

# WATER AND SANITATION BUSINESS



## The Roles and Responsibilities of Local Government and Related Institutions



**water & forestry**

Department:  
Water Affairs and Forestry  
REPUBLIC OF SOUTH AFRICA

# Preface

Service delivery is an important commitment made by Government to provide the necessary services to the people of South Africa, especially to the rural poor and those who did not have access to basic services before 1994. Government is continually supplying more resources and putting more effort to provide services to our people. In order to achieve this all levels of government need to work together, provide support and build capacity where it is needed.

Effective collaboration between government means coordinated planning, development of appropriate strategies, establishing and supporting structures that work together effectively and the implementation of integrated developmental programmes.

Effective and efficient water supply and sanitation services are complex processes. Many organisations are involved and their roles and responsibilities need to be understood if services are to be provided in such a way that everyone in this country benefits.


Since 2002 Local Government has the responsibility to implement water supply and sanitation services and the Department of Water Affairs and Forestry now acts as sector leader, by regulating, monitoring and supporting to ensure effective service provision.

This booklet seeks to provide an understanding and to illustrate how the water business works. It is a product of the ongoing collaboration between the Department of Water Affairs and Forestry (DWAF), the Department of Provincial and Local Government (DPLG) and the South African Local Government Association (SALGA).

It explains the legislation on which the provision of water services is based and makes use of easy language and illustrations to explain the roles of the different institutions involved, the recovery costs of the business cycle and the planning processes involved.

This version is a slight update on the previous water and sanitation booklet and reflects the changes in legislation since 2002 in the water sector.

Water and sanitation is an example of cooperative governance and together, we can ensure some for all, forever!



Director-General  
Department of Water Affairs and Forestry

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## Purpose of this booklet

The purpose of this booklet is to inform municipalities (both councillors and officials) of:

- the different water sector institutions provided for by the Water Services Act (108 of 1997) and the National Water Act (36 of 1998)
- how the different water sector institutions link to the water and sanitation business cycle and the associated costs
- the legislative roles and responsibilities of the different water sector institutions, in particular the water services authority and the water services provider

This booklet is an information booklet, which highlights legislative requirements and institutional responsibilities.

**It is not meant as a replacement for the actual Acts and is not a policy document.**

Whilst this booklet refers to the National Water Act and various water resource management institutions to illustrate the linkages between water resource management and water services, the emphasis is on **the Water Services Act, water supply and sanitation services**, and the **Water Services Institutions**.

There are separate booklets on the National Water Act and Water Resource Management Institutions, which can be obtained from the Department of Water Affairs and Forestry.

### What is meant by Water Services?

Water services means both water supply services and sanitation services. Wherever the Act and this booklet refer to water services, the implications for sanitation must also be addressed.

## **PART 1:**

# **Legislation which impacts on water services**



**There are various key pieces of local government legislation, which have an impact on water services, notably:**

- the Municipal Structures Act
- the Municipal Systems Act
- the Municipal Finance Management Act

In addition the Division of Revenue Act has a bearing on water services.

These Acts are briefly discussed below.

### ***The Constitution of the Republic of South Africa Act 108 of 1996***

The Constitution vests the executive authority for water services in local government. One of the objectives of local government is to ensure the provision of services to communities in a sustainable manner.

### ***Local Government: Municipal Structures Act (Act 117 of 1998)***

This Act, known as the 'Structures Act', deals with the following matters:

- It sets up the basis for the establishment of municipalities in the 'A' (Metropolitan Municipalities), 'B' (Local Municipalities) and 'C' (District Municipalities) categories.
- It defines the way municipalities are established.
- It establishes the way councils are to function, including committees and mayoral options.
- It determines the division of powers and functions between municipalities who have concurrent jurisdiction.

The Structures Act gives district municipalities the powers and functions necessary to perform the water services authority function as contained in the Water Services Act.

The Minister of Provincial and Local Government may however authorise a local municipality, after consultation, to be a water services authority.

Effective from July 2003, the Minister published a list of authorisations. This meant that in some cases the power and function for water services shifted from district municipalities to local municipalities. In other cases where local municipalities had fulfilled the water services authority role, the power and function shifted to the district municipality.

Where there was a shift in power and function for water services, the staff, assets and liabilities predominantly associated with water services delivery automatically became vested, by law, in the authorised municipality. The transfer of staff and assets was generally regulated by the "section 12 notices" (authorisation notices).

Although there may still be *ad hoc* boundary demarcations, and shifts in powers and functions, it is generally accepted that the transformation of local government has now stabilised. This means that water services authorities can now focus on their water services powers and functions towards ensuring effective, affordable and sustainable water services delivery.

### **Local Government Municipal Systems Act (Act 32 of 2000)**

This Act focuses on the internal systems and administration of a municipality. It covers various matters including:

- Public accountability and community involvement in policy formulation and decision making
- Guidelines for making bylaws
- Establishing Integrated Development Plans
- Establishing a performance management system
- Delivering municipal services
- Credit control and debt collection

Key issues impacting on water services are summarised below:

#### **Authority / provider differentiation**

The Act introduces the differentiation between authority and provider functions of a municipality, by providing that a municipality may deliver services itself, or by way of an external mechanism by entering into a service deliver agreement. This makes it consistent with the Water Services Act which specifically defines a water services authority and a water services provider, and distinguishes the constitutional obligation to *ensure* services delivery, but not necessarily to provide it.

#### **Municipal Service Partnerships**

The Act identifies the importance of alternative mechanisms for providing municipal services. The Act distinguishes between internal and external mechanisms. It obliges a municipality to first consider internal mechanisms (a department, business unit or other mechanism) before it examines external mechanisms for the delivery of municipal services. If a municipality wants to deliver services through an external mechanism, it has to undertake a feasibility study and assess affordability as well as get the views of the community. The Act further sets out certain requirements for contracting with others. This applies to a water services authority contracting a water services provider to fulfil the water services provision function.

If the water services authority chooses a public sector partner, it is not obliged to follow a competitive tendering process.

#### **Institutional options**

The Act introduces a range of institutional forms that may be utilised for the delivery of municipal services, such as municipal entities which include multi-jurisdictional service utilities and service utilities, established by by-law. These institutional options may be applied to the delivery of water services, as appropriate.

## **Local Government: Municipal Finance Management Act (Act 56 of 2003)**

The objective of this Act is to ensure sound and sustainable management of the financial affairs of municipalities. It covers various matters for both municipalities and municipal entities including:

- Managing revenue and debt
- Budgeting
- Responsibilities of mayors and municipal officials
- Procurement (supply chain management and PPPs)
- Reporting
- Intervention in the instance of financial problems

The duty to provide free basic water needs to be balanced against the duty to ensure sustainable service delivery. The Municipal Finance Management Act provides the mechanisms for ensuring affordable service delivery (budgets) and for regulating financial performance. This Act is intended to complement the Systems Act which regulates credit control and debt collection, and decision making about service delivery mechanisms.

The Act also regulates partnerships and associated reporting obligations on municipalities.



## **The Division of Revenue Act (enacted annually)**

The Division of Revenue Act, which is enacted annually, gives effect to Section 214(1) of the Constitution of the Republic of South Africa, 1996 (108 of 1996). The Constitution requires an Act of Parliament to provide for the equitable division of nationally raised revenue among the three spheres of government.

The Act contains various schedules, which set out:

- the respective equitable shares in respect of national, provincial and local spheres of government
- the respective shares of each province
- other allocations, including conditional grants, unconditional grants and indirect transfers, as well as the condition they are subject to.

All local government infrastructure grant funding is now consolidated into the 'Municipal Infrastructure Grant' which is aimed at assisting the *poor* to gain access to infrastructure. MIG funds can only be used for infrastructure for *basic levels of service*.





## PART 2:

# Legislative framework for water and sanitation



The Water Services Act (108 of 1997) and the National Water Act (36 of 1998) provide the legislative framework within which water supply and sanitation services and water use need to take place. A process is underway to change the Water Services Act to align it to the Strategic Framework for Water Services and other legislation applicable to the water sector.

### Water Services Act (108 of 1997)

#### Purpose

- ✓ Legislates the municipal function of providing water supply and sanitation services

The overall objective of the Water Services Act is to assist **municipalities** to undertake their role as water services authorities, and to look after the interests of consumers. It is also to clarify the role of other water services institutions, especially water services providers and water boards.

### National Water Act (36 of 1998)

#### Purpose

- ✓ Legislates the way that the water resource (surface and ground water) is protected, used, developed, conserved, managed and controlled.

It is in terms of this Act that a municipality obtains use of the water that it requires for distribution to its consumers. This Act also governs how a municipality may return effluent and other waste water back to the water resource.

## Water Services Act

### Mandate

Gets its mandate from (amongst others) Section 27 of the Bill of Rights in the Constitution. Section 27 of the Constitution provides, amongst other rights, that **everyone has the right to have access to sufficient food and water** and that the state must take reasonable legislative and other measures within its available resources, to achieve the progressive realisation of each of these rights.

## National Water Act

### Mandate

Gets its mandate from (amongst others) Section 24 of the Bill of Rights in the Constitution that states that **everyone has the right to an environment that is not harmful to their health or well being**; and to have the environment protected for the benefit of present and future generations through reasonable legislative and other measures that:

- prevent pollution and ecological degradation;
- promote conservation; and
- secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

The main objects of the **Water Services Act** are to provide for:

- the right of access to basic water supply and to basic sanitation;
- the setting of national standards and norms and standards for tariffs;
- the preparation of water services development plans;
- a regulatory framework for water services institutions;
- the establishment of water boards and water services committees;
- the monitoring of water supply and sanitation services;
- intervention by the Minister or by the relevant Province;
- financial assistance to water services institutions;
- a national information system;
- the accountability of water services providers; and
- the promotion of effective water resource management and conservation.

The purpose of the **National Water Act** is to ensure that the nation's water resources are protected, used, developed, conserved, managed and controlled in ways which take the following into account:

- meeting the basic human needs;
- promoting equitable access to water;
- redressing the results of past racial and gender discrimination;
- promoting the efficient, sustainable and beneficial use of water;
- facilitating social and economic development;
- providing for growing demand for water use;
- protecting aquatic and associated ecosystems;
- reducing and preventing pollution and degradation of water resources;
- meeting international obligations;
- promoting dam safety;
- managing floods and droughts; and
- establishing suitable institutions and to ensure that they have appropriate community, racial and gender representation.

