



Strategic overview of the Water Services Regulatory Framework in South Africa

**DWAF/DEAT MEETING
DWAF OFFICES
PRETORIA
12 August 2008**



water & forestry

Department:
Water Affairs and Forestry
REPUBLIC OF SOUTH AFRICA



Purpose

- To give an overview of the Water Services Regulatory Framework in South Africa.



Introduction

- After three years we have reached common understanding on the need for Regulation in the water sector however we still differ on the Institutional Form/Model of the Regulator.
- Phase 1 almost complete awaiting DG's Approval, was presented at Policy Board in Oct 2007. Now developing the Institutional Model as part of Institutional-alignment Project.
- Good opportunity for developing the regulatory model as Presidency has developed a generic framework for economic regulation (including water) in South Africa.
- National Sector Steering Committee established to provide input into developing the framework.



Legislative Mandate

Section 155(7) of the Constitution

- “The **national government**, subject to section 44, and the provincial governments have the legislative and executive authority **to see to the effective performance by municipalities of their functions** in respect of matters listed in schedules 4 and 5, **by regulating** the exercise by municipalities of their executive authority referred to in section 156(1)



Legislative Mandate

Chapter VIII of section 62 of WS Act, 1997

- The Minister and any relevant Province **must** monitor the performance of every water services institution in order to ensure compliance with
 - all applicable national standards prescribed under this Act;
 - all norms and standards for tariffs prescribed under this Act;
 - every applicable development plan, policy statement or business plan adopted in terms of this Act.
- Every water services institution **must**
 - furnish such information as maybe required by the Minister after consultation with the Minister for Provincial Affairs and Constitutional Development; and
 - **allow the Minister access to its books, records and physical assets to the extent necessary for the Minister to carry out the monitoring functions contemplated above.**



Policy Mandate

Strategic Framework For Water Services approved by Cabinet in 2003

- **The role of DWAF as regulator** : Until such time as it is considered appropriate for an independent regulatory function to be created, **DWAF will fulfill the role of the National Regulator of the WS sector.** (Section 7.1)
- A national regulation strategy : DWAF will develop a regulation strategy to implement the regulatory framework. (Section 7.2)



Why is water regulation important ?

- Water has a social component - provision is included in the Bill of Rights.
- Water has an economic component - efficient and reliable provision is essential for economic growth .
- Water has many elements of monopoly – mostly impossible for a consumer to switch to another provider.
 - Water industry dominated by public sector monopolies with only few Private sector contracts (Nelspruit, Dolphin Coast,)
 - Annual turnover not accurately known (R10b??)



The heart of regulation is
*the protection of the consumer
and the public interest*

by ensuring

- **Compliance** with minimum national norms and standards.
- **Good performance** and **efficient** use of resources.
- **Good contracting** practice.



Key Tasks of a Regulator

- Set and/or interpret rules/standards and, where relevant, grant approvals.
- Monitor, analyse and publish.
- Make determinations, enforce decisions and intervene.

Evolution of the Water Services Regulatory Framework



Define sector
Vision, / goals

Specify regulatory objectives
in support sector goals

Specify regulatory domains/functions
e.g. economic, social, environmental
in support of regulatory objectives

Identify range of regulatory
institutional models
e.g. regulation by government, independent agencies,
expert panels, regulatory contracts, hybrids, etc

Narrow range of options by
eliminating those least likely
to fit local political and institutional context

For each regulatory function, assess each regulatory model

Will model enable
best-practices in regulatory
substance?

Will model enable
best-practices in regulatory
governance?

Is the level
of regulatory discretion
commensurate
with capacity & commitment?

