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E N V I R O N M E N T

architecture  
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quantity surveying

# Built Environment Acts





# Contents

COUNCIL FOR THE BUILT ENVIRONMENT ACTS 43 OF 2000.....	4
ARCHITECTURAL PROFESSION ACTS 44 OF 2000.....	13
LANDSCAPE ARCHITECTURAL PROFESSION ACTS 45 OF 2000.....	29
ENGINEERING PROFESSION ACTS 46 OF 2000.....	45
PROPERTY VALUERS PROFESSION ACTS 47 OF 2000.....	61
PROJECT AND CONSTRUCTION MANAGEMENT PROFESSIONS ACT 48 OF 2000 .....	77
QUANTITY SURVEYING PROFESSION ACTS 49 OF 2000.....	93

## COUNCIL FOR THE BUILT ENVIRONMENT ACT 43 OF 2000

(English text signed by the President)

[Assented To: 26 November 2000]

[Commencement Date: 21 September 2001]

### ACT

To provide for the establishment of a juristic person to be known as the Council for the Built Environment; to provide for the composition, functions, powers, assets, rights, duties and financing of such a council; and to provide for matters connected therewith.

### ARRANGEMENT OF SECTIONS

1. Definitions
2. Establishment of Council for the Built Environment
3. Objects of council
4. Functions, powers and duties of council
5. Composition of council
6. Appointment of members of council
7. Removal from office
8. Disqualification, vacation of office and filling of vacancies
9. Chairperson and deputy chairperson
10. Meetings of council
11. Quorum and decisions
12. Executive committee
13. Powers of executive committee
14. Committees of council
15. Appointment of registrar and staff
16. Delegation of powers
17. Financing of council
18. Accounting and accountability
19. Reporting
20. Identification of work
21. Appeal
22. Regulations
23. Short title

#### 1. Definitions

In this Act, unless the context otherwise indicates -

“**built environment**” means the field within which the registered persons practice;

“**built environment professions**” means the professions regulated by the professions’ Acts;

“**council**” means the Council for the Built Environment contemplated in [section 2](#);

“**councils for the professions**” means the -

- (a) South African Council for the Architectural Profession, established by the Architectural Profession Act, 2000;
- (b) South African Council for the Project and Construction Management Professions, established by the Project and Construction Management Professions Act, 2000;
- (c) Engineering Council of South Africa, established by the Engineering Profession Act, 2000;
- (d) South African Council for the Landscape Architectural Profession, established by the Landscape Architectural Profession Act, 2000;
- (e) South African Council for the Property Valuers Profession, established by the Property Valuers Profession Act, 2000; and

- (f) South African Council for the Quantity Surveying Profession, established by the Quantity Surveying Profession Act, 2000;

“**department**” means the national department responsible for public works;

“**Director-General**” means the director-general of the national department responsible for public works;

“**Minister**” means the Minister responsible for public works;

“**prescribed**” means prescribed by regulation;

“**professional**” means a person who is registered as such in terms of any of the professions’ Acts;

“**professions’ Acts**” means the -

- (a) Architectural Profession Act, 2000;
- (b) Project and Construction Management Professions Act, 2000;
- (c) Engineering Profession Act, 2000;
- (d) Landscape Architectural Profession Act, 2000;
- (e) Property Valuers Profession Act, 2000; and
- (f) Quantity Surveying Profession Act, 2000;

“**registered person**” means a person registered in terms of any of the professions’ Acts;

“**registrar**” means a person appointed as registrar under section 15 (1) (a);

“**relevant Minister**” means any Minister, except the Minister responsible for public works, whose portfolio is affected by this Act;

“**this Act**” includes the regulations; and

“**voluntary association for the built environment professions**” means any voluntary association recognised as such by the councils for the professions in terms of any of the professions’ Acts.

## 2. Establishment of Council for the Built Environment

The Minister must, by notice in the *Gazette* and with effect from a date specified in such notice, establish a juristic person to be known as the Council for the Built Environment.

## 3. Objects of council

The objects of the council are to -

- (a) promote and protect the interests of the public in the built environment;
- (b) promote and maintain a sustainable built environment and natural environment;
- (c) promote ongoing human resource development in the built environment;
- (d) facilitate participation by the built environment professions in integrated development in the context of national goals;
- (e) promote appropriate standards of health, safety and environmental protection within the built environment;
- (f) promote sound governance of the built environment professions;
- (g) promote liaison in the built environment in the field of training, both in the Republic and elsewhere, and to promote the standards of such training in the Republic;
- (h) serve as a forum where the representatives of the built environment professions may discuss the relevant -
  - (i) required qualifications;
  - (ii) standards of education;
  - (iii) training and competence;
  - (iv) promotion of professional status; and
  - (v) legislation impacting on the built environment; and
- (i) ensure the uniform application of norms and guidelines set by the councils for the professions throughout the built environment.

#### 4. Functions, powers and duties of council.

The council may -

- (a) advise government on any matter falling within the scope of the built environment, including resource utilisation, socio-economic development, public health and safety and the environment, and for this purpose carry out such investigations as it or the relevant Minister deems necessary;
- (b) communicate to the Minister information on matters of public importance acquired by the council in the course of the performance of its functions under this Act;
- (c) make recommendations to the Minister on the composition, functions, assets, rights, employees or financing of the council;
- (d) advise the Minister with regard to the amendment of this Act, if necessary, in order to support the norms and values of the built environment professions;
- (e) facilitate interministerial co-operation concerning issues relating to the built environment;
- (f) provide advice and consultation on national policy that could impact on the built environment, human resource development in relation to the built environment professions, and the recognition of new professions;
- (g) comment, if necessary, on all proposed legislation impacting on health and safety in the built environment;
- (h) direct communication from the Minister or the relevant Minister to the councils for the professions;
- (i) advise the councils for the professions on matters of national importance where the needs of State, as communicated to the council through the relevant Minister, require joint and co-ordinated action by the built environment professions;
- (j) coordinate the establishment of mechanisms for professionals to gain international recognition;
- (k) ensure the consistent application of policy by the councils for the professions with regard to -
  - (i) accreditation;
  - (ii) the registration of different categories of registered persons;
  - (iii) key elements of competence testing of registered persons;
  - (iv) codes of conduct to be prescribed by the councils for the professions;
  - (v) the principles upon which the councils for the professions must base the determination of fees which registered persons are entitled to charge in terms of any of the professions' Acts, and in accordance with any legislation relating to the promotion of competition;
  - (vi) standards of health, safety and environmental protection within the built environment;
  - (vii) the recognition of voluntary associations for the built environment professions, by approving the framework for that recognition submitted by the councils for the professions, taking due cognisance of the characteristics of each built environment profession;
- (l) investigate or initiate investigations into matters pertaining to its functions and policies with regard to the built environment and, if necessary, recommend legislation in this regard;
- (m) act as an appeal body with regard to matters referred to it in terms of the law regulating the built environment professions;
- (n) in consultation with councils for the professions, obtain recognition for the councils for the professions as bodies responsible for the establishment of education and training standards in terms of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);
- (o) ensure the consistent application of policy throughout the built environment by encouraging coordination between the councils for the professions;
- (p) promote coordination between the Council on Higher Education and the councils for the professions in relation to the accreditation of education institutions;
- (q) liaise with the Competition Commission, established in terms of the Competition Act, 1998 (Act No. 89 of 1998), on behalf of the councils for the professions regarding the identification of work for the built environment professions;
- (r) review fees published by the councils for the professions to ensure the consistent application of the principles regarding such fees;
- (s) charge -
  - (i) membership fees in the prescribed manner from the councils for the professions, calculated pro rata to the number of persons registered with that council;
  - (ii) fees payable for appeals in terms of [section 21](#); and
  - (iii) any other fee it considers necessary;
- (t) institute legal proceedings to recover all outstanding membership fees payable under this Act;
- (u) consider proposals from the councils for the professions with regard to the determination of policy contemplated in paragraph (k);
- (v) receive and assimilate the annual reports of the councils for the professions and submit a summary to the Minister;
- (w) purchase, hire or otherwise acquire or dispose of property, borrow money on the security of the assets of the council or accept and administer any trust or donation;
- (x) subject to this Act, approve standing orders for the regulation of its proceedings and of all other matters relating to the management, powers and duties of the council;
- (y) perform such functions as may be prescribed; and

- (z) generally, do all such things as the council deems necessary or expedient to achieve the objectives of this Act.

5. Composition of council

- (1) The Minister must appoint the members of the council.
- (2) The council consists of the following members, taking into account, among other things, the principles of transparency and representivity:
  - (a) One representative from the department.
  - (b) Not more than three persons nominated, from the nominations contemplated in section 6 (2) (a) by state departments within whose functional areas the professions are also practiced, taking due cognisance of provincial participation.
  - (c) Two representatives nominated by each council for the professions, which representatives may be members of a council for the professions, a voluntary association for the built environment professions or any other person with appropriate expertise.
  - (d) Not more than four persons nominated, from the nominations contemplated in section 6 (2) (b) by the public through an open process of public participation.
- (3)
  - (a) If a profession which is involved and active in the built environment establishes a council in terms of legislation similar to the professions' Acts, that council may make a request to the Minister to be represented on the council.
  - (a) On receipt of a request contemplated in paragraph (a), the Minister may appoint representatives to the council in accordance with this section for the remainder of the term of office of the council.

6. Appointment of members of council

- (1) For the purposes of the first term of office of the council -
  - (a) the councils for the professions must, within 30 days from the date of the publication of the notice of establishment of the council in the *Gazette*, submit in writing to the Director-General the names of the persons nominated by them for purposes of section 5 (2) (c);
  - (b) the Minister must, for the purposes of section 5 (2) (d), on the date of publication of the notice of establishment of the council in the *Gazette*, invite nominations for representatives from the general public;
  - (c) the invitation referred to in paragraph (b), must be published in the *Gazette* and in any newspaper generally circulated throughout the Republic.
- (2) For purposes of subsequent terms of office of the council -
  - (a) when nominations in terms of section 5 (2) (a), (b) or (c) become necessary, the council must invite the department, state departments referred to in section 5 (2) (b) and councils for the professions, respectively, to nominate within the period specified, persons who qualify for nomination in terms of section 5 (2) (a), (b), or (c), respectively;
  - (b) when nominations in terms of section 5 (2) (d) become necessary, the council must invite the public by notice in the *Gazette* and any newspaper generally circulated throughout the Republic, to nominate persons for appointment to the council within the period specified in the notice from the date of the notice;
  - (c) the period referred to in the invitation and the notice must be at least 60 days;
  - (d) on receipt of any nomination the council must, within 30 days from the expiry date specified in the invitation and the notice, submit its recommendations to the Minister.
- (3)
  - (a) If no nominations are submitted as contemplated in subsection (1) or (2), or if a council for the profession or referred to in subsection (1) fails to submit the names of nominated persons to the Director-General under subsection (1), the Director-General must immediately inform the Minister of such failure in writing.
  - (b) In the case of failure as contemplated in paragraph (a), the Minister must appoint the required number of persons who qualify to be appointed in terms of this Act, as members of the council.
- (4) The Minister must, as soon as possible after the appointment of the members of the council, publish the names of the members of the council and the date of commencement of their period of office in the *Gazette*.
- (5) The members of the council hold office for a period of four years calculated from the date contemplated in subsection (4).

7. Removal from office

The Minister may remove a member of the council from office on account of misconduct or inability to perform his or her duties efficiently after due inquiry.

#### 8. Disqualification, vacation of office and filling of vacancies

- (1) A person may not be appointed as a member of the council if that person -
  - (a) is not a South African citizen and ordinarily resident in the Republic;
  - (b) is an unrehabilitated insolvent;
  - (c) has been convicted of an offence in the Republic, other than an offence committed prior to 27 April 1994 associated with political objectives, and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;
  - (d) subject to subsection (3), has been convicted of an offence in a foreign country and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;
  - (e) has, as a result of improper conduct, been removed from an office of trust;
  - (f) has in terms of this Act been found guilty by the council of improper conduct; or
  - (g) in the case of persons referred to in section 5 (2) (c) is not a registered person.
- (2) A member of the council must vacate his or her office if he or she -
  - (a) becomes disqualified in terms of subsection (1) from being appointed as a member of the council;
  - (b) resigns by written notice addressed to the registrar;
  - (c) is declared by the High Court to be of unsound mind or mentally disordered or is detained under the Mental Health Act, 1973 (Act No. 18 of 1973);
  - (d) has, without leave of the council, been absent from more than two consecutive meetings of the council;
  - (e) is appointed in terms of section 5 (2) (c) and ceases to be associated with the council or voluntary association for the built environment profession that nominated him or her;
  - (f) is appointed in terms of section 5 (2) (b) and ceases to be employed by the State;
  - (g) ceases to be permanently resident in the Republic; or
  - (h) is removed from office in terms of section 7.
- (3) For the purposes of subsection (1) (d), the Minister must take cognisance of the prevailing circumstances in a foreign country relating to a conviction.
- (4) If a member of the council dies or vacates his or her office before the expiration of his or her term of office, the Minister must, within 60 days from the date on which the vacancy occurred, appoint the person nominated by the council subject to section 5, to fill the vacancy for the unexpired portion of the period for which that member was appointed.

#### 9. Chairperson and deputy chairperson

- (1) The Minister must, in the prescribed manner, appoint a chairperson and a deputy chairperson for every newly constituted council.
- (2) The chairperson and deputy chairperson hold office for the period of four years from the date of their appointment.
- (3) The deputy chairperson must, if the chairperson is for any reason unable to act as chairperson, perform all the functions of the chairperson and may exercise all the powers of the chairperson.
- (4)
  - (a) If both the chairperson and the deputy chairperson are for any reason unable to preside at a council meeting, the members present must elect one of the members to preside at that meeting.
  - (b) The person elected may, during that meeting, perform all the functions and exercise all the powers of the chairperson.
- (5) If the office of the chairperson or the deputy chairperson becomes vacant, the Minister must, in the prescribed manner, appoint one of the members as chairperson or deputy chairperson, as the case may be, and the member so appointed holds office for the unexpired portion of the period for which his or her predecessor was appointed.
- (6) A chairperson or deputy chairperson may vacate office as such, and such vacation does not terminate his or her membership of the council.

#### 10. Meetings of council

- (1)
  - (a) The Minister must, within 30 days from the date of the appointment of the council, determine the time and place of the first meeting of the council.
  - (b) The council must determine the time and place of any future meeting.
- (2) The council must hold at least two meetings in a year, but may hold more meetings if necessary.
- (3)
  - (a) The chairperson may at any time convene a special meeting of the council, to be held on a date and at a place as determined by him or her.

- (b) The chairperson must, on written request by the Minister or a written request signed by at least six members, convene a special meeting.
  - (c) A special meeting contemplated in paragraph (b) must be held within 30 days from the date of receipt of the request, on a date and at a place determined by the chairperson.
  - (d) The written request contemplated in paragraph (b) must clearly state the purpose for which the meeting is to be convened.
- (4) Subject to the approval of the council, any person who is not a member of the council may attend or take part, but may not vote, in a meeting of the council.

#### 11. Quorum and decisions

- (1) The majority of the members of the council constitute a quorum at any meeting of the council.
- (2)
  - (a) A decision of the majority of the members of the council present at any meeting constitutes a decision of the council.
  - (b) In the event of an equality of votes the chairperson has a casting vote in addition to his or her deliberative vote.
- (3) If the requisite majority of the members who are entitled to sit as members at a meeting of the council, make a decision or authorise an act at that meeting, the decision made or act performed under that authorization, is valid despite the fact that at that meeting a member who had become disqualified in terms of [section 8 \(2\)](#) but had not vacated his or her office, sat as a member.

#### 12. Executive committee

- (1)
  - (a) The council must have an executive committee consisting of the chairperson of the council and not more than three other members elected by the council.
  - (b) The council may appoint alternate members to the executive committee.
- (2) A majority of the total number of members of an executive committee constitutes a quorum.
- (3)
  - (a) A member -
    - (i) serves on the executive committee for a period of one year;
    - (ii) may be re-elected; and
    - (iii) remains in office until his or her successor is elected.
  - (b) Upon expiry of the term of office of any member of the executive committee, the vacancy must be filled by the council at its next ordinary meeting or, failing which, at a special meeting convened for that purpose by the chairperson of the council within 21 days from the date of that ordinary meeting.
  - (c) A vacancy on the executive committee occurs if a member resigns as a member of the executive committee, or if he or she ceases to be a member of the council as contemplated in [section 8](#).
  - (d)
    - (i) If a vacancy occurs in the executive committee the vacancy must be filled by the council at its next ordinary meeting or, failing which, at a special meeting convened for that purpose by the chairperson of the council within 21 days from the date of that ordinary meeting.
    - (ii) The member elected serves for the unexpired portion of the term of office of his or her predecessor.
- (4) The executive committee must hold a meeting as and when necessary, but at least four times per year.
- (5) A special meeting of the executive committee -
  - (a) may, at any time, be convened by the chairperson; and
  - (b) must be convened by the chairperson if he or she is requested thereto in writing by a majority of the members of the executive committee.

#### 13. Powers of executive committee

The executive committee has the power to -

- (a) ensure that the resolutions of the council are carried out;

- (b) consider any matter delegated to it by the council in terms of any law, and to advise the council in connection therewith;
- (c) prepare estimates of revenue and expenditure of the council;
- (d) control the expenditure of moneys voted by the council in its approved estimates and all other moneys or funds made available by the council;
- (e) exercise or perform any power, duty or function delegated to it by the council under section 16; and
- (f) report at every ordinary meeting of the council on the activities of the committee.

14. Committees of council

- (1) The council -
  - (a) may establish any committee to -
    - (i) assist it in the performance of its functions; or
    - (ii) investigate and make recommendations on matters relating to any of its functions;
  - (b) must designate a chairperson for any such committee, and determine the quorum for meetings.
- (2) The council must determine the terms of reference of the committees.
- (3) Section 10 applies with the necessary changes in respect of a committee of the council.

15. Appointment of registrar and staff

- (1) The council -
  - (a) must appoint a registrar; and
  - (b) may employ such staff as it may deem necessary for the carrying out of its functions,

on such conditions, including the payment of remuneration and allowances, as it may determine, and may dismiss any person so appointed.
- (2) The registrar must enter into a performance agreement, as prescribed, with the council on acceptance of his or her appointment.
- (3) The registrar must perform, in addition to such functions as may otherwise be assigned to him or her by or under this Act, such functions as may from time to time be assigned to him or her by the council.

16. Delegation of powers

- (1) The council may, subject to subsection (2), delegate any power, duty or function conferred or imposed on it by this Act to -
  - (a) a committee established under section 14;
  - (b) the executive committee elected under section 12;
  - (c) the chairperson of the council or any member of the council; or
  - (d) any officer of the council.
- (2) The council may not delegate the power to appropriate funds or appoint committees.
- (3) The council may amend, ratify or repeal any decision made in relation to any power, duty or function delegated by the council in terms of subsection (1).
- (4) Any delegation under subsection (1) does not prohibit the exercise of the power or the performance of the duty or function in question by the council.

17. Financing of council

- (1) The funds of the council consist of any money received in terms of this Act, and all other monies accrued to the council from any other legal source, including -
  - (a) membership fees payable by the councils for the professions to the council;
  - (b) donations, contributions or grants received from any person, institute or government; and
  - (c) interest on investments.
- (2) The council must use its funds to defray expenses in connection with the performance of its functions and generally to pursue the objects of the council.
- (3) The council -

- (a)
  - (i) may invest any unspent portion of the funds of the council at the end of a financial year; and
  - (ii) must carry over any surplus to the next financial year and such surplus may be used to defray expenses incurred by the council during that financial year;
- (b) must, during each financial year, submit an estimated income and expenditure statement of the council for the following financial year to the councils for the professions for comment.
- (4) The Minister may, with the concurrence of the Minister of Finance -
  - (a) advance or grant to the council money, from the money appropriated by Parliament, to enable the council to carry out its functions; and
  - (b) determine the conditions to, and repayment of, the advance.
- (5) The council must apply due care and diligence when investing such money or incurring any expenditure from the funds of the council.

18. Accounting and accountability

- (1) The registrar is the accounting officer of the council and must -
  - (a) cause proper records to be kept of all transactions, assets and liabilities of the council; and
  - (b) as soon as possible after the end of each financial year, cause to be prepared a -
    - (i) statement of the income and expenditure of the council for that financial year; and
    - (ii) balance sheet of its assets and liabilities as at the end of that financial year.
- (2) The records, statement and balance sheet referred to in subsection (1) must be audited by an independent auditor appointed by the council.
- (3) The financial year of the council is the period from 1 April in any year to 31 March of the following year.

19. Reporting

- (1) The council must -
  - (a) furnish the Minister with such information and particulars as he or she may from time to time require in connection with the affairs and financial position of the council; and
  - (b) annually, within six months from the end of the financial year, submit to the Minister a report with regard to the functions, affairs and financial position of the council in respect of that financial year.
- (2) Without derogating from the generality of subsection (1) (b), the annual report referred to in that subsection must include -
  - (a) an audited balance sheet and statement of income and expenditure, including any notes and documents containing the relevant information;
  - (b) particulars of any donations, contributions or grants received under [section 17 \(1\) \(b\)](#);
  - (c) the report on the audit referred to in [section 18 \(2\)](#);
  - (d) a report regarding the execution of the functions of the council;
  - (e) a report regarding the envisaged strategies of the council; and
  - (f) such other information as the Minister may from time to time determine.
- (3) The Minister may cause the council to be investigated if he or she suspects that there are any irregularities with regard to the functions of the council.
- (4) The Minister must table the annual report referred to in this section and a summary of the reports referred to in [section 4 \(v\)](#) in Parliament within 14 days after the receipt thereof if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within 14 days after the commencement of its following ordinary session.

20. Identification of work

- (1) The council must, after receipt of the recommendations of the councils for the professions submitted to it in terms of the professions' Acts, and before liaising with the Competition Commission in terms of [section 4 \(q\)](#) -
  - (a) determine policy with regard to the identification of work for the different categories of registered persons;

- (b) consult with any person, body or industry that may be affected by the identification of work in terms of this section.
- (2) The council must, after consultation with the Competition Commission, and in consultation with the councils for the professions, identify the scope of work for every category of registered persons.

#### 21. Appeal

- (1) Any person who is aggrieved by a decision of any of the councils for the professions may upon payment of the prescribed fee and, within 30 days from that person becoming aware of such decision, in writing appeal to the council, and the council must consider and decide the appeal.
- (2) The appellant must submit a copy of the appeal against a decision of a council for the profession and any documents or records supporting such appeal, to that council for the profession and furnish proof of such submission for the information of the council.
- (3) The council must appoint an appeal committee consisting of -
  - (a) a professional who has appropriate experience;
  - (b) a person qualified in law and who has appropriate experience; and
  - (c) a person who specialises in the professional field concerning the appeal.
- (4) The appeal committee must conduct the appeal in accordance with section 33 of the Constitution.
- (5) The appeal committee must decide an appeal within 60 days from the date on which the appeal was lodged, and inform the appellant and the council concerned accordingly.

#### 22. Regulations

The Minister may, after consultation with the council, make regulations with regard to -

- (i) any matter that is required or permitted to be prescribed in terms of this Act;
- (ii) any other matter for the better execution of this Act; or
- (iii) any power granted or duty imposed by this Act.

#### 23. Short title

This Act is called the Council for the Built Environment Act, 2000, and commences on a date fixed by the President by proclamation in the *Gazette*.

## ARCHITECTURAL PROFESSION ACT 44 OF 2000

(English text signed by the President)

*[Assented To: 26 November 2000]*

*[Commencement Date: 26 January 2001 - unless otherwise indicated]*

*[Proc. R6 / GG 22023 / 20010126]*

*[Proc. R38 / GG 27828 / 20050722]*

### ACT

**To provide for the establishment of a juristic person to be known as the South African Council for the Architectural Profession; to provide for the registration of professionals, candidates and specified categories in the architectural profession; to provide for the regulation of the relationship between the South African Council for the Architectural Profession and the Council for the Built Environment; and to provide for matters connected therewith.**

**BE IT ENACTED** by the Parliament of the Republic of South Africa as follows:

1. Definitions
2. Establishment of South African Council for the Architectural Profession
3. Composition of council
4. Nomination procedure
5. Term of office of members of council
6. Disqualification from membership of council and vacation of office
7. Election of president and vice-president of council
8. Appointment of registrar and other stag members of council
9. Decisions of council
10. Administrative powers of council
11. Powers of council with regard to registration
12. Powers of council with regard to fees and charges
13. Powers of council with regard to education in architecture
14. General powers of council
15. Funds of council and keeping and auditing of accounts
16. Reports to CBE
17. Committees of council
18. Categories of registration
19. Registration
20. Cancellation of registration
21. Authorised titles
22. Renewal of registration
23. Return of registration certificate
24. Grievance procedure in relation to registration
25. Recognition of voluntary associations
26. Identification of work
27. Professional conduct
28. Investigation of charge of improper conduct
29. Charge of improper conduct
30. Appointment of disciplinary tribunal
31. Disciplinary hearing
32. Proceedings after hearing
33. Appeal against decision of disciplinary tribunal
34. Professional fees
35. Appeal against certain decisions of council
36. Rules
37. Procedure and evidence for evidential purposes
38. Rectification of errors and exemptions
39. Liability
40. Delegation of powers
41. Offences and penalties
42. Transitional provisions
43. Repeal of laws
44. Act binding on State
45. Short title and commencement

## SCHEDULE

### 1. Definitions

In this Act, unless the context otherwise indicates -

- (i) “**accredit**” means the process of evaluation and recognition by the council of educational programmes offered by educational institutions relating to the architectural profession, and “**accreditation**” has a corresponding meaning;
- (ii) “**actively practise**” means to practise on an ongoing basis in one of the categories contemplated in section 18, and includes a person qualified in the architectural profession who is employed by any sphere of government or an educational institution;
- (iii) “**candidate**” means a person who is registered in terms of section 19(2)(b);
- (iv) “**CBE**” means the Council for the Built Environment established in terms of section 2 of the Council for the Built Environment Act, 2000;
- (v) “**committee**” means a committee established in terms of section 17;
- (vi) “**council**” means the South African Council for the Architectural Profession established by section 2;
- (vii) “**department**” means the national department responsible for public works;
- (viii) “**disciplinary tribunal**” means a tribunal appointed in terms of section 30;
- (ix) “**Minister**” means the Minister responsible for public works;
- (x) “**prescribe**” means prescribed by a rule made by the council under section 36, and “**prescribed**” has a corresponding meaning;
- (xi) “**professional**” means a person who is registered in terms of section 19(2)(a);
- (xii) “**registered person**” means a person registered under one of the categories referred to in section 18;
- (xiii) “**registrar**” means a person appointed as registrar under section 8(1)(a);
- (xiv) “**registration**” means the process -
  - (b) of assessment of competency of applicants for the purpose of registration under this Act; and
  - (c) of entering the names of applicants who qualify into the register referred to in section 11(c);
- (xv) “**rule**” means a rule made and in force under this Act;
- (xvi) “**this Act**” includes any notice, order or rule issued or made under this Act; and
- (xvii) “**voluntary association**” means any voluntary association recognised by the council in terms of section 25.

### 2. Establishment of South African Council for the Architectural Profession

There is hereby established a juristic person to be known as the South African Council for the Architectural Profession.

### 3. Composition of council

- (1) The council consists of the following members, appointed by the Minister, taking into account, among other things, the principles of transparency and representivity -
  - (a) seven registered persons, excluding candidates, of whom at least four must actively practise in the architectural profession -
    - (i) who must be nominated by the voluntary associations and any registered person; and
    - (ii) who must represent the categories of registered persons contemplated in section 18, in the prescribed manner;

- (b) two professionals in the service of the State nominated by any sphere of government, of whom at least one must be nominated by the department; and
  - (c) two members of the public nominated through an open process of public participation.
- (2) A maximum of a third of the members of the South African Council for Architects, established in terms of the Architects' Act, 1970 (Act No. 35 of 1970), who are nominated by that council remain in office for the first term of the council.

#### 4. Nomination procedure

- (1) When any nomination in terms of section 3(1)(a) or (b) becomes necessary, the council must invite registered persons, the voluntary associations and the State, respectively, in the prescribed manner, to nominate within a period of at least 60 days from the date of the invitation, persons who qualify for nomination in terms of section 3(1)(a) or (b), respectively.

(Commencement date of sub-s. (1): 1 July 2005)

- (2) When any nomination in terms of section 3(1)(c) becomes necessary, the council must invite the public, by notice in the *Gazette* and in any newspaper the council considers necessary, but in at least a leading newspaper in each province, to nominate persons for appointment to the council within the period of at least 60 days from the date of the notice.

(Commencement date of sub-s. (2): 1 July 2005)

- (3) On receipt of any nomination, the council must, within 30 days from the expiry date specified in the invitation or the notice, make and submit its recommendations to the Minister.
- (4) The Minister must, within 60 days from the date of the receipt of the nominations from the outgoing council, appoint new members of the council.
- (5) If the council receives no or insufficient nominations within the period specified in the invitation or the notice, the Minister may, after consultation with the council, appoint the required number of persons who qualify to be appointed in terms of this Act.
- (6) The Minister must, as soon as practicable after the appointment of the members of the council, by notice in the *Gazette*, publish -
  - (a) the name of every person appointed as a member;
  - (b) the date from which the appointment takes effect; and
  - (c) the period for which the appointment is made.
- (7) The Minister must, within 30 days from the date of the appointment of the council, determine the time and place of its first meeting, and, thereafter, the council must determine the time and place of any future meeting.

#### 5. Term of office of members of council

- (1) The term of office for members of the council is four years, but members continue in office until the succeeding council is duly constituted.
- (2) Subject to section 42(12), a member of the council may not serve for more than two consecutive terms of office.
- (3) Despite subsection (1), the Minister may, by notice in the *Gazette*, after consultation with the council, extend the period of office of all the members of the council for a period of six months, but he or she may only extend the period of office twice.
- (4) Despite subsection (1), the Minister may, by notice in the *Gazette*, after consultation with the council, terminate the period of office of a member or all members of the council.
- (5) The Minister may only act in terms of subsection (4) if a new member or a new council has been appointed, on nominations invited by the Minister in the manner provided for in section 4, to take over the functions of the member or the council concerned.

#### 6. Disqualification from membership of council and vacation of office

- (1) A person may not be appointed as a member of the council if that person -
- (a) is not a South African citizen and ordinarily resident in the Republic;
  - (b) is an unrehabilitated insolvent;
  - (c) has been convicted of an offence in the Republic, other than an offence committed prior to 27 April 1994 associated with political objectives, and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;
  - (d) subject to subsection (3), has been convicted of an offence in a foreign country and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both,

- (e) has, as a result of improper conduct, been removed from an office of trust; or
  - (f) has in terms of this Act been found guilty by the disciplinary tribunal or the council of improper conduct.
- (2) A member of the council must vacate his or her office if he or she -
- (a) becomes disqualified in terms of subsection (1) from being appointed as a member of the council;
  - (b) resigns by written notice addressed to the registrar;
  - (c) is declared by the High Court to be of unsound mind or mentally disordered or is detained under the Mental Health Act, 1973 (Act No. 18 of 1973);
  - (d) has, without leave of the council, been absent from more than two consecutive meetings of the council;
  - (e) was appointed in terms of section 3(1)(a) and after that appointment a change in his or her circumstances arises that affects the ratio of the membership referred to in section 3(1);
  - (f) was appointed in terms of section 3(1)(b) and ceases to be employed by the State; or
  - (g) ceases to be permanently resident in the Republic.
- (3) For the purposes of subsection (1)(d), the Minister must take cognisance of the prevailing circumstances in a foreign country relating to a conviction.
- (4) (a) If a member of the council dies or vacates his or her office before the expiration of his or her term of office, the Minister may, after consultation with the council and subject to section 5(1), appoint a person to fill the vacancy for the unexpired portion of the period for which that member was appointed.
- (b) If the Minister appoints a person to fill the vacant seat, the appointment must be made within 60 days from the date on which the vacancy occurred.

#### 7. Election of president and vice-president of council

- (1) (a) The members of the council must, at the first meeting of every newly constituted council elect a president and vice-president who must be registered persons and at least one must actively practise in the architectural profession.
- (b) The president and vice-president hold office for the period of four years from the date of their appointment,
- (2) The vice-president must, if the president is for any reason unable to act as president, perform all the functions and may exercise all the powers of the president.
- (3) (a) If both the president and the vice-president are for any reason unable to preside at a council meeting, the members present must elect a person to preside at that meeting.
- (b) The person elected may, during that meeting and until the president or vice-president resumes his or her functions, perform all the functions and exercise all the powers of the president.

#### 8. Appointment of registrar and other staff members of council

- (1) The council -
- (a) must appoint a registrar; and
  - (b) may employ such staff members as it may deem necessary for the carrying out of its functions,
- on such conditions, including the payment of remuneration and allowances, as it may determine, and may dismiss any person so appointed.
- (2) The registrar must enter into a performance agreement, as prescribed, with the council on acceptance of his or her appointment.
- (3) The registrar must perform, in addition to such functions as may otherwise be assigned to him or her by or under this Act, such functions as may from time to time be assigned to him or her by the council.

#### 9. Decisions of council

- (1) A decision of the majority of the members of the council present at any meeting constitutes a decision of the council.
- (2) In the event of an equality of votes the person presiding at the meeting has a casting vote in addition to his or her deliberative vote.
- (3) If the requisite majority of the members who are entitled to sit as members at a meeting of the council, make a decision or authorise an act at that meeting, the decision made or act performed under that authorisation, is valid despite the fact that at that meeting a member who had become disqualified in terms of section 6(2) but had not vacated his or her office, sat as a member.

#### 10. Administrative powers of council

The council may -

- (a) determine the remuneration and allowances payable to its members or the members of any committee of the council after consultation with the CBE;
- (b) arrange for the payment of pension and other benefits to any staff of the council or the registrar and to his or her dependants on the termination of the service of a staff member or the registrar;
- (c) determine where its head office must be situated;
- (d) determine the manner in which meetings of the council or any committee of the council must be convened, the procedure and quorum at such meetings and the manner in which the minutes of such meetings must be kept; and
- (e) print, circulate, sell and administer the publication of, and generally take any steps necessary to publish, any publication relating to the architectural profession and related matters.

#### 11. Powers of council with regard to registration

The council may, subject to this Act -

- (a) consider and decide on any application for registration;
- (b) prescribe the period of validity of the registration of a registered person;
- (c) keep a register of registered persons and decide on -
  - (i) the form of certificates and the register to be kept;
  - (ii) the maintenance of the register or issuing of certificates; and
  - (iii) the reviewing of the register and certificates and the manner in which alterations thereto may be effected.

#### 12. Powers of council with regard to fees and charges

- (1) The council may, with regard to fees and charges, which are payable to the council, determine -
  - (a) application fees;
  - (b) registration fees;
  - (c) annual fees, or portion thereof, in respect of a part of a year;
  - (d) the date on which any fee or charge is payable;
  - (e) the fees, or portion thereof, payable in respect of any examination referred to in [section 19](#), conducted by or on behalf of the council;
  - (f) any charge payable for the purposes of the education fund referred to in [section 15\(5\)](#);
  - (g) fees payable for a service referred to in [section 14\(c\)](#);
  - (h) the fees payable for an appeal in terms of [section 24\(1\)](#); or
  - (i) any other fee or charge it considers necessary.
- (2) The council may grant exemption from payment of application fees, registration fees, annual fees, charges, or a portion thereof referred to in subsection (1).

#### 13. Powers of council with regard to education in architecture

The council may -

- (a) subject to [sections 5 and 7](#) of the Higher Education Act, 1997 (Act No. 101 of 1997), conduct accreditation visits to any educational institution which has a department, school or faculty of architecture, but must conduct at least one such visit during its term of office. If the council does not conduct an accreditation visit within that term of office, it must notify the Minister accordingly and provide him or her with reasons for the failure to do so;
- (b) either conditionally or unconditionally grant, refuse or withdraw accreditation to all educational institutions and their educational programmes with regard to architecture;
- (c) consult with the Council on Higher Education established in terms of the Higher Education Act, 1997, regarding matters relevant to education in architecture;
- (d) consult with the South African Qualifications Authority established by the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), or any body established by it and the voluntary associations, to determine competency standards for the purpose of registration;

- (e) establish mechanisms for registered persons to gain recognition of their qualifications and professional status in other countries;
- (f) liaise with the relevant National Standards Body established in terms of Chapter 3 of the regulations under the South African Qualifications Authority Act, 1995, with a view to the establishment of a standards generating body in terms of those regulations;
- (g) recognise or withdraw the recognition of any examination contemplated in [section 19](#);
- (h) enter into an agreement with any person or body of persons, within or outside the Republic, with regard to the recognition of any examination or qualification for the purposes of this Act;
- (i) give advice or render assistance to any educational institution, voluntary association or examining body with regard to educational facilities for and the training and education of registered persons and prospective registered persons;
- (j) conduct any examination for the purposes of [section 19](#); and
- (k) determine, after consultation with the voluntary associations and registered persons, conditions relating to and the nature and extent of continuing education and training.

