



Examining the challenges and opportunities for enhancing the effectiveness of municipal water services by-laws in South Africa

A report for the Water Research Commission

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Executive summary

By-laws are embedded in the laws and policies that regulate the powers and functions of municipalities in South Africa. Laws and policies that are specifically relevant for this study are the Constitution (1996), the Water Services Act 108 of 1997, the National Water Act 36 of 1998, the Municipal Structures 117 of 1998, the Municipal Systems Act 32 of 2000, the Strategic Framework for Water Services (DWS, 2003) and the National Water and Sanitation Master Plan (DWS, 2019).

The South African Constitution (RSA, 1996) empowers municipalities to pass their own legislation, in the form of by-laws, for specific subject areas. Section 156 (2) states that "A municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer". Section 162 (RSA, 1996) states that a municipal by-law may be enforced only after it has been published in the official gazette of the relevant province and that by-laws' must be accessible to the public. The Water Services Act 118 of 1997 stipulates the requirements for water services by-laws.

Section 14, 1(a) of the Municipal Systems Act 32 of 2000 makes provision for standard draft by-laws. Section 21 of Water Services Act 108 of 1996 allows the Minister to develop model by-laws that will assist WSAs to develop their own by-laws.

To assist and support municipalities with the task of drafting by-laws that relate to water services, the Department of Water and Sanitation published Model By-laws in 2001 and amended versions in 2005 and 2011. The 2011 By-laws Pack was supplemented by a Water By-laws Development Manual, which was published in 2013. In this study, an analysis of 15 randomly selected water services by-laws confirmed that most municipalities used the framework and contents of the 2001 Model Water By-laws to review and amend existing by-laws.

This study emanated from a call for proposals by the Water Research Commission of South Africa, which outlined some issues with by-laws in South Africa:

- 1. In many municipalities, the by-laws are out of date or difficult to find. The Municipal Systems Act stipulates that municipalities must make their by-laws publicly available on their website. However, not all municipalities have the capacity to do so.*
- 2. In many cases, these by-laws are ignored and mismanaged, without the community having any form of recourse and consequence.*

The general objective of the study was to determine the effectiveness of water services by-laws and their use with regard to improving the water services environment. The study had three aims:

1. To investigate the institutional context, application, and use of water services by-laws in South Africa
2. To determine the impact and effectiveness of water services by-laws and identify challenges and problems in their application
3. To recommend solutions to address the challenges and problems identified in Aim 2.

The study developed an **effectiveness model** to assess the effectiveness of water services by-laws against two sets of criteria: **intrinsic criteria** that relate to the contents of the by-law and **extrinsic criteria** that relate to the implementation of the by-law. The model is based on an extensive literature review, and qualitative interviews with stakeholders from DWS, SALGA, MISA and Johannesburg Water, representatives of community or business organisations from a purposeful sample of 13 WSAs, and the heads of technical services and/or the legal adviser of 18 WSAs.

A **self-assessment tool**, based on the effectiveness model, was subsequently developed. The tool can score and weight criteria.

The effectiveness model was applied to seven case studies: City of Tshwane, Nelson Mandela Bay, City of Cape Town, eThekweni, City of uMhlathuze LM, and Midvaal LM. Each case study compares the perspective of the community and that of the municipality, as captured in the in-depth interviews with representatives. The self-assessment tool was applied to six of the seven case studies to give the respective municipality's scores on the tool. Tswaing LM was excluded because it does not have a water services by-law.

The intrinsic effectiveness assessment found that the current water services by-laws are not effective to:

- Guarantee quality and quantity of potable water provision
- Hold WSAs and WSPs accountable for failure to provide services
- Enforce consumers' rights to proper services, and
- Control and regulate self-supply.

As a result, by-laws not used to resolve service delivery disputes between consumers and local government. In the cases discussed in this report, consumers resorted to national legislation that relates to health (The National Health Act), the protection of the environment (National Environmental Management Act) and human rights (the Constitution) to hold local government accountable for inadequate services.

According to community representatives, a lack of accountability has become endemic to local government. It does not help that many municipal by-laws include a disclaimer that is commonly found in by-laws across the world: "The Municipality does not guarantee an uninterrupted supply of water, or a specific flow rate or pressure, or a specific standard or quality of water". Where municipalities do commit themselves to service levels, they do so in their service charters, which are not legally enforceable.

Despite the fact that all of the sampled municipalities followed some form of public participation process when they developed their by-laws, consumer organizations and officials agreed that the awareness and knowledge of water services by-laws are low. The public participation process is therefore inadequate. None of the sampled municipalities involved community representatives in the drafting of by-laws.

The interviews with municipal officials confirmed that the respondents did not have a good knowledge of the content of their municipality's water and sanitation's by-laws. Among the community representatives, knowledge was variable.

Low awareness is exacerbated by the low visibility of by-laws on municipal websites. The research team found that by-laws were difficult to find on all except two of the sampled municipal websites. Content is not intuitively organized, and web page names are not helpful. Summaries of by-laws in non-legal language are the exception.

The interaction between communities and their municipality was community-driven in the sampled municipalities, not municipality driven.

Applying the criteria for extrinsic effectiveness or effective implementation showed that:

1. Capacitated municipalities (Metros and larger municipalities) have evidence that they are implementing their by-laws effectively, or partly.
2. Evidence that WSAs are not implementing their by-laws effectively includes:
 - a. Poor visibility of water services by-laws on municipal websites and the resulting low public awareness of these by-laws.
 - b. The absence of a dedicated budget for implementation and enforcement.
 - c. Lack of interest and/or capacity of Municipal Courts to enforce water services by-laws. Lack of coordination between municipality and the court in terms of fines schedules.
 - d. Cost recovery for services provided is problematic as the debt collection rates indicate.
 - e. The lack of interest on the part of the legal representatives to participate in the study.

The study makes several recommendations as to how the intrinsic and extrinsic effectiveness of these by-laws can be strengthened.

The **self-assessment tool** was further refined for WSAs to assess and improve their water services by-laws. The tool has been included as an attachment to this document.

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- Our co-researchers:
Ms Andile Ndzabandzaba
Prof Kolawole Odeku of the Department of Public and Environmental Law at the University of Limpopo.

List of acronyms

| | |
|--------|---|
| CEO | Chief Executive Officer |
| CMA | Catchment Management Agency |
| CMF | Catchment Management Forum |
| CME | Compliance, monitoring and enforcement |
| CoCT | City of Cape Town |
| CoGTA | Cooperative Governance and Traditional Affairs |
| CoSMOS | Community-based Sustainable Water Management and Observation system |
| DDM | District Development Model |
| DM | District Municipality |
| DPLG | Department of Local and Provincial Government |
| DoE | Department of Education |
| DWAF | Department of Water and Forestry |
| DWS | Department of Water and Sanitation |
| EC | Eastern Cape |
| FS | Free State |
| GT | Gauteng |
| HOD | Head of Department |
| ito | In terms of |
| IDP | Integrated Development Plan |
| KPA | Key performance area |
| KPI | Key performance indicator |
| KZN | KwaZulu-Natal |
| LM | Local Municipality |
| LP | Limpopo |
| MECS | Members of the Executive Council |
| MM | Municipal Manager |
| MOU | Memorandum of Understanding |
| MP | Mpumalanga |
| NC | Northern Cape |
| NW | Northwest |
| NA | Not applicable |
| NGO | Non-government organisation |
| NRW | Non-revenue water |
| PAIA | Promotion of Access to Information Act |
| PAJA | Promotion of Administrative Justice Act |
| PMU | Project Management Unit |
| PPP | Public-private partnership |
| RPMS | Regulatory Performance Measurement System |
| SALGA | South African Local Government Association |
| SANS | South African National Standards |
| SAPS | South African Police Service |
| SDCEA | South Durban Community Environmental Alliance |
| SLA | Service Level Agreement |

| | |
|------|---------------------------------|
| WC | Western Cape |
| WRC | Water Research Commission |
| WSA | Water Services Authority |
| WSI | Water Services Intermediary |
| WSDP | Water Services Development Plan |
| WSP | Water Services Provider |
| WTP | Water treatment plant |
| WUA | Water Users' Association |
| WWTP | Wastewater treatment plant |

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Chapter 1: Introduction

1.1 The research problem

The Terms of Reference for this study refers to municipal by-laws as an essential part of the legal foundation of effective service delivery and cooperative communities. According to the Terms of Reference, there are unfortunately several issues with by-laws in South Africa:

In many municipalities, the by-laws are out of date or difficult to find. The Municipal Systems Act stipulates that municipalities must make their by-laws publicly available on their website. However, not all municipalities have the capacity to do so.

In many cases, these by-laws are ignored and mismanaged, without the community having any form of recourse and consequence.

It was, therefore, the general objective of this study to determine the effectiveness of by-laws and their use with regard to improving the water services environment.

1.2 Aims of the study

The specific aims of the study were as follows:

1. To investigate the institutional context, application, and use of water by-laws in South Africa.
2. To determine the impact and effectiveness of water by-laws and identify challenges and problems in their application.
3. To recommend solutions to address the challenges and problems identified in Aim 2.

1.3 Research methodology

The sub-sections below describe the methodology that was used to address the research aims.

1.3.1 Aim 1: Literature review and stakeholder engagement

To achieve Aim 1, the following study methods were used:

1. A literature review of:
 - a. The institutional context of water services by-laws in South Africa
 - b. The institutional context of water services by-laws in a sample of other countries. This review is included in this report as an [annexure](#).
 - c. The legal foundation of sustainable water services at local government level
 - d. Efficiency models.
2. A desktop comparison of 15 water services by-laws of WSAs with DWS' model water and sanitation by-law of 2001.s.
3. Consultations with key stakeholders.

See Chapters [2](#), [3](#) and [5](#) for the details.

1.3.2 Aim 2: Case studies and survey

An effectiveness model to evaluate water services by-laws was developed based on the literature review and the stakeholder consultations. See Chapter [4](#).

The research team applied the effectiveness model to a purposeful, stratified sample of WSAs to investigate the intrinsic and extrinsic effectiveness of their water services by-laws from different perspectives. Online qualitative interviews were conducted with consumer representatives and municipal officials to gather data for the case studies.

The research team developed a survey questionnaire to supplement the rich, qualitative data of the interviews. The survey questionnaire was distributed via SALGA to the Head: Technical Services of all municipalities.

See Chapter [6](#) for the details of the sample and the findings of the case studies, and Chapter [7](#) for the survey results.

1.3.3 Aim 3: Conclusions and recommendations

The findings of the research were further analysed and synthesised into a set of proposed actions to make water services by-laws more effective.

The WRC in partnership with DWS and SALGA hosted a seminar on 3 August 2023 to present the research findings and proposed actions to key stakeholders. Stakeholders' input was integrated into this report.

See Chapter [8](#) for the conclusions and recommendations.

The assessment tool that was developed to measure the effectiveness of municipal by-laws was reworked as a separate deliverable to be distributed to all municipalities.

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Chapter 2:

Water services by-laws in South Africa

2.1 What are by-laws?

The “by” in bylaw means “town” in Old Norse¹. A by-law was therefore originally a “town law”, and in many instances it still is.

According to the Cambridge Business English Dictionary², a by-law has two meanings:

- In the United Kingdom (UK), a by-law is “a law made by local government that only relates to its particular region”.
- In the United States (US), a by-law has a broader meaning as “a rule that governs the members of an organisation”.

However, in the UK, water by-laws can also be made by water companies.

Australia has five types of by-laws: state bylaws, local government bylaws, organisational bylaws, company bylaws and body corporate bylaws³. In Canada, non-profit corporations can also have bylaws⁴.

All types of by-laws are authorised, limited, or regulated by legislation at a higher level. In Canada, for example, municipalities can only pass laws if the authority to do so is legislated at another level of government. For example, the Municipal Government Act delegates the authority for local bylaws to municipalities.

In South Africa, by-laws are passed by the council of a municipality to regulate the affairs and the services the municipality is authorised to provide in its area of jurisdiction. These by-laws have the status of law, albeit subservient to national and provincial legislation. They are enforced primarily by the municipalities themselves, or the Magistrate Courts and in some instances by established Municipal Courts.

The Introduction to the 2005 Water Services Model By-laws Pack describes the function of water services by-laws as follows (DWS, 2005:5):

By-laws are the legislative instrument through which municipalities give effect to their policies and are a critical instrument in ensuring the municipalities’ sustainability.

By-laws set out the relationship between the municipality, its service providers and consumers. By-laws should provide clarity in respect of the rights and responsibilities of the municipality, its service providers and consumers.

By-laws are also a regulatory instrument against which the municipalities can monitor their own performance or that of their service providers.

¹ <https://banff.ca/677/What-is-a-Bylaw>

² <https://dictionary.cambridge.org/dictionary/english/bylaw>

³ <https://www.stratacare.com.au/by-laws-explained/>

⁴ <https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs05005.html>

2.2 Institutional context

What follows is a short overview of the development of the legal foundation or framework and other legal prescripts and guidelines that govern the provision of water and sanitation services by municipalities. This provides the background to understand the current status quo and the specific challenges faced by all stakeholders involved in the water and sanitation sector, including the communities, residents and businesses that are dependent on these critical services. It should be noted that the institutional context of water services by-laws in South Africa is an ongoing and evolving process.

2.2.1 The South African Constitution, Act 108 of 1996

Municipalities derive their powers and functions from sections 156 and 229 of the Constitution. The specific powers and functions of municipalities are those listed in Part B of Schedule 4, which includes: *Water and sanitation services limited to potable water supply systems and domestic wastewater and sewage disposal systems* and Part B of Schedule 5 which contains additional municipal functions.

Section 156(1)(b) of the Constitution (RSA, 1996) allows assignment of national and provincial competencies listed in Part A of both Schedules 4 and 5, to a specific municipality, by agreement, which *inter alia*, includes water and sanitation, subject to certain conditions.

The Constitution (RSA, 1996) furthermore empowers municipalities to pass their own legislation, in the form of by-laws, for specific subject areas. Section 156 (2) states that “A municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer”.

Section 162 (RSA, 1996) states that a municipal by-law may be enforced only after it has been published in the official gazette of the relevant province. The section further states that by-laws must be accessible to the public.

The National Department of Water and Sanitation (DWS), acting through the Minister, is the public trustee of all the nation’s water resources⁵ The Minister has the authority to assign water and sanitation powers and functions to water service authorities or municipalities, as indicated above.

The Bill of Rights set out the rights of citizens in terms of water and sanitation:

24: Everyone has the right to an environment that is not harmful to their health or well-being.

27 (1) (b): Everyone has the right to have access to sufficient water.

2.2.2 National Environmental Management Act 107 of 1998

The National Environmental Management Act (Nema) refers in its preamble to the constitutional right of citizens to a safe and healthy environment. Together with the National Water Act 36 of 1998, Nema controls and regulates water pollution (LHR 2009). This includes the responsibility of municipalities to treat wastewater to national standards before releasing it in water bodies or to address sewage spills⁶.

2.2.3 The Water Services Act 108 of 1997

The purpose and objectives of the Act are:

- To provide for the rights of access to basic water supply and sanitation

⁵ Section 3 of the Water Services Act 108 of 1997

⁶ <https://cer.org.za/news/case-note-the-high-court-hands-down-a-supervisory-order-against-a-non-compliant-municipality>

- To provide for the setting of national standards and of norms and standards for tariffs
- To provide for water service development plans
- To provide a regulatory framework for water institutions and water service intermediaries
- To provide for the establishment and disestablishment of water boards and water committees and their powers and functions
- To provide for the monitoring of water services and intervention by the Minister or by the relevant province
- To provide for financial assistance to water services institutions
- To provide for certain powers of the Minister.

The Water Services Act provides specifically for water by-laws. Section 21 states the following:

- 21. (1)** Every water services authority must make bylaws which contain conditions for the provision of water services, and which must provide for at least—
- a) the standard of the services;
 - b) the technical conditions of supply, including quality standards, units or standards of measurement, the verification of meters, acceptable limits of error and procedures for the arbitration of disputes relating to the measurement of water services provided;
 - c) the installation, alteration, operation, protection and inspection of water services works and consumer installations;
 - d) the determination and structure of tariffs in accordance with section 10;
 - e) the payment and collection of money due for the water services;
 - f) the circumstances under which water services may be limited or discontinued and the procedure for such limitation or discontinuation; and
 - g) the prevention of unlawful connections to water services works and the unlawful or wasteful use of water.
- (2) Conditions under which water services are provided—
- a) may place limits on the areas to which water services will be provided according to the nature, topography, zoning and situation of the land in question;
 - b) may provide for the limitation or discontinuation of water services where a consumer fails to meet his or her obligations to the water services provider, including—
 - (i) a failure to pay for services; or
 - (ii) a failure to meet other conditions for the provision of services;
 - c) may place an obligation on a payment defaulter—
 - (i) to pay a higher deposit;
 - (ii) to pay a reconnection fee after disconnection of water services;
 - d) may require a payment defaulter to pay a higher tariff for water services, where that defaulter gains access to water services through a communal water services work and the provision thereof cannot be disconnected or limited without other consumers being prejudiced;
 - e) may provide for the general limitation or discontinuation of water services where-
 - (i) national disasters cause disruptions in the provision of services; or
 - (ii) sufficient water is not available for any other reason;
 - f) may include an option to retain limited access to at least basic water supply or basic sanitation for a consumer whose water services are to be discontinued; and
 - g) must be accessible to consumers and potential consumers.

Section 4(1) and (2) of the Act stipulates that the water services provider of an area must provide water services in terms of conditions contained in the by-laws that the water services authority with jurisdiction in the area, has made.

2.2.4 National Water Act 36 of 1998

2.2.4.1 Purpose and objectives

The primary purpose and objectives⁷ of this Act is to fundamentally reform the South African Law relating to water resources in the country in order to ensure that the water resources are protected, used, developed, conserved, managed, and controlled, taking account of various factors, i.e.:

- Meeting the needs of present and future generations
- 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
- Providing for the growing demand for water
- Protecting aquatic and associated ecosystems and their biological diversity
- Reducing and preventing pollution and degradation of water resources
- Meeting international water obligations across borders
- Promoting safety and managing floods and droughts.

and to establish suitable Water Management Institutions⁸, including Water Service Authorities (WSAs), to achieve to the objectives contained in the Act.

2.2.4.2 Matters dealt with in the Act

The Act is comprised of 17 chapters dealing with the following:

- Interpretation and Fundamental Principles.
- Water Management Strategies
- Protection of Water Resources
- Use of Water
- Financial Provisions
- General Powers and Duties of the Minister and the Director-General
- Catchment Management Agencies
- Water User Associations
- Advisory Committees
- International Water Management
- Government Water Works
- Safety of Dams
- Access to and Rights Over Land
- Monitoring, Assessment, and Information
- Appeals and Dispute Resolution
- Offences and Remedies
- General and Transitional Provisions.

2.2.4.3 Water management as national competency

As the public trustee of the nation's water resources⁹, the National Government acting through the Minister of DWS, must implement and comply with the provisions of the Act. Authorising water use including discharge of effluent from sanitation services facilities are, therefore, competencies of national

⁷ Section 2 of the National Water Act 36 of 1998

⁸ As defined in section 1(xxvi) of the Act

⁹ Section 3 of the Act

government and only the Minister of DWS may authorise, assign, or delegate powers and functions relating to water use.

Authorising municipalities as WSAs is, therefore, done by the Minister of DWS, subject to compliance with the prescribed processes and procedures.

2.2.5 Local Government: Municipal Structures Act 117 of 1998

2.2.5.1 Purpose and objectives

- To provide for the establishment of various categories and types of municipalities
- To provide for an appropriate division of functions and powers between District (DM) and Local Municipalities (LM).

Prior to the enactment of the Structures Act, the then local government was in a transitional state. Municipalities comprised transitional urban, local, rural, and regional services councils and health boards, as regulated by the various and different provincial ordinances for each province¹⁰. The areas of jurisdiction of the various municipalities did not span the total geographical area of South Africa, as it now does¹¹. The “vacant” areas in between the municipal areas were the so-called “remaining areas” which were serviced by regional services councils or health boards.

This Act provided the necessary legal framework to regulate and direct the local government transition process.¹² All transitional municipalities were disestablished and Category A (Metropolitan Municipality), Category B (Local Municipality [LM]) and Category C (District Municipality [DM]) were established¹³.

Ward committees were established for Category A and B municipalities, with Category C (District Municipalities) having no wards. The primary function of these ward committees is to serve as a community participation platform and an advisory body to the ward councillor¹⁴.

2.2.5.2 Division of powers and functions (water & sanitation) between DMs and LMs

The Constitution (RSA, 1996) does not distinguish between the various categories of local government as categorised above. It simply refers to local government. A DM and an LM share the same area of jurisdiction, hence the need to divide the respective powers and functions between them, as provided for in section 83, 84 and 85 of the Municipal Structures Act (RSA, 1998).

Section 83 lists the powers and functions allocated exclusively to the DM, which include promoting bulk infrastructural development and services for the whole district.¹⁵

Section 84 (1) (a-p) lists the various powers and functions of a DM. Of note are sections 84(1) (a) Bulk supply of water, 84(1)(d) Bulk sewage purification works that affect a significant proportion of municipalities in the district.

¹⁰ For example, the Local Government Ordinance No. 17 of 1939 for the Transvaal

¹¹ Wall-to-wall municipalities for the whole of South Africa were established in 2000. (Section 151(1) of the Constitution, 1996)

¹² Transition from White, Indian and Black Municipalities to democratically elected non-racial municipalities.

¹³ Section 12 and 14 of the Local Government: Municipal Structures Act 117 of 1998

¹⁴ The role and function of ward committees in the provision of water and sanitation services is discussed in more detail later in the report.

¹⁵ Section 83(3)(b) of the Municipal Structures Act 117 of 1998

Section 84(2) provides that an LM has the functions and powers referred to in section 83(1) (Sections 156 and 229 of the Constitution mentioned above), excluding those functions and powers vested in the DM.¹⁶

Section 84(3) provides that section 84(2) does not prevent an LM from performing functions in its area and exercising powers in its area of the nature described in subsection (1).

Section 85 regulates the division of functions and powers between DMs and LMs by either the relevant Minister and/or the relevant Member of the Executive Committee(MEC) of the relevant province. As mentioned above, only the Minister of DWS is authorised to delegate or assign powers and functions relating to water and sanitation.

The decision of the Minister must be informed by a capacity assessment by the Demarcation Board, supported by the Department of Local Government in the provinces, which would confirm the capacity of the municipality to manage and implement the specific power or function, in this instance, water and sanitation.

Powers and functions were first adjusted between DMs and LMs during 2003, followed by a second, and last, adjustment during 2008/2009. No record could be found of any update after this period.

2.2.6 Local Government: Municipal Systems Act 32 of 2000

2.2.6.1 Purpose and objectives

This legislation has the following purpose and objectives:

- 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.
- To define the legal nature of a municipality as including the local community within the municipal area, working in partnership with the municipality's political and administrative structures
- To provide the way municipal powers and functions are exercised and performed.
- To provide for community participation
- To establish a simple and enabling framework for the core processes of planning, performance management, resource mobilisation and organisational change which underpin the notion of developmental local government.
- To provide a framework for local public administration and human resource development
- To empower the poor and ensure that municipalities put in place service tariffs and credit control policies that take their needs into account, providing a framework for the provision of services, service delivery agreements and municipal service districts.
- To provide for credit control and debt collection
- To establish a framework for support, monitoring and standard setting by other spheres of government in order to progressively build local government into a frontline development agency capable of integrating the activities of all spheres of government for the overall social and economic upliftment of communities in harmony with their local natural environment.
- To provide for matters pertaining to local government, and
- To provide for matters incidental thereto.

¹⁶ Section 83(1) of the Municipal Structures Act 117 of 1998

2.2.6.2 Rights and duties

Sections 4, 5 and 6 of the Act sets out the rights and duties of municipal councils, communities, and municipal administrations. The Act does not state explicitly that these rights and duties must be reflected in the municipality's by-laws.

2.2.6.3 Integrated planning for services

This Act provides municipalities with systems and procedures to enable them to achieve the objectives of local government, as envisaged in the White Paper on Local Government¹⁷ and the Constitution. It compels municipalities to do proper planning for, amongst others, the delivery of basic services, including water and sanitation, in an integrated manner in collaboration with the relevant national and provincial spheres of government. This planning finds expression in the Integrated Development Plan (IDP) of the Municipality. The IDP also contains sector plans, of which the Water Services Development Plan (WSDP) is an important one.

2.2.6.4 By-laws

The Municipal Systems Act 32 of 2000 requires municipalities to make tariff by-laws and credit control and debt collection by-laws. The Act requires municipalities to first adopt a tariff policy and a credit control and debt collection policy and then to give effect to these policies in by-laws (DWS, 2005:5).

Although the Water Services Act 108 of 1997 states that water services authorities must deal in their by-laws with tariffs and collection of money due to the municipality, it does not require that these aspects be addressed in water services by-laws. These aspects of water services could be dealt with in separate by-laws as set out in the paragraph above.

Particularly relevant for this study is the publication and community consultation processes that the Act requires WSAs to follow when they make by-laws (Chapter 4, Section 21).

The Municipal Systems Act 32 of 2000 requires WSAs to compile a Municipal Code, that is, a document or web page that is a compilation of all by-laws. The Municipal Code must be "constantly updated and annotated and kept at the municipalities' head offices as their official record of all applicable by-laws" (DWS, 2005:8).

2.2.7 Establishment of Water Services Authorities (2003)

WSAs are defined¹⁸ in the Water Services Act 108 of 1997, as any municipality, including a district and rural council, responsible for ensuring access to water services.

The establishment of water services authorities is regulated in Chapter 3 of the Water Services Act. WSAs were established in 2003 by the Minister of the (then) Department of Provincial and Local Government (DPLG) when the necessary powers and functions relating to water and sanitation services were assigned to the various authorities. There are currently 144 water services authorities¹⁹ out of a total of 257 local authorities in the Country, with 8 Metros, 44 DMs and 205 LMs.

2.2.7.1 Water Services Development Plan (WSDP)

It is obligatory for WSAs to have a Water Services Development Plan (WSDP), which forms part of the IDP of the municipality. The contents of the plan are regulated by section 13 of the Act, and include:

- Providing access to water services

¹⁸ In Section 1 of the Act

¹⁹ As per the list provided by DWS.

- Preparation and review and adoption of a water services development plan
- Any deviation from the approved development plans
- Reporting on implementation of development plans
- Contracts and joint ventures with water services providers
- Water services authority acting as water services provider.

A WSA must prepare and adopt a new development plan at intervals determined by the Minister in consultation with the Minister of Local Government and Traditional Affairs, in accordance with the procedures set out in the Act.²⁰ A WSA must also report on the implementation of its development plan during each financial year after adoption of the plan.²¹

The WSDP is an important instrument that directs the operations and obligations of the water services provider, which is contracted to provide water and sanitation services on behalf of the WSA.

No formal information on the current status quo of these plans is available as far as we know. Slabbert and Green (2020) found in a WRC study that many of the sampled WSAs have not updated their WSDPs. The focus is on the IDP because National Treasury requires the IDP to be updated. The WSDP is a sector plan of the IDP and must be updated when the IDP is annually updated by the municipalities.

WSAs may only provide water and sanitation services, albeit through an appointed service provider or on their own, as provided for in their promulgated by-laws and in accordance with their approved WSDPs.

2.2.8 The Strategic Framework for Water Services (2003)

In September 2003, Cabinet approved and adopted a Strategic Framework for Water Services (SFWS). The SFWS has as one of its targets: all WSAs must have properly promulgated by-laws by 2005 (DWS, 2003:7).

The SFWS (DWS, 2003) refers to WSA's universal service obligation:

Water Service Authorities have a responsibility to ensure that all people living within their jurisdiction are progressively provided with at least basic water and sanitation services (the first step up the ladder). This includes people living on privately owned land and others who are provided by intermediaries. Wherever practical and sustainable, water services authorities are expected to plan for and provide higher levels of service (stepping up the ladder).

The implication is that WSAs should, therefore, capture the responsibilities of Water Services Intermediaries in their by-laws and ensure these are enforced.

The SFWS (DWS, 2003: 45-47)) sets minimum technical norms and standards and the process for setting and revising national norms and standards. Basic water and sanitation are defined in the Framework.

With reference to credit control, the SFWS (DWS, 2003:36,37) includes the following principles in the list that WSAs must follow in their credit control policies (authors' emphasis):

*Communication: Consumers must be informed with respect to water consumption, credit control, debt collection and disconnection policies, credit control procedures and consumer responsibilities. **Communication must be clear and accessible and, wherever practical, in the home language of the consumer.***

²⁰ Sections 12 to 15 of the Act

²¹ Section 18(1) of the Act

*Balancing Rights and Responsibilities: ... Consumers have a right to a basic water supply and sanitation service. However, this right also embodies the obligation to exercise that right reasonably and in accordance with general limitations placed on that right. **At the same time, water services authorities must ensure sustainable provision of water services and safeguard the financial viability of the water services provider. These rights and responsibilities must be clearly communicated to consumers.***

These principles of clear communication and balancing rights and responsibilities were included in the effectiveness model for municipal by-laws that was developed in this study.

2.2.9 National Norms and Standards for Domestic Water and Sanitation Services (2017)

It is notable that the 2017 national norms and standard for water and sanitation services (DWS, 2017) confirms the principle of balancing rights and responsibilities in water by-laws:

National government sets national norms and minimum standards and monitors compliance with these. It is the responsibility of water services authorities (municipalities that have been allocated responsibility for water and sanitation services) to set local standards through by-laws, to monitor and enforce adherence to these local by-laws and to regulate water service providers contracted to provide water services on its behalf. (DWS, 2017:179)

2.2.10 The National Water and Sanitation Master Plan (2019)

The Master Plan makes very little mention of water services by-laws. It only refers in general to the responsibility of WSAs to develop water services by-laws and proposes a key action with 2020 as target date for WSAs to “develop and implement municipal by-laws to protect raw water quality”.

2.2.11 The need for standard or generic water services by-laws

Municipalities in South Africa are in the unique position of having both legislative and executive authority to execute and implement their powers and functions assigned to them in sections 156 and 229 of the Constitution 1996²², as well as those derived or assigned to them by national and provincial legislation.

Prior to the establishment of WSAs by the Minister of (then) DPLG during 2003, municipalities who were providing water retail and reticulation services within their areas of jurisdiction, promulgated their own water services by-laws. After the local government elections held in 2000, all municipalities in the country embarked on a policy and by-law review and update process to provide for and comply with all the transformational legal prescripts put in place to achieve national, provincial, and local developmental and institutional objectives and strategies.

There were no standard or generic by-laws that could inform the development or review of existing water services by-laws of municipalities. The development of model water services by-laws followed from this situation.

²² Section 151(2) of the Constitution, 1996

2.3 Model water services by-laws from 2001 to 2013

2.3.1 DWAF Model Water By-laws (DWS, 2001)

In 2001, the then Department of Water Affairs and Forestry (DWAF)²³, published DWAF Model Water By-laws in terms of Section 21 of the Water Services Act, which states that the Minister may provide model bylaws to be used as a guide for water services authorities.

Standard by-laws are also provided for in Section 14(1)(a), of the Municipal Systems Act 32 of 2000:

The Minister, at the request of organised local government representing local government nationally, or after consulting the MECS for local government and organised local government, may by notice in the Gazette—

(i) make standard draft by-laws concerning any matter, including standard draft rules and orders referred to in section 160(6) of the Constitution, for which municipal councils may make by-laws; and

(ii) amend any standard draft by-laws.

The drafting team comprised Neil Macleod, Tim Leonie, Geoff de Rome, Roy Donovan, and Joanne Ferreira. Neil Macleod (personal communication) recalls that the then Director General took out the water saving clauses before gazetting the model by-law.

The model by-law followed broadly the outline of Section 21 of the Water Services Act 108 of 1997.

In practice, most municipalities used the framework and contents of the 2001 Model Water by-laws to review and amend their existing water services by-laws. This by-law, therefore, formed the basis for the assessment made on the application and use of this Model By-law by WSAs and municipalities, as detailed in Chapter 6 of this report.

2.3.2 Updated Model By-laws Pack (DWS, 2005)

In 2005, the then Minister of DWS published an updated Model By-laws Pack, which included Model Water Services By-laws and Model Credit Control and Debt Collection By-laws.

The Local Government: Municipal Finance Management Act 56 of 2003 and its Regulations as well as sections 75 and 98 of the Local Government: Municipal Systems Act 32 of 2000 require municipalities to promulgate tariff by-laws and credit control and debt collection by-laws for services provided to their communities. Credit control and debt collection by-laws deal with all monies that are due and payable to the municipality whereas Tariff by-laws regulate the levying of fees for the water and sanitation services provided by the municipality.

Most municipalities, however, chose to have separate Credit and Debit Control and Tariff policies and by-laws, grouped under their financial and budget related policies. Many municipalities have a combination of these two policies in their water services by-laws and their financial policies and by-laws.

The revised model water services by-laws included a section on consumers' rights and responsibilities. For the rest, the revised model by-law was basically the same as the 2001 model by-laws with some minor changes and additions.

²³ Now the National Department of Water and Sanitation or DWS

2.3.3 A further update: The Model Water By-laws Pack (DWS, 2011)

A revised Model Water By-laws Pack was published in March 2011 by the Department of Water and Sanitation. The model water by-laws included in the pack are comprehensive. The Pack contains the following model by-laws:

- Water Services Tariff By-law
- Indigent By-laws
- Water Service Intermediary and Provision of Water Services to Residents of Privately Owned Land, and
- Water Conservation and Water Demand Management By-laws.

The model by-laws of 2005 were revised in line with the subsequent experience and developments in the water sector. Some municipalities promulgated the model bylaws as is, without making it specific to their context, both in terms of services delivery and the municipal policy and bylaws context (Abri Vermeulen, personal communication).

It was the purpose of the 2011 model by-laws to provide guidance to and assist municipalities in drafting and promulgating their water by-laws. The model by-laws pack was therefore supplemented by a Water By-laws Development Manual (DWS, 2013).

2.3.4 Water By-laws Development Manual (DWS, 2013)

The Water By-laws Development manual followed a questions and answers format, which provides a stepwise guide to municipalities.