## PART 3:

# Water sector institutions

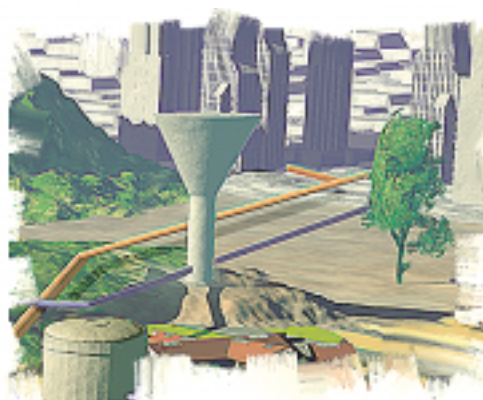


### Water Services Authority

Both the Water Services Act and the National Water Act provide for different types of institutions. The Water Services Act provides for water services institutions, whilst the National Water Act provides for water management institutions. Brief descriptions of each institution are provided below. The more detailed legislative roles and responsibilities of the different institutions are provided later in this booklet.

### Water Services Institutions

One of the most important elements of the Water Services Act is that it provides for the institutional arrangements for water services provision. It sets out who is responsible for different activities.



- **A water services authority** is any municipality that has executive authority for water services within its area of jurisdiction in terms of the Municipal Structures Act or the ministerial authorisations made in terms of the Municipal Structures Act. This means that the municipality is responsible for ensuring access to water supply and sanitation services.
- A water services authority is a municipality and cannot be any other type of institution.
- The water services authority can be a Category A (Metropolitan), or Category C (District) municipality, or a Category B (Local) municipality, if authorised by the Minister of Provincial and Local Government. A water services authority has a choice. It may carry out the functions of a water services provider itself or it may enter into a contract (service delivery agreement) with another water services provider.

## Water Services Provider



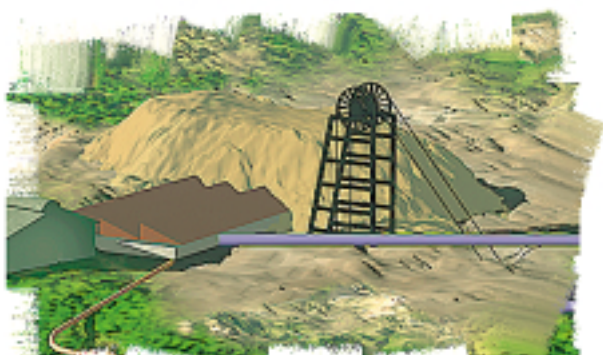
- The **water services provider** physically provides the water supply and sanitation services to consumers under contract to the water services authority.
- This function can be performed by the municipality itself or any other public or private body, such as a water board, a non-governmental organisation (NGO), a community-based organisation (CBO) or a private sector company, with whom it contracts.
- No person may operate as a water services provider without the approval of the water services authority or by means of a contract/service delivery agreement.

## Water Board



- A **water board** is established by the Minister of Water Affairs and Forestry.
- The primary function of a water board is to provide water services to other water services institutions.
- Water boards may carry out secondary activities as long as they do not interfere with its primary function of supplying other institutions, or create financial problems for the board. Secondary activities of a water board may include:
  - providing management services, training and other support services
  - supplying untreated water to end users who do not use the water for household purposes
  - providing catchment management services
  - with the approval of the water services authority:
    - supplying water directly for industrial use
    - accepting industrial effluent
    - acting as a water services provider to consumers
  - performing water conservation functions.
- A water board is a public water services provider.

### Water Services Intermediary



- Although not a water services institution, the Water Services Act provides for a **water services intermediary**.
- A water services intermediary is a person or body which provides water to people as a part of some other contract. For example a farmer who provides water to farm labourers, landlords of flats who provide water to tenants, or a mine who provides water to people living in company housing and hostels.
- The definition of a water services intermediary within the Water Services Act makes it clear that a water services intermediary only applies where water supply is a specific part of the contract between the two parties, namely that there is an obligation to provide water services by the one party to the other.

### Water Resource Management Institutions

The **National Water Act** provides for four different types of water management institutions:

- catchment management agency
- water user association
- a body responsible for international water management
- any person who fulfils the functions of a water management institution in terms of the Act

The institution that is of most relevance to water services authorities is the catchment management agency. Water user associations are mainly established to provide water to the agricultural sector and are briefly mentioned below. Bodies responsible for international water management are established to co-ordinate activities with neighbouring countries.

### Catchment Management Agency



- The national government is the public trustee of the nation's water resources.
- The purpose of establishing **catchment management agencies (CMAs)** is for national government to delegate water resource management to the catchment level, and to involve local communities.
- The aim is to establish catchment management agencies for all water management areas. There are 19 water management areas covering the entire country. A water management area is an area of responsibility of a single catchment management agency.
- The Minister, acting through the DWAF regional offices, will act as the catchment management agency in water management areas where catchment management agencies have not been established, or where they do not function properly.
- The initial functions of a catchment management agency are to:
  - investigate and advise on the protection, use, development,

- conservation, management and control of the water resources in its water management area
- develop a catchment management strategy
- co-ordinate the activities of water users and of the water management institutions
- promote the implementation of any applicable water services development plan
- promote community participation
- DWAF will, over time delegate other functions to catchment management agencies which in the long term will result in catchment management agencies authorising water use.

**Water User Association**



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

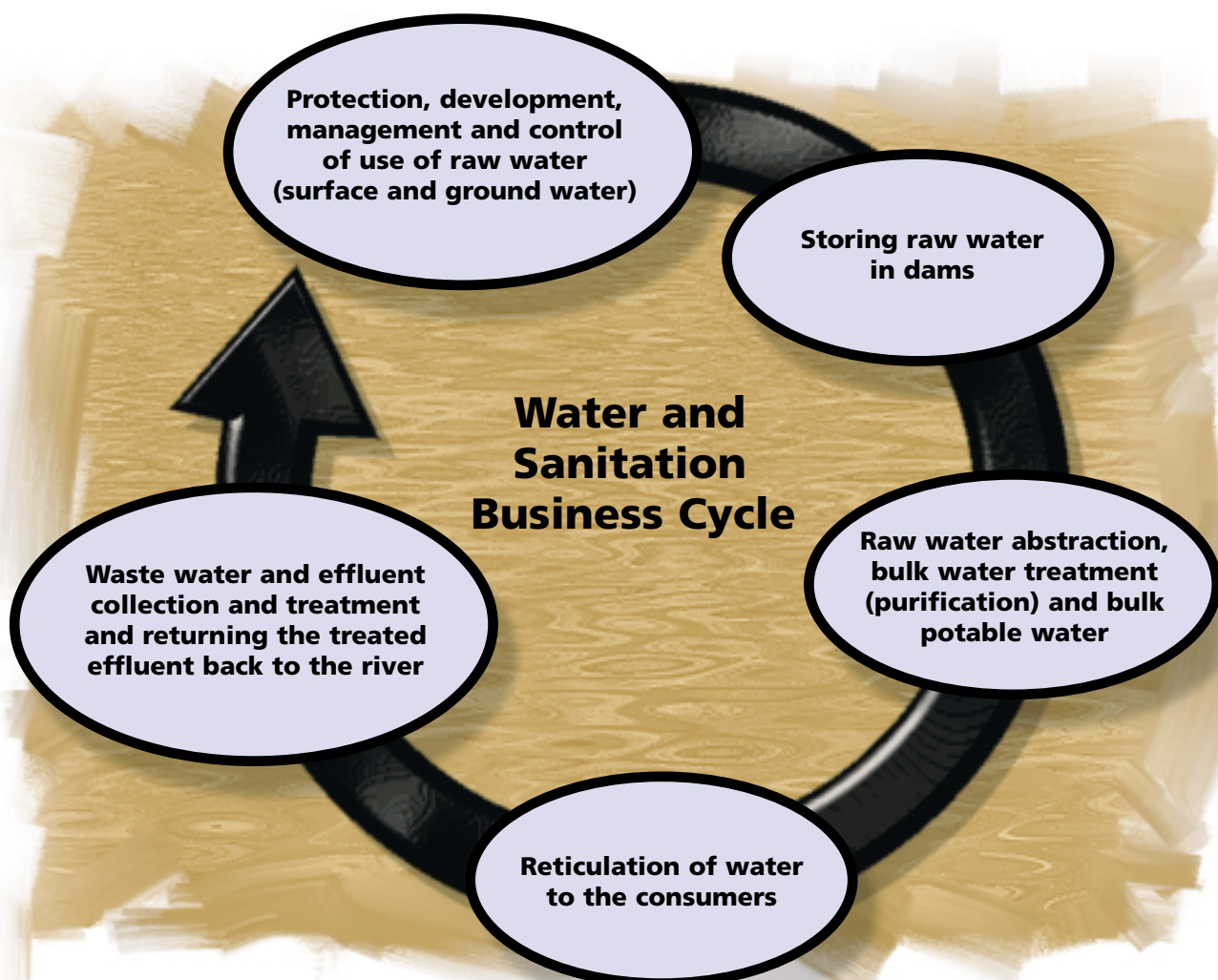
- Although water user associations are water management institutions their primary purpose, unlike catchment management agencies, is not broad resource water management.
- They operate at a restricted localised level, and are particularly tailored for the management of local water resource infrastructure, with an emphasis on agricultural and other rural users. As such, they provide a vehicle for local water resource infrastructure management where there are no other relevant organisations.
- Whilst the primary function of water user associations is to operate infrastructure for their members, water user associations may provide bulk water services on behalf of a municipality, i.e. fulfil the function of bulk water services provider. For example, this may be the case where there is no water board and where the water user association has the capacity to provide bulk water services.



## **PART 4:**

# **The role of water sector institutions in the water and sanitation business cycle**

The water and sanitation business cycle comprises a number of separate components, which are all linked into one business cycle. The components are illustrated in the diagram below.