#### 14. General powers of council

The council may, in addition to other powers in this Act -

- (a) acquire, hire, maintain, let, sell or otherwise dispose of movable or immovable property for the effective performance and exercise of its functions, duties or powers;
- (b) decide upon the manner in which contracts must be entered into on behalf of the council;
- (c) perform any service within its competence if it is requested by any person or body of persons, including the State;
- (d) determine, subject to [section 25](#), the requirements with which a voluntary association must comply to qualify for recognition by the council;
- (e) advise the Minister, any other Minister or the CBE on any matter relating to the architectural profession;
- (f) encourage and itself undertake research into matters relating to the architectural profession;
- (g) take any steps it considers necessary for the protection of the public in their dealings with registered persons for the maintenance of the integrity and the enhancement of the status of the architectural profession;
- (h) take any steps it considers necessary for the improvement of the standards of services rendered by registered persons;
- (i) create an awareness amongst registered persons of the importance to protect the environment against unsound architectural practices;
- (j) take any steps which it considers necessary, where, as a result of architectural related undertakings, public health and safety is prejudiced; and
- (k) take any measures it considers necessary for the proper performance and exercise of its functions, duties or powers or to achieve the objectives of this Act.

#### 15. Funds of council and keeping and auditing of accounts

- (1) The funds of the council consist of any money received in terms of this Act and all other monies which may accrue to the council from any other legal source, including fines and penalties imposed by the council.
- (2) The council may -
  - (a) collect and invest funds of the council;
  - (b) raise money by way of loan for the purpose of effectively performing its functions;
  - (c) with a view to the promotion of any matter relating to the architectural profession, lend money against such security as the council considers adequate; and
  - (d) mortgage any of its immovable property as security for a loan referred to in paragraph (b).
- (3) The council may remunerate its members and committee members from its funds.
- (4) The council may finance any publication referred to in [section 10\(e\)](#).
- (5) The council may establish and administer an education fund for the purpose of education, training and continuing education and training of registered persons and students in the architectural profession.
- (6) The council must keep full and correct account of all monies received and expended by it.
- (7)
  - (a) The council must annually prepare a statement of income and expenditure and a balance sheet showing its financial position as at the close of the financial year to which it relates.
  - (b) The council must have the statement and balance sheet audited by an auditor registered in terms of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991).
  - (c) A copy of the audited statement and balance sheet must be open for inspection at the offices of the council.

- (8) The council must, within six months from the close of each financial year or such other period as may be agreed to by the Minister after a request by the Council, submit the audited statement and balance sheet to the Minister and must provide a copy to the CBE.
- (9) The Minister may, with the concurrence of the Minister of Finance -
  - (a) advance or grant to the council, out of money appropriated by Parliament, such amounts as he or she considers necessary in order to enable the council to carry out its functions; and
  - (b) determine the conditions to and repayment of the advance.
- (10) The council must determine its financial year.
- (11) The council must apply due care and diligence when investing any money or incurring any expenditure from the funds of the council.

#### 16. Reports to CBE

- (1) The council must, within six months from the close of each financial year, provide the CBE with a report regarding its activities during that financial year, for the purpose of section 4 of the Council for the Built Environment Act, 2000.
- (2) A copy of the report and the register referred to in section 11 (c) must be open for inspection at the offices of the council.
- (3) The council must, on request by the CBE, provide the CBE with any information regarding a registered person.

#### 17. Committees of council

- (1)
  - (a) The council may establish any committee, including an investigating committee, to assist it in the performance of its functions and may appoint any person as a member of that committee.
  - (b) If the council does not designate a chairperson for a committee, the committee may, at its first meeting, elect a chairperson from among its members.
  - (c) The council may at any time dissolve or reconstitute a committee.
- (2) Section 9 may, with the necessary changes, apply in respect of a committee of the council.

#### 18. Categories of registration

- (1) The categories in which a person may register in the architectural profession are -
  - (a) professional, which is divided into -
    - (i) Professional Architect;
    - (ii) Professional Senior Architectural Technologist;
    - (iii) Professional Architectural Technologist; or
    - (iv) Professional Architectural Draughtsperson; or
  - (b) candidate, which is divided into -
    - (i) Candidate Architect;
    - (ii) Candidate Senior Architectural Technologist;
    - (iii) Candidate Architectural Technologist; or
    - (iv) Candidate Architectural Draughtsperson; or
  - (c) specified categories prescribed by the council.
- (2) A person may not practise in any of the categories contemplated in subsection (1), unless he or she is registered in that category.
- (3) A person who is registered in the category of candidate must perform work in the architectural profession only under the supervision and control of a professional of a category as prescribed.

#### 19. Registration

- (1)
  - (a) A person must apply, in the prescribed application form, to the council for registration in a category referred to in section 18(1).
  - (b) The application form referred to in paragraph (a) must be accompanied by the prescribed fee.

- (2) The council must register the applicant in the relevant category and issue a registration certificate to the successful applicant in the prescribed form if, after consideration of an application, the council is satisfied that the applicant -
- (a) in the case of a person applying for registration as a professional -
    - (i) has demonstrated his or her competence as measured against standards determined by the council for the relevant category of registration; and
    - (ii) has passed any additional examinations that may be determined by the council;
  - (b) in the case of a person applying for registration as a candidate or a candidate in a specified category, has satisfied the relevant educational outcomes determined by the council for this purpose, by -
    - (i) having passed accredited or recognised examinations at any educational institution offering educational programmes in architecture; and
    - (ii) having passed any other examination that may be determined by the council; or
    - (iii) presenting evidence of prior learning in architecture.
- (3) (a) Despite subsection (2), the council may refuse to register an applicant -
- (i) if the applicant has been removed from an office of trust on account of improper conduct;
  - (ii) has been convicted of an offence in the Republic, other than an offence committed prior to 27 April 1994 associated with political objectives, and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;
  - (iii) if the applicant has, subject to paragraph (b), been convicted of an offence in a foreign country and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;
  - (iv) if the applicant is declared by the High Court to be of unsound mind or mentally disordered, or is detained under the Mental Health Act, 1973;
  - (v) for as long as the applicant is disqualified from registration as a result of any punishment imposed on him or her under this Act;
  - (vi) if the applicant is an unrehabilitated insolvent whose insolvency, was caused by his or her negligence or incompetence in performing work falling within the scope of the category in respect of which he or she is applying for registration.
- (b) For the purposes of paragraph (a)(iii), the council must take cognisance of the prevailing circumstances in a foreign country relating to a conviction.
- (c) The council must provide the applicant with a notice of a refusal referred to in, paragraph (a).
- (4) For the purposes of this section "prior learning" means the previous learning and experience of a learner, howsoever obtained, against the learning outcomes required for a specified qualification and the acceptance for the purposes of qualification of that which meets those requirements.

## 20. Cancellation of registration

- (1) (a) The council may cancel the registration of a registered person if he or she -
- (i) becomes disqualified from registration as contemplated in [section 19\(3\)](#);
  - (ii) has erroneously been registered, or has been registered on information subsequently proved to be false; or
  - (iii) fails to pay the prescribed annual fee or portion thereof, within 60 days from it becoming due or within such further period as the council may allow, either before or after the expiry of the 60 days.
- (b) The council must provide the registered person with a notice of a cancellation referred to in paragraph (a).
- (2) If a person who is registered as a candidate qualifies to be registered as a professional in terms of [section 19\(2\)\(a\)](#), the council must cancel his or her registration as a candidate.
- (3) The council must at the written request of any registered person cancel his or her registration, but where an investigation into alleged improper conduct by that person is in progress or is to be held, the registration may not be cancelled until the investigation has been concluded.
- (4) Despite the cancellation of the registration of a registered person in terms of this section, that person remains liable for any fee, arrears or penalty imposed by the council for the period that he or she was registered.

## 21. Authorised titles

- (1) A person who is registered in any of the categories referred to in [section 18](#) (1) may describe himself or herself as and use the title -
  - (a) Professional Architect;
  - (b) Professional Senior Architectural Technologist;
  - (c) Professional Architectural Technologist;
  - (d) Professional Architectural Draughtsperson;
  - (e) Candidate Architect;
  - (f) Candidate Senior Architectural Technologist;
  - (g) Candidate Architectural Technologist; or
  - (h) Candidate Architectural Draughtsperson.
- (2) A registered person may use a title prescribed by the council for the specified category.
- (3) A registered person must use his or her title in all architectural reports and other documentation relating to his or her work in the architectural profession, prepared by or for him or her.
- (4) The council may determine abbreviations or acronyms for the titles referred to in subsection (1).

## 22. Renewal of registration

- (1) A registered person must, at least three months prior to the prescribed expiry date of his or her registration, apply in the prescribed manner to the council for the renewal of his or her registration.
- (2) The council may determine conditions for the renewal of registration.
- (3) Subject to [section 19](#), the council must, on application, register a person who was previously registered and whose registration was cancelled in terms of [section 20](#) (1)(a)(iii), if he or she has paid -
  - (a) the prescribed fee;
  - (b) any arrear annual fee or portion thereof;
  - (c) any expenses incurred by the council in connection with the recovery of any arrear fees; and
  - (d) any penalties imposed on him or her by the council.

## 23. Return of registration certificate

Any person whose registration has been cancelled in terms of this Act, must return his or her registration certificate to the registrar within 30 days from the date on which he or she is directed by the registrar in writing to do so.

## 24. Grievance procedure in relation to registration

- (1) If an applicant is of the opinion that a committee, in its refusal to register him or her, or to cancel his or her registration, other than a cancellation in terms of [section 20](#)(1)(a)(iii) or [32](#)(3)(a)(iv), did not comply with [section 33](#) of the Constitution, that applicant may, on payment of the prescribed fees and within 30 days from the date on which the refusal or cancellation came to his or her knowledge, appeal to the council against that decision.
- (2) The council must, at its first ensuing meeting, within 60 days from the date of the receipt of the appeal, decide on the appeal and provide the appellant with reasons for its decision.
- (3) If an appeal is lodged against a refusal of a committee to renew the registration of a registered person, the registration of that person may not be cancelled until the appeal has been decided.

## 25. Recognition of voluntary associations

- (1) The council must, within 90 days from the date of its first meeting, submit the framework for the requirements for recognition of a voluntary association to the CBE for approval.
- (2) Any voluntary association may apply to the council to be recognised as such.
- (3) The council may, if the voluntary association complies with the requirements determined in terms of [section 14](#)(d), recognise that association and issue it with a certificate of recognition.
- (4) A certificate of recognition is valid for a period of five years from the date of issue.
- (5) A voluntary association must display its certificate of recognition in a prominent place at its head office.
- (6) The recognition of a voluntary association lapses -
  - (a) if that association no longer complies with the requirements contemplated in [section 14](#)(d); or
  - (b) at the expiry of the five-year period referred to in subsection (4).
- (7) A voluntary association must, at least three months prior to the expiry of its recognition, apply in the prescribed manner to the council for the renewal thereof.

- (8) A voluntary association whose recognition has lapsed must, within 30 days from the date on which it is so directed in writing by the council, return its certificate of recognition.

#### **26. Identification of work**

- (1) The council must consult with -
- (a) all voluntary associations;
  - (b) any person;
  - (c) any body; or
  - (d) any industry,
- that may be affected by any laws regulating the built environment professions regarding the identification of the type of architectural work which may be performed by persons registered in any of the categories referred to in section 18, including work which may fall within the scope of any other profession regulated by the professions' Acts referred to in the Council for the Built Environment Act, 2000.
- (2) After the process of consultation the council must submit recommendations to the CBE regarding the work identified in terms of subsection (1), for its consideration and identification in terms of section 20 of the Council for the Built Environment Act, 2000.
- (3) A person who is not registered in terms of this Act, may not -
- (a) perform any kind of work identified for any category of registered persons;
  - (b) pretend to be, or in any manner hold or allow himself or herself to be held out as a person registered in terms of this Act;
  - (c) use the name of any registered person or any name or title referred to in section 18 or 21; or
  - (d) perform any act indicating, or calculated to lead persons to believe, that he or she is registered in terms of this Act.
- (4) Subsection (3)(a) may not be construed as prohibiting any person from performing work identified in terms of this section, if such work is performed in the service of or by order of and under the direction, control, supervision of or in association with a registered person entitled to perform the work identified and who must assume responsibility for any work so performed. (Commencement date of Section 26: 1 July 2005)

#### **27. Professional conduct**

- (1) The council must, in consultation with the CBE, voluntary associations and registered persons, draw up a code of conduct for registered persons.
- (2)
- (a) The council is responsible for administering the code of conduct and must ensure that the code is available to all members of the public at all reasonable times.
  - (b) The council must provide the CBE with a copy of the code of conduct.
- (3) All registered persons must comply with the code of conduct and failure to do so constitutes improper conduct.

#### **28. Investigation of charge of improper conduct**

- (1) The council must refer any matter brought against a registered person to an investigating committee contemplated in section 17 if -
- (a) the council has reasonable grounds to suspect that a registered person has committed an act which may render him or her guilty of improper conduct; or
  - (b) a complaint, charge or allegation of improper conduct has been brought against a registered person by any person.
- (2) At the request of the council, the investigating committee must -
- (a) investigate the matter; and
  - (b) obtain evidence to determine whether or not in its opinion the registered person concerned may be charged and, if so, recommend to the council the charge or charges that may be preferred against that registered person.
- (3) An investigating committee may not question the registered person concerned unless the investigating committee informs that registered person that he or she -

- (a) has the right to be assisted or represented by another person; and
  - (b) is not obliged to make any statement and that any statement so made may be used in evidence against the registered person.
- (4) The investigating committee must, after the conclusion of the investigation, submit a report making its recommendations to the council regarding any matter referred to it in terms of this section.

**29. Charge of improper conduct**

- (1) The council must, after considering a report of the investigating committee in terms of section 28(2)(b) and (4), charge a registered person with improper conduct if the council is convinced that sufficient grounds exist for a charge to be preferred against such a registered person.
- (2) The council must furnish a charge sheet to the registered person concerned by hand or registered mail.
- (3) A charge sheet must inform the registered person charged -
- (a) of the details and nature of the charge;
  - (b) that he or she must, in writing, admit or deny the charge;
  - (c) that he or she may, together with the admission or denial, submit a written explanation regarding the improper conduct with which he or she is charged; and
  - (d) of the period, which must be reasonable, within which his or her plea in terms of paragraph (b) must be submitted to the council.
- (4) (a) If a registered person charged admits that he or she is guilty of the charge, he or she is considered to have been found guilty of improper conduct as charged, after he or she has explained his or her conduct.
- (b) The council may, subject to section 32(2), impose a penalty contemplated in section 32(3)(a) or (b) on a registered person who has admitted guilt in terms of paragraph (a).
- (5) The acquittal or the conviction of a registered person by a court of law on a criminal charge is not a bar to proceedings against him or her under this Act on a charge of improper conduct, even if the facts stated in the charge of improper conduct would, if proved, constitute the offence stated in the criminal charge on which he or she was acquitted or convicted or any other offence of which he or she might have been acquitted or convicted at his or her trial on the criminal charge.

**30. Appointment of disciplinary tribunal**

- (1) The council must appoint a disciplinary tribunal to hear a charge of improper conduct if a person charged -
- (a) denies the charge; or
  - (b) fails to comply with section 29(3)(b).
- (2) The disciplinary tribunal must consist of at least -
- (a) a person who specialises in the professional field concerning the charge;
  - (b) a professional who has appropriate experience; and
  - (c) a person qualified in law and who has appropriate experience.

**31. Disciplinary hearing**

- (1) The disciplinary hearing must be conducted by the disciplinary tribunal.
- (2) The disciplinary tribunal may, for the purposes of this section, appoint a person to assist it in the performance of its functions.
- (3) (a) The disciplinary tribunal may, for the purposes of a hearing, subpoena any person -
- (i) who in its opinion may be able to give material information concerning the subject of the hearing; or
  - (ii) who it suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing on the subject of the hearing, to appear before the disciplinary tribunal at the time and place specified in the subpoena, to be questioned or to produce a book, document or object.
- (b) A subpoena issued in terms of paragraph (a), must -
- (i) be in the prescribed form;

- (ii) be signed by the chairperson of the disciplinary tribunal or, in his or her absence, any member of the disciplinary tribunal; and
  - (iii) be served on the registered person concerned personally or by sending it by registered mail.
- (4) The disciplinary tribunal may retain a book, document or object produced in terms of subsection (3) for the duration of the hearing.
- (5) The chairperson of the disciplinary tribunal may call upon and administer an oath to, or take an affirmation from, any witness at the hearing who was subpoenaed in terms of subsection (3).
- (6) At a hearing the registered person charged -
  - (a)
    - (i) may personally be present at the hearing of the proceedings;
    - (ii) may be assisted or represented by another person in conducting the proceedings;
    - (iii) has the right to be heard;
    - (iv) may call witnesses;
    - (v) may cross-examine any person called as a witness in support of the charge; and
    - (vi) may have access to documents produced in evidence;
  - (b)
    - (i) may admit at any time before conviction that he or she is guilty of the charge despite the fact that he or she denied the charge or failed to react in terms of [section 29\(3\)\(b\)](#) or (c);
    - (ii) may, in the case where he or she makes an admission in terms of subparagraph (i), be deemed to be guilty of improper conduct as charged.
- (7) The person referred to in subsection (2) may during a hearing -
  - (a) lead evidence and advance arguments in support of the charge and cross-examine witnesses;
  - (b) question any person who was subpoenaed in terms of subsection (3); or
  - (c) call anyone to give evidence or to produce any book, document or object in his or her possession or custody or under his or her control which the person referred to in subsection (2) suspects or believes to have a bearing on the subject of the hearing.
- (8) (a) A witness who has been subpoenaed may not -
  - (i) without sufficient cause, fail to attend the hearing at the time and place specified in the subpoena;
  - (ii) refuse to be sworn in or to be affirmed as a witness;
  - (iii) without sufficient cause, fail to answer fully and satisfactorily to the best of his or her knowledge to all questions lawfully put to him or her; or
  - (iv) fail to produce any book, document or object in his or her possession or custody or under his or her control which he or she has been required to produce.
  - (b) A witness who has been subpoenaed must remain in attendance until excused by the chairperson of the disciplinary tribunal from further attendance.
  - (c) A witness who has been subpoenaed may request that the names of the members of the disciplinary tribunal be made available to him or her.
  - (d) The law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce a book, document or object in a civil trial before a court of law may, with the necessary changes, apply in relation to the examination of, or the production of any book, document or object to the disciplinary tribunal by, any person called in terms of this section as a witness.
  - (e) A witness may not, after having been sworn in or having been affirmed as a witness, give a false statement on any matter, knowing that answer or statement to be false.
  - (f) A person may not prevent another person from complying with a subpoena or from giving evidence or producing a book, document or object which he or she is in terms of this section required to give or produce.
- (9) The record of evidence which has a bearing on the charge before the disciplinary tribunal and which was presented before any commission which investigated an event or conduct is admissible without further evidence being led if
  - (a) the record is accompanied by a certificate from the chairperson; and
  - (b) the certificate certifies that the investigation was lawful, reasonable and procedurally fair.

- (10) If the improper conduct with which the registered person is charged amounts to an offence of which he or she has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court is, on the identification of the registered person as the person referred to in the record, sufficient proof of the commission by him or her of that offence, unless the conviction has been set aside by a superior court.

### 32. Proceedings after hearing

- (1) After the conclusion of the hearing the disciplinary tribunal must, within 30 days -
- (a) decide whether or not the registered person charged is guilty of improper conduct;
  - (b) if the disciplinary tribunal finds that the registered person charged is guilty of improper conduct, take cognisance of any aggravating or mitigating circumstances;
  - (c) inform the registered person charged and the council of the finding; and
  - (d) inform the registered person of his or her right of appeal in terms of [section 33](#).
- (2) A registered person found guilty of improper conduct in terms of this section may
- (a) address the disciplinary tribunal in mitigation of sentence; and
  - (b) call witnesses to give evidence on his or her behalf in mitigation of the sentence.
- (3) (a) If the registered person charged is found guilty of improper conduct, or if he or she admits that he or she is guilty of the charge, the disciplinary tribunal must either -
- (i) caution or reprimand the registered person;
  - (ii) impose on him or her a fine not exceeding the amount calculated according to the ratio for one year imprisonment determined in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991);
  - (iii) suspend the registration of the registered person concerned for a period not exceeding one year; or
  - (iv) cancel the registration of the registered person concerned and remove his or her name from the register referred to in [section 11](#) (c).
- (b) The disciplinary tribunal may take decisions under more than one of the subparagraphs of paragraph (a).
- (4) At the conclusion of the hearing the disciplinary tribunal must notify the council of its finding.
- (5) The council must publish the finding and the sanction imposed in terms of subsection (3) in the *Gazette*.
- (6) The council must give effect to the decision of the disciplinary tribunal.

### 33. Appeal against decision of disciplinary tribunal

- (1) (a) A registered person found guilty of improper conduct may appeal to the council against a finding of the disciplinary tribunal or against the sentence, or both.
- (b) The appeal must be lodged, within 30 days after the disciplinary tribunal has informed the registered person of its decision.
- (2) The council may -
- (a) dismiss the appeal against the decision of the disciplinary tribunal and confirm the finding or sentence or both; or
  - (b) uphold the appeal against the decision of the disciplinary tribunal wholly or in part and set aside or vary the finding or sentence or both.
- (3) If an appeal is dismissed in terms of subsection (2)(a) the appellant may, within 30 days, from the date of the dismissal of the appeal, appeal to the CBE.
- (4) If a registered person found guilty of improper conduct lodges an appeal in terms of subsection (1) -
- (a) the decision of the disciplinary tribunal under [section 32](#)(3); or
  - (b) the publication by the council in terms of [section 32](#)(5),
- may not be put into effect before the council or the CBE, or both, has decided the appeal.
- (5) (a) The appellant whose appeal was dismissed by the CBE may appeal to the appropriate High Court.

- (b) A person referred to in paragraph (a) must, after giving notice to the CBE, lodge a notice of appeal with the registrar of the appropriate High Court within one month from the date of the decision of the CBE.
- (6) (a) The council may appeal to the appropriate High Court against any decision of the CBE with regard to disciplinary matters.
- (b) The council must, after giving notice to the CBE, lodge a notice of appeal with the registrar of the appropriate High Court within one month from the date of the decision of the CBE.

#### 34. Professional fees

- (1) The council must, in consultation with the voluntary associations, formulate recommendations with regard to the principles referred to in section 4(k)(v) of the Council for the Built Environment Act, 2000.
- (2) The council must annually, after consultation with the voluntary associations, determine guideline professional fees and publish those fees in the *Gazette*.
- (3) The CBE may review the guideline professional fees published by the council, and refer the fees back to the council for reconsideration.
- (4) If the council, after review by the CBE of the guideline professional fees, is aggrieved about that review, it may refer the matter to the Minister for a final decision.
- (5) Any person who is aggrieved by the guideline professional fees published in terms of subsection (2), may bring the matter to the attention of the CBE within 60 days from the date of such publication.

#### 35. Appeal against certain decisions of council

- (1) Any member of the public whose interests and rights are affected by a decision made by the council may -
  - (a) within 30 days from that person becoming aware of the decision, request the council in writing to furnish him or her in writing with its reasons for that decision;
  - (b) within 90 days from the date on which the council furnished him or her with its reasons for that decision and after giving notice to the council, appeal to the CBE against that decision in terms of section 21 of the Council for the Built Environment Act, 2000.
- (2) A person referred to in subsection (1) may, after giving notice to the council or the CBE, as the case may be, lodge a notice of appeal with the registrar of the appropriate High Court within one month from the date of the decision of the council or the CBE.

#### 36. Rules

- (1) The council may, by notice in the *Gazette*, make rules with regard to any matter that is required or permitted to be prescribed in terms of this Act and any other matter for the better execution of this Act or in relation to any power granted or duty imposed by this Act.
- (2) (a) Before the council makes any rule under this section, it must publish a draft of the proposed rule in the *Gazette* together with a notice calling on interested persons to comment in writing within a period stated in the notice, but the period may not be less than 30 days from the date of publication of the notice.
- (b) If the council alters the draft rules as a result of any comment it need not publish those alterations before making the rule.
- (3) The council may, if circumstances necessitate the immediate publication of a rule, publish that rule without consultation as contemplated in subsection (2), provided that the CBE, any of the councils for the professions or any person who is aggrieved by the said rule may -
  - (a) comment after such publication; or
  - (b) appeal to the CBE or the appropriate High Court, as the case may be, against such a rule.

#### 37. Procedure and evidence for evidential purposes

- (1) The register referred to in section 11(c) serves as evidence of all matters which, in terms of this Act, are required or permitted to be noted therein.
- (2) A certificate purporting to be signed by the registrar to the effect that an entry has or has not been made in the register or that any other function authorised by this Act to be performed, has or has not been performed, is evidence of the matters specified in that certificate.
- (3) A copy of an entry in the register or of a document in the custody of the registrar, or an extract from the register or from any such document, purporting to be certified by the registrar, may be admitted as evidence in all courts without further proof or production of the original.

### 38. Rectification of errors and exemptions

- (1) When anything which according to this Act is required to be done or performed on or before a specified day or at a specified time or during a specified period, has not been done or performed, the Minister may, if satisfied that the failure was due to error or oversight, authorise it to be done or performed on or before another day, time, or during another period and anything done or performed in this regard is of full force and is deemed to have been lawfully done or performed in accordance with this Act.
- (2) The Minister must, after consultation with the council, voluntary associations and any other person he or she considers necessary, make rules regarding exemptions from the provisions of this Act.
- (3)
  - (a) The Minister may, after consultation with the council, voluntary associations and any other person he or she considers necessary, exempt any person, council, voluntary association or industry from any provision of this Act for a period not exceeding two years.
  - (b) The exemption referred to in paragraph (a) must comply with the rules contemplated in subsection (2).

### 39. Liability

- (1) The council, the registrar, or any member, committee or staff member of the council, is not liable for any act performed in good faith in terms of this Act.
- (2) A registered person who, in the public interest -
  - (a) refuses to perform an act;
  - (b) omits to perform an act; or
  - (c) informs the council or other appropriate authority of an act or omission performed by any other person,which act or omission endangers or is likely to endanger the safety or health of the public or fellow employees, is not liable for that refusal, omission or information.
- (3) Any person who was registered in terms of this Act and whose registration was cancelled, is liable for any action taken by him or her while he or she was registered.

### 40. Delegation of powers

- (1) The Minister may delegate any of his or her powers in terms of this Act, excluding the power to appoint the members of the council, to the Director-General or any other official of the department.
- (2) The council may delegate any of its powers in terms of this Act to a committee, a staff member or a member of the council or any other person or body of persons, excluding the power to hear an appeal in terms of [sections 24\(1\)](#) and [33\(1\)\(a\)](#).
- (3) The registrar may delegate any of his or her powers in terms of this Act, to a member of the staff of the council.
- (4) Any delegation under subsection (1), (2) or (3) does not prohibit the exercise of the power or the performance of the duty or function in question by the Minister, council or the registrar.

### 41. Offences and penalties

- (1) A person contravening [section 18\(2\)](#), [23](#), [25\(8\)](#) or [31\(8\)\(a\)](#), (b), (e) or (f) is guilty of an offence.
- (2) If the council wilfully or in a grossly negligent manner fails to comply with [section 15\(8\)](#) it is guilty of an offence and liable to a fine calculated according to the ratio determined for a period of five years' imprisonment in terms of the Adjustment of Fines Act, 1991.
- (3) A person convicted of an offence in terms of [section 18\(2\)](#), may be liable to a fine equal to double the remuneration received by him or her for work done in contravention of section 18(2) or to a fine equal to the fine calculated according to the ratio determined for three years imprisonment in terms of the Adjustment of Fines Act, 1991.
- (4) A person who is convicted of an offence in terms of [section 23](#) or [25\(8\)](#), may be liable to a fine calculated according to the ratio determined for a period of one month imprisonment in terms of the Adjustment of Fines Act, 1991.
- (5) A person who is convicted of an offence in terms of [section 31\(8\)\(a\)](#), (b), (e) or (f) may be liable to a fine equal to the fine calculated according to the ratio determined for three years imprisonment in terms of the Adjustment of Fines Act, 1991.

### 42. Transitional provisions

- (1) For the purposes of this section, "effective date" means the date of the first meeting of the council.

- (2) The South African Council for Architects established by section 2 of the Architects' Act, 1970 (Act No. 35 of 1970), continues to exist and may exercise its powers and perform its functions after the commencement of this Act until the effective date.
- (3) The South African Council for Architects must, within 30 days from the date of commencement of this Act, invite nominations for the first appointment of members in accordance with [section 4](#).
- (4) For the purpose of the nominations referred to in [section 4](#) and for the first term of office of the council, the existing voluntary associations within the architectural profession are deemed to be recognised in terms of [section 25](#).
- (5) Any person practising as an architectural technologist or an architectural draughtsperson and a candidate in any of these categories, may continue to practise as such and is deemed to be a registered person until a date determined by the Minister in the *Gazette*.
- (6) From the effective date, all rights, obligations, assets and liabilities acquired or incurred by the South African Council for Architects in terms of the Architects' Act, 1970, vest in the council and the council is deemed to have acquired or incurred those rights, obligations, assets and liabilities in terms of this Act.
- (7) Any act performed, decision taken, or rule made or purported to have been so performed, taken or made in terms of the Architects' Act, 1970, by the South African Council for Architects remains valid unless repealed under this Act.
- (8) Any notice issued or exemption granted by the Minister in terms of the Architects' Act, 1970, remains valid unless repealed under this Act.
- (9) Any person who at the commencement of this Act is registered in terms of the Architects' Act, 1970, is deemed to be registered in the corresponding category provided for in this Act.
- (10) From the effective date, any register maintained in terms of the Architects' Act, 1970, is incorporated in and is considered to form part of a register to be maintained in terms of this Act.
- (11) Any action taken in terms of section 24 of the Architects' Act, 1970, which is pending at the commencement date of this Act, must be finalised in terms of that Act.
- (12) At the end of the first term of the council 50 per cent of the members of the council may not be reappointed by the Minister.

#### 43. Repeal of laws

The laws mentioned in the second column of the Schedule are repealed to the extent indicated in the third column of that Schedule and in so far as the laws were in force in the various areas of the national territory indicated in the fourth column.

#### 44. Act binding on State

This Act binds the State.

#### 45. Short title and commencement

This Act is called the Architectural Profession Act, 2000, and commences on a date fixed by the President by proclamation in the *Gazette*.

#### SCHEDULE (Section 43)

No. and year of Act	Short title	Extent of repeal	Area of national territory
Act No. 35 of 1970	Architects' Act, 1970	The whole	
Act No. 18 of 1975	Architects' Amendment Act, 1975	The whole	
Act No. 78 of 1979	Architects' Amendment Act, 1979	The whole	
Act No. 29 of 1981	Act to Regulate the Professions of Engineering, Architecture and Quantity Surveying, 1981	The whole	Bophuthatswana
Act No. 49 of 1982	Architects' Amendment Act, 1982	The whole	
Act No. 8 of 1985	Architects' Amendment Act, 1985	The whole	
Act No. 65 of 1987	Architects' Amendment Act, 1987	The whole	
Act No. 14 of 1995	Periods of Office of Members of Councils for Architects, Engineers, Quantity Surveyors and Valuers Act, 1995	The whole	

## LANDSCAPE ARCHITECTURAL PROFESSION ACT 45 OF 2000

(English text signed by the President)

*[Assented To: 26 November 2000]*

*[Commencement Date: 26 January 2001 - unless otherwise indicated]*

*[Proc. R7 / GG 22023 / 20010126]*

*[Proc. R34 / GG 27828 / 20050722]*

### ACT

**To provide for the establishment of a juristic person to be known as the South African Council for the Landscape Architectural Profession; to provide for the registration of professionals, candidates and specified categories in the landscape architectural profession; to provide for the regulation of the relationship between the South African Council for the Landscape Architectural Profession and the Council for the Built Environment; and to provide for matters connected therewith.**

### ARRANGEMENT OF SECTIONS

1. Definitions
2. Establishment of South African Council for the Landscape Architectural Profession
3. Composition of council
4. Nomination procedure
5. Term of office of members of council
6. Disqualification from membership of council and vacation of office
7. Election of president and vice-president of council
8. Appointment of registrar and staff members of council
9. Decisions of council
10. Administrative powers of council
11. Powers of council with regard to registration
12. Powers of council with regard to fees and charges
13. Powers of council with regard to education in landscape architecture
14. General powers of council
15. Funds of council and keeping and auditing of accounts
16. Reports to CBE
17. Committees of council
18. Categories of registration
19. Registration
20. Cancellation of registration
21. Authorised titles
22. Renewal of registration
23. Return of registration certificate
24. Grievance procedure in relation to registration
25. Recognition of voluntary associations
26. Identification of work
27. Professional conduct
28. Investigation of charge of improper conduct
29. Charge of improper conduct
30. Appointment of disciplinary tribunal
31. Disciplinary hearing
32. Proceedings after hearing
33. Appeal against decision of disciplinary tribunal
34. Professional fees
35. Appeal against certain decisions of council
36. Rules
37. Procedure and evidence for evidential purposes
38. Rectification of errors and exemptions
39. Liability
40. Delegation of powers
41. Offences and penalties
42. Transitional provisions
43. Act binding on State
44. Short title and commencement

## 1. Definitions

In this Act, unless the context otherwise indicates -

“**accredit**” means the process of evaluation and recognition by the council of educational programmes offered by educational institutions relating to the landscape architectural profession, and “accreditation” has a corresponding meaning;

“**actively practice**” means to practice on an ongoing basis in one of the categories contemplated in [section 18](#), and includes a person qualified in the landscape architectural profession who is employed by any sphere of government or an educational institution;

“**candidate**” means a person who is registered in terms of [section 19 \(2\) \(b\)](#);

“**CBE**” means the Council for the Built Environment established in terms of [section 2](#) of the Council for the Built Environment Act, 2000;

“**committee**” means a committee established in terms of [section 17](#);

“**council**” means the South African Council for Landscape Architectural Profession established by [section 2](#);

“**department**” means the national department responsible for public works;

“**disciplinary tribunal**” means a tribunal appointed in terms of [section 30](#);

“**Minister**” means the Minister responsible for public works;

“**prescribe**” means prescribed by a rule made by the council under [section 36](#), and “**prescribed**” has a corresponding meaning;

“**professional**” means a person who is registered in terms of [section 19 \(2\) \(a\)](#);

“**registered person**” means a person registered in one of the categories referred to in [section 18](#);

“**registrar**” means the person appointed as registrar under [section 8 \(a\)](#);

“**registration**” means the process -

- (a) of assessment of competency of applicants for the purpose of registration under this Act; and
- (b) of entering the names of the applicants who qualify into the register referred to in [section 11 \(c\)](#);

“**rule**” means a rule made and in force under this Act;

“**this Act**” includes any notice, order or rule issued or made under this Act; and

“**voluntary association**” means any voluntary association recognised by the council in terms of [section 25](#).

## 2. Establishment of South African Council for the Landscape Architectural Profession

There is hereby established a juristic person to be known as the South African Council for the Landscape Architectural Profession.

## 3. Composition of council

- (1) The council consists of the following members, appointed by the Minister, taking into account, among other things, the principles of transparency and representivity:
  - (a) six registered persons, excluding candidates of whom at least four must actively practise in the landscape architectural profession -
    - (i) who must be nominated by the voluntary associations and any registered person; and
    - (ii) who must represent the categories of registered persons contemplated in [section 18](#), in the prescribed manner;

- (b) two professionals in the service of the State nominated by any sphere of government, of whom at least one must be nominated by the department; and
  - (c) two members of the public nominated through an open process of public participation.
- (2) A maximum of a third of the members of the Board of Control for Landscape Architects established by section 31B of the Architects' Act, 1970 (Act No. 35 of 1970), who are nominated by that Board remain in office for the first term of the council.

