PAPER 10

RENAVIGATING THE WATER SERVICES AMENDMENT BILL: IMPLICATIONS, RISKS AND STRATEGIC RESPONSES

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ABSTRACT

South Africa's water services sector is undergoing its most farreaching transformation since 1997, driven by the Water Services Amendment Bill, revised national Norms and Standards, and the reform momentum generated under Operation Vulindlela. These reforms seek to address deteriorating municipal performance, widespread noncompliance with water quality standards, and systemic service failures. However, they unfold within a context of profound structural constraints, including ageing infrastructure, severe skills shortages, weak revenue systems, and the fiscal limitations imposed by the Municipal Finance Management Act (MFMA). This paper provides a rigorous analysis of the implications, risks, and strategic considerations arising from the Amendment Bill, arguing that the current reform trajectory could deepen rather than resolve the sector's crisis if not aligned with municipal realities.

The paper begins by examining constitutional mandates, particularly the tension between municipalities' obligation to ensure access to safe and reliable water services and the MFMA's requirement that they operate strictly within affordability constraints. It demonstrates how legislative instruments, such as the Water Services Act, the National Water Act, Municipal Systems Act, and newly introduced technical and tariff Norms and Standards, intersect to create obligations that many municipalities are structurally incapable of meeting. The introduction of mandatory licensing for Water Services Providers (WSPs) represents a major architectural shift, centralising regulatory power at the national level and raising constitutional, financial, and organisational implications for Water Services Authorities (WSAs).

Using Msunduzi Municipality as a representative case study, the paper illustrates how national reforms collide with local capacity constraints, highlighting challenges arising from the WSA/WSP split, professionalisation requirements, and tariff affordability. It analyses emerging risks, particularly those related to licensing, labour dynamics, organisational restructuring, and service continuity.

The paper concludes that meaningful reform requires alignment between legislative ambition and municipal capacity. Without fiscal recalibration, institutional strengthening, and coherent cross-government coordination, the Amendment Bill may formalise contradictions that will perpetuate the sector's cycle of non-compliance, fiscal distress, and declining service levels.

NAVIGATING THE LEGISLATION

To understand the implications of the Amendment Bill, it is necessary to begin with the constitutional and legislative architecture that defines the water services system. The Constitution establishes water as a fundamental right and assigns municipalities executive authority over water and sanitation services. This authority is not delegated; **it is inherent**. Municipalities are not implementers of national policy, rather they are autonomous spheres of government with their **own legislative and executive powers**. Any regulatory framework, including the Amendment Bill, must therefore operate within the boundaries of municipal autonomy.

The legislative instruments that govern water services have evolved inconsistently. The Water Services Act, the National Water Act, the Municipal Systems Act, the MFMA, and the new Norms and Standards each impose obligations that, when read together, **create contradictions** that no municipality can resolve on its own. The Amendment Bill attempts to address some of these contradictions, but in several areas, it merely formalises them.

The Bill strengthens national oversight, yet the Constitution protects municipal autonomy. The Bill introduces enforceable performance conditions, yet municipalities lack the capacity to meet them. These contradictions are not theoretical. They shape the daily realities of WSAs, influence budget decisions, determine tariff trajectories, and define the limits of compliance. They also pose legal and operational risks that must be clearly understood if municipalities are to navigate the transition effectively.

Msunduzi Municipality is a representative case study of the challenges facing WSAs nationwide. Msunduzi's experience mirrors national patterns: ageing infrastructure, high non-revenue water, insufficient maintenance budgets, technical vacancies, weak revenue systems, and increasing regulatory obligations. These challenges are not unique to Msunduzi; **they are systemic** across South Africa's 144 WSAs. The contradictions in the legislative framework, the pressures of Operation Vulindlela, and the demands of the Amendment Bill converge in municipalities like Msunduzi, making it ideal for understanding the national transformation underway.

The constitutional and legislative foundations of the water sector, the evolution of the WSA/WSP model, the drivers of reform under Operation Vulindlela, and the systemic contradictions that undermine service delivery must be examined. The Water Services Amendment Bill will require evaluation in terms of the implications of mandatory licensing, the professionalisation requirements imposed by the new Norms and Standards, and the financial constraints created by the MFMA.