The Manual covers the development of by-laws and policies for:

- Credit Control and Debt Collection
- Water Services Supply
- Water Services Tariff
- Indigent residents
- Water Services Intermediaries
- Provision of Water Services to Residents on Privately Owned Land, and
- Water Conversation & Water Demand management.

2.3.5 Summary of updates and amendments

The table below maps the changes to the model by-laws that the Department of Water and Sanitation developed over the period 2001-2012.

Table 1: Updates and amendments to DWS model water by-laws

| 2001 DWA Model Water By-Laws | 2005 Review Model Credit Control and Debt Collection By-laws Model Water Services By-laws | 2011 Review DWS Model By-laws Pack |
|--|--|--|
| CH 1: Definitions | | |
| CH 2: Application Payment & Termination | CH 2: Application Payment & Termination | CH 2: Application of by-laws This by-law makes water services rendered to a customer by the municipality subject to the |

| | | |
|---|---|---|
| | | municipality's by-laws relating to credit control and debt collection. |
| Part 1: Application Part 2: Charges Part 3: Payment Part 4: Termination | Part 1: Application for Water Services Part 2: Charges Part 3: Payment Part 4: Termination, Limitation and Disconnection Pack included Model Credit Control and Debt Collection By-Laws | Replaced by Model Debit and Credit Control By-laws contained in the Pack |
| CH 3: Service Levels | | |
| CH 4: Conditions for Water Supply Services | | |
| Part 1: Connections Part 2: Standards Part 3: Measurement Part 4: Audit Part 5: Installation Part 6: Communal Water Supply Services Part 7: Temporary Water Supply Services Part 8: Boreholes Part 9: Fire Services Connections | Part 1: Connection to Water Supply Service Part 2: Standards Part 3: Measurement Part 4: Audit Part 5: Installation Work Part 6: Communal Water Supply Services Part 7: Temporary Water Supply Services Part 8: Boreholes Part 9: Fire Services Connections | Part 1: Connection to Water Supply Service Part 2: Standards Part 3: Measurement Part 4: Audit Part 5: Installation Work Part 6: Communal Water Supply Services Part 7: Temporary Water Supply Services Part 8: Boreholes Part 9: Fire Extinguishing Connections and Installations |
| CH 5: Conditions for Sanitation Services | | |
| Part 1: Connection to Sanitation Services Part 2: Standards Part 3: Method to Determine Charges (Sanitation) Part 4: Drainage Installations Part 5: Onsite Sanitation Services Part 6: Industrial Effluent Part 7: Sewage Delivered by Road Haulage Part 8: Other Sanitation Services Part 9: Installation Work | Part 1: Connection to Sanitation System Part 2: Standards Part 3: Method to Determine Charges (Sanitation) Part 4: Drainage Installations Part 5: Onsite Sanitation Services and Associated Services Part 6: Industrial Effluent Part 7: Sewage Delivered by Road Haulage Part 8: Other Sanitation Services Part 9: Installation Work | Part 1: Connection to Sanitation System Part 2: Standards Part 3: Methods to Determining Charges (Sanitation) Part 4: Drainage Installations Part 5: Onsite Sanitation Services and Associated Services Part 6: Industrial Effluent Part 7: Sewage Delivered by Road Haulage Part 8: Other Sanitation Services |
| CH 6: Water Services Intermediaries | | A separate by-law in the Pack |
| CH 7: Unauthorised Water Services | | CH 6: Unauthorised Water Services. Regulated in the Model Debit and Credit Control By-law contained in the Pack |
| | | CH 7: Emergency Situations Provides for declaration of emergency situations |
| CH 8: Notices | | |

| | |
|---------------------------|-----------------------------|
| CH 9: Appeals | |
| CH 10: Offences | |
| CH 11: Documentation | No chapter on Documentation |
| CH 12: General Provisions | CH 11: General Provisions |

2.4 Current status of water services by-laws in South Africa

According to data from DWS (May 2022), there could still be several WSAs without the compulsory water services by-laws. A presentation of the Directorate: Retail Water Pricing Regulation, DWS (May 2022) mentions 28 WSAs without by-laws, that is 19%. The Department cautioned that the data might not be 100% reliable (personal communication).

A report of Lawyers for Human Rights (LHR, 2009:17) stated that “There are no further sanctions for municipalities that fail to make compulsory by-laws”. The report notes that the lack of sanctions for non-compliance with statutory requirements “makes it difficult for civil society to put pressure on water services authorities”.

Chapter 3:

What is an effective/efficient by-law?

3.1 Views of key stakeholders

The research team interviewed stakeholders from DWS, SALGA, CoGTA/MISA, and Johannesburg Water to get their views on the effectiveness/efficiency of water services by-laws.

Their feedback is summarised below.

3.1.1 DWS

The research team met with Mr Nevondo, the Deputy Director: Sector Economics & Finance²⁴, and his team on 9 June 2022. The box below is the official minutes for the meeting.



water & sanitation
Department:
Water and Sanitation
REPUBLIC OF SOUTH AFRICA

DISCUSSION ON MODEL WATER SERVICES BY-LAWS MINUTES

Date: 09 June 2022

Time: 10:00-11:30

Venue: MS Teams Virtual Meeting

Opening and Welcome:

Mr Nevondo opened the meeting and welcomed everyone who attended the meeting.

Attendees:

- Mr T Makulani
- Mr H Nevondo
- Mr M Masombuka
- Mr C Matlejoane
- Mr Jurie Vorster

Purpose of the meeting:

Mr Nevondo highlighted that the purpose of the meeting is to discuss with Mr Jurie Vorster the status of water services by-laws and respond to the request and questions that was made with regards to water services by-laws within the Water Services Authorities in the entire country.

²⁴ Mr Nevondo is also the Acting Director: Pricing regulation in the Directorate for Bulk and Retail Water.

Mr Jurie Vorster indicated that he is part of the BHI32 consultant team appointed by Water Research Commission to do investigate on the status of water by-laws and whether the municipal by-laws are being implemented and compliance with DWS model water services by-laws is realised by WSAs. Mr Vorster also made a request that he would like to work with the Department on this project as he knows most of the information will come from the Department since the Model by-laws were developed by the Department. It is, therefore, necessary to collaborate in order fulfil the main aim of the project.

Discussion:

Mr Nevondo made a presentation to respond to the questions that Mr Vorster sent via email prior to the meeting. The presentation started by highlighting the legislation mandate which gives right to WSAs to develop and promulgate the by-laws. The legislation mentioned in the presentation are Section 156(2) Constitution of the Republic of South Africa, Act 108 of 1996, Section 75 & 98 of Local Government: Municipal Systems Act 32 of 2000 (Tariff and credit control and Debt Collection By-laws) and Section 21 of Water Service Act 108 of 1996, which allows the Minister to develop Model by-laws that will assist the WSAs to develop their own by-laws.

Mr Nevondo indicated that DWS developed the Model Water By-laws in 2001 and it was revised in 2011. A Water By-laws Development Manual was also developed in 2013 which is used as a guideline to assist the WSAs to develop their own water services by-laws which will be compliant with DWS Model water services by-laws. Mr Nevondo further indicated that the model by-laws have never been revised since 2011, and most of the WSAs have adopted the DWS Model water services by-laws as it is without considering issues and factors that may emanate within their area of jurisdictions.

Mr Nevondo also highlighted the status of water services by-laws within each province, wherein the number of WSAs with by-laws approved, by-laws in draft and no by-laws were mentioned within provinces. He further indicated that the status of by-law information was compiled through being collected from Municipal websites, National Treasury MSCOA websites and through engagement with some WSAs, which might not a true reflection of the status of by-laws in some of the WSAs. Mr Nevondo also indicated that the list of the by-laws, DWS Model by-laws, and Water By-laws Development Manual have been sent to Mr Vorster for him to read and further engagement will be held to discuss anything that Mr Vorster may need clarity on.

Mr Vorster asked whether the Department has any information on the capacity assessment of WSAs which was done in 2003 by either the Demarcation Board, DWS or CoGTA. Mr Nevondo answered by indicating that he is not aware of the assessment, and he is not in possession of that kind information, therefore, Mr Vorster should either engage Demarcation Board and CoGTA to find out whether they have such information. Mr Vorster said that he will engage with those institutions to check whether they have such information.

Mr Masombuka indicated that most of the WSAs have their water services by-laws, but they are not provincially gazetted which is quite a challenge on its own. Mr Vorster indicated that most of the WSAs especially those in rural area are not gazetted as they do not have funds to gazette such by-laws.

Mr Matlejoane highlighted that engagement with WSAs often do not materialise, due to WSAs not coming on board when being requested to do so. Mr Vorster also highlighted that

the WSAs have a norm of not responding to requests for discussions and engagement, therefore, he doesn't have any effective approach that might assist.

Mr Makulani highlighted the current position of revised Norms and Standards: in Minister's office. Mr Nevondo also specified that the Department is keen to be part of the project throughout the duration of the project. Mr Vorster said that the project is going to take two years to complete, therefore, the involvement of the Department is of importance as it will add value to this project.

Mr Vorster indicated that the project manager of this project will engage with Mr Nevondo and team to pave a way forward and it will be important for the Department to form part of the Reference Group meeting, which is planned for the 15th of June 2022. Mr Nevondo said that he will further engage with Mr Vorster throughout the duration of the project.

Mr Nevondo adjourned the meeting at 11:00.

Approved By:

Date:

3.1.2 SALGA

The research team conducted an online interview with Lubabalo Luyaba from SALGA on 8 July 2022.

1. Are you familiar with the DWS model water and sanitation by-law (2001 and 2011)?

He knows of the model by-laws but is not very familiar with their content.

2. What should be the purpose of a model water and sanitation by-law from the perspective of SALGA?

In principle, having a by-law should make a difference to performance. Unfortunately, WSAs must have the willingness and the ability to enforce their by-laws. At the moment, many WSAs don't have a budget to enforce their by-laws. As a result, by-laws are there, but they are not used.

3. What are the content criteria for a model water and sanitation by-law:

- a) Agrees that the by-law should promote democratic principles, equitable access to water and sanitation.
- b) Relevant for all WSAs? Not all WSAs are the same. The model by-law should recognise this.
- c) Relevant for all consumers? No response.
- d) Must be worded clearly? Clear for who? The ordinary consumer? The municipal official? These are very different audiences. If you want to apply clarity as a criterion, you should specify the audience.
- e) Is it specific enough? Content must be generally applicable, considering the uniqueness of individual WSAs. Or rather, it should cover the range of contexts and services that WSAs provide and give WSAs the opportunity to select those that apply to them. (Interviewer: For example, actual versus estimated meter readings. The model by-law specifies that municipalities should do meter readings at "regular" intervals, but in the absence of a time specification, WSAs can estimate use without breaking the by-law.) Agrees, but the Municipal Systems Act limits estimation to 6 months.

- f) The content of the law should promote efficiencies, given the limited water and monetary resources we have. The content of the law should make it clear how the WSA can ease the burden on resources and promote savings. How can non-revenue water be reduced? For example, by imposing steeper fines or giving consumers who use under a certain volume or save water a rebate.
- g) By-laws need a more balanced structure:
 - What are the rights and responsibilities of the WSA and what happens if they do not meet standards and fulfil their responsibilities? What action can consumers/the community take?
 - What are the rights and responsibilities of consumers and what happens if they do not fulfil these? What action can the WSA take?
 - It should be a balanced contract between parties.
 - Consider specifying accountability of the WSA by including the service level agreements.
 - Include the WSA's pricing structure.
- h) DWS (national and provincial) are always blaming municipalities, but the question is seldom asked: how should DWS support WSAs? In his view, DWS needs to provide the following support:
 - Support to strengthen WSAs
 - The power to intervene when a WSA becomes dysfunctional, including dissolving a Council and taking over the funding (See Section 139 of the Constitution)
 - Continuous monitoring functionality.

4. By-laws are expensive to get gazetted. Should this study also consider other legal instruments, like an individual contract between the owner of a premises and the WSA?

Yes, sometimes you have to try various legal instruments if the existing one does not give results.

5. What would it mean for a water and sanitation by-law to be efficiently applied in a WSA? What are the indicators? How can one measure this?

From the perspective of a WSA, the by-law would be effective if you win a lawsuit, but this is difficult to measure.

He is in favour of a combination of a qualitative and quantitative approach to the methodology.

6. You mentioned that you have had experience of data envelopment analysis (DEA)? Do you think one can apply the DEA model to measure the efficiency of legislation?

He is not convinced that the DEA model can be applied to by-laws. A by-law is a fixed input; it cannot be reduced or increased in quantitative terms.

Consider looking at selected clauses (a subset of the model water and sanitation by-law). For example, how to apply the water services by-laws to reduce NRW in a Metro. It is important that you compare applications in similar types of WSAs, for example, compare 3 Metros, 3 LMs and 3 DMs:

- Make sure that the intention is clearly captured in the relevant clause(s)
- E.g., increase regular meter readings (increase cost) to reduce NRW (Compare, for example, City of Cape Town with City of Tshwane)
- Measure the movement over time.

7. Is one expecting too much of a by-law? Should the study also consider alternative legal constructs, such as a contract/legal agreement between the consumer and the WSA?

See response to Question 5.

3.1.3 CoGTA/MISA

The research team conducted an online interview with Nomaza Mzaidume-Nkopane from MISA on 29 July 2022.

1. Your background and interest in this study

Nomaza is the provincial manager for MISA in the Western Cape. MISA is a state-owned enterprise of CoGTA that supports municipalities with technical capacity. This includes deploying engineers in municipalities that do not have engineers.

MISA also supports municipalities with water services, especially in times of drought.

2. What should be the purpose of a water and sanitation by-law?

Its purpose should be to protect water as a scarce resource. "We had the same situation that Nelson Mandela Bay is facing during the 2013/14 drought in the Central Karoo. We need the municipal water by-laws to protect this scarce resource."

3. What should be the criteria for the content a WSA's water and sanitation by-law?

Consider the following criteria critically, but please also add your own:

- a) The content should promote democratic principles, and equitable access to water and sanitation.
- b) The content should be relevant for all types of consumers.
- c) The wording must be easy to understand. For whom?
- d) The content must be specific and not vague. Examples?
- e) The content of the law should promote efficiencies, given the limited water and monetary resources we have. How?
- f) The content should stipulate the accountability of the consumer and the municipality. How?

Regarding a): With the right to access comes the responsibility to use responsibly, making sure that municipalities and residents protect this scarce resource.

Regarding b): Yes, the content of the water and sanitation by-law must indicate what is relevant for which category of consumers, be it businesses, or indigents.

Regarding c): Water services by-laws must be simplified so that any ordinary citizen can understand it. And it should be made available in the languages that are spoken in that municipality.

Regarding d): Agree with this criterion.

Regarding e): People, including politicians, don't understand the value chain of water. They don't understand that it costs money to provide water and sanitation. They don't understand that vandalising WWTW, stealing taps, illegal connections, interfering with the distribution network, all of these have consequences for the resource and for the service.

Regarding f) Agree. Consumers need to understand their accountability. Indigents, for example, must understand that, yes, they get the resource for free, for any use over and beyond the FBW amount, you must pay. When one visits communal taps, you often see people using water as if there is an unlimited free supply.

Nomaza added two content aspects:

g): the content of water by-laws should speak to the effective communication of the content of the by-law, and this should consider the communication channels that people access locally, for example, community radio, billboards, and cell phones.

h) Planning for water scarcity and the enforcement of the by-law. Most of the municipal money is spent on roads and items like sportsgrounds, the reason being that they are visible. Politicians are only interested in expenditure that voters can see; they are, therefore, not interested in spending money on wastewater treatment or sanitation. They don't realise the impact that water and sanitation have on people's lives.

She gave an example: a municipality in the Central Karoo District built an Olympic-size swimming pool. In December, when it was hot, the municipality did not have enough water to fill the pool. They had to fill it with sand to prevent further cracking.

4. In your work, do you deal with the water services by-laws?

Yes, she does. During drought situations when municipalities run out of water, their water by-law and the enforcement of, for example, water restrictions, are critical. As MISA gives support to municipalities in drought situations, the way that municipality applies and enforces its water by-law is very important.

5. What would it mean for a water and sanitation by-law to be effectively applied in a WSA? What are the indicators? How can one measure this?

- Political will to enforce the by-law
- Administrative capacity (people and money) allocated to enforce the by-law
- Interviewer: This would also imply that the municipality is able to report on enforcement

In her view, the first two are lacking in most of the municipalities that she has been working with.

She gave the example of a Karoo municipality during the 2013/14 drought. It has literally days before it would have run out of water. Yet, the municipality had neither the political will nor the resources to communicate the content of its water by-law with residents, or to enforce water restrictions.

She also emphasised how important it is for sectors of the community to understand the purpose of the water by-law. For example, in Kannaland LM, in the middle of a severe drought, farmers would continue to irrigate during the day and residents would continue to water their gardens with hosepipes; industries would continue to use large quantities of water and would be prepared to pay the fine.

Municipalities need to educate their residents on water scarcity. Many municipalities don't have a communication strategy or a customer communication function at all. Customer care and customer communication must be strengthened (added to content – SS).

6. DWS has developed model water services by-laws (2001, 2005 and 2011). What more, or what else, can DWS do to support WSAs in the drafting and implementation of their water services by-laws?

- Education of the public
- Further education of Councillors and community groups is needed. DWS could organise workshops for the new cohort of politicians that make them aware of the content and enforcement of the water services by-laws.

- DWS should also check if the booklet that SALGA distributes to Councillors include the necessary information on water and sanitation. The booklet for 2023 is being prepared at the moment, so it would be timely.

7. What do you expect from this study?

She expects to be informed of the findings and she would welcome an opportunity to be part of discussions that look in the interventions that are needed.

8. Is one expecting too much of a by-law? Should the study also consider alternative legal constructs, such as a contract/legal agreement between the consumer and the WSA?

A formal water services agreement with groups like farmers or businesses could work. She is not sure if a water services agreement with ordinary people will work.

She believes that more effective communication and enforcement of water by-laws will make a difference, but it should be proactive and not reactive.

3.1.4 Johannesburg Water

The research team conducted an online interview with Nomvula Mofokeng from the City of Johannesburg and Zakhele Khuzwayo from Joburg Water on 22 July 2022.

Nomvula Mofokeng is the Head of Water Services, Policy development and Regulation at the City of Johannesburg. It is her task to oversee the governance, efficiency, and performance of Joburg Water on behalf of the City as the 100% shareholder of Joburg Water. She monitors the entity's KPIs and has to submit quarterly reports to the Members of the Mayoral Committee.

It is also her responsibility to report the performance of Joburg Water to DWS.

Specific responsibilities include water services and sanitation policy, by-laws, and the WSDP. She works closely in this regard with Joburg Water.

Zakhele Khuzwayo is her counterpart in Joburg Water.

1. What should be the purpose of a water and sanitation by-law?

Water services by-laws are required by the Water Services Act. It is a tool to ensure that residents adhere to their responsibilities in terms of water services. The by-laws should also set out how we service residents. It governs the provision of services. In other words, it sets out the City's and Joburg Water's responsibilities in terms of water and sanitation services

2. What should be the criteria for the content a WSA's water and sanitation by-law?

I agree that content is a very important aspect. The content of a by-law must be relevant and appropriate. If the content is not right, how can you ensure that people conform to the by-law.

Consider the following criteria critically, but please also add your own:

- a) The content should promote democratic principles and equitable access to water and sanitation.
- b) The content should be relevant for all types of consumers.
- c) The wording must be easy to understand. For whom?
- d) The content must be specific and not vague. Examples?

- e) The content of the law should promote efficiencies, given the limited water and monetary resources we have. How?
- f) The content should stipulate the accountability of the consumer and the municipality. How?

She agreed with the criteria above but added that a by-law should not be static. It should be revised from time to time to ensure that it remains relevant and useful, even if the process is costly. In their case, the process to get the revised by-law promulgated took extra-long because of issues with the government printer and Covid-19. Normally, it should not take longer than 12 months.

They also added that a by-law should legally protect the City.

The City of Johannesburg has revised the content of its current by-law. The new by-law is in the process of being promulgated.

The current by-law was no longer sufficient. It does not talk to current issues, such as:

- Water conservation
- Water security
- Alternative water sources (e.g., greywater, groundwater, and treated effluent).

It is furthermore not user-friendly. It is not well structured; as a result, it is very difficult to find information in the by-law.

The revised by-law has the following features:

- It is a well-structured document
- it addresses the mentioned three gaps
- it aims to be relevant to all types of consumers
- the content aims to be specific. In the current by-law, some sections are not explicit enough.
 - For example, in some areas of the City there is no bulk sewer service. People have septic tanks. The current by-law does not specifically say that the City is not responsible for maintaining septic tanks; it will assist at a charge.
 - Also, the fines were not explicit or adequate to stop the offence. In some instances, offenders would pay fines and continue with the offence over years.

The public participation process was delayed because of the delay in printing advertisements. It took place as an online meeting. The Speaker's Office led the participation process from its budget. They collated the comments. Not all comments could be addressed in the revised by-law, but these were noted and could be addressed in different ways.

Comments from residents related mostly to the tariff structure. In comparison with other Metros, water in the City is cheaper; sewer charges are more expensive. The tariffs are approved by the Council and is reflective of political interests.

Other comments from residents related to service delivery failures and the legal recourse of residents. In her opinion, these issues should be raised at the IDP level.

They went out of their way to make sure that the public participating in the feedback process was aware of the new features and content of the revised by-law. The by-law was sent to participating parties, plus a covering report that highlighted these features, and they gave a presentation at the meeting. The focus was on the new content aspects of the revised by-law.

3. When would you give a municipality's water and sanitation by-law 10 out of 10 for its content?

Nomvula declared her vested interest in the revised by-law. She would give the revised by-law a 10 and the current one a 5. The current one in her words: "is only there to comply with the requirement that WSAs must have a by-law".

4. In your work, do you deal with the City of Johannesburg's water services by-law?

See the introduction.

5. What do you want to achieve with the revised by-law and its application?

- It must be a living document
- It must be used by everybody – the City, Joburg Water, residents, and businesses
- It must be a guidance tool for everybody; it must assist employees of the City and Joburg Water, and residents
- This will not happen without continuous education and an extensive stakeholder engagement process. The City will have to reach out to people regarding specific sections that are relevant for specific groups of people
- It must protect the City legally.

6. Is the revised by-law also relevant for people putting up a shack on an open space?

The City recognises that shacks will continue to mushroom and that the revised by-law must include shack dwellers. It is only on private property that the City is not responsible for services. For example, the revised by-law states that the minimum water service is a standpipe within 200m of the residence.

The current sanitation by-law dates from 2002 and is outdated. It does not talk about issues on the ground. It was/is also being revised.

7. What would it mean for a water and sanitation by-law to be effectively applied in a WSA? What are the indicators? How can one measure this?

Addressed in 5.

8. How would you rate the effective use of this by-law by Joburg Water on a scale of 1 to 5, where 1 is not effectively used at all, and 5 is very effectively used? Please explain your score.

See comments on the inadequate content of the current by-law.

The effective application or use of the by-law requires effective enforcement. At the moment, the JMPD is responsible for enforcement, but its capacity and resources are limited. Also, they don't always understand the context in which the by-laws must be enforced. As a result, the enforcement could be inappropriate.

Joburg Water also has a section responsible for by-law transgression and enforcement, but they face similar limitations of staff and resources. Plus, in hot spots where there could be violence, they can't do enforcement without the support of JMPD.

She worked previously in Ekurhuleni where the water and sanitation department did their own enforcement. It worked well.

Environment and Impact Management is looking at a strategy of enforcement and ways to address challenges. They are the custodian of all by-laws.

Because of the reasons mentioned above, she is in favour of decentralised enforcement. I.e., Joburg Water should be responsible for the enforcement of the water services by-laws, with the support of JMPD in hot spots.

9. DWS has developed two model water services by-laws (2001 and 2011). What more, or what else, can DWS do to support WSAs in the drafting and implementation of their water services by-laws?

They are not getting the support from DWS that they need. She gave the process to update their WSDP as an example:

- Not sufficient guidance
- It is a long, tedious process
- Challenges with the template and the system is not user-friendly and frustrating
- The system loses the formatting
- DWS and their service providers are slow to respond
- “It is difficult to get hold of IT”
- “It is just a compliance document”
- “We don’t want to rely on DWS”. At the moment, the WSDP is additional work. The information is anyway integrated in the City’s planning documents (master plan and the IDP).

10. What do you expect from this study?

- Assist WSAs to take by-laws forward
- Point out gaps in the model by-laws
- Evaluate WSA’s by-laws in terms of content
- “We should be proud of our water services by-laws”
- Add legal instruments as necessary. They will welcome it.

11. Is one expecting too much of a by-law? Should the study also consider alternative legal constructs, such as a contract/legal agreement between the consumer and the WSA?

Positive about the study exploring alternative or supplementary legal options. For some WSP arrangements, for example, water services provided by an intermediary, a service contract could be essential. The study should unlock as many opportunities as possible.

3.2 The theory of effective legislation

To get more clarity on the criteria that can be used to evaluate South African water services by-laws, the research team reviewed literature that deals with theories, frameworks, and methods to evaluate laws.

3.2.1 Terminology: efficiency or effectiveness?

Should one evaluate water services by-laws in terms of efficiency or in terms of effectiveness?

The relationship between the two terms have been described widely in scholarly and popular publications. The figure below captures the essence:

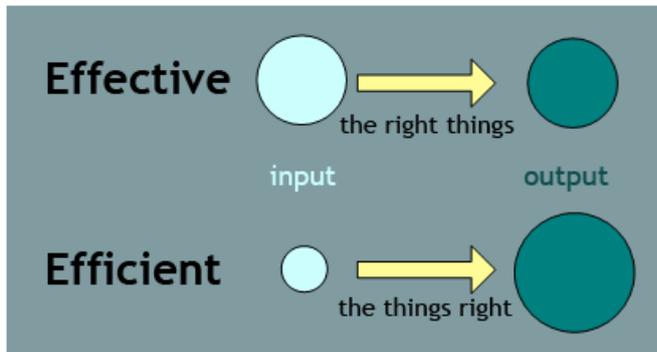


Figure 1: The difference between “effective” and “efficient”

(Source: <https://www.publichealthnotes.com/differences-effectiveness-efficiency/>)

“Effectiveness” is the term that the literature uses to evaluate legislation, but the literature includes discussions on the efficiency of institutions to apply legislation. Both terms might, therefore, be useful for this study.

3.2.2 A general overview of studies that assess regulatory effectiveness

Hodge (2007) in his discussion paper prepared for the OECD, “Regulatory Frameworks for Urban Services” states that there are as many frameworks to assess regulatory effectiveness as there are analysts interested in the question.

Three evaluative frameworks are, in his words, “worthy of note” (Hodge, 2007)

- The first seeks to establish the degree to which regulatory objectives are met in practice, with what efficiency and with what impact. This includes identifying the regulatory tools that produce the most cost-effective results. He concedes that measuring regulatory outcomes and establishing cause and effect is “difficult and complex”.

As a result, these analyses have been supplemented by assessments that use non-instrumental criteria like clarity, proportionality, legitimacy, predictability, flexibility, and accountability.

- For the second framework, Hodge (2007) cites Ballance and Taylor (2005: 20), who have suggested three sets of criteria to assess the strengths and weaknesses of regulation:
 - a) Sector performance criteria (including the efficiency and quality of services)
 - b) Regulatory process criteria (including criteria such as legislative authority, accountability, fair and accessible decision-making processes, and
 - c) Institutional criteria (including criteria such as the compatibility of regulation with other legislation and the broader institutional environment)
- The third framework Hodge calls “the degree to which ‘regulatory capture’ has been avoided”. In other words, the degree to which regulation functions independently and uncorrupted by the interference of any party.

Hodge (2007) concludes that unfortunately “few comprehensive or comparative examples exist using these evaluation frameworks, and in any event, such examples as do exist tend again to be Western based and economics dominated.”

In the next two sub-sections, criteria of effective legislation as they appear in the literature will be further explored.

3.2.3 “Good legislation” (Mousmouti & Crispi, 2015)

The article of Mousmouti & Crispi (2015) deals with what they title as “Good legislation as a means of ensuring voice, accountability, and the delivery of results in urban development”.

Mousmouti & Crispi (2015:258) defines “bad” legislation and its impact as follows:

Unclear or ambiguous provisions that are complex, overlapping, or leave gaps in protection, that are difficult to access or understand and poorly enforced and implemented, with high compliance costs and unwanted effects, will have a negative impact on competitiveness and economic growth.

According to the authors, the criteria for “good” legislation are not always evident. Quality is a subjective term that depends on the viewpoint of the different actors, legal traditions, and the social and political context.

The authors state that there is agreement that good legislation equals effective legislation. (They do not explain the methodology that they have used to come to this conclusion.)

They subsequently define effective legislation as setting rules that “address existing problems, take into account the voice of affected people and communities, ensure accountability, and can deliver the results it promises” (Mousmouti & Crispi, 2015:259).

The effectiveness of a law is determined by its contents and its results:

In terms of content, a law should:

- Have a clear purpose.
- Introduce consistent and well-thought-out rules and enforcement mechanisms that realistically:
 - address the problem, and
 - introduce clear, precise, and unambiguous rules and obligations.
- Be congruent with reality. Mousmouti & Crispi (2015:260) emphasise that laws cannot be effective if they are incongruent with the reality of the people that they affect:

Laws that are not harmonized with the reality they aim to regulate and are incongruent with existing socioeconomic conditions cannot be successful in setting out the terms of social contracts, and, therefore, they have little chance to deliver targeted or appropriate results.

- Allow for systematic monitoring and evaluation of the results in real life.

They further emphasise that effective legislation:

1. Gives the people affected by the law a voice, not only by allowing them to participate in the law-making process, but also in assessing the results of the law.
2. It is simple and easy to comply with. The article cites several examples from Nigeria and Mozambique that involve complex procedures and red tape that are costly and hence difficult to comply with, undermining the effectiveness of the legislation.
3. It is easy to understand.

Legislation that is incomprehensible, fragmented, and dispersed is inaccessible to laypersons and even to trained jurists. Understanding what the law prescribes is a fundamental premise of the rule of law (Mousmouti & Crispi, 2015: 264).

4. Is easily accessible. Multiple amendments, and supplementary regulations and guidelines complicate the accessibility of legislation. The authors advocate codification (bringing together all rules on a subject in a single text with legally binding force [Mousmouti & Crispi 2015: 267] but concede that codification might not be enough to ensure accessibility.
5. Is consistent. Inconsistencies across related laws or in definitions complicate understanding and interpretation. The authors advocate drafting guidelines but caution against drafting manuals that are too detailed or prescriptive.
6. Is practical to implement. The authors cite an example of a draft planning law in Uganda that would have required 20 000 civil servants to implement! They state that, unless laws consider institutional and financial capacity, coordination mechanisms, roles, and functions, they cannot deliver results.

Legislation is a black hole if there is no information on its implementation, its results, and the ways in which it operates in real life. (Mousmouti & Crispi, 2015: 267)

7. Is results driven. For legislation to be effective, its intended results should be clearly defined with measurable indicators, and it should be monitored consistently. The authors conclude that legislation should lay down the terms of what they call, the “social contract”. People need to know what the results are that the legislation intends to achieve.

The transparency of results enhances accountability and enables modification and improvements to be made to urban laws and regulation that do not achieve their objectives. (Mousmouti & Crispi, 2015: 269)

The criteria that Mousmouti and Crispi (2015) list for effective legislation fall into two groups:

- Criteria that relate to the drafting process and the legislative content (the “prospective dimension”) and
- Criteria that relate to the implementation of the law and the results that it achieves (“the real-life dimension”).

The authors conclude the article by proposing an “effectiveness test” that can inform legal drafting and legal reform processes.

3.2.4 Significance and effectiveness of legislation (Akirav, 2019)

In a recent study, Akirav (2019) explores a model to determine legislative significance and effectiveness. To create the model, Akirav analysed data from focus groups, and also conducted a content analysis of 200 laws.

Legislative significance relates to the content of a law or the “prospective dimension”, as it was labelled by Mousmouti and Crispi (2015). The term “significance of a law” relates to the question: “How many people will be/are affected by the legislation?” which she took from the questionnaire that Francis and Weber (1980) used in their study to determine criteria for the significance of laws.

The content analysis of the 200 pieces of legislation and the focus group results led to eight criteria for significant legislation:

- (1) Does the bill advance democratic principles (such as equality, freedom, human rights)

(2) Is the bill relevant to future generations in the sense that it deals with issues that will affect future generations?

(3) Does the bill correct historical and other injustices?

(4) Does the bill affect a significant number of people?

(5) Does the bill have attendant costs, and does it indicate from where the money to pay for the implementation or enforcement of the law will come from?

(6) Is the bill an entirely new piece of legislation or is it an amendment?

(7) Is the bill worded clearly?

(8) Is the bill feasible? It should be easy for the public to comply with the law.

Akirav divided the above criteria into three groups, essence (1, 2 and 3), extent (4, 5 and 6) and practicality (7 and 8), to create a 5-point scale for significant legislation.

In Akirav's study (2019:1), legislative effectiveness refers to the implementation of laws or the "real life dimension" as it was labelled by Mousmouti and Crispi (2015). The term is defined as "achieving the goal of the legislation". The model assesses legislative effectiveness in terms of three criteria:

(1) Does the bill raise awareness of the subject?

(2) Is there a gap between the intentions of the legislator and the implementation of the law?

(3) Is the gap between the intention behind the law and its implementation so large that it makes the law meaningless (=an existential gap)?

The draft framework was subsequently tested with three Israeli laws. Akirav measured legislative effectiveness in terms of media attention and responses to official government surveys and surveys from academic institutions, but she is not very clear on the indicators of a gap between the intentions of the legislator and actual implementation.

3.2.5 A different perspective on effective law: access to justice

Preston (2015) discusses in a book chapter the topic "the effectiveness of the law in providing access to environmental justice". He relates, therefore, effective law to access to justice. According to Preston (2015), environmental justice includes three concepts: distributive justice, justice as recognition, and procedural justice. The first two relate to the content of the law and the third to the application of laws.

Molaiwa (2021) applies Preston (2015) to the South African context.

Distributive justice is promoted when, for example, residents of a municipality, have equal rights to environmental benefits, such as clean water, and similarly equal rights to prevent, mitigate, or be compensated for environmental burdens, such as pollution (Preston, 2015).