**Who is responsible for each of these components?**

Protection, development, management and control of use of raw water (surface and ground water)

Department of Water Affairs and Forestry

The Minister of Water Affairs and Forestry sets the national objectives for protecting the resource in the *national water resource strategy*.

Catchment Management Agency

Each **catchment management agency** is then responsible for protecting the catchments and aquifers within their water management areas in accordance with the national water resource strategy.



Protection of a water resource, means:

- to maintain the quality of surface and ground water so that it can be used in an ecologically sustainable way
- to prevent degradation of the river or aquifer
- to rehabilitate the river or aquifer

In order to protect the national water resource, the resource needs to be developed, managed, and conserved. In addition, protection of the resource requires **control of use** from the resource and control of activities within the resource - for example controlling abstraction from the resource and controlling the return of effluent and disposal of waste to the resource.

Storing raw water in the dams

Department of Water Affairs and Forestry

The national government is the public trustee of the nation's water resources. In many cases the national **Department of Water Affairs and Forestry** has taken the initiative to develop, operate and maintain the inter-basin transfer schemes and the storage dams used to store the raw water.

But, **any institution** (or person) can construct and operate a dam if that institution has a licence or other authorisation to do so.





Raw water abstraction, bulk water treatment (purification) and bulk potable water distribution

**Bulk Water Services Provider**

**Water Board**



**Bulk water services providers** are responsible for developing, operating and maintaining abstraction works and bulk potable infrastructure, such as bulk water treatment plants and pump stations, and reservoirs and pipelines for distributing bulk potable water to the municipal reservoirs. In terms of bulk potable water, the municipality can either fulfil this function itself, or it can contract a bulk water services provider (who may also be the water services provider responsible for developing, operating and maintaining the municipal reticulation infrastructure).

In areas where a **water board** exists, the water board will usually fulfil the role of bulk water services provider. The primary function of water boards is provide water services to other water services institutions. If a water board fulfils the role of bulk water services provider, it must have a contract with the relevant municipality (water services authority).

Reticulation of water to the consumers

**Water Services Authority**

**Water Services Provider**

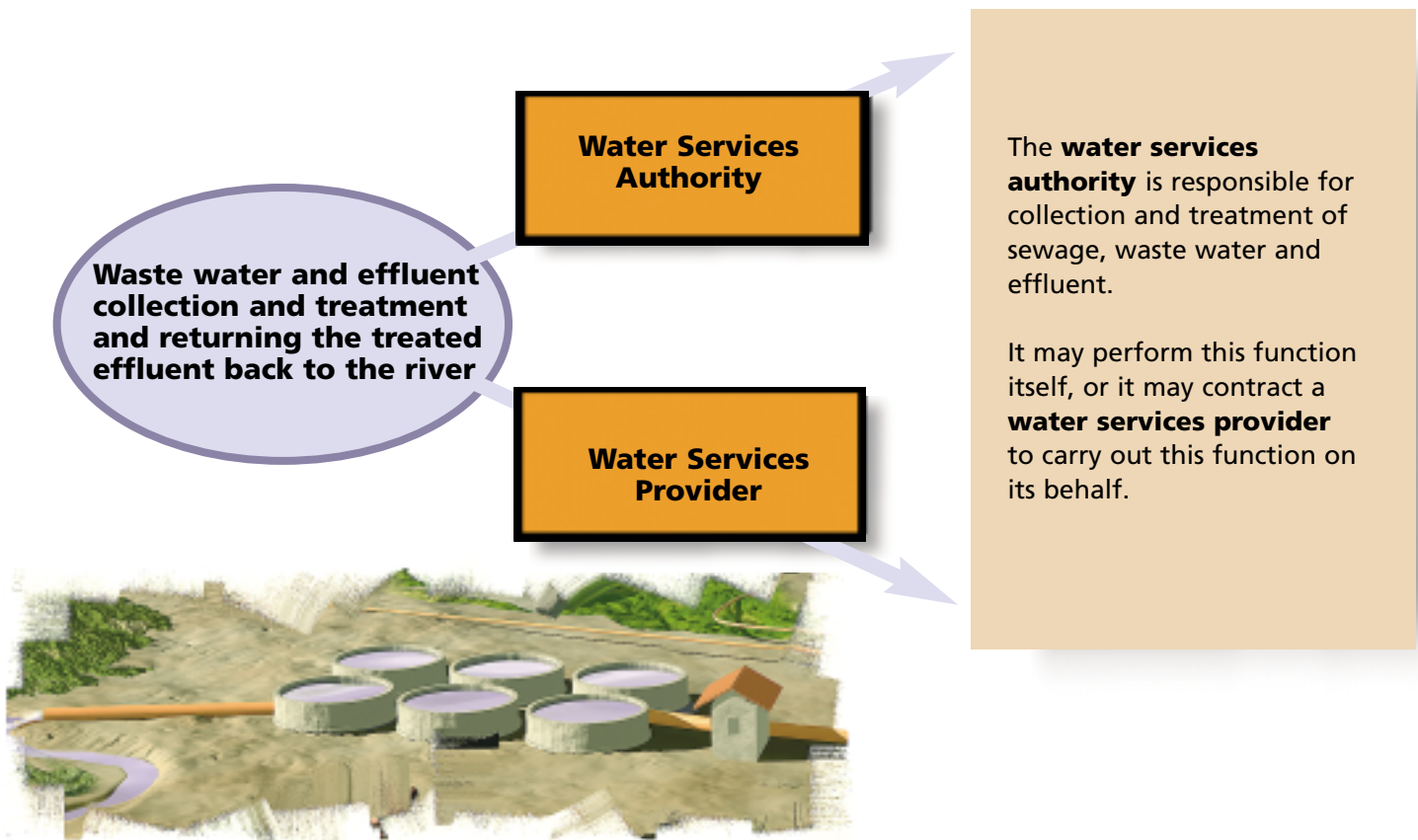


The **water services authority** (municipality) is responsible for ensuring that infrastructure is developed, operated and maintained. It may perform the functions of a water services provider itself (i.e. it may develop, operate and maintain the infrastructure, manage revenue collection and customer relations, and promote health and hygiene awareness itself), or it may contract another **water services provider** to carry out this function on its behalf.

Municipal infrastructure comprises the municipal reservoirs, pump stations and pipelines used to reticulate the water to the consumer.

The duty of the water services authority to ensure efficient, affordable, economical and sustainable access to water services is subject to:

- the availability of resources
- the need for an equitable allocation of resources
- the need to regulate access to water services in an equitable way
- the duty of consumers to pay reasonable charges
- the duty to conserve water resources
- the nature, topography, zoning and situation of the land in question



Municipal sewage and waste water treatment infrastructure comprises the sewerage pipes and sewerage treatment plants used to collect sewage, waste water and other effluent and to treat it before returning the treated water back into the river or sea.

Section 7 of the Water Services Act states that no person may obtain water for industrial use or dispose of the industrial effluent from any other source other than the distribution system of a water services provider, or its nominated agency, without the permission of that water services authority.

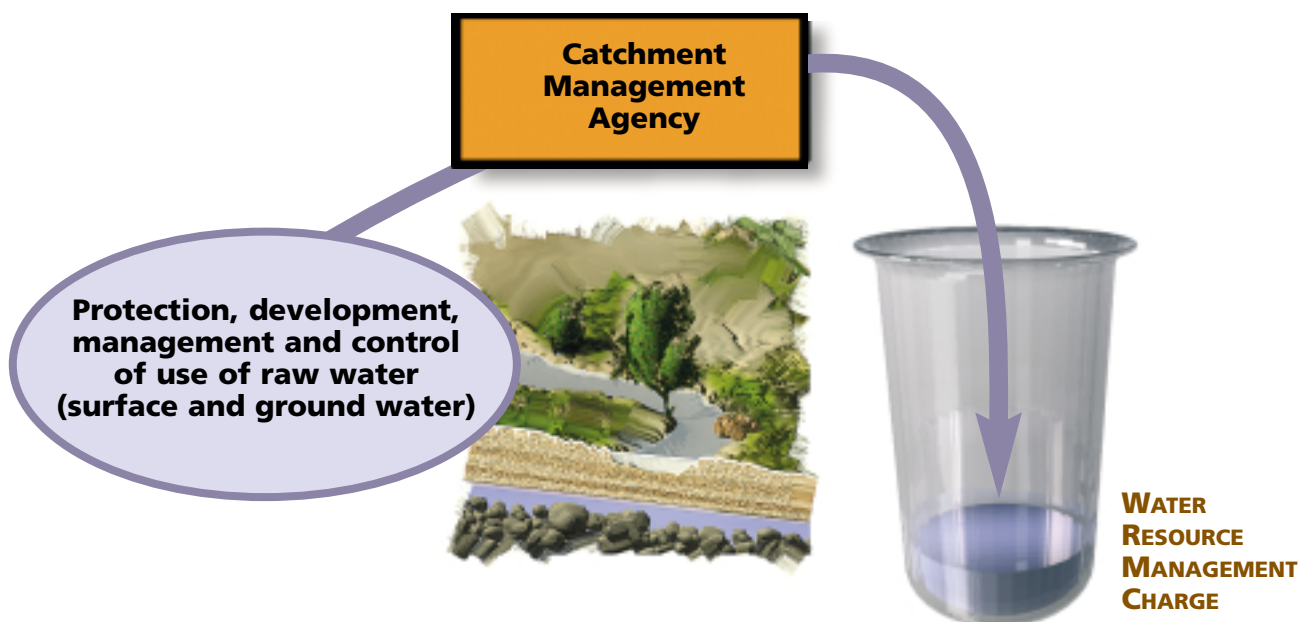
All industries are therefore firstly required to discharge waste to the water services provider's treatment works. Water services providers should take extra care, at all times, to ensure that the effluent received is treatable and that the water treatment works will comply to the set effluent standards. Water services providers can however give permission that effluent be treated by another party, or be treated on site.

## PART 5:

# The recovery of costs in the water and sanitation business cycle

Costs are incurred during each phase of the water and sanitation business cycle.