#### 4. Nomination procedure

- (1) When any nomination in terms of section 3 (1) (a) or (b) becomes necessary, the council must invite registered persons, the voluntary associations and the State, respectively, in the prescribed manner, to nominate within a period of at least 60 days from the date of the invitation, persons who qualify for nomination in terms of section 3 (1) (a) or (b), respectively. (Commencement date of s. 4(1): 1 July 2005)
- (2) When any nomination in terms of section 3 (1) (c) becomes necessary, the council must invite the public, by notice in the *Gazette* and in any newspaper the council considers necessary, but in at least a leading newspaper in each province, to nominate persons for appointment to the council within a period of at least 60 days from the date of the notice. (Commencement date of s. 4(2): 1 July 2005)
- (3) On receipt of any nomination, the council must, within 30 days from the expiry date specified in the invitation or the notice, make and submit its recommendations to the Minister.
- (4) The Minister must, within 60 days from the date of the receipt of the nominations from the outgoing council, appoint the new members of the council.
- (5) If the council receives no or insufficient nominations within the period specified in the invitation or the notice, the Minister may, after consultation with the council, appoint the required number of persons who qualify to be appointed in terms of this Act.
- (6) The Minister must, as soon as practicable after the appointment of the members of the council, by notice in the *Gazette*, publish -
  - (a) the name of every person appointed as a member;
  - (b) the date from which the appointment takes effect; and
  - (c) the period for which the appointment is made.
- (7) The Minister must, within 30 days from the date of the appointment of the council, determine the time and place of its first meeting, and, thereafter, the council must determine the time and place of any future meeting.

#### 5. Term of office of members of council

- (1) The term of office for members of the council is four years, but members continue in office until the succeeding council is duly constituted.
- (2) Subject to section 42 (12), a member of the council may not serve for more than two consecutive terms of office.
- (3) Despite subsection (1), the Minister may, by notice in the *Gazette*, after consultation with the council, extend the period of office of all the members of the council for a period of six months, but he or she may only extend the period of office twice.
- (4) Despite subsection (1), the Minister may, by notice in the *Gazette*, after consultation with the council, terminate the period of office of a member or all the members of the council.
- (5) The Minister may only act in terms of subsection (4) if a new member or a new council has been appointed, on nominations invited by the Minister in the manner provided for in section 4, to take over the functions of the member or the council concerned.

#### 6. Disqualification from membership of council and vacation of office

- (1) A person may not be appointed as a member of the council if that person -
  - (a) is not a South African citizen and ordinarily resident in the Republic;
  - (b) is an unrehabilitated insolvent;
  - (c) has been convicted of an offence in the Republic, other than an offence committed prior to 27 April 1994 associated with political objectives, and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;
  - (d) subject to subsection (3), has been convicted of an offence in a foreign country and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;
  - (e) has, as a result of improper conduct, been removed from an office of trust; or
  - (f) has in terms of this Act been found guilty by the disciplinary tribunal or the council of improper conduct.

- (2) A member of the council must vacate his or her office if he or she -
  - (a) becomes disqualified in terms of subsection (1) from being appointed as a member of the council;
  - (b) resigns by written notice addressed to the registrar;
  - (c) is declared by the High Court to be of unsound mind or mentally disordered or is detained under the Mental Health Act, 1973 (Act No. 18 of 1973);
  - (d) has, without the leave of the council, been absent from more than two consecutive meetings of the council;
  - (e) was appointed in terms of section 3 (1) (a) and after that appointment a change in his or her circumstances arises that affects the ratio of the membership referred to in section 3 (1);
  - (f) was appointed in terms of section 3 (1) (b) and ceases to be employed by the State; or
  - (g) ceases to be permanently resident in the Republic.
- (3) For the purposes of subsection (1) (d), the Minister must take cognisance of the prevailing circumstances in a foreign country relating to a conviction.
- (4)
  - (a) If a member of the council dies or vacates his or her office before the expiration of his or her term of office, the Minister may, after consultation with the council and subject to section 5 (1), appoint a person to fill the vacancy for the unexpired portion of the period for which that member was appointed.
  - (b) If the Minister appoints a person to fill the vacant seat, the appointment must be made within 60 days from the date on which the vacancy occurred.

#### **7. Election of president and vice-president of council**

- (1)
  - (a) The members of the council must, at the first meeting of every newly constituted council elect a president and vice-president who must be registered persons and at least one must actively practice in the landscape architectural profession.
  - (b) The president and vice-president hold office for the period of four years from the date of their appointment.
- (2) The vice-president must, if the president is for any reason unable to act as president, perform all the functions and may exercise all the powers of the president.
- (3)
  - (a) If both the president and the vice-president are for any reason unable to preside at a council meeting, the members present must elect a person to preside at that meeting.
  - (b) The person elected may, during that meeting and until the president or vice-president resumes his or her functions, perform all the functions and exercise all the powers of the president.

#### **8. Appointment of registrar and staff members of council**

- (1) The council -
  - (a) must appoint a registrar; and
  - (b) may employ such staff as it may deem necessary for the carrying out of its functions, on such conditions, including the payment of remuneration and allowances, as it may determine, and may dismiss any person so appointed.
- (2) The registrar must enter into a performance agreement, as prescribed, with the council on acceptance of his or her appointment.
- (3) The registrar must perform, in addition to such functions as may otherwise be assigned to him or her by or under this Act, such functions as may from time to time be assigned to him or her by the council.

#### **9. Decisions of council**

- (1) A decision of the majority of the members of the council present at any meeting constitutes a decision of the council.
- (2) In the event of an equality of votes the person presiding at the meeting has a casting vote in addition to his or her deliberative vote.
- (3) If the requisite majority of the members who are entitled to sit as members at a meeting of the council, make a decision or authorise an act at that meeting, the decision made or act performed under that authorisation, is valid despite the fact that at that meeting a member who had become disqualified in terms of section 6 (2) but had not vacated his or her office, sat as a member.

#### 10. Administrative powers of council

The council may -

- (a) determine the remuneration and allowances payable to its members or the members of any committee of the council;
- (b) arrange for the payment of pension and other benefits to any staff of the council or the registrar and to his or her dependants on the termination of the service of that staff member or the registrar;
- (c) determine where its head office must be situated;
- (d) determine the manner in which meetings of the council or any committee of the council must be convened, the procedure and quorum at such meetings and the manner in which the minutes of such meetings must be kept; and
- (e) print, circulate, sell and administer the publication of, and generally take any steps necessary to publish, any publication relating to the landscape architectural profession and related matters.

#### 11. Powers of council with regard to registration

The council may, subject to this Act -

- (a) consider and decide on any application for registration;
- (b) prescribe the period of validity of the registration of a registered person;
- (c) keep a register of registered persons and decide on -
  - (i) the form of certificates and the register to be kept;
  - (ii) the maintenance of the register or issuing of certificates; and
  - (iii) the reviewing of the register and certificates and the manner in which alterations thereto may be effected.

#### 12. Powers of council with regard to fees and charges

(1) The council may, with regard to fees and charges, which are payable to the council, determine -

- (a) application fees;
- (b) registration fees;
- (c) annual fees, or portion thereof, in respect of a part of a year;
- (d) the date on which any fee or charge is payable;
- (e) the fees, or portion thereof, payable in respect of any examination referred to in [section 19](#), conducted by or on behalf of the council;
- (f) any charge payable for the purposes of the education fund referred to in [section 15](#) (5);
- (g) fees payable for a service referred to in [section 14](#) (c);
- (h) the fees payable for an appeal in terms of [section 24](#) (1); or
- (i) any other fee or charge it considers necessary.

(2) The council may grant exemption from payment of application fees, registration fees, annual fees, charges, or a portion thereof referred to in subsection (1).

#### 13. Powers of council with regard to education in landscape architecture

The council may -

- (a) subject to [sections 5](#) and [7](#) of the Higher Education Act, 1997 (Act No. 101 of 1997), conduct accreditation visits to any educational institution which has a department, school or faculty which offers landscape architectural educational programmes, but must conduct at least one such visit during its term of office. If the council does not conduct an accreditation visit within that term of office, it must notify the Minister accordingly and provide him or her with reasons for the failure to do so;
- (b) either conditionally or unconditionally grant, refuse or withdraw accreditation with regard to all educational institutions and their educational programmes with regard to landscape architecture;
- (c) consult with the Council on Higher Education established in terms of the Higher Education Act, 1997, regarding matters relevant to education in landscape architecture;
- (d) consult with the South African Qualifications Authority established by the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), or any body established by it and the voluntary associations, to determine competency standards for the purpose of registration;
- (e) establish mechanisms for registered persons to gain recognition of their qualifications and professional status in other countries;
- (f) liaise with the relevant National Standards Body established in terms of Chapter 3 of the regulations under the South African Qualifications Authority Act, 1995, with a view to the establishment of a standards generating body in terms of those regulations;
- (g) recognise or withdraw the recognition of any examination contemplated in [section 19](#);

- (h) enter into an agreement with any person or body of persons, within or outside the Republic, with regard to the recognition of any examination or qualification for the purposes of this Act;
- (i) give advice or render assistance to any educational institution, voluntary association or examining body with regard to educational facilities for and the training and education of registered persons and prospective registered persons;
- (j) conduct any examination for the purposes of section 19; and
- (k) determine, after consultation with the voluntary associations and registered persons, conditions relating to and the nature and extent of continuing education and training.

#### 14. General powers of council

The council may, in addition to other powers in this Act -

- (a) acquire, hire, maintain, let, sell or otherwise dispose of movable or immovable property for the effective performance and exercise of its functions, duties or powers;
- (b) decide upon the manner in which contracts must be entered into on behalf of the council;
- (c) perform any service within its competence if it is requested by any person or body of persons, including the State;
- (d) determine, subject to section 25, the requirements with which a voluntary association must comply to qualify for recognition by the council;
- (e) advise the Minister, any other Minister or the CBE on any matter relating to the landscape architectural profession;
- (f) encourage and itself undertake research into matters relating to the landscape architectural profession;
- (g) take any steps it considers necessary for the protection of the public in their dealings with registered persons for the maintenance of the integrity, and the enhancement of the status of the landscape architectural profession;
- (h) take any steps it considers necessary for the improvement of the standards of services rendered by registered persons;
- (i) create an awareness amongst registered persons of the importance to protect the environment against unsound landscape architectural practices;
- (j) take any steps which it considers necessary, where, as a result of landscape architectural related undertakings, public health and safety is prejudiced; and
- (k) take any measures it considers necessary for the proper performance and exercise of its functions, duties or powers or to achieve the objectives of this Act.

#### 15. Funds of council and keeping and auditing of accounts

- (1) The funds of the council consist of any money received in terms of this Act and all other monies which may accrue to the council from any other legal source, including fines and penalties imposed by the council.
- (2) The council may -
  - (a) collect and invest funds of the council;
  - (b) raise money by way of loan for the purpose of effectively performing its functions;
  - (c) with a view to the promotion of any matter relating to the landscape architectural profession, lend money against such security as the council considers adequate; and
  - (d) mortgage any of its immovable property as security for a loan referred to in paragraph (b).
- (3) The council may remunerate its members and committee members from its funds.
- (4) The council may finance any publication referred to in section 10 (e).
- (5) The council may establish and administer an education fund for the purpose of education, training and continuing education and training of registered persons and students in the landscape architectural profession.
- (6) The council must keep full and correct account of all monies received and expended by it.
- (7)
  - (a) The council must annually prepare a statement of income and expenditure and a balance sheet showing its financial position as at the close of the financial year to which it relates.
  - (b) The council must have the statement and balance sheet audited by an auditor registered in terms of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991).
  - (c) A copy of the audited statement and balance sheet must be open for inspection at the offices of the council.
- (8) The council must, within six months from the close of each financial year or such other period as may be agreed to by the Minister after a request by the council, submit the audited statement and balance sheet to the Minister and must provide a copy to the CBE.
- (9) The Minister may, with the concurrence of the Minister of Finance -
  - (a) advance or grant to the council, out of money appropriated by Parliament, such amounts as he or she considers necessary in order to enable the council to carry out its functions; and
  - (b) determine the conditions to and repayment of the advance.

- (10) The council must determine its financial year.
- (11) The council must apply due care and diligence when investing any money or incurring any expenditure from the funds of the council.

#### 16. Reports to CBE

- (1) The council must, within six months from the close of each financial year, provide the CBE with a report regarding its activities during that financial year, for the purpose of [section 4](#) of the Council for the Built Environment Act, 2000.
- (2) A copy of the report and the register referred to in [section 11](#) (c) must be open for inspection at the offices of the council.
- (3) The council must, on request by the CBE, provide the CBE with any information regarding a registered person.

#### 17. Committees of council

- (1)
  - (a) The council may establish any committee, including an investigating committee, to assist it in the performance of its functions and may appoint any person as a member of that committee.
  - (b) If the council does not designate a chairperson for a committee, the committee may, at its first meeting, elect a chairperson from among its members.
  - (c) The council may at any time dissolve or reconstitute a committee.
- (2) Section 9 may, with the necessary changes, apply in respect of a committee of the council.

#### 18. Categories of registration

- (1) The categories in which a person may register in the landscape architectural profession are -
  - (a) professional, which is divided into -
    - (i) Professional Landscape Architect;
    - (ii) Professional Landscape Technologist;
    - (iii) Professional Landscape Technician; or
    - (iv) Professional Landscape Assistant, or
  - (b) candidate, which is divided into -
    - (i) Candidate Landscape Architect;
    - (ii) Candidate Landscape Technologist;
    - (iii) Candidate Landscape Technician; or
    - (iv) Candidate Landscape Assistant; or
  - (c) specified categories prescribed by the council.
- (2) A person may not practice in any of the categories contemplated in subsection (1), unless he or she is registered in that category.
- (3) A person who is registered in the category of candidate must perform work in the landscape architectural profession only under the supervision and control of a professional of a category, as prescribed.

#### 19. Registration

- (1)
  - (a) A person must apply, in the prescribed application form, to the council for registration in a category referred to in [section 18](#) (1).
  - (b) The application form referred to in paragraph (a) must be accompanied by the prescribed fee.
- (2) The council must register the applicant in the relevant category and issue a registration certificate to the successful applicant in the prescribed form if, after consideration of an application, the council is satisfied that the applicant -
  - (a) in the case of a person applying for registration as a professional -
    - (i) has demonstrated his or her competence as measured against standards determined by the council for the relevant category of registration; and
    - (ii) has passed any additional examinations that may be determined by the council;

- (b) in the case of a person applying for registration as a candidate or as a candidate in a specified category, has satisfied the relevant educational outcomes determined by the council for this purpose, by -
  - (i) having passed accredited or recognised examinations at any educational institution offering educational programmes in landscape architecture; and
  - (ii) having passed any other examination that may be determined by the council; or
  - (iii) presenting evidence of prior learning in landscape architecture.
- (3) (a) Despite subsection (2), the council may refuse to register an applicant -
  - (i) if the applicant has been removed from an office of trust on account of improper conduct;
  - (ii) has been convicted of an offence in the Republic, other than an offence committed prior to 27 April 1994 associated with political objectives, and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;
  - (iii) if the applicant has, subject to paragraph (b), been convicted of an offence in a foreign country and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;
  - (iv) if the applicant is declared by the High Court to be of unsound mind or mentally disordered, or is detained under the Mental Health Act, 1973;
  - (v) for as long as the applicant is disqualified from registration as a result of any punishment imposed on him or her under this Act;
  - (vi) if the applicant is an unrehabilitated insolvent whose insolvency was caused by his or her negligence or incompetence in performing work falling within the scope of the category in respect of which he or she is applying for registration.
- (b) For the purposes of paragraph (a) (iii), the council must take cognisance of the prevailing circumstances in a foreign country relating to a conviction.
- (c) The council must provide the applicant with a notice of a refusal referred to in paragraph (a).
- (4) For the purposes of this section "prior learning" means the previous learning and experience of a learner, howsoever obtained, against the learning outcomes required for a specified qualification and the acceptance for the purposes of qualification of that which meets those requirements.

## 20. Cancellation of registration

- (1) (a) The council may cancel the registration of a registered person if he or she -
  - (i) becomes disqualified from registration as contemplated in [section 19](#) (3);
  - (ii) has erroneously been registered, or has been registered on information subsequently proved to be false; or
  - (iii) fails to pay the prescribed annual fee or portion thereof, within 60 days from it becoming due or within such further period as the council may allow, either before or after the expiry of the 60 days.
- (b) The council must provide the registered person with a notice of a cancellation referred to in paragraph (a).
- (2) If a person who is registered as a candidate qualifies to be registered as a professional in terms of [section 19](#) (2) (a), the council must cancel his or her registration as a candidate.
- (3) The council must at the written request of any registered person cancel his or her registration, but where an investigation into alleged improper conduct by that person is in progress or is to be held, the registration may not be cancelled until the investigation has been concluded.
- (4) Despite the cancellation of the registration of a registered person in terms of this section, that person remains liable for any fee, arrears or penalty imposed by the council for the period that he or she was registered.

## 21. Authorised titles

- (1) A person who is registered in any of the categories referred to in [section 18](#) (1) may describe himself or herself as and use the title -
  - (a) Professional Landscape Architect;
  - (b) Professional Landscape Technologist;
  - (c) Professional Landscape Technician;
  - (d) Professional Landscape Assistant;
  - (e) Candidate Landscape Architect;
  - (f) Candidate Landscape Technologist;

- (g) Candidate Landscape Technician; or
  - (h) Candidate Landscape Assistant.
- (2) A registered person may use a title prescribed by the council for the specified category.
  - (3) A registered person must use his or her title in all landscape architectural reports and other documentation relating to his or her work in the landscape architectural profession, prepared by or for him or her.
  - (4) The council may determine abbreviations or acronyms for the titles referred to in subsection (1).

**22. Renewal of registration**

- (1) A registered person must, at least three months prior to the prescribed expiry date of his or her registration, apply in the prescribed manner to the council for the renewal of his or her registration.
- (2) The council may determine conditions for the renewal of registration.
- (3) Subject to section 19, the council must, on application, register a person who was previously registered and whose registration was cancelled in terms of section 20 (1) (a) (iii), if he or she has paid -
  - (a) the prescribed fee;
  - (b) any arrear annual fee or portion thereof;
  - (c) any expenses incurred by the council in connection with the recovery of any arrear fees; and
  - (d) any penalties imposed on him or her by the council.

**23. Return of registration certificate**

Any person whose registration has been cancelled in terms of this Act, must return his or her registration certificate to the registrar within 30 days from the date on which he or she is directed by the registrar in writing to do so.

**24. Grievance procedure in relation to registration**

- (1) If an applicant is of the opinion that a committee, in its refusal to register him or her, or to cancel his or her registration, other than a cancellation in terms of section 20 (1) (a) (iii) or 32 (3) (a) (iv), did not comply with section 33 of the Constitution, that applicant may, on payment of the prescribed fees and within 30 days from the date on which the refusal or cancellation came to his or her knowledge, appeal to the council against that decision.
- (2) The council must, at its first ensuing meeting, within 60 days from the date of the receipt of the appeal, decide on the appeal and provide the appellant with reasons for its decision.
- (3) If an appeal is lodged against a refusal of a committee to renew the registration of a registered person, the registration of that person may not be cancelled until the appeal has been decided.

**25. Recognition of voluntary associations**

- (1) The council must, within 90 days from the date of its first meeting, submit the framework for the requirements for recognition of a voluntary association to the CBE for approval.
- (2) Any voluntary association may apply to the council to be recognised as such.
- (3) The council may, if the voluntary association complies with the requirements determined in terms of section 14 (d), recognise that association and issue it with a certificate of recognition.
- (4) A certificate of recognition is valid for a period of five years from the date of issue.
- (5) A voluntary association must display its certificate of recognition in a prominent place at its head office.
- (6) The recognition of a voluntary association lapses -
  - (a) if that association no longer complies with the requirements contemplated in section 14 (d); or
  - (b) at the expiry of the five-year period referred to in subsection (4).
- (7) A voluntary association must, at least three months prior to the expiry of its recognition, apply in the prescribed manner to the council for the renewal thereof.
- (8) A voluntary association whose recognition has lapsed must, within 30 days from the date on which it is so directed in writing by the council, return its certificate of recognition.

**26. Identification of work**

- (1) The council must consult with -
  - (a) all voluntary associations;
  - (b) any person;
  - (c) any body; or

- (d) any industry,

that may be affected by any laws regulating the built environment professions regarding the identification of the type of landscape architectural work which may be performed by persons registered in any of the categories referred to in section 18, including work which may fall within the scope of any other profession regulated by the professions' Acts referred to in the Council for the Built Environment Act, 2000.

- (2) After the process of consultation the council must submit recommendations to the CBE regarding the work identified in terms of subsection (1), for its consideration and identification in terms of section 20 of the Council for the Built Environment Act, 2000.
- (3) A person who is not registered in terms of this Act, may not -
  - (a) perform any kind of work identified for any category of registered persons;
  - (b) pretend to be, or in any manner hold or allow himself or herself to be held out as a person registered in terms of this Act;
  - (c) use the name of any registered person or any name or title referred to in section 18 or 21; or
  - (d) perform any act indicating, or calculated to lead persons to believe, that he or she is registered in terms of this Act.
- (4) Subsection (3) (a) may not be construed as prohibiting any person from performing work identified in terms of this section, if such work is performed in the service of or by order of and under the direction, control, supervision of or in association with a registered person entitled to perform the work identified and who must assume responsibility for any work so performed. (Commencement date of s. 26: 1 July 2005)

#### **27. Professional conduct**

- (1) The council must, in consultation with the CBE, voluntary associations and registered persons, draw up a code of conduct for registered persons.
- (2)
  - (a) The council is responsible for administering the code of conduct and must ensure that the code is available to all members of the public at all reasonable times.
  - (b) The council must provide the CBE with a copy of the code of conduct.
- (3) All registered persons must comply with the code of conduct and failure to do so constitutes improper conduct.

#### **28. Investigation of charge of improper conduct**

- (1) The council must refer any matter brought against a registered person to an investigating committee contemplated in section 17 if -
  - (a) the council has reasonable grounds to suspect that a registered person has committed an act which may render him or her guilty of improper conduct; or
  - (b) a complaint, charge or allegation of improper conduct has been brought against a registered person by any person.
- (2) At the request of the council, the investigating committee must -
  - (a) investigate the matter; and
  - (b) obtain evidence to determine whether or not in its opinion the registered person concerned may be charged and, if so, recommend to the council the charge or charges that may be preferred against that registered person.
- (3) An investigating committee may not question the registered person concerned unless the investigating committee informs that registered person that he or she -
  - (a) has the right to be assisted or represented by another person; and
  - (b) is not obliged to make any statement and that any statement so made may be used in evidence against the registered person.
- (4) The investigating committee must, after the conclusion of the investigation, submit a report making its recommendations to the council regarding any matter referred to it in terms of this section.

## 29. Charge of improper conduct

- (1) The council must, after considering a report of the investigating committee in terms of section 28 (2) (b) and (4), charge a registered person with improper conduct if the council is convinced that sufficient grounds exist for a charge to be preferred against such a registered person.
- (2) The council must furnish a charge sheet to the registered person concerned by hand or registered mail.
- (3) A charge sheet must inform the registered person charged -
  - (a) of the details and nature of the charge;
  - (b) that he or she must, in writing, admit or deny the charge;
  - (c) that he or she may, together with the admission or denial, submit a written explanation regarding the improper conduct with which he or she is charged; and
  - (d) of the period, which must be reasonable, within which his or her plea in terms of paragraph (b) must be submitted to the council.
- (4)
  - (a) If a registered person charged admits that he or she is guilty of the charge, he or she is considered to have been found guilty of improper conduct as charged, after he or she has explained his or her conduct.
  - (b) The council may, subject to section 32 (2), impose a penalty contemplated in section 32 (3) (a) or (b) on a registered person who has admitted guilt in terms of paragraph (a).
- (5) The acquittal or the conviction of a registered person by a court of law on a criminal charge is not a bar to proceedings against him or her under this Act on a charge of improper conduct, even if the facts stated in the charge of improper conduct would, if proved, constitute the offence stated in the criminal charge on which he or she was acquitted or convicted or any other offence of which he or she might have been acquitted or convicted at his or her trial on the criminal charge.

## 30. Appointment of disciplinary tribunal

- (1) The council must appoint a disciplinary tribunal to hear a charge of improper conduct if a person charged -
  - (a) denies the charge; or
  - (b) fails to comply with section 29 (3) (b).
- (2) The disciplinary tribunal must consist of at least -
  - (a) a person who specialises in the professional field concerning the charge;
  - (b) a professional who has appropriate experience; and
  - (c) a person qualified in law and who has appropriate experience.

## 31. Disciplinary hearing

- (1) The disciplinary hearing must be conducted by the disciplinary tribunal.
- (2) The disciplinary tribunal may, for the purposes of this section, appoint a person to assist it in the performance of its functions.
- (3)
  - (a) The disciplinary tribunal may, for the purposes of a hearing, subpoena any person -
    - (i) who in its opinion may be able to give material information concerning the subject of the hearing; or
    - (ii) who it suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing on the subject of the hearing, to appear before the disciplinary tribunal at the time and place specified in the subpoena, to be questioned or to produce a book, document or object.
  - (b) A subpoena issued in terms of paragraph (a), must -
    - (i) be in the prescribed form;
    - (ii) be signed by the chairperson of the disciplinary tribunal or, in his or her absence, any member of the disciplinary tribunal; and
    - (iii) be served on the registered person concerned personally or by sending it by registered mail.
- (4) The disciplinary tribunal may retain a book, document or object produced in terms of subsection (3) for the duration of the hearing.

- (5) The chairperson of the disciplinary tribunal may call upon and administer an oath to, or take an affirmation from, any witness at the hearing who was subpoenaed in terms of subsection (3).
- (6) At a hearing the registered person charged -
- (a)
    - (i) may personally be present at the hearing of the proceedings;
    - (ii) may be assisted or represented by another person in conducting the proceedings;
    - (iii) has the right to be heard;
    - (iv) may call witnesses;
    - (v) may cross-examine any person called as a witness in support of the charge; and
    - (vi) may have access to documents produced in evidence;
  - (b)
    - (i) may admit at any time before conviction that he or she is guilty of the charge despite the fact that he or she denied the charge or failed to react in terms of section 29 (3) (b) or (c);
    - (ii) may, in the case where he or she makes an admission in terms of subparagraph (i), be deemed to be guilty of improper conduct as charged.
- (7) The person referred to in subsection (2) may during a hearing -
- (a) lead evidence and advance arguments in support of the charge and cross-examine witnesses;
  - (b) question any person who was subpoenaed in terms of subsection (3); or
  - (c) call anyone to give evidence or to produce any book, document or object in his or her possession or custody or under his or her control which the person referred to in subsection (2) suspects or believes to have a bearing on the subject of the hearing.
- (8) (a) A witness who has been subpoenaed may not -
- (i) without sufficient cause, fail to attend the hearing at the time and place specified in the subpoena;
  - (ii) refuse to be sworn in or to be affirmed as a witness;
  - (iii) without sufficient cause, fail to answer fully and satisfactorily to the best of his or her knowledge to all questions lawfully put to him or her; or
  - (iv) fail to produce any book, document or object in his or her possession or custody or under his or her control which he or she has been required to produce.
- (b) A witness who has been subpoenaed must remain in attendance until excused by the chairperson of the disciplinary tribunal from further attendance.
  - (c) A witness who has been subpoenaed may request that the names of the members of the disciplinary tribunal be made available to him or her.
  - (d) The law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce a book, document or object in a civil trial before a court of law may, with the necessary changes, apply in relation to the examination of, or the production of any book, document or object to the disciplinary tribunal by, any person called in terms of this section as a witness.
  - (e) A witness may not, after having been sworn in or having been affirmed as a witness, give a false statement on any matter, knowing that answer or statement to be false.
  - (f) A person may not prevent another person from complying with a subpoena or from giving evidence or producing a book, document or object which he or she is in terms of this section required to give or produce.
- (9) The record of evidence which has a bearing on the charge before the disciplinary tribunal, and which was presented before any commission which investigated an event or conduct is admissible without further evidence being led if -
- (a) the record is accompanied by a certificate from the chairperson; and
  - (b) the certificate certifies that the investigation was lawful, reasonable and procedurally fair.
- (10) If the improper conduct with which the registered person is charged amounts to an offence of which he or she has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court is, on the identification of the registered person as the person referred to in the record, sufficient proof of the commission by him or her of that offence, unless the conviction has been set aside by a superior court.

### 32. Proceedings after hearing

- (1) After the conclusion of the hearing the disciplinary tribunal must, within 30 days -

- (a) decide whether or not the registered person charged is guilty of improper conduct;
  - (b) if the disciplinary tribunal finds that the registered person charged is guilty of improper conduct, take cognisance of any aggravating or mitigating circumstances;
  - (c) inform the registered person charged and the council of the finding; and
  - (d) inform the registered person of his or her right of appeal in terms of [section 33](#).
- (2) A registered person found guilty of improper conduct in terms of this section may -
- (a) address the disciplinary tribunal in mitigation of sentence; and
  - (b) call witnesses to give evidence on his or her behalf in mitigation of the sentence.
- (3) (a) If the registered person charged is found guilty of improper conduct, or if he or she admits that he or she is guilty of the charge, the disciplinary tribunal must either -
- (i) caution or reprimand the registered person;
  - (ii) impose on him or her a fine not exceeding the amount calculated according to the ratio for one year imprisonment determined in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991);
  - (iii) suspend the registration of the registered person concerned for a period not exceeding one year; or
  - (iv) cancel the registration of the registered person concerned and remove his or her name from the register referred to in [section 11](#) (c).
- (b) The disciplinary tribunal may take decisions under more than one of the subparagraphs of paragraph (a).
- (4) At the conclusion of the hearing the disciplinary tribunal must notify the council of its finding.
- (5) The council must publish the finding and the sanction imposed in terms of subsection (3) in the *Gazette*.
- (6) The council must give effect to the decision of the disciplinary tribunal.

### 33. Appeal against decision of disciplinary tribunal

- (1) (a) A registered person found guilty of improper conduct may appeal to the council against a finding of the disciplinary tribunal or against the sentence, or both.
- (b) The appeal must be lodged, within 30 days after the disciplinary tribunal has informed the registered person of its decision.
- (2) The council may -
- (a) dismiss the appeal against the decision of the disciplinary tribunal and confirm the finding or sentence or both; or
  - (b) uphold the appeal against the decision of the disciplinary tribunal wholly or in part and set aside or vary the finding or sentence or both.
- (3) If an appeal is dismissed in terms of subsection (2) (a) the appellant may, within 30 days from the date of the dismissal of the appeal, appeal to the CBE.
- (4) If a registered person found guilty of improper conduct lodges an appeal in terms of subsection (1)
- (a) the decision of the disciplinary tribunal under [section 32](#) (3); or
  - (b) the publication by the council in terms of [section 32](#) (5),
- may not be put into effect before the council or the CBE, or both, has decided the appeal.
- (5) (a) The appellant whose appeal was dismissed by the CBE may appeal to the appropriate High Court.
- (b) A person referred to in paragraph (a) must, after giving notice to the CBE, lodge a notice of appeal with the registrar of the appropriate High Court within one month from the date of the decision of the CBE.
- (6) (a) The council may appeal to the appropriate High Court against any decision of the CBE with regard to disciplinary matters.
- (b)
- + The council must, after giving notice to the CBE, lodge a notice of appeal with the registrar of the appropriate High Court within one month from the date of the decision of the CBE.

#### 34. Professional fees

- (1) The council must, in consultation with the voluntary associations, formulate recommendations with regard to the principles referred to in section 4 (k) (v) of the Council for the Built Environment Act, 2000.
- (2) The council must annually, after consultation with the voluntary associations, determine guideline professional fees and publish those fees in the *Gazette*.
- (3) The CBE may review the guideline professional fees published by the council, and refer the fees back to the council for reconsideration.
- (4) If the council, after review by the CBE of the guideline professional fees, is aggrieved about that review, it may refer the matter to the Minister for a final decision.
- (5) Any person who is aggrieved by the guideline professional fees published in terms of subsection (2), may bring the matter to the attention of the CBE within 60 days from such publication.

#### 35. Appeal against certain decisions of council

- (1) Any member of the public whose interests and rights are affected by a decision made by the council may -
  - (a) within 30 days from that person becoming aware of the decision, request the council in writing to furnish him or her in writing with its reasons for that decision;
  - (b) within 90 days from the date on which the council furnished him or her with its reasons for that decision and after giving notice to the council, appeal to the CBE against that decision in terms of section 21 of the Council for the Built Environment Act, 2000.
- (2) A person referred to in subsection (1) may, after giving notice to the council or the CBE, as the case may be, lodge a notice of appeal with the registrar of the appropriate High Court within one month from the date of the decision of the council or the CBE.

#### 36. Rules

- (1) The council may, by notice in the *Gazette*, make rules with regard to any matter that is required or permitted to be prescribed in terms of this Act and any other matter for the better execution of this Act or in relation to any power granted or duty imposed by this Act.
- (2)
  - (a) Before the council makes any rule under this section, it must publish a draft of the proposed rule in the *Gazette* together with a notice calling on interested persons to comment in writing within a period stated in the notice, but the period may not be less than 30 days from the date of publication of the notice.
  - (b) If the council alters the draft rules as a result of any comment it need not publish those alterations before making the rule.
- (3) The council may, if circumstances necessitate the immediate publication of a rule, publish that rule without consultation as contemplated in subsection (2), provided that the CBE, any of the councils for the professions or any person who is aggrieved by the said rule may -
  - (a) comment after such publication; or
  - (b) appeal to the CBE or the appropriate High Court, as the case may be, against such a rule.

#### 37. Procedure and evidence for evidential purposes

- (1) The register referred to in section 11 (c) serves as evidence of all matters which, in terms of this Act, are required or permitted to be noted therein.
- (2) A certificate purporting to be signed by the registrar to the effect that an entry has or has not been made in the register or that any other function authorised by this Act to be performed, has or has not been performed, is evidence of the matters specified in that certificate.
- (3) A copy of an entry in the register or of a document in the custody of the registrar, or an extract from the register or from any such document, purporting to be certified by the registrar, may be admitted as evidence in all courts without further proof or production of the original.

#### 38. Rectification of errors and exemptions

- (1) When anything which according to this Act is required to be done or performed on or before a specified day or at a specified time or during a specified period, has not been done or performed, the Minister may, if satisfied that the failure was due to error or oversight, authorise it to be done or performed on or before another day, time, or during another period and anything done or performed in this regard is of full force and is deemed to have been lawfully done or performed in accordance with this Act.

- (2) The Minister must, after consultation with the council, voluntary associations and any other person he or she considers necessary, make rules regarding exemptions from the provisions of this Act.
- (3) (a) The Minister may, after consultation with the council, voluntary associations and any other person he or she considers necessary, exempt any person, council, voluntary association or industry from any provision of this Act for a period not exceeding two years.
- (b) The exemption referred to in paragraph (a) must comply with the rules contemplated in subsection (2).

### 39. Liability

- (1) The council, the registrar, or any member, committee or staff member of the council, is not liable for any act performed in good faith in terms of this Act.
- (2) A registered person who, in the public interest -
  - (a) refuses to perform an act;
  - (b) omits to perform an act; or
  - (c) informs the council or other appropriate authority of an act or omission performed by any other person,
 which act or omission endangers or is likely to endanger the safety or health of the public or fellow employees, is not liable for that refusal, omission or information.
- (3) Any person who was registered in terms of this Act and whose registration was cancelled, is liable for any action taken by him or her while he or she was registered.

### 40. Delegation of powers

- (1) The Minister may delegate any of his or her powers in terms of this Act, excluding the power to appoint the members of the council, to the Director-General or any other official of the department.
- (2) The council may delegate any of its powers in terms of this Act to a committee, a staff member or a member of the council or any other person or body of persons, excluding the power to hear an appeal in terms of sections 24 (1) and 33 (1) (a).
- (3) The registrar may delegate any of his or her powers in terms of this Act, to a member of the staff of the council.
- (4) Any delegation under subsection (1), (2) or (3) does not prohibit the exercise of the power or the performance of the duty or function in question by the Minister, council or the registrar.

