

REPUBLIC OF SOUTH AFRICA

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# GEOMATICS PROFESSION BILL

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*(As agreed to by the Portfolio Committee on Rural Development and Land Reform  
(National Assembly));  
(The English text is the official text of the Bill)*

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(MINISTER OF RURAL DEVELOPMENT AND LAND REFORM)

**[B 4B—2013]**

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## GENERAL EXPLANATORY NOTE:

[                    ]     Words in bold type in square brackets indicate omissions from existing enactments.

                         Words underlined with a solid line indicate insertions in existing enactments.

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# BILL

To provide for the transformation of the geomatics profession; to provide for the establishment of the South African Geomatics Council as a juristic person; to provide for the facilitation of accessibility to the geomatics profession; to provide for different categories of registered persons and branches in the geomatics profession; to provide for the identification of areas of work to be performed by the different categories of registered persons; to provide for the recognition of certain voluntary associations by the Council; to provide for measures designed to protect the public from unethical geomatics practices; to provide for measures in order to maintain a high standard of professional conduct and integrity; to provide for the establishment of disciplinary mechanisms; to provide for the establishment of an Appeal Board; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

## ARRANGEMENT OF ACT

### CHAPTER 1

#### DEFINITIONS AND GEOMATICS PROFESSION PRINCIPLES 5

#### *Sections*

1. Definitions
2. Geomatics profession principles

### CHAPTER 2

#### SOUTH AFRICAN GEOMATICS COUNCIL 10

3. Establishment of South African Geomatics Council
4. Composition of Council
5. Disqualification as member of Council and vacation of office
6. Committees of Council
7. Functions of Council 15
8. Powers and duties of Council
9. Meetings of Council
10. Decisions of Council

- 11. Remuneration of members of Council and committees
- 12. Funds of Council and keeping and auditing of accounts

### **CHAPTER 3**

#### **REGISTRATION**

- 13. Registration of persons 5
- 14. Cancellation of registration
- 15. Return of registration certificate
- 16. Identification of geomatics profession work
- 17. Carrying on of geomatics profession by company

### **CHAPTER 4**

10

#### **VOLUNTARY ASSOCIATIONS**

- 18. Recognition of voluntary associations

### **CHAPTER 5**

#### **PROFESSIONAL CONDUCT**

- 19. Code of conduct 15
- 20. Investigation of charge of improper conduct
- 21. Steps after investigation
- 22. Appointment of disciplinary tribunal
- 23. Disciplinary hearing
- 24. Proceedings after hearing 20

### **CHAPTER 6**

#### **APPEALS**

- 25. Establishment of Appeal Board
- 26. Meetings, procedures and administration of Appeal Board
- 27. Remuneration and allowances of members of Appeal Board 25
- 28. Appeal against decisions of Council and disciplinary tribunal
- 29. Appeal to High Court of South Africa

### **CHAPTER 7**

#### **GENERAL**

- 30. Professional fees 30
- 31. Regulations and rules
- 32. Procedure and evidence
- 33. Rectification of errors
- 34. Liability
- 35. Delegation of powers 35
- 36. Offences and penalties
- 37. Transitional provisions
- 38. Repeal and amendment of laws
- 39. Act binding on State
- 40. Short title and commencement 40

### **SCHEDULE 1**

Repeal of laws

### **SCHEDULE 2**

Amendment of laws

## CHAPTER 1

## DEFINITIONS AND GEOMATICS PROFESSION PRINCIPLES

## Definitions

1. (1) In this Act, unless the context indicates otherwise—
- “**accreditation**” means the process of evaluation and recognition by the Council of educational programmes offered by educational institutions in respect of the geomatics profession; 5
- “**Appeal Board**” means the Appeal Board established by section 25;
- “**assessment**” means an admission procedure, established by the Council, to determine whether an applicant is competent to be registered in any of the categories contemplated in section 13(1); 10
- “**branch**” means a specific specialisation field of geomatics, including land surveying, topographical surveying, engineering surveying, mine surveying, geo-spatial information science, hydrographic surveying and photogrammetric surveying or any other specialisation field which may be determined by the Minister by notice in the *Gazette*; 15
- “**candidate geomatics practitioner**” means a person registered as a candidate geomatics practitioner in terms of section 13(4)(a);
- “**category**” means a specific level of registration contemplated in section 13(1) or such other level of registration as may be prescribed by the Minister after consultation with the Council; 20
- “**committee**” means a committee of the Council established in terms of section 6;
- “**Council**” means the South African Geomatics Council established by section 3;
- “**Department**” means the Department of Rural Development and Land Reform;
- “**Director-General**” means the Director-General of the Department; 25
- “**educational institution**” means any educational institution which has a department, school or faculty, or offers a recognised programme, of geomatics surveying, land surveying or geo-spatial information science;
- “**financial year**” means a year ending on 31 March;
- “**geo-spatial information**”, “**geo-information**”, “**geographic information**” or “**spatial information**” means information that describes the location and characteristics of natural or human-made phenomena in relation to the earth’s surface; 30
- “**geomatics practitioner**” means a person who—
- (a) exercises skills and competencies in the science of measurement, the collection and assessment of geographic information and the application of that information in the efficient administration of land, the sea and structures thereon or therein as is contemplated in section 2(a); and 35
- (b) is registered in one or more of the branches of geomatics and in one or more of the categories contemplated in section 13(4)(b), (c) and (d); 40
- “**geomatics profession**” means the profession carrying on by persons registered in terms of section 13(4);
- “**geomatics professional**” means a person registered in terms of section 13(4)(d);
- “**geomatics technician**” means a person registered in terms of section 13(4)(b);
- “**geomatics technologist**” means a person registered in terms of section 13(4)(c); 45
- “**Minister**” means the Minister of Rural Development and Land Reform;
- “**NQF**” means the National Qualifications Framework contemplated in Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008);
- “**prescribed**” means prescribed by regulation;
- “**professional land surveyor**” means a person— 50
- (a) who is registered as a geomatics professional in terms of section 13(4)(d) in the branch of land surveying;
- (b) who is authorised to perform work reserved for a professional land surveyor in terms of the Land Survey Act, 1997 (Act No. 8 of 1997); and
- (c) whose name is entered in the register for professional land surveyors contemplated in section 8(1)(b)(iii)(bb); 55
- “**register**”, when used as a noun, means any of the registers referred to in section 8(1)(b)(ii);
- “**registered persons**” means persons registered in terms of section 13(4);

“**Registrar**” means the person appointed as Registrar in terms of section 8(1)(a)(i);

“**regulation**” means any regulation made by the Minister in terms of section 31(1);

“**rule**” means any rule made and published by the Council in accordance with this Act;

“**sea**” has the meaning ascribed to it in section 1 of the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008);

“**surveying**” is a component of geomatics work referred to in section 2;

“**this Act**” includes any regulation and any rule;

“**voluntary association**” means any association, organisation, institute, institution or other body of registered persons recognised by the Council in terms of section 18.

(2) In this Act, any word or expression derived from a word or expression defined in subsection (1) has a corresponding meaning unless the context indicates that another meaning is intended.

### **Geomatics 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) Geomatics and the geomatics profession are areas of expertise which involve one or more of the following activities which may occur 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 and recording of all data needed to define the size, position, shape and contour of any part of the earth;
  - (ii) the spatial positioning of objects and the positioning and monitoring of physical features, structures and engineering works;
  - (iii) the planning and determination of the position of the boundaries of land and of rights in land, for the purposes 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 geo-spatial information;
  - (v) the measurement of land, mineral and marine resources; and
  - (vi) such other activity as may be prescribed;
- (b) geomatics work must pursue and serve the interests of the public in order to benefit the present and future generations; and
- (c) the Council and the geomatics profession must—
  - (i) strive to achieve transparency and equity in the profession in order 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 registered persons through the development of skills, knowledge and standards within the profession;
  - (iv) promote environmentally responsible geomatics work which will ensure sustainable development; and
  - (v) strive to transform the profession in order to reflect the demographics of the country and to redress the imbalances of the past.

## **CHAPTER 2**

### **SOUTH AFRICAN GEOMATICS COUNCIL**

#### **Establishment of South African Geomatics Council**

3. (1) There is hereby established a juristic person called the South African Geomatics Council.

(2) The Council must perform the functions provided for in this Act.

(3) The Council must, in accordance with sections 13(1)(i)(i) and 29 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), and within 90 days from the date of its first meeting, apply to be recognised as a professional body in terms of that Act.

