

**GENERAL NOTICES  
ALGEMENE KENNISGEWINGS**

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**NOTICE 1226 OF 2005**

**DEPARTMENT OF LAND AFFAIRS**

**PUBLICATION OF SURVEYING PROFESSION BILL FOR GENERAL  
COMMENT**

I, Angela Thokozile Didiza, Minister for Agriculture and Land Affairs, hereby publish the Surveying Profession Bill for general comment.

Comment must be submitted in writing within 60 days from the date of publication of this notice to :

Mr A van den Berg  
Chief Surveyor-General  
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**A T DIDIZA**

**MINISTER FOR AGRICULTURE AND LAND AFFAIRS**

TH3091

(For discussion purposes)

# REPUBLIC OF SOUTH AFRICA

## SURVEYING PROFESSION BILL

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*(As introduced in the National Assembly as a section 75Bill;  
Bill published in Government Gazette No. of )  
(The English text is the official text of the Bill)*

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**(MINISTER FOR AGRICULTURE AND  
LAND AFFAIRS)**

**[B - 2005]**

# BILL

To provide for the establishment of the South African Council for Surveyors as a juristic person; to broaden access to the profession of Surveyors; to provide for different categories of surveyors and the registration of surveyors; to authorise the identification of areas of work for surveyors; to recognise certain voluntary associations; to protect the public from unethical surveying practices; to maintain a high standard of professional conduct and integrity; to establish disciplinary mechanisms and an Appeal Board; and to provide for incidental matters.

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

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## CHAPTER 1 DEFINITIONS AND SURVEYING PROFESSION PRINCIPLES

### Definitions

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

“**accreditation**” means the process of evaluation and recognition by the Council of education programmes offered by educational institutions relating to the surveying profession;

“**Appeal Board**” means the Appeal Board established by section 24;

“**assessment**” means an admission procedure established by the Council, to determine whether an applicant is competent to be registered as a registered person;

“**candidate surveyor**” means a person registered as a candidate surveyor in terms of section 13 (4);

“**Council**” means the South African Council for Surveyors established by section 3;

“**Department**” means the national department responsible for the surveying profession;

“**Director-General**” means the Director-General of the Department;

“**educational institution**” means any educational institution which has a department, school or faculty of surveying, geomatics or geoinformation science;

**“financial year”** means a year ending on 31 March;

**“geoinformation”** means information that describes the location and characteristics of phenomena, natural or human made, related to the earth’s surface – **also** referred to **as** spatial or geographic information;

**“Minister”** means the Minister responsible for the surveying profession;

**“National Qualifications Framework”** means the National Qualifications Framework as defined in section 1 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);

**“prescribe”** means prescribe by rule made by the Council or regulation made by the Minister;

**“professional surveyor”** means a person registered as a professional surveyor in terms of section 13 (4);

**“register”** when used as a noun, means the register referred to in section 8 (2) (b);

**“registered persons”** means persons registered as candidate surveyors, survey technicians, survey technologists or professional surveyors in terms of section 13 (4);

**“Registrar”** means the person appointed as Registrar under section 8(1)(a);

“surveying profession” means the persons registered in terms of section 13 (4) as candidate surveyors, survey technicians, survey technologists or professional surveyors;

“**surveyor**” means a person who exercises **skills** and competencies in the science of measurement, the collection and assessment of geographic information, as well as the application of that information in the efficient administration of land, the sea and structures thereon or therein as contemplated in section 2 (a), and who is registered in one or more of the categories contemplated in section 13 (4);

“**survey technician**” means a person registered as a survey technician in terms of section 13(4);

“survey technologist” means a person registered as a survey technologist in terms of section 13(4);

“**the sea**” means the sea as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

“**this Act**” means the Surveying Profession Act, 2005, and includes any regulation or rule; and

“**voluntary association**” means any voluntary association, organisation; institute, institution or other body of surveyors recognised by the Council in terms of section 17.

## Surveying profession principles

2 The following principles apply to the Council and all registered persons and must guide the interpretation, administration and implementation of this Act:



- (a) Surveying and the surveying profession are areas of expertise which involve one or more of the following activities, which may occur either on, above or below the surface of the land or the sea:-
- (i) the determination of the size and shape of the earth and the measurement of all data needed to define the size, position, shape and contour of any part of the earth;
  - (ii) the positioning of objects in space and the positioning and monitoring of physical features, structures and engineering works;
  - (iii) the determination of the position of the boundaries of land **and** of real rights in land, for **the** purpose of registration of such land and rights in terms of applicable legislation;
  - (iv) the design, establishment and administration of geographic information systems and the collection, storage, analysis, visualisation and management of geoinformation; and
  - (v) the measurement of land, mineral and marine resources.
- (b) Surveying ~~must~~ pursue and serve the interests of the public to benefit the present and future generations.
- (c) The Council and the surveying profession must-
- (i) strive to achieve the transformation of the profession to ensure its legitimacy and effectiveness; — —

- (ii) strive to achieve high standards of quality and integrity in the profession;
- (iii) promote the profession and pursue improvements in the competence of surveyors through the development of ~~skills~~, knowledge and standards within the profession; and
- (iv) promote environmentally responsible surveying which will ensure sustainable development.

## CHAPTER 2 SOUTH AFRICAN COUNCIL FOR SURVEYORS

### Establishment of South African Council for Surveyors

3. (1) There is hereby established a juristic person called the South African Council for Surveyors.
- (2) The Council must perform the functions determined in this Act.

### Constitution of Council

4. (1) The Council consists of the following members appointed by the Minister after the nomination and selection processes referred to in subsection (3) have taken place:
- (a) Six surveyors in the full-time employ of the State, of which at least four must be in the full-time employ of the Department;
  - (b) eleven surveyors who are not in the full-time employ of the State;
- and

(c) no more than two, but at least one person to represent the interests of the public.

(2) (a) The Minister must appoint, from the members of the Council, a chairperson, a deputy chairperson and an alternate chairperson of the Council.

(b) When the chairperson is unable to perform the functions of that office, they shall be performed by the deputy chairperson or, if the deputy chairperson is unable to do so, by the alternate chairperson.

(3) The Minister must call for nominations for members of the Council at least 30 days before the selection process takes place by-

(a) publishing a notice in the *Gazette and* at least one national newspaper and any other appropriate media, indicating the categories of members to constitute the Council, the number of representatives to be appointed in each category and the persons or bodies entitled to nominate persons in the specified categories;

(b) inviting all interested persons, voluntary associations, institutions and organisations to submit nominations; and

(c) taking any other steps he or she deems necessary.

(4) In appointing members of the Council, the Minister must have due regard to the surveying profession principles contained in section 2, the different categories and branches of the surveying profession and the need to ensure and promote gender, disability and other demographic representativity.

(5) Every member of the Council must be appointed for a period of four years, but the Minister may in his or her discretion extend the term of such a member by a further period not exceeding three months until a new Council or member has been appointed.

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

(7) The Minister must publish in the *Gazette* the names of and positions held by each appointee to the Council and the date on which each appointment takes effect.

(8) If a member of the Council dies or vacates his or her office before the expiry of the period for which he or she was appointed, the Minister may appoint a person to fill the vacancy for the unexpired portion of the period for which such member was appointed: provided that the appointment does not alter the composition of the Council as set out in subsection (1).

#### **Disqualification as member of Council, and vacation of office**

5. (1) The Minister may not appoint as a member of the Council a person who-

- (a) is not a South African citizen or a permanent resident, and is not ordinarily resident in the Republic of South Africa;
- (b) is an unrehabilitated insolvent;
- (c) is declared by a court of law to be mentally incompetent or is detained in terms of the Mental Health Act, 1973 (Act No. 18 of 1973);

- (d) has been convicted, whether in the Republic of South Africa or elsewhere, of an offence involving dishonesty and for which he or she was sentenced to imprisonment without the option of a fine, unless the person has received a grant of amnesty or a free pardon before the date of his or her appointment;
  - (e) has been removed from an office of trust on account of improper conduct;
  - (f) has had his or her name removed from any professional register on account of misconduct and has not been reinstated;
  - (g) has been determined by a court, tribunal or forum as contemplated by the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), to have contravened section 7 or any other provision of that Act;
  - (h) is a political representative at the national, provincial or municipal sphere of government; or
  - (i) is not a fit and proper person to be so appointed.
- (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 Minister;

- (c) is, in the Minister's opinion, after consultation with the Council, incapable of performing his or her duties due to **ill** health;
- (d) has, without the leave of the Council, been absent from **two** or more consecutive meetings of the Council; or
- (e) was appointed under section 4 (1) **(a), (b) and (c)** and-
  - (i) his or her appointment has ceased; or
  - (ii) he or she is not, within one year from **the date** of the publication of the rules contemplated in section 8 (2) **(d)** or within such extended period as the Minister may approve, a registered person.