The concept of "justice as recognition" is interpreted by Molaiwa (2021:8) as referring as laws that do not "unfairly discriminate against people directly or indirectly".

Procedural justice refers to access to the courts, access to a fair process and the right to be heard (Molaiwa, 2021). According to Molaiwa (2021), public participation processes such as those included in the process to develop a municipality's Integrated Development Plan (IDP) promote procedural justice.

Molaiwa (2021) argues furthermore that municipal courts are the most appropriate to ensure procedural justice. Municipal courts get their authority from the Department of Justice and Constitutional

Development and the National Prosecuting Authority. They are typically established by municipalities to deal with violations of by-laws. Most of the major Metros, for example, the Cities of Cape Town, Johannesburg, Tshwane, eThekweni, and Ekurhuleni have municipal courts in which offences against by-laws are prosecuted.

Molaiwa (2021) is of the view that “well-established and efficient municipal courts would help residents with service delivery and that residents could use these courts to report environmental harm”. It remains a question though, if municipalities would be prepared to establish a court and allocate resources to an institution that could prosecute the municipality for its failure to deliver services.

3.3 The relevance of efficiency models

3.3.1 Introduction

The “real-life dimension” of laws refers to implementation, where “doing things right”, in other words, efficiencies, come into play. For this first deliverable, the research team explored whether efficiency models like data envelopment analysis (DEA) could be used to evaluate municipalities’ implementation of their water services by-laws.

3.3.2 The term “efficiency”

The term “efficiency”²⁵ refers to the peak level of performance that uses the least number of inputs to achieve the highest amount of output.

The Steering Committee for the Review of Commonwealth/State Service Provision (1997) defined efficiency as “the degree to which the observed use of resources to produce outputs of a given quality matches the optimal use of resources to produce outputs of a given quality”.

In the literature, efficiency is described as measurable and can be expressed as a ratio or percentage. You can measure it by using the following formula:

$$\text{Efficiency} = \text{Output} \div \text{Input}$$

Efficiency is typically expressed as a percentage by multiplying the ratio by 100.

The literature distinguishes between different types of efficiencies, for example, economic efficiency, market efficiency, operational efficiency, and technical efficiency.

Steering Committee for the Review of Commonwealth/State Service Provision (1997: Definitions) includes the yardstick of best practice. “An organisation operating at best practice is said to be 100 per cent technically efficient. If operating below best practice levels, then the organisation’s technical efficiency is expressed as a percentage of best practice”.

3.3.3 Data envelopment analysis (DEA)

DEA measures the comparative or relative efficiency of, for example, public sector organisations, non-profit making organisations and private sector organisations. It is a method to evaluate the performance of a set of peer entities called Decision Making Units (DMUs), which convert multiple inputs into multiple outputs²⁶. A municipality could, for example, be considered a DMU, with its efficiency being compared with other municipalities (other DMUs).

²⁵ <https://www.investopedia.com/terms/e/efficiency.asp>

²⁶ <http://ceur-ws.org/Vol-1152/paper37.pdf>

Thanassoulis (2001) explains that, in DEA, “inputs” refer to resources and “outputs” refer to outcomes. The inputs should capture all resources that impact the outputs. The outputs should reflect all outcomes on which, for example, a regulator would assess the DMUs.

The efficiency score is usually expressed as a number between 0-1 or 0-100%. A DMU with a score less than 100% is deemed inefficient relative to other decision-making units.^{27,28}

DEA has been used in South Africa to measure the technical efficiency of provincial public healthcare in South Africa²⁹; bank efficiency³⁰; tertiary institutions³¹ and Water Services Authorities (WSAs) (Dikgang et al.,2020)

Dikgang et al. (2020) focused on Key Performance Areas (KPA) and Key Performance Indicators (KPI) of WSAs. See the table below.

²⁷ <https://core.ac.uk/download/pdf/11048605.pdf>

²⁸ https://www.nbs.sk/_img/documents/biatec/bia08_05/24_28.pdf

²⁹ http://www.econrsa.org/system/files/publications/working_papers/working_paper_810.pdf

³⁰ http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2222-34362019000100030

³¹ https://vital.seals.ac.za/vital/access/manager/Repository/vital:20674?site_name=GlobalView&view=null&f0=sm_subject%3A%22Data+envelopment+analysis+--+South+Africa%22&sort=ss_dateNormalized+asc%2Csort_ss_title+asc

Table 2: Assessing the KPAs and KPIs of Water Services Authorities (Source: Dikgang et al., 2020)

| Key Performance Area | Key Performance Indicator | Measurement |
|--------------------------|---------------------------------|---|
| Financial Sustainability | 1. Cost recovery | Total annual operation expenses/Total annual pre-tax collections |
| | 2. Collection period | Days |
| | 3. Metered water sold | % of metered water sold/total water delivered |
| | 4. Bad debts | % of collections |
| | 5. Average revenue | Average revenue/kl sold |
| | 6. Average operating cost | Average operating cost/kl sold |
| | 7. Level of capital expenditure | Capital expenditure/Total expenditure |
| Water Quality | 1. Water quality compliance | % of quality tests in compliance with national regulatory standards |

| Key Performance Area | Key Performance Indicator | Measurement |
|--|--|--|
| Asset Maintenance | 1. Apparent losses | % of system input volume |
| | 2. Real losses | % of system input volume |
| Operational Efficiency | 1. Labour per connection | Labour/1000 connections |
| | 2. Labour per population served | Labour/1000 people served |
| | 3. Labour costs | Labour costs/Total operating costs |
| | 4. Vacant employee posts | Vacant posts/total number of posts |
| Service Quality | 1. Water availability | Hours of service/day |
| | 2. Water pressure | Average water pressure |
| | 3. Response time for complaints | No of days to address complaint |
| Access and Affordability of Water Services | 1. Water coverage | % of population receiving water services |
| | 2. Cost of new connection | % of per capita GDP |
| | 3. Waiting time for new connection | Days |
| | 4. Households served by pipe connections | Number of Households served by pipe connections/Total number of households |
| | 5. Households per connection | Number of households/connections |
| | 6. Average tariff cost | Average tariff cost/kl sold |

The efficient implementation and enforcement of the local water and sanitation by-law is notably not mentioned as a KPA.

3.3.4 Example of another method to compare efficiency of water utilities

The efficiency of water utilities is usually expressed in terms of operational and technical efficiency. For example, Leong & Li (2017) used a few simple indicators to compare the operational and technical efficiency of Singapore's PUB and Sydney Water as the figure below sets out:

| Indicator | PUB | | Sydney Water | |
|---|-----------|-----------|--------------|-----------|
| | 2008–2009 | 2013–2014 | 2008–2009 | 2013–2014 |
| Basic Information | | | | |
| Customer accounts (million) | 1.27 | 1.36 | 4.30 | 4.80 |
| Water delivered (million m ³ /day) | 1.64 | 1.80 | 1.35 | 1.42 |
| Asset value (million USD) | 7905 | 9477 | 11,039 | 11,555 |
| Capital expenditure (million USD) | 944 | 681 | 1281 | 418 |
| Operating expenditure (million USD) | 933 | 1324 | 1080 | 1103 |
| Quality of Service | | | | |
| Drinking Water Quality (%) | 100 | 100 | 99.98 | 99.99 |
| Customer satisfaction (%) | - | - | 73 | 77 |
| Efficiency | | | | |
| Employees per thousand accounts | 2.46 | 2.37 | 0.73 | 0.42 |
| Leakage (%) | 5.00 | 5.00 | 7.30 | 7.30 |
| Capital efficiency (m ³ /USD) | 0.64 | 0.96 | 0.38 | 1.24 |
| Operating efficiency (m ³ /USD) | 0.64 | 0.50 | 0.46 | 0.47 |

Figure 2: Comparison of the water management efficiency of Singapore's PUB and Sydney Water

Monetary values are expressed in US dollar (USD). The quality of drinking water is expressed in terms of the national standard of the respective country or state.

3.3.5 Measuring the efficiency of implementing water services by-laws

Discussions at the first Reference Group meeting, and a follow-up meeting with Mr Luyaba from SALGA, indicated that it is unlikely that efficiency models would be useful to compare the efficiency of WSAs implementing their water services by-laws.

Reasons include:

1. The efficient implementation of water services by-laws is not a KPA of WSAs.
2. The indicators of efficient implementation of water services by-laws would be fuzzy in the absence of:
 - a. Regulatory guidelines for the financial and human resources required for efficient implementation, including aspects such as community participation, communication, and enforcement.
 - b. A clear purpose for water services by-laws and the intended results
3. The impact that the quality of water services by-laws, as discussed earlier in this chapter, has on efficient implementation.
4. The interplay of municipal efficiencies on service delivery performance makes it very difficult, if not impossible, to relate a specific performance indicator to efficiency to implement water services by-laws.

3.4 An effectiveness model

The engagement with key stakeholders, as well as the literature reviewed, indicated that any model to evaluate municipal water services by-laws should distinguish between

1. Intrinsic effectiveness, and
2. Extrinsic effectiveness.

Intrinsic effectiveness refers to those criteria that relates to the legislative process and the content of the water and sanitation by-law.

Extrinsic effectiveness refers to the effective implementation of the water and sanitation by-law and the results that it has achieved. Has the by-law achieved its goal? The criteria for the effective implementation of water services by-laws that the literature review discusses make it clear that the effective implementation of by-laws is a function of the intrinsic effectiveness of the by-law and the efficiency of the institution to implement it.

In the next chapter, the report will take the reader through the journey to develop such an effectiveness model. In Chapters [6](#) and [7](#), the application of the model will be discussed.

Chapter 4: An effectiveness model

4.1 Evolution of the draft model to evaluate the effectiveness of water services by-laws

The model distinguishes between intrinsic and extrinsic effectiveness. Each type of effectiveness comprises aspects and their associated criteria. The first draft of the model was primarily based on the literature review and the stakeholder interviews. However, the model went through several drafts as the research progressed. The tables below set out the features of the final version of the effectiveness model.

Table 3: Aspects and criteria of intrinsic effectiveness

| Intrinsic effectiveness | |
|--|--|
| Aspect | Criteria |
| The process to develop water services by-laws | An inclusive and democratic process Input from communities and other relevant stakeholders |
| Content | |
| <ul style="list-style-type: none"> Purpose and goals | Specify purpose |
| | Clearly specified intended results with measurable indicators |
| | Reality-based; relevant for all types of residents and all contexts |
| | Ensure access for all |
| | Redress historic inequalities |
| <ul style="list-style-type: none"> Rights and obligations | Set out the rights and obligations of all parties |
| | Include the WSA's service level agreements |
| | Sets out the recourse of all parties |
| | Accountability |
| <ul style="list-style-type: none"> Implementation | Specifying enforcement requirements and resources to be allocated |
| | Specify how awareness should be created; requirements for the communication strategy and customer care |
| <ul style="list-style-type: none"> Usability | Structure and language are easy to understand and navigate |
| | Easy to comply with, cutting out red tape |
| <ul style="list-style-type: none"> Accessibility | Codification in place |
| | Visible and easy to access in different media |

Table 4: Aspects and criteria of extrinsic effectiveness

| Extrinsic effectiveness | |
|-------------------------|---|
| Aspect | Criteria |
| Resources | Sufficient monetary and human resources to implement |
| Awareness | Awareness of the law and its content |
| Support | Support tools from DWS used: manual; model by-law; effectiveness test |
| Access to justice | Residents have access to courts and legal representation |

| | |
|---|---|
| Results following implementation or enforcement | <p>Significant improvement in:</p> <ul style="list-style-type: none"> • Meeting national norms and standards • Collaboration between the state and civil society (PPPs; reduction in negative indicators such as protests, illegal connections, etc) • The use of Municipal Courts to settle unresolved water & sanitation issues, grievances, or disputes. <p>Consumer satisfaction with services</p> |
|---|---|

4.2 Indicators that the criteria have been met

To apply the model to the by-laws of WSA, the research team had to design relevant indicators for each criterion. The indicators were phrased as questions to form the basis of the discussion guides for the interviews with community representatives and municipal officials (see annexures [2](#) and [3](#)), and became eventually the survey questions (see annexure [4](#)). See the tables below.

Table 5: Indicators that the criteria of intrinsic effectiveness have been met

| Intrinsic effectiveness | |
|-------------------------|--|
| Aspect | Criteria and indicators |
| Legislative process | <ul style="list-style-type: none"> • Inclusivity: Did the municipality follow an inclusive process when its by-law was developed? • Input from stakeholders: Were government departments, communities and organised business consulted on the content of the water and sanitation by-law? • Updated: Has the by-law been updated? |
| Content | <ul style="list-style-type: none"> • Purpose and goal – Does it have clear purpose and measurable goals that promote an equitable and accessible society for all types of residents? • Rights and obligations: <ul style="list-style-type: none"> ○ Does it set out clear roles and responsibilities to hold all parties accountable who are involved in water and sanitation services delivery in the municipality? ○ Does it include the WSA’s service level agreements? ○ Does it set out recourse for all parties in the event of non-compliance? ○ Does it provide for collaboration between the state and civil society, e.g., PPPs? • Implementation: <ul style="list-style-type: none"> ○ Does it refer to resources to be allocated to raise awareness, enforce, and support the implementation of by-laws? ○ Does it specify how awareness should be created? ○ Does it set out requirements for a communication strategy and customer care? |
| Language and structure | <ul style="list-style-type: none"> • Usable and accessible: |

| | |
|--|--|
| | <ul style="list-style-type: none"> ○ Is the language and structure easy to understand and navigate? We used readability software to assess how easy (or hard) it is to read and understand the by-law(s). ○ Is there a single document in which all amendments are shown (codification)? |
|--|--|

Table 6: Indicators that the criteria of extrinsic effectiveness have been met

| Extrinsic effectiveness | |
|-------------------------|---|
| Aspect | Criteria and indicators |
| Resources | <ul style="list-style-type: none"> ● Sufficient monetary and human resources to implement: Does the municipality allocate sufficient monetary and human resources to implement the by-law? |
| Awareness | <ul style="list-style-type: none"> ● Awareness of the law and its content: <ul style="list-style-type: none"> ○ Does the municipality make the by-law visible and easy to access in the different media? ○ Are consumers aware of the law and its content? |
| Support | <ul style="list-style-type: none"> ● Support tools from DWS used: manual; model by-law; effectiveness test: Has the municipality used the support tools from DWS: manual; model by-laws; effectiveness test? |
| Access to justice | <ul style="list-style-type: none"> ● Residents have access to courts and legal representation: <ul style="list-style-type: none"> ○ Is there a Municipal Court and do residents have access to courts and legal representation? ○ Is a dispute resolution process followed? |
| Performance | <ul style="list-style-type: none"> ● Significant improvement in: <ul style="list-style-type: none"> ○ Meeting national norms and standards (see 4.2.1 below) ○ Implementation: debt collection rate (see 4.2.3 below) |
| Collaboration | <ul style="list-style-type: none"> ● Collaboration between the state and civil society (successful PPPs; community forums) |
| Customer satisfaction | <ul style="list-style-type: none"> ● Consumer satisfaction with services (customer satisfaction surveys; reduction in negative indicators such as protests, illegal connections, etc). |

In the subsections that follow, some of these indicators are discussed in more detail.

4.2.1 Indicators that the public was consulted effectively

According to the introduction of the 2005 Model By-Laws Pack (DWS, 2005:7), legislation and jurisprudence provide “little guidance” on an effective public participation process. Hence, the recommendations in the Pack that WSAs follow these processes (DWS, 2005:7):

- ✓ *the draft by-laws (and the official languages in which the notice calling for public comment should be published, if the Municipal Council has not done so already) be approved for consultation by resolution of the Municipal Council*
- ✓ *the notice calling for public comment be published in the official languages determined by the Municipal Council. The notice calling for public comment must include a statement:*

- ✓ *stating what is addressed in the by-laws published for comment*
- ✓ *inviting the public to submit written comments in connection with the draft by-laws before or on a specified date or within a specified period*
- ✓ *to whom and how comments should be submitted (postal and physical address, fax number and e-mail address)*
- ✓ *that copies of the draft by-laws may be obtained from the Government Printer or from the office of the Municipal Manager against payment of a nominal fee*
- ✓ *that the draft by-laws are available for inspection at the offices, the satellite offices and library of the municipality every weekday between the hours of 8:00 and 16:00*
- ✓ *that the draft by-laws are available for inspection on the official website of the municipal website (include website address)*
- ✓ *that members of the community who cannot read or write may visit the municipality's offices (name of official to be specified) during the above office hours, where assistance will be provided in transcribing their comments or representations*
- ✓ *that members of the community who wish to have the draft by-laws explained to them in a different language may visit the municipality's offices (name of official to be specified) during the above office hours, where assistance will be provided*
- ✓ *the notice calling for public comment be published for public comment in the Provincial Gazette for a period of at least 14 (fourteen) calendar days*
- ✓ *the same notice as published in the provincial gazette, is published in the local newspapers or, if the municipality has determined a newspaper or newspapers of record, in such newspaper or newspapers*
- ✓ *radio broadcasts covering the area of the municipality inform the community of the proposed by-laws and provide information on where the by-laws are available for inspection and how comments may be made*
- ✓ *on the expiry of the period allowed for public comment, all comments will be reviewed and amendments, if necessary, will be made to the by-laws*
- ✓ *the draft by-laws be submitted to the Municipal Council for promulgation*
- ✓ *the by-laws are published in the Provincial Gazette and take effect on publication or on a future date stated.*

The introduction furthermore points out that, when making by-laws, WSAs must establish if there is any provincial legislation that prescribes how by-laws must be published and consulted. If there is, the WSA must follow these requirements.

4.2.2 Indicators that support tools were used

The use of the 2001 DWS Model by-laws was applied in the case studies as an indicator that these WSAs have used the available support tools. The comparisons of the seven case study municipalities in this regard are included in this report.

4.2.3 Indicators that a municipality is meeting norms and standards

The study applied two criteria to determine if the municipality is meeting national norms and standards for water and sanitation services:

1. Compliance of drinking water quality according to the Blue Drop Watch Report (DWS, 2023)³², and effluent quality according to the latest Green Drop report (DWS, 2022).
2. Dysfunctional and poorly maintained infrastructure is a major contributor to municipalities' non-compliance to national norms and standards for water and sanitation services. It leads to interruptions in water supply, pipe bursts, and poor water and effluent quality.

Spending on repairs and maintenance is indicative of how well a municipality maintains its infrastructure. The website, <https://municipalmoney.gov.za/>, was used to determine if a municipality meets the norm in this regard.

The website explains the indicator as follows: "Infrastructure must be maintained so that service delivery is not affected. This indicator looks at how much money was budgeted for repairs and maintenance, as a percentage of total fixed assets (property, plant, and equipment). For every R10 spent on building/replacing infrastructure, R0.80 should be spent every year on repairs and maintenance. This translates into a Repairs and Maintenance budget that should be 8 percent of the value of property, plant, and equipment."

A green face is the icon for good performance, i.e., spending > 8%; a red face is the icon for poor performance, i.e., spending <8%.

4.2.4 Debt collection rate

Municipal by-laws set out the obligations of consumers to pay for services. A municipality's current debt collection rate is therefore an indicator of how effective the municipality is in collecting the revenue that it is entitled to in terms of its by-laws.

The website, <https://municipalmoney.gov.za/>, was used to determine municipalities' debt collection rate. Municipalities don't manage to collect all of the money they earn through rates and service charges. The debt collection rate indicates the percentage of new revenue (generated within the financial year) that a municipality actually collects.

A green face is the icon for good performance, i.e., spending > 95%; a red face is the icon for poor performance, i.e., spending <95%.

It is important to note that the debt collection rate percentage does not refer to water and sanitation services only; it refers to the percentage of all debt collected. However, for the purpose of this research, this figure was regarded as indicative of how effectively a municipality implements a central aspect of all water services by-laws.

³² The Blue Drop Watch Report is an interim report. It reports on the results of a 151 independently audited water supply systems (reservoirs and water treatment works).

4.3 Assessment of the effectiveness of a sample of South African water services by-laws

The chapters that follow apply the criteria and indicators of the effectiveness model to the water services by-laws of a sample of municipalities. The chapters are structured as follows:

Chapter 5 gives a contextual overview of participation structures that govern the relationship between citizens and the state at the local government level in South Africa.

Chapter 6 covers case studies of seven municipalities. The research team conducted interviews with community representatives and municipal officials of each of these municipalities to gain insights into their respective perspectives on the effectiveness aspects of their water services by-laws.

The research team developed an assessment tool in Microsoft Excel to rate the intrinsic effectiveness of the case study municipalities' water services by-laws. (See annexure [5](#) for the details of the tool.). The qualitative information that the respondents gave was used to populate the tool. The results translate into an assessment of the water services by-laws of the case study municipalities.

The case studies were supplemented by a national survey of all municipalities. The findings are discussed in **chapter 7**.

Chapter 5:

Water and Sanitation Participation Structures

5.1 Background and relevance for this study

Local governments in South Africa were established by the Constitution (1996) as a distinctive sphere of government, interdependent and interrelated with national and provincial spheres of government.

The legal nature of a municipality is described³³ as:

- a) *an organ of state within the local sphere of government exercising legislative and executive authority within an area determined in terms of the Local Government: Municipal Demarcation Act 27 of 1998;*
- b) *consists of the political structures and administration of the municipality and the community of the municipality;*
- c) *functions in its area in accordance with the political, statutory and other relationships between its political structures, political office bearers and administration and its community; and*
- d) *has a separate legal personality, which excludes liability on the part of its community for the actions of the municipality.*

Municipalities are therefore a tri-party institution comprised of the municipal council, the administration of the municipality and the community within the area of jurisdiction of the municipality. As such, the community or residents within the municipality form an integral component thereof and must be involved in the matters of the municipality, for example, the provision of water and sanitation services.

Chapter 4 of the Municipal Systems Act regulates the participation of the community in municipal affairs. All municipalities are supposed to have Public Participation Policies that regulate the involvement of the community in the matters of the municipality.

Apart from the prescribed public participation process, the government created various forums over time to serve as platforms for community participation, i.e., IGR Forums, IDP Consultation Forums, the latest District Development Model, and Municipal Ward Committees. Water and Sanitation Community Forums and Catchment Forums have been set up to focus on water and sanitation matters. In addition, communities initiated a range of community forums that address water and sanitation matters as part of their business.

This study consulted local community participation structures on the effectiveness of water services by-laws. This chapter provides a background and a brief overview of community participation structures at local government level.

³³ Section 2 of the Local Government: Municipal Systems Act 32 of 2000

5.2 Intergovernmental Relations Forums

These Intergovernmental Relations (IGR) forums were created by the Intergovernmental Relations Framework Act 13 of 2005 to:

- establish a framework for the national government, provincial governments, and local governments to promote and facilitate intergovernmental relations
- provide for mechanisms and procedures to facilitate the settlement of intergovernmental disputes, and
- provide a platform for matters of mutual concern.

Every local municipality has a local IGR Forum, the District Municipality has a district forum comprised of the local forums within the district and the Metros have similar structures. The district forums are represented in a similar provincial structure.

Speakers of Councils are the chairpersons of these forums and the institutional and administrative support to these forums is provided by the staff in the Offices of the Speakers. Matters of mutual concern are discussed in these forums, including the provision of services, as some services cross more than one municipal boundary, like rivers and dams.

No data is available on the effectiveness of these IGR forums.

5.3 District Development Model³⁴

The development of the District Development Model (DDM) by the Department of Cooperative Governance and Traditional Affairs (CoGTA), as an IGR structure, is the latest initiative by this Department to combat so-called “in-silos planning” by the various departments and municipalities and aims to centralise planning within one structure, one budget, situated within each district and Metro municipality.

The objectives of the DDM include narrowing the distance between people and government by strengthening the coordination role and capacities at the district and city levels, but details as to how this will be done must still be developed.

The impact of this new collaborative IGR structure on the delivery of services will become clearer in future as these models are rolled out and become operational and start to implement service delivery projects.

5.4 Integrated Development Plan Representative Forums

Every municipality must have an Integrated Development Plan (IDP)³⁵, that is the blueprint for the projects and proposed actions of the municipality for a five-year period. The plan must be updated annually by the municipality. The performance assessment of the municipality and those of the senior managers of the municipality will be informed by the successful implementation of the IDP. Sector plans, like the Water Services Development Plans, are included in the approved IDPs.

³⁴ Information obtained from the official website of the Department at www.cogta.gov.za.

³⁵ Chapter 5 of the Local Government: Municipal Systems Act 32 of 2000

Section 15 of the Local Government: Municipal Planning and Performance Regulations (No. 796, 24 August 2001) states that a municipality must, in the absence of an appropriate municipal-wide structure for community participation, establish a forum that will enhance community participation.

- I. the drafting and implementation of the municipality's integrated development plan; and
- II. the monitoring, measurement, and review of the municipality's performance in relation to the key performance indicators and performance targets set by the municipality.

The IDP representative forum established in terms of Section 15 as set out above must be representative of the composition of the local community of the municipality concerned.

5.5 Municipal Ward Committees³⁶

5.5.1 Background

Only Metropolitan (Metro) and Local Municipalities (LMs) may have ward committees. The objective of a ward committee is to enhance participatory democracy in local government. In June 2005, the Guidelines for the Establishment and Operation of Municipal Ward Committees were gazetted by the Department of Local Government (Notice 965 of 2005). CoGTA also published a Handbook for Ward Committees.

A ward committee consists of the councillor elected in that ward to represent that ward in the council, who must also be the chairperson of the committee, and not more than 10 other persons elected by residents in the ward.

A Metro or local council must make rules regulating the procedure to elect the members of a ward committee and may make administrative arrangements to enable ward committees to perform their functions and exercise their powers effectively.³⁷

A ward committee may make recommendations on any matter affecting its ward:

- to the ward councillor, or
- through the ward councillor, to the Metro or local council, the executive committee, the executive mayor, or the relevant metropolitan sub-council, and has such duties and powers as the Metro or local council may delegate to it.

The Minister for Cooperative Governance and Traditional Affairs has, in terms of section 75(2) of the Local Government: Municipal Structures Act 117 of 1998, published the Local Government Municipal Regulations for the Term of Office of Ward Committee Members in 2009.³⁸ These regulations synchronised the term of office of the ward committee members with the term of office of the municipal council, i.e., five years.

5.5.2 Effectiveness of Municipal Ward Committees

The research team planned interviews with two legal experts on the effectiveness of municipal ward committee structure and its practical application in South Africa, with specific reference to water by-laws and the legal recourse that communities have when a municipality fails to deliver water and sanitation services according to the national norms and standards.

³⁶ Chapter 4: Part 4 of the Local Government Municipal Structures Act 117 of 1998

³⁷ The North-West Province is the only known province with promulgated Ward Committee Regulations. Most other municipalities adopted internal rules or policies that govern their ward committees.

³⁸ GoN R972 G. 32626 (c.i.o 8 October 2009)

The research found that ward committees do not function optimally as effective input structures into municipal council decision-making processes. Their current legislative functions and lack of decision-making delegations contribute to this ineffectiveness as a decision influencing body. It was also found that ward committees need more training, especially on the IDP and budgeting process, project and financial management, and by-laws. It also appears that by-laws, including water services by-laws, are rarely, if ever, discussed in these forums. See [annexure 5](#) for the details.

5.6 Community forums

5.6.1 DWS-initiated Water and Sanitation Community Forums³⁹

The Department of Water and Sanitation (DWS) and its partners established Water and Sanitation Community Forums in various provinces as part of their community engagement initiatives. According to media statements from 2022, these forums aim to “ease communication and provision of reliable water and sanitation services’ information to the communities regarding progress, challenges and envisaged developments in the water and sanitation business. The establishment will also empower forum members to actively participate in the water and sanitation business processes, while enabling informed decision-making towards water and sanitation services within their respective Local Municipality and the villages they serve.”⁴⁰

In Vhembe DM, Ms Deborah Olifant of the local DWS office mentioned a lack of communication between communities and the municipalities as the biggest challenge. The community forums are being set up to address this challenge. The lack of communication around water shortages, leaks, burst pipes, etc., creates uncertainty and concern. She called it “a bottom-up communication structure to ensure that issues get reported and addressed”.

Ms Olifant also mentioned vandalism as a challenge and a symptom of a lack of ownership and understanding of the water business on the part of communities.

5.6.2 Catchment (management) forums

Catchment management forums (CMFs) or catchment forums are collaborative platforms established under the National Water Act of 1998. They serve as forums for stakeholder engagement and participation in water resource management at the local level.

5.6.3 Community-initiated forums

These forums deal with water or sanitation matters, but not exclusively. They also deal with other municipal matters.

5.6.3.1 Ratepayers’ associations

Ratepayers' Associations are voluntary organisations formed by residents or property owners within a specific geographic area, such as a neighbourhood or a town. The primary role of a Ratepayers' Association is to represent the interests of its members and advocate for their concerns and needs related to local municipal services and governance. The roles and activities of Rate Payers Associations

³⁹ <https://www.sanews.gov.za/south-africa/forum-engage-communities-reliable-water-provision>

⁴⁰ [https://www.dws.gov.za/Communications/PressReleases/2022/MS%20-%20established%20Ntswelentsoku%20water%20and%20sanitation%20forum%20commits%20to%20a%20sustainable%20water%20and%20sanitation%20management%20_Ed%20\(2\).pdf](https://www.dws.gov.za/Communications/PressReleases/2022/MS%20-%20established%20Ntswelentsoku%20water%20and%20sanitation%20forum%20commits%20to%20a%20sustainable%20water%20and%20sanitation%20management%20_Ed%20(2).pdf)

may vary, but typically include advocacy, service monitoring, community engagement, information sharing, and legal support.

5.6.3.2 Community Facebook or WhatsApp groups

Community Facebook or WhatsApp groups can be associated with any of the participation structures discussed above, or they can be a separate participation structure. They work particularly well to facilitate communication, information sharing and participation.

Chapter 6: Case studies

6.1 Introduction

In this chapter, the effectiveness model is applied to a set of WSAs as case studies. The case studies comprise an independent assessment of the intrinsic and extrinsic effectiveness of the WSAs' water and sanitation by-law(s), complemented by in-depth qualitative interviews with municipal officials and community representatives.

6.2 Sampling

6.2.1 Sampling criteria

A purposeful, stratified sample of 12 WSAs was initially selected. The sampling criteria and the selected WSAs were as follows:

Municipality type:

- Metros: 2-3
- Local Municipalities: 4-5
- District Municipalities: 4-5

WSAs that are/were experiencing a water crisis:

- Metros: City of Cape Town; eThekweni Metro; Nelson Mandela Bay
- LMs: See the next criterion
- DMs: See the next criterion

WSAs where industry or communities actively engage with municipalities:

LMs:

- Lekwa LM, Mpumalanga: Astral Foods has had a dispute with the municipality about water services. Astral obtained a court order in terms of section 139(7) of the Constitution, and section 150 of the Municipal Finance Management Act 56 of 2003.
- Kai !Garib LM, Northern Cape: the Kakamas Water Users Association (WUA) is actively engaging the municipality and civil society organisations to address poor water quality and the blue algae issue, which are due to inadequate wastewater treatment on the part of upstream municipalities.
- Maluti-A-Phofung LM, Free State: the community took over some of the water services where the municipality failed.

DMs:

- Vhembe DM, Limpopo: the local DWS office is instrumental in setting up water and sanitation forums to empower community members and connect them with senior technical officials in the DM.
- Ngaka Modiri Molema DM, Northwest: the ratepayers' association got a court order to take over some municipal services temporarily.
- Ugu DM, KZN: residents introduced a "pay slow" due to poor water services.

Municipalities either without water services by-laws or with such by-laws in progress:

- Kai!Garib LM, Northern Cape
- Ngaka Modiri Molema DM, Northwest – no by-law
- Lekwa LM, Mpumalanga – no by-law
- City of uMhlatuze LM, KZN – by-law in draft

(Source of information: DWS 2022)

Good performing municipalities

Three municipalities that were top performers in their respective provinces were included in the sample to establish if their by-laws are more effectively implemented or enforced. The financial (and service) performance ratings of Ratings Afrika (2021), confirmed on the website of Municipal Money, were used:

- Midvaal LM, Gauteng
- Greater Tzaneen LM, Limpopo
- Saldanha Bay LM, Western Cape.

The above sample of WSAs was proposed and submitted to the project manager, Mr Jay, Bhagwan, Mr Humbulani Nevondo of DWS and Mr Luyaba of SALGA for feedback. The aim was to interview two representatives of the community or local businesses/industries and two officials from the WSA, including the legal advisor to the office of the Municipal Manager.

6.2.2 The final sample

Because the interviews with the community representatives took less time to schedule than the interviews with municipal officials, these interviews were conducted first. SALGA, through its provincial representatives, sent out letters and reminders to the sampled municipalities to request their participation in the research. Municipalities' responses came in very slowly and required multiple follow-up calls and emails, and rescheduled meetings. The meeting with the City of Tshwane, for example, was rescheduled three times. The legal advisers' response was particularly disappointing, indicating a reluctance to discuss the municipal water services by-laws or the perceived non-importance of such by-laws.

As a result, the number of case studies had to be reduced to seven. See the table below. (Some of these were replacements for municipalities that did not respond to requests to participate in the research study. The research team replaced the initially selected WSA with a WSA of a similar nature (LM or DM)).