For each regulatory function select regulatory model that on balance
enables best practice regulatory substance and governance and a
level of regulatory discretion with best-fit to local context of regulatory commitment and capacity

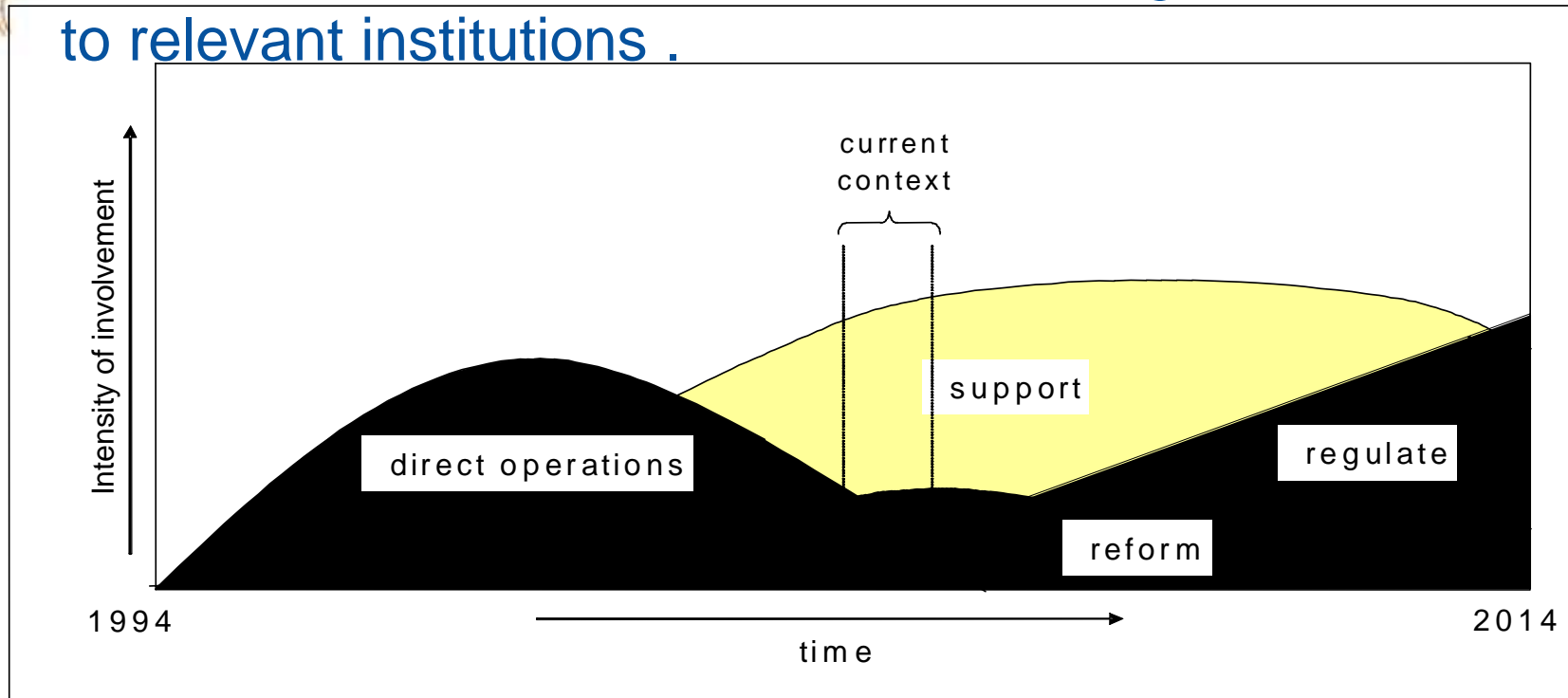
Map evolutionary path with transitional models