### **Committees of Council**

**6. (1) (a)** The Council may establish committees to assist it in the performance of its functions, and may appoint such of its members, registered persons and other persons as it may deem **fit**, to **be members of such** committees.

**(b)** The Council may designate one of the members of a committee as chairperson of the committee.

**(c)** If the Council does not designate a chairperson of a committee, the committee may, at its first meeting, elect a chairperson from amongst its members.

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

(3) The Council must establish an Education and Training Committee which must-

(a) **serve solely as a committee on educational and training matters;** and

(b) advise or assist the Council as the Council may determine on-

(i) matters contemplated in section 8 (4);

(ii) the methods and procedures for the assessment and registration in the various categories of registered persons; and

(iii) **all** educational, training, **skills** development and related matters.

(4) The provisions of section 10 apply, with the necessary changes, in respect of a committee of the Council.

## Functions of Council

7. The functions of the Council are to-
- (a) regulate the surveying profession so as to promote and protect the interests of the public in relation to surveying;
  - (b) register persons in terms of this Act;
  - (c) institute and enforce disciplinary action against registered persons contravening the provisions of this Act;
  - (d) support the functioning of disciplinary and appeal structures established under this Act; and
  - (e) ensure and promote a high standard of education and training in the surveying sector.

## Powers and duties of Council

8. In the exercise of its powers and the performance of its duties, the Council-

- (1) with regard to administrative matters-
  - (a) must, with the concurrence of the Minister and the Minister of Finance, appoint, remunerate and determine conditions of service of the Registrar and such other persons employed by the Council as the Council considers necessary for the performance of its functions, and determine their functions;



- (b) must determine where its head office must be situated;
  - (c) must determine the manner of convening meetings and the procedure at meetings of the Council and any committee, the quorum for committee meetings and the manner in which minutes of all meetings must be kept;
  - (d) may print, circulate, sell, finance and administer the publication of, and generally take any steps necessary to publish any publication relating to the surveying profession and related matters; and
  - (e) must prescribe the procedure for the cancellation, or suspension of the registration of a person registered in terms of this Act;
- (2) with regard to registration of persons under section 13-
  - (a) must, subject to the provisions of this Act, consider and decide on any application for registration;
  - (b) must keep and maintain a register of persons registered in each of the categories, and, in the case of survey technicians, survey technologists and professional surveyors, specify which branch of surveying each person is entitled to practice in, which register must at all reasonable times be open for inspection by any member of the public;
  - (c) must decide upon the form of the register and registration certificates to be issued, the reviewing thereof and the manner in which alterations thereto may be effected; and

- 
- (d) must within 90 days of its first meeting, or within such extended period as the Minister may approve, prescribe the manner in which any person must apply for registration and the qualifications necessary for such application;
- (3) with regard to fees-
- (a) must prescribe the application, registration and annual fees payable to the Council by the different categories of registered persons, or the portion of such annual fees which is payable in respect of any part of a year, as well as the date on which any fee or portion thereof is payable;
- (b) may grant exemption from payment of application fees, registration fees, annual fees or a portion thereof;
- (c) must determine the fees, or any part thereof, payable to the Council in respect of any assessment referred to in section 13 (4), conducted by or on behalf of the Council;
- (d) must prescribe the fees payable in respect of the lodging of an appeal with the Appeal Board and the copying or transcription of records of a disciplinary tribunal; and
- (e) may determine any other fee it considers necessary;
- (4) with regard to education and training-
- (a) must consult with the South African Qualifications Authority established by the South African Qualifications Authority Act,

**1995 (Act No. 58 of 1995)**, or any body established by it and the voluntary associations, to determine competency standards for the purpose of registration in terms of the National Qualifications Framework;

- (b) must conduct accreditation visits to any educational institution which has a department, school or faculty of surveying, geomatics or geoinformation science at least once in five years, and if the Council does not conduct an accreditation visit within the five-year period, it must notify the Minister accordingly;
- (c) may grant, conditionally grant, refuse or withdraw the accreditation of educational programmes with regard to surveying;
- (d) must deal with matters pertaining to education and training in consultation with the Council on Higher Education established in terms of the Higher Education Act, **1997 (Act No. 101 of 1997)**;
- (e) may establish mechanisms for registered persons to gain recognition of their qualifications and professional status in other countries;
- (f) may liaise with the relevant National Standards Body established in terms of Chapter 3 of the Regulations under the South African Qualifications Authority Act, **1995**;
- (g) may enter into an agreement with any person or body, within or outside the Republic of South Africa, with regard to the

recognition of any examination or qualification for the purposes of this Act;

(h) may advise or assist any educational institution, voluntary association or examining body with regard to educational facilities for and the training of registered persons and prospective registered persons;

(i) must prescribe the procedure for any assessment for the purposes of section 13 (4) of this Act; and

(j) must facilitate the provision of continuing education and training;

(5) With regard to finance-

(a) must collect all moneys due to the Council;

(b) may invest funds of the Council;

(c) may raise loans for the purpose of effectively performing its functions;

(d) may, with a view to the promotion of any matter relating to the surveying profession, lend money against such security as the Council considers adequate;

(e) may mortgage any of its immovable property as security for any loan referred to in paragraph (c);

- (f) may undertake fund-raising activities including conferences, production and sale of merchandise and publications; and
- (g) may open, operate and close such current or savings bank accounts with a registered commercial bank as it may require to effectively perform its functions and duties;

(6) In general-

- (a) may acquire or lease such movable or immovable property as it considers necessary for the effective performance of its functions and let, sell or otherwise dispose of property acquired;
- (b) must decide upon the manner in which contracts must be entered into on behalf of the Council;
- (c) may advise the Minister or any other minister on any matter relating to the surveying profession;
- (d) may take any steps which it considers necessary for the protection of the public in their dealings with registered persons, for the maintenance of the integrity, the enhancement of the status and the improvement of the standards of services rendered by those persons;
- (e) may take any steps which it considers necessary to create an awareness amongst registered persons of the importance of protecting the environment;

- (f) must consider and give its final decision on recommendations of a committee of the Council;
- (g) may from time to time insure, through a registered insurer, against any risk to which the Council, its members, its employees or registered persons may be exposed;
- (h) may do anything necessary for the proper performance of its functions or to achieve the objectives of this Act;
- (i) must obtain the Minister's prior written approval, which may be granted subject to such reasonable conditions as he or she may impose, before-
- (i) investing funds, borrowing or lending money or entering into any lease, whether as lessor or lessee, if the period of the transaction will be longer than 12 months, and the value exceeds an amount prescribed by the Minister from time to time by publication of an appropriate notice in the *Gazette*; and
  - (ii) acquiring, other than as a lessee, or disposing of or encumbering immovable property, irrespective of its value; and
- (j) must invest its funds only in registered financial institutions considered appropriate by the Department of the National Treasury.

## Meetings of Council

9. (1) The first meeting of the Council must be held at the time and place determined by the Minister and subsequent meetings of the Council must be held at such times and places as determined by the Council.

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

(3) The chairperson may at any time on reasonable grounds and on notice of the purpose of the meeting convene a special meeting of the Council to be held on a date and place that he or she determines.

(4) The chairperson must convene a special meeting on request by-

(a) the Minister; or

(b) at least one third of the Council members,

on notice of the purpose of the meeting.

(5) The special meeting requested in terms of subsection (4) must be held within 30 days after the date of receipt of the request, on a date and at a place that the chairperson determines.

(6) A majority of the members of the Council constitutes a quorum at any meeting of the Council.

