

# Municipal services

## Is Chapter 8 of the Systems Act a help or a hindrance?

The new definition of municipal services puts even more services within the ambit of Chapter 8 of the System Act. Municipalities are already under heavy pressure to extend and improve delivery of municipal services. Chapter 8 of the Systems Act is supposed to facilitate this process, but it is questionable whether it achieves its purpose or whether it instead puts an additional burden on already limited municipal resources.

The new definition, as introduced by the Local Government Laws Amendment Act 51 of 2002, defines municipal service as:

*a service that a municipality in terms of its powers and functions provides or may provide to or for the benefit of the local community irrespective of whether-*

- (i) *such services is provided, or to be provided by the municipality through an internal mechanism contemplated in section 76 or by engaging an external mechanism as contemplated in section 76 of the Systems Act; and*
- (ii) *fees, charges or tariffs are levied in respect of such services or not.*

## key points

- Municipal services include all services for the benefit of the community, irrespective of whether fees, charges or tariffs are levied for them.
- The new definition of municipal services places many more services in the ambit of section 78.
- Community participation is important when municipalities decide on an external mechanism.

This means that a municipality needs to follow the section 78 process in relation to all its services.

With this definition of municipal services, coupled with the revocation notice relating to the 'big four' functions taking effect on the 1 July 2003 (see *Local Government Bulletin* 2003 5(1): 8), municipalities may face the requirements of section 78 of the Systems Act in relation to a number of new services.

All services provided to the benefit of the local community, whether or not fees are charged for them, may trigger a section 78 process.

For instance, if a service was previously provided by the local municipality but in terms of the revocation notice it now needs to be provided by the district municipality, a section 78 process will also be triggered.

### What triggers section 78?

According to section 77 of the Systems Act, a municipality must review and decide on an appropriate mechanism to provide a municipal service when:

- preparing or reviewing an IDP;
- a new municipal service is to be provided;
- an existing municipal services is to be upgraded significantly, extended or improved;
- a performance evaluation in terms of the Act requires a review of the service delivery mechanism;
- the municipality is restructured or reorganised;



- it is requested to do so by the local community; or
- it is instructed to do so by the provincial executive in terms of a section 139 intervention.

Any of the above will trigger a section 78 process. For example, if a local municipality previously provided water but that function is now the responsibility of a district municipality, this will be seen as a new service rendered by the district municipality, which must follow the section 78 procedure.

## Section 78 process

Section 78 of the Systems Act spells out the criteria and processes that the municipality must follow when it decides on a mechanism to provide municipal services. This process can be divided in four phases (see *LGL Bulletin* 2001 3(4): 3).

Phase one is the initial internal assessment, phase two involves further assessments, phase three is the implementation phase and phase four is the competitive bidding process.

### Phase one

In phase one the municipality must assess the direct and indirect costs and benefits associated with the project if the municipality provides the service through an internal mechanism.

This includes the expected effect on the environment and on human health, well-being and safety.

It also needs to assess its own existing and future capacity to furnish the skills, expertise and resources necessary for an internal mechanism.

The impact that the service delivery mechanism might have on the development of job creation and employment patterns, and the views of organised labour on this, must also be considered. It is important to note that labour needs not be consulted in the initial process, but merely informed.

Any development trends in the sustainable

provision of municipal services need to be taken into account. To save time and valuable resources it is advisable that municipalities do the internal and external assessments simultaneously.

### Phase two

Phase two deals with situation in which the council decides to use an external mechanism to provide the service. Importantly, notice must be given to the community of this decision.

Following the review of an appropriate external or internal process the council needs to take the following into consideration before deciding on the mechanism to be used:

- the municipal services must be equitable and accessible to the whole community, and be provided in a manner that is conducive to economic, efficient and effective use of available resources and to improving the standard and quality of services delivery; and
  - it must be financially and environmentally sustainable and be regularly reviewed and updated.

### Phase three

Phase three deals with implementation. Depending on the council's decision, it is obliged to make sufficient resources available for the proper provision of the service(s). If the council opts for the external mechanism it must establish a consultation mechanism with the community during the process of finalising the service delivery agreement.

Community participation becomes extremely important in this stage and failure to adhere to this requirement creates a material defect in the agreement (see *LGL Bulletin* 2003 4(1): 11).

### Phase four

If the council decides to use a non-public service provider, it needs to follow a competitive selection approach in terms of the Preferential Procurement Policy Framework Act 5 of 2000. The provisions of section 83 that require a competi-

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tive, fair, transparent, equitable and cost-effective selection process come into play.

## Comments

A big stumbling block is the fact that the Act defines community-based organisation (CBOs) and non-governmental organisations (NGOs) as external mechanisms, which obliges municipalities to follow competitive bidding processes before concluding a service delivery agreement. This takes up already scarce resources.

The Act is silent about the definition of service mechanism. If interpreted broadly, almost every municipal decision resulting in an expenditure, whether capital or operational in nature, will trigger a section 78 process.

Another complication arises when a section 78 process needs to be implemented at the different levels of a service. For example, in a review of an IDP it might become apparent that a municipality must assess its entire water and sanitation service, thus triggering section 78. When an existing waste-water plant needs to be upgraded and expanded a section 78 process is triggered yet again. All these assessment processes could put additional strain on limited resources.

Although the new definition of municipal services helps remove uncertainty in relation to the scope of section 78, it places many more services in the ambit of section 78, which might not have been the intention of the legislature.

The intention is clearly to enable decision-making. However, currently it has the opposite effect. An urgent re-examination of the scope of section 78 in relation to the definition of municipal services is thus called for.

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