By outlining the institutional and financial reforms necessary to restore stability, accountability, and public trust in South Africa's water supply services, the sector must confront the structural misalignment between regulatory ambition and municipal reality. **The Amendment Bill will not deliver the transformation it promises**. Instead, it risks entrenching a cycle of non-compliance, fiscal distress, and declining service levels.

THE CONSTITUTIONAL MANDATE AND THE STRUCTURAL TENSIONS AT THE HEART OF THE WATER SERVICES SYSTEM

The Constitution is unambiguous in its allocation of authority, its assignment of responsibility, and its articulation of rights. Yet the legislative and regulatory instruments that have evolved around it have created a system that is internally contradictory, structurally misaligned, and increasingly unworkable for municipalities.

Section 27 of the Constitution guarantees everyone the right to access sufficient water, which is neither aspirational nor contingent on municipal affordability. It is a binding obligation on the state, and because

municipalities are the primary providers of water services, they bear the brunt of constitutional accountability. The Constitution requires the state to take reasonable legislative and other measures, within its available resources, to achieve the *"***progressive realisation***"* of this right. In practice, this means that municipalities must ensure water services that are safe, reliable, sustainable, and financially viable.

Section 24 guarantees an environment that is **not harmful to health or well-being**. Water quality failures, pollution, and inadequate sanitation are therefore not merely service delivery shortcomings; they are constitutional violations. When a municipality fails to provide safe drinking water or allows wastewater to contaminate rivers, it is not simply failing to meet technical standards; it is breaching the Bill of Rights.

Section 156 assigns municipalities executive authority over potable water supply systems. This authority is inherent, not delegated. Municipalities are not administrative extensions of National Departments; they are **autonomous spheres of government** with their own legislative and executive powers. Section 160 further entrenches this autonomy by reserving key decisions exclusively for municipal councils, including the passing of bylaws, the approval of budgets, and the imposition of tariffs, rates, and levies.

Therefore, there is a delicate balance between rights, responsibilities, and autonomy. Municipalities must deliver essential services and are authorised to determine how those services are structured, funded, and managed. The National Government must regulate the sector without encroaching on municipal autonomy. When this balance is respected, the system functions. **When it is not, the system becomes unstable.**

Unfortunately, the legislative and regulatory framework that has evolved over the past three decades has increasingly disrupted this balance. The Water Services Act, the National Water Act, the Municipal Systems Act, the MFMA, and the new Norms and Standards each impose obligations that, **when read together**, **create contradictions that no municipality can resolve on its own**. These contradictions are not minor technical inconsistencies; they are **structural tensions** that fundamentally undermine WSAs' ability to comply with the law.

The first and most significant contradiction lies between the Constitution's guarantee of the right to water and the MFMA's strict fiscal discipline. The Constitution requires municipalities to ensure universal access to safe, reliable water services. The MFMA, however, prohibits municipalities from adopting budgets that are not **"affordable"** or from incurring expenditures that exceed available resources. This creates a situation in which municipalities are legally required to **achieve outcomes they are legally prohibited from funding**. The Amendment Bill intensifies this contradiction by imposing licensing conditions, performance requirements, and enforcement mechanisms that will require significant investment in staffing, infrastructure, monitoring, and compliance, all of which are constrained by the MFMA.

The **second central contradiction** lies between the Municipal Systems Act and the new Norms and Standards for tariffs. Section 74 of the MSA empowers municipalities to design **their own tariff policies**, provided that they reflect equity, efficiency, cost recovery, and affordability. This autonomy is central to local government's constitutional status. Yet the 2024 Norms and Standards impose prescriptive tariff structures, affordability thresholds, and cross-subsidisation rules that effectively remove municipal discretion. The question becomes unavoidable: **who has the final authority over tariffs**, the Council, as required by the Constitution and the MFMA, or the national regulator, as implied by the Norms and Standards?

