necessities of life. The National Treasury definition of a ‘poverty line’ is also acknowledged to determine indigence.
<b>“Privately Owned Land”</b>	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. The range of contexts of privately owned land includes, amongst others: <ul style="list-style-type: none"> <li>• Commercial farms;</li> <li>• Mine owned land;</li> <li>• Church owned land;</li> <li>• Industrial owned land including privately owned enterprises;</li> <li>• Sectional title / residential complexes &amp; estates;</li> <li>•</li> <li>• Game parks</li> <li>• Agricultural holdings</li> <li>• Communal Property Association (CPA)</li> <li>• Trust properties</li> </ul>
<b>“Commercial</b>	Local	A commercial farmer for purposes of this policy document

<b>Farmer”</b>	Government: Municipal Property Rates Act (2004)	means an owner of an agricultural property in a rural or peri-urban 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.
<b>“Farm Worker”</b>		<p>A farm worker in terms of this policy document, means a farm worker employed by a commercial farmer (as defined above). There are two main types of farm workers:</p> <ul style="list-style-type: none"> <li>• <i>Commercial farm workers</i> - who may reside on commercial farms and work virtually exclusively for a cash wage.</li> <li>• <i>Labour tenant workers</i> - who function as small-scale farmers who provide labour to commercial farmers in return for the right to live on the land and grow crops or graze their animals (these labour tenants need to apply for land tenure rights in terms of the Land Reform Act).</li> </ul>
<b>“Farm Worker Household”</b>		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).
<b>“Farm and other Private Land Dwellers”</b>		Not all residents on farms are farm workers; thus, it is important to distinguish between farm workers and farm dwellers. Families of farm workers and other non-working residents are also entitled to basic water, sanitation and electricity services depending on the contracts and conditions of employment of the workers. In the same light, not all residents on mining, industrial, game park, estate and church land are workers; it is therefore again important to distinguish between workers and dwellers. Depending on the contracts and conditions of employment of the private land workers, where applicable, families of workers and other non-working residents may also be entitled to basic water, sanitation and electricity services.

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## 1. INTRODUCTION

Privately owned land is any land that is not public land, or any land controlled or leased by the State, but a land that is owned or under the control of a single private individual or entity or group of private individuals collectively (and includes tribal and communal owned land). Ownership of private land is a “bundle of rights” defining a relationship between private individual/s or entities with regard to land and not a direct relationship between private individual/s or entities and land. In common law, ‘real tangible immovable property’ is the combination of interests in land and improvements thereto and ‘real property’ rights are rights relating to the land - these rights include ownership and usage - and private landowners can grant rights to persons or entities in the form of leases, licenses and servitudes.

To live on a farm is seen as an exile residential status in South Africa. Local government and other organisations often do not know what to do with the ‘condition’ of those living on farms. Thus, they are usually allocated a status of inferiority within the general tenure and development system in South Africa. In fact, farm dwellers are citizens equal to other South Africans, and as such, they have rights just like everyone else” - AFRA News.

The Court case between Zabalaza Mshengu, Thabisile Ntombifuthi Ngema, AFRA and Umsunduzi Local Municipality, Umshwathi Local Municipality, Umgungundlovu District Municipality, Department of Water and Sanitation, Department of Cooperative Governance and others has set a precedent in protecting the rights of farm dwellers who were being denied access to basic water and sanitation services by farm owners which subsequently denied Water Services authority access to enter the property to provide water services to farm dwellers. The court ordered that the Msundudzi local municipality, Umshwathi local municipality and Umgungundlovu on-going and persistent failure to provide the farm occupiers and labour tenants who are residing within areas of their jurisdiction with access to basic sanitation, sufficient water and collection of refuse is inconsistent with the Constitution of the Republic of South Africa, 1996, particularly section 9, 10, 24, 27(1)(b), 33, 152, 153, 195 and 237. The court directed them to ensure that the farm occupiers and labour tenants have access to basic municipal services, more specifically, water, sanitation and refuse removal.

Ensuring provision of water services to residents living on privately owned land means much more than purely providing infrastructure - the most important requirement for safe water supply and sanitation is providing access to a potable water supply and also safely disposing of human excreta. Also crucial are the way people think and behave and whether they have hygienic and healthy habits. Health improvement is a bigger process aimed at the individual, the home, and the community, which must include health and hygiene education as well as sustainable improved toilet and water supply facilities.

Ensure that this policy is made known to all interested and affected parties and co-operate with other public and private sectors that are involved in the provision of water services to residents on privately owned land.

## 2. PROBLEM STATEMENT

A census study is yet to be done to determine how many people residing on privately owned land that do not have access to a basic level of water service. It is important that the policy distinguishes between a “employees of private land owner” and a “ dweller not working for landowner”. In terms of employees, the land owner has a responsibility to provide water services to the employees and their families residing on the land in terms of their employment contract and the mechanism for enabling such provision is the Water Services Intermediary (WSI) concept as defined by the Water Services Act (Act 108 of 1997). Unfortunately, landowners who may want to fulfil their WSI functions often do not receive sufficient guidance and/or support from the WSA, and this has led to the WSI concept being narrowly adopted thus far.

Many of the people residing on privately owned land are also private land dwellers who are not employed by the private landowner. There is a major challenge in terms of WSA planning for and providing sustainable water services to these dwellers since the WSI mechanism for enabling and assisting water services provision may not be relevant in such circumstances. In addition, the situation surrounding the level of security of tenure afforded to these dwellers could also be uncertain. Unfortunately, despite their clearly legislated water services responsibilities, it is evident that some Water Service Authorities do not see it as a priority or even as their responsibility to step in and ensure provision of basic water services on privately owned land to these dwellers.