(7) **If** within half an hour after the time appointed for any meeting a quorum is not present, the meeting must be adjourned to a date to be determined by the chairperson, which date must not be earlier than seven days and not later

than 21 days after the date of the meeting and the members present at such meeting constitute a quorum.

(8) The minutes of, and the reports tabled at, the meetings or proceedings of the Council must be forwarded to the Minister within 30 days after the conclusion of each meeting or proceeding.

### **Decisions of Council**

**10. (1)** A decision of the majority of the members of the Council present at any meeting constitutes a decision of the Council.

(2) In the event of a deadlock the chairperson has a casting vote in addition to a deliberative vote.

(3) A decision taken by the Council or 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.

(4) The Minister may after consultation with the Council and any person directly affected by a Council decision suspend or revoke that decision on good grounds and if it is in the public interest to do so.

(5) The Minister must, after suspending the decision of the Council and before its revocation, remit such decision to the Council for its reconsideration.



### **Remuneration of members of Council and committees**

**11.** The chairperson, deputy chairperson, other members of the Council and members of committees of the Council who are not members of the Council, excluding such a member who *is* in the full-time service of the State, must out of the funds of the Council be paid such remuneration and allowances as the Minister, with the concurrence of the Minister of Finance, may determine from time to time.

### **Funds of Council and keeping and auditing of accounts**

**12.** (1) The funds of the Council consist of any money received by it in terms of this Act and all other moneys which may accrue to the Council from any other source.

(2) The Council may establish and administer an education fund for the purpose of the education, training and continued education and training of registered persons and students in the surveying profession.

(3) The Council must keep a full and correct account of all moneys received and expended by it.

(4) The Council must annually prepare a statement of income and expenditure and a balance sheet showing a financial position at the close of the financial year, and must have the statement and balance sheet audited, by an auditor registered in terms of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991).

(5) A copy of the auditor's statement and balance sheet must be open for public inspection at the offices of the Council.

(6) The Council must within six months from the close of each financial year, submit the auditor's statement and balance sheet to the Minister.

(7) The Minister may, with the concurrence of the Minister of Finance, on receipt of a budgeted request 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 may determine the conditions of the grant.

### CHAPTER 3 REGISTRATION

#### **Registration of persons**

13. (1) The categories of registered persons are-

- (a) candidate surveyor;
- (b) survey technician;
- (c) survey technologist; and
- (d) professional surveyor.

(2) A person may not practice ~~in~~ or perform any work, whether for reward or otherwise, which is reserved for any of the categories referred to in subsection (1) unless he or she is registered in that category and unless such practice or performance is supervised as may be required,

(3) Any person who wishes to be registered, must apply in the manner prescribed by the Council.

(4) The Council must consider an application for registration and must register the applicant in the relevant category, and issue to him or her a registration certificate in the prescribed form if it is satisfied that the applicant-

- (a) in the case of a person applying for registration as a candidate surveyor is registered for an accredited surveying, geomatics, cartographic or geoinformation science educational programme at the National Qualifications Framework level 5 or higher;
- (b) in the case of a person applying for registration as a survey technician-
  - (i) has completed an accredited surveying, geomatics, cartographic or geoinformation science educational programme at the National Qualifications Framework level 5 or higher; and
  - (ii) is in the process of undergoing the practical training which is prescribed by the Council in terms of paragraph (c)(ii);
- (c) in the case of a person applying for registration as a survey technologist-
  - (i) has completed an accredited surveying, geomatics, cartographic or geoinformation science educational programme at the National Qualifications Framework level 6 or higher;

- (ii) has undergone practical training of not less than *two* years or as may be prescribed by the Council; and
  - (iii) has passed a competency assessment determined by the Council;
- (d) in the case of a person applying for registration as a professional surveyor-
- (i) has completed an accredited surveying educational programme at the National Qualifications Framework level 7 or higher;
  - (ii) has undergone practical training of not ~~less~~ than one year or as may be prescribed by the Council; and
  - (ii) has passed a competency assessment determined by the Council,

or that the applicant possesses such other qualifications **as** defined in the South African Qualifications Authority Act, 1995, as may be determined for the relevant category from time to time by the South African Qualifications Authority in terms of that Act and by the Council.

(5) Only a registered person may describe himself or herself in terms of the category and, if applicable, the branch of surveying, in which he or she is registered.

(6) The Council may determine abbreviations or acronyms for the categories of registration referred to in subsection (1).

- (7) The Council must not register any person who-
- (a) is an unrehabilitated insolvent whose insolvency was caused by his or her negligence or incompetence in performing surveying work;
  - (b) is declared by a court of law to be mentally incompetent or is detained under the Mental Health Act, 1973;
  - (c) has been convicted, whether in the Republic of South Africa or elsewhere, of an offence involving dishonesty and for which he or she was sentenced to imprisonment without the option of a fine;
  - (d) has been removed from an office of trust on account of improper conduct;
  - (e) ~~has~~ had his or her name removed from any professional register on account of misconduct and who has not been reinstated; or
  - (f) is not, in the Council's opinion, a fit and proper person to be registered.

### **Cancellation of registration**

14. (1) The registration of a registered person who-
- (a) becomes disqualified on any ground referred to in section 13 (7);

- (b) was erroneously registered;
- (c) was registered on the basis of incorrect information; or
- (d) fails, without good reason and in the absence of an arrangement for deferred payment, to pay any amount owing to the Council on the due date or any extended date,

may be cancelled in terms of this section.

**(2)** The Council must notify **such a** person **of** the intention to cancel **his** or her registration and call for representations to be made within a specified reasonable time.

**(3)** Unless the Council is thereafter satisfied that good grounds exist for such person's registration to continue, it must cancel that registration.

**(4)** The Council must, at the written request of any registered person, remove his or her name from the register, but where an investigation into an alleged improper conduct by such a registered person is in progress or ~~is~~ to be held, such removal must not be made until any resultant misconduct proceedings have been concluded.

**(5)** A person who was previously registered in terms of section 13 **(4)** and-

(a) whose registration was cancelled in terms of subsection (1) **(c)**; or

(b) resigned; or

(c) wishes to be registered in a different category,

may apply to be re-registered.

(6) If a person contemplated in subsection (4) has paid the prescribed application and registration fees and any arrear fees, subscriptions, recovery expenses and penalties, the Council must, subject to the provisions of this Act, re-register such person in the appropriate category.

### **Return of registration certificate**

15. (1) Any person whose registration has been cancelled must return his or her certificate of registration to the Registrar within 30 days from the date upon which he or she is directed by the Registrar in writing to do so.

(2) If the person referred to in subsection (1) cannot return a certificate as required, he or she must provide written reasons on affidavit to the Registrar's satisfaction for the inability to return the certificate.

### **Identification of surveying profession work**

16. (1) The Council must consult with all voluntary associations and any person, body or industry determined by the Minister regarding the identification of certain areas of surveying work to be reserved for registered persons, including work which may fall within the scope of any other profession.

(2) After such consultation, the Council must prescribe the areas of surveying work to be reserved for each category of registered persons.

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

*E. cl. 13.*

- (a) perform any kind of work reserved for any category of registered persons;
- (b) pretend to be, or in any manner hold himself or herself out or allow himself or herself to be held out as, a person registered in terms of this Act; or
- (c) use the name of any registered person or any name or title referred to in section 13(1).

(4) Notwithstanding the provisions of subsections (2) and (3), the Council may identify certain areas of work which may be carried out by persons registered in terms of other legislation, without subjecting such persons to the prohibitions contained in subsection (3).

(5) The provisions of this section 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 must assume responsibility for any work so performed.



## CHAPTER 4 VOLUNTARY ASSOCIATIONS

### **Recognition of voluntary associations**

17. (1) Any voluntary association which has as its main object the promotion and protection of the interests of the surveying profession, and which applies its profit, if any, in promoting its said main object, may apply to the Council to be recognised as such.

(2) The Council must, within 90 days after its first meeting, prescribe the requirements and procedure for the recognition of a voluntary association.

(3) The Council may, if the voluntary association complies with the rules made under section 30 (2), recognise that organisation 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 so long as the voluntary association continues to comply with the rules.

