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GENERAL NOTICE

NOTICE 1496 OF 1999

DEPARTMENT OF PUBLIC WORKS

The **Policy Document on the Statutory Regulation of the Built Environment Professions**, which sets the conceptual framework for the complete review of the regulation of the professions that are the responsibility of the Department of Public Works, is hereby published for public comment.

The draft legislation that flows from the above-mentioned policy is simultaneously published for comment from the public and interested parties at large. These draft bills are:

- Council for the Built Environment Bill, 1999;
- Architectural Profession Bill, 1999;
- Construction Management Profession Bill, 1999;
- Engineering Profession Bill, 1999;
- Landscape Architectural Profession Bill, 1999;
- Quantity Surveying Profession Bill, 1999;
- Property Valuation Profession Bill, 1999; and
- Quantity Surveying Profession Bill, 1999.

Written comments and input are invited from interested parties and the general public which must be submitted to:

A. POLICY ISSUES AND GENERAL COMMENTS –

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B. BILLS ON THE BUILT ENVIRONMENT COUNCIL, ARCHITECTURAL, LANDSCAPE ARCHITECTURAL AND PROPERTY VALUATION PROFESSIONS —

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C. BILLS ON THE ENGINEERING, QUANTITY SURVEYING AND CONSTRUCTION MANAGEMENT PROFESSIONS

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The closing date for such comment: 6 August 1999.

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POLICY DOCUMENT ON THE STATUTORY REGULATION OF THE BUILT ENVIRONMENT PROFESSIONS

JULY 1999

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PREAMBLE

As the second democratically elected Government of South Africa, we continue to face the enormous challenges of mobilising all possible resources to rebuild our country and to eradicate the inequalities caused by past practices. Professional expertise is an important component of effective reconstruction and development. The Department of Public Works, which is charged with the regulation of architects, landscape architects, engineers, quantity surveyors and valuers, deemed it necessary to review the regulation of these professions and other allied disciplines, in order to ensure good governance of, and accessibility to the professions, as well as their coordinated input into the process of developing our country.

In 1994 my predecessor, Mr J Radebe appointed a Forum, comprising various stakeholders, to undertake this review. All aspects of professional regulation were analysed and debated in-depth. In the period June 1995 to February 1996 broader public participation in the process was invited and a large number of written submissions were received, studied and considered. A study of international models was also undertaken. On the basis of all these inputs, this policy framework was formulated.

I am satisfied that this policy document, that has been developed on the basis of comprehensive interaction with key stakeholders in the built environment, provides us with a comprehensive framework to commence with the broader public consultative process. Draft Bills on the Built Environment Council, Engineering Profession, Architectural Profession, Landscape Architectural Profession, Valuation Profession, Quantity Surveying Profession and the Construction Management Profession have also been compiled on the basis of this policy document and is also submitted for comment from interested parties and the public at large.

S N SIGCAU

MINISTER OF PUBLIC WORKS

DATE: 6 JULY 1999

DEFINITIONS

Accreditation

Accreditation process is the process by means of which education providers and educational programmes within the specific professional fields are evaluated by the council for the professions to ensure that they comply with the quality standards required for the registration of professionals, candidates and persons in specified categories and that they are accredited.

Built environment

The concept **built environment** refers to the functional area in which registered persons practice. The built environment includes all structures that are planned and/or erected above or under ground, as well as the land utilised for this purpose and the supporting infrastructure.

CBE

CBE means the Council for the Built Environment.

Candidate

Candidate means a person who has completed or is undergoing his or her formal (required) education and who is registered as a candidate in the category pertaining to his or her profession in which he or she intends to practice.

Councils for the professions

Statutory bodies responsible for the regulation of professions.

Minister

Minister responsible for Public Works.

Professions

The term **professions** is used in this Policy Document to refer to the following:

- architectural profession
- construction management profession
- engineering profession
- landscape architectural profession
- property valuation profession
- quantity surveying profession

Professionals

Professional means a person registered as such in terms of an act of a council for a profession – a professional has met all educational and training requirements set by the council concerned.

Registered persons

Registered persons means those persons who are registered by the councils for the professions in the category of professional or candidate or in another specified category.

Registration

Registration is the process of assessment of competency of applicants and of entering the names of suitably qualified (competent) persons as professionals, candidates and specified category persons into an official register. The register is kept according to categories that specify the professional areas in which registered persons are competent to practice. Registration allows registered persons to use a specific title that serves as indication of competency to members of the public.

Regulation of the professions

The **regulation of the professions** refers to those mechanisms used to protect the public interest, identify and recognise the competency levels of members of the profession, to ensure acceptable educational standards and standards of practice in the profession and to control the professional conduct of members of the profession.

Reservation of functions

Reservation of functions refer to provisions in legislation whereby certain aspects of work or functions are reserved for persons who comply with specific competency requirements (ie, who are registered in a certain category).

Specified category

Specified category means a category created for registered persons, other than professionals or candidates, who has specific training pertaining to a specialised field that has to be regulated.

Voluntary association for the Built Environment Professions

Voluntary association for the Built Environment Professions, means any voluntary association –

- (a) formed for any lawful purpose;
- (b) having the main object of promoting and protecting the interests and quality of the work done in the particular built environment profession;
- (c) which intends to apply its profits, if any, or other income in promoting its said main objective.

1. BACKGROUND

Professional expertise in the country is a national asset and should be managed as a scarce resource of high value. This expertise is a resource that is renewable but that is also subject to degradation if standards are allowed to decline and/or interest in entering the professions as a career is not promoted. The intrinsic value of professions lies in their essential role and function in socio-economic development. While socio-economic development and the improvement of the quality of life in South Africa enjoys priority attention, professional expertise needs to be nurtured, professional standards need to be maintained and professional services need to be within reach of all communities.

To develop a profession and to keep a profession healthy, the profession must be regulated from within, as well as by government. Government has the duty to protect the public, while self-regulation by the professions ensures quality and development within the professions. Government is of the opinion that in the built environment, self-regulation by the professions manifests itself in voluntary associations and institutes. Government involves itself by recognising the competence levels set by the professions and protecting the public interest by legislation.

This Policy Document puts forward Government's policy with regard to the regulation of the professions.

2. THE PRESENT REGULATION OF THE PROFESSIONS

At present, Acts of parliament regulate some professions, while other professions are not regulated in the same manner. The professions regulated by law are the engineering profession, architectural and landscape architectural profession, quantity surveying profession and property valuation profession. The Minister of Public Works is responsible for the administration of the Acts regulating the above professions. The present legislation regulating the professions was developed from within the professions and was not superimposed by government.

The profession that is currently not regulated, namely the construction management profession, has through voluntary associations, expressed willingness, and acknowledged the need, to be regulated in the same manner as those mentioned above. Each of the current Acts regulating the professions provides for the establishment of a statutory council for the specific profession. The Minister appoints the members of the councils. The councils differ in size and composition but the majority of representatives on the councils are from within the respective professions. Landscape architects are regulated by the Act that regulates architects and have their own board of control that functions under the auspices of the council for architects.

The powers and functions of the councils are similar and include the registration of different categories of professionals and persons in training, the reservation of work for persons registered in terms of the Acts (in consultation with the Competition Commission), and the development and enforcement of codes of conduct.

Most of the Acts also provide for the appointment of an advisory committee responsible for educational standards and the accreditation of educational institutions. In all cases, with the exception of the Engineering Council of South Africa, the Acts stipulate that the responsible Minister must appoint the Education Advisory Committees. The nomination procedures are similar and entail inviting nominees from three main stakeholder groups;

- Educational institutions offering tuition in the field concerned
- Ministerial nominees
- Voluntary institutes and/or associations

Each of the Acts protects the titles of registered persons, ie, prohibits unregistered persons from claiming to be registered by using the designated titles.

The various Acts also provide for codes of conduct by which all registered persons have to abide. Furthermore, provision is made for disciplinary action against registered persons charged with misconduct in the execution of their duties. The Acts confer powers on the councils to impose penalties in cases of misconduct.

The councils function in close co-operation with various voluntary professional associations and institutes. In terms of the Acts, the institutes are the main nominating bodies for members of the councils.

3. THE NEED TO REVISE THE STATUTORY REGULATION SYSTEM FOR THE BUILT ENVIRONMENT PROFESSIONS

The revision of the regulatory system for the built environment professions was necessitated by the need to constructively engage the professions in the reconstruction and development initiatives of the new, democratically elected government, changes in the broader legislative and policy framework of the country and certain limitations in the representivity and functions of the existing professional councils.

From the outset of the review process, the Ministry aimed at creating a regulatory framework for the professions that would -

- take cognisance of the context in which the professions developed in South Africa;

- promote and protect the public against exploitation by registered persons;
- take due cognisance of the need to promote and maintain sustainable built and natural environments;
- promote a culture of mutual accountability within the professions, their clients, employers and the public;
- facilitate the professions' participation in integrated development in the context of national goals;
- maintain healthy professions in terms of standards, competence and performance;
- promote ongoing human resources development by providing for the necessary diversity of professional skills;
- make it possible for all persons with the required competence to obtain professional recognition;
- make professional services available to the public and the State; and
- promote sound governance of the professions.

4. PRINCIPLES

Through the process of review, a number of broad principles for a policy framework emerged. The proposals that are put forward in this Policy Document, are based on these principles. The principles are discussed briefly:

4.1 STATUTORY REGULATION OF THE PROFESSIONS

Although regulation is fundamental to professions, not all professions are regulated through legislation. The Ministry, however, proposes to retain a system of statutory regulation for the following reasons:

- Statutory regulation of the built environment professions has contributed substantially to the improvement of professional competency and standards in South Africa. At this stage in the country's development, it is imperative to protect these standards.
- The built environment still does not reflect the changed South African environment and new legislation to effect such changes is needed. The differences in educational levels increase the possibility of exploitation of individuals and communities. Similarly, the gap between the developed and the emerging sectors of commerce and industry provide wide scope for exploitation and for the lowering of standards. A statutory regulation system would provide a mechanism for public protection and recourse in such situations.

4.2 PROVIDING SUPPORT FOR BROADER NATIONAL DEVELOPMENT PRIORITIES THROUGH THE STATUTORY REGULATION SYSTEM OF THE PROFESSIONS

The Reconstruction and Development Programme (RDP), comprising six main objectives, provides the framework within which the Government has defined development priorities and which contains the criteria for structuring development projects. The professions working in the built environment play a major role in projects enjoying national priority and make a significant contribution to their success.

In view of the high priority at national level of projects undertaken within the RDP framework, it is of national interest that the contribution of the professions is maximised and co-ordinated. Co-ordination is important because of the necessary interaction between the professions and because of the potential synergy, in the national interest, of their joint contributions.

The expertise available to the Government and the country from the professions represents a valuable source of information and advice on matters of critical importance. Since the professions are a national asset, this information and advice must be readily accessible.

4.3 PROFESSIONAL REGULATION SHOULD NOT UNNECESSARILY INTERFERE WITH MARKET FORCES OR WITH THE COMMERCIAL ASPECTS OF PROFESSIONAL PRACTICE

Professional services are regarded as an important part of the economic activity of the country and as a potential growth sector. Many professional activities are carried out within normal business practice and are governed by business principles. Professional regulation should promote an environment in which competition is stimulated and should not unnecessarily interfere with the commercial aspects of professional practice. Professional regulation should therefore be consistent with the competition policy of the country and should provide public protection and recourse only in relation to aspects of professional conduct. In this regard, due cognizance must be taken of any legislation relating to the promotion of competition.

4.4 CREATING AN ENABLING ENVIRONMENT

The regulation of professions is, by nature, restrictive. One of its main purposes is to ensure that professional functions are performed only by persons with the necessary competence. At the same time, the system should create an enabling environment in which qualified persons are able to receive recognition for their competence and in which the minimum competence requirements for functions are identified in a realistic manner. The system should also provide for the upgrading of qualifications through the recognition of various forms of prior learning and experience.

4.5 STRIVING TOWARDS INTERNATIONAL BEST PRACTICE

The development of the professions in South Africa has largely reflected the political developments in the country focused on First World requirements. This has led to failure to properly heed the developmental needs of broader society. South Africans can, however, call on the services of members of the professions equal to the best available elsewhere in the world. Furthermore, the professions in South Africa enjoy the respect of most other countries, worldwide. This is demonstrated by the ease with which registered persons enjoy recognition and obtain employment virtually anywhere in the world.

The international respect for the professions in South Africa has led to a significant degree of co-operation and recognition between statutory bodies and voluntary societies in South

Africa, and their counterparts elsewhere in the world. It is in the interest of both the professions and the broader South African society that this interaction be supported and expanded wherever possible, and that international best practices be identified, studied and followed in professional practice as well as in the development of all registered persons. It should be ensured that the professions contribute to the competitiveness of the South African services in relation to the global environment.

4.6 SUPPORT FOR THE ROLE OF VOLUNTARY PROFESSIONAL ASSOCIATIONS IN THE DEVELOPMENT OF THE PROFESSIONS

Voluntary societies in the professions in South Africa have existed in the form of clubs, associations, institutions and institutes for over 100 years. These societies pre-date statutory bodies in South Africa and continue a tradition of service to their members in the fields of technological development, education and training, information dissemination and lifestyle benefits. In addition to this, they have also served as the important mouthpiece, lobbyist and power base of the professions. Societies, by their nature and design, represent the interest of their members and not that of the State or of the public. Societies serve the interest of their members by promoting the art, science and development of the professions.

While statutory councils are necessary to ensure that the professions fulfil their essential role in the interest of the public, their actions should be supportive of voluntary societies whose attention is focused on the development of the professions. This symbiosis exists to a large extent at present and should be developed to the maximum in future.

The desired healthy symbiotic relationship could best be entrenched if an inviolable independence of statutory councils from voluntary societies exists. This implies that total clarity on the relationship between public interest and the interests of the professions and registered persons should exist.

4.7 PROFESSIONAL REGULATION BASED ON A SYSTEM OF PEER REVIEW, BUT WITH A LARGER DEGREE OF PUBLIC PARTICIPATION

Professional practice relies on a specialised body of knowledge and skills that require appropriate education. The monitoring and evaluation of professional practice are, therefore, dependent on a superior level of professional expertise in the specific field.

The present statutory councils for the various professions were instituted in close co-operation with the professions themselves, through their voluntary professional bodies, and their work has been based on a system of peer review. The new regulation system should equally rely on the expertise of the professions. However, to ensure a clear focus on the public as opposed to professional interest, independent representation of the public interest is also required.

4.8 RECOGNITION OF THE COMMONALITIES AS WELL AS THE DIFFERENCES BETWEEN THE PROFESSIONS

Although the professions that are dealt with in this Policy Document have much in common, they differ in disciplinary composition, the number of registered persons that need to be included in the regulatory system, and their relationship with other occupational groupings that might be affected by the system. The new regulatory framework needs to make provision for the commonalities as well as the differences between the professions.

5. INSTITUTIONAL ARRANGEMENTS

5.1 COUNCIL FOR THE BUILT ENVIRONMENT

5.1.1 The need for a Council for the Built Environment

Professions in the built environment lend valuable support to development initiatives of the Government, through structured advice on development proposals and policy issues, mobilisation of expertise for implementing development projects from the public, as well as the private sectors, and the compilation of development specifications and standards, among others. The professions, on behalf of the Government, could undertake evaluation of international best practice in respect of development projects.

Similarly, a managed co-ordination between the professions is necessary to support matters of high priority for the country. The public interest may best be served by intervention in the professions through statutory councils and voluntary associations.

Furthermore, the Government is committed to good governance of the professions, and therefore needs to ensure co-ordination of the professional regulatory systems of the various professions.

In order to ensure that the Government has access to the coordinated support of the professions with regard to national development priorities and the regulation of the professions, it is necessary that a statutory body with the responsibility for this co-ordination be established. A statutory Council for the Built Environment is therefore proposed.

5.1.2 Functions and objectives of the Council

The CBE will be a statutory body to -

- advise government on matters of national importance, such as resource utilisation, socio-economic development, public health and safety and the environment;
- promote appropriate standards of health, safety and environmental protection within the built environment;
- provide advice and consultation on national policy that could impact on the built environment, human resources development in relation to the professions and the recognition of new professions;
- evaluate and comment on all proposed legislation impacting on health and safety in the built environment;
- investigate and initiate investigations into matters pertaining to its functions and policy with regard to the built environment, and recommend legislation in this regard;
- ensure the consistent application of policy by the councils for the professionals in the following areas, taking due cognisance of the characteristics of each built environment profession -
 - the accreditation of education providers and education programmes;
 - principles for the registration of different classes of professionals, candidates and specified categories;
 - key elements of competence testing of applicants for registration;
 - codes of conduct to be prescribed by the councils for the professions;
 - disciplinary procedures to be followed by the councils for the professions; and

- the determination of fee structures for the councils for the professions;
- facilitate interministerial co-operation concerning issues relating to the built environment;
- consider proposals from the different councils for the professions with regard to the determination of the policy framework referred to above;
- direct communication from the Minister to the councils for the professions;
- act as an appeal body with regard to disciplinary hearings conducted by the councils for the professions in cases where conviction upon the charge may lead to cancellation of registration and other decisions of a particular council for a profession;
- obtain recognition for the respective councils for the professions as the bodies responsible for the establishment of education and training standards in terms of the South African Qualification Authority Act, 1995 (Act No. 58 of 1995);
- assimilate the annual reports of the councils for the professions and submit one report to the Minister;
- review fees published by the councils for the professions to ensure the consistent application of the framework for fees determined by it;
- ensure consistent application of predetermined policy throughout the Built Environment by the co-ordination of the councils for the built environment;
- advise the statutory councils for the professions on matters of national importance where the needs of the state, as communicated to the CBE through the relevant Minister, require joint and coordinated action by the professions;
- levy of membership fees from the councils for the professions, calculated on a *pro rata* basis according to membership numbers;
- institute legal proceedings to recover all membership fees payable in terms of this Act if such fees are in arrears.

5.1.3 Membership of the Council

The Council for the Built Environment will consist of a maximum of 28 members who will be appointed by the Minister of Public Works in consultation with other Ministers. Membership of the Council will reflect a balance between stakeholder interest and expertise in national development issues. Members will be appointed for a term of four years. The CBE's membership will be constituted as follows:

- One representative from the Department of Public Works;
- A maximum of 4 members nominated by departments within whose functional area the professions are also practiced, taking due cognizance of provincial participation;
- Two representatives from each council for the professions;
- A maximum of 6 representatives nominated by the voluntary associations for the built environment professions, but restricted to one representative per profession;
- A maximum of 5 persons nominated by the public through an open nomination process.

The Council will elect a chairperson from its members.

The composition of the CBE must ensure broad representation of the population in respect of race, gender and disability.

5.1.4 Administration of the Council

The CBE will have its own operating budget and will provide its own secretariat.

The CBE will form standing committees to deal with regular issues as well as *ad hoc* committees as the need arises. It will be able to co-opt members with the necessary expertise to assist it with specific tasks.

The chairperson and three members, to be elected by all members of the CBE, will form the executive committee. The executive committee will plan the activities of the CBE and will delegate tasks to the various committees.

The CBE will submit an annual report on its activities to the Minister of Public Works.

5.1.5 Funding of the CBE

The CBE will be funded from the *pro rata* contributions from the councils for the professions, calculated on their membership base. Provision is made in the legislation for the acceptance by the CBE of donations from the government and other sources. The CBE will also submit an annual financial report to the Minister of Public Works, at the end of each financial year.

5.2 COUNCILS FOR THE PROFESSIONS

The Councils for the professions that currently exist will be re-established. The Department envisages the establishment of two additional councils for the construction management profession as well as for the landscape architectural profession. The Acts as referred to in paragraph 6.2 will regulate these councils. The Acts will also regulate the councils' relationship with the CBE.

5.2.1 Functions of the councils

5.2.1.1 *Education, training and professional development*

The councils for the various professions should be made responsible for setting professional competency standards within the framework provided therefor by the South African Qualifications Authority, and to ensure that these standards are complied with.

It is of critical importance that appropriate competency standards are set for each of the professions and that compliance with these standards in all aspects of the education, training and professional development is assured. It is clearly in the public interest that appropriate standards are set and maintained for all levels of expertise in the professions.

Achievement of appropriate standards of competence in a profession is of public interest because there is then a formal basis for the objective judging of the suitability of a particular person to undertake specific work.

The South African Qualifications Authority Act, 1995 provides for a National Qualifications Framework and the establishment of National Standards Bodies as well as Standards Generating Bodies in different fields. The statutory councils for the professions are best placed for setting the appropriate standards for the professions in their capacities as Standards Generating Bodies. These Councils should also be represented on the National Standards Bodies.

A critical aspect of standard setting and quality assurance in the professions is the accreditation of educational programmes offered by various educational institutions. Educational institutions are to a large degree autonomous, and are relatively free to offer programmes in response to the needs of the community. Since admission to the professions at every level (through registration) should also be subject to strict quality assurance it is imperative that candidates who obtain educational qualifications for this purpose can be confident that the qualifications meet the minimum requirements.

Accreditation systems in use at present for programmes in the various professions should be extended to all tertiary educational institutions offering programmes which may lead to recognition of competence at all levels in all professions in the built environment where registration is required. A positive relationship exists at present between professional councils, the voluntary professional institutions and educational and training institutions. This relationship should be extended by including all three groups in the accreditation system.

Since accreditation visits to all educational institutions should be mandatory, and not subject to an invitation by the institution as is presently the case, a strong relationship between the Council on Higher Education and the professional councils should be promoted at the highest level. The Council on Higher Education, through its permanent committee, the Higher Education Quality Committee, is strongly urged to recognise the experience and expertise of the professional councils in the area of accreditation. However, accreditation visits should continue to be undertaken in a constructive manner. Educational institutions that do not comply with the standard required for specific educational programmes should be given the support and time necessary to meet the requirements.

5.2.1.2 *Registration*

Registration of individuals in a profession comprises the evaluation of individual competency against predetermined registration requirements and includes the evaluation of foreign qualifications with a view to compliance with local standards. It also includes the administration of registers and the renewal of registrations. The registration of individuals in the professions in the built environment will be retained as a function of the statutory councils for the professions at least for the foreseeable future, in order to uphold standards, which are locally appropriate and internationally acceptable.

It is necessary that all the professions, which play a meaningful role in the built environment, be identified and recognised as such. Registered persons in these professions, at all levels, should be empowered to carry out their vocation by recognition of their competence through registration. The criteria currently used for the evaluation of competence with a view to registration, namely educational qualification, training and professional development should be retained.

It is the opinion of the Ministry that, in order to meet the objective of upholding standards through registration, all persons who are eligible for registration and who practice their vocation, whether self employed or salaried, should be obliged to register.

Legislation will make provision for certain professional titles to be reserved for registered persons. This will enable the general public to identify the competency levels of the registered persons.

Inclusivity should also be promoted by identification and recognition of the various levels of competence in each profession and the registration of applicants at each level. In order to maximise the value of the human resource potential in the professions, it is necessary for the councils to identify each entry level and to specify the requirements for progression from one registration category to the next. The only constraint on progression up the hierarchy of professional competence should be the individual potential and ability to satisfy requirements for registration.

Rapidly changing technology and the proven value of training and professional development in gaining competence calls for a system of regular renewal of registration. Regular renewal

of registration implies a reassessment of competence, which offers an institutionalised incentive to upgrade the category of registration as well as an obligation to maintain the required levels of professional expertise. In this regard, proposals must be submitted by the councils for the professions, to the CBE, to define the broad principles for such renewals.

5.2.1.3 International recognition of qualifications

Statutory councils have the responsibility for assessing and evaluating the professional competence of persons from other countries to enable them to gain appropriate recognition in South Africa and to establish mechanisms for registered persons to gain recognition elsewhere in the world. This important task should be carried out in a way, which supports and augments the competitiveness of South Africa in the global economy.

5.2.1.4 Reservation of functions

Reservation of functions may be perceived as an attempt by the professions to create monopolies, as a mechanism to stifle competition and as an infringement on consumers' right to choose. However, the reservation of certain functions of the professions is necessary to ensure protection of the health, safety and pecuniary interests of the public and of quality standards. Statutory bodies responsible for the professions in the built environment should be entrusted with the identification of functions to be reserved for registered persons and to arrange for the reservation.

The role of the Competition Commission in protecting the interests of the public is important with regard to the reservation of functions. Participation of the Commission in this process will ensure that competition principles are adhered to and will prevent the reservation of functions from being driven by professional interests rather than public interests. The Competition Commission must obviously have the competence to fulfil this moderating role. In this regard, the CBE must liaise with the Competition Commission on behalf of the councils for the professions.

Effective reservation of functions for registered persons in the built environment professions will make it possible for registration in any category in a profession to be tantamount to a license to practice at that level. This is an effective means of empowering competent persons to participate in the work of their profession with the full confidence of the public and

of employers. Care must therefore be taken that reservation of functions is not a restrictive practice but rather an enabling provision.

Experience in South Africa has demonstrated that reservation of functions through legislation for the statutory regulation of professions in the built environment alone is not effective. Statutory bodies must therefore seek the co-operation of government departments who administer other legislation to protect all aspects of the health, safety and pecuniary interests of the public through the effective and realistic reservation of functions.

5.2.1.5 *Professional conduct*

Registration in a particular category implies adherence to the norms set for that category within the profession concerned, particularly in relation to the public and to other registered persons. The behavioural norms for each profession should be enshrined in a code of professional conduct for the profession concerned. All registered persons, and only registered persons, are obliged to comply with the code of conduct or face the sanction of the statutory body regulating that profession.

Codes of conduct should define the minimum standard of behaviour expected of registered persons. The conduct of a registered person should always be measurable against the norms defined in the code to ensure that the interests of the public are being served and that the standards set by the professions are upheld at all times.

Codes of professional conduct should be limited in scope to the relationship between the registered person and the public or other professions and should not attempt to impinge on the area of contract law or aspects of common law regulating the behaviour of individuals. Codes of conduct should be set up by the professions and administered by statutory bodies established to regulate the professions. The authority lent to codes of conduct should be inviolate and the sanctions imposed for contravention should carry the force of law.

Statutory bodies should establish comprehensive procedures for dealing with alleged contraventions of codes of conduct. Procedures to be followed in investigations and inquiries must be in accordance with just administration.

In view of the public interest in professional misconduct, findings of guilt and the sanction imposed should be published for general information. Publication of the outcome of

investigations of alleged misconduct, which were either rejected, found to be frivolous or which led to a finding of not guilty should be at the discretion of the defendant. A distinction should be drawn between lesser offences and more serious offences. In the case where the registration of a person is cancelled as a result of a finding of guilty on a charge of improper conduct, that person must be able to appeal to the CBE. In the case of lesser offences, the councils should handle the appeals.

5.2.1.6 *Professional fees*

In view of the stage of socio-economic, political and constitutional development in South Africa it can be expected that the professions in the built environment, particularly those components which provide professional services as a form of business, will, for a considerable time in future, be more sophisticated than many client bodies. It is therefore important that guidelines on appropriate fees for professional services be available to assist both parties when drawing up agreements between clients and service providers.

While technical merit should be the main criterion for the selection and appointment of a professional consultant, the remuneration for the service rendered remains an important component of the agreement. Since the value added by the professional, and the responsibility which he or she carries, is of vital importance to the client, it is imperative that the remuneration for the service rendered be the subject of negotiation within wide but reasonable limits. Guideline fees should be used as an aid in such negotiations. Where one or other party is not in a position to negotiate on an equal basis, the guidelines should be acceptable as a reasonable basis for agreement.

It is important that the scope of services to be provided by professional consultants for a fee be clearly defined and understood by the client and the service provider. In view of the uncertainty often associated with assignments for professional services, it is important that the agreed basis for remuneration be fair to both parties. Ideally, remuneration should reflect the value added to a project or assignment. Since it is seldom possible to assess the value added on a rigorous basis, it is necessary that general guidelines for determining a reasonable professional fee be made available. The councils for the professions must publish guideline fees.

