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# Lessons learned from energy reform

Address to EDO “Water Law in WA” Conference  
8 July 2005

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## **disclaimer:**

- 1. n.** renunciation or disavowal, denial of claim to or connection with.
- 2. n.** Weasel words (usu. by lawyer) intended to protect own backside [SEE C.Y.A.]



# Today's subject ...

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- Regulatory structures
- Governance



## Today's subject (cont) ...

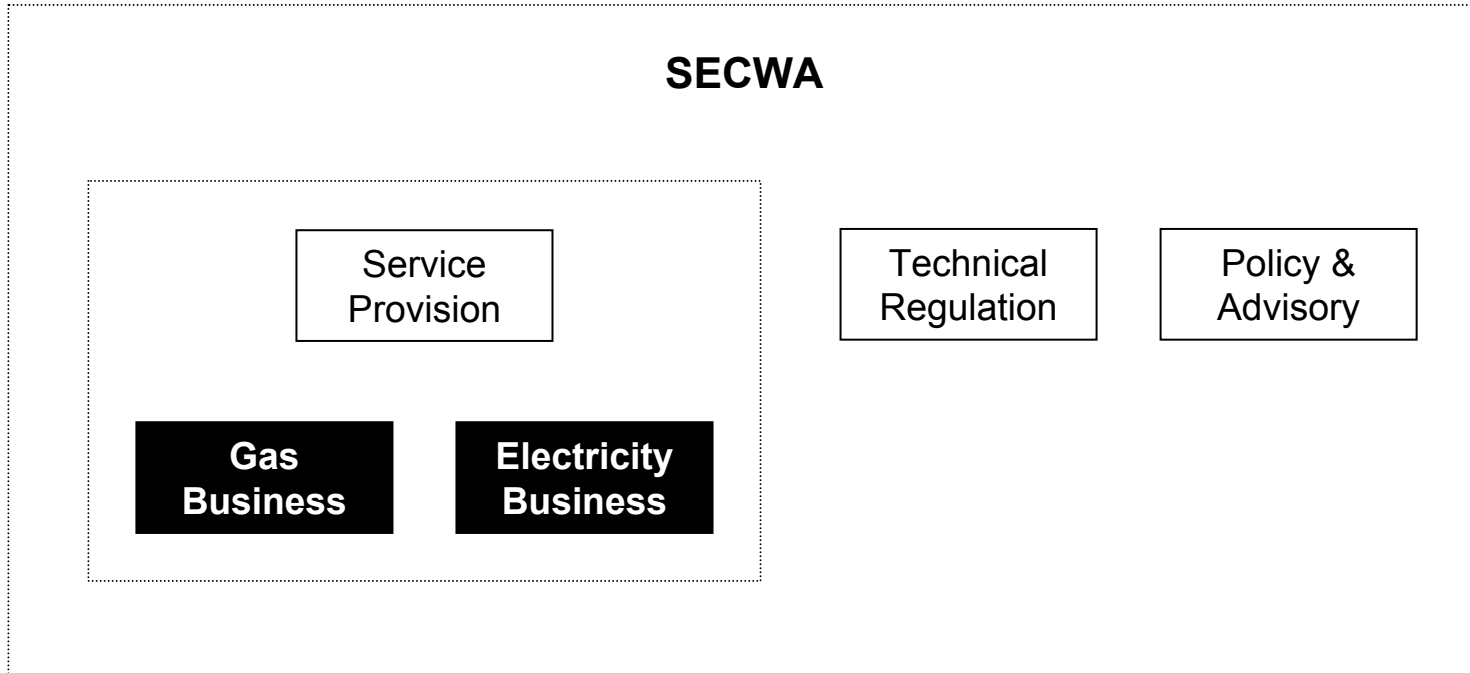
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- History