Those residents living on privately owned land who have inadequate water supply may be using unsafe sources of raw water and those who have inadequate sanitation may be using the bucket system, unimproved pit toilets or open defecation. These inadequate water supply and excreta disposal facilities, combined with unhygienic practices, represent South Africa’s water services on private land problem.

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 and the 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 & curative health care is substantial; and
- *Environmental effects* - inadequate water supply and sanitation facilities lead to dispersed pollution of water sources, and this in turn increases the cost of downstream water treatment, as well as the risk of coming into contact with waterborne disease for people who use untreated water.

### 3. GUIDING POLICY PRINCIPLES AND LEGISLATIVE FRAMEWORKS

#### POLICY PRINCIPLES

The following policy principles should be applied ~~aeross~~ across households, in rural and urban areas, and whether water services are provided for individuals in private land households or provided as a system for an entire private land community:

- *Basic water and sanitation services are a human right* - in fulfilment of its obligation, government must create an enabling environment through which all South Africans can access basic water services and support in obtaining those services.
- *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 population and level of 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 & sanitation services.
- *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 take into account 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.
- *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.

- *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.
- *Basic water and sanitation service provision supports improved health* - water service provision is far more than the construction of “taps and toilets” - it is a process of infrastructural improvements which must be accompanied by promotional activities as well as health, hygiene and end-user education and the aim is to encourage and assist people to improve their own health and quality of life.
- *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. 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.

## **Constitution**

With the adoption of the Constitution in 1996, most of the responsibility for the delivery of basic services, was decentralised to local government, with Municipalities becoming the main drivers for the delivery of water, sanitation, and refuse removal. Section 153, 193 and 273 of the Constitution compels Municipalities to structure and manage their administration, budgeting, and planning processes to give priority to the basic needs of the community and to promote the social and economic development of the community.

The relevant constitutional rights (from the bill of rights) which talks to the provision of services to people living in privately owned land includes:

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

## ***Extension of Security of Tenure Act 62 of 1997 (ESTA)***

The Extension of Security of Tenure Act 62 of 1997 (“ESTA”) was introduced by government in order to intervene by establishing a 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 taking into account all relevant factors.

- 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 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’.

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

## ***Water services Act 108 of 1997***

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

- a) Sections 3 (1) and (2) of the Water Services Act states that everyone has a right to access a basic water supply and basic sanitation – this section is related to section 27 of the Constitution.
- b) Section 11(1) talks about Water Services Authorities having a duty to consumers and potential consumers in their area of jurisdiction to ensure efficient, affordable, economical, and sustainable access to water services
- c) Section 22 talks about the approval to operate as a water services provider and emphasise that water services providers getting an approval of the water services authority
- d) Section 24 talks to the 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

## ***National Water Act 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 growing demand for water use.

### ***Municipal Systems Act No. 32 of 2000***

The Municipal Systems Act is the enabling legislation which delineates the Municipalities duties. 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), 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, In order 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) Section 76 -81 talks about different mechanism that can be used for provision of services

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. While not a right to the immediate provision of services, it is a far stronger obligation than that imposed by the Constitution and other provisions of the Water Services Act and the Municipal Systems Act.

### ***GNR.509 of 8 June 2001: Regulations relating to compulsory national standards and measures to conserve water***

- a) Section 2(b) of the regulation provides that the minimum standard for basic sanitation services is a toilet which is safe, reliable environmentally sound, easy to keep clean, provides privacy and protection against the weather, well ventilated, keeps smells to a minimum and prevents entry and exit of flies and other disease-carrying pests.
- b) Section 3(b) the Minister determined the minimum standard for basic water supply services as: ‘a minimum quantity of potable water of 25 litres per person per day or 6 kilolitres per household per month –
  - i. at a minimum flow rate of not less than 10 litres per minute;
  - ii. with an effectiveness such that no consumer is without a supply for more than seven full days in any year.

## **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 of 2003 in ensuring that the service needs of all people living within their municipal jurisdiction, are addressed. Where people are unable to access water and sanitation services directly, it is the duty of the WSA 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 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 other existing national acts, policies, strategies, and various sector guideline documents.

### **4. POLICY PURPOSE**

The publication of this policy is a positive step by the DWS in its endeavour to support Water Services Authorities including other Water Services Institutions in fulfilling their responsibility to ensure that all South Africans including those residing on privately owned land have access to at least a basic level of water services.

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

The Strategic Framework of Water Services (2003) 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)*”.

### **5. POLICY OBJECTIVES**

As a holistic policy with the intention of unifying and simplifying the delivery and regulation of sustainable water services to residents living on privately owned land, the objectives of the policy are to:

- Establish an enabling regulatory environment for the provision of water services to residents living on privately owned land under DWS's mandate as a sector leader;
- 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;
- Promote equity in the provision of water services on privately owned land;

- Emphasise the need for the conservation of water resources and the use of appropriate technologies to provide water services on privately owned land in an environmentally responsible manner based on best management practices;
- Attain compatible integration of the use of water resources for the provision of at least a basic level of water service to residents living on privately owned land with other water uses;
- Emphasise the need for the 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 the clarification of the roles of Water Service Authorities and Water Service Intermediaries;
- Allow for the alignment of DWS's policies and protocols in relation to water services on privately owned land with all relevant legislations of the other Departments;
- Identify internal mechanisms for dealing with information that relates to the provision of water services to residents living on privately owned land and ensure that DWS, various sector departments and local government, become increasingly aware of this target group; and
- Emphasise the need for a regular review of this policy.

## **6. POLICY SCOPE**

This policy defines both DWS's and sectors' obligations in regulating and supporting the provision of water services to residents living on privately owned land and establishes basic principles to be applied in achieving access to water-related infrastructure, the establishment of institutional arrangements, financial and internal and external coordination mechanisms, and implementation responsibilities. Therefore, it must be applied to achieve sustainable and equitable water supply and sanitation provision for residents living on privately owned land.