### COSTS ASSOCIATED WITH PROTECTING THE RAW WATER SOURCE



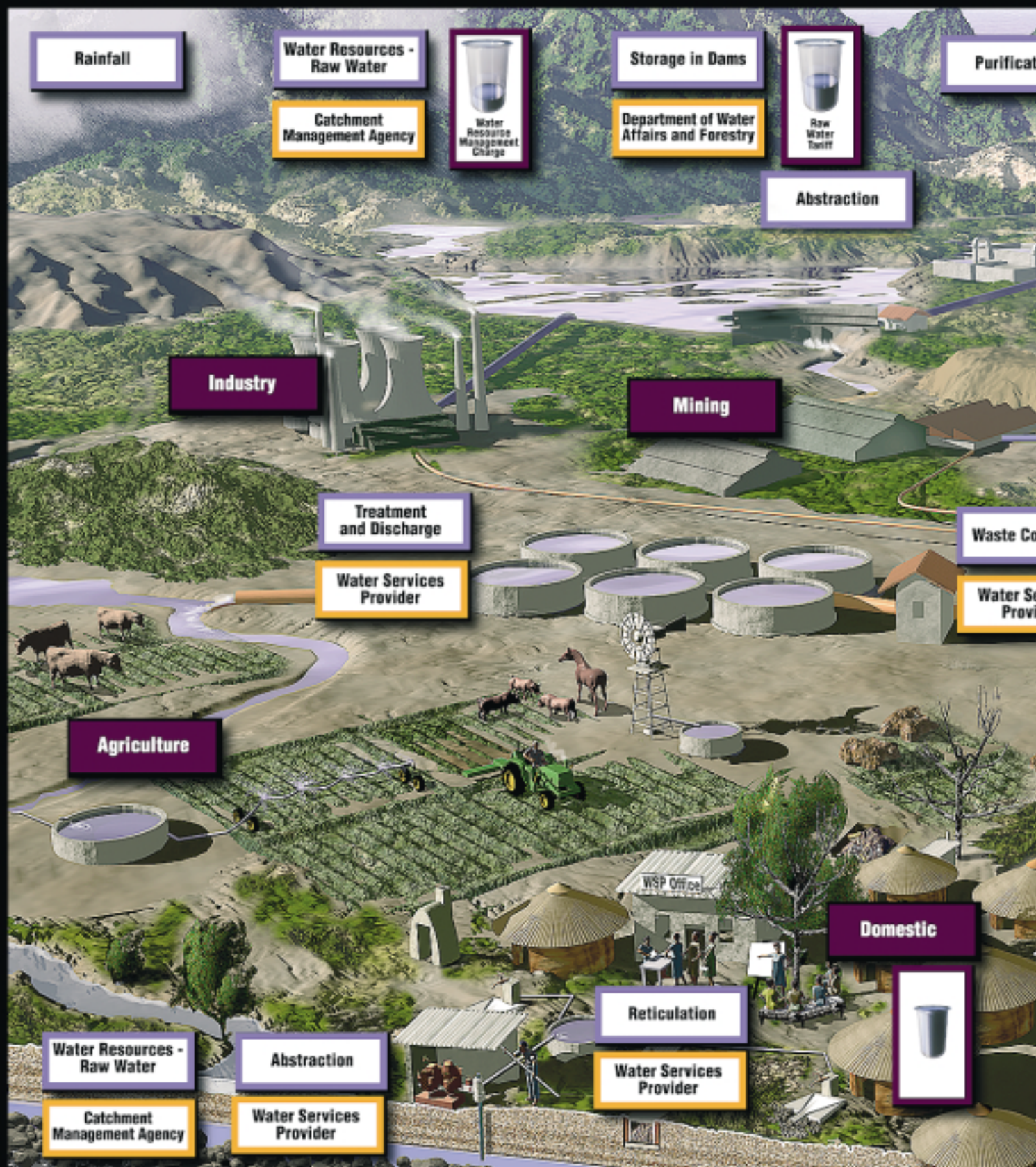
The catchment management agency incurs costs in protecting and managing the resource.

#### It costs money to:

- evaluate and issue licences
- monitor water resource quality against the water resource objectives
- detect and prosecute unlawful use
- promote water conservation and demand management etc.

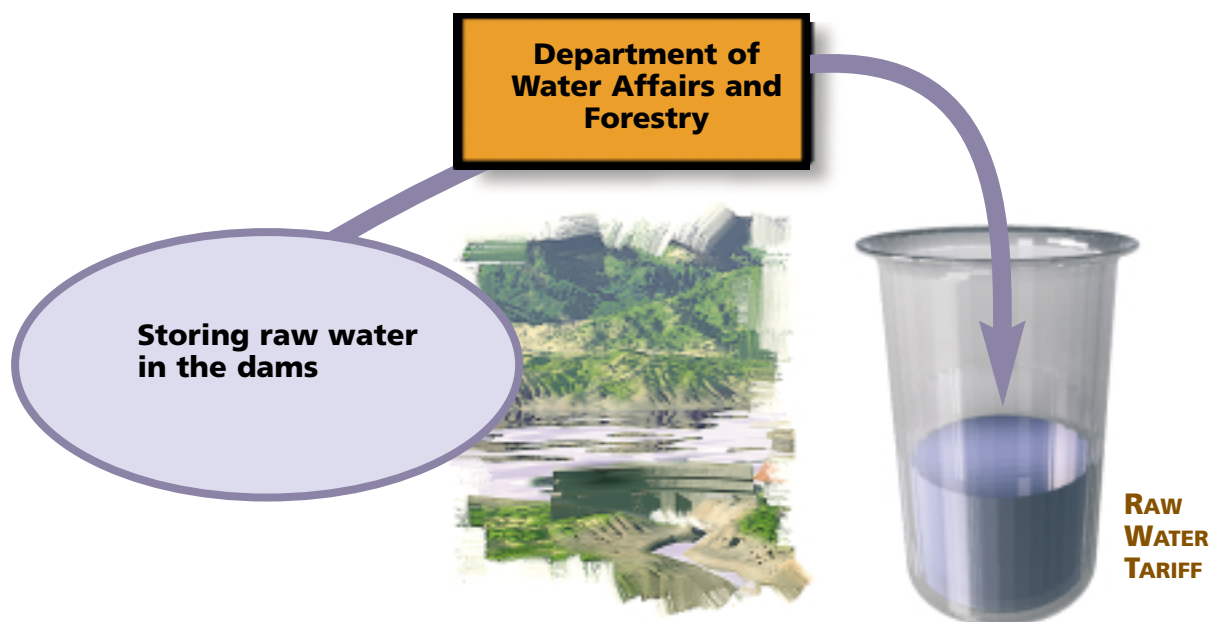
These costs are recovered by the catchment management agency from the users (those that abstract raw water from the river or aquifer or those that discharge waste water or treated effluent back into the river) in the form of a **water resource management charge**.

# The Water and Sanitation Business Wall Chart





## COSTS ASSOCIATED WITH THE RAW WATER SUPPLY



### It costs money to:

- develop (construct) the inter-basin transfer schemes, dams, and other infrastructure required to store and supply the raw water from the source
- repay the loans (and interest) required to finance the construction
- operate these works (including electricity and labour)
- maintain these works

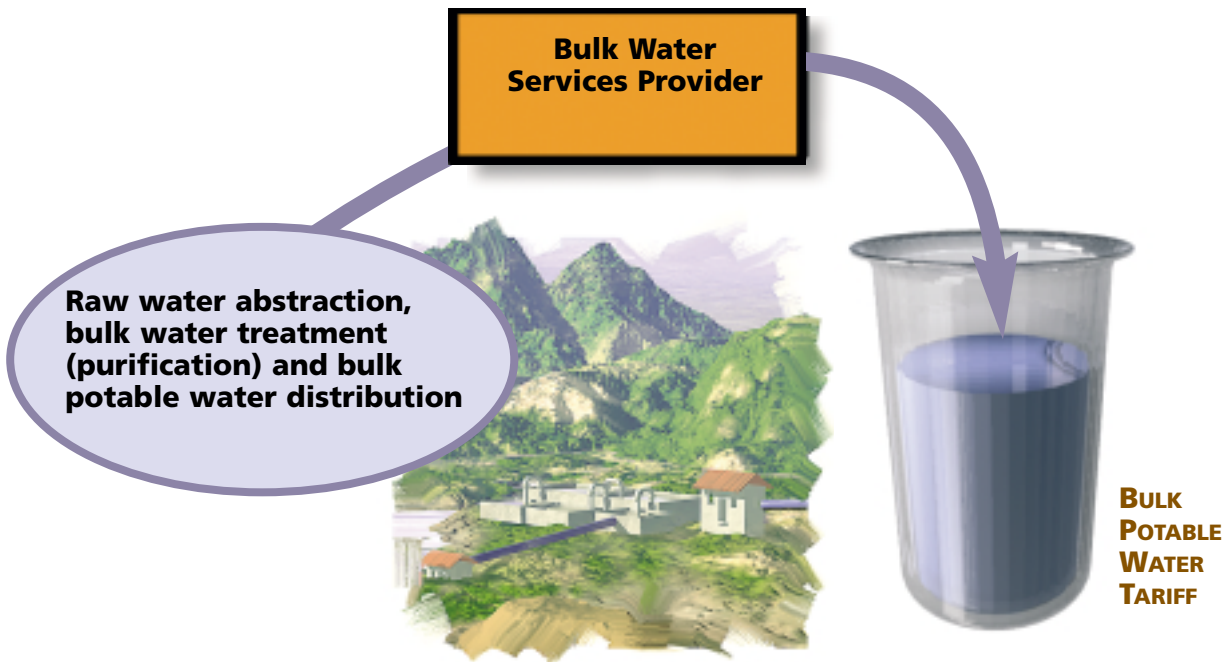
The Department of Water Affairs and Forestry (or raw water supplier) charges a **water resource development and use of water works charge** to cover the costs of developing, financing, operating and maintaining and refurbishing the raw water abstraction and storage works.

This charge is added to the **Water Resource Management Charge** (charged by the catchment management agency) and the total costs are passed on to the bulk water services provider / user as a **Raw Water Tariff**.