Context : changing role of DWAF

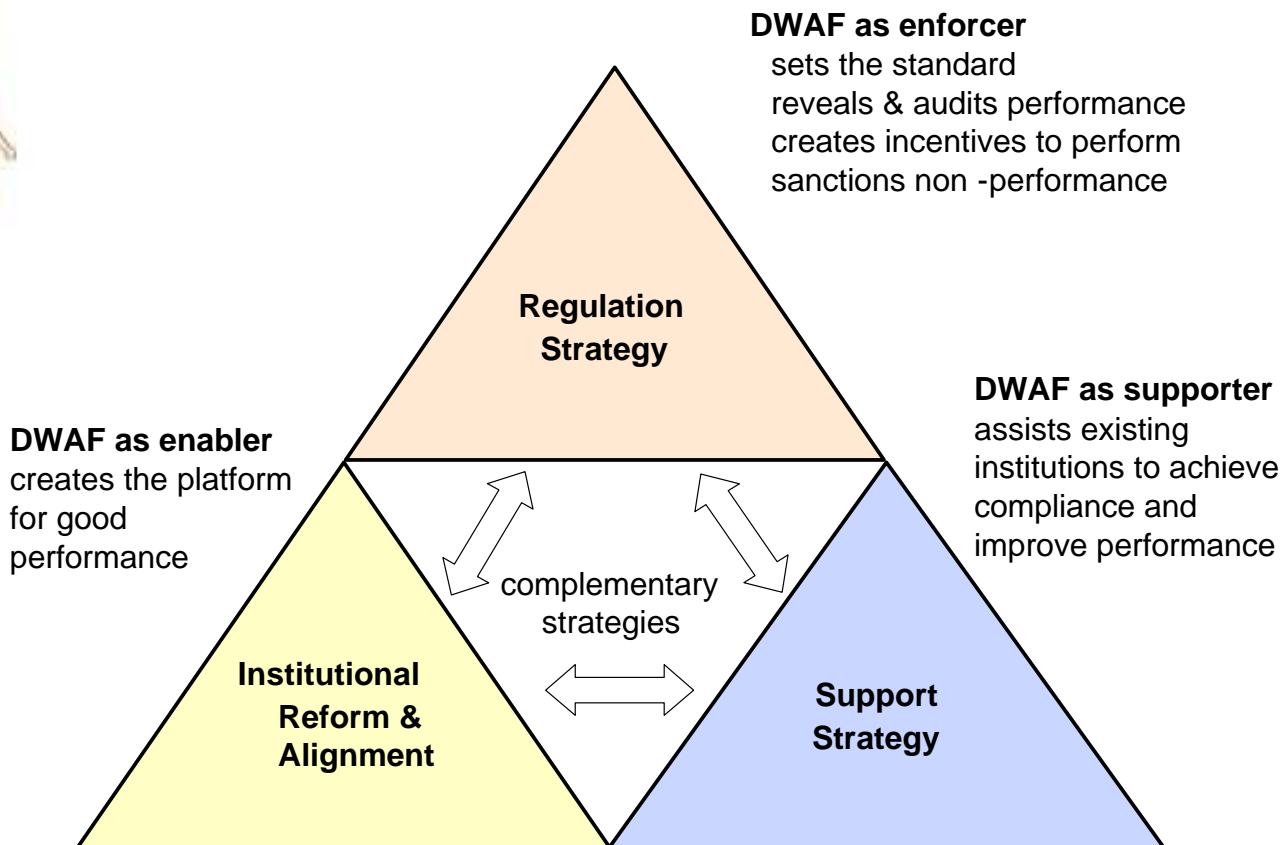


- DWAF's regulatory role is emerging in the water sector, and support will be aimed at supporting institutions to comply with existing regulations, institutional reforms have started and involves DWAF handing over functions to relevant institutions .





Complementary Strategies





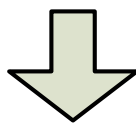
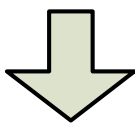
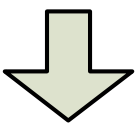
The WS Regulation Strategy: Three Pronged Approach

The Three Legs of the Strategy

Priority programmes
Initiatives to mitigate key risks
3. Priority compliance initiatives
4. Drinking water quality
5. Effluent quality

Building the foundations for effective regulation
Cross-cutting initiatives to ensure effective regulation
6. Revealing performance
7. Financial transparency
8. Improving accountability
9. Strengthening enforcement
10. Building consumer voice
11. Regulating competencies
12. Building regulatory capacity