It is accepted that competition between registered persons is healthy except when this leads to fees cutting to the extent that the level of service, which can be provided, is impaired.

In view of the market-orientated and competitive nature of professional services the role of controlling authorities such as the Minister, the Department of Public Works and statutory councils in the determination of professional fees should be limited to that which is essential for protecting the interest of the public. To this extent the public should have access to authoritative guidelines for the determination of fees which can be used as a basis for negotiations between clients and service providers. For the foreseeable future it will be prudent to charge the statutory councils representing various professions in the built environment with the development of such guidelines, updated on a regular basis. Statutory councils should facilitate the discussion of the basis for payment of fees as well as appropriate quantum or tariffs between service providers and representative clients. The outcome of such discussions, in the form of advice or recommendations, should be utilised by statutory councils to formulate or amend guidelines on professional fees.

In view of the composition of statutory councils and their general terms of reference in relation to public interest and to the health of the professions, they are accountable to the Minister. It is therefore considered important that the councils' position in relation to clients and to professional service providers be respected as being beyond reproach and that the Minister be recognised as the accessible, independent level of appeal in relation to the function of statutory councils in publishing guidelines on professional fees.

5.2.1.7 *Advisory roles of councils*

A subsidiary, but important role of statutory councils is to provide information to the Government. Councils should enjoy the prerogative of compiling and submitting information on matters of public interest to the Government, and be assured of a hearing. Government, on its part, has full access to statutory councils for advice on matters it believes the councils can formulate an opinion on.

5.2.2 *Membership of the councils*

The Minister of Public Works will appoint members of the councils for a term of four years. A president for each council will be elected from the members of the council. Members will be appointed from nominations submitted to the Minister. Each of the councils will comprise a majority of registered persons nominated by the voluntary professional associations and registered persons who do not belong to a voluntary association, as well as representatives

from the departments of State (at all levels), with a direct interest in the work of the professions and representatives of the broader public interest nominated through an open process of public participation (i.e., invitations for nominations will be extended through the media and any person will be allowed to submit a nomination). The interests group above must be represented in a 60:20:20 ratio.

Provision will be made in the legislation for inclusion of representatives of different levels of competency who are not registered, but whose registration is under review. The intention is to allow for a more inclusive process. Provision must be made to gain input from people of all levels in the professions.

With regard to the landscape architectural profession, a new Act will be drafted, giving the landscape architectural profession independent status. The council for this profession will function in the same manner as the Board of Control for Landscape Architects in terms of current legislation. A separate Act will be drafted for the construction management profession as well. It will provide for a council for that profession that will function similarly to other councils.

Taking into account the above representation ratio and appropriate representation of race and gender, the following composition of the different councils is proposed:

The South African Council for the Architectural Profession

- Seven registered persons, excluding candidates, nominated by voluntary professional bodies and other registered persons, including technologists;
- Two representatives from Government (one from any department/level of government and one from the Department of Public Works);
- Two members of the public nominated through an open process of public participation.

The South African Council for the Construction Management Profession

- Six registered persons, excluding candidates, nominated by voluntary associations and (future) registered construction managers and construction project managers;
- Two representative from Government nominated on the same basis as for the other councils;
- Two members of the public nominated through an open process of public participation.

The South African Council for the Engineering Profession

- Thirty registered engineering professionals nominated by voluntary associations and any other nominating body, determined by the council in consultation with the Minister. (This process was necessitated by the fact that the engineering profession has, as a result of its diverse nature a variety of stakeholders who have an interest in nominating persons to the council;
- Ten representatives from Government nominated on the same basis as for the other councils;
- Ten members of the public nominated through an open process of public participation.

The South African Council for the Landscape Architectural Profession

- Six registered persons, excluding candidates, nominated by voluntary associations and (future) registered persons;
- Two representative from Government nominated on the same basis as for the other councils;
- Two members of the public nominated through an open process of public participation.

The South African Council for the Property Valuation Profession

- Six registered persons, excluding candidates, nominated by voluntary associations and other registered persons;
- Two representative from Government nominated on the same basis as for the other councils;
- Two member of the public nominated through an open process of public participation

The South African Council for the Quantity Surveying Profession

- Nine registered persons, excluding candidates, nominated by voluntary professional associations and other registered persons;
- Three representatives from Government nominated on the same basis as for the other councils;

- Three members of the public nominated through an open process of public participation

5.2.3 Authority of the councils

Each of the councils will appoint its own subcommittees to give effect to its responsibilities. Councils may appoint registered persons who are not members of the councils or other persons with particular expertise, to serve on any of their committees. Accreditation committees will comprise representatives from the councils, voluntary professional associations and educational institutions. International participants will be invited as and when necessary.

Each council will prescribe the procedures to be followed in relation to its responsibilities and will determine the fees payable to the council, e.g., registration, examination and annual fees. The councils will be self-funding but will submit an annual report to the Minister on their activities and the execution of their functions.

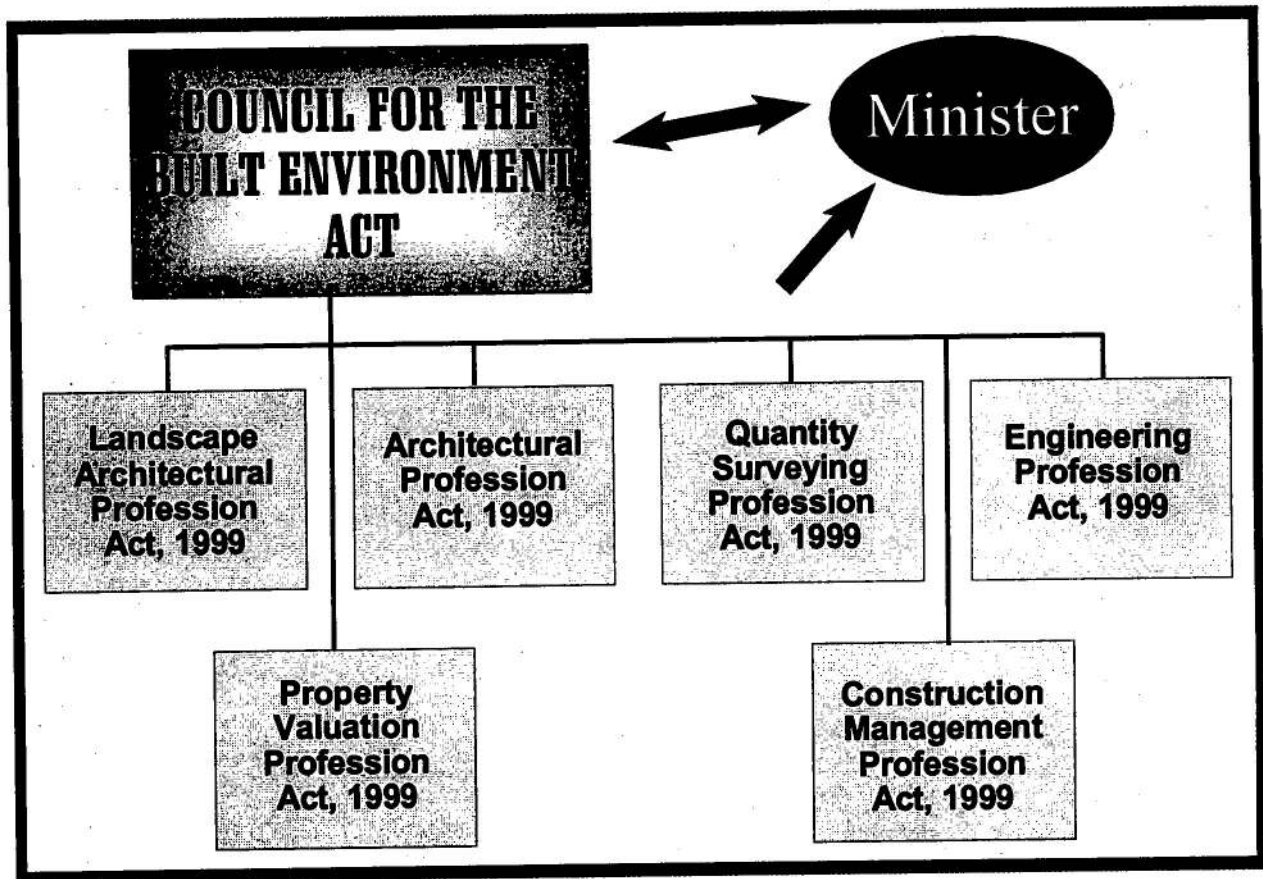
6. NEW LEGISLATION

To give effect to the principles discussed above, Government intends promulgating new legislation that will restructure the regulation of the professions practising in the built environment.

6.1 THE REGULATORY STRUCTURE

The regulatory structure for the built environment is seen by Government as follows:

Figure 1



6.2 PURPOSE OF THE LEGISLATION

6.2.1 The Council for the Built Environment Act

The Council for the Built Environment Act will be an Act establishing an overarching Council for the professions practising within the Built Environment. This Act will provide the framework within which the various statutory councils will operate. The Council for the Built Environment (CBE) can also act as a medium of communication from the Minister to the councils for the professions. A further important point is that the CBE will hear appeals in cases where appellants are not satisfied with the decision of an individual council for a profession. The powers and functions of the CBE were discussed in more detail in paragraph 5.1.2.

6.2.2 Councils for the professions

As shown in the diagram (Figure 1), an Act establishing a Council for each profession is foreseen. The current Acts were reviewed to determine whether they can be adapted to suit the new policy or whether new Acts will have to be drafted. It was decided to reflect the new policy in new legislation for each profession. Separate Acts will regulate both the landscape architectural profession and the construction management profession in future.

The Acts establishing individual Councils for each profession will give effect and content to the framework and principles provided in the CBE Act. These Acts will also provide the Councils with the power to make rules for the professions, eg, codes of conduct, educational requirements, etc.

6.2.3 Voluntary Associations

Government does not intend to regulate voluntary associations within the professions. The legislation, as described above, will necessarily influence the operations of voluntary associations. Voluntary associations perform an important self-regulatory function within the broader scope of the built environment and should not be unnecessarily regulated in order not to stifle development. Whilst registration with a voluntary association is recommended, it should not be a prerequisite for professional registration. As far as interaction with an individual council is concerned, however, it is preferred that councils recognise voluntary associations according to objective standards, upon after consultation with the CBE.

7. COMMUNICATION

The sheer scope of the built environment professions necessitates structured communication. In this regard, the CBE can play a very helpful role. It is suggested that the CBE act as a conduit for at least the communication of information from the Minister to the councils for the professions.

8. CONCLUSION

The policy contained in this document were translated into legislation and is now submitted for public comment. After comments by the public have been studied and where necessary,

incorporated, the Bills will be submitted to Cabinet, the State Law Advisers, and finally Parliament.

The Department of Public Works is confident that the principles contained in the document which were arrived at after much deliberation and consultation with the professions, will serve to co-ordinate the profession in the built environment in a constructive manner.

THE COUNCIL FOR THE BUILT ENVIRONMENT BILL, 1999

BILL

To provide for the establishment of a council for the built environment; and the constitution, functions, assets, rights, members and financing of such council; and to provide for matters connected therewith.

Definitions

1. In this Act, unless the context otherwise indicates -
 - (i) "accreditation" means the process by means of which education providers and educational programmes within the specific professional fields are evaluated by the councils for the professions to ensure that such providers and programmes comply with the quality standards required for the registration of registered persons and that those providers and programmes are accredited;
 - (ii) "built environment" means the functional area within which the registered persons practise, and includes all structures that are planned or erected above or under ground, as well as the land utilised for this purpose and the supporting infrastructure;
 - (iii) "built environment professions" means the professions regulated by the Architectural Profession Act, 1999 (Act No. ... of 1999), Construction Management Profession Act, 1999 (Act No. ... of 1999), Engineering Profession Act, 1999 (Act No. ... of 1999), Landscape Architectural Profession Act, 1999 (Act No. ... of 1999), Property Valuation Profession Act, 1999 (Act No. ... of 1999) and Quantity Surveying Profession Act, 1999 (Act No. ... of 1999);
 - (iv) "council" means the Council for the Built Environment established by section 2;
 - (v) "councils for the professions" means the South African Council for the Architectural Profession established by the Architectural Profession Act, 1999, the South African

Council for the Construction Management Profession, established by the Construction Management Profession Act, 1999, the South African Council for the Engineering Profession established by the Engineering Profession Act, 1999; the South African Council for the Landscape Architectural Profession established by the Landscape Architectural Profession Act, 1999, the South African Council for the Property Valuation Profession established by the Property Valuation Profession Act, 1999 and the South African Council for the Quantity Surveying Profession established by the Quantity Surveying Profession Act, 1999;

- (vi) "department" means the national department responsible for public works;
- (vii) "Minister" means the Minister responsible public works;
- (viii) "prescribed" means prescribed by regulation;
- (ix) "professional" means a person who is registered as such in terms of the Architectural Profession Act, 1999, Construction Management Profession Act, 1999, Engineering Profession Act, 1999, Landscape Architectural Profession Act, 1999, Property Valuation Profession Act, 1999 and Quantity Surveying Profession Act, 1999;
- (x) "registered person" means a person registered in terms of the Architectural Profession Act, 1999, Construction Management Profession Act, 1999, Engineering Profession Act, 1999, Landscape Architectural Profession Act, 1999, Property Valuation Profession Act, 1999 and Quantity Surveying Profession Act, 1999;
- (xi) "registration" means the process of assessment of the competency of applicants for the various categories provided for in the built environment professions, and of entering the names of suitably qualified registered persons into a register kept by the councils for the professions;
- (xii) "reservation of functions" means those functions, which are reserved for registered persons in the Architectural Profession Act, 1999, Construction Management Profession Act, 1999, Engineering Profession Act, 1999, Landscape Architectural Profession Act,

1999, Property Valuation Profession Act, 1999 and Quantity Surveying Profession Act, 1999;

(xiii) "this Act" includes the regulations; and

(xiv) "voluntary association for the built environment professions" means any voluntary association recognised as such by the councils for the professions in terms of the Architectural Profession Act, 1999, Construction Management Profession Act, 1999, Engineering Profession Act, 1999, Landscape Architectural Profession Act, 1999, Property Valuation Profession Act, 1999 and Quantity Surveying Profession Act, 1999.

Establishment of council

2. (1) The Minister shall, by notice in the *Gazette* and with effect from a date specified in such notice, establish the Council for the Built Environment.

(2) The council is a juristic person and is charged with the functions determined in this Act.

Objects of council

3. The objects of the council are to -

- (a) promote and protect the interest of the public;
- (b) promote and maintain a sustainable built environment and natural environment;
- (c) promote ongoing human resource development;
- (d) facilitate participation by the 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 professions;
- (g) promote liaison in the field of training, both in the Republic and elsewhere, and to promote the standards of such training in the Republic;
- (h) provide a forum where the professions can discuss the required qualifications, standards of education, training and competence, promotion of professional status and legislation impacting on the built environment; and

- (i) ensure the uniform application of norms and guidelines throughout the built environment.

Powers and duties of council

4. The council shall -

- (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 it may 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 constitution, functions, assets, rights, employees or financing of the council;
- (d) advise the Minister with regard to the amendment of this Act 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 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 coordinated action by the professions;
- (j) coordinate the establishment of mechanisms for professionals to gain recognition in foreign countries;
- (k) ensure the consistent application of policy by the councils for the professions with regard to -
 - (i) accreditation;
 - (ii) the registration of different classes of registered persons;

- (iii) key elements of competence testing of registered persons for registration;
 - (iv) codes of conduct to be prescribed by the councils for the professions;
 - (v) disciplinary procedures to be followed by the councils for the professions;
 - (vi) the principles upon which the councils for the professions shall base the determination of fees which registered persons are entitled to charge in terms of the Architectural Profession Act, 1999, Construction Management Profession Act, 1999, Engineering Profession Act, 1999, Landscape Architectural Profession Act, 1999, Property Valuation Profession Act, 1999 and Quantity Surveying Profession Act, 1999, and in accordance with any legislation relating to the promotion of competition;
 - (vii) standards of health, safety and environmental protection within the built environment,
- taking due cognisance of the characteristics of each built environment profession;
- (l) investigate or initiate investigations into matters pertaining to its functions and policy with regard to the built environment, and recommend legislation in this regard;
 - (m) act as an appeal body with regard to disciplinary hearings conducted by the councils for the professions;
 - (n) obtain recognition for the councils for the professions, in consultation with them, as the bodies responsible for the establishment of education and training standards in terms of the South African Qualification Authority Act, 1995 (Act No. 58 of 1995);
 - (o) ensure the consistent application of policy throughout the built environment by the coordination between the councils for the professions;
 - (p) promote coordination between the Council on Higher Education and the councils for the profession in relation to the accreditation of education institutions;
 - (q) liaise with the Competition Board, established in terms of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), on behalf of councils for the professions regarding the reservation of functions 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) levy membership fees in the prescribed manner from the councils for the professions, calculated *pro rata* on their membership base, and be entitled to

institute legal proceedings to recover all membership fees payable under this Act, if those fees are in arrears;

- (t) consider proposals from the councils for the professions with regard to the determination of policy contemplated in paragraph (k);
- (u) receive and assimilate the annual reports of the councils for the professions and submit a summary to the Minister;
- (v) 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;
- (w) subject to the provisions of 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;
- (x) perform such functions as may be prescribed; and
- (y) generally, do all such things as the council deems necessary or expedient to achieve the objectives of this Act.

Constitution of council

5. (1) The council shall consist of the following members appointed by the Minister:
- (a) One representative from the department;
 - (b) not more than four persons nominated by departments within whose functional areas the professions are also practised, taking due cognisance of provincial participation;
 - (c) two representatives of each council for the professions;
 - (d) not more than six representatives nominated by voluntary associations for the built environment professions, equitably representing such voluntary associations for the built environment professions; and
 - (e) not more than five persons nominated by the public through an open process of public participation.
- (2) If a council for the professions or a voluntary association for the built environment professions, other than a council for the professions or voluntary association for the built environment professions defined in section (1), is constituted and that council for the professions or voluntary association for the built environment professions request

representation on the council, the Minister may appoint representatives to the council in accordance with the provisions of this section.

(3) The councils for the professions and voluntary associations for the built environment professions shall, within 30 days from the publication of the notice of establishment of the council in the *Gazette*, inform the Director-General in writing of the names of the persons nominated by them for the purposes of subsection (1)(c).

(4) For the purposes of subsection (1)(d), the Minister shall, at least 14 days before the publication of the notice of establishment of the council in the *Gazette*, request nominations for representatives from the general public.

(5) The request referred to in subsection (4), must be published in the *Gazette* and in any other newspaper generally circulated throughout the Republic.

(6) (a) If no nomination is submitted as contemplated in subsection (3) or (4), or if a council for the professions or voluntary association referred to in subsection (3) fails to inform the Director-General under subsection (3) of the names of the persons so nominated, the Minister must appoint qualified persons up to the number required, as members of the council.

(b) The Director-General must, in the case of failure contemplated in paragraph (a), immediately inform the Minister of such failure in writing.

(7) The Minister shall as soon as possible after the appointment of the members of the council inform the Director-General of the names of the persons appointed by him or her.

(8) The names of the members of the council and the date of commencement of their period of office must be published by the Director-General in the *Gazette* as soon as possible after the constitution of the council.

(9) Subject to the provisions of section 6, the members of the council holds office for a period of four years calculated from the date contemplated in subsection (8).

Vacation of office and filling of vacancies

6. (1) A person may not be appointed as a member of the council if that person -

(a) is not a South African citizen;

(b) is an unrehabilitated insolvent;

(c) has been convicted of an offence and sentenced to imprisonment for a period exceeding three months or a fine as alternative thereto;

(d) has, as a result of improper conduct, been removed from an office of trust;

- (e) has in terms of this Act been found guilty by the council of improper conduct; or
 - (f) in the case of persons referred to in section 5(1)(c) and (d) 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(1)(c) and (d) and is no longer associated with the council or voluntary association that nominated him or her and if that disassociation affects the ratio of the membership referred to in section 5(1);
 - (f) is appointed in terms of section 5(1)(b) and ceases to be a person employed by the State;
 - (g) ceases to be permanently resident in South Africa; or
 - (h) the Minister, in the public interest, terminates his or her membership.
- (3) 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, to fill the vacancy for the unexpired portion of the period for which that member was appointed.

Chairperson and deputy-chairperson

7. (1) The members of the council shall at the first meeting of every newly constituted council from their number elect a chairperson and deputy-chairperson.
- (2) The chairperson and deputy-chairperson hold office for the period that the council determines at the time of their election.
- (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) If both the chairperson and the deputy-chairperson are for any reason unable to preside at a council meeting, the members present must elect from their number a person to preside at

that meeting. 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 deputy-chairperson becomes vacant, the council must, at its first meeting after the chairperson or deputy-chairperson vacates his or her office, elect one of the members as chairperson or deputy-chairperson, and the member so elected holds office for the unexpired portion of the period for which his or her predecessor was elected.

(6) A chairperson or a deputy-chairperson may vacate office as such, and the vacation does not terminate his or her membership of the council.

Meetings of the council

8. (1) The Minister must, within 30 days after the appointment of the council, determine the time and place of its first meeting, and the council shall determine the time and place of any future meeting.

(2) The council shall hold at least two meetings each year but may hold such further meetings as it determines from time to time.

(3) The chairperson may at any time convene a special meeting of the council, to be held on a date and place as he or she may determine and he or she must, on written request by the Minister or a written request signed by at least six members, convene a special meeting. The special meeting must be held within 30 days after the date of receipt of the request, on a date and at a place as the chairperson may determine. The written request must state clearly the purpose for which the meeting is to be convened.

Quorum and decisions

9. (1) The majority of the members of the council constitutes a quorum at any meeting of the council.

(2) A decision of the majority of the members of the council present at any meeting constitutes a decision of the council. In the event of an equality of votes the chairperson has a casting vote in addition to a deliberative vote.

(3) A decision taken by the council or act performed under the authority of the council is not invalid by reason only of a vacancy on the council, or of the fact that a person who is not entitled to sit as a member of the council, sat as a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite

majority of the members of the council who were present at the time and entitled to sit as members.

Executive committee

- 10.** (1) The council has an executive committee consisting of the chairperson of the council and not more than three other members elected by the council.
- (2) A majority of the total number of members of an executive committee constitutes a quorum.
- (3) (a) A member serves on the executive committee for a period of one year, but may be again designated and remains in office until his or her successor is elected.
- (b) Upon the expiry of the term of office of any member of the executive committee, the vacancy must be filled by the council at its next ensuing ordinary meeting or, failing which, at a special meeting convened for that purpose by the chairperson of the council within 21 days after that ordinary meeting.
- (c) A casual 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 concerned as contemplated in section 6.
- (d) If a casual vacancy occurs in the executive committee the vacancy must be filled by the council concerned at its next ensuing ordinary meeting or, failing which, at a special meeting convened for that purpose by the chairperson of the council within 21 days after that ordinary meeting, and the person elected to fill the vacancy acts in that capacity for the unexpired portion of the term of office of his or her predecessor.
- (e) If the council is convinced that the executive committee temporarily cannot function, as no quorum can be obtained, the council may elect so many members as is necessary to constitute a quorum to serve temporarily on the executive committee in the place of the absent members until such members can again attend a meeting of the executive committee.
- (4) The executive committee shall hold at least one ordinary meeting a month.
- (5) A special meeting of the executive committee -
- (a) may at any time be convened by the chairperson thereof; 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.

Powers of executive committee**11. The executive committee has the power to -**

- (a) ensure that the resolutions of the council are carried out;
- (b) consider any matter entrusted to the council in terms of the provisions of any law (excluding any matter determined by the council) 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; and
- (e) report at every ordinary meeting of the council on the functions of the committee.

Committees of council**12. (1) The council -**

- (a) may establish any committee to assist it in the performance of its functions or to investigate and make recommendations on matters relating to any of its functions; and
- (b) shall designate a chairperson for any such committee, and determine the quorum for meetings of such committee.

(2) The provisions of section 8, adjusted as may contextually be necessary, applies in respect of a committee of the council.

(3) Any reference in this Act to the council, or to the chairperson of the council, in relation to the exercise of any power which the council has delegated to a committee, must be construed as including a reference to that committee or to the chairperson of that committee, as the case may be.

Delegation of powers

13. The council may delegate any power (except the powers regarding the appropriation of funds and the appointment of committees) duty or function conferred or imposed on it by this Act to a committee appointed under section 12, the executive committee appointed under section 10, the chairperson of the council or any officer of the council.

Financing of council

14. (1) The funds of the council consist of -
- (a) membership fees levied on the councils for the professions by the council;
 - (b) donations, contributions or grants received from any person, institution, government or administration; and
 - (c) interest on investments.
- (2) The council shall utilise its funds to defray expenses in connection with the performance of its functions.
- (3) The council -
- (a) may, invest any unspent portion of the funds of the council, and any surplus at the end of a financial year must be carried over to the next financial year and be utilised to defray expenses incurred by the council during that financial year;
 - (b) shall during each financial year, submit a statement of the council's estimated income and expenditure for the following financial year to the councils for professions for comment.

Accounting and accountability

15. (1) The chairperson of the council is the accounting officer of the council and shall -
- (a) cause proper records to be kept of all financial 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 statement of the income and expenditure of the council for that financial year and a 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 approved by the councils for the professions.
- (3) The financial year of the council is the period from 1 April in any year to 31 March of the following year.

Reporting

16. (1) The council shall -

- (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 after 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 the provisions 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 thereon and documents annexed thereto whereby relevant information is provided;
 - (b) particulars of any donations or contributions received under section 14(1)(b);
 - (c) the report on the audit referred to in section 15(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, if he or she suspects that there are any irregularities with regard to the functions of the council, cause the council to be investigated.

Administration

17. All administrative work as well as secretarial work, in connection with the performance of the functions of the council, executive committee or other committees established in terms of section 12, shall be carried out by members of the council or other persons appointed by the council.

Appeal

18. (1) Any person who feels aggrieved by a decision of any one of the councils for the professions, may, on payment of the prescribed fee and in writing, appeal to the council, within 30 days after that person becomes aware of such decision, and the council must consider and decide the appeal.

- (2) The appellant shall 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 and furnish proof of such submission for the information of the council.
- (3) The council may confirm, set aside or amend the decision of the council for the profession concerned.
- (4) The decision of the council in terms of this section is final.

Regulations

19. The Minister may make regulations, not inconsistent with this Act, 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.

Short title

20. This Act shall be called the Council for the Built Environment Act, 1999.

THE ARCHITECTURAL PROFESSION BILL, 1999

BILL

To provide for the establishment of the South African Council for the Architectural Profession, for the registration of professionals, candidates and specified categories; 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 related matters.

Definitions

- 1. In this Act, unless the context otherwise indicates -**
 - (i) "accredit" means the process of evaluation and recognition of educational programmes offered by educational institutions relating to the architectural profession and "accreditation" has a corresponding meaning;**
 - (ii) "candidate" means a person who is registered as such in terms of section 12;**
 - (iii) "CBE" means Council for the Built Environment established by section 2 of the Council for the Built Environment Act, 1999 (Act No. ... of 1999);**
 - (iv) "council" means the South African Council for the Architectural Profession established by section 2;**
 - (v) "department" means the national department responsible for public works;**
 - (vi) "Minister" means the Minister responsible for public works;**
 - (vii) "prescribe" means prescribed by rule made by the council under section 26, and "prescribed" has a corresponding meaning;**
 - (viii) "professional" means a person who is registered as such in terms of section 12;**

- (ix) "registered person" means a person registered in terms of section 12;
- (x) "registrar" means the person appointed as registrar under section 8(a)(i);
- (xi) "registration" means the process of assessment of competency of applicants for the purpose of registration under this Act;
- (xii) "rule" means a rule made and in force under this Act;
- (xiii) "this Act" includes any notice, order or rule issued or made under this Act;
- (xiv) "voluntary association" means any voluntary association recognised by the council in terms of section 16.