(5) A voluntary association must, at least three months prior to the expiry of its recognition, apply in the prescribed manner to the Council for renewal thereof.

(6) A voluntary association whose recognition has lapsed must on written request of the Registrar return its certificate of recognition to the Council within 30 days from the date upon which it is directed by the Registrar to do so, unless it provides written reasons on affidavit to the Registrar's satisfaction for not returning the certificate.

## CHAPTER 5 PROFESSIONAL CONDUCT

### Code of conduct

18. (1) The Council must include in its rules a code of conduct for registered persons.

(2) The Council is responsible for administering the code of conduct and must ensure that the code of conduct is available to registered persons and members of the public at all reasonable times.

(3) In addition to what is contained in the code of conduct, a registered person is required-

- (a) to do nothing calculated to unjustly or unfairly injure the reputation of another registered person;
- (b) to abstain completely from direct or indirect participation as an advisor or decision maker in any matter in which he or she has a personal interest, and leave any chamber in which such matter is under deliberation, unless the personal interest has been made a matter of public record, his or her employer, if any, has given written approval, and the public official, public agency or body with jurisdiction to rule on ethical matters has expressly authorised his or her participation;
- (c) not to solicit prospective clients or employment through use of false or misleading claims, harassment or duress;

- (d) not to use the power of any office to seek or obtain special advantage that is not in the public interest nor any special advantage that is not a matter of public knowledge;
  - (e) not to use confidential information acquired in the course of his or her duties to further a personal interest;
  - (f) not to disclose confidential information acquired in the course of his or her duties unless required by law to do so or by circumstances to prevent substantial injury to third persons;
  - (g) not to commit a deliberately wrongful act which reflects adversely on the surveying profession or seek business by stating or implying that he or she is prepared, willing or able to influence decisions by improper means;
  - (h) to accurately represent his or her qualifications to practice surveying as well as his or her education and affiliations; and
  - (i) to respect the rights of every person and not violate any right of another person protected by the Constitution of the Republic of South Africa, **1996** (Act No. **108** of **1996**).
- (4) A registered person is guilty of improper conduct if he or she-
- (a) performs work reserved for registered persons in connection with any matter which is the subject of a dispute or litigation, **on** condition that payment for such work will be made only if such dispute or litigation ends in favour of the person for whom such work is performed;

- (b) performs work reserved for registered persons during any period for which he or she is suspended under this Act;
- (c) commits an offence in the performance of his or her work as a registered person;
- (d) accepts remuneration for the performance of work reserved for registered persons from any person other than his or her client or employer without the prior approval of such client or employer; or
- (e) fails to comply with the provisions of this Act.

### **Investigation of charge of improper conduct**

**19.** (1) The Council must appoint one or more investigating officers as it deems fit to investigate any charge of improper conduct.

(2) When-

- (a) a complaint, charge or allegation of improper conduct has been brought 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, as soon as is reasonably possible, refer the matter for investigation.

(3) At the request of the Council, the investigating officer must-

- (a) investigate the matter; and
- (b) obtain evidence to determine whether or not in his or her opinion the person concerned should be charged or not, and if so, recommend to the Council what the contents of the charge in question should be.

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

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

(5) The investigating officer must, after the conclusion of the investigation, submit a report making his or her recommendations to the Council regarding any matter referred to it in terms of this section.

### **Steps after investigation**

**20.** (1) The Council must after considering the investigation report charge the registered person with improper conduct if the Council is convinced that sufficient grounds exist for such a charge to be made against such a registered person.

(2) The Council must, by hand or registered mail, deliver to a registered person who *is* charged with misconduct a charge sheet setting out the details and nature of the charge together with a copy of the investigation report.

(3) The Council must inform the registered person charged-

- (a) that he or she must, in writing, admit or deny the charge;
- (b) that he or she may, together with the admission or denial, submit a written explanation regarding the improper conduct with which he or she is charged; and
- (c) of the period, which must be reasonable, within which his or her plea in terms of paragraph (a) and explanation in terms of paragraph (b) must be submitted to the Council.

(4) The Council may, if a registered person charged-

- (a) has admitted that he or she is guilty of the charge; and
- (b) the sanctions contemplated in subparagraphs (i) and (ii) of section 23(3)(a) may be imposed in respect of such charge,

find such registered person guilty without referring the charge to a disciplinary tribunal and may impose an appropriate sanction.

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

offence of which he or she might have been acquitted or convicted at his or her trial on the criminal charge.

### **Appointment of disciplinary tribunal**

**21.** (1) The Council must appoint a disciplinary tribunal to hear a charge of improper conduct if a person charged-

- (a) denies the charge; or
- (b) admits the charge and the sanctions contemplated in subparagraphs (iii) and (iv) of section 23(3)(a) may be imposed in respect of such charge.

(2) The disciplinary tribunal must consist of at least-

- (a) three registered persons or Council members;
- (b) a person qualified in law and who has at least five years' experience in the legal profession; and
- (c) a person with specialised knowledge of matters concerning the charge if the Council deems it necessary.

(3) The members of the disciplinary tribunal must amongst themselves elect a chairperson to chair the proceedings.

### **Disciplinary hearing**

**22.** (1) The Registrar must perform the administrative functions necessary to support the functioning of a disciplinary tribunal.

(2) (a) The disciplinary tribunal may, for the purposes of a hearing, summons the person charged; or subpoena any person-

- (i) who in its opinion may be able to give material information concerning the subject of the hearing; or
- (ii) who it suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing on the subject of the hearing,

to appear before the disciplinary tribunal at the time and place specified in the subpoena, to be questioned or to produce a book, document or object.

(b) A subpoena issued in terms of paragraph (a), must-

- (i) be in the form prescribed by rules;
- (ii) be signed by the chairperson of the disciplinary tribunal or, in his or her absence, any member of the disciplinary tribunal; and
- (iii) be served on the subpoenaed person personally or by sending it by registered mail.

(3) The disciplinary tribunal may retain a book, document or object produced in terms of subsection (2)(a) for the duration of the hearing.

(4) The chairperson of the disciplinary tribunal may call upon and administer an oath to, or take an affirmation from, any witness.



- (5) (a) A witness who has been subpoenaed may not-
- (i) without sufficient cause, fail to attend the hearing at the time and place specified in the subpoena;
  - (ii) refuse to be sworn or to be affirmed as a witness;
  - (iii) without sufficient cause, fail to answer fully and satisfactorily to the best of his or her knowledge to all questions lawfully put to him or her; or
  - (iv) fail to produce any book, document or object in his or her possession or custody or under his or her control which he or she is required to produce.

(b) A witness who has been subpoenaed must remain in attendance until excused by the chairperson of the disciplinary tribunal from further attendance.

(c) A witness who has been subpoenaed may request that the names of the members of the disciplinary tribunal be made available to him or her.

(d) The law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce a book, document or object in a civil trial before a court of law must, with the necessary changes, apply in relation to the examination of, or the production of any book, document or object to the disciplinary tribunal by, any person called in terms of this section as a witness.

(e) A witness may not, after having been sworn or having been affirmed as a witness, give a false statement on any matter, knowing that answer or statement to be false.

(f) No person may unlawfully prevent another person from complying with a subpoena or from giving evidence or producing a book, document or object which he or she, in terms of this section, is required to give or produce.

(6) The record of evidence which has a bearing on the charge before the disciplinary tribunal, and which was presented before any tribunal which investigated an event or conduct relating to the hearing before the disciplinary tribunal, is admissible without further evidence being led if-

- (a) the record *is* accompanied by a certificate from the chairperson of the relevant disciplinary tribunal; and
- (b) the certificate-certifies that the investigation was lawful, reasonable and procedurally fair.

(7) 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.

(8) The Council may prescribe procedures not inconsistent with this Act for the effective performance of the functions of a disciplinary tribunal.