## Composition of Council

4. (1) The Council, subject to subsection (2), consists of at least 13 but not more than 15 members, appointed in writing by the Minister, and must be composed as follows:
- (a) Four geomatics practitioners in the full-time employ of the State, of whom—
    - (i) one is the Chief Surveyor-General appointed in terms of section 2 of the Land Survey Act, 1997 (Act No. 8 of 1997);
    - (ii) two must be geomatics practitioners in the full-time employ of the Department; and
    - (iii) one must be a geomatics practitioner in the full-time employ of the Department of Mineral Resources;
  - (b) at least seven but not more than eight geomatics practitioners, of whom—
    - (i) at least two must be geomatics practitioners who are not in the full-time employ of the State; and
    - (ii) at least six but not more than seven must represent voluntary associations equitably;
  - (c) one person nominated by the Council on Higher Education referred to in section 4 of the Higher Education Act, 1997 (Act No. 101 of 1997); and
  - (d) at least one but not more than two persons to represent the interests of the public.
- (2) A maximum of five of the members of the council established in terms of section 2 of the Professional and Technical Surveyors' Act, 1984 (Act No. 40 of 1984), who are nominated by that council before the repeal of that Act and taking into account the provisions of subsection (1), remain in office for the first term of the Council.
- (3) Persons to be considered for appointment in terms of subsection (1)(a)(ii) and (iii) must be nominated by the Directors-General or Accounting Officers of the departments referred to in that subsection, or by such person as may be prescribed.
- (4) (a) Whenever it is necessary to appoint a member in terms of subsection (1)(b), (c) or (d), the Minister must invite written nominations of persons other than candidate geomatics practitioners, to be considered for appointment as such a member—
- (i) through advertisements in the *Gazette* and other media circulating nationally or otherwise;
  - (ii) by any other method, including approaching persons directly; and
  - (iii) in any prescribed manner.
- (b) The invitation must require any person making a nomination to indicate which category and which branch of registered persons is to be represented by such nominated person.
- (5) A nomination must be supported by—
- (a) the personal details of the nominee;
  - (b) particulars of the qualifications, experience in geomatics or related matters or skills which may make the nominee suitable for appointment; and
  - (c) any other information that may be prescribed.
- (6) In appointing a member, the Minister must have due regard to—
- (a) the principles referred to in section 2;
  - (b) the different constituencies to be represented in terms of subsection (1);
  - (c) the different categories of registered persons referred to in section 13;
  - (d) the need to promote representation, including gender, disability and other demographic representation; and
  - (e) the need to broadly reflect the different branches of the geomatics profession.
- (7) (a) For every member of the Council, there must be an alternate member, nominated and appointed in the same manner and for the same term of office as the relevant member.
- (b) An alternate member must act in the place of the relevant member during such member's absence or inability to act as a member.
- (c) An alternate member may, with the concurrence of the Council, attend and participate in any other meeting of the Council where the member to whom such person is an alternate member is present, but may not vote on any matter to be considered by the Council.
- (8) The Minister must appoint from the members of the Council, a chairperson, a deputy chairperson and an alternate chairperson of the Council.
- (9) When the chairperson is unable to perform the functions of that office, they must be performed by the deputy chairperson or, if he or she is also unable to do so, by the alternate chairperson.

(10) Subject to subsection (12), a member or an office-bearer is appointed for a period of four years and, with the exception of the Chief Surveyor-General, may not serve more than two consecutive terms of office.

(11) The Minister must, by notice in the *Gazette*, publish the names of and the position held by an appointee to the Council, including alternate members, and the date on which his or her appointment takes effect. 5

(12) If a vacancy in the membership or alternate membership or in an office of the Council occurs, the Minister may appoint, in accordance with this section, a replacement member or office-bearer for the unexpired portion of the four-year period applicable to such vacancy. 10

(13) The Minister may, in writing and on such conditions as he or she considers appropriate, extend the term of office of a member or alternate member or office-bearer until a new Council, member or office-bearer is appointed.

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

5. (1) The Minister may not appoint as a member or an alternate member of the Council a person who— 15

- (a) is not a South African citizen or a permanent resident, and who 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 Care Act, 2002 (Act No. 17 of 2002); 20
- (d) has been convicted, whether in the Republic 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; 25
- (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 who has not been reinstated;
- (g) has been determined by a court, tribunal or forum in accordance with section 20 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), to have contravened any provision of that Act; 30
- (h) is a political office-bearer in the national, provincial or municipal sphere of government; or
- (i) is not a fit and proper person to be appointed as member or an alternate member. 35

(2) A member or alternate member of the Council must vacate his or her office, if such member—

- (a) becomes disqualified by virtue of subsection (1) from being appointed as a member of the Council;
- (b) resigns by written notice to the Minister; 40
- (c) is incapable of performing his or her duties due to ill health;
- (d) has, without the leave of the Council, been absent from two consecutive meetings of the Council; or
- (e) has allowed his or her registration with the Council to lapse or if such member's name has been removed or suspended from the register: Provided that this paragraph does not apply to persons appointed in terms of section 4(1)(c) or (d). 45

(3) A decision whether or not a member must vacate office in terms of subsection (2)(c) must be taken by the Minister, after consultation with the Council.

(4) The Minister may in the prescribed manner remove any member of the Council from office on the grounds of misconduct or incompetence. 50

(5) (a) The Minister may dissolve the Council if the Minister, on good cause shown, loses confidence in the ability of the Council to perform its functions effectively and efficiently.

(b) The Minister may dissolve the Council only— 55

- (i) after having given the Council a reasonable opportunity to be heard; and
- (ii) after having afforded the Council a hearing on any submissions received.

(c) If the Minister dissolves the Council, the Minister—

- (i) may appoint an administrator to take over the functions of the Council and to do anything which the Council might otherwise be empowered or required to 60

do by or under this Act, subject to such conditions as the Minister may determine; and

- (ii) must, as soon as it is feasible but not later than three months after the dissolution of the Council, replace the members of the Council in the same way as the way in which they were appointed. 5

(6) (a) The costs associated with the appointment of an administrator shall be for the account of the Council.

(b) The appointment of the administrator terminates when the Council members have been replaced in terms of subsection (5)(c)(ii).

### **Committees of Council**

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6. (1) (a) The Council may, on such conditions as may be prescribed, 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. 15

(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 as chairperson of the committee.

(2) The Council must, in the prescribed manner, establish an Education and Training Committee, which— 20

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

(b) must advise and assist the Council at the request of the Council on—

(i) any matter contemplated in section 8(1)(d);

(ii) the methods and procedures for the assessment of and registration in the various categories and branches of registered persons; and 25

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

(3) Section 10 applies, with the changes required by the context, in respect of a committee of the Council.

### **Functions of Council**

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7. The functions of the Council are to—

(a) regulate the geomatics profession so as to promote and protect the interests of the public in relation to geomatics work, as long as it is not inconsistent with any other applicable law;

(b) register persons in terms of this Act; 35

(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;

(e) ensure and promote a high standard of education and training in the geomatics sector; and 40

(f) advise the Minister on any matter referred to it by the Minister or on any matter it considers necessary to achieve the objects of this Act.

### **Powers and duties of Council**

8. (1) The Council, in exercising its powers and performing its duties— 45

(a) with regard to administrative matters—

(i) must, with the concurrence of the Minister and the Minister of Finance—  
(aa) appoint the Registrar and such other persons as it considers necessary for the performance of its functions; and

(bb) determine the functions, remuneration and conditions of service of the Registrar and such other persons; 50

(ii) must determine where its head office must be situated;

(iii) must determine the manner of convening meetings and the procedure at meetings of the Council or of any committee, the quorum for committee meetings and the manner in which minutes of all meetings must be kept; 55

(iv) may take any reasonable steps necessary to publish any publication relating to the geomatics profession and related matters; and