Establishment of South African Council for the Architectural Profession

2. The South African Council for the Architectural Profession is established as a juristic person.

Composition of council

3. (1) The council consists of the following members, appointed by the Minister:
- (a) seven registered persons (excluding candidates) of whom at least four must actively practise in the architectural profession, nominated by the voluntary associations or any registered person;
 - (b) two professionals in the service of the State nominated by any level of government, of whom at least one professional must be in the service of and be nominated by the department;
 - (c) two members of the public nominated through an open process of public participation.
- (2) When any nomination in terms of subsection 1(a) or (b) becomes necessary, the council must invite registered persons, the voluntary associations and the State, in the prescribed

manner, to nominate within the period specified persons who qualify for nomination in terms of subsection (1)(a) or (b) respectively.

(3) When any nomination in terms of subsection (1)(c) becomes necessary, the council must invite the public, by notice in the *Gazette* and any other newspaper the council considers necessary (but at least in a leading newspaper in each province), to nominate members for appointment to the council within the period specified in the notice.

(4) The period referred to in the invitation and the notice must be at least 60 days.

(5) If the council receives any nominations it must within 30 days from the expiry date specified in the invitation and the notice, submit its recommendations to the Minister.

(6) The Minister shall, within 60 days after the receipt of the nominations from the outgoing council, appoint the council.

(7) If the council receives no or not sufficient nominations within the period specified in the invitation or the notice, the Minister may, after consultation with the council, appoint such person or persons who hold the necessary qualifications for appointment, up to the number required, to be members of the council in terms of the subsection concerned.

(8) The Minister shall, as soon as practicable after the appointment of the members of the council, publish the name of every person appointed as a member of the council, together with the date from which the appointment takes effect and the period for which the appointment is made, by notice in the *Gazette*.

(9) The Minister shall, within 30 days after the appointment of the council, determine the time and place of its first meeting, and the council shall determine the time and place of any future meeting.

Term of office of members of council

4. (1) Every member of the council appointed in terms of section 3, holds office for a period of four years, but continues to hold office after the expiration of the period for which that member was appointed, until the succeeding council is properly constituted.

(2) A member of the council may not serve for more than two consecutive terms of office.

(3) If a member of the council dies or vacates his or her office before the expiration of the period for which he or she was appointed, the Minister may, after consultation with the council and subject to the provisions of section 5(1), appoint a person to fill the vacancy for the unexpired portion of the period for which that member was appointed. 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.

(4) Notwithstanding the provisions of subsection (1), the Minister may by notice in the *Gazette*, after consultation with the council, extend or terminate the period of office of all the members of the council. If the Minister extends the period of office, that extension may be for a further period of six months, but he or she may only extend the period of office twice. If the Minister terminates the period of office he or she may only do so if a new council has been appointed, on nominations invited by the Minister, to take over the functions of the council concerned.

Persons disqualified from membership of council and vacation of office

5. (1) A person may not be appointed as a member of the council if that person -
- (a) is not a South African citizen;
 - (b) is an unrehabilitated insolvent;
 - (c) has been convicted of an offence and sentenced to imprisonment for a period exceeding three months or a fine as alternative thereto;
 - (d) has, as a result of improper conduct, been removed from an office of trust;
 - (e) has in terms of this Act been found guilty by the council of improper conduct; or
 - (f) in the case of persons referred to in section 3(1)(a) and (b) 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 3(1)(a) and is no longer associated with the voluntary association that nominated him or her and if that disassociation affects the ratio of the membership referred to in section 3(1);
 - (f) is appointed in terms of section 3(1)(b) and ceases to be a person employed by the State; or

- (g) ceases to be permanently resident in South Africa.

Election of president and vice-president of council

6. (1) The members of the council shall at the first meeting of every newly constituted council and, as the occasion arises, from their number elect a president and a vice-president of whom at least one must actively practise in the architectural profession and both must be registered persons. The president and vice-president hold office for the period that the council determines at the time of their election.

(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) If both the president and the vice-president are for any reason unable to preside at a council meeting, the members present must elect from their number a person to preside at that meeting. 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.

Decisions of council

7. (1) A decision taken by the council or an act performed under the authority of the council is not invalid by reason only of a vacancy on the council, or of the fact that a person who is not entitled to sit as a member of the council sat as a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of the members of the council who were present at the time and entitled to sit as members.

(2) A decision of the majority of the members of the council present at any meeting constitutes a decision of the council.

(3) In the event of an equality of votes the president has a casting vote in addition to a deliberative vote.

General powers of council

8. In addition to any other powers of the council in terms of this Act, the council may -

- (a) with regard to administrative matters -

- (i) appoint and remunerate a registrar and any other persons as the council considers necessary for the performance of its functions, and determine their functions;
 - (ii) determine the remuneration and allowances payable from the funds of the council to its members or of any committee of the council;
 - (iii) arrange for the payment of pension and other benefits to any official of the council and his or her dependants on the termination of the service of that official;
 - (iv) determine where its head office must be situated;
 - (v) 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 minutes of such meetings must be kept;
 - (vi) 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;
- (b) with regard to registration –
 - (i) subject to the provisions of this Act, consider and decide on any application for registration;
 - (ii) determine and prescribe the period of validity of the registration of a registered person;
 - (iii) keep a register of registered persons and decide on the form of the register and certificates to be kept, maintained or issued under this Act, the reviewing thereof and the manner in which alterations thereto may be effected;
- (c) with regard to fees –
 - (i) determine the application fees payable to the council;
 - (ii) determine the registration fees payable to the council;
 - (iii) determine the annual fees or portion thereof in respect of a part of a year, payable by registered persons to the council;
 - (iv) determine the date on which any fee or levy is payable;
 - (v) grant exemption from payment of application fees, registration fees, annual fees, levies, or a portion thereof;

- (vi) determine the fees (or any part thereof) payable to the council in respect of any examination referred to in section 12, conducted by or on behalf of the council;
- (vii) determine any levy payable to the council for the purposes of the education fund referred to in section 9(5);
- (viii) determine fees payable to the council in terms of an appointment referred to in paragraph (e)(iii);
- (ix) determine any other fee or levy it considers necessary;
- (d) with regard to education –
 - (i) conduct accreditation visits to any educational institution which has a department, school or faculty of architecture, but shall conduct at least one such visit every five years, and if the council does not conduct an accreditation visit within the five-year period due to circumstances beyond its control, it must notify the Minister accordingly;
 - (ii) grant, conditionally grant, refuse or withdraw accreditation of all educational institutions and its educational programmes with regard to architecture;
 - (iii) consult regularly with the Council on Higher Education established in terms of the Higher Education Act, 1997 (Act No. 101 of 1997), regarding matters relevant to education in architecture;
 - (iv) 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;
 - (v) establish mechanisms for registered persons to gain recognition of their qualifications and professional status in other countries;
 - (vi) 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 the view to the establishment of a Standards Generating Body in terms of those Regulations;
 - (vii) recognise or withdraw the recognition of any examination contemplated in section 12;

- (viii) 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;
 - (ix) 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;
 - (x) conduct any examination for the purposes of section 12;
 - (xi) determine conditions relating to and the nature and extent of continuing education and training;
- (e) in general –
- (i) acquire or hire such movable or immovable property as it considers necessary for the effective performance of its functions and maintain, let, sell or otherwise dispose of property acquired;
 - (ii) decide upon the manner in which contracts must be entered into on behalf of the council;
 - (iii) accept an appointment by any person or body of persons (including the State) to perform a service within its competence;
 - (iv) determine, subject to section 16, the requirements with which a voluntary association must comply to qualify for recognition by the council;
 - (v) advise the Minister, any other Minister or the CBE on any matter relating to the architectural profession;
 - (vi) encourage and itself undertake research into matters relating to the architectural profession;
 - (vii) take any steps which it considers necessary for the protection of the public in their dealings with registered persons, for the maintenance of the integrity, the enhancement of the status and the improvement of the standards of services rendered by those persons;
 - (viii) take any steps which it considers necessary to create an awareness amongst registered persons of the importance to protect the environment against unsound architectural practises;
 - (ix) determine and prescribe punitive measures with regard to disciplinary hearings conducted as contemplated in section 19(4), excluding the punitive measure of cancellation of registration;

- (x) take any measures it considers necessary for the proper performance of its functions or to achieve the objectives of this Act.

Funds of council and keeping and auditing of accounts

9. (1) The funds of the council consist of any money received by it in terms of this Act and all other monies which may accrue to the council from any other source.

(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;
- (d) mortgage any of its immovable property as security for a loan referred to in paragraph (b).

(3) The council may, from its funds, appropriate money for the remuneration of its members, committee members and officials.

(4) The council may finance any publication referred to in section 8.

(5) The council may establish and administer an education fund for the purpose of the education, training and continuing education and training of registered persons and students in the architectural profession.

(6) The council shall keep full and correct account of all monies received and expended by it.

(7) The council shall annually prepare a statement of income and expenditure and a balance sheet showing its financial position at the close of the financial year to which it relates, and shall 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). A copy of the audited statement and balance sheet must be open for inspection at the offices of the council.

(8) The council shall within six months from the close of each financial year, submit the audited statement and balance sheet to the Minister and shall 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 shall determine its financial year.
- (11) The council shall apply due care and diligence when investing such money or appropriating any expenditure from the funds of the council.

Reports to CBE

10. (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, 1999.
- (2) A copy of the report and the register referred to in section 8(b)(iii) 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.

Committees of council

11. (1) (a) The council may establish any 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) Any reference in this Act to the council, or to the president of the council, in relation to the exercise of any power which the council has delegated to a committee, must be construed as including a reference to that committee or to the chairperson of that committee, as the case may be.
- (3) The provisions of section 7, adjusted as may contextually be necessary, applies in respect of a committee of the council.

Registration

12. (1) The categories for registered persons in the architectural profession are:
- | | |
|-----------------|-------------------------------------|
| A. Professional | : Architect |
| | : Senior Architectural Technologist |
| | : Architectural Technologist |

- : Architectural Draughtsperson
 - B. Candidate
 - : Architect
 - : Senior Architectural Technologist
 - : Architectural Technologist
 - : Architectural Draughtsperson
 - C. Specified Categories
 - : As the council determines

(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 shall apply, in the prescribed manner, to the council for registration in a category contemplated in subsection (1). The prescribed registration fee and information must accompany the application.

(4) If, after consideration of an application, the council is satisfied that the applicant –

- (a) in the case of a professional or a person applying for registration in a specified category –
 - (i) has demonstrated his or her competence 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 candidate, or a person applying for registration as a candidate in a specified category, has proved that he or she has satisfied the relevant educational outcomes determined by the council for this purpose, by –
 - (i) passing accredited or recognised examinations at any educational institution offering educational programmes in architecture;
 - (ii) passing any other examinations that may be determined by the council; or
 - (iii) presenting evidence of prior learning,

the council must register the applicant in the relevant category and issue to him or her a registration certificate in the prescribed form.

(5) The council may refuse to register an applicant –

- (a) if the applicant has been removed from an office of trust on account of improper conduct;
- (b) if the applicant has been convicted of an offence and sentenced to imprisonment for a period exceeding three months or a fine as alternative thereto;

- (c) 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;
 - (d) for as long as the registration of the applicant is suspended as a result of any punishment imposed on him or her under this Act;
 - (e) 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.
- (6) The council may cancel the registration of a registered person if he or she –
- (a) becomes disqualified for registration as contemplated in subsection (5);
 - (b) has erroneously been registered, or has been registered on information subsequently proved to be false; or
 - (c) fails to pay the prescribed annual fee or portion thereof, within 60 days after it becomes due or within such further period as the council may, either before or after termination of the 60 days, allow. Despite the cancellation in terms of this paragraph, the person concerned remains liable for the payment of the due amount.
- (7) If a person who is registered as a candidate qualifies to be registered as a professional in terms of subsection (4)(a), the council must cancel his or her registration as a candidate.
- (8) The council must at the written request of any registered persons cancel his or her registration, but where an investigation into alleged improper conduct by that person is in progress or to be held, the registration may not be cancelled until that investigation has been concluded.
- (9) Subject to subsections (4) and (5) and section 13(2), the council must, on application register a person who was previously registered and whose registration was cancelled in terms of subsection (6)(c), if he or she –
- (a) has paid the prescribed application fee;
 - (b) has paid any arrear annual fee or portion thereof;
 - (c) has paid any expenses incurred by the council in connection with the recovery of any arrear fees; and
 - (d) has paid any penalties imposed on him or her by the council.
- (10) A person who is registered in any of the categories contemplated in subsection (1), may describe himself or herself and use the title "professional architect", "professional senior architectural technologist", "professional architectural technologist", "architectural draughtsperson", "candidate architect", "candidate senior architectural technologist", "candidate

architectural technologist", "candidate architectural draughtsperson" or the name for the specified category as determined by the council, as the case may be.

(11) The council may determine abbreviations or acronyms for the titles referred to in subsection (10).

(12) A person who is registered in the category of candidate shall -

- (a) only perform work in the architectural profession under the supervision and control of a professional; and
- (b) describe himself or herself as a candidate in all architectural reports or other documentation relating to his or her work in the architectural profession, prepared by him or her.

Renewal of registration

13. (1) A registered person must, at least three months prior to the expiry of his or her registration, as determined by the council in terms of section 8(b)(ii), apply in the prescribed manner to the council for the renewal of his or her registration in the applicable category.

(2) In addition to the provisions of section 12 which apply to the renewal of registration, adapted as may contextually be necessary, the council may determine conditions for the renewal of registration.

Return of registration certificate

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

Grievance procedure in relation to registration

15. (1) If an applicant is of the opinion that a committee of the council, in its refusal to register him or her, or to cancel his or her registration (other than a cancellation in terms of sections 12(6)(c) or 21(8)(a)), did not comply with section 33 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), that applicant may, on payment of the prescribed fees and within 30 days, appeal to the council against that decision.

- (2) The council must, at its first ensuing council meeting, but at least within 60 days after the receipt of the appeal, decide on the appeal and provide the appellant with reasons for its decision.
- (3) If an appeal lies 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.

Recognition of voluntary associations

- 16.** (1) The council shall 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 8(e)(iv), recognise that association and issue to it 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 shall display its certificate of recognition in a conspicuous place at its head office.
 - (6) The recognition of a voluntary association lapses if that association no longer complies with the requirements or at the expiry of the five-year period referred to in subsection (4).
 - (7) A voluntary association whose recognition has lapsed must on written demand return its certificate of recognition to the council.

Reservation of work

- 17.** (1) The council shall consult with all voluntary associations regarding the identification of certain kinds of architectural work to be reserved for registered persons.
- (2) After the process of consultation the council must submit recommendations to the CBE regarding the reservation of certain kinds of work, for their consideration and determination in terms of section 4 of the Council for the Built Environment Act, 1999.
 - (3) A person who is not registered in terms of this Act, may not -
 - (a) perform any kind of work reserved for any category of registered persons;
 - (b) pretend to be, or in any manner hold himself or herself out 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 12; or

(d) perform any act indicating, or calculated to lead persons to infer, that he or she is registered in terms of this Act.

(4) The provisions of subsection (3)(a) may not be construed as prohibiting any person from performing work reserved, if such work is performed in the service of or by order of and under the direction, control, supervision of or in a formal association with a registered person entitled to perform that reserved work and who shall assume responsibility for any work so performed.

(5) Notwithstanding the provisions of subsection (3), a person registered in terms of the -

(a) Town and Regional Planners Act, 1984 (Act No. 19 of 1984);

(b) Professional Land Surveyors and Technical Surveyors Act, 1984 (Act No. 40 of 1984);

(c) Construction Management Profession Act, 1999 (Act No. ... of 1999);

(d) Engineering Profession Act, 1999 (Act No. ... of 1999);

(e) Landscape Architectural Profession Act, 1999 (Act No. ... of 1999); or

(f) Quantity Surveying Profession Act, 1999 (Act No. ... of 1999),

may perform those elements of an architectural nature which is essential for the practising of his or her profession, if his or her education, training and experience render him or her competent to perform that work.

Professional conduct

18. (1) The council shall draw up a code of conduct for registered persons. The council shall consult with the CBE, voluntary associations and registered persons in drawing up that code.

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

(3) All registered persons shall comply with the code of conduct.

Investigation of charge of improper conduct

19. (1) When -

(a) a complaint of improper conduct is lodged against a registered person; or

(b) the council has reasonable grounds to suspect that a registered person is guilty of improper conduct,

the council must refer the matter to an investigating committee established in terms of section 11.

(2) The investigating committee must, in the prescribed manner, determine whether in its opinion the person concerned should be charged or not, and if so, what the contents of the charge in question should be.

(3) If the investigating committee is convinced that the person concerned should be charged and that, on *prima facie* evidence, conviction upon the charge may lead to the cancellation of the registration of the person concerned, the provisions of sections 20 to 23 apply.

(4) If the investigating committee is convinced that the person concerned should be charged and that, on *prima facie* evidence, conviction upon the charge will not lead to the cancellation of the registration of the person concerned, the disciplinary hearing must be conducted in the prescribed manner.

(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 set forth in the charge of improper conduct would, if proved, constitute the offence set forth 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.

Steps after investigation

20. (1) The investigating committee may charge a person referred to in section 19 with improper conduct, if it is of the opinion that sufficient grounds for a charge of improper conduct against that person exists.

(2) The investigating committee shall serve a charge sheet on the person concerned by hand or registered mail.

(3) A charge sheet must inform the person charged –

- (a) of the detail and the 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 admittance or denial submit a written explanation regarding the improper conduct with which he or she is charged; and
- (d) of the period (which period must be reasonable) within which his or her reaction in terms of paragraphs (b) and (c) must be submitted to the investigating committee.

(4) If the 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.

(5) If the person charged –

- (a) denies the charge; or
- (b) fails to comply with subsection (3),

the council must appoint a disciplinary tribunal to hear the charge.

(6) The disciplinary tribunal shall consist of at least –

- (a) a professional who has at least 10 years' experience;
- (b) a person qualified in law and who has at least 10 years' experience; and
- (c) a person who specialises in the area concerning the charge.

Hearing of charge of improper conduct

21. (1) The investigating committee may, for the purposes of this section, appoint a person to perform its functions.

(2) (a) The investigating committee may, for the purposes of a hearing, subpoena any person who in its opinion may be able to give material information concerning the subject of the hearing, or 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 that book, document or object.

(b) A subpoena to a person to appear before the disciplinary tribunal or to produce a book, document or object, must be signed by the investigating committee or the chairperson of the disciplinary tribunal and be served on that person by delivering or tendering it to him or her or by sending it by registered mail to him or her.

(c) The investigating committee may retain a book, document or object so produced, for the duration of the hearing.

(3) During a hearing the investigating committee may –

(a) lead evidence and advance arguments in support of the charge and cross-examine witnesses; and

(b) question any person who was or might have been subpoenaed in terms of subsection (1) and order him or her to produce any book, document or object in his or her possession or custody or under his or her control which the

investigating committee suspects or believes to have a bearing on the subject of the hearing.

(4) The chairperson of the disciplinary tribunal may call upon and administer an oath to or accept an affirmation from any person present at the hearing who was or might have been subpoenaed in terms of subsection (1).

(5) (a) A person who has been subpoenaed -

- (i) may not without sufficient cause, fail to attend the hearing at the time and place specified in the subpoena;
- (ii) must remain in attendance until excused by the chairperson of the disciplinary tribunal from further attendance;
- (iii) may not refuse to be sworn in or to be affirmed as a witness;
- (iv) may not, 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;
- (v) may not fail to produce any book, document or object in his or her possession which he or she has been required to produce.

(b) 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, applies, adjusted as may contextually be necessary, 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.

(c) A person 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.

(d) A person may not prevent another person from obeying 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.

(e) 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 such offence, unless the conviction has been set aside by a superior court.

(6) At a hearing the person charged has the right -

- (a) to be personally present, to be assisted or represented by another person, to give evidence and, either personally or through a representative –
 - (i) to be heard;
 - (ii) to call witnesses;
 - (iii) to cross-examine any person called as a witness in support of the charge; and
 - (iv) to have access to documents produced in evidence;
 - (b) despite the fact that he or she denied the charge or failed to react in terms of section 20(3), to admit at any time that he or she is guilty of the charge, in which case he or she is deemed to be guilty of improper conduct as charged;
 - (c) if the improper conduct with which he or she is charged amounts to an offence of which he or she was convicted by a court of law, to show cause why in his or her opinion he or she was wrongly convicted.
- (7) After the conclusion of the hearing the disciplinary tribunal must make a finding on the charge, and in the case of a finding of guilty, take cognisance of any aggravating or mitigating circumstances it may find.
- (8) (a) If the 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 person charged;
 - (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 person concerned for a period not exceeding one year; or
 - (iv) cancel the registration of the person concerned and remove his or her name from the register.
- (b) The disciplinary tribunal may take decisions under more than one of the subparagraphs of paragraph (a).
- (9) The disciplinary tribunal shall inform the person charged of its finding and of the person's right of appeal in terms of section 23.

Proceedings after hearing

22. (1) At the conclusion of the hearing the disciplinary tribunal shall notify the council of its finding.
- (2) The council may publish any finding and the sanction (if applicable) imposed in terms of section 21 in any manner it considers fit.

Appeal against decision of disciplinary tribunal

23. (1) A person charged may appeal to the CBE against a finding of guilty by the disciplinary tribunal or the sentence, or both, within 30 days after the disciplinary tribunal notified him or her of its decision in accordance with section 21(9).
- (2) If a person charged lodges an appeal in terms of subsection (1), the decision of the disciplinary tribunal under section 21 may not be affected before the CBE has decided the appeal in terms of section 18 of the Council for the Built Environment Act, 1999.

Professional fees

24. (1) The council shall, in consultation with the voluntary associations, formulate recommendations with regard to the principles referred to in section 4(k)(vi) of the Council for the Built Environment Act, 1999.
- (2) The council shall 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, feels aggrieved about that review, it may refer the matter to the Minister for a final decision.
- (5) Any person who feels aggrieved by the guideline professional fees published in terms of subsection (2), may bring the matter to the attention of the CBE.

Appeal against certain decisions of council

25. (1) Any person who feels aggrieved by a decision made by the council in the exercise of its powers in terms of this Act may –

- (a) within 30 days after that person became aware of the decision and on payment of the prescribed fees, request the council in writing to furnish him or her in writing with its reasons for that decision;
 - (b) within 90 days after the council has in accordance with paragraph (a) furnished him or her with its reasons for that decision and after notice to the council, appeal to the CBE against that decision in terms of section 18 of the Council for the Built Environment Act, 1999.
- (2) This section does not apply to any appeal or procedure contemplated in sections 15 and 23 or a decision in terms of section 12(6)(c).

Rules

26. The council may by notice in the *Gazette* make rules, not inconsistent with this Act, 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.

Procedure and evidence

27. (1) The register referred to in section 8(b)(iii) serves as *prima facie* 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 thing authorised by this Act to be done, has or has not been done, is *prima facie* 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.

Rectification of errors

28. When anything, which according to the provisions of 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.

Liability

29. (1) The council, any member, committee or official thereof, is not liable in respect of any legal proceedings in relation to an act performed in good faith.

(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 with respect to any legal proceedings in relation to a refusal, omission or information contemplated in this subsection.

(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.

Delegation of powers

30. (1) The Minister may delegate any of his or her powers in terms of this Act (excluding the power to appoint 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, excluding the power to hear an appeal in terms of section 15(2) (and whether discretionary or not) to a committee, an official or a member of the council, or any other person or body of persons.

(3) The registrar may delegate any of his or her powers in terms of this Act, to an official of the council.

Offences and Penalties

31. (1) A person convicted of an offence in terms of section 17(3), is liable to a maximum fine equal to double the remuneration received by him or her for work done in

contravention of section 17(3), or to a maximum fine equal to the fine calculated according to the ratio determined for three years imprisonment in terms of the Adjustment of Fines Act, 1991.

(2) A person who is convicted of an offence in terms of section 21(5)(a), (c) or (d), is liable to maximum 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.

(3) A person who is convicted of an offence in terms of any other section of this Act, is liable to a maximum fine calculated according to the ratio determined for a period of one month imprisonment in terms of the Adjustment of Fines Act, 1991.

Transitional provisions

32. (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 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 3.

(4) For the purpose of nominations referred to in section 3, the existing voluntary associations are deemed to be recognised in terms of section 16.

(5) Any person practising as an architectural technologist or an architectural draughtsperson 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 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) A maximum of a third of the members of the South African Council for Architects who are nominated by that council, remain in office for the first term of the council.

(8) 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.

- (9) Any notice issued or exemption granted by the Minister in terms of the Architects' Act, 1970, remains valid unless repealed under this Act.
- (10) 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.
- (11) 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.
- (12) 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.
- (13) At the end of the first term of the council 50 per cent of the members of the council must resign.

Repeal of laws

33. (1) 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.
- (2) In the Schedule any reference to the territory of the former Republic of South Africa must be construed as a reference to the territory of the Republic of South Africa as it was immediately before the commencement of the Constitution of the Republic of South Africa, 1996.

Act binding on State

34. This Act binds the State.

Short title and commencement

35. This Act is called the Architectural Profession Act, 1999 and commences on a date fixed by the President by Proclamation in the *Gazette*.

SCHEDULE

(Section 33)

No. and year of laws	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. 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. 29 of 1981	Act to Regulate the Professions of Engineering, Architecture and Quantity Surveying, 1981	The whole	Bophuthatswana
Act No. 14 of 1995	Periods of Office of Members of Councils for Architects, Engineers, Quantity Surveyors and Valuers Adjustment Act, 1995	The whole	

THE CONSTRUCTION MANAGEMENT PROFESSION BILL, 1999

BILL

To provide for the establishment of the South African Council for the Construction Management Profession, for the registration of professionals, candidates and specified categories; for the regulation of the relationship between the South African Council for the Construction Management Profession and the Council for the Built Environment; and to provide for related matters.

Definitions

1. In this Act, unless the context otherwise indicates -
 - (i) "accredit" means the process of evaluation and recognition of educational programmes offered by educational institutions relating to the construction management profession and "accreditation" has a corresponding meaning;
 - (ii) "candidate" means a person who is registered as such in terms of section 12;
 - (iii) "CBE" means the Council for the Built Environment established by section 2 of the Council for the Built Environment Act, 1999 (Act No. ... of 1999);
 - (iv) "council" means the South African Council for the Construction Management Profession established in terms of section 2;
 - (v) "department" means the national department responsible for public works;
 - (vi) "Minister" means the Minister responsible for public works;
 - (vii) "prescribe" means prescribe by rule made by the council under section 26, and "prescribed" has a corresponding meaning;

- (viii) "professional" means a person who is registered as such in terms of section 12;
- (ix) "registered person" means a person registered in terms of section 12;
- (x) "registrar" means the person appointed as registrar under section 8(a)(i);
- (xi) "registration" means the process of assessment of the competency of applicants and of entering the names of such persons into the register;
- (xii) "rule" means a rule made and in force under this Act;
- (xiii) "this Act" includes any notice, order or rule issued or made under this Act;
- (xiv) "voluntary association" means any voluntary association recognised by the council in terms of section 16.

Establishment of South African Council for the Construction Management Profession

2. The South African Council for the Construction Management Profession is established as a juristic person.

Composition of council

3. (1) The council consists of the following members, appointed by the Minister -
- (a) six registered persons (excluding candidates), of whom at least four must actively practise in the construction management profession, nominated by the voluntary associations.
 - (b) two professionals in the service of the State nominated by any level of government. One person so nominated must be in the service of the department;
 - (c) two members of the public or an organisation involved in the Built Environment, nominated through an open process of public participation;
- (2) When any nomination in terms of subsection 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 the period specified who qualify for nomination in terms of subsection (1)(a) or (b), respectively.

(3) When any nomination in terms of subsection 1(c) becomes necessary the council must invite the public by notice in the *Gazette* and any other newspaper the council considers necessary (but at least in a leading newspaper in each province), to nominate members for appointment to the council within the period specified in the notice.

(4) The period referred to in the invitation and the notice must be at least 60 days.

