



Strategic overview of the Water Regulatory Framework in South Africa

**WSLG
Bakgatla Lodge
North West
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water & forestry

Department:
Water Affairs and Forestry
REPUBLIC OF SOUTH AFRICA



Purpose

- To update the sector on the progress made on the development of the water sector regulatory framework.



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.
- **Triggers for reform** – We will only succeed where the triggers for regulation reform or **crises is of a sufficient magnitude** to warrant the pain involved in reforming institutions in any significant way.
- **Understanding the benefits** –need to visualise the benefits and picture how a regulated sector will look like.
- Phase 1 almost complete and presented at Policy Board in Oct 2007. (development of regulatory functions) now developing the Institutional Model. Water Resources still packaging regulation functions.
- 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.



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??)

Evolution of the Water 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?

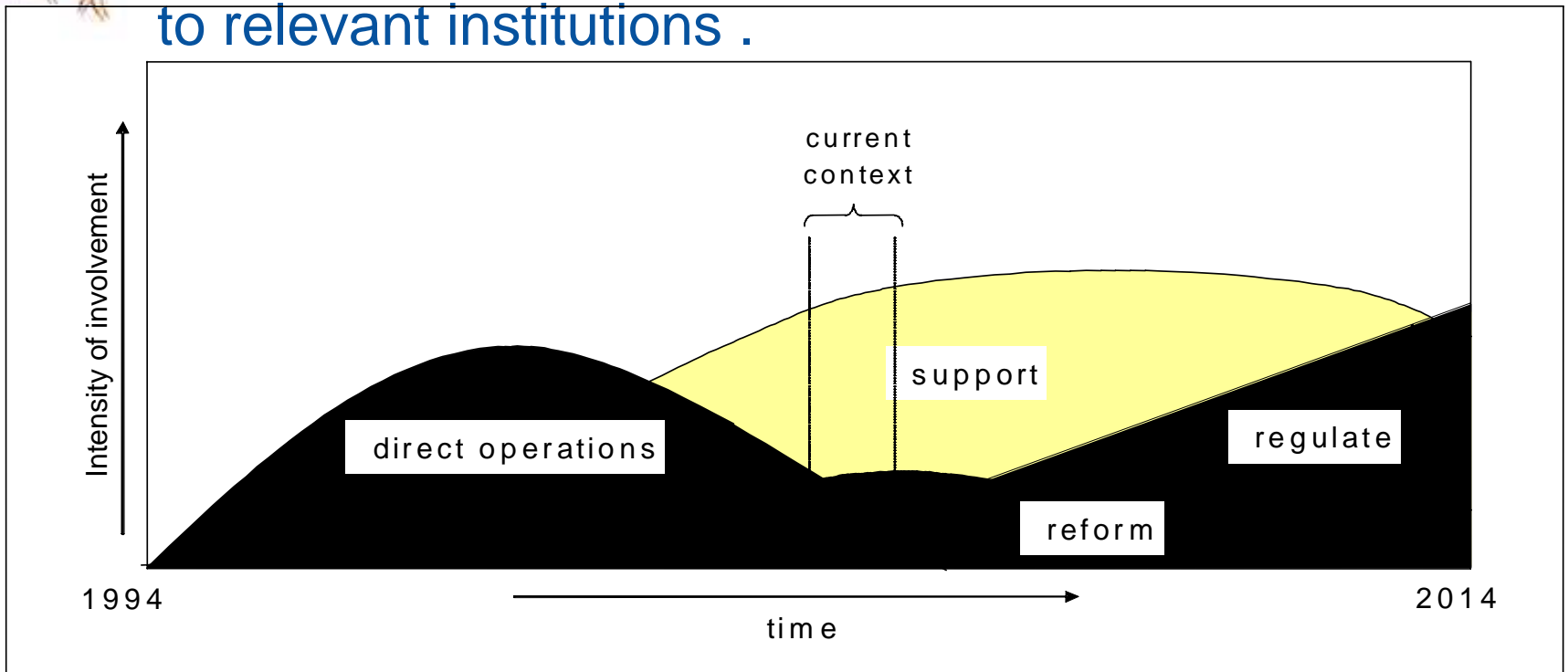
For each regulatory function select regulatory model that on balance enables best practice regulatory substance and governance and a level of regulatory discretion with best-fit to local context of regulatory commitment and capacity