Full scope of water services regulation
Implement all regulatory functions
13. Social regulation
14. Drinking water quality regulation
15. Environmental health regulation
16. Economic regulation

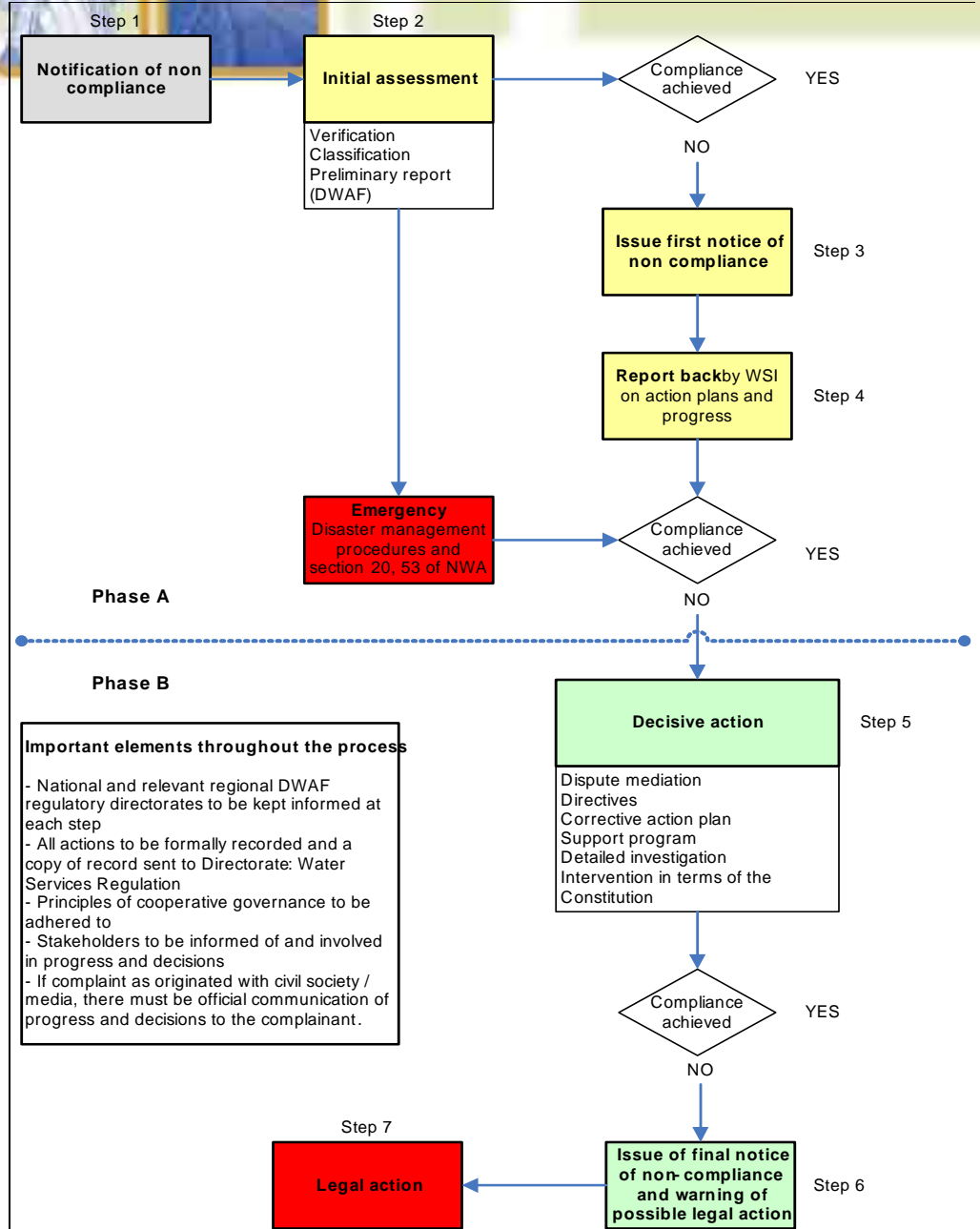


Effective regulation of Sector



ENFORCEMENT PROTOCOL FOR ORGANS OF STATE

A reactive
business process
for resolving non-
compliance in the
water sector





Water resources regulation creates the context for this regulation

Regulate abstraction

Regulate discharge

These two regulatory mechanisms influence
How the business is run but do not get involved
In the detail of the business itself.