(5) If the council receives any nomination it must, within 30 days from the expiry date specified in the invitation and the notice, submit its recommendations to the Minister.

(6) The Minister shall, within 60 days after the receipt of the nominations from the outgoing council, appoint the council.

(7) If the council receives no or not sufficient nominations within the period specified in the invitation or the notice, the Minister may, after consultation with the council, appoint such persons who hold the qualifications necessary for appointment, up to the number required, to be members of the council in terms of the subsection concerned.

(8) The Minister shall, as soon as practicable after the appointment of the members of the council, publish the name of every person appointed as a member, together with the date from which the appointment takes effect and the period for which the appointment is made, by notice in the *Gazette*.

(9) The Minister shall, within 30 days from the appointment of the council, determine the time and place of its first meeting, but the council must determine the time and place of any future meeting.

Term of office of members of council

4. (1) Every member of the council appointed in terms of section 3, holds office for a period of four years, but continues to hold office after the expiration of the period for which that member was appointed, for a further period, until the succeeding council is properly constituted.

(2) If a member of the council dies or vacates his or her office before the expiration of the period for which he or she was appointed, the Minister may, subject to the provisions of section 5(1), and after consultation with the council, appoint a person to fill the vacancy for the unexpired portion of the period for which that member was appointed. If the Minister appoints a person in the vacant seat, the appointment must be made within 60 days from the date on which the vacancy occurred.

- (3) A member of the council may not serve for more than two consecutive terms of office.
- (4) Notwithstanding the provisions of subsection (1), the Minister may by notice in the *Gazette*, after consultation with the council, extend or terminate the period of office of all the members of the council. If the Minister extends the period of offices, that extension may be for a further period of six months, but he or she may only extend the period of office twice. If the Minister terminates the period of office he or she may only do so if a new council has been appointed, on nominations invited by the Minister, to take over the functions of the council concerned.

Persons disqualified from membership of council and vacation of office

- 5. (1) A person may not be appointed as a member of the council if that person -
 - (a) is not a South African citizen;
 - (b) is an unrehabilitated insolvent;
 - (c) has been convicted of an offence and sentenced to imprisonment for a period exceeding three months or a fine as alternative thereto;
 - (d) has, as a result of improper conduct, been removed from an office of trust;
 - (e) has in terms of this Act been found guilty by the council of improper conduct; or
 - (f) is not, in the case of members referred to in section 3(1)(a) and (b), 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 3(1)(a) and ceases to be associated with the body that nominated him or her, and if that disassociation affects the ratio of the membership referred to in section 3(1);
 - (f) is appointed in terms of section 3(1)(b) and ceases to be a person employed by the State; or
 - (g) ceases to be permanently resident in the Republic of South Africa.

Election of president and vice-president of council

6. (1) The members of the council shall at the first meeting of every newly constituted council and, as the occasion arises, from their number elect a president and a vice-president, of whom at least one must actively practise in the construction management profession and both must be registered persons. The president and the vice-president hold office for the period that the council determines at the time of their election.

(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) If both the president and the vice-president are for any reason unable to preside at a council meeting, the members present must elect from their number a person to preside at that meeting. 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.

Decisions of council

7. (1) In the event of an equality of votes, the president has a casting vote in addition to a deliberative vote.

(2) A decision taken by the council or an act performed under authority of the council is not invalid by reason only of a vacancy on the council, or of the fact that a person who is not entitled to sit as a member of the council sat as a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of the members of the council who were present at the time and entitled to sit as members.

(3) A decision of the majority of the members of the council present at any meeting constitutes a decision of the council.

General powers of council

8. In addition to any other powers of the council in terms of this Act, the council may -

(a) with regard to administrative matters -

- (i) appoint and remunerate, a registrar and any other persons as the council considers necessary for the performance of its functions, and determine their functions;
 - (ii) determine the remuneration and allowances payable from the funds of the council to its members or of any committee of the council;
 - (iii) arrange for the payment of pension and other benefits to any official of the council and his or her dependants on the termination of the service of that official;
 - (iv) determine where its head office must be situated;
 - (v) 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 minutes of such meetings must be kept;
 - (vi) print, circulate, sell and administer the publication of, and generally take any steps necessary to publish, any publication relating to the construction management profession and related matters;
- (b) with regard to registration –
- (i) subject to the provisions of this Act, consider and decide on any application for registration;
 - (ii) determine and prescribe the period of validity of the registration of a registered person;
 - (iii) keep a register of the registered persons and decide on the form of the register and certificates to be kept, maintained or issued under this Act, the reviewing thereof and the manner in which alterations thereto may be effected;
- (c) with regard to fees –
- (i) determine the application fees payable to the council;
 - (ii) determine the registration fees payable to the council;
 - (iii) determine the annual fees or portion thereof in respect of a part of a year, payable by registered persons to the council;
 - (iv) determine the date on which any fee or levy is payable;
 - (v) grant exemption from payment of application fees, registration fees, annual fees, levies or portion thereof;

- (vi) determine the fees (or part thereof) payable to the council in respect of any examination referred to in section 12, conducted by or on behalf of the council;
- (vii) determine any levy payable to the council for the purposes of the education fund referred to in section 9(5) determine the registration fees payable to the council;
- (viii) determine fees payable to the council in terms of an appointment referred to in paragraph (f)(iii);
- (ix) determine any other fee or levy it considers necessary;
- (d) with regard to education –
 - (i) conduct accreditation visits to any educational institution which has a department, school or faculty which has a construction management education programme, but shall conduct at least one such visit every five years, and if the council does not conduct an accreditation visit within the five-year period, due to circumstances beyond its control, it must notify the Minister accordingly;
 - (ii) grant, conditionally grant, refuse or withdraw accreditation of all educational institutions and their educational programmes in construction management;
 - (iii) consult regularly with the Council on Higher Education established in terms of the Higher Education Act, 1997 (Act No. 101 of 1997), regarding matters relevant to education in construction management;
 - (iv) 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 association to determine competency standards for the purpose of registration;
 - (v) establish mechanisms for registered persons to gain recognition of their qualifications and professional status in other countries; and
 - (vi) 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 the view to the establishment of a Standards Generating Body in terms of those Regulations.
 - (vii) recognise or withdraw the recognition of any examination contemplated in section 12;

- (viii) 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;
 - (ix) 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;
 - (x) conduct any examination for the purposes of section 12;
 - (xi) determine conditions relating to and the nature and extent of continuing education and training.
- (e) in general –
- (i) acquire or hire such movable or immovable property as it considers necessary for the effective performance of its functions and maintain, let, sell or otherwise dispose of property acquired;
 - (ii) decide upon the manner in which contracts must be entered into on behalf of the council;
 - (iii) accept an appointment by any person or body of persons (including the State) to perform a service within its competence;
 - (iv) advise the Minister, any other Minister or the CBE on any matter relating to the construction management profession;
 - (v) encourage and itself undertake research into matters relating to the construction management profession;
 - (vi) determine, the requirements with which a voluntary association must comply to qualify for recognition by the council;
 - (vii) take any steps which it considers expedient for the protection of members of the public in their dealings with registered persons, for the maintenance of the integrity, the enhancement of the status and the improvement of the standards of services rendered by those persons;
 - (viii) take any steps which it considers necessary to create an awareness amongst registered persons of the importance to protect the environment against unsound construction management practises;
 - (ix) take any steps which it considers necessary, where, as a result of construction management related undertakings, the public health and safety is prejudiced;

- (x) determine and prescribe punitive measures with regard to disciplinary hearings conducted as contemplated in section 19(4), excluding the punitive measure of cancellation of registration;
- (xi) take any measures it considers necessary for the proper performance of its functions or to achieve the objectives of this Act.

Funds of council and keeping and auditing of accounts

9. (1) The funds of the council consist of any money received by it in terms of this Act, and all other monies, which may accrue to the council from any other source.
- (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 construction management profession, lend money against such security as the council considers adequate;
 - (d) mortgage any of its immovable property as security for a loan referred to in paragraph (b).
- (3) The council may, from its funds, appropriate money for the remuneration of its members, committee members and officials.
- (4) The council may finance any publication referred to in section 8.
- (5) The council may establish and administer an education fund for the purpose of the education, training and continuing education and training of registered persons and students in the construction management profession.
- (6) The council shall keep full and correct account of all monies received and expended by it.
- (7) The council shall annually prepare a statement of income and expenditure and a balance sheet showing its financial position at the close of the financial year to which it relates, and shall 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). A copy of the audited statement and balance sheet must be open for inspection at the offices of the council.
- (8) The council shall, within six months from the close of each financial year submit the audited statement and balance sheet to the Minister, and shall 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 shall determine its financial year.
- (11) The council shall apply due care and diligence in investing any money or appropriating any expenditure from the funds of the council.

Reports to CBE

10. (1) The council shall, within six months from the close of each financial year, provide the CBE with a report regarding to its activities during that financial year for the purpose of section 4 of the Council for the Built Environment Act, 1999.
- (2) A copy of the report and the register referred to in section 8(b)(iii) must be open for inspection at the offices of the council.
- (3) The council shall, on request by the CBE, provide the CBE with any information regarding a registered person

Committees of council

11. (1) (a) The council may establish any 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) Any reference in this Act to the council, or to the president of the council, in relation to the exercise of any power which the council has delegated to a committee, must be construed as including a reference to that committee or to the chairperson of that committee, as the case may be.
- (3) The provisions of section 7, adjusted as may contextually be necessary, applies in respect of a committee of the council.

Registration

12. (1) The categories for registered persons in the construction management profession are:

- | | | |
|-------------------------|---|------------------------------|
| A. Professional | : | Construction Manager |
| | : | Construction Project Manager |
| B. Candidate | : | Construction Manager |
| | : | Construction Project Manager |
| C. Specified categories | : | As the council determines |

(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 shall apply, in the prescribed manner, to the council for registration in a category contemplated in subsection (1). The prescribed registration fee and information must accompany the application.

(4) If, after consideration of an application, the council is satisfied that the applicant -

(a) in the case of a professional or a person applying for registration in a specified category -

- (i) has demonstrated his or her competence 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 candidate or a person applying for registration as a candidate in a specified category, proved that he or she has satisfied the relevant educational outcomes determined by the council for this purpose, by -

- (i) passing accredited or recognised examinations at any educational institution offering educational programmes in construction management;
- (ii) passing any other examinations that may be determined by the council; or
- (iii) presenting evidence of prior learning,

the council must register the applicant in the relevant category and issue to him or her a registration certificate in the prescribed form.

(5) The council may refuse to register an applicant -

- (a) if the applicant has been convicted of an offence and sentenced to imprisonment for a period exceeding three months, or a fine as alternative thereto;

- (b) 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;
 - (c) for as long as the registration of the applicant is suspended as a result of any punishment imposed on him or her under this Act.
 - (d) if the applicant has been removed from an office of trust on account of improper conduct
 - (e) 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
- (6) The council may cancel the registration of a registered person if he or she -
- (a) becomes disqualified for registration as contemplated in subsection (5);
 - (b) has erroneously been registered, or has been registered on information subsequently proved to be false; or
 - (c) fails to pay the prescribed annual fee or portion thereof, within 60 days after it becomes due or within such further period as the council may, either before or after termination of the 60 days, allow. Despite the cancellation in terms of this paragraph, the person concerned remains liable for the payment of the due amount.
- (7) If a person who is registered as a candidate, qualifies to be registered as a professional in terms of subsection (4)(a), the council must cancel his or her registration as a candidate.
- (8) The council must at the written request of any professional or candidate cancel his or her registration, but where an investigation into alleged improper conduct by that person is in progress or to be held, the registration may not be cancelled until that investigation has been concluded.
- (9) Subject to subsections (4) and (5) and section 13(2), the council must, on application register a person who was previously registered and whose registration was cancelled in terms of subsection (6)(c), if he or she -
- (a) has paid the prescribed application fee;
 - (b) has paid any arrear annual fee or portion thereof;
 - (c) has paid any expenses incurred by the council in connection with the recovery of any arrear fees;
 - (d) has paid any penalties imposed on him or her by the council.
- (10) A person who is registered in any of the categories referred to in subsection (1), may describe himself or herself and use the title -

- (a) "professional construction manager";
- (b) "professional construction project manager";
- (c) "candidate construction manager;
- (d) "candidate construction project manager";
- (e) the name for the specified category, as determined by the council,

as the case may be.

(11) The council may determine abbreviations or acronyms for the titles referred to in subsection (10).

(12) A person who is registered in the category of candidate shall -

- (a) only perform work in the construction management profession under the supervision and control of a professional; and
- (b) describe himself or herself as a candidate in all construction management or project management reports or other documentation relating to his or her work in the construction management profession, prepared by him or her.

Renewal of registration

13. (1) A registered person must, at least three months prior to the expiry of his or her registration, as determined by the council in terms of section 8(b)(ii), apply in the prescribed manner to the council for the renewal of his or her registration in the applicable category.

(2) In addition to the provisions of section 12, which apply to the renewal of registration, adapted as may contextually be necessary, the council may determine conditions for the renewal of registration.

Return of registration certificate

14. Any person whose registration has been cancelled, 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.

Grievance procedure in relation to registration or fees

15. (1) If a committee of the council refuses to register a person or cancels his or her registration (other than a cancellation in terms of sections 12(6)(c) or 21(8)(a)), that person may,

on payment of the prescribed fee and within 30 days, appeal to the council against that decision.

(2) The council must, at its first ensuing meeting but at least 60 days after the receipt of the appeal, decide on the appeal and provide the appellant with reasons for its decision.

(3) If an appeal lies against the 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.

Recognition of voluntary associations

16. (1) The council shall 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 8(e)(vi), recognise that association and issue to it a certificate of recognition.

(4) A certificate of recognition is valid for a period of five years from the date of issue.

(5) The recognition of a voluntary association lapses if that association no longer complies with the approved requirements or at the expiry of the five-year period referred to in subsection (4).

(6) A voluntary association whose recognition has lapsed must on written demand return its certificate of recognition to the council.

(7) A voluntary association must display its certificate of recognition in a conspicuous place at its head office.

Reservation of work

17. (1) The council shall consult with all voluntary associations recognised in terms of this Act regarding the identification of certain kinds of work in connection with construction management to be reserved for registered persons.

(2) After the process of consultation the council must submit recommendations to the CBE, regarding the reservation of certain kinds of work, for their consideration and determination in terms of section 4 of the Council for the Built Environment Act, 1999.

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

- (a) perform any kind of work reserved for any category of registered persons in terms of this section;
 - (b) pretend to be, or in any manner hold himself or herself out 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 12; or
 - (d) perform any act indicating, or calculated to lead persons to infer, that he or she is registered in terms of this Act.
- (4) The provisions of subsection (3)(a) may not be construed as prohibiting any person from performing work reserved, if such work is performed in the service of or by order of and under the direction, control, supervision of or in a formal association with a registered person entitled to perform that reserved work and who shall assume responsibility for any work so performed.

Professional conduct

18. (1) The council shall draw up a code of conduct for registered persons. The council shall consult with the CBE, the voluntary associations and all persons registered in terms of this Act in drawing up that code.
- (2) The council is responsible for administering the code of conduct and shall ensure that the code is available to all members of the public at all reasonable times. The council shall provide the CBE with a copy of the code.
- (3) All registered persons shall comply with the code of conduct.

Investigation of charge of improper conduct

19. (1) When -
- (a) a complaint of improper conduct is lodged against a registered person; or
 - (b) the council has reasonable grounds to suspect that a registered person is guilty of improper conduct,
- the council must refer the matter to an investigating committee, established in terms of section 11.
- (2) The investigating committee must in the prescribed manner determine whether in its opinion the person concerned should be charged or not, and if so, what the contents of the charge in question should be.

- (3) If, the investigating committee is convinced that the person concerned should be charged and, on *prima facie* evidence, that conviction upon the charge may lead to the cancellation of the registration of the person concerned, the provisions of sections 20 to 23 apply.
- (4) If the investigating committee is convinced that the person concerned should be charged and, on *prima facie* evidence, that conviction upon the charge will not lead to the cancellation of the registration of the person concerned, the disciplinary hearing must be conducted in the prescribed manner.
- (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 set forth in the charge of improper conduct would, if proved, constitute the offence set forth 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.

Steps after investigation

20. (1) The investigating committee may charge a person referred to in section 19 with improper conduct, if the investigating committee is of the opinion that sufficient grounds for a charge of improper conduct against that person exists.
- (2) The investigating committee shall serve a charge sheet on the person concerned by hand or registered mail.
- (3) A charge sheet must inform the person charged –
- (a) of the detail and the 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 admittance or denial submit a written explanation regarding the improper conduct with which he or she is charged; and
 - (d) of the period (which period must be reasonable) within which his or her reaction in terms of paragraphs (b) and (c) must be submitted to the investigating committee.
- (4) If the 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.
- (5) If the person charged –
- (a) denies the charge; or

(b) fails to comply with subsection (3),
the council must appoint a disciplinary tribunal to hear the charge.

(6) The disciplinary tribunal shall consist of at least -

- (a) a professional who has at least 10 years' experience;
- (b) a person qualified in law and who has at least 10 years experience; and
- (c) a person who specialises in the area concerning the charge.

Hearing of charge of improper conduct

21. (1) The investigating committee may, for the purposes of this section appoint a person to perform its functions.

- (2) (a) The investigating committee may, for the purposes of a hearing, subpoena any person who its opinion may be able to give material information concerning the subject of the hearing, or 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 that book, document or object.
 - (b) A subpoena to a person to appear before the disciplinary tribunal or to produce a book, document or object, must be signed by the investigating committee or the chairperson of the disciplinary tribunal and be served on that person by delivering or tendering it to him or her or by sending it by registered mail to him or her.
 - (c) The investigating committee may retain a book, document or object so produced, for the duration of the hearing.
- (3) During a hearing an investigating committee may -
- (a) lead evidence and advance arguments in support of the charge and cross-examine witnesses; and
 - (b) question any person who was or might have been subpoenaed in terms of subsection (1) and order him or her to produce any book, document or object in his or her possession or custody or under his or her control which the investigating committee suspects or believes to have a bearing on the subject of the hearing.

- (4) The chairperson of the disciplinary tribunal may call upon and administer an oath to or accept an affirmation from any person present at the hearing who was or might have been subpoenaed in terms of subsection (1).
- (5) (a) A person who has been subpoenaed -
- (i) may not, without sufficient cause, fail to attend the hearing at the time and place specified in the subpoena;
 - (ii) must remain in attendance until excused by the chairperson of the disciplinary tribunal from further attendance;
 - (iii) may not refuse to be sworn in or to be affirmed as a witness;
 - (iv) may not, 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;
 - (v) may not fail to produce any book, document or object in his or her possession which he or she has been required to produce.
- (b) The law relating to privilege, adjusted as may contextually be necessary, 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, applies 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.
- (c) A person 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.
- (d) A person may not prevent another person from obeying 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.
- (e) 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.
- (6) At a hearing the person charged has the right -
- (a) to be personally present, to be assisted or represented by another person, to give evidence and, either personally or through a representative -

- (i) to be heard;
 - (ii) to call witnesses;
 - (iii) to cross-examine any person called as a witness in support of the charge; and
 - (iv) to have access to documents produced in evidence;
 - (b) despite the fact that he or she denied the charge or failed to react in terms of section 20(3), to admit at any time that he or she is guilty of the charge, in which case he or she is deemed to be guilty of improper conduct as charged;
 - (c) if the improper conduct with which he or she is charged amounts to an offence of which he or she was convicted by a court of law, to show cause why in his or her opinion he or she was wrongly convicted.
- (7) After the conclusion of the hearing the disciplinary tribunal must make a finding on the charge and in the case of a finding of guilty, take cognisance of any aggravating or mitigating circumstances.
- (8) (a) If the person charged is found guilty of the 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 person charged;
 - (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 person concerned for a period not exceeding one year; or
 - (iv) cancel the registration of the person concerned, and remove his or her name from the register.
- (b) The disciplinary tribunal may take decisions under more than one of the subparagraphs of paragraph (a).
- (9) The disciplinary tribunal shall inform the person charged of its finding and of the person's right of appeal in terms of section 23.

Proceedings after hearing

- 22.** (1) At the conclusion of the hearing the disciplinary tribunal shall notify the council of its finding.

- (2) The council may publish any finding and the sanction (if applicable) imposed in terms of section 21 in any manner it considers fit.

Appeal against decision of disciplinary tribunal

23. (1) A person charged may appeal to the CBE against a finding of guilty by the disciplinary tribunal, or the sentence, or both, within 30 days after the disciplinary tribunal notified him or her of its decision in accordance with section 21(9).

(2) If a person charged lodges an appeal in terms of subsection (1), the decision of the disciplinary tribunal under section 21 may not be put into effect before the CBE has decided the appeal in terms of section 18 of the Council for the Built Environment Act, 1999.

Professional fees

24. (1) The council shall, in consultation with the voluntary associations, formulate recommendations with regard to the principles referred to in section 4(k)(vi) of the Council for the Built Environment Act, 1999.

(2) The council shall 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, feels aggrieved about that review, it may refer the matter to the Minister for a final decision.

(5) Any person, who feels aggrieved by the guideline professional fees published in terms of subsection (2), may bring the matter to the attention of the CBE.

Appeal against certain decisions of council

25. (1) Any person who feels aggrieved by a decision made by the council in the exercise of its powers in terms of this Act may –

- (a) within 30 days after that person became aware of the decision and on payment of the prescribed fees, request the council in writing to furnish him or her in writing with its reasons for that decision;

- (b) within 90 days after the council has in accordance with paragraph (a) furnished him or her with its reasons for that decision and after notice to the council, appeal to the CBE against that decision in terms of section 18 of the Council for the Built Environment Act, 1999.
- (2) This section does not apply to any appeal contemplated in sections 15 and 23, or a decision referred to in section 12(6)(c).

Rules

26. The council may by notice in the *Gazette* make rules, not inconsistent with this Act, 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 duty imposed by this Act.

Procedure and evidence

27. (1) The register referred to in section 8(b)(iii) serves as *prima facie* 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 thing authorised by this Act to be done, has or has not been done, is *prima facie* 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.

Rectification of errors

28. When anything which, according to the provisions of 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.

Liability

29. (1) The council, any member, committee or official thereof is not liable in respect of any legal proceedings in relation to an act performed in good faith.

(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 with respect to any legal proceedings in relation to a refusal, omission or information contemplated in this section.

(3) Any person who was registered in terms of this Act, and whose registration was cancelled, is liable for any act taken or omission to act by him or her while he or she was registered.

Delegation of powers

30. (1) The Minister may delegate any of his or her powers in terms of this Act (excluding the power to appoint 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, excluding the power to hear an appeal in terms of section 15(2) (and whether discretionary or not) to a committee, an official or a member of the council or any other person or body of persons.

(3) The registrar may delegate any of his or her powers in terms of this Act to an official of the council.

Offences and Penalties

31. (1) A person convicted of an offence in terms of section 17(3), is liable to a maximum fine equal to double the remuneration received by him or her for work done in contravention of section 17(3), or to a maximum fine equal to the fine calculated according to the ratio determined for three years imprisonment in terms of the Adjustment of Fines Act, 1991.

(2) A person who is convicted of an offence section 21(5)(a), (c) or (d), is liable to a maximum fine equal to the fine calculated according to the ratio determined for three years imprisonment in terms of the Adjustment of Fines Act, 1991.

(3) A person who is convicted of an offence in terms of any other section of this Act, is liable to a maximum fine calculated according to the ratio determined for a period of one month imprisonment in terms of the Adjustment of Fines Act, 1991.

Transitional provisions

32. (1) Any person practising in any of the categories determined in section 12, may continue to practise 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 nominations referred to in section 3, the existing voluntary associations are deemed to be recognised in terms of section 16.

(3) Any person nominated in terms of section 3 to serve on the council, is deemed to be registered for the purpose of that section and section 4.

(4) The Minister shall, within 30 days from the commencement of this Act, invite nominations as contemplated in section 3.

(5) At the end of the first term of office of the council, fifty percent of the members of the council must resign.

Act binding on State

33. This Act binds the State.

Short title and commencement

34. This Act is called the Construction Management Profession of South Africa Act, 1999 and commences on a date fixed by the President by Proclamation in the *Gazette*.

THE ENGINEERING PROFESSION BILL, 1999

BILL

To provide for the establishment of the Council for the Engineering Profession, for the registration of professionals, candidates and specified categories; for the regulation of the relationship between the South African Council for the Engineering Profession and the Council for the Built Environment; and to provide for related matters.

Definitions

1. In this Act, unless the context otherwise indicates -

- (i) "accredit" means the process of evaluation and recognition of educational programmes offered by educational institutions relating to the engineering profession and "accreditation" has a corresponding meaning;**
- (ii) "candidate" means a person who is registered as such in terms of section 12;**
- (iii) "CBE" means the Council for the Built Environment established by section 2 of the Council for the Built Environment Act, 1999 (Act No. ... of 1999);**
- (iv) "chief executive officer" means the person appointed as chief executive officer under section 8(a)(i);**
- (v) "council" means the South African Council for the Engineering Profession established by section 2;**
- (vi) "department" means the national department responsible for public works;**
- (vii) "Minister" means the Minister responsible for public works;**

- (viii) "prescribe" means prescribe by rule made by the council under section 26, and "prescribed" has a corresponding meaning;
- (ix) "professional" means a person who is registered as such in terms of section 12;
- (x) "registered person" means a person registered in terms of section 12;
- (xi) "registration" means the process of assessment of competency of applicants for the purpose of registration under this Act;
- (xii) "rule" means a rule made and in force under this Act;
- (xiii) "this Act" includes any notice, order or rule issued or made under this Act;
- (xiv) "voluntary association" means any voluntary association recognised by the council in terms of section 16.

Establishment of South African Council for the Engineering Profession

2. The South African Council for the Engineering Profession is established as a juristic person.

Composition of council

3. (1) The council consists of the following members, appointed by the Minister -
- (a) 30 registered persons (excluding candidates) –
 - (i) of whom 20 must actively practise in the engineering profession;
 - (ii) who must be nominated by the voluntary associations and other prescribed nominating bodies;
 - (iii) who must represent the categories of registered persons as determined in section 12 in the prescribed manner;
 - (iv) who must represent the different branches in the engineering profession in the prescribed manner.

- (b) ten professionals, of whom at least six must be registered persons, in the service of the State nominated by any level of government. At least one the persons so nominated must be in the service of the department and nominated by the department;
 - (c) ten members of the public nominated through an open process of public participation;
- (2) The nominating bodies contemplated in subsection (1)(a)(ii) must be determined in consultation with the CBE.
- (3) When any nomination in terms of subsection 1(a) or (b) becomes necessary, the council must invite registered persons, the prescribed voluntary associations and nominating bodies and the State, in the prescribed manner, to nominate, within the period specified, qualify for nomination in terms of subsection (1)(a) or (b), respectively.
- (4) When any nomination in terms of subsection 1(c) becomes necessary the council must invite the public by notice in the *Gazette* and any other newspaper the council considers necessary (but at least in a leading newspaper in each province), to nominate members for appointment to the council within the period specified in the notice.
- (5) The period referred to in the invitation and the notice must be at least 60 days.
- (6) If the council receives any nomination it must, within thirty days from the expiry date specified in the invitation and the notice, submit its recommendations to the Minister.
- (7) The Minister shall, within 60 days after the receipt of the nominations from the outgoing council, appoint the council.
- (8) If the council receives no or not sufficient nominations within the period specified in the invitation or the notice, the Minister may, after consultation with the council, appoint such persons who hold the qualifications necessary for appointment, up to the number required, to be members of the council in terms of the subsection concerned.
- (9) The Minister shall, as soon as practicable after the appointment of the members of the council, publish the name of every person appointed as a member, together with the date from which the appointment takes effect and the period for which the appointment is made, by notice in the *Gazette*.
- (10) The Minister shall, within 30 days from the appointment of the council, determine the time and place of its first meeting and the council shall determine the time and place of any future meeting.