### Proceedings after hearing

23. (1) After the conclusion of the hearing the disciplinary tribunal must-
- (a) within 30 days, decide whether or not the registered person charged is guilty of improper conduct;
  - (b) within 14 days after its decision and in writing, inform the registered person charged and the Council of the finding and the reasons for such finding; and
  - (c) inform the registered person of his or her right of appeal in terms of section 27.
- (2) The Council or a registered person found guilty of improper conduct in terms of this Act may offer evidence, including calling witnesses, to establish any aggravating or mitigating circumstances which the disciplinary tribunal must consider in determining an appropriate sanction.
- (3) (a) If the registered person charged is found guilty of improper conduct, or if he or she admits that he or she is guilty of the offence, the disciplinary tribunal must either-
- (i) caution or reprimand the registered person;
  - (ii) impose on him or her a fine not exceeding the amount calculated according to the ratio for one year imprisonment determined in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991);

(iii) suspend the registration of the registered person concerned for a period not exceeding one year; or

(iv) cancel the registration of the registered person concerned and request the Registrar to remove his or her name from ~~the register referred to in section 8(2).~~

(b) The disciplinary tribunal may act under more than one of the subparagraphs of paragraph (a).

(c) The disciplinary tribunal may, but is not obliged to, award costs as may be just against the Council or the registered person charged.

(4) At the conclusion of the hearing the disciplinary tribunal must notify the Council of its decision.

(5) The Council must publish the outcome of the disciplinary hearing in its annual report and may publish it in any other manner it considers fit.

(6) The Council must give effect to the decision of the disciplinary tribunal.

(7) The Registrar must keep a record of the proceedings of every tribunal hearing.

## CHAPTER 6

### APPEALS

#### Establishment of Appeal Board

24. (1) There is hereby established an Appeal Board with jurisdiction to hear appeals in terms of this Act.

(2) The Appeal Board consists of the following members appointed by the Minister:

(a) Three registered persons who have been practising or teaching surveying for a period of not less than five years; and

(b) Two members of the public of whom at least one person is qualified in law and has at least five years' experience in the legal profession.

(3) The Minister must appoint, from the members of the Appeal Board, a chairperson and a deputy chairperson and an alternate chairperson of the Appeal Board.

(4) When the chairperson ~~is~~ unable to perform the functions of that office, they shall be performed by the deputy chairperson or, if he or she **is also** unable to do so, by the alternate chairperson.

(5) The Minister must take into account, among other things, the principles of transparency and representivity when he or she appoints members of the Appeal Board.

(6) The procedure for the calling of nominations and the selection of appointees, the appointment of members to the Appeal Board and the term of office for membership thereof must, with the necessary changes, be that provided for in section 4(3), (4), (5) and (6).

(7) ~~The grounds upon which persons~~ are disqualified from membership of the Appeal Board and upon which a member must vacate his or her office, are those referred to in section 5(1), (2)(a), (b), (c) and (d), and in addition, a member must vacate his or her office if the member has, without leave of the chairperson of the Appeal Board, been absent from two or more sittings of the Appeal Board during a year.

### **Meetings, procedures and administration of Appeal Board**

25. (1) The chairperson or deputy chairperson may vacate his or her office as such, and such vacation does not terminate his or her membership of the Appeal Board.

(2) An appeal must be heard by not fewer than three members of the Appeal Board, including the chairperson.

(3) A decision of the majority of the members of the Appeal Board present at any meeting in terms of this section constitutes a decision of the Appeal Board.

(4) In the event of a deadlock at a meeting the chairperson has a casting vote in addition to a deliberative vote.

(5) The Appeal Board must conduct appeals in accordance with rules made by the Council under section 30(2).

(6) The Appeal Board must decide an appeal within 60 days after the appeal was lodged and, within the same period, inform the appellant and the Council of its decision.

(7) The Appeal Board must keep a record of proceedings of every sitting held in terms of this section.

(8) The Registrar must perform administrative functions necessary to support the functioning of the Appeal Board.

### **Remuneration and allowances of members of Appeal Board**

26. The remuneration and allowances of the chairperson, the deputy chairperson and every other member of the Appeal Board must be paid out of the funds of the Council as the Minister, with the concurrence of the Minister of Finance, may determine from time to time.

### **Appeal against decisions of Council and disciplinary tribunal**

27. (1) An appeal may be lodged with the Appeal Board by-
- (a) a registered person found guilty of improper conduct who is aggrieved by a finding of the disciplinary tribunal or the sentence imposed, or both;
  - (b) a person aggrieved by a decision of the Council in terms of sections 13 and 14; and
  - (c) a person objecting to a rule in terms of section 30 (4).

(2) The appeal must be lodged, in the manner prescribed and upon payment of the fees prescribed by the Council, within 30 days after the Council or disciplinary tribunal has informed the appellant of its decision and the Appeal Board must consider and decide the appeal.

(3) The Appeal Board may-

(a) dismiss an appeal against a rule, decision, finding or sentence of the Council or the disciplinary tribunal and confirm the relevant rule, decision, finding or sentence, or both the finding and the sentence;

(b) uphold an appeal against such a rule or a decision of the Council wholly or in part and set aside or vary the rule, decision, finding or sentence or both the finding and the sentence and must in writing inform the appellant and the Council of its decision and the reasons for it; or

(c) award costs as may be just.

### **Appeal to High Court of South Africa**

**28.** (1) If an appeal is dismissed in terms of section 27 (3) (a), the appellant may through the Registrar request the Appeal Board in writing to furnish him or her with its reasons for the decision within 30 days after receipt of the request.

(2) The appellant may, after giving notice to the Appeal Board, lodge a notice of appeal with the Registrar of the High Court of South Africa within 30 days from the date of the decision of the Appeal Board or of receipt of the reasons for the Appeal Board's decision.



(3) The Council may appeal to the High Court of South Africa against any decision of the Appeal Board in terms of section 27(3)(b).

(4) The Council must, after giving notice to the Appeal Board, lodge a notice of appeal with the Registrar of the High Court of South Africa within 30 days from the date of the decision of the Appeal Board.

## CHAPTER 7 GENERAL

### Professional fees

29. (1) The Council may annually, but must at least every three years, after consultation with voluntary associations, determine guideline professional fees and publish such fees in the *Gazette*.

(2) The Council must, before determining the guideline fees in terms of subsection (1), publish a draft of the proposed guideline fees in the *Gazette* together with a notice calling on interested persons to comment in writing within a period of not less than 30 days after such publication, and must consider any comments received.

### Regulations and rules

30. (1) (a) The Minister may, by notice in the *Gazette*, make regulations, not inconsistent with this Act, with regard to-

- (i) any matter that he or she is required or permitted to prescribe in terms of this Act;

(ii) generally all matters necessary for or incidental to the exercise of the powers and the performance of the functions of the Council; and

(iii) any other matter for the better execution of this Act.

(b) The Minister must, before making any regulation under subsection (1), publish a draft of the proposed regulation, repeal or amendment in the *Gazette* together with a notice calling on interested persons or voluntary associations to comment in writing within a period not less than 30 days from the date of publication of the notice.

(c) If the Minister alters the draft regulations as a result of any comment, he or she needs not publish those alterations before making the regulations.

(2) The Council may, by notice in the *Gazette*, make rules not inconsistent with this Act, with regard to-

(a) any matter it is required or permitted to prescribe in terms of this Act;

(b) the form of process and the procedure at or in connection with the proceedings of a disciplinary tribunal or the Appeal Board:

(c) the representation of any party before the Appeal Board;

(d) generally all matters necessary for or incidental to the exercise of the powers and performance of the functions of a disciplinary tribunal and the Appeal Board; and

- (e) the fees payable in respect of the lodging of an appeal under this Act and the copying or transcription of records of a disciplinary tribunal or Appeal Board.

(3) (a) Before the Council makes, repeals or amends any rule under this section, it must publish a draft of the proposed rule, repeal or amendment in the *Gazette* together with a notice calling on interested persons and voluntary associations to comment in writing within a period not less than 30 days from the date of publication of the notice.

(b) If the Council alters the draft rules as a result of any comment, it needs not publish those alterations before making the rule.

(4) The Council may, if circumstances necessitate the immediate publication of a rule, publish that rule without consultation as contemplated in subsection (3) : Provided that any person who objects to the said rule may-

(a) comment after such publication; or

(b) appeal to the Appeal Board against such a rule.

### **Procedure and evidence**

31. (1) The register serves as evidence of all matters which are required to be or may be entered therein by or under this Act.