### 41. Offences and penalties

- (1) A person contravening section 18 (2), 23, 25 (8) or 31 (8) (a), (b), (e) or (f) is guilty of an offence.
- (2) If the council wilfully or in a grossly negligent manner fails to comply with section 15 (8) it is guilty of an offence and liable to a fine calculated according to the ratio determined for a period of five years' imprisonment in terms of the Adjustment of Fines Act, 1991.
- (3) A person convicted of an offence in terms of section 18 (2) may be liable to a fine equal to double the remuneration received by him or her for work done in contravention of section 18 (2) or to a fine equal to the fine calculated according to the ratio determined for three years imprisonment in terms of the Adjustment of Fines Act, 1991.
- (4) A person who is convicted of an offence in terms of section 23 or 25 (8), may be liable to a fine calculated according to the ratio determined for a period of one month imprisonment in terms of the Adjustment of Fines Act, 1991.
- (5) A person who is convicted of an offence in terms of section 31 (8) (a), (b), (e) or (f), may be liable to a fine equal to the fine calculated according to the ratio determined for three years imprisonment in terms of the Adjustment of Fines Act, 1991.

### 42. Transitional provisions

- (1) For the purposes of this section, "effective date" means the date of the first meeting of the council.
- (2) The Board of Control for Landscape Architects established by section 31B of the Architects' Act, 1970 (Act No. 35 of 1970), continues to exist and may exercise its powers and perform its functions after the commencement of this Act until the effective date.
- (3) The Board of Control for Landscape Architects must, within 30 days from the Commencement date of this Act, invite nominations for the first appointment of members in accordance with section 4.
- (4) For the purpose of the nominations referred to in section 4 and for the first term of office of the council, the existing voluntary associations within the landscape architectural profession are deemed to be recognised in terms of section 25.

- (5) Any person practicing as an landscape technologist, landscape technician or landscape assistant as well as a candidate in any of these categories, may continue to practise as such and is deemed to be a registered person until a date determined by the Minister in the *Gazette*.
- (6) From the effective date, all rights, obligations, assets and liabilities acquired or incurred by the Board of Control for Landscape Architects in terms of the Architects' Act, 1970, vest in the council and the council is deemed to have acquired or incurred those rights, obligations, assets and liabilities in terms of this Act.
- (7) Any act performed, decision taken, or rule made or purported to have been so performed, taken or made in terms of the Architects' Act, 1970, by the Board of Control for Landscape Architects remains valid unless repealed under this Act.
- (8) Any notice issued or exemption granted by the Minister in terms of the Architects' Act, 1970, remains valid unless repealed under this Act.
- (9) Any person who at the commencement of this Act is registered in terms of a rule contemplated in section 31B (13) of the Architects' Act, 1970, is deemed to be registered in the corresponding category provided for in this Act.
- (10) From the effective date, any register maintained in terms of the Architects' Act, 1970, is incorporated in and is considered to form part of a register to be maintained in terms of this Act.
- (11) Any action taken in terms of section 24 of the Architects' Act, 1970, which is pending at the commencement date of this Act, must be finalised in terms of that Act.
- (12) At the end of the first term of the council 50 per cent of the members of the council may not be reappointed by the Minister.

#### **43. Act binding on State**

This Act binds the State.

#### **44. Short title and commencement**

This Act is called the Landscape Architectural Profession Act, 2000, and commences on a date fixed by the President by Proclamation in the *Gazette*.

## ENGINEERING PROFESSION ACT 46 OF 2000

(English text signed by the President)

*[Assented To: 26 November 2000]*

*[Commencement Date: 26 January 2001 – unless otherwise indicated]*

*[Proc. R8 / GG 22023 / 20010126]*

*[Proc. R37 / GG 27828 / 20050722]*

### ACT

To provide for the establishment of a juristic person to be known as the Engineering Council of South Africa; to provide for the registration of professionals, candidates and specified categories in the engineering profession; to provide for the regulation of the relationship between the Engineering Council of South Africa and the Council for the Built Environment; and to provide for matters connected therewith.

### ARRANGEMENT OF SECTIONS

1. Definitions
2. Establishment of the Engineering Council of South Africa
3. Composition of council
4. Nomination procedure
5. Term of office of members of council
6. Disqualification from membership of council and vacation of office
7. Election of president and vice-president of council
8. Appointment of chief executive officer and other staff members of council
9. Decisions of council
10. Administrative powers of council
11. Powers of council with regard to registration
12. Power of council with regard to fees and charges
13. Powers of council with regard to education in engineering
14. General powers of council
15. Funds of council and keeping and auditing of accounts
16. Reports to CBE
17. Committees of council
18. Categories of registration
19. Registration
20. Cancellation of registration
21. Authorised titles
22. Renewal of registration
23. Return of registration certificate
24. Grievance procedure in relation to registration
25. Recognition of voluntary associations
26. Identification of work
27. Professional conduct
28. Investigation of charge of improper conduct
29. Charge of improper conduct
30. Appointment of disciplinary tribunal
31. Disciplinary hearing
32. Proceedings after hearing
33. Appeal against decision of disciplinary tribunal
34. Professional fees
35. Appeal against certain decisions of council
36. Rules
37. Procedure and evidence for evidential purposes
38. Rectification of errors and exemptions
39. Liability
40. Delegation of powers
41. Offences and penalties
42. Transitional provisions
43. Repeal of laws
44. Act binding on State
45. Short title and commencement

## SCHEDULE

### 1. Definitions

In this Act, unless the context otherwise indicates -

“**accredit**” means the process of evaluation and recognition by the council of education programmes offered by educational institutions relating to the engineering profession, and “accreditation” has a corresponding meaning;

“**actively practice**” means to practice on an ongoing basis in one of the categories contemplated in [section 18](#), and includes a person qualified in the engineering profession who is employed by any sphere of government or an educational institution;

“**candidate**” means a person who is registered in terms of [section 19](#) (2) (b);

“**CBE**” means the Council for the Built Environment established by [section 2](#) of the Council for the Built Environment Act, 2000;

“**chief executive officer**” means the person appointed as chief executive officer under [section 8](#) (1) (a);

“**committee**” means a committee established in terms of [section 17](#);

“**council**” means the Engineering Council of South Africa established by [section 2](#);

“**department**” means the national department responsible for public works;

“**disciplinary tribunal**” means a tribunal appointed in terms of [section 30](#);

“**Minister**” means the Minister responsible for public works;

“**prescribe**” means prescribed by a rule made by the council under [section 36](#), and “**prescribed**” has a corresponding meaning;

“**professional**” means a person who is registered in terms of [section 19](#) (2) (a);

“**registered person**” means a person registered under one of the categories referred to in [section 18](#);

“**registration**” means the process -

(a) of assessment of competency of applicants for the purpose of registration under this Act; and

(b) of entering the names of the applicants who qualify into the register referred to in [section 11](#) (c);

“**rule**” means a rule made and in force under this Act;

“**this Act**” includes any notice, order or rule issued or made under this Act; and

“**voluntary association**” means any voluntary association recognised by the council in terms of [section 25](#).

### 2. Establishment of the Engineering Council of South Africa

There is hereby established a juristic person to be known as the Engineering Council of South Africa.

### 3. Composition of council

(1) The council consists of the following members, appointed by the Minister, taking into account, among other things, the principles of transparency and representivity -

(a) thirty registered persons, excluding candidates, of whom at least 20 must actively practice in the engineering profession -

(i) who must be nominated by the voluntary associations, registered persons and prescribed nominating bodies;

- (ii) who must represent the categories of registered persons contemplated in section 18, in the prescribed manner; and
    - (iii) who must represent the different disciplines of the engineering profession in the prescribed manner;
  - (b) ten persons, of whom at least -
    - (i) six must be professionals, in the service of the State nominated by any sphere of government; and
    - (ii) one must be nominated by the department; and
  - (c) ten members of the public nominated through an open process of public participation.
- (2) The nominating bodies contemplated in subsection (1) (a) (i) must be determined in consultation with the CBE and if no agreement is reached the CBE must refer the matter to the Minister for a final determination.
  - (3) A maximum of a third of the members of the Engineering Council of South Africa, established in terms of the Engineering Profession of South Africa Act, 1990 (Act No. 114 of 1990), who are nominated by that council remain in office for the first term of the council.

#### 4. Nomination procedure

- (1) When any nomination in terms of section 3 (1) (a) or (b) becomes necessary, the council must invite registered persons, the voluntary associations, prescribed nominating bodies and the State, respectively, in the prescribed manner, to nominate within a period of at least 60 days from the date of the invitation, persons who qualify for nomination in terms of section 3 (1) (a) or (b), respectively.  
(Commencement date of sub-s. (1): 1 July 2005)
- (2) When any nomination in terms of section 3 (1) (c) becomes necessary, the council must invite the public, by notice in the *Gazette* and any newspaper the council considers necessary, but in at least a leading newspaper in each province, to nominate persons for appointment to the council within a period of at least 60 days from the date of the notice.  
(Commencement date of sub-s. (2): 1 July 2005)
- (3) On receipt of any nomination, the council must, within 30 days from the expiry date specified in the invitation or the notice, make and submit its recommendations to the Minister.
- (4) The Minister must, within 60 days from the date of the receipt of the nominations from the outgoing council, appoint the members of the council.
- (5) If the council receives no or insufficient nominations within the period specified in the invitation or the notice, the Minister may, after consultation with the council, appoint the required number of persons who qualify to be appointed in terms of this Act.
- (6) The Minister must, as soon as practicable after the appointment of the members of the council, by notice in the *Gazette*, publish -
  - (a) the name of every person appointed as a member;
  - (b) the date from which the appointment takes effect; and
  - (c) the period for which the appointment is made.
- (7) The Minister must, within 30 days from the date of the appointment of the council, determine the time and place of its first meeting, and, thereafter, the council must, determine the time and place of any future meeting.

#### 5. Term of office of members of council

- (1) The term of office for members of the council is four years, but members continue in office until the succeeding council is duly constituted.
- (2) Subject to section 42 (13), a member of the council may not serve for more than two consecutive terms of office.
- (3) Despite subsection (1), the Minister may, by notice in the *Gazette*, after consultation with the council, extend the period of office of all the members of the council for a period of six months, but he or she may only extend the period of office twice.
- (4) Despite subsection (1), the Minister may, by notice in the *Gazette*, after consultation with the council, terminate the period of office of a member or all the members of the council.
- (5) The Minister may only act in terms of subsection (4) if a new member or a new council has been appointed, on nominations invited by the Minister in the manner provided for in section 4, to take the over the functions of the member or the council concerned.

## 6. Disqualification from membership of council and vacation of office

- (1) A person must not be appointed as a member of the council if that person -
  - (a) is not a South African citizen and ordinarily resident in the Republic;
  - (b) is an unrehabilitated insolvent;
  - (c) has been convicted of an offence in the Republic, other than an offence committed prior to 27 April 1994 associated with political objectives, and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;
  - (d) subject to subsection (3), has been convicted of an offence in a foreign country and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;
  - (e) has, as a result of improper conduct, been removed from an office of trust; or
  - (f) has in terms of this Act been found guilty by a disciplinary tribunal or the council of improper conduct.
- (2) A member of the council must vacate his or her office if he or she -
  - (a) becomes disqualified in terms of subsection (1) from being appointed as a member of the council;
  - (b) resigns by written notice addressed to the chief executive officer;
  - (c) is declared by the High Court to be of unsound mind or mentally disordered or is detained under the Mental Health Act, 1973 (Act No. 18 of 1973);
  - (d) has, without the leave of the council, been absent from more than two consecutive meetings of the council;
  - (e) was appointed in terms of [section 3](#) (1) (a) and after that appointment a change in his or her circumstances arises that affects the ratio of the membership referred to in [section 3](#) (1);
  - (f) was appointed in terms of [section 3](#) (1) (b) and ceases to be employed by the State; or
  - (g) ceases to be permanently resident in the Republic.
- (3) For the purposes of subsection (1) (d), the Minister must take cognisance of the prevailing circumstances in a foreign country relating to a conviction.
- (4)
  - (a) If a member of the council dies or vacates his or her office before the expiration of his or her term of office, the Minister may, after consultation with the council and subject to [section 5](#) (1), appoint a person to fill the vacancy for the unexpired portion of the period for which that member was appointed.
  - (b) If the Minister appoints a person to fill the vacant seat, the appointment must be made within 60 days from the date on which the vacancy occurred.

## 7. Election of president and vice-president of council

- (1)
  - (a) The members of the council must, at the first meeting of every newly constituted council elect a president and vice-president who must be registered persons and at least one must actively practise in the engineering profession.
  - (b) The president and vice-president hold office for a period of four years from the date of their appointment.
- (2) The vice-president must, if the president is for any reason unable to act as president, perform all the functions and may exercise all the powers of the president.
- (3)
  - (a) If both the president and the vice-president are for any reason unable to preside at a council meeting, the members present must elect a person to preside at that meeting.
  - (b) The person elected may, during that meeting and until the president or vice-president resumes his or her functions, perform all the functions and exercise all the powers of the president.

## 8. Appointment of chief executive officer and other staff members of council

- (1) The council -
  - (a) must appoint a chief executive officer; and
  - (b) may employ such other staff members as it may deem necessary for carrying out its functions,on such conditions, including the payment of remuneration and allowances, as it may determine, and may dismiss any person so appointed.
- (2) The chief executive officer must enter into a performance agreement, as prescribed, with the council on acceptance of his or her appointment.

- (3) The chief executive officer must perform, in addition to such functions as may otherwise be assigned to him or her by or under this Act, such functions as may from time to time be assigned to him or her by the council.

#### 9. Decisions of council

- (1) A decision of the majority of the members of the council present at any meeting constitutes a decision of the council.
- (2) In the event of an equality of votes the person presiding at the meeting has a casting vote in addition to his or her deliberative vote.
- (3) If the requisite majority of the members who are entitled to sit as members at a meeting of the council, make a decision or authorise an act at that meeting, the decision made or act performed under that authorisation, is valid despite the fact that at that meeting a member who had become disqualified in terms of [section 6](#) (2) but had not vacated his or her office, sat as a member.

#### 10. Administrative powers of council

The council may -

- (a) determine the remuneration and allowances payable to its members or the members of any committee of the council after consultation with the CBE;
- (b) arrange for the payment of pension and other benefits to any staff of the council or the chief executive officer and to his or her dependants on the termination of the service of that staff member or the chief executive officer;
- (c) determine where its head office must be situated;
- (d) determine the manner in which meetings of the council or any committee of the council must be convened, the procedure and quorum at such meetings and the manner in which the minutes of such meetings must be kept; and
- (e) print, circulate, sell and administer the publication of, and generally take any steps necessary to publish, any publication relating to the engineering profession and related matters.

#### 11. Powers of council with regard to registration

The council may, subject to this Act -

- (a) consider and decide on any application for registration;
- (b) prescribe the period of validity of the registration of a registered person;
- (c) keep a register of registered persons and decide on -
- (i) the form of certificates and the register to be kept;
- (ii) the maintenance of the register or issuing of certificates; and
- (iii) the reviewing of the register and the manner in which alterations thereto may be effected.

#### 12. Power of council with regard to fees and charges

- (1) The council may, with regard to fees and charges, which are payable to the council, determine -
- (a) application fees;
- (b) registration fees;
- (c) annual fees, or portion thereof, in respect of a part of a year;
- (d) the date on which any fee or charge is payable;
- (e) the fees, or portion thereof, payable in respect of any examination referred to in [section 19](#), conducted by or on behalf of the council;
- (f) any charge payable for the purposes of the education fund referred to in [section 15](#) (5);
- (g) fees payable for a service referred to in [section 14](#) (c);
- (h) the fees payable for an appeal in terms of [section 24](#) (1); or
- (i) any other fee or charge it considers necessary.
- (2) The council may grant exemption from payment of application fees, registration fees, annual fees, charges, or a portion thereof referred to in subsection (1).

#### 13. Powers of council with regard to education in engineering

The council may -

- (a) subject to [sections 5](#) and [Z](#) of the Higher Education Act, 1997 (Act No. 101 of 1997), conduct accreditation visits to any educational institution which has a department, school or faculty of engineering, but must conduct at least one

- such visit during its term of office. If the council does not conduct an accreditation visit within that term of office, it must notify the Minister accordingly and provide him or her with reasons for the failure to do so;
- (b) either conditionally or unconditionally grant, refuse or withdraw accreditation with regard to all educational institutions and their educational programmes with regard to engineering;
  - (c) consult with the Council on Higher Education established in terms of the Higher Education Act, 1997, regarding matters relevant to education in engineering;
  - (d) consult with the South African Qualifications Authority established by the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), or any body established by it and the voluntary associations, to determine competency standards for the purpose of registration;
  - (e) establish mechanisms for registered persons to gain recognition of their qualifications and professional status in other countries;
  - (f) liaise with the relevant National Standards Body established in terms of Chapter 3 of the regulations under the South African Qualifications Authority Act, 1995, with a view to the establishment of a standards generating body in terms of those regulations;
  - (g) recognise or withdraw the recognition of any examination contemplated in [section 19](#);
  - (h) enter into an agreement with any person or body of persons, within or outside the Republic, with regard to the recognition of any examination or qualification for the purposes of this Act;
  - (i) give advice or render assistance to any educational institution, voluntary association or examining body with regard to educational facilities for and the training and education of registered persons and prospective registered persons;
  - (j) conduct any examination for the purposes of [section 19](#); and
  - (k) determine, after consultation with the voluntary associations and registered persons, conditions relating to and the nature and extent of continuing education and training.

#### 14. General powers of council

The council may, in addition to other powers in this Act -

- (a) acquire, hire, maintain, let, sell or otherwise dispose of movable or immovable property for the effective performance and exercise of its functions, duties or powers;
- (b) decide upon the manner in which contracts must be entered into on behalf of the council;
- (c) perform any service within its competence if it is requested by any person or body of persons, including the State;
- (d) determine, subject to [section 25](#), the requirements with which a voluntary association must comply to qualify for recognition by the council;
- (e) advise the Minister, any other Minister or the CBE on any matter relating to the engineering profession;
- (f) encourage and itself undertake research into matters relating to the engineering profession;
- (g) take any steps it considers necessary for the protection of the public in their dealings with registered persons for the maintenance of the integrity, and the enhancement of the status of the engineering profession;
- (h) take any steps it considers necessary for the improvement of the standards of services rendered by registered persons;
- (i) create an awareness amongst registered persons of the importance to protect the environment against unsound engineering practices;
- (j) take any steps which it considers necessary, where, as a result of engineering related undertakings, public health and safety is prejudiced; and
- (k) take any measures it considers necessary for the proper performance and exercise of its functions, duties or powers or to achieve the objectives of this Act.

#### 15. Funds of council and keeping and auditing of accounts

- (1) The funds of the council consist of any money received in terms of this Act and all other monies which may accrue to the council from any other legal source, including fines and penalties imposed by the council.
- (2) The council may -
  - (a) collect and invest funds of the council;
  - (b) raise money by way of loan for the purpose of effectively performing its functions;
  - (c) with a view to the promotion of any matter relating to the engineering profession, lend money against such security as the council considers adequate; and
  - (d) mortgage any of its immovable property as security for a loan referred to in paragraph (b).
- (3) The council may remunerate its members and committee members from its funds.
- (4) The council may finance any publication referred to in [section 10](#) (e).
- (5) The council may establish and administer an education fund for the education, training and continuing education and training of registered persons and students in the engineering profession.
- (6) The council must keep full and correct account of all monies received and expended by it.

- (7) (a) The council must annually prepare a statement of income and expenditure and a balance sheet showing its financial position as at the close of the financial year to which it relates.
- (b) The council must have the statement and balance sheet audited by an auditor registered in terms of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991).
- (c) A copy of the audited statement and balance sheet must be open for inspection at the offices of the council.
- (8) The council must, within six months from the close of each financial year or such other period as may be agreed to by the Minister after a request by the council, submit the audited statement and balance sheet to the Minister and must provide a copy to the CBE.
- (9) The Minister may, with the concurrence of the Minister of Finance -
  - (a) advance or grant to the council, out of money appropriated by Parliament, such amounts as he or she considers necessary in order to enable the council to carry out its functions; and
  - (b) determine the conditions to and repayment of the advance.
- (10) The council must determine its financial year.
- (11) The council must apply due care and diligence when investing any money or incurring any expenditure from the funds of the council.

#### 16. Reports to CBE

- (1) The council must, within six months from the close of each financial year, provide the CBE with a report regarding its activities during that financial year, for the purpose of [section 4](#) of the Council for the Built Environment Act, 2000.
- (2) A copy of the report and the register referred to in [section 11](#) (c) must be open for inspection at the offices of the council.
- (3) The council must, on request by the CBE, provide the CBE with any information regarding a registered person.

#### 17. Committees of council

- (1) (a) The council may establish any committee, including an investigating committee, to assist it in the performance of its functions and may appoint any person as a member of that committee.
- (b) If the council does not designate a chairperson for a committee, the committee may, at its first meeting, elect a chairperson from among its members.
- (c) The council may at any time dissolve or reconstitute a committee.
- (2) [Section 9](#) may, with the necessary changes, apply in respect of a committee of the council.

#### 18. Categories of registration

- (1) The categories in which a person may register in the engineering profession are -
  - (a) professional, which is divided into -
    - (i) Professional Engineer;
    - (ii) Professional Engineering Technologist;
    - (iii) Professional Certificated Engineer; or
    - (iv) Professional Engineering Technician; or
  - (b) candidate, which is divided into -
    - (i) Candidate Engineer;
    - (ii) Candidate Engineering Technologist;
    - (iii) Candidate Certificated Engineer; or
    - (iv) Candidate Engineering Technician; or
  - (c) specified categories prescribed by the council.
- (2) A person may not practice in any of the categories contemplated in subsection (1), unless he or she is registered in that category.
- (3) A person may practise in a consulting capacity in the category in which he or she is registered.
- (4) A person who is registered in the category of candidate must perform work in the engineering profession only under the supervision and control of a professional of a category as prescribed.

## 19. Registration

- (1)
  - (a) A person must apply, in the prescribed application form, to the council for registration in a category referred to in [section 18](#) (1).
  - (b) The application form referred to in paragraph (a) must be accompanied by the prescribed fee.
- (2) The council must register the applicant in the relevant category and issue a registration certificate to the successful applicant in the prescribed form if, after consideration of an application, the council is satisfied that the applicant -
  - (a) in the case of a person applying for registration as a professional -
    - (i) has demonstrated his or her competence as measured against standards determined by the council for the relevant category of registration; and
    - (ii) has passed any additional examinations that may be determined by the council;
  - (b) in the case of a person applying for registration as a candidate or a candidate in a specified category, has satisfied the relevant educational outcomes determined by the council for this purpose, by -
    - (i) having passed accredited or recognised examinations at any educational institution offering educational programmes in engineering; and
    - (ii) having passed any other examination that may be determined by the council; or
    - (iii) presenting evidence of prior learning in engineering.
- (3)
  - (a) Despite subsection (2), the council may refuse to register an applicant -
    - (i) if the applicant has been removed from an office of trust on account of improper conduct;
    - (ii) has been convicted of an offence in the Republic, other than an offence committed prior to 27 April 1994 associated with political objectives, and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;
    - (iii) if the applicant has, subject to paragraph (b), been convicted of an offence in a foreign country and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;
    - (iv) if the applicant is declared by the High Court to be of unsound mind or mentally disordered, or is detained under the Mental Health Act, 1973;
    - (v) for as long as the applicant is disqualified from registration as a result of any punishment imposed on him or her under this Act;
    - (vi) if the applicant is an unrehabilitated insolvent whose insolvency was caused by his or her negligence or incompetence in performing work falling within the scope of the category in respect of which he or she is applying for registration.
  - (b) For the purposes of paragraph (a) (iii), the council must take cognisance of the prevailing circumstances in a foreign country relating to a conviction.
  - (c) The council must provide the applicant with a notice of a refusal referred to in paragraph (a).
- (4) For the purposes of this section "prior learning" means the previous learning and experience of a learner, however obtained, against the learning outcomes required for a specified qualification and the acceptance for the purposes of qualification of that which meets those requirements.

## 20. Cancellation of registration

- (1)
  - (a) The council may cancel the registration of a registered person if he or she -
    - (i) becomes disqualified from registration as contemplated in [section 19](#) (3);
    - (ii) has erroneously been registered, or has been registered on information subsequently proved to be false; or
    - (iii) fails to pay the prescribed annual fee or portion thereof, within 60 days from it becoming due or within such further period as the council may allow, either before or after expiry of the 60 days.
  - (b) The council must provide the registered person with a notice of a cancellation referred to in paragraph (a).
- (2) If a person who is registered as a candidate qualifies to be registered as a professional in terms of [section 19](#) (2) (a), the council must cancel his or her registration as a candidate.
- (3) The council must at the written request of any registered person cancel his or her registration, but where an investigation into alleged improper conduct by that person is in progress or is to be held, the registration may not be cancelled until the investigation has been concluded.

- (4) Despite the cancellation of the registration of a registered person in terms of this section, that person remains liable for any fee, arrears or penalty imposed by the council for the period that he or she was registered.

#### 21. Authorised titles

- (1) A person who is registered in any of the categories referred to in [section 18](#) (1) may describe himself or herself and use the title -
- (a) Professional Engineer;
  - (b) Professional Engineering Technologist;
  - (c) Professional Certificated Engineer;
  - (d) Professional Engineering Technician;
  - (e) Candidate Engineer;
  - (f) Candidate Engineering Technologist;
  - (g) Candidate Certificated Engineer; or
  - (h) Candidate Engineering Technician.
- (2) A registered person may use a title prescribed by the council for the specified category.
- (3) The council may determine abbreviations or acronyms for the titles referred to in subsection (1).

#### 22. Renewal of registration

- (1) A registered person must, at least three months prior to the prescribed expiry date of his or her registration, apply in the prescribed manner to the council for the renewal of his or her registration.
- (2) The council may determine conditions for the renewal of registration.
- (3) Subject to [section 19](#), the council must, on application, register a person who was previously registered and whose registration was cancelled in terms of [section 20](#) (1) (a) (iii), if he or she has paid -
- (a) the prescribed fee;
  - (b) any arrear annual fee or portion thereof;
  - (c) any expenses incurred by the council in connection with the recovery of any arrear fees; and
  - (d) any penalties imposed on him or her by the council.

#### 23. Return of registration certificate

Any person whose registration has been cancelled in terms of this Act, must return his or her registration certificate to the chief executive officer within 30 days from the date on which he or she is directed by the chief executive officer in writing to do so.

#### 24. Grievance procedure in relation to registration

- (1) If an applicant is of the opinion that a committee, in its refusal to register him or her, or to cancel his or her registration, other than a cancellation in terms of [section 20](#) (1) (a) (iii) or [32](#) (3) (a) (iv), did not comply with section 33 of the Constitution, that applicant may, on payment of the prescribed fees and within 30 days from the date on which the refusal or cancellation came to his or her knowledge, appeal to the council against that decision.
- (2) The council must, at its first ensuing meeting, within 60 days from the date of the receipt of the appeal, decide on the appeal and provide the appellant with reasons for its decision.
- (3) If an appeal is lodged against a refusal of a committee to renew the registration of a registered person, the registration of that person may not be cancelled until the appeal has been decided.

#### 25. Recognition of voluntary associations

- (1) The council must, within 90 days from the date of its first meeting, submit the framework for the requirements for recognition of a voluntary association to the CBE for approval.
- (2) Any voluntary association may apply to the council to be recognised as such.
- (3) The council may, if the voluntary association complies with the requirements determined in terms of [section 14](#) (d), recognise that association and issue it with a certificate of recognition.
- (4) A certificate of recognition is valid for a period of five years from the date of issue.
- (5) A voluntary association must display its certificate of recognition in a prominent place at its head office.
- (6) The recognition of a voluntary association lapses -
- (a) if that association no longer complies with the requirements contemplated in [section 14](#) (d); or
  - (b) at the expiry of the five-year period referred to in subsection (4).
- (7) A voluntary association must, at least three months prior to the expiry of its recognition, apply in the prescribed manner to the council for the renewal thereof.

- (8) A voluntary association whose recognition has lapsed must, within 30 days from the date on which it is so directed in writing by the council, return its certificate of recognition.

#### 26. Identification of work

- (1) The council must consult with -
- (a) all voluntary associations;
  - (b) any person;
  - (c) any body; or
  - (d) any industry,
- that may be affected by any laws regulating the built environment professions regarding the identification of the type of engineering work which may be performed by persons registered in any of the categories referred to in section 18, including work which may fall within the scope of any other profession regulated by the professions' Acts referred to in the Council for the Built Environment Act, 2000.
- (2) After the process of consultation the council must submit recommendations to the CBE regarding the work identified in terms of subsection (1), for its consideration and identification in terms of section 20 of the Council for the Built Environment Act, 2000.
- (3) A person who is not registered in terms of this Act, may not -
- (a) perform any kind of work identified for any category of registered persons;
  - (b) pretend to be, or in any manner hold or allow himself or herself to be held out as a person registered in terms of this Act;
  - (c) use the name of any registered person or any name or title referred to in section 18 or 21; or
  - (d) perform any act indicating, or calculated to lead persons to believe, that he or she is registered in terms of this Act.
- (4) Subsection (3) (a) may not be construed as prohibiting any person from performing work identified in terms of this section, if such work is performed in the service of or by order of and under the direction, control, supervision of or in association with a registered person entitled to perform the work identified and who must assume responsibility for any work so performed.  
(Commencement date of s. 26: 1 July 2005)

#### 27. Professional conduct

- (1) The council must, in consultation with the CBE, voluntary associations and registered persons, draw up a code of conduct for registered persons and may draw up a code of practice.
- (2)
- (a) The council is responsible for administering the code of conduct and the code of practice and must ensure that the codes are available to all members of the public at all reasonable times.
  - (b) The council must provide the CBE with copies of both codes.
- (3) All registered persons must comply with the code of conduct and the code of practice and failure to do so constitutes improper conduct.

#### 28. Investigation of charge of improper conduct

- (1) The council must refer any matter brought against a registered person to an investigating committee contemplated in section 17 if -
- (a) the council has reasonable grounds to suspect that a registered person has committed an act which may render him or her guilty of improper conduct; or
  - (b) a complaint, charge or allegation of improper conduct has been brought against a registered person by any person.
- (2) At the request of the council, the investigating committee must -
- (a) investigate the matter; and
  - (b) obtain evidence to determine whether or not in its opinion the registered person concerned may be charged and, if so, recommend to the council the charge or charges that may be preferred against that registered person.

- (3) An investigating committee may not question the registered person concerned unless the investigating committee informs that registered person that he or she -
  - (a) has the right to be assisted or represented by another person; and
  - (b) is not obliged to make any statement and that any statement so made may be used in evidence against the registered person.
- (4) The investigating committee must, after the conclusion of the investigation, submit a report making its recommendations to the council regarding any matter referred to it in terms of this section.

### 29. Charge of improper conduct

- (1) The council must, after considering a report of the investigating committee in terms of [section 28](#) (2) (b) and (4), charge a registered person with improper conduct if the council is convinced that sufficient grounds exist for a charge to be preferred against such a registered person.
- (2) The council must furnish a charge sheet to the registered person concerned by hand or registered mail.
- (3) A charge sheet must inform the registered person charged -
  - (a) of the details and nature of the charge;
  - (b) that he or she must, in writing, admit or deny the charge;
  - (c) that he or she may, together with the admission or denial, submit a written explanation regarding the improper conduct with which he or she is charged; and
  - (d) of the period, which must be reasonable, within which his or her plea in terms of paragraph (b) must be submitted to the council.
- (4)
  - (a) If a registered person charged admits that he or she is guilty of the charge, he or she is considered to have been found guilty of improper conduct as charged, after he or she has explained his or her conduct.
  - (b) The council may, subject to [section 32](#) (2), impose a penalty contemplated in [section 32](#) (3) (a) or (b) on a registered person who has admitted guilt in terms of paragraph (a).
- (5) The acquittal or the conviction of a registered person by a court of law on a criminal charge is not a bar to proceedings against him or her under this Act on a charge of improper conduct, even if the facts stated in the charge of improper conduct would, if proved, constitute the offence stated in the criminal charge on which he or she was acquitted or convicted or any other offence of which he or she might have been acquitted or convicted at his or her trial on the criminal charge.

### 30. Appointment of disciplinary tribunal

- (1) The council must appoint a disciplinary tribunal to hear a charge of improper conduct if a person charged -
  - (a) denies the charge; or
  - (b) fails to comply with [section 29](#) (3) (b).
- (2) The disciplinary tribunal must consist of at least -
  - (a) a person who specialises in the professional field concerning the charge;
  - (b) a professional who has appropriate experience; and
  - (c) a person qualified in law and who has appropriate experience.

### 31. Disciplinary hearing

- (1) The disciplinary hearing must be conducted by the disciplinary tribunal.
- (2) The disciplinary tribunal may, for the purposes of this section, appoint a person to assist it in the performance of its functions.
- (3)
  - (a) The disciplinary tribunal may, for the purposes of a hearing, subpoena any person -
    - (i) who in its opinion may be able to give material information concerning the subject of the hearing; or
    - (ii) who it suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing on the subject of the hearing, to appear before the disciplinary tribunal at the time and place specified in the subpoena, to be questioned or to produce a book, document or object.

- (b) A subpoena issued in terms of paragraph (a), must -
- (i) be in the prescribed form;
  - (ii) be signed by the chairperson of the disciplinary tribunal or, in his or her absence, any member of the disciplinary tribunal; and
  - (iii) be served on the registered person concerned personally or by sending it by registered mail.
- (4) The disciplinary tribunal may retain a book, document or object produced in terms of subsection (3) for the duration of the hearing.
- (5) The chairperson of the disciplinary tribunal may call upon and administer an oath to, or take an affirmation from, any witness at the hearing who was subpoenaed in terms of subsection (3).
- (6) At a hearing the registered person charged -
- (a)
    - (i) may personally be present at the hearing of the proceedings;
    - (ii) may be assisted or represented by another person in conducting the proceedings;
    - (iii) has the right to be heard;
    - (iv) may call witnesses;
    - (v) may cross-examine any person called as a witness in support of the charge; and
    - (vi) may have access to documents produced in evidence;
  - (b)
    - (i) may admit at any time before conviction that he or she is guilty of the charge despite the fact that he or she denied the charge or failed to react in terms of section 29 (3) (b) or (c);
    - (ii) may, in the case where he or she makes an admission in terms of subparagraph (i), be deemed to be guilty of improper conduct as charged.
- (7) The person referred to in subsection (2) may during a hearing -
- (a) lead evidence and advance arguments in support of the charge and cross-examine witnesses;
  - (b) question any person who was subpoenaed in terms of subsection (3); or
  - (c) call anyone to give evidence or to produce any book, document or object in his or her possession or custody or under his or her control which the person referred to in subsection (2) suspects or believes to have a bearing on the subject of the hearing.
- (8) (a) A witness who has been subpoenaed may not -
- (i) without sufficient cause, fail to attend the hearing at the time and place specified in the subpoena;
  - (ii) refuse to be sworn in or to be affirmed as a witness;
  - (iii) without sufficient cause, fail to answer fully and satisfactorily to the best of his or her knowledge to all questions lawfully put to him or her; or
  - (iv) fail to produce any book, document or object in his or her possession or custody or under his or her control which he or she has been required to produce.
- (b) A witness who has been subpoenaed must remain in attendance until excused by the chairperson of the disciplinary tribunal from further attendance.
  - (c) A witness who has been subpoenaed may request that the names of the members of the disciplinary tribunal be made available to him or her.
  - (d) The law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce a book, document or object in a civil trial before a court of law may, with the necessary changes, apply in relation to the examination of, or the production of any book, document or object to the disciplinary tribunal by, any person called in terms of this section as a witness.
  - (e) A witness may not, after having been sworn in or having been affirmed as a witness, give a false statement on any matter, knowing that answer or statement to be false.
  - (f) A person may not prevent another person from complying with a subpoena or from giving evidence or producing a book, document or object which he or she is in terms of this section required to give or produce.
- (9) The record of evidence which has a bearing on the charge before the disciplinary tribunal, and which was presented before any commission which investigated an event or conduct is admissible without further evidence being led if -
- (a) the record is accompanied by a certificate from the chairperson; and
  - (b) the certificate certifies that the investigation was lawful, reasonable and procedurally fair.

- (10) If the improper conduct with which the registered person is charged amounts to an offence of which he or she has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court is, on the identification of the registered person as the person referred to in the record, sufficient proof of the commission by him or her of that offence, unless the conviction has been set aside by a superior court.