The amount of the raw water tariff is determined by the input costs and may differ between catchments in a single water management area (area of responsibility of a CMA) and may even differ from scheme to scheme in the same catchment.

It is important to note that a user is only charged the water resource development and use of water works charge if they receive their raw water from the Department of Water Affairs' or another raw water supplier's water works. If, for example, a user abstracts ground water, the user is charged the water resource management charge, but not the water resource development and use of water works charge.

## COSTS ASSOCIATED WITH BULK WATER TREATMENT AND BULK POTABLE DISTRIBUTION



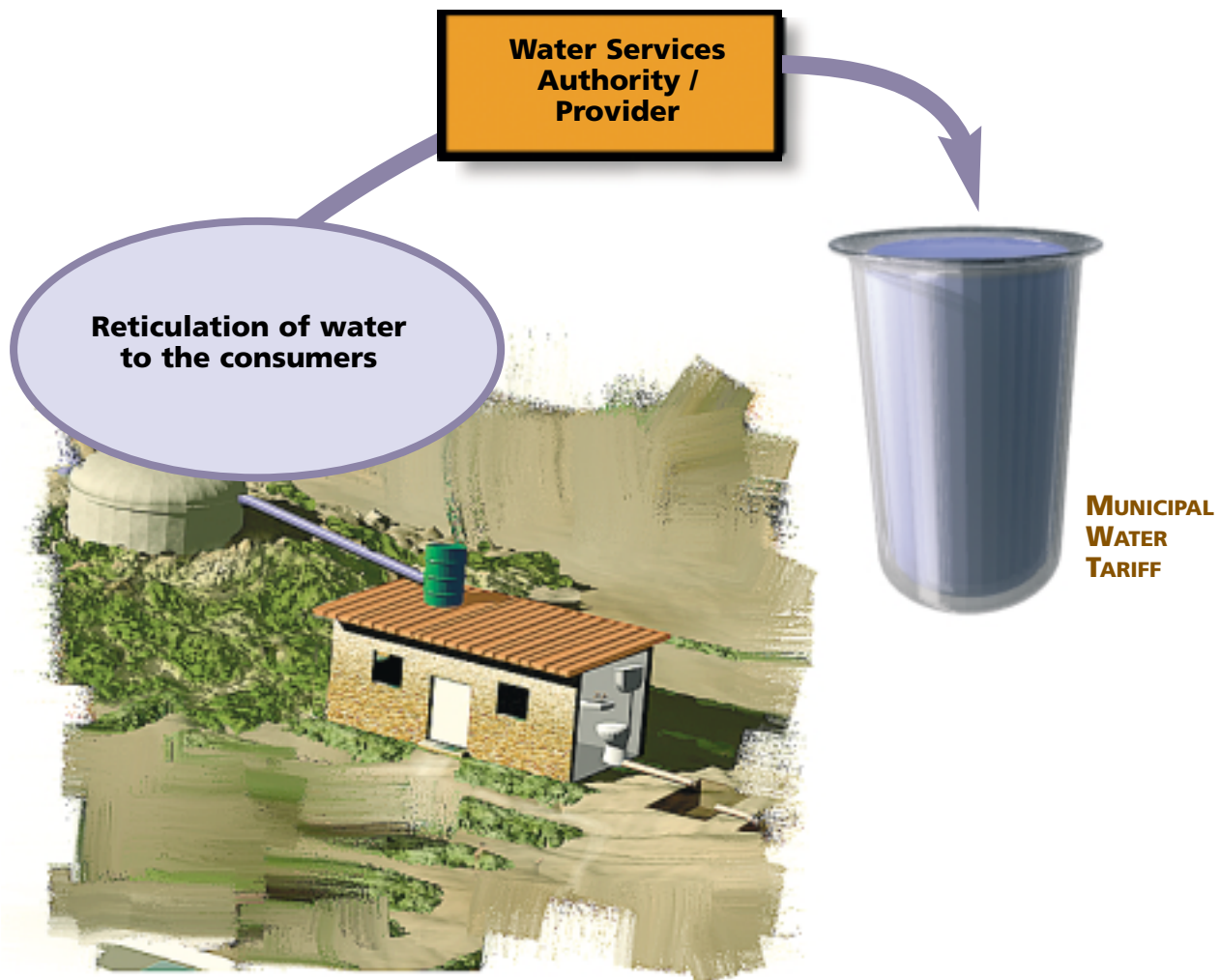
### It costs money to:

- purchase the raw water from DWA or the institution responsible for storing the raw water (raw water tariff)
- develop (construct) the abstraction works, bulk water treatment plant, the bulk reservoirs, pump stations and pipelines required to abstract and purify the raw water and distribute the potable bulk water to the municipal reservoirs
- repay the loans (and interest) required to finance the construction
- operate these works (including chemicals, electricity and labour)
- maintain these works

These costs are recovered from the water services authority or water services provider by the bulk water services provider in the form of a **bulk potable water tariff**, which includes the raw water tariff.

## COSTS ASSOCIATED WITH MUNICIPAL WATER SUPPLY

### INFRASTRUCTURE



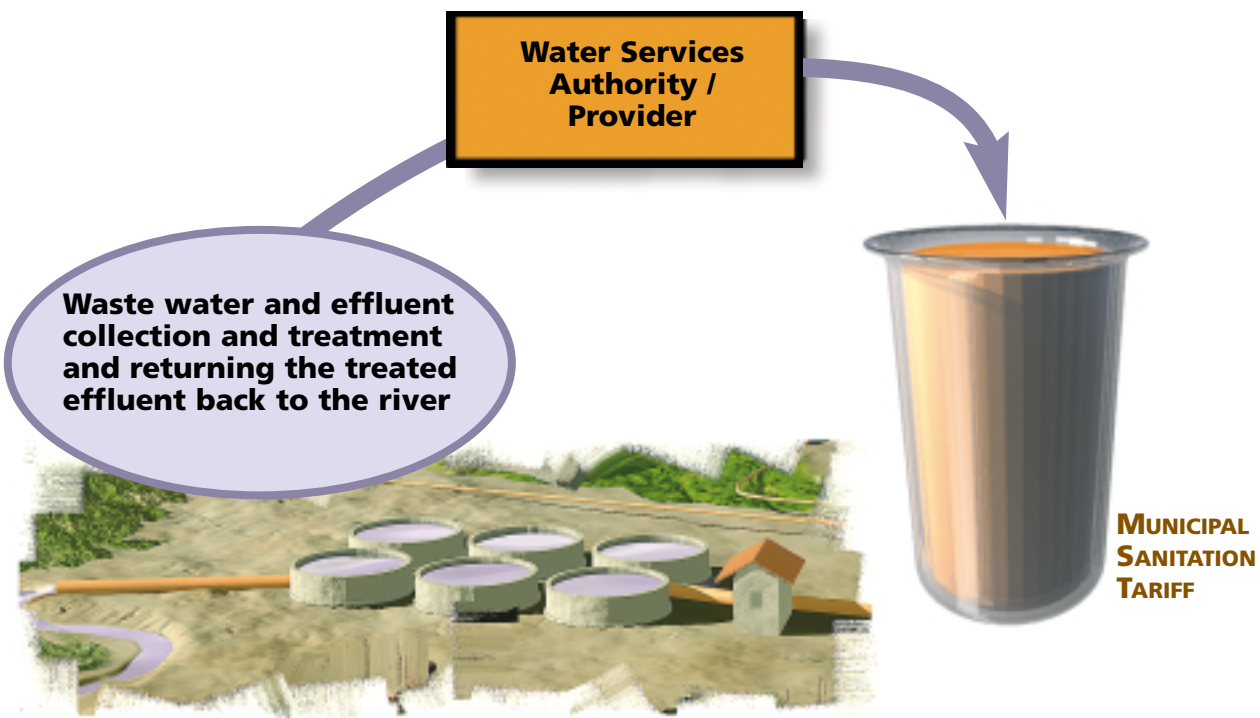
#### It costs money to:

- purchase the bulk potable water from the institution responsible for abstracting, purifying and distributing the bulk potable water (bulk water tariff which includes the raw water tariff)
- develop (construct) the municipal water supply infrastructure comprising the municipal reservoirs, pump stations and pipelines used to reticulate the water to the consumer
- repay the loans (and interest) required to finance the construction
- operate these works (including electricity and labour)
- maintain these works
- to read the meters and bill the customers

These costs are recovered from the consumer by the water services authority in the form of a **municipal water tariff**, which includes the bulk water tariff.



## COSTS ASSOCIATED WITH MUNICIPAL SEWAGE COLLECTION AND TREATMENT



### It costs money to:

- pay the water resource management charge associated with discharging treated effluent back into the river
- develop (construct) the municipal sewage collection and treatment infrastructure comprising the municipal sewers, sewage pump stations and sewage treatment plants used to collect the sewage, effluent and waste water from the consumer and to treat it
- repay the loans (and interest) required to finance the construction
- operate these works (including chemicals, electricity and labour)
- maintain these works
- promote health, hygiene and sanitation
- monitor health impacts and periodically evaluate the effectiveness of the sanitation promotion
- create an enabling environment for the construction of household and public toilet facilities
- bill the customers

These costs are recovered from the consumer by the water services authority or water services provider in the form of a **municipal sanitation tariff** which includes the water resource management charge (if any) applicable to discharging effluent. This tariff is sometimes included in the municipal water tariff.

It should be noted that because of all these costs, full water borne sanitation is far more expensive than on-site systems, such as a septic tank, aquaprivy or VIP. However, costs such as health and hygiene promotion and pit emptying also apply to on-site systems.

## PART 6:

# Planning for the different components of the water cycle



As shown above, various components of the water cycle are managed by different institutions. Furthermore, each component has large financial implications and it may take a number of years to progressively develop the institutions envisaged by the Acts. For example, no catchment management agencies have yet been established.

This indicates that there is a considerable need for sound planning to ensure that all components of the cycle are co-ordinated. It is for this reason that the Acts prescribe that each of the institutions should compile formal plans.

The National Water Act requires the Minister to compile a ***national water resource strategy*** and each catchment management agency to compile a ***catchment management strategy***.