Map evolutionary path with transitional models



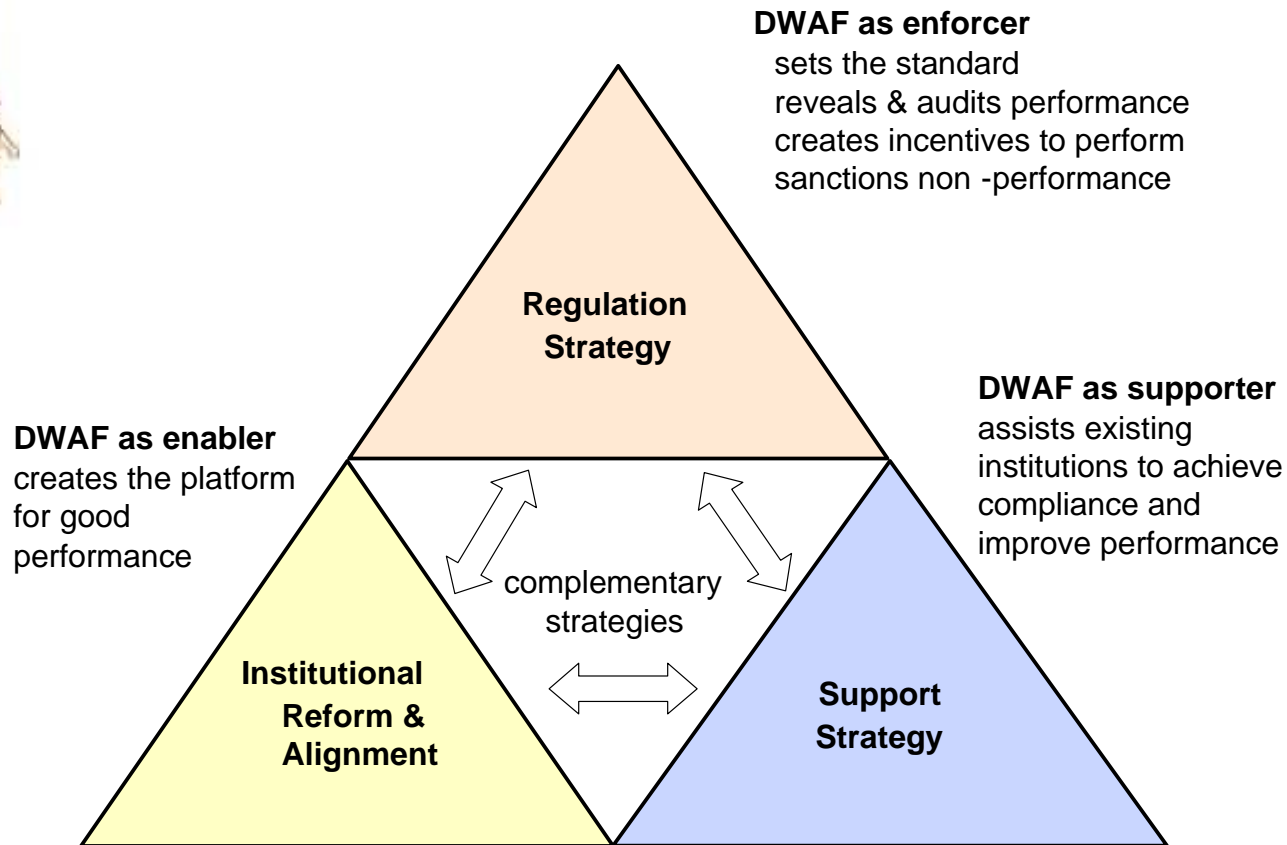
Context : changing role of DWAF

- 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





Progress Made :Confirmed regulatory domains

**SOCIAL
REGULATION**
(Universal access to services)

All citizens have access to an adequate water and sanitation service

**WATER RESOURCES
REGULATION**
(Wastewater discharges, licences)

All discharges meet the specified minimum standards to protect the environment

**PUBLIC HEALTH
REGULATION**
(Drinking water quality)

The water provided to consumers is safe to drink

**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.***





Challenges

Policy and legislation

- Initial focus was on water services.
- Water services and water resources policies and legislation have followed two parallel streams.