Term of office of members of council

4. (1) Every member of the council appointed in terms of section 3, holds office for a period of four years, but continues to hold office after the expiration of the period for which that member was appointed, until the succeeding council is properly constituted.
- (2) If a member of the council dies or vacates his or her office before the expiration of the period for which he or she was appointed, the Minister may, subject to the provisions of section 5(1), and after consultation with the council, appoint a person to fill the vacancy for the unexpired portion of the period for which that member was appointed. If the Minister appoints a person for the vacant seat, the appointment must be made within 60 days from the date on which the vacancy occurred.
- (3) A member of the council may not serve for more than two consecutive terms of office.
- (4) Notwithstanding the provisions of subsection (1), the Minister may by notice in the *Gazette*, after consultation with the council, extend or terminate the period of office of all the members of the council. If the Minister extends the period of offices, that extension may be for a further period of six months, but he or she may only extend the period of office twice. If the Minister terminates the period of office he or she may only do so if a new council has been appointed, on nominations invited by the Minister, to take over the functions of the council concerned.

Persons disqualified from membership of council and vacation of office

5. (1) A person may not be appointed as a member of the council if that person -
- (a) is not a South African citizen;
 - (b) is an unrehabilitated insolvent;
 - (c) has been convicted of an offence and sentenced to imprisonment for a period exceeding three months, or a fine as alternative thereto;
 - (d) has, as a result of improper conduct, been removed from an office of trust;
 - (e) has in terms of this Act been found guilty by the council of improper conduct; or
 - (f) is not, in the case of persons referred to in section 3(1)(a) and (b), if applicable, 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 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 leave of the council, been absent from more than two consecutive meetings of the council;
- (e) is appointed in terms of section 3(1)(a) and is no longer associated with the body who nominated him or her, and if that disassociation affects the ratio of the membership referred to in section 3(1);
- (f) is appointed in terms of section 3(1)(b) and ceases to be a person employed by the State; or
- (g) ceases to be permanently resident in South Africa.

Election of president and vice-president of council

6. (1) The members of the council shall at the first meeting of every newly constituted council and, as the occasion arises, from their number elect a president and a vice-president, of whom at least one must actively practise in the engineering profession and both must be registered persons. The president and the vice-president hold office for the period that the council determines at the time of their election.

(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) If both the president and the vice-president are for any reason unable to preside at a council meeting, the members present must elect from their number a person to preside at that meeting. 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.

Decisions of council

7. (1) In the event of an equality of votes, the president has a casting vote in addition to a deliberative vote.

(2) A decision taken by the council or an act performed under authority of the council is not invalid by reason only of a vacancy on the council, or of the fact that a person who is not entitled to sit as a member of the council sat as a member at the time when the decision was taken or

the act was authorised, if the decision was taken or the act was authorised by the requisite majority of the members of the council who were present at the time and entitled to sit as members.

(3) A decision of the majority of the members of the council present at any meeting constitutes a decision of the council.

General powers of council

8. In addition to any other powers of the council in terms of this Act, the council may -

- (a) with regard to administrative matters -
 - (i) appoint and remunerate a chief executive officer and any other persons as the council considers necessary for the performance of its functions, and determine their functions;
 - (ii) determine the remuneration and allowances payable from the funds of the council to its members or of any committee of the council;
 - (iii) arrange for the payment of pension and other benefits to any official of the council and his or her dependants on the termination of the service of that official;
 - (iv) determine where its head office must be situated;
 - (v) 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 minutes of such meetings must be kept;
 - (vi) 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;
- (b) with regard to registration -
 - (i) subject to the provisions of this Act, consider and decide on any application for registration;
 - (ii) determine and prescribe the period of validity of the registration of a registered person;
 - (iii) keep a register of registered persons and decide on the form of the register and certificates to be kept, maintained or issued under this Act,

the reviewing thereof and the manner in which alterations thereto may be effected;

(c) with regard to fees –

- (i) determine the application fees payable to the council;
- (ii) determine the registration fees payable to the council;
- (iii) determine the annual fees or portion thereof in respect of a part of a year, payable by registered persons to the council;
- (iv) determine the date on which any fee or levy is payable;
- (v) grant exemption from payment of application fees, annual fees, registration fees, levies or portion thereof;
- (vi) determine the fees (or part thereof) payable to the council in respect of any examination referred to in section 12, conducted by or on behalf of the council;
- (vii) determine any levy payable to the council for the purposes of the education fund referred to in section 9(5);
- (viii) determine fees payable to the council in terms of an appointment referred to in paragraph (e)(iii);
- (ix) determine any other fee or levy it considers necessary;

(d) with regard to education –

- (i) conduct accreditation visits to any educational institution which has a department, school or faculty of engineering, but shall conduct at least one such visit every five years, and if the council does not conduct an accreditation visit within the five-year period due to circumstances beyond its control, it must notify the Minister accordingly;
- (ii) grant, conditionally grant, refuse or withdraw accreditation of all tertiary educational institutions and its educational programmes with regard to engineering;
- (iii) consult regularly with the Council on Higher Education established in terms of the Higher Education Act, 1997 (Act No. 101 of 1997), regarding matters relevant to education in engineering;
- (iv) 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 relevant sector in the engineering

- profession to determine competency standards for the purpose of registration;
 - (v) establish mechanisms for registered persons to gain recognition of their qualifications and professional status in other countries;
 - (vi) 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 the view to the establishment of a Standards Generating Body in terms of those Regulations.
 - (vii) recognise or withdraw the recognition of any examination contemplated in section 12;
 - (viii) 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;
 - (ix) 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;
 - (x) conduct any examination for the purposes of section 12;
 - (xi) determine conditions relating to and the nature and extent of continuing education and training.
- (e) in general –
- (i) acquire or hire such movable or immovable property as it considers necessary for the effective performance of its functions and maintain, let, sell or otherwise dispose of property acquired;
 - (ii) decide upon the manner in which contracts must be entered into on behalf of the council;
 - (iii) accept an appointment by any person or body of persons (including the State) to perform a service within its competence;
 - (iv) advise the Minister, any other Minister or the CBE on any matter relating to the engineering profession;
 - (v) encourage and itself undertake research into matters relating to the engineering profession;
 - (vi) determine, subject to section 16, the requirements with which a voluntary association must comply to qualify for recognition by the council;

- (vii) take any steps which it considers expedient for the protection of the public in their dealings with registered persons, for the maintenance of the integrity, the enhancement of the status, and the improvement of the standards of services rendered by those persons;
- (viii) take any steps which it considers necessary to create an awareness amongst registered persons of the importance to protect the environment against unsound engineering practises;
- (ix) take any steps which it considers necessary, where, as a result of engineering related undertakings, the public health and safety is prejudiced;
- (x) determine and prescribe punitive measures with regard to disciplinary hearings conducted as contemplated in section 19(4), excluding the punitive measure of cancellation of registration;
- (xi) take any measures it considers necessary for the proper performance of its functions or to achieve the objectives of this Act.

Funds of council and keeping and auditing of accounts

9. (1) The funds of the council consist of any money received by it in terms of this Act, and all other monies, which may accrue to the council from any other source.
- (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;
 - (d) mortgage any of its immovable property as security for a loan referred to in paragraph (b).
- (3) The council may, from its funds, appropriate money for the remuneration of its members, committee members and officials.
- (4) The council may finance any publication referred to in section 8.
- (5) The council may establish and administer an education fund for the purpose of the education, training and continuing education and training of registered persons and students in the engineering profession.

- (6) The council shall keep full and correct account of all monies received and expended by it.
- (7) The council shall annually prepare a statement of income and expenditure and a balance sheet showing its financial position at the close of the financial year to which it relates, and shall 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). A copy of the audited statement and balance sheet must be open for inspection at the offices of the council.
- (8) The council shall, within six months from the close of each financial year submit the audited statement and balance sheet to the Minister, and shall 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 shall determine its financial year.
- (11) The council shall apply due care and diligence in investing any money or appropriating any expenditure from the funds of the council.

Reports to CBE

10. (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, 1999.
- (2) A copy of the report and the register referred to in section 8(b)(iii) 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.

Committees of council

11. (1) (a) The council may establish any 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) Any reference in this Act to the council, or to the president of the council, in relation to the exercise of any power which the council has delegated to a committee, must be construed as including a reference to that committee or to the chairperson of that committee, as the case may be.
- (3) The provisions of section 7, adjusted as may contextually be necessary, applies in respect of a committee of the council.

Registration

12. (1) The categories for registered persons in the Engineering profession are:

- | | | |
|--------------------------|---|----------------------------|
| A. Professional | : | Engineer |
| | : | Technologist (Engineering) |
| | : | Certificated Engineer |
| | : | Technician (Engineering) |
| B. Candidate | : | Engineer |
| | : | Engineering Technologist |
| | : | Certificated Engineer |
| | : | Engineering Technician |
| C. Specified Categories: | : | As the council determines |

- (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 registered person may practise in a consulting capacity.
- (4) A person shall apply, in the prescribed manner, to the council for registration in a category contemplated in subsection (1). The prescribed registration fee and information must accompany the application.
- (5) If, after consideration of an application, the council is satisfied that the applicant -
- (a) in the case of a professional, or a person applying for registration in a specified category -
- (i) has demonstrated his or her competence 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 candidate or a person applying for registration as a candidate in a specified category, proved that he or she has satisfied the relevant educational outcomes determined by the council for this purpose, by –
 - (i) passing accredited or recognised examinations at any educational institution offering educational programmes in engineering;
 - (ii) passing any other examinations that may be determined by the council; or
 - (iii) presenting evidence of prior learning,
- the council must register the applicant in the relevant category and issue to him or her a registration certificate to that effect.
- (6) The council may refuse to register an applicant –
 - (a) if the applicant has been convicted of an offence and sentenced to imprisonment for a period exceeding three months, or a fine as alternative thereto;
 - (b) 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;
 - (c) for as long as the registration of the applicant is suspended as a result of any punishment imposed on him or her under this Act.
 - (d) if the applicant has been removed from an office of trust on account of improper conduct;
 - (e) 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
 - (7) The council may cancel the registration of a registered person if he or she –
 - (a) becomes disqualified for registration as contemplated in subsection (6);
 - (b) has erroneously been registered, or has been registered on information subsequently proved to be false; or
 - (c) fails to pay the prescribed annual fee or portion thereof, within 60 days after it becomes due or within such further period as the council may, either before or after termination of the 60 days, allow. Despite the cancellation in terms of this paragraph, the person concerned remains liable for the payment of the due amount.
 - (8) If a person who is registered as a candidate, qualifies to be registered as a professional in terms of subsection 5(a), the council must cancel his or her registration as a candidate.
 - (9) The council must at the written request of any professional or candidate cancel his or her registration, but where an investigation into alleged improper conduct by that person is in

progress or to be held, the registration may not be cancelled until that investigation has been concluded.

(10) Subject to subsections (5) and (6) and section 13(2), the council must, on application register a person who was previously registered and whose registration was cancelled in terms of subsection (7)(c), if he or she -

- (a) has paid the prescribed application fee;
- (b) has paid any arrear annual fee or portion thereof;
- (c) has paid any expenses incurred by the council in connection with the recovery of any arrear fees;
- (d) has paid any penalties imposed on him or her by the council.

(11) A person who is registered 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";
- (h) "candidate engineering technician"; or
- (i) the name for the specified category determined by the council,

as the case may be.

(12) The council may determine abbreviations or acronyms for the titles referred to in subsection (11).

(13) A person who is registered in the category of candidate shall -

- (a) only perform work in the engineering profession under the supervision and control of a professional; and
- (b) describe himself or herself as a candidate in all engineering reports or other documentation relating to his or her work in the engineering profession, prepared by him or her.

Renewal of registration

13. (1) A registered person must, at least three months prior to the expiry of his or her registration, as determined by the council in terms of section 8(b)(ii), apply in the prescribed manner to the council for the renewal of his or her registration in the applicable category.

(2) In addition to the provisions of section 12, which apply to the renewal of registration, adapted as may contextually be necessary, the council may determine conditions for the renewal of registration.

Return of registration certificate

14. Any person whose registration has been cancelled, 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.

Grievance procedure in relation to registration

15. (1) If a committee of the council refuses to register a person or cancels his or her registration (other than a cancellation in terms of sections 12(6)(c) or 21(8)(a)) that person may, on payment of the prescribed fees and within 30 days, appeal to the council against that decision.

(2) The council must, at its first ensuing council meeting, but at least within 60 days after the receipt of the appeal, decide on the appeal and provide the appellant with reasons for its decision.

(3) If an appeal lies against the 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.

Recognition of voluntary associations

16. (1) The council shall 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 8(e)(vi), recognise that association and issue to it a certificate of recognition.
- (4) A certificate of recognition is valid for a period of five years from the date of issue.
- (5) The recognition of a voluntary association lapses if that association no longer complies with the requirements, or at the expiry of the five-year period referred to in subsection (4).
- (6) A voluntary association whose recognition has lapsed must on written demand return its certificate of recognition to the council.
- (7) A voluntary association shall display its certificate of recognition in a conspicuous place at its head office.

Reservation of work

17. (1) The council shall consult with all voluntary associations regarding the identification of certain kinds of work in connection with engineering to be reserved for registered persons.
- (2) After the process of consultation the council must submit recommendations to the CBE, regarding the reservation of certain kinds of work, for their consideration and determination in terms of section 4 of the Council for the Built Environment Act, 1999.
- (3) A person who is not registered in terms of this Act, may not -
- (a) perform any kind of work reserved for any category of registered persons in terms of this section;
 - (b) pretend to be, or in any manner hold himself or herself out 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 12; or
 - (d) perform any act indicating, or calculated to lead persons to infer, that he or she is registered in terms of this Act.
- (4) The provisions of subsection (3)(a) may not be construed as prohibiting any person from performing work reserved, if such work is performed in the service of or by order of and under the direction, control, supervision of or in a formal association with a registered person entitled to perform that reserved work and who shall assume responsibility for any work so performed.
- (5) Notwithstanding the provisions of subsection (3), a person registered in terms of the -
- (a) Natural Scientists Act, 1982, (Act No. 55 of 1982);
 - (b) Town and Regional Planners Act, 1984 (Act No. 19 of 1984)

- (c) Professional Land Surveyors and Technical Surveyors Act, 1984 (Act No. 40 of 1984);
- (d) Architectural Profession Act, 1999, (Act No. ... of 1999);
- (e) Construction Management Profession Act, 1999 (Act No. ... of 1999);
- (f) Landscape Architectural Profession Act, 1999 (Act No. ... of 1999);
- (g) Property Valuation Profession Act, 1999 (Act No. ... of 1999);
- (h) Quantity Surveying Profession Act, 1999, (Act No. ... of 1999),

may perform those elements of an engineering nature which is essential for the practising his or her profession, if his or her education, training and experience render him or her competent to perform that work.

Professional conduct

18. (1) The council shall draw up a code of conduct and may draw up a code of practise for registered persons. The council shall consult with the CBE, the voluntary associations and all persons registered in terms of this Act in drawing up that code.
- (2) The council is responsible for administering the code of conduct and the code of practise and shall ensure that the codes are available to all members of the public at all reasonable times. The council shall provide the CBE with copies of both codes
- (3) All registered persons shall comply with the code of conduct and the code of practise.

Investigation of charge of improper conduct

19. (1) When -
- (a) a complaint of improper conduct is lodged against a registered person; or
 - (b) the council has reasonable grounds to suspect that a registered person is guilty of improper conduct,

the council must, refer the matter to an investigating committee, established in terms of section 11.

(2) The investigating committee must in the prescribed manner determine whether in its opinion the person concerned should be charged or not, and if so, what the contents of the charge in question should be.

(3) If, the investigating committee is convinced that, the person concerned should be charged and, on *prima facie* evidence, that conviction upon the charge may lead to the

cancellation of the registration of the person concerned, the provisions of sections 20 to 23 apply.

(4) If, the investigating committee is convinced that the person concerned should be charged and that, on *prima facie* evidence, conviction upon the charge will not lead to the cancellation of the registration of the person concerned, the disciplinary hearing must be conducted in the prescribed manner.

(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 set forth in the charge of improper conduct would, if proved, constitute the offence set forth 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.

Steps after investigation

20. (1) The investigating committee may charge a person referred to in section 19 with improper conduct, if it is of the opinion that sufficient grounds for a charge of improper conduct against that person exists.

(2) The investigating committee shall serve a charge sheet on the person concerned by hand or registered mail.

(3) A charge sheet must inform the person charged –

- (a) of the detail and the 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 admittance or denial submit a written explanation regarding the improper conduct with which he or she is charged; and
- (d) of the period (which period must be reasonable) within which his or her reaction in terms of paragraphs (b) and (c) must be submitted to the investigating committee.

(4) If the 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.

(5) If the person charged –

- (a) denies the charge; or
- (b) fails to comply with subsection (3),

the council must appoint a disciplinary tribunal to hear the charge.

- (6) The disciplinary tribunal shall consist of at least -
- (a) a professional who has at least 10 years' experience;
 - (b) a person qualified in law and who has at least 10 years' experience; and
 - (c) a person who specialises in the area concerning the charge.

Hearing of charge of improper conduct

21. (1) The investigating committee may, for the purposes of this section, appoint a person to perform its functions.
- (2) (a) The investigating committee may, for the purposes of a hearing, subpoena any person who in its opinion may be able to give material information concerning the subject of the hearing, or 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 that book, document or object.
- (b) A subpoena to a person to appear before the disciplinary tribunal or to produce a book, document or object, must be signed by the investigating committee or the chairperson of the disciplinary tribunal and be served on that person by delivering or tendering it to him or her or by sending it by registered mail to him or her.
- (c) The investigating committee may retain a book, document or object so produced, for the duration of the hearing.
- (3) During a hearing the investigating committee may -
- (a) lead evidence and advance arguments in support of the charge and cross-examine witnesses; and
 - (b) question any person who was or might have been subpoenaed in terms of subsection (1) and order him or her to produce any book, document or object in his or her possession or custody or under his or her control which the investigating committee suspects or believes to have a bearing on the subject of the hearing.
- (4) The chairperson of the disciplinary tribunal may call upon and administer an oath to or accept an affirmation from any person present at the hearing who was or might have been subpoenaed in terms of subsection (1).
- (5) (a) A person who has been subpoenaed -

- (i) may not, without sufficient cause, fail to attend the hearing at the time and place specified in the subpoena;
 - (ii) must remain in attendance until excused by the chairperson of the disciplinary tribunal from further attendance;
 - (iii) may not refuse to be sworn in or to be affirmed as a witness;
 - (iv) may not, 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;
 - (v) may not fail to produce any book, document or object in his or her possession which he or she has been required to produce.
- (b) The law relating to privilege, adjusted as may contextually be necessary, 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, applies 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.
- (c) A person 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.
- (d) A person may not prevent another person from obeying 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.
- (e) 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.
- (6) At a hearing the person charged has the right -
- (a) to be personally present, to be assisted or represented by another person, to give evidence and, either personally or through a representative -
 - (i) to be heard;
 - (ii) to call witnesses;
 - (iii) to cross-examine any person called as a witness in support of the charge;
 - and

- (iv) to have access to documents produced in evidence;
 - (b) despite the fact that he or she denied the charge or failed to react in terms of section 20(3), to admit at any time that he or she is guilty of the charge, in which case he or she is deemed to be guilty of improper conduct as charged;
 - (c) if the improper conduct with which he or she is charged amounts to an offence of which he or she was convicted by a court of law, to show cause why in his or her opinion he or she was wrongly convicted.
- (7) After the conclusion of the hearing the disciplinary tribunal must make a finding on the charge and in the case of a finding of guilty, take cognisance of any aggravating or mitigating circumstances.
- (8) (a) If the person charged is found guilty of the 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 person charged;
 - (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 person concerned for a period not exceeding one year; or
 - (iv) cancel the registration of the person concerned, and remove his or her name from the register.
- (b) The disciplinary tribunal may take decisions under more than one of the subparagraphs of paragraph (a).
- (9) The disciplinary tribunal shall inform the person charged of its finding and of the person's right of appeal in terms of section 23.

Proceedings after hearing

22. (1) At the conclusion of the hearing the disciplinary tribunal shall notify the council of its finding.
- (2) The council may publish any finding and the sanction (if applicable) imposed in terms of this section 21 in any manner it considers fit.

Appeal against decision of disciplinary tribunal

- 23.** (1) A person charged may appeal to the CBE against a finding of guilty by the disciplinary tribunal or the sentence, or both, within 30 days after the disciplinary tribunal notified him or her of its decision in accordance with section 21(9)
- (2) If a person charged lodges an appeal in terms of subsection (1), the decision of the disciplinary tribunal under section 21 may not be put into effect before the CBE has decided the appeal in terms of section 18 of the Council for the Built Environment Act, 1999.

Professional fees

- 24.** (1) The council shall, 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)(vi) of the Council for the Built Environment Act, 1999.
- (2) The council shall 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, feels aggrieved about that review, it may refer the matter to the Minister for a final decision.
- (5) Any person, who feels aggrieved by the guideline professional fees published in terms of subsection (2), may bring the matter to the attention of the CBE.

Appeal against certain decisions of council

- 25.** (1) Any person who feels aggrieved by a decision made by the council in the exercise of its powers in terms of this Act may –
- (a) within 30 days after that person became aware of the decision and on payment of the prescribed fees, request the council in writing to furnish him or her in writing with its reasons for that decision;
 - (b) within 90 days after the council has in accordance with paragraph (a) furnished him or her with its reasons for that decision and after notice to the council, appeal

to the CBE against that decision in terms of section 18 of the Council for the Built Environment Act, 1999.

- (2) This section does not apply to any appeal contemplated in sections 15 and 23, or a decision referred to in section 12(6)(c).

Rules

26. The council may by notice in the *Gazette* make rules, not inconsistent with this Act, 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.

Procedure and evidence

27. (1) The register referred to in section 8(b)(iii) serves as *prima facie* 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 thing authorised by this Act to be done, has or has not been done, is *prima facie* 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.

Rectification of errors

28. When anything which, according to the provisions of 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.

Liability

29. (1) The council, any member, committee or official thereof is not liable in respect of any legal proceedings in relation to an act performed in good faith.

(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 with respect to any legal proceedings in relation to a refusal, omission or information contemplated in this section.

(3) Any person who was registered in terms of this Act, and whose registration was cancelled, is liable for any act taken or omission to act by him or her while he or she was registered.

Delegation of powers

30. (1) The Minister may delegate any of his or her powers in terms of this Act (excluding the power to appoint 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, excluding the power to hear an appeal in terms of section 15(2) (and whether discretionary or not) to a committee, an official or a member of the council or any other person or body of persons.

(3) The Chief Executive Officer may delegate any of his or her powers in terms of this Act to an official of the council.

Offences and Penalties

31. (1) A person convicted of an offence in terms of section 17(3), is liable to a maximum fine equal to double the remuneration received by him or her for work done in contravention of section 17(3), or to a maximum fine equal to the fine calculated according to the ratio determined for three years imprisonment in terms of the Adjustment of Fines Act, 1991.

(2) A person who is convicted of an offence section 21(5)(a), (c) or (d), is liable to a maximum fine equal to the fine calculated according to the ratio determined for three years imprisonment in terms of the Adjustment of Fines Act, 1991.

(3) A person who is convicted of an offence in terms of any other section of this Act, is liable to a maximum fine calculated according to the ratio determined for a period of one month imprisonment in terms of the Adjustment of Fines Act, 1991.

Transitional provisions

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

(2) The Engineering Council of South Africa established in terms of 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 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) A maximum of a third of the members of the Engineering Council of South Africa, who are nominated by that council, remain in office for the first term of the council.

(5) For the purpose of nominations referred to in section 3, the existing voluntary associations are deemed to be recognised in terms of section 16.

(6) The Engineering Council of South Africa shall, in consultation with the Minister, determine nominating bodies referred to in section 3, for the purpose of inviting nominations for the appointment of members of the first council.

(7) The Engineering Council of South Africa must within 30 days from the commencement of this Act invite nominations for the appointment of members of the council, in accordance with section 3.

(8) Any act performed, decision taken, or rule made in terms of the Engineering Profession of South Africa Act, 1990, by the Engineering Council of South Africa or purported to have been so taken performed, taken or made, remains valid unless repealed under this Act.

(9) 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.

- (10) Any person who at the commencement of this Act is registered in terms of the Engineering Profession Act, 1990, is deemed to be registered in the corresponding category provided for in this Act.
- (11) 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.
- (12) 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.
- (13) 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 applies for registration as a professional technician (engineering) in terms of this Act, and is registered as such.
- (14) 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 technician in terms of this Act.
- (15) At the end of the first term of the council, fifty per cent of the members of the council must resign.

Repeal of laws

33. (1) 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.
- (2) In the Schedule any reference to the territory of the former Republic of South Africa must be construed as a reference to the territory of the Republic of South Africa as it was immediately before the commencement of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

Act binding on State

34. This Act binds the State.

Short title and commencement

- 35.** This Act is called the Engineering Profession Act, 1999 and commences on a date fixed by the President by Proclamation in the *Gazette*.

SCHEDULE

(Section 33)

No. and year of laws	Short title	Extent of repeal	Area of national territory
Act No. 30 of 1978	Engineering Profession Act, 1978	The whole	Transkei
Act No. 114 of 1990	The Engineering Act, 1990	The whole	
Act No. 7 of 1985	The Engineering Amendment Act, 1985	The whole	
Act No. 67 of 1987	The Engineering Amendment Act, 1987	The whole	
Act No. 29 of 1981	Act to Regulate the Professions of Engineering, Architecture and Quantity Surveying	The whole	Bophuthatswana
Act No. 14 of 1995	Periods of Office of Members of Councils for Architects, Engineers, Quantity Surveyors and Valuers Adjustment Act, 1995	The whole	

THE LANDSCAPE ARCHITECTURAL PROFESSION BILL, 1999

BILL

To provide for the establishment of the South African Council for the Landscape Architectural Profession, for the registration of professionals, candidates and specified categories, 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 related matters.

Definitions

1. In this Act, unless the context otherwise indicates -
 - (i) "accredit" means the process of evaluation and recognition of educational programmes offered by educational institutions relating to the landscape architectural profession and "accreditation" has a corresponding meaning;
 - (ii) "candidate" means a person who is registered as such in terms of section 12;
 - (iii) "CBE" means Council for the Built Environment established by section 2 of the Council for the Built Environment Act, 1999 (Act No. ... of 1999);
 - (iv) "council" means the South African Council for the Landscape Architectural Profession established by section 2;
 - (v) "department" means the national department responsible for public works;
 - (vi) "Minister" means the Minister responsible for public works;
 - (vii) "prescribe" means prescribed by rule made by the council under section 26, and "prescribed" has a corresponding meaning;

- (viii) "professional" means a person who is registered as such in terms of section 12;
- (ix) "registered person" means a person registered in terms of section 12;
- (x) "registrar" means the person appointed as registrar under section 8(a)(i);
- (xi) "registration" means the process of assessment of competency of applicants for the purpose of registration under this Act and of entering the names of such persons into the register;
- (xii) "rule" means a rule made and in force under this Act;
- (xiii) "this Act" includes any notice, order or rule issued or made under this Act;
- (xiv) "voluntary association" means any voluntary association recognised by the council in terms of section 16.

Establishment of South African Council for the Landscape Architectural Profession

2. The South African Council for the Landscape Architectural Profession is established as a juristic person.

Composition of council

3. (1) The council consists of the following members, appointed by the Minister:
- (a) six registered persons (excluding candidates) of whom at least three must actively practise in the landscape architectural profession, nominated by the voluntary associations or any registered person;
 - (b) two professionals in the service of the State nominated by any level of government, of whom at least one professional must be in the service of and be nominated by the department;
 - (c) two members of the public nominated through an open process of public participation.

