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The Director General: Department of Water and Sanitation

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Per email to:

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A. INTRODUCTION

1. This submission is made by the Equality Collective in response to the invitation for public comment on the Proposed Compulsory National Water and Sanitation Services Norms and Standards GG No. 4246 (proposed regulations), which were published by the Minister of Water and Sanitation on 12 January 2024.
2. The Equality Collective is based in Nqileni Village in the Xhora Mouth Administrative Area in deep rural Eastern Cape. We promote the rights in our Constitution with an understanding that reliable access to quality socio-economic rights will advance greater equity in South Africa. We are committed to meeting the immediate needs of our community as well as building the capacity of community members to shape their own lives and the world around them.
3. We are grateful for this opportunity to participate in the public consultations on the proposed regulations. The provision of water and sanitation services is a constitutionally enshrined right in section 27 of the Constitution. The legislative regulations on water provide for a range of provisions that provide for the execution of the mandate for water service and sanitation governance and service delivery. There remains a gap in the implementation of this service delivery specifically as it relates to the context of communal and rural settings.

4. For over two years, the [Equality Collective](#) has been running a community monitoring project that gathers data on the Mncwasa Water Scheme. This Scheme was built in 2015 to provide water to 6,100 households and over 30,000 people across 40 villages. The scheme has not provided consistent and reliable water to these communities primarily because of poor operations and maintenance of this bulk infrastructure by the Amathole District Municipality (ADM).
5. The Equality Collective has worked together with the ADM to submit a business plan for the financing of the refurbishment of the treatment works. This resulted in R8 million allocated through the Water Services Infrastructure Grant (WSIG) to refurbish the Mncwasa Water Scheme. Notwithstanding some improvements, the Scheme is still unable to provide reliable water services to our community.
6. Although the progress of this one Scheme is encouraging, there remains an evident problem with the provision of water services to communities in the ADM area. Communities regularly strike concerning the lack of water service delivery and emergency water service provision is inconsistent. Data from our community monitoring project shows that in December, the water reliability index (WRI)¹ was 69%. Over an analysis of 6 months, the average WRI was 51%.
7. One of the main factors affecting water reliability in our communities is related to the provision of electricity to the water treatment works (WTW). What we have been advised by the consultants working at ADM is that there is a phase imbalance problem. This effectively means there is a low voltage supply of electricity to the WTW which means the water pumps cannot operate. This problem directly affects water provision to our communities.
8. The proposed regulations have the potential to play an important role in regulating the details of water and sanitation services to the most vulnerable communities and set clear guidelines for Water Service Institutions (WSIs) and Water Service Authorities (WSAs).

B. BROAD COMMENT ON THE BILL

In Part B of this submission, we provide broad comments on the proposed regulations.

9. We welcome the proposed regulations and are encouraged by the steps the Department of Water and Sanitation (DWS) is taking to improve the regulation of water and sanitation services

¹ The Water Reliability Index is an indication of water availability at a reservoir level across the 32 reservoirs in the Mncwasa Water Scheme. It is expressed as the percentage of reservoirs out of the total reservoirs that have water on a particular day.

in the country. The regulations provide a holistic set of provisions which touch on a range of important matters. We equally however have some reservations.

10. We believe the regulations fail to consider the realities of WSIs and WSAs servicing rural/communal areas. We believe the provisions are over-prescriptive in certain instances. An example is the provisions under interim sanitation services in section 6(5) (b, c, f) which outline the conditions that must be met when providing interim sanitation services. The same applies to provisions under sections 6(7) and 6(10).
11. The reality is that WSIs and WSAs are underfunded and unable to meet basic operation and maintenance obligations. Some of the clauses in the proposed regulations are over-ambitious. Particularly in rural jurisdictions, which could unintentionally foster unlawful actions and dilute accountability where WSIs and WSAs are unable to comply with the regulations. An inability to comply with the provisions as minimum standards could place them at risk of onerous and expensive court proceedings.
12. The specific context of each municipality will determine their ability to conform with and enforce the proposed regulations. In the instance of ADM, we believe the municipality will face difficulties in meeting some of the proposed regulations owing to capacity issues within the municipality, a poor track record of operation and maintenance and a poor revenue collection mechanism which leaves the municipality in a dire financial position.
13. We believe that the proposed regulations need to be practicable and encourage innovation and local adaptation. In the same light, we view the regulations as an important step towards setting minimum water and sanitation standards supporting the health and well-being of our communities. The proposed regulations must therefore maintain at the least, a minimum standard that is within reasonable reach, balancing the institutional and contextual realities of the WSIs and WSAs, the rights of communities and the constitutional obligation to provide sufficient water to everyone.

C. OPPORTUNITIES TO IMPROVE THE REGULATIONS

In Part C of this submission, we provide detailed comments on specific provisions of the proposed regulations.