The Water Services Act requires each water board to compile a ***water board business plan***, and every water services authority to compile a ***water services development plan***. Furthermore, the Act specifies the minimum contents of each of these plans.

Planning between the different institutions must be co-ordinated. For example when a catchment management agency prepares its catchment management strategy (which includes an allocation plan for allocating

water to existing and prospective users), the catchment management agency needs to take into account the water requirements of water services authorities in the water management area. These requirements are specified in the water services authorities' water services development plans. Likewise when preparing the water services development plan, water services authorities must ensure that there is sufficient water available in the catchment management strategy.

The water services development plan is the most relevant to municipal councillors and officials. The requirements of this plan are detailed under the legislative roles and responsibilities of a water services authority in part 7 below.

### **LEGISLATIVE ROLES AND RESPONSIBILITIES OF THE KEY WATER SERVICES INSTITUTIONS**

The Minister's responsibilities in terms of the Water Services Act are included as Appendix 1.

The next two parts describe the more detailed legislative roles and responsibilities of the water services authority and the water services provider. These parts are particularly relevant to municipalities in terms of water supply and sanitation services.

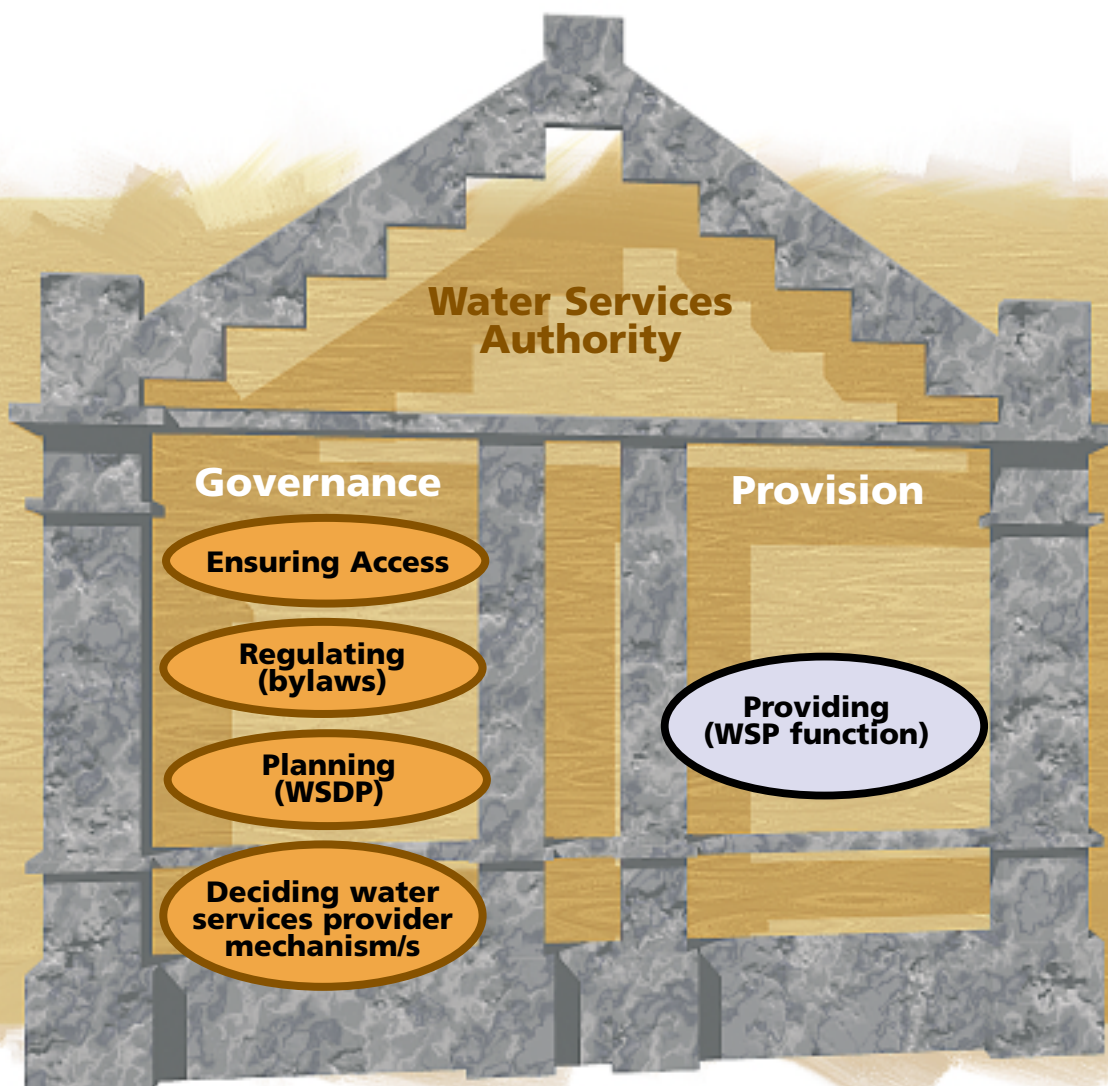
## PART 7:

# Water services authority

The Water Services Act provides that every water services authority must:

- **ensure access** to efficient, affordable, economical and sustainable access to water services for all consumers;
- make **bylaws**;
- prepare a **water services development plan**; and
- decide on appropriate mechanism for providing water services, i.e. either perform the function of **water services provider** itself (internal mechanism) or contract a water services provider (external mechanism).

These legislative functions can be divided into two key areas:



The **Governance Functions** cannot be delegated to any other legal entity, however, the water services authority can contract in support to **assist** with various governance functions.

If the water services authority also performs the water services provider (provision functions), the governance functions must be managed and accounted separately from the provision functions.

The **Provision Function** is the actual provision of the water supply and sanitation services to consumers, for example operating and maintaining the water services infrastructure, customer relations, revenue collection, etc.

The Municipal Systems Act introduces the differentiation between authority (governance) and provider functions of a municipality, which makes it consistent with the Water Services Act.

## Ensuring Access

Every water services authority has 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.

This duty to ensure access to services is subject to:

- the availability of resources;
- the need for an equitable allocation of resources;
- the need to regulate access to water services in an equitable way;
- the duty of consumers to pay reasonable charges;
- the duty to conserve water resources; and
- the nature, topography, zoning and situation of the land in question.

The authority has the right to limit or discontinue the provision of water services if there is a failure to comply with reasonable

conditions set for the provision of such services, and may also impose reasonable limitations on the use of water services.

Water Services Authorities also need to develop water services policies such as a free basic water policy and policies related to equitable share and the channeling of grants. These policies must be integrated and consistent with other municipal service policies. Whilst policy development is not required by legislation, it is required in order to develop by laws and for the performance of other functions.

Ensuring access is also ensuring that the necessary water services infrastructure is in place. This requires accessing grants and implementing capital projects. All projects must be identified in the water services development plan.

## Regulating: Bylaws and Monitoring

Every water services authority must make bylaws which contain **conditions for the provision of water services**, and which must provide for at least:

- the standard of the services;
- the technical conditions of supply;
- the installation, alteration, operation, protection and inspection of water services works and consumer installations;
- the determination and structure of tariffs;
- the payment and collection of money due for the water services;
- the circumstances under which water services may be limited or discontinued;
- the procedure for discontinuing and limiting services;
- the prevention of unlawful connections to water services works; and
- the unlawful or wasteful use of water.

Bylaws must comply with national standards.

Part of the regulatory function is monitoring the provision of water services and taking

corrective action where required. This requires setting up a regulatory system in the water services authority.

## **Planning: Water Services Development Plans**

A water services authorities must prepare a draft **water services development plan** (WSDP) for its area of jurisdiction, as part of the Integrated Development Plan (IDP) process.

The WSDP is a tool to assist water services authorities to make informed decisions about water and sanitation services, and to plan for those communities that do not have access to basic services. The planning process involves:

- data collection and analysis;
- stakeholder participation;
- strategic decision making;
- project identification and prioritisation; and
- commitments in terms of actions and resources required to implement the WSDP.

### **The water services development plan must contain details about:**

- the physical attributes of the area;
- the size and distribution of the population;
- a time frame for the plan, including the implementation programme for the following five years;
- existing water services;
- existing industrial water use;
- existing industrial effluent disposed of;
- the number and location of persons who are not being provided with a basic water supply and basic sanitation;
- water services providers which will provide the water services;
- contracts and proposed contracts with water services providers;
- proposed infrastructure necessary;
- the water sources to be used and the quantity of water to be obtained from and discharged into each source;
- the estimated capital and operating costs of those water services;
- financial arrangements for funding those water services, including the tariff structures;
- any water services institution that will assist the water services authority;
- the operation, maintenance, repair and replacement of existing and future infrastructure;
- the number and location of persons to whom water services cannot be provided within the next five years, setting out the reasons; and the time frame within which it may reasonably be expected that a basic water supply and basic sanitation will be provided to those persons; and
- of existing and proposed water conservation, recycling and environmental protection measures

In developing the water services development plan the water services authority must at all times be conscious of the requirements of Section 5 of the Water Services Act which states that:

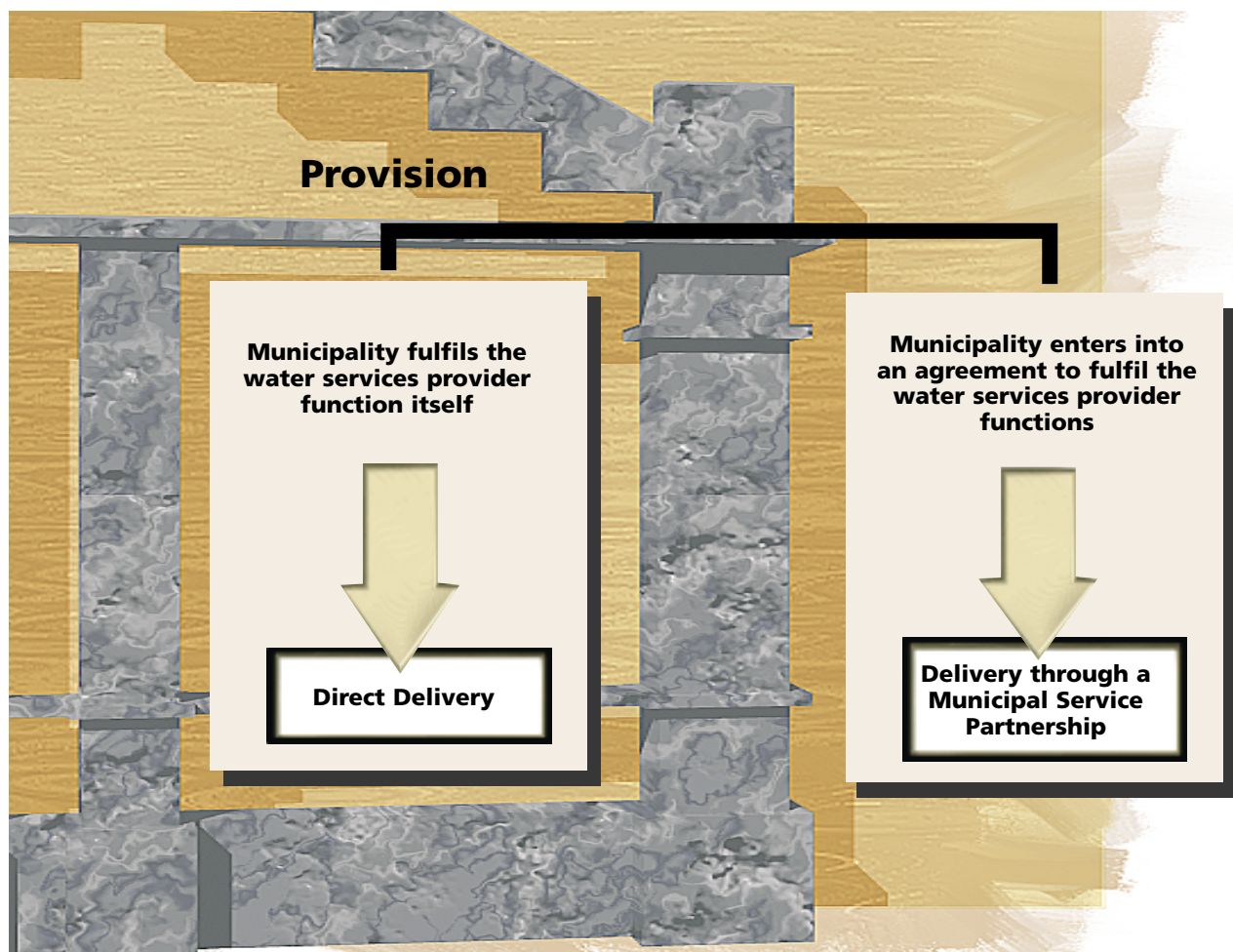
“if the water services provided by a water services institution are unable to meet the requirements of all its existing consumers, it must give preference to the provision of basic water supply and basic sanitation to them.”

The Strategic Framework for Water Services (2003), provides definitions of basic water supply and basic sanitation as follows, (the changes to the Water Services Act will also reflect these definitions):

- **‘basic water supply service’** means 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. *(A basic water supply facility is defined as the infrastructure necessary to provide 25 litres of potable water per person per day within 200 metres of a household and with a minimum flow of 10 litres per minute.)*

- **‘basic sanitation service’** means 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. *(A basic sanitation facility is defined as the infrastructure necessary to provide a sanitation service which is safe, reliable, private, protected from weather, ventilated, keeps smells to the minimum, is easy to keep clean, minimises the risk of the spread of disease carrying flies and pests, and enables safe and appropriate treatment and/or removal of human water and wastewater in an environmentally sound manner.)*



These definitions are made more specific in terms of quantity and quality in the Regulations published by the Minister under Section 9 of the Water Services Act.

The Department of Water Affairs and Forestry has prepared guidelines to assist municipalities in compiling a water services development plan.

## Deciding Water Services Provider Mechanism/s

The water services authority is responsible for deciding the most appropriate service delivery mechanism for the provision of water supply and sanitation services. It has a choice, to either provide the services itself (internal mechanism), or to select and appoint another water services provider/s to provide water services within its area of jurisdiction (external mechanism).

An **internal mechanism** includes any arrangement where the municipality fulfils the water services provider function itself. This could be:

- a department or an administrative unit within the municipality's administration
- a business unit
- an internal municipal service district

If the municipality chooses to establish or contract another entity to fulfil the water services provider function, this is called an external mechanism. An **external mechanism** includes:

- a municipal entity
- another municipality
- an organ of state
- a community-based organisation
- a non-governmental organisation
- any other institution or entity legally competent to operate a business activity

## Summary of internal and external delivery agreements

### Internal mechanisms



- ✓ Department or administrative unit
- ✓ Business unit
- ✓ Any other component of municipality's administration

### External mechanisms



- ✓ Another municipality
- ✓ Municipal entity
- ✓ Organ of State
- ✓ CBO
- ✓ NGO
- ✓ Any other institution

The process to assess, select and appoint a service delivery mechanism is regulated by Chapter 8 of the Municipal Systems Act. This Chapter also specifies that a competitive tendering process is required if a CBO, NGO or private entity is to be appointed as a municipal services provider.

According to Section 19(2) of the Water Services Act, a water services authority may only enter into a contract with a private sector water services provider after it has considered all known public sector water services providers which are willing and able to perform the relevant functions.

### **What is a Municipal Service Partnership?**

A municipal service partnership is a contractual arrangement for the delivery of municipal services. The services delivery agreement (contract) is between the water services authority and another body or organisation that will fulfil the water services provider functions.

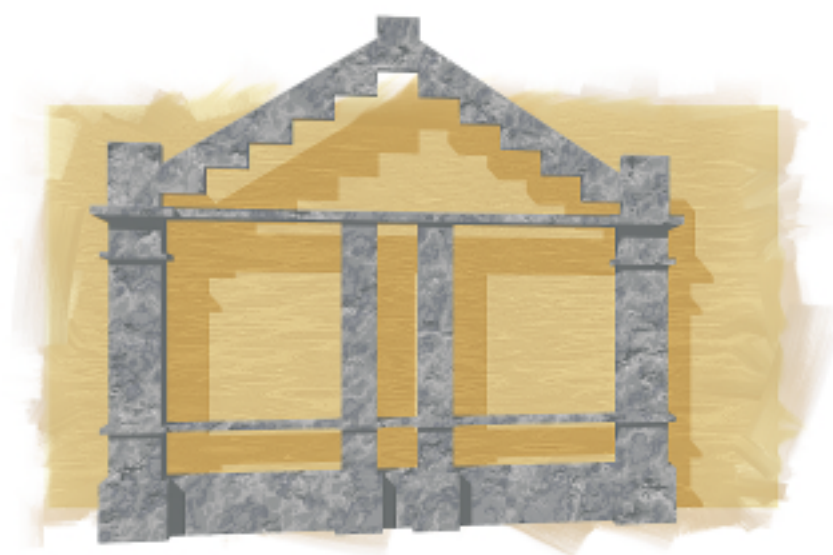
There are different types of contracts (services delivery agreements) that a water services authority can enter into with a water services provider. These include:

- service contract
- management contract
- lease
- BOT
- Concession
- or a combination of contract types

The type of contract will depend upon the type of resources and services that the water services authority aims to access through the municipal services partnership, and will depend upon allocation of risk between the water services authority and water services provider.

As soon as a service delivery agreement has been concluded with a water services provider, the water services authority must supply a copy thereof to the relevant Province (Provincial MEC for Local Government) and to the Minister of Water Affairs and Forestry.

The **implementation** of selected service delivery mechanisms is regulated by the Municipal Systems Act, the Municipal Finance Management Act and the Water Services Act.





## PART 8:

# Water services provider



The water services provider physically provides the services.

### Duties and Functions of Water Services Providers

The Water Services Act requires the following of the water services provider:

- Every water services provider must be contracted to act as a provider;
- A water services provider must provide information when required to do so
- Every water services provider must set conditions for provision of water services.

The Municipal Systems Act requires that a municipal services provider must have a service delivery agreement with the municipality. In the case of a water service provider, this service delivery agreement is regulated in terms the Section 19(5) Regulations issued by the Department of Water Affairs and Forestry.

### Provide Information

A water services provider must give such information concerning the provision of water services as may reasonably be called for by:

- the water services authority;
- the relevant Province;
- the Minister of Water Affairs and Forestry; or
- a consumer or potential consumer.

### Conditions for Provision of Water Services

Every water services provider must set conditions for the provision of water services.

These conditions must be in accordance with the conditions contained in the bylaws made by the water services authority having jurisdiction in the area in question.

The conditions must provide for:

- the technical conditions of existing or proposed extensions of supply;
- the determination and structure of tariffs;
- the conditions for payment;
- the circumstances under which water services may be limited or discontinued;
- procedures for limiting or discontinuing water services; and
- measures to promote water conservation and demand management.

Procedures for the limitation or discontinuation of water services must:

- be fair and equitable;
- with a few exceptions, provide for reasonable notice of intention to limit or discontinue water services; and
- provide for an opportunity to make representations and not result in a person being denied access to basic water services for non-payment, where that person proves, to the satisfaction of the relevant water services authority, that he or she is unable to pay for basic services.

The Section 19 Regulations require a model consumer charter to be published by the water services provider. It must be developed in consultation with consumers, and must contain the conditions for the provision of water services.

## Provision Functions

The contract with the water services provider will determine the provision functions that must be performed by the water services provider. It is important to note that water services provision is not simply about operating and maintaining water services infrastructure; it is also about providing an efficient, affordable, reliable and sustainable service to consumers.

Provision functions include the following:

### **Daily Operations**

Daily operations refers to operating the scheme. The nature of the operations activity will vary depending upon the technology of the water services infrastructure. Daily operations includes monitoring the water services infrastructure and minor repairs.

### **Maintenance**

This refers to normal repairs as well as preventative maintenance and major maintenance required to maintain the water services infrastructure.