(2) A certificate purporting to be signed by the Registrar to *the* effect that an entry has or has not been made in the register or that any other thing by or under this Act has or has not been done, is evidence of the matters mentioned in that certificate.

(3) A copy of an entry in the register or of a document in the custody of the Registrar, or of an extract from the register or from any such document, purporting to be certified by the Registrar, must be admitted in evidence in any disciplinary tribunal, Appeal Board hearing or court of law without further proof or production of the original.

### **Rectification of errors**

32. When anything which is required to be done or performed in terms of this Act 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 such failure was due to an error or oversight and that it would not be to the detriment of any person affected by such failure, and after that person has been informed of such failure, where applicable, authorise it to be done or performed on or before any other day or at any other time or during any other period, and anything done or performed during this period is of full force and effect and is deemed to have been lawfully done or performed in accordance with the provisions of this Act.

### **Liability**

33. (1) The Council, or any member, committee or official thereof, is not liable in respect of any legal proceedings in relation to an act performed in good faith in terms of this Act.

(2) A registered person who, in the public interest-

(a) refuses to perform an act;

(b) fails to perform an act; or

- (c) informs the Council or any other appropriate authority of an act, or failure to perform an act, by any other person,

which act or failure endangers or is likely to endanger the safety or health of the public or fellow employees, is not liable with respect to any legal proceedings in relation to a refusal, omission or information contemplated in this subsection.

(3) Any person who was registered in terms of this Act and whose registration has been cancelled, is liable for any action taken against him or her while he or she was a registered person.

### **Delegation of powers**

34. (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 and the Appeal Board and the power to make regulations, 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 make rules, to a committee, an official or a member of the Council.

### **Offences and penalties**

35. (1) Any person or body who contravenes the provisions of sections 13(2), 13(5), 15, 16(3), 17(6) or 22(5)(a)(i) and (iv) or (f) is guilty of an offence.

(2) Any person convicted of an offence of contravening the provisions of sections 13(2), 13(5) or 16(3) is liable to a maximum fine equal to double the remuneration payable to him or her for work done during the period of such

contravention or to a maximum fine equal to the fine calculated according to the ratio determined for a period of three years' imprisonment in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991).

(3) Any person or organisation who is convicted of an offence of contravening the provisions of section 15 or 17(6) of the Act, is liable to a maximum fine equal to the fine calculated according to the ratio determined for one month's imprisonment in terms of the Adjustment of Fines Act, 1991.

(4) Any person who is convicted of an offence of contravening the provisions of section 22(5)(a)(i) and (iv) or (f) 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.

(5) Any person who is convicted of an offence of contravening the provisions of any other section of this Act, is liable to a maximum fine equal to the fine calculated according to the ratio determined for one month's imprisonment in terms of the Adjustment of Fines Act, 1991.

(6) In addition to, and independently of, any criminal proceedings contemplated or instituted against a person or body referred to in subsection (1), the Council may, in any court having jurisdiction, institute any civil proceedings against such person or body in order to compel compliance with the relevant provisions of this Act or to interdict any contravention thereof or for any related purpose.

### **Transitional provisions**

36. (1) For the purposes of this section, 'effective date' means the date of the first meeting of the Council.

(2) The South African Council for Professional and Technical Surveyors established by section 2 of the Professional and Technical Surveyors' Act, 1984 (Act No. 40 of 1984), continues to exist and may exercise its powers and perform its duties and functions after the commencement of this Act until the effective date, on which date that council will cease to exist.

(3) Subject to subsections (4) and (5) any person who, at the commencement of this Act, is registered and practices in terms of the Professional and Technical Surveyors' Act, 1984-

- (a) as a technical surveyor in training, or as a geoinformation practitioner, or as a professional surveyor in training, is entitled to be registered under this Act as a candidate surveyor;
- (b) as a survey technician or geoinformation technician, is entitled to be registered under this Act as a survey technician;
- (c) as a surveyor or geoinformation technologist, is entitled to be registered under this Act as a survey technologist; and
- (d) as a professional surveyor or professional geoinformation practitioner, is entitled to be registered under this Act as a professional surveyor,

and must, on applying for registration in terms of this Act, be registered accordingly and issued with the appropriate registration certificate.

(4) A person contemplated in subsection (3) may, pending his or her registration in terms of this Act and notwithstanding the repeal of the Professional

and Technical Surveyors' Act, 1984, continue to use his or her professional title and may continue to perform surveying work as if that Act had not been repealed, for a transitional period which shall end no later than 12 months after the date of publication of the rules contemplated in section 8(2)(d) or on such later date as the Minister may determine and publish in an appropriate notice in the *Gazette*.

(5) Notwithstanding any other provision of this Act, a person contemplated in subsection (3) who wishes to continue to practice in the profession must be registered in terms of this Act by no later than the end of the transitional period contemplated in subsection (4).

(6) From the effective date, all rights, obligations, assets and liabilities acquired or incurred by the South African Council for Technical and Professional Surveyors, vest in the Council and the Council is deemed to have acquired or incurred those rights, obligations, assets and liabilities in terms of this Act.

(7) Any act performed, decision taken, or rule made or purported to have been so performed, taken or made in terms of the Professional and Technical Surveyors' Act, 1984, remains valid unless substituted by any act performed, decision taken or rule made under this Act.

(8) Any notice issued or exemption granted by the Minister in term of the Professional and Technical Surveyors' Act, 1984, remains valid unless substituted by a notice issued or exemption granted under this Act.

(9) From the effective date, any register maintained in terms of the Professional and Technical Surveyors' Act, 1984, is incorporated in and is considered to form part of a register to be maintained in terms of section 8(2) of this Act.



(10) Any action taken in terms of the Professional and Technical Surveyors' Act, 1984, which is pending at the commencement date of this Act, must be finalised in terms of that Act.

### **Repeal and amendment of laws**

37. (1) The Professional and Technical Surveyors' Act, 1984, is hereby repealed.

(2) The laws mentioned in the Schedule to this Act are hereby amended to the extent set out in the third column of the Schedule.

### **Act binding on State**

38. This Act binds the State.

### **Short title and commencement**

39. This Act is called the Surveying Profession Act, 2005, and comes into operation on a date fixed by the President by proclamation in the Gazette.

## SCHEDULE

Amendment of laws

(Section 37)

## Laws enacted by Parliament

No. and year of law	Short title	Extent of amendment or repeal
Act 8 of 1997	Land Survey Act 1997	<p>(a) By the substitution in <b>section 1</b> for the definition of "land surveyor" of the following definition :</p> <p>" 'land surveyor' means a person registered as a professional <b>[land]</b> surveyor in terms of the <b>[Professional and Technical Surveyors' Act, 1984]</b> <u>Surveying Profession Act, 2005</u>, and whose name is entered in the register referred to in section <b>[7(4)] 8(2)</b> of that Act";</p> <p>(b) by the substitution in section 1 for the definition of " 'supervise' or 'supervision'" for the words preceding paragraph (a) of the following words :</p> <p>" 'supervise' or 'supervision'" when used in relation to a survey and the field operations by any person registered as a professional surveyor, <b>[professional surveyor in training] survey technologist</b>, or <b>[technical surveyor] survey technician</b>, in terms of the <b>[Professional and Technical Surveyors' Act 1984 (Act 40 of 1984)]</b> <u>Surveying Profession Act, 2005</u>. (in this definition referred to as 'an assistant', means—";</p> <p>(c) by the substitution in section 2A for subsection (1) of the following subsection :</p> <p>"(1) the Minister shall, subject to section 50 and the <b>Public Service Act, 1994</b></p>