Table 7: List of WSAs and respondents that participated in the case studies

| | Municipalities | Officials interviewed | Community structures interviewed |
|---|------------------------|---|--|
| 1 | Tshwane Metro, Gauteng | Mr Stephens Notoane, Group Head: Water and Sanitation – interviewed on 27 February Mr Mandlenkosi Myanga, Deputy Director: System Development – interviewed on 27 February | Bronkies Catchment Forum Rayton ratepayers' association |

| | | | |
|---|--|---|---|
| 2 | Nelson Mandela Bay Metro, Eastern Cape | Mr Joseph Tsatsire, Senior Manager: Technical Services – interviewed on 26 January | No community organisations interviewed |
| 3 | City of Cape Town Metro, Western Cape | Ms Nokuzola Mhlungu, Head: Policy, WDM, Regulation and Planning; part of Technical Services: Water and Sanitation – interviewed on 24 January | Cape Town Chamber of Commerce and Industry Western Cape Property Development Forum |
| 4 | eThekweni Metro, KwaZulu-Natal | Ms Lungizwa Zuma, Technical services – interviewed on 30 January Mr Malusi Mhlongo, Head of Legal – no response Mr Rajesh Raghobar, Customer Services technical – no response | GroundWork South Durban Community Environmental Alliance (SDCEA) |
| 5 | City of Umhlathuze LM, KwaZulu-Natal | Ms Zandile Mashiyi, Senior manager: Technical Services – interviewed on 27 January Ms Jodi Allen, legal adviser – no response | Zululand Chamber of Business Foundation Mondi Group |
| 6 | Midvaal LM, Gauteng | Mr Phumudzo Magodi, Head: Technical Services and Mr Ratidzai Madimutsa – interviewed on 6 February Ms Nataasha Ameer-van Wyk, legal adviser – no response | Homelands AH |
| 7 | Tswaing LM, North West | Mr G. Moleboge, Director: Technical services – interviewed on 10 February | Tswaing Business Forum |

The City of Johannesburg was not included in the case studies for two reasons: The sample already includes four Metros and the interview that the research team conducted with Ms Nomvula Mofokeng is described under the general stakeholder interviews. The research team had an informative interview with the chairperson of the Alexandra Community Water Forum, which is described in detail in Deliverable 2.

The table below lists sampled WSAs where there was no response from the municipality and only representatives from business or community organizations were interviewed.

Table 8: Sampled WSAs where only community structures could be interviewed

| | Municipalities | Officials interviewed | Community structures interviewed |
|---|------------------------------|--------------------------------------|---|
| 1 | Lekwa LM, Mpumalanga | <i>No response from municipality</i> | Astral Foods |
| 2 | Kai !Garib LM, Northern Cape | <i>No response from municipality</i> | Kakamas WUA Gariep Watch |

| | | | |
|---|------------------------------------|---|--|
| 3 | Maluti-A-Phofung LM, Free State | <i>No response from municipality</i> | MONN carpets, one of the largest industries in Harrismith The Water Heroes, a community organisation |
| 4 | Saldanha Bay LM, Western Cape | <i>No response from municipality</i> | <i>No response</i> |
| 5 | Ngaka Modiri Molema DM, North West | <i>No response from municipality</i> Replaced by interview with official from Tswaing LM | Lichtenburg Business Chamber Harts River Catchment Management Forum Tswaing Business Chamber Agri Marico Bosveld Marico River Catchment Management Forum Agri Northwest (2 respondents) |
| 6 | Ugu DM, KwaZulu-Natal | <i>No response from municipality</i> | Port Shepstone Business Forum Ugu Ratepayers' Association |
| 7 | Greater Tzaneen DM, Limpopo | <i>No response from municipality</i> | Letaba WUA |
| 8 | Emfuleni LM | <i>No response from municipality</i> | Bhopolong Community Water Forum |

In Section 6.6 of this chapter, Municipalities represented only by community representatives, the responses from the community representatives from these municipalities are summarized.

6.2.3 Data collection

Data was collected through a combination of in-depth online and telephone interviews. Interviews were recorded and summarised.

The first discussion guide was simplified and aligned with the draft effectiveness model as was recommended by the Reference Group.

6.3 Assessments of the water services by-laws

The first step was to apply the assessment tool that was developed to measure the intrinsic and extrinsic effectiveness of the water and sanitation by-law(s) of each case study municipality.

6.3.1 Intrinsic effectiveness

The details of the scoring sheet appear in Annexure 6: Assessment tool for intrinsic criteria. The summary table below compares the intrinsic effectiveness scores of the case study municipalities' water services by-laws. The best scorers per criteria are marked in green. Note: Tswaing LM is not included here, because it does not have a water and sanitation by-law.

Municipalities' individual intrinsic scores, with notes supporting each score, are listed under [Annexure 6](#).

Table 9: Assessment of intrinsic effectiveness

| | City of Tshwane | Nelson Mandela Bay | City of Cape Town | eThekweni Metro | City of uMhlathuze LM | Midvaal LM |
|---|-----------------|--------------------|-------------------|-----------------|-----------------------|------------|
| Process to develop by-law | | | | | | |
| An inclusive and democratic process (Max score = 4) | 2 | 1 | 1 | 1 | 1.5 | 1.5 |
| Content of by-law | | | | | | |
| Purpose and goals (8) | 3.5 | 2.5 | 2.5 | 3.5 | 3.5 | 2.5 |
| Rights and obligations (10) | 4 | 3.5 | 4.5 | 4.5 | 5 | 2 |
| Implementation (4) | 2 | 1 | 1 | 2 | 1 | 0 |
| Usability (3) | 1 | 0 | 1 | 1 | 1 | 0 |
| Accessibility (3 or 5) | 1 out of 3 | 2 out of 3 | 3 out of 5 | 2 out of 3 | 2 out of 3 | 3 out of 3 |

6.3.2 Extrinsic effectiveness

The table below compares the extrinsic effectiveness of the case study municipalities' water services by-laws. With the exception of the two performance scores for 2021, the answers below were self-reported by the municipal officials interviewed.

The fact that the first discussion guide for municipal officials was simplified and better aligned with the draft effectiveness model, as was recommended by the Reference Group, led to gaps in some of the data, as is evident in the table below.

Table 10: Assessment of extrinsic effectiveness

| | City of Tshwane | Nelson Mandela Bay | City of Cape Town | eThekweni Metro | City of uMhlathuze LM | Midvaal LM |
|---|--------------------------------|---|---|--|----------------------------------|----------------------------------|
| Resources | | | | | | |
| Dedicated annual budget to enforce by-laws | <i>No mention in interview</i> | <i>No mention in interview</i> | No | <i>No mention in interview</i> | Yes | No |
| Internal departments involved in the implementation, administration, and enforcement of by-laws | Finance, legal, communications | Water and sanitation, legal, public participation | Water and Sanitation directorate (incl. Technical Services) | Technical services manager, water inspectorate | City Manager, technical services | Inspectorate, technical services |
| Awareness | | | | | | |
| Do they measure awareness? | No | No | Yes | <i>No mention in interview</i> | <i>No mention in interview</i> | <i>No mention in interview</i> |
| Support | | | | | | |
| Model by-law used | See table below | See table below | See table below | See table below | See table below | See table below |

| | City of Tshwane | Nelson Mandela Bay | City of Cape Town | eThekweni Metro | City of uMhlathuze LM | Midvaal LM |
|---|--|--------------------------------|---|---------------------------------|--|---------------------------------------|
| Guideline/manual used | <i>No mention in interview</i> | No | <i>No mention in interview</i> | No | No | <i>No mention in interview</i> |
| Consulted DWS | <i>No mention in interview</i> | No | Yes | <i>No mention in interview</i> | <i>No mention in interview</i> | <i>No mention in interview</i> |
| Access to justice | | | | | | |
| Municipal court | Yes | Yes | Yes | No | No | No |
| External parties used in enforcement | SAPS, Metro police | Municipal Court, Metro police | <i>No mention in interview</i> | <i>No mention in interview</i> | <i>No mention in interview</i> | <i>No mention in interview</i> |
| Involved in court cases | Yes | Yes | <i>No mention in interview</i> | Yes | No | No |
| Performance (Municipal Money 2021, Green Drop report, 2022, Blue Drop Watch report, 2023) | | | | | | |
| Drinking water compliance: Microbiological compliance Chemical compliance (Max score = 100%) ⁴¹ | (Average of Temba and Cullinan WTPs) 92,53% 89,75% | (Linton WTP) 99,9% 87,2% | (Average of Faure and Steenbras WTPs) 99,69% 99,33% | (Kloof WTP) 99,90% 99,77% | (Average of Nsezi and Mzingazi WTPs) 96,36% 98,60% | (Vaal Marina WTP) 90,43% 95,88% |
| Green Drop score (Max score = 100%) | 60% | 58% | 88% | 76% | 58% | 69% |
| Spending on repairs and maintenance (norm = 8%) | Not available | 1.9% | 2.6% | 243.9% | 6.1% | 4.7% |
| Debtors Collection Rate | Not available | -0.6% | 94.6% | Not available | 100.4% | 18.2% |
| Collaboration between the municipality and civil society | | | | | | |
| PPPs | No | <i>No mention in interview</i> | <i>No mention in interview</i> | <i>No mention in interview</i> | Yes | <i>No mention in interview</i> |
| Water community forums | Yes | <i>No mention in interview</i> | <i>No mention in interview</i> | <i>No mention in interview</i> | Yes | <i>No mention in interview</i> |
| Customer satisfaction | | | | | | |
| Customer satisfaction surveys (at least every 5 years) | Yes (Every 2-4 years) | No | Yes (annual) | Yes | <i>No mention in interview</i> | <i>No mention in interview</i> |
| Customer Service Charter | Yes | Yes (In draft) | Yes | Yes | Yes (In draft) | No |

⁴¹ The Blue Drop Watch report describes scores above 97% and higher as good or excellent (green); scores below 97% are described as poor or bad (red).

6.3.2.1 Support: Use of DWS model by-law

The researchers compared the framework and contents of the DWAF Model Water By-laws of 2001 with the water services by-laws of the sampled municipalities. See the table below. Positive answers are marked in **green**.

Table 11: Use of DWS model water and sanitation by-law

| Model Water Services by-law (2003) | | City of Cape Town Metro | eThekweni Metro | Midvaal LM | City of Tshwane Metro | Nelson Mandela Bay Metro | uMhlathuze LM |
|--|---|-------------------------|-------------------------|----------------------|-----------------------|--------------------------|-------------------------|
| CH 1: Definitions | | Yes | Yes | Yes | Yes | Yes | Yes |
| CH 2: Application Payment & Termination | | Yes | Yes | Yes | Yes | Not all aspects covered | Yes |
| | Part 1: Application | Yes | Yes | Yes | Yes | Yes | Yes |
| | Part 2: Charges | Yes | Yes | Yes | Yes | Yes | Yes |
| | Part 3: Payment | Yes | Yes | Yes | Yes | No | Yes |
| | Part 4: Termination | Yes | Yes | Yes | Yes | Yes | Yes |
| CH 3: Service Levels | | Yes | Yes | No | Yes | No | Yes |
| CH 4: Conditions for Water Supply Services | | Yes | Yes | Yes | Yes | Not all aspects covered | Yes |
| | Part 1: Connection | Yes | Yes | Yes | Yes | Yes | Yes |
| | Part 2: Standards | Yes | Yes | Yes | Yes | Yes | Yes |
| | Part 3: Measurement | Yes | Yes | Yes | Yes | Yes | Yes |
| | Part 4: Audit | Yes | Yes | Yes | Yes | No | Yes |
| | Part 5: Installation | Yes | Yes | Yes | Yes | Yes | Yes |
| | Part 6: Communal Water Supply Services | Yes | Yes | Yes | Yes | No | Yes |
| | Part 7: Temporary Water Supply Services | Yes | Yes | Yes | Yes | Yes | Yes |
| | Part 8: Boreholes | Yes | Yes | Yes | Yes | Yes | Yes |
| | Part 9: Fire Services Connections | Yes | Yes | Yes | Yes | Yes | Yes |
| CH 5: Conditions for Sanitation Services | | No | Not all aspects covered | Most aspects covered | Most aspects covered | Not all aspects covered | Not all aspects covered |

| Model Water Services by-law (2003) | | City of Cape Town Metro | eThekweni Metro | Midvaal LM | City of Tshwane Metro | Nelson Mandela Bay Metro | uMhlatuze LM |
|--|--|--------------------------------|------------------------|-------------------|------------------------------|---------------------------------|---------------------|
| | Part 1: Connection to Sanitation Services | No | Yes | Yes | Yes | Yes | Yes |
| | Part 2: Standards | No | No | No | Yes | No | No |
| | Part 3: Method to Determine Charges | No | No | Yes | Yes | No | Yes |
| | Part 4: Drainage Installations | No | Yes | Yes | Yes | Yes | No |
| | Part 5: Onsite Sanitation Services | No | No | Yes | Yes | No | Yes |
| | Part 6: Industrial Effluent | Yes | Yes | Yes | Yes | No | Yes |
| | Part 7: Sewage Delivered by Road Haulage | Yes | Yes | No | Yes | Yes | Yes |
| | Part 8: Other Sanitation Services | No | No | Yes | Yes | No | No |
| | Part 9: Installation Work | No | Yes | Yes | No | Yes | Yes |
| CH 6: Water Services Intermediaries | | Yes | No | No | No | No | Yes |
| CH 7: Unauthorised Water Services | | Yes | Yes | Yes | Yes | Yes | Yes |
| CH 8: Notices | | Yes | Yes | Yes | Yes | Yes | Yes |
| CH 9: Appeals | | Yes | No | No | No | No | Yes |
| CH 10: Offences | | Yes | Yes | Yes | Yes | Yes | Yes |
| CH 11: Documentation | | Yes | Yes | Yes | Yes | Yes | Yes |
| CH 12: General | | Yes | Yes | Yes | Yes | Yes | Yes |
| National Norms & Standards for Domestic Water and Sanitation Services | | No | No | No | No | No | No |

6.4 City of Tshwane Metro

6.4.1 Assessment on the effectiveness of the model

See City of Tshwane Metro for the municipality's scores and evaluative descriptions in terms of the intrinsic effectiveness of its water services by-laws.

6.4.2 Perspective of citizens/consumers

Community representatives in the City of Tshwane Metro included respondents from the Bronkhorstspuit ("Bronkies") Catchment Forum, and various members of the Rayton Property Forum.

The Bronkies Catchment Forum described their relationship with the municipality, and specifically the department that provides water and sanitation, as a "good relationship, however, nothing changes." They would use "meetings, forums, emails, [and] log complaints" as communication channels if there is a dispute with the municipality.

The Rayton Property Forum was more neutral about their relationship with the municipality, saying "at the moment, no problem. But sometimes they just take a chance on reading the meters wrong". The respondent mentioned that they did "need to go into the offices" to address disputes with the municipality, if and when they arise, as "face to face" works best as a communication channel. They would also reach out to their ward councillor to address water and sanitation challenges in the community.

To questions on the municipality's water services by-laws, these representatives responded as follows:

Did the municipality consult communities in the drafting of water and sanitation by-law(s)?

- **Bronkies Catchment Forum:** Although they have been consulted about the water and sanitation by-law, they have never made inputs into a draft by-law.
- **Rayton Property Forum:** The respondent was not aware of the municipality's water services by-laws, did not know where to find them, and have never seen nor read them.

What are community representatives' levels of awareness of the municipality's water and sanitation by-law(s)?

- **Bronkies Catchment Forum:** Yes, knows where to find it, and has read it.
- **Rayton Property Forum:** No, didn't know it exists.

Have water services by-laws been used with a positive result?

- **Bronkies Catchment Forum:** Potential, but lack of understanding and resources.
- **Rayton Property Forum:** Since the respondent was not aware of the by-laws, the question could not be asked.

Both groups of respondents mentioned similar water and sanitation challenges in their municipality. The Bronkhorstspuit Catchment Forum mentioned poor drinking water quality, sewer leaks, pump breakdowns and general pollution of water resources as challenges. The Rayton Property Forum had a similar problem with drinking water quality, calling it "undrinkable, brown and smelly".

6.4.3 The municipality's perspective

The City of Tshwane Metro is both a WSA and a WSP, and there are no other WSPs in the municipality.

They promulgated their water services by-laws in 2014, but haven't updated the by-laws since then. The municipality is, however, planning to review and update the by-laws' content to make them more "relevant" to the challenges they deal with, such as residents' use of boreholes. The current by-laws also do not address greywater or other methods of self-supply for off-the-grid customers, which the municipality would also like to address in an updated version of the by-laws.

Awareness of, and ease of access to, the water services by-laws is low. One of the respondents was able to navigate to the water services by-laws within three clicks from the municipality's website, while the research team was only able to find the by-laws 12 mouse clicks away from the municipality's Home page (see "accessibility" under [the municipality's scores in Annexure 7](#)). The municipal officials were not aware of any negative feedback regarding the content of their water services by-laws, or any complaints that their by-laws are difficult to comply with.

Similar to other municipalities that participated in this research study, the City of Tshwane's water services by-laws are not integrated with other public municipal documents, such as their WSDP, IDP, customer care SLA or Customer Service Delivery Charter.

Respondents acknowledged that internal capacity constraints inhibit the municipality's ability to effectively implement and enforce its by-laws. The municipality, therefore, outsources functions to private entities to supplement specific internal capacity constraints. Thus far, outsourcing has been limited to non-critical services, such as credit control and security cameras to deal with theft and vandalism at remote locations. Although they manage their outsourced service providers via MOUs, they do not have the necessary processes or rules in place to allow public entities to work on their critical infrastructure yet, "definitely not [on our] water or distribution network".

Although accountability to meet norms and standards is not mentioned in the municipality's by-laws, they are included in senior management's individual performance agreements. The respondents also speculated that accountability is mentioned in customer contracts that consumers enter into when they become customers of the municipality. Consumers enter into a service contract with the customer care department, not directly with the water and sanitation services department, hence the uncertainty on the part of the respondents.

Although the municipality's communication strategy is centrally managed by the Communications department, there is frequent collaboration between the water and sanitation services and other departments, such as customer care, finance, communications and even the municipality's fire department. This collaborative approach enables the municipality to communicate on multiple topics simultaneously and through multiple platforms. They often use Twitter, Facebook, and councillor-managed WhatsApp groups to communicate with the public about planned water interruptions, and proactively educate the public on water-related topics (water-saving tips, etc.).

The municipality has an internal Legal department that has a representative on each Committee involved in the drafting of by-laws. Of their two by-laws related to water and sanitation services, an external services provider ("consultant") was only involved in the drafting of the water by-law.

Since there is no mention of a dispute resolution process in the municipality's water or sanitation by-laws, the research team asked respondents what legal recourse consumers would have if the municipality does not meet service delivery norms and standards. The officials were not aware of

any by-laws available to the public to hold the municipality accountable. One official commented that “consumers can lodge a complaint with customer services if they have a service interruption.”

One of the respondents mentioned that unreported issues are often invisible to the public (e.g., underground leaks), and, therefore, may take longer than the standard turnaround time to resolve. The same goes for complex technical issues that take time to detect (even with technology, like leak detectors) and resolve.

They did indicate that their proactive communication with the public, as well as participation in community water forums, does strengthen cooperation between the municipality and the public. The water forums often bring important issues to the municipality’s attention and mitigate the risk of the public taking legal action against the municipality.

The municipality is regularly involved in court cases of various natures (including PAIA, PAJA and cases by the Public Protector). The respondents consider the court cases to be a product of the size of their municipality, noting that “Metros are taken to court.”.

The City of Tshwane has a Municipal Court but finds (like the CoCT) that the Court prioritises issues that are not related to water and sanitation services, such as enforcing parking tickets. The municipality has, however, not shared its fines and penalties schedules with the Court.

To enforce their by-laws, the municipality conducts water audits of the top 500 water users, which are often commercial or industrial customers, and sometimes specific communities. These audits detect illegal water connections and use. The municipality would then engage with SAPS’ community management teams too, especially in areas where service interruptions have been exacerbated by loadshedding. “Electricity and water go together”, said one senior city official.

The municipality engages with a community-initiated MAP Forum (which covers the Moreleta, Apies, and Pienaars River networks in the city) monthly. They attend and participate in the standing meetings and assist in addressing some of the Forum’s challenges, such as river cleaning campaigns and removing litter in the streets. The City’s officials were very positive about the Forum, saying it is a “very useful platform. Instead of us dragging each other to court, it helps the different parties be part of the solution, together.” The municipality is not yet involved in any rural water community forums and is not keen on joining additional community forums now.

6.5 Nelson Mandela Bay Metro

Interviews with community representatives must still be included.

6.5.1 Assessment on the effectiveness of the model

See Nelson Mandela Bay Metro for the municipality’s scores and evaluative descriptions in terms of the intrinsic effectiveness of its water services by-laws.

6.5.2 The municipality’s perspective

The Nelson Mandela Bay Metro is the WSA and WSP. There are no additional WSPs.

As a result of the drought conditions experienced in the area, the municipality is in the process of reviewing its water by-law to manage the drought more effectively and to control demand. “Looking at our by-law from a [Water Services Demand Management] WSDM perspective, there is quite a lot that we can put in there to regulate our water effectively, for example, in offsetting rainwater harvesting and greywater reuse. Those things need guidelines in the by-law.”

The municipality's responsibility to meet national norms and standards is included in the individual performance agreement of senior staff, such as the Technical Services department's Executive Director. The Executive director "signs off on an SLA with an accounting officer. [most of the functions and roles of a WSP are part of that performance agreement. The KPIs [of the SLA] are then delegated to the KPIs of the individual officials. But it does not filter further down than the fourth tier of the organisation."

The public can log service calls with the municipality through a call centre. The respondent noted that the municipality responds to service calls within 24 hours, "according to our KPIs", although it can take longer to resolve reported issues. "Currently, our turnaround time [to resolve] water and sanitation service failures [is] 4-7 days. [...] It can be [longer] if we have a lack of resources."

Their Customer Service Charter was drafted by the office of the Chief Operating Officer, but hasn't been adopted by the city's Council yet. Commenting on the document's drafting process, the respondent said that "it [had] gone through most of the departments for comments." The research did not have access to the Charter.

Similar to other municipalities, there is a lack of clear roles and responsibilities, or a dispute resolution process, in the by-laws. The respondent commented on the potential gap in water services by-laws' content, saying, "if you are not satisfied with the work of a department, you can go to the accounting officer, but if that is not spelled out in the by-law. It might be a flaw."

Nelson Mandela Bay Metro is the only municipality in the research study that commented on their use of the Municipal Court (and Metro police) to enforce their water services by-laws and review tenders. They use their by-law and schedule of fines to prosecute transgressors. "Currently, as we are experiencing a drought, quite a number of people are being fined for breaching the water restrictions." The respondent didn't comment on the effectiveness of the court. "The only time I have worked with the Municipal Court was when they had to approve the schedule of fines, and I think they were quite effective and supportive with that."

The municipality has been involved in court cases in the past, both in prosecuting transgressors and defending legal applications against the municipality, such as PAIA and PAJA applications, and liability claims. The water and sanitation department would conduct technical assessments in the event of liability claims, such as "people [injuring themselves] in relation to municipal infrastructure, for example, falling into an open manhole, or even damage to their properties as a result of infrastructure that broke".

6.6 City of Cape Town Metro

6.6.1 Assessment on the effectiveness of the model

See City of Cape Town Metro for the municipality's scores and evaluative descriptions in terms of the intrinsic effectiveness of its water services by-laws.

6.6.2 Perspective of citizens/consumers

The CEO of the Cape Town business chamber and the chairperson of the Western Cape property development forum mentioned the frustrations that their members experience with red tape, slow administrative processes, and a lack of skills. According to the respondents, officials are not empowered to make decisions.

They also think that the City is inconsistent with, and behind schedule in, their management of water and sanitation infrastructure. According to the respondents, the city's infrastructure development lags behind the demand for water and sanitation services created by population growth.

To questions on the municipality's water services by-laws, these representatives responded as follows:

Did the municipality consult communities in the drafting of water and sanitation by-law(s)?

- **Cape Town Chamber of Commerce:** Yes
- **WC Property Development Forum:** Not asked

What are community representatives' levels of awareness of the municipality's water and sanitation by-law(s)?

- **WC Property Development Forum:** Yes, knows where to find it, have read it.
- **Cape Town Chamber of Commerce:** Yes.

Have water services by-laws been used with a positive result?

- **WC Property Development Forum:** No, "legislation should support economic growth and job creation".
- **Cape Town Chamber of Commerce:** Slow responses from municipality.

6.6.3 The municipality's perspective

CoCT is both a WSA and WSP. There are two other WSPs who manage two of their wastewater treatment plants, who were appointed (with SLAs) by CoCT in terms of the "Section 78" process (Section 78 of the Municipal Systems Act). Their Water Services Intermediaries (WSIs) are appointed via Service Level Agreements (SLAs) too.

The CoCT promulgated their first water services by-laws in 2010. During the drought of 2018, the municipality amended the by-law to address the growing gaps in demand management and augmented supply. The new by-law addresses alternative water sources and encourages households to do rainwater harvesting.

Following the by-law amendment, and at the request of the public during the public participation process, CoCT created a summary of their four water services by-laws. Although they couldn't legally combine the by-laws, the respondent mentioned that the "Water By-law Summary Guidelines" at least helps consumers read the by-laws better. They also created another "summary" (one for consumers, one for plumbers) during the drought so that people know how to connect to the municipal water supply (to avoid contamination of the water supply).

The municipality will not, however, encourage self-supply plumbing installations "anytime soon", as there's a risk of contamination of CoCT's water supply if households don't install the correct (RPZ) valves. They are busy with a draft policy to cater for more self-supply scenarios (like the ones property developers are putting forward).

As a Metro, they use the by-laws, Integrated Development Plan (IDP), the Water Services Development Plan (WSDP), and other operational documents to deliver services, do reporting and monitoring, and improve services. Only some are legislated documents. Other documents are strategic documents. There is no duplication between documents. They also have an annual Business Plan and Customer Service Charter. All these documents talk to each other, each has its

function, and together they form the foundation of the service that CoCT provides. They also use some documents to motivate getting funding from or prove their compliance (with legislation) when they're audited by the national government. "We can't just have an IDP and WSDP and think we're going to function well," said the respondent.

Although the municipality has a Customer Service Charter in which it sets out the WSA's service level agreements, the Charter does not have legal status. The by-law also includes a disclaimer from DWS' 2011 model by-law, which further overrides their services commitments made in their Customer Service Charter: "The Municipality does not guarantee an uninterrupted supply of water, or a specific flow rate or pressure, or a specific standard or quality of water."

CoCT does not have an annual budget for the enforcement or implementation of the water services by-laws, because it's worked into salaries as a cost. They track and report on negative service delivery indicators (like illegal connections, how many notices was served, etc.) on a monthly basis in their internal production report. On an annual basis, they report the performance of their WSDP to national DWS, and track their Green Drop, Blue Drop and RPMS (Regulatory Performance Measurement System) assessments' scores, which refer to by-laws. They only track awareness of water services by-laws in their annual customer satisfaction surveys. Awareness of by-laws still scores low, despite the summaries available to the public.

The CoCT have not enforced their by-laws through their Municipal Court, noting that the Court is "focused on traffic fines. We submit a schedule of fines and penalties for water and sanitation by-law transgressions. But the court is very slow to act or respond." They have had workshops and training sessions with the Court.

6.7 eThekweni Metropolitan Municipality

6.7.1 Assessment on effectiveness model

See eThekweni Metropolitan Municipality for the municipality's scores and evaluative descriptions in terms of the intrinsic effectiveness of its water services by-laws.

6.7.2 Perspective of citizens/consumers

In eThekweni, two environmental activist groups participated in the research study: groundWork, and the South Durban Community Environmental Alliance (SDCEA).

GroundWork listed old infrastructure, exacerbated by the recent floods and a lack of maintenance, as the main water and sanitation-related challenge in the municipality. The respondent also claimed that "there has been a wilful neglect of services" after experiencing several incidents of untreated sewage polluting water sources. The failing pump station in Blackburn, for example, led to untreated sewage going into the Umhlanga lagoon. This was confirmed by the South Durban Community Environmental Alliance (SDCEA).

To questions on the municipality's water services by-laws, these representatives responded as follows:

Did the municipality consult communities in the drafting of water and sanitation by-law(s)?

- **GroundWork:** No.
- **SDCEA:** Yes, they were consulted and gave input.

What are community representatives' levels of awareness of the municipality's water and sanitation by-law(s)?

- **GroundWork:** Yes, know where to find it, has seen and read it.
- **SDCEA:** Yes, knows where to find it and has read it.

Have water services by-laws been used with a positive result?

- **GroundWork:** Not answered.
- **SDCEA:** have used by-laws several times to lodge complaints but they get more results from protest actions and involving the media.

6.7.3 The municipality's perspective

eThekwini Metro is both a WSA and a WSP. There are no other appointed WSPs.

The Metro's water services by-laws were promulgated in 1996 and went through the legally required public participation process in 2021. eThekwini is the only Metro (who participated in the study) that translated its by-law into an official language other than English. According to the respondent, "the draft by-law [...] is available in two languages: Zulu and English." The translation was done before going through the public participation process.

When commenting on the support they received to draft their by-law, the respondent noted that "In September 2022, we consulted SALGA and national DWS. [It] was mainly about our sanitation policy, and the policy leads to the by-law, so they got people from that Policy department within DWS to have a look at our by-law." The respondent also commented on the role that SALGA played in the consultation process: "We have not received a lot of support from DWS. I think we don't reach out to them as we should, or maybe we are not aware of the support we are supposed to be getting from them. The support that they gave us recently, was as a result of SALGA; it's SALGA that put us together. We wouldn't have reached out to them if SALGA had not put us together."

The municipality is in the process of reviewing their water by-law to provide for off-the-grid customers. A review of the water by-law has become necessary since "a lot of people who were residing in the suburbs are now moving back to the rural and using the water for free, [which is] a challenge for the Municipality. [...] The Ingonyama Trust⁴² owns about 55% of the land in KZN, but we are working on a strategy that will work for us and Ingonyama Trust – we are in talks about this matter."

The respondent mentioned various communication channels between the municipality and the community. "We have a customer service system where individuals, businesses, industries, or communities can lodge queries online; they either send us an email, WhatsApp or contact our call centre where queries are lodged, and they are directed to another internal system that's called 'Fault min' – where it is directed specifically to the person that will attend to that query which works with our control centre."

"The control centre [then] dispatches [the support ticket to] the relevant people who will attend to that matter, and a turnaround time for resolving a complaint or query is 3 – 4 hours, depending on what's the matter. We have a Service Level Agreement, when it comes to turnaround time of resolving a query, that's being updated every year, mainly because our Province, KZN, has been hit

⁴² According to the Ingonyama Trust, "The sole trustee to land under Ingonyama Trust is His Majesty the King Misuzulu kaZwelithini." (<https://www.ingonyamatrust.org.za/>)

hard by floods and in most areas, we had to reinstall new equipment altogether which took more time.”

The municipality has an appeals process based on the Local Government: Municipal Systems Act 32 of 2000, not a formal dispute resolution process.

6.8 City of uMhlathuze LM

6.8.1 Assessment on the effectiveness of the model

See City of uMhlathuze LM for the municipality’s scores and evaluative descriptions in terms of the intrinsic effectiveness of its water services by-laws.

6.8.2 Perspective of citizens/consumers

The research team talked to representatives of the Zululand Chamber of Commerce and Industries and Mondi, a large enterprise.

The Zululand Chamber of Commerce and Industries mentioned infrastructure projects that drag out for years, or never get fully operational. For example, the desalination plant in uMhlathuze is still not fully operational and pipes are continually popping. Other challenges include poor planning and management of infrastructure, lack of maintenance, and poor service delivery to communities.

Mondi depends on a reliable and continuous water supply. They also require a water supply of potable quality, and any water interruptions are a significant risk for their businesses. For example, Mondi’s Richards Bay mill has been flagged as a risk within the global Mondi group due to, amongst other issues, water supply. No water; no business.

Mondi gets their water directly from uMhlathuze Water, but it uses potable water from the City of uMhlathuze as a backup. According to the respondent, old infrastructure, which the municipality does not maintain properly, jeopardises the reliability of the backup supply. Inconsistent monitoring of water resources and poor wastewater treatment are additional risks to their water supply.

To questions on the municipality’s water services by-laws, these representatives responded as follows:

Did the municipality consult communities in the drafting of water and sanitation by-law(s)?

- **Zululand Chamber of Commerce and Industries:** They were not consulted and made no inputs.
- **Mondi Group:** Yes, they were consulted and made inputs.

What are community representatives’ levels of awareness of the municipality’s water and sanitation by-law(s)?

- **Zululand Chamber of Commerce and Industries:** Yes
- **Mondi Group:** Yes, know where to find, have read; not sure if communities know where to find it.

Have water services by-laws been used with a positive result?

- **Zululand Chamber of Commerce and Industries:** “you can’t apply the law if people don’t have the tools to do the job”.
- **Mondi Group:** Not used.

6.8.3 The municipality's perspective

The City is the WSA and the WSP. There are other WSPs with whom the City has Service Level Agreements.

With the drafting process of their water services by-laws in 2020, the municipality invited stakeholders to discuss the by-law's content "in a forum [at] our chambers." They are currently reviewing their water by-law and have decided to follow a different public participation process than before: "we decided to broaden the public participation by advertising in local newspapers and requesting for public comments. We also did community outreaches, trying to involve all sectors of our people by making sure they are well represented in this new, reviewed by-law, and to raise awareness about by-laws."

The current water by-law, which is now under review, does not regulate self-supply or off-the-grid customers. An outsourced service provider is drafting the revised by-law and DWS is involved in this review process. When asked why they only incorporated the National Water Act in their first water services by-laws, the respondent answered, "I am not sure why the model by-laws were not incorporated; I think it's a matter of awareness – we were not aware that we should incorporate the DWS guidelines."

The municipality "makes use of customer relationship management software, where all calls/complaints/incidents are registered. All calls are registered per incident type, priority, description, date, status, address, and suburb and by when the incident should be resolved. The City of uMhlatuze strives to resolve incidents within 24 hours. All calls registered are available electronically and there's an agent allocated for each query until the query is resolved."

In commenting on the effectiveness of their water services by-laws, the respondent said "Yes, I consider it as an effective tool [...] for issues of compliance."

The municipality is actively involved in community forums where they interact with the Zululand Business Chamber, large businesses, like Mondi, and other community representatives.

6.9 Midvaal LM

6.9.1 Assessment on the effectiveness of the model

See Midvaal LM for the municipality's scores and evaluative descriptions in terms of the intrinsic effectiveness of its water services by-laws.

6.9.2 Perspective of citizens/consumers

A farmer in the Homelands AH region participated in the research study and was overall positive about engagement with the municipality in the past.

In explaining the organisation's relationship with the municipality, and specifically the department that provides water and sanitation, however, the respondent said, "It is non-existent in the farm holdings, but very good in the townships where the water connections and sewer connections on new building projects are done timeously and efficiently."

