



DEPARTMENT: WATER AFFAIRS AND FORESTRY  
REPUBLIC OF SOUTH AFRICA

**POLICY AND GUIDELINES FOR THE  
ESTABLISHMENT OF LICENCE ASSESSMENT  
ADVISORY COMMITTEES**

2 April 2000

Published by

Department of Water Affairs and Forestry

Private Bag x313

Pretoria, 0001

Republic of South Africa

Tel: 012 336 8053/6

Fax: 012 336 8947

**No part of this publication may be reproduced in any manner without full acknowledgement of the source.**

This report should be cited as:

Department of Water Affairs and Forestry. April 2000. Policy and Guidelines for the Establishment of Advisory Committees. Pretoria.

**Status of Document:** Final Draft

**Authors:**

Mike Warren

Department of Water Affairs and Forestry  
Private Bag x 313  
Pretoria, 0001

Tel: (012) 336 8053/6

Fax: (012) 336 8947

E-mail: [mike.warren@dwaf.gov.za](mailto:mike.warren@dwaf.gov.za)

## EXECUTIVE SUMMARY

In support of the purpose of the National Water Act, No. 36 of 1998, the Policy and Guidelines for Licence Assessment Advisory Committees is a framework that provides the established institutions, such as CMAs, with the necessary advisory support for decision-making. The primary objective of Licence Assessment ACs is to offer advice and to make recommendations based on social, economic, bio-physical and technical knowledge.

Each type of Licence Assessment AC can be established for a particular water-use if so required, and it is therefore possible for a variety of Licence Assessment ACs to be established for different purposes and functions. Each type of Licence Assessment AC should establish operational guidelines specific to its purpose and functions. The Licence Assessment ACs shall work according to their Terms of Reference and any other guidelines given to them by the Minister or delegated official.

Licence Assessment Advisory Committees are an excellent mechanism for promoting co-operative governance and for streamlining the licence assessment process. They will integrate the requirements of relevant external national and provincial legislation into their procedures, encouraging co-operative governance.

It must be emphasised that, the establishment of a Licence Assessment AC should only be instituted when there is a clear need and after other (potentially time/ cost etc. saving) mechanisms have been utilised.

The requirement for technical competence is without question the most important consideration when assembling a group of people to assess water-use licence applications. It should override any other consideration.

The existing Licence Assessment ACs for Stream Flow Reduction Allocations (previously Afforestation Permit Review Panels) have demonstrated that all the necessary expertise to assess licence applications does not reside in the Department, and that augmentation is required from external institutions and organisations, both public and private. There are real benefits inherent in this approach, in respect of fostering inter-agency and inter-sector co-operation and understanding, and also in achieving a single entry and exit point for applications which require approval under more than one law. (It should however be considered how many water uses, apart from commercial afforestation, will require multiple approvals).

A mechanism for dealing with applications is captured in a procedure that all parties are made aware of and can understand (this is not a black-box/ non-transparent approach). Licence Assessment Advisory Committees adjudication of licence applications is reasoned well, offering a “round table consensus approach” – all parties have an equal say and are made aware of the requirements of other parties and can therefore deliberate actively, responsibly and simultaneously.

# INDEX

|  | <b>Page:</b> |
|--|--------------|
| <b>i. Acronyms Used</b>  | <b>2</b>     |
| <b>1. Goal</b>   | <b>3</b>     |
| <b>2. Purpose</b>  | <b>3</b>     |
| <b>3. Objectives</b>   | <b>3</b>     |
| <b>4. Principles</b>   | <b>4</b>     |
| <b>5. Licence Assessment Advisory Committees and Catchment Management Agencies</b> | <b>5</b>     |
| <b>6. Mechanisms other than Licence Assessment Advisory Committees</b>             | <b>5</b>     |
| <b>7. Institutional Requirements</b>   | <b>6</b>     |
| <b>7.1 Duties and Powers of the Committee</b>                                      | <b>6</b>     |
| <b>7.2 Appointments to the Committee</b>   | <b>6</b>     |
| <b>i Composition of the Committee</b>  | <b>6</b>     |
| <b>ii Representivity</b>   | <b>7</b>     |
| <b>iii Membership</b>  | <b>7</b>     |
| <b>iv Chairperson</b>  | <b>8</b>     |
| <b>v Deputy Chairperson</b>  | <b>8</b>     |
| <b>vi Voting Powers</b>  | <b>8</b>     |
| <b>vii Veto Powers</b>   | <b>8</b>     |
| <b>7.3 Finances</b>  | <b>9</b>     |
| <b>7.4 Administrative Support</b>  | <b>9</b>     |
| <b>7.5 Frequency of Meetings</b>   | <b>9</b>     |
| <b>8 Pro's and Con's to the establishment of Licence Assessment ACs</b>            | <b>9</b>     |