Water services business

Non-reticulated systems (eg. on-site "dry" sanitation)

Water
Treatment

Distribution

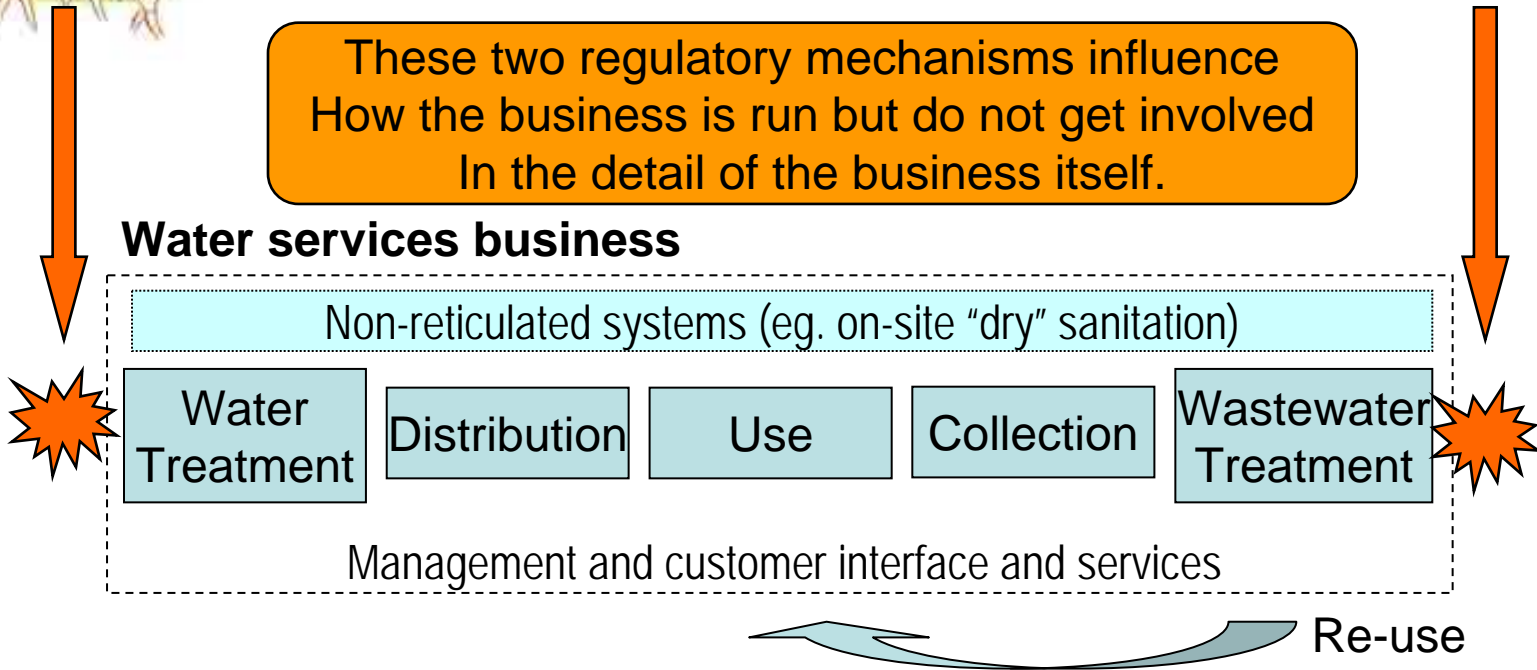
Use

Collection

Wastewater
Treatment

Management and customer interface and services

Re-use





Regulations

- Sect 9 regulate the supply of potable water and sanitation.
- Sect 10 prescribes the norms and standards i.r.o tariffs for Water Services This is done in conjunction with the Minister of Finance.
- Sect 19(5) – The Minister after consultation with the Min for Provincial and Local Govt. prescribes the matters which must be regulated by a contract between the WSA and the WSP