The respondent was aware of a customer desk or hotline that the public can use to communicate with the municipality, but said that "in-person walk-in in their offices" worked best in dispute cases. The only time the respondent has used the municipality's dispute resolution process was to "get

verification of change of account owner". At the time of the response, the respondent was "still awaiting [a] favourable answer [...] for my account to be changed to my name".

To questions on the municipality's water services by-laws, these representatives responded as follows:

Did the municipality consult communities in the drafting of water and sanitation by-law(s)?

- **Midvaal farmer:** The respondent was not aware of the municipality's water services by-laws: "I don't know about it, but I hear that you need water rights in place for borehole water."

What are community representatives' levels of awareness of the municipality's water and sanitation by-law(s)?

- **Midvaal farmer:** No awareness.

No further questions were asked about the by-law.

6.9.3 The municipality's perspective

The municipality is WSA as well as WSP. Rand Water deliver directly to the residents of Klipriviersberg.

The respondents noted that the municipality follows a consultative process when they review a by-law or policy: "it goes through the entire municipality, every department will have an input, so it's not one person or one department." They also announced the promulgation of their water and sanitation by-law on the municipality's app.

The respondents mentioned that all of the municipality's by-laws are currently under review with the help of an internal service provider to "[as] we want to ensure that any loopholes we have in the current by-law are addressed". Although they did not consult with the provincial or national DWS offices when they developed the first by-law internally, " we will consult [DWS] this year."

The respondents viewed the fines and penalties for non-compliance as "the dispute resolution process". They quoted from the by-law on this matter, saying "if a consumer fails to comply with the terms of a notice served upon him or her in terms of the By-laws; shall be guilty of an offence and liable on conviction to a fine not exceeding R2,000.00 or, in default on payment, to imprisonment for a period not exceeding 4 months."

Although there's no reference in the by-law to a communication strategy or customer care, the respondents explained the process that the municipality follows: "We have a call centre that receives queries, then they refer these queries to the team that does the repairs, and the turnaround time depends on the type of query that was reported. We also have a municipal app where consumers log in their queries/ complaints directly to the maintenance and technical team. They also have a WhatsApp line. With water, for large water users, such as businesses, there's an exception; they report directly to a number that is meant for large water use consumers."

The municipality uses the by-law to enforce matters like illegal connections and considers it effective: "When we have cases of illegal connections and other cases, we use the by-law. [...] [The By-law] is effective, they help us in the regulation of the water and sanitation service, it gives us how to manage, control and manage the process of providing this service."

The municipality plans to "host a water week" to raise awareness "with our consumers and stakeholders at large" on the municipality's water services by-laws.

6.10 Tswaing LM

6.10.1 Perspective of citizens/consumers

The Tswaing Business Chamber mentioned that water and sanitation challenges that they have experienced include the following: “bulk water shortages days/weeks/ months, leaks uncontrolled, no communication, no maintenance or sound management, infrastructure collapse, [and] contamination of natural resources.” The Business Chamber’s relationship with the municipality is strained, the respondent commenting that there is “no relationship, no communication” with the municipality, and specifically the department that provides water and sanitation.

To address water and sanitation challenges in their community, the organisation has used “petitions, media, [as well as] motions in legislature, national assembly & NCOP”. They also use a combination of communication channels if there is a dispute with the municipality, citing “registered letter via mail; e-mail; letter hand-delivered and signed for at delivery; WhatsApp messages posted on Councillors’ group by our Councillors”. They have even opened “several” criminal court cases against the municipality and used the National Water Act 36 of 1998 and National Environmental Management Act 107 of 1998 as bases for the legal applications.

To questions on the municipality’s water services by-laws, these representatives responded as follows:

Did the municipality consult communities in the drafting of water and sanitation by-law(s)?

- **Tswaing Business Chamber:** No

What are community representatives’ levels of awareness of the municipality’s water and sanitation by-law(s)?

- **Tswaing Business Chamber:** No awareness

No further questions were asked on the by-law.

6.10.2 The municipality’s perspective

Tswaing LM is part of Ngaka Modiri Molema DM, which is the WSA and the WSP.

Ngaka Modiri Molema DM is in the process of drafting a water and sanitation by-law. The respondent did not have information on whether the support from DWS was being used.

According to the respondent, the purpose and goal of a by-law is to “enforce laws and regulations as far as water and sanitation is concerned and be a guide for our consumers on what’s expected of them.” Not having a by-law, has also proven to “[have] had a serious negative effect in our service delivery, and we don’t have full control over our customers.” The respondent supported the introduction of a by-law and service charter, saying “we urgently need to promulgate the water and sanitation by-law. It will be very much useful, because at the moment we are encountering a number of challenges due to the fact that we don’t have a water and sanitation by-law.”

The municipality had been taken to court on water and sanitation issues, and the respondent believed that a by-law would have kept them out of court: “if we had a by-law, we wouldn’t have taken the case to the court, because we would just quote the by-law in the matter”.

In the absence of a by-law, customers are not aware of their rights and obligations. To raise awareness of the by-law during the public participation process, “we plan to have a water and

sanitation awareness week. [...] This will help the municipality and our consumers to know the dos and don'ts as far as water and sanitation are concerned." The municipality also plans to use various communication channels, such as "pamphlets and placards to display in busy areas around the communities in our area of jurisdiction, and [...] social media (Facebook) to communicate with our residents. [We put] most of the communiques on our Facebook; the rules to follow are on our website." The municipality has set aside a budget for the implementation of their by-law, and "will also consult our sister municipality to assist us".

The respondent's only comment on how the by-law will address the rights and responsibilities of all parties involved in the water and sanitation services delivery process in the municipality was that "currently, we use a community forum to deal with rights and obligations of our **consumers** and to make them known to them." The respondent did not know if the WSA's service level agreements will be mentioned in the by-law, but confirmed that the by-law would include a dispute resolution process.

The WSA plans to include guidelines in its by-law on how to regulate self-supply customers using boreholes, greywater, and rainwater as alternative water sources. The respondent mentioned that they are drafting the by-law internally, and "are benchmarking" their by-law, but did not provide more details.

The respondent did not refer to the draft by-law when asked about the municipality's communication strategy and customer care, but referred to their current process: "There is a suggestion box in our offices where customers with complaints drop any complaints and queries, anonymously. Also, we have a municipality WhatsApp line where queries and complaints are forwarded to by our customers."

The relationship between the municipality and its residents is affected by factors outside of a municipality's control too. "Our water supply is affected by the power cuts and that poses a negative impact to our consumers, but as the year 2023 started, we haven't had any protests, so that is satisfying, because it is our primary goal to give an efficient service to our customers."

6.11 Municipalities represented only by community representatives

6.11.1 Maluti-A-Phofung

MONN carpets is a medium-size enterprise who participated in the research study. They depend on a reliable and continuous water supply and have a backup supply of water in the form of one week's supply stored as a backup. MONN mentioned inconsistent monitoring of water resources and poor wastewater treatment as additional risks to their water supply.

The Water Heroes in Maluti-a-Phofung mentioned similar challenges with water and sanitation service delivery to other community representatives. The respondent mentioned that the community, however, also contributes to the challenges they experience by dumping solid waste into the sewer system indiscriminately. Corruption in tender processes has led to inadequate operations at the local water and wastewater treatment plants.

The Water Heroes mentioned vandalism as a challenge and a symptom of a lack of taking ownership for infrastructure and not understanding of the water business.

To questions on the municipality's water services by-laws, these representatives responded as follows:

Did the municipality consult communities in the drafting of water and sanitation by-law(s)?

- **Maluti-a-Phofung Water Heroes:** No.
- **MONN carpets:** No, no inputs.

What are community representatives' levels of awareness of the municipality's water and sanitation by-law(s)?

- **Maluti-a-Phofung Water Heroes:** No awareness.
- **MONN carpets:** The respondent had no knowledge of the water and sanitation by-law.

Have water services by-laws been used with a positive result?

- **Maluti-a-Phofung Water Heroes:** No.
- **MONN carpets:** No knowledge if and how the by-laws are used.

6.11.2 Lekwa LM

Astral Foods, one of the two large enterprises that the research team spoke to, depends on a reliable and continuous water supply. Similar to the Mondi group, they require a water supply of potable quality, and any water interruptions are a significant risk for their businesses.

The company has had a dispute with the municipality about water services. Astral obtained a court order in terms of section 139(7) of the Constitution, and section 150 of the Municipal Finance Management Act 56 of 2003.

The company's relationship with the municipality was "hostile" before the municipality was placed under administration; now it has improved. The municipality was placed under administration as a direct result of a court case that Astral won in May 2018 in the North Gauteng High Court. They appealed to the Constitution, section 139, and the Municipal Finance Management Act to make their case.

According to the respondent, Astral currently provides technical services, equipment, and infrastructure repairs to the municipality. They have a direct line to the Municipal Manager and the Head of Technical Services. A call works best. They cooperate with the municipality to take water tankers to communities when there is load shedding. The municipality does not have a dispute resolution process, or a hotline.

In Olifantsfontein, they engage the municipality through the local business forums.

Astral Foods manage the risk of no supply by diversifying their water sources: they get water from Lekwa LM, directly from the Vaal River, plus they have an agreement with farmers to get water from their boreholes. They have an onsite water treatment plant. The company monitors the water quality daily, as the municipal supply often does not meet SANS 241 standards.

To questions on the municipality's water services by-laws, these representatives responded as follows:

Did the municipality consult communities in the drafting of water and sanitation by-law(s)?

- **Astral foods:** Lekwa LM does not have a by-law. No further questions were applicable.

6.11.3 Khai! Garib LM

The key water and sanitation challenge for the Kakamas Water Users' Association is the deteriorating water quality of the Orange River due to insufficient wastewater treatment by municipalities upstream. As a result, growers can no longer wash fruit and vegetables with river or canal water. They have to install expensive industrial filtering and treatment systems to ensure that they meet the water quality standards of the countries to which they export.

Gariep Watch mentioned that water users experience the same challenge along the lower Orange River. The water quality is further compromised by toxic and other substances from industrial effluent that goes into municipal sewage systems, and which are inadequately treated before the effluent is released into the Vaal River system.

To questions on the municipality's water services by-laws, these representatives responded as follows:

Did the municipality consult communities in the drafting of water and sanitation by-law(s)?

- **Kakamas WUA:** The question was not applicable as the municipality does not have water services by-laws.

What are community representatives' levels of awareness of the municipality's water and sanitation by-law(s)?

- **Kakamas WUA:** The respondent claimed awareness, but "could not find the local by-laws".

Have water services by-laws been used with a positive result?

- The question was not applicable, as the municipality does not have these by-laws.
- **Gariep Watch:** "By-laws are useless, I have never heard of a by-law being used effectively to prevent pollution. Plus, the state is the biggest polluter."

6.11.4 Ugu DM

The Ugu Ratepayers' Association in KwaZulu-Natal mentioned prolonged periods without water services and dysfunctional sanitation systems and plants.

To questions on the municipality's water services by-laws, these representatives responded as follows:

Did the municipality consult communities in the drafting of water and sanitation by-law(s)?

- **Ugu Ratepayers' Association:** No and no inputs were made.
- **Port Shepstone Business Forum:** No and no inputs were made.

What are community representatives' levels of awareness of the municipality's water and sanitation by-law(s)?

- **Ugu Ratepayers' Association:** Yes, knows where to find, has seen and read.
- **Port Shepstone Business Forum:** No, don't know where to find, have not read.

Have water services by-laws been used with a positive result?

- **Ugu Ratepayers' Association:** The by-law is a "white elephant".

6.11.5 Greater Tzaneen LM

The Letaba Water Users' Association mentioned similar water and sanitation challenges. Insufficiently treated effluent pollutes the Letaba River, which is their water source. Municipalities extract more water than their licences allow (up to 290%). The licences have not been updated to provide for new population figures and industrial development. As a result, statistics are distorted, and it becomes very difficult to manage water allocation. There is also inadequate communication between the provincial and local authorities of Limpopo and Mpumalanga. The result is blame shifting and challenges don't get resolved.

To questions on the municipality's water services by-laws, these representatives responded as follows:

Did the municipality consult communities in the drafting of water and sanitation by-law(s)?

- **Letaba WUA:** No, did not give inputs.

What are community representatives' levels of awareness of the municipality's water and sanitation by-law(s)?

- **Letaba WUA:** No, assume it is there, but they only deal with primary water distribution.

Have water services by-laws been used with a positive result?

- No awareness, therefore, not asked.

6.11.6 City of Johannesburg

The representative of the Alexandra Water Warriors in Johannesburg sketched the extent of pollution and flow alteration of the Jukskei River, which creates unique water and sanitation challenges for the community. Broken sewer pipes are also a common occurrence in the area. In addition, a decommissioned wastewater treatment plant is a security hazard and a site where foetuses and corpses are dumped.

To questions on the municipality's water services by-laws, the representative responded as follows:

Did the municipality consult communities in the drafting of water and sanitation by-law(s)?

- **Alexandra Water Forum:** They don't get invited to City's public participation processes; they go as individuals.

What are community representatives' levels of awareness of the municipality's water and sanitation by-law(s)?

- **Alexandra Water Forum:** Yes

Have water services by-laws been used with a positive result?

- **Alexandra Water Forum:** Potentially, yes, especially in efforts to counter illegal dumping into the Jukskei River.

6.11.7 Emfuleni LM

The community representative from the Greater Bhopelong Environment Water & Sanitation Forum mentioned theft of infrastructure (especially galvanized steel pipes) as a key water and sanitation challenge. Stormwater and sewer pipes also "don't work very well [...] because of the crumbling infrastructure that was not well maintained." They do, however, have a good working relationship

with the municipality, and have a direct line of communication with some senior municipal officials to report service delivery issues.

To questions on the municipality's water services by-laws, these representatives responded as follows:

Did the municipality consult communities in the drafting of water and sanitation by-law(s)?

- **Greater Bhopelong Water Forum:** No, they were not consulted.

What are community representatives' levels of awareness of the municipality's water and sanitation by-law(s)?

- **Greater Bhopelong Water Forum:** No awareness.

Have water services by-laws been used with a positive result?

- **Greater Bhopelong Water Forum:** No awareness; therefore, not asked.

Chapter 7: Survey

7.1 Introduction

At the second meeting of the Reference Group, the Research Manager suggested that a survey of the technical managers of WSAs be conducted to supplement the case studies. A questionnaire was compiled from the Yes/No questions in the discussion guide for municipal officials. This was done – see Annexure 4: Survey questionnaire. The quantitative data was used to supplement the rich, qualitative data of the case study interviews.

The research team created a survey to collect quantitative data from municipalities on their water services by-laws. Mr Lubabalo Luyaba distributed the survey to all provincial SALGA representatives to forward to the Directors: Technical Services of municipalities in their province. Seven representatives confirmed that they sent out the invitation mail to their province’s municipalities. Eleven municipalities responded by either filling in the survey online (via Google Forms) or by completing a fillable PDF form and emailing it to the research team leader. Municipalities’ response rate was 4.3%⁴³. Note, therefore, that the findings of this survey cannot be extrapolated to all municipalities.

At a high level, the survey consisted of two sections:

- Section 1: Collected respondents’ information, such as name, job title, name of the municipality they represent in the survey, whether the municipality is both a WSA and WSP, and the status of the municipality’s water services by-laws. If the municipality has promulgated water services by-laws, they could continue to section 2 of the survey. If the municipality’s water services by-laws were either in draft or they didn’t have such by-laws, the survey ended for them.
- Section 2: Contained 30 questions about the promulgated water services by-laws. The questions related to the extrinsic and intrinsic criteria of the by-law effectiveness by-law.

The following municipalities are represented in the survey results:

- Theewaterskloof LM from the Western Cape is both a WSA and WSP and has promulgated water services by-laws. The Manager: Civil Engineering completed the survey via the fillable PDF.
- Saldanha Bay LM, who is also from the Western Cape, is only a WSA. The municipality has promulgated water services by-laws. The Director: Infrastructure & Planning Services completed the survey via the fillable PDF.
- Umsobomvu LM from the Northern Cape is both a WSA and WSP and has promulgated water services by-laws. A Technician, Water and Sanitation, completed the survey via the fillable PDF.
- Matjhabeng LM from the Free State is also only a WSA but does not have water services by-laws. The Project Management Unit (PMU) Manager completed the survey via the Google Form.
- Buffalo City Metro from the Eastern Cape is both a WSA and WSP and has promulgated water services by-laws. Two respondents completed the survey: The General Manager:

⁴³ According to Chat GPT (version 4, 31 March 2023), however, a typical response rate for an online survey is generally considered to be around 10-15%.

Water, Wastewater & Scientific Services completed the survey via the Google Form, while the Senior Manager Water Services Authority (WSA) completed the survey via the fillable PDF.

- City of Mbombela Metro from Mpumalanga is both a WSA and WSP and has promulgated water services by-laws. Two respondents completed the survey via the Google Form: A Senior Manager and a Senior Engineering Technician.
- Swartland LM from the Western Cape is both a WSA and WSP and has promulgated water services by-laws. The Director: Civil Engineering Services completed the survey via the Google Form.
- JB Marks LM from the North West is both a WSA and WSP and is busy developing their water services by-laws. The Chief Water Analyst completed the survey via the Google Form.
- Dr Beyers Naude LM from the Eastern Cape is both a WSA and WSP but does not have water services by-laws. The Director: Infrastructure Services completed the survey via the Google Form.
- Dihlabeng LM from the Free State is both a WSA and WSP and has promulgated water services by-laws. A Technician completed the survey via the Google Form.
- Nelson Mandela Bay Metro from the Eastern Cape is both a WSA and WSP and has promulgated water services by-laws. The Senior Director: Water & Sanitation completed the survey via the fillable PDF.

The above list shows that nine of the 11 municipalities are both a WSA and a WSP, and only three municipalities reported not to have any water services by-laws in place yet.

7.2 Summary of results

Cautionary note: The research team did not fact-check respondents' survey responses, but reported results as they were recorded by respondents. Results may, therefore, contain overclaim.

According to the survey results, three municipalities promulgated their water services by-laws before 2012: Umsobomvu LM in 2007, Nelson Mandela Bay Metro in 2010, and Buffalo City Metro in 2011. The municipalities that promulgated their first water services by-laws after 2012 include Swartland LM in 2014, City of Mbombela in 2017, Theewaterskloof LM in 2018, and Saldanha Bay LM and Dihlabeng LM in 2022. Only the City of Mbombela has reviewed and updated its water services by-laws since the first promulgation date.

The two respondents for the City of Mbombela were divided on whether the municipality has a document that consolidates the old (2017) and the amended (2021) versions of their water services by-laws (one respondent answered "yes", the other answered "no"). According to the Manager: Civil Engineering at Theewaterskloof LM, their municipality does have a document that consolidates the old and the amended versions of their water services by-laws, even though they have not updated their by-law since its promulgation in 2018.

Buffalo City Metro and Nelson Mandela Bay Metro reported to have used the 2001 model by-law from DWS when they drafted their first water services by-laws. Swartland LM, the City of Mbombela and Dihlabeng LM said they used DWS' model by-law of 2011 when they drafted their first water services by-laws. Saldanha Bay LM was the only municipality that did not use DWS' model by-law when they drafted their water and sanitation by-law in 2022. The survey did not investigate the root cause for municipalities not using the model by-law. Two respondents did not indicate, or completed an irrelevant version, of the question asking whether they used the 2001 or 2011 versions of DWS' model by-laws when they drafted their water services by-laws.

Four municipalities followed the guideline/manual that DWS provided for water & sanitation by-laws and have consulted with provincial and/or national DWS on at least one aspect of their water services by-laws. Swartland LM and Nelson Mandela Bay Metro only followed the guidelines/manual that DWS provided for water & sanitation by-laws. Umsobomvu LM, who did not use any DWS support, as well as Buffalo City Metro and Swartland LM used an outside service provider to assist with the drafting or updating of their water services by-laws. Buffalo City Metro was, therefore, the only municipality that engaged with both the DWS and an outside service provider in the drafting of their water services by-laws. Swartland LM was the only municipality that followed both DWS's 2011 model by-law and guideline/manual, and still engaged an outside services provider in the drafting of their by-laws.

The City of Mbombela again submitted contradicting responses (one respondent answering "yes", one answering "no") to the following questions:

- Question 11: Did you follow the guideline/manual that DWS provided for water & sanitation by-laws?
- Question 12: Have you ever consulted with the provincial and or national Department of Water and Sanitation on any aspect of your water services by-laws?
- Question 13: Did an outside service provider assist with the drafting or updating of the water services by-laws?
- Question 16: Did you involve the public in the drafting of your water services by-laws?
- Question 25: Do the water services by-laws indicate how the municipality should make sure that consumers are aware of these by-law(s)?
- Question 26: Are your water services by-laws published on your website?
- Question 29: Is the municipality represented on any community water forums?
- Question 30: Do you regularly (at least every five years) conduct customer satisfaction surveys that include questions on water and sanitation?
- Question 34: Have consumers ever taken your municipality to court for a matter that relates to water and sanitation services?

Buffalo City Metro was also divided on the following questions (one respondent answered "yes", one answered "no"):

- Question 16: Did you involve the public in the drafting of your water services by-laws?
- Question 22: Do you have clauses in your current by-law, or an additional by-law, that regulate water and sanitation self-supply for off-the-grid consumers?
- Question 24: Have you ever received complaints that your water services by-laws are difficult to comply with?
- Question 25: Do the water services by-laws indicate how the municipality should make sure that consumers are aware of these by-law(s)?
- Question 26: Are your water services by-laws published on your website?
- Question 29: Is the municipality represented on any community water forums?

All the municipalities say that they have a department in the municipality that is responsible for the administration/implementation/enforcement of their water services by-laws, instead of outsourcing that function to an external service provider.

The figure below captures the involvement of WSPs in the drafting or review process of these by-laws. Where WSAs do not have any other appointed WSPs, they could answer "not applicable".

If you have appointed WSPs: 15. Did your WSPs participate in the drafting/review process of your water and sanitation by-laws?

10 responses

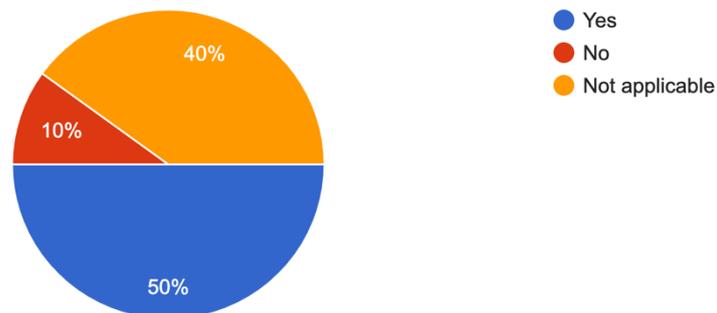


Figure 3: WSPs' involvement in drafting/reviewing of by-laws

At least one respondent from each municipality reported that they invited the public to comment on the draft(s) of their water services by-laws as part of their public participation process. Dihlabeng LM used public meetings in their public participation process. Municipalities do not seem to be aware of, or record, negative feedback from the public about the content or usability of their water services by-laws. Only one respondent from Buffalo City Metro reported having ever received either negative feedback from the public about the content of their water services by-laws, or complaints that their water services by-laws are difficult to comply with.

Five municipalities reported to have Customer Service Charters: Dihlabeng LM, Nelson Mandela Bay Metro, and the three Western Cape municipalities. Since a Customer Service Charter has no legal basis for consumers to enforce municipalities' service levels, service commitments in Saldanha Bay LM, Swartland LM and Nelson Mandela Bay Metro's Customer Service Charter are overridden by the following disclaimer: *"The Municipality does not guarantee an uninterrupted supply of water, or a specific flow rate or pressure, or a specific standard or quality of water."*

Theewaterskloof LM, Saldanha Bay LM and Buffalo City Metro have either clauses in their current water services by-laws, or additional by-laws that regulate water and sanitation self-supply for off-the-grid consumers. These clauses or additional by-laws mostly regulate boreholes as an alternative water source. Buffalo City Metro regulates greywater and rainwater use as well.

23. Does your water and sanitation by-laws regulate the use of any of the following:

10 responses



Figure 4: Regulation of greywater, boreholes, and rainwater use

Six municipalities reported that their water services by-laws indicate how the municipality should make sure that consumers are aware of these by-laws. This contradicts the findings of the qualitative research. In several instances, the municipal officials responding to the survey questions were themselves not aware that their by-laws were available on the municipality's website. For example, the respondent from Nelson Mandela Bay Metro, and one respondent each from Buffalo City, the City of Mbombela, and Dihlabeng LM reported that their water services by-laws are not published on their website. An internet search found the by-laws on these municipalities' websites. The exception was Dihlabeng LM, where the search resulted in a missing file, i.e., 404 error,

Only Saldanha Bay LM and Umsobomvu LM make a summary of their water services by-laws available for consumers.

While Theewaterskloof LM participates in both PPPs and local water forums, the City of Mbombela participates only in PPPs. Buffalo City Metro and Dihlabeng LM are only represented on at least one community water forum.

Six municipalities conduct customer satisfaction surveys that include questions on water and sanitation on a regular basis (at least every five years). Silulumanzi, the WSP of the City of Mbombela, conducts customer satisfaction surveys regularly, but the two respondents from the City of Mbombela were not aware of this⁴⁴. Swartland LM publishes the results on their website. Buffalo City Metro does not regularly conduct customer satisfaction surveys that include questions on water and sanitation, but when they do, they publish the results on their website. It is of concern that **none** of the municipalities that completed the Google Form version of the survey have ever asked consumers in a survey if they are aware of their water services by-laws' existence and its content. The qualitative interviews found the same.

Only three municipalities said that they have an annual budget for the enforcement or implementation of water services by-laws: Theewaterskloof LM, Saldanha Bay LM and Umsobomvu LM.

⁴⁴ See Silulumanzi's 2020 customer satisfaction survey results [here](#).

Consumers of Buffalo City Metro and the City of Mbombela have taken the municipality to court before for a matter that relates to water and sanitation services. The survey did not explore the court’s rulings or other outcomes of the court cases.

Respondents were asked to rate the effectiveness of the enforcement of their water services by-laws on a scale of 1 to 5 (where 1 is poor and 5 is excellent). Respondents’ scores are highlighted in blue.

Table 12: Self-reported effectiveness rating

| Municipality name | Score (out of 5) | | | | |
|--|------------------|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 |
| Theewaterskloof LM | 1 | 2 | 3 | 4 | 5 |
| Saldanha Bay LM | 1 | 2 | 3 | 4 | 5 |
| Umsobomvu LM | 1 | 2 | 3 | 4 | 5 |
| Buffalo City Metro (two respondents) | 1 | 2 | 3 | 4 | 5 |
| City of Mbombela Metro (two respondents) | 1 | 2 | 3 | 4 | 5 |
| Swartland LM | 1 | 2 | 3 | 4 | 5 |
| Dihlabeng LM | 1 | 2 | 3 | 4 | 5 |
| Nelson Mandela Bay Metro | 1 | 2 | 3 | 4 | 5 |

36. Do you view your water and sanitation by-laws as effective tools or instruments to address the opportunities and challenges faced with the provision of water and sanitation services? Provide the reason for your answer
10 responses



Figure 5:By-law addresses opportunities and challenges with provision of water and sanitation services

Respondents’ answers indicated that water services by-laws can only be effective tools or instruments to address the opportunities and challenges faced with the provisioning of water and sanitation services **if by-laws are properly enforced** and if **adequate resources are allocated for this purpose**.

Chapter 8:

Conclusions and recommendations

8.1 General conclusions

8.1.1 Conclusions about intrinsic effectiveness

The intrinsic effectiveness assessment found that the current water services by-laws are not effective to:

- Guarantee quality and quantity of potable water provision
- Hold WSAs and WSPs accountable for failure to provide services
- Enforce consumers' rights to proper services, and
- Control and regulate self-supply.

As a result, by-laws are not used to resolve service delivery disputes between consumers and local government. In the cases discussed in this report, consumers resorted to national legislation that relates to health (The National Health Act), the protection of the environment (National Environmental Management Act) and human rights (the Constitution) to hold local government accountable for inadequate services.

According to community representatives, a lack of accountability has become endemic to local government. It does not help that many municipal by-laws include a disclaimer that is commonly found in by-laws across the world: "The Municipality does not guarantee an uninterrupted supply of water, or a specific flow rate or pressure, or a specific standard or quality of water". Where municipalities commit themselves to service levels, they do so in their service charters, which are not legally enforceable.

Despite the fact that all of the sampled municipalities followed some form of public participation process when they developed their by-laws, consumer organizations and officials agreed that the awareness and knowledge of water services by-laws are low. The public participation process is therefore inadequate. None of the sampled municipalities involved community representatives in the drafting of by-laws.

The interviews with municipal officials confirmed that the respondents did not have a good knowledge of the content of their municipality's water and sanitation by-laws. Among the community representatives, knowledge was variable.

Low awareness is exacerbated by the low visibility of by-laws on municipal websites. The research team found that by-laws were difficult to find on all the municipal websites. Content is not intuitively organized, and web page names are not helpful. Summaries of by-laws in non-legal language are the exception.

The interaction between communities and their municipality was community-driven in the sampled municipalities, not municipality driven.

8.1.2 Conclusions about extrinsic effectiveness

The majority of sampled WSAs have by-laws based on the DWS Model by-laws, in other words, municipalities made use of the support that the national department offered.

Applying the criteria for extrinsic effectiveness or effective implementation showed that:

1. Capacitated municipalities (Metro's and larger municipalities) have evidence that they are implementing their by-laws effectively, or partly.
2. Evidence that WSAs are not implementing their by-laws effectively includes:
 - a. Poor visibility of water services by-laws on municipal websites and the resulting low public awareness of these by-laws.
 - b. The absence of a dedicated budget for implementation and enforcement.
 - c. Lack of interest and/or capacity of Municipal Courts to enforce water services by-laws. Lack of coordination between the municipality and the court in terms of fines schedules.
 - d. Cost recovery for services provided is problematic as the debt collection rates indicate.
 - e. The lack of interest on the part of the legal representatives to participate in the study.
 - f. The sampled by-laws do not refer to public-private partnerships. Nor do they refer to national private-public regulations. As a result, by-laws cannot be used to facilitate public-private partnerships.

8.1.3 Response rate

The response rate of LMs and DMs was disappointing, especially that of the legal advisors to the offices of Municipal Managers. This is indicative that these by-laws are a low priority, which was confirmed by the sometimes-shocking lack of knowledge that municipal officials have of their own water services by-laws.

The Metros responded the best to calls to participate in the study. Possible reasons are Metros' involvement in court cases and the fact that they are better capacitated (better funding, better internal skills, or the financial resources to outsource skills).

8.2 Recommendations

8.2.1 Strengthening intrinsic effectiveness

The intrinsic effectiveness of water services by-laws will be strengthened by the following actions:

1. Redress historic inequalities: refer to Perception Study 2023. Attend at the national level to improve services to informal settlements.
2. Purpose and goal: write at the national level and all by-laws should have it in.
3. Democratize local law by actively enabling stakeholders and communities to participate in the drafting process of by-laws and updates of by-laws to ensure an inclusive process, and that the unique, practical realities of a municipality are addressed.
4. Strengthen national support by amending the model by-laws. There are several options:
 - a. Revise model by-law to incorporate the obligations of the municipality/service level commitments and other missing aspects, e.g., self-supply, dispute resolution, budget for implementation, or
 - b. Develop a regulation for water services by-laws that stipulate the core content that by-laws must include.

5. Develop a regulation to standardise the application form for a water connection. Expand the application form to state the obligations of both parties and the legal recourse or a dispute resolution process. Do this on an App. Cross-reference the by-law with a hyperlink.

8.2.2 Strengthening extrinsic effectiveness

The extrinsic effectiveness of water services by-laws will be strengthened by the following actions:

1. Improve accessibility of water services by-laws:
 - a. By-laws must be in Plain Language. Apply the ISO PL standard.
 - b. Don't upload scanned documents.
 - c. Publish by-laws as interactive PDFs
 - d. By-laws should follow the W3C WCAG 2.1 standard to ensure that by-laws are accessible for people with disabilities.
 - e. CoGTA to propose a standard website structure. All websites are to have a by-law page.
 - f. Link to by-laws on municipal bills and social media platforms
 - g. Include by-laws in local radio discussions
 - h. All the Metros must have a simplified summary document of their by-laws. Use local languages
 - i. Metros only: codified by-laws if amended
2. Improve awareness:
 - a. Include awareness of by-laws as a strategic objective
 - b. Include a standard question on customer satisfaction surveys about by-law awareness and accessibility
3. Increase collaboration between municipalities and civil society through:
 - a. Community Water Forums
 - b. PPPs
 - c. Regulated self-supply.
4. Increase collaboration between government institutions: e.g., municipal courts and municipalities to strengthen the capacity to enforce by-laws and to broaden access to justice.
5. Develop a basic online training module on the model by-law that municipal officials and the Councillors responsible for water and sanitation can follow as part of their induction process.
6. Include the implementation of by-laws in the KPIs of officials at all levels, not only at the executive level.
7. Improve measuring the effectiveness of by-laws with data on payment for services, credit control, maintenance, vandalism, and capacity building initiatives.
8. Develop a Capacity Model for WSAs and WSPs based on SANS Codes and best practices. Do a full capacity assessment of municipalities based on the Capacity Model to determine which water and sanitation roles and responsibilities they have the capacity for. This should include:
 - a. A skills assessment, and
 - b. A financial capacity assessment.
9. Adjust the powers and functions between all role-players based on the outcome of the capacity assessments.
10. Investigate the current municipal funding model, i.e., DORA and Equitable Share allocations, to municipalities to prioritise the delivery of basic municipal services and especially water and sanitation services.

11. Investigate the possible role of the private sector in the provisioning of water and sanitation services for both bulk and retail distribution and management.

8.3 Outcomes of seminar

The WRC, in partnership with DWS and SALGA, hosted a seminar on 3 August 2023 to present the research findings and proposed actions to key stakeholders. Stakeholders’ input was integrated into this report. See the figure for the agenda of the seminar.

95 registrants participated in the seminar.

As a follow-up to the seminar, Dr Slabbert

presented the study findings

to the SALGA Water and Sanitation Working Group of the Free State on 29 August 2023.



