

General authorisations as a tool to promote water allocation reform in South Africa

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Overview

1. Public trust doctrine and the National Water Act
2. General authorisations
3. Water allocation reform and compulsory licensing
4. Implementation challenges of general authorisations



The public trust doctrine and the National Water Act

- The National Water Act (NWA) replaces a private right system with a public right system.
- The Constitutional mandate requires organs of state to alleviate injustices of the past and to establish a society based on democratic values, social justice and fundamental human rights.
- The control of water is entrusted to the State with the proviso that it be managed in the public's interest with consideration of environmental needs and in accordance with Constitutional mandate.



Water Allocation Reform (WAR)

- Water allocation reform is one component of a wider government mandate to address the inequities of the past.
- Compulsory licensing (CL) is one of the main tools in the NWA to give effect to the process.
- CL is a mechanism to reconsider all water use authorisations in an area so as to potentially achieve equity of access [s43 to s48].
- CL is now being implemented in three priority catchments.

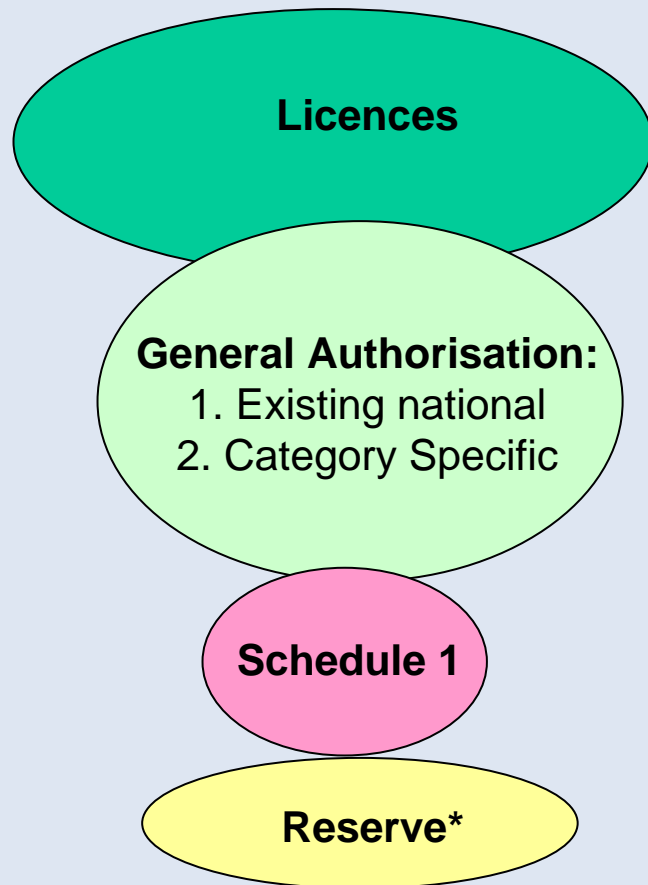


What is a general authorisation?