**i. ACRONYMS USED**

|      |  |
|------|--|
| AC   | Advisory Committee                       |
| CMA  | Catchment Management Agency              |
| DWAF | Department of Water Affairs and Forestry |
| NWA  | National Water Act (Act No. 36 of 1998)  |
| WMA  | Water Management Area                    |

## **1. GOAL**

To ensure the establishment of Licence Assessment Advisory Committees, established by the Minister in terms of Chapter 9 of the NWA, that are flexible, equitable, fair, transparent, and which meet the needs and requirements of stakeholders, for the sustainable management of South Africa's water resources.

## **2. PURPOSE**

In support of the purpose of the National Water Act, No. 36 of 1998, the Policy and Guidelines for Licence Assessment Advisory Committees is a framework that provides the established institutions, such as CMAs, with the necessary advisory support for decision-making. It also ensures that each Licence Assessment Advisory Committee has the appropriate technical expertise as well as community, racial and gender representation, according to section 2, and 99(7)(c) NWA.

A Licence Assessment AC can be established for a particular water-use, and it is therefore possible for a variety of Licence Assessment ACs to be established for different purposes and functions. Each type of Licence Assessment AC should establish operational guidelines specific to its purpose and functions.

Certain existing advisory committees (see section 101, NWA) will continue to function as though they were advisory committees established under the NWA. Licence Assessment ACs established to advise regarding water-use licensing, form only one part of the overall licence procedure. It should be noted that the total process from licence application through to decision and appeal is not discussed below.

## **3. OBJECTIVES**

1. The primary objective of Licence Assessment ACs is to offer advice based on social, economic, bio-physical and technical knowledge and to make recommendations to the Minister, or the official to whom decision-taking has been delegated. The recommendation given by the Licence Assessment ACs would carry extensive weight in the final decision because they will be acting according to departmental policy, and because of their authoritative knowledge of the issues in their area of jurisdiction. The Minister, or delegated authority, would have to show good reason for disagreeing with any recommendation from a Licence Assessment AC. Although primarily advisory in nature, such Committees may exercise powers, which are delegated to them (Chapter 9, NWA).
2. The Licence Assessment ACs shall work according to their Terms of Reference and any other guidelines given to them by the Minister or delegated official. These will be based on the principles of the NWA and the policies and strategies emerging from the provisions of the Act, such as the National Water Resource Classification System, and the National

Water Resource Strategy, as well as the basic values and principles governing public administration as set out in the Constitution and Public Service Code of Conduct.

3. The Licence Assessment ACs will integrate the requirements of relevant external national and provincial legislation into their procedures, encouraging co-operative governance.

#### 4. PRINCIPLES

- a) All Licence Assessment ACs will be guided by the principles espoused in the White Paper on a National Water Policy for South Africa. However, attention is drawn specifically to the following principles, emanating from this White Paper:
  - *Principle 1*  
The water law as applied shall be subject to and consistent with the Constitution in all matters including the determination of the public interest and the rights and obligations of all parties, public and private, with regards to water. While taking cognisance of legitimate existing uses, the water law will actively promote the values enshrined in the Bill of Rights.
  - *Principle 7*  
The objective of managing the quantity, quality and reliability of the nation's water resources is to achieve optimum, long term, environmentally sustainable, social and economic benefit for society from their use.
  - *Principle 19*  
Any authorisation to use water shall be given in a timeous fashion and in a manner which is clear, secure and predictable in respect of the assurance of availability, extent and duration of use. The purpose for which the water may be used shall not arbitrarily be restricted.
  - *Principle 22*  
The institutional framework for water management shall as far as possible be simple, pragmatic and understandable. It shall be self-driven and minimise the necessity for State intervention. Administrative decisions shall be subject to appeal.
  - *Principle 23*  
Responsibility for the development, apportionment and management of available water resources shall, where possible and appropriate, be delegated to a catchment or regional level in such a manner as to enable interested parties to participate.