- (2) When any nomination in terms of subsection 1(a) or (b) becomes necessary, the council must invite registered persons, the voluntary associations and the State, in the prescribed manner, to nominate within the period specified persons who qualify for nomination in terms of subsection (1)(a) or (b), respectively.
- (3) When any nomination in terms of subsection (1)(c) becomes necessary, the council must invite the public, by notice in the *Gazette* and any other newspaper the council considers necessary (but at least in a leading newspaper in each province), to nominate members for appointment to the council within the period specified in the notice.
- (4) The period referred to in the invitation and the notice must be at least 60 days.
- (5) If the council receives any nominations it must within 30 days from the expiry date specified in the invitation and the notice, submit its recommendations to the Minister.
- (6) The Minister shall, within 60 days after the receipt of the nominations from the outgoing council, appoint the council.
- (7) If the council receives no or not sufficient nominations within the period specified in the invitation or the notice, the Minister may, after consultation with the council, appoint such person or persons who hold the necessary qualifications for appointment, up to the number required, to be members of the council in terms of the subsection concerned.
- (8) The Minister shall, as soon as practicable after the appointment of the members of the council, publish the name of every person appointed as a member of the council, together with the date from which the appointment takes effect and the period for which the appointment is made, by notice in the *Gazette*.
- (9) The Minister shall, within 30 days after the appointment of the council, determine the time and place of its first meeting, and the council shall determine the time and place of any future meeting.

Term of office of members of council

4. (1) Every member of the council appointed in terms of section 3, holds office for a period of four years, but continues to hold office after the expiration of the period for which that member was appointed until the succeeding council is properly constituted.
- (2) A member of the council may not serve for more than two consecutive terms of office.
- (3) If a member of the council dies or vacates his or her office before the expiration of the period for which he or she was appointed, the Minister may, after consultation with the council and subject to the provisions of section 5(1), appoint a person to fill the vacancy for the

unexpired portion of the period for which that member was appointed. 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.

(4) Notwithstanding the provisions of subsection (1), the Minister may by notice in the *Gazette*, after consultation with the council, extend or terminate the period of office of all the members of the council. If the Minister extends the period of offices, that extension may be for a further period of six months, but he or she may only extend the period of office twice. If the Minister terminates the period of office he or she may only do so if a new council has been appointed, on nominations invited by the Minister, to take over the functions of the council concerned.

Persons disqualified from membership of council and vacation of office

5. (1) A person may not be appointed as a member of the council if that person -

- (a) is not a South African citizen;
- (b) is an unrehabilitated insolvent;
- (c) has been convicted of an offence and sentenced to imprisonment for a period exceeding three months or a fine as alternative thereto;
- (d) has, as a result of improper conduct, been removed from an office of trust;
- (e) has in terms of this Act been found guilty by the council of improper conduct; or
- (f) in the case of persons referred to in section 3(1)(a) and (b) 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 3(1)(a) and is no longer associated with the voluntary association that nominated him or her and if that disassociation affects the ratio of the membership referred to in section 3(1);

- (f) is appointed in terms of section 3(1)(b) and ceases to be a person employed by the State; or
- (g) ceases to be permanently resident in South Africa.

Election of president and vice-president of council

6. (1) The members of the council shall at the first meeting of every newly constituted council and, as the occasion arises, from their number elect a president and a vice-president of whom at least one must actively practise in the landscape architectural profession and both must be registered persons. The president and vice-president hold office for the period that the council determines at the time of their election.

(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) If both the president and the vice-president are for any reason unable to preside at a council meeting, the members present must elect from their number a person to preside at that meeting. 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.

Decisions of council

7. (1) A decision taken by the council or an act performed under the authority of the council is not invalid by reason only of a vacancy on the council, or of the fact that a person who is not entitled to sit as a member of the council sat as a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of the members of the council who were present at the time and entitled to sit as members.

(2) A decision of the majority of the members of the council present at any meeting constitutes a decision of the council.

(3) In the event of an equality of votes the president has a casting vote in addition to a deliberative vote.

General powers of council

8. In addition to any other powers of the council in terms of this Act, the council may -

(a) with regard to administrative matters -

- (i) appoint and remunerate a registrar and any other persons as the council considers necessary for the performance of its functions, and determine their functions;
- (ii) determine the remuneration and allowances payable from the funds of the council to its members or of any committee of the council;
- (iii) arrange for the payment of pension and other benefits to any official of the council and his or her dependants on the termination of the service of that official;
- (iv) determine where its head office must be situated;
- (v) 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 minutes of such meetings must be kept;
- (vi) 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;

(b) with regard to registration -

- (i) subject to the provisions of this Act, consider and decide on any application for registration;
- (ii) determine and prescribe the period of validity of the registration of a registered person;
- (iii) keep a register of registered persons and decide on the form of the register and certificates to be kept, maintained or issued under this Act, the reviewing thereof and the manner in which alterations thereto may be effected;

(c) with regard to fees -

- (i) determine the application fees payable to the council;
- (ii) determine the registration fees payable to the council;
- (iii) determine the annual fees or portion thereof in respect of a part of a year, payable by registered persons to the council;

- (iv) determine the date on which any fee or levy is payable;
- (v) grant exemption from payment of application fees, registration fees, annual fees, levies, or a portion thereof;
- (vi) determine the fees (or any part thereof) payable to the council in respect of any examination referred to in section 12, conducted by or on behalf of the council;
- (vii) determine any levy payable to the council for the purposes of the education fund referred to in section 9(5);
- (viii) determine fees payable to the council in terms of an appointment referred to in paragraph (e)(iii);
- (ix) determine any other fee or levy it considers necessary;
- (d) with regard to education –
 - (i) conduct accreditation visits to any educational institution which has a department, school or faculty which offers landscape architectural educational programmes, but shall conduct at least one such visit every five years, and if the council does not conduct an accreditation visit within the five-year period due to circumstances beyond its control, it must notify the Minister accordingly;
 - (ii) grant, conditionally grant, refuse or withdraw accreditation of all educational institutions and its educational programmes with regard to landscape architecture;
 - (iii) consult regularly with the Council on Higher Education established in terms of the Higher Education Act, 1997 (Act No. 101 of 1997), regarding matters relevant to education in landscape architecture;
 - (iv) 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;
 - (v) establish mechanisms for registered persons to gain recognition of their qualifications and professional status in other countries;
 - (vi) 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 the view to the establishment of a Standards Generating Body in terms of those Regulations;

- (vii) recognise or withdraw the recognition of any examination contemplated in section 12;
- (viii) 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;
- (ix) 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;
- (x) conduct any examination for the purposes of section 12;
- (xi) determine conditions relating to, and the nature and extent of continuing education and training;
- (e) in general –
 - (i) acquire or hire such movable or immovable property as it considers necessary for the effective performance of its functions and maintain, let, sell or otherwise dispose of property acquired;
 - (ii) decide upon the manner in which contracts must be entered into on behalf of the council;
 - (iii) accept an appointment by any person or body of persons (including the State) to perform a service within its competence;
 - (iv) determine, subject to section 16, the requirements with which a voluntary association must comply to qualify for recognition by the council;
 - (v) advise the Minister, any other Minister or the CBE on any matter relating to the landscape architectural profession;
 - (vi) encourage and itself undertake research into matters relating to the landscape architectural profession;
 - (vii) take any steps which it considers necessary for the protection of the public in their dealings with registered persons, for the maintenance of the integrity, the enhancement of the status and the improvement of the standards of services rendered by those persons;
 - (viii) take any steps which it considers necessary to create an awareness amongst registered persons of the importance to protect the environment against unsound landscape architectural practises;

- (ix) determine and prescribe punitive measures with regard to disciplinary hearings conducted as contemplated in section 19(4), excluding the punitive measure of cancellation of registration;
- (x) take any measures it considers necessary for the proper performance of its functions or to achieve the objectives of this Act.

Funds of council and keeping and auditing of accounts

9. (1) The funds of the council consist of any money received by it in terms of this Act and all other monies which may accrue to the council from any other source.

(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;
- (d) mortgage any of its immovable property as security for a loan referred to in paragraph (b).

(3) The council may, from its funds, appropriate money for the remuneration of its members, committee members and officials.

(4) The council may finance any publication referred to in section 8.

(5) The council may establish and administer an education fund for the purpose of the education, training and continuing education and training of registered persons and students in the landscape architectural profession.

(6) The council shall keep full and correct account of all monies received and expended by it.

(7) The council shall annually prepare a statement of income and expenditure and a balance sheet showing its financial position at the close of the financial year to which it relates, and shall 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). A copy of the audited statement and balance sheet must be open for inspection at the offices of the council.

(8) The council shall within six months from the close of each financial year, submit the audited statement and balance sheet to the Minister and shall 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 shall determine its financial year.
- (11) The council shall apply due care and diligence when investing such money or appropriating any expenditure from the funds of the council.

Reports to CBE

10. (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, 1999.
- (2) A copy of the report and the register referred to in section 8(b)(iii) must be open for inspection at the offices of the council.
- (3) The council must, upon request by the CBE, provide the CBE with any information regarding a registered person.

Committees of council

11. (1) (a) The council may establish any 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) Any reference in this Act to the council, or to the president of the council, in relation to the exercise of any power which the council has delegated to a committee, must be construed as including a reference to that committee or to the chairperson of that committee, as the case may be.
- (3) The provisions of section 7, adjusted as may contextually be necessary, applies in respect of a committee of the council.

Registration

12. (1) The categories for registered persons in the landscape architectural profession are:

- | | | |
|-------------------------|---|--|
| A. Professional | : | Landscape Architect
Landscape Technologist
Landscape Technician
Landscape Assistant |
| B. Candidate | : | Landscape Architect
Landscape Technologist
Landscape Technician
Landscape Assistant |
| C. Specified Categories | : | As the council determines |

(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 shall apply, in the prescribed manner, to the council for registration in a category contemplated in subsection (1). The prescribed registration fee and information must accompany the application.

(4) If, after consideration of an application, the council is satisfied that the applicant –

(a) in the case of a professional or a person applying for registration in a specified category –

- (i) has demonstrated his or her competence 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 candidate, or a person applying for registration as a candidate in a specified category, has proved that he or she has satisfied the relevant educational outcomes determined by the council for this purpose, by -

- (i) passing accredited or recognised examinations at any educational institution offering educational programmes in landscape architecture;
- (ii) passing any other examinations that may be determined by the council; or
- (iii) presenting evidence of prior learning,

the council must register the applicant in the relevant category and issue to him or her a registration certificate in the prescribed form.

- (5) The council may refuse to register an applicant –
- (a) if the applicant has been removed from an office of trust on account of improper conduct;
 - (b) if the applicant has been convicted of an offence and sentenced to imprisonment for a period exceeding three months or a fine as alternative thereto;
 - (c) 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;
 - (d) for as long as the registration of the applicant is suspended as a result of any punishment imposed on him or her under this Act;
 - (e) 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.
- (6) The council may cancel the registration of a registered person if he or she –
- (a) becomes disqualified for registration as contemplated in subsection (5);
 - (b) has erroneously been registered, or has been registered on information subsequently proved to be false; or
 - (c) fails to pay the prescribed annual fee or portion thereof, within 60 days after it becomes due or within such further period as the council may, either before or after termination of the 60 days, allow. Despite the cancellation in terms of this paragraph, the person concerned remains liable for the payment of the due amount.
- (7) If a person who is registered as a candidate qualifies to be registered as a professional in terms of subsection 4(a), the council must cancel his or her registration as a candidate.
- (8) 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 to be held, the registration may not be cancelled until that investigation has been concluded.
- (9) Subject to subsections (4) and (5) and section 13(2), the council must, on application register a person who was previously registered and whose registration was cancelled in terms of subsection (6)(c), if he or she –
- (a) has paid the prescribed application fee;
 - (b) has paid any arrear annual fee or portion thereof;
 - (c) has paid any expenses incurred by the council in connection with the recovery of any arrear fees; and

- (d) has paid any penalties imposed on him or her by the council.
- (10) A person who is registered in any of the categories contemplated in subsection (1), may describe himself or herself and use the title "professional landscape architect", "professional landscape technologist", "professional landscape technician", "professional landscape assistant", "candidate landscape architect", "candidate landscape technologist", "candidate landscape technician", "candidate landscape assistant" or the name for the specified category as determined by the council, as the case may be.
- (11) The council may determine abbreviations or acronyms for the titles referred to in subsection (10).
- (12) A person who is registered in the category of candidate shall -
 - (a) only perform work in the landscape architectural profession under the supervision and control of a professional; and
 - (b) describe himself or herself as a candidate in all landscape architectural reports or other documentation relating to his or her work in the landscape architectural profession, prepared by him or her.

Renewal of registration

13. (1) A registered person must, at least three months prior to the expiry of his or her registration, as determined by the council in terms of section 8(b)(ii), apply in the prescribed manner to the council for the renewal of his or her registration in the applicable category.
- (2) In addition to the provisions of section 12 which apply to the renewal of registration, adapted as may contextually be necessary, the council may determine conditions for the renewal of registration.

Return of registration certificate

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

Grievance procedure in relation to registration

15. (1) If a committee of the council refuses to register a person or cancels his or her registration (other than a cancellation in terms of sections 12(6)(c) or 21(8)(a)), that person may, on payment of the prescribed fees and within 30 days, appeal to the council against that decision.
- (2) The council must, at its first ensuing council meeting, but at least within 60 days after the receipt of the appeal, decide on the appeal and provide the appellant with reasons for its decision.
- (3) If an appeal lies 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.

Recognition of voluntary associations

16. (1) The council shall 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 8(e)(iv), recognise that association and issue to it 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 shall display its certificate of recognition in a conspicuous place at its head office.
- (6) The recognition of a voluntary association lapses if that association no longer complies with the requirements or at the expiry of the five-year period referred to in subsection (4).
- (7) A voluntary association whose recognition has lapsed must on written demand return its certificate of recognition to the council.

Reservation of work

17. (1) The council shall consult with all voluntary associations regarding the identification of certain kinds of landscape architectural work to be reserved for registered persons.

(2) After the process of consultation the council must submit recommendations to the CBE regarding the reservation of certain kinds of work, for their consideration and determination in terms of section 4 of the Council for the Built Environment Act, 1999.

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

- (a) perform any kind of work reserved for any category of registered persons;
- (b) pretend to be, or in any manner hold himself or herself out 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 12; or
- (d) perform any act indicating, or calculated to lead persons to infer, that he or she is registered in terms of this Act.

(4) The provisions of subsection (3)(a) may not be construed as prohibiting any person from performing work reserved, if such work is performed in the service of or by order of and under the direction, control, supervision of or in a formal association with a registered person entitled to perform that reserved work and who shall assume responsibility for any work so performed.

(5) Notwithstanding the provisions of subsection (3), a person registered in terms of the -

- (a) Natural Scientists Act, 1982 (Act No. 54 of 1982);
- (b) Town and Regional Planners Act, 1984 (Act No. 19 of 1984);
- (c) Professional Land Surveyors and Technical Surveyors Act, 1984 (Act No. 40 of 1984);
- (d) Architectural Profession Act, 1999, (Act No. ... of 1999);
- (e) Construction Management Profession Act, 1999 (Act No. ... of 1999);
- (f) Engineering Profession Act, 1999 (Act No. ... of 1999);
- (g) Landscape Architectural Profession Act, 1999 (Act No. ... of 1999); or
- (h) Quantity Surveying Profession Act, 1999 (Act No. ... of 1999),

may perform those elements of a landscape architectural nature which is essential for the practising of his or her profession, if his or her education, training and experience render him or her competent to perform that work.

Professional conduct

18. (1) The council shall draw up a code of conduct for registered persons. The council shall consult with the CBE, voluntary associations and registered persons in drawing up that code.

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

(3) All registered persons shall comply with the code of conduct.

Investigation of charge of improper conduct

19. (1) When -

- (a) a complaint of improper conduct is lodged against a registered person; or
- (b) the council has reasonable grounds to suspect that a registered person is guilty of improper conduct,

the council must refer the matter to an investigating committee established in terms of section 11.

(2) The investigating committee must, in the prescribed manner, determine whether in its opinion the person concerned should be charged or not, and if so, what the contents of the charge in question should be.

(3) If the investigating committee is convinced that the person concerned should be charged and that, on *prima facie* evidence, conviction upon the charge may lead to the cancellation of the registration of the person concerned, the provisions of sections 20 to 23 apply.

(4) If the investigating committee is convinced that the person concerned should be charged and that, on *prima facie* evidence, conviction upon the charge will not lead to the cancellation of the registration of the person concerned, the disciplinary hearing must be conducted in the prescribed manner.

(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 set forth in the charge of improper conduct would, if proved, constitute the offence set forth 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.

Steps after investigation

20. (1) The investigating committee may charge a person referred to in section 19 with improper conduct, if it is of the opinion that sufficient grounds for a charge of improper conduct against that person exists.
- (2) The investigating committee shall serve a charge sheet on the person concerned by hand or registered mail.
- (3) A charge sheet must inform the person charged –
- (a) of the detail and the 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 admittance or denial submit a written explanation regarding the improper conduct with which he or she is charged; and
 - (d) of the period (which period must be reasonable) within which his or her reaction in terms of paragraphs (b) and (c) must be submitted to the investigating committee.
- (4) If the 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.
- (5) If the person charged –
- (a) denies the charge; or
 - (b) fails to comply with subsection (3),
- the council must appoint a disciplinary tribunal to hear the charge.
- (6) The disciplinary tribunal shall consist of at least –
- (a) a professional who has at least 10 years' experience;
 - (b) a person qualified in law and who has at least 10 years' experience; and
 - (c) a person who specialises in the area concerning the charge.

Hearing of charge of improper conduct

21. (1) The investigating committee may, for the purposes of this section, appoint a person to perform its functions.
- (2) (a) The investigating committee may, for the purposes of a hearing, subpoena any person who in its opinion may be able to give material information concerning the subject of the hearing, or 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 that book, document or object.

- (b) A subpoena to a person to appear before the disciplinary tribunal or to produce a book, document or object, must be signed by the investigating committee or the chairperson of the disciplinary tribunal and be served on that person by delivering or tendering it to him or her or by sending it by registered mail to him or her.
 - (c) The investigating committee may retain a book, document or object so produced, for the duration of the hearing.
- (3) During a hearing the investigating committee may –
- (a) lead evidence and advance arguments in support of the charge and cross-examine witnesses; and
 - (b) question any person who was or might have been subpoenaed in terms of subsection (1) and order him or her to produce any book, document or object in his or her possession or custody or under his or her control which the investigating committee suspects or believes to have a bearing on the subject of the hearing.
- (4) The chairperson of the disciplinary tribunal may call upon and administer an oath to or accept an affirmation from any person present at the hearing who was or might have been subpoenaed in terms of subsection (1).
- (5) (a) A person who has been subpoenaed –
- (i) may not without sufficient cause, fail to attend the hearing at the time and place specified in the subpoena;
 - (ii) must remain in attendance until excused by the chairperson of the disciplinary tribunal from further attendance;
 - (iii) may not refuse to be sworn in or to be affirmed as a witness;
 - (iv) may not, 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;
 - (v) may not fail to produce any book, document or object in his or her possession which he or she has been required to produce.
- (b) 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, applies, adjusted as may contextually be necessary, 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.
- (c) A person 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.
 - (d) A person may not prevent another person from obeying 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.
 - (e) 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 such offence, unless the conviction has been set aside by a superior court.
- (6) At a hearing the person charged has the right –
- (a) to be personally present, to be assisted or represented by another person, to give evidence and, either personally or through a representative –
 - (i) to be heard;
 - (ii) to call witnesses;
 - (iii) to cross-examine any person called as a witness in support of the charge; and
 - (iv) to have access to documents produced in evidence;
 - (b) despite the fact that he or she denied the charge or failed to react in terms of section 20(3), to admit at any time that he or she is guilty of the charge, in which case he or she is deemed to be guilty of improper conduct as charged;
 - (c) if the improper conduct with which he or she is charged amounts to an offence of which he or she was convicted by a court of law, to show cause why in his or her opinion he or she was wrongly convicted.
- (7) After the conclusion of the hearing the disciplinary tribunal must make a finding on the charge, and in the case of a finding of guilty, take cognisance of any aggravating or mitigating circumstances it may find.
- (8) (a) If the 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 person charged;

- (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 person concerned for a period not exceeding one year; or
 - (iv) cancel the registration of the person concerned and remove his or her name from the register.
- (b) The disciplinary tribunal may take decisions under more than one of the subparagraphs of paragraph (a).
- (9) The disciplinary tribunal shall inform the person charged of its finding and of the person's right of appeal in terms of section 23.

Proceedings after hearing

22. (1) At the conclusion of the hearing the disciplinary tribunal shall notify the council of its finding.
- (2) The council may publish any finding and the sanction (if applicable) imposed in terms of this section 21 in any manner it considers fit.

Appeal against decision of disciplinary tribunal

23. (1) A person charged may appeal to the CBE against a finding of guilty by the disciplinary tribunal or the sentence, or both, within 30 days after the disciplinary tribunal notified him or her of its decision in accordance with section 21(9).
- (2) If a person charged lodges an appeal in terms of subsection (1), the decision of the disciplinary tribunal under section 21 may not be affected before the CBE has decided the appeal in terms of section 18 of the Council for the Built Environment Act, 1999.

Professional fees

24. (1) The council shall, in consultation with the voluntary associations, formulate recommendations with regard to the principles referred to in section 4(k)(vi) of the Council for the Built Environment Act, 1999.

- (2) The council shall 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, feels aggrieved about that review, it may refer the matter to the Minister for a final decision.
- (5) Any person who feels aggrieved by the guideline professional fees published in terms of subsection (2), may bring the matter to the attention of the CBE.

Appeal against certain decisions of council

25. (1) Any person who feels aggrieved by a decision made by the council in the exercise of its powers in terms of this Act may –
- (a) within 30 days after that person became aware of the decision and on payment of the prescribed fees, request the council in writing to furnish him or her in writing with its reasons for that decision;
 - (b) within 90 days after the council has in accordance with paragraph (a) furnished him or her with its reasons for that decision and after notice to the council, appeal to the CBE against that decision in terms of section 18 of the Council for the Built Environment Act, 1999.
- (2) This section does not apply to any appeal or procedure contemplated in section 15 or 23 or to a decision in terms of section 12(6)(c).

Rules

26. The council may by notice in the *Gazette* make rules, not inconsistent with this Act, 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.

Procedure and evidence

27. (1) The register referred to in section 8(b)(iii) serves as *prima facie* 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 thing authorised by this Act to be done, has or has not been done, is *prima facie* 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.

Rectification of errors

28. When anything, which according to the provisions of 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.

Liability

29. (1) The council, any member, committee or official thereof, is not liable in respect of any legal proceedings in relation to an act performed in good faith.

(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 with respect to any legal proceedings in relation to a refusal, omission or information contemplated in this subsection.

(3) Any person who was registered in terms of this Act and whose registration was cancelled by the council, is liable for any act taken or omission to act by him or her while he or she was a registered person.

Delegation of powers

30. (1) The Minister may delegate any of his or her powers in terms of this Act (excluding the power to appoint 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, excluding the power to hear an appeal in terms of section 15(2) (and whether discretionary or not) to a committee, an official or a member of the council, or any other person or body of persons.
- (3) The registrar may delegate any of his or her powers in terms of this Act, to an official of the council.

Offences and Penalties

31. (1) A person convicted of an offence in terms of section 17(3), is liable to a maximum fine equal to double the remuneration received by him or her for work done in contravention of section 17(3), or to a maximum fine equal to the fine calculated according to the ratio determined for three years imprisonment in terms of the Adjustment of Fines Act, 1991.
- (2) A person who is convicted of an offence in terms of section 21(5)(a), (c) or (d), is liable to maximum 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.
- (3) A person who is convicted of an offence in terms of any other section of this Act, is liable to a maximum fine calculated according to the ratio determined for a period of one month imprisonment in terms of the Adjustment of Fines Act, 1991.

Transitional provisions

32. (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 functions after the commencement of this Act until the effective date.
- (3) The Board of Control for Landscape Architects must, within 30 days after the date of commencement of this Act, invite nominations for the first appointment of members in accordance with section 3.

- (4) For the purposes of nominations referred to in section 3, the existing voluntary associations are deemed to be recognised in terms of section 16.
- (5) Any person practising as a 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) All rights, obligations, assets and liabilities acquired or incurred, as the case may be, 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) A maximum of a third of the members of the Board of Control for Landscape Architects who are nominated by that Board, remain in office for the first term of the council.
- (8) 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.
- (9) Any notice issued or exemption granted by the Minister in terms of the Architects' Act, 1970, remains valid unless repealed under this Act.
- (10) 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.
- (11) From the effective date, any register maintained in terms of the Architects' Act, 1970, is incorporated in and is considered to form part of the register to be maintained in terms of this Act.
- (12) 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.
- (13) At the end of the first term of the council 50 per cent of the members of the council must resign.

Repeal of laws

33. (1) 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.
- (2) In the Schedule any reference to the territory of the former Republic of South Africa must be construed as a reference to the territory of the Republic of South Africa as it was immediately

before the commencement of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

Act binding on State

34. This Act binds the State.

Short title and commencement

35. This Act is called the Landscape Architectural Profession Act, 1999 and commences on a date fixed by the President by Proclamation in the *Gazette*.

SCHEDULE

(Section 33)

No. and year of laws	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. 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	

THE PROPERTY VALUATION PROFESSION BILL, 1999

BILL

To provide for the establishment of the South African Council for the Property Valuation Profession, for the registration of professionals, candidates and specified categories; for the regulation of the relationship between the South African Council for the Property Valuation Profession and the Council for the Built Environment; and to provide for related matters.

Definitions

- 1. In this Act, unless the context otherwise indicates -**
 - (i) "accredit" means the process of evaluation and recognition of educational programmes offered by educational institutions relating to the property valuation profession and "accreditation" has a corresponding meaning;**
 - (ii) "candidate" means a person who is registered as such in terms of section 12;**
 - (iii) "CBE" means the Council for the Built Environment established by section 2 of the Council for the Built Environment Act, 1999 (Act No. ... of 1999);**
 - (iv) "council" means the South African Council for the Property Valuation Profession established by section 2;**
 - (v) "department" means the national department responsible for public works;**
 - (vi) "immovable property" includes a right in respect of or an interest in immovable property;**
 - (vii) "Minister" means the Minister responsible for public works;**

- (viii) "prescribe" means prescribe by rule made by the council under section 26, and "prescribed" has a corresponding meaning;
- (ix) "professional" means a person who is registered as such in terms of section 12;
- (x) "property valuation" means the determination of the value of immovable property;
- (xi) "registered person" means a person registered in terms of section 12;
- (xii) "registrar" means the person appointed as registrar under section 8(a)(i);
- (xiii) "registration" means the process of assessment of competency of applicants for the purpose of registration;
- (xiv) "rule" means a rule made and in force under this Act;
- (xv) "this Act" includes any notice, order or rule issued or made under this Act;
- (xvi) "voluntary association" means any voluntary association recognised by the council in terms of section 16.

Establishment of South African Council for the Property Valuation Profession

2. The South African Council for the Property Valuation Profession is established as a juristic person.

Composition of council

3. (1) The council consists of the following members, appointed by the Minister -
 - (a) six registered persons (excluding candidates) of whom at least three must practise in the property valuation profession, nominated by the voluntary associations or any registered person;

- (b) two professionals in the service of the State nominated by any level of government, of whom at least one professional must be in the service of and nominated by the department;
 - (c) two members of the public nominated through an open process of public participation.
- (2) When any nomination in terms of subsection 1(a) or (b) becomes necessary, the council must invite registered persons, the voluntary associations and the State, in the prescribed manner, to nominate within the period specified persons who qualify for nomination in terms of subsection (1)(a) or (b) respectively.
- (3) When any nomination in terms of subsection 1(c) becomes necessary the council must invite the public by notice in the *Gazette* and any other newspaper the council considers necessary (but at least in a leading newspaper in each province), to nominate members for appointment to the council within the period specified in the notice.
- (4) The period referred to in the invitation and the notice must be at least 60 days.
- (5) If the council receives any nomination it must, within 30 days from the expiry date specified in the invitation and the notice, submit its recommendations to the Minister.
- (6) The Minister shall, within 60 days after the receipt of the nominations from the outgoing council, appoint the council.
- (7) If the council receives no or not sufficient nominations within the period specified in the invitation or the notice, the Minister may, after consultation with the council, appoint such persons who hold the qualifications necessary for appointment, up to the number required, to be members of the council in terms of the subsection concerned.
- (8) The Minister shall, as soon as practicable after the appointment of the members of the council, publish the name of every person appointed as a member, together with the date from which the appointment takes effect and the period for which the appointment is made, by notice in the *Gazette*.
- (9) The Minister shall, within 30 days after the appointment of the council, determine the time and place of its first meeting, and the council shall determine the time and place of any future meeting.