### 32. Proceedings after hearing

- (1) After the conclusion of the hearing the disciplinary tribunal must, within 30 days -
- (a) decide whether or not the registered person charged is guilty of improper conduct;
  - (b) if the disciplinary tribunal finds that the registered person charged is guilty of improper conduct, take cognisance of any aggravating or mitigating circumstances;
  - (c) inform the registered person charged and the council of the finding; and
  - (d) inform the registered person of his or her right of appeal in terms of [section 33](#).
- (2) A registered person found guilty of improper conduct in terms of this section may -
- (a) address the disciplinary tribunal in mitigation of sentence; and
  - (b) call witnesses to give evidence on his or her behalf in mitigation of the sentence.
- (3) (a) If the registered person charged is found guilty of improper conduct, or if he or she admits that he or she is guilty of the charge, the disciplinary tribunal must either -
- (i) caution or reprimand the registered person;
  - (ii) impose on him or her a fine not exceeding the amount calculated according to the ratio for one year imprisonment determined in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991);
  - (iii) suspend the registration of the registered person concerned for a period not exceeding one year; or
  - (iv) cancel the registration of the registered person concerned and remove his or her name from the register referred to in [section 11](#) (c).
- (b) The disciplinary tribunal may take decisions under more than one of the subparagraphs of paragraph (a).
- (4) At the conclusion of the hearing the disciplinary tribunal must notify the council of its finding.
- (5) The council must publish the finding and the sanction imposed in terms of subsection (3) in the *Gazette*.
- (6) The council must give effect to the decision of the disciplinary tribunal.

### 33. Appeal against decision of disciplinary tribunal

- (1) (a) A registered person found guilty of improper conduct may appeal to the council against a finding of the disciplinary tribunal or against the sentence, or both.
- (b) The appeal must be lodged, within 30 days after the disciplinary tribunal has informed the registered person of its decision.
- (2) The council may -
- (a) dismiss the appeal against the decision of the disciplinary tribunal and confirm the finding or sentence or both; or
  - (b) uphold the appeal against the decision of the disciplinary tribunal wholly or in part and set aside or vary the finding or sentence or both.
- (3) If an appeal is dismissed in terms of subsection (2) (a) the appellant may, within 30 days from the date of the dismissal of the appeal, appeal to the CBE.
- (4) If a registered person found guilty of improper conduct lodges an appeal in terms of subsection (1) -
- (a) the decision of the disciplinary tribunal under [section 32](#) (3); or
  - (b) the publication by the council in terms of [section 32](#) (5),
- may not be put into effect before the council or the CBE, or both, has decided the appeal.
- (5) (a) The appellant whose appeal was dismissed by the CBE may appeal to the appropriate High Court.
- (b) A person referred to in paragraph (a) must, after giving notice to the CBE, lodge a notice of appeal with the registrar of the appropriate High Court within one month from the date of the decision of the CBE.

- (6) (a) The council may appeal to the appropriate High Court against any decision of the CBE with regard to disciplinary matters.
- (b) The council must, after giving notice to the CBE, lodge a notice of appeal with the registrar of the appropriate High Court within one month from the date of the decision of the CBE.

#### 34. Professional fees

- (1) The council must, in consultation with the voluntary associations, representatives of service providers and clients in the public and private sector, formulate recommendations with regard to the principles referred to in section 4 (k) (v) of the Council for the Built Environment Act, 2000.
- (2) The council must annually, after consultation with the voluntary associations, representatives of service providers and clients in the public and private sector, determine guideline professional fees and publish those fees in the *Gazette*.
- (3) The CBE may review the guideline professional fees published by the council, and refer the fees back to the council for reconsideration.
- (4) If the council, after review by the CBE of the guideline professional fees, is aggrieved about that review, it may refer the matter to the Minister for a final decision.
- (5) Any person who is aggrieved by the guideline professional fees published in terms of subsection (2), may bring the matter to the attention of the CBE within 60 days from the date of publication.

#### 35. Appeal against certain decisions of council

- (1) Any member of the public whose interests and rights are affected by a decision made by the council may -
  - (a) within 30 days from that person becoming aware of the decision, request the council in writing to furnish him or her in writing with its reasons for that decision;
  - (b) within 90 days from the date in which the council furnished him or her with its reasons for that decision and after giving notice to the council, appeal to the CBE against that decision in terms of section 21 of the Council for the Built Environment Act, 2000.
- (2) A person referred to in subsection (1) may, after giving notice to the council or the CBE, as the case may be, lodge a notice of appeal with the registrar of the appropriate High Court within one month from the date of the decision of the council or the CBE.

#### 36. Rules

- (1) The council may, by notice in the *Gazette*, make rules with regard to any matter that is required or permitted to be prescribed in terms of this Act and any other matter for the better execution of this Act or in relation to any power granted or duty imposed by this Act.
- (2) (a) Before the council makes any rule under this section, it must publish a draft of the proposed rule in the *Gazette* together with a notice calling on interested persons to comment in writing within a period stated in the notice, but the period may not be less than 30 days from the date of publication of the notice.
- (b) If the council alters the draft rules as a result of any comment it need not publish those alterations before making the rule.
- (3) The council may, if circumstances necessitate the immediate publication of a rule, publish that rule without consultation as contemplated in subsection (2), provided that the CBE, any of the councils for the professions or any person who is aggrieved by the said rule may -
  - (a) comment after such publication; or
  - (b) appeal to the CBE or the appropriate High Court, as the case may be, against such a rule.

#### 37. Procedure and evidence for evidential purposes

- (1) The register referred to in section 11 (c) serves as evidence of all matters which, in terms of this Act, are required or permitted to be noted therein.
- (2) A certificate purporting to be signed by the chief executive officer to the effect that an entry has or has not been made in the register or that any other function authorised by this Act to be performed, has or has not been performed, is evidence of the matters specified in that certificate.
- (3) A copy of an entry in the register or of a document in the custody of the chief executive officer or an extract from the register or from any such document, purporting to be certified by the chief executive officer, may be admitted in evidence in all courts without further proof or production of the original.

### 38. Rectification of errors and exemptions

- (1) When anything which according to this Act is required to be done or performed on or before a specified day or at a specified time or during a specified period, has not been done or performed, the Minister may, if satisfied that the failure was due to error or oversight, authorise it to be done or performed on or before another day, time, or during another period and anything done or performed in this regard is of full force and is deemed to have been lawfully done or performed in accordance with this Act.
- (2) The Minister must, after consultation with the council, voluntary associations and any other person he or she considers necessary, make rules regarding exemptions from the provisions of this Act.
- (3)
  - (a) The Minister may, after consultation with the council, voluntary associations and any other person he or she considers necessary, exempt any person, council, voluntary association or industry from any provision of this Act for a period not exceeding two years.
  - (b) The exemption referred to in paragraph (a) must comply with the rules contemplated in subsection (2).

### 39. Liability

- (1) The council, the chief executive officer, or any member, committee or staff member of the council, is not liable for any act performed in good faith in terms of this Act.
- (2) A registered person who, in the public interest -
  - (a) refuses to perform an act;
  - (b) omits to perform an act; or
  - (c) informs the council or other appropriate authority of an act or omission performed by any other person, which act or omission endangers or is likely to endanger the safety or health of the public or fellow employees, is not liable for that refusal, omission or information.
- (3) Any person who was registered in terms of this Act and whose registration was cancelled, is liable for any action taken by him or her while he or she was registered.

### 40. Delegation of powers

- (1) The Minister may delegate any of his or her powers in terms of this Act, excluding the power to appoint the members of the council, to the Director-General or any other official of the department.
- (2) The council may delegate any of its powers in terms of this Act to a committee, a staff member or a member of the council or any other person or body of persons, excluding the power to hear an appeal in terms of [sections 24 \(1\) and 33 \(1\) \(a\)](#).
- (3) The chief executive officer may delegate any of his or her powers in terms of this Act, to a member of the staff of the council.
- (4) Any delegation under subsection (1), (2) or (3) does not prohibit the exercise of the power or the performance of the duty or function in question by the Minister, council or the chief executive officer.

### 41. Offences and penalties

- (1) A person contravening [section 18 \(2\)](#), [23](#), [25 \(8\)](#) or [31 \(8\) \(a\), \(b\), \(e\) or \(f\)](#), is guilty of an offence.
- (2) If the council wilfully or in a grossly negligent manner fails to comply with [section 15 \(8\)](#) it is guilty of an offence and liable to a fine calculated according to the ratio determined for a period of five years imprisonment in terms of the Adjustment of Fines Act, 1991.
- (3) A person convicted of an offence in terms of [section 18 \(2\)](#), may be liable to a fine equal to double the remuneration received by him or her for work done in contravention of [section 18 \(2\)](#), or to a fine equal to the fine calculated according to the ratio determined for three years imprisonment in terms of the Adjustment of Fines Act, 1991.
- (4) A person who is convicted of an offence in terms of [section 23](#) or [25 \(8\)](#), may be liable to a fine calculated according to the ratio determined for a period of one month imprisonment in terms of the Adjustment of Fines Act, 1991.
- (5) A person who is convicted of an offence in terms of [section 31 \(8\) \(a\), \(b\), \(e\) or \(f\)](#), may be liable to a fine equal to the fine calculated according to the ratio determined for three years imprisonment in terms of the Adjustment of Fines Act, 1991.

### 42. Transitional provisions

- (1) For the purposes of this section, "effective date" means the date of the first meeting of the council.
- (2) The Engineering Council of South Africa established by section 2 of the Engineering Profession of South Africa Act, 1990 (Act No. 114 of 1990), continues to exist and may exercise its powers and perform its functions after the commencement of this Act until the effective date.

- (3) From the effective date, all rights, obligations, assets and liabilities acquired or incurred by the Engineering Council of South Africa in terms of the Engineering Profession of South Africa Act, 1990, vest in the council and the council is deemed to have acquired or incurred those rights, obligations, assets and liabilities in terms of this Act.
- (4) The Minister must, after consultation with the Engineering Council of South Africa, determine the voluntary associations and other nominating bodies referred to in [section 4](#) for the purpose of inviting nominations for the appointment of the first council.
- (5) The Engineering Council of South Africa must, within 30 days from the date of commencement of this Act, invite nominations for the first appointment of members in accordance with [section 4](#).
- (6) Any act performed, decision taken, or rule made or purported to have been so performed, taken or made in terms of the Engineering Profession of South Africa Act, 1990, by the Engineering Council of South Africa remains valid unless repealed under this Act.
- (7) Any notice issued or exemption granted by the Minister in terms of the Engineering Profession of South Africa Act, 1990, remains valid unless repealed under this Act.
- (8) Subject to subsection (11), any person who at the commencement of this Act is registered in terms of the Engineering Profession of South Africa Act, 1990, is deemed to be registered in the corresponding category provided for in this Act.
- (9) From the effective date, any register maintained in terms of the Engineering Profession of South Africa Act, 1990, is incorporated in and is considered to form part of a register to be maintained in terms of this Act.
- (10) Any action taken in terms of sections 17 to 21 of the Engineering Profession of South Africa Act, 1990, which is pending at the commencement date of this Act, must be finalised in terms of that Act.
- (11) A person who is registered as an engineering technician in terms of section 14 (1) and (2) of the Engineering Profession of South Africa Act, 1990, remains registered as such, until that person is registered as a professional engineering technician in terms of this Act.
- (12) A person who is registered as an engineering technician in training in terms of the Engineering Profession of South Africa Act, 1990, is considered to be registered as a candidate engineering technician in terms of this Act.
- (13) At the end of the first term of the council 50 per cent of the members of the council may not be reappointed by the Minister.

#### 43. Repeal of laws

The laws mentioned in the second column of the Schedule are repealed to the extent indicated in the third column of that Schedule and in so far as the laws were in force in the various areas of the national territory indicated in the fourth column.

#### 44. Act binding on State

This Act binds the State.

#### 45. Short title and commencement

This Act is called the Engineering Profession Act, 2000, and commences on a date fixed by the President by proclamation in the *Gazette*.

#### Schedule (Section 43)

No. and year of Act	Short title	Extent of repeal	Area of national territory
Act No. 30 of 1978	Engineering Profession Act, 1978	The whole	Transkei
Act No. 29 of 1981	Act to Regulate the Professions of Engineering, Architecture and Quantity Surveying, 1981	The whole	Bophuthatswana
Act No. 114 of 1990	Engineering Profession of South Africa Act, 1990	The whole	
Act No. 14 of 1995	Periods of Office of Members of Councils for Architects, Engineers, Quantity Surveyors and Valuers Act, 1995	The whole	

## PROPERTY VALUERS PROFESSION ACT 47 OF 2000

(English text signed by the President)

*[Assented To: 26 November 2000]*

*[Commencement Date: 26 January 2001 – unless otherwise indicated]*

*[Proc. R9 / GG 22023 / 20010126 – All provisions except Sections 4(1), (2) and 27]*

*[Proc. R40 / GG 27905 / 20050815 – Sections 4(1), (2) and 27]*

### ACT

**To provide for the establishment of a juristic person to be known as the South African Council for the Property Valuers Profession; to provide for the registration of professionals, candidates and specified categories in the property valuation profession; to provide for the regulation of the relationship between the South African Council for the Property Valuers Profession and the Council for the Built Environment; and to provide for matters connected therewith.**

### ARRANGEMENT OF SECTIONS

1. Definitions
2. Establishment of South African Council for the Property Valuers Profession
3. Composition of council
4. Nomination procedure
5. Term of office of members of council
6. Disqualification from membership of council and vacation of office
7. Election of president and vice-president of council
8. Appointment of registrar and other staff members of council
9. Decisions of council
10. Administrative powers of council
11. Powers of council with regard to registration
12. Power of council with regard to fees and charges
13. Powers of council with regard to education in property valuation
14. Powers of council with regard to insurance
15. General powers of council
16. Funds of council and keeping and auditing of accounts
17. Reports to CBE
18. Committees of council
19. Categories of registration
20. Registration
21. Cancellation of registration
22. Authorised titles
23. Renewal of registration
24. Return of registration certificate
25. Grievance procedure in relation to registration
26. Recognition of voluntary associations
27. Identification of work
28. Professional conduct
29. Investigation of charge of improper conduct
30. Charge of improper conduct
31. Appointment of disciplinary tribunal
32. Disciplinary hearing
33. Proceedings after hearing
34. Appeal against decision of disciplinary tribunal
35. Professional fees
36. Appeal against certain decisions of council
37. Rules
38. Procedure and evidence for evidential purposes
39. Rectification of errors and exemptions
40. Liability
41. Delegation of powers
42. Offences and penalties
43. Transitional provisions
44. Repeal of laws
45. Act binding on State
46. Short title and commencement Schedule

## 1. Definitions

In this Act, unless the context otherwise indicates -

“**accredit**” means the process of evaluation and recognition by the council of education programmes offered by educational institutions relating to the property valuation profession, and “**accreditation**” has a corresponding meaning;

“**actively practise**” means to practise on an ongoing basis in one of the categories contemplated in [section 19](#), and includes a person qualified in the property valuation profession who is employed by any sphere of government or an educational institution;

“**candidate**” means a person who is registered in terms of [section 20](#) (2) (b);

“**CBE**” means the Council for the Built Environment established by [section 2](#) of the Council for the Built Environment Act, 2000;

“**committee**” means a committee established in terms of [section 18](#);

“**council**” means the South African Council for the Property Valuers Profession established by [section 2](#);

“**department**” means the national department responsible for public works;

“**disciplinary tribunal**” means a tribunal appointed in terms of [section 31](#);

“**immovable property**” includes a right in respect of, or an interest in, immovable property;

“**Minister**” means the Minister responsible for public works;

“**prescribe**” means prescribed by a rule made by the council under [section 37](#), and “**prescribed**” has a corresponding meaning;

“**professional**” means a person who is registered in terms of [section 20](#) (2) (a);

“**property valuation**” means the determination of the value of immovable property;

“**registered person**” means a person registered under one of the categories referred to in [section 19](#);

“**registrar**” means the person appointed as registrar under [section 8](#) (1) (a);

“**registration**” means the process -

- (a) of assessment of competency of applicants for the purpose of registration under this Act; and
- (b) of entering the names of the applicants who qualify into the register referred to in [section 11](#) (c);

“**rule**” means a rule made and in force under this Act;

“**this Act**” includes any notice, order or rule issued or made under this Act; and

“**voluntary association**” means any voluntary association recognised by the council in terms of [section 26](#).

## 2. Establishment of South African Council for the Property Valuers Profession

There is hereby established a juristic person to be known as the South African Council for the Property Valuers Profession.

## 3. Composition of council

- (1) The council consists of the following members, appointed by the Minister, taking into account, among other things, the principles of transparency and representivity -
  - (a) six registered persons, excluding candidates, of whom at least three must actively practise in the property valuation profession -
    - (i) who must be nominated by the voluntary associations and any registered person; and
    - (ii) who must represent the categories of registered persons contemplated in [section 19](#), in the prescribed manner;

- (b) two professionals in the service of the State nominated by any sphere of government, of whom at least one must be nominated by the department; and
  - (c) two members of the public nominated through an open process of public participation.
- (2) A maximum of a third of the members of the South African Council for Valuers, established in terms of the Valuers' Act, 1982 (Act No. 23 of 1982), who are nominated by that council bearing in mind the composition of the council determined in subsection (1), remain in office for the first term of the council.

#### 4. Nomination procedure

- (1) When any nomination in terms of section 3 (1) (a) or (b) becomes necessary, the council must invite registered persons, the voluntary associations, educational institutions and the State, respectively, in the prescribed manner, to nominate within a period of at least 60 days from the date of the invitation, persons who qualify for nomination in terms of section 3 (1) (a) or (b), respectively.
- (Commencement date of subs. (1): 1 July 2005)
- (2) When any nomination in terms of section 3 (1) (c) becomes necessary, the council must invite the public, by notice in the *Gazette* and any newspaper the council considers necessary, but at least in a leading newspaper in each province, to nominate persons, in the prescribed manner, within a period of at least 60 days from the date of the notice.
- (Commencement date of sub-s. (2): 1 July 2005)
- (3) On receipt of any nomination, the council must, within 30 days from the expiry date specified in the invitation or the notice, make and submit its recommendations to the Minister.
- (4) The Minister must, within 60 days from the date of the receipt of the nominations from the outgoing council, appoint the members of the council.
- (5) If the council receives no or insufficient nominations within the period specified in the invitation or the notice, the Minister may, after consultation with the council, appoint the required number of persons who qualify to be appointed in terms of this Act.
- (6) The Minister must, as soon as practicable after the appointment of the members of the council, by notice in the *Gazette*, publish -
- (a) the name of every person appointed as a member;
  - (b) the date from which the appointment takes effect; and
  - (c) the period for which the appointment is made.
- (7) The Minister must, within 30 days from the date of the appointment of the council, determine the time and place of its first meeting, and, thereafter, the council must determine the time and place of any future meeting.

#### 5. Term of office of members of council

- (1) The term of office for members of the council is four years, but members continue in office until the succeeding council is duly constituted.
- (2) Subject to section 43 (12), a member of the council may not serve for more than two consecutive terms of office.
- (3) Despite subsection (1), the Minister may, by notice in the *Gazette*, after consultation with the council, extend the period of office of all the members of the council for a period of six months, but he or she may only extend the period of office twice.
- (4) Despite subsection (1), the Minister may, by notice in the *Gazette*, after consultation with the council, terminate the period of office of a member or all the members of the council.
- (5) The Minister may only act in terms of subsection (4) if a new member or a new council has been appointed, on nominations invited by the Minister in the manner provided for in section 4, to take the over the functions of the member or the council concerned.

#### 6. Disqualification from membership of council and vacation of office

- (1) A person may not be appointed as a member of the council if that person -
- (a) is not a South African citizen and ordinarily resident in the Republic;
  - (b) is an unrehabilitated insolvent;
  - (c) has been convicted of an offence in the Republic, other than an offence committed prior to 27 April 1994 associated with political objectives, and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;

- (d) subject to subsection (3), has been convicted of an offence in a foreign country and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;
- (e) has, as a result of improper conduct, been removed from an office of trust; or
- (f) has in terms of this Act been found guilty by a disciplinary tribunal or the council of improper conduct.

**(2) A member of the council must vacate his or her office if he or she -**

- (a) becomes disqualified in terms of subsection (1) from being appointed as a member of the council;
  - (b) resigns by written notice addressed to the registrar;
  - (c) is declared by the High Court to be of unsound mind or mentally disordered or is detained under the Mental Health Act, 1973 (Act No. 18 of 1973);
  - (d) has, without the leave of the council, been absent from more than two consecutive meetings of the council;
  - (e) was appointed in terms of section 3 (1) (a) and after that appointment a change in his or her circumstances arises that affects the ratio of the membership referred to in section 3 (1);
  - (f) was appointed in terms of section 3 (1) (b) and ceases to be employed by the State; or
  - (g) ceases to be permanently resident in the Republic.
- (3) For the purposes of subsection (1) (d), the Minister must take cognisance of the prevailing circumstances in a foreign country relating to a conviction.
- (4) (a) If a member of the council dies or vacates his or her office before the expiration of his or her term of office, the Minister may, after consultation with the council, and subject to section 5 (1), appoint a person to fill the vacancy for the unexpired portion of the period for which that member was appointed.
- (b) If the Minister appoints a person to fill the vacant seat, the appointment must be made within 60 days from the date on which the vacancy occurred.

**7. Election of president and vice-president of council**

- (1) (a) The members of the council must at the first meeting of every newly constituted council elect a president and vice-president who must be registered persons and at least one must actively practise in the property valuation profession.
- (b) The president and vice-president hold office for a period of four years from the date of their appointment.
- (2) The vice-president must, if the president is for any reason unable to act as president, perform all the functions and may exercise all the powers of the president.
- (3) (a) If both the president and the vice-president are for any reason unable to preside at a council meeting, the members present must elect a person to preside at that meeting.
- (b) The person elected may, during that meeting and until the president or vice-president resumes his or her functions, perform all the functions and exercise all the powers of the president.

**8. Appointment of registrar and other staff members of council**

- (1) The council -
- (a) must appoint a registrar; and
  - (b) may employ such other staff members as it may deem necessary for carrying out its functions,
- on such conditions, including the payment of remuneration and allowances, as it may determine, and may dismiss any person so appointed.
- (2) The registrar must enter into a performance agreement, as prescribed, with the council on acceptance of his or her appointment.
- (3) The registrar must perform, in addition to such functions as may otherwise be assigned to him or her by or under this Act, such functions as may from time to time be assigned to him or her by the council.

**9. Decisions of council**

- (1) A decision of the majority of the members of the council present at any meeting constitutes a decision of the council.
- (2) In the event of an equality of votes the person presiding at the meeting has a casting vote in addition to his or her deliberative vote.
- (3) If the requisite majority of the members who are entitled to sit as members at a meeting of the council, make a decision or authorise an act at that meeting, the decision made or act performed under that authorisation, is valid

despite the fact that at that meeting a member who had become disqualified in terms of [section 6 \(2\)](#) but had not vacated his or her office, sat as a member.

#### 10. Administrative powers of council

The council may -

- (a) determine the remuneration and allowances payable to its members or the members of any committee of the council after consultation with the CBE;
- (b) arrange for the payment of pension and other benefits to any staff of the council or the registrar and to his or her dependants on the termination of the service of that staff member or the registrar;
- (c) determine where its head office must be situated;
- (d) determine the manner in which meetings of the council or any committee of the council must be convened, the procedure and quorum at such meetings and the manner in which the minutes of such meetings must be kept; and
- (e) print, circulate, sell and administer the publication of, and generally take any steps necessary to publish, any publication relating to the property valuation profession and related matters.

#### 11. Powers of council with regard to registration

The council may, subject to this Act -

- (a) consider and decide on any application for registration;
- (b) prescribe the period of validity of the registration of a registered person;
- (c) keep a register of registered persons and decide on -
  - (i) the form of certificates and the register to be kept;
  - (ii) the maintenance of the register or issuing of certificates; and
  - (iii) the reviewing of the register and the manner in which alterations thereto may be effected.

#### 12. Power of council with regard to fees and charges.

- (1) The council may, with regard to fees and charges, which are payable to the council, determine -
  - (a) application fees;
  - (b) registration fees;
  - (c) annual fees, or portion thereof, in respect of a part of a year;
  - (d) the date on which any fee or charge is payable;
  - (e) the fees, or portion thereof, payable in respect of any examination referred to in [section 20](#), conducted by or on behalf of the council;
  - (f) any charge payable for the purposes of the education fund referred to in [section 16 \(5\)](#);
  - (g) fees payable for a service referred to in [section 15 \(c\)](#);
  - (h) the fees payable for an appeal in terms of [section 25 \(1\)](#); or
  - (i) any other fee or charge it considers necessary.
- (2) The council may grant exemption from payment of application fees, registration fees, annual fees, charges, or a portion thereof referred to in subsection (1).

#### 13. Powers of council with regard to education in property valuation

The council may -

- (a) subject to [sections 5](#) and [7](#) of the Higher Education Act, 1997 (Act No. 101 of 1997), conduct accreditation visits to any educational institution which has a department, school or faculty which offers property valuation education programmes, but must conduct at least one such visit during its term of office. If the council does not conduct an accreditation visit within that term of office, it must notify the Minister accordingly and provide him or her with reasons for the failure to do so;
- (b) either conditionally or unconditionally grant, refuse or withdraw accreditation with regard to all educational institutions and their educational programmes with regard to property valuation;
- (c) consult with the Council on Higher Education established in terms of the Higher Education Act, 1997, regarding matters relevant to education in property valuation;
- (d) consult with the South African Qualifications Authority established by the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), or any body established by it and the voluntary associations, to determine competency standards for the purpose of registration;
- (e) establish mechanisms for registered persons to gain recognition of their qualifications and professional status in other countries;

- (f) liaise with the relevant National Standards Body established in terms of Chapter 3 of the regulations under the South African Qualifications Authority Act, 1995, with a view to the establishment of a standards generating body in terms of those regulations;
- (g) recognise or withdraw the recognition of any examination contemplated in [section 20](#);
- (h) enter into an agreement with any person or body of persons, within or outside the Republic, with regard to the recognition of any examination or qualification for the purposes of this Act;
- (i) give advice or render assistance to any educational institution, voluntary association or examining body with regard to educational facilities for and the training and education of registered persons and prospective registered persons;
- (j) conduct any examination for the purposes of [section 20](#); and
- (k) determine, after consultation with the voluntary associations and registered persons, conditions relating to and the nature and extent of continuing education and training.

#### 14. Powers of council with regard to insurance

The council may -

- (a) arrange insurance with an insurer who is registered or deemed to be registered under the Long Term Insurance Act, 1998 (Act No. 52 of 1998) or the Short Term Insurance Act, 1998 (Act No. 53 of 1998), for the indemnification of registered persons, against claims arising from the performance of their functions;
- (b) arrange with an insurer referred to in subsection (1) for the provision of insurance cover for -
  - (i) any member, registrar or staff member of the council in respect of any bodily injury, disablement or death resulting from an accident occurring in the course of the performance of his or her functions in terms of this Act;
  - (ii) the council against any loss, damage, risk or liability which it may suffer or incur, including cover in respect of any loss or damage caused to it by any person in its service and in respect of all property under the control of the council.

#### 15. General powers of council

The council may, in addition to other powers in this Act -

- (a) acquire, hire, maintain, let, sell or otherwise dispose of movable or immovable property for the effective performance and exercise of its functions, duties or powers;
- (b) decide upon the manner in which contracts must be entered into on behalf of the council;
- (c) perform any service within its competence if it is requested by any person or body of persons, including the State;
- (d) determine, subject to [section 26](#), the requirements with which a voluntary association must comply to qualify for recognition by the council;
- (e) advise the Minister, any other Minister or the CBE on any matter relating to the property valuation profession;
- (f) encourage and itself undertake research into matters relating to the property valuation profession;
- (g) take any steps it considers necessary for the protection of the public in their dealings with registered persons, for the maintenance of the integrity, and the enhancement of the status of the property valuation profession;
- (h) take any steps it considers necessary for the improvement of the standards of services rendered by registered persons; and
- (i) take any measures it considers necessary for the proper performance and exercise of its functions, duties or powers or to achieve the objectives of this Act.

#### 16. Funds of council and keeping and auditing of accounts

- (1) The funds of the council consist of any money received in terms of this Act and all other monies which may accrue to the council from any other legal source, including fines and penalties imposed by the council.
- (2) The council may -
  - (a) collect and invest funds of the council;
  - (b) raise money by way of loan for the purpose of effectively performing its functions;
  - (c) with a view to the promotion of any matter relating to the property valuation profession, lend money against such security as the council considers adequate; and
  - (d) mortgage any of its immovable property as security for a loan referred to in paragraph (b).
- (3) The council may remunerate its members and committee members from its funds.
- (4) The council may finance any publication referred to in [section 10](#) (e).
- (5) The council may establish and administer an education fund for the education, training and continuing education and training of registered persons and students in the property valuation profession.
- (6) The council must keep full and correct account of all monies received and expended by it.

- (7) (a) The council must annually prepare a statement of income and expenditure and a balance sheet showing its financial position as at the close of the financial year to which it relates.
- (b) The council must have the statement and balance sheet audited by an auditor registered in terms of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991).
- (c) A copy of the audited statement and balance sheet must be open for inspection at the offices of the council.
- (8) The council must, within six months from the close of each financial year or such other period as may be agreed to by the Minister after a request by the council, submit the audited statement and balance sheet to the Minister and must provide a copy to the CBE.
- (9) The Minister may, with the concurrence of the Minister of Finance -
  - (a) advance or grant to the council, out of money appropriated by Parliament, such amounts as he or she considers necessary in order to enable the council to carry out its functions; and
  - (b) determine the conditions to and repayment of the advance.
- (10) The council must determine its financial year.
- (11) The council must apply due care and diligence when investing any money or incurring any expenditure from the funds of the council.

#### 17. Reports to CBE

- (1) The council must, within six months from the close of each financial year, provide the CBE with a report regarding its activities during that financial year, for the purpose of section 4 of the Council for the Built Environment Act, 2000.
- (2) A copy of the report and the register referred to in section 11 (c) must be open for inspection at the offices of the council.
- (3) The council must, on request by the CBE, provide the CBE with any information regarding a registered person.

#### 18. Committees of council

- (1) (a) The council may establish any committee, including an investigating committee, to assist it in the performance of its functions and may appoint any person as a member of that committee.
- (b) If the council does not designate a chairperson for a committee, the committee may, at its first meeting, elect a chairperson from among its members.
- (c) The council may at any time dissolve or reconstitute a committee.
- (2) Section 9 may, with the necessary changes, apply in respect of a committee of the council.

#### 19. Categories of registration

- (1) The categories in which a person may register in the property valuation profession are -
  - (a) Professional Valuer;
  - (b) Professional Associated Valuer;
  - (c) Candidate Valuer; or
  - (d) specified categories prescribed by the council.
- (2) A person may not practice in any of the categories contemplated in subsection (1), unless he or she is registered in that category.
- (3) A person who is registered in the category of candidate must perform work in the property valuation profession only under the supervision and control of a professional of a category as prescribed.

#### 20. Registration

- (1) (a) A person must apply, in the prescribed application form, to the council for registration in a category referred to in section 19 (1).
- (b) The application form referred to in paragraph (a) must be accompanied by the prescribed fee.
- (2) The council must register the applicant in the relevant category and issue a registration certificate to the successful applicant in the prescribed form if, after consideration of an application, the council is satisfied that the applicant -
  - (a) in the case of a person applying for registration as a professional -

- (i) is at least 21 years of age and is ordinarily resident in the Republic;
  - (ii) has passed the prescribed examinations or any examinations recognised by the council; and
  - (iii) has gained practical experience in property valuation in the Republic which is of the prescribed scope, variety, nature and standard;
- (b) in the case of a person applying for registration as a candidate or a candidate in a specified category -
- (i) is enrolled at an educational institution accredited by the council, for a course which includes the prescribed or recognised examinations;
  - (ii) has passed any other examination that may be determined by the council; and
  - (iii) has proved that he or she has satisfied the relevant educational outcomes determined by the council for this purpose by presenting evidence of prior learning in property valuation.
- (3) The council may determine the restrictions and conditions, if any, applicable to an applicant applying in the category of associated valuer, candidate valuer or in a specified category.
- (4) (a) Despite subsection (2), the council may refuse to register an applicant -
- (i) if the applicant has been removed from an office of trust on account of improper conduct;
  - (ii) has been convicted of an offence in the Republic, other than an offence committed prior to 27 April 1994 associated with political objectives, and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;
  - (iii) if the applicant has, subject to paragraph (b), been convicted of an offence in a foreign country and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;
  - (iv) if the applicant is declared by the High Court to be of unsound mind or mentally disordered, or is detained under the Mental Health Act, 1973;
  - (v) for as long as the applicant is disqualified from registration as a result of any punishment imposed on him or her under this Act;
  - (vi) if the applicant is an unrehabilitated insolvent whose insolvency was caused by his or her negligence or incompetence in performing work falling within the scope of the category in respect of which he or she is applying for registration.
- (b) For the purposes of paragraph (a) (iii), the council must take cognisance of the prevailing circumstances in a foreign country relating to a conviction.
- (c) The council must provide the applicant with a notice of a refusal referred to in paragraph (a).
- (5) For the purposes of this section "prior learning" means the previous learning and experience of a learner, howsoever obtained, against the learning outcomes required for a specified qualification and the acceptance for the purposes of qualification of that which meets those requirements.

## 21. Cancellation of registration

- (1) (a) The council may cancel the registration of a registered person if he or she -
- (i) becomes disqualified from registration as contemplated in [section 20](#) (4);
  - (ii) has erroneously been registered, or has been registered on information subsequently proved to be false; or
  - (iii) fails to pay the prescribed annual fee or portion thereof, within 60 days from it becoming due or within such further period as the council may allow, either before or after expiry of the 60 days.
- (b) The council must provide the registered person with a notice of a cancellation referred to in paragraph (a).
- (2) If a person who is registered as a candidate qualifies to be registered as a professional in terms of [section 20](#) (2) (a), the council must cancel his or her registration as a candidate.
- (3) The council must at the written request of any registered person cancel his or her registration, but where an investigation into alleged improper conduct by that person is in progress or is to be held, the registration may not be cancelled until the investigation has been concluded.
- (4) Despite the cancellation of the registration of a registered person in terms of this section, that person remains liable for any fee, arrears or penalty imposed by the council for the period that he or she was registered.

## 22. Authorised titles

- (1) A person who is registered in any of the categories referred to in [section 19](#) (1) may describe himself or herself and use the title -
  - (a) Professional Valuer;
  - (b) Professional Associated Valuer; or
  - (c) Candidate Valuer.
- (2) A registered person may use a title prescribed by the council for the specified category.
- (3) A registered person must use his or her title in all property valuation reports and other documentation relating to his or her work in the property valuation profession, prepared by or for him or her.
- (4) The council may determine abbreviations or acronyms for the titles referred to in subsection (1).

## 23. Renewal of registration

- (1) A registered person must, at least three months prior to the prescribed expiry date of his or her registration, apply in the prescribed manner to the council for the renewal of his or her registration.
- (2) The council may determine conditions for the renewal of registration.
- (3) Subject to [section 20](#), the council must, on application, register a person who was previously registered and whose registration was cancelled in terms of [section 21](#) (1) (a) (iii), if he or she has paid -
  - (a) the prescribed fee;
  - (b) any arrear annual fee or portion thereof;
  - (c) any expenses incurred by the council in connection with the recovery of any arrear fees; and
  - (d) any penalties imposed on him or her by the council.

## 24. Return of registration certificate

Any person whose registration has been cancelled in terms of this Act, must return his or her registration certificate to the registrar within 30 days from the date on which he or she is directed by the registrar in writing to do so.

## 25. Grievance procedure in relation to registration

- (1) If an applicant is of the opinion that a committee, in its refusal to register him or her, or to cancel his or her registration, other than a cancellation in terms of [section 21](#) (1) (a) (iii) or [33](#) (3) (a) (iv), did not comply with section 33 of the Constitution, that applicant may, on payment of the prescribed fees and within 30 days from the date on which the refusal or cancellation came to his or her knowledge, appeal to the council against that decision.
- (2) The council must, at its first ensuing meeting, within 60 days from the date of the receipt of the appeal, decide on the appeal and provide the appellant with reasons for its decision.
- (3) If an appeal is lodged against a refusal of a committee to renew the registration of a registered person, the registration of that person may not be cancelled until the appeal has been decided.