No. and year of law	Short title	Extent of amendment or repeal
		<p>(Proclamation 103 of 1994), appoint an officer, who shall be a person registered in terms of section <b>[20] 13</b> of the <b>[Professional Technical Surveyors' Act 1984 (Act 40 of 1984)] Surveying Profession Act, 2005</b>, as a <u>professiona</u> <u>surveyor</u>, to be styled the Chief Director Surveys and Mapping.”;</p> <p>d) by the substitution in section 9(1) for paragraph (c) of the following paragraph :</p> <p>“(c) three land surveyors nominated by the South African Council for <b>[Professional and Technical]</b> Surveyors established by section <b>[2] 3</b> of the <b>[Professional and Technical Surveyors' Act, 1984 (Act 40 of 1984)] Surveying Profession Act, 2005</b>.”;</p> <p>e) by the substitution in section 9 for subsection (3) of the following subsection :</p> <p>“(3) If the South African Council for <b>[Professional and Technical]</b> Surveyors fails to nominate –</p> <p>(a) a member for the purposes of subsection (1)(c); or</p> <p>(b) an alternate member referred to in subsection (2),</p> <p>the Minister shall appoint a land surveyor as a member or alternate member, and any member or alternate member so appointed shall be deemed to have been nominated in terms of subsection (1)(c) or 2 as the case may be.”;</p> <p>(f) by the substitution in section 9(4) for paragraph (b) of the following paragraph :</p> <p>“(b) A member of the Board referred to in subsection 1(c) shall hold office for a term”</p>

No. and year of law	Short title	Extent of amendment or repeal
		<p>determined by the South African Council for <b>[Professional and Technical]</b> Surveyor but not exceeding two years, but that Council may, at any time remove the member from office on grounds of misbehaviour, incapacity or incompetence.'</p> <p>(g) by the substitution in section 9 fa subsection (5) of the following subsection :</p> <p>“(5) Should a member of the board die or vacate office before the expiration of his or her term of office, the Minister or the South African Council for <b>[Professional and Technical]</b> Surveyors, as the case may be may appoint a person to fill the vacancy for the unexpired part of the term for which the member was appointed or nominated.”; and</p> <p>(h) by the substitution in section 12(2) <del>for</del> paragraph (a) of the following paragraph :</p> <p>“(a) refer any complaint or allegation of improper conduct to the South African Council for <b>[Professional and Technical]</b> Surveyors established by section <del>[2]</del> <u>3</u> of the <b>[Professional and Technical Surveyors’ Act, 1984 (Act 40 of 1984)]</b> <u>Surveying Professions Act, 2005</u>, for <b>[enquiry]</b> <u>investiaation</u> in terms of section <del>[29]</del> <u>19</u> of that Act; or”.</p>

## MEMORANDUM ON THE OBJECTS OF THE SURVEYING PROFESSION BILL, 2005

### 1. BACKGROUND

- 1.1 The surveying profession in South Africa is regulated by the Professional and Technical Surveyors' Act, 1984 (Act No. 40 of 1984) ("the Act"). The South African Council for Professional and Technical Surveyors, established by the Act, controls the education, training, registration and discipline of surveyors registered in terms of the Act.
- 1.2 The Act provides for the registration of different categories of surveyors. Each of the categories are divided into different fields of survey, namely engineering, mining, cadastral and topographic surveyors.
- 1.3 In spite of various initiatives by the said Council, the profession is still far from being representative of the South African demographics. Other areas where the profession needs to be transformed are, *inter alia*, the composition of the Council itself, the entry requirements into the profession, the funding of the Council, rationalisation of the categories of surveyors, work reservation and disciplinary procedures.
- 1.4 In order to provide for a mechanism to accelerate the transformation of the surveying profession in a meaningful manner which would serve the interests of both the profession and the public and-for the benefit of-present and future generations, the Surveying Profession Bill has been drafted.

### 2. OBJECTS OF THE BILL

- 2.1 Chapter 1 of the Bill contains the definitions and surveying profession principles. Clause 2, *inter alia*, acknowledges that surveying and the surveying profession

are areas of expertise involving a number of activities. It acknowledges that surveying must pursue and serve the interests of the public to benefit the present and future generations. It obliges the South African Council for Surveyors ("the Council") to strive to achieve the transformation of the profession to ensure its legitimacy and effectiveness and to achieve high standards of quality and integrity in the profession.

- 2.2** Chapter 2 provides for the establishment of the Council, its constitution, membership, committees, functions, powers and duties, meetings, decisions, remuneration of members, its funds and the keeping and auditing of accounts. In terms of clause 3 the Council to be established is a juristic person consisting of not more than 19 members to be appointed by the Minister after nominations by the public have been called for. The appointment of members in terms of clause 4 by the Minister will ensure the constitution of a more representative Council because at present the appointments are made from nominations by the professional bodies.
- 2.3** Clause 5 of the Bill provides for the disqualification of persons as members of the Council and vacation of office.
- 2.4** Clause 6 of the Bill empowers the Council to establish committees to assist it in the performance of its functions. The Council is obliged to establish an Education and Training Committee to serve solely as a committee on educational and training matters and to advise or assist the Council on these matters.
- 2.5** Clause 7 of the Bill provides for the functions of the Council. These functions are aimed at regulating the surveying profession in order to promote and protect the public interest, to register persons as surveyors, to institute and enforce disciplinary action, to support the functioning of disciplinary and appeal structures

and to ensure and promote a high quality of training. These functions will promote and protect the interests of both the surveying profession and the public.

- 2.6** Clause 8 of the Bill provides for the powers and duties of the Council with regard to administrative, registration of persons, fees, education and training, financial **and** general matters. A Registrar who is responsible for the registration of persons in the categories of registered persons must be appointed. The Council must keep and maintain a register of registered persons, which register will be open for public inspection. To determine competency standards, the Council must consult with the South African Qualifications Authority. Accredited visits must be paid to educational institutions which have departments, schools or faculties of surveying, geomatics and geoinformation science. Matters pertaining to education and training must be dealt with in consultation with the Council on Higher Education. As far as finance **is** concerned, the Council is empowered to collect moneys due to it, invest funds, raise loans, lend money and mortgage immovable property. The Council may also acquire or lease movable or immovable property.
- 2.7** Clause **9** of the Bill determines the meetings of the Council.
- 2.8** Clause 10 of the Bill regulates the decision process of the Council.
- 2.9** Clause 11 of the Bill determines the remuneration of members of the Council and committees of the Council who are not in the full-time service of the State. Such members are paid out of the Council's funds. The remuneration and allowances are determined by the Minister with the concurrence of the Minister of Finance.

- 2.10 Clause 12 of the Bill provides for the Council's funds and the keeping and auditing of records. The Minister may, with the concurrence of the Minister of Finance, on receipt of a budgeted request, grant to the Council, out of money appropriated by Parliament, such amount the Minister considers necessary. At present the Council has to contend with funding received from inadequate registration fees. The funding from the budget of the Department will enable the Council to carry out its duties and responsibilities more effectively. The Council's statement and balance sheet must at the close of the financial year be audited by a registered auditor.
- 2.11 Chapter 3 of the Bills deals with the categories of registered persons, the cancellation of registration of such persons, the return of registration certificates and the identification of surveying profession work. In terms of clause 13 of the Bill, the existing categories of registration are reduced to four, namely candidate surveyor, survey technician, survey technologist and professional surveyor. The entry requirements for each category are brought into line with the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995) and refer only to National Qualifications Framework level. The existing barriers whereby technical surveyors cannot become professionals without completing a university degree, are thus eliminated. The Act does not provide for work reservation and consequently there is no incentive for people to register. The exception is in terms of the Land Survey Act, 1997 (Act No. 8 of 1997), where only registered professional land surveyors may perform cadastral surveys. The provision with regard to work reservation should, therefore, encourage surveyors to register, which will be in the interest of both the surveying profession and the public.
- 2.12 Clause 14 of the Bill provides for circumstances when a registered person's registration may be cancelled. The person must, however, be notified of the intended cancellation and be given an opportunity to make representations



before a decision is taken in respect of the cancellation of registration. In terms of clause 12 of the Bill, a person whose certificate has been cancelled, must return the certificate of registration to the Registrar within 30 days. This is to protect the public from surveyors performing work for which they are no longer registered.

2.13 | Clause 16 of the Bill obliges the Council to consult with voluntary associations and any person, body or industry determined by the Minister, pertaining to the identification of areas of surveying work to be reserved for registered persons. The Council may even identify areas of work which may be carried out by persons registered in terms of other legislation. This is to ensure that persons registered perform work for which they are properly trained and to protect the interests of registered persons and the public. This will also contribute to the quality of the work performed.

