

WATER MANAGEMENT INSTITUTIONS OVERVIEW



water & forestry

Department:
Water Affairs and Forestry
REPUBLIC OF SOUTH AFRICA

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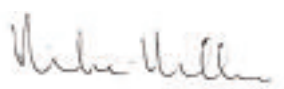
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PREFACE

Institutional management and participation of all stakeholders is essential to achieve the successful protection, use, development, conservation, management and control of our water resources. The institutional framework outlined in the National Water Act provides for the progressive decentralisation of water resource management to the appropriate level as well as providing for participation in water resource management in South Africa.

The ongoing challenge facing us is to implement this framework whereby existing institutions transform themselves in line with the principles outlined in the Act, and new institutions are established to take on the challenge of decentralised decision-making and effective participation of all water users and other stakeholders.

It will take some time to achieve the institutional vision within the National Water Act, however the process towards achieving the vision is as important, if not more important, than accomplishing the new institutional arrangements. This guide is one of the tools to promote a greater understanding of the institutional vision we are working towards so that all stakeholders can effectively participate in the process. We invite and encourage you to participate in and influence our water resource management institutional environment towards achieving sustainable, equitable and efficient water resource management.



Mike Muller

*Director General
Department of Water Affairs and Forestry*

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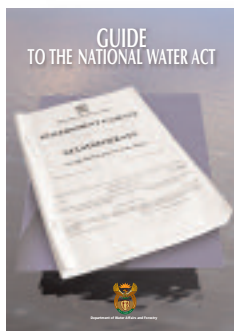
Purpose of this guide

The National Water Act (Act No. 36 of 1998) sets the framework for the management of water resources in South Africa. This framework provides for the establishment of water management institutions.

This guide is about **water management institutions**. It explains the following:

- n what the different water management institutions are
- n how they should be established, and
- n the overall functions of different water management institutions

The Department of Water Affairs and Forestry has published a separate book on the National Water Act.



Framework for water resource management

The Act focuses on achieving sustainability through integrated management. It facilitates participation in the management of water resources by delegating the management to regional and catchment levels.

This guide on water management institutions should be read together with the Guide to the National Water Act, 1998.



Institutions within the Framework

The Act provides for a number of different institutions to perform water management functions. The primary purpose of these institutions is to achieve integrated and sustainable management of water resources within the principles of equity and efficiency.

Who should read this guide?

This guide provides information that will be useful to:

- n water users;
- n anyone who wants to know more about water resources management institutions; and
- n anyone who wants to participate in water resources management.

For more detailed information on a specific topic you should contact the nearest Regional Office of the Department of Water Affairs and Forestry. Contact details are listed on the back cover. A copy of the National Water Act can be obtained from these offices or via the Internet at www.dwaf.gov.za

What is covered in this guide?

This guide is not a comprehensive guideline to all aspects of every water resource management institution. It provides a broad overview of the framework for water resource management institutions and the roles and responsibilities of the different institutions and bodies.

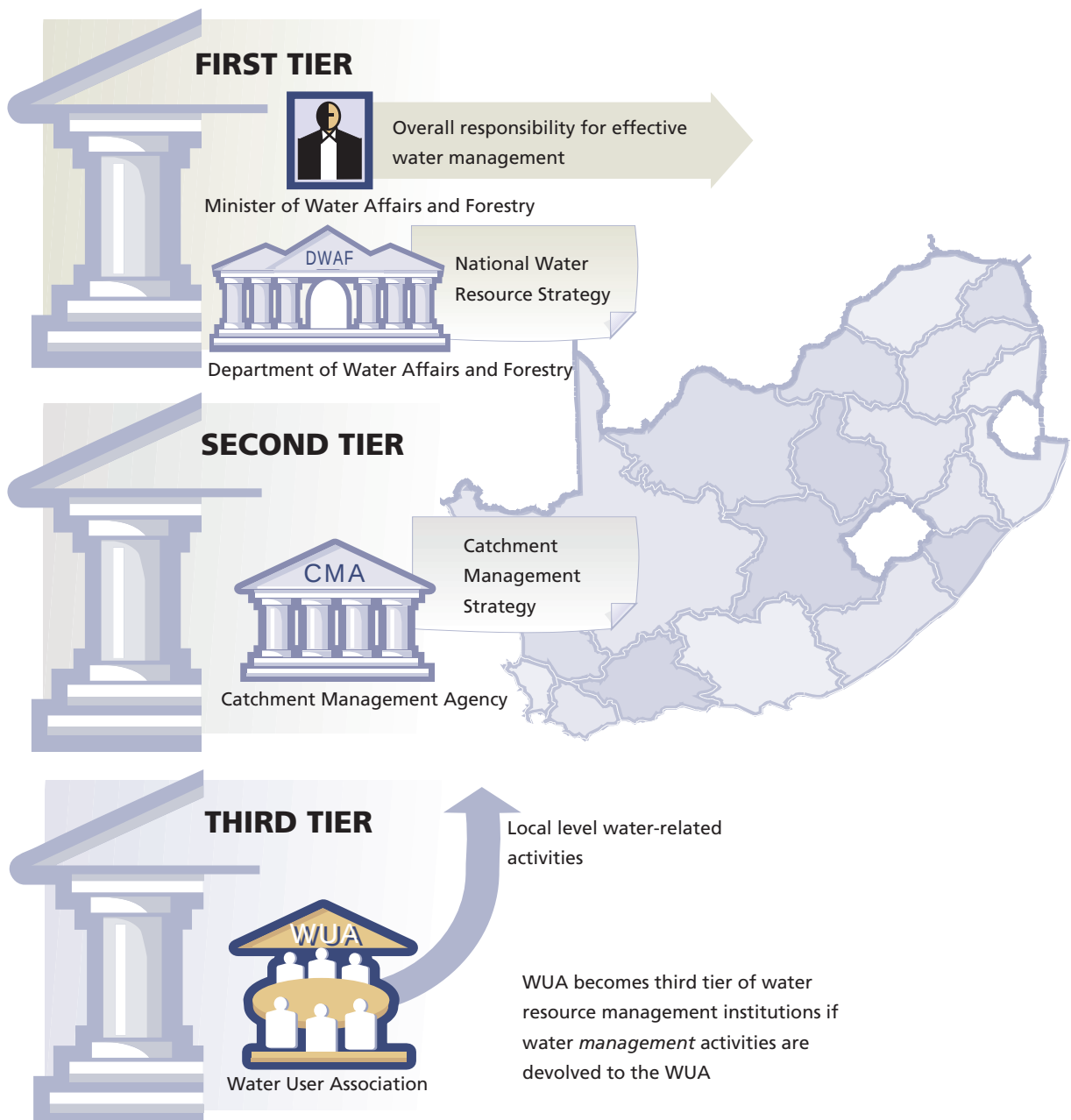
PART 1

THE WATER RESOURCES MANAGEMENT FRAMEWORK

The National Water Act provides the framework for water resource management. It outlines the different water management institutions as well as the specific functions of the different institutions.

A separate guide has been prepared on the National Water Act. It explains what the Act says and what it means.

Overview of water resource management institutions within the framework



The custodian of water resources

FIRST TIER

Minister of Water Affairs and Forestry

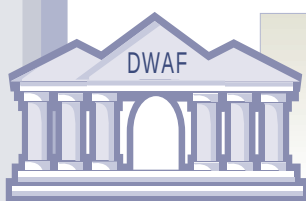


Overall responsibility for effective water management

The Minister of Water Affairs and Forestry is the custodian of water resources and has the ultimate responsibility to ensure that:

- 3 water resources are protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner, for the benefit of all persons; and
- 3 water is allocated equitably and used beneficially in the public interest, while promoting environmental values.

Department of Water Affairs and Forestry



National Water Resource Strategy

The Department of Water Affairs and Forestry is responsible for administering all aspects of the National Water Act delegated to it by the Minister or Director-General. As the various water resource management institutions are established and the responsibility and authority for water resource management is delegated or assigned to them, the

Department's role will change. It will increasingly focus on national policy, a regulatory framework for water resource management, and ensuring that other institutions are effectively fulfilling their roles and responsibilities.

National Water Resource Strategy

One of the main tools that is used to ensure that the nation's water resources are protected, used, developed, conserved, managed and controlled is the National Water Resource Strategy. This Strategy provides the framework within which water will be managed at regional or catchment level, in defined water management areas. The National Water Resource Strategy is progressively developed after public consultation and must be reviewed every 5 years. To date, the Minister has identified 19 water management areas, covering the whole country.

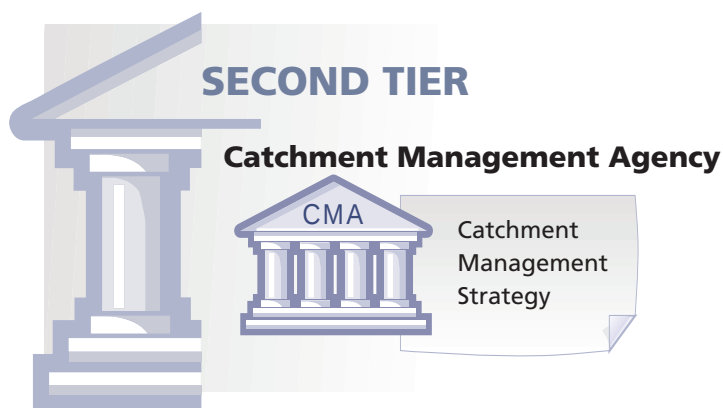
In terms of institutional arrangements, the National Water Act states that the National Water Resource Strategy must:

- n contain objectives for the establishment of institutions to undertake water resource management; and
- n determine the inter-relationship between institutions involved in water resource management.

All water resources management institutions must function in accordance with the National Water Resource Strategy.

For more information on the National Water Resource Strategy refer to the Guide to the National Water Act guide.

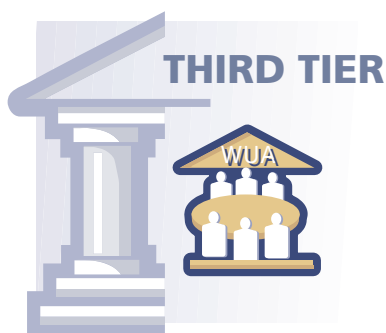
Catchment Management Agencies & Catchment Management Strategies



Catchment management agencies (CMAs) represent the second tier of the water resource management framework. A CMA will be established in each of the 19 water management areas.

Each CMA is responsible for the progressive development and broad implementation of a catchment management strategy. The catchment management strategy must be consistent with the National Water Resource Strategy, within its water management area.

Water user associations

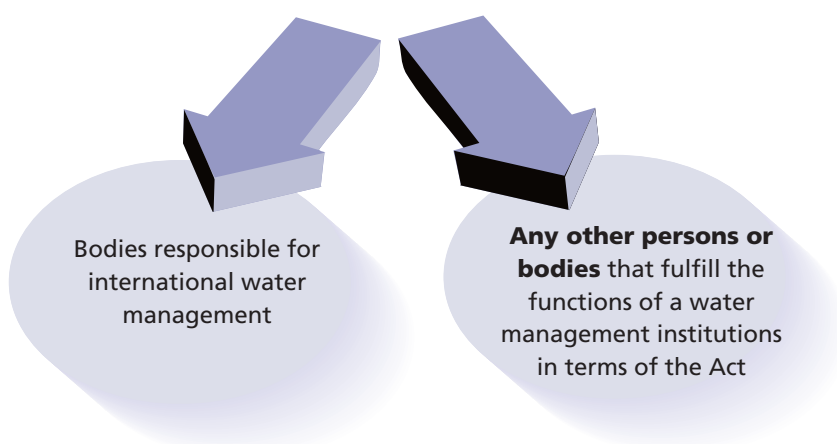


WUAs are associations of individual water users that undertake water-related activities for their mutual benefit.

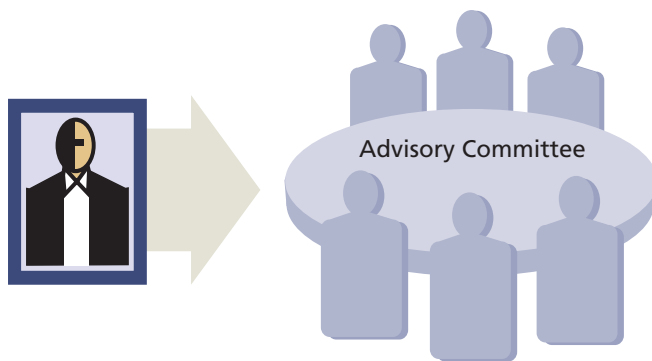
Water management activities may be devolved to WUAs in which case they become the third tier of water management institutions.

Other water management institutions

In addition to CMAs and WUAs, the Act also provides for the following types of water management institutions:



Advisory committees



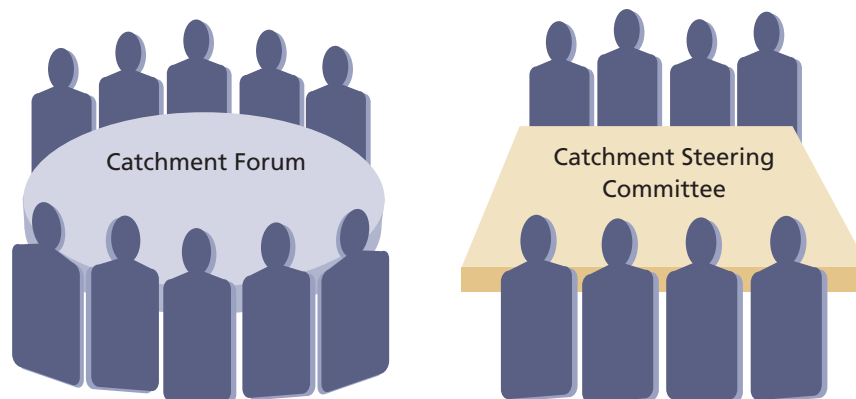
The Act empowers the Minister to establish advisory committees. Advisory committees are statutory bodies because they are established in terms of the Act. Advisory committees are established for a particular purpose with particular functions, for example advising the minister about the composition of a CMA governing board.