## **7. WATER AND SANITATION SERVICES ON PRIVATELY OWNED LAND POLICY POSITIONS**

### *Redress and Access*

#### **Problem Statement**

People living on privately owned land are still deprived of access to basic water supply and sanitation services even under this democratic dispensation. Many people living on privately owned land feel as if they are second class citizens of this country whose rights are not being upheld as those who are living in other forms of settlements. Basic access to water services and resources on privately owned land in South Africa can contribute to the local, regional, and national economy by providing employment, rural food security, socio-economic development, participation opportunities, business opportunities, skills development, and empowerment in an integrated manner, without land reform capitalisation. Provision of water services and allocation of water resources must, however, take particular account of the needs of socially and economically disadvantaged communities and the previously disadvantaged sectors in the South African demography.

## **Current policy and Legislative Framework**

The Extension of Security of Tenure Act (Act No 62 of 1997) chapter two talks about 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 the government in order to intervene by establishing a 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 legally, with a court hearing taking into account all relevant factors. 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. While 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’.

Spatial Planning and Land Use Management Act 16 of 2013 seeks also to address past spatial regulatory imbalances. In contrast, 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, based on racial inequality, segregation, and unsustainable settlements.

## **Policy Positions**

In furthering the redress and access of water services provision to residents living on privately owned land, DWS, in partnership with the water services authorities, providers and intermediaries, must endeavour to:

- In order to achieve the redress and access, the water use licences for commercial water users must be reviewed to have a condition that compels them to set aside a portion of water for basic services for their employees and families;
- WSAs must ensure that water services are provided to the dwellers living on the privately owned land within their jurisdiction;
- Set up a system to evaluate the potential use of public water resources and the associated water-related infrastructure for ventures that embrace equity, rural community upliftment, food security and public-private partnerships; and
- Accelerating assistance to other Government Departments and non-governmental organisations in their efforts to achieve equity and redress through the provision of water services and water resources needs to residents living on privately owned land by assisting with applications and authorisations for the sustainable use of water, other natural resources, and the associated infrastructure for domestic and livelihood purposes.

## **Right of Entry by Authorities**

### **Problem Statement**

Most WSAs are having a problem with the private landowners in terms of accessing the property to provide services to people living on private land. Most of these landowners cite section 14 and section 25 of the Constitution as their basis for denying water services institutions access to provide

basic services. The farm dwellers are being forced to use open defaecation, leading to their right to dignity being violated.

The worst part, few Water Services Institutions are willing to provide services to people living on privately owned land, and they may have put it in their plans to provide such services; however, they are being denied access.

### **Current policy and Legislative Framework**

Chapter 13 of the National Water Act talks about the access and rights over land. It allows any authorised person to enter and inspect the property for a number of purposes associated with the implementation of NWA.

Section 80 of the Water Services Act talks about the issue of entry and inspection of the property. It gives any authorised person by the Minister, Province, or any Water Services Institution to enter any property and inspect water services work.

Section 2(d) of the Systems Act talks about the members of the local community having a duty to allow municipal officials reasonable access to their property for the performance of municipal functions

### **Policy Positions**

- Municipalities and any other water service authorities must review their bylaws and put a legal prescript for them to have a right of entry to any private land to provide basic services and other water and sanitation-related activities.
- 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 access to educational or health services.
- Landowners need to be accommodative in supporting the right of entry to their properties in the provision of basic services.
- Section 36 of the constitution talk about the limitation of rights, and the right to water supersede the right to privacy and property.

### **Tenure**

#### **Problem Statement**

Land Tenure is a conundrum faced by many Water Services Authorities and Institutions in addressing access to the 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 some delays in determining the people's tenure arrangements.

There is generally greater investment in water services infrastructure where people have secure tenure or own their dwellings, and owner-occupiers are also more likely to invest in additional improvements. Traditionally, private land residents do not own the property they live on; 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 on the government to provide at least basic access to water services infrastructure.

Unless goal-directed initiatives are put in place to address security of tenure and the provision of housing to the indigent, the significant problems that frustrate attempts to provide water services to residents living on privately owned land will remain a constant constraint to reaching the water services target.

### **Current policy and Legislative Framework**

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.

Upgrading of Land Tenure Right Amendment Act 6 of 2021. The Act seeks to provide for the 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.

### **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 the water service authority.

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

- Providing access to land with secure tenure so that those private land residents who are not in a position to receive basic water services via a water service intermediary yet do wish to invest on their property and amenities with municipal assistance can do so.
- Encouraging the landowner (or intermediary if appropriate) to provide basic water services facilities and guided by norms and standards around appropriate technical options and communal services (where and if applicable) as per their water services bylaws.
- WSAs and other water institutions must engage with DALRRD to ascertain the status of the tenure arrangement of the affected communities
- While the DALRRD is dealing with the tenure issues, the water services authorities and institutions must provide interim water and sanitation services
- For the household whose tenure has been confirmed, the water services institutions must provide permanent water and sanitation services to those households.

## **Advocacy, Awareness and Education**

### **Problem Statement**

Most government policies, when approved, are not adequately advocated. Evidence shows a gap between policy advocacy and policy implementation. This could be attributed to the inability to communicate approved policies effectively. There is a need to change such an approach and ensure that all approved policies are advocated throughout the breaths of the country to ensure that the public is educated and well-informed about the policies that are there so that they could also hold the government into account.

### **Current policy and Legislative Framework**

The Water Services Act calls for public awareness campaigns to be taken to promote water conservation and demand management. The 2016 National Sanitation Policy emphasises that user education and awareness must be part of a comprehensive user-education programme. It further states that education should be an on-going activity during the implementation and re-emphasis that awareness must be provided to end-users.