## 26. Recognition of voluntary associations

- (1) The council must, within 90 days from the date of its first meeting, submit the framework for the requirements for recognition of a voluntary association to the CBE for approval.
- (2) Any voluntary association may apply to the council to be recognised as such.
- (3) The council may, if the voluntary association complies with the requirements determined in terms of [section 15](#) (d), recognise that association and issue it with a certificate of recognition.
- (4) A certificate of recognition is valid for a period of five years from the date of issue.
- (5) A voluntary association must display its certificate of recognition in a prominent place at its head office.
- (6) The recognition of a voluntary association lapses -
  - (a) if that association no longer complies with the requirements contemplated in [section 15](#) (d); or
  - (b) at the expiry of the five-year period referred to in subsection (4).
- (7) A voluntary association must, at least three months prior to the expiry of its recognition, apply in the prescribed manner to the council for the renewal thereof.
- (8) A voluntary association whose recognition has lapsed must, within 30 days from the date on which it is so directed in writing by the council, return its certificate of recognition.

## 27. Identification of work

(1) The council must consult with -

- (a) all voluntary associations;
- (b) any person;
- (c) any body; or
- (d) any industry,

that may be affected by any laws regulating the built environment professions regarding the identification of the type of property valuation work which may be performed by persons registered in any of the categories referred to in section 19, including work which may fall within the scope of any other profession regulated by the professions' Acts referred to in the Council for the Built Environment Act, 2000.

(2) After the process of consultation the council must submit recommendations to the CBE regarding the work identified in terms of subsection (1), for its consideration and identification in terms of section 20 of the Council for the Built Environment Act, 2000.

(3) A person who is not registered in terms of this Act, may not -

- (a) perform any kind of work identified for any category of registered persons;
- (b) pretend to be, or in any manner hold or allow himself or herself to be held out as a person registered in terms of this Act;
- (c) use the name of any registered person or any name or title referred to in section 19 or 22; or
- (d) perform any act indicating, or calculated to lead persons to believe, that he or she is registered in terms of this Act.

(4) Subsection (3) (a) may not be construed as prohibiting any person from performing work identified in terms of this section, if such work is performed in the service of or by order of and under the direction, control, supervision of or in association with a registered person entitled to perform the work identified and who must assume responsibility for any work so performed. (Commencement date of s. 27: 1 July 2005)

## 28. Professional conduct

(1) The council must, in consultation with the CBE, voluntary associations and registered persons, draw up a code of conduct for registered persons.

- (2)
- (a) The council is responsible for administering the code of conduct and must ensure that the code is available to all members of the public at all reasonable times.
  - (b) The council must provide the CBE with a copy of the code of conduct.

(3) All registered persons must comply with the code of conduct and failure to do so constitutes improper conduct.

## 29. Investigation of charge of improper conduct

(1) The council must refer any matter brought against a registered person to an investigating committee contemplated in section 18 if -

- (a) the council has reasonable grounds to suspect that a registered person has committed an act which may render him or her guilty of improper conduct; or
- (b) a complaint, charge or allegation of improper conduct has been brought against a registered person by any person.

(2) At the request of the council, the investigating committee must -

- (a) investigate the matter; and
- (b) obtain evidence to determine whether or not in its opinion the registered person concerned may be charged and, if so, recommend to the council the charge or charges that may be preferred against that registered person.

(3) An investigating committee may not question the registered person concerned unless the investigating committee informs that registered person that he or she -

- (a) has the right to be assisted or represented by another person; and
- (b) is not obliged to make any statement and that any statement so made may be used in evidence against the registered person.

- (4) The investigating committee must, after the conclusion of the investigation, submit a report making its recommendations to the council regarding any matter referred to it in terms of this section.

### 30. Charge of improper conduct

- (1) The council must, after considering a report of the investigating committee in terms of [section 29](#) (2) (b) and (4), charge a registered person with improper conduct if the council is convinced that sufficient grounds exist for a charge to be preferred against such a registered person.
- (2) The council must furnish a charge sheet to the registered person concerned by hand or registered mail.
- (3) A charge sheet must inform the registered person charged -
  - (a) of the details and nature of the charge;
  - (b) that he or she must, in writing, admit or deny the charge;
  - (c) that he or she may, together with the admission or denial, submit a written explanation regarding the improper conduct with which he or she is charged; and
  - (d) of the period, which must be reasonable, within which his or her plea in terms of paragraph (b) must be submitted to the council.
- (4)
  - (a) If a registered person charged admits that he or she is guilty of the charge, he or she is considered to have been found guilty of improper conduct as charged, after he or she has explained his or her conduct.
  - (b) The council may, subject to [section 33](#) (2), impose a penalty contemplated in section 33 (3) (a) or (b) on a registered person who has admitted guilt in terms of paragraph (a).
- (5) The acquittal or the conviction of a registered person by a court of law on a criminal charge is not a bar to proceedings against him or her under this Act on a charge of improper conduct, even if the facts stated in the charge of improper conduct would, if proved, constitute the offence stated in the criminal charge on which he or she was acquitted or convicted or any other offence of which he or she might have been acquitted or convicted at his or her trial on the criminal charge.

### 31. Appointment of disciplinary tribunal

- (1) The council must appoint a disciplinary tribunal to hear a charge of improper conduct if a person charged -
  - (a) denies the charge; or
  - (b) fails to comply with [section 30](#) (3) (b).
- (2) The disciplinary tribunal must consist of at least -
  - (a) a person who specialises in the professional field concerning the charge;
  - (b) a professional who has appropriate experience; and
  - (c) a person qualified in law and who has appropriate experience.

### 32. Disciplinary hearing

- (1) The disciplinary hearing must be conducted by the disciplinary tribunal.
- (2) The disciplinary tribunal may, for the purposes of this section, appoint a person to assist it in the performance of its functions.
- (3)
  - (a) The disciplinary tribunal may, for the purposes of a hearing, subpoena any person -
    - (i) who in its opinion may be able to give material information concerning the subject of the hearing; or
    - (ii) who it suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing on the subject of the hearing, to appear before the disciplinary tribunal at the time and place specified in the subpoena, to be questioned or to produce a book, document or object.
  - (b) A subpoena issued in terms of paragraph (a), must -
    - (i) be in the prescribed form;
    - (ii) be signed by the chairperson of the disciplinary tribunal or, in his or her absence, any member of the disciplinary tribunal; and
    - (iii) be served on the registered person concerned personally or by sending it by registered mail.

- (4) The disciplinary tribunal may retain a book, document or object produced in terms of subsection (3) for the duration of the hearing.
- (5) The chairperson of the disciplinary tribunal may call upon and administer an oath to, or take an affirmation from, any witness at the hearing who was subpoenaed in terms of subsection (3).
- (6) At a hearing the registered person charged -
- (a)
    - (i) may personally be present at the hearing of the proceedings;
    - (ii) may be assisted or represented by another person in conducting the proceedings;
    - (iii) has the right to be heard;
    - (iv) may call witnesses;
    - (v) may cross-examine any person called as a witness in support of the charge; and
    - (vi) may have access to documents produced in evidence;
  - (b)
    - (i) may admit at any time before conviction that he or she is guilty of the charge despite the fact that he or she denied the charge or failed to react in terms of [section 30 \(3\) \(b\) or \(c\)](#);
    - (ii) may, in the case where he or she makes an admission in terms of subparagraph (i), be deemed to be guilty of improper conduct as charged.
- (7) The person referred to in subsection (2) may during a hearing -
- (a) lead evidence and advance arguments in support of the charge and cross-examine witnesses;
  - (b) question any person who was subpoenaed in terms of subsection (3); or
  - (c) call anyone to give evidence or to produce any book, document or object in his or her possession or custody or under his or her control which the person referred to in subsection (2) suspects or believes to have a bearing on the subject of the hearing.
- (8) (a) A witness who has been subpoenaed may not -
- (i) without sufficient cause, fail to attend the hearing at the time and place specified in the subpoena;
  - (ii) refuse to be sworn in or to be affirmed as a witness;
  - (iii) without sufficient cause, fail to answer fully and satisfactorily to the best of his or her knowledge to all questions lawfully put to him or her; or
  - (iv) fail to produce any book, document or object in his or her possession or custody or under his or her control which he or she has been required to produce.
- (b) A witness who has been subpoenaed must remain in attendance until excused by the chairperson of the disciplinary tribunal from further attendance.
  - (c) A witness who has been subpoenaed may request that the names of the members of the disciplinary tribunal be made available to him or her.
  - (d) The law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce a book, document or object in a civil trial before a court of law may, with the necessary changes, apply in relation to the examination of, or the production of any book, document or object to the disciplinary tribunal by, any person called in terms of this section as a witness.
  - (e) A witness may not, after having been sworn in or having been affirmed as a witness, give a false statement on any matter, knowing that answer or statement to be false.
  - (f) A person may not prevent another person from complying with a subpoena or from giving evidence or producing a book, document or object which he or she is in terms of this section required to give or produce.
- (9) The record of evidence which has a bearing on the charge before the disciplinary tribunal, and which was presented before any commission which investigated an event or conduct is admissible without further evidence being led if -
- (a) the record is accompanied by a certificate from the chairperson; and
  - (b) the certificate certifies that the investigation was lawful, reasonable and procedurally fair.
- (10) If the improper conduct with which the registered person is charged amounts to an offence of which he or she has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court is, on the identification of the registered person as the person referred to in the record, sufficient proof of the commission by him or her of that offence, unless the conviction has been set aside by a superior court.

### 33. Proceedings after hearing

- (1) After the conclusion of the hearing the disciplinary tribunal must, within 30 days -
  - (a) decide whether or not the registered person charged is guilty of improper conduct;
  - (b) if the disciplinary tribunal finds that the registered person charged is guilty of improper conduct, take cognisance of any aggravating or mitigating circumstances;
  - (c) inform the registered person charged and the council of the finding; and
  - (d) inform the registered person of his or her right of appeal in terms of [section 34](#).
- (2) A registered person found guilty of improper conduct in terms of this section may -
  - (a) address the disciplinary tribunal in mitigation of sentence; and
  - (b) call witnesses to give evidence on his or her behalf in mitigation of the sentence.
- (3) (a) If the registered person charged is found guilty of improper conduct, or if he or she admits that he or she is guilty of the charge, the disciplinary tribunal must either -
  - (i) caution or reprimand the registered person;
  - (ii) impose on him or her a fine not exceeding the amount calculated according to the ratio for one year imprisonment determined in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991);
  - (iii) suspend the registration of the registered person concerned for a period not exceeding one year; or
  - (iv) cancel the registration of the registered person concerned and remove his or her name from the register referred to in [section 11](#) (c).
- (b) The disciplinary tribunal may take decisions under more than one of the subparagraphs of paragraph (a).
- (4) At the conclusion of the hearing the disciplinary tribunal must notify the council of its finding.
- (5) The council must publish the finding and the sanction imposed in terms of subsection (3) in the *Gazette*.
- (6) The council must give effect to the decision of the disciplinary tribunal.

### 34. Appeal against decision of disciplinary tribunal

- (1) (a) A registered person found guilty of improper conduct may appeal to the council against a finding of the disciplinary tribunal or against the sentence, or both.
- (b) The appeal must be lodged, within 30 days after the disciplinary tribunal has informed the registered person of its decision.
- (2) The council may -
  - (a) dismiss the appeal against the decision of the disciplinary tribunal and confirm the finding or sentence or both; or
  - (b) uphold the appeal against the decision of the disciplinary tribunal wholly or in part and set aside or vary the finding or sentence or both.
- (3) If an appeal is dismissed in terms of subsection (2) (a) the appellant may, within 30 days, from the date of the dismissal of the appeal, appeal to the CBE.
- (4) If a registered person found guilty of improper conduct lodges an appeal in terms of subsection (1) -
  - (a) the decision of the disciplinary tribunal under [section 33](#) (3); or
  - (b) the publication by the council in terms of [section 33](#) (5),may not be put into effect before the council or the CBE, or both, has decided the appeal.
- (5) (a) The appellant whose appeal was dismissed by the CBE may appeal to the appropriate High Court.
- (b) A person referred to in paragraph (a) must, after giving notice to the CBE, lodge a notice of appeal with the registrar of the appropriate High Court within one month from the date of the decision of the CBE.
- (6) (a) The council may appeal to the appropriate High Court against any decision of the CBE with regard to disciplinary matters.

- (b) The council must, after giving notice to the CBE, lodge a notice of appeal with the registrar of the appropriate High Court within one month from the date of the decision of the CBE.

### 35. Professional fees

- (1) The council must, in consultation with the voluntary associations, formulate recommendations with regard to the principles referred to in section 4 (k) (v) of the Council for the Built Environment Act, 2000.
- (2) The council must annually, after consultation with the voluntary associations, representatives of service providers and clients in the public and private sector, determine professional fees and publish those fees in the *Gazette*.
- (3) The CBE may review the guideline professional fees published by the council, and refer the fees back to the council for reconsideration.
- (4) If the council, after review by the CBE of the guideline professional fees, is aggrieved about that review, it may refer the matter to the Minister for a final decision.
- (5) Any person who is aggrieved by the guideline professional fees published in terms of subsection (2), may bring the matter to the attention of the CBE within 60 days from the date of such publication.

### 36. Appeal against certain decisions of council

- (1) Any member of the public whose interests and rights are affected by a decision made by the council may -
  - (a) within 30 days from that person becoming aware of the decision, request the council in writing to furnish him or her in writing with its reasons for that decision;
  - (b) within 90 days from the date on which the council furnished him or her with its reasons for that decision and after giving notice to the council, appeal to the CBE against that decision in terms of section 21 of the Council for the Built Environment Act, 2000.
- (2) A person referred to in subsection (1) may, after giving notice to the council or the CBE, as the case may be, lodge a notice of appeal with the registrar of the appropriate High Court within one month from the date of the decision of the council or the CBE.

### 37. Rules

- (1) The council may, by notice in the *Gazette*, make rules with regard to any matter that is required or permitted to be prescribed in terms of this Act and any other matter for the better execution of this Act or in relation to any power granted or duty imposed by this Act.
- (2)
  - (a) Before the council makes any rule under this section, it must publish a draft of the proposed rule in the *Gazette* together with a notice calling on interested persons to comment in writing within a period stated in the notice, but the period may not be less than 30 days from the date of publication of the notice.
  - (b) If the council alters the draft rules as a result of any comment it need not publish those alterations before making the rule.
- (3) The council may, if circumstances necessitate the immediate publication of a rule, publish that rule without consultation as contemplated in subsection (2), provided that the CBE, any of the councils for the professions or any person who is aggrieved by the said rule may -
  - (a) comment after such publication; or
  - (b) appeal to the CBE or the appropriate High Court, as the case may be, against such a rule.

### 38. Procedure and evidence for evidential purposes

- (1) The register referred to in section 11 (c) serves as evidence of all matters which, in terms of this Act, are required or permitted to be noted therein.
- (2) A certificate purporting to be signed by the registrar to the effect that an entry has or has not been made in the register or that any other function authorised by this Act to be performed, has or has not been performed, is evidence of the matters specified in that certificate.
- (3) A copy of an entry in the register or of a document in the custody of the registrar or an extract from the register or from any such document, purporting to be certified by the registrar, may be admitted in evidence in all courts without further proof or production of the original.

### 39. Rectification of errors and exemptions

- (1) When anything which according to this Act is required to be done or performed on or before a specified day or at a specified time or during a specified period, has not been done or performed, the Minister may, if satisfied that the failure was due to error or oversight, authorise it to be done or performed on or before another day, time, or during another period and anything done or performed in this regard is of full force and is deemed to have been lawfully done or performed in accordance with this Act.
- (2) The Minister must, after consultation with the council, voluntary associations and any other person he or she considers necessary, make rules regarding exemptions from the provisions of this Act.
- (3)
  - (a) The Minister may, after consultation with the council, voluntary associations and any other person he or she considers necessary, exempt any person, council, voluntary association or industry from any provision of this Act for a period not exceeding two years.
  - (b) The exemption referred to in paragraph (a) must comply with the rules contemplated in subsection (2).

### 40. Liability

- (1) The council, the registrar, or any member, committee or staff member of the council, is not liable for any act performed in good faith in terms of this Act.
- (2) A registered person who, in the public interest -
  - (a) refuses to perform an act;
  - (b) omits to perform an act; or
  - (c) informs the council or other appropriate authority of an act or omission performed by any other person,which act or omission endangers or is likely to endanger the safety or health of the public or fellow employees, is not liable for that refusal, omission or information.
- (3) Any person who was registered in terms of this Act and whose registration was cancelled, is liable for any action taken by him or her while he or she was registered.

### 41. Delegation of powers

- (1) The Minister may delegate any of his or her powers in terms of this Act, excluding the power to appoint the members of the council, to the Director-General or any other member of the staff of the department.
- (2) The council may delegate any of its powers in terms of this Act to a committee, a staff member or a member of the council or any other person or body of persons, excluding the power to hear an appeal in terms of [sections 25 \(1\) and 34 \(1\) \(a\)](#).
- (3) The registrar may delegate any of his or her powers in terms of this Act, to a member of the staff of the council.
- (4) Any delegation under subsection (1), (2) or (3) does not prohibit the exercise of the power or the performance of the duty or function in question by the Minister, council or the registrar.

### 42. Offences and penalties

- (1) A person contravening [section 19 \(2\)](#), [24](#), [26 \(8\)](#), or [32 \(8\) \(a\)](#), (b), (e) or (f), is guilty of an offence.
- (2) If the council wilfully or in a grossly negligent manner fails to comply with [section 15 \(8\)](#) it is guilty of an offence and liable to a fine calculated according to the ratio determined for a period of five years imprisonment in terms of the Adjustment of Fines Act, 1991.
- (3) A person convicted of an offence in terms of [section 19 \(2\)](#), may be liable to a fine equal to double the remuneration received by him or her for work done in contravention of section 19 (2), or to a fine equal to the fine calculated according to the ratio determined for three years imprisonment in terms of the Adjustment of Fines Act, 1991.
- (4) A person who is convicted of an offence in terms of [section 24](#) or [26 \(8\)](#), may be liable to a fine calculated according to the ratio determined for a period of one month imprisonment in terms of the Adjustment of Fines Act, 1991.
- (5) A person who is convicted of an offence in terms of [section 32 \(8\) \(a\)](#), (b), (e) or (f), may be liable to a fine equal to the fine calculated according to the ratio determined for three years imprisonment in terms of the Adjustment of Fines Act, 1991.

### 43. Transitional provisions

- (1) For the purposes of this section -
  - (a) "affected area" means the national territories of the former Transkei, Bophuthatswana, Venda and Ciskei and the territories of the former Gazankulu, KaNgwane, KwaNdebele, KwaZulu, Lebowa and Qwaqwa; and
  - (b) "effective date" means the date of the first meeting of the council.

- (2) The South African Council for Valuers established by section 2 of the Valuers' Act, 1982 (Act No. 23 of 1982), continues to exist and may exercise its powers and perform its functions after the commencement of this Act until the effective date.
- (3) The South African Council for Valuers must, within 30 days from the Commencement date of this Act, invite nominations for the first appointment of members in accordance with [section 4](#).
- (4) For the purpose of the nominations referred to in [section 4](#) and for the first term of office of the council, the existing voluntary associations within the property valuation profession are deemed to be recognised in terms of [section 26](#).
- (5) From the effective date, all rights, obligations, assets and liabilities acquired or incurred by the South African Council for Valuers in terms of the Valuers' Act, 1982, vest in the council and the council is deemed to have acquired or incurred those rights, obligations, assets and liabilities in terms of this Act.
- (6) Any act performed, decision taken, or rule made or purported to have been so performed, taken or made in terms of the Valuers' Act, 1982, by the South African Council for Valuers remains valid unless repealed under this Act.
- (7) Any notice issued or exemption granted by the Minister in terms of the Valuers' Act, 1982, remains valid unless repealed under this Act.
- (8) Any person who at the commencement of this Act is registered in terms of the Valuers' Act, 1982, is deemed to be registered in the corresponding category provided for in this Act.
- (9) Any person who at the commencement of this Act, is registered as a valuer or associated valuer and holds a certificate of temporary registration issued in terms of the Valuers' Act, 1982, is deemed to be registered as a valuer or associated valuer in terms of this Act, until his or her certificate of temporary registration expires, after which the council must determine the category in which he or she is to be registered.
- (10) From the effective date, any register maintained in terms of the Valuers' Act, 1982, is incorporated in and is considered to form part of a register to be maintained in terms of this Act.
- (11) Any action taken in terms of sections 17 to 21 of the Valuers' Act, 1982, which is pending at the commencement date of this Act, must be finalised in terms of that Act.
- (12) At the end of the first term of the council 50 per cent of the members of the council may not be reappointed by the Minister.
- (13) (a) The council must on application in the prescribed form and accompanied by the prescribed registration fee and such information as may be required by the council, by any person who, with effect from the effective date -
- (i) is ordinarily resident in the affected area;
- (ii) has, for a continuous period of not less than five years before that date, been regularly engaged in the affected area in the performance of property valuation work which in the opinion of the council is of sufficient scope and variety and of a satisfactory nature and standard, register that person as an associated valuer in terms of [section 20](#) and issue to the applicant a certificate of registration in the prescribed form.
- (b) The registration of a person registered in terms of paragraph (a), lapses after a period of two years from the date of that registration or a further period determined by the council, which period may not exceed one year, unless that person complies with [section 20](#) (2) (a) (ii).
- (14) A person may not be registered in terms of subsection (13), unless he or she has within a period of six months after the effective date, or within a period determined by the council, applied to the council to be registered.

#### 44. Repeal of laws

The laws mentioned in the second column of the Schedule are repealed to the extent indicated in the third column of that Schedule.

#### 45. Act binding on State

This Act binds the State.

#### 46. Short title and commencement

This Act is called the Property Valuers Profession Act, 2000, and commences on a date fixed by the President by proclamation in the *Gazette*.

#### Schedule (Section 44)

No. and year of Act	Short title	Extent of repeal
Act No. 23 of 1982	Valuers' Act, 1982	The whole
Act No. 7 of 1985	Valuers' Amendment Act, 1985	The whole
Act No. 67 of 1987	Valuers' Amendment Act, 1987	The whole
Act No. 14 of 1995	Periods of Office of Members of Councils for Architects, Engineers, Quantity Surveyors and Valuers Act, 1995	The whole

## PROJECT AND CONSTRUCTION MANAGEMENT PROFESSIONS ACT 48 OF 2000

(English text signed by the President)

*[Assented To: 26 November 2000]*

*[Commencement Date: 26 January 2001 - unless otherwise indicated]*

*[Proc. R10 / GG 22023 / 20010126]*

*[Proc. R36 / GG 27828 / 20050722]*

### ACT

To provide for the establishment of a juristic person to be known as the South African Council for the Project and Construction Management Professions; to provide for the registration of professionals, candidates and specified categories in the project and construction management professions; to provide for the regulation of the relationship between the South African Council for the Project and Construction Management Professions and the Council for the Built Environment; and to provide for matters connected therewith.

### ARRANGEMENT OF SECTIONS

1. Definitions
2. Establishment of South African Council for the Project and Construction Management Professions
3. Composition of council
4. Nomination procedure
5. Term of office of members of council
6. Disqualification from membership of council and vacation of office
7. Election of president and vice-president of council
8. Appointment of registrar and staff members of council
9. Decisions of council
10. Administrative powers of council
11. Powers of council with regard to registration
12. Powers of council with regard to fees and charges
13. Powers of council with regard to education in project and construction management
14. General powers of council
15. Funds of council and keeping and auditing of accounts
16. Reports to CBE
17. Committees of council
18. Categories of registration
19. Registration
20. Cancellation of registration
21. Authorised titles
22. Renewal of registration
23. Return of registration certificate
24. Grievance procedure in relation to registration
25. Recognition of voluntary associations
26. Identification of work
27. Professional conduct
28. Investigation of charge of improper conduct
29. Charge of improper conduct
30. Appointment of disciplinary tribunal
31. Disciplinary hearing
32. Proceedings after hearing
33. Appeal against decision of disciplinary tribunal
34. Professional fees
35. Appeal against certain decisions of council
36. Rules
37. Procedure and evidence for evidential purposes
38. Rectification of errors and exemptions
39. Liability
40. Delegation of powers
41. Offences and penalties
42. Transitional provisions
43. Act binding on State
44. Short title and commencement

## 1. Definitions

In this Act, unless the context otherwise indicates -

“**accredit**” means the process of evaluation and recognition by the council of educational programmes offered by educational institutions relating to the project and construction management professions, and “**accreditation**” has a corresponding meaning;

“**actively practice**” means to practice on an ongoing basis in one of the categories contemplated in [section 18](#), and includes a person qualified in the project and construction management professions who is employed by any sphere of government or an educational institution;

“**candidate**” means a person who is registered in terms of [section 19](#) (2) (b);

“**CBE**” means the Council for the Built Environment established in terms of [section 2](#) of the Council for the Built Environment Act, 2000;

“**committee**” means a committee established in terms of [section 17](#);

“**council**” means the South African Council for the Project and Construction Management Professions established by [section 2](#);

“**department**” means the national department responsible for public works;

“**disciplinary tribunal**” means a tribunal appointed in terms of [section 30](#);

“**Minister**” means the Minister responsible for public works;

“**prescribe**” means prescribed by a rule made by the council under [section 36](#), and “**prescribed**” has a corresponding meaning;

“**professional**” means a person who is registered in terms of [section 19](#) (2) (a);

“**registered person**” means a person registered under one of the categories referred to in [section 18](#);

“**registrar**” means the person appointed as registrar under [section 8](#) (1) (a);

“**registration**” means the process -

- (a) of assessment of competency of applicants for the purpose of registration under this Act; and
- (b) of entering the names of the applicants who qualify into the register referred to in [section 11](#) (c);

“**rule**” means a rule made and in force under this Act;

“**this Act**” includes any notice, order or rule issued or made under this Act; and

“**voluntary association**” means any voluntary association recognised by the council in terms of [section 25](#).

## 2. Establishment of South African Council for the Project and Construction Management Professions

There is hereby established a juristic person to be known as the South African Council for the Project and Construction Management Professions.

## 3. Composition of council

The council consists of the following members, appointed by the Minister, taking into account, among other things, the principles of transparency and representivity -

- (a) six registered persons, excluding candidates, of whom at least four must actively practise in the project and construction management professions -
  - (i) who must be nominated by the voluntary associations and any registered person; and

- (ii) who must represent the categories of registered persons contemplated in section 18, in the prescribed manner;
- (b) two professionals in the service of the State, nominated by any sphere of government, of whom at least one must be nominated by the department; and
- (c) two members of the public nominated through an open process of public participation.

#### 4. Nomination procedure

- (1) When any nomination in terms of section 3 (1) (a) or (b) becomes necessary, the council must invite registered persons, the voluntary associations and the State, respectively, in the prescribed manner, to nominate within a period of at least 60 days from the date of the invitation, persons who qualify for nomination in terms of section 3 (1) (a) or (b), respectively. (Commencement date of sub-s. (1): 1 July 2005)
- (2) When any nomination in terms of section 3 (1) (c) becomes necessary, the council must invite the public, by notice in the *Gazette* and in any newspaper the council considers necessary, but in at least a leading newspaper in each province, to nominate persons within a period of at least 60 days from the date of the notice. (Commencement date of sub-s. (2): 1 July 2005)
- (3) On receipt of any nomination, the council must, within 30 days from the expiry date specified in the invitation or the notice, make and submit its recommendations to the Minister.
- (4) The Minister must, within 60 days from the date of the receipt of the nominations from the outgoing council, appoint new members of the council.
- (5) If the council receives no or insufficient nominations within the period specified in the invitation or the notice, the Minister may, after consultation with the council, appoint the required number of persons who qualify to be appointed in terms of this Act.
- (6) The Minister must, as soon as practicable after the appointment of the members of the council, by notice in the *Gazette*, publish -
  - (a) the name of every person appointed as a member;
  - (b) the date from which the appointment takes effect; and
  - (c) the period for which the appointment is made.
- (7) The Minister must, within 30 days from the date of the appointment of the council, determine the time and place of its first meeting, and, thereafter, the council must determine the time and place of any future meeting.

#### 5. Term of office of members of council

- (1) The term of office for members of the council is four years, but members continue in office until the succeeding council is duly constituted.
- (2) Subject to section 42 (5), a member of the council may not serve for more than two consecutive terms of office.
- (3) Despite subsection (1), the Minister may, by notice in the *Gazette*, after consultation with the council, extend the period of office of all the members of the council for a period of six months, but he or she may only extend the period of office twice.
- (4) Despite subsection (1), the Minister may, by notice in the *Gazette*, after consultation with the council, terminate the period of office of a member or all members of the council.
- (5) The Minister may only act in terms of subsection (4) if a new member or a new council has been appointed, on nominations invited by the Minister in the manner provided for in section 4, to take over the functions of the member or the council concerned.

#### 6. Disqualification from membership of council and vacation of office

- (1) A person may not be appointed as a member of the council if that person -
  - (a) is not a South African citizen and ordinarily resident in the Republic;
  - (b) is an unrehabilitated insolvent;
  - (c) has been convicted of an offence in the Republic, other than an offence committed prior to 27 April 1994 associated with political objectives, and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;
  - (d) subject to subsection (3), has been convicted of an offence in a foreign country and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;
  - (e) has, as a result of improper conduct, been removed from an office of trust; or
  - (f) has in terms of this Act been found guilty by the disciplinary tribunal or the council of improper conduct.

- (2) A member of the council must vacate his or her office if he or she -
  - (a) becomes disqualified in terms of subsection (1) from being appointed as a member of the council;
  - (b) resigns by written notice addressed to the registrar;
  - (c) is declared by the High Court to be of unsound mind or mentally disordered or is detained under the Mental Health Act, 1973 (Act No. 18 of 1973);
  - (d) has, without leave of the council, been absent from more than two consecutive meetings of the council;
  - (e) was appointed in terms of section 3 (1) (a) and after that appointment a change in his or her circumstances arises that affects the ratio of the membership referred to in section 3 (1);
  - (f) was appointed in terms of section 3 (1) (b) and ceases to be employed by the State; or
  - (g) ceases to be permanently resident in the Republic.
- (3) For the purposes of subsection (1) (d), the Minister must take cognisance of the prevailing circumstances in a foreign country relating to a conviction.
- (4)
  - (a) If a member of the council dies or vacates his or her office before the expiration of his or her term of office, the Minister may, after consultation with the council, and subject to section 5 (1), appoint a person to fill the vacancy for the unexpired portion of the period for which that member was appointed.
  - (b) If the Minister appoints a person to fill the vacant seat, the appointment must be made within 60 days from the date on which the vacancy occurred.

#### 7. Election of president and vice-president of council

- (1)
  - (a) The members of the council must, at the first meeting of every newly constituted council elect a president and vice-president who must be registered persons and at least one must actively practise in the project or construction management professions.
  - (b) The president and vice-president hold office for the period of four years from the date of their appointment.
- (2) The vice-president must, if the president is for any reason unable to act as president, perform all the functions and may exercise all the powers of the president.
- (3)
  - (a) If both the president and the vice-president are for any reason unable to preside at a council meeting, the members present must elect a person to preside at that meeting.
  - (b) The person elected may, during that meeting and until the president or vice-president resumes his or her functions, perform all the functions and exercise all the powers of the president.

#### 8. Appointment of registrar and staff members of council

- (1) The council -
  - (a) must appoint a registrar; and
  - (b) may employ such staff as it may deem necessary for the carrying out of its functions, on such conditions, including the payment of remuneration and allowances, as it may determine, and may dismiss any person so appointed.
- (2) The registrar must enter into a performance agreement, as prescribed, with the council on acceptance of his or her appointment.
- (3) The registrar must perform, in addition to such functions as may otherwise be assigned to him or her by or under this Act, such functions as may from time to time be assigned to him or her by the council.

#### 9. Decisions of council

- (1) A decision of the majority of the members of the council present at any meeting constitutes a decision of the council.
- (2) In the event of an equality of votes the person presiding at the meeting has a casting vote in addition to his or her deliberative vote.
- (3) If the requisite majority of the members who are entitled to sit as members at a meeting of the council, make a decision or authorise an act at that meeting, the decision made or act performed under that authorisation, is valid despite the fact that at that meeting a member who had become disqualified in terms of section 6 (2) but had not vacated his or her office, sat as a member.

#### 10. Administrative powers of council

The council may -

- (a) determine the remuneration and allowances payable to its members or the members of any committee of the council after consultation with the CBE;
- (b) arrange for the payment of pension and other benefits to any staff of the council or the registrar and to his or her dependants on the termination of the service of that staff member or the registrar;
- (c) determine where its head office must be situated;
- (d) determine the manner in which meetings of the council or any committee of the council must be convened, the procedure and quorum at such meetings and the manner in which the minutes of such meetings must be kept; and
- (e) print, circulate, sell and administer the publication of, and generally take any steps necessary to publish, any publication relating to the project and construction management professions and related matters.

#### 11. Powers of council with regard to registration

The council may, subject to this Act -

- (a) consider and decide on any application for registration;
- (b) prescribe the period of validity of the registration of a registered person;
- (c) keep a register of registered persons and decide on -
  - (i) the form of certificates and the register to be kept;
  - (ii) the maintenance of the register or issuing of certificates; and
  - (iii) the reviewing of the register and certificates and the manner in which alterations thereto may be effected.

#### 12. Powers of council with regard to fees and charges

- (1) The council may, with regard to fees and charges, which are payable to the council, determine -
  - (a) application fees;
  - (b) registration fees;
  - (c) annual fees, or portion thereof, in respect of a part of a year;
  - (d) the date on which any fee or charge is payable;
  - (e) the fees, or portion thereof, payable in respect of any examination referred to in [section 19](#), conducted by or on behalf of the council;
  - (f) any charge payable for the purposes of the education fund referred to in [section 15](#) (5);
  - (g) fees payable for a service referred to in [section 14](#) (c);
  - (h) the fees payable for an appeal in terms of [section 24](#) (1); or
  - (i) any other fee or charge it considers necessary.
- (2) The council may grant exemption from payment of application fees, registration fees, annual fees, charges, or a portion thereof referred to in subsection (1).

#### 13. Powers of council with regard to education in project and construction management

The council may -

- (a) subject to [sections 5](#) and [7](#) of the Higher Education Act, 1997 (Act No. 101 of 1997), conduct accreditation visits to any educational institution which has a department, school or faculty which offers project and construction management educational programmes, but must conduct at least one such visit during its term of office. If the council does not conduct an accreditation visit within that term of office, it must notify the Minister accordingly and provide him or her with reasons for the failure to do so;
- (b) either conditionally or unconditionally grant, refuse or withdraw accreditation to all educational institutions and their educational programmes with regard to project and construction management;
- (c) consult with the Council on Higher Education established in terms of the Higher Education Act, 1997, regarding matters relevant to education in project and construction management;
- (d) consult with the South African Qualifications Authority established by the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), or any body established by it and the voluntary associations, to determine competency standards for the purpose of registration;

- (e) establish mechanisms for registered persons to gain recognition of their qualifications and professional status in other countries;
- (f) liaise with the relevant National Standards Body established in terms of Chapter 3 of the regulations under the South African Qualifications Authority Act, 1995, with a view to the establishment of a standards generating body in terms of those regulations;
- (g) recognise or withdraw the recognition of any examination contemplated in [section 19](#);
- (h) enter into an agreement with any person or body of persons, within or outside the Republic, with regard to the recognition of any examination or qualification for the purposes of this Act;
- (i) give advice or render assistance to any educational institution, voluntary association or examining body with regard to educational facilities for and the training and education of registered persons and prospective registered persons;
- (j) conduct any examination for the purposes of [section 19](#); and
- (k) determine, after consultation with the voluntary associations and registered persons, conditions relating to and the nature and extent of continuing education and training.