Advisory committees in general are set up to:

- n Support the establishment of water management institutions, or
- n Support water management institutions to perform their roles and responsibilities.

Non-statutory bodies

In addition to the statutory bodies provided for in the National Water Act, non-statutory bodies may also be established by interested and affected individuals and institutions (stakeholders). These bodies tend to play a facilitation and supporting role to the establishment of CMAs, for example catchment forums and catchment steering committees.



The next part of this guide addresses Catchment Management Agencies and bodies that support them, in more detail.

PART 2

CATCHMENT MANAGEMENT AGENCIES (CMAs)



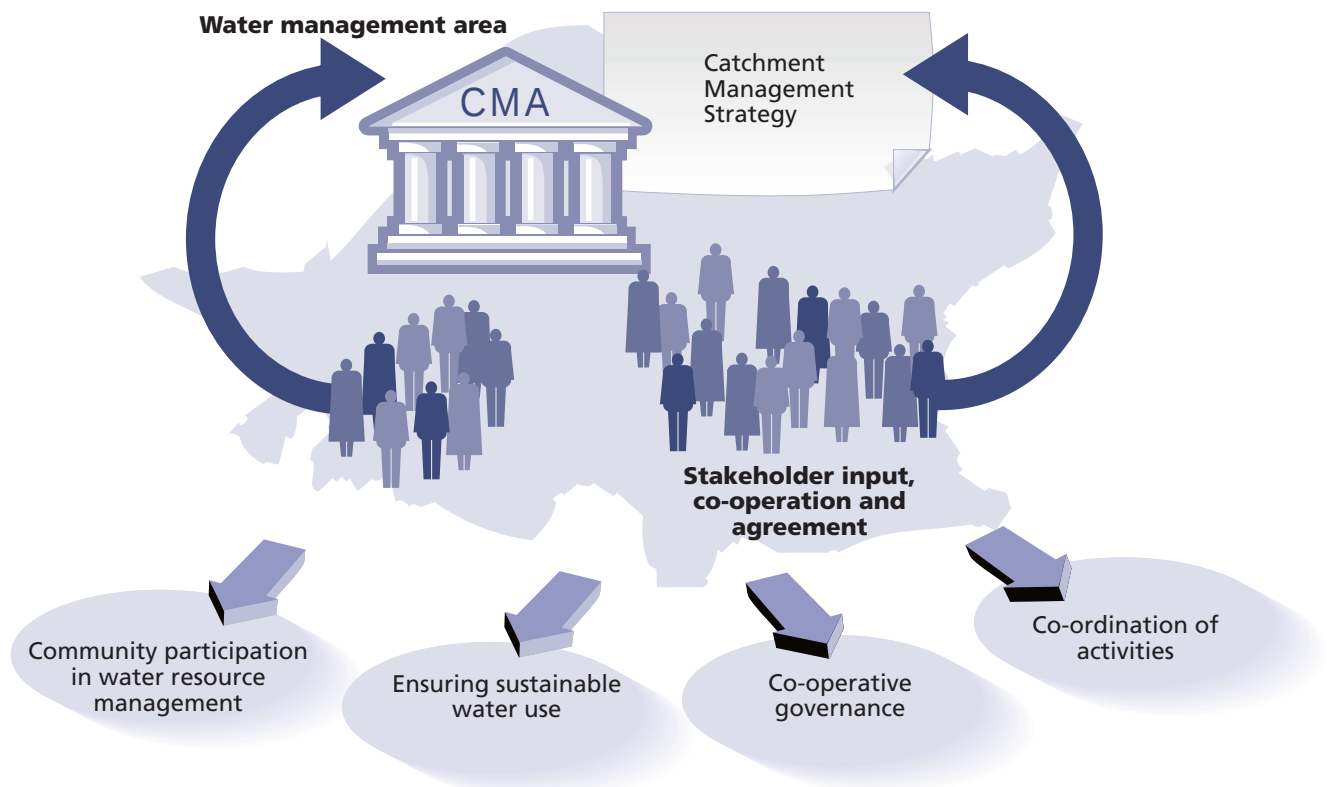
What is a catchment management agency?

A catchment management agency (CMA) is a statutory body established in terms of the National Water Act. A CMA has a governing board, which is appointed by the Minister. This board must represent all stakeholders (including current and potential user groups) and their interests in the water management area. The area of jurisdiction of a CMA is a defined water management area.

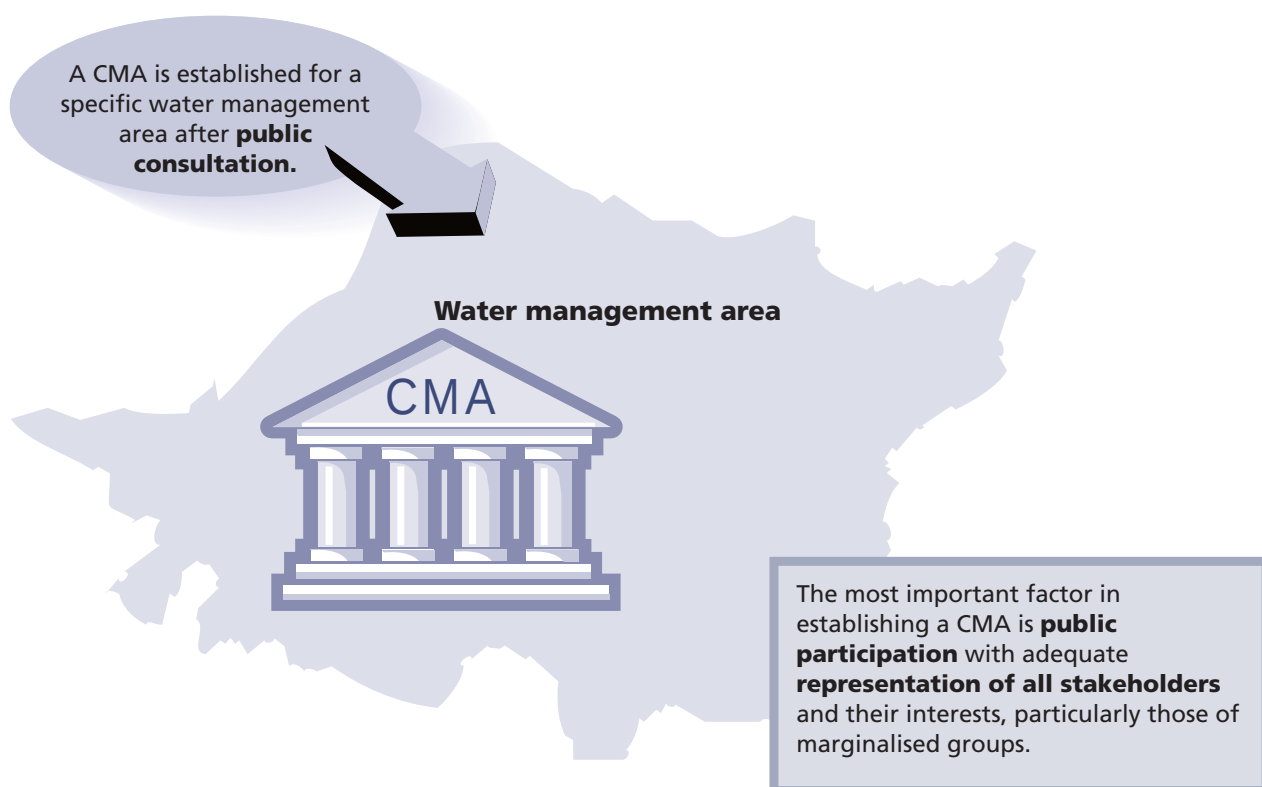
What is the purpose of a CMA?

CMAs are established so that water resource management can be delegated to the regional or catchment level. The primary purpose of a CMA is to involve local communities in water resource management. CMAs must also seek co-operation and agreement on water-related matters between the various stakeholders and interested persons.

- n A CMA manages water resources within its **water management area**.
- n CMAs must develop and implement a **catchment management strategy** for the water resources within their water management area.
- n The catchment management strategy must be in harmony with the National Water Resource Strategy.
- n A CMA must contribute towards social and economic development.



How is a CMA established?



Given that every water management area is different and has specific requirements, the Act enables **various approaches** to the establishment of CMAs. A CMA may be established:

- 3 on the initiative of the community and stakeholders concerned, or
- 3 by the Minister in the absence of such an initiative.

The aim is to establish a CMA in each of the 19 water management areas. Until this is achieved, the Minister (through the Regional Offices of the Department of Water Affairs and Forestry) will act as the CMA for a specific water management area.

Phases of the CMA establishment process

There are generally four phases to establishing a CMA. In some areas the CMA establishment process may go through each phase one after the other, whilst in other areas the establishment process may have phases taking place at the same time or skip a phase. The Department of Water Affairs and Forestry does not prescribe any process for the establishment of a CMA apart from the requirement that stakeholders participate in the development of the CMA establishment proposal.



Phase 1:

Initiating participation

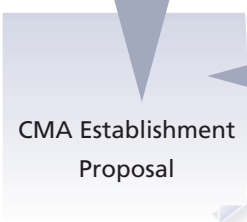
The first phase begins with awareness creation, public participation and the formation of **Catchment Forums**. The main purpose of this phase is to develop a trusting and constructive relationship between all the stakeholders and interest groups and to find a common vision. If the catchment management forums have adequate representation of all stakeholder interests, a proposal to establish a CMA can commence.

Phase 2:

Formalising participation

During the participation process, stakeholders may feel that a formal committee, which represents all stakeholders, is required to guide the CMA establishment process. This committee is non-statutory and is called a **Catchment Steering Committee**. The purpose of this phase is to strengthen relationships between stakeholders, plan for the future and develop the CMA establishment proposal.

The establishment of catchment management forums and catchment steering committees are not required as part of the legislated process. However these forums have been found to play a key role in terms of participation and representation.



Phase 3:

Interim management arrangements

In some water management areas, it may take some time before a financially and technically viable CMA can be established. In such cases an interim management arrangement may be necessary. This could take the form of a committee that assists the governing board with the initial activities.



Phase 4:

The CMA is established

The ultimate goal of the different phases is to establish a CMA with a Governing Board. The CMA will develop over time according to its functions and delegations. Until the CMA is fully functional the interim arrangement may continue to assist with various activities.

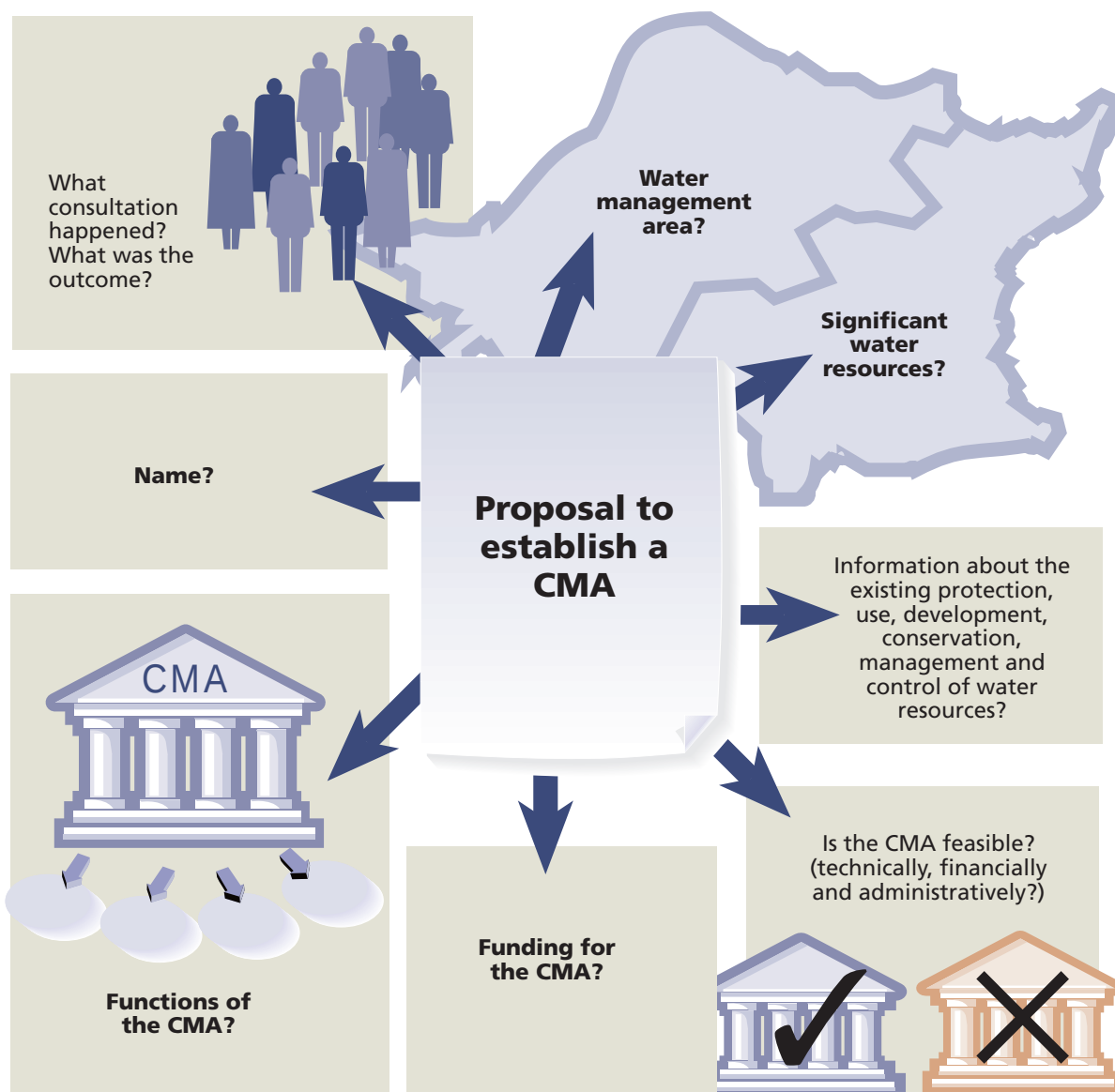
Proposal to establish a CMA

The community and stakeholders must submit a proposal to the Minister for the establishment of a CMA.