- (v) must make rules in respect of the procedure for the cancellation or suspension of the registration of a person registered in terms of this Act;
- (b) with regard to the registration of persons in terms of section 13, must—
- (i) subject to the provisions of this Act, consider and decide any application for registration; 5
  - (ii) in such manner as may be prescribed, keep and maintain a register, which must at all reasonable times be open for inspection by any member of the public;
  - (iii) in such manner as may be prescribed, enter into a register the names of—
    - (aa) persons registered in each of the categories contemplated in section 13, including persons referred to in section 37(3) and, in the case of geomatics technicians, geomatics technologists and geomatics professionals, must specify in which branch or branches of geomatics each person is entitled to practice; and 10
    - (bb) professional land surveyors who are qualified to perform the surveys referred to in section 13(2)(b); 15
  - (iv) 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
  - (v) within 90 days of its first meeting, or within such extended period as the Minister may approve, make rules in respect of the manner in which any person must apply for registration and the qualifications necessary for such registration; 20
- (c) with regard to fees, must be guided by the actual administrative costs associated with the specific service and— 25
- (i) must make rules in respect of—
    - (aa) the application, registration and, with the concurrence of the Minister and the Minister of Finance, the annual fees payable to the Council by the different categories of applicants or registered persons; 30
    - (bb) the portion of such annual fees which is payable in respect of any part of a year; and
    - (cc) the date on which any fee or portion thereof is payable;
  - (ii) may for good cause grant exemption from payment of application fees, registration fees, annual fees or a portion thereof, or may defer any such payment; 35
  - (iii) must, with the concurrence of the Minister and the Minister of Finance, determine the fees or any part thereof payable to the Council in respect of any assessment contemplated in section 13(4) conducted by or on behalf of the Council; 40
  - (iv) must, with the concurrence of the Minister and the Minister of Finance, make rules in respect of 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
  - (v) may, with the concurrence of the Minister and the Minister of Finance, determine any other fee it considers necessary; 45
- (d) with regard to education and training—
- (i) must consult with the relevant quality council referred to in Chapter 5 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), and the voluntary associations, to determine the required competency standards relevant to the geomatics profession; 50
  - (ii) must conduct accreditation visits to educational institutions offering educational programmes with regard to geomatics at least once in four years and, if the Council does not conduct an accreditation visit within the four-year period, must notify the Minister accordingly and provide reasons for not visiting such institutions; 55
  - (iii) may, subject to the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), recognise specific qualifications or part qualifications as requirements to be registered as a geomatics practitioner;
  - (iv) 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); 60

- (v) may establish mechanisms for registered persons to gain recognition of their qualifications and professional status in other countries;
- (vi) may, subject to the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), enter into an agreement with any person or body, within or outside the Republic, with regard to the recognition of any examination or qualification for the purposes of this Act; 5
- (vii) may advise or assist any educational institution, voluntary association or examining body with regard to educational facilities for the training of registered persons and prospective registered persons;
- (viii) must make rules to determine the procedure for any assessment for the purposes of section 13(4); and 10
- (ix) must make rules which determine—
  - (aa) the conditions relating to continuing professional development;
  - (bb) the nature and extent of continuing professional development to be undertaken by persons registered in terms of this Act; 15
  - (cc) the criteria for the recognition of continuing professional development and of service providers offering such activities;
  - (dd) the recognition of professionals who offer opportunities for practical training towards the development of graduates and potential graduates; and 20
  - (ee) in liaison with the relevant quality council referred to in Chapter 5 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), and the South African Qualifications Authority, if applicable, the recognition of any prior learning relating to the geomatics profession; 25
- (e) with regard to finance and subject to subsection (2) of this section and sections 66 and 70 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), where applicable—
  - (i) must collect all monies due to it;
  - (ii) may invest its funds in any registered financial institution approved by the National Treasury; 30
  - (iii) may, with the approval of the Minister of Finance, raise loans for the purposes of effectively performing its functions;
  - (iv) may, with a view to promoting any matter relating to the geomatics profession, lend money in the manner, subject to such conditions and against such security as may be prescribed by the Minister with the concurrence of the Minister of Finance; 35
  - (v) may, with the approval of the Minister of Finance, mortgage any of its immovable property as security for any loan raised for the purpose of effectively performing its functions; 40
  - (vi) may, in consultation with the National Treasury, undertake fund-raising activities, including conferences, production and sale of merchandise and publications;
  - (vii) 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; and 45
- (f) in general but subject to subsection (2)—
  - (i) 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; 50
  - (ii) must decide upon the manner in which contracts must be entered into on its behalf;
  - (iii) may advise the Minister or any other Minister, as the case may be, on any matter relating to the geomatics profession;
  - (iv) 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; 55
  - (v) may take any steps which it considers necessary to create an awareness amongst registered persons of the importance of protecting the environment; 60
  - (vi) must consider and give its final decision on recommendations of a committee of the Council; and

(vii) may from time to time insure, through a registered insurer, against any risk to which it, its members, its employees or registered persons may be exposed.

(2) The Council must obtain the written approval of the Minister and the Minister of Finance, which approval may be granted subject to conditions, before— 5

- (a) 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 by publication of an appropriate notice in the *Gazette*; and
- (b) acquiring, disposing of or encumbering immovable property, irrespective of its value. 10

### Meetings of Council

9. (1) (a) The first meeting of the Council and any future first meetings of a newly appointed Council must be held at the time and place determined by the Chief Surveyor-General in concurrence with the Minister, and subsequent meetings of the Council must be held at such times and places as determined by the Council. 15

(b) The first meeting of the Council and any future first meetings of a newly appointed Council must be chaired by the Chief Surveyor-General until a chairperson has been appointed in terms of section 4(8).

(2) The Council must hold at least two meetings each year, but may hold such further meetings as it determines necessary from time to time. 20

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

(4) The chairperson must, on notice of the purpose of the meeting, convene a special meeting at the request of— 25

- (a) the Minister; or
- (b) at least one third of the Council members.

(5) A special meeting requested in terms of subsection (4) must be held within 30 days from the date of receipt of the request, on such date and at such place as the chairperson may determine. 30

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

(7) If within an hour after the time scheduled for a 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 so adjourned and the members then present at the second meeting, constitute a quorum. 35

(8) The Council or a committee is a body of record and must keep appropriate records of its activities, including minutes of its meetings, its documents and documents submitted to or obtained by it. 40

(9) Copies of the minutes of and the reports tabled at the meetings or proceedings of the Council or a committee must be forwarded to the Minister and Director-General within 60 days from the date of each meeting or proceeding.

### Decisions of Council 45

10. (1) A decision of a majority of the members of the Council 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 the authority of the Council is not invalid by reason only of a vacancy on the Council or of the fact that a person who is not entitled to sit as a member of the Council sat as a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of the members of the Council who were present at the time and entitled to sit as members. 50

(4) The Minister may, after consultation with the Council and any person directly affected by a Council decision, suspend or revoke that decision on reasonable grounds and on such conditions as are just and equitable, if it is in the public interest to do so. 55

(5) The Minister must, on suspending a decision of the Council and before its revocation, remit such decision to the Council for 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, including members of committees who are not members of the Council itself, but excluding any member who is in the full-time service of the State, must out of the funds of the Council be paid such remuneration and such allowances as the Minister, with the concurrence of the Minister of Finance, may determine. 5

### **Funds of Council and keeping and auditing of accounts** 10

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

(2) The Council may, in consultation with the National Treasury, establish and administer an education fund for the purposes of educating, training and providing continued education and training of registered persons and students of geomatics. 15

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

(4) The Council must annually prepare a statement of income and expenditure and a balance sheet showing the financial position at the close of the financial year, which statement and balance sheet must be audited by an auditor registered in terms of the Auditing Profession Act, 2005 (Act No. 26 of 2005). 20

(5) A copy of the auditor's statement and balance sheet, after endorsement by the Council, must lie open for public inspection at the offices of the Council for a period of 14 days and the Council must give notice thereof to all registered persons in any manner deemed appropriate by the Council. 25

(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 from the Council and on such conditions the Minister may determine, grant to the Council out of money appropriated by Parliament, such amounts as the Minister considers necessary in order to enable the Council to carry out its functions. 30

## **CHAPTER 3**

### **REGISTRATION**

#### **Registration of persons** 35

13. (1) A person may be registered in terms of subsection (4) in one or more of the following categories and in one, more or all of the applicable branches of the geomatics profession:

- (a) A candidate geomatics practitioner;
- (b) a geomatics technician; 40
- (c) a geomatics technologist; or
- (d) a geomatics professional.