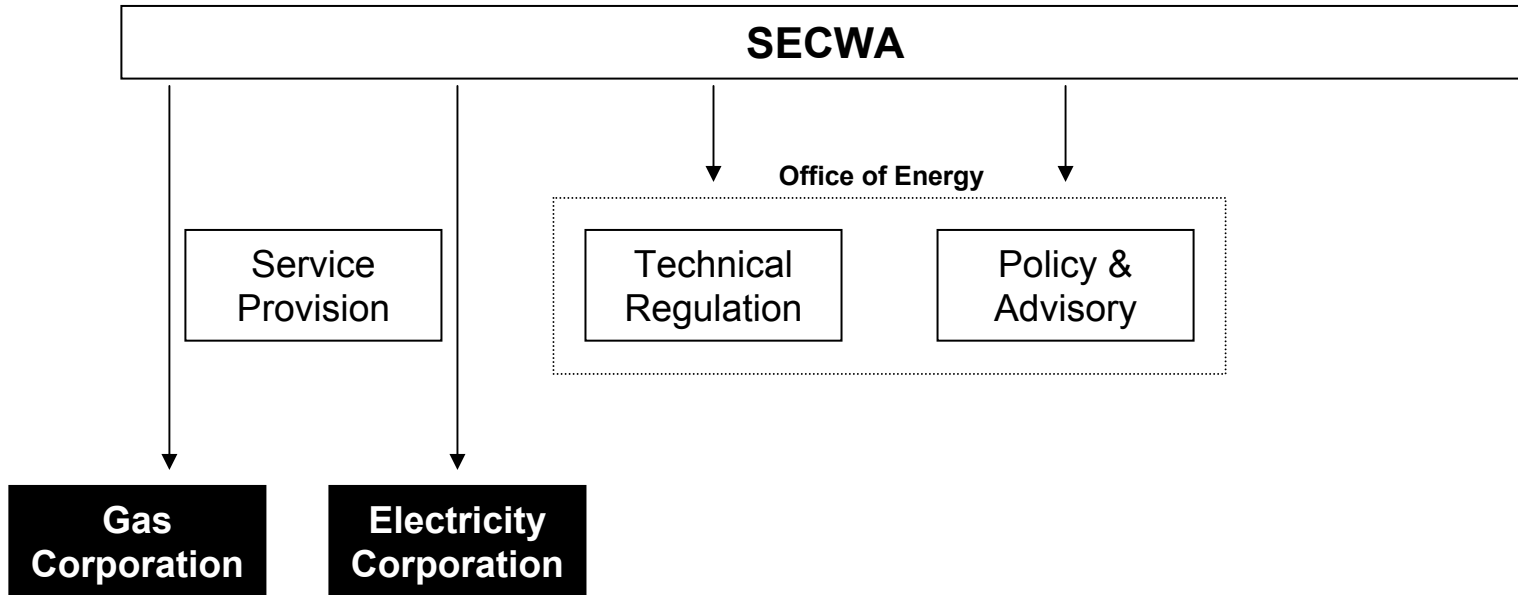


# Energy Reform - before 1995

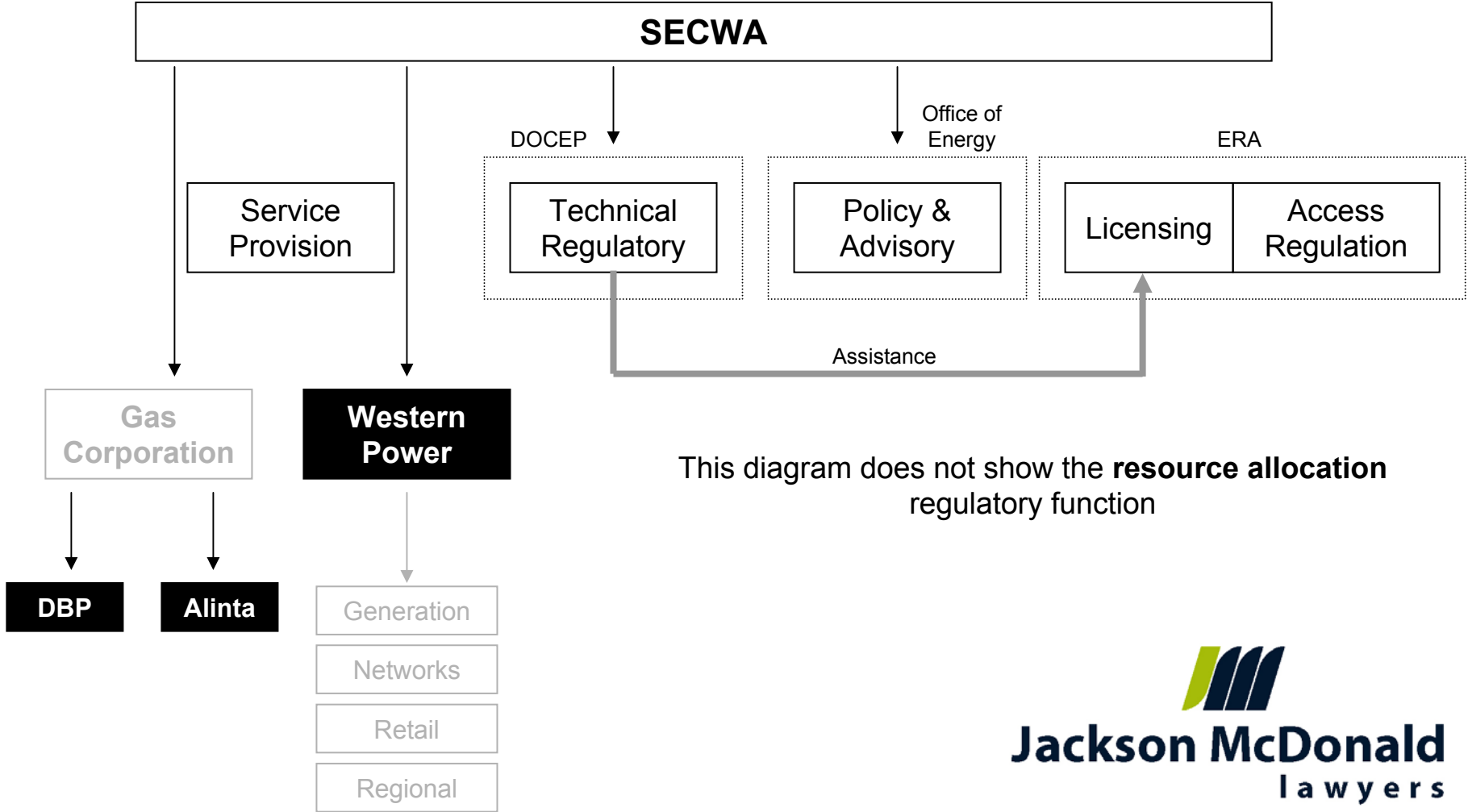