The **third contradiction** lies between the Water Services Act and Municipal capacity. The Act mandates universal access, minimum service standards, water quality compliance, infrastructure planning, and regulatory oversight of WSPs. Yet many WSAs lack the technical skills, financial resources, institutional structure, or operational capacity to meet these obligations. The Amendment Bill attempts to address this by introducing licensing, but licensing does not create capacity; it merely enforces compliance. When compliance is structurally unaffordable or institutionally impossible, **enforcement becomes punitive rather than corrective**.

The **fourth contradiction** lies between the National Water Act and the Water Services Act. The NWA governs water resources, including abstraction, allocation, and licensing. The WSA governs service delivery. Yet the two Acts intersect in areas such as bulk supply, water-use licensing, and the role of Water Boards. The Amendment Bill attempts to clarify these intersections, but in several regions it introduces new ambiguities that could lead to **regulatory gridlock**.

These contradictions create a system in which municipalities are held accountable for outcomes they cannot achieve within the constraints of their fiscal and institutional environment. They also create legal uncertainty, operational risk, and governance instability. The Amendment Bill attempts to address some of these issues, but in several areas, it formalises contradictions that were previously informal or implicit. For example, by requiring all WSPs to be licensed, the Bill effectively places municipal service delivery under national control, raising constitutional questions about the limits of national oversight.

> Msunduzi Municipality provides a clear illustration of these tensions. As a designated WSA, Msunduzi is responsible for ensuring access to water services, planning for future needs, regulating WSPs, and ensuring compliance with national standards. Yet it faces ageing infrastructure, high non-revenue water, insufficient maintenance budgets, technical vacancies, tariff affordability constraints, and increasing regulatory obligations.
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> These challenges are not unique to Msunduzi; they are systemic across South Africa's 144 WSAs. The contradictions in the legislative framework, the pressures of Operation Vulindlela, and the demands of the Amendment Bill all converge in municipalities like Msunduzi, making it an ideal case study for understanding the national transformation underway.

The constitutional mandate is clear, but the legislative and regulatory environment has become increasingly misaligned with municipal reality. The Amendment Bill does not resolve these contradictions; in several areas, **it intensifies them**. Unless these structural tensions are addressed directly, the sector will remain trapped in a cycle of non-compliance, fiscal distress, and declining service levels.

THE EVOLUTION OF SOUTH AFRICA'S WATER SERVICES FRAMEWORK: HOW THREE DECADES OF REFORM PRODUCED A FRAGMENTED, OVERBURDENED SYSTEM

The Water Services Framework we have today is not the product of a single policy choice or legislative instrument. It is the cumulative result of overlapping reforms, shifting political priorities, institutional experimentation, and repeated attempts to correct structural weaknesses without addressing their root causes. **The result is a framework that is increasingly complex, internally contradictory, and operationally unsustainable for most municipalities**.

The post-1994 period began with an **urgent and morally necessary imperative**: to extend water services to millions of households who had

been deliberately excluded under apartheid. The national government played a central role in funding and implementing infrastructure projects, while local government structures were still being consolidated. The Water Services Act of 1997 was designed to support this expansion by establishing Water Services Authorities (WSAs) as the accountable institutions for service delivery, defining minimum standards, enabling municipalities to choose between internal and external service providers, and promoting cost recovery as a foundation for their sustainability.

At the time, the assumption was that municipalities would gradually build the technical, financial, and managerial capacity required to fulfil this mandate. In practice, **capacity grew unevenly**, and many municipalities inherited infrastructure backlogs, institutional weaknesses, and fragmented administrative systems that persist to this day. The early years of the democratic era were characterised by rapid infrastructure rollout but **insufficient attention to long-term sustainability**, asset management, and institutional capability. Infrastructure was built faster than municipalities could develop the systems and skills needed to operate and maintain it.

A central feature of the 1997 Act was the conceptual separation between the Water Services Authority (WSA) and the Water Services Provider (WSP). The WSA was intended to be the regulator, planner, and custodian of water services, while the WSP was designed to be the operator responsible for day-to-day service delivery.