### **Policy Positions**

- The DWS, SALGA, COGTA, DMRE, DALRRD are tasked with advocating and communicating this policy to the water services sector
- Different stakeholders are required to develop an advocacy plan to ensure effective communication of the policy
- The communication should be focused on creating an understanding of the role that the sector plays in the regulation of and support towards achieving sustainable water services provision to residents living on privately owned land.
- Apart from the policy itself, the message that will be conveyed to all stakeholders is that the regulation of and support towards achieving sustainable water services provision to residents living on privately owned land will be governed and facilitated in accordance with all the policy positions
- Policy advocacy includes capacity building, relationship building, forming networks, and leadership development. The general public plays a vital role in developing and implementing public policy to promote an informed, healthy, and strong democratic society.
- The advocacy content should be translated to cover demographic language setups

## **Community Participation**

### **Problem Statement**

People living on privately owned land continue to live without having access to at least a basic level of water and sanitation services must be identified. Often than not, people living on privately owned land do not know their constitutional rights to having basic services rendered to them. Besides, government continue to make a big mistake when having services delivery projects. It often does projects for the people rather than with the people. Therefore, there is a need to conscientise people living on privately owned land about their constitutional rights, and also, 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 the programmes provided to them.

## **Current policy and Legislative Framework**

The 2001 Regulations Relating to Compulsory National Standards and Measures to Conserve Water provide that the minimum standards of basic water supply and sanitation services must include “the provision of appropriate education.”

One of the Strategic Framework for Water Services sector goals is that “all people living in South Africa are educated in healthy living practices (specifically with respect to the use of water and sanitation services) and the wise use of water.”

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 participation in sanitation services through hygiene education; end-user education; ownership of sanitation services, and Gender, youth and disabled in sanitation services as also alluded on the White Paper on Water Supply and Sanitation of 1994.

## **Policy Positions**

As emphasised above, community involvement is essential for long term success.

- Water service authorities must develop their capacity to involve people in local decision-making processes.
- In privately-owned land contexts existing bodies such as local committees, unions, or ward structures, community water and sanitation forums, assisted by local government or water boards where possible, should be involved in promoting water service programmes on privately owned land. Such a programme will not succeed unless the wider community is mobilised, and water services programmes should look to the special requirements of the disabled, elderly, and young children.
- It is the responsibility of each community to safeguard public health and to reach consensus with the landowners (where appropriate) and water service authority as to the water supply and sanitation system that is the most sustainable, affordable, and acceptable to their local environment.
- The improvements that can be made to existing water service systems must be part of an ongoing-education process, and consideration must always be given to the locals for upgrading of water services infrastructure.

## **Integrated Planning**

### **Problem Statement**

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

## 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 will be interpreted as a right to a level of services adequate to provide a healthy environment. They do not 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 2001 sanitation policy has a strong focus on basic sanitation services and the provision of these to households in rural areas. The provision of sanitation services to the non-indigent, and urban/peri-urban households in the country is largely not addressed in the policy. The White Paper of Basic Household Sanitation (2001) does indicate that beneficiaries who enjoy informal land rights to the property they occupy may also access the subsidy.

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)". This policy thus defines responsibilities in the provision of water services to residents living on privately owned land.

The National Sanitation policy of 2016 reiterates that WSAs have an obligation to provide services to people in privately owned land.

## Policy Positions

Effective intergovernmental planning is vital to ensuring water service delivery to residents living on privately owned land; instances of intergovernmental planning tools are listed below:

- The primary water services-related planning tool at the local authority level is the Water Services Development Planning (WSDP) and the processes driving its development and submission. The information (including aspects related to water services to residents living on privately owned land) as contained in the WSDPs should be extracted and monitored at the national level to ensure that coherent planning is taking place at local level and that specific goal-directed actions are being implemented towards meeting the targets set for addressing the backlog.
- A generic protocol providing guidance in respect of the procedures must be followed to ensure an integrated development planning that enhances water service delivery to residents living on privately owned land.
- Such a protocol must guide decision-making, the allocation of responsibilities (including the underlying principles for water service delivery and the regulatory and policy framework that informs it), and detailed procedures for water services delivery to residents on privately owned land.
- Integrated Development Planning (IDP) and Water Service Development Planning (WSDP) processes make provision for sensible discussion and debate between water service authorities,

providers, intermediaries, and communities on their water services needs and how these needs can be met most adequately efficiently. The planning frameworks must always be compliant with the District Development Model (DDM).

- National and Provincial government must make sure, in their programmes of interventions that they include such interventions on the DDM to ensure seamless planning.
- While the 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 include in all instances temporal services of health and hygiene promotion activities, including safe water supply and sanitation services.
- DWS and other water services institutions must cater to multiple water needs in their bulk water infrastructure projects, including the water services to privately owned land residents.
- Ownership of water and sanitation assets provided on private land may pass into the hands of the person owning the land in the following circumstances (1) where an “on-site” water and sanitation facilities are provided to a household; and (2) where assets are required for services to consumers served by a water services intermediary who owns the land on which the consumers reside and where that intermediary has made an appropriate contribution to financing the cost of the assets.

## **Health and Environmental Impacts**

### **Problem Statement**

The living conditions and the use of unsafe pit latrines or open defecation by farm dwellers are having negative impacts on the health of the farm dwellers and the environment, leading to the degradation of the water resources quality.

One of the major aims of this policy is to contribute to improving the health and quality of life of those residents living on privately owned land. At present, significant investments are being made in the provision of safe water supplies for all. However, the health benefits that could result from this will be severely limited if adequate attention is not also paid to sanitation. Furthermore, 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. Only when all these are in place will real and lasting health benefits follow.