What must be covered in the proposal?

There are three components that must be covered in the proposal:

- 3 a summary of the public participation process supporting the establishment of the CMA;
- 3 a feasibility study, indicating the requirements of a viable CMA; and
- 3 an implementation plan for the establishment of the CMA.



Evaluation of the Proposal

The Proposal is submitted to the Department of Water Affairs and Forestry and evaluated against the following criteria:

- 3 Inclusiveness of the participation process
- 3 Feasibility of the proposal (social, institutional, technical)
- 3 Financial viability
- 3 Proposed delegation of functions
- 3 Practicality and feasibility of the implementation plan.

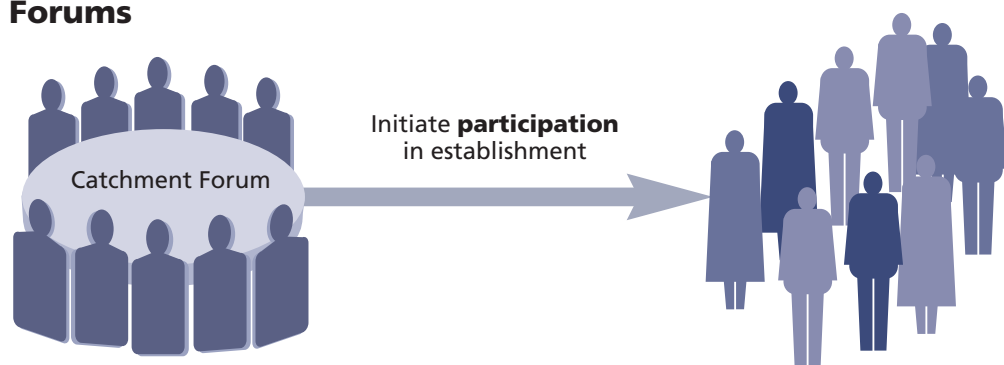
Gazetting Notice

- n Following the evaluation of the proposal it is submitted to the Minister for approval, after which it is published in the *Government Gazette* for public comment.
- n After a period of 60 days from the date of publication in the Gazette, the proposed is reviewed taking into account the comments received.
- n The final draft is then published in the *Government Gazette*.

Which bodies can assist in the establishment of a CMA?

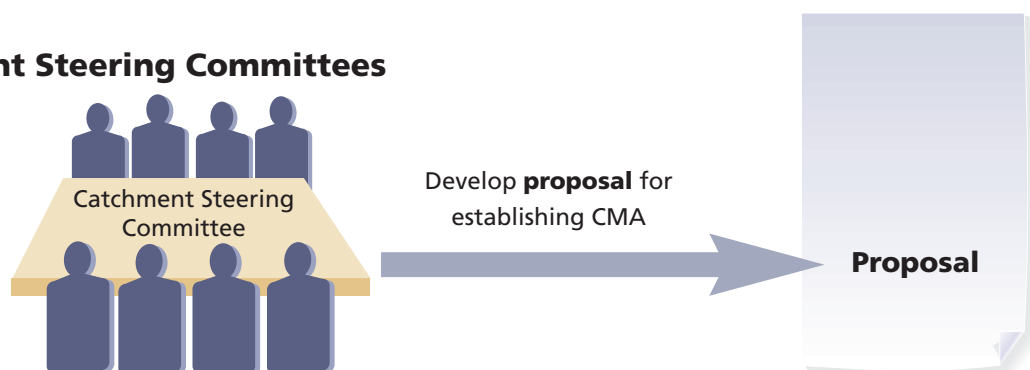
Any interested or affected person, non-statutory or statutory body can assist in the establishment of a CMA. The non-statutory bodies are called **catchment forums** and **catchment steering committees**, whilst the statutory bodies are called '**advisory committees**'.

Catchment Forums



- n Catchment forums, which are non-statutory bodies, may be established to support the establishment of a CMA.
- n Catchment forums provide an important mechanism for consultation and interaction with stakeholders, thus ensuring public participation.
- n During the CMA establishment process, catchment forums are likely to play an *institutional development role*, as well as a *consultative-advisory role* to the Department of Water Affairs and Forestry.
- n After establishment, the catchment forum role may shift to a consultative-advisory role, and possibly an *integrated planning role* where other organisations are actively involved. In addition, catchment forums may play a water resources management support role, thereby performing certain activities on behalf of the CMA.

Catchment Steering Committees



- n The catchment steering committee represents all stakeholders such as water user associations, community based organisations, municipalities, and so on. It investigates and develops the proposal for establishing the CMA. The Department of Water Affairs and Forestry may assist with the proposal development.
- n The Department of Water Affairs and Forestry may co-ordinate catchment steering committees and may contribute, along with water users and stakeholder organisations, to their secretarial and financial support.
- n A catchment steering committee is usually dissolved once the CMA is established.

Advisory Committees

The Minister may establish advisory committees for different purposes and functions, and may also delegate powers to these committees. There are three types of advisory committees that are associated with the establishment of CMAs.

Advisory Committee: Governing Board

Before appointing the CMA governing board, the Minister is required to establish an advisory committee to make recommendations on the board's composition.



Stakeholders may suggest members for this advisory committee for the Minister to consider, however the Minister is under no obligation to accept these.

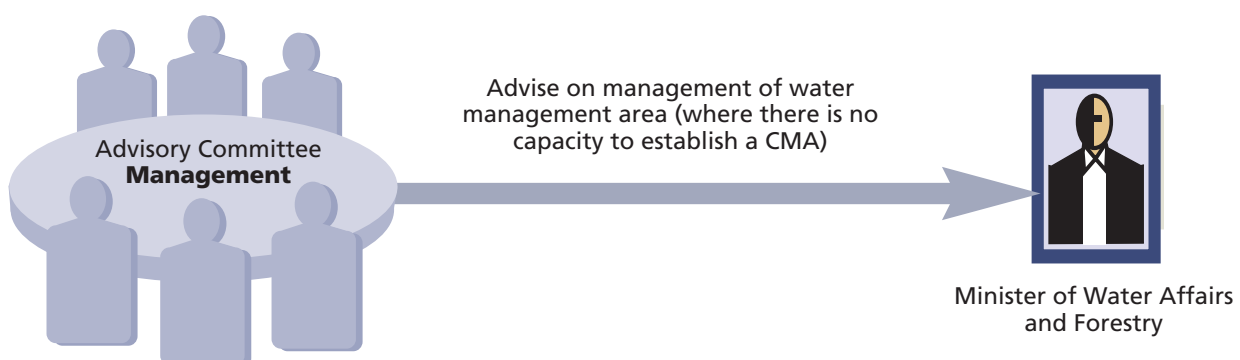
Advisory Committee: Process

An 'Advisory Committee: Process' may be established to develop the necessary capacity towards establishing a CMA. This is particularly the case where there is limited capacity to establish a CMA. This type of advisory committee would guide and oversee the participation and establishment process.



Advisory Committee: Management

An advisory committee for management may be formed to advise the Minister through the Department of Water Affairs and Forestry on the management of a water management area. This type of committee would be established where the necessary capacity or resources do not yet exist to establish the CMA.



The Governing Board of a CMA

A Board will govern and provide strategic direction to the CMA. The Governing Board must reflect all the various stakeholders and water users in the water management area. The Governing Board should also reflect the following:

- n gender representation
- n demographic representation
- n representation of disadvantaged persons and communities which have been in the past been prejudiced by racial and gender discrimination in relation to access to water.

The Board of a CMA should be constituted so that the interests of the various stakeholders are represented in a balanced manner, and to ensure the necessary expertise for the Board to operate effectively.

The Act regulates the functioning of the board.

How is the CMA Governing Board appointed?

Members of the Governing Board can be elected or nominated by the different water user groups for appointment by the Minister. The Minister may of his or her own accord appoint further members.

Before the Minister can appoint members to the Governing Board, the Minister must receive recommendations from the Advisory Committee: Governing Board concerning:

- 3 the number of members that should be appointed
- 3 which organs of state should be represented on the board, and
- 3 what other bodies representing different user sectors should be represented on the board (invited to nominate members).

The task of the Advisory Committee: Governing Board is to consult all stakeholders, including the relevant organs of state and interest groups, on who should be nominated to the CMA Governing Board. Only after it has consulted all stakeholders can it make its recommendations to the Minister.

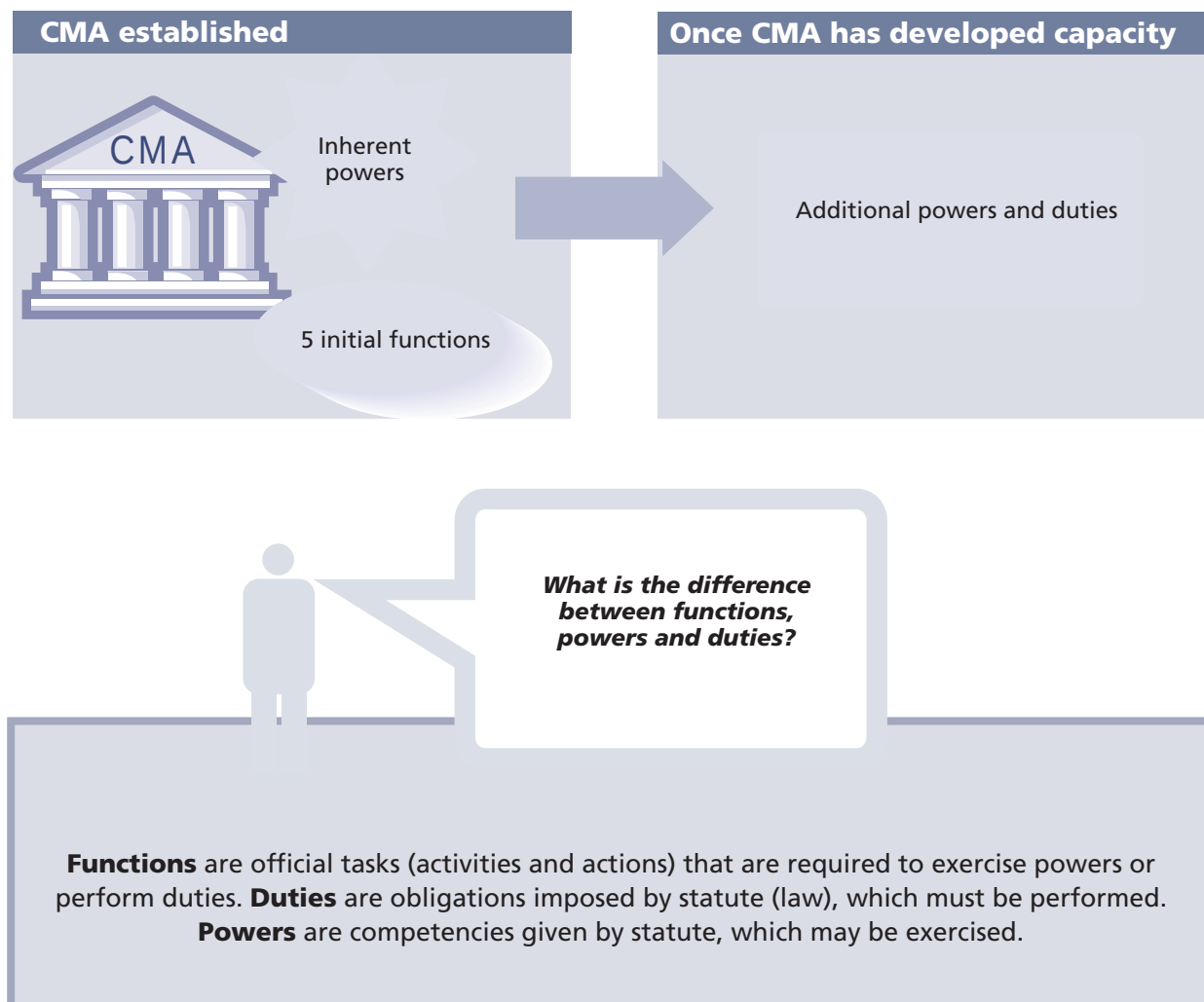
After receiving the Advisory Committee's recommendations the Minister decides which organs of state and which bodies will be invited to nominate representatives to the Governing Board, and how many representatives may be nominated.

When the Minister appoints the Board a balance must be achieved among the interests of water users, potential water users, local and provincial government and environmental interest groups. The Minister may also determine the extent to which municipalities will be represented on the Board. In addition the Minister may remove Board members for good reason.

What are the roles and responsibilities of a CMA?

A CMA manages water resources within its water management area.

The Act provides that when a CMA is established it has '*inherent powers*' and five *initial functions*. In addition, there are a wide range of additional powers and duties that may be delegated or assigned to a CMA by the Minister.