However, in South Africa, the vast majority of municipalities adopted internal WSPs, meaning the same institution both regulates and operates the service. This internalisation was driven by **limited private sector interest** in municipal water operations, political concerns about outsourcing essential services, labour resistance to externalisation, and the absence of a national licensing framework for WSPs. As a result, the WSA/WSP split remained largely theoretical.

Municipalities continued to operate water services through internal departments, often without the specialised skills or governance structures required for either role. The Amendment Bill now attempts to enforce a separation that was never implemented in practice, creating significant organisational and political challenges.

The early 2000s saw a shift toward decentralisation and municipal autonomy, driven by the Municipal Systems Act (2000) and the Municipal Finance Management Act (2003). These Acts were designed to strengthen local accountability, promote financial sustainability, and ensure transparent governance. They entrenched municipal authority over service delivery, budgeting, and tariff setting. However, they also placed significant responsibilities on municipalities without always providing the resources or capacity required to fulfil them. **The assumption that municipalities could self-regulate and self-fund water services has proven unrealistic** in many contexts, particularly in rural and financially distressed municipalities.

By the mid-2010s, several systemic stressors had become evident. Ageing infrastructure, insufficient maintenance budgets, high levels of non-revenue water, declining revenue collection, technical vacancies, rising energy and chemical costs, and weak asset management systems all contributed to a decline in performance. These pressures eroded WSAs' operational capability and exposed the fragility of the internal WSP model. The Blue Drop and Green Drop assessments of 2022 and 2023 confirmed widespread non-compliance, with more than 100 WSAs classified as high-risk or dysfunctional.

Operation Vulindlela (OV), launched in 2020, marked a turning point. It recognised that the water sector's challenges were not isolated municipal failures but **systemic issues requiring national intervention**. OV accelerated reforms in water-use licensing, infrastructure delivery, asset management, revenue systems, and regulatory enforcement. While OV improved coordination and highlighted critical bottlenecks, it also **exposed the extent to which municipalities lacked the capacity to meet existing obligations, let alone new ones**. OV's work laid the groundwork for the Amendment Bill, which seeks to formalise and enforce many of the reforms initiated under OV.

Between 2024 and 2026, the regulatory landscape dramatically shifted. Tariff Norms and Standards introduced prescriptive tariff structures and affordability rules. Technical Norms and Standards imposed detailed requirements for water quality, staffing, monitoring, and infrastructure. The Amendment Bill introduced mandatory licensing for all WSPs and expanded national oversight. These reforms aim to improve accountability and service quality, **but they also increase compliance costs and administrative burdens,** particularly for municipalities already struggling with basic operations.

The cumulative effect of these reforms is a system characterised by overlapping mandates, contradictory obligations, unfunded mandates, capacity gaps, weak separation between WSA and WSP roles, and fragmented accountability across spheres of government. The Amendment Bill attempts to address some of these issues. Still, it also formalises several contradictions and introduces new tensions, particularly around licensing, tariff setting, and the balance of authority between local and national government.

Msunduzi's experience reflects the national trajectory.

- It inherited an ageing infrastructure and uneven capacity. It operates with an internal WSP model. The WSA function, although separate from the internal WSP, **is incorrectly placed** within the organisational structure.
- It faces **affordability constraints** that limit the ability to implement cost-reflective tariffs.
- It must comply with increasingly prescriptive national standards.
- It is expected to license its internal WSP **despite systemic constraints**.

Msunduzi **is not an outlier** but a microcosm of the structural pressures facing WSAs across South Africa.

The evolution of the water services framework has produced a system that is **overburdened, under-resourced, and structurally misaligned**. The Amendment Bill does not emerge in a vacuum; it appears in a context where municipalities are already struggling to meet basic obligations. **Unless the Bill is implemented with a clear understanding of this historical trajectory, it risks reinforcing the very failures it seeks to correct.**

OPERATION VULINDLELA AND THE REFORM DRIVERS RESHAPING THE WATER SERVICES LANDSCAPE

Operation Vulindlela (OV) has become one of the most potent forces reshaping South Africa's water services sector, not because it introduced new legislation, but because it exposed the **structural weaknesses that legislation alone cannot fix**. OV was conceived as a cross-government initiative to unlock structural reforms that individual departments had been unable to implement. In the water sector, however, OV did far more than accelerate administrative processes; it fundamentally altered the expectations placed on Water Services Authorities (WSAs), intensified regulatory scrutiny, and laid the groundwork for the Water Services Amendment Bill.

