

# THE ENGINEERING PROFESSION BILL

## 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 : As the council determines  
Categories

(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	