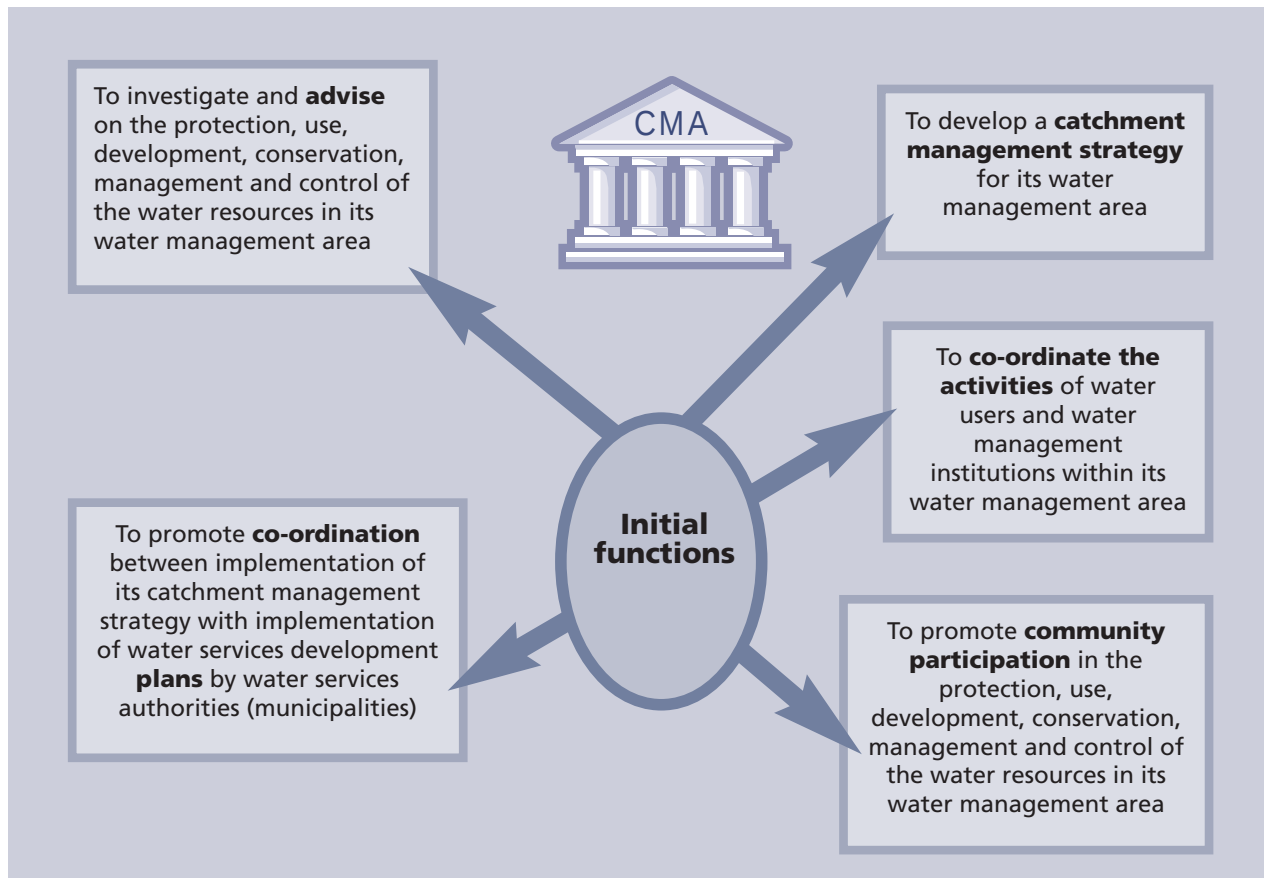
What are the inherent powers of a CMA?

A CMA has the powers of a natural person of full capacity (sound mind, etc.), except those powers, which can only be that of a natural person or are inconsistent with the Act. This means that a CMA can do all the things an individual can do, such as open a bank account, enter into contracts for supplies and borrowing money.

The Act regulates the management and institutional planning of a CMA and amongst other activities requires a CMA to submit business plans and annual reports.

Initial functions

When a CMA is established it has the following initial functions:



In performing its functions, a CMA needs to:

- 3 redress the results of past racial and gender discrimination;
- 3 achieve equitable access to water resources;
- 3 achieve co-operation and consensus in the management of its water resources; and
- 3 act prudently in financial matters.

Development of a catchment management strategy

A CMA must progressively develop a **catchment management strategy** for the water resources within its water management area. The catchment management strategy must include a water allocation plan.

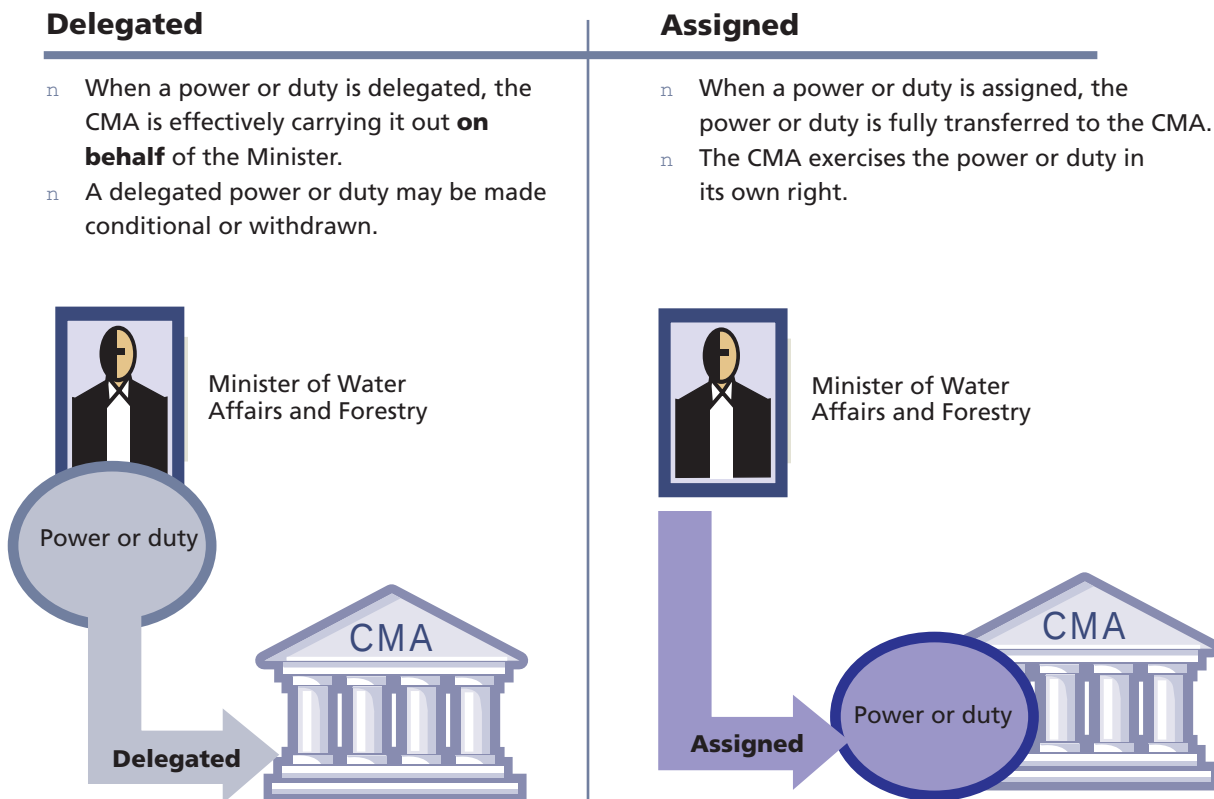
A catchment management strategy must:

- 3 set principles for allocating water to existing and prospective users;
- 3 take into account all matters in terms of the protection, use, development, conservation, management and control of water resources;
- 3 be in harmony with the national water resources strategy; and
- 3 be reviewed every 5 years.

- n In developing a catchment management strategy the CMA must consult all stakeholders within its water management area.
- n Once the catchment management strategy is developed, a notice is published in the *Government Gazette*, which provides a summary of the catchment management strategy and invites comments.
- n The catchment management strategy must go through a public consultation process and must be approved by the Minister before it can be 'established'.

Additional powers and duties

CMAs can acquire a range of additional powers and duties. These powers and duties are either **delegated** or **assigned** to the CMA by the Minister.

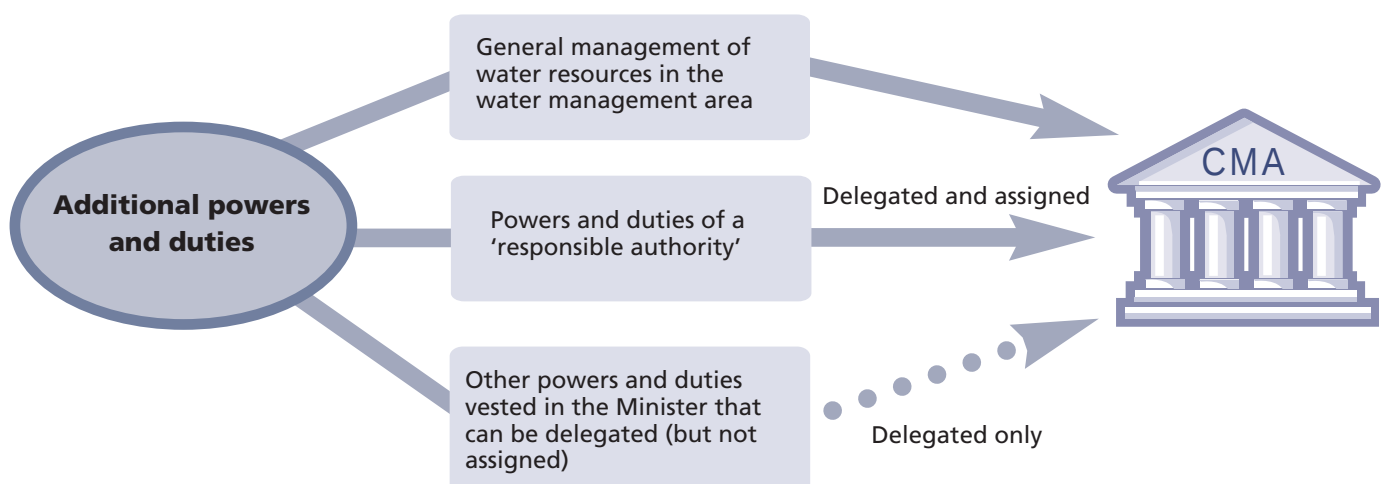


Conditions can be attached to a delegation or assignment.

It is likely that powers and duties will first be delegated. Assignment may follow once a CMA has demonstrated it can effectively carry out the relevant power or duty.

What additional powers and functions can a CMA obtain?

There are three categories of powers and duties that can be delegated or assigned to a CMA. These are:



General management of water resources powers and functions

The following additional powers and duties described in Schedule 3 of the Act may be assigned or delegated to CMAs:

- 3 Power to manage, monitor, conserve and protect water resources and to implement catchment management strategies
- 3 Establishing rules to regulate water use
- 3 Require establishment of management systems by water users
- 3 Require alterations to waterworks
- 3 Temporarily control, limit or prohibit use of water during periods of water shortage.

If these powers and duties are not assigned by the Minister to the CMA they continue to vest in the Minister. In other words the Minister continues to exercise these powers and duties. It is however the intention that all the powers and duties in Schedule 3 will ultimately be assigned and delegated to CMAs.

In assigning any power or duty the Minister may:

- n limit the area within which an assigned power may be exercised or a duty may be performed, and
- n attach conditions to the assignment.

Before assigning a power or duty to a CMA, the Minister must consider the capacity of the CMA to exercise the power or perform the duty. The Minister must also consider the desirability of assigning that power or duty to the CMA.

Water use and allocation powers and duties : responsible authority

The Minister may also assign to a CMA certain powers or duties in terms of water uses and the allocation of water. This makes the CMA a responsible authority.

POWERS AND DUTIES OF A RESPONSIBLE AUTHORITY

The powers and duties of a responsible authority are as follows:

- 3 Issue general authorisations and licences for water use subject to conditions
- 3 Extend the licence period under certain conditions
- 3 Review licences (at periods stated in the licence and make amendments to the licence conditions or renew the licence)
- 3 Waive the need for a licence if the water use is authorised under another law
- 3 Promote 'one stop shop' licensing
- 3 Require licence applicants to provide security for licence obligations
- 3 Require registration of existing lawful water uses
- 3 Require an existing water user to apply to verify its water use
- 3 Undertake compulsory licensing where there is water stress
- 3 Suspend or withdraw entitlements to use water
- 3 Enforce licence conditions.