(2) (a) A person may not practice in or perform any work, whether for reward or otherwise, which is reserved for any of the categories or branches referred to in subsection (1), unless he or she is registered in that category or branch or he or she performs such work under the supervision of a registered person of the same discipline and such registered person assumes responsibility for any work so performed. 45

(b) A person whose name is not entered in the register for professional land surveyors referred to in section 8(1)(b)(iii)(bb), may not practice in or perform—

- (i) any survey for the purposes of preparing a diagram or general plan to be filed or registered in terms of any law governing the registration of any land or rights in land or mentioned in any manner whatsoever in any other document to be so filed or registered; or 50
- (ii) any survey affecting the delimitation of the boundaries or the location of the beacons of any land so registered. 55

- (3) Any person intending to be registered in a category or branch contemplated in subsection (1) must apply for registration in the manner determined in the rules.
- (4) The Council must consider an application for registration, register the applicant in the relevant category and branch and issue to him or her a registration certificate in the form determined in the rules, if the Council is satisfied that the applicant— 5
- (a) in the case of a person applying for registration as a candidate geomatics practitioner, is registered for an accredited and appropriate geomatics educational programme registered on the NQF and recognised in terms of subsection (5);
  - (b) in the case of a person applying for registration as a geomatics technician— 10
    - (i) has completed an accredited and appropriate geomatics educational programme registered on the NQF and recognised in terms of subsection (5);
    - (ii) has completed such practical training as may be determined in the rules; and 15
    - (iii) has passed a competency assessment determined by the Council;
  - (c) in the case of a person applying for registration as a geomatics technologist—
    - (i) has completed an accredited and appropriate geomatics educational programme registered on the NQF and recognised in terms of subsection (5); 20
    - (ii) has completed such practical training as may be determined in the rules; and
    - (iii) has passed a competency assessment determined by the Council; and
  - (d) in the case of a person applying for registration as a geomatics professional— 25
    - (i) has completed an accredited and appropriate geomatics educational programme registered on the NQF and recognised in terms of subsection (5);
    - (ii) has completed such practical training as may be determined in the rules; and
    - (iii) has passed a competency assessment determined by the Council. 30
- (5) The Council must, in liaison with the relevant quality council referred to in Chapter 5 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), and in accordance with section 28 of that Act, determine which educational programmes and qualifications relating to geomatics, registered or to be registered on the NQF by the South African Qualifications Authority in terms of that Act, would be recognised for the purposes of subsection (4)(a), (b)(i), (c)(i) and (d)(i). 35
- (6) Only a registered person may be described in terms of the category and branch of geomatics in which he or she is registered.
- (7) The Council may determine abbreviations or acronyms for the categories and branches referred to in subsection (1). 40
- (8) 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 geomatics work;
  - (b) is declared by a court of law to be mentally incompetent or is detained under the Mental Health Care Act, 2002 (Act No. 17 of 2002); 45
  - (c) has been convicted, whether in the Republic 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 and has not been re-instated; 50
  - (e) has had his or her name removed from any professional register on account of misconduct and has not been reinstated; or
  - (f) is not a fit and proper person.

#### **Cancellation of registration**

14. (1) The registration of a registered person who— 55
- (a) becomes disqualified on any ground referred to in section 13(8);
  - (b) was erroneously registered;
  - (c) was registered on the basis of incorrect information;
  - (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 60 extended date; or

(e) fails, without good reason, to comply with the prescribed requirements in respect of continuing professional development or any rule in this regard, may be cancelled in writing in terms of this section.

(2) The Council must notify such person in writing of its intention to cancel his or her registration and request the person to submit written representations, within a specified reasonable time, indicating the reasons why the registration should not be cancelled. 5

(3) If the Council is satisfied that no reasonable grounds exist for such person's registration to continue, the registration must be cancelled and the registered person must be notified accordingly.

(4) The Council must, at the written request of any registered person, remove such person's name from the register, but if an investigation into 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. 10

(5) A person who was previously registered in terms of section 13(4) may apply for re-registration, if— 15

(a) that person's registration was cancelled in terms of subsection (1)(c);

(b) that person has resigned; or

(c) that person wishes to be registered in a different category.

(6) If a person contemplated in subsection (5) has paid the application, registration and arrear fees, subscriptions, recovery expenses and penalties, if any, determined in the rules, the Council must, subject to the provisions of this Act, re-register such person in any appropriate category and branch. 20

#### **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. 25

(2) If the person cannot return the certificate as required, he or she must, by way of an affidavit, provide satisfactory reasons for the inability to return the certificate.

#### **Identification of geomatics 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 geomatics work to be reserved for registered persons, including work which may fall within the scope of any other profession. 30

(2) The Minister may, upon advice from the Council and after the consultation contemplated in subsection (1), prescribe the geomatics work to be reserved for each category in respect of each branch of registered persons. 35

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

(a) perform any kind of work reserved for any category of registered persons;

(b) pretend to be, or in any manner hold himself or herself out or allow himself or herself to be held out as, a person registered in terms of this Act; or 40

(c) use the name of any registered person or any name or title referred to in section 13(1).

(4) Notwithstanding subsections (2) and (3), the Minister may prescribe certain areas of work which may be carried out by a person registered or lawfully appointed in terms of other legislation to carry out such work, without subjecting such person to the prohibitions contained in subsection (3). 45

(5) The provisions of this section must 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, on the condition that such a registered person assumes responsibility for any work so performed. 50

#### **Carrying on of geomatics profession by company**

**17.** (1) Notwithstanding any provision of this Act to the contrary, a company may practise as and perform the work of a geomatics professional if the company has been incorporated or recognised as a personal liability company in terms of the Companies Act, 2008 (Act No. 71 of 2008), and its Memorandum of Incorporation provides— 55

- (a) that the main object of the company is to perform the work of a geomatics professional;
- (b) that only natural persons who are geomatics professionals, or other natural persons approved by the Council in writing, may be shareholders of the company; 5
- (c) that every shareholder of the company must be a director thereof and that only a shareholder of the company may be a director thereof;
- (d) that a shareholder may not transfer any share, or any rights or benefits attaching to a share, to any person other than a person referred to in paragraph (b); 10
- (e) that in the event of a shareholder's death or of his or her ceasing to comply with a requirement of paragraph (b), his or her estate or he or she himself or herself, as the case may be, may continue to hold his or her shares in the company as from the relevant date for a period of six months or for such longer period as may have been approved by the Council, and that during such 15  
period any voting rights attaching to such shares may be exercised by any other shareholder of the company whom the first-mentioned shareholder may have nominated in writing before his or her death or disqualification for the purposes of this paragraph or, failing such nomination, by the company's board. 20

(2) (a) The holder of a share referred to in subsection (1)(e) may not act as a director of the company in question, or directly or indirectly receive any directors' fees or remuneration from that company.

(b) Such shares as are not in accordance with the company's Memorandum of Incorporation transferred within the period referred to in subsection (1)(e) to any person referred to in subsection (1)(b), may be acquired by the company itself. 25

(c) Any transfer of shares in a company referred to in this section, or of any rights and benefits attaching thereto, in conflict with subsection (1)(e), shall be void.

(3) Subject to the provisions of section 11 of the Companies Act, 2008 (Act No. 71 of 2008), the name of a company referred to in this section must, unless the Council in any particular case approves of any other name, consist solely of the name or names of any of the present or past members of the company or of a person or persons who conducted, either for his, her or their own account or in partnership, any practice which may reasonably be regarded as a predecessor of the practice of the company. 30

(4) Any— 35

(a) act performed, with or without a particular intent, by or on instructions or with permission, express or implied, given by a director or employee of a company referred to in this section; and

(b) omission, with or without a particular intent, of any act which ought to have been but was not performed by or on instructions given by a director or employee of a company, 40

in the exercise of his or her powers or in the performance of his or her duties as such director or employee or in furthering or endeavouring to further the interests of that company, and which would have constituted improper conduct if it had been performed or omitted by a geomatics professional carrying on his or her profession or calling as a natural person in practice must, for the purpose of this Act, be regarded as having been performed or omitted by every shareholder, director or employee of such company practising as a geomatics professional, unless it is proved that such geomatics professional did not take part in the performance of the act or the omission and that he or she could not have prevented it. 45  
50

(5) A company referred to in this section which, otherwise than under an exemption granted in terms of this Act, entrusts work reserved under section 16 for a geomatics professional to any person, whether a shareholder, director or employee of the company or not, other than a geomatics professional, is guilty of an offence and liable on conviction to a fine not exceeding R10 000. 55

(6) Any person who—

(a) not being a nominee or board referred to in subsection (1)(e), exercises any voting rights contemplated in that subsection during the period referred to therein; or

(b) contravenes a provision of subsection (2)(a), 60

is guilty of an offence and liable on conviction to a fine not exceeding R1 000.

(7) (a) The provisions of section 16 apply with the changes required by the context in respect of a company referred to in this section.

(b) The payment in accordance with the provisions of this Act by a company referred to in this section on behalf of a geomatics professional who carries on his or her profession as a member, shareholder, director or employee of that company, of any annual fee or levy, must for the purposes of this Act be regarded as a payment by such geomatics professional. 5

(8) The Council may cancel the registration as a geomatics professional of any shareholder or director of a company referred to in this section, if the company is liquidated or wound up.

