

# POLICY DOCUMENT ON THE STATUTORY REGULATION OF THE BUILT ENVIRONMENT PROFESSIONS

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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.

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## **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) (a) formed for any lawful purpose;
- (b) (b) having the main object of promoting and protecting the interests and quality of the work done in the particular built environment profession;
- (c) (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.

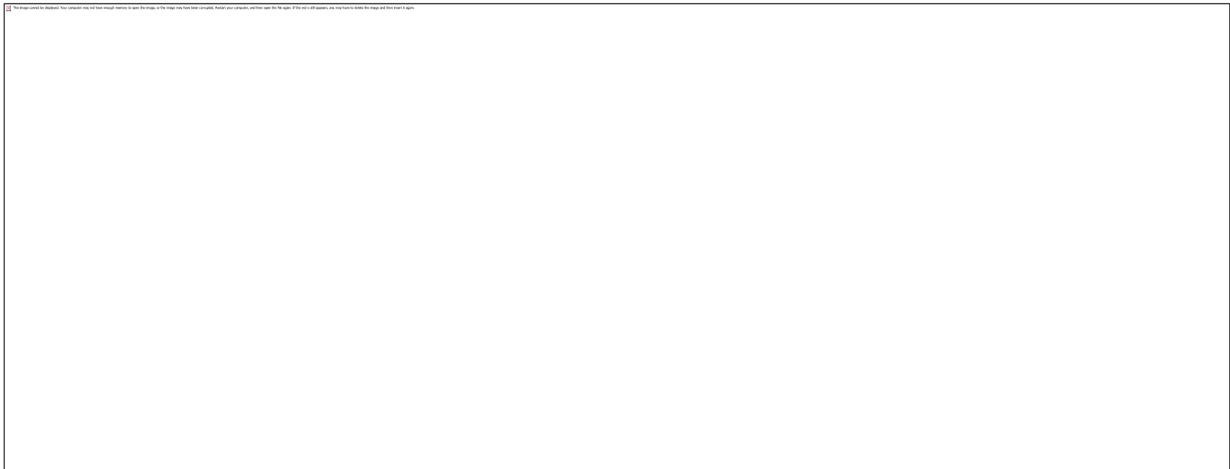
## **6. NEW LEGISLATION**

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.