Figure 6: Agenda of seminar of 3 August 2023

8.4 Way forward

At the seminar, Mr Nevondo, Deputy Director: Sector Economics & Finance at DWS reiterated the commitment of the Department to make by-laws effective in municipalities. A pilot project with a group of WSAs to review and amend their by-laws in collaboration with their respective communities was suggested by Mr Nevondo as a first step at a subsequent meeting of his team with the project leader on 7 September 2023. The project leader confirmed that the assessment tool that was developed as part of the study will be made available to DWS to share with WSAs.

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Annexure 1: Institutional context of water services by-laws in a sample of other countries

Regulatory frameworks

Graham (2007) notes in an OECD paper that gives an overview of regulatory frameworks for urban services, which includes water services, that the regulation of these services is firstly framed by the particular historical, cultural, and political context in which they evolved.

He discusses three further frameworks, which are also relevant for this study.

The enforcement pyramid

The first framework that Graham (2007: 8) discusses refers to the range of regulatory mechanisms as depicted in the enforcement pyramid of Ayers and Braithwaite (1992). See the figure below.

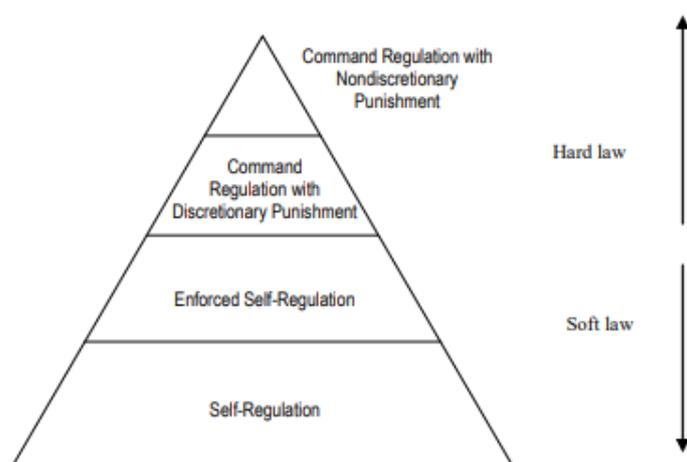


Figure 7: The enforcement pyramid of regulatory mechanisms (Ayers and Braithwaite (1992))

Graham (2007) notes that the middle tiers of the pyramid include what he calls “non-law mechanisms” such as strategies, master plans, guidelines, norms and standards, codes of conduct, customer charters, and best practices. According to him, the pyramid has formed the basis of most developments in contemporary thinking on the regulation of urban services.

Regulatory functions available to the government

The second framework that Graham (2007) discusses comprises the set of regulatory tools that are available to a government as identified by Freiberg (2006). It is notable that legislation is only one of the five tools. See the Table below.

Table 13: Freiberg (2006)'s framework of regulatory tools

| Regulatory Tool | Explanation and Examples |
|-----------------------------|--|
| Economic Actor | As an <i>economic actor</i> the state can use taxes and charges, bounties, quotas or even permit trading. |
| Party | The state as a <i>party</i> uses the governments party to a contract to influence behaviour so that contract parties may for example pay minimum wages, institute environmental controls or undertake particular industrial relations approaches, report specific information or adhere to various government guidelines. Alternatively governments may use their party to a grant as a mechanism for regulating the behaviour of another party). |
| Facilitator | As a <i>facilitator</i> , governments may choose to use markets as a regulatory mechanisms, or may license, register, certify or accredit other parties and control behaviour through this mechanism. Alternatively, governments may litigate and through rule of law ensure particular behaviours occur. Alternatively, environmental design and physical control can form one mechanism of regulation, an example of which is an overpass built for a road which regulates behaviour of pedestrians crossing. |
| Information Provider | The state may act as an <i>information provider</i> . Under this category, information as a resource is used, and education and training can be adopted as a mechanism for regulation. Product labeling and disclosure laws attempt to encourage the provision of information along with date stamping, disclosing interest rates, fuel consumption and so on. |
| Legislator | The state as <i>legislator</i> is the most well known and familiar regulatory tool. Traditionally it provides law, rules and regulation as a formal responsibility. Primary legislation through parliament is central to this as well as delegated legislation or regulations which are of course a more narrow detailed technical legal form. Quasi legislation in which standards, codes, rulings, instruments, other rules and guidelines also exist. These have been termed 'grey law' and are some what more ambiguous as well as ubiquitous. |

However, we would rather call the above a framework of regulatory functions than tools. The regulatory tools for each of these functions are the tiers of regulatory mechanisms as depicted in the enforcement pyramid. We would therefore simplify the table for water and sanitation services as follows:

| Regulatory mechanisms | Regulatory functions |
|-----------------------------|--|
| Laws, regulations | Regulating structures, roles, and responsibilities |
| Rules, norms, and standards | Regulating WSA's economic behaviour, e.g., tariff setting, meter reading, and credit control |
| Strategies, policies | Regulating WSA's obligation to provide services according to certain norms and standards |
| Guidelines, codes | Regulating the WSA's obligation to provide information |
| Service agreement, etc | Regulating consumers' social behaviour, e.g., applying for a service, paying for services, reporting leaks, etc. |

Regulatory functions do not necessarily have a one-on-one relationship with a regulatory mechanism. Acts of law can include all of the listed regulatory functions.

A framework of ownership and control (Hodge, 2000)

The third framework that Graham (2007) discusses relates to ownership and control, which is relevant when one compares water and sanitation regulation across countries. See the figure below:

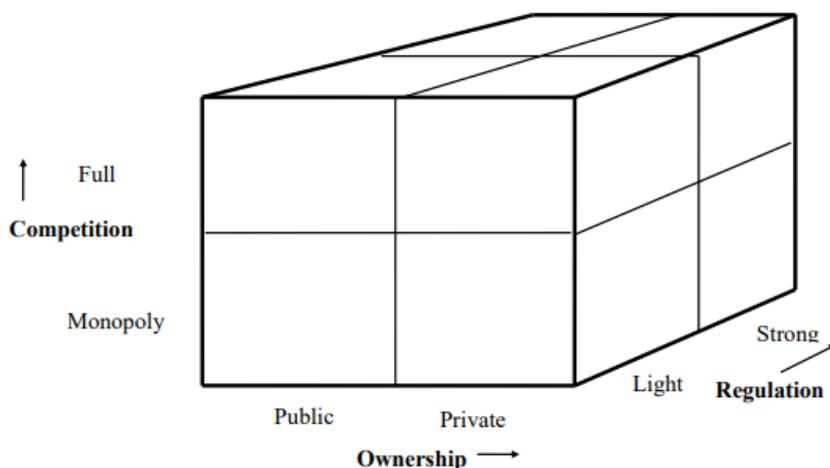


Figure 8: Ownership, Competition and Regulation (Hodge [2000] as quoted in Graham [2007])

Graham (2007) points out that in reality, the relationships sit on a continuum and are much less compartmentalised than the cube suggests.

Examples from a range of countries

Below is a brief high-level summary of how these frameworks interplay in a range of countries across the world:

Table 14: High-level summary of water regulation in different countries

| Country | Ownership | Regulator | Regulatory mechanisms |
|----------------------|--|---------------------------------------|--|
| England and Wales | In history: initially private, later public, currently private utilities | OFWAT, national independent regulator | The Water Act (2003) |
| Canada ⁴⁵ | Publicly provided by municipalities. Some municipalities have contracts (by-laws) in place that describe the relationship with a private utility company | | Canada Water Act (1970) ⁴⁶ Drinking Water Guidelines, set by Health Canada. Adapted at the provincial and territorial level. |

⁴⁵ <https://www.canada.ca/en/environment-climate-change/services/water-overview/governance-legislation/federal-policy.html>

⁴⁶ <https://ncceh.ca/environmental-health-in-canada/health-agency-projects/drinking-water-guidelines-and-governance>

| Country | Ownership | Regulator | Regulatory mechanisms |
|-------------------------|--|---|--|
| France | Public-private contracts between local authorities and the utility. (The rest of Europe has mainly public utilities) | No single national regulator. Decentralised regulation. | |
| USA ⁴⁷ | Mainly private utilities, but also some public utilities | At the state level, public utility commissions regulate the water services | <p>Safe Drinking Water Act (1974) - Federal law</p> <p>The Clean Water Act 1972) regulates the discharge of pollutants into the waters of the US and regulates quality standards for surface waters.</p> <p>EPA sets drinking water quality standards and oversees water services providers who implement those standards.</p> |
| Australia ⁴⁸ | Mainly government-owned utilities | <p>National Water Commission, which was established by the National Water Commission Act of 2004 and strengthened in 2011, no enforcement power (yet)</p> <p>Economic regulation at the state level through state commissions</p> | <p>National Water Initiative (NWI), a national forum for dealing with water issues.</p> <p>States have their own water Acts</p> |
| Example: Sydney | Government-owned utility: Sydney Water, and private sector competitors | The Independent Pricing & Regulatory Tribunal of NSW (IPART) serves as an independent regulator for Sydney Water and its competitors in the private sector. Objectives set for IPART | <p>Established under the Sydney Water Act (1995).</p> <p>Water Industry Competition Act of 2016 regulates competition and customer relations.</p> |

⁴⁷ <https://www.epa.gov/regulatory-information-topic/regulatory-and-guidance-information-topic-water>

⁴⁸ <https://ppp.worldbank.org/public-private-partnership/water-regulation-separate-regulatory-body-licensing-regime>

| Country | Ownership | Regulator | Regulatory mechanisms |
|------------------------------|---|---|---|
| | | in legislation broadly cover economic efficiency, market competition, consumer protection, commercial sustainability and financing, and environmental protection (Leong & Li, 2017:5) | Sydney Water operates a Customer Council to involve customers in service and decision-making processes. |
| Singapore (Leong & Li, 2017) | Government-utility: Public Utilities Board (PUB), responsible for all aspects of water and sanitation management. Outsourced some of its functions to the private sector. | Ministry of Environment and Water Resources (MEWR)'s policies and master plans provide guidance. PUB is the provider and regulator | The Public Utilities Act, the Sewerage and Drainage Act, the Environmental Protection and Management Act, and the Environmental Public Health Act. Legislation imposes responsibilities on both the PUB and the public and ensures staff accountability (Leong & Li, 2017) |

By-laws

The “by” in by-law means “town” in Old Norse⁴⁹. A by-law was therefore originally a “town law”, and in many instances it still is.

According to the Cambridge Business English Dictionary⁵⁰, a by-law has two meanings:

- In the UK, a by-law is “a law made by local government that only relates to its particular region”.
- In the US, a bylaw has a broader meaning as “a rule that governs the members of an organisation”.

However, in the UK, water bylaws can also be made by water companies.

Australia has five types of by-laws: state by-laws, local government by-laws, organisational by-laws, company by-laws and body corporate by-laws⁵¹. In Canada, non-profit corporations can also have by-laws⁵².

All types of by-laws are authorised, limited, or regulated by legislation at a higher level.

⁴⁹ <https://banff.ca/677/What-is-a-Bylaw>

⁵⁰ <https://dictionary.cambridge.org/dictionary/english/bylaw>

⁵¹ <https://www.stratacare.com.au/by-laws-explained/>

⁵² <https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs05005.html>

In Canada, for example, municipalities can only pass laws if the authority to do so is legislated at another level of government. For example, the Municipal Government Act delegates the authority for local by-laws to municipalities.

Below are a few examples of water by-laws from Canada.

| Place | Example | Notes |
|--|--|---|
| City of Winnipeg | New water by-law (2015) | Look similar to South African model water and sanitation bylaws |
| San Antonio Water Company, Upland, Canada Requirements are set by the state | “The By-Laws establish the specific rules of guidance for the water company’s daily operations and service to its shareholders” | The bylaws set out the relationship between the company and its shareholders and the level of water services (treated or untreated water) that it delivers to shareholders. |
| Calgary ⁵³ | This city has a range of water bylaws (water utility bylaw, stormwater by-law, fire hydrant bylaw, wastewater bylaw, water meter bylaw, etc) | |
| Vancouver | Water Works by-law ⁵⁴ | Similar to the South African model water by-laws |
| City of Edmonton ⁵⁵ | Edmonton water by-law describes the relationship between the municipality and Epcor, a water services utility company | Looks very similar to the South African model by-laws |

Service agreement or customer contract

Countries like Australia and New Zealand have a service agreement or a customer contract as the legal foundation of the relationship between consumers and the water services authority or provider.

For example, the Power and Water Corporation⁵⁶ in the Northern Territory of Australia has a customer contract which dates back to 2007 (but last updated in 2020). The contract sets out the rights and obligations of the service provider and customers. The Corporation’s minimum service level standards are attached to the contract.

⁵³ <https://www.calgary.ca/csps/abs/bylaws-by-topic/water.html><https://www.calgary.ca/csps/abs/bylaws-by-topic/water.html>

⁵⁴ <https://bylaws.vancouver.ca/consolidated/4848.PDF>

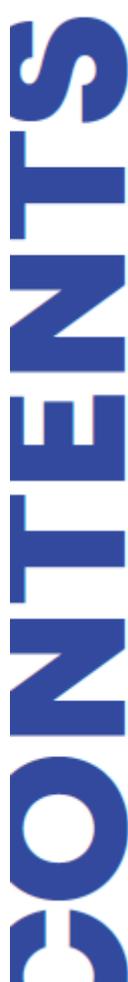
⁵⁵ <https://pub-edmonton.escribemeetings.com/filestream.ashx?DocumentId=113064>

⁵⁶ <https://www.powerwater.com.au/publications/customer/Customer-Contract-Effective-February-2007.pdf>

Watercare, the largest utility in New Zealand that supplies to Auckland communities, has a customer contract⁵⁷ that covers the following aspects:

- the terms under which they provide water and wastewater services.
- the obligation of the customer to pay for these services
- price schedules for domestic and commercial customers
- terms and conditions for infrastructure growth charges
- the rights of the customer in any dispute with Watercare.

The language of Sydney Water’s customer contract is noticeable. The English is easy to understand for an ordinary consumer, the contract addresses the customer directly and key headings are phrased in terms of customers’ frequently asked questions. The figure illustrates these aspects.

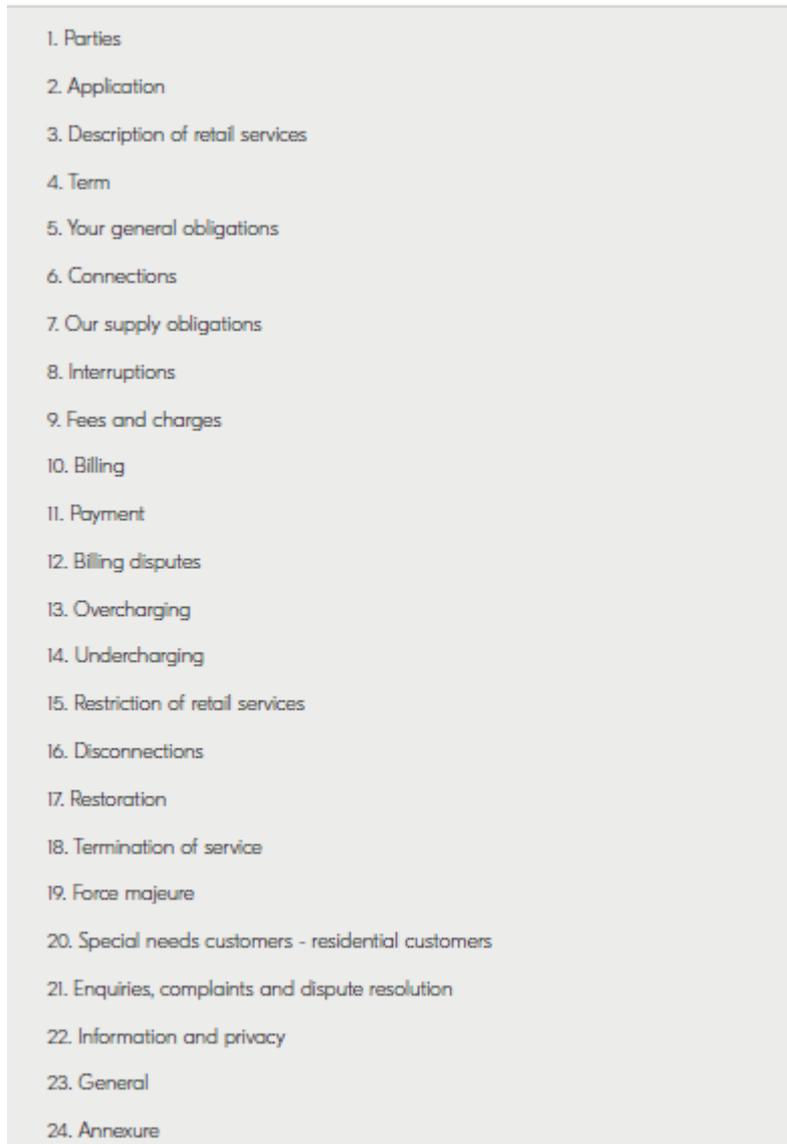


| | | | |
|---|-----------|---|-----------|
| Foreword | 4 | 6 Restriction or disconnection of water supply and wastewater services | 19 |
| 1 Introduction | 5 | 6.1 Restriction or disconnection | 19 |
| 1.1 Words used in this contract | 5 | 6.2 Notice of restriction or disconnection of supply of water for non payment by customers | 19 |
| 1.2 Understanding the contract | 5 | 6.3 Conditions for restriction or disconnection of supply of water for non-payment by customers | 20 |
| 2 What is this contract and who is covered by it? | 6 | 6.4 Restriction or disconnection for other reasons | 20 |
| 2.1 What is this contract? | 6 | 6.5 Occupiers (tenants) may pay charges to avoid restriction or disconnection | 21 |
| 2.2 Who is covered by this contract? | 6 | 6.6 Minimum flow rate during restriction | 21 |
| 2.3 Other agreements with us | 7 | 6.7 Limitations on restriction or disconnection | 21 |
| 2.4 When does this contract commence? | 7 | 6.8 Disconnection by a customer | 22 |
| 3 What services does Sydney Water provide? | 8 | 6.9 Restoration of water supply after restriction or disconnection | 22 |
| 3.1 Water supply services | 8 | 6.10 Costs for debt recovery activities | 22 |
| 3.2 Wastewater services | 9 | 7 Redress | 23 |
| 3.3 Stormwater services | 10 | 7.1 Notification | 23 |
| 3.4 Factors affecting service | 10 | 7.2 Rebates | 23 |
| 4 What you pay | 12 | 7.3 Rebates for recurring unplanned interruptions | 24 |
| 4.1 Responsibility to pay the account | 12 | 7.4 Rebates for recurring wastewater overflows | 24 |
| 4.2 Publication of charges | 12 | 7.5 Exception for disaster events | 24 |
| 4.3 Concessions | 12 | 7.6 Redress | 25 |
| 4.4 Your bill | 12 | 7.7 Claim for damages | 25 |
| 4.5 Undercharging | 14 | 7.8 Guarantees and assurances | 25 |
| 4.6 Overcharging | 14 | | |
| 4.7 Billing disputes | 14 | | |
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| 4.9 How prices are determined | 15 | | |
| 4.10 Notification of price variations | 15 | | |
| 4.11 Other costs and charges | 15 | | |
| 4.12 Exchange of information | 16 | | |
| 5 What can I do if I am unable to pay my bill? | 17 | | |
| 5.1 Payment difficulties and assistance options for all customers | 17 | | |
| 5.2 Payment arrangements | 17 | | |

Figure 9: Sydney Water’s customer contract

In comparison, the customer contract of South Australia Water is less accessible as the table of contents illustrate:

⁵⁷ <https://www.watercare.co.nz/Help-and-advice/Customer-contract>



A vertical list of 24 numbered items, serving as a table of contents. The items are: 1. Parties, 2. Application, 3. Description of retail services, 4. Term, 5. Your general obligations, 6. Connections, 7. Our supply obligations, 8. Interruptions, 9. Fees and charges, 10. Billing, 11. Payment, 12. Billing disputes, 13. Overcharging, 14. Undercharging, 15. Restriction of retail services, 16. Disconnections, 17. Restoration, 18. Termination of service, 19. Force majeure, 20. Special needs customers - residential customers, 21. Enquiries, complaints and dispute resolution, 22. Information and privacy, 23. General, 24. Annexure.

1. Parties
2. Application
3. Description of retail services
4. Term
5. Your general obligations
6. Connections
7. Our supply obligations
8. Interruptions
9. Fees and charges
10. Billing
11. Payment
12. Billing disputes
13. Overcharging
14. Undercharging
15. Restriction of retail services
16. Disconnections
17. Restoration
18. Termination of service
19. Force majeure
20. Special needs customers - residential customers
21. Enquiries, complaints and dispute resolution
22. Information and privacy
23. General
24. Annexure

Figure 10: Table of contents of South Australia Water

Service agreements from the US were also found on the internet. The Holmwood Utility integrates its customer service agreement with the application form⁵⁸. Water tariffs and credit control measures are not included in the service agreement. The customer must agree to pay the tariff, but must find the details elsewhere.

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https://www.anra.org/divisions/water_delivery/holmwood_utilities/pdfs/HMU_Customer_Service_Agreement.pdf

Annexure 2: Discussion guides of qualitative interviews with community representatives

1. Who provides water and sanitation to you?
2. What are the water and sanitation challenges that residents/consumers deal with in this municipality?
3. Tell me about your organisation's relationship with the municipality, and specifically the department that provides water and sanitation?
4. Tell me about your organisation's relationship with the municipality regarding your monthly account.
5. Does the municipality give notice before it disconnects a service?
6. What communication channels do you use if there is a dispute with the municipality? What works best?
7. Does the municipality have a dispute resolution process, and have you used this process? Please provide details.
8. Is there a hotline or a customer desk that you have used? Are you satisfied with the service?
9. What else does your organisation do to address water and sanitation challenges in your community?
10. **Only applicable if the municipality has a by-law:**
Let's talk about your municipality's water and sanitation by-law (if it exists).
 - a. Did you know that there is a water and sanitation by-law? Do you know where to find your municipality's water and sanitation by-law?
 - b. Have you seen and read the by-law? Please provide details.
 - c. **If Yes to B**, do you feel that the by-law adequately protects your rights as a consumer? Please give reasons.
 - d. Have you ever been consulted about this by-law? Have you ever made inputs into a draft by-law?
 - e. What are your views on the by-law? Is it a useful document or a white elephant? Please provide reasons.
11. **Only applicable if the municipality does not have a by-law:**
Your municipality does not have a water and sanitation by-law. Do you think this situation has led to the challenges that you are experiencing, or don't you think a by-law will make a difference?
12. **Only applicable if the municipality is in the process of promulgating a by-law:**
Has the municipality ever consulted you on their by-law?
13. **Only applicable if the municipality has a by-law or is in the process of promulgating a by-law:**
Have you ever used the by-law to enforce or to settle a grievance or complaint with the municipality?
If yes, please provide details.
14. Have you ever taken any legal action or made a legal application against the municipality regarding the provisioning of water and sanitation services, or the lack thereof?
If yes, please provide details.
15. On which law(s) or regulation did you base your action? Please provide details.

16. Have you ever made an application to the municipality in terms of the Promotion of Access to Information Act (PAIA)?
If yes, please provide details.
17. Have you ever taken any legal action or made a legal application against the municipality in terms of the Promotion of Administrative Justice Act (PAJA)?
If yes, please provide details.
18. Does the municipality involve communities during the IDP public participation processes?
19. In your opinion, do you view your by-law as an effective tool or instrument to address the challenges you face with the provisioning of water and sanitation services?
Please provide details.
20. In summary: How do you think the water and sanitation challenges in this municipality may and can be addressed?

Annexure 3: Discussion guides of qualitative interviews with municipalities

Note for interviewer: Don't ask information in grey as you can look that up in the by-law(s) yourself.

Questions for all municipalities

1. Are you a WSA?
If yes, are you also the water services provider (WSP)?
If no, are you a WSP and who is your WSA?
 - a. *If yes*, usually, there is an SLA in place with the WSP. How does quality control work if you are the WSP as well?
If no, who are your WSPs?
2. Do you have a service level agreement (SLA) with the WSA?
1. What is the status of your water and sanitation by-law?
 - a. Answer option 1: There is a water & sanitation by-law (it was promulgated in the Provincial Gazette).
Please provide a copy of your by-law.
 - b. Answer option 2: We (the WSA) are busy developing our Water & Sanitation by-law.
Please provide a copy of your draft by-law.
 - c. Answer option 3: We do not have a Water & Sanitation by-law.

Questions for municipalities with a promulgated by-law or a draft

2. When was it promulgated?
3. When last has it been reviewed/updated? Please give a year.
4. Do you have a document that consolidates the old and the amended version of your by-law?

PART 1: INTRINSIC CRITERIA

5. **Tell me about the process that you followed to develop your water and sanitation by-law(s)**
 - ***If promulgated or updated BEFORE 2012:***
Was your first (current) by-law based on the model by-law from DWS?
 - ***If promulgated or updated AFTER 2012:***
Have you incorporated the 2011 model by-law from DWS in your update? And did you follow the guideline/manual that DWS provided for water & sanitation by-laws?
If yes, please provide details.
If no, are you aware of the guideline and updated model by-law?
 - Have you ever consulted with the provincial and or national Department of Water and Sanitation regarding your by-law?
If yes, please provide details.

- Did an outside service provider assist with the drafting or updating of the by-law or was it done internally? Please provide details.
- Who is responsible for the administration/ implementation/enforcement of your by-law? Please provide details on whether it is someone in your organisation or an external service provider.
- **If the WSA has WSPs:**
Did the WSP(s) participate in the drafting/review process of your water and sanitation by-law? And in the water services development plan (WSDP)?
If Yes, please provide details.
- **Public participation process:**
 - i. how did you involve the public in the drafting of your by-law?
 - ii. **If the by-law was updated (anytime):**
Did the public participate in the update/review process of your by-law?
If Yes, please indicate how it was done.
 - iii. In your opinion, what approach to a public participation process has the best chance of a success? E.g., if you want to make the public aware of your by-law and its content, what participation process will result in consumers being aware and knowledgeable?
 - iv. Have you ever had any negative feedback from the public about the content of your by-law?

6. **Let's discuss the content of your by-law:**

- Does your by-law specify its **purpose and goals**?
If Yes, what are these?
- Are there specific indicators mentioned in your by-law that you could use to **measure** whether you have achieved these goals?
- How does your by-law address the **different realities** of your residents, e.g., businesses, middle-class consumers, and the poor?
- How does your by-law redress **historic inequalities**?
- Does it indicate the **rights and obligations of all parties, i.e., those of the municipalities and those of residents**?
- Does your municipality have a Customer Service Charter?
If Yes, does it relate to your water and sanitation by-law? (If the disclaimer paragraph appears in their by-law, you can refer the contradiction between the disclaimer and a service pledge. Ask them for their response to this contradiction.)
Does the following disclaimer appear on your by-law?.
If No, where do you publish your service level standards so that the public can see them?
- What **recourse** does the public have if service level standards are not met?
- Normally, by-laws prohibit the public from interfering with infrastructure. However, there have been cases where residents fix infrastructure that the municipality was unable to do. Is this something that you have come across? How do you think your by-law should regulate this kind of scenario?
- Where does **accountability** for meeting national norms and standards appear in your municipality's documents?
(Possible answers: in your by-laws, in individual performance contracts, (if they have a Service Charter) in your service charter, or (if you have WSPs) in SLAs?)
If not in by-laws, why not in by-laws?
- How do you feel about including a reference in your by-law to consumers' right to clean water and the municipality's obligation to meet the national norms and standard for water and sanitation services (2017)?

- Do you have a clause or additional by-law that regulates water and sanitation self-supply for off-the-grid consumers?
- Does the by-law regulate the use of greywater, boreholes, and rainwater use?
- Does the by-law provide for public-private partnerships (PPPs)?
- Is there a **dispute resolution process** included in your by-law?
If Yes, please provide more details.
If No, (thinking back to the previous disputes with WSPs or consumers), where do you set out your dispute resolution process?
 Do you think there's scope in your by-law to include a dispute resolution process?
- Have you ever received complaints that your by-law is difficult to comply with?
- Does the by-law indicate how the municipality should create **awareness**?
- How aware are your consumers of your by-law? How you know, do you test this?
- ***If the research team could not find the by-law on the municipality's website:***
 - Is your by-law published on your website? Where?
 - Apart from publishing it on your website, how else do you make consumers aware of your by-law and where to find it?

Structure and language, easy to understand

(don't ask; run by-law through readability checker)

- Does your by-law address **implementation and enforcement**?
If Yes, how?
- Does your by-law specify requirements for your **communication strategy and customer care**?

PART 2: EXTRINSIC CRITERIA

7. What human and financial **resources** do you have to implement your by-law?
8. *Question for the legal adviser to the Municipal Manager:*
 Do you have an annual budget for the enforcement or implementation of the water and sanitation by-law?
If Yes, what is the amount?
 How is the amount spent?

Awareness

(See content questions)

Accessibility

9. Do you have a summary of your by-laws that you make available for consumers?
 Please provide details.

Results

See Blue Drop, Green Drop, Municipal money findings

Collaboration

10. Is the municipality involved in any public-private partnerships?
11. Is the municipality represented on any community forums?

Consumer satisfaction and negative indicators

12. Have you conducted **customer satisfaction surveys**?
If Yes, how often? Do you ask about by-law awareness in the survey? What are the trends?
13. Have you had major service protests in the past year that were related to water and sanitation services?
If Yes, please provide more details.
14. Have you ever been taken to court for water and sanitation services or the associated billing?
If Yes, please provide details (who made the application, when did they make it, what was the outcome of the application).
15. Has your municipality ever had to deal with an application in terms of the Promotion of Access to Information Act (PAIA)?
If Yes, please provide details (who made the application, when did they make it, what was the outcome of the application).
16. Has your municipality ever had to deal with an application in terms of the Promotion of Administrative Justice Act (PAJA)?
If Yes, please provide details (who made the application, when did they make it, what was the outcome of the application).

Effective enforcement

17. What kind of **legal action** do you take to enforce your by-law? For example, if a consumer does not pay for water?
 18. Do you have a Municipal Court in your area of jurisdiction?
If Yes, how functional is it? Please provide details.
 19. Have you ever used your by-law to prosecute illegal connectors?
If Yes, how successful were you?
 20. Would you say your by-law deters illegal connections or not really?
 21. **Your views on the effectiveness of your water and sanitation by-law(s)**
 - How would you rate the effectiveness of your municipality to enforce your by-laws? (e.g., cut services that people don't pay for, give fines, change behaviour? Rate on a scale of 1-5 (where 1 is very poor and 5 is excellent/perfect)
 - Do you view your by-law as an effective tool or instrument to address the opportunities and challenges faced with the provisioning of water and sanitation services?
If Yes, please provide reasons for your answer.
3. *If No*, in summary, what do you think a municipality like you can do to effectively resolve the challenges you experience around water and sanitation services?

[END INTERVIEW]

Questions for municipalities without a by-law

Part 1: Intrinsic criteria

1. Why do you not have a by-law? What is holding you back?
2. Do you think a water and sanitation by-law will be useful for your municipality?
3. *If Yes*, what should be the purpose and goals of a water and sanitation by-law?
4. How do you deal with:
 - the rights and obligations of all parties?
 - self-supply/ off-the-grid consumers?

- greywater, boreholes, and rainwater use?
- Public Privat Partnerships (PPPs)?
- dispute resolution?
- customer care and complaints?
- customers who refuse to pay, or illegal connections?
- ignorant customers who do not know what their obligations are? For example, customers who don't know that they must pay for water, or that they must not use a fire hose to wash a car?

Part 2: Extrinsic criteria

1. What human and financial resources do you have to implement a by-law?
2. How do you communicate with residents? Where can residents find information on the rules that they must follow?
3. Do you have PPPs (public-private partnership) in your municipality? If Yes, how are PPPs regulated? (What are the rules for PPPs and where is it written down?)
4. How satisfied are your consumers with your water and sanitation services and the associated billing?
5. What kind of legal action do you take to enforce your by-law?
6. Have you ever been taken to court for water and sanitation services or the associated billing?
7. Not having a by-law, do you think it has an effect on the effectiveness of your water and sanitation services?
8. What do you think a municipality like yours can do to effectively resolve the challenges that you experience around water and sanitation services?

[END INTERVIEW]

Annexure 4: Survey questionnaire

Please answer the following questions to help us explore the status of municipal water by-laws and their application in terms of improving the water services environment in South Africa. The survey will take 5-8 minutes to complete. This research study is supported by the Water Research Commission of South Africa (WRC) and South African Local Government Association (SALGA).

SCREEN 1:

1. What is the name of your municipality? **TEXT**
2. What is your name (first name + surname)? **TEXT**
3. Respondent's job title: **TEXT**
4. Is your municipality both a Water Services Authority (WSA) and the Water Services Provider (WSP)? **YES/NO**
5. What is the status of your water and sanitation by-law(s)?
 - a. There is a water and sanitation by-law (it was promulgated in the Provincial Gazette).
 - b. We are busy developing our water services by-laws.
 - c. We do not have a water and sanitation by-law.