To understand the pressures now confronting municipalities such as Msunduzi, it is essential to comprehend OV's role as **both a catalyst and a disruptor**. OV did not create the sector's crisis; **it revealed it**. It did not create new obligations; it forced the national government to acknowledge that existing obligations were not being met. And it did not design the

Amendment Bill; it created the political and administrative momentum that made the Bill possible.

OV was launched in 2020 as a joint initiative of the Presidency and National Treasury, at a time when South Africa's economic stagnation, infrastructure failures, and declining investor confidence had reached critical levels. Water security was identified early as one of the five priority reform areas, not because of ideological preference, but because water is foundational to economic stability, public health, and social cohesion.

Phase I of OV focused on streamlining water-use licensing and unblocking major infrastructure projects. The approval period for Water-Use License Applications (WULAs) was reduced through digitisation, standardisation, and improved coordination between DWS, Catchment Management Agencies, and other regulators. This reform signalled a shift toward more assertive national oversight of water-related processes. OV's intervention in bulk water infrastructure highlighted the extent to which municipal performance is dependent on upstream systems beyond their control. **When national projects stall, municipal service delivery collapses,** which is a reality that the Amendment Bill does not fully address.

Phase II of OV thus shifted focus to municipal performance, recognising that national reforms could not succeed without functional WSAs. OV emphasised infrastructure maintenance, asset management, revenue systems, and regulatory enforcement. It encouraged municipalities to adopt standardised asset management systems, improve reporting on infrastructure condition, and adhere to the 8% maintenance budgeting norm. **It also highlighted the chronic underfunding of maintenance** in municipal budgets, a structural problem exacerbated by the MFMA, which **prioritises short-term affordability over long-term sustainability**.

OV's focus on revenue management was equally significant. It recognised that water services cannot be financially sustainable without accurate metering, credible billing, effective credit control, and reduced non-revenue water. But many municipalities lack the revenue base needed to fund cost-reflective water services, regardless of how efficient their billing systems become. **This is a structural problem that no amount of administrative reform can solve.**

OV also supported the implementation of the national professionalisation framework, recognising that chronic skills shortages, high vacancy rates, and inconsistent competency levels were undermining service delivery. The revised Norms and Standards now embed these professionalisation requirements, **but do not provide the funding or institutional support required to meet them**. OV's work to strengthen regulatory enforcement, including improvements to the Blue Drop, Green Drop, and No Drop systems, further intensified pressure on municipalities by exposing widespread non-compliance. The Amendment Bill's licensing regime is a direct response to these findings.

OV did not create the sector's crisis; **it revealed it**. It created the political momentum that made the Bill possible. OV's reforms were necessary, but they also intensified the gap between regulatory expectations and municipal capacity. They accelerated the shift toward a more regulated, compliance-driven water sector, but they did so **without addressing the structural contradictions that make compliance impossible for many WSAs**.

The Amendment Bill is the legislative embodiment of OV's reform agenda. It sought to strengthen accountability, formalise oversight mechanisms, introduce licensing to enforce performance, clarify institutional roles, and improve service quality. However, because OV exposed the fragility of municipal systems, the Bill now faces an environment in which many WSAs lack the capacity, funding, or institutional structures to comply with its requirements.

The Bill assumes that municipalities can restructure their organograms, professionalise their staff, upgrade their infrastructure, and implement sophisticated performance management systems, yet all within the constraints of the MFMA and **without additional funding**. It aims to increase accountability, formalise oversight, implement performance-based licensing, define institutional roles, and enhance service quality.