Only the Minister (DWAF on behalf of the Minister) or a CMA can be a responsible authority

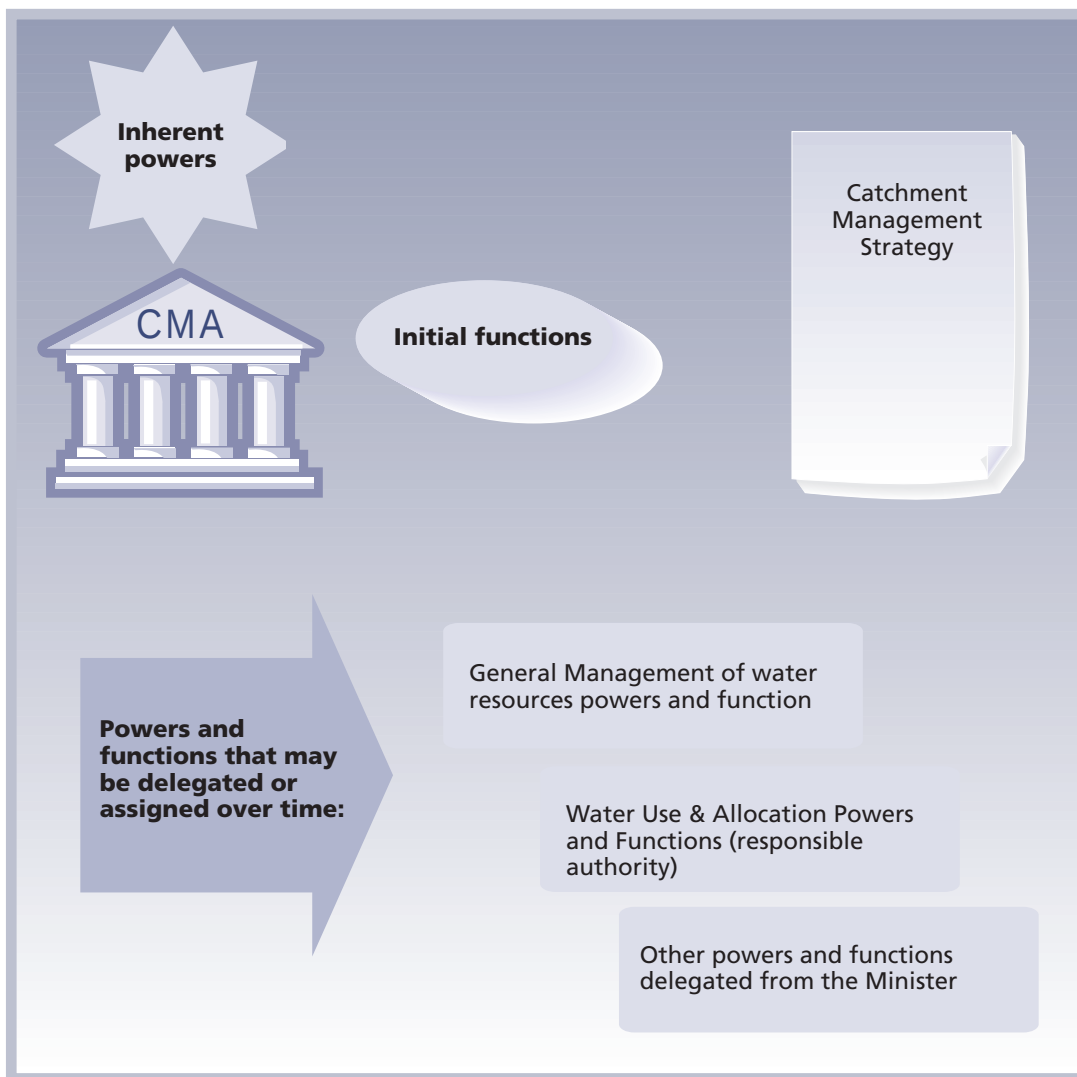
CMA's are only likely to be given the power to license water use once they have:

- n an approved catchment management strategy in place
- n established sufficient technical expertise to adequately assess applications, and
- n have operational administrative and information systems.

Other powers and duties which may be delegated to CMAs

The Minister may delegate to a CMA and /or a range of other bodies, many of the other powers and duties vested in the Minister. This would include, for example, the power to oversee the activities of a WUA.

Summary of CMA functions, powers and duties



Powers and duties the Minister may not delegate

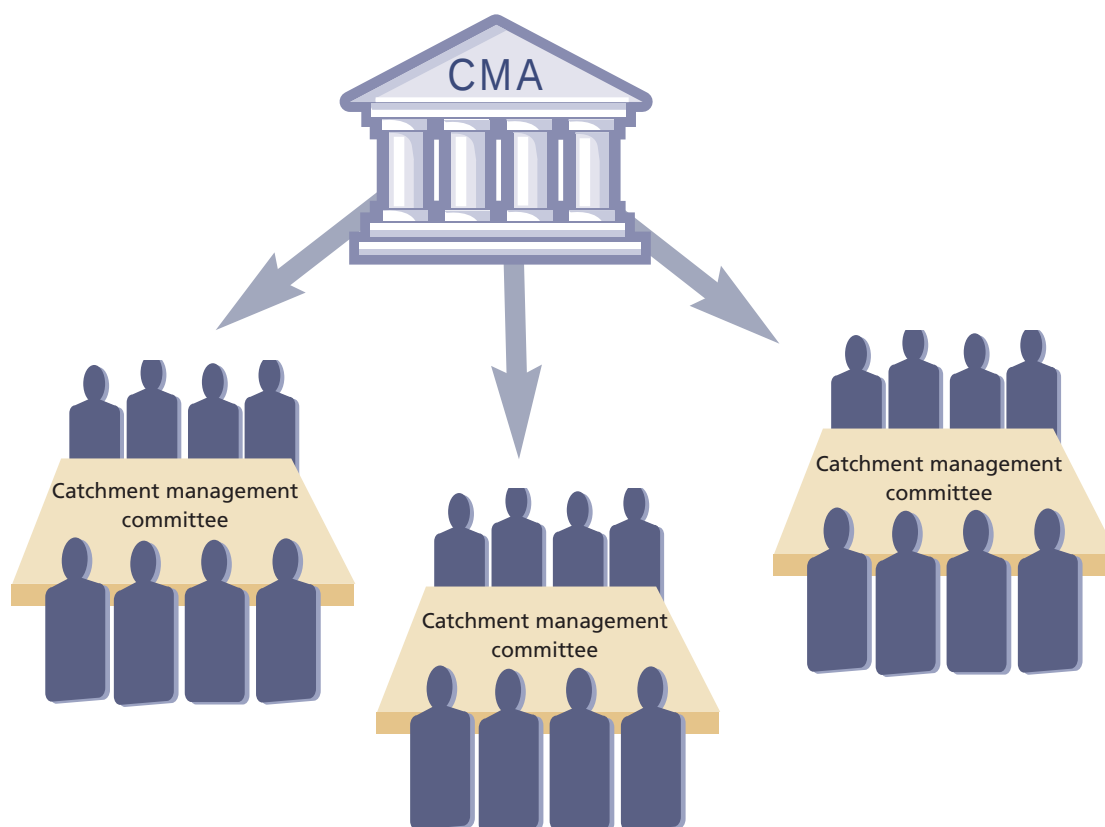
The Minister may not delegate the following powers:

- n Power to make a regulation
- n Power to authorise a water management institution to expropriate
- n Power to appoint the Governing Board of a CMA, or
- n Power to appoint a member of the Water Tribunal.

Bodies that can support a CMA with its functions

Catchment Management Committees

The National Water Act provides for the formal establishment of committees by a CMA or the Minister acting as a CMA. These committees which are statutory committees have become known as 'catchment management committees' although in the National Water Act they are simply referred to as 'committees'.



What is the purpose of these committees?

The purpose of these committees can either be:

- 3 an advisory role (consultative body), or
- 3 to actually perform certain functions of the CMA within a specified area (executive type committee).

When the CMA establishes a committee it must determine how the committee will function.

A catchment management committee provides a mechanism for the CMA to increase its technical management capacity and/or broaden stakeholder representation. It further provides a mechanism for communication, co-operation and decision making between stakeholders and the CMA governing board.

- n Catchment management committees should have representation from the CMA governing board and/or CMA staff, but may include other specialists and stakeholders. The composition of a catchment management committee will depend upon whether it is established as an advisory body or as a body to take on specific functions (executive in nature).
- n A catchment management committee may be geographically and/or functionally based. For example, it may focus on a specific water resources management problem, or it may focus on a specific geographical area within the water management area.

- n The types of activities that a catchment management committee may undertake include:
 - n making recommendations on water use authorisation
 - n monitoring water resources and water use
 - n implementing local water resources management projects, and
 - n mobilising people and resources.
- n If a catchment management committee consists of non-CMA board or staff members, the Minister must approve the delegation of functions to committee.

Catchment forums

As mentioned earlier in this guide, whilst not provided for in the National Water Act, catchment forums have already been established in many areas to *initiate the participation process for the establishment of a CMA*.

Purpose beyond participatory role in establishing a CMA

Apart from initiating participation in the establishment of a CMA, catchment forums provide an *institutional mechanism to facilitate ongoing participation* of stakeholders with diverse interests. A catchment forum gains its strength from the stakeholders it represents, rather than statutory powers. A key purpose of a catchment forum is to enable the public (anyone) to participate meaningfully in water resources management. They also provide an important platform for stakeholders to share their views and to communicate with the CMA. The ongoing role of catchment forums is as important, if not more important, than their role during the CMA establishment process.

Once a CMA is established, a catchment forum can play two roles:

- 3 promote integrated planning and co-operative resource management between organs of state and other role players; and
- 3 support water resources management and the operations of the CMA, by performing activities and implementing projects.

Participating parties should ideally fund their formalised catchment forums.

How does a catchment forum support a CMA?

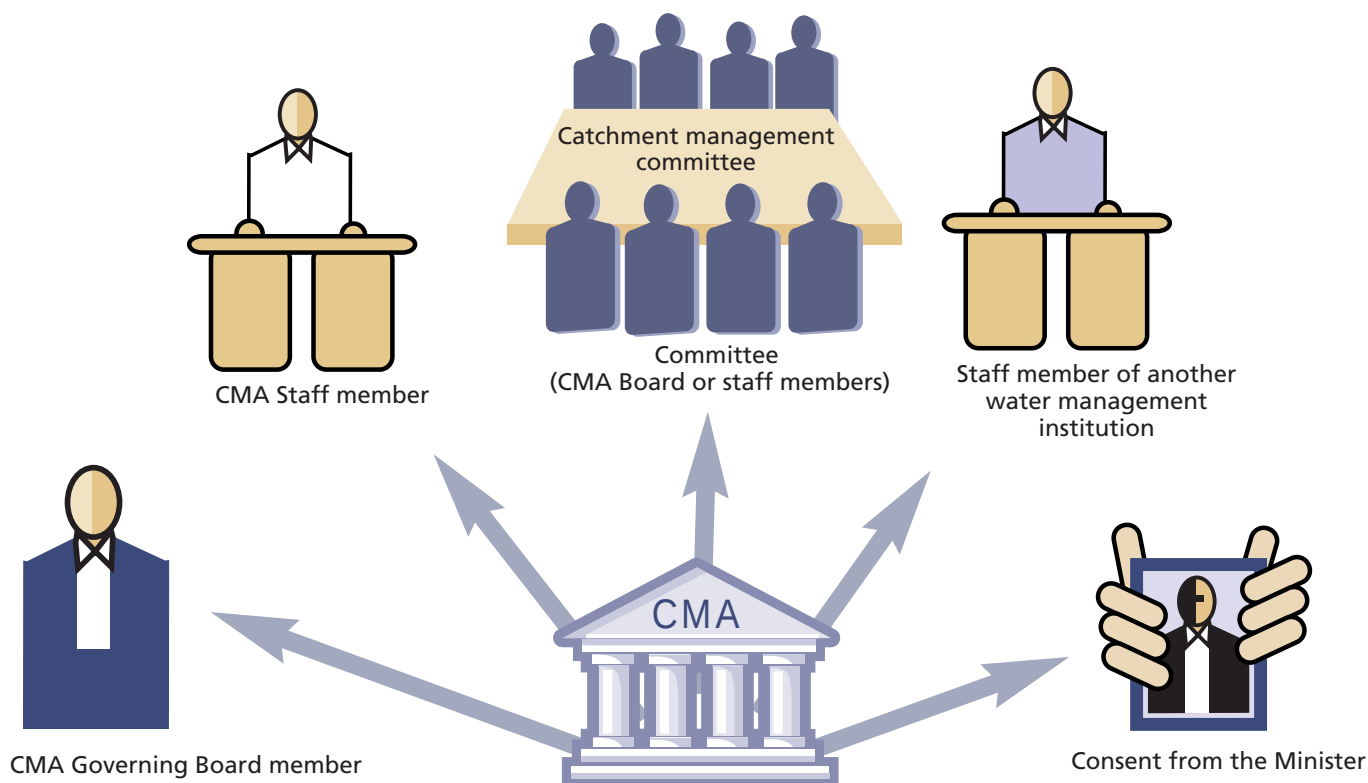
A catchment forum supports a CMA through performing one or more of the following roles:

- 3 **Consultation for water resources management:** A catchment forum is most commonly established as a vehicle for consultation around water resources management issues. It is the primary interface between the CMA and the body of stakeholders. All catchment forums (including those with the roles described below) should have a consultative-advisory role.
- 3 **Institutional co-ordination:** Since catchment forums involve stakeholders from a variety of sectoral backgrounds they may be required to engage in issues that are outside the mandate of water resources management. For example they can play a co-ordinating role, or promote integrated planning and management (in support of integrated water resources management) through addressing other issues such as water services, waste management, integrated environmental management and land development. This role is likely to have a broad resources management focus as well as involving CMA activities. It could also involve associated activities of other sectors.

To whom can a CMA delegate its powers?

A CMA can delegate powers to:

- n a member of its Governing Board
- n an employee of the CMA
- n an employee of any other water management institution
- n any committee established by the CMA that consists of only of Board members or employees of the CMA
- n any person or body with the written consent of the Minister



What powers can a CMA delegate?