- b) The following principles are specific to Licence Assessment Advisory Committees:
- i. All Licence Assessment ACs will exhibit reasonable representation of the stakeholder community. Membership of any Licence Assessment AC must also be representative in terms of race and gender as far as reasonably possible. However, the requirement for technical competence is without question the most important consideration when assembling a group of people to assess water-use licence applications. It should override any other consideration.
  - ii. All Licence Assessment ACs are advisory in nature and would thus make recommendations to the appropriate decision-making authorities, rather than taking decisions.
  - iii. Wherever possible, recommendations will be made once consensus has been achieved. Where consensus cannot be achieved, majority and minority views will be put forward.

## **5. LICENCE ASSESSMENT ADVISORY COMMITTEES AND CATCHMENT MANAGEMENT AGENCIES**

As and when the need arises, each WMA may be allocated a Licence Assessment AC, mandated to advise the appropriate CMA or decision-making authority within the WMA. One Licence Assessment AC may serve more than one WMA, and one WMA may have more than one Licence Assessment AC, varying in purpose and function, i.e. advising on different water-use licences.

The assumption here is that Licence Assessment requires the support of scarce technical and other advice, which is most economically assembled in a single body for each relevant Region or WMA.

## **6. MECHANISMS OTHER THAN LICENCE ASSESSMENT ADVISORY COMMITTEES**

In considering alternatives to LAACs, it should not be imagined that the various institutions mentioned in the Act are the only ones which may be established. Non-statutory groups can be legitimately constituted (catchment forums, for example) to undertake mandated tasks under the Act, even though the Act is silent about such bodies. Licence Assessment Advisory Committees should not be established for every task under the Act just because they seem to be the only appropriate institution mentioned in the Act.

The establishment of a Licence Assessment AC should only be instituted, when there is a clear need and after other (potentially time/ cost etc. saving) mechanisms have been utilised, e.g. specific forums for dealing with specific water-use licences/ requirements, temporary forums that are instituted “once off” for particular water uses, etc.



- *Compulsory Licensing: the establishment of “short term” Licence Assessment ACs to deal with compulsory licences.*

In the event of a call for compulsory licensing in a catchment/ Water Management Area where curtailments are foreseen, a short term Licence Assessment AC may be established to offer recommendations on the overall allocation of water in the specific catchment/ Water Management Area utilising Water-use Allocation Plans if available. This Licence Assessment AC would be comprised of representatives as described in Section 6.2.i. “Composition of Licence Assessment Advisory Committees” below. The Strategic Environmental Assessment currently undertaken by the Subdirectorate: Stream Flow Reduction Allocations, which is also being applied to all water uses, will be a useful tool in providing the overall catchment context for allocations.

The work of assessing all the applications during Compulsory Licensing is likely to take weeks of continuous effort, and special arrangements will be necessary to ensure that all the required members are available for the whole of the exercise.

Once the compulsory licensing in the area is complete, the short term Licence Assessment AC will most likely be dissolved.

## **7. INSTITUTIONAL REQUIREMENTS**

According to section 100 of the NWA, the Minister may, by regulation, draw up Terms of Reference and any other rules concerning membership, powers and duties and operation of a Committee.

*The following requirements should be elaborated on in the Terms of Reference and operational guidelines prepared for each Licence Assessment Advisory Committee:*

### **7.1. Duties and powers of the Committee**

Elaborate on the duties of the specific Licence Assessment AC, as well as the powers associated with the committee.

### **7.2. Appointments to the Committee, including Chair- and Deputy Chairperson**

#### **i. Composition of the Licence Assessment Advisory Committee**

The appropriate Regional Director: DWAF will advise the Minister on the composition of the Licence Assessment Advisory Committee within a WMA. It is the responsibility of the Regional Director to ensure that it consists of a cross-section of interested and affected statutory parties, and to ensure the inclusion of non-government bodies/ organisations representing social, economic and environmental interests, or other bodies or persons who have the expertise to serve on it.