> Msunduzi's position within the OV landscape reflects the national pattern. It faces high non-revenue water, ageing infrastructure, insufficient maintenance budgets, technical vacancies, weak revenue systems, and increasing regulatory obligations. OV's reforms highlight these weaknesses and underscore the urgency of addressing them, but they also expose the structural contradictions that complicate compliance.
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> **Msunduzi is not an exception; it is a representative example of the systemic pressures facing WSAs across South Africa.**

Operation Vulindlela has **intensified the contradictions** that the Amendment Bill now seeks to regulate. Unless these contradictions are addressed directly, the Bill will not achieve its intended outcomes. Instead, it risks deepening the cycle of non-compliance, fiscal distress, and declining service levels.

THE WATER SERVICES AMENDMENT BILL: PURPOSE, ARCHITECTURE, CONTRADICTIONS AND RISKS

The Water Services Amendment Bill is designed to address several longstanding challenges: widespread non-compliance with water quality and service standards; weak enforcement under the original Water Services Act; ambiguous institutional roles among WSAs, WSPs, and Water Boards; a lack of separation between regulatory and operational functions; inadequate performance management of internal WSPs; fragmented oversight across spheres of government; and declining public trust in water services. **These challenges are real, and the need for reform is undeniable.**

However, the Bill's approach to reform **assumes without evidence that municipalities** have the institutional maturity, technical competence, and financial resilience to comply with its provisions. At the heart of the Bill is the introduction of mandatory licensing for all Water Services Providers (WSPs), including internal municipal units.

For the first time, municipalities will no longer have **inherent authority to operate water services**; they must obtain permission from a National Regulator. The Bill establishes a Licensing Authority within the Department of Water and Sanitation (DWS) to issue licences, monitor compliance, enforce conditions, and suspend or revoke licences. This centralised authority marks a significant expansion of national regulatory power. It raises constitutional questions about the limits of national oversight in a system where municipalities have **constitutionally protected executive authority**.

The Bill's licensing system aims to set minimum standards, confirm necessary capacity and competence, and provide a way to intervene if performance falls short. However, there is uncertainty for WSAs, especially those with internal WSPs that may lack sufficient staff, systems, or financial resources to meet expected licensing requirements. **The absence of clear criteria also creates the risk of inconsistent or politically influenced licensing decisions**.

The Bill introduces expanded enforcement powers, including penalties for non-compliance, personal liability for Accounting Officers and Directors, mandatory reporting obligations, and the power to intervene when WSAs fail to act. These measures strengthen accountability but may also expose

municipalities to legal and administrative risks. For example, if a WSP license is suspended or revoked, the WSA remains responsible for maintaining service continuity. **This creates a situation in which municipalities may be held accountable for failures that arise from licensing decisions beyond their control.**

The Bill reinforces the WSA's role as the regulator and custodian of water services, responsible for planning, tariff policy, compliance, performance management, and oversight. This aligns with the Constitution but increases the administrative burden on municipalities. The Bill requires WSAs to enter into formal Performance Management Agreements (PMAs) with WSPs that specify Key Performance Areas (KPAs), Key Performance Indicators (KPIs), and measurable performance targets. Performance management is no longer optional; it is a licensing requirement. Yet many **WSAs lack the capacity** to develop, implement, and monitor sophisticated performance management systems.

The Bill introduces licensing conditions that require significant investment in staffing, infrastructure, and monitoring, but the MFMA restricts expenditure to what is affordable. The Bill requires WSAs to enforce performance conditions on WSPs, but many internal WSPs lack the capacity to meet these conditions.

The Bill requires WSAs to ensure continuity of service even if a WSP license is suspended. Still, it does not provide mechanisms for securing alternative service providers in municipalities **where external WSPs are unwilling or unable to operate**.

The Bill's licensing regime creates several new contradictions. Licensing may require increased staffing, infrastructure upgrades, enhanced monitoring, or improved performance systems, but the MFMA restricts expenditure to what is **affordable**. If a municipality cannot fund the requirements of its license, it **risks non-compliance and potential suspension.**

Licensing requires a distinct WSP entity, a formal contract, performance management systems, and precise separation of duties, but most municipalities have not separated their WSA and WSP functions. Licensing requires compliance with technical Norms and Standards, but many WSAs currently fail Blue Drop and Green Drop audits. Licensing requires financial viability, but **many municipalities lack the necessary revenue base to fund cost-reflective water services**.