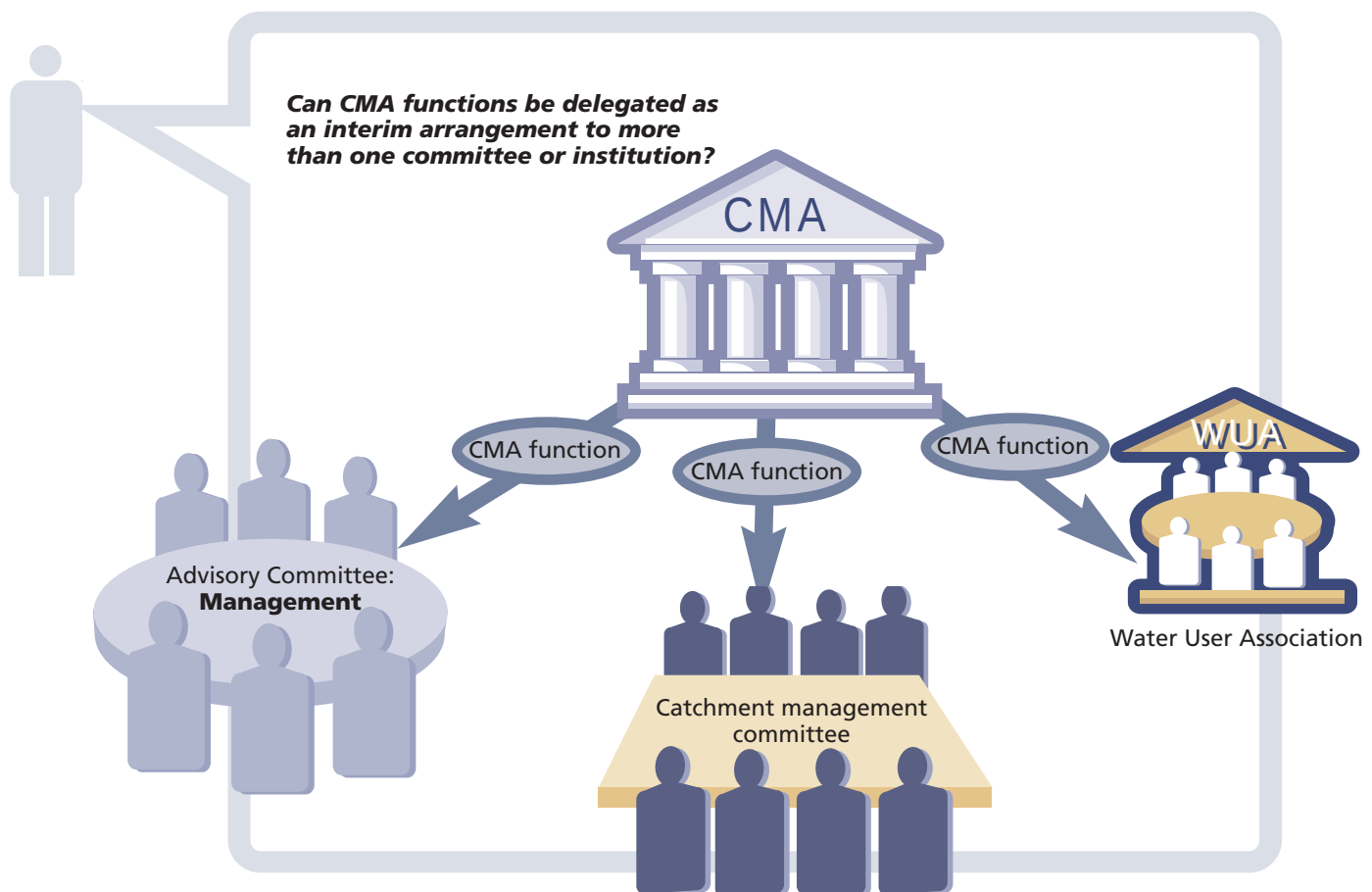
A CMA can delegate *any power* except:

- n the power to delegate (in other words the body to whom a CMA delegates a power cannot delegate that power to someone else) and
- n the power to impose user charges
- n the power to authorise water use (unless this power is delegated to a committee consisting of three or more members of the CMA's Governing Board).

Who is accountable for CMA duties that are delegated or assigned to another body?

If a CMA **delegates** a power or duty to another body or institution, the **CMA remains accountable** for the performance of the duty or exercising of the power. However, if a CMA **assigns** a power or duty, the institution or **body to which these are assigned is accountable**.

If a CMA has delegated any of its powers or duties to another water management institution or body, it can also **allocate funding** to that institution or body so that it can fulfil the power or duty.



Different functions can be delegated to different committees or water management institutions or water services institutions, but it is preferable to delegate to one or other institution to ensure that the interim management arrangements do not become too complicated. It is also important that delegating functions to committees or other institutions does not undermine the establishment of the CMA.

How is a CMA funded?

A CMA can be funded from:

- n water use charges made in its water management area, in terms of the pricing strategy, or
- n money from any other lawful source such as grants, loans and so on, or
- n money appropriated by Parliament.

A catchment management agency may also raise the funds that it requires to exercise its powers and to carry out its duties in terms of the National Water Act.

Can a CMA recover costs?

Charges within a specific water management area may be made by the relevant CMA and are payable to that CMA. These charges are called water use charges. Water use charges would consist of a *water resources management charge* and a *water resources development and use charge*. Water use charges must be in accordance with the pricing strategy for water use charges set by the Minister.

The Minister may direct a CMA to recover charges for water use from water users within its water management area. In such cases the CMA may retain a portion of the charges recovered to compensate the CMA for its expenses and losses.

Powers of the Minister in terms of CMAs

Directives

The Minister may in certain circumstances intervene in the functioning of a CMA by directing it to take a certain action or actions. Funds that the CMA is entitled to may also be withheld until it has complied with the directive.

If the CMA fails to comply with a directive, the Minister may take over its functions until the matter that gave rise to the issuing of the directive has been addressed.

Regulations

The Minister may make regulations relating to CMAs. Such regulations can prescribe the following:

- 3 The maximum and minimum number of members of a Governing Board;
- 3 Require the establishment of consultative forums and determine their composition and functions;
- 3 Determine, in consultation with the Minister of Finance, the basis and extent of remuneration and payment of expenses of members of Governing Boards and committees; or
- 3 Regulate any other matter, which is necessary or desirable for the efficient functioning of catchment management agencies and their governing boards and committees.

When may the Minister disestablish a CMA?

The Minister may disestablish a CMA:

- n for purposes of reorganising water management institutions in that area in the interests of effective water resources management;
- n because the catchment management agency cannot or does not operate effectively; or
- n because there is no longer a need for the catchment management agency.

The Minister may only disestablish a CMA after:

- 3 publishing information on the proposed disestablishment
 - 3 inviting comments to the proposed disestablishment
 - 3 considering all comments received.
-

PART 3

WATER USER ASSOCIATIONS (WUAs)

What is a water user association?



A WUA is a statutory body established by the Minister under the National Water Act. A WUA is a co-operative association of individual water users who wish to undertake water-related activities for their mutual benefit. A management committee governs a WUA.

What is the purpose of a WUA?

The purpose of a WUA is to enable people within a community to pool their resources (money, human resources and expertise) to more effectively carry out water-related activities. Through a WUA members can benefit from addressing their local needs and priorities.

WUAs operate at a restricted localised level. WUAs can provide a mechanism through which the catchment management strategy can be implemented at local level. WUAs also have an important role to play in terms of poverty eradication and providing food security.

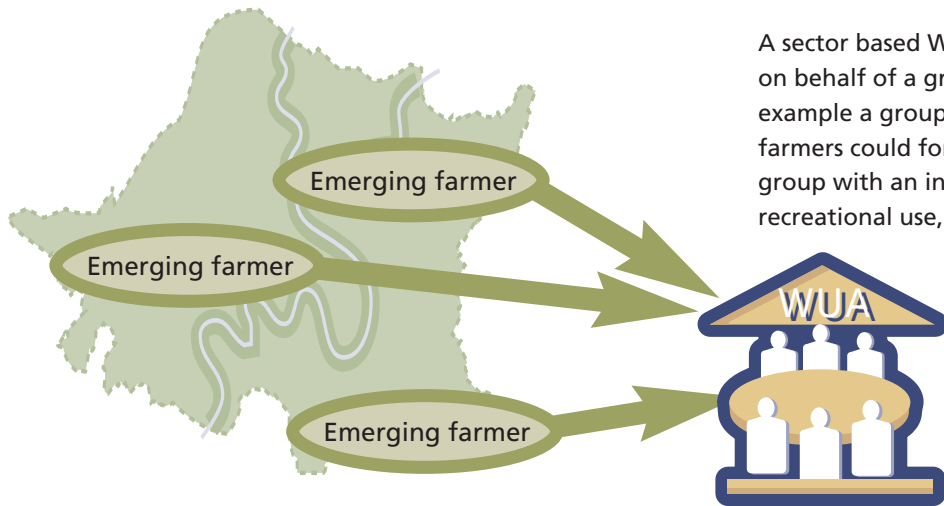
Legal status of a WUA

- n A WUA is a body corporate and has the powers of a natural person of full capacity, except those powers, which can only attach to natural persons or are inconsistent with the National Water Act. This means that a WUA can do all the things an individual may do, such as open a bank account, enter into contracts for supplies and borrowing money. A WUA can sue or be sued by another party.
- n The National Water Act and the constitution of a WUA regulate its management and institutional functioning.

Different types of WUAs

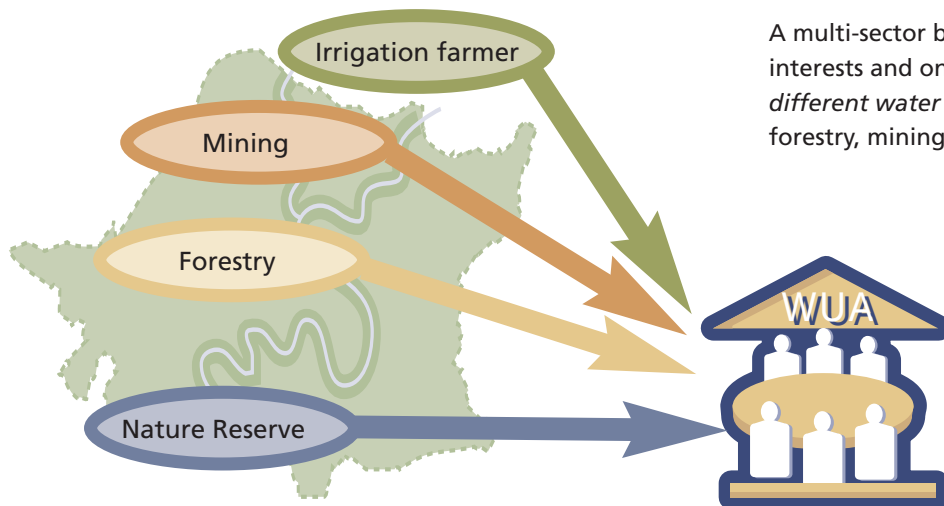
The Act provides for the establishment of WUAs for any form of water use as described in the Act. However, there are two distinct types of WUAs that may be established, namely, a sectoral WUA and a multi-sectoral WUA.

Sector based WUA



A sector based WUA acts in the interests and on behalf of a group of *similar users*. For example a group of emerging irrigation farmers could form a sector based WUA, or a group with an interest in controlling recreational use, and so on.

Multi-sector based WUA



A multi-sector based WUA acts in the interests and on behalf of a *combination of different water users*, such as conservation, forestry, mining, and irrigation collectively.

Interest is most likely to be shown in the establishment of WUAs for four main purposes (although there may be others):

- 3 the taking and using of water for irrigation purposes on a commercial or subsistence scale
- 3 stream flow reduction activities (such as forestry)
- 3 the treatment and disposal of effluent and waste
- 3 to control the use of water for recreational and/or environmental purposes.

How is a WUA established?

A WUA is established by the Minister according to procedures set out in the National Water Act.

Either the Minister or stakeholders may initiate the process to establish a WUA.

When is the Minister likely to initiate establishment?

The circumstances where the Minister may initiate the establishment of a WUA are not stated in the Act. However, the Minister is likely to initiate the establishment process where the WUA would be *in the public interest*. The box below outlines examples that would be in the public interest.

Local control of a government scheme

The Minister may wish to devolve the operation, maintenance and control of a government scheme to a local community. This is particularly likely when the scheme has been built for the benefit of the community concerned and can be effectively managed by an appropriate WUA.

Support of emerging farmers

The Minister may wish to support initiatives by other government departments in terms of the settlement of emerging farmers or the development of subsistence farming projects.

Promote co-ordinated development of a resource

Where uncoordinated development of a particular resource is taking place, the Minister may decide to establish a WUA as a means of providing better control and avoiding potential conflict.

Public consultation

- n A WUA is established after public consultation has taken place.
- n If the Minister undertakes the public consultation, the costs of this consultation can be recovered from the WUA once it is established.
- n A WUA for a particular purpose would usually be established following a proposal to the Minister by the interested parties.
- n The Minister may require the person or parties that submit the proposal to pay the costs for public consultation in advance.