Progress Made :Confirmed regulatory domains

SOCIAL REGULATION (Universal access to services)

All citizens have access to an adequate water and sanitation service

PUBLIC HEALTH REGULATION (Drinking water quality)

The water provided to consumers is safe to drink

WATER RESOURCES & Environment REGULATION (Wastewater discharges, licences)

All discharges meet the specified minimum standards to protect the environment

ECONOMIC REGULATION (Tariffs, contracts, Service quality and price)

Services provided are efficient, sustainable and meet consumer quality needs



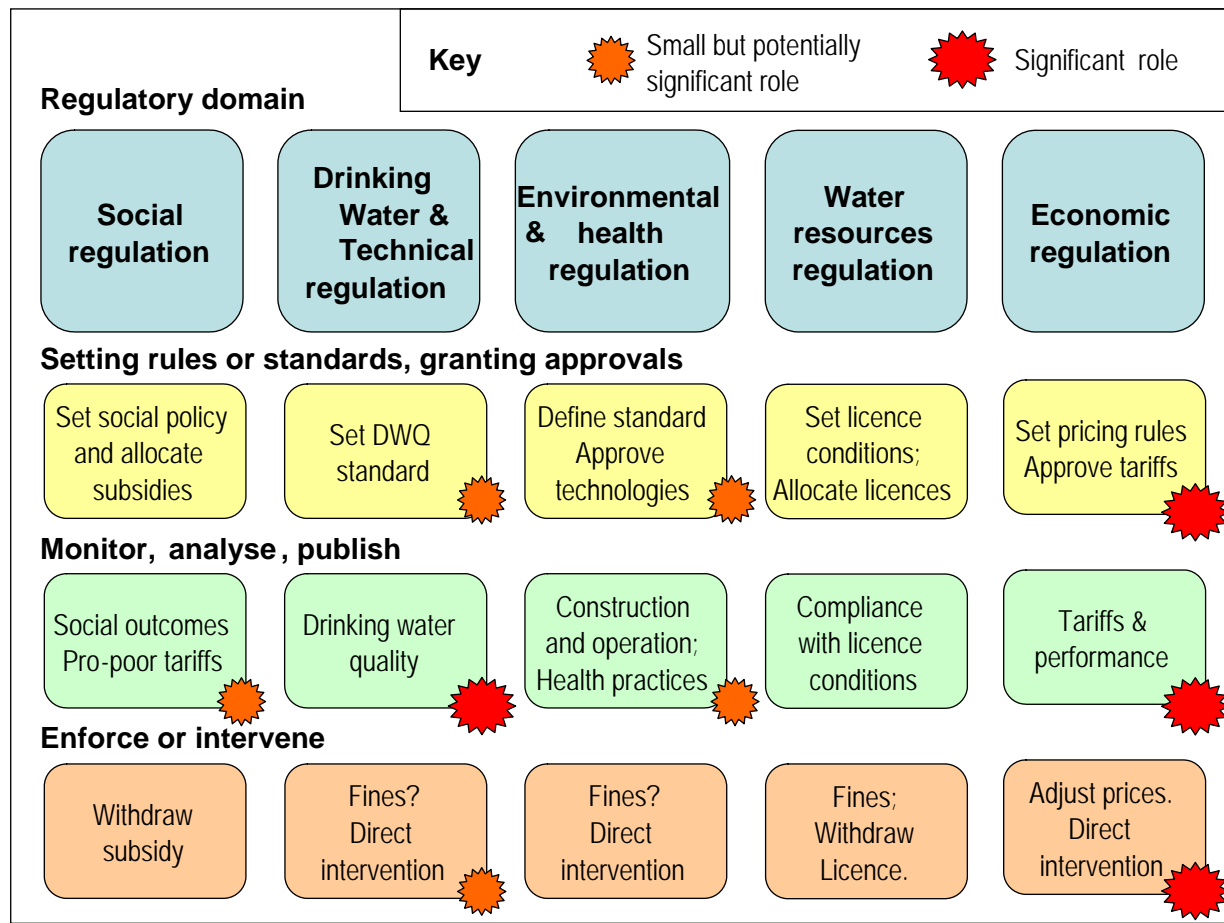
Progress Made



- Penultimate Draft on WS Regulation Strategy.
- Consultants appointed to draft the Water Resources component .
- Drinking Water Quality regulation started and electronic monitoring system developed and implemented.
- Assessment of Waste Water Treatment works started.
- Annual Consumer Satisfaction Survey conducted.
- Regulatory Performance Measurement System –piloted on 19 municipalities.
- Audit of WSA/WSP Contracts conducted.
- Enforcement Protocol developed and implemented.
- WSA/WSP and Citizens disputes are handled.
- Tariff analysis started.
- Regulatory Publication in progress.
- Citizens Voice Project started at Ekurhuleni Metro –slow in Msunduzi
- Water Use Compliance & Enforcement Draft Strategy developed.
- Director Regulation Positions established in almost all regions.
- Note : DWAF Regulator for Dam Safety for almost 21 years.



The Emerging Model





Increasing decision making rigour

Minister of Water Affairs & Forestry

Consumer Watch Group

DWAF/
Independent
Regulator

DWAF
Environmental
Regulation

Economic Regulation
NWRIA, WBs & WSAs

Technical Regulation
(Drinking Water Quality)

Social Regulation

Water Resources

Possible future

Setup
advisory panel

7-9 CMA's
Blue Scorpions

CME
Environmental Regulations

Step 1

Current
Situation

Ringfence
regulation
functions in DWAF

Step 2

Increasing capacity



Building Foundations

- **Building a cadre of water regulators around the country :**
 - Training –University of Cape Town
 - E-learning
- **Strengthen our networks with AFUR**
 - Sector visit to **Zambian Water Regulator**
- **Economic regulation of water utilities**
 - Using Amathola Learning Journey experience
- **Statement of Intent : Media Release in the document pack.**



Statement of Intent

Embargoed until formal approval by DG.

Joint Release by the Minister of Water Affairs and Forestry and
the South African Local Government Association

(DRAFT – JUNE 2008)



The Department of Water Affairs and Forestry (DWAF), supported by the South African Local Government Association (SALGA), hereby makes a statement of its intention to intensify the regulation of water supply and sanitation services in South Africa.

Both DWAF and SALGA recognise that a critical point has been reached in the development of our democracy. It is time for the balance between supporting the development of local government institutions and regulating these institutions to shift in order to ensure the ongoing safety and security of our people, the sustainable management of our natural environment and the social and economic growth and development of our country.



Timeframes and Milestones

- **Aug 08 : Statement of Intent –Media Release.**
- **Aug 08 : Draft doc on Water Resources Regulation &CME.**
- **Sept 08 : National Steering Committee Meeting**
- **Sept 08 : Draft Water Sector Regulatory Framework.**
- **Dec 08 : Final Draft Water Institutional Model.**



Conclusion

'We are on track but we have mountains to climb' President Mbeki



Key Documents

- Penultimate Draft on National WS Regulation Strategy, 2008.
- A regulatory framework for economic regulation of network industries in SA. Prepared by GENESIS for Presidency, 2008.
- International Models of WS regulation and their relevance to SA, 2008, WRC.
- Review of regulatory aspects of WS Sector –Summary Report-2008, WRC.
- Nedlac administered prices study on economic inputs in the water sector , April 2007-unpublished.
- Institutional Options for WS Regulation, WRC- 2006.
- Current International trends in the economic regulation of network industries for the Presidency of SA, March 2006.
- Water Services Reform and Regulation initiatives in South Africa, Paper by Prof John Langford-Melbourne Australia, 2004.