## CHAPTER 4

### VOLUNTARY ASSOCIATIONS 10

#### Recognition of voluntary associations

18. (1) Any association, organisation, institute, institution or other body of registered persons which has as its main object the promotion and protection of the interests of the geomatics profession and applies its profit, if any, in promoting its main object, may apply to the Council to be recognised as a voluntary association. 15

(2) The Council must, within 90 days from its first meeting, make rules in respect of the requirements and procedures for the recognition of a voluntary association.

(3) The Council may, if the association, organisation, institute, institution or other body of registered persons comply with the rules, recognise that association, organisation, institute, institution or other body of registered persons as a voluntary association and issue to it a certificate of recognition. 20

(4) A certificate of recognition is valid for a period of five years from the date of issue on condition that the voluntary association continues to comply with the relevant rules.

(5) A voluntary association must, at least three months prior to the expiry of its certificate of recognition, apply to the Council for the renewal thereof in the manner determined in the rules. 25

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

## CHAPTER 5

### PROFESSIONAL CONDUCT

#### Code of conduct

19. (1) The Council must, within 90 days from the date of its first meeting and in consultation with the Minister, prepare a code of conduct for registered persons which must be published in the *Gazette*. 35

(2) The code of conduct may contain different provisions for different categories of registered persons.

(3) The Council must take all reasonable steps to—

(a) publicise the existence of the code of conduct developed by the Council in terms of this Act; 40

(b) inform members of the public of the contents of the code of conduct, including its enforcement procedures; and

(c) inform members of the public on how and where to obtain a copy of the code of conduct. 45

(4) The Council may amend the code of conduct in consultation with the Minister, and any amendment must be published in the *Gazette*.

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

(6) In addition to the code of conduct, a registered person must— 50

(a) not deliberately do anything calculated to unjustly or unfairly injure the reputation of another registered person;

(b) abstain from direct or indirect participation as an adviser or decision-maker in any matter in which he or she has a personal interest, and must leave any chamber in which such matter is under deliberation, unless— 55



- (i) the personal interest has been made a matter of public record;
- (ii) his or her employer, if any, has given written approval; and
- (iii) the public official, public agency or body with jurisdiction to rule on ethical matters has expressly authorised his or her participation;
- (c) not solicit prospective clients or employment through the use of false or misleading claims, harassment or duress; 5
- (d) not use the power of any office to seek or to obtain special advantage that is not in the public interest nor any special advantage that is not a matter of public knowledge;
- (e) not use confidential information acquired in the course of his or her duties to further a personal interest; 10
- (f) not 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 commit a deliberately wrongful act which reflects adversely on the geomatics profession or seek business by stating or implying that he or she is prepared, willing or able to influence decisions by improper means; 15
- (h) accurately represent his or her qualifications to practise geomatics and his or her education and affiliations;
- (i) respect the rights of every person and must not violate any right of another person protected by the Constitution of the Republic of South Africa, 1996; and 20
- (j) accept personal responsibility and liability for geomatics work performed by or under his or her supervision, direction or control.
- (7) A registered person is guilty of improper conduct if he or she— 25
  - (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; 30
  - (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 35
  - (e) fails to comply with this Act.

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

- 20.** (1) The Council must appoint one or more investigating officers, which meet such criteria as may be prescribed, in order to investigate any charge of improper conduct under this Act. 40
- (2) The Council must, as soon as is reasonably possible, when—
- (a) a complaint, charge or allegation of improper conduct has been brought against a registered person; or
  - (b) it has reasonable grounds to suspect that a registered person is guilty of improper conduct, 45
- refer the matter to an investigating officer.
- (3) The investigating officer must at the request of the Council—
- (a) investigate the matter; and
  - (b) obtain evidence to determine whether or not the registered person concerned should be charged and, if so, must recommend to the Council what the appropriate charge should be. 50
- (4) An investigating officer may not question the registered person concerned unless the investigating officer informs that 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 made may be used in evidence against him or her.
- (5) The investigating officer must, after the conclusion of the investigation, submit a report, together with his or her recommendations, to the Council regarding any matter referred to the Council in terms of this section. 60

### Steps after investigation

- 21.** (1) The Council must, after considering the investigation report, charge the registered person with improper conduct if sufficient grounds exist for such a charge.
- (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. 5
- (3) The Council must inform the registered person charged in terms of subsection (1)—
- (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 10
  - (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. 15
- (4) If a registered person charged in terms of subsection (1) has admitted that he or she is guilty of the charge and a sanction contemplated in section 24(4)(a) or (b) may be imposed in respect of such charge, the Council may—
- (a) find such registered person guilty without referring the charge to a disciplinary tribunal; and 20
  - (b) impose an appropriate sanction contemplated in section 24(4)(a) or (b).
- (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. 25

### Appointment of disciplinary tribunal

- 22.** (1) The Council must appoint a disciplinary tribunal to hear a charge of improper conduct if a person charged— 30
- (a) denies the charge; or
  - (b) admits the charge and the sanctions contemplated in section 24(4)(c) and (d) may be imposed in respect of such charge.
- (2) The disciplinary tribunal must consist of at least— 35
- (a) two 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) two persons with specialised knowledge of matters concerning the particular charge.
- (3) The members of the disciplinary tribunal must amongst themselves elect a 40 chairperson to chair the proceedings.

### Disciplinary hearing

- 23.** (1) The Registrar performs 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— 45
- (i) who may be able to give material information concerning the subject of the hearing; or
  - (ii) who is suspected or believed to have 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, 50
- 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 summons or subpoena issued in terms of paragraph (a)— 55
- (i) must be in the form prescribed by the Minister in consultation with the Minister of Justice and Constitutional Development;

- (ii) must be signed by the chairperson of the disciplinary tribunal or, in his or her absence, any member of the disciplinary tribunal assigned by the chairperson; and
  - (iii) must be served on the person concerned, either personally or by sending it by registered mail. 5
- (3) The disciplinary tribunal may retain a book, document or object produced in terms of subsection (2)(a)(ii) 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 witness— 10
- (a) may request that the names of the members of the disciplinary tribunal be made available to him or her;
  - (b) may not—
    - (i) refuse to be sworn in or to make an affirmation; or
    - (ii) knowingly make a false statement or give a false answer; and 15
  - (c) may not without sufficient cause fail to—
    - (i) attend the hearing, including any postponed hearing at the place and time specified in a subpoena or by the chairperson of the disciplinary tribunal, and must remain in attendance until excused from further attendance by such chairperson; 20
    - (ii) answer all questions lawfully put to him or her, fully and satisfactorily to the best of his or her knowledge; or
    - (iii) 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. 25
- (6) 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 is required to give or produce.
- (7) The law of privilege in relation to evidence, including the production of a book, document or object, applicable in a civil proceeding in a court of law, applies with the changes required by the context to a proceeding before a disciplinary tribunal. 30
- (8) A record of evidence which was presented to a tribunal in a prior hearing which is relevant to a charge before a subsequent tribunal, is admissible in a hearing before such subsequent tribunal without further evidence being led, if the chairperson of such prior tribunal certifies it to be a full and true record and that the prior proceedings were lawful and procedurally fair. 35
- (9) 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 competent court. 40
- (10) The Minister may, in consultation with the Minister of Justice and Constitutional Development, prescribe procedures not inconsistent with this Act, for the effective performance of the functions of a disciplinary tribunal.
- (11) A person appearing before the disciplinary tribunal on account of a charge of improper conduct is entitled to legal representation at the hearing. 45

#### **Proceedings after hearing**

- 24.** (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; and 50
  - (b) within 14 days after its decision, in writing inform the Council of its finding and the reasons therefor.
- (2) The Council must, within 30 days, from receipt of the disciplinary tribunal's decision, in writing inform the registered person— 55
- (a) of the tribunal's finding; and
  - (b) of his or her right of appeal in terms of section 28.
- (3) The Council or a registered person found guilty of improper conduct in terms of this Act, may adduce evidence, including calling witnesses, to establish any aggravating or mitigating circumstances which must be considered by the disciplinary tribunal in determining an appropriate sanction. 60

- (4) If the registered person charged is found guilty of improper conduct, or if such person confesses during the proceedings that he or she is guilty of the offence, the disciplinary tribunal may, when informing the Council of its finding in terms of subsection (1)(b), recommend that the Council—
- (a) caution or reprimand the registered person; 5
  - (b) impose on the registered person a fine not exceeding an amount prescribed by the Minister in consultation with the Minister of Justice and Constitutional Development; 10
  - (c) suspend the registration of the registered person concerned for a period not exceeding one year; or
  - (d) cancel the registration of the registered person concerned. 10
- (5) The disciplinary tribunal may—
- (a) recommend more than one of the sanctions referred to in subsection (4); and
  - (b) order the registered person charged to pay the cost of the investigation or the disciplinary hearing. 15
- (6) The Council—
- (a) may give effect to a recommendation of the disciplinary tribunal;
  - (b) must publish the outcome of a disciplinary hearing in its annual report and may publish it in any other manner it considers appropriate; and
  - (c) must instruct the Registrar to endorse the register to record the charge, the finding of guilt and the sanction and, if applicable, the removal of the name of the registered person found guilty, from such register. 20
- (7) Any court with civil jurisdiction may on the application of the disciplinary tribunal or the Council, grant an order for the recovery from the registered person charged of any amount he or she failed to pay in accordance with a sanction imposed in terms of this Act, together with any interest thereon, after which the order so granted has the effect of a civil judgment of that court and must be executed in accordance with the law applicable in that court. 25
- (8) The Registrar must keep a record of the proceedings of every tribunal hearing.