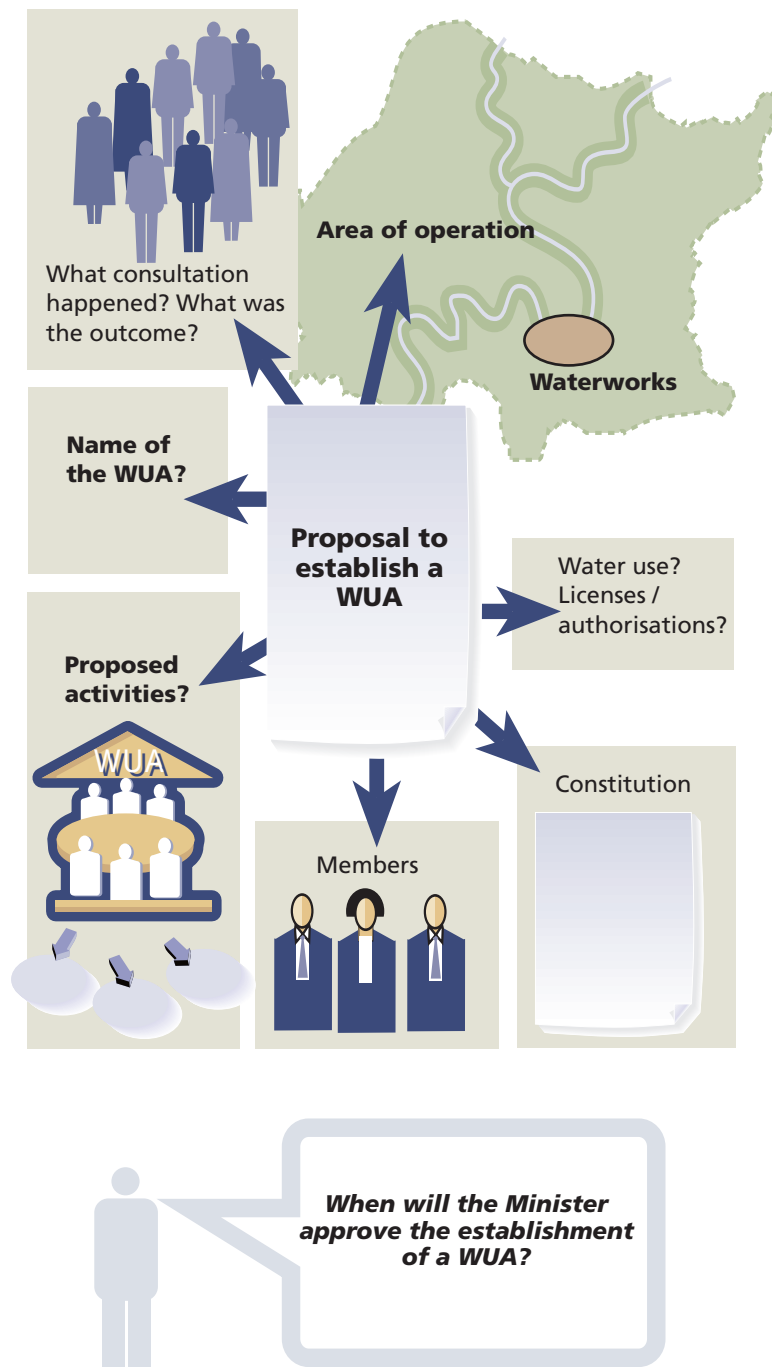
Proposal for establishment of a water user association

- n Any category or group of water users may submit a proposal to the Minister for the establishment of a WUA.
- n The Director-General of the Department of Water Affairs and Forestry may assist water users to develop a proposal.

What must be covered in the proposal?

The proposal must address all the issues that are listed in the Act:

- 3 the reasons for making the proposal
- 3 the proposed name of the association
- 3 the proposed area of operation for the association
- 3 the proposed activities of the association
- 3 where relevant, a description of existing or proposed water works within the proposed area of operation
- 3 a description of the water use licences or authorisations that the proposed members hold or that they intend to apply for
- 3 the proposed constitution of the association
- 3 a description of how the proposed constitution will differ from the example (model constitution) contained in the Act
- 3 a list of the proposed members or categories of members of the association
- 3 a description of what consultation has taken place to develop the proposal and the outcome of that consultation.



The Minister will approve the establishment of a WUA if the WUA promotes the objectives set out under the **Purpose of the National Water Act**. These objectives include factors such as:

- 3 protection, use, development, conservation, management and control of the nations water resources
- 3 meeting basic human needs of present and future generations
- 3 promoting equity; efficient, sustainable and beneficial use of water
- 3 social and economic development, and
- 3 protecting aquatic ecosystems.

The proposal to establish a WUA should also be consistent with the Catchment Management Strategy of the CMA.

One of the issues to be included in the proposal is the proposed constitution of the WUA.

Constitution of a WUA

The National Water Act outlines all the matters that must be addressed in the constitution of a WUA. The Act (Schedule 5) also includes a model constitution that may be used as the basis for drafting a constitution.

Below is an outline of issues that the WUA constitution must address:



CONSTITUTION OF WATER USER ASSOCIATION

Name of Association

Objects of the Association

Principal functions of the Association

Ancillary functions of Associations

Founding members

Membership of the Association

- n procedures and requirements for admitting new members to the association
- n voting powers of members
- n procedures for terminating membership

Nomination of and voting for members of Management Committee

- n procedures for electing the management committee

Appointment of employees

- n procedures for appointing employees of the association

Raising of loans

- n procedures for obtaining loans

Charges and the recovery of charges

- n financial obligations of members towards the association

Annual Report

Winding up

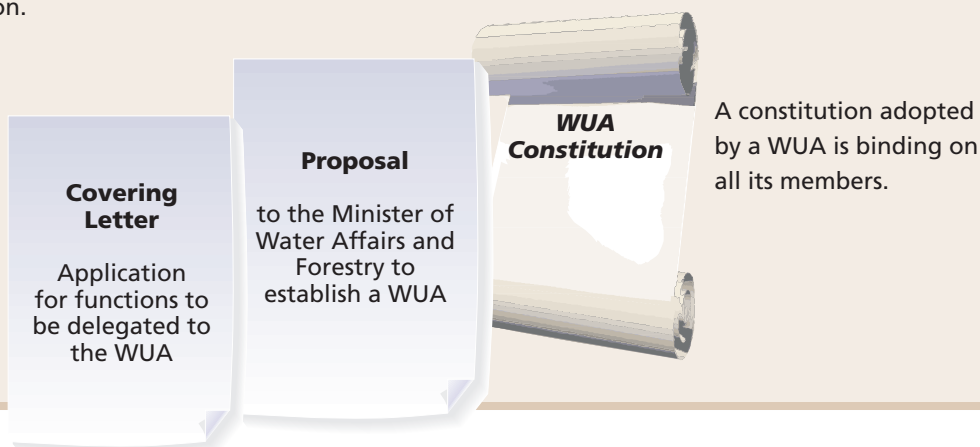
Annexures:

- 3 LIST OF FOUNDING MEMBERS
- 3 LIST OF MEMBERS
- 3 DESCRIPTION OF SUB-AREAS AND REPRESENTATION IN MANAGEMENT
- 3 COMMITTEE

Applying for functions for a WUA

Whilst the WUA's draft constitution may include a number of functions for the WUA, this does not mean that the WUA will automatically have these functions when it is established.

Those applying to establish a WUA must, as part of the establishment procedure, formally *apply for the functions* to be delegated to the WUA. This can be done in a covering letter when submitting a proposal for consideration.



The Minister may require that additional provisions be included in the constitution of a WUA. These provisions must be adopted by the members of the association and approved by the Minister before the WUA can exercise any powers or perform any duties.

What support will the Minister provide for establishing a WUA?

The Director-General of the Department of Water Affairs and Forestry will provide support to:

- 3 individuals seeking guidance on the development of a proposal to establish a WUA in terms of:
 - n defining the area of operation
 - n determining the nature and extent of water resources to be controlled, and
 - n the powers and functions which will need to be delegated to the WUA.
- 3 communities lacking the ability to organise and develop the required institutional arrangements.
In particular, assistance is likely to be provided where a development (like the establishment of emerging farmers) needs to be promoted through the establishment of a WUA.

Transformation of irrigation boards

All irrigation boards and subterranean water control boards that existed prior to the commencement of the Act must be transformed into WUAs. Certain water boards established in terms of the former Water Act for stock watering purposes will also be transformed into WUAs.

In essence transformation of irrigation boards means that they should reform their operational area and management structure to be more representative of the demographics of the area, in terms of race and gender.

Why transform?

South Africa has a history of inequitable access to resources. Transformation is one of the mechanisms to achieve equity. The Minister has issued guidelines concerning the composition of the management committee of a transformed irrigation board.

How is a WUA funded?

The ability of a WUA to fund itself is vital to its existence. The establishment of a WUA is only possible if members are able to pay for the administrative costs of the WUA as well as the operation and maintenance costs of any capital works associated with the WUA. A WUA is therefore normally funded through charges levied on its members called '**water use charges**'. Other potential sources of funding include:

- 3 the proceeds from operating waterworks,
- 3 direct financial assistance from the Department of Water Affairs and Forestry or from a CMA
- 3 other sources that meet the requirements of the Act such as aid programmes or sponsorship funding.

A WUA may annually assess charges on its members if its constitution provides for this. These charges must be according to the pricing strategy for water use set by the Minister.

The Minister may also provide financial assistance to a WUA for the purposes of achieving the objectives of the National Water Act (subject to regulations made under the Act).

The Department has developed a policy for providing financial assistance to existing or new irrigators of historically disadvantaged groups who are members of a WUA.

Before giving any financial assistance, the Minister must take into account the following:

- 3 the need for equity;
- 3 the need for transparency;
- 3 the need for redressing the results of past racial and gender discrimination;
- 3 the purpose of the financial assistance;
- 3 the financial position of the recipient; and
- 3 the need for water resources protection.

Accountability of a WUA

The constitution of a WUA must provide for the appointment of a **Management Committee** as well as a Chairperson and Deputy Chairperson.

The Management Committee is directly accountable to the WUA members. The WUA is more broadly accountable to the Minister. If the Minister delegates the overseeing of the operation of a WUA to a CMA, the WUA will be accountable to the CMA.

What are the roles and responsibilities of a WUA?

The functions of a WUA depend on its approved constitution.

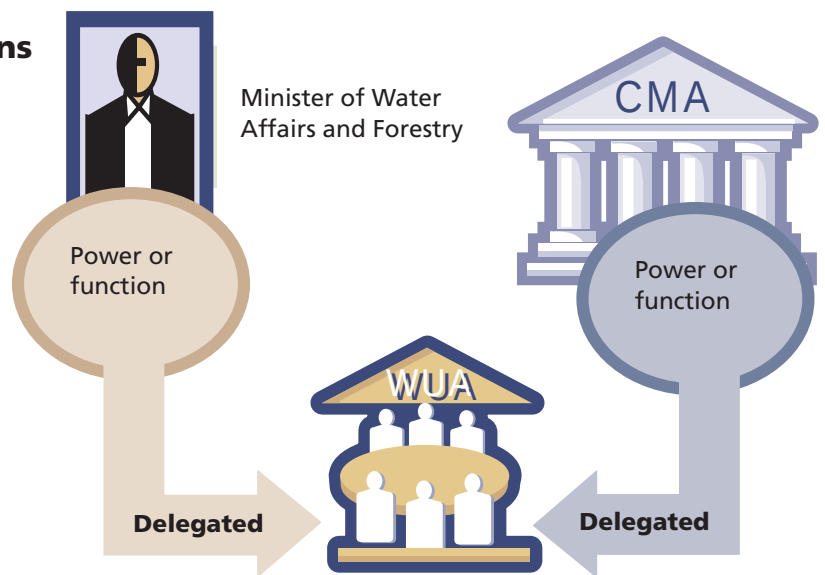
The constitution of a WUA can provide for the following functions to be performed by the WUA:

- 3 To prevent water from any water resources being wasted.
- 3 To protect water resources.
- 3 To prevent any unlawful water use.
- 3 To remove or arrange to remove any obstruction unlawfully placed in a watercourse.
- 3 To prevent any unlawful act likely to reduce the quality of water in any water resources.
- 3 To exercise general supervision over water resources.
- 3 To regulate the flow of any watercourse by:
 - clearing its channel;
 - reducing the risk of damage to the land in the event of floods; and
 - changing a watercourse back to its previous course where it has been altered through natural causes.

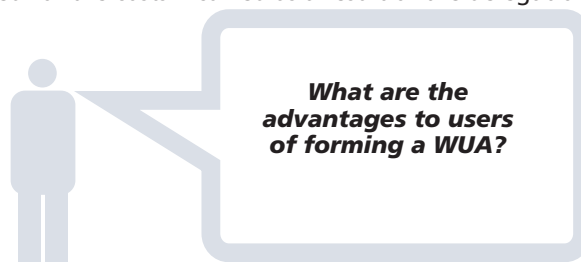
- 3 To investigate and record:
 - the quantity of water at different levels of flow in a watercourse;
 - the times when; and
 - the places where water may be used by any person entitled to use water from a water resources.
- 3 To construct, purchase or otherwise acquire, control, operate and maintain waterworks considered to be necessary for:
 - draining land; and
 - supplying water to land for irrigation or other purposes.
- 3 To supervise and regulate the distribution and use of water from a water resources according to the relevant water use entitlements, by erecting and maintaining devices for:
 - measuring and dividing; or
 - controlling the diversion of the flow of water.

Additional powers and functions

WUAs may be delegated additional powers and functions by the CMA or the Minister.



The WUA must be compensated for the costs incurred as a result of the delegation of additional powers and functions.