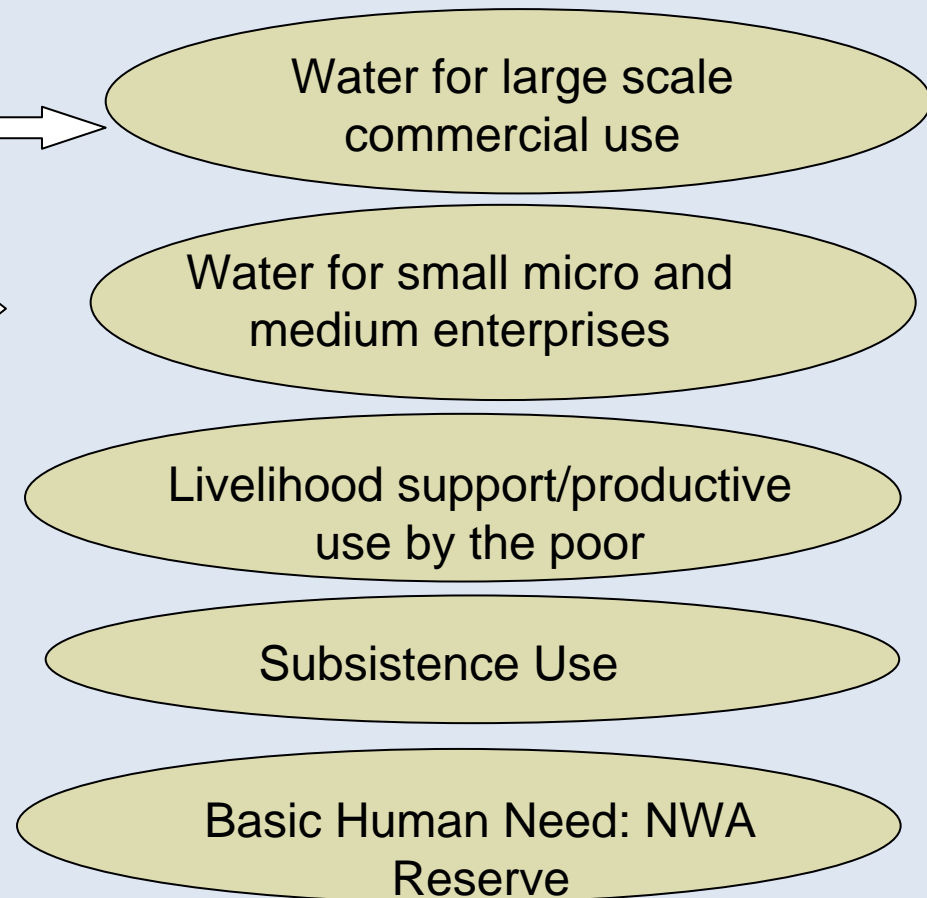
- Water use under a GA does not require a licence and provides a tool to authorise use in a particular area or for a particular resource.
- “A responsible authority may, by a notice in a gazette authorise all, or a category of persons, to use water either [S 39]:
 - Generally
 - In relation to a specific water resource, or
 - Within an area specified in the notice.”