## CHAPTER 6 30

### APPEALS

#### **Establishment of Appeal Board**

- 25.** (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 in writing by the Minister: 35
- (a) Three registered persons who have been practising or teaching geomatics 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. 40
- (3) The Minister must appoint, from the members of the Appeal Board, a chairperson, a deputy chairperson and an alternate chairperson of the Appeal Board.
- (4) When the chairperson is unable to perform the functions of the Appeal Board, they shall be performed by the deputy chairperson or, if he or she is also unable to do so, by the alternate chairperson. 45
- (5) The Minister must take into account, amongst other things, the principles of transparency and representivity when members of the Appeal Board are appointed.
- (6) The provisions of section 4(4), (5), (6), (7)(a), (9), (12) and (13) apply, with the changes required by the context, to the nomination of candidates, the selection of appointees, the appointment of members to the Appeal Board and the term of office for membership thereof. 50
- (7) The grounds contemplated in section 5(1) and (2) apply, with the changes required by the context, to the appointment of persons to and the vacation of office by members of the Appeal Board.

#### **Meetings, procedures and administration of Appeal Board 55**

- 26.** (1) If the chairperson or deputy chairperson vacates his or her office, 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 a majority of the members of the Appeal Board, constitutes a decision of the Appeal Board.
- (4) In the event of a deadlock at a hearing, the chairperson has a casting vote in addition to a deliberative vote. 5
- (5) The Appeal Board must conduct appeals in accordance with the procedures prescribed by the Minister in consultation with the Minister of Justice and Constitutional Development.
- (6) The Appeal Board must decide an appeal within 60 days after the appeal was lodged and must inform the appellant and the Council, in writing, of its decision within 60 days after such decision has been made. 10
- (7) The Appeal Board must keep a record of the proceedings of every sitting held in terms of this section.
- (8) The Registrar performs the administrative functions necessary to support the functioning of the Appeal Board. 15

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

27. The chairperson, deputy chairperson and other members of the Appeal Board, excluding any 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. 20

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

28. (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 sanction imposed, or both; 25
  - (b) a person aggrieved by a decision of the Council in terms of section 13 or 14; or
  - (c) a person objecting to a rule published in terms of section 31(4).
- (2) (a) The appeal must be lodged in the manner and upon payment of the fees determined in the rules, within 30 days after the Council or disciplinary tribunal has informed the appellant of its decision or the date of publication of a rule in the *Gazette*. 30
- (b) The Appeal Board must consider and decide the appeal.
- (3) The Appeal Board may—
- (a) dismiss an appeal against a finding or sanction of the disciplinary tribunal or the decision of the Council or rule, and confirm the relevant finding, sanction, decision or rule; 35
  - (b) uphold an appeal and set aside or vary such a finding, sanction, decision or rule, wholly or in part, and must in writing inform the appellant and the Council of its decision and the reasons therefor; or
  - (c) award such costs as may be just. 40

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

29. (1) An appellant aggrieved by a decision of the Appeal Board may through the Registrar request the Appeal Board in writing to furnish him or her, within 30 days from receipt of the request, with the Appeal Board's reasons for the decision.
- (2) The appellant may, after notice has been given to the Appeal Board, lodge an appeal with the High Court of South Africa within 30 days from the date of the decision of the Appeal Board or receipt of the reasons for the Appeal Board's decision, whichever is the later. 45
- (3) The Council may, after notice has been given to the Appeal Board, appeal to the High Court of South Africa against any decision of the Appeal Board in terms of section 28(3)(b) or (c) within 30 days from the date of the decision of the Appeal Board. 50
- (4) The rules of the High Court governing appeals apply to an appeal contemplated in this section to the extent that such rules are not inconsistent with this section.

## CHAPTER 7

## GENERAL

**Professional fees**

**30.** (1) The Council may annually, but must at least every three years, after consultation with voluntary associations and with the concurrence of the Minister and the Minister of Finance, determine guideline professional fees and publish such fees by notice in the *Gazette*. 5

(2) The Council must, before determining the guideline fees in terms of subsection (1), publish by notice in the *Gazette* a draft of the proposed guideline fees, calling on interested persons to submit comments in writing within a period of not less than 30 days after such publication. 10

(3) If the Council alters the proposed guideline professional fees as a result of any comment received, it need not publish those alterations before determining the said fees.

**Regulations and rules**

**31.** (1) (a) The Minister may, by notice in the *Gazette*, make regulations not inconsistent with this Act regarding— 15

- (i) any matter that may be or must be prescribed in terms of this Act;
- (ii) any matter necessary for or incidental to the exercise of the powers and the performance of the functions of the Council; and
- (iii) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the implementation or administration of this Act. 20

(b) The Minister must, before making any regulation in terms of subsection (1), publish a draft of the proposed regulation by notice in the *Gazette*, calling on interested persons and voluntary associations to comment on the draft, in writing, within a period of not less than 30 days from the date of publication of the notice. 25

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

(2) The Council may, in consultation with the Minister and by notice in the *Gazette*, make rules not inconsistent with this Act regarding—

- (a) any matter that the Council is required or permitted to determine in terms of this Act; 30
- (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; and
- (d) any matter ancillary or incidental to the exercise of the powers and performance of the functions of a disciplinary tribunal and the Appeal Board. 35

(3) (a) Before the Council makes any rule under this section, it must publish by notice in the *Gazette* a draft of the proposed rule calling on interested persons and voluntary associations to submit comment, in writing, within a period of 30 days from the date of publication of the notice. 40

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

(4) The Council may, if circumstances necessitate the immediate publication of a rule, publish that rule by notice in the *Gazette* without the consultation contemplated in subsection (3), but any person who objects to the said rule may— 45

- (a) comment on the rule after such publication; or
- (b) appeal to the Appeal Board against such a rule.

**Procedure and evidence**

**32.** (1) Any register referred to or implied in this Act serves as evidence of all matters which are required to or may be entered therein in terms of this Act. 50

(2) A certificate signed by the Registrar to the effect that an entry has or has not been made in a 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 a register or a document in the custody of the Registrar or an extract from a register or from any such document, certified by the Registrar, must be 55

admitted in evidence in any disciplinary tribunal, Appeal Board or court of law hearing without further proof or production of the original.

### **Rectification of errors**

**33.** The Minister may, if 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, and the Minister is 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. 5 10

### **Liability**

**34.** (1) The Council or any member, committee or employee thereof is not liable for any act performed in good faith in terms of this Act. 15

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

(a) refuses to perform an act;

(b) omits to perform an act; or

(c) informs the Council or any other appropriate authority of an act or failure to perform an act, by any other person, 20

which act or omission endangers or is likely to endanger the safety or health of the public or fellow employees, is not liable in any legal proceedings for that refusal, failure 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 registered. 25

### **Delegation of powers**

**35.** (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. 30

(2) The Council may delegate any of its powers or duties in terms of this Act, excluding the power to make rules or to give effect to a recommendation contemplated in section 24(6)(a), to a member of the Council, a committee, the chairperson of a committee, the Registrar or any other employee of the Council. 35

### **Offences and penalties**

**36.** (1) Any person or body who contravenes the provisions of section 13(2) or (5), 15, 16(3), 18(6) or 23(5)(b) or (c) or (6) is guilty of an offence.

(2) Any person convicted of an offence of contravening the provisions of section 13(2) or (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) (in this section referred to as the Adjustment of Fines Act). 40

(3) Any person who is convicted of an offence of contravening the provisions of section 15 or 18(6), 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. 45

(4) Any person who is convicted of an offence of contravening the provisions of section 23(5)(b) or (c) or (6) 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. 50

(5) 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 civil proceedings against such person or body in order 55

to compel compliance with the relevant provisions of this Act or to interdict any contravention thereof or for any related purpose.