### **Current policy and Legislative Framework**

WSA Section 2 on basic sanitation and basic water supply provides acceptable minimum standards for the provision of water and sanitation services.

Occupational health and safety Act 85 of 1993 seeks to provide for the health and safety of persons at work and for the health and safety of persons in connection with the use of plants and machinery; the protection of persons other than persons at work against hazards to health and safety arising out of or in connection with the activities of persons at work; to establish an advisory council for occupational health and safety, and to provide for matters connected therewith.

National Environmental Management Act, 107 of 1998, provide for cooperative environmental governance by establishing principles for decision-making on matters affecting the environment,

institutions that will promote cooperative governance and procedures for co-ordinating environmental functions exercised by organs of State; to provide for certain aspects of the administration and enforcement of other environmental management laws; and to provide for matters connected therewith.; everyone has the right to an environment that is not harmful to his or her health or well-being; the State must respect, protect, promote and fulfil the social, economic and environmental rights of everyone and strive to meet the basic needs of previously disadvantaged communities.

### **Policy Positions**

- The provision of water and sanitation infrastructure must always be coupled with health, hygiene, and end-user communication.
- DWS, SALGA, National Treasury, DBE, DHS and COGTA must ensure that water services institutions incorporate health, hygiene & end-user education within the water services delivery programmes earmarked for residents living in privately owned
- The quality, quantity and sustainability of water services provided by water services intermediaries must also meet all national minimum standards.
- Municipal water service contracts must therefore state that the water service intermediary is required to undertake the following drinking water quality management activities on privately owned land:
  - Minimum drinking water quality monitoring and record-keeping (source-dependent, but at least monthly monitoring of *E. coli* and disinfectant residual);
  - Comparison of results with SANS 241: 2006 for drinking water; and
  - Communication of any health risks and provision of alternate water supplies if health risks are deemed to exist.
- Water supply and sanitation systems on privately owned land must always consider environmental sustainability in both provision and ongoing maintenance.
- Water resources are often at risk of pollution from water supply and sanitation systems. Still, before a decision is made to invest heavily in any water supply or sanitation technology, the costs of raw water and wastewater treatment and other environmental impacts should be estimated. This can then be compared with the costs of the options for water supply and sanitation improvement, phased over time, if necessary, to establish which course of action is the best, both now and in the future.
- All water services institution must always use an appropriate water supply and sanitation technology that protect the environmental integrity

### **Technical Considerations**

#### **Problem Statement**

A wide variety of 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 technical considering the appropriateness of the water supply and sanitation facility being provided to them and with also issue of other farm dwellers resisting to change making it also difficult for Water Service Authorities

### Current policy and Legislative Framework

The Water Services Act outlined the legislative responsibilities of a WSA as having a duty to all consumers or potential consumers in its area of jurisdiction to progressively ensure efficient, affordable, economical, and sustainable access to water services (Section 11 (1)).

The SFWS guides the 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, made by the water services authority, is the key to successful provision of basic water supply and sanitation services sustainably. The selection of technology is strongly dependent on settlement conditions.

The National Sanitation Policy 2016 alludes that appropriate technical solutions must be based on subsidy levels while considering settlement type and resource limitation.

### Policy Positions

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

**Affordability:** The most critical factor influencing the choice of technology is affordability - at household, local and national levels. As far as it affects technology choice, 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 the 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.

**Institutional needs:** The more complex water service technologies, the more they may require substantial intermediary or community-level organisation and institutional support for delivery and operation and maintenance. Any water supply or sanitation improvement technology should include resources to develop the 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 the guidelines and tools.

**Environmental impact:** All water supply and sanitation systems should be designed to reduce the environmental impact of unmanaged greywater and human waste disposal. Nevertheless, most systems may cause some small degree of environmental impact, particularly if they are not managed as well as the designer intended. The general risk of environmental problems and the specific risks resulting from system failure (and the likelihood of failure) must be considered at the time of technology selection.

**Social issues:** Social and cultural practices and preferences vary considerably from area to area. These will affect the range of options acceptable to consumers and must be catered for so that facilities are used effectively, and health benefits are gained by users and the community.

**Water supply service levels:** Water is a scarce and costly resource in most parts of South Africa. Higher water supply service levels imply increased water usage and cost and the 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 “water-saving” water supply and sanitation appropriate technologies.

**Reliability:** It is imperative that only proven technologies and designs should be adopted in the provision of water services. In particular, innovative and proprietary systems must be tested against performance criteria and independently evaluated in terms of operational requirements, value-for-money and customer acceptability and satisfaction. This must be done before they become part of a service delivery programme. To this end, the government will identify appropriately qualified and objective bodies (such as the Water Research Commission, CSIR etc.) to carry out such evaluations against agreed criteria.

**Upgrading:** As water supply and sanitation improvement is a process, it is desirable to consider infrastructure upgrading (e.g., borehole to yard connection or VIP to septic tank) sequences, where this is likely in the foreseeable future. Designs should be done accordingly within cost constraints and in some cases infrastructure up-grading (e.g., installing a reticulation network at a later stage) should be considered at the planning stage.

**Site-specific issues:** The geology, hydrology and topography of an area may influence the choice of technology insofar as they may 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. In a few cases, site conditions may make the use of low-cost on-site technology questionable, but frequently the cost of installing and operating safe off-site reticulated bulk systems is unaffordable. Exceptional situations will require independent review and advice, and a wider range of technologies should be considered.

**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 service facilities should maximise the use of these resources to stimulate local economic development and job creation.

**Settlement patterns:** The density and layout of a settlement are important factors in selecting 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.

**Compliance with National Standards:** The provision of water and sanitation services must comply with the Norms and Standards for water services and South African Bureau of Standards.