The requirement for technical competence is without question the most important consideration when assembling a group of people to assess water use licence applications. It should override any other consideration.

The existing SFRA Licence Assessment ACs (previously APRPs) have demonstrated that all the necessary expertise to assess licence applications does not reside in the Department, and that augmentation is required from external institutions and organisations, both public and private. There are real benefits inherent in this approach, in respect of fostering inter-agency and inter-sector co-operation and understanding, and also in achieving a single entry and exit point for applications which require approval under more than one law. (It should however be considered how many water uses, apart from commercial afforestation, will require multiple approvals).

DWAF Head Office will play a co-ordinating role among all Licence Assessment ACs to ensure congruency and uniformity between all related Licence Assessment ACs.

## **ii. Representivity**

In terms of section 99(7)(b), the Licence Assessment ACs must represent various relevant interests. According to section 2 of the NWA, when suitable institutions are established, they should ensure that they have appropriate racial, gender and community representation as far as reasonably possible.

The Chairperson may nominate more than one person from any sector listed in the composition of the Licence Assessment AC, should it be desirable. However, the Licence Assessment AC should be kept as small and as capable as possible, so that quick yet informed recommendations can be made. While remaining representative in terms of race, gender and community, the Committee must display the necessary expertise required to exercise its powers and perform its duties effectively (section 99(7)(c)).

It is essential that representatives for the different sectors attend the meetings on behalf of the sector for which they have been elected and do not exploit this position for self-gain. If there is reason to believe that a representative is not acting in the interests of his/ her constituency but rather in their own interests or for any other motive, s/he may be requested to step down from membership by the Minister or delegated official, allowing for another more suitable person from that interest group to fulfil that role.

## **iii. Membership**

Any changes in membership must be negotiated with the Chairperson. If a member cannot attend a certain meeting, with at least one week's

notice and with permission of the Chairperson, a nominated and acceptable alternate with the full member status and privileges may attend, so long as such a replacement is fully informed on all matters pertaining to that meeting, and is of such rank as to be in a position to take immediate important decisions with minimum referral to any senior. The attendance of a replacement member must not occur more than twice in succession. Meetings will be scheduled approximately once every six weeks and members who are absent more than four meetings in one year, will be requested to be replaced by an alternate member of their organisation, unless there are extenuating circumstances.

Observers/ advisors may attend the meetings with permission from the Chairperson, in consultation with at least one other Licence Assessment AC member. No powers are vested in such observers/ advisors. The Chairperson may restrict the number of observers/ advisors to avoid making the Committee unwieldy and inefficient.

#### **iv. Chairperson**

The Regional Director: DWAF or the appropriate regional (water resources) DWAF official delegated by the Regional Director shall serve as the departmental chairperson of the Licence Assessment AC. Where the responsible authority is the CMA the relevant delegated CMA representative shall serve as chairperson. The Chairperson should maintain a balanced, objective and transparent standpoint, and be guided by the provisions/ requirements of the NWA and any other related legislation.

It is the responsibility of the Chairperson to effectively summarise the previous dealings with each case as a means of introduction to the proceeding discussions. This will ensure that all attendees will have a greater understanding of the case at hand. The Chairperson should also summarise the outcome or conclusion after each discussion for purposes of a true reflection of that outcome for the minutes.

#### **v. Deputy Chairperson**

The Deputy Chairperson will be a DWAF official, nominated to that role. The Deputy Chairperson will take over functions in the absence of the Chairperson.

#### **vi. Voting powers**

The Licence Assessment AC will not invoke voting powers. Wherever possible, recommendations will be made once consensus has been achieved. Where consensus cannot be achieved, majority and minority views will be put forward.

#### **vii. Veto powers**

Although the decision to approve or refuse a licence remains the Minister's or the delegated authority's responsibility, good reason must be shown if a recommendation from any Licence Assessment AC is not accepted.