(6) Any person who is not registered in terms of this Act and who performs any work which may only be performed by a registered person, or who pretends to be a registered person in any manner whatsoever, is guilty of an offence and 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. 5

(7) Any registered person is personally responsible and liable for geomatics work performed by or under the supervision, direction or control of such person.

### **Transitional provisions** 10

**37.** (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) (in this section referred to as the Surveyors’ Act), 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 ceases to exist. 15

(3) Any person who, at the commencement of this Act, was registered in terms of the Surveyors’ Act—

(a) as a professional surveyor, is deemed to be registered under this Act as a geomatics professional; 20

(b) as a professional land surveyor, is deemed to be registered under this Act as a geomatics professional in the branch of land surveying and such person’s name must be entered in the register for professional land surveyors referred to in section 8(1)(b)(iii)(bb); 25

(c) as a professional surveyor in training, is deemed to be registered under this Act as a candidate geomatics practitioner;

(d) as a surveyor, is deemed to be registered under this Act as a geomatics technologist;

(e) as a survey technician, is deemed to be registered under this Act as a geomatics technician; and 30

(f) as a survey technician in training, is deemed to be registered under this Act as a candidate geomatics practitioner,

and must, within 90 days from the effective date, be issued with the appropriate registration certificate. 35

(4) 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.

(5) Any act performed, decision taken or rule made, or purported to have been so performed, taken or made in terms of the Surveyors’ Act remains valid if it is not inconsistent with any provision of this Act, until substituted by an act performed, decision taken or rule made under this Act. 40

(6) Any notice issued or exemption granted by the Minister in terms of the Surveyors’ Act, remains valid unless substituted by a notice issued or exemption granted under this Act. 45

(7) From the effective date, any register other than that mentioned in subsection (3) maintained by the South African Council for Professional and Technical Surveyors or in terms of the Surveyors’ Act is incorporated in and forms part of the registers to be maintained in terms of section 8(1)(b)(ii) of this Act. 50

(8) Any action taken in terms of the Surveyors’ Act which is pending at the commencement date of this Act, must be finalised in terms of that Act as if that Act had not been repealed by this Act.

(9) The Education Advisory Committee established by section 11 of the Surveyors’ Act continues to exist and may exercise its powers and perform its duties and functions after the commencement of this Act until the Education and Training Committee referred to in section 6(2) of this Act had been established. 55



**Repeal and amendment of laws**

**38.** (1) The laws mentioned in Schedule 1 are hereby repealed to the extent set out in the third column of that Schedule.

(2) The law mentioned in Schedule 2 is hereby amended to the extent set out in the third column of that Schedule.

5

**Act binding on State**

**39.** This Act binds the State.

**Short title and commencement**

**40.** This Act is called the Geomatics Profession Act, 2013, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

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**SCHEDULE 1**

Repeal of laws

(Section 38(1))

<b>No. and year of law</b>	<b>Short title</b>	<b>Extent of repeal</b>
Act No. 40 of 1984	Professional and Technical Surveyors' Act, 1984	The whole
Act No. 37 of 1986	Professional Land Surveyors' and Technical Surveyors' Amendment Act, 1986	The whole
Act No. 66 of 1987	Professional Land Surveyors' and Technical Surveyors' Amendment Act, 1987	The whole
Act No. 34 of 1993	Professional Land Surveyors' and Technical Surveyors' Amendment Act, 1993	The whole

## SCHEDULE 2

Amendment of law

(Section 38(2))

No. and year of law	Short title	Extent of amendment
Act No. 8 of 1997	Land Survey Act, 1997	<p>1. Amendment of section 1—</p> <p>(a) by the substitution for the definition of “land surveyor” of the following definition:</p> <p>“ ‘land surveyor’ means a person registered as a professional land surveyor in terms of the <b>[Professional and Technical Surveyors’ Act, 1984 (Act No. 40 of 1984), and whose name is entered in the register referred to in section 7(4)(a) of that Act]</b> <u>Geomatics Profession Act, 2013</u>;”;</p> <p>and</p> <p>(b) by the substitution for the words preceding paragraph (a) of the definition of “ ‘supervise’ or ‘supervision’ ” 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]</b> <u>geomatics technologist</u> or <b>[technical surveyor]</b> <u>geomatics technician</u> in terms of the <b>[Professional and Technical Surveyors’ Act 1984 (Act No. 40 of 1984)]</b> <u>Geomatics Profession Act, 2013</u>, (in this definition referred to as ‘an assistant’), means—”.</p> <p>2. Amendment of section 2A by the substitution for subsection (1) of the following subsection:</p> <p>“(1) The Minister shall, subject to section 50 and the Public Service Act, 1994 (Proclamation No. 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 No. 40 of 1984),]</b> <u>Geomatics Profession Act, 2013</u>, as a <u>geomatics professional</u>, to be styled the Chief Director: Surveys and Mapping.”.</p> <p>3. Amendment of section 9—</p> <p>(a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:</p> <p>“(c) three land surveyors nominated by the South African <u>Geomatics Council</u> <b>[for Professional and Technical Surveyors]</b> established by section <b>[2] 3</b> of the <b>[Professional and Technical Surveyors’ Act, 1984 (Act No. 40 of 1984)]</b> <u>Geomatics Profession Act, 2013</u>.”;</p> <p>(b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:</p> <p>“If the South African <u>Geomatics Council</u> <b>[for Professional and Technical Surveyors]</b> fails to nominate—”;</p>

No. and year of law	Short title	Extent of amendment
		<p>(c) by the substitution in subsection (4) for paragraph (b) of the following paragraph:  “(b) A member of the board referred to in subsection (1)(c) shall hold office for a term determined by the South African Geomatics Council [<b>for Professional and Technical Surveyors</b>] but not exceeding two years, but that Council may, at any time remove that member from office on grounds of misbehaviour, incapacity or incompetence.”; and</p> <p>(d) by the substitution for subsection (5) of the following subsection:  “(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 Geomatics Council [<b>for Professional and Technical Surveyors</b>], 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.”.</p> <p>4. Amendment of section 12 by the substitution in subsection (2) for paragraph (a) of the following paragraph:  “(a) refer any complaint or allegation of improper conduct to the South African Geomatics Council [<b>for Professional and Technical Surveyors</b>] established by section [2] 3 of the [<b>Professional and Technical Surveyors’ Act, 1984 (Act No. 40 of 1984)</b>] Geomatics Profession Act, 2013, for [enquiry] investigation in terms of section [29] 19 of that Act; or”.</p>

## **MEMORANDUM ON THE OBJECTS OF THE GEOMATICS PROFESSION BILL, 2013**

### **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 (the SACPTS), established by the Act, controls and regulates 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 is divided into different fields of survey, namely cadastral (or land), topographical, engineering and mining surveying.
- 1.3 In spite of various initiatives by the SACPTS, the profession is still far from being representative of the South African demographics. Areas where the profession still needs to be transformed are, amongst others, the composition of the SACPTS, the entry requirements into the profession, the funding of the SACPTS, 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 Geomatics Profession Bill (the Bill) has been drafted.

### **2. OBJECTS OF BILL**

- 2.1 Chapter 1 of the Bill contains the definitions and geomatics profession principles in order to guide the interpretation, administration and implementation of the aims thereof. Clause 2, inter alia, acknowledges that geomatics and the geomatics profession are areas of expertise involving a number of activities. It acknowledges that geomatics must pursue and serve the interests of the public to benefit the present and future generations. It obliges the South African Geomatics Council (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 composition, the disqualification of members, committees of the Council, the functions, powers and duties of the Council, meetings and decisions of the Council, the remuneration of members, funds of the Council and the keeping and auditing of accounts. In terms of clause 3 the Council to be established is a juristic person. Clause 4 determines that the Council will consist of at least 11 but not more than 14 members. Members are to be appointed by the Minister of Rural Development and Land Reform (the Minister) after having invited nominations for persons to be considered to represent the specific categories and will, inter alia, be geomatics professionals in the full-time employ of the State, geomatics professionals who represent professional land surveyors and recognised voluntary associations, a person representing the Council on Higher Education as well as persons representing the interests of the public. The Council is smaller and more streamlined than the one established in terms of the Act. The appointment of members by the Minister will further ensure a more representative council. To ensure a smooth transition, clause 4(2) makes provision for not more than five members of the council established in terms of the Act, to remain in office for the first term of the Council. Provision is also made for the appointment of alternate members.
- 2.3 Clause 5 of the Bill provides for the disqualification of persons as members of the Council and vacation of office. These are principles normally embodied in legislation pertaining to members of statutory bodies.