Term of office of members of council

4. (1) Every member of the council appointed in terms of section 3, holds office for a period of four years, but continues to hold office after the expiration of the period for which that member was appointed, until the succeeding council is properly constituted.
- (2) A member of the council may not serve for more than two consecutive terms of office.
- (3) If a member of the council dies or vacates his or her office before the expiration of the period for which he or she was appointed, the Minister may, after consultation with the council, and subject to the provisions of section 5(1), appoint a person to fill the vacancy for the unexpired portion of the period for which that member was appointed. 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.
- (4) Notwithstanding the provisions of subsection (1), the Minister may by notice in the *Gazette*, after consultation with the council, extend or terminate the period of office of all the members of the council. If the Minister extends the period of office, that extension may be for a further period of six months, but he or she may only extend the period of office twice. If the Minister terminates the period of office he or she may only do so if a new council has been appointed, on nominations invited by the Minister, to take over the functions of the council concerned.

Persons disqualified from membership of council and vacation of office

5. (1) A person may not be appointed as a member of the council if that person -
- (a) is not a South African citizen;
 - (b) is an unrehabilitated insolvent;
 - (c) has been convicted of an offence and sentenced to imprisonment for a period exceeding three months or a fine as alternative thereto;
 - (d) has, as a result of improper conduct, been removed from an office of trust;
 - (e) has in terms of this Act been found guilty by the council of improper conduct; or
 - (f) in the case of persons referred to in section 3(1)(a) and (b), 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 3(1)(a) and is no longer associated with the voluntary association which nominated him or her and if that disassociation affects the ratio of the membership referred to in section 3(1);
- (f) is appointed in terms of section 3(1)(b) and ceases to be employed by the State; or
- (g) ceases to be permanently resident in South Africa.

Election of president and vice-president of council

6. (1) The members of the council shall at the first meeting of every newly constituted council and, as the occasion arises, from their number elect a president and a vice-president, of whom at least one must practise in the property valuation profession and both must be registered persons. The president and the vice-president hold office for the period that the council determines at the time of their election.
- (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) If both the president and the vice-president are for any reason unable to preside at a council meeting, the members present must elect from their number a person to preside at that meeting. 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.

Decisions of council

7. (1) A decision taken by the council or an act performed under authority of the council is not invalid by reason only of a vacancy on the council, or of the fact that a person who is not entitled to sit as a member of the council sat as a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the

requisite majority of the members of the council who were present at the time and entitled to sit as members.

(2) A decision of the majority of the members of the council present at any meeting constitutes a decision of the council.

(3) In the event of an equality of votes, the president has a casting vote in addition to a deliberative vote.

General powers of council

8. In addition to any other powers of the council in terms of this Act, the council may -

(a) with regard to administrative matters -

- (i) appoint and remunerate a registrar and any other persons as the council considers necessary for the performance of its functions, and determine their functions;
- (ii) determine the remuneration and allowances payable from the funds of the council to its members or of any committee of the council;
- (iii) arrange for the payment of pension and other benefits to any official of the council and his or her dependants on the termination of the service of that official;
- (iv) determine where its head office must be situated;
- (v) 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 minutes of such meetings must be kept;
- (vi) 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;

(b) with regard to registration -

- (i) subject to the provisions of this Act, consider and decide on any application for registration;
- (ii) determine and prescribe the period of validity of the registration of a registered person;
- (iii) keep a register of registered persons and decide on the form of the register and certificates to be kept, maintained or issued under this Act,

the reviewing thereof and the manner in which alterations thereto may be effected;

(c) with regard to fees –

- (i) determine the application fees payable to the council;
- (ii) determine the registration fees payable to the council;
- (iii) determine the annual fees or portion thereof in respect of a part of a year, payable by registered persons to the council;
- (iv) determine the date on which any fee or levy is payable;
- (v) grant exemption from payment of application fees, registration fees, annual fees, levies, or a portion thereof;
- (vi) determine the fees (or any part thereof) payable to the council in respect of any examination referred to in section 12, conducted by or on behalf of the council;
- (vii) determine any levy payable to the council for the purposes of the education fund referred to in section 9(5);
- (viii) determine fees payable to the council in terms of an appointment referred to in paragraph (f)(iii);
- (ix) determine any other fee or levy it considers necessary;

(d) with regard to education –

- (i) conduct accreditation visits to any educational institution which has a department, school or faculty which has a property valuation education programme, but shall conduct at least one such visit every five years, and if the council does not conduct an accreditation visit within the five-year period due to circumstances beyond its control, it must notify the Minister accordingly;
- (ii) grant, conditionally grant, refuse or withdraw accreditation of all educational institutions and its educational programmes with regard to property valuation;
- (iii) consult regularly with the Council on Higher Education established in terms of the Higher Education Act, 1997 (Act No. 101 of 1997), regarding matters relevant to education in property valuation;
- (iv) 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;
- (v) establish mechanisms for registered persons to gain recognition of their qualifications and professional status in other countries;
 - (vi) 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 the view to the establishment of a Standards Generating Body in terms of those Regulations.
 - (vii) recognise or withdraw the recognition of any examination contemplated in section 12;
 - (viii) 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;
 - (ix) 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;
 - (x) conduct any examination for the purposes of section 12;
 - (xi) determine conditions relating to and the nature and extent of continuing education and training;
- (e) with regard to insurance -
- (i) arrange 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, by means of insurance of registered persons, against claims arising from the performance of their functions.
 - (ii) arrange with an insurer referred to in paragraph (i) for the provision of insurance cover -
 - (aa) for any member or official of the council in respect of any bodily injury, disablement or death resulting solely and directly from an accident occurring in the course of the performance by that member or official of his or her functions in terms of this Act;
 - (bb) for 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;

(f) in general –

- (i) acquire or hire such movable or immovable property as it considers necessary for the effective performance of its functions and maintain, let, sell or otherwise dispose of property acquired;
- (ii) decide upon the manner in which contracts must be entered into on behalf of the council;
- (iii) accept an appointment by any person or body of persons (including the State) to perform a service within its competence;
- (iv) determine, subject to section 16, the requirements with which a voluntary association must comply to qualify for recognition by the council;
- (v) advise the Minister, any other Minister or the CBE on any matter relating to the property valuation profession;
- (vi) encourage and itself undertake research into matters relating to the property valuation profession;
- (vii) take any steps which it considers necessary for the protection of the public in their dealings with registered persons, for the maintenance of the integrity, the enhancement of the status and the improvement of the standards of services rendered by those persons;
- (viii) determine and prescribe punitive measures with regard to disciplinary hearings conducted as contemplated in section 19(4), excluding the punitive measure of cancellation of registration;
- (ix) take any measures it considers necessary for the proper performance of its functions or to achieve the objectives of this Act.

Funds of council and keeping and auditing of accounts

9. (1) The funds of the council consist of any money received by it in terms of this Act, and all other monies which may accrue to the council from any other source.

(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;
 - (d) mortgage any of its immovable property as security for a loan referred to in paragraph (b).
- (3) The council may, from its funds, appropriate money for the remuneration of its members, committee members and officials.
- (4) The council may finance any publication referred to in section 8.
- (5) The council may establish and administer an education fund for the purpose of the education, training and continuing education and training of registered persons and students in the property valuation profession.
- (6) The council shall keep full and correct account of all monies received and expended by it.
- (7) The council shall annually prepare a statement of income and expenditure and a balance sheet showing its financial position at the close of the financial year to which it relates, and shall 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). A copy of the audited statement and balance sheet must be open for inspection at the offices of the council.
- (8) The council shall, within six months from the close of each financial year submit the audited statement and balance sheet to the Minister, and shall 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 shall determine its financial year.
- (11) The council shall apply due care and diligence in investing any money or appropriating any expenditure from the funds of the council.

Reports to CBE

10. (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, 1999.

- (2) A copy of the report and the register referred to in section 8(b)(iii) 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.

Committees of council

11. (1) (a) The council may establish any 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) Any reference in this Act to the council, or to the president of the council, in relation to the exercise of any power which the council has delegated to a committee, must be construed as including a reference to that committee or to the chairperson of that committee, as the case may be.
- (3) The provisions of section 7, adjusted as may contextually be necessary, applies in respect of a committee of the council.

Registration

12. (1) The categories for registered persons in the property valuation profession, are:
- | | |
|-------------------------|------------------------------|
| A. Professional | : Valuer |
| | : Associated valuer |
| B. Candidate | : Valuer |
| C. Specified Categories | : As the council determines. |
- (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 shall apply, in the prescribed manner, to the council for registration in a category contemplated in subsection (1). The prescribed application fee and information must accompany the application.
- (4) If, after consideration of an application, the council is satisfied that the applicant -
- (a) in the case of a professional or a person applying for registration in a specified category -

- (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 for the purposes of this paragraph; and
 - (iii) has gained practical experience in property valuation in the Republic which in the opinion of the council is of sufficient variety and of a satisfactory nature and standard;
- (b) in the case of a candidate, or a person applying for registration as 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 examinations that may be determined by the council; or
 - (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,

the council must register the applicant in the relevant category and issue to him or her a registration certificate in the prescribed form.

(5) The council may determine the restrictions and conditions, if any, applicable to an applicant applying in the category of associated valuer or candidate valuer.

(6) The council may refuse to register an applicant –

- (a) if the applicant has been removed from an office of trust on account of improper conduct;
- (b) if the applicant has been convicted of an offence and sentenced to imprisonment for a period exceeding three months, or a fine as alternative thereto;
- (c) 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;
- (d) for as long as the registration of the applicant is suspended as a result of any punishment imposed on him or her under this Act;
- (e) if an 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.

(7) The council may cancel the registration of a registered person if he or she –

- (a) becomes disqualified for registration as contemplated in subsection (6);

- (b) has erroneously been registered, or has been registered on information subsequently proved to be false; or
 - (c) fails to pay the prescribed annual fee or portion thereof, within 60 days after it becomes due or within such further period as the council may, either before or after termination of the 60 days, allow. Despite the cancellation in terms of this paragraph, the person concerned remains liable for the payment of the due amount.
- (8) If a person who is registered as a candidate qualifies to be registered as a professional in terms of subsection (4)(a), the council must cancel his or her registration as a candidate.
- (9) 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 to be held, the registration may not be cancelled until that investigation has been concluded.
- (10) Subject to subsections (4) and (6) and section 13(2), the council must, on application register a person who was previously registered and whose registration was cancelled in terms of subsection (7)(c), if he or she -
- (a) has paid the prescribed application fee;
 - (b) has paid any arrear annual fee or portion thereof; and
 - (c) has paid any expenses incurred by the council in connection with the recovery of any arrear fees; and
 - (d) has paid any penalties imposed on him or her by the council.
- (11) A person who is registered in any of the categories referred to in subsection (1), may describe himself or herself and use the title "professional valuer", "professional associated valuer", "candidate valuer" or the name for the specified category as determined by the council, as the case may be.
- (12) The council may determine abbreviations or acronyms for the titles referred to in subsection (11).
- (13) A person who is registered in the category of candidate shall -
- (a) only perform work in the property valuation profession under the supervision and control of a professional; and
 - (b) describe himself or herself as a candidate valuer in all property valuation reports and other documentation relating to his or her work in the property valuation profession, prepared by him or her.

Renewal of registration

13. (1) A registered person must, at least three months prior to the expiry of his or her registration, as determined by the council in terms of section 8(b)(ii), apply in the prescribed manner to the council for the renewal of his or her registration in the applicable category.

(2) In addition to the provisions of section 12 which apply to the renewal of registration adapted as may contextually be necessary, the council may determine conditions for the renewal of registration.

Return of registration certificate

14. Any person whose registration has been cancelled, 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.

Grievance procedure in relation to registration

15. (1) If a committee of the council refuses to register a person or cancels his or her registration (other than a cancellation in terms of sections 12(6)(c) or 21(8)(a)), that person may, on payment of the prescribed fees and within 30 days, appeal to the council against that decision.

(2) The council must, at its first ensuing council meeting but at least within 60 days after the receipt of the appeal, decide on the appeal and provide the appellant with reasons for its decision.

(3) If an appeal lies 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.

Recognition of voluntary associations

16. (1) The council shall 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 8(f)(iv), recognise that association and issue to it 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 shall display its certificate of recognition in a conspicuous place at its head office.
- (6) The recognition of a voluntary association lapses if that association no longer complies with the requirements or at the expiry of the five-year period referred to in subsection (4).
- (7) A voluntary association whose recognition has lapsed must on written demand return its certificate of recognition to the council.

Reservation of work

17. (1) The council shall consult with all voluntary associations regarding the identification of certain kinds of work in connection with property valuation to be reserved for registered persons.
- (2) After the process of consultation the council must submit recommendations to the CBE, regarding the reservation of certain kinds of work, for their consideration and determination in terms of section 4 of the Council for the Built Environment Act, 1999.
- (3) A person who is not registered in terms of this Act, may not -
- (a) perform any kind of work reserved for any category of registered persons;
 - (b) pretend to be, or in any manner hold himself or herself out 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 12; or
 - (d) perform any act indicating, or calculated to lead persons to infer, that he or she is registered in terms of this Act.
- (4) The provisions of subsection (3)(a) may not be construed as prohibiting any person from performing work reserved, if such work is performed in the service of or by order of and under the direction, control, supervision of or in a formal association with a registered person entitled to perform that reserved work and who shall assume responsibility for any work so performed.

Professional conduct

18. (1) The council shall draw up a code of conduct for registered persons. The council shall consult with the CBE, the voluntary associations and all registered persons in drawing up that code.

- (2) The council is responsible for administering the code of conduct and shall ensure that the code is available to all members of the public at all reasonable times. The council shall provide the CBE with a copy of the code of conduct.
- (3) All registered persons shall comply with the code of conduct.

Investigation of charge of improper conduct

19. (1) When -

- (a) a complaint of improper conduct is lodged against a registered person; or
- (b) the council has reasonable grounds to suspect that a registered person is guilty of improper conduct,

the council must refer the matter to an investigating committee established in terms of section 11.

(2) The investigating committee must, in the prescribed manner, determine whether in its opinion the person concerned should be charged or not, and if so, what the contents of the charge in question should be.

(3) If the investigating committee is convinced that the person concerned should be charged and that, on *prima facie* evidence, conviction upon the charge may lead to the cancellation of the registration of the person concerned, the provisions of section 20 to 23 apply.

(4) If the investigating committee is convinced that the person concerned should be charged and that, on *prima facie* evidence, conviction upon the charge will not lead to the cancellation of the registration of the person concerned, the disciplinary hearing must be conducted in the prescribed manner.

(5) The acquittal or the conviction of a registered person by a court of law on a criminal charge is a bar to proceedings against him or her under this Act on a charge of improper conduct, even if the facts set forth in the charge of improper conduct would, if proved, constitute the offence set forth 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.

Steps after investigation

20. (1) The investigating committee may charge a person referred to in section 19 with improper conduct, if it is of the opinion that sufficient grounds for a charge of improper conduct against that person exists.
- (2) The investigating committee shall serve a charge sheet on the person concerned by hand or registered mail.
- (3) A charge sheet must inform the person charged –
- (a) of the detail and the 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 admittance or denial submit a written explanation regarding the improper conduct with which he or she is charged; and
 - (d) of the period (which period must be reasonable) within which his or her reaction in terms of paragraphs (b) and (c) must be submitted to the investigating committee.
- (4) If the 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.
- (5) If the person charged –
- (a) denies the charge; or
 - (b) fails to comply with subsection (3),
- the council must appoint a disciplinary tribunal to hear the charge.
- (6) The disciplinary tribunal shall consist of at least –
- (a) a professional who has at least 10 years' experience;
 - (b) a person qualified in law and who has at least 10 years' experience; and
 - (c) a person who specialises in the area concerning the charge.

Hearing of charge of improper conduct

21. (1) The investigating committee may, for the purposes of this section, appoint a person to perform its functions.
- (2) (a) The investigating committee may, for the purposes of a hearing, subpoena any person who in its opinion may be able to give material information concerning the subject of the hearing, or 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 that book, document or object.

- (b) A subpoena to a person to appear before the disciplinary tribunal or to produce a book, document or object, must be signed by the investigating committee or the chairperson of the disciplinary tribunal and be served on that person by delivering or tendering it to him or her or by sending it by registered mail to him or her.
- (c) The investigating committee may retain a book, document or object so produced, for the duration of the hearing.

(3) During a hearing the investigating committee may –

- (a) lead evidence and advance arguments in support of the charge and cross-examine witnesses; and
- (b) question any person who was or might have been subpoenaed in terms of subsection (1) and order him or her to produce any book, document or object in his or her possession or custody or under his or her control which the investigating committee suspects or believes to have a bearing on the subject of the hearing.

(4) The chairperson of the disciplinary tribunal may call upon and administer an oath to or accept an affirmation from any person present at the hearing who was or might have been subpoenaed in terms of subsection (1).

(5) (a) A person who has been subpoenaed –

- (i) may not without sufficient cause, fail to attend the hearing at the time and place specified in the subpoena;
- (ii) must remain in attendance until excused by the chairperson of the disciplinary tribunal from further attendance;
- (iii) may not refuse to be sworn in or to be affirmed as a witness;
- (iv) may not, 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;
- (v) may not fail to produce any book, document or object in his or her possession which he or she has been required to produce.

(b) The law relating to privilege, adjusted as may contextually be necessary, 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, applies 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.

- (c) A person 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.
 - (d) A person may not prevent another person from obeying 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.
 - (e) 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.
- (6) At a hearing the person charged has the right -
- (a) to be personally present, to be assisted or represented by another person, to give evidence and, either personally or through a representative -
 - (i) to be heard;
 - (ii) to call witnesses;
 - (iii) to cross-examine any person called as a witness in support of the charge; and
 - (iv) to have access to documents produced in evidence;
 - (b) despite the fact that he or she denied the charge or failed to react in terms of section 20(3), to admit at any time that he or she is guilty of the charge, in which case he or she is deemed to be guilty of improper conduct as charged;
 - (c) if the improper conduct with which he or she is charged amounts to an offence of which he or she was convicted by a court of law, to show cause why in his or her opinion he or she was wrongly convicted.
- (7) After the conclusion of the hearing the disciplinary tribunal must make a finding on the charge, and in the case of a finding of guilty, take cognisance of any aggravating or mitigating circumstances.
- (8) (a) If the person charged is found guilty of the 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 person charged;

- (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 person concerned for a period not exceeding one year; or
 - (iv) cancel the registration of the person concerned, and remove his or her name from the register.
- (b) The disciplinary tribunal may take decisions under more than one of the subparagraphs of paragraph (a).
- (9) The disciplinary tribunal shall inform the person charged of its finding and of the person's right of appeal in terms of section 23.

Proceedings after hearing

22. (1) At the conclusion of the hearing the disciplinary tribunal shall notify the council of its finding.
- (2) The council may publish any finding and the sanction (if applicable) imposed in terms of section 21 in any manner it considers fit.

Appeal against decision of disciplinary tribunal

23. (1) A person charged may appeal to the CBE against a finding of guilty by the disciplinary tribunal or the sentence, or both, within 30 days after the disciplinary tribunal notified him or her of its decision in accordance with section 21(9).
- (2) If a person charged lodges an appeal in terms of subsection (1), the decision of the disciplinary tribunal under section 21 may not be put into effect before the CBE has decided the appeal in terms of section 18 of the Council for the Built Environment Act, 1999.

Professional fees

24. (1) The council shall, in consultation with the voluntary associations, formulate recommendations with regard to the principles referred to in section 4(k)(vi) of the Council for the Built Environment Act, 1999.

- (2) The council shall 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, feels aggrieved about that review, it may refer the matter to the Minister for a final decision.
- (5) Any person who feels aggrieved by the guideline professional fees published in terms of subsection (2), may bring the matter to the attention of the CBE.

Appeal against certain decisions of council

25. (1) Any person who feels aggrieved by a decision made by the council in the exercise of its powers in terms of this Act may –
- (a) within 30 days after that person became aware of the decision and on payment of the prescribed fees, request the council in writing to furnish him or her in writing with its reasons for that decision;
 - (b) within 90 days after the council has in accordance with paragraph (a) furnished him or her with its reasons for that decision and after notice to the council, appeal to the CBE against that decision in terms of section 18 of the Council for the Built Environment Act, 1999.
- (2) This section does not apply to any appeal contemplated in sections 15 and 23 or a decision in terms of section 12(6)(c).

Rules

26. The council may by notice in the *Gazette* make rules, not inconsistent with this Act, 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.

Procedure and evidence

27. (1) The register referred to in section 8(b)(iii) serves as *prima facie* 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 thing authorised by this Act to be done, has or has not been done, is *prima facie* 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.

Rectification of errors

28. When anything, which according to the provisions of 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.

Liability

29. (1) The council, any member, committee or official thereof is not liable in respect of any legal proceedings in relation to an act performed in good faith.

(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 an 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 with respect to any legal proceedings in relation to a refusal, omission or information contemplated in this subsection.

(3) Any person who was registered in terms of this Act and whose registration was cancelled, is liable for any act taken or omission to act by him or her while he or she was registered.

Delegation of powers

30. (1) The Minister may delegate any of his or her powers in terms of this Act (excluding the power to appoint 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, excluding the power to hear an appeal in terms of section 15(2) (and whether discretionary or not) to a committee, an official or a member of the council or any other person or body of persons.

(3) The registrar may delegate any of his or her powers in terms of this Act, to an official of the council.

Offences and Penalties

31. (1) A person convicted of an offence in terms of section 17(3), is liable to a maximum fine equal to double the remuneration received by him or her for work done in contravention of section 17(3), or to a maximum fine equal to the fine calculated according to the ratio determined for three years imprisonment in terms of the Adjustment of Fines Act, 1991.

(2) A person who is convicted of an offence in terms of section 21(5)(a), (c) or (d), is liable to a maximum fine equal to the fine calculated according to the ratio determined for three years imprisonment in terms of the Adjustment of Fines Act, 1991.

(3) A person who is convicted of an offence in terms of any other section of this Act, is liable to a maximum fine calculated according to the ratio determined for a period of one month imprisonment in terms of the Adjustment of Fines Act, 1991.

Transitional provisions

32. (1) For the purposes of this section -

(a) "effected area" means the area which formerly constituted the national territories of the former Transkei, Bophuthatswana, Venda and Ciskei, and the areas in respect of which the former self-governing territories of Gazankulu, KaNgwane, KwaNdebele, KwaZulu, Lebowa and Quaqwa were established; 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 functions after the commencement of this Act until the effective date.
- (3) The South African Council for Valuers must, within 30 days from the date of commencement of this Act, invite nominations for the first appointment of members of the council in accordance with section 3.
- (4) For the purpose of nominations referred to in section 3, the existing voluntary associations are deemed to be recognised in terms of section 16.
- (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) A maximum of a third of the members of the South African Council for Valuers who are nominated by that council, remain in office for the first term of the council.
- (7) 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.
- (8) Any notice issued or exemption granted by the Minister in terms of the Valuers' Act, 1982, remains valid unless repealed under this Act.
- (9) 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.
- (10) 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.
- (11) From the effective date, any register maintained in terms of the Valuers' Act, 1982, are incorporated in and are considered to form part of a register to be maintained in terms of this Act.
- (12) 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.
- (13) At the end of the first term of the council 50 per cent of the members of the council must resign.

(14) 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 –

- (a) is ordinarily resident in any affected area;
- (b) has, for a continuous period of not less than five years before that date been regularly engaged in any affected area in the performance of work in property valuation 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 12 and issue to the applicant a certificate of registration in the prescribed form.

(15) 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 further period as the council may allow, applied to the council to be registered.

Repeal of laws

33. (1) 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 affected area indicated in the fourth column.

(2) In the Schedule any reference to the territory of the former Republic of South Africa must be construed as a reference to the territory of the Republic of South Africa as it was immediately before the commencement of the Constitution of the Republic of South Africa, 1996.

Act binding on State

34. This Act binds the State.

Short title and commencement

35. This Act is called the Property Valuation Profession Act, 1999 and commences on a date fixed by the President by Proclamation in the *Gazette*.

SCHEDULE

(Section 33)

No. and year of laws	Short title	Extent of repeal	Area of national territory
Act No. 30 of 1978	Valuation Act, 1978	The whole	Transkei
Act No. 23 of 1982	The Valuers' Act, 1982	The whole	
Act No. 7 of 1985	The Valuers' Amendment Act, 1985	The whole	
Act No. 67 of 1987	The 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 Adjustment Act, 1995	The whole	

THE QUANTITY SURVEYING PROFESSION BILL, 1999

BILL

To provide for the establishment of the South African Council for the Quantity Surveying Profession, for the registration of professionals, candidates and specified categories; 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 related matters.

Definitions

- 1. In this Act, unless the context otherwise indicates -**
 - (i) "accredit" means the process of evaluation and recognition of educational programmes offered by educational institutions relating to the quantity surveying profession and "accreditation" has a corresponding meaning;**
 - (ii) "candidate" means a person who is registered as such in terms of section 12;**
 - (iii) "CBE" means Council for the Built Environment established by section 2 of the Council for the Built Environment Act, 1999 (Act No. ... of 1999);**
 - (iv) "council" means the South African Council for the Quantity Surveying Profession established by section 2;**
 - (v) "department" means the national department responsible for public works;**
 - (vi) "Minister" means the Minister responsible for public works;**
 - (vii) "prescribe" means prescribed by rule made by the council under section 26, and "prescribed" has a corresponding meaning;**

- (viii) "professional" means a person who is registered as such in terms of section 12;
- (ix) "registered person" means a person registered in terms of section 12;
- (x) "registrar" means the person appointed as registrar under section 8(a)(i);
- (xi) "registration" means the process of assessment of the competency of applicants for the purpose of registration under this Act;
- (xii) "rule" means a rule made and in force under this Act;
- (xiii) "this Act" includes any notice, order or rule issued or made under this Act;
- (xiv) "voluntary association" means any voluntary association recognised by the council in terms of section 16.

Establishment of South African Council for the Quantity Surveying Profession

2. The South African Council for the Quantity Surveying Profession is established as a juristic person.

Composition of council

3. (1) The council consists of the following members, appointed by the Minister:
- (a) nine registered persons (excluding candidates) of whom at least three must actively practise in the quantity surveying profession, nominated by the voluntary associations;
 - (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 service of the State nominated by any level of government. At least one of the persons so nominated must be in the service of the department.

- (d) three members of the public or organisations involved in the built environment nominated through an open process of public participation.
- (2) When any nomination in terms of subsection 1(a), (b) or (c) becomes necessary, the council must invite the voluntary associations, educational institutions and the State, respectively, in the prescribed manner, to nominate within the period specified who qualify for nomination in terms of subsection (1)(a), (b) or (c), respectively.
- (3) When any nomination in terms of subsection (1)(d) becomes necessary, the council must invite the public, by notice in the *Gazette* and any other newspaper the council considers necessary (but at least in a leading newspaper in each province), to nominate members for appointment to the council within the period specified in the notice.
- (4) The period referred to in the invitation and the notice must be at least 60 days.
- (5) If the council receives any nominations it must within seven days from the expiry date specified in the invitation and the notice, submit its recommendations to the Minister.
- (6) The Minister shall, within 60 days after receipt of the nominations from the outgoing council, appoint the council.
- (7) If the council receives no or not sufficient nominations within the period specified in the invitation or the notice, the Minister may, after consultation with the council, appoint such person or persons who hold the necessary qualifications for appointment, up to the number required, to be members of the council in terms of the subsection concerned.
- (8) The Minister shall, as soon as practicable after the appointment of the members of the council, publish the name of every person appointed as a member of the together with the date from which the appointment takes effect and the period for which the appointment is made, by notice in the *Gazette*.
- (9) The council shall, within 30 days from the appointment of the council, determine the time and place of its first meeting and the council shall determine the time and place of any future meeting.