**Ownership of the infrastructure:** Ownership of water and sanitation assets provided on private land may pass into the hands of the person owning the land in the following circumstances (1) where an “on-site” water and sanitation facilities are provided to a household; and (2) where assets are required for services to consumers served by a water services intermediary who owns the land on which the consumers reside and where that intermediary has made an appropriate contribution to financing the cost of the assets.

**Operation and maintenance and capital development:** Of water and sanitation services on privately owned land remains the responsibility of the property owners.

### ***Economically and Financially Sustainable Water and Sanitation Services on Privately Owned Land***

#### **Problem Statement**

Currently, there are no dedicated funding programmes by water services institutions, including water services authorities, that are earmarked to provide water services to residents residing on privately owned land.

Across the entire water services value chain, there is still under-recovery of the total economic, and financial cost of water services by WSAs has resulted in water tariffs that do not capture the total cost of water services. Currently, most WSAs provide free basic water services to everyone within their jurisdiction, which negatively affect their revenue collection capacity. This has potentially not changed the behaviours of water consumers i.e., prices did not induce households to minimise or control their water demand.

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 the economic viability to provide such services when their revenue collection does not meet their spending.

Due to the failure of implementing sound revenue collection controls by water services authorities, this negatively affect the operation and maintenance for water service infrastructure.

The MIG as conditional grant does not cater for operation and maintenance.

#### **Current policy and Legislative Framework**

Section 153 of the Constitution (1996) alludes that a municipality must structure and manage its administration and budgeting and planning processes to prioritise the basic needs of the community and promote the social and economic development of the community and participate in national and provincial development programmes.

The SFWS of 2003 aims to place greater emphasis on a sustainable, financially viable and efficient water services sector. Water Services Authorities are responsible for setting their own tariffs within these norms and standards. Sanitation tariffs should be calculated on the 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 provisions.

WSA: are responsible for ensuring adequate investment in water services infrastructure, prioritising universal access to basic service and that the investments were sustainable over time. The Municipal Infrastructure Grant (MIG) was highlighted as the financial mechanism for addressing universal access priorities WSP: The key financial responsibilities of water services providers were to operate water services effectively and efficiently, be financially viable, and honour the services delivery agreement with the water services authority.

Both 2013 NPWR and 2016 NSP policies provide a condition that free basic water services are only for indigent households.

The Municipal Systems Act and the Municipal Finance Management Act has 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 financial supervision by national and provincial governments.

### 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 the health benefits: for example, from a public health point of view there is no difference between a well-built, properly maintained VIP toilet and water-borne sewerage, but financially they are very different. The economic and health benefits of installing more expensive water service systems such as reticulated water supply and/or water-borne sewerage may be minor, and the only added benefit may be increased convenience and 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 not met due to consumer non-payments or on-going 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 reticulated water supply and full water-borne sewerage systems for all unserved households. Even if the capital funds were available, there would still be a severe 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 the reticulated water and sanitation services.

- WSAs basic services budget must identify tariffs and funding mechanisms required for financial sustainability, and tariffs should be determined in keeping with the tariff policies and the service's budget approved by the Municipality.
- Financial planning and management must incorporate Municipal Infrastructure Grant (MIG) budgeting and financial reporting, which addresses basic infrastructure development for the poor, including residents living on privately owned land. The current MIG framework must include a condition that set aside a portion to cater for operation and maintenance.
- Reaffirming the MIG position that in order to address the needs of farm dwellers; MIG funding can be used to provide basic services to indigent households living on private land, without

servitudes, subject to certain conditions. One of these conditions is that the landowner must make an appropriate contribution to the capital cost.

- WSAs and water services institutions must conduct municipal surveys on privately owned land to capture relevant information as part of the Integrated Development Plans and Water Services Development Plans of the municipality to enable and enhance local infrastructure and financial planning.
- Capital expenditure programmes like WSIG, RBIG and MIG must include detailed long term affordability studies in order to establish the most appropriate programmes and projects for continued financial viability, and communities should have the responsibility to participate in the choices and implementation of the mix of service levels that they desire, taking into account government policies and socio-economic realities.
- Water services authorities must develop a funding framework on incentives and subsidies that must be applied when dealing with water services intermediaries to fund water services infrastructure development, health and hygiene promotion, improving water quality, 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.
- Municipalities must make practical decisions about the allocation and distribution of funds and take council responsibility for these decisions.
- On-going basic service provision can be funded by:
  - Equitable Share;
  - Municipal rates;
  - Cross-subsidised water services charges;
  - Water services revenue;
  - Other sources.
- WSAs can introduce property tax rebates and exceptions by way of creating subsidised incentives to assist intermediaries in providing services on privately owned land, especially to those dwellers who are not their employees.
- DWS through water use license can incentivise commercial water users, who are providing water and sanitation services to their dwellers who may not necessary be employed up until there is a contractual agreement between a WSA and WSI
- The Private Sector is encouraged to invest in the provision of services to people living on privately owned land through PPP mechanisms including bringing on board appropriate technology for water services.

## ***Institutional Arrangements for Water and Sanitation Services on Privately Owned Land***

### **Problem Statement**

There is currently a lack of effective regulatory capabilities between DWS, COGTA and WSAs, which has prolonged challenges in regulating the sector at a local level. The local government perceived their reporting responsibility to CoGTA and not to DWS. Similarly, CoGTA is responsible for allocating powers and functions to WSAs. At the same time, DWS is responsible for ensuring compliance and performance of these organisations in fulfilling their water services Constitutional responsibility. This hinders regulation at a local level by DWS.

The ineffectual interpretation and implementation of Section 78 of the Municipal Systems Act (No. 32 of 2000) process 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. WSAs are not responding to their key responsibilities in legislation and the SFWS. Where a WSA has contracted a WSP 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.