### **7.3. Finances**

All parties represented on the Licence Assessment AC are responsible for all transport and subsistence claims of their representative(s). In cases where a member of the Committee or a non-member requested to address the Committee, e.g. a community representative, cannot afford to pay such expenditure, such claims may be lodged with the Department of Water Affairs and Forestry or CMA.

### **7.4. Administrative support**

The responsibility for arranging the Licence Assessment AC meetings lies with the Chairperson and support staff. The Chairperson will be responsible to provide or ensure the provision of secretarial services for the Licence Assessment AC meetings, including documentation/ follow-up actions, etc. In terms of section 99(5) the Department may supply administrative support services to a Committee.

### **7.5. Meeting Frequency**

Although there need not necessarily be a fixed time period between meetings (approximately once every six weeks is suggested), it is up to the Chairperson to ensure that no unnecessary delays in decisions on licences are made due to too few or irregular meetings.

Any excuse by any member claiming insufficient time to study the case under consideration, or come to a decision on any matter prior to the meeting, will normally not be accepted by the Chairperson if the necessary inputs had reached that member in accordance with the time constraints set out, i.e. comments should be submitted to the office of the Regional Director: DWAF marked for the attention of the Chairperson: Licence Assessment Advisory Committee, within 14 working days of the date of the communication to the member. Communication must be sent by the fastest means. The Chairperson will forward copies of the replies and any proposed mitigation measures to the Licence Assessment AC members as soon as possible, which must reach their destination not less than 5 working days before the Licence Assessment AC meeting at which they are to be discussed.

## **8. Pro's and Con's to the establishment of Licence Assessment ACs**

### **8.1 Pro's**

- i) Licence Assessment Advisory Committees are an excellent mechanism for promoting co-operative governance.

- ii) “Round table consensus approach” – all parties have an equal say and are made aware of the requirements of other parties and can therefore deliberate actively, responsibly and simultaneously.
- iii) Licence Assessment Advisory Committees provide a platform for meeting all requirements of statutory bodies.
- iv) All parties involved in the process know the procedure, understand the time periods required to process licence applications and understand the requirements.
- v) They provide an excellent mechanism for streamlining the licence assessment process.
- vi) They offer the applicant a single point of entry and a single point of exit in the licence application process; i.e. the lead statutory body (e.g. DWAF) takes responsibility of the administration of the licence application through to the granting of a licence.
- vii) A mechanism for dealing with applications is captured in a procedure that all parties are made aware of and can understand (this is not a black-box/non-transparent approach).
- viii) Licence Assessment Advisory Committees allow for a co-ordinated and rigorous approach for dealing with licence applications.
- ix) They provide not only a strategic overview of water resources in general but focus on site-specific areas in dealing with licence assessment.
- x) Licence Assessment Advisory Committees adjudication of licence applications is reasoned well.

## **8.2 Con’s**

- i) The Licence Assessment Advisory Committee process can be time consuming.
- ii) The committee requires members to have skills that aren’t necessary available.
- iii) The process is fairly administratively intensive. However, it is more streamlined and rigorous.
- iv) There are budget implications for the statutory bodies concerned.
- v) Multi-skilled people may be required to attend many meetings. (Multi-skilling may be required from statutory bodies, NGO’s, having membership on various Licence Assessment Advisory Committees).
- vi) They are statutory bodies which may be established, disestablished and constituted only by the Minister. (These functions have not been delegated as yet). The establishment process is likely to be lengthy.
- vii) There is a danger that more institutions are established than can be dealt with in terms of the requirement for the Department to provide administrative and financial support. Considering the whole spectrum of possible water-related institutions - CMAs, WUAs, a variety of Forums, LAACs and other ACs - adds up to a staggering, and probably unupportable administrative and financial burden on the Department.
- viii) Whilst the s100 regulations are optional (The Minister *may...*), if this route is chosen it sets in motion a complex, lengthy and resource-intensive process of public consultation and submission to Parliament.
- ix) Because it will take much less time to establish LAACs than it will to establish, capacitate and empower CMAs, in effect CMAs will be presented with established statutory institutions as a *fait accompli*. The

desirability of such actions must be considered, in terms of prejudicing the CMAs' freedom of choice, and burdening them with administrative and financial obligations.