The Bill's enforcement mechanisms may also conflict with labour legislation, particularly if license suspension requires transferring staff to an external WSP.

The Bill's strengths lie in its attempt to introduce enforceable accountability, strengthen national oversight, clarify institutional roles, formalise performance management, and align with Operation Vulindlela's reform agenda. These are necessary reforms in a sector facing systemic collapse.

The Bill's weaknesses stem from its lack of clarity on licensing criteria, insufficient alignment with the MFMA, unresolved constitutional tensions, limited national capacity to implement licensing, and the risk of unintended consequences.

For Msunduzi, the Bill will require significant organisational restructuring, including the reporting structures within WSA and WSP functions, the appointment of a qualified WSA Manager, the licensing of the internal WSP, the development of new performance management systems, enhanced planning and reporting, compliance with technical Norms and Standards, and alignment with tariff Norms and Standards.

These requirements will stretch existing capacity and may require significant budget adjustments, Council approval, and union engagement.

The Water Services Amendment Bill strengthens regulation, but it does not redesign the system architecture. It improves enforcement, but it does not resolve the contradictions between the MFMA and water sector legislation, the affordability gap, the capacity deficit, or the institutional fragmentation.

Unless the structural tensions embedded in the legislative framework are addressed directly, the Bill risks entrenching a cycle of non-compliance, fiscal distress, and declining service levels.

PROFESSIONALISATION, MFMA CONSTRAINTS, IMPLEMENTATION RISKS AND THE STRATEGIC WAY FORWARD

The transformation of South Africa's water services sector cannot be understood without examining the profound implications of the revised Norms and Standards, the professionalisation agenda, the constraints imposed by the Municipal Finance Management Act (MFMA), and the contractual risks introduced by the Water Services Amendment Bill. These elements form the operational backbone of the new regulatory environment, **yet they also expose the structural weaknesses that threaten to undermine the entire reform effort**. Unless these issues are directly addressed, the sector will remain trapped in a cycle of non-compliance, fiscal distress, and declining service levels, **no matter how sophisticated the regulatory framework becomes.**

Professionalisation is a necessary reform, **yet it rests on unrealistic assumptions.** The revised Compulsory National Water and Sanitation Services Standards introduce the most far-reaching professionalisation requirements the municipal water sector has ever seen. They require WSAs and WSPs to employ qualified, professionally registered personnel in key positions, to maintain minimum staffing levels, and to implement structured human resource plans aligned with national competency frameworks. The WSA Manager must be a professionally registered engineer or technologist with at least fifteen years of experience. Technical and operational staff must meet minimum qualification levels, professional registration requirements, and ongoing competency development obligations.

Whilst these requirements are necessary, the sector's collapse is rooted in chronic skills shortages, high vacancy rates, inconsistent competency levels, and the erosion of technical expertise across municipalities. **Professionalisation is essential to improve service quality, restore public trust, ensure compliance with licensing requirements, and strengthen regulatory oversight.**

However, the professionalisation agenda is built on an assumption that municipalities have the financial resources, organisational flexibility, and labour stability required to implement it. **This assumption is not supported by evidence**. Many municipalities lack the budget to recruit qualified engineers, technicians, and process controllers. Salary disparities between municipalities, Water Boards, and the private sector make recruitment and retention extremely difficult. Labour resistance to restructuring, regrading, and competency enforcement is widespread. Training and development programmes are inconsistent, underfunded, or absent.

Professionalisation without funding is an unfunded mandate. Professionalisation without organisational restructuring is impossible. Professionalisation without labour alignment is unimplementable. The Amendment Bill and the Norms and Standards impose professionalisation requirements without providing the financial or institutional support required to meet them. This creates a situation in which **municipalities are legally required to comply with standards they cannot afford to implement**.

MFMA CONSTRAINTS: THE STRUCTURAL BARRIER TO COMPLIANCE

The MFMA is the single most significant constraint on municipal performance in the water sector. It governs budgeting, revenue management, procurement, financial reporting, and expenditure. It requires

municipalities to adopt credible budgets for **fiscal stability**, base revenue projections on realistic assumptions, avoid unfunded mandates, maintain cash-backed reserves, and ensure expenditures do not exceed available resources.