The social and political induced challenges of poor governance are exacerbated by the uncoordinated and fragmented frameworks that govern water resources and services which have blurred matters of accountability, answerability, and responsibility. The NWA of 1998, the WSA of 1997, the Municipal Systems Act of 2000 and the Municipal Structures Act of 1998 have all contributed to this issue. All these acts have an overlap institutional mandate, thus creating confusion. An example of this is Section 84 of the Municipal Structures Act of 2000, which talks about the division of functions and powers between the district and local municipalities. It gives the power of water provision to the district municipality. At the same time, the WSA of 1997, on the other side defines a water services authority as any municipality, including district and rural councils. Therefore, there is an overlap of institutional mandate with regards to this.

### **Current policy and Legislative Framework**

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

The Water Services Act (1997) introduced the Water Services Authority to the water services sector, defining a WSA 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 WSAs and water services intermediaries (WSIs).

Department of Co-operative Governance and Traditional Affairs is the regulator of the Local Government: Municipal Systems Act (Act 32 of 2000) and the Local Government: Municipal Structures Act (Act 117 of 1998).

The Municipal Systems Act (No. 32 of 2000) provides, in Section 77, a municipality with the mandate to review and decide on the appropriate mechanism to provide a municipal service. Through the process outlined in Section 77 and Section 78 of the Act, the municipality may decide on an appropriate internal mechanism to provide the service; or may decide to provide the service through an external mechanism. These external mechanisms may include making use of a Water Services Provider.

The SFWS indicates the DWS is the custodian of the water resource and overall leader of the water Sector and has been given a mandate of playing a central role in four areas with respect to water services, namely: Policy; Regulation; Support and Information Management. It gives WSAs a responsibility for ensuring access, planning and regulating the provision of water services within their area of jurisdiction. It further states that Farmers are employers and are responsible for their employees' housing and related services living on the farms. Therefore, farmers are intermediaries and are responsible for providing (at least) basic water services to farmworkers and their families living on their farms. Water Services Authorities is responsible for ensuring that this is implemented and that it is addressed in their bylaws and adhered to.

### **Policy Positions**

- The institutional arrangements for promoting and providing effective water services for people living in privately owned land must be guided by the Constitution and other related policies and legislation.
- Water services authorities and other institutions must always apply intergovernmental coordination mechanisms or practices that seek to promote services on privately owned land; such arrangements must be reflected in the planning, budgetary and programmes. These institutional provisions will further be articulated in the next position of roles and responsibilities.
- Private landowners must provide basic water services to their employees and their families living on their land. The water services authorities must ensure that this is implemented and must identify, register and regulate water service intermediaries according to their bylaws and norms and standards.

## **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 in order to create heightened levels of awareness and to provide additional information to private landowners and constituents, as well as to assist municipalities in fulfilling their universal service obligation of ensuring access to basic services on privately owned land.

To optimise ensuring delivery of basic services to residents on privately owned land, municipalities would need to set up appropriate local mechanisms for engaging with private landowners to encourage enhanced networking and stakeholder participation. Through suitable fora, 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.

To make basic water services a practical reality to the many people that this policy is intended to serve, DWS has already developed implementation support tools and guidelines such as “Ensuring water services to privately owned land: Toolkits” and “Ensuring water services to privately owned land: A guide for municipalities” to help support local government with the implementation 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 to funding mechanisms and policies, e.g., the MIG formula. It is also vital that the various related national government departments play a role in co-operative action and for this inter-sectoral co-operation at provincial and local level to be repeated to build the multi-disciplinary approach essential to the successful implementation of this policy.

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

- DWS and WSAs must collect and maintain a standardised suite of information regarding the sustainable use of water for water services to residents living on privately owned land using the existing system by the Department. This information should stipulate the nature of the resource, the nature of the water services to residents living on privately owned land activity and the conditions under which authorisations or entitlements are allocated (according to the administrative stipulations of the WSA and NWA).
- Information concerning the sustainable use of water resources for water services to residents living on privately owned land will remain public domain. It must be kept orderly in accordance with the legal obligations set for public administration and the duties to make information available to the public.
- To regulate effectively, WSA municipalities must clarify water services institutional arrangements, promulgate bylaws and tariffs, and ensure performance monitoring and management.
- WSAs must regulate water services to residents on privately owned land through their municipal bylaws to ensure compliance with minimum standards.
- DWS has developed a set of water services model bylaws that WSAs can utilise to assist in the process of reviewing and/or developing their own set of bylaws.
- WSAs must ensure that their municipal bylaws specify:
  - What levels of services must be provided;
  - The rights and responsibilities of the municipality, the water services intermediaries, consumers and the WSP if applicable; and
  - The rights and responsibilities of the various parties regarding decision-making processes about water and sanitation services.
- WSAs must draft water service contracts with private landowner “intermediaries” to ensure clarity concerning financial incentives and contributions, the rights and responsibilities of all

parties, and as a valuable outcome to consultation processes (the terms and conditions of such contracts should be negotiated during the consultation process). Signing a contract could be a prerequisite for a WSA to provide funding to an intermediary, but WSAs 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.