[For answer "a", continue to the questions in screen 2]

[For answers "b" and "c", END SURVEY]

SCREEN 2:

6. When was it promulgated? **YEAR**
7. When last was it reviewed/updated? **YEAR/NOT APPLICABLE**
8. Do you have a document that consolidates the old and the amended versions of your water services by-laws? **YES/NO/NA**
9. **If your water services by-laws were promulgated before 2012:** Was your by-law based on the 2001 model by-law from DWS? **YES/NO/NA**
10. **If you have promulgated or updated your water and sanitation by-law after 2012:** Have you incorporated the 2011 model by-law from DWS? **YES/NO/NA**
11. Did you follow the guideline/manual that DWS provided for water & sanitation by-laws? **YES/NO**
12. Have you ever consulted with the provincial and or national Department of Water and Sanitation on any aspect of your water services by-laws? **YES/NO**
13. Did an outside service provider assist with the drafting or updating of the water services by-laws? **YES/NO**
14. Who is responsible for the administration/ implementation/enforcement of your water services by-laws? **A department in the municipality /An external service provider/Other (Specify).**
15. **If you have appointed WSPs:** Did your WSPs participate in the drafting/review process of your water services by-laws? **YES/NO/NA**
16. Did you involve the public in the drafting of your water services by-laws? **YES/NO**
17. Did you invite the public to comment on the drafts of your water services by-laws? **YES/NO**
18. **IF YES: Which of the following platforms, did you use for your public participation process?**
 - a. Local newspapers

- b. Local radio stations
 - c. Social media
 - d. Our website
 - e. Public meetings
 - f. Other (Specify)
19. Have you ever had any negative feedback from the public about the content of your water services by-laws? YES/NO
 20. Does your municipality have a Customer Service Charter? YES/NO
 21. Does the following disclaimer appear in your water services by-laws? *“The Municipality does not guarantee an uninterrupted supply of water, or a specific flow rate or pressure, or a specific standard or quality of water.”* YES/NO
 22. Do you have clauses in your current by-law, or an additional by-law, that regulate water and sanitation self-supply for off-the-grid consumers? YES/NO
 23. Does your water services by-laws regulate the use of any of the following:
 - a. greywater
 - b. boreholes
 - c. rainwater?
 - d. none of these
 24. Have you ever received complaints that your water services by-laws are difficult to comply with? YES/NO
 25. Do the water services by-laws indicate how the municipality should make sure that consumers are aware of these by-laws? YES/NO
 26. Are your water services by-laws published on your website? YES/NO
 27. Do you have a summary of your water services by-laws that you make available for consumers? YES/NO
 28. Is the municipality involved in any public private partnerships that relate to water and sanitation services? YES/NO
 29. Is the municipality represented on any community water forums? YES/NO
 30. Do you regularly (at least every five years) conduct customer satisfaction surveys that include questions on water and sanitation? YES/NO
 31. **If Yes:** Are the results published on your website? YES/NO
 32. Have you ever asked consumers on a survey if they are aware of your water services by-laws’ existence and its content? YES/NO
 33. Do you have an annual budget for the enforcement or implementation of water services by-laws? YES/NO
 34. Have consumers ever taken your municipality to court for a matter that relates to water and sanitation services? YES/NO
 35. How would you rate the effectiveness of your municipality to enforce your water services by-laws? (e.g., cut services that people don’t pay for, give fines, or change behaviour): 1 is poor - 5 is excellent.
 36. Do you view your water services by-laws as effective tools or instruments to address the opportunities and challenges faced with the provisioning of water and sanitation services? YES/NO. PROVIDE THE REASON FOR YOUR ANSWER.

Thank you for participating in this survey. **[END SURVEY]**

Annexure 5:

Effectiveness of ward committees

Aim of the research

The research team planned interviews with two legal experts on the effectiveness of municipal ward committee structure and its practical application in South Africa, with specific reference to water by-laws and the legal recourse that communities have when a municipality fails to deliver water and sanitation services according to the national norms and standards.

Discussion guide

An interview questionnaire was developed to guide discussions with legal experts in this field.

The questionnaire contained the following questions:

1. How did you gain experience of the ward councillor and ward committee structure and how it works in South Africa?
2. How would you define “a functional ward committee”?
3. How functional is the ward committee structure in South African municipalities?
4. What are the critical success factors of a well-functional ward committee?
5. When do ward committees fail?
6. Can you give examples of ward committees that have had an impact on municipal service delivery? Please give the details.
7. Do ward committees consider by-laws when they engage the municipality or not really?
8. In your experience, what is the role of water services by-laws in the interaction between ward committees and municipalities?
9. Are there other civil society structures in South Africa that have the same role as ward committees? IF NO ANSWER, for example, WhatsApp groups of which the local councillor is a member? Or community forums? Or local business chambers? How would you compare the functionality of these alternatives with ward committees?
10. Citizens often complain that they have no legal recourse when the municipality fails to deliver water and sanitation services, or if the services do not meet national norms and standards. How would you respond to this complaint?
11. How does the ward committee structure compare with similar structures in other parts of the world? Can you give a few examples of similar structures elsewhere in the world?
12. What is the way forward for the relationship between municipalities and citizens in South Africa in terms of water and sanitation services?

The relevant legal expert was given the option to either respond to these questions in writing or to answer the questions during an online interview.

Research findings

Interview with Professor Hennie van As (Nelson Mandela Bay University)

This legal expert in local government chose to respond in writing to the questions posed to him on the effectiveness of the ward committees in the municipalities, as follows:

1. How did you gain experience of the ward councillor and ward committee structure and how it works in South Africa?

I developed a training programme for ward committees and provided training to most ward committees in the Eastern and Western Cape.

2. How would you define “a functional ward committee”?

One that can take informed decisions on matters pertaining to their wards, without political bias. It is also imperative that the WC members must communicate with the citizenry.

3. How functional is the ward committee structure in South African municipalities?

Not at all in the areas where I am still active.

4. What are the critical success factors of a well-functional ward committee?

Being trained and having public interests at heart. Not trying to use the system as a steppingstone to a political career.

5. When do ward committees fail?

Because they are not used properly. They are not trained properly and don't know what they are supposed to do.

6. Can you give examples of ward committees that have had an impact on municipal service delivery? Please give the details.

Not really. They react after violent demonstrations.

7. Do ward committees consider by-laws when they engage the municipality or not really?

No. In most instances they are not aware of the existence of the by-laws.

8. In your experience, what is the role of water services by-laws in the interaction between ward committees and municipalities?

When draft by-laws are introduced, councillors are supposed to discuss it with WC members, but in many instances, this does not happen because the councillors are not in a position to explain it either because they were not interested when it was discussed in council, or they were absent.

9. Are there other civil society structures in South Africa that have the same role as ward committees? IF NO ANSWER, for example, WhatsApp groups of which the local councillor is a member? Or community forums? Or local business chambers? How would you compare the functionality of these alternatives with ward committees?

Where I live, we have different WhatsApp groups, and the councillor is on some of them, and the business chamber is quite involved. I see no need for WCs. It is a relic from the struggle days that has outlived itself.

10. Citizens often complain that they have no legal recourse when the municipality fails to deliver water and sanitation services, or if the services do not meet national norms and standards. How would you respond to this complaint?

They are not correct. There is always a legal recourse, but it is expensive. When action is taken, it has to be funded by individuals or organisations, but the municipality uses taxpayer's funding to oppose matters.

11. How does the ward committee structure compare with similar structures in other parts of the world? Can you give a few examples of similar structures elsewhere in the world?

No.

12. What is the way forward for the relationship between municipalities and citizens in South Africa in terms of water and sanitation services?

Officials and councillors should be held accountable for failure to deliver services. The current water crisis in Port Elizabeth is an example. The officials sat on their whilst knowing there were more than 3000 leaks accounting for almost 40% of water taken from the dams. Then a minister comes into kick and within 2 weeks almost all the leaks were fixed. Where was the council and the portfolio committee all this time? They should be held accountable in their personal capacity. No work, no pay.

Research paper of Professor Jaap de Visser (University of the Western Cape)

The research team was unable to interview Professor Jaap de Visser. Instead, see below the summary of a research paper that Prof De Visser wrote with his colleague, Terence Smith. The paper is called *Are ward committees working? Insights from six case studies*.⁵⁹ Prof De Visser teaches law at the University of the Western Cape's Faculty of Law. He has also been the Director of the Dullah Omar Institute since 2013. Prof De Visser is an expert on the ward committee structure and its practical application in South Africa.

Introduction

Smith and De Visser (2009) note that since 1994 the importance of participatory governance within government and civil society have been emphasised in South Africa and given legal standing through the country's Constitution and other pieces of legislation. Ward committees became key institutional mechanisms that aim to bridge the gap between communities and the political and administrative structures of municipalities.

However, the effectiveness of ward committees has been questioned: *Are ward committees useful conduits for community participation in local governance? Are ward committees inherently capable of playing the critical role expected of them? Do ward committees create opportunities for real power sharing between municipalities and citizens?*

In their research paper, Smith and De Visser (2009) take a deeper look at the functioning and value of ward committees using the insights from in-depth qualitative studies of six ward committees. They unpack the key reasons behind the dysfunctionality of most ward committees in South Africa and provide lessons for the future to help strengthen the role of ward committees.

⁵⁹ Smith, T. & De Visser, J. 2009. *Are ward committees working? Insights from six case studies*. [Online] Available from: <https://dullahomarinate.org.za/multilevel-govt/publications/ward-committ-pdf.pdf>.

Sample

The sample included three municipalities, two LMs and a Metro. Two ward committees from each municipality were included in the case study. The sample included a balance between well-functioning and poorly functioning committees, urban and rural locations, and ruling party and opposition party-led committees.

Data was gathered through semi-structured interviews with councillors, committee members, public residents, and municipal officials responsible for overseeing ward committees.

Common issues and challenges

Smith and De Visser (2009) identified the following issues and challenges that are commonly highlighted in research that has been conducted on ward committees:

1. **Representivity:** Ward committee members must be representative of the communities and interest groups within their wards; however, it is not uncommon for ward councillors to have a direct hand in picking members in line with their political affiliations. Ward committees are therefore extensions of political party structures and not necessarily representative of the full range of interests in communities.
2. **Powers:** The Municipal Structures Act allows municipalities to delegate certain powers and duties to ward committees. Research, however, indicates that few municipalities have clearly defined the roles and responsibilities of ward committees.
3. **Skills:** Research has shown that committee members' levels of education, skills and expertise limit the effectiveness of ward committees.
4. **Functionality:** Concerns include high turnover of members, members losing interest and not participating in meetings, poor working relationships between ward councillors and the committees, insufficient administrative and other resources, and the minutes of meetings not being taken.
5. **Access to information:** The ability of ward committees to function effectively as communication channels between municipal councils and communities is constrained by poor municipal communication strategies and a lack of accessible information at ward level.
6. **Influence on decision-making:** Research suggests that, in general, ward committees are not significantly influencing the decisions made by council and the resources allocated at ward level.
7. **Relationship to other structures:** It is not uncommon for ward committees to compete with, undermine or displace other channels and spaces for participation at local level.

Case study findings

The table below summarises Smith and De Visser’s case study findings.

Table 15: Effectiveness of ward committees – case study findings

| | Municipality 1 - LM | | Municipality 2 - LM | | Municipality 3 - Metro | |
|-----------------------|---|--|--|---|---|---|
| | Ward A | Ward B | Ward C | Ward D | Ward E | Ward F |
| Representivity | Low level of participation by white and Indian residents | <ul style="list-style-type: none"> • Low level of participation by white and Indian residents • One member is disabled • Party politics played role in selection of committee members | <ul style="list-style-type: none"> • Good representation • Party politics did not influence selections of committee members | <ul style="list-style-type: none"> • Good representation • Party politics did not influence selections of committee members | <ul style="list-style-type: none"> • Party politics influenced composition of committee • Committee not racially representative of population of the ward | <ul style="list-style-type: none"> • Party politics did not play role in selections of members |
| Powers | Committee raises service delivery concerns, but nothing seems to be done by municipality in response to these concerns raised | <ul style="list-style-type: none"> • Councillor expects members to liaise with community, bring issues to ward committee meetings and take concerns of public to relevant departments in municipality | <ul style="list-style-type: none"> • Councillor gathers information from ward committee members, relays to municipality and gives feedback to committee • He expects members to communicate with their | <ul style="list-style-type: none"> • Councillor guides discussions in the committee and recommends issues to inform the agenda for council to discuss • Expects ward committee to be independent and to criticise any recommendations • Members assist councillor with municipal | <ul style="list-style-type: none"> • Members see their role as being the “ears to the ground” and to give feedback to the councillor • Councillor coordinates meetings, provides direction to committee and facilitates | <ul style="list-style-type: none"> • Clear understanding of roles and responsibilities • Members look after the community and make sure every project implemented in ward benefits local community; also visit members of the |

| | Municipality 1 - LM | | Municipality 2 - LM | | Municipality 3 - Metro | |
|----------------------|---|--|--|---|---|--|
| | Ward A | Ward B | Ward C | Ward D | Ward E | Ward F |
| | | <ul style="list-style-type: none"> Most members are fulfilling this role; consult broadly with public | structures – most members are not doing this | programmes, to take information to the community and to relay community problems to the municipality | requests to council | community to find out problems <ul style="list-style-type: none"> Councillor facilitates communication between residents and government |
| Skills | <ul style="list-style-type: none"> Level of education is a concern Councillor not trained on running ward committee Members need more training on conflict management, communication skills and project and financial management | <ul style="list-style-type: none"> Councillor needs training on how liaise effectively with community and how to write reports Members need further training to help them understand their roles, as well as on the municipal budget and IDP, project management and by-laws | <ul style="list-style-type: none"> Level of education is a concern Councillor and members have not received any training Members need training on understanding their roles, reporting back, computer skills and taking minutes Repeated promises from municipality to give training | <ul style="list-style-type: none"> Only councillor and secretary have been trained Councillor received some training on ward committees Members need training on their roles, how to measure the performance of the municipality and how to engage with the budget process | Committee has received no training – no clear understanding of roles and responsibilities | <ul style="list-style-type: none"> Two-day induction workshop Members need training on how to help communities; also how other ward committees operate (peer exchange programme) |
| Functionality | <ul style="list-style-type: none"> Membership is stable | <ul style="list-style-type: none"> Functioning well | <ul style="list-style-type: none"> Functioning relatively well | <ul style="list-style-type: none"> Functioning well Membership is stable | <ul style="list-style-type: none"> Membership is stable | <ul style="list-style-type: none"> Functioning very well |

| | Municipality 1 - LM | | Municipality 2 - LM | | Municipality 3 - Metro | |
|------------------------------|--|--|---|---|--|--|
| | Ward A | Ward B | Ward C | Ward D | Ward E | Ward F |
| | <ul style="list-style-type: none"> Members claim that councillor is not involved; does not convene meetings or engage with community Irregular meetings When they meet, unable to constitute quorum Perception that councillor was involved in misappropriation of funds | <ul style="list-style-type: none"> Membership is stable Ward is large; cost to attend meetings is high Monthly meetings Never been a problem to constitute quorum Secretary takes minutes | <ul style="list-style-type: none"> Membership is stable Meets once a month at central location Quorum not always reached Councillor and secretary prepares agenda, members can add items Secretary takes minutes | <ul style="list-style-type: none"> Good relationship between councillor and committee Meets every month Never been a problem to constitute quorum Councillor and secretary prepares agenda Secretary takes minutes | <ul style="list-style-type: none"> Meets every month | <ul style="list-style-type: none"> Membership is stable Meets every two weeks Good attendance by all members Secretary takes minutes Good relationship between councillor and members |
| Access to information | <p>Little follow-up by councillor; communities therefore do not get feedback</p> | <ul style="list-style-type: none"> Due to slow response from municipality, community perceives that councillor is not doing his job Undermines councillor's credibility | <ul style="list-style-type: none"> Councillor reports to Speaker once a month Regular community meetings to report back to residents Members cannot see the impact of their | <ul style="list-style-type: none"> Councillor submits report to Speaker on bi-monthly basis together with a programme of action for next two months Speaker gives comments on each report and suggests issues | <ul style="list-style-type: none"> No minutes or reports have been submitted to Speaker No public constituency meeting has been called Little to no support from municipality | <ul style="list-style-type: none"> Councillor compiles regular reports on committee activities and forwards them to Speaker's office Calls public meetings every two months – |

| | Municipality 1 - LM | | Municipality 2 - LM | | Municipality 3 - Metro | |
|---|---|--|--|---|-----------------------------------|------------------------------------|
| | Ward A | Ward B | Ward C | Ward D | Ward E | Ward F |
| | | | work on the community. <ul style="list-style-type: none"> • Little to no action from municipality | for the councillor to consider <ul style="list-style-type: none"> • Mass community meetings held every quarter, supplemented with issue-specific meetings in different areas of ward | | attendance is good |
| Influence on decision-making | Some engagement on municipality's IDP and budget; no engagement on performance management and by-laws | Some inputs have been accommodated in municipality's IDP; not involved in deliberations around performance management, budget, and by-laws | No mention | Committee has been involved in IDP and budget review; not as active in issues relating to performance management and by-laws | Some involvement with IDP process | Limited involvement in IDP process |
| Relationship to other structures | <ul style="list-style-type: none"> • Tension between committee and community development workers • Strong relationship with traditional leaders | No conflicts reported | Good relationships | Good relationships | No mention | Good relationships |

Lessons for the future

The following are important considerations to improve the functioning of ward committees in future (Smith & De Visser, 2009):

1. The primary function of ward committees should be to act as a communication channel between communities and municipal councils, and vice versa.
2. Ward committees should be more integrated into municipal IDP processes.
3. There needs to be institutionalised mechanisms for communication between municipal councils and ward committees.
4. The role of councillors is critical to the effective functioning of ward committees.
5. Input from ward committees needs to be acted upon, otherwise they risk becoming discredited structures in the eyes of communities.
6. Ward committees should be independent structures rooted within civil society.
7. Ward committees cannot function effectively without receiving capacity building training.
8. Ward committees cannot function effectively without administrative and other support from municipalities.
9. Ward committee members should receive incentives for their work.
10. There should be a national fund to support ward committees.
11. Ward committees should be democratically elected, representative structures.
12. Ward committees should be accountable for their activities to the communities they represent and not only to councillors or municipalities.
13. Ward committees should complement, rather than detract from, other spaces for public participation in local governance.
14. A range of tools and approaches to participation should be promoted.
15. Municipalities should have communication strategies to support ward committees.
16. Information sharing between ward committees should be promoted.

Annexure 6: Assessment tool for intrinsic criteria

Visit the [E-tools](#) section on the WRC's website to download the effectiveness model.

| Intrinsic effectiveness scoring criteria | | | | | | |
|--|--|--|---|---|--|--|
| Aspect | Criteria | 0 | 1 | 1.5 | 2 | Notes |
| Process to develop by-law | | | | | | |
| An inclusive and democratic process | Communities and other relevant stakeholders assist in drafting process | Communities and other relevant stakeholders did not assist in the drafting process | | | Communities and other relevant stakeholders assisted in the drafting of the by-law* | *This must take place before the public participation process. **Minimum required process = published in Provincial Gazette, local newspapers and advertised over local radio. |
| | Public participation process to get input from communities and other relevant stakeholders on draft by-law | No public participation process followed | Minimum required public participation process followed** | Required public participation process followed. Plus, published on website or another public forum. | Required public participation process followed. Plus, published on website and advertised on social media. | Both criteria must be met in order for the process to be inclusive and democratic |
| Content of by-law | | | | | | |
| Purpose and goals | Clearly specify purpose | No mention of purpose of by-law | Purpose of by-law stated, but vague | | Purpose of by-law clearly specified | |
| | Clearly specify intended results with measurable indicators | No mention of intended results and measurable indicators | Intended results specified; no mention of measurable indicators | Intended results specified; some mention of measurable indicators, but not clear | Intended results and measurable indicators clearly specified | Results = National norms and standards, customer satisfaction, Drops, collaboration between state and society, community structures, effective application of by-law e.g., debt collection, infrastructure in place and maintained |
| | Reality-based: relevant for all types of residents and all contexts | No mention of different residents and contexts | Different residents or contexts mentioned; no | Some residents and contexts considered, but not all | All types of residents and context considered | Residents = Businesses, industry, households (middle class and poor) Contexts = consider self-supply/off-the-grid |

| | | | | | | |
|-------------------------------|--|--|--|---|--|---|
| | | | mention of the other | | | consumers; greywater, boreholes, and rainwater use Note: the resident and contexts of rural and urban municipalities will differ. |
| | Ensure access to services for all | No mention of how access for all will be ensured | | | Description of how access for all will be ensured | Link with SDG goals 6.1 and 6.2; mentions how historic inequalities will be addressed |
| Rights and obligations | Set out rights and obligations of all parties | No mention of rights and obligations | Some mention of rights and obligations, but not all parties considered | | Rights and obligations of all parties mentioned | All parties = municipality and residents |
| | Include the WSA's service level agreements | No mention of WSA's service level agreements | Some mention of WSA's service level agreements | | WSA's service level agreements mentioned | |
| | Set out recourse of all parties | No mention of recourse | Some mention of recourse, but not all parties considered | Recourse of all parties mentioned, but vague on process or criteria | Recourse of all parties mentioned | |
| | Set out accountability | No mention of accountability | Some mention of accountability, but not all aspects considered | | Accountability specified; all aspects considered | Who is accountable for maintenance plan, disaster management, refurbishments, asset management, etc.? Who holds the municipality accountable and how? |
| Implementation | Specify enforcement requirements and resources to be allocated | No mention of enforcement requirements and resources | Enforcement requirements specified; no mention of resources | | Enforcement requirements and resources mentioned | |
| | Specify how awareness should be created; requirements for communication strategy and customer care | No mention of how awareness should be created | How awareness should be created specified; no mention of requirements | | How awareness should be created, plus requirements specified | |

| | | | | | | |
|----------------------|--|---|--|---------------------------------|---|--|
| Usability | Structure and language easy to understand and navigate | 😞 for all three tests | 😞 for two tests; 😊 for one test | 😞 for one test; 😊 for two tests | 😊 for all three tests | Use https://app.readable.com/text/ to get readability statistics of by-law Three readability instruments are considered: <ul style="list-style-type: none"> • The Flesch-Kincaid and the Gunning Fog tests, which determine what Grade level (United States) is needed to understand the text with ease, and • The Flesch Reading Ease test, which gives a general score for reading ease, based on syllable, word and sentence length. Icons indicate the ease of reading: a Grade Level below 10 and a reading ease score over 60 get a smiley face. Above Grade Level 10 and a reading ease score of less than 60 gets an unhappy face. |
| | Bonus mark | Simplified summary of by-law not available | Simplified summary of by-law available | | | |
| Accessibility | Codification in place | No codification used to map amendments onto original by-law | | | Codification used to map amendments onto original by-law | Codification = single document in which all amendments are shown N/A if by-law has not been amended |
| | Visible and easy to access in different media | By-law not on website | By-law on website but not easy to find (within 3 clicks from homepage) | | By-law on website; easy to find (within 3 clicks from homepage) | Accessible on website = find by-law within 3 clicks from homepage |
| | Bonus mark | By-law not displayed on social media or App | By-law also displayed on social media or App | | | |

Annexure 7: Municipalities' scores on the intrinsic criteria

City of Tshwane Metro

Table 16: City of Tshwane intrinsic effectiveness scoring sheet

| Intrinsic effectiveness scoring sheet | | | | | | | |
|--|--|--|---|---|---|-------|---|
| Municipality name: | City of Tshwane Metro | | | | | | |
| Status of by-law: | By-law promulgated on 23 July 2014. | | | | | | |
| Aspect | Criteria | 0 | 1 | 1.5 | 2 | Score | Comments/evidence |
| Process to develop by-law | | | | | | | |
| An inclusive and democratic process | Communities and other relevant stakeholders assist in drafting process | Communities and other relevant stakeholders did not assist in the drafting process | | | Communities and other relevant stakeholders were consulted assisted in the drafting of the by-law* | 0 | No mention in interview |
| | Public participation process to get input from communities and other relevant stakeholders on draft by-law | No public participation process followed | Minimum required public participation process followed | Required public participation process followed. Plus, published on website or another public forum. | Required public participation process followed. Plus, published on website/public forum and advertised on social media. | 2 | See interview. |
| Content of by-law | | | | | | | |
| Purpose and goals | Clearly specify purpose | No mention of purpose of by-law | Purpose of the by-law stated, but vague | | Purpose of by-law clearly specified | 1 | Opening paragraphs state the purpose of the by-law; description is vague, and no further details are given. |
| | Clearly specify intended results with measurable indicators | No mention of intended results and measurable indicators | Intended results specified; no mention of measurable indicators | Intended results specified; some mention of measurable | Intended results and measurable indicators clearly specified | 1 | Mentions minimum standards for water supply services (Part 2, clause 16(1)). |

| | | | | | | | |
|-------------------------------|---|--|--|---|---|------------|---|
| | | | | indicators, but not clear | | | |
| | Reality-based: relevant for all types of residents and all contexts | No mention of different residents and contexts | Different residents or contexts mentioned; no mention of the other | Some residents and contexts considered, but not all | All types of residents and context considered | 1.5 | Residents considered: Domestic consumers including consumers in informal settlements, industrial/commercial purposes, property owners and landlords No mention of poor/indigents Contexts considered: Potable water, boreholes, communal water supply services No mention of self-supply/off-the-grid consumers, rainwater, and greywater use |
| | Ensure access to services for all | No mention of how access for all will be ensured | | | Description of how access for all will be ensured | 0 | No link to SDG 6.1 and 6.2 goals; no mention of how historic inequalities will be addressed. |
| Rights and obligations | Set out rights and obligations of all parties | No mention of rights and obligations | Some mention of rights and obligations, but not all parties considered | | Rights and obligations of all parties mentioned | 1 | By-law generally refers to the rights of municipality (and its "authorised representatives"), whereas residents' obligations ("responsibilities", "must") are noted. The by-law uses a lot of passive voice and long sentences (written in "legalese", alternating between "may" and "must" and "shall"), which makes it difficult to trace different parties' rights and obligations. The by-law refers to many Acts: "Sections 5 and 6 of the <u>Local Government: Municipal Property Rates Act, 2004</u> (Act 6 of 2004), read with section 7 of the <u>Gauteng Rationalisation of Local Government Affairs Act, 1998</u> (Act 10 of 1998), Section 13 of the <u>Local Government Municipal System Act, 2000</u> (Act 32 of 2000), and Section 162 of The <u>Constitution of the Republic of South Africa, 1996</u> (Act 108 of 1996); the <u>City Of Tshwane Metropolitan Municipality Water Supply By-Laws</u> ," " <u>Water</u> |

| | | | | | | |
|--|--|--|--|--|--|---|
| | | | | | | <p><u>Services Act, 1997</u> (Act No. 108 of 1997)" but not the National Water Act.</p> <p>When asked "how do you feel about including a reference in your by-law to consumers' right to clean water (and dignified sanitation) and the municipality's obligation to meet the national norms and standards for water and sanitation services (gazetted norms and standards of 2017)?" , the municipality responded as follows: "[For the sake of] transparency, maybe yes. But we don't want to duplicate what is already covered elsewhere (e.g., the Constitution), because documents will become thick. [The] purpose of the by-law is to regulate the supply and access to water and sanitation services and ensure uninterrupted supply to residents/community. For example, if we don't regulate the water supply, anyone may come and work in our network and that might interrupt the other users. So, we put regulations in place to prohibit anyone from touching our services without permission. There will be planned interruptions. For unplanned interruptions, there's nothing the city can do about it, other than repair it."</p> |
| | Include the WSA's service level agreements | No mention of WSA's service level agreements | Some mention of WSA's service level agreements | | WSA's service level agreements mentioned | <p>1</p> <p>Only notes that WSPs must be appointed by the WSA with a "written contract". The only service level quality criteria noted is that the municipality must comply with the "minimum standards set for the provision of water supply services in terms of section 9 of the [Water Services] Act." SANS (241, 10252-1, 1529-1, 10254, 10400) and their comparable SABS standards (241, 0252-1, 1529-1, 0254, 0400) also mentioned in the by-law.</p> |

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|-----------------------|--|--|--|---|--|---|---|
| | | | | | | | The municipality does have a "Customer Service Delivery Charter" which mentions the service levels, turnaround times, and the municipality's commitment to consumers. |
| | Set out recourse of all parties | No mention of recourse | Some mention of recourse, but not all parties considered | Recourse of all parties mentioned, but vague on process or criteria | Recourse of all parties mentioned | 1 | No "appeals" section in the by-law. Municipality must get court approval to find anyone guilty of an offense ito the by-law: "guilty of an offence and on conviction by the court, shall be liable to a fine as may be prescribed in terms of this by-laws." The by-law dedicates a chapter (chapter VI) to "offences" and the action the municipality may consequently take. No reference to a "dispute resolution process" between the WSA and consumers. |
| | Set out accountability | No mention of accountability | Some mention of accountability, but not all aspects considered | | Accountability specified; all aspects considered | 1 | Only the "municipal manager" is mentioned to have specific duties to fulfil (representation in a court of law and verifying documents). "Court of law" is mentioned. No details of anyone within the municipality who can be held accountable ito specific functions, such as lack of maintenance planning, disaster management, refurbishments, asset management, etc. |
| Implementation | Specify enforcement requirements and resources to be allocated | No mention of enforcement requirements and resources | Enforcement requirements specified; no mention of resources | | Enforcement requirements and resources mentioned | 2 | The only reference to enforcement is under "Chapter VIII: general provisions" and "Power of entry and inspection" by the "municipality or authorised agent" "for any purpose connected with the implementation or enforcement of these by-laws". No budget for enforcement. "Courts" involved in enforcement of non-payment, seizure of an "article seized in terms of these by-laws" or prosecuting other offenses. |

| | | | | | | | |
|---------------|--|---|--|---------------------------------|---|-----|---|
| | Specify how awareness should be created; requirements for communication strategy and customer care | No mention of how awareness should be created | How awareness should be created specified; no mention of requirements | | How awareness should be created, plus requirements specified | 0 | The by-law notes "written notice" or "notice" as the official communication method between municipality and its customers. |
| Usability | Structure and language easy to understand and navigate | 😞 for all three tests | 😞 for two tests; 😊 for one test | 😞 for one test; 😊 for two tests | 😊 for all three tests | 0 | Readability scores: Flesch-Kincaid Grade Level 10.1 - unhappy Gunning Fog Index 12.0 - unhappy Flesch Reading Ease - 42.4 unhappy. |
| | Bonus mark | Simplified summary of by-law not available | Simplified summary of by-law available | | | 1 | Simplified summary: https://www.matumihoa.co.za/Municipal%20By%20Laws.pdf The municipality "[if the] most important things [are] highlighted in summary form, it makes it easier for [the public]." |
| Accessibility | Codification in place | No codification used to map amendments onto original by-law | | | Codification used to map amendments onto original by-law | N/A | Not applicable. |
| | Visible and easy to access in different media | By-law not on website | By-law on website but not easy to find (within 3 clicks from homepage) | | By-law on website; easy to find (within 3 clicks from homepage) | 1 | By-laws are very difficult to find on website. The path to get to the by-law is: Home > Documents > By-Laws and Policy Listing > By-Laws > Promulgated By-Laws > [click 'Next' 7 times] > Water supply by-laws. |
| | Bonus mark | By-law not displayed on social media or App | By-law also displayed on social media or App | | | 0 | One of the respondents were able to navigate to the water services by-laws in three clicks (Home page's Data – Documents – search for by-laws in the search toolbar). |

Nelson Mandela Bay Metro

Table 17: Nelson Mandela Bay intrinsic effectiveness scoring sheet

| Intrinsic effectiveness scoring sheet | | | | | | | |
|--|--|--|---|---|---|-------|--|
| Municipality name: | Nelson Mandela Bay Metro | | | | | | |
| Status of by-law: | By-law promulgated on 14 May 2010 | | | | | | |
| Aspect | Criteria | 0 | 1 | 1.5 | 2 | Score | Comments/evidence |
| Process to develop by-law | | | | | | | |
| An inclusive and democratic process | Communities and other relevant stakeholders assist in drafting process | Communities and other relevant stakeholders did not assist in the drafting process | | | Communities and other relevant stakeholders were consulted assisted in the drafting of the by-law* | 0 | <i>The by-law was drafted internally by our internal legal department, and it followed a public participation process.</i> |
| | Public participation process to get input from communities and other relevant stakeholders on draft by-law | No public participation process followed | Minimum required public participation process followed | Required public participation process followed. Plus, published on website or another public forum. | Required public participation process followed. Plus, published on website/public forum and advertised on social media. | 1 | |
| Content of by-law | | | | | | | |
| Purpose and goals | Clearly specify purpose | No mention of purpose of by-law | Purpose of the by-law stated, but vague | | Purpose of by-law clearly specified | 0 | No mention of purpose of by-law. |
| | Clearly specify intended results with measurable indicators | No mention of intended results and measurable indicators | Intended results specified; no mention of measurable indicators | Intended results specified; some mention of measurable indicators, but not clear | Intended results and measurable indicators clearly specified | 1 | Mentions minimum standards for the quality of potable water (clause 30 (2)). |

| | | | | | | | |
|-------------------------------|---|--|--|---|---|-----|--|
| | Reality-based: relevant for all types of residents and all contexts | No mention of different residents and contexts | Different residents or contexts mentioned; no mention of the other | Some residents and contexts considered, but not all | All types of residents and context considered | 1.5 | Residents considered: Domestic/residential consumers, users of non-potable water, irrigation purposes, industrial purposes, property owners and landlords, consumers outside jurisdiction of Municipality. No mention of poor/indigents Contexts considered: Potable water, boreholes, greywater, reclaimed water, storage tanks. No mention of self-supply/off-the-grid consumers, nor rainwater harvesting. |
| | Ensure access to services for all | No mention of how access for all will be ensured | | | Description of how access for all will be ensured | 0 | No link to SDG 6.1 and 6.2 goals; no mention of how historic inequalities will be addressed. |
| Rights and obligations | Set out rights and obligations of all parties | No mention of rights and obligations | Some mention of rights and obligations, but not all parties considered | | Rights and obligations of all parties mentioned | 1 | By-law generally refers to the rights of municipality, and obligations ("responsibilities", "must") of residents (especially in covering costs due to "non-compliance" or "contravention" of the by-law). The by-law uses a lot of passive voice (although active voice is also present in the by-law) and long sentences (written in "legalese", alternating between "may" and "must" and "shall"), which makes it difficult to trace the rights and obligations of parties other than the municipality. The by-law only refers to the " <u>National Water Act, Act 136 of 1998</u> " ito boreholes (that they should comply with the Act) and acknowledges the " <u>Sections 3(1) and 21 of the Water Services Act, 1997 (Act 108 of 1997)</u> " and " <u>Sections 27(l)(b), 152(l)(b) and 156 of the Constitution of the Republic of South Africa, 1996</u> " in its introduction. Other acts are also mentioned throughout the by-law. |
| | Include the WSA's service level agreements | No mention of WSA's service level agreements | Some mention of WSA's service level agreements | | WSA's service level agreements mentioned | 1 | The by-law only refers to a "written agreement" between the municipality and "the responsible water services authority" ito section 91: |

| | | | | | | | |
|--|---------------------------------|------------------------------|--|---|--|-----|--|
| | | | | | | | "acceptance or discharge of sewage" and section 26:"special agreement for supply of water". Refers only to SANS 241 (on the definition of "potable water"), SABS (0400, 0252-1 & -2, 0254, 0140, 151, 0106, 1186), as well as section 9(1), 6, 7, 22 of the Water Services Act (to set minimum standards or potable drinking water and govern boreholes). |
| | Set out recourse of all parties | No mention of recourse | Some mention of recourse, but not all parties considered | Recourse of all parties mentioned, but vague on process or criteria | Recourse of all parties mentioned | 1.5 | There is a blanket statement in the by-law that indemnifies the municipality of not meeting standards. E.g., "Unless otherwise stipulated by the Executive Director, the owner must, at his or her own cost, request the Municipality to install and maintain the connection point on the owner's premises." The sentence illustrates the general writing style of the by-law: stating what consumers/owners must do, but no response time or recourse if the municipality doesn't act on the request. The by-law mentions "fines" for "non-compliance" or "offenses" by residents, but no recourse by the public if the municipality doesn't deliver adequate water services. The only reference to any "appeals" process is noted in section 20 ("Appeals must be made in terms of section 62 of the Local Government: Municipal Systems Act (Act 32 of 2000)."). It doesn't state under which circumstances a person may make an appeal, to whom, how it's processed or when it's successful/unsuccessful. No reference to a "dispute resolution process" between the WSA and consumers. |
| | Set out accountability | No mention of accountability | Some mention of accountability, but not all aspects considered | | Accountability specified; all aspects considered | 0 | The by-law indemnifies the municipality on various occasions. E.g., Section 18: "Liabilities and compensation: The Municipality will not be liable for damages or compensation arising from anything done by it in terms of this by-law." and section 19 on "Waiver of by-law provisions". |

| | | | | | | | |
|-----------------------|--|---|---|---------------------------------|---|------------|--|
| | | | | | | | This indemnity extends to individuals within the municipality. Apart from reference to the "Executive Director: Infrastructure and Engineering", there is no mention in by-law of anyone in the municipality who can be held accountable for specific functions, such as lack of maintenance planning, disaster management, refurbishments, asset management, etc. |
| Implementation | Specify enforcement requirements and resources to be allocated | No mention of enforcement requirements and resources | Enforcement requirements specified; no mention of resources | | Enforcement requirements and resources mentioned | 1 | Very limited information about enforcement. E.g., Annexure A (RESTRICTIONS ON THE USE OF WATER) notes "18. All requirements of the Water and Sanitation By-Law will be enforced.", but there is no follow-up section that addresses what these enforcement actions entail. No budget for enforcement, departments or courts involved in enforcement. |
| | Specify how awareness should be created; requirements for communication strategy and customer care | No mention of how awareness should be created | How awareness should be created specified; no mention of requirements | | How awareness should be created, plus requirements specified | 0 | Not about the by-law itself. Only communication about specific topics is covered, e.g., boreholes "by notice to an owner or occupier or by public notice". |
| Usability | Structure and language easy to understand and navigate | 😞 for all three tests | 😞 for two tests; 😊 for one test | 😞 for one test; 😊 for two tests | 😊 for all three tests | 0 | Readability scores: Flesch-Kincaid Grade Level 18.9 -unhappy Gunning Fog Index 21.3 - unhappy Flesch Reading Ease 29- unhappy |
| | Bonus mark | Simplified summary of by-law not available | Simplified summary of by-law available | | | 0 | |
| Accessibility | Codification in place | No codification used to map amendments onto original by-law | | | Codification used to map amendments onto original by-law | N/A | |
| | Visible and easy to access in different media | By-law not on website | By-law on website but not easy to find (within 3 | | By-law on website; easy to find (within 3 clicks from homepage) | 2 | Easy to find by-law on website. The path to get to the by-law is: Home > Council > By-laws > Water and Sanitation Services by-law |

| | | | | | | | |
|--|------------|---|--|--|--|--|---|
| | | | clicks from homepage) | | | | |
| | Bonus mark | By-law not displayed on social media or App | By-law also displayed on social media or App | | | | 0 |