The Constitution requires municipalities to ensure universal access to safe, reliable water services. The Water Services Act and the Amendment Bill require compliance with technical standards, performance conditions, and licensing requirements. The Norms and Standards require professionalisation, infrastructure upgrades, monitoring systems, and enhanced reporting.

This creates a fundamental contradiction that municipalities are **legally required to achieve outcomes they are legally prohibited from funding**. The Amendment Bill intensifies this contradiction by imposing licensing conditions that require significant investment in staffing, infrastructure, and monitoring. If a municipality cannot fund the requirements of its license, it risks non-compliance and potential suspension. **The MFMA does not allow municipalities to budget for compliance if compliance is unaffordable**.

The MFMA also creates operational constraints that undermine service delivery. Procurement delays hinder infrastructure maintenance and emergency repairs. Revenue collection challenges undermine financial sustainability. Tariff affordability constraints limit cost-reflective pricing. The National Treasury's imposition of **affordable budgets** restricts expenditure on maintenance, staffing, and compliance. **These constraints are not the result of municipal inefficiency; they are structural features of the fiscal framework**.

IMPLEMENTATION RISKS: THE TRANSITION WILL BE TURBULENT

Municipalities face significant organisational, financial, operational, and political risks. They must restructure their WSA and WSP functions, fill critical technical posts, conduct Section 77 and 78 reviews, prepare for licensing assessments, and implement new performance management systems, all within the set timelines and under severe fiscal pressure.

Organisational risks include restructuring organograms, regrading staff posts, and realigning reporting lines. Labour resistance is likely, particularly from unions concerned about job security, post-reclassifications, and competency enforcement.

Recruitment challenges will be significant due to the national shortage of qualified engineers, technicians, and process controllers. Budget constraints will limit the ability to fund new posts **with competitive salaries**, training programmes, and infrastructure upgrades.

Operational risks include the potential for service disruptions, water-quality failures, and infrastructure failures during the transition. Licensing risks include the possibility that internal WSPs may fail to obtain or retain licenses, requiring WSAs to secure external WSPs in an environment where private-sector interest is limited.

Political risks include reluctance to approve cost-reflective tariffs, interference in operational decisions, and resistance to organisational restructuring.

Service continuity is the most critical risk. If a WSP license is suspended or revoked, the WSA remains responsible for ensuring service delivery. The Bill does not provide mechanisms for securing alternative service providers in municipalities where external WSPs are unwilling or unable to operate. This creates the potential for **service collapse in municipalities that fail licensing assessments**.

THE STRATEGIC WAY FORWARD: CONFRONTING STRUCTURAL REALITIES

The transformation of the water sector requires alignment between the MFMA and water sector legislation, realistic funding models, strengthened institutional capacity, predictable regulation, and a clear understanding of the roles and responsibilities of WSAs and WSPs. **Without this alignment, the sector will remain trapped in a cycle of non-compliance, fiscal distress, and declining service levels**.

The National Government must confront the structural contradictions embedded in the legislative framework. The MFMA must be aligned with the Constitution and the Water Services Act to ensure that municipalities can fund the obligations imposed by the Amendment Bill. The Norms and Standards must be accompanied by funding, training, and institutional support. **The licensing regime must be implemented in a manner that recognises municipalities' capacity constraints**.

Municipalities must restructure their WSA and WSP functions, professionalise their staff, strengthen their planning and regulatory capacity, improve water-quality compliance, and enhance their revenue systems. They must adopt credible budgets, implement performance management systems, and incorporate risk protections into WSP agreements. **They must engage unions, secure political support, and manage organisational change carefully.**

The sector must move toward a model that prioritises sustainability, accountability, and public trust. This requires a shift from reactive crisis management to proactive institutional strengthening. It requires investment in infrastructure, skills, and systems. **It requires coordination across spheres of government, alignment of legislative frameworks, and a shared commitment to restoring the integrity of South Africa's water services.**

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