Constitutional, policy and legislative framework



Constitution informs all government policy and legislation

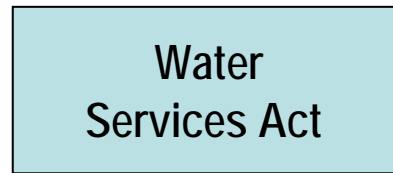
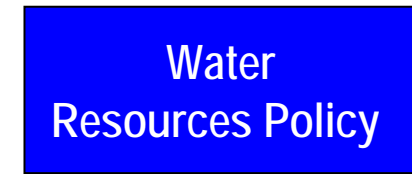
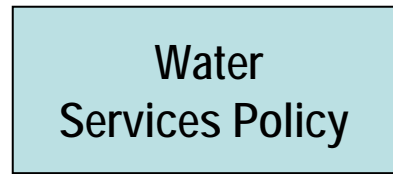
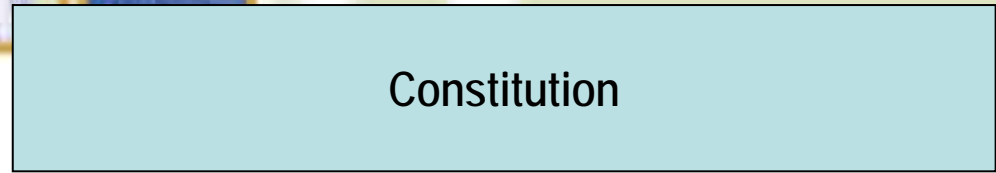
Cabinet approves policy

Policy informs legislation

Parliament passes legislation

Policy and legislation informs institutional arrangements

Strategies give practical effect to policy





The domain of water resources

Water resources

The water itself (the water resource)

This is a all inclusive

- The water in the river and underground
- The transfer of water between catchments
- The availability of water, and locality of availability
- The quality of the water in the environment

The activities that affect the water resource

This is a all inclusive

- Abstraction of water from the water environment
- Discharge of water back into the water environment
- Other water using activities (such as forestry)
- The building of dams, transfer pipelines

Regulatory tools

Primary regulatory tool is the allocation of rights

- Abstraction licenses, general authorisations
- Discharge licences
- Economic regulation of the infrastructure component (price)



The domain of water services

Water services

The water itself

The water flowing through, and stored in a water services system, that is, treatment works, local storage reservoirs, reticulation networks, wastewater collection networks, wastewater treatment works, outfalls.

This is a small sub-set of the full water resource

The management of the water services business

The management of the water services infrastructure, including Planning, capital investment, operations, customer management, Financial management etc. This needs to be managed as a business. (This a particular kind of industry commonly referred to as a Capital-intensive, networked, monopoly infrastructure industry)

BUSINESS FOCUS

Regulatory tools

Same as for all network infrastructure industries (economic regulation of performance and price, standards regulation, regulation by contract)

Standard infrastructure regulatory tools apply



The key interfaces

- **At the point of abstraction**
 - The water resource regulator allocates “the right to abstract” (quantity and location) and can include conditions on use
- **At point of discharge**
 - The water resource regulator regulates “the right to discharge” including location, quantity and quality.



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

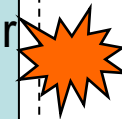
Use

Collection

Wastewater
Treatment

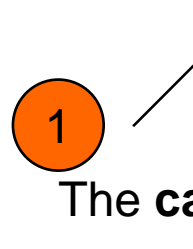
Management and customer interface and services

Re-use





The nature of water resources regulation is different ...



Catchment management agency

3

The governance arrangements are different. The management of the resource is overseen by all stakeholders/users

2

The key regulatory tools are different

- (1) Allocation of rights between users (to abstract and to discharge)
- (2) Regulator or influence all activities which affect water quality and quantity.

1

The catchment boundary is different to the water services provision area



What then are we saying?

- Is it possible to have one Institutional Model for Water Regulation ?

OR

- Are we looking at hybrid model?



Drinking water quality

areas where capacity and autonomy
important



Setting standards

DWAF doing this

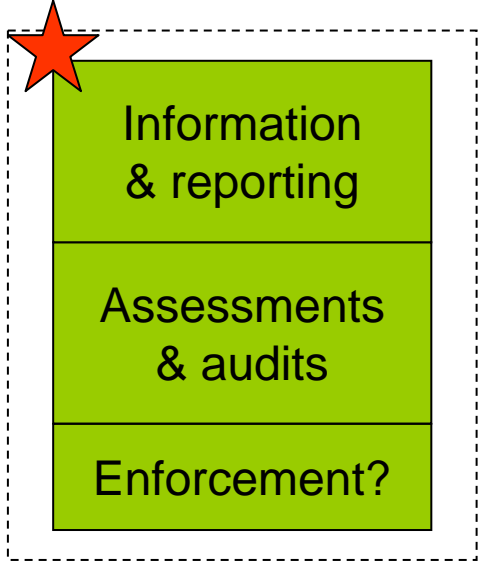
DWAF

Setting standards

Information & reporting

WSA responsibility
DWAF oversight

Technical capacitated
agency (synergies)



Assessments & audits

DWAF responsibility
(capacity constraints?)

