

Agbiz comments on the Draft Water and Sanitation Services Policy on Privately Owned Land Proposals in the draft policy

The Department of Water and Sanitation (DWS) published a draft policy on a Water and Sanitation Services Policy on Privately Owned Land for public comment on the 22nd of November 2022. The due date for comments, which has been extended is 31 March 2023. Agbiz prepared draft comments and requested members' input whereafter the comments were finalised and submitted.

The policy defines DWS's obligations in regulating and supporting the provision of water services to residents living on privately owned land and establishes basic principles to be applied in achieving access to water-related infrastructure on private land. This policy is likely the result of a judgement in the KwaZulu-Natal High Court in 2019 where the court found that the ongoing and persistent failure by a number of municipalities to provide the farm occupiers and labour tenants who are residing within areas of their jurisdiction with access to basic sanitation and sufficient water is inconsistent with the Constitution. The court directed them to ensure that the farm occupiers and labour tenants have access to basic municipal services, such as water, sanitation and refuse removal.

The policy examines the provisions of the Constitution as well as existing laws and policies including the Extension of Security of Tenure Act, the Water Services Act, the National Water Act and the Strategic Framework for Water Services. It proposes certain principles that should apply to water provision on private land and also proposes funding mechanisms.

Two important policy positions include:

- In order to achieve the redress and access, the water use licences for commercial water users must be reviewed to have a condition that compels them to set aside a portion of water for basic services for their employees and families;
- Water Services Authorities must ensure that water services are provided to the dwellers living on the privately owned land within their jurisdiction either directly or using water services intermediary approach.

Gist of Agbiz comments

In its written submission Agbiz acknowledges the need to better the lives of those previously disadvantaged (farm workers and farm dwellers) in South Africa. Agbiz however cautions against burdening private actors such as landowners with the obligation to provide potable water people living on farms without providing funding mechanisms and incentives to enable and encourage them to do so.

Agbiz emphasises the importance of clear definitions and the distinction between farmworkers and farm dwellers with no employment relationship to the landowner.

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Regarding the proposal that the water use licences for commercial water users must be reviewed to have a condition that compels them to set aside a portion of water for basic services for their employees and families, Agbiz points out that is likely to be controversial. This proposal also seems superfluous as domestic water use is already contained in Schedule 1 to the National Water Act. Schedule 1 water use is water use that is permissible without a formal authorisation. In other words, domestic water consumption taken directly from a source is already excluded from the water allocated for a licence. The authorisation for domestic use and commercial use falls under two different authorisations, namely schedule 1 and a water use licence. There is also a financial implication that should be considered. Many landowners are already providing water for their employees and their families. If the Department were to adopt an incentive-based approach, it might be easier to get the full cooperation of land owners. Municipalities can also consider encouraging private services provision through subsidies and tax incentives. Agbiz also suggests the capping of water use when water is supplied by an intermediary. The use of water above the cap should then be paid for by the user.

Agbiz highlights the fact that the implementation of the policy will require the buy-in and cooperation of private landowners. This will require extensive consultation with landowners and organisations representing their interests and catering for legitimate concerns raised by landowners.