#### 14. General powers of council

The council may, in addition to other powers in this Act -

- (a) acquire, hire, maintain, let, sell or otherwise dispose of movable or immovable property for the effective performance and exercise of its functions, duties or powers;
- (b) decide upon the manner in which contracts must be entered into on behalf of the council;
- (c) perform any service within its competence if it is requested by any person or body of persons, including the State;
- (d) determine, subject to [section 25](#), the requirements with which a voluntary association must comply to qualify for recognition by the council;
- (e) advise the Minister, any other Minister or the CBE on any matter relating to the project and construction management professions;
- (f) encourage and itself undertake research into matters relating to the project and construction management professions;
- (g) take any steps it considers necessary for the protection of the public in their dealings with registered persons for the maintenance of the integrity and the enhancement of the status of the project and construction management professions;
- (h) take any steps it considers necessary for the improvement of the standards of services rendered by registered persons;
- (i) create an awareness amongst registered persons of the importance to protect the environment against unsound project and construction management practices;
- (j) take any steps which it considers necessary, where, as a result of project and construction management related undertakings, public health and safety is prejudiced; and
- (k) take any measures it considers necessary for the proper performance and exercise of its functions, duties or powers or to achieve the objectives of this Act.

#### 15. Funds of council and keeping and auditing of accounts

- (1) The funds of the council consist of any money received in terms of this Act and all other monies which may accrue to the council from any other legal source, including fines and penalties imposed by the council.
- (2) The council may -
  - (a) collect and invest funds of the council;
  - (b) raise money by way of loan for the purpose of effectively performing its functions;
  - (c) with a view to the promotion of any matter relating to the project and construction management professions, lend money against such security as the council considers adequate; and
  - (d) mortgage any of its immovable property as security for a loan referred to in paragraph (b).
- (3) The council may remunerate its members and committee members from its funds.
- (4) The council may finance any publication referred to in [section 10](#) (e).
- (5) The council may establish and administer an education fund for the purpose of education, training and continuing education and training of registered persons and students in the project and construction management professions.
- (6) The council must keep full and correct account of all monies received and expended by it.
- (7)
  - (a) The council must annually prepare a statement of income and expenditure and a balance sheet showing its financial position as at the close of the financial year to which it relates.
  - (b) The council must have the statement and balance sheet audited by an auditor registered in terms of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991).

- (c) A copy of the audited statement and balance sheet must be open for inspection at the offices of the council.
- (8) The council must, within six months from the close of each financial year or such other period as may be agreed to by the Minister after a request by the council, submit the audited statement and balance sheet to the Minister and must provide a copy to the CBE.
- (9) The Minister may, with the concurrence of the Minister of Finance -
  - (a) advance or grant to the council, out of money appropriated by Parliament, such amounts as he or she considers necessary in order to enable the council to carry out its functions; and
  - (b) determine the conditions to and repayment of the advance.
- (10) The council must determine its financial year.
- (11) The council must apply due care and diligence when investing any money or incurring any expenditure from the funds of the council.

#### 16. Reports to CBE

- (1) The council must, within six months from the close of each financial year, provide the CBE with a report regarding its activities during that financial year, for the purpose of [section 4](#) of the Council for the Built Environment Act, 2000.
- (2) A copy of the report and the register referred to in [section 11](#) (c) must be open for inspection at the offices of the council.
- (3) The council must, on request by the CBE, provide the CBE with any information regarding a registered person.

#### 17. Committees of council

- (1)
  - (a) The council may establish any committee, including an investigating committee, to assist it in the performance of its functions and may appoint any person as a member of that committee.
  - (b) If the council does not designate a chairperson for a committee, the committee may, at its first meeting, elect a chairperson from among its members.
  - (c) The council may at any time dissolve or reconstitute a committee.
- (2) Section 9 may, with the necessary changes, apply in respect of a committee of the council.

#### 18. Categories of registration

- (1) The categories in which a person may register in the project and construction management professions are -
  - (a) professional, which is divided into -
    - (i) Professional Construction Manager; or
    - (ii) Professional Construction Project Manager; or
  - (b) candidate, which is divided into -
    - (i) Candidate Construction Manager; or
    - (ii) Candidate Construction Project Manager; or
  - (c) specified categories prescribed by the council.
- (2) A person may not practice in any of the categories contemplated in subsection (1), unless he or she is registered in that category.
- (3) A person who is registered in the category of candidate must perform work in the project and construction management professions only under the supervision and control of a professional of a category as prescribed.

#### 19. Registration

- (1)
  - (a) A person must apply, in the prescribed application form, to the council for registration in a category referred to in [section 18](#) (1).
  - (b) The application form referred to in paragraph (a) must be accompanied by the prescribed fee.
- (2) The council must register the applicant in the relevant category and issue a registration certificate to the successful applicant in the prescribed form if, after consideration of an application, the council is satisfied that the applicant -
  - (a) in the case of a person applying for registration as a professional -

- (i) has demonstrated his or her competence as measured against standards determined by the council for the relevant category of registration; and
  - (ii) has passed any additional examinations that may be determined by the council;
- (b) in the case of a person applying for registration as a candidate or as a candidate in a specified category, has satisfied the relevant educational outcomes determined by the council for this purpose, by -
- (i) having passed accredited or recognised examinations at any educational institution offering educational programmes in project and construction management; and
  - (ii) having passed any other examination that may be determined by the council; or
  - (iii) presenting evidence of prior learning in project and construction management.
- (3) (a) Despite subsection (2), the council may refuse to register an applicant -
- (i) if the applicant has been removed from an office of trust on account of improper conduct;
  - (ii) has been convicted of an offence in the Republic, other than an offence committed prior to 27 April 1994 associated with political objectives, and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;
  - (iii) if the applicant has, subject to paragraph (b), been convicted of an offence in a foreign country and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;
  - (iv) if the applicant is declared by the High Court to be of unsound mind or mentally disordered, or is detained under the Mental Health Act, 1973;
  - (v) for as long as the applicant is disqualified from registration as a result of any punishment imposed on him or her under this Act;
  - (vi) if the applicant is an unrehabilitated insolvent whose insolvency was caused by his or her negligence or incompetence in performing work falling within the scope of the category in respect of which he or she is applying for registration.
- (b) For the purposes of paragraph (a) (iii), the council must take cognisance of the prevailing circumstances in a foreign country relating to a conviction.
- (c) The council must provide the applicant with a notice of a refusal referred to in paragraph (a).
- (4) For the purposes of this section "prior learning" means the previous learning and experience of a learner, howsoever obtained, against the learning outcomes required for a specified qualification and the acceptance for the purposes of qualification of that which meets those requirements.

## 20. Cancellation of registration

- (1) (a) The council may cancel the registration of a registered person if he or she -
- (i) becomes disqualified from registration as contemplated in [section 19](#) (3);
  - (ii) has erroneously been registered, or has been registered on information subsequently proved to be false; or
  - (iii) fails to pay the prescribed annual fee or portion thereof, within 60 days from it becoming due or within such further period as the council may allow, either before or after the expiry of the 60 days.
- (b) The council must provide the registered person with a notice of a cancellation referred to in paragraph (a).
- (2) If a person who is registered as a candidate qualifies to be registered as a professional in terms of [section 19](#) (2) (a), the council must cancel his or her registration as a candidate.
- (3) The council must at the written request of any registered person cancel his or her registration, but where an investigation into alleged improper conduct by that person is in progress or is to be held, the registration may not be cancelled until the investigation has been concluded.
- (4) Despite the cancellation of the registration of a registered person in terms of this section, that person remains liable for any fee, arrears or penalty imposed by the council for the period that he or she was registered.

## 21. Authorised titles

- (1) A person who is registered in any of the categories referred to in [section 18](#) (1) may describe himself or herself as and use the title -

- (a) Professional Construction Manager;
  - (b) Professional Construction Project Manager;
  - (c) Candidate Construction Manager; or
  - (d) Candidate Construction Project Manager.
- (2) A registered person may use a title prescribed by the council for the specified category.
- (3) The council may determine abbreviations or acronyms for the titles referred to in subsection (1).

**22. Renewal of registration**

- (1) A registered person must, at least three months prior to the prescribed expiry date of his or her registration, apply in the prescribed manner to the council for the renewal of his or her registration.
- (2) The council may determine conditions for the renewal of registration.
- (3) Subject to [section 19](#), the council must, on application, register a person who was previously registered and whose registration was cancelled in terms of [section 20](#) (1) (a) (iii), if he or she has paid -
- (a) the prescribed fee;
  - (b) any arrear annual fee or portion thereof;
  - (c) any expenses incurred by the council in connection with the recovery of any arrear fees; and
  - (d) any penalties imposed on him or her by the council.

**23. Return of registration certificate**

Any person whose registration has been cancelled in terms of this Act, must return his or her registration certificate to the registrar within 30 days from the date on which he or she is directed by the registrar in writing to do so.

**24. Grievance procedure in relation to registration**

- (1) If an applicant is of the opinion that a committee, in its refusal to register him or her, or to cancel his or her registration, other than a cancellation in terms of [section 20](#) (1) (a) (iii) or [32](#) (3) (a) (iv), did not comply with [section 33](#) of the Constitution, that applicant may, on payment of the prescribed fees and within 30 days from the date on which the refusal or cancellation came to his or her knowledge, appeal to the council against that decision.
- (2) The council must, at its first ensuing meeting, within 60 days from the date of the receipt of the appeal, decide on the appeal and provide the appellant with reasons for its decision.
- (3) If an appeal is lodged against a refusal of a committee to renew the registration of a registered person, the registration of that person may not be cancelled until the appeal has been decided.

**25. Recognition of voluntary associations**

- (1) The council must, within 90 days from the date of its first meeting, submit the framework for the requirements for recognition of a voluntary association to the CBE for approval.
- (2) Any voluntary association may apply to the council to be recognised as such.
- (3) The council may, if the voluntary association complies with the requirements determined in terms of [section 14](#) (d), recognise that association and issue it with a certificate of recognition.
- (4) A certificate of recognition is valid for a period of five years from the date of issue.
- (5) A voluntary association must display its certificate of recognition in a prominent place at its head office.
- (6) The recognition of a voluntary association lapses -
- (a) if that association no longer complies with the requirements contemplated in [section 14](#) (d); or
  - (b) at the expiry of the five-year period referred to in subsection (4).
- (7) A voluntary association must, at least three months prior to the expiry of its recognition, apply in the prescribed manner to the council for the renewal thereof.
- (8) A voluntary association whose recognition has lapsed must, within 30 days from the date on which it is so directed in writing by the council, return its certificate of recognition.

**26. Identification of work**

- (1) The council must consult with -
- (a) all voluntary associations;
  - (b) any person;

- (c) body; or
- (d) industry,

that may be affected by any laws regulating the built environment professions regarding the identification of the type of project and construction management work which may be performed by persons registered in any of the categories referred to in [section 18](#), including work which may fall within the scope of any other profession regulated by the professions' Acts referred to in the Council for the Built Environment Act, 2000.

- (2) After the process of consultation the council must submit recommendations to the CBE regarding the work identified in terms of subsection (1), for its consideration and identification in terms of [section 20](#) of the Council for the Built Environment Act, 2000.
- (3) A person who is not registered in terms of this Act, may not -
  - (a) perform any kind of work identified for any category of registered persons;
  - (b) pretend to be, or in any manner hold or allow himself or herself to be held out as a person registered in terms of this Act;
  - (c) use the name of any registered person or any name or title referred to in [section 18](#) or [21](#); or
  - (d) perform any act indicating, or calculated to lead persons to believe, that he or she is registered in terms of this Act.
- (4) Subsection (3) (a) may not be construed as prohibiting any person from performing work identified in terms of this section, if such work is performed in the service of or by order of and under the direction, control, supervision of or in association with a registered person entitled to perform the work identified and who must assume responsibility for any work so performed.

(Commencement date of s. 26: 1 July 2005)

#### **27. Professional conduct**

- (1) The council must, in consultation with the CBE, voluntary associations and registered persons, draw up a code of conduct for registered persons.
- (2)
  - (a) The council is responsible for administering the code of conduct and must ensure that the code is available to all members of the public at all reasonable times.
  - (b) The council must provide the CBE with a copy of the code of conduct.
- (3) All registered persons must comply with the code of conduct and failure to do so constitutes improper conduct.

#### **28. Investigation of charge of improper conduct**

- (1) The council must refer any matter brought against a registered person to an investigating committee contemplated in [section 17](#) if -
  - (a) the council has reasonable grounds to suspect that a registered person has committed an act which may render him or her guilty of improper conduct; or
  - (b) a complaint, charge or allegation of improper conduct has been brought against a registered person by any person.
- (2) At the request of the council, the investigating committee must -
  - (a) investigate the matter; and
  - (b) obtain evidence to determine whether or not in its opinion the registered person concerned may be charged and, if so, recommend to the council the charge or charges that may be preferred against that registered person.
- (3) An investigating committee may not question the registered person concerned unless the investigating committee informs that registered person that he or she -
  - (a) has the right to be assisted or represented by another person; and
  - (b) is not obliged to make any statement and that any statement so made may be used in evidence against the registered person.
- (4) The investigating committee must, after the conclusion of the investigation, submit a report making its recommendations to the council regarding any matter referred to it in terms of this section.

## 29. Charge of improper conduct

- (1) The council must, after considering a report of the investigating committee in terms of [section 28](#) (2) (b) and (4), charge a registered person with improper conduct if the council is convinced that sufficient grounds exist for a charge to be preferred against such a registered person.
- (2) The council must furnish a charge sheet to the registered person concerned by hand or registered mail.
- (3) A charge sheet must inform the registered person charged -
  - (a) of the details and nature of the charge;
  - (b) that he or she must, in writing, admit or deny the charge;
  - (c) that he or she may, together with the admission or denial, submit a written explanation regarding the improper conduct with which he or she is charged; and
  - (d) of the period, which must be reasonable, within which his or her plea in terms of paragraph (b) must be submitted to the council.
- (4)
  - (a) If a registered person charged admits that he or she is guilty of the charge, he or she is considered to have been found guilty of improper conduct as charged, after he or she has explained his or her conduct.
  - (b) The council may, subject to [section 32](#) (2), impose a penalty contemplated in section 32 (3) (a) or (b) on a registered person who has admitted guilt in terms of paragraph (a).
- (5) The acquittal or the conviction of a registered person by a court of law on a criminal charge is not a bar to proceedings against him or her under this Act on a charge of improper conduct, even if the facts stated in the charge of improper conduct would, if proved, constitute the offence stated in the criminal charge on which he or she was acquitted or convicted or any other offence of which he or she might have been acquitted or convicted at his or her trial on the criminal charge.

## 30. Appointment of disciplinary tribunal

- (1) The council must appoint a disciplinary tribunal to hear a charge of improper conduct if a person charged -
  - (a) denies the charge; or
  - (b) fails to comply with [section 29](#) (3) (b).
- (2) The disciplinary tribunal must consist of at least -
  - (a) a person who specialises in the professional field concerning the charge;
  - (b) a professional who has appropriate experience; and
  - (c) a person qualified in law and who has appropriate experience.

## 31. Disciplinary hearing

- (1) The disciplinary hearing must be conducted by the disciplinary tribunal.
- (2) The disciplinary tribunal may, for the purposes of this section, appoint a person to assist it in the performance of its functions.
- (3)
  - (a) The disciplinary tribunal may, for the purposes of a hearing, subpoena any person -
    - (i) who in its opinion may be able to give material information concerning the subject of the hearing; or
    - (ii) who it suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing on the subject of the hearing,to appear before the disciplinary tribunal at the time and place specified in the subpoena, to be questioned or to produce a book, document or object.
  - (b) A subpoena issued in terms of paragraph (a), must -
    - (i) be in the prescribed form;
    - (ii) be signed by the chairperson of the disciplinary tribunal or, in his or her absence, any member of the disciplinary tribunal; and
    - (iii) be served on the registered person concerned personally or by sending it by registered mail.

- (4) The disciplinary tribunal may retain a book, document or object produced in terms of subsection (3) for the duration of the hearing.
- (5) The chairperson of the disciplinary tribunal may call upon and administer an oath to, or take an affirmation from, any witness at the hearing who was subpoenaed in terms of subsection (3).
- (6) At a hearing the registered person charged -
- (a)
    - (i) may personally be present at the hearing of the proceedings;
    - (ii) may be assisted or represented by another person in conducting the proceedings;
    - (iii) has the right to be heard;
    - (iv) may call witnesses;
    - (v) may cross-examine any person called as a witness in support of the charge; and
    - (vi) may have access to documents produced in evidence;
  - (b)
    - (i) may admit at any time before conviction that he or she is guilty of the charge despite the fact that he or she denied the charge or failed to react in terms of section 29 (3) (b) or (c);
    - (ii) may, in the case where he or she makes an admission in terms of subparagraph (i), be deemed to be guilty of improper conduct as charged.
- (7) The person referred to in subsection (2) may during a hearing -
- (a) lead evidence and advance arguments in support of the charge and cross-examine witnesses;
  - (b) question any person who was subpoenaed in terms of subsection (3); or
  - (c) call anyone to give evidence or to produce any book, document or object in his or her possession or custody or under his or her control which the person referred to in subsection (2) suspects or believes to have a bearing on the subject of the hearing.
- (8) (a) A witness who has been subpoenaed may not -
- (i) without sufficient cause, fail to attend the hearing at the time and place specified in the subpoena;
  - (ii) refuse to be sworn in or to be affirmed as a witness;
  - (iii) without sufficient cause, fail to answer fully and satisfactorily to the best of his or her knowledge to all questions lawfully put to him or her; or
  - (iv) fail to produce any book, document or object in his or her possession or custody or under his or her control which he or she has been required to produce.
- (b) A witness who has been subpoenaed must remain in attendance until excused by the chairperson of the disciplinary tribunal from further attendance.
  - (c) A witness who has been subpoenaed may request that the names of the members of the disciplinary tribunal be made available to him or her.
  - (d) The law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce a book, document or object in a civil trial before a court of law may, with the necessary changes, apply in relation to the examination of, or the production of any book, document or object to the disciplinary tribunal by, any person called in terms of this section as a witness.
  - (e) A witness may not, after having been sworn in or having been affirmed as a witness, give a false statement on any matter, knowing that answer or statement to be false.
  - (f) A person may not prevent another person from complying with a subpoena or from giving evidence or producing a book, document or object which he or she is in terms of this section required to give or produce.
- (9) The record of evidence which has a bearing on the charge before the disciplinary tribunal, and which was presented before any commission which investigated an event or conduct is admissible without further evidence being led if -
- (a) the record is accompanied by a certificate from the chairperson; and
  - (b) the certificate certifies that the investigation was lawful, reasonable and procedurally fair.
- (10) If the improper conduct with which the registered person is charged amounts to an offence of which he or she has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court is, on the identification of the registered person as the person referred to in the record, sufficient proof of the commission by him or her of that offence, unless the conviction has been set aside by a superior court.

### 32. Proceedings after hearing

- (1) After the conclusion of the hearing the disciplinary tribunal must, within 30 days -
  - (a) decide whether or not the registered person charged is guilty of improper conduct;
  - (b) if the disciplinary tribunal finds that the registered person charged is guilty of improper conduct, take cognisance of any aggravating or mitigating circumstances;
  - (c) inform the registered person charged and the council of the finding; and
  - (d) inform the registered person of his or her right of appeal in terms of [section 33](#).
- (2) A registered person found guilty of improper conduct in terms of this section may -
  - (a) address the disciplinary tribunal in mitigation of sentence; and
  - (b) call witnesses to give evidence on his or her behalf in mitigation of the sentence.
- (3) If the registered person charged is found guilty of improper conduct, or if he or she admits that he or she is guilty of the charge, the disciplinary tribunal must either -
  - (i) caution or reprimand the registered person;
  - (ii) impose on him or her a fine not exceeding the amount calculated according to the ratio for one year imprisonment determined in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991);
  - (iii) suspend the registration of the registered person concerned for a period not exceeding one year; or
  - (iv) cancel the registration of the registered person concerned and remove his or her name from the register referred to in [section 11](#) (c).
  - (b) The disciplinary tribunal may take decisions under more than one of the subparagraphs of paragraph (a).
- (4) At the conclusion of the hearing the disciplinary tribunal must notify the council of its finding.
- (5) The council must publish the finding and the sanction imposed in terms of subsection (3) in the *Gazette*.
- (6) The council must give effect to the decision of the disciplinary tribunal.

### 33. Appeal against decision of disciplinary tribunal

- (1)
  - (a) A registered person found guilty of improper conduct may appeal to the council against a finding of the disciplinary tribunal or against the sentence, or both.
  - (b) The appeal must be lodged, within 30 days after the disciplinary tribunal has informed the registered person of its decision.
- (2) The council may -
  - (a) dismiss the appeal against the decision of the disciplinary tribunal and confirm the finding or sentence or both; or
  - (b) uphold the appeal against the decision of the disciplinary tribunal wholly or in part and set aside or vary the finding or sentence or both.
- (3) If an appeal is dismissed in terms of subsection (2) (a) the appellant may, within 30 days, from the date of the dismissal of the appeal, appeal to the CBE.
- (4) If a registered person found guilty of improper conduct lodges an appeal in terms of subsection (1) -
  - (a) the decision of the disciplinary tribunal under [section 32](#) (3); or
  - (b) the publication by the council in terms of [section 32](#) (5),may not be put into effect before the council or the CBE, or both, has decided the appeal.
- (5)
  - (a) The appellant whose appeal was dismissed by the CBE may appeal to the appropriate High Court.
  - (b) A person referred to in paragraph (a) must, after giving notice to the CBE, lodge a notice of appeal with the registrar of the appropriate High Court within one month from the date of the decision of the CBE.
- (6)
  - (a) The council may appeal to the appropriate High Court against any decision of the CBE with regard to disciplinary matters.

- (b) The council must, after giving notice to the CBE, lodge a notice of appeal with the registrar of the appropriate High Court within one month from the date of the decision of the CBE.

#### 34. Professional fees

- (1) The council must, in consultation with the voluntary associations, formulate recommendations with regard to the principles referred to in section 4 (k) (v) of the Council for the Built Environment Act, 2000.
- (2) The council must annually, after consultation with the voluntary associations, determine guideline professional fees and publish those fees in the *Gazette*.
- (3) The CBE may review the guideline professional fees published by the council, and refer the fees back to the council for reconsideration.
- (4) If the council, after review by the CBE of the guideline professional fees, is aggrieved about that review, it may refer the matter to the Minister for a final decision.
- (5) Any person who is aggrieved by the guideline professional fees published in terms of subsection (2), may bring the matter to the attention of the CBE within 60 days from the date of such publication.

#### 35. Appeal against certain decisions of council

- (1) Any member of the public whose interests and rights are affected by a decision made by the council may -
  - (a) within 30 days from that person becoming aware of the decision request the council in writing to furnish him or her in writing with its reasons for that decision;
  - (b) within 90 days from the date on which the council furnished him or her with its reasons for that decision and after giving notice to the council, appeal to the CBE against that decision in terms of section 21 of the Council for the Built Environment Act, 2000.
- (2) A person referred to in subsection (1) may, after giving notice to the council or the CBE, as the case may be, lodge a notice of appeal with the registrar of the appropriate High Court within one month from the date of the decision of the council or the CBE.

#### 36. Rules

- (1) The council may, by notice in the *Gazette*, make rules with regard to any matter that is required or permitted to be prescribed in terms of this Act and any other matter for the better execution of this Act or in relation to any power granted or duty imposed by this Act.
- (2)
  - (a) Before the council makes any rule under this section, it must publish a draft of the proposed rule in the *Gazette* together with a notice calling on interested persons to comment in writing within a period stated in the notice, but the period may not be less than 30 days from the date of publication of the notice.
  - (b) If the council alters the draft rules as a result of any comment it need not publish those alterations before making the rule.
- (3) The council may, if circumstances necessitate the immediate publication of a rule, publish that rule without consultation as contemplated in subsection (2), provided that the CBE, any of the councils for the professions or any person who is aggrieved by the said rule may -
  - (a) comment after such publication; or
  - (b) appeal to the CBE or the appropriate High Court, as the case may be, against such a rule.

#### 37. Procedure and evidence for evidential purposes

- (1) The register referred to in section 11 (c) serves as evidence of all matters which, in terms of this Act, are required or permitted to be noted therein.
- (2) A certificate purporting to be signed by the registrar to the effect that an entry has or has not been made in the register or that any other function authorised by this Act to be performed, has or has not been performed, is evidence of the matters specified in that certificate.
- (3) A copy of an entry in the register or of a document in the custody of the registrar, or an extract from the register or from any such document, purporting to be certified by the registrar, may be admitted as evidence in all courts without further proof or production of the original.

#### 38. Rectification of errors and exemptions

- (1) When anything which according to this Act is required to be done or performed on or before a specified day or at a specified time or during a specified period, has not been done or performed, the Minister may, if satisfied that the failure was due to error or oversight, authorise it to be done or performed on or before another day, time, or during another period and anything done or performed in this regard is of full force and is deemed to have been lawfully done or performed in accordance with this Act.
- (2) The Minister must, after consultation with the council, voluntary associations and any other person he or she considers necessary, make rules regarding exemptions from the provisions of this Act.
- (3)
  - (a) The Minister may, after consultation with the council, voluntary associations and any other person he or she considers necessary, exempt any person, council, voluntary association or industry from any provision of this Act for a period not exceeding two years.
  - (b) The exemption referred to in paragraph (a) must comply with the rules contemplated in subsection (2).

#### 39. Liability

- (1) The council, the registrar, or any member, committee or staff member of the council, is not liable for any act performed in good faith in terms of this Act.
- (2) A registered person who, in the public interest -
  - (a) refuses to perform an act;
  - (b) omits to perform an act; or
  - (c) informs the council or other appropriate authority of an act or omission performed by any other person,
 which act or omission endangers or is likely to endanger the safety or health of the public or fellow employees, is not liable for that refusal, omission or information.
- (3) Any person who was registered in terms of this Act and whose registration was cancelled, is liable for any action taken by him or her while he or she was registered.

#### 40. Delegation of powers

- (1) The Minister may delegate any of his or her powers in terms of this Act, excluding the power to appoint the members of the council, to the Director-General or any other official of the department.
- (2) The council may delegate any of its powers in terms of this Act to a committee, staff member or a member of the council or any other person or body of persons, excluding the power to hear an appeal in terms of [sections 24 \(1\) and 33 \(1\) \(a\)](#).
- (3) The registrar may delegate any of his or her powers in terms of this Act to a member of the staff of the council.
- (4) Any delegation under subsection (1), (2) or (3) does not prohibit the exercise of the power or the performance of the duty or function in question by the Minister, council or the registrar.

#### 41. Offences and penalties

- (1) A person contravening [section 18 \(2\)](#), [23](#), [25 \(8\)](#) or [31 \(8\) \(a\), \(b\), \(e\) or \(f\)](#) is guilty of an offence.
- (2) If the council wilfully or in a grossly negligent manner fails to comply with [section 15 \(8\)](#) it is guilty of an offence and liable to a fine calculated according to the ratio determined for a period of five years imprisonment in terms of the Adjustment of Fines Act, 1991.
- (3) A person convicted of an offence in terms of [section 18 \(2\)](#), may be liable to a fine equal to double the remuneration received by him or her for work done in contravention of [section 18 \(2\)](#) or to a fine equal to the fine calculated according to the ratio determined for three years imprisonment in terms of the Adjustment of Fines Act, 1991.
- (4) A person who is convicted of an offence in terms of [section 23](#) or [25 \(8\)](#), may be liable to a fine calculated according to the ratio determined for a period of one month imprisonment in terms of the Adjustment of Fines Act, 1991.
- (5) A person who is convicted of an offence in terms of [section 31 \(8\) \(a\), \(b\), \(e\) or \(f\)](#), may be liable to a fine equal to the fine calculated according to the ratio determined for three years imprisonment in terms of the Adjustment of Fines Act, 1991.

#### 42. Transitional provisions

- (1) Any person practising in any of the categories contemplated in [section 18](#), may continue to practice as such and is deemed to be a registered person until a date determined by the Minister by notice in the *Gazette*.
- (2) For the purpose of the nominations referred to in [section 4](#) and for the first term of office of the council, the existing voluntary associations within the project and construction management professions are deemed to be recognised in terms of [section 25](#).
- (3) Any person nominated in terms of [section 4](#), is deemed to be registered for the purpose of that section and [section 5](#).

- (4) The Minister must, within 30 days from the commencement of this Act, invite nominations as contemplated in section 4.
- (5) At the end of the first term of the council 50 per cent of the members of the council may not be reappointed by the Minister.

**43. Act binding on State**

This Act binds the State.

**44. Short title and commencement**

This Act is called the Project and Construction Management Professions Act, 2000, and commences on a date fixed by the President by proclamation in the *Gazette*.

## QUANTITY SURVEYING PROFESSION ACT 49 OF 2000

(English text signed by the President)

(Assented To: 26 November 2000)

(Commencement Date: 26 January 2000 – unless otherwise indicated)

[Proc. R11 / GG 22023 / 20010126]

[Proc. R35 / GG 27828 / 20050722]

### ACT

To provide for the establishment of a juristic person to be known as the South African Council for the Quantity Surveying Profession; to provide for the registration of professionals, candidates and specified categories in the quantity surveying profession; to provide for the regulation of the relationship between the South African Council for the Quantity Surveying Profession and the Council for the Built Environment; and to provide for matters connected therewith.

**BE IT ENACTED** by the Parliament of the Republic of South Africa as follows:-

1. Definitions
2. Establishment of South African Council for the Quantity Surveying Profession
3. Composition of council
4. Nomination procedure
5. **Term of office of members of council**
6. **Disqualification from membership of council and vacation of office**
7. **Election of president and vice-president of council**
8. Appointment of registrar and other staff members of council
9. Decisions of council
10. Administrative powers of council
11. Powers of council with regard to registration
12. Powers of council with regard to fees and charges
13. Powers of council with regard to education in quantity surveying
14. General powers of council
15. Funds of council and keeping and auditing of accounts
16. Reports to CBE
17. Committees of council
18. Categories of registration
19. Registration
20. Cancellation of registration
21. Authorised titles
22. Renewal of registration
23. Return of registration certificate
24. Grievance procedure in relation to registration
25. Recognition of voluntary associations
26. Identification of work
27. Professional conduct
28. Investigation of charge of improper conduct
29. Charge of improper conduct
30. Appointment of disciplinary tribunal
31. Disciplinary hearing
32. Proceedings after hearing
33. Appeal against decision of disciplinary tribunal
34. Professional fees
35. Appeal against certain decisions of council
36. Rules
37. Procedure and evidence for evidential purposes
38. Rectification of errors and exemptions
39. Liability
40. Delegation of powers
41. Offences and penalties
42. Transitional provisions
43. Repeal of laws
44. Act binding on State
45. Short title and commencement

## 1. Definitions

In this Act, unless the context otherwise indicates-

- (i) “**accredit**” means the process of evaluation and recognition by the council of education programmes offered by educational institutions relating to the quantity surveying profession, and “**accreditation**” has a corresponding meaning;
- (ii) “**actively practice**” means to practice on an ongoing basis in one of the categories contemplated in section 18, and includes a person qualified in the quantity surveying profession employed by any sphere of government or an educational institution;
- (iii) “**candidate**” means a person who is registered in terms of section 19(2)(b);
- (iv) “**CBE**” means the Council for the Built Environment established by section 2 of the Council for the Built Environment Act, 2000;
- (v) “**committee**” means a committee established in terms of section 17;
- (vi) “**council**” means the South African Council for the Quantity Surveying Profession established by section 2;
- (vii) “**department**” means the national department responsible for public works;
- (viii) “**disciplinary tribunal**” means a tribunal appointed in terms of section 30;
- (ix) “**Minister**” means the Minister responsible for public works;
- (x) “**prescribe**” means prescribed by a rule made by the council under section 36, and “**prescribed**” has a corresponding meaning;
- (xi) “**professional**” means a person who is registered in terms of section 19(2)(a);
- (xii) “**registered person**” means a person registered under one of the categories referred to in section 18;
- (xiii) “**registrar**” means the person appointed as registrar under section 8(1)(a);
- (xiv) “**registration**” means the process-
  - (a) of assessment of competency of applicants for the purpose of registration under this Act; and
  - (b) of entering the names of the applicants who qualify into the register referred to in section 11(c);
- (xv) “**rule**” means a rule made and in force under this Act;
- (xvi) “**this Act**” includes any notice, order or rule issued or made under this Act; and
- (xvii) “**voluntary association**” means any voluntary association recognised by the council in terms of section 25.

## 2. Establishment of South African Council for the Quantity Surveying Profession

There is hereby established a juristic person to be known as the South African Council for the Quantity Surveying Profession.

## 3. Composition of council

- (1) The council consists of the following members, appointed by the Minister, taking into account, among other things, the principles of transparency and representivity-
  - (a) nine registered persons, excluding candidates, of whom at least three must actively practice in the quantity surveying profession-
    - (i) who must be nominated by the voluntary associations and any registered person; and
    - (ii) who must represent the categories of registered persons contemplated in section 18, in the prescribed manner;
  - (b) two professionals, who are professors or lecturers in quantity surveying at an accredited educational institution nominated by the educational institutions, voluntary associations or registered persons;

- (c) three professionals in the service of the State nominated by any sphere of government, of whom at least one must be nominated by the department; and
  - (d) three members of the public nominated through an open process of public participation.
- (2) A maximum of a third of the members of the South African Council for Quantity Surveyors, established in terms of the Quantity Surveyors' Act, 1970 (Act No. 36 of 1970), who are nominated by that council bearing in mind the composition of the council determined in subsection (1), remain in office for the first term of the council.

#### 4. Nomination procedure

- (1) When any nomination in terms of section 3(1)(a), (b) or (c) becomes necessary, the council must invite registered persons, the voluntary associations, educational institutions and the State, respectively, in the prescribed manner, to nominate within a period of at least 60 days from the date of the invitation, persons who qualify for nomination in terms of subsection (1)(a), (b) or (c), respectively.
- (Commencement date of subsection (1): 1 July 2005)

- (2) When any nomination in terms of section 3(1)(d) becomes necessary, the council must invite the public, by notice in the *Gazette* and any newspaper the council considers necessary, but at least in a leading newspaper in each province, to nominate persons, in the prescribed manner, within a period of at least 60 days from the date of the notice.
- (Commencement date of subsection (2): 1 July 2005)

- (3) On receipt of any nomination, the council must, within 30 days from the expiry date specified in the invitation or the notice, make and submit its recommendations to the Minister.
- (4) The Minister must, within 60 days from the date of the receipt of the nominations from the outgoing council, appoint the members of the council.
- (5) If the council receives no or insufficient nominations within the period specified in the invitation or the notice, the Minister may, after consultation with the council, appoint the required number of persons who qualify to be appointed in terms of this Act.
- (6) The Minister must, as soon as practicable after the appointment of the members of the council, by notice in the *Gazette*, publish-
  - (a) the name of every person appointed as a member;
  - (b) the date from which the appointment takes effect; and
  - (c) the period for which the appointment is made.

- (7) The Minister must, within 30 days from the date of the appointment of the council, determine the time and place of its first meeting, and, thereafter, the council must determine the time and place of any future meeting.

#### 5. Term of office of members of council

- (1) The term of office for members of the council is four years, but members continue in office until the succeeding council is duly constituted.
- (2) Subject to section 42(11), a member of the council may not serve for more than two consecutive terms of office.
- (3) Despite subsection (1), the Minister may, by notice in the *Gazette*, after consultation with the council, extend the period of office of all the members of the council for a period of six months, but he or she may only extend the period of office twice.
- (4) Despite subsection (1), the Minister may, by notice in the *Gazette*, after consultation with the council, terminate the period of office of a member or all the members of the council.
- (5) The Minister may only act in terms of subsection (4) if a new member or a new council has been appointed, on nominations invited by the Minister in the manner provided for in section 4, to take over the functions of the member or the council concerned.

#### 6. Disqualification from membership of council and vacation of office

- (1) A person may not be appointed as a member of the council if that person -
  - (a) is not a South African citizen and ordinarily resident in the Republic;
  - (b) is an unrehabilitated insolvent;
  - (c) has been convicted of an offence in the Republic, other than an offence committed prior to 27 April 1994 associated with political objectives, and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;
  - (d) subject to subsection (3), has been convicted of an offence in a foreign country and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;

- (e) has, as a result of improper conduct, been removed from an office of trust; or
  - (f) has in terms of this Act been found guilty by a disciplinary tribunal or the council of improper conduct.
- (2) A member of the council must vacate his or her office if he or she-
- (a) becomes disqualified in terms of subsection (1) from being appointed as a member of the council;
  - (b) resigns by written notice addressed to the registrar;
  - (c) is declared by the High Court to be of unsound mind or mentally disordered or is detained under the Mental Health Act, 1973 (Act No. 18 of 1973);
  - (d) has, without the leave of the council, been absent from more than two consecutive meetings of the council;
  - (e) was appointed in terms of section 3(1)(a) and after that appointment a change in his or her circumstances arises that affects the ratio of the membership referred to in section 3(1);
  - (f) was appointed in terms of section 3(1)(b) and ceases to be employed by an accredited educational institution;
  - (g) was appointed in terms of section 3(1)(c) and ceases to be employed by the State; or
  - (h) ceases to be permanently resident in the Republic.
- (3) For the purposes of subsection (1)(d), the Minister must take cognisance of the prevailing circumstances in a foreign country relating to a conviction.
- (4) (a) If a member of the council dies or vacates his or her office before the expiration of his or her term of office, the Minister may, after consultation with the council and subject to section 5(1), appoint a person to fill the vacancy for the unexpired portion of the period for which that member was appointed.
- (b) If the Minister appoints a person to fill the vacant seat, the appointment must be made within 60 days from the date on which the vacancy occurred.