2.14 Chapter 4 of the Bill deals with the recognition of voluntary associations by the Council. In terms of clause 17 of the Bill, the Council may recognise any voluntary association which has as its main object the promotion and protection of the interests of the surveying profession and which applies its profit in promoting its main objects, as a voluntary association. The recognition of voluntary associations as contemplated in the Bill, could obviously only benefit the surveying profession.

2.15 Chapter 5 of the Bill deals with professional conduct. A code of conduct for registered persons, which must also be available to members of the public, must be provided by the Council. In addition to the code of conduct, clause 18(3) of the Bill contains a number of requirements pertaining to proper conduct. Clause 18(4) determines when a registered person is guilty of improper conduct.

- 2.16 Clause 19 provides for the appointment of investigating officers to investigate charges of improper conduct. A registered person's right to a fair investigation is protected because he or she may not be questioned unless he or she is informed of the right to be assisted or represented by another registered person or a legal representative and that he or she is not obliged to make a statement and that any statement made may be used in evidence against him or her. After the investigation the investigating officer must submit a report with his or her recommendations to the Council.
- 2.17 In terms of clause 20 the Council must charge the registered person with improper conduct if sufficient grounds exist. A charge sheet must be delivered to the registered person who may admit or deny the charge. If a registered person charged has admitted his or her guilt of the charge, the Council may find such person guilty without referring the charge to a disciplinary tribunal.
- 2.18 Clause 21 provides for the appointment of a disciplinary tribunal by the Council if the person charged of improper conduct denies or admits the charge and the charge is subject to the imposition of certain sanctions. The constitution of the members of the disciplinary tribunal is such that the interests of both the Council and the person charged will be served.
- 2.19 Clause 22 regulates the disciplinary hearing process. The person charged must be subpoenaed to appear before the disciplinary tribunal. The disciplinary tribunal may retain any book, document or object produced for the duration of the hearing and the law pertaining to privilege applicable to a witness subpoenaed to give evidence or to produce a book, document or object in a trial before a court of law, applies to disciplinary tribunal hearings. Any record of evidence on the charge before the disciplinary tribunal which was presented before any tribunal which investigated an event or conduct relating to the hearing before the

disciplinary hearing, is admissible without any further evidence if the chairperson of the disciplinary hearing of first instance certifies that the investigation was lawful, reasonable and procedurally fair. If the improper conduct with which the registered person is charged, amounts to an offence to which the person has been convicted by a court of law, a certified copy of the record of the trial and conviction by the court, serves as sufficient proof of the commission of that offence, unless the conviction has been set aside by a superior court.

- 2.20 Clause 23 regulates the proceedings after the disciplinary tribunal hearing. The disciplinary tribunal must within 30 days decide if the person is guilty of improper conduct and within **14** days after the decision inform the person of the reasons for its findings. The person charged must be informed of his or her right to appeal against the findings. Both the Council and the person, if found guilty of improper conduct, are allowed to offer evidence to establish aggravating or mitigating circumstances before the Council determines an appropriate sanction. At the conclusion of the hearing the disciplinary tribunal must notify the Council of its decision and the outcome of the disciplinary hearing must be published in the Council's annual report and may also be published in any other manner the Council considers fit.
- 2.21 Chapter 6 regulates the establishment of an Appeal Board and its functioning. The Appeal Board is established by clause 24(1) and consists of **5** members appointed by the Minister. Three registered persons ~~who~~ have been practicing or teaching surveying for a period of not less than five years and *two* members of the public of whom at least one person is qualified in law with at least five years experience in the legal profession, must be appointed. The Minister must call for nominations ~~by~~ notice in the *Gazette* and at least one national newspaper and any other appropriate media, and invite interested persons, voluntary associations and organisations to submit nominations for the appointment of

members. In order to enhance the transformation process it is required from the Minister to take the principles of transparency and representivity into account and to have due regard to the surveying profession principles, the categories and branches of the surveying profession and the need to ensure and promote gender, disability and other demographic representivity.

- 2.22 Clause 25 regulates the meetings, procedures and administration of the Appeal Board. An appeal must be heard by not fewer than three members of the Appeal Board and a decision of the members present at a meeting constitutes a decision of the Appeal Board. Appeals must be conducted in accordance with the rules made by the Council. An appeal must be decided within 60 days from the date of lodgment and the appellant and the Council must be informed of the decision within the same period. The Registrar performs the administrative functions of the Appeal Board and keeps records of the proceedings.
- 2.23 Clause 26 regulates the remuneration and allowances of members of the Appeal Board. Members are paid out of the Council's funds as the Minister, with the concurrence of the Minister of Finance, from time to time determines.
- 2.24 Clause 27 deals with appeals against decisions of the Council and disciplinary tribunal. An appeal may be lodged by a person found guilty of improper conduct who is aggrieved by a finding of the disciplinary tribunal or the sentence imposed or a person aggrieved by a decision of the Council or a person objecting to a rule made by the Council. The Appeal Board may dismiss or uphold an appeal.
- 2.25 Clause 28 provides for an appeal to the High Court if an appeal is dismissed by the Appeal Board. The appellant must give notice to the Appeal Board of an appeal to the High Court. This clause also empowers the Council to appeal to the High Court against any decision of the Appeal Board.

- 2.26 Chapter 7 regulates certain general issues. Clause 29 empowers the Council to determine guideline professional fees after consultation with voluntary associations. A draft of the guideline fees must be published in the *Gazette* for comment by interested persons.
- 2.27 Clause 30 empowers the Minister to make regulations and the Council to make rules, by notice in the *Gazette*. In both instances the draft regulations and rules must be published in the *Gazette* together with a notice calling on interested persons or voluntary associations for comment. The Council may, if circumstances necessitate the immediate publication of a rule, publish the rule without consultation. Any person objecting to the rule may, however, comment after the publication or appeal to the Appeal Board.
- 2.28 Clause 31 deals with procedures and evidence with regard to the entering of information in the register to be kept by the Registrar and certificates purporting to be signed by the Registrar.
- 2.29 Clause 32 deals with the rectification of errors where the Minister is empowered to authorise anything which is required to be done or performed on or before a specified time or during a specified period has not been done or performed, if the Minister is satisfied that the failure was due to an error or oversight.
- 2.30 Clause 33 provides for liability by determining that the Council, or any member, committee or official thereof, is not liable in respect of any legal proceedings in relation to an act performed in good faith. This clause also exempts registered persons who in the public interest, refuses or fails to perform certain acts endangering the safety or health of the public or fellow employees, from liability.

- 2.31 Clause 34 seeks to empower the Minister to delegate certain powers to the Director-General or other official in the Department and also empowers the Council to delegate certain of its powers to a committee, an official or a member of the Council.
- 2.32 Clause 35 provides for offences and penalties.
- 2.33 Clause 36 makes provision for transitional arrangements and determines that the South African Council for Professional and Technical Surveyors continues to exist and may exercise its powers and perform its duties until the date of the first meeting of the Council, on which date the former Council ceases to exist. This clause also deals with the transition of the existing categories of surveyors to the new categories contemplated in the Bill and the appropriate registration of persons for the new categories.
- 2.34 Clause 37 provides for the repeal and amendment of laws.
- 2.35 Clause 38 determines that the State is bound by the Act.
- 2.36 Clause 39 contains the short title and the date of commencement of the Act.

### **3. FINANCIAL IMPLICATIONS FOR STATE**

- The only financial implications are those relating to the funding of the Council's and the Appeal Board's activities. These are estimated at about R 3 million per year.

#### 4. ORGANISATIONS CONSULTED

All the staff members in the Chief Directorates of Cadastral Surveys and of Surveys and Mapping in the Department have been consulted. After publication of the Bill specific stakeholders will be consulted. These include the present Council, the provincial Institutes of Land Surveyors, the Mine Surveyors and the Institute for Technical Surveyors.

#### 5. CONSTITUTIONAL IMPLICATIONS

None.

#### 6. COMMUNICATIONS IMPLICATIONS

- None

#### 7. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Land Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure established by section **75** of the Constitution since it contains no provisions **to** which the Procedure set out in section **74** or **76** of **the** Constitution applies.