- 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. This clause should be read with clause 36(9) which makes provision for the Education Advisory Committee, which was established under the Act, to continue to exist until the Education and Training Committee has been established.
- 2.5 Clause 7 of the Bill provides for the functions of the Council. These functions are aimed at regulating the geomatics profession in order to promote and protect the public interest, to register persons, 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 and education. These functions will promote and protect the interests of both the geomatics profession and the public.
- 2.6 Clause 8 of the Bill provides for the powers and duties of the Council with regard to administrative matters, the registration of persons, fees, education and training including rules which determine conditions relating to professional development, as well as financial and general matters. The Council must appoint a Registrar and 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 relevant quality council referred to in Chapter 5 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008). Accreditation visits must be paid to educational institutions that offer educational programmes with regard to geomatics. 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 monies due to it, invest funds, raise loans, lend money and mortgage immovable property. The Council may also acquire or lease movable or immovable property. The written approval of the Minister and the Minister of Finance is required for most of the finance-related activities contained in clause 8(1)(c), (e) and (2).
- 2.7 Clause 9 of the Bill determines that the Council must hold at least two meetings each year. The first meeting of the Council and any future first meetings of a newly appointed Council must be chaired by the Chief Surveyor-General.
- 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 of money as the Minister considers necessary. At present the SACPTS has to contend with funding received from inadequate registration fees. Funding via the budget of the Department of Rural Development and Land Reform (the Department) will enable the Council to carry out its duties and responsibilities more effectively. The Council's statement of income and expenditure must at the close of the financial year be audited by a registered auditor. The auditor's statement and balance sheet must lie open for public inspection.
- 2.11 Chapter 3 of the Bill deals with the registration of persons in specific categories, the cancellation of registration of such persons, the return of registration certificates and the identification of geomatics profession work.

This clause should be read with clause 36(3) where provision is made for persons who are registered in terms of the Act, to automatically be deemed to be registered in an appropriate category in terms of the Bill.

- 2.12 In terms of clause 13 of the Bill, the categories of registration are candidate geomatics practitioner, geomatics technician, geomatics technologist and geomatics professional. The entry requirements for each category are brought in line with the relevant educational levels determined by the Council in liaison with the relevant quality council referred to in Chapter 5 of the National Qualifications Framework Act, 2008. The relevant qualifications must be registered on the National Qualifications Framework. In certain instances, persons must also have completed specific practical training and must have passed a competency assessment. Provision is made for candidate geomatics practitioners being persons registered for an accredited and appropriate geomatics educational programme. Specific recognition is also given to technicians. The existing barriers whereby certain persons cannot become professionals without completing a university degree are thus eliminated.
- 2.13 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 Bill, however, provides for work reservation in clause 13(2) and should therefore encourage persons to register, which will be in the interest of both the profession and the public.
- 2.14 Clause 14 of the Bill provides for circumstances under which 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 15 of the Bill, a person whose registration has been cancelled, must return the certificate of registration to the Registrar within 30 days. This is to protect the public from persons performing work for which they are no longer registered.
- 2.15 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 geomatics work to be reserved for registered persons. The Minister may prescribe the geomatics work to be reserved for each category of registered persons and may also prescribe areas of work which may be carried out by persons registered in terms of other legislation. This is to ensure that registered persons 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. Clause 17 provides for the carrying on of geomatics profession by companies.
- 2.16 Chapter 4 of the Bill deals with the recognition of voluntary associations by the Council. In terms of clause 18, the Council may recognise any voluntary association which has as its main object the promotion and protection of the interests of the geomatics profession and which applies its profit in promoting its main objects. The recognition of voluntary associations contemplated in the Bill would benefit the geomatics profession.
- 2.17 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 for by the Council. In addition to the code of conduct, clause 19(6) of the Bill contains a number of requirements pertaining to proper conduct. Clause 19(7) determines when a registered person is guilty of improper conduct. Charges of improper conduct must be investigated in accordance with the provisions of clause 20. 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, 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.

- 2.18 In terms of clause 21, 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 and also impose an appropriate sanction.
- 2.19 Clause 22 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 composition of the members of the disciplinary tribunal is such that the interests of both the Council and the person charged will be served.
- 2.20 Clause 23 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. In order to ensure a fair hearing, a person charged is entitled to legal representation.
- 2.21 Clause 24 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 Council of the reasons for its findings and the Council must inform the person accordingly. The person charged must be informed of his or her right to appeal against the findings. If a person is found guilty of improper conduct, the tribunal may also recommend an appropriate sanction or sanctions to the Council and may furthermore award costs. The Council may give effect to such a recommendation of the tribunal and must publish the outcome of a disciplinary hearing in the Council's annual report.
- 2.22 Chapter 6 of the Bill regulates the establishment and functioning of an Appeal Board. The Appeal Board is established by clause 22(1) and consists of five members appointed by the Minister, namely three registered persons who have been practicing or teaching geomatics 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. 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 geomatics profession principles, the categories and branches of the geomatics profession and the need to ensure and promote gender, disability and other demographic representation.
- 2.23 Clause 26 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 majority of the members present at a meeting constitutes a decision of the Appeal Board. Appeals must be conducted in accordance with the procedures prescribed by the Minister in consultation with the Minister of Justice and Constitutional Development. 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 a further 60 days. The Registrar performs the administrative functions of the Appeal Board and must keep records of the proceedings.

- 2.24 Clause 27 regulates the remuneration and allowances of members of the Appeal Board. Members are paid out of the Council's funds such remuneration and allowances as the Minister, with the concurrence of the Minister of Finance, from time to time determines.
- 2.25 In terms of clause 28, an appeal may be lodged against a finding of a disciplinary tribunal, a sanction imposed, certain decisions of the Council and a rule made by the Council. The Appeal Board may dismiss or uphold an appeal.
- 2.26 Clause 29 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.
- 2.27 Chapter 7 regulates certain general issues. Clause 30 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.
- 2.28 Clause 31 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 such a rule may, however, comment after the publication or appeal to the Appeal Board.
- 2.29 Clause 32 deals with procedures and evidence with regard to the entering of information in the register to be kept and certificates to be signed by the Registrar.
- 2.30 Clause 33 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.
- 2.31 Clause 34 provides for liability by determining that the Council, or any member, committee or employee 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, refuse or fail to perform certain acts endangering the safety or health of the public or fellow employees, from liability.
- 2.32 Clause 35 seeks to empower the Minister to delegate certain powers to the Director-General or any other official in the Department. It also empowers the Council to delegate certain of its powers to a member of the Council, a committee, the chairperson of a committee, the Registrar or any other Council employee.
- 2.33 Clause 36 provides for offences and penalties in line with the provisions of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991). Clause 35(6) specifically makes it an offence for any person who is not registered in terms of the provisions of the Bill, to perform work which is only to be performed by such registered persons.

2.34 Clause 37 makes provision for transitional arrangements and determines that the SACPTS 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 SACPTS ceases to exist. This clause also deals with the transition of the existing categories of surveyors to new categories contemplated in the Bill. Rules made by the council in terms of the Act remain valid until it is replaced by rules made in accordance with the provisions of the Bill. It furthermore provides for the vesting of rights, obligations, assets and liabilities of the SACPTS in the Council. As mentioned in paragraph 2.4, provision is also made for the Education Advisory Committee, which was established under the Act, to continue to exist until the Education and Training Committee has been established in terms of the provisions of the Bill.

2.35 Clause 38, read with Schedules 1 and 2, provides for the repeal and amendment of laws.

2.36 Clause 39 determines that the State is bound by the Act.

2.37 Clause 40 contains the short title and the date of commencement of the Act.

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

Financial implications will mainly be limited to the funding of the Council's and Appeal Board's activities. Provision will therefore amongst other things be made for the day-to-day administrative duties of the Registrar and officials in the office of the Registrar, the activities of the proposed Education and Training Committee, the activities of the Appeal Board and meetings of the Council, including ad hoc meetings, when necessary. The cost to the Department is estimated at approximately R3 million for the first year, whereafter a more precise and informed budget will be provided for.

### **4. DEPARTMENTS/BODIES/PERSONS CONSULTED**

The staff members of the Chief Directorate: Cadastral Surveys Management and of the Chief Directorate: Surveys and Mapping of the Department of Rural Development and Land Reform have been consulted. The Bill was also published in *