#### 7. Election of president and vice-president of council

- (1) (a) The members of the council must, at the first meeting of every newly constituted council elect a president and vice-president who must be registered persons and at least one must actively practice in the quantity surveying profession.
- (b) The president and vice-president hold office for a period of four years from the date of their appointment.
- (2) The vice-president must, if the president is for any reason unable to act as president, perform all the functions and may exercise all the powers of the president.
- (3) (a) If both the president and the vice-president are for any reason unable to preside at a council meeting, the members present must elect a person to preside at that meeting.
- (b) The person elected may, during that meeting and until the president or vice-president resumes his or her functions, perform all the functions and exercise all the powers of the president.

#### 8. Appointment of registrar and other staff members of council

- (1) The council -
- (a) must appoint a registrar; and
  - (b) may employ such other staff members as it may deem necessary for carrying out its functions, on such conditions, including the payment of remuneration and allowances, as it may determine, and may dismiss any person so appointed.
- (2) The registrar must enter into a performance agreement, as prescribed, with the council on acceptance of his or her appointment.
- (3) The registrar must perform, in addition to such functions as may otherwise be assigned to him or her by or under this Act, such functions as may from time to time be assigned to him or her by the council.

#### 9. Decisions of council

- (1) A decision of the majority of the members of the council present at any meeting constitutes a decision of the council.
- (2) In the event of an equality of votes the person presiding at the meeting has a casting vote in addition to his or her deliberative vote.
- (3) If the requisite majority of the members who are entitled to sit as members at a meeting of the council, make a decision or authorise an act at that meeting, the decision made or act performed under that authorisation, is valid

despite the fact that at that meeting a member who had become disqualified in terms of [section 6\(2\)](#) but had not vacated his or her office, sat as a member.

#### 10. Administrative powers of council

The council may-

- (a) determine the remuneration and allowances payable to its members or the members of any committee of the council after consultation with the CBE;
- (b) arrange for the payment of pension and other benefits to any staff of the council or the registrar and to his or her dependants on the termination of the service of that staff member or the registrar;
- (c) determine where its head office must be situated;
- (d) determine the manner in which meetings of the council or any committee of the council must be convened, the procedure and quorum at such meetings and the manner in which the minutes of such meetings must be kept; and
- (e) print, circulate, sell and administer the publication of, and generally take any steps necessary to publish, any publication relating to the quantity surveying profession and related matters.

#### 11. Powers of council with regard to registration

The council may, subject to this Act-

- (a) consider and decide on any application for registration;
- (b) prescribe the period of validity of the registration of a registered person;
- (c) keep a register of registered persons and decide on-
  - (i) the form of certificates and the register to be kept;
  - (ii) the maintenance of the register or issuing of certificates; and
  - (iii) the reviewing of the register and the manner in which alterations thereto may be effected.

#### 12. Powers of council with regard to fees and charges

- (1) The council may, with regard to fees and charges, which are payable to the council, determine-
  - (a) application fees;
  - (b) registration fees;
  - (c) annual fees, or portion thereof, in respect of a part of a year;
  - (d) the date on which any fee or charge is payable;
  - (e) the fees, or portion thereof, payable in respect of any examination referred to in [section 19](#), conducted by or on behalf of the council;
  - (f) any charge payable for the purposes of the education fund referred to in [section 15\(5\)](#);
  - (g) fees payable for a service referred to in [section 14\(c\)](#);
  - (h) the fees payable for an appeal in terms of [section 24\(1\)](#); or
  - (i) any other fee or charge it considers necessary.
- (2) The council may grant exemption from payment of application fees, registration fees, annual fees, charges, or a portion thereof referred to in subsection(1).

#### 13. Powers of council with regard to education in quantity surveying

The council may-

- (a) subject to [sections 5](#) and [7](#) of the Higher Education Act, 1997 (Act No. 101 of 1997), conduct accreditation visits to any educational institution which has a department, school or faculty of quantity surveying, but must conduct at least one such visit during its term of office. If the council does not conduct an accreditation visit within that term of office, it must notify the Minister accordingly and provide him or her with reasons for the failure to do so;
- (b) either conditionally or unconditionally grant, refuse or withdraw accreditation with regard to all educational institutions and its educational programmes with regard to quantity surveying;
- (c) consult with the Council on Higher Education established in terms of the Higher Education Act, 1997, regarding matters relevant to education in quantity surveying;
- (d) consult with the South African Qualifications Authority established by the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), or any body established by it and the voluntary associations, to determine competency standards for the purpose of registration;
- (e) establish mechanisms for registered persons to gain recognition of their qualifications and professional status in other countries;

- (f) liaise with the relevant National Standards Body established in terms of Chapter 3 of the regulations under the South African Qualifications Authority Act, 1995, with a view to the establishment of a standards generating body in terms of those regulations;
- (g) recognise or withdraw the recognition of any examination contemplated in [section 19](#);
- (h) enter into an agreement with any person or body of persons, within or outside the Republic, with regard to the recognition of any examination or qualification for the purposes of this Act;
- (i) give advice or render assistance to any educational institution, voluntary association or examining body with regard to educational facilities for and the training and education of registered persons and prospective registered persons;
- (j) conduct any examination for the purposes of [section 19](#); and
- (k) determine, after consultation with the voluntary associations and registered persons, conditions relating to and the nature and extent of continuing education and training.

#### 14. General powers of council

The council may, in addition to other powers in this Act-

- (a) acquire, hire, maintain, let, sell or otherwise dispose of movable or immovable property for the effective performance and exercise of its functions, duties or powers;
- (b) decide upon the manner in which contracts must be entered into on behalf of the council;
- (c) perform any service within its competence if it is requested by any person or body of persons, including the State;
- (d) determine, subject to [section 25](#), the requirements with which a voluntary association must comply to qualify for recognition by the council;
- (e) advise the Minister, any other Minister or the CBE on any matter relating to the quantity surveying profession;
- (f) encourage and itself undertake research into matters relating to the quantity surveying profession;
- (g) take any steps it considers necessary for the protection of the public in their dealings with registered persons, for the maintenance of the integrity, and the enhancement of the status of the quantity surveying profession;
- (h) take any steps it considers necessary for the improvement of the standards of services rendered by registered persons; and
- (i) take any measures it considers necessary for the proper performance and exercise of its functions, duties or powers or to achieve the objectives of this Act.

#### 15. Funds of council and keeping and auditing of accounts

- (1) The funds of the council consist of any money received in terms of this Act and all other monies which may accrue to the council from any other legal source, including fines and penalties imposed by the council.
- (2) The council may-
  - (a) collect and invest funds of the council;
  - (b) raise money by way of loan for the purpose of effectively performing its functions;
  - (c) with a view to the promotion of any matter relating to the quantity surveying profession, lend money against such security as the council considers adequate; and
  - (d) mortgage any of its immovable property as security for a loan referred to in paragraph (b).
- (3) The council may remunerate its members and committee members from its funds.
- (4) The council may finance any publication referred to in [section 10\(e\)](#).
- (5) The council may establish and administer an education fund for the education, training and continuing education and training of registered persons and students in the quantity surveying profession.
- (6) The council must keep full and correct account of all monies received and expended by it.
- (7)
  - (a) The council must annually prepare a statement of income and expenditure and a balance sheet showing its financial position as at the close of the financial year to which it relates.
  - (b) The council must have the statement and balance sheet audited by an auditor registered in terms of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991).
  - (c) A copy of the audited statement and balance sheet must be open for inspection at the offices of the council.
- (8) The council must, within six months from the close of each financial year or such other period as may be agreed to by the Minister after a request by the council, submit the audited statement and balance sheet to the Minister and must provide a copy to the CBE.
- (9) The Minister may, with the concurrence of the Minister of Finance-
  - (a) advance or grant to the council, out of money appropriated by Parliament, such amounts as he or she considers necessary in order to enable the council to carry out its functions; and

- (b) determine the conditions to and repayment of the advance.
- (10) The council must determine its financial year.
- (11) The council must apply due care and diligence when investing any money or incurring any expenditure from the funds of the council.

**16. Reports to CBE**

- (1) The council must, within six months from the close of each financial year, provide the CBE with a report regarding its activities during that financial year, for the purpose of section 4 of the Council for the Built Environment Act, 2000.
- (2) A copy of the report and the register referred to in section 11(c) must be open for inspection at the offices of the council.
- (3) The council must, on request by the CBE, provide the CBE with any information regarding a registered person.

**17. Committees of council**

- (1)
  - (a) The council may establish any committee, including an investigating committee, to assist it in the performance of its functions and may appoint any person as a member of that committee.
  - (b) If the council does not designate a chairperson for a committee, the committee may, at its first meeting, elect a chairperson from among its members.
  - (c) The council may at any time dissolve or reconstitute a committee.
- (2) Section 9 may, with the necessary changes, apply in respect of a committee of the council.

**18. Categories of registration**

- (1) The categories in which a person may register in the quantity surveying profession are -
  - (a) Professional Quantity Surveyor;
  - (b) Candidate Quantity Surveyor, or
  - (c) specified categories prescribed by the council.
- (2) A person may not practice in any of the categories contemplated in subsection (1), unless he or she is registered in that category.
- (3) A person who is registered in the category of candidate must perform work in the quantity surveying profession only under the supervision and control of a professional of a category as prescribed.

**19. Registration**

- (1)
  - (a) A person must apply, in the prescribed application form, to the council for registration in a category referred to in section 18(1).
  - (b) The application form referred to in paragraph (a) must be accompanied by the prescribed fee.
- (2) The council must register the applicant in the relevant category and issue a registration certificate to the successful applicant in the prescribed form if, after consideration of an application, the council is satisfied that the applicant-
  - (a) in the case of a person applying for registration as a professional-
    - (i) has demonstrated his or her competence as measured against standards determined by the council for the relevant category of registration; and
    - (ii) has passed any additional examinations that may be determined by the council;
  - (b) in the case of a person applying for registration as a candidate or a candidate in a specified category, has satisfied the relevant educational outcomes determined by the council for this purpose, by-
    - (i) having passed accredited or recognised examinations at any educational institution offering educational programmes in quantity surveying; and
    - (ii) having passed any other examination that may be determined by the council; or
    - (iii) presenting evidence of prior learning in quantity surveying.
- (3)
  - (a) Despite subsection (2), the council may refuse to register an applicant-
    - (i) if the applicant has been removed from an office of trust on account of improper conduct;

- (ii) has been convicted of an offence in the Republic, other than an offence committed prior to 27 April 1994 associated with political objectives, and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;
  - (iii) if the applicant has, subject to paragraph (b), been convicted of an offence in a foreign country and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;
  - (iv) if the applicant is declared by the High Court to be of unsound mind or mentally disordered, or is detained under the Mental Health Act, 1973;
  - (v) for as long as the applicant is disqualified from registration as a result of any punishment imposed on him or her under this Act;
  - (vi) if the applicant is an unrehabilitated insolvent whose insolvency was caused by his or her negligence or incompetence in performing work falling within the scope of the category in respect of which he or she is applying for registration.
- (b) For the purposes of paragraph (a)(iii), the council must take cognisance of the prevailing circumstances in a foreign country relating to a conviction.
  - (c) The council must provide the applicant with a notice of a refusal referred to in paragraph (a).
- (4) For the purposes of this section "prior learning" means the previous learning and experience of a learner, howsoever obtained, against the learning outcomes required for a specified qualification and the acceptance for the purposes of qualification of that which meets those requirements.

## 20. Cancellation of registration

- (1) (a) The council may cancel the registration of a registered person if he or she -
  - (i) becomes disqualified from registration as contemplated in [section 19\(3\)](#);
  - (ii) has erroneously been registered, or has been registered on information subsequently proved to be false; or
  - (iii) fails to pay the prescribed annual fee or portion thereof, within 60 days after it becoming due or within such further period as the council may, allow, either before or from expiry of the 60 days.
- (b) The council must provide the registered person with a notice of a cancellation referred to in paragraph (a).
- (2) If a person who is registered as a candidate qualifies to be registered as a professional in terms of [section 19\(2\)\(a\)](#), the council must cancel his or her registration as a candidate.
- (3) The council must at the written request of any registered person cancel his or her registration, but where an investigation into alleged improper conduct by that person is in progress or is to be held, the registration may not be cancelled until the investigation has been concluded.
- (4) Despite the cancellation of the registration of a registered person in terms of this section, that person remains liable for any fee, arrears or penalty imposed by the council for the period that he or she was registered.

## 21. Authorised titles

- (1) A person who is registered in any of the categories referred to in [section 18\(1\)](#) may describe himself or herself and use the title-
  - (a) Professional Quantity Surveyor; or
  - (b) Candidate Quantity Surveyor.
- (2) A registered person may use a title prescribed by the council for the specified category.
- (3) The council may determine abbreviations or acronyms for the titles referred to in subsection (1).

## 22. Renewal of registration

- (1) A registered person must, at least three months prior to the prescribed expiry date of his or her registration, apply in the prescribed manner to the council for the renewal of his or her registration.
- (2) The council may determine conditions for the renewal of registration.
- (3) Subject to [section 19](#), the council must, on application, register a person who was previously registered and whose registration was cancelled in terms of [section 20 \(1\)\(a\)\(iii\)](#), if he or she has paid-
  - (a) the prescribed fee;
  - (b) any arrear annual fee or portion thereof;
  - (c) any expenses incurred by the council in connection with the recovery of any arrear fees; and

- (d) any penalties imposed on him or her by the council.

**23. Return of registration certificate**

Any person whose registration has been cancelled in terms of this Act, must return his or her registration certificate to the registrar within 30 days from the date on which he or she is directed by the registrar in writing to do so.

**24. Grievance procedure in relation to registration**

- (1) If an applicant is of the opinion that a committee, in its refusal to register him or her, or to cancel his or her registration, other than a cancellation in terms of section 20(1)(a)(iii) or 32(3)(a)(iv), did not comply with section 33 of the Constitution, that applicant may, on payment of the prescribed fees and within 30 days from the date on which the refusal or cancellation came to his or her knowledge, appeal to the council against that decision.
- (2) The council must, at its first ensuing meeting, within 60 days from the date of the receipt of the appeal, decide on the appeal and provide the appellant with reasons for its decision.
- (3) If an appeal is lodged against a refusal of a committee to renew the registration of a registered person, the registration of that person may not be cancelled until the appeal has been decided.

**25. Recognition of voluntary associations**

- (1) The council must, within 90 days from the date of its first meeting, submit the framework for the requirements for recognition of a voluntary association to the CBE for approval.
- (2) Any voluntary association may apply to the council to be recognised as such.
- (3) The council may, if the voluntary association complies with the requirements determined in terms of section 14(d), recognise that association and issue it with a certificate of recognition.
- (4) A certificate of recognition is valid for a period of five years from the date of issue.
- (5) A voluntary association must display its certificate of recognition in a prominent place at its head office.
- (6) The recognition of a voluntary association lapses-
  - (a) if that association no longer complies with the requirements contemplated in section 14(d); or
  - (b) at the expiry of the five-year period referred to in subsection (4).
- (7) A voluntary association must, at least three months prior to the expiry of its recognition, apply in the prescribed manner to the council for the renewal thereof.
- (8) A voluntary association whose recognition has lapsed must, within 30 days from the date on which it is so directed in writing by the council, return its certificate of recognition.

**26. Identification of work**

- (1) The council must consult with -
  - (a) all voluntary associations;
  - (b) any person;
  - (c) any body; or
  - (d) any industry, that may be affected by any laws regulating the built environment professions regarding the identification of the type of quantity surveying work which may be performed by persons registered in any of the categories referred to in section 18, including work which may fall within the scope of any other profession regulated by the professions' Acts referred to in the Council for the Built Environment Act, 2000.
- (2) After the process of consultation the council must submit recommendations to the CBE regarding the work identified in terms of subsection (1), for its consideration and identification in terms of section 20 of the Council for the Built Environment Act, 2000.
- (3) A person who is not registered in terms of this Act, may not-
  - (a) perform any kind of work identified for any category of registered persons;
  - (b) pretend to be, or in any manner hold or allow himself or herself to be held out as a person registered in terms of this Act;
  - (c) use the name of any registered person or any name or title referred to in section 18 or 21; or
  - (d) perform any act indicating, or calculated to lead persons to believe, that he or she is registered in terms of this Act.
- (4) Subsection (3)(a) may not be construed as prohibiting any person from performing work identified in terms of this section, if such work is performed in the service of or by order of and under the direction, control, supervision of or in

association with a registered person entitled to perform the work identified and who must assume responsibility for any work so performed. (Commencement date of section 26: 1 July 2005)

#### **27. Professional conduct**

- (1) The council must, in consultation with the CBE, voluntary associations and registered persons, draw up a code of conduct for registered persons.
- (2)
  - (a) The council is responsible for administering the code of conduct and must ensure that the code is available to all members of the public at all reasonable times.
  - (b) The council must provide the CBE with a copy of the code of conduct.
- (3) All registered persons must comply with the code of conduct and failure to do so constitutes improper conduct.

#### **28. Investigation of charge of improper conduct**

- (1) The council must refer any matter brought against a registered person to an investigating committee contemplated in section 17 if-
  - (a) the council has reasonable grounds to suspect that a registered person has committed an act which may render him or her guilty of improper conduct; or
  - (b) a complaint, charge or allegation of improper conduct has been brought against a registered person by any person.
- (2) At the request of the council, the investigating committee must-
  - (a) investigate the matter; and
  - (b) obtain evidence to determine whether or not in its opinion the registered person concerned may be charged and, if so, recommend to the council the charge or charges that may be preferred against that registered person.
- (3) An investigating committee may not question the registered person concerned unless the investigating committee informs that registered person that he or she-
  - (a) has the right to be assisted or represented by another person; and
  - (b) is not obliged to make any statement and that any statement so made may be used in evidence against the registered person.
- (4) The investigating committee must, after the conclusion of the investigation, submit a report making its recommendations to the council regarding any matter referred to it in terms of this section.

#### **29. Charge of improper conduct**

- (1) The council must, after considering a report of the investigating committee in terms of section 28(2)(b) and (4), charge a registered person with improper conduct if the council is convinced that sufficient grounds exist for a charge to be preferred against such a registered person.
- (2) The council must furnish a charge sheet to the registered person concerned by hand or registered mail.
- (3) A charge sheet must inform the registered person charged-
  - (a) of the details and nature of the charge;
  - (b) that he or she must, in writing, admit or deny the charge
  - (c) that he or she may, together with the admission or denial, submit a written explanation regarding the improper conduct with which he or she is charged; and
  - (d) of the period, which must be reasonable, within which his or her plea in terms of paragraph (b) must be submitted to the council.
- (4)
  - (a) If a registered person charged admits that he or she is guilty of the charge, he or she is considered to have been found guilty of improper conduct as charged, after he or she has explained his or her conduct.
  - (b) The council may, subject to section 32(2), impose a penalty contemplated in section 32(3)(a) or (b), on a registered person who has admitted guilt in terms of paragraph (a).

- (5) The acquittal or the conviction of a registered person by a court of law on a criminal charge is not a bar to proceedings against him or her under this Act on a charge of improper conduct, even if the facts stated in the charge of improper conduct would, if proved, constitute the offence stated in the criminal charge on which he or she was acquitted or convicted or any other offence of which he or she might have been acquitted or convicted at his or her trial on the criminal charge.

### 30. Appointment of disciplinary tribunal

- (1) The council must appoint a disciplinary tribunal to hear a charge of improper conduct if a person charged-
- (a) denies the charge; or
  - (b) fails to comply with [section 29\(3\)\(b\)](#).
- (2) The disciplinary tribunal must consist of at least-
- (a) a person who specialises in the professional field concerning the charge;
  - (b) a professional who has appropriate experience; and
  - (c) a person qualified in law and who has appropriate experience.

### 31. Disciplinary hearing

- (1) The disciplinary hearing must be conducted by the disciplinary tribunal.
- (2) The disciplinary tribunal may, for the purposes of this section, appoint a person to assist it in the performance of its functions.
- (3) The disciplinary tribunal may, for the purposes of a hearing, subpoena any person-
- (i) who in its opinion may be able to give material information concerning the subject of the hearing; or
  - (ii) who it suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing on the subject of the hearing, to appear before the disciplinary tribunal at the time and place specified in the subpoena, to be questioned or to produce a book, document or object.
- (b) A subpoena issued in terms of paragraph (a), must-
- (i) be in the prescribed form;
  - (ii) be signed by the chairperson of the disciplinary tribunal or, in his or her absence, any member of the disciplinary tribunal; and
  - (iii) be served on the registered person concerned personally or by sending it by registered mail.
- (4) The disciplinary tribunal may retain a book, document or object produced in terms of subsection (3) for the duration of the hearing.
- (5) The chairperson of the disciplinary tribunal may call upon and administer an oath to, or take an affirmation from, any witness at the hearing who was subpoenaed in terms of subsection (3).
- (6) At a hearing the registered person charged-
- (a)
    - (i) may personally be present at the hearing of the proceedings,
    - (ii) may be assisted or represented by another person in conducting the proceedings;
    - (iii) has the right to be heard;
    - (iv) may call witnesses;
    - (v) may cross-examine any person called as a witness in support of the charge; and
    - (vi) may have access to documents produced in evidence;
  - (b)
    - (i) may admit at any time before conviction that he or she is guilty of the charge despite the fact that he or she denied the charge or failed to react in terms of [section 29\(3\)\(b\)](#) or (c);
    - (ii) may, in the case where he or she makes an admission in terms of subparagraph (i), be deemed to be guilty of improper conduct as charged.
- (7) The person referred to in subsection (2) may during a hearing-
- (a) lead evidence and advance arguments in support of the charge and cross-examine witnesses;
  - (b) question any person who was subpoenaed in terms of subsection (3); or
  - (c) call anyone to give evidence or to produce any book, document or object in his or her possession or custody or under his or her control which the person referred to in subsection (2) suspects or believes to have a bearing on the subject of the hearing.

- (8) (a) A witness who has been subpoenaed may not-
- (i) without sufficient cause, fail to attend the hearing at the time and place specified in the subpoena;
  - (ii) refuse to be sworn in or to be affirmed as a witness;
  - (iii) without sufficient cause, fail to answer fully and satisfactorily to the best of his or her knowledge to all questions lawfully put to him or her; or
  - (iv) fail to produce any book, document or object in his or her possession or custody or under his or her control which he or she has been required to produce.
- (b) A witness who has been subpoenaed must remain in attendance until excused by the chairperson of the disciplinary tribunal from further attendance.
- (c) A witness who has been subpoenaed may request that the names of the members of the disciplinary tribunal be made available to him or her.
- (d) The law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce a book, document or object in a civil trial before a court of law may, with the necessary changes, apply in relation to the examination of, or the production of any book, document or object to the disciplinary tribunal by, any person called in terms of this section as a witness.
- (e) A witness may not, after having been sworn in or having been affirmed as a witness, give a false statement on any matter, knowing that answer or statement to be false.
- (f) A person may not prevent another person from complying with a subpoena or from giving evidence or producing a book, document or object which he or she is in terms of this section required to give or produce.
- (g) The record of evidence which has a bearing on the charge before the disciplinary tribunal, and which was presented before any commission which investigated an event or conduct is admissible without further evidence being led if-
- (a) the record is accompanied by a certificate from the chairperson; and
  - (b) the certificate certifies that the investigation was lawful, reasonable and procedurally fair.
- (10) If the improper conduct with which the registered person is charged amounts to an offence of which he or she has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court is, on the identification of the registered person as the person referred to in the record, sufficient proof of the commission by him or her of that offence, unless the conviction has been set aside by a superior court.

### 32. Proceedings after hearing

- (1) After the conclusion of the hearing the disciplinary tribunal must, within 30 days -
- (a) decide whether or not the registered person charged is guilty of improper conduct;
  - (b) if the disciplinary tribunal finds that the registered person charged is guilty of improper conduct, take cognisance of any aggravating or mitigating circumstances;
  - (c) inform the registered person charged and the council of the finding; and
  - (d) inform the registered person of his or her right of appeal in terms of [section 33](#).
- (2) A registered person found guilty of improper conduct in terms of this section may -
- (a) address the disciplinary tribunal in mitigation of sentence; and
  - (b) call witnesses to give evidence on his or her behalf in mitigation of the sentence.
- (3) (a) If the registered person charged is found guilty of improper conduct, or if he or she admits that he or she is guilty of the charge, the disciplinary tribunal must either -
- (i) caution or reprimand the registered person;
  - (ii) impose on him or her a fine not exceeding the amount calculated according to the ratio for one year imprisonment determined in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991);
  - (iii) suspend the registration of the registered person concerned for a period not exceeding one year; or
  - (iv) cancel the registration of the registered person concerned and remove his or her name from the register referred to in [section 11\(c\)](#).
- (b) The disciplinary tribunal may take decisions under more than one of the subparagraphs of paragraph (a).
- (4) At the conclusion of the hearing the disciplinary tribunal must notify the council of its finding.

- (5) The council must publish the finding and the sanction imposed in terms of subsection (3) in the *Gazette*.
- (6) The council must give effect to the decision of the disciplinary tribunal.

### 33. Appeal against decision of disciplinary tribunal

- (1)
  - (a) A registered person found guilty of improper conduct may appeal to the council against a finding of the disciplinary tribunal or against the sentence, or both.
  - (b) The appeal must be lodged, within 30 days after the disciplinary tribunal has informed the registered person of its decision.
- (2) The council may-
  - (a) dismiss the appeal against the decision of the disciplinary tribunal and confirm the finding or sentence or both; or
  - (b) uphold the appeal against the decision of the disciplinary tribunal wholly or in part and set aside or vary the finding or sentence or both.
- (3) If an appeal is dismissed in terms of subsection (2)(a) the appellant may, within 30 days from the date of the dismissal of the appeal, appeal to the CBE.
- (4) If a registered person found guilty of improper conduct lodges an appeal in terms of subsection (1)-
  - (a) the decision of the disciplinary tribunal under [section 32\(3\)](#); or
  - (b) the publication by the council in terms of [section 32\(5\)](#), may not be put into effect before the council or the CBE, or both, has decided the appeal.
- (5)
  - (a) The appellant whose appeal was dismissed by the CBE may appeal to the appropriate High Court.
  - (b) A person referred to in paragraph (a) must, after giving notice to the CBE, lodge a notice of appeal with the registrar of the appropriate High Court within one month from the date of the decision of the CBE.
- (6)
  - (a) The council may appeal to the appropriate High Court against any decision of the CBE with regard to disciplinary matters.
  - (b) The council must, from giving notice to the CBE, lodge a notice of appeal with the registrar of the appropriate High Court within one month after the date of the decision of the CBE.

### 34. Professional fees

- (1) The council must, in consultation with the voluntary associations, formulate recommendations with regard to the principles referred to in [section 4\(k\)\(v\)](#) of the Council for the Built Environment Act, 2000.
- (2) The council must annually, after consultation with the voluntary associations, representatives of service providers and clients in the public and private sector, determine guideline professional fees and publish those fees in the *Gazette*.
- (3) The CBE may review the guideline professional fees published by the council, and refer the fees back to the council for reconsideration.
- (4) If the council, after review by the CBE of the guideline professional fees, is aggrieved about that review, it may refer the matter to the Minister for a final decision.
- (5) Any person who is aggrieved by the guideline professional fees published in terms of subsection (2), may bring the matter to the attention of the CBE within 60 days from the date of publication.

### 35. Appeal against certain decisions of council

- (1) Any member of the public whose interests and rights are affected by a decision made by the council may -
  - (a) within 30 days from that person becoming aware of the decision, request the council in writing to furnish him or her in writing with its reasons for that decision;
  - (b) within 90 days from the date on which the council furnished him or her with its reasons for that decision and after giving notice to the council, appeal to the CBE against that decision in terms of [section 21](#) of the Council for the Built Environment Act, 2000.
- (2) A person referred to in subsection (1) may, after giving notice to the council or the CBE, as the case may be, lodge a notice of appeal with the registrar of the appropriate High Court within one month from the date of the decision of the council or the CBE.

### 36. Rules

- (1) The council may, by notice in the *Gazette*, make rules with regard to any matter that is required or permitted to be prescribed in terms of this Act and any other matter for the better execution of this Act or in relation to any power granted or duty imposed by this Act.
- (2)
  - (a) Before the council makes any rule under this section, it must publish a draft of the proposed rule in the *Gazette* together with a notice calling on interested persons to comment in writing within a period stated in the notice, but the period may not be less than 30 days from the date of publication of the notice.
  - (b) If the council alters the draft rules as a result of any comment it need not publish those alterations before making the rule.
- (3) The council may, if circumstances necessitate the immediate publication of a rule, publish that rule without consultation as contemplated in subsection (2), provided that the CBE, any of the councils for the professions or any person who is aggrieved by the said rule may-
  - (a) comment after such publication; or
  - (b) appeal to the CBE or the appropriate High Court, as the case may be, against such a rule.

### 37. Procedure and evidence for evidential purposes

- (1) The register referred to in [section 11](#) (c) serves as evidence of all matters which, in terms of this Act, are required or permitted to be noted therein.
- (2) A certificate purporting to be signed by the registrar to the effect that an entry has or has not been made in the register or that any other function authorised by this Act to be performed, has or has not been performed, is evidence of the matters specified in that certificate.
- (3) A copy of an entry in the register or of a document in the custody of the registrar or an extract from the register or from any such document, purporting to be certified by the registrar, may be admitted in evidence in all courts without further proof or production of the original.

### 38. Rectification of errors and exemptions

- (1) When anything which according to this Act is required to be done or performed on or before a specified day or at a specified time or during a specified period, has not been done or performed, the Minister may, if satisfied that the failure was due to error or oversight, authorise it to be done or performed on or before another day, time, or during another period and anything done or performed in this regard is of full force and is deemed to have been lawfully done or performed in accordance with this Act.
- (2) The Minister must, after consultation with the council, voluntary associations and any other person he or she considers necessary, make rules regarding exemptions from the provisions of this Act.
- (3)
  - (a) The Minister may, after consultation with the council, voluntary associations and any other person he or she considers necessary, exempt any person, council, voluntary association or industry from any provision of this Act for a period not exceeding two years.
  - (b) The exemption referred to in paragraph (a) must comply with the rules contemplated in subsection (2).

### 39. Liability

- (1) The council, the registrar, or any member, committee or staff member of the council, is not liable for any act performed in good faith in terms of this Act.
- (2) A registered person who, in the public interest-
  - (a) refuses to perform an act;
  - (b) omits to perform an act; or
  - (c) informs the council or other appropriate authority of an act or omission performed by any other person, which act or omission endangers or is likely to endanger the safety or health of the public or fellow employees, is not liable for that refusal, omission or information.
- (3) Any person who was registered in terms of this Act and whose registration was cancelled, is liable for any action taken by him or her while he or she was registered.

### 40. Delegation of powers

- (1) The Minister may delegate any of his or her powers in terms of this Act, excluding the power to appoint the members of the council, to the Director-General or any other member of the staff of the department.

- (2) The council may delegate any of its powers in terms of this Act to a committee, an official or a member of the council or any other person or body of persons, excluding the power to hear an appeal in terms of [sections 24\(1\)](#) and [33\(1\)](#).
- (3) The registrar may delegate any of his or her powers in terms of this Act, to a member of the staff of the council.
- (4) Any delegation under subsection (1), (2) or (3) does not prohibit the exercise of the power or the performance of the duty or function in question by the Minister, council or the registrar.

#### 41. Offences and penalties

- (1) A person contravening [section 18\(2\)](#), [23](#), [25\(8\)](#), or [31\(8\)\(a\)](#), (b), (e) or (f), is guilty of an offence.
- (2) If the council wilfully or in a grossly negligent manner fails to comply with [section 15\(8\)](#) it is guilty of an offence and liable to a fine calculated according to the ratio determined for a period of five years' imprisonment in terms of the Adjustment of Fines Act, 1991.
- (3) A person convicted of an offence in terms of [section 18\(2\)](#), may be liable to a fine equal to double the remuneration received by him or her for work done in contravention of section 18(2), or to a fine equal to the fine calculated according to the ratio determined for three years imprisonment in terms of the Adjustment of Fines Act, 1991.
- (4) A person who is convicted of an offence in terms of [section 23](#) or [25\(8\)](#), may be liable to a fine calculated according to the ratio determined for a period of one month imprisonment in terms of the Adjustment of Fines Act, 1991.
- (5) A person who is convicted of an offence in terms of [section 31\(8\)\(a\)](#), (b), (e) or (f), may be liable to a fine equal to the fine calculated according to the ratio determined for three years imprisonment in terms of the Adjustment of Fines Act, 1991.

#### 42. Transitional provisions

- (1) For the purposes of this section, "effective date" means the date of the first meeting of the council.
- (2) The South African Council for Quantity Surveyors established by section 2 of the Quantity Surveyors' Act, 1970 (Act No. 36 of 1970), continues to exist and may exercise and perform its powers and functions after the commencement of this Act until the effective date.
- (3) The South African Council for Quantity Surveyors must, within 30 days from the date of commencement of this Act, invite nominations for the first appointment of members in accordance with [section 4](#).
- (4) For the purpose of the nominations referred to in [section 4](#) and for the first term of office of the council, the existing voluntary associations within the quantity surveying profession are deemed to be recognised in terms of [section 25](#).
- (5) From the effective date, all rights, obligations, assets and liabilities acquired or incurred by the South African Council for Quantity Surveyors in terms of the Quantity Surveyors' Act, 1970, vest in the council and the council is deemed to have acquired or incurred those rights, obligations, assets and liabilities in terms of this Act.
- (6) Any act performed, decision taken, or rule made or purported to have been so performed, taken or made in terms of the Quantity Surveyors' Act, 1970, by the South African Council for Quantity Surveyors remains valid unless repealed under this Act.
- (7) Any notice issued or exemption granted by the Minister in terms of the Quantity Surveyors' Act, 1970, remains valid unless repealed under this Act.
- (8) Any person who at the commencement of this Act is registered in terms of the Quantity Surveyors' Act, 1970, is deemed to be registered in the corresponding category provided for in this Act.
- (9) From the effective date, any register maintained in terms of the Quantity Surveyors' Act, 1970, is incorporated in and is considered to form part of a register to be maintained in terms of this Act.
- (10) Any action taken in terms of section 24 of the Quantity Surveyors' Act, 1970, which is pending at the commencement date of this Act, must be finalised in terms of that Act.
- (11) At the end of the first term of the council 50 per cent of the members of the council may not be reappointed by the Minister.

#### 43. Repeal of laws

The laws mentioned in the second column of the Schedule are repealed to the extent indicated in the third column of that Schedule and in so far as the laws were in force in the various areas of the national territory indicated in the fourth column.

#### 44. Act binding on State

This Act binds the State.

#### 45. Short title and commencement

This Act is called the Quantity Surveying Profession Act, 2000, and commences on a date fixed by the President by proclamation in the *Gazette*.

**SCHEDULE**  
(Section 43)

No. and year of Act	Short title	Extent of repeal	Area of national territory
Act No. 36 of 1970	Quantity Surveyors' Act, 1970	The whole	
Act No. 79 of 1979	Quantity Surveyors' Amendment Act, 1979	The whole	
Act No. 50 of 1982	Quantity Surveyors' Amendment Act, 1982	The whole	
Act No. 29 of 1981	Act to Regulate the Professions of Engineering, Architecture and Quantity Surveying, 1981	The whole	Bophuthatswana
Act No. 76 of 1987	Quantity Surveyors' Amendment Act 1987	The whole	
Act No. 14 of 1995	Periods of Office of Members of Councils for Architects, Engineers, Quantity Surveyors and Valuers Act, 1995	The whole	



***For A Better Built Environment***

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