Term of office of members of council

4. (1) Every member of the council appointed in terms of section 3 holds office for a period of four years, but continues to hold office after the expiration of the period for which that member was appointed until the succeeding council is properly constituted.
- (2) A member of the council may not serve for more than two consecutive terms of office.

(3) If a member of the council dies or vacates his or her office before the expiration of the period for which he or she was appointed, the Minister may, after consultation with the council and subject to the provisions of section 5(1), appoint a person to fill the vacancy for the unexpired portion of the period for which that member was appointed. If the Minister appoints a person for the vacant seat, the appointment must be made within 60 days from the date on which the vacancy occurred.

(4) Notwithstanding the provisions of subsection (1), the Minister may by notice in the *Gazette*, after consultation with the council, extend or terminate the period of office of all the members of the council. If the Minister extends the period of offices, that extension may be for a further period of six months, but he or she may only extend the period of office twice. If the Minister terminates the period of office he or she may only do so if a new council has been appointed, on nominations invited by the Minister, to take over the functions of the council concerned.

Persons disqualified from membership of council and vacation of office

5. (1) A person may not be appointed as a member or alternate member of the council if that person -

- (a) is not a South African citizen
- (b) is an unrehabilitated insolvent;
- (c) has been convicted of an offence and sentenced to imprisonment for a period of exceeding three months or a fine as alternative thereto;
- (d) has, as a result of improper conduct, been removed from an office of trust;
- (e) has in terms of this Act been found guilty by the council of improper conduct; or
- (f) in the case of persons referred to in section 3(1)(a), (b) and (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 3(1)(a) and ceases to be a member of the voluntary association or the board which nominated him or her and if that disassociation affects the ratio of the membership referred to in section 3(1);
- (f) is appointed in terms of section 3(1)(b) and ceases to be employed by an accredited educational institution;
- (g) is appointed in terms of section 3(1)(c) and ceases to be a person employed by the State; or
- (h) ceases to be a permanent resident in the Republic of South Africa.

Election of president and vice-president of council

6. (1) The members of the council shall at the first meeting of every newly constituted council and, as the occasion arises, from their number elect a president and a vice-president of whom at least one must actively practise in the quantity surveying profession, and both must be registered persons. The president and vice-president hold office for the period that the council determines at the time of their election.

(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) If both the president and the vice-president are for any reason unable to preside at a council meeting, the members present must elect from their number a person to preside at that meeting, and that person 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.

Decisions of council

7. (1) A decision taken by the council or an act performed under the authority of the council is not invalid by reason only of a vacancy on the council, or of the fact that a person who is not entitled to sit as a member of the council sat as a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of the members of the council who were present at the time and entitled to sit as members.

(2) A decision of the majority of the members of the council present at any meeting constitutes a decision of the council.

- (3) In the event of an equality of votes, the president has a casting vote as well as a deliberative vote.

General powers of council

8. In addition to any other powers of the council in terms of this Act, the council may -

(a) with regard to administrative matters -

- (i) appoint and remunerate a registrar and any other persons as the council considers necessary for the performance of its functions, and determine their functions;
- (ii) determine the remuneration and allowances payable from the funds of the council to its members or of any committee of the council;
- (iii) arrange for the payment of pension and other benefits to any official of the council and his or her dependants on the termination of the service of that official;
- (iv) determine where its head office must be situated;
- (v) 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 minutes of such meetings must be kept;
- (vi) 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;

(b) with regard to registration -

- (i) subject to the provisions of this Act, consider and decide on any application for registration as a professional or candidate;
- (ii) determine and prescribe the period of validity of the registration of a registered person;
- (iii) keep registers of all categories of registered persons;
- (iv) decide on the form of the registers and certificates to be kept, maintained or issued under this Act, the reviewing thereof and the manner in which alterations thereto may be effected;

(c) with regard to fees -

- (i) determine the application fees payable to the council;

- (ii) determine the registration fees payable to the council;
- (iii) determine the annual fees or portion thereof in respect of a part of a year, payable by registered persons to the council;
- (iv) determine the date on which any fee or levy is payable;
- (v) determine the fees (or part thereof) payable to the council in respect of any examination referred to in section 12, conducted by or on behalf of the council;
- (vi) determine any levy payable to the council for the purposes of the fund referred to in section 9(5);
- (vii) grant exemption from payment of application fees, registration fees, annual fees, levies or portion thereof;
- (viii) determine fees payable to the council in terms of an appointment referred to in paragraph (e)(iii);
- (ix) determine any other fee or levy it considers necessary;
- (d) with regard to education –
 - (i) conduct accreditation visits to any educational institution which has a department, school or faculty in Quantity Surveying, but shall conduct at least one such visit every five years and if the council does not conduct an accreditation visit within the five-year period, due to circumstances beyond its control, it must notify the Minister accordingly;
 - (ii) grant, grant conditionally, refuse or withdraw accreditation of all educational institutions and its educational programmes with regard to Quantity Surveying;
 - (iii) consult regularly with the Council on Higher Education established in terms of the Higher Education Act, 1997 (Act No. 101 of 1997) regarding matters relevant to education of quantity surveying;
 - (iv) 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.
 - (v) establish mechanisms for registered persons to gain recognition of their qualifications and professional status in other countries;
 - (vi) liaise with the National Standards Body established in terms Chapter 3 of the Regulations under the South African Qualifications Authority Act,

1995, with the view to the establishment of a Standards Generating Body in terms of those Regulations;

(vii) recognise or withdraw the recognition of any examination contemplated in section 12;

(viii) 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;

(ix) 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;

(x) conduct any examination or test for the purposes of section 12;

(xi) determine conditions relating to, and the nature and extent of continuing education and training;

(e) in general –

(i) acquire or hire such movable or immovable property as it considers necessary for the effective performance of its functions and maintain, let, sell or otherwise dispose of property acquired;

(ii) decide upon the manner in which contracts must be entered into on behalf of the council;

(iii) accept an appointment by any person or body of persons (including the State) to perform a service within its competence;

(iv) determine, subject to section 16, the requirements with which a voluntary association must comply to qualify for recognition by the council;

(v) advise the Minister any other Minister or the CBE on any matter relating to the Quantity Surveying Profession;

(vi) encourage and itself undertake research into matters relating to the quantity surveying profession;

(vii) take any steps which it considers necessary for the protection of the public in their dealings with registered persons for the maintenance of the integrity, the enhancement of the status and the improvement of the standards of services rendered by those persons;

- (viii) determine and prescribe punitive measures with regard to disciplinary hearings conducted as contemplated in section 19(4), excluding the punitive measure of cancellation of registration;
- (ix) take any measures it considers necessary for the proper performance of its functions or to achieve the objects of this Act.

Funds of council and keeping and auditing of accounts

9. (1) The funds of the council consist of any money received by it in terms of this Act and all other monies which may accrue to the council from any other source.
- (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;
 - (d) mortgage any of its immovable property as security for a loan referred to in paragraph (b).
- (3) The council may, from its funds, appropriate money for the remuneration of its members, committee members and officials.
- (4) The council may finance any publication referred to in section 8.
- (5) The council may establish and administer an education fund for the purpose of the education, training and continuing education and training of registered persons and students in the Quantity Surveying Profession.
- (6) The council shall keep full and correct account of all monies received or expended by it.
- (7) The council shall annually prepare a statement of income and expenditure and a balance sheet showing its financial position at the close of the financial year to which it relates, and shall 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). A copy of the audited statement and balance sheet must be open for inspection at the offices of the council.
- (8) The council shall within six months from the close of each financial year, submit the audited statement and balance sheet to the Minister and shall provide a copy to the CBE.
- (9) The Minister may, with the concurrence of the Minister of Finance –

- (a) advance 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 shall determine its financial year.
- (11) The council shall apply due care and diligence when investing such money or appropriating any expenditure from the funds of the council.

Reports to CBE

10. (1) The council shall, within six months from the close of each financial year, provide the CBE with a report regarding to its activities during that financial year for the purpose of section 4 of the Council for the Built Environment Act, 1999.
- (2) A copy of the report and the register referred to in section 8(b)(iii) 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.

Committees of council

11. (1) (a) The council may establish any 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) Any reference in this Act to the council, or to the president of the council, in relation to the exercise of any power which the council has delegated to a committee, must be construed as including a reference to that committee or to the chairperson of that committee, as the case may be.
- (3) The provisions of section 7, adjusted as may contextually be necessary, applies in respect of a committee of the council.

Registration

12. (1) The categories for registered persons in the Quantity Surveying profession are:

- A. Professional : Quantity Surveyor
- B. Candidate : Quantity Surveyor
- C. Specified categories : As the council determines

(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 shall apply, in the prescribed manner, to the council for registration in a category contemplated in subsection (1). The application must be accompanied by the prescribed registration fee and information.

(4) If, after consideration of an application, the council is satisfied that the applicant –

(a) in the case of a professional or a person applying for registration in a specified category –

- (i) has demonstrated his or her competence against standards determined by the council for the relevant category of registration;;
- (ii) has passed any additional examination, that may be determined by the council for the purpose of this paragraph;
- (iii) has gained practical experience in quantity surveying in the Republic, which in the opinion of the council, is of sufficient variety and of a satisfactory nature and standard;

(b) in the case of a candidate or a person applying has proved that he or she has satisfied the relevant educational outcomes determined by the council for this purpose, by –

- (i) passing accredited or recognised examinations at any educational institution offering educational programmes in quantity surveying;
- (ii) passing any other examinations that may be determined by the council; or
- (iii) presenting evidence of prior learning;

the council must register the applicant in the relevant category and issue to him or her a registration certificate in the prescribed form.

(5) The council may refuse to register an applicant –

- (a) if the applicant has been convicted of an offence and sentenced to imprisonment for a period exceeding three months or a fine as alternative thereto;

- (b) if the applicant has been removed from an office of trust on account of improper conduct;
 - (c) 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;
 - (d) for as long as the registration of the applicant is suspended as a result of any punishment imposed on him or her under this Act;
 - (e) 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.
- (6) The council may cancel the registration of a professional or candidate if he or she –
- (a) becomes disqualified for registration as contemplated in subsection (5);
 - (b) has erroneously been registered, or has been registered on information subsequently proved to be false; or
 - (c) fails to pay the prescribed annual fee or portion thereof, within 60 days after it becomes due or within such further period as the council may, either before or after termination of the 60 days, allow. Despite cancellation in terms of this paragraph, the person concerned remains liable for the payment of the due amount.
- (7) 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 to be held, the registration may not be cancelled until that investigation has been concluded.
- (8) If a person who is registered as a candidate, qualifies to be registered as a professional in terms of subsection (4)(a), the council must cancel his or her registration in as a candidate.
- (9) Subject to subsections (4) and (5) and section 13(2), the council must, on application register a person who was previously registered and whose registration has been cancelled in terms of subsection (6)(c), if he or she –
- (a) has paid the prescribed application fee;
 - (b) has paid any arrear annual fee or portion thereof;
 - (c) has paid any expenses incurred by the council in connection with the recovery of any arrear fees;
 - (d) has paid any penalties imposed on him or her by the council.

- (10) A person who is registered may describe himself or herself and use the title "professional quantity surveyor", "candidate quantity surveyor" or the name for the specified category, as determined by the council, as the case may be.
- (11) The council may determine abbreviations or acronyms for the titles referred to in subsection (10).
- (12) A person who is registered in the category of candidate shall -
- (a) only perform work in the quantity surveying profession under the supervision and control of a professional; and
 - (b) describe himself or herself as a candidate in all quantity surveying reports or other documentation relating to his or her work in the quantity surveying profession, prepared by him or her.

Renewal of registration

13. (1) A registered person must, at least three months prior to the expiry of his or her registration, as determined by the council in terms of section 8(b)(ii), apply in the prescribed manner to the council for the renewal of his or her registration in the applicable category.
- (2) In addition to the provisions of section 12, which apply to the renewal of registration, adapted as may contextually be necessary, the council may determine conditions for the renewal of registration.

Return of registration certificate

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

Grievance procedure in relation to registration

15. (1) If a committee of the council refuses to register a person or cancels his or her registration (excluding a cancellation in terms of sections 12(6)(c) and 21 (8)(a)), that person may, on payment of the prescribed fees and within 30 days, appeal to the council against that decision.

- (2) The council must, at its first ensuing meeting, but at least within 60 days after the receipt of the appeal, decide on the appeal and provide the appellant with the reasons for its decision.
- (3) If an appeal lies against the 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.

Recognition of voluntary associations

16. (1) The council shall 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 8(e)(iv), recognise that association and issue to it 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 shall display its certificate of recognition in a conspicuous place at its head office.
- (6) The recognition of a voluntary association lapses if that association no longer complies with the approved requirements, or at the expiry of the five-year period referred to in subsection (4).
- (7) A voluntary association whose recognition has lapsed must on written demand return its certificate of recognition to the council.

Reservation of work

17. (1) The council shall consult with all voluntary associations regarding the identification of certain kinds of quantity surveying work to be reserved for registered persons.

(2) After the process of consultation the council must submit recommendations to the CBE regarding the reservation of certain kinds of work, for their consideration and determination in terms of section 4 of the Council for the Built Environment Act, 1999.

- (3) A person who is not registered in terms of this Act may not -
 - (a) perform any kind of work reserved for any category of registered persons unless that person is registered in that particular category;
 - (b) pretend to be, or in any manner hold himself or herself out 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 12; or
 - (d) perform any act indicating, or calculated to lead persons to infer, that he or she is registered in terms of this Act.
- (4) The provisions of subsection (3)(a) may not be construed as prohibiting any person from performing work reserved, if such work is performed in the service of or by order of and under the direction, control, supervision of or in a formal association with a registered person entitled to perform that reserved work and who shall assume responsibility for any work so performed.

Professional conduct

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

Investigation of charge of improper conduct

19. (1) When -
- (a) a complaint of improper conduct is lodged against a registered person; or
 - (b) the council has reasonable grounds to suspect that a registered person is guilty of improper conduct,
- the council must refer the matter to an investigating committee, established in terms of section 11.
- (2) The investigating committee must in the prescribed manner, determine whether in its opinion the person concerned should be charged or not, and if so, what the contents of the charge in question should be.
- (3) If the investigating committee is convinced that the person should be charged and on *prima facie* evidence, that conviction upon the charge may lead to the cancellation of the registration of the person concerned, the provisions of sections 20 to 23 apply.

(4) If the investigating committee is convinced that the person concerned should be charged and that, on *prima facie* evidence, conviction upon the charge will not lead to the cancellation of the registration of the person concerned, the disciplinary hearing must be conducted in the prescribed manner.

(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 set forth in the charge of improper conduct would, if proved, constitute the offence set forth 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.

Steps after investigation

20. (1) The investigating committee may charge a person referred to in section 19 with improper conduct, if it is of the opinion that sufficient grounds for a charge of improper conduct against that person exists.

(2) The investigating committee shall serve a charge sheet on the person concerned by hand or registered mail.

(3) A charge sheet must inform the person charged –

- (a) of the detail and the 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 admittance or denial submit a written explanation regarding the improper conduct with which he or she is charged; and
- (d) of the period (which period must be reasonable) within which his or her reaction in terms of paragraphs (b) and (c) must be submitted to the investigating committee.

(4) If the 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.

(5) If the person charged –

- (a) denies the charge; or
- (b) fails to comply with subsection (3),

the council must appoint a disciplinary tribunal to hear the charge.

(6) The disciplinary tribunal shall consist of at least –

- (a) a professional who has at least 10 years' experience;

- (b) a person qualified in law and who has at least 10 years' experience; and
- (c) a person who specialises in the area concerning the charge.

Hearing of charge of improper conduct

21. (1) The investigating committee may, for the purposes of this section, appoint a person to perform its functions.

(2) (a) The investigating committee may, for the purposes of a hearing, subpoena any person who in its opinion may be able to give material information concerning the subject of the hearing, or 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 that book, document or object.

(b) A subpoena to a person to appear before the disciplinary tribunal or to produce a book, document or object, must be signed by the investigating committee or the chairperson of the disciplinary tribunal and be served on that person by delivering or tendering it to him or her or by sending it by registered mail to him or her.

(c) The investigating committee may retain a book, document or object so produced, for the duration of the hearing.

(3) During a hearing an investigating committee may –

(a) lead evidence and advance arguments in support of the charge and cross-examine witnesses; and

(b) question any person who was or might have been subpoenaed in terms of subsection (1) and order him or her to produce any book, document or object in his or her possession or custody or under his or her control which the investigating committee suspects or believes to have a bearing on the subject of the hearing.

(4) The chairperson of the disciplinary tribunal may call upon and administer an oath to or accept an affirmation from any person present at the hearing who was or might have been subpoenaed in terms of subsection (1).

(5) (a) A person who has been subpoenaed –

(i) may not without sufficient cause, fail to attend the hearing at the time and place specified in the subpoena;

- (ii) must remain in attendance until excused by the chairperson of the disciplinary tribunal from further attendance;
 - (iii) may not refuse to be sworn in or to be affirmed as a witness;
 - (iv) may not, 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;
 - (v) may not fail to produce any book, document or object in his or her possession which he or she has been required to produce.
 - (b) The law relating to privilege, adjusted as may contextually be necessary, 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, applies, adjusted as may contextually be necessary, 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.
 - (c) A person 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.
 - (d) A person may not prevent another person from obeying 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.
 - (e) 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 such offence, unless the conviction has been set aside by a superior court.
- (6) At a hearing the person charged has the right –
- (a) to be personally present, to be assisted or represented by another person, to give evidence and, either personally or through a representative –
 - (i) to be heard;
 - (ii) to call witnesses;
 - (iii) to cross-examine any person called as a witness in support of the charge; and
 - (iv) to have access to documents produced in evidence;

- (b) despite the fact that he or she denied the charge or failed to react in terms of section 20(3), to admit at any time that he or she is guilty of the charge, in which case he or she is deemed to be guilty of improper conduct as charged;
 - (c) if the improper conduct with which he or she is charged amounts to an offence of which he or she was convicted by a court of law, to show cause why in his or her opinion he or she was wrongly convicted.
- (7) After the conclusion of the hearing the disciplinary tribunal must make a finding on the charge, and, in the case of a finding of guilty, take cognisance of any aggravating or mitigating circumstances it may find.
- (8) (a) If the 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 person charged;
 - (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 person concerned for a period not exceeding one year; or
 - (iv) cancel the registration of the person concerned and remove his or her name from the register.
- (b) The disciplinary tribunal may take decisions under more than one of the subparagraphs of paragraph (a).
- (9) The disciplinary tribunal shall notify the person charged of its finding and of the person's right of appeal in terms of section 23.

Proceedings after hearing

22. (1) At the conclusion of the hearing the disciplinary tribunal shall notify the council of its finding.
- (2) The council may publish any finding and the sanction (if applicable) imposed in terms of this section in any manner it considers fit.

Appeal against decision of disciplinary tribunal

23. (1) A person charged may appeal to the CBE against a finding of guilty by the disciplinary tribunal or the sentence, or both, within 30 days after the disciplinary tribunal notified him or her of its decision in accordance with section 21(9).

(2) If a person charged lodges an appeal in terms of subsection (1), the decision of the disciplinary tribunal under section 21 may not be effected before the CBE has decided the appeal in terms of section 18 of the Council for the Built Environment Act, 1999.

Professional fees

24. (1) The council shall, in consultation with the voluntary associations, formulate recommendations with regard to the principles referred to in section 4(k)(vi) of the Council for the Built Environment Act, 1999.

(2) The council shall annually, after consultation with the voluntary associations, determine guideline professional fees and publish those fees in the *Government Gazette*.

(3) The CBE may review the guideline professional fees published by the council, and may refer the fees back to the council for re-consideration.

(4) If the council, after review by the CBE of the guideline professional fees, feels aggrieved about that review, it may refer the matter to the minister for a final decision.

(5) Any person who feels aggrieved by the guideline professional fees published in terms of subsection (2), may bring the matter to the attention of the CBE.

Appeal against certain decisions of council

25. (1) Any person who feels aggrieved by a decision made by the council in the exercise of its powers in terms of this Act may –

(a) within 30 days after that person became aware of the decision and on payment of the prescribed fees, request the council in writing to furnish him or her in writing with its reasons for that decision;

(b) within 90 days after the council has in accordance with paragraph (a) furnished him or her with its reasons for that decision and after notice to the council, appeal to the CBE against that decision in terms of section 18 of the Council for the Built Environment Act, 1999.

- (2) This section does not apply to any appeal or procedure contemplated in sections 15 or 23, or a decision in terms of section 12(6)(c).

Rules

26. The council may by notice in the *Gazette* make rules, not inconsistent with this Act, with regard to any matter that is required or permitted to be prescribed or determined 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.

Procedure and evidence

27. (1) The register referred to in section 8(b)(iii) serves as *prima facie* 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 thing authorised by this Act to be done, has or has not been done, is *prima facie* 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.

Rectification of errors

28. When anything, which according to the provisions of 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.

Liability

29. (1) The council, any member, committee or official thereof, is not liable in respect of any legal proceedings in relation to an act performed in good faith.

- (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 with respect to any legal proceedings in relation to a refusal, omission or information contemplated in this subsection.

- (3) Any person who was registered in terms of this Act, and whose registration was cancelled, is liable for any act taken or omission to act by him or her while he or she was registered.

Delegation of powers

30. (1) The Minister may delegate any of his or her powers in terms of this Act (excluding the power to appoint 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, excluding the power to hear an appeal in terms of section 15(2) (and whether discretionary or not) to a committee, an official or a member of the council.

(3) The registrar may delegate any of his or her powers in terms of this Act to an official of the council.

Offences and Penalties

31. (1) A person convicted of an offence in terms of section 17(3), is liable to a maximum fine equal to double the remuneration received by him or her for work done in contravention of section 17(3), or to a maximum fine equal to the fine calculated according to the ratio determined for three years imprisonment in terms of the Adjustment of Fines Act, 1991.

(2) A person who is convicted of an offence in terms of section 21(5)(a), (c) or (d), is liable to a maximum fine equal to the fine calculated according to the ratio determined for three years imprisonment in terms of the Adjustment of Fines Act, 1991.

- (3) A person who is convicted of an offence in terms of subsection (1) read with any other section of this Act, is liable to a maximum fine calculated according to the ratio determined for a period of one month imprisonment in terms of the Adjustment of Fines Act, 1991.

Transitional provisions

32. (1) For the purpose of this section, "effective date" means the date the date of the first meeting of the council.
- (2) The South African Council for Quantity Surveyors established in terms of section 2 of the Quantity Surveyors' Act, 1970 (Act No. 36 of 1970), continues to exist and may exercise 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 commencement of this Act invite nominations for the first appointment of members of the council, in accordance with section 3.
- (4) 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.
- (5) A maximum of a third of members of the South African Council for Quantity Surveyors who are nominated by that council, remain in office for the first term of the council.
- (6) Any act performed, decision taken, or rule made or purported to be 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 office of the council, fifty per cent of the members of the council must resign.

Repeal of laws

33. (1) 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.

(2) In the Schedule any reference to the territory of the former Republic of South Africa must be construed as a reference to the territory of the Republic of South Africa as it was immediately before the commencement of the Constitution of the Republic of South Africa, 1996.

Act binding on State

34. This Act binds the State.

Short title and commencement

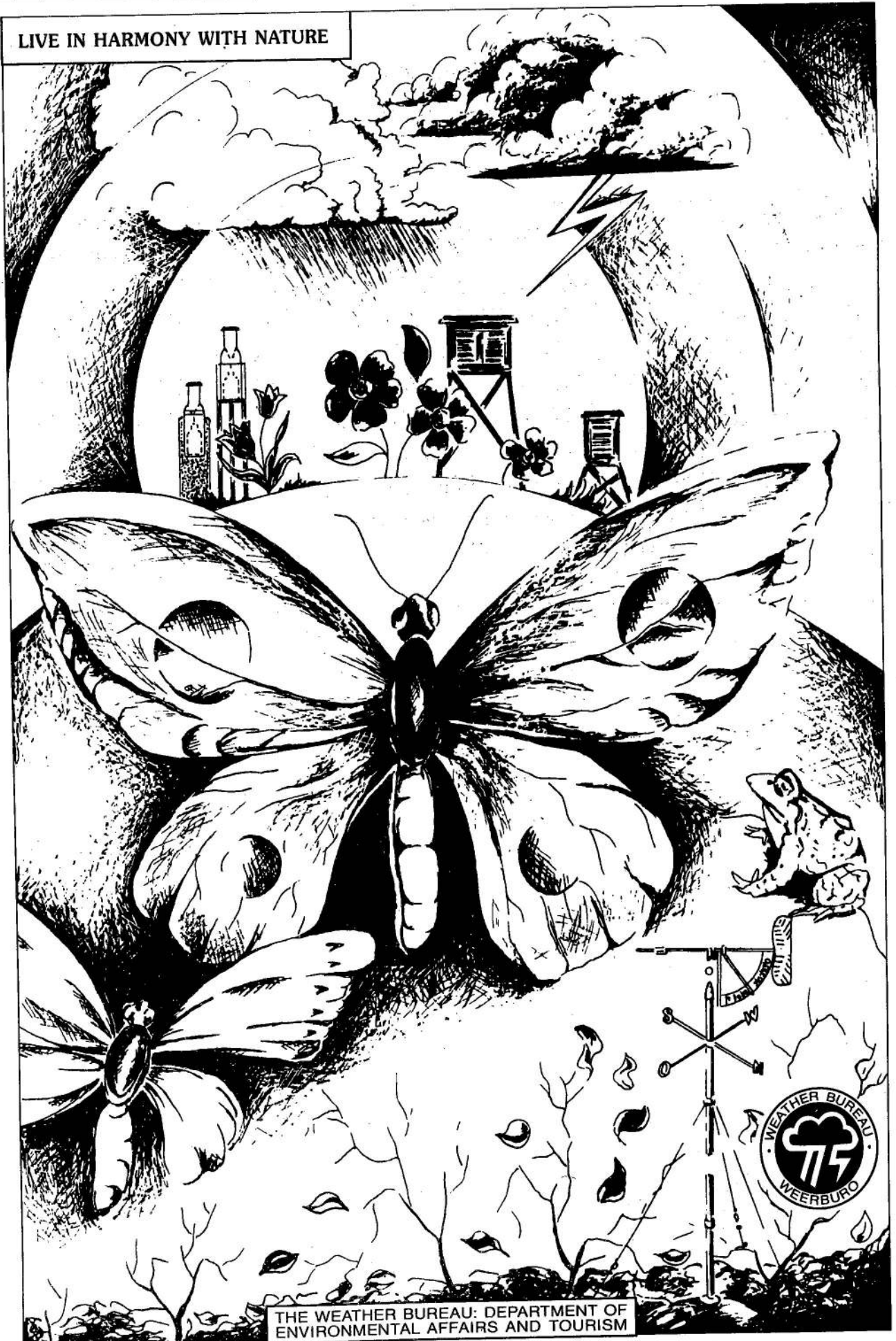
35. This Act is called the Quantity Surveying Profession Act, 1999 and commences on a date fixed by the President by Proclamation in the *Gazette*.

SCHEDULE

(Section 33)

No. and year of laws	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, 1975	The whole	
Act No. 50 of 1982	Quantity Surveyors' Amendment Act, 1979	The whole	
Act No. 76 of 1987	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. 14 of 1995	Periods of Office of Members of Councils for Architects, Engineers, Quantity Surveyors and Valuers Adjustment Act, 1995	The whole	

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