City of Cape Town Metro

Table 18: City of Cape Town intrinsic effectiveness scoring sheet

| Intrinsic effectiveness scoring sheet | | | | | | | |
|--|--|--|--|---|---|-------|---|
| Municipality name: | City of Cape Town Metro | | | | | | |
| Status of by-law: | First by-law promulgated in 2010 | | | | | | |
| Aspect | Criteria | 0 | 1 | 1.5 | 2 | Score | Comments/evidence |
| Process to develop by-law | | | | | | | |
| An inclusive and democratic process | Communities and other relevant stakeholders assist in drafting process | Communities and other relevant stakeholders did not assist in the drafting process | | | Communities and other relevant stakeholders were consulted assisted in the drafting of the by-law* | 0 | No mention in interview. |
| | Public participation process to get input from communities and other relevant stakeholders on draft by-law | No public participation process followed | Minimum required public participation process followed | Required public participation process followed. Plus, published on website or another public forum. | Required public participation process followed. Plus, published on website/public forum and advertised on social media. | 1 | |
| Content of by-law | | | | | | | |
| Purpose and goals | Clearly specify purpose | No mention of purpose of by-law | Purpose of the by-law stated, but vague | | Purpose of by-law clearly specified | 1 | Opening paragraphs state the purpose of the amended by-law; description is vague, and no further details are given. |

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|-------------------------------|---|--|--|--|--|-----|---|
| | Clearly specify intended results with measurable indicators | No mention of intended results and measurable indicators | Intended results specified; no mention of measurable indicators | Intended results specified; some mention of measurable indicators, but not clear | Intended results and measurable indicators clearly specified | 0 | |
| | Reality-based: relevant for all types of residents and all contexts | No mention of different residents and contexts | Different residents or contexts mentioned; no mention of the other | Some residents and contexts considered, but not all | All types of residents and context considered | 1.5 | Residents considered: Consumers who use water for domestic purposes, special agreement for consumers outside of CoCT, property owners and landlords, users of non-potable water. Vague mentions of industrial/commercial use; no mention of poor/indigents. Contexts considered: potable water, alternative water (greywater, rainwater, treated effluent, surface water, water from borehole, well and spring), storage tanks, irrigations systems. No mention of self-supply/off-the-grid consumers. |
| | Ensure access to services for all | No mention of how access for all will be ensured | | | Description of how access for all will be ensured | 0 | No link to SDG 6.1 and 6.2 goals; no mention of how historic inequalities will be addressed. |
| Rights and obligations | Set out rights and obligations of all parties | No mention of rights and obligations | Some mention of rights and obligations, but not all parties considered | | Rights and obligations of all parties mentioned | 1 | By-law generally refers to the "rights" of municipality, and obligations ("responsibilities") of residents. There are some rights of "consumers" or "owners", e.g. "The consumer must be informed of the method used by the authorised official to estimate the quantity of water supplied to him or her, as contemplated in subsection (1) or (2) and be given an opportunity to make representations to the authorised official." and "the authorised official...must inform the owner of, or consumer who resides in, the first mentioned premises of such [water supply] restrictions". The by-law uses a lot of passive voice and long sentences (written in "legalese", alternating between "may" and "must" and "shall"), which makes it difficult to trace different parties' rights and obligations. The by-law does highlight some legal bases for its actions, e.g., impost water restrictions in terms of "sections 54(3)(b) and 55(2) of the Disaster |

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| | | | | | | <p>Management Act, 2002 (Act 57 of 2002)" and processes people should follow for appeals: "appeal against that decision in accordance with section 62 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)."</p> <p>It also recognises its position among other legislation: "The provisions of this section [chapter 10: miscellaneous provisions] do not exempt any person from complying with the applicable provisions of <u>the National Water Act, 1998 (Act No. 36 of 1998)</u>, or any <u>other relevant legislation</u>." and "basic water supply" means the minimum standards of water supply services necessary for the reliable supply of water to households to support life and personal hygiene prescribed in terms of the <u>Water Services Act, 1997(Act No. 108 of 1997)</u>" and "section 156(2) and (5) of the Constitution provides that a municipality may make and administer by-laws."</p> |
| | Include the WSA's service level agreements | No mention of WSA's service level agreements | Some mention of WSA's service level agreements | | WSA's service level agreements mentioned | <p>1</p> <p>By-law has no mention of service level agreement(s), SLA(s) or service contract(s). Only service levels are mentioned (i.e., water, service, or plumbing components' quality in terms of a standard, like SANS (10252, 10106, 1352, 10100-1, 1200-G, 10140, 1186-1, 10287, not 241), SABS (1529) and the Water Services Act 108 of 1997 (reliable water supply). It is mentioned that water service intermediaries should provide services at a similar (or higher) quality that the WSA.</p> |
| | Set out recourse of all parties | No mention of recourse | Some mention of recourse, but not all parties considered | Recourse of all parties mentioned, but vague on process or criteria | Recourse of all parties mentioned | <p>1.5</p> <p>The by-law mentions "fines" for non-compliance by residents. The only recourse for residents is "appeals" (in section 63 of the by-law): "A person whose rights are affected by a decision taken in terms of a power or duty delegated or sub-delegated in terms of this By-law, may appeal against that decision in accordance with section 62 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)." It doesn't state under which circumstances a person may make an appeal, to whom, how it's processed or when it's successful/unsuccessful. No "dispute resolution process" mentioned.</p> |

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|----------------|--|--|---|---------------------------------|--|---|--|
| | Set out accountability | No mention of accountability | Some mention of accountability, but not all aspects considered | | Accountability specified; all aspects considered | 1 | No mention in by-law of anyone in the municipality who can be held accountable for specific functions, such as lack of maintenance planning, disaster management, refurbishments, asset management, etc. No mention of "courts". One mention of "Director must report the matter to the City Manager without delay" under the section "Imminent emergencies and situations that require immediate action". |
| Implementation | Specify enforcement requirements and resources to be allocated | No mention of enforcement requirements and resources | Enforcement requirements specified; no mention of resources | | Enforcement requirements and resources mentioned | 1 | Only mentions the actions an "authorised official" may take to implement or enforce the by-law. The by-law also mentions "The City shall thereupon be entitled to take such enforcement steps as are prescribed in this By-law directly against the owner or person in charge of the relevant unit" in section 28 (23). The specific "enforcement steps" are not clear. No budget for enforcement, departments or courts involved in enforcement." |
| | Specify how awareness should be created; requirements for communication strategy and customer care | No mention of how awareness should be created | How awareness should be created specified; no mention of requirements | | How awareness should be created, plus requirements specified | 0 | Only refers to communication of specific things "by public notice", such as "whenever there is scarcity of water for distribution and supply to consumers, or for any other good cause". "Public notice" is defined as "a notice published in a newspaper in three official languages of the City". The three official languages are not specified, or references in another by-law. |
| Usability | Structure and language easy to understand and navigate | 😞 for all three tests | 😞 for two tests; 😊 for one test | 😞 for one test; 😊 for two tests | 😊 for all three tests | 0 | Readability scores: Flesch-Kincaid Grade Level 12.1 - unhappy Gunning Fog Index 15.6 - unhappy Flesch Reading Ease 46.8 - unhappy. CoCT created a summary of their four water services by-laws. The "Water By-law Summary Guidelines" of the water by-laws originated from a request from the public during the public participation process. They created another "summary" (one for consumers, one for plumbers) during the drought so that people know how to connect to the municipal water supply (to avoid contamination of the water supply). |
| | Bonus mark | Simplified summary of by-law not available | Simplified summary of by-law available | | | 1 | |

| | | | | | | | |
|---------------|---|---|--|--|---|---|---|
| Accessibility | Codification in place | No codification used to map amendments onto original by-law | | | Codification used to map amendments onto original by-law | 2 | https://resource.capetown.gov.za/documentcentre/Documents/By-laws%20and%20policies/Unofficial_Consolidated_Water_By-law_2010_2018.pdf |
| | Visible and easy to access in different media | By-law not on website | By-law on website but not easy to find (within 3 clicks from homepage) | | By-law on website; easy to find (within 3 clicks from homepage) | 1 | By-law is very difficult to find on website. The path to get to the by-law is: Home > Family and home > Meet the city > City Council > Council policies and by-laws > Council by-laws > Water Amendment By-law, 2018 |
| | Bonus mark | By-law not displayed on social media or App | By-law also displayed on social media or App | | | 0 | |

eThekweni Metropolitan Municipality

Table 19: eThekweni intrinsic effectiveness scoring sheet

| Intrinsic effectiveness scoring sheet | | | | | | | |
|---------------------------------------|--|--|---|-----|--|-------|------------------------------------|
| Municipality name: | eThekweni Metro | | | | | | |
| Status of by-law: | The current one was promulgated in September 1996, whilst the other one that is being reviewed over the past 10 years, the draft, has been on our website since 2021. Note: For the purpose of this scoring, we will use the updated, draft by-law of 2021. | | | | | | |
| Aspect | Criteria | 0 | 1 | 1.5 | 2 | Score | Comments/evidence |
| Process to develop by-law | | | | | | | |
| An inclusive and democratic process | Communities and other relevant stakeholders assist in drafting process | Communities and other relevant stakeholders did not assist in the drafting process | | | Communities and other relevant stakeholders were consulted assisted in the drafting of the by-law* | 0 | The by-law was drafted internally. |

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|-------------------------------|--|--|--|---|---|-----|---|
| | Public participation process to get input from communities and other relevant stakeholders on draft by-law | No public participation process followed | Minimum required public participation process followed | Required public participation process followed. Plus, published on website or another public forum. | Required public participation process followed. Plus, published on website/public forum and advertised on social media. | 1 | |
| Content of by-law | | | | | | | |
| Purpose and goals | Clearly specify purpose | No mention of purpose of by-law | Purpose of the by-law stated, but vague | | Purpose of by-law clearly specified | 2 | Opening paragraphs state the purpose of the by-law. Clause 3. Object of By-law gives more details. |
| | Clearly specify intended results with measurable indicators | No mention of intended results and measurable indicators | Intended results specified; no mention of measurable indicators | Intended results specified; some mention of measurable indicators, but not clear | Intended results and measurable indicators clearly specified | 0 | |
| | Reality-based: relevant for all types of residents and all contexts | No mention of different residents and contexts | Different residents or contexts mentioned; no mention of the other | Some residents and contexts considered, but not all | All types of residents and context considered | 1.5 | Residents considered: supply of potable water to households, temporary supply of water to informal settlements, supply of non-potable water, commercial purposes, industrial purposes, domestic purposes, property owners and landlords, consumers outside jurisdiction of Municipality, "customers who are unable to meet normal service charges" = poor Contexts considered: Potable water, boreholes, storage tanks No mention of self-supply/off-the-grid consumers, rainwater, and greywater use |
| | Ensure access to services for all | No mention of how access for all will be ensured | | | Description of how access for all will be ensured | 0 | No link to SDG 6.1 and 6.2 goals; no mention of how historic inequalities will be addressed. |
| Rights and obligations | Set out rights and obligations of all parties | No mention of rights and obligations | Some mention of rights and obligations, but | | Rights and obligations of all parties mentioned | 1 | By-law generally refers to the "rights" of municipality (e.g., right to administer by-laws as per 156(2) of the Constitution of the Republic of South Africa, 1996), and obligations ("responsibilities") of |

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|--|--|--|--|--|--|---|
| | | | not all parties considered | | | <p>residents. It only "recognises" various parties needs in the "preamble" if the by-law, as well as the municipality's "duty", as a WSA, to customers to "to progressively ensure efficient, affordable, economical and sustainable access to clean water services". The by-law does not, however, provide concrete practical bases for these statements, such as obligations, that the municipality needs to fulfil in the course of delivering water services to customers.</p> <p>The by-law recognises that it cannot override parties' rights as set out in its previous by-law ("<u>Water Supply By-law of 1996</u>") and refers to other Acts: <u>Constitution</u> (section 156(2) and Part B of Schedule 4), section 11 of the <u>Local Government: Municipal Systems Act, 2000</u> (Act No. 32 of 2000), <u>Water Services Act, 1997</u> (Act No.108 of 1997), and others. It does not refer to the National Water Act. The by-law uses a lot of passive voice and long sentences (written in "legalese", alternating between "may" and "must" and "shall"), which makes it difficult to trace different parties' rights and obligations.</p> |
| | Include the WSA's service level agreements | No mention of WSA's service level agreements | Some mention of WSA's service level agreements | | WSA's service level agreements mentioned | <p>1</p> <p>No mention of a "service level agreement", "SLA", "service levels", or any agreement between the WSA and its customers to service quality.</p> <p>No specific mention of SANS or "minimum standards". Mention of SABS (0140, 241) only (SABS 241 is the SABS' adoption of SANS 241). General references to the water services act ("The object of this By-law is to regulate water supply in a manner which - complies with the Water Services Act.")</p> |
| | Set out recourse of all parties | No mention of recourse | Some mention of recourse, but not all parties considered | Recourse of all parties mentioned, but | Recourse of all parties mentioned | <p>1.5</p> <p>The by-law contains general recourse actions that the municipality may take, such as fines, cutting-off services, and other actions related to "non-compliance" by residents.</p> |

| | | | | | | | |
|----------------|--|--|---|---------------------------------|--|---|---|
| | | | | vague on process or criteria | | | Contains a section (section 129) on "appeals" by the public "A person whose rights are affected by a decision taken by an authorised official in terms of this By-law ... by giving written notice of the appeal and reasons <u>to the Municipal Manager within 21 days of the date of the notification</u> of the decision." It doesn't state under which circumstances a person may make an appeal, to whom, how it's processed or when it's successful/unsuccessful. No reference to a "dispute resolution process" between the WSA and consumers. |
| | Set out accountability | No mention of accountability | Some mention of accountability, but not all aspects considered | | Accountability specified; all aspects considered | 1 | The "appeals" section of the by-law is detailed and refers to specific roles within the municipality ("person" i.e., consumer, "municipal manager", "appeal authority", "court of law", "peace officers", "police officers"). |
| Implementation | Specify enforcement requirements and resources to be allocated | No mention of enforcement requirements and resources | Enforcement requirements specified; no mention of resources | | Enforcement requirements and resources mentioned | 2 | The by-law dedicated a chapter (chapter 18) to "enforcement" and what an "authorised official" may do to enforce the by-law. No budget for enforcement. "Courts" are involved in enforcement, but no "departments" mentioned. |
| | Specify how awareness should be created; requirements for communication strategy and customer care | No mention of how awareness should be created | How awareness should be created specified; no mention of requirements | | How awareness should be created, plus requirements specified | 0 | None mentioned that relates to awareness of the by-law itself. Communication methods are mentioned, e.g., ito "cutting-off and restrictions": "by written notice" and include "inform him or her of its <u>intention to cut off or restrict</u> his or her supply of water on a <u>specified date</u> and it may on or after that date so cut off or restrict such supply" |
| Usability | Structure and language easy to understand and navigate | 😞 for all three tests | 😞 for two tests; 😊 for one test | 😞 for one test; 😊 for two tests | 😊 for all three tests | 1 | Readability scores: Flesch-Kincaid Grade Level 9.9 -neutral Gunning Fog Index 11.4 - unhappy Flesch Reading Ease 40.5 - unhappy |

| | | | | | | | |
|---------------|---|---|--|--|---|-----|--|
| | Bonus mark | Simplified summary of by-law not available | Simplified summary of by-law available | | | 0 | |
| Accessibility | Codification in place | No codification used to map amendments onto original by-law | | | Codification used to map amendments onto original by-law | N/A | |
| | Visible and easy to access in different media | By-law not on website | By-law on website but not easy to find (within 3 clicks from homepage) | | By-law on website; easy to find (within 3 clicks from homepage) | 2 | Easy to find by-law on website. The path to get to the by-law is: Home > Government > By-laws > Draft by-laws > Water By-Law 2021 |
| | Bonus mark | By-law not displayed on social media or App | By-law also displayed on social media or App | | | 0 | |

City of uMhlathuze LM

Table 20: City of uMhlathuze intrinsic effectiveness scoring sheet

| Intrinsic effectiveness scoring sheet | | | | | | | |
|--|---|--|---|---|---|-------|---|
| Municipality name: | City of uMhlathuze DM | | | | | | |
| Status of by-law: | Current by-law was promulgated in 2020. <i>It is currently being reviewed. There is a draft, and we are looking at publishing/releasing it in the first quarter of 2023.</i> | | | | | | |
| Aspect | Criteria | 0 | 1 | 1.5 | 2 | Score | Comments/evidence |
| Process to develop by-law | | | | | | | |
| An inclusive and democratic process | Communities and other relevant stakeholders assist in drafting process | Communities and other relevant stakeholders did not assist in the drafting process | | | Communities and other relevant stakeholders were consulted assisted in the drafting of the by-law* | 0 | Drafted internally. City Manager closely involved. |
| | Public participation process to get input from communities and other relevant stakeholders on draft by-law | No public participation process followed | Minimum required public participation process followed | Required public participation process followed. Plus, published on website or another public forum. | Required public participation process followed. Plus, published on website/public forum and advertised on social media. | 1.5 | Minimum public participation process followed plus: <i>All stakeholders were notified and invited in our chambers in a forum to discuss the by-law</i> |
| Content of by-law | | | | | | | |
| Purpose and goals | Clearly specify purpose | No mention of purpose of by-law | Purpose of the by-law stated, but vague | | Purpose of by-law clearly specified | 0 | No mention of purpose of by-law. |
| | Clearly specify intended results with measurable indicators | No mention of intended results and measurable indicators | Intended results specified; no mention of measurable indicators | Intended results specified; some mention of measurable indicators, but not clear | Intended results and measurable indicators clearly specified | 2 | Mentions minimum standards for water services (clause 3(2)). |

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|-------------------------------|---|--|--|---|---|-----|---|
| | Reality-based: relevant for all types of residents and all contexts | No mention of different residents and contexts | Different residents or contexts mentioned; no mention of the other | Some residents and contexts considered, but not all | All types of residents and context considered | 1.5 | Residents considered: Domestic consumers, industrial purposes, property owners and landlords, supply of non-potable water No mention of poor/indigents Contexts considered: Potable water, boreholes, communal water connection, greywater No mention of self-supply/off-the-grid consumers, rainwater use |
| | Ensure access to services for all | No mention of how access for all will be ensured | | | Description of how access for all will be ensured | 0 | No link to SDG 6.1 and 6.2 goals; no mention of how historic inequalities will be addressed. |
| Rights and obligations | Set out rights and obligations of all parties | No mention of rights and obligations | Some mention of rights and obligations, but not all parties considered | | Rights and obligations of all parties mentioned | 2 | Notes municipality's rights, and some of its customers' rights (e.g., a consumer's "right to make representations to the Municipality or its appointed agent within a specified time" if the municipality wants to terminate a water services agreement with the consumer, and "The Municipality may not unreasonably withhold the permission" to grant a person the right to dispose of industrial effluent, and that a "compliance notice" "must include a reference to the right to a hearing and the time period within which this must be held"). The by-law's sentences are long (written in "legalese", alternating between "may" and "must" and "shall"), which makes it difficult to trace different parties' rights and obligations. The by-law refers to many Acts (calling them "by-laws"): 156(2) of the <u>Constitution</u> of the Republic of South Africa, read with by-laws 11 - 13 of the <u>Local Government: Municipal Systems Act, 2000</u> (Act No 32 of 2000).and the <u>Water Services Act, 2007</u> (Act No 30 of 2007), <u>National Water Act, 1998</u> , (Act No. 36 of 1998), and others. |
| | Include the WSA's service level agreements | No mention of WSA's service level agreements | Some mention of WSA's service level agreements | | WSA's service level agreements mentioned | 1 | Dedicated section in section 3: "levels or service", which outlines the three levels of service the municipality may use to "determine the service |

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|--|---------------------------------|------------------------------|--|---|--|---|--|
| | | | | | | | <p>levels it is able to provide to consumers and/or users, where applicable, at fees set out in the Tariff of Charges". The by-law doesn't hold the municipality to a specific service level. However, later in the by-law, it does state that "Subject to sub-by-law (4), once the Municipality has been informed of the presence of any leaks by any person, the <u>Municipality shall repair these within 24 hours of becoming aware of them.</u>"</p> <p>Mention of SANS (10248, 1529-1, 10252-1, 10254, 10400, 241, 1186-1) in service standards. No mention of specific SABS standards. Reference to "minimum standard for basic water services" as defined by the Water Services Act.</p> |
| | Set out recourse of all parties | No mention of recourse | Some mention of recourse, but not all parties considered | Recourse of all parties mentioned, but vague on process or criteria | Recourse of all parties mentioned | 1 | <p>The by-law is clear on what the municipality considers an "offense" of its by-laws, and the municipality's recourse ("prosecution of an offense") to "give effect to the right to procedurally fair administrative action". No mention of a "dispute resolution process" but dedicates a section to "appeals" (section 141).</p> |
| | Set out accountability | No mention of accountability | Some mention of accountability, but not all aspects considered | | Accountability specified; all aspects considered | 1 | <p>Municipality indemnifies itself and shifts responsibility to consumers to ensure service delivery. "If an owner and/or consumer should require that any uninterrupted supply, specific pressure or rate of flow or specific water quality standard is maintained on his or her premises, the owner and/or consumer shall make his or her own provision in the water installation for such operation and shall undertake regular maintenance thereof.</p> <p>No mention of "court". Reference to a "building control officer", as well as more detailed role and responsibilities defined under appeals (section 141) to the "Municipal Manager" and "Director/Manager: Water and Sanitation". No details on who is accountable for specific functions, such as maintenance planning, disaster</p> |

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| | | | | | | | management, refurbishments, asset management, etc. |
| Implementation | Specify enforcement requirements and resources to be allocated | No mention of enforcement requirements and resources | Enforcement requirements specified; no mention of resources | | Enforcement requirements and resources mentioned | 1 | Notes that the "Municipality may enforce any other rights or exercise any power conferred upon it by the Act, these By-laws and any other applicable legislation". No budget for enforcement, departments or courts involved in enforcement. |
| | Specify how awareness should be created; requirements for communication strategy and customer care | No mention of how awareness should be created | How awareness should be created specified; no mention of requirements | | How awareness should be created, plus requirements specified | 0 | Reference to "public notice" and "compliance notice" as methods of communication. There are references to "Municipality shall ensure that the owner is aware of" (see Section 24: location of connection pipes"). The by-law does expect service providers to be aware of the content of their agreement with the WSA (does it include the by-law?): Under section 103: "Application for supply of treated effluent": "An application must contain at least the following information- (a) a declaration that the applicant is aware of and understands the contents of the agreement" |
| Usability | Structure and language easy to understand and navigate | 😞 for all three tests | 😞 for two tests; 😊 for one test | 😞 for one test; 😊 for two tests | 😊 for all three tests | 1 | Readability scores: Flesch-Kincaid Grade Level 9.4 -happy Gunning Fog Index 10.6 - unhappy Flesch Reading Ease 49.8 - unhappy |
| | Bonus mark | Simplified summary of by-law not available | Simplified summary of by-law available | | | 0 | |
| Accessibility | Codification in place | No codification used to map amendments onto original by-law | | | Codification used to map amendments onto original by-law | N/A | |
| | Visible and easy to access in different media | By-law not on website | By-law on website but not easy to find (within 3 clicks from homepage) | | By-law on website; easy to find (within 3 clicks from homepage) | 2 | Easy to find by-law on website. The path to get to the by-law is: Home > Quick menu > By-laws > Water Services By-law |

| | | | | | | | |
|--|------------|---|--|--|--|---|--|
| | Bonus mark | By-law not displayed on social media or App | By-law also displayed on social media or App | | | 0 | |
|--|------------|---|--|--|--|---|--|

Midvaal LM

Table 21: Midvaal intrinsic effectiveness scoring sheet

| Intrinsic effectiveness scoring sheet | | | | | | | |
|--|--|--|---|---|---|-------|---|
| Municipality name: | Midvaal LM | | | | | | |
| Status of by-law: | | | | | | | |
| Aspect | Criteria | 0 | 1 | 1.5 | 2 | Score | Comments/evidence |
| Process to develop by-law | | | | | | | |
| An inclusive and democratic process | Communities and other relevant stakeholders assist in drafting process | Communities and other relevant stakeholders did not assist in the drafting process | | | Communities and other relevant stakeholders were consulted assisted in the drafting of the by-law* | 0 | Consultative process but only internally within the municipality. |
| | Public participation process to get input from communities and other relevant stakeholders on draft by-law | No public participation process followed | Minimum required public participation process followed | Required public participation process followed. Plus, published on website or another public forum. | Required public participation process followed. Plus, published on website/public forum and advertised on social media. | 1.5 | <i>We just advertised in The Star newspaper, where we notified our stakeholders about our water and sanitation by-law, we also announced on our municipal app that we have a water and sanitation by-law.</i> |
| Content of by-law | | | | | | | |
| Purpose and goals | Clearly specify purpose | No mention of purpose of by-law | Purpose of the by-law stated, but vague | | Purpose of by-law clearly specified | 0 | No mention of purpose of by-law. |
| | Clearly specify intended results with measurable indicators | No mention of intended results and measurable indicators | Intended results specified; no mention of measurable indicators | Intended results specified; some mention of measurable indicators, but not clear | Intended results and measurable indicators clearly specified | 1 | Mentions minimum standards for water supply services (Part 4, clause 35). |
| | Reality-based: relevant for all types | No mention of different residents and contexts | Different residents or contexts | Some residents and contexts | All types of residents and context considered | 1.5 | Residents considered: Domestic consumers, supply of non-potable water, property owners and landlords |

| | | | | | | | |
|-------------------------------|---|--|--|-------------------------|---|---|---|
| | of residents and all contexts | | mentioned; no mention of the other | considered, but not all | | | Vague mentions of industrial/commercial use; no mention of poor/indigents Contexts considered: Potable water, communal water services, boreholes No mention of self-supply/off-the-grid consumers, rainwater, and greywater use |
| | Ensure access to services for all | No mention of how access for all will be ensured | | | Description of how access for all will be ensured | 0 | No link to SDG 6.1 and 6.2 goals; no mention of how historic inequalities will be addressed. |
| Rights and obligations | Set out rights and obligations of all parties | No mention of rights and obligations | Some mention of rights and obligations, but not all parties considered | | Rights and obligations of all parties mentioned | 0 | Defines "public water" as water to which "the public has the <u>right of use</u> or to which the public has the <u>right of access</u> " (which is the only reference to "rights"). "Responsibility for compliance with these By-laws" only addresses consumers and is specific to installations. No responsibilities are mentioned for WSA and allows WSA or "authorised agent" to estimate meter readings (see section 38: "Quantity of water supplied to consumer", subsection 4). The by-law uses long sentences (written in "legalese", alternating between "may" and "must" and "shall"), which makes it difficult to trace different parties' rights and obligations. The by-law only refers to the " <u>National Water Act, Act 136 of 1998</u> " i.t.o. boreholes (that they should comply with the Act), acknowledges the <u>Local Government: Municipal Systems Act, Act 32 of 2000</u> in its intro, and refers to the <u>Water Services Act, 1997</u> (Act No. 108 of 1997), on multiple occasions. It does not refer to the <u>Constitution</u> of the Republic of South Africa. |
| | Include the WSA's service level agreements | No mention of WSA's service level agreements | Some mention of WSA's service level agreements | | WSA's service level agreements mentioned | 1 | No mention of "service level", "SLA", or other type of service quality agreement by the WSA. No mention of SANS standards in the by-law. Mention of SABS (0252-1, 0400) only. It does refer |

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| | | | | | | | to "minimum standards set for the provision of water supply services" i.t.o. section 9 of the Water Services Act. |
| | Set out recourse of all parties | No mention of recourse | Some mention of recourse, but not all parties considered | Recourse of all parties mentioned, but vague on process or criteria | Recourse of all parties mentioned | 1 | No recourse by consumers: no mention of "appeal" or "dispute resolution process", only the WSA's actions i.t.o. non-compliance in consumers' behalf. Requires a process to find people "guilty of an offence and liable on conviction to a fine" or "imprisonment" but doesn't outline this process. |
| | Set out accountability | No mention of accountability | Some mention of accountability, but not all aspects considered | | Accountability specified; all aspects considered | 0 | No accountability for WSA not deliver adequate water services. Non-potable water (section 34: "Supply of non-potable water by municipality or its authorised agent") specifically indemnifies the municipality of any wrongdoing, even in where is "malfunction of a treatment plant". No mention of "court", "manager", "engineer" or who an "approved/authorised officer" is. |
| Implementation | Specify enforcement requirements and resources to be allocated | No mention of enforcement requirements and resources | Enforcement requirements specified; no mention of resources | | Enforcement requirements and resources mentioned | 0 | Only refers to "A municipality or its authorised agent may enter and inspect any premises: - (b) for any purpose connected with the implementation or <u>enforcement</u> of these By-laws, at all reasonable times, after having given reasonable written notice of the intention to do so, unless it is an emergency situation." No budget for enforcement, departments or courts involved in enforcement. |
| | Specify how awareness should be created; requirements for communication strategy and customer care | No mention of how awareness should be created | How awareness should be created specified; no mention of requirements | | How awareness should be created, plus requirements specified | 0 | Refers to "written notice" as authorised communication method. No process of how to gain awareness of the by-law or its content, only that "the municipality or its authorised agent shall <u>ensure that the owner is aware of</u> " specific restrictions, costs, and other requirements "concerning the location of a connection pipe". |

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| Usability | Structure and language easy to understand and navigate | 😞 for all three tests | 😞 for two tests; 😊 for one test | 😞 for one test; 😊 for two tests | 😊 for all three tests | 0 | Readability scores: Flesch-Kincaid Grade Level 18.5 - unhappy Gunning Fog Index 21.9 - unhappy Flesch Reading Ease 22.1 - unhappy |
| | Bonus mark | Simplified summary of by-law not available | Simplified summary of by-law available | | | 0 | |
| Accessibility | Codification in place | No codification used to map amendments onto original by-law | | | Codification used to map amendments onto original by-law | N/A | Easy to find by-law on the website. The path to get to the by-law is: Home > Statutory reporting > Municipal by-laws > Water services By-law |
| | Visible and easy to access in different media | By-law not on website | By-law on website but not easy to find (within 3 clicks from homepage) | | By-law on website; easy to find (within 3 clicks from homepage) | 2 | |
| | Bonus mark | By-law not displayed on social media or App | By-law also displayed on social media or App | | | 1 | |