GA IN THE CONTEXT OF OTHER ENTITLEMENTS

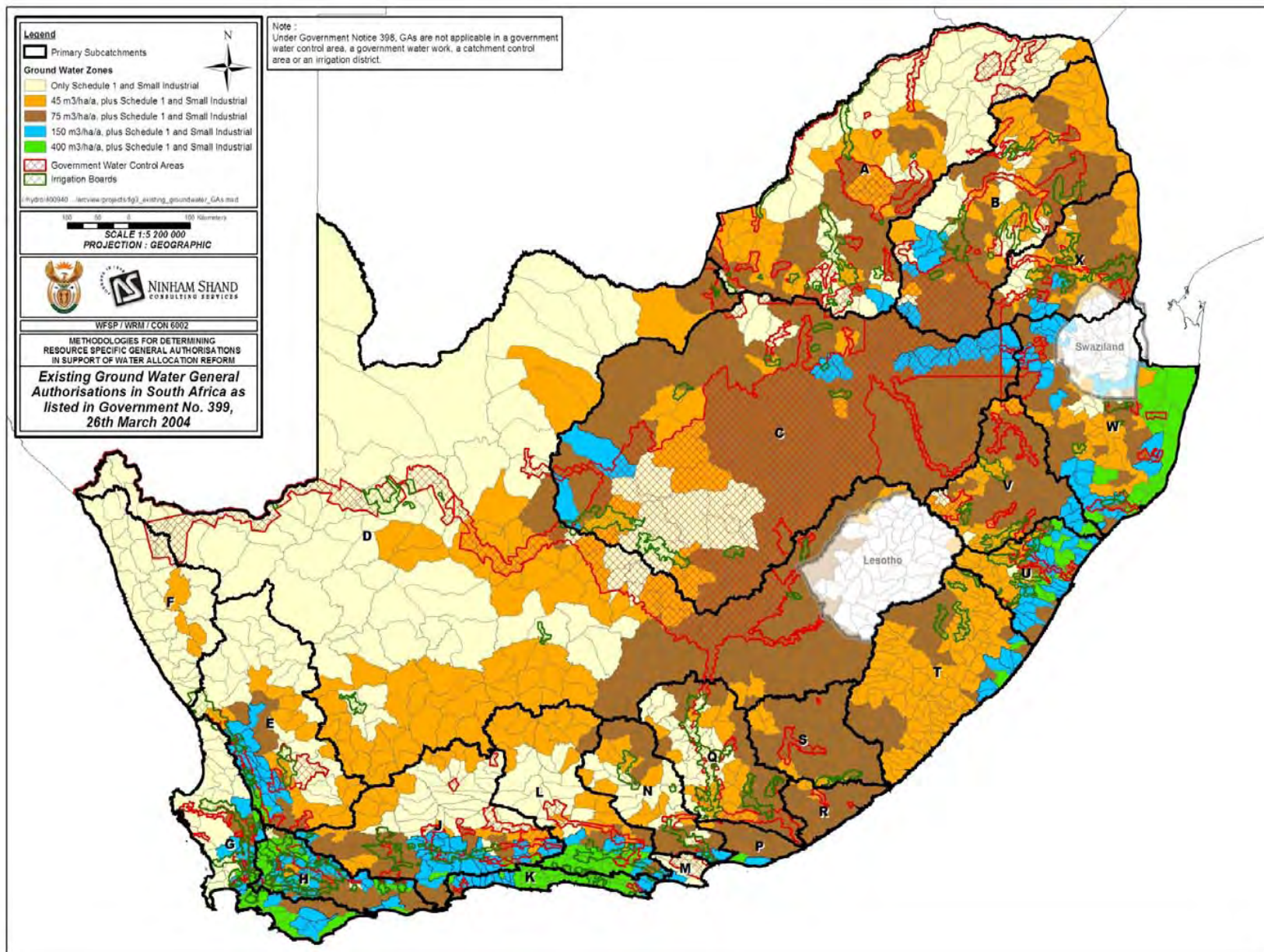
Water Use Entitlement



Water Use Objective



The Reserve* is not a water use entitlement but the only right to water stated in the Act





Category specific GAs

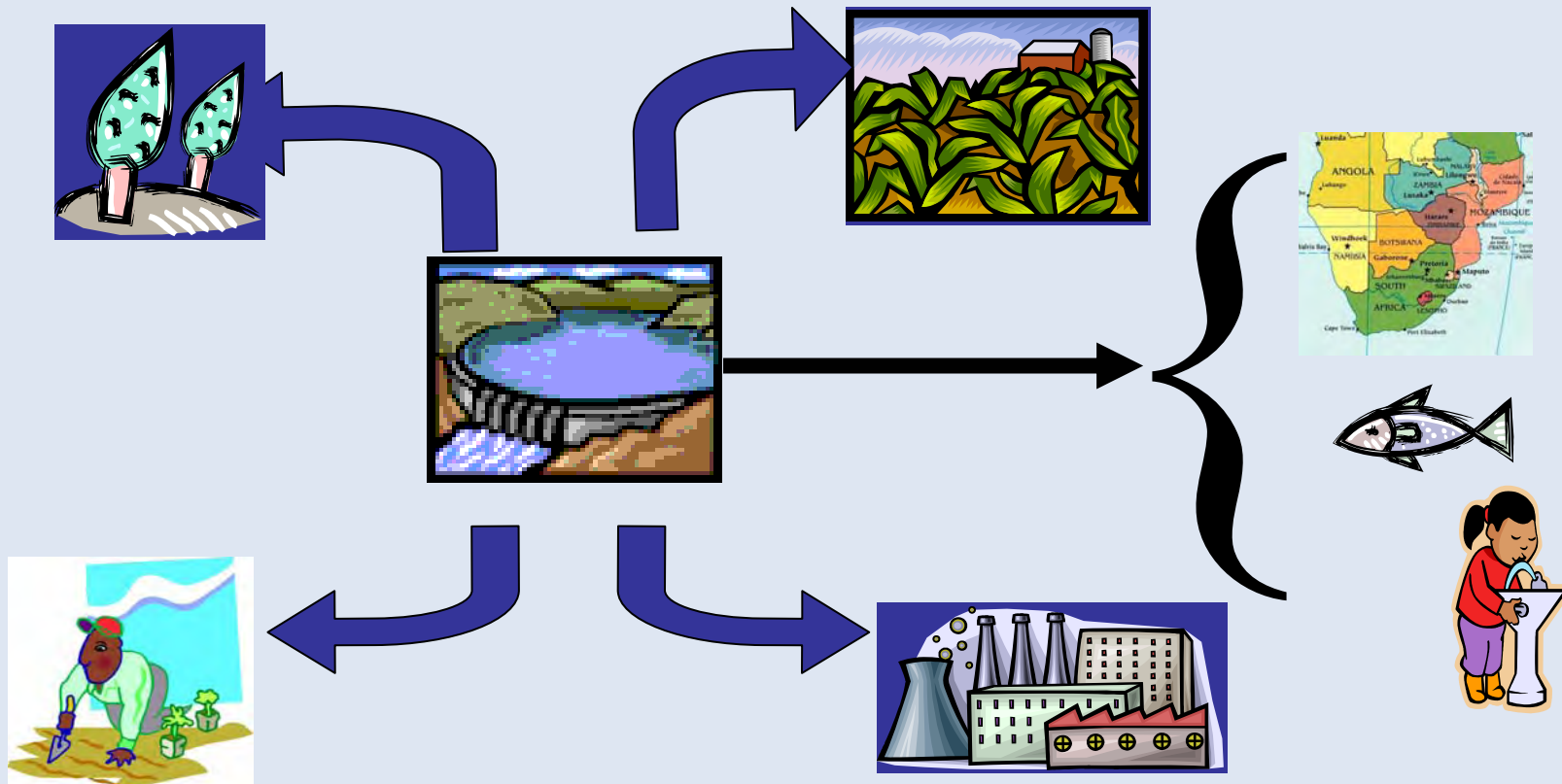
- GAs have been promulgated across South Africa for specific uses
- “A responsible authority may by a notice in a gazette authorise all, or a category of persons, to use water...”
- The category of persons clause has not yet been applied.
- Assignment to investigate category specific general authorisations in the context of compulsory licensing.