Section 1: Definitions

Section	Context and rationale	Proposed amendment
Section 1	The proposed regulations make mention of Water Service Institutions in several sections. There is however	We propose the inclusion of “Water Service Institution” in the definition section.

	no definition for WSIs in the definitions section making it impossible to understand what WSIs mean in the context of the proposed regulations.	
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Section 2: Interim Water Services

Section	Context and rationale	Proposed amendment
section 2(1)	Section 2 (1) refers to “reasonable measures” that WSA’ must take to provide water services to informal settlements. This section is not clear as to what these reasonable measures entail. Equally, the provision is silent as it relates to communal land.	We propose that the provision be amended to be inclusive of communal land. We propose that a definition of reasonableness be provided.
Section 2(2).	We welcome the specific outline of the responsibilities of WSIs and WSAs to ensure the capital, operation, maintenance and refurbishment actions and costs related to interim water services outlined in section 2(2). This removes any ambiguity as to the responsible authority when such services are required.	-

Section 3: Basic Water Services

Section	Context and rationale	Proposed amendment
Section 3(1)	Section 3(1) provides that “A Water Service authority is responsible for the provision of basic water services in its jurisdictional area.” We believe this section misses the opportunity to be specific as to the beneficiaries of water services.	In line with the Constitution, we propose the word “ <i>Everyone</i> ” must be included so the text reads. “ <i>A Water Service Authority is responsible for the provision of basic water services for everyone in its jurisdictional area.</i> ”
Section 3(2)(a)(iii)	We welcome the inclusion of section 3(2)(a)(iii) which directs that basic water services must be provided at no cost to indigent households. The definition of indigent in the proposed regulations is drawn from the National Treasury Indigent Policy. This is important because it allows for the removal of barriers such as registration on an indigent database which is onerous and exclusionary, and its criteria makes it impossible for meaningfully poor people to comply in most jurisdictions.	-

Section 3(b)	Section 3(b) provides that a water access or delivery point must be at the end of the boundary of the property. In the context of communal land, what does this entail or mean? The classification of boundaries is not provided for in the definition section. In rural areas and farms, property boundaries may be some distance from households. It is unclear what is meant by 'property'. Does this refer to even plots or yards?	We propose that a definition must be included to provide clarity as to what "boundary of the property" means. Clarity concerning communal land ought to be provided as well.
Section 3(5)	Section 3(5) provides that "all user connections water supply must be metered or measured, controlled and tariffed..." The definition of user connection includes communal connection. We believe this provision is not practical in rural settings. Does this refer to rural households that have connections at the end of their property as envisioned in section 3(2)(a)(iii)? Do these tariffs apply to indigent households that have received the minimal litres envisioned by the indigent policy allocation of 25 litres per day?	We propose the provision be redrafted to provide clarity as to which user connections are being referred to. It is also unclear how feasible this would be in communal settings.

Section 4: Emergency Water Services

Section	Context and rationale	Proposed amendment
Section 4(1)	<p>The initiation of reasonable measures seems to be conditioned on the declaration of an emergency. We believe this is problematic, as it assumes that only disasters warrant emergency water services.</p> <p>The term disaster is also not defined. Does the Eskom phase imbalance problem which has rendered the Mncwasa Water Scheme non-functional for weeks qualify as a disaster under these provisions?</p>	<p>We propose that this provision be changed to read "A water Services institution must take reasonable measures to ensure that where water supply is interrupted for a period of more than 48 hours, including but not limited to where an emergency situation is declared a consumer has access..."</p> <p>[An assessment as to what is progressively realistic for rural municipalities ought to be considered]</p>
Section 4(4)	This provision refers to reasonable limitations and it is again unclear how 'reasonable' is defined. Does reasonable mean rational, equitable and proportional as per the provisions of the Promotion of Administrative Justice Act 3 of 2000?	We propose a definition for "reasonable" be included in the proposed regulations.

Section 20: Management of negative impact of disruptive electricity supply on water services

Section	Context and rationale	Proposed amendment
Section 20	The Eskom phase imbalance problem has proven to be a significant barrier in the efforts to ensure water provision to communities serviced by the Mncwasa water scheme. Alternative measures have also not been put in place by the WSI responsible.	We welcome the inclusion of this mandate to WSIs to ensure that alternative measures are put in place and functional.

Section 25: Water services audit as a component in the Water Services Development Plan

Section	Context and rationale	Proposed amendment
Section 25(2)(d)	Communal land users are significantly poorer and because they carry water from communal standpipes, frequently access less water than the national standard for basic water supply and are dependent on free basic services to access water. We believe the proposal stipulated in this provision will serve a limited purpose in the context of WSIs that service areas that are predominantly populated by remotely situated indigents. This will only serve to continue the trend of poorer-situated WSIs being unable to meet their O&M obligations because the financing for that is attached to cost recovery through tariffs.	Though this provision may be beneficial for class A municipalities, alternative funding models must be formulated for other municipalities that cannot undertake cost recovery through tariffs as envisioned by this provision.

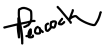
Annexure A: Competency Requirements

Section	Context and rationale	Proposed amendment
Annexure A	Overall, we welcome the Annexures as they aim to professionalise and reduce both political appointments and an over-reliance on consultants. Having these 4 roles in-house within WSAs, particularly those who undertake the water services provision functions will make a big difference and is essential.	

D. CONCLUSION

14. Equality Collective supports the Proposed Compulsory National Water and Sanitation Services Norms and Standards. We believe the proposed regulations have the potential to play a positive role in regulating the provision of water and service delivery in our communities provided they take cognisance of the realities of rural communities and the constraints that they and their municipalities face.
15. Equality Collective hopes that its submission and comments on the proposed regulations will be considered.

Yours sincerely



Tess Nolzwe Peacock
Executive Director