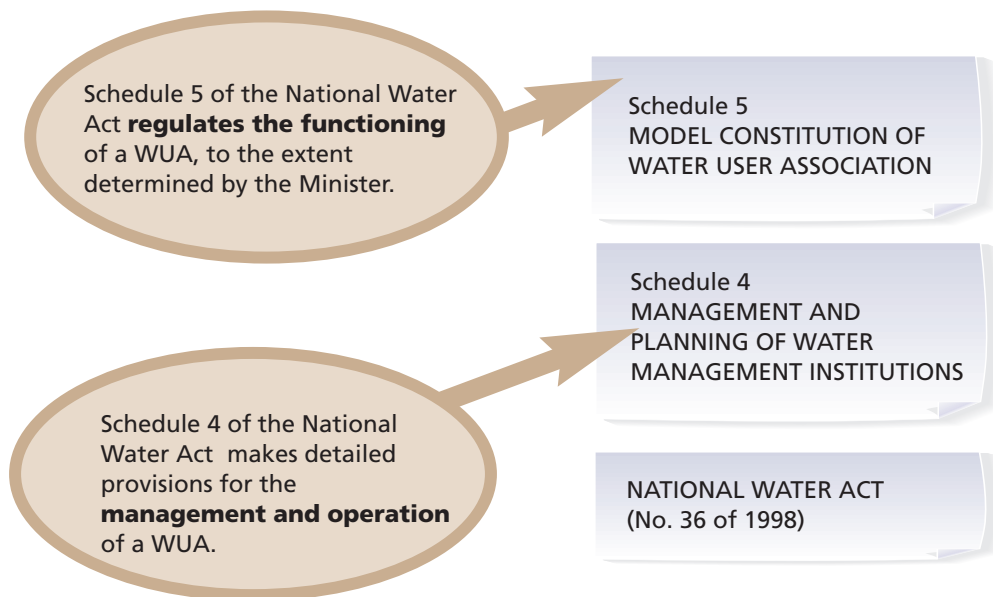
The advantage to users of a WUA will depend upon the purpose for which the WUA is established.

In the case of irrigation schemes for commercial or emerging farmers, establishing a WUA makes it possible to establish joint works on an economic scale which are shared by members. The development of individual small-scale works is normally not financially viable.

In the case of WUAs established for control over recreational use, the benefit is that a single body assumes responsibility for the use of a particular water resource for recreational purposes. This allows the WUA to undertake the necessary co-ordination and to balance the interests of different users in order to avoid conflict.

When a group wants to establish a WSA for a particular water use, they must first establish whether the WUA will bring about sufficient advantages to the members. Membership of a WUA is voluntary, so if the WUA does not provide the necessary benefits, it will not be able to keep its members.

Management and operation of a WUA



Powers of the Minister in terms of WUAs

- n The Minister may, after consulting with a water user association, direct that a person be admitted as a member of the association on conditions that are fair and equitable.
- n In certain circumstances the Minister may intervene in the functioning of a WUA. The Minister does this by directing the WUA to take certain action/s. If the WUA does not comply with the directive, funding to which the WUA may have been entitled can be withheld until it has complied with the directive.
- n The Minister may terminate the office of a member of the management committee by issuing a notice to the WUA and the member concerned. In such cases the Minister can also arrange for the vacancy on the management committee to be filled.
- n If a WUA fails to comply with a directive, the Minister may take over its functions until the WUA complies with the directive. The Minister may also recover all costs incurred in taking over a function or functions for a period from the WUA.

Disestablishment of a WUA

The National Water Act states that the Minister may disestablish a WUA under certain conditions:

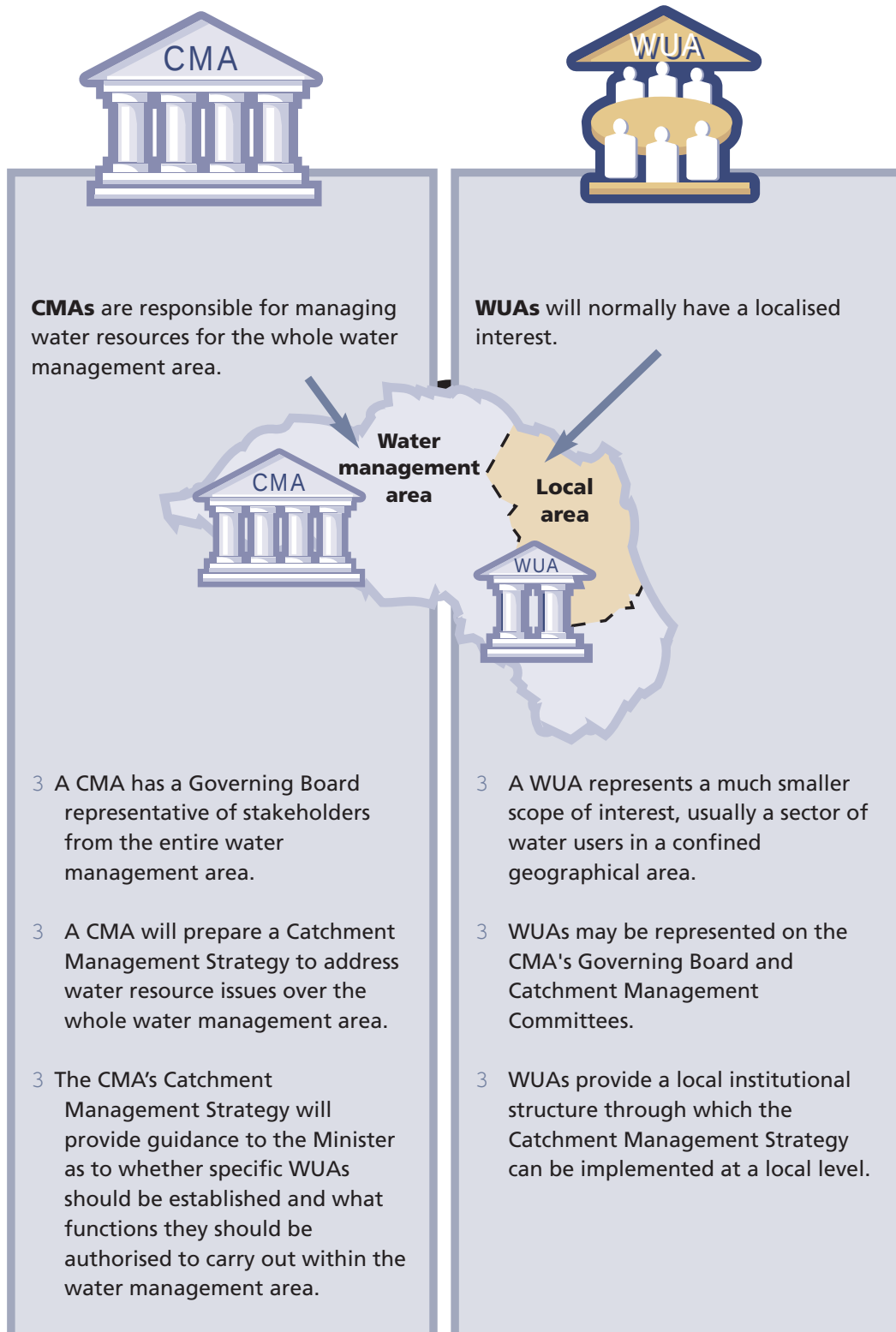
- n in circumstances provided for in the constitution of the association;
- n if the functions of the association are, by agreement with another water management institution, to be combined with, or taken over by that water management institution;
- n if it is in the best interests of the association or its members;
- n if an investigation of its affairs or financial position reveals that disestablishment is appropriate;
- n if the Minister has taken over a power or duty of the association as a result of dissensions among the management committee or its members; or
- n if the association is no longer active or effective.

The Minister may only disestablish a WUA after:

- 3 publishing information on the proposed disestablishment
- 3 inviting comments on the proposed disestablishment, and
- 3 after considering all comments received.



What is the difference between CMAs and WUAs?



PART 4

INTERNATIONAL WATER MANAGEMENT BODIES

What is an international water management body?

An international water management body is a body corporate and has the powers of a natural person of full capacity, except those powers, which can only attach to natural persons or are excluded by or inconsistent with the Act or the relevant international agreement.

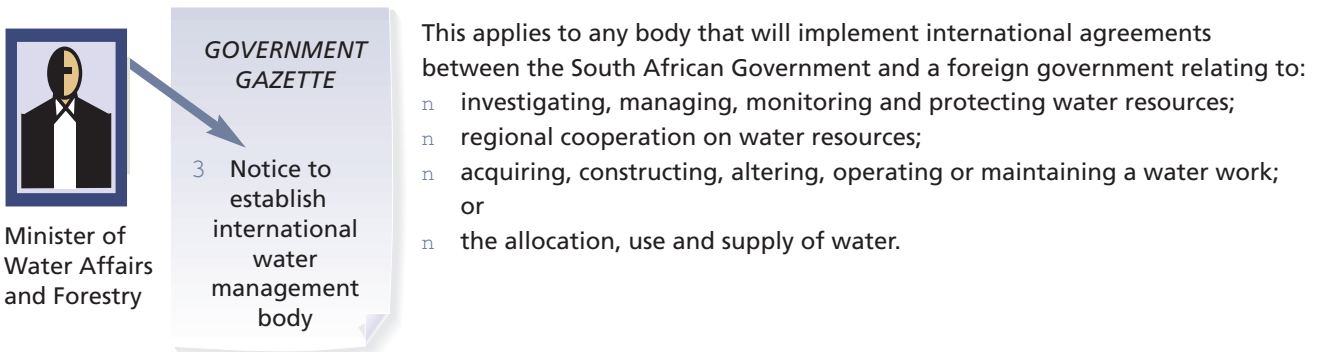
What is the purpose of an international water management body?

An international water management body is established to **implement international agreements** in terms of:

- 3 the management and development of water resources shared with neighbouring countries and
- 3 regional co-operation over water resources.

How is an international water management body established?

The Minister establishes an international water management body in consultation with the Cabinet. The Minister is required to publish a notice in the *Government Gazette* concerning the establishment of the proposed international body.



Notice to establish body to implement international agreement

The notice to establish an international water management body must provide the following details:

- 3 the governance of the body;
- 3 the functions of the body;
- 3 the financing of the body;
- 3 mechanisms for controlling and supervising the affairs of the body;
- 3 any items that apply to the body in terms of management and planning;
- 3 the disestablishment of the body and the winding-up of the body's affairs; and
- 3 any other matter necessary to give effect to the agreement.

The Trans-Caledon Tunnel Authority, the Komati Basin Water Authority established by an agreement with the Kingdom of Swaziland and the Vioolsdrift Noordoewer Joint Irrigation Authority established by an agreement with the Government of Namibia, (in terms of the Water Act, 1956, repealed by the National Water Act, 1998) are regarded as being bodies established as international water management bodies.

What are the roles and responsibilities of an international water management body?

The primary role of international water management bodies is to **implement international agreements**.

However, the Minister may direct an international water management body to perform **additional functions**. In such cases the Minister must ensure that the additional functions will not negatively affect the capacity of the body to perform the functions for which it was established. Additional functions may include (amongst others) the following:

- 3 management services;
- 3 financial services;
- 3 training; and
- 3 other support services.

An international water management body may perform its functions outside the Republic.

If an international water management body is given additional functions, it must manage and account for each of its functions separately. It must also apply accounting practices that are consistent with generally accepted accounting practices.

Accountability of an international water management body

An international water management body must report on the performance of its functions within three months after the end of its financial year (unless the international agreement requires otherwise). The report must be submitted to the Minister and any other parties as required by the international agreement. The Director-General of Water Affairs and Forestry must send a copy of the report to the Secretary of Parliament.

Powers of the Minister in terms of international water bodies

The Minister may appoint a person to investigate the affairs or financial position of an international water body if:

- a) the international agreement provides for such an investigation, or
- b) the parties to the agreement agree to an investigation.

The Minister may also give a directive to an international water body in relation to any of the body's powers or duties, including any power or duty assigned or delegated to that body.

PART 5

GENERAL

Additional Guidelines

- n The National Water Act
- n Establishing a Catchment Management Agency
- n The Catchment Management Agency as an Organisation
- n Establishing a Water User Association
- n Public Participation for Catchment Management Agencies and Water User Associations
- n Guide on the Transformation of Irrigation Boards and Certain Other Boards into Water User Associations
- n Policy on Support for Water Users Associations

These guidelines and further information on any of the water resources management institutions discussed in this guideline may be obtained from **www.dwaf.gov.za**

DWAF CONTACT DETAILS

Designation	Phone number	Fax	Postal Address
CHIEF DIRECTOR: Southern Cluster	043 604 5400	043 604 5595	Private Bag X 7485 King William's Town 5600
REGIONAL DIRECTOR: Eastern Cape (WRM)	043 604 5400	043 604 5595	Private Bag X 7485 King William's Town 5600
REGIONAL DIRECTOR: Western Cape	021 950 7100	021 946 2664	Private Bag X 16 Sanlamhof 7532
CHIEF DIRECTOR: Eastern Cluster	031 336 2700	031 304 9546	P.O. Box 1018 Durban 4000
REGIONAL DIRECTOR: KwaZulu-Natal (WRM)	031 336 2700	031 304 9546	P.O. Box 1018 Durban 4000
REGIONAL DIRECTOR: Umkomatie Water Management Area (Mpumalanga)	013 759 7300	013 755 7678	Private Bag X 11259 Nelspruit 1200
REGIONAL DIRECTOR: Olifant Water Management Area (Mpumalanga)	013 759 7300	013 755 1678	Private Bag X 11259 Nelspruit 1200
CHIEF DIRECTOR: Central Cluster	012 392 1477/8	012 392 1454	Private Bag X 313 Pretoria 0001
REGIONAL DIRECTOR: Free State	051 430 3134	051 430 8146	P.O.Box 528 Bloemfontein 9300
REGIONAL DIRECTOR: Gauteng	012 392 1300	012 392 1304	Private Bag X 995 Pretoria 0001
REGIONAL DIRECTOR: Northern Cape	053 831 4125	053 831 5682	Private Bag X 6101 Kimberley 8300
REGIONAL DIRECTOR: North West	018 392 1193/4	018 392 1193/4	Private Bag X 5 Mmabatho 2735
CHIEF DIRECTOR: Northern Cluster	015 295 9410 015 295 3217	015 295 9410	Private Bag X 9506 Pietersburg 0700
REGIONAL DIRECTOR: Limpopo Water Resource Management	015 295 9410	015 295 3217	Private Bag X 9506 Pietersburg 0700