WHAT IS COMPULSORY LICENSING?



SET ASIDE SOME FOR THE RESERVE AND
INTERNATIONAL REQUIREMENTS

THEN DIVIDE THE REST UP MORE FAIRLY IN THE
BEST INTERESTS OF ALL SOUTH AFRICANS



Compulsory licensing (CL)

- The intention to achieve race and gender equity.
- All users are required to apply for their entitlement.
- The process can only happen once.
- **What if everyone applies?**
- Concern that the administrative processes required will burden local authorities.
- **What if nobody applies?**
- There is a concern that participants will not be able to contribute equally in the process.
- Certain groups, may lack resources (knowledge, time, travel, money) to participate and may lose out in the process.





Benefits of category specific GAs with CL

- Water can be ring fenced if no applications are received from rural poor.
- Reduce the burden of application for the rural poor.
- GAs allow the gradual uptake of water by the poor, paralleled with the gradual reduction of use by existing lawful water users.
- Reduced the administrative burden on the responsible authority



Implementation challenges

- Public Engagement
 - GAs must be published in the Gazette and must invite written comments.
 - The responsible authority needs to communicate contents and respond to comments.
- Cooperative Governance
 - GAs only authorises the water use and not the activity.
 - Users still need to obtain authorisations under any other applicable laws.
- Defining the resource and the volume of water
 - A GA notice should specify a cumulative upper limit
 - The GA notice should also specify an individual volumetric cap, (e.g. the minimum irrigated area required for the sustainable cultivation of the most likely crop)
- Trading

Conclusion

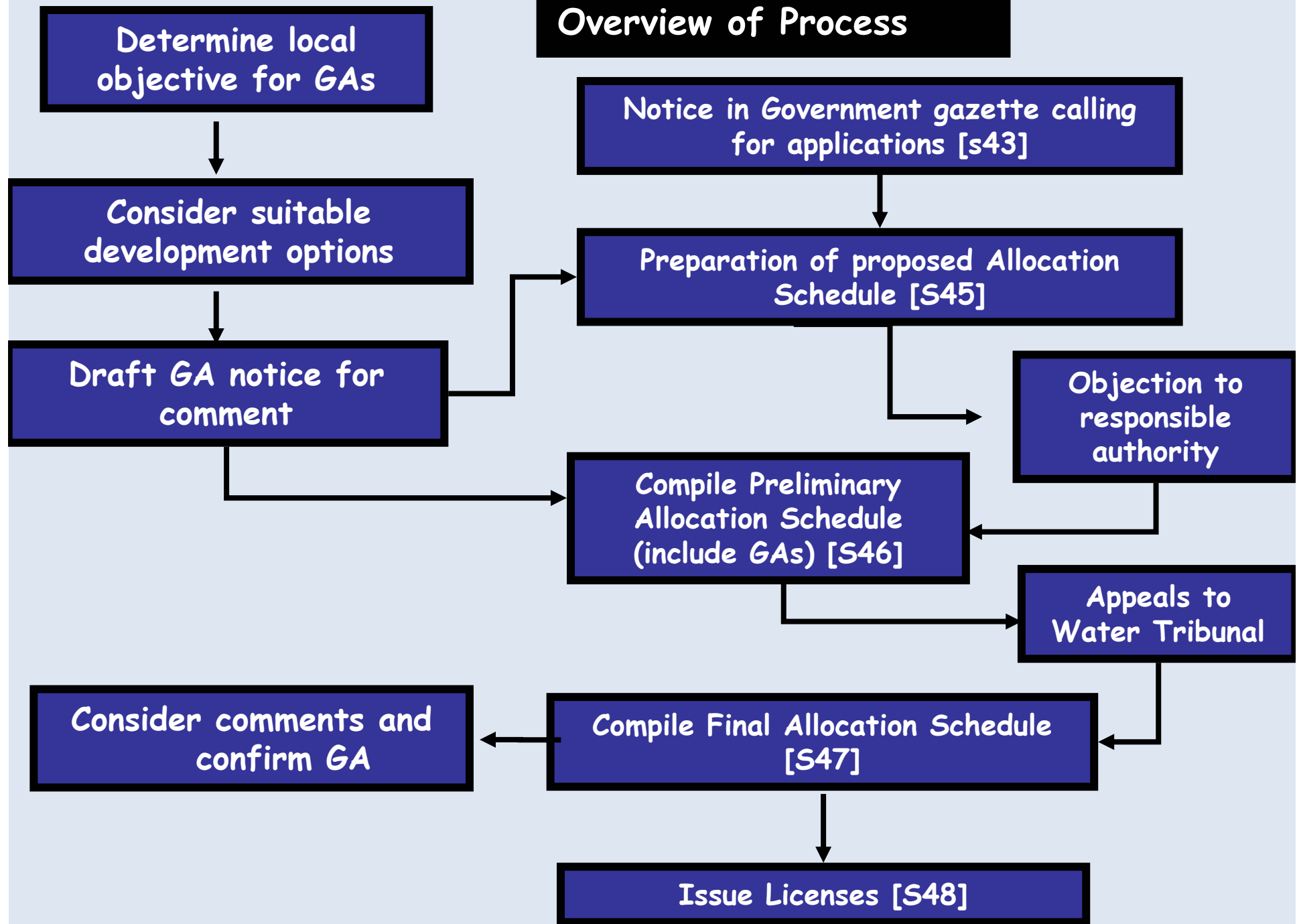
- General authorisations provide a mechanism to support water allocation reform by allowing water to be ring fenced for specific categories of users.
- This assists DWAF in meeting its constitutional obligation of over coming inequities of the past and reduces some of the administrative burden on the applicant and the Responsible Authority.

Questions?

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Overview of Process





Will compulsory licensing achieve equity?

- There is a concern that participants will not be able to contribute equally in the process.
- Certain groups, such as woman or the rural poor lack resources (knowledge, time, travel, money) to participate and may lose out in resource formulisation.
- CL could be dominated by more powerful groups.
- Concern that the administrative processes required will burden local authorities.
- Need strategies to overcome inequities and ease administrative burdens.