- DWS proposes, in its model water services bylaws, that if a water services intermediary fails to perform its functions effectively, then the WSA may direct the intermediary to rectify its failure by setting out:
  - The nature of the failure;
  - The steps which must be taken to remedy the failure; and
  - A reasonable time period within which those steps must be taken.
- Suppose the intermediary fails to rectify its failure within the stated period. In that case, the WSA may take over the provision of water services, but only after the intermediary has been given a reasonable opportunity to make written submissions. However, in an emergency situation, a WSA is not obliged to give a reasonable opportunity for the WSI to make written submissions.
- Where a WSA takes over the provision of water services or appoints another water services institution to act on its behalf, it may:
  - Exercise all relevant powers and perform all relevant duties on behalf of the intermediary to the exclusion of the intermediary; and
  - Use the infrastructure of the intermediary to the extent necessary to perform those functions.
- As soon as the water services intermediary is in a position to resume its duties effectively, the WSA must stop exercising the powers and performing the duties on the intermediary's behalf. It may recover all associated expenses incurred during the period for which it took over the provision of water services from the intermediary.
- Water and sanitation services to residents living on privately owned land must comply with the National Norms and Standards

Given the limited practical experience in the field and the evolving institutional arrangements at the 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 reinforce the role of local government as the implementers of service provision (directly or through other appropriate local mechanisms).

## **10. ROLES AND RESPONSIBILITIES**

DWS is mandated as the sector leader to support and regulate the provision of water services to residents living on privately owned land. It is the responsibility of DWS to communicate this policy to all relevant stakeholders and ensure that this policy is implemented at the national and regional level so that the aims and objectives of this policy can be achieved.

Based on preliminary consultations held during the drafting of this policy, it is clear that all national government departments mentioned 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.

In addition, the following department and WSI's-specific roles and responsibilities have been identified:

### **Private Landowner**

Private landowners must provide basic water services to their employees and their families living on their land. The water services authorities must ensure that this is implemented and must identify, register, and regulate water service intermediaries according to their bylaws and norms and standards. The landowner must make an appropriate contribution to the capital cost of basic services. The ownership of water and sanitation assets provided on private land may pass into the hands of the person owning the land in the following circumstances (1) where an “on-site” water services facilities are provided to a household; and (2) where assets are required for services to consumers served by a water services intermediary who owns the land on which the consumers reside and where that intermediary has made an appropriate contribution to financing the cost of the assets. Operation and maintenance and capital development of water and sanitation services on privately owned land remains the responsibility of the property owners.

### **Cooperative Governance and Traditional Affairs (COGTA)**

As the department that has overall responsibility for the affairs of provincial and local government, the role of the Cooperative Governance and Traditional Affairs must support DWS in communicating this policy so as 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. Add MIG

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

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

### **Department of Human Settlements (DOHS)**

As the department that sets national housing policy, the role of the **Department of Human Settlements (DOHS)** 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, to ensure internal and external privacy, and providing adequate protection against the elements and potable water, adequate sanitation facilities and domestic energy supply.

### **Department of Public Works and Infrastructure (DPWI)**

As the department that acts as the implementing agent on behalf of national government departments when facilities are constructed and developed, the role of the Department of Public

Works and Infrastructure is to integrate this policy with the mechanisms currently in use for ensuring equitable access and use of publicly owned assets associated with these water services and resources.

#### **Department of Science and Innovation (DSI)**

The role of the Department of Science and Innovation is to integrate this policy with its responsibility in the development and funding of water services, appropriate technology initiatives and in the dissemination of related scientific and technological and innovation information.

#### **Department of Forestry, Fisheries and the Environment**

As the department responsible for national environmental policies, the role of the Department of Forestry, Fisheries and the Environment is to integrate this policy with its responsibility in protecting and conserving environmental resources; and to convey this policy to the respective provincial departments for use in areas of common responsibility.

#### **Department of Health**

As the department responsible for health policies and practices, the role of the Department of Health is to integrate this policy with its responsibility in ensuring public health related to the domestic and other utilisation of these water resources; and to determine a structured approach toward ensuring water services to clinics situated on privately owned land.

#### **Department of Basic Education**

The Department of Basic Education's role as the department responsible for educational policies and practices is to integrate this policy with its responsibility to determine a structured approach towards ensuring water services to schools situated on privately owned land.

The role of relevant **Provincial Government** departments, depending on the allocation of roles and responsibilities within the province, will be to support the regulatory and support mandates of DWS over the water services and resources to be provided to residents living on privately owned land and to integrate this policy with their respective provincial mandates that related to water services and resources policy and planning.

The role of **WSA** will be to comply with the regulatory and support mandates of DWS over the water services and resources to be provided to residents living on privately owned land and to integrate this policy with their respective local mandates in terms of the Strategic Framework for Water Services.

The role of **Water Management Institutions (WMI)**, such as Water User Associations, Water Boards and Irrigation Boards, etc will be to:

- Support the regulatory and support mandates of DWS over the water services and resources to be provided to residents living on privately owned land and to integrate this policy with their responsibility over water resources within their respective institutions; and to
- Support DWS's initiatives in communicating this policy to any person or party contemplating or involved in water services and resources and associated with the institution.

As the agency responsible for the development and implementation of the Catchment Management Strategy, the role of the **Catchment Management Agencies (CMA)** is to:

- Support the regulatory and support mandates of DWS over the water services and resources to be provided to residents living on privately owned land and to integrate this policy with their existing responsibilities as a catchment-based management authority over water resources and the NWA; and
- To support DWS's initiatives in communicating this policy to any person or party contemplating or involved in water services and resources management within their catchment.

All role players in the “**Private Land**” Sector have a responsibility to:

- Support the regulatory and support mandates of DWS over the water services and resources to be provided to residents living on privately owned land;
- Integrate and implement this policy in terms of their planning and implementation to ensure compliance with all relevant legislation concerning water services on private land; and to
- Ensure that this policy is communicated to any person, party or organisation affiliated to the “private land” sector.
- The employer is responsible for providing water and sanitation services to its labourers/employees as per Section 81(1) of the Occupational Health and Safety Act (Act 85 of 1993).

## 11. BIBLIOGRAPHY

- DFFE, White Paper on Integrated Pollution and Waste Management for South Africa.
- DFFE, National Waste Management Guideline for South Africa.
- 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 (Act 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).

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).

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