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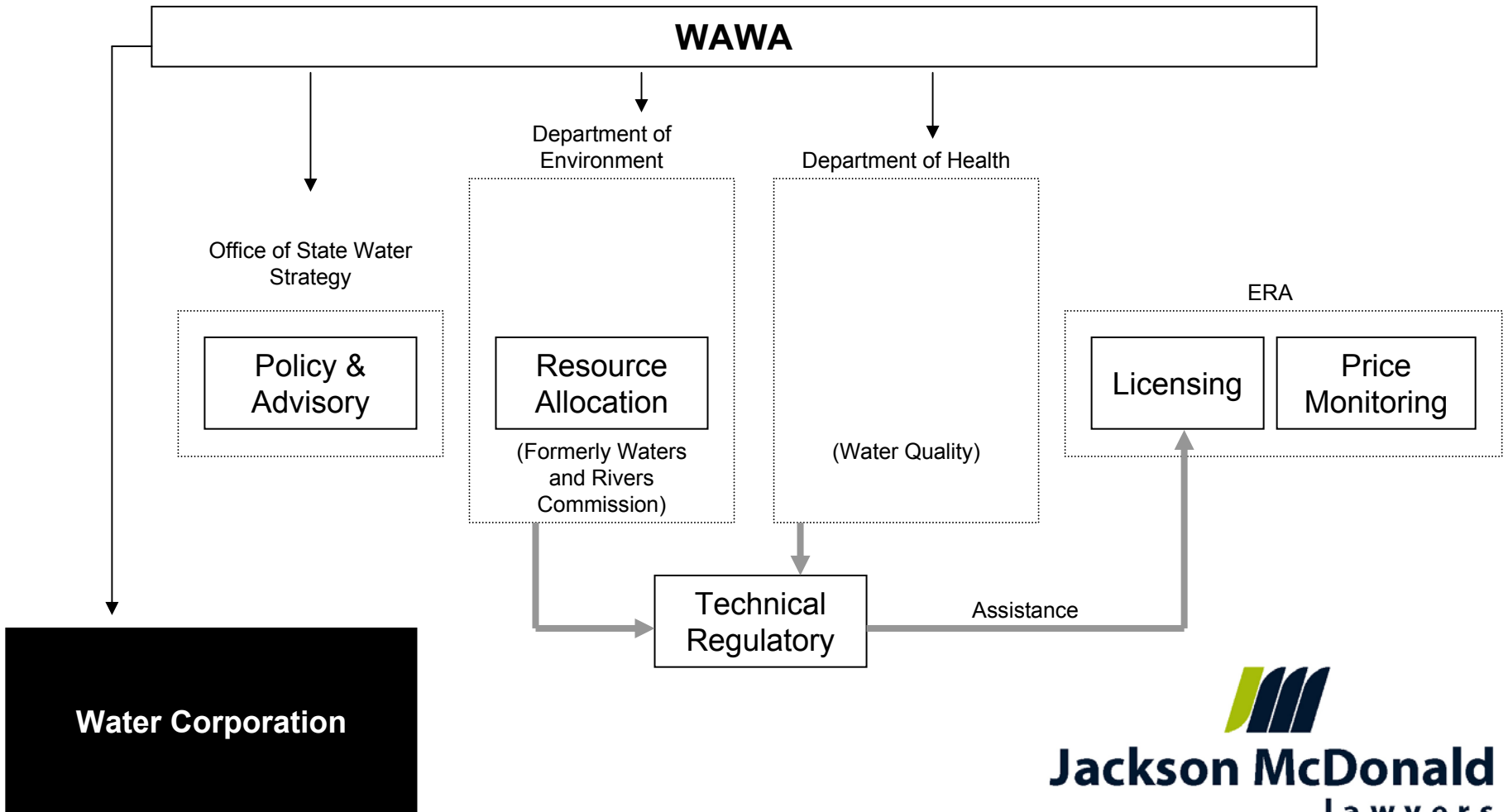
# Energy Reform - 1995