In terms of sanitation this function includes:

- ensuring that on-site latrines are desludged as necessary
- management and maintenance of sewered systems
- safe treatment and disposal of sludge, sewage and effluent



### **Customer Relations and Communication**

The relationship between the water services provider and customers is very important. The water services provider must provide customers with the services that have been agreed upon in a way which satisfies customer requirements. Customer relations includes:

- two way communication with consumers and keeping them informed
- arrangements for dealing with complaints
- finding out customer needs and problems and responding to those needs

### **Health and Hygiene Promotion**

Health and hygiene promotion covers a number of activities, including:

- Creating demand for better sanitation in communities through programmes which raise awareness about why sanitation is important
- Providing consumers with information about a range of sanitation options and involving them in the choice of the system they prefer
- Promoting health awareness and safe hygiene practice
- Providing users with information about their toilets to ensure they are well maintained
- Monitoring the impact of health and hygiene programmes, and making improvements where necessary.

## **Contract Management**

The water services provider must manage its contract with the water services authority as well as any other contracts that it may have entered into. For example a contract with a bulk water services provider or a sub-contractor who is fulfilling a specific function on behalf of the water services provider.

## **Financial Management**

Financial management includes a range of activities including:

- Investment planning
- Raising grant and loan funds
- Budgeting
- Raising income: billing and revenue collection
- Banking
- Maintaining accounts
- Financial reporting

If the water services authority is also the water services provider, the municipality will be responsible for all these financial activities. If a water services provider has been contracted to fulfil the provision function, these activities will vary depending upon the specific contract between the water services authority and the water services provider. For example, the water services provider may not be involved in raising grant and loan funds, but may be responsible for revenue collection from consumers.



## **Planning**

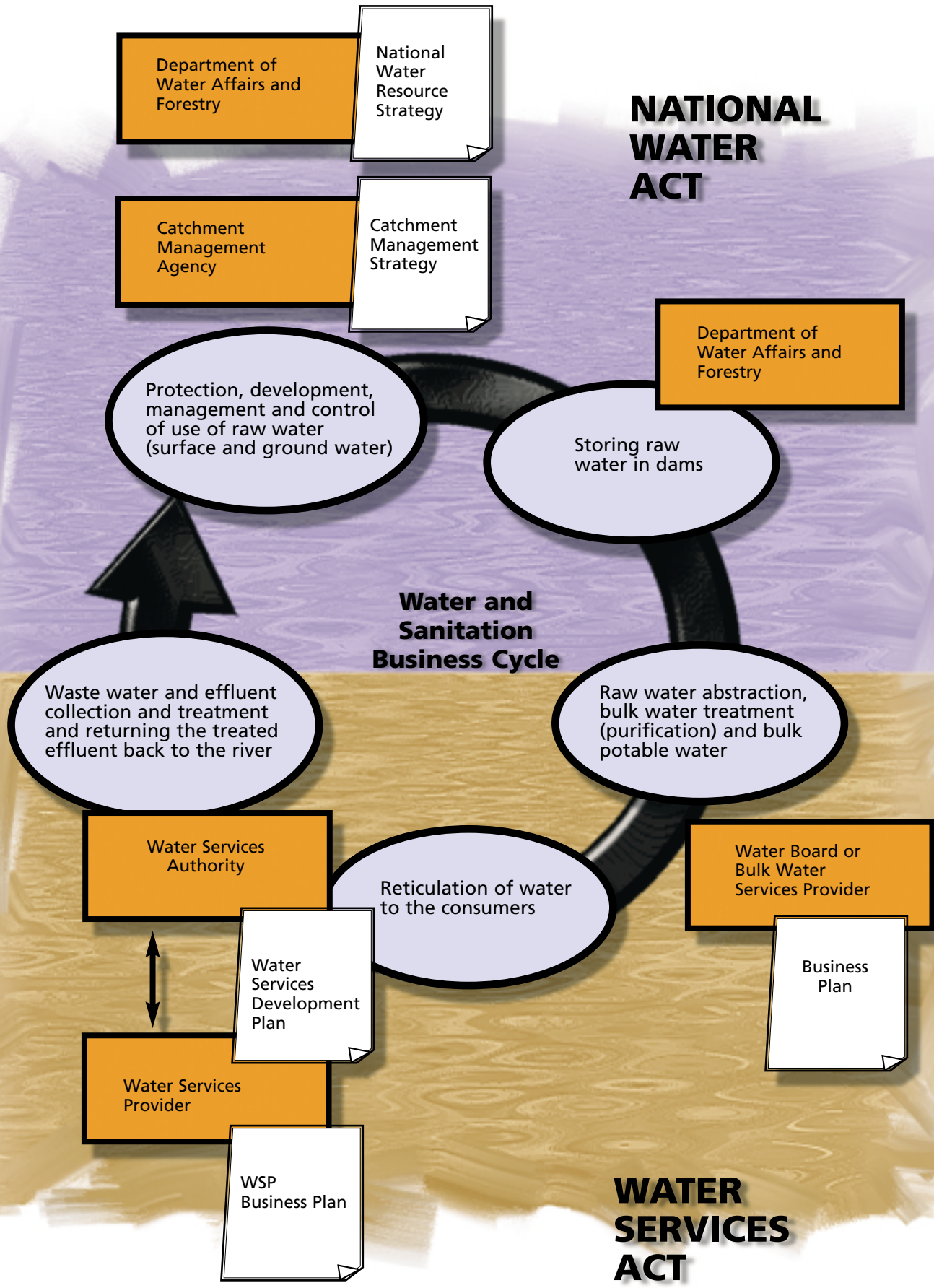
The planning function of a water services provider will also depend upon the specific water services provider institutional arrangements. Planning typically includes:

- Water services business planning which is essentially strategic in orientation and brings together physical, financial, socio-economic and organisational aspects. In terms of the Strategic Framework for Water Services, a water service provider is required to prepare a water services business plan. The status quo and targets information from the water services provider business plan should be incorporated into the water services development plan prepared by the water services authority. If the water services authority is also the water services provider, the water services provider business plan would be part of the water services development plan.
- Technical planning which includes level of service decisions, the way in which the infrastructure is expanded to serve new customers, and the arrangements to provide for bulk and connector services sufficient to provide for the growth in water demand.
- Operations planning involves the way in which operations are organised so that the service is run efficiently and effectively.

## **Monitoring and Reporting**

If the water services provider has contracted out any functions it must monitor these functions and take corrective action where necessary. The water services provider should also report on the services provided to the water services authority.

# SUMMARY OVERVIEW



# CONCLUSION

It is essential for the Department of Water Affairs and Forestry, catchment management agencies, water boards, water services authorities, water services providers and consumers to work together in a coordinated way if everyone is to have access to sufficient food and water, an environment that is not harmful to their health or well being; and to have the environment protected for the benefit of present and future generations as set out in the Bill of Rights in the Constitution.

This working together entails coordinating planning, coordinating the conditions of water and sanitation services provision, and conserving water so that tariff structures can be affordable and services can be sustainable.

Councillors and municipal officials have a key role to play making the water and sanitation goals happen. The time is right, let's work together to make it happen.

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## Appendix 1

### Responsibilities of the Minister of Water Affairs and Forestry in terms of the Water Services Act

*In the changes to the Act the responsibilities of the Minister will be reviewed towards enabling the Department of Water Affairs and Forestry, to fulfil its sector leader functions, including: information management, regulation, support, and policy development.*

The Minister of Water Affairs and Forestry is mandated, under the Water Services Act, to prescribe certain sub-ordinate legislation that regulates water services institutions.

The Minister may prescribe:

- compulsory national standards relating to water services [Section 9];
- norms and standards for tariffs [Section 10];
- matters to be regulated by a contract between a water services authority and a water services provider [Section 19(5)].

### Compulsory National Standards Relating to Water Services

The Minister may, from time to time, prescribe compulsory national standards relating to:

- the provision of water services;
- the quality of water taken from or discharged into any water services or water resource system;
- the effective and sustainable use of water resources for water services;
- the nature, operation, sustainability, operational efficiency and economic viability of water services;
- requirements for persons who install and operate water services works; and
- the construction and functioning of water services works and consumer installations.

Every water services institution must comply with the standards prescribed by the Minister.

Standards have been published for comment in the Gazette and are available on the Department of Water Affairs and Forestry web site (<http://www-dwaf.pwv.gov.za>).

## Norms and Standards for Tariffs

The Minister may, with the concurrence of the Minister of Finance, from time to time prescribe norms and standards in respect of tariffs for water services.

These norms and standards may:

- differentiate on an equitable basis between:
  - i) different users of water services;
  - ii) different types of water services; and
  - iii) different geographic areas, taking into account, among other factors, the socio-economic and physical attributes of each area;
- place limitations on surplus or profit;
- place limitations on the use of income generated by the recovery of charges; and
- provide for tariffs to be used to promote or achieve water conservation.

No water services institution may use a tariff which is substantially different from any norms and standards prescribed by the Minister.

Norms and standards have been published for comment in the Gazette and are available on the Department of Water Affairs and Forestry web site.

## Regulations: Contracts between Water Services Authorities and Water Services Providers

The Minister may, after consultation with the Minister for Provincial Affairs and Constitutional Development, prescribe:

- matters which must be regulated by a contract between a water services provider and a water services authority;
- compulsory provisions to be included in such a contract; and
- requirements for a joint venture between a water services authority and a water services institution.

The purpose of these regulations is to ensure that:

- water services are provided on an efficient, equitable, cost-effective and sustainable basis;
- the terms of the contract are fair and equitable to the water services authority, the water services provider and the consumer; and
- compliance with the Water Services Act.

Regulations governing contracts between water services authorities and water services providers have been promulgated.

## Monitoring and Intervention

The Minister and any relevant Province must monitor the performance of every water services institution [Section 62]. If a water services authority has not effectively performed any function imposed on it under the Water Services Act, the Minister may, in consultation with Minister of Provincial and Local Government, request the relevant Province to intervene in terms of Section 139 of the Constitution [Section 63 of the Water Services Act].

## National Information System

The Minister must ensure that there is a national information system on water services. One of the purposes of this system is to provide information to water services institutions, consumers and the public to enable them to monitor the performance of water services institutions.

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**Produced by  
the Department of  
Water Affairs and Forestry  
Revised August 2005**