Enforcement

DWAF
huge capacity constraints

DWAF

Enforcement



Water resources Institutional Considerations

- Typically within government domain
- Intention to devolve to CMAs
- More robust enforcement needed for discharges especially (could be aided by greater regulatory independence)
- Require technical capacity
 - Audits and assessments
 - Information management / monitoring / reporting
 - This technical capacity is different in nature to the technical capacity required for DWQ

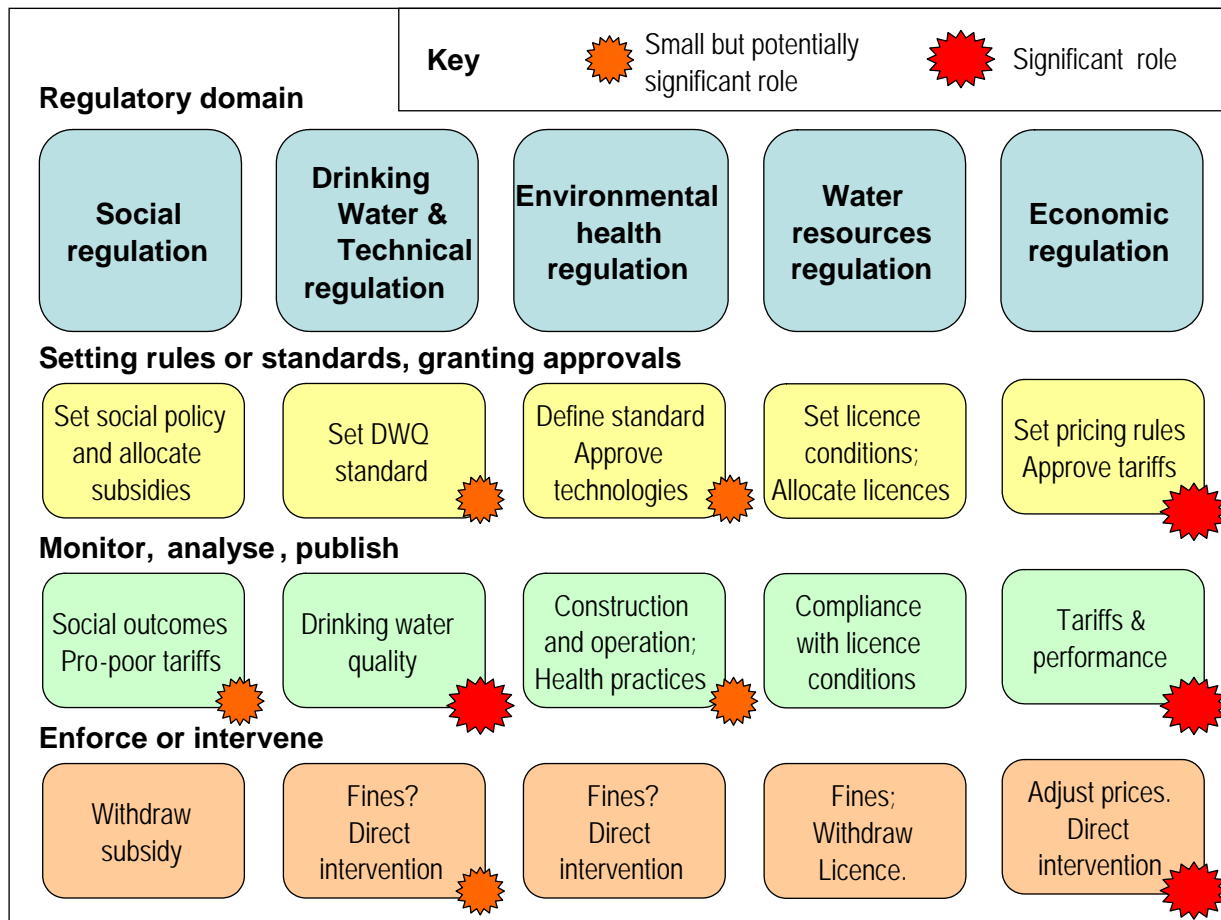


Economic regulation

- None of the water sector is currently subject to formal economic regulation (rate of return analysis, efficiency analysis, economic incentives).
- Application of economic regulation requires high level of financial, economic, technical expertise and experience. (requires discretion and autonomy)
- Economic regulation must be WSP specific. A national norms and standards route cannot work.
- WR and WS Infrastructure can be regulated by one economic regulator .
- Need a comprehensive, systematic and consistent approach across the full value chain :
 - Stakeholders have requested regulatory independence or autonomy to address this as they believe DWAF have a conflict of interest.

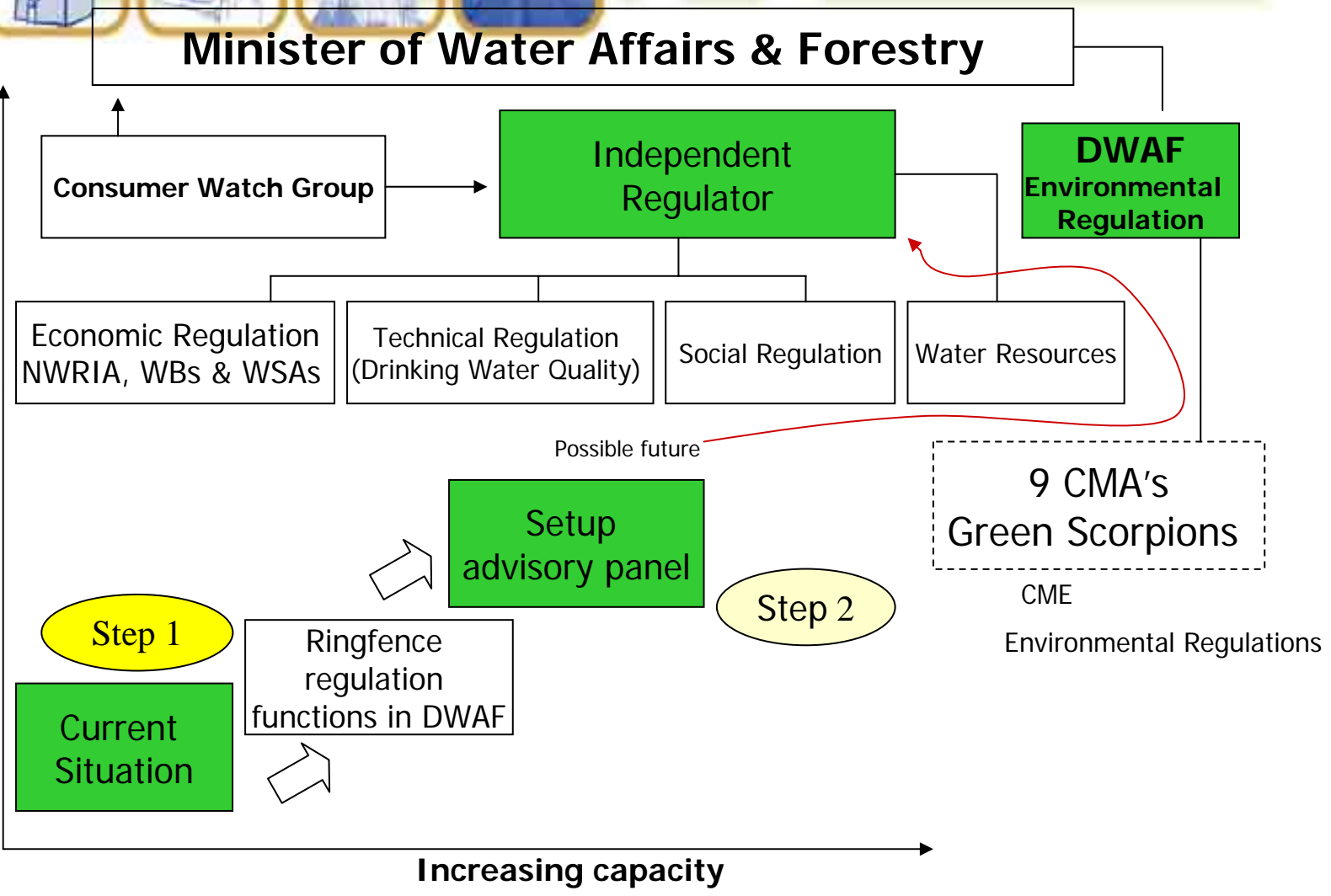


The Emerging Model





Increasing decision making rigour





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.**



Recommendations

- Sector to note the attached Statement of Intent prepared by DWAF & SALGA.
- Sector to note and debate the emerging Regulatory Model for the water sector.



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.