# Energy Reform - Now



# Water Reform

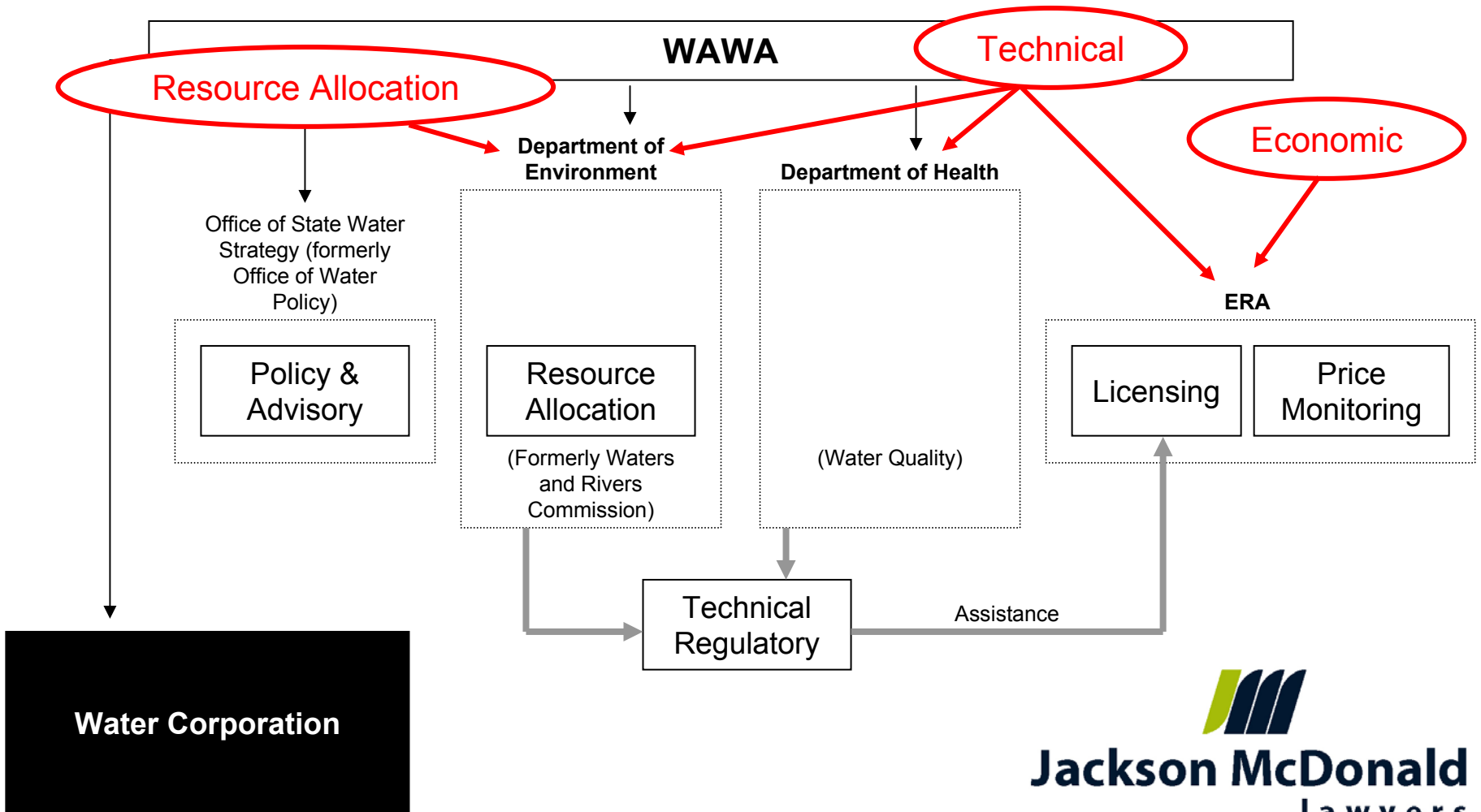


# Types of regulation

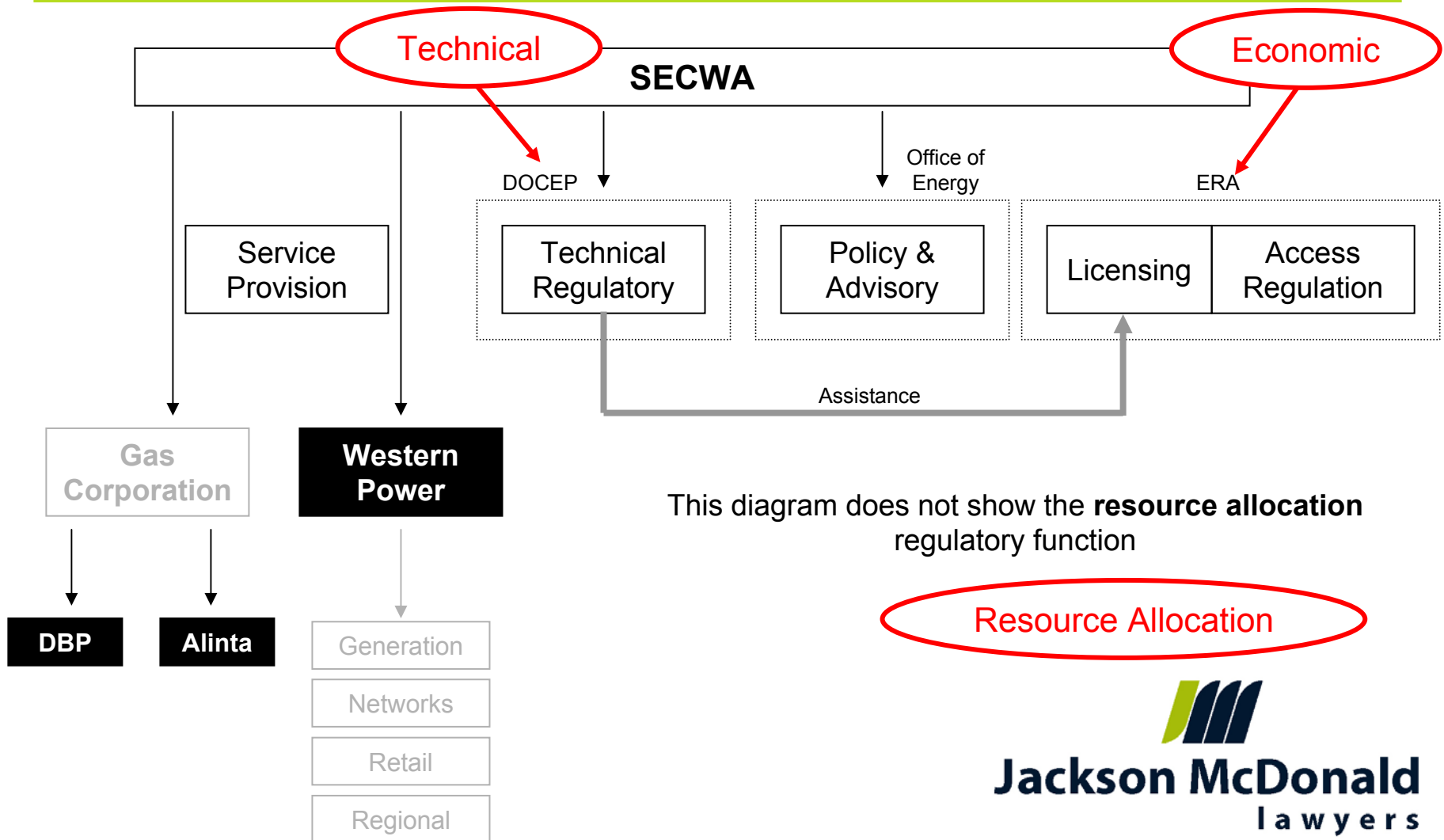
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- Resource allocation
- Technical
- Economic
  - Licensing
  - Access and pricing

# Water Reform (with regulatory roles)



# Energy Reform (with regulatory roles)



# Regulator's expertise

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- Regulators struggle to access sufficient in-house expertise
- Why?
  - Engineers are in the service provider
  - Funding
  - Better prospects elsewhere
  - Size of WA market

## Regulator's expertise (cont)

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- So where do they get the assistance?
  - The service provider
  - External consultants
    - Do they mostly come from Water Corp?
- Problems:
  - Regulatory capture (real or perceived)
  - Limited pool of new ideas
  - Different type of advice
    - Conservative
    - Less invested



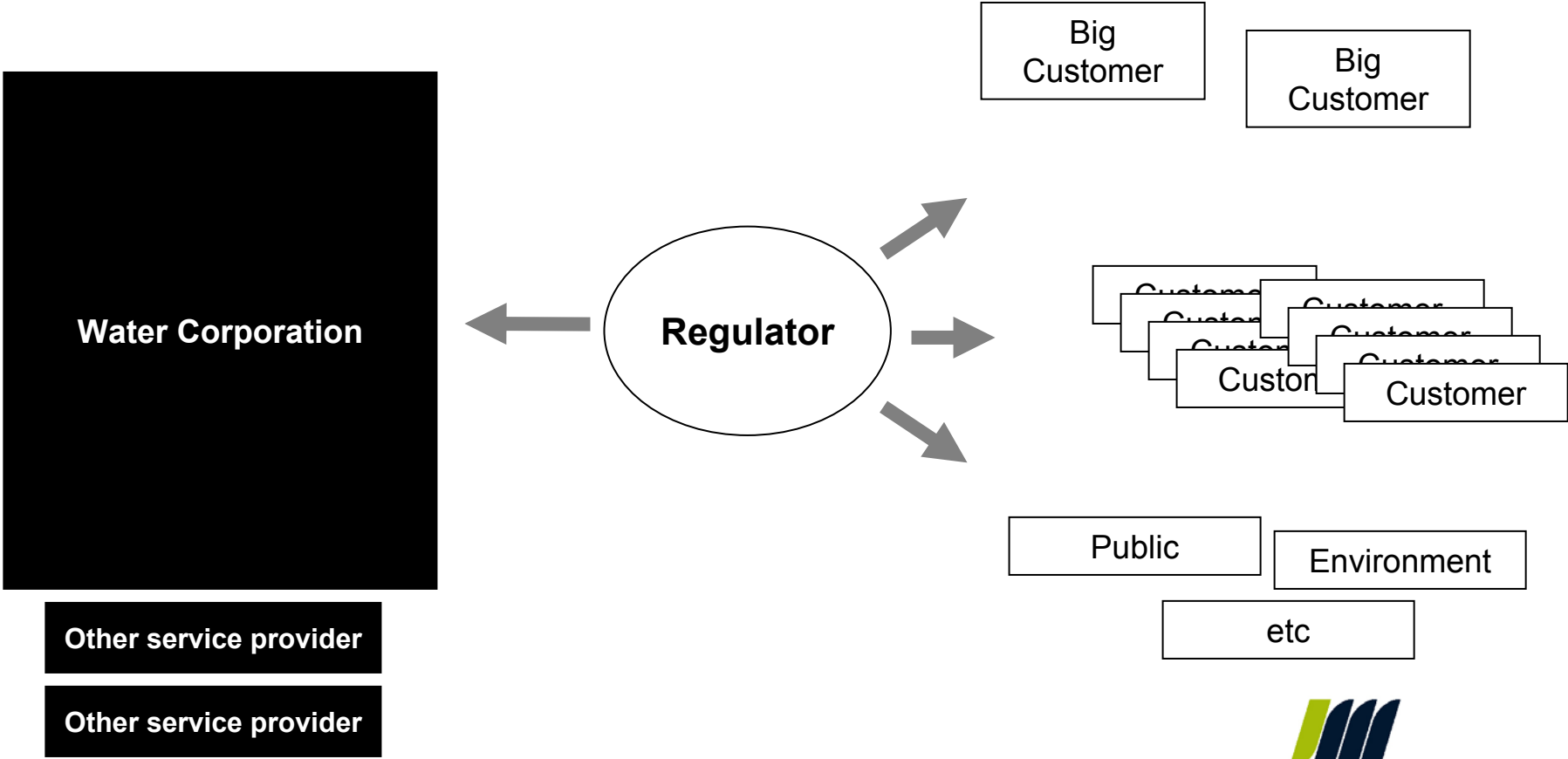
# Power of regulated entity

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- Regulator is outgunned
  - Service provider has more expertise probably, more money and more people
- How can the service provider exploit this?
  - Heavy-hitting “independent” reports
  - Regulatory fugue - overwhelm the regulator
  - Litigation (actual or threatened)
  - Political influence (more on this later)



# Who represents the smaller players?



## Who represents the smaller players? (cont)

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- Other players cannot spare time or other resources to participate in regulatory process
- Impact of decisions:
  - specific on service provider
  - distributed on other players
- Means incumbent has louder voice
- So regulator must represent the other interests
- Problems:
  - How does the regulator know?
  - Makes regulator partisan



# Demarcation between regulators

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- Economic regulator does licensing, access and pricing
- Technical regulator does technical and safety
- Problems
  - Most economic licensing also has technical ramifications
  - Technical decisions can be barriers to entry and impact on costs/compliance
  - Divide and conquer



# Independence of regulators

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- Two types of regulators
  - Government departments
    - DoE, DoH
  - “Independent”
    - ERA
- Government departments
  - (Quite properly) under Ministerial control
  - Ministers (quite properly) make political decisions
  - Departments are politicized

## Independence of regulators (cont)

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- Does regulator being politicized affect the quality of regulation?
  - Ministers have short-term political focus
  - Regulators need longer-term focus
- Government has conflict of interest
  - Economic, if it owns the regulated entity
  - Political
    - Use of utility or regulator for collateral purposes
    - Utility's customers are also voters
- Ministers can be influenced or captured by the regulated entity

## Independence of regulators (cont)

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- So “independent” regulators were created
- Not immune from political interference
  - Behind closed doors
  - Regulators want career paths too
- Depend for technical support on:
  - government departments
    - politicised
  - the regulated entity
    - capture or influence



# Ministers interfering in regulated businesses

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- WA Inc
- Gas Corporation and Western Power
  - Ministers can direct the corporation
  - Must be in writing
  - Must be tabled in parliament
- Not fully effective
  - Ministers still pressure the organisation
  - Executives want career paths

# Summary

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- Three types of regulation: resource allocation, technical, economic
- Regulator's expertise
- Power of regulated entity
- Who represents the small players?
- Demarcation between regulators
- Independence of regulators
- Ministers interfering in regulated businesses

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# The End



# Important Notices

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