



water & sanitation

Department:
Water and Sanitation
REPUBLIC OF SOUTH AFRICA



Development of the National Water Resources Strategy Third Edition (NWRS-3)

Enabling Chapter: Addressing Legislative and Policy Gaps

NWRS-3 CONSULTATION WORKSHOP

22 August 2022

NWRS-3 CH18: Addressing Legislative and Policy Gaps

The aim of this chapter is:

To address emerging legislative and policy issues through the amendment of the National Water Act (36 of 1998) and Water Services Act (108 of 1997) legislation addressing the entire water and sanitation value chain.

This chapter consists of the following 3 sections:

- Emerging Legislative and Policy Issues
- Policy Principles
- Policy Objectives
(see next slides)

CH18 Policy Objective 1:

Addressing Legislative and Policy Gaps

There is a need to work with sector partners to align legislation, reduce the regulatory burden wherever practical, and unblock regulatory obstacles to water re-use. These issues are to be addressed and coordinated in more detail in the NW&SMP and relate to:

- Align interventions with CoGTA on municipalities with existing support programmes e.g. MISA.
- Roll-out of Feasibility and Implementation Readiness studies to align with national grant funding programmes.
- Align water, land and agrarian reform programmers and link to the Irrigation Strategy.
- Focus on Strategic Water Sources Areas.
- Ensure One Environmental System.
- Implementation of Operation Vulindlela.
- Programmes relating to innovation sector for solutions that are ready for application and invest in their implementation.

CH18 Policy Objective 2:

Developing New Policies

The Department will continue to work towards finalization of the Draft Policies that are under currently in different stages of development. The approach to all policy development seeks to prioritize and address the most critical challenges throughout the value chain. As at November 2021 the following policies, among others, are currently under development and at various stages:

- **Approved Mine Water Management Policy:** The policy seeks to provide policy guidance to the mine sector to safely manage mine water including Acid Mine Drainage. This is turn will protect the water resources within the regions where there is mine activities.
- **Sustainable Hydropower Generation Policy:** The draft policy has been developed to provide a framework to assist the Department to use water resource infrastructure to generate hydropower.
- **Draft Integrated Water Quality Management Policy:** This policy intervention is aimed at consolidating all past policies on water quality that were segmented in nature.
- **Wetland Management Framework:** The framework provides a case for wetland conservation in South Africa (i.e. implications of wetland loss), explains the nature of the problem, identifies solutions and describes the opportunities and appropriate management instrument(s) that should be utilized to address the challenges in terms of wetland protection, management and conservation in South Africa. The Framework will lead to an integrated / joint national policy on wetlands being developed that would address the mandates for wetland management, conservation and protection of the three key Departments, i.e., DFFE, DWS and DALRRD.

CH18 Policy Objective 3:

Effecting Institutional Reform

An institutional model needs to be legislated that will adequately respond to the challenges related to regional and bulk services which include the following:

- Weak performance in the management of water supply and sanitation services by many municipalities, which compromises services.
- Lack of clarity regarding responsibilities for water resources development at the local and regional level, and for regional bulk services outside of the existing water board service areas.
- Governance and performance-related problems within some of the existing water institutions.
- Determining and conforming the institutional framework or arrangement of the Regional Water Utilities, Catchment Management Agencies and Water User Associations.
- Delegation and assignment of Powers and Functions of the CMAs.

CH18 Policy Objective 4:

Achieving Redress and Equity

Equity is critical in ensuring that water reform in South Africa is realised. In the water sector, equity implies justice in the management of water, responding to social and economic needs of all South Africans. The existing legal framework and policy does not adequately respond to the objective of redress in terms of making water available and advancing equity considerations. It is imperative that provisions within the proposed water and sanitation legislation will not only protect the interest of existing water rights, but will also provide water availability for redress. Legislation should provide for equitable water allocation and enjoyment of water benefits by all. It is expected that the proposed legislation will deal directly and decisively with the following real issues that impact or are on the way of the process of redress and achieving equity:

- The determination of the legal time frame and duration for a licence.
- Revising the authorisation when the right has not been exercised upon with any cause or good reason. There must be a process to revise authorisations when there is redundancy or no use of available water to provide access to water for re-allocation to other equity considerations.
- Ensuring that any transfer of water serves the purpose of the policy in terms of redress and equity in particular.
- Exploring and revisiting the issue of existing lawful use and how it should be modified to enable faster redress and equity achievements without unfairly penalising current water users.

CH18 Policy Objective 5:

Ensuring Planning and Implementation

The National Water Act (Act No 36 of 1998) and the Water Services Act (Act No 108 of 1997) are currently being amended separately as opposed to being revised (as outlined in the NWRS-2) and combined into a single coherent piece of water legislation that addresses the entire water value chain.

The Department of Water and Sanitation has taken a different approach and it has currently embarked on the amendment process and the National Water Amendment Bill and National Water Services Bill have been developed.

The approach seeks to prioritize the most critical challenges highlighted in the National Sanitation Policy (2016) and National Policy Review (2013) and it will also result in the most effective way of addressing the most pertinent gaps and legislative challenges in order to enable sustainable socio-economic development within the water and sanitation sector.

CH18 Policy Objective 6:

Implementing Sustainable Delivery Mechanisms

Due to the centrality of water to life and local government service delivery imperatives, it is likely that most government policies and legislation would directly or indirectly have an impact on water resources management and, consequently, water and sanitation services provision. There is need for integration between water and sanitation in terms of the whole water value chain management and this includes water-borne sanitation, wastewater treatment, operation and maintenance of infrastructure, on site sanitation and potential pollution of groundwater.

The proposed water and sanitation legislation amendments are expected to provide policy direction on some of the following issues:

- A structured mechanism, through which the Minister of Water and Sanitation can give input into the planning and development of water supply and sanitation infrastructure.
- An effective formal reporting mechanism on the water and sanitation services function from Local Government to the Minister and means within the legal framework for the Minister of Water and sanitation to take corrective steps in case of serious malpractice or negligence affecting effective water supply and sanitation management in the country.

CH18 Policy Objective 7:

Exploring Unconventional Oil and Gas Development

To ensure that the limited available water resources are protected from exploitation and pollution the policy and legislative framework needs to expand on the mining of:

- Shale gas.
- Associated hydraulic fracturing.
- A coal-bed methane extraction regulatory framework.

NWRS-3 Enabling Chapters

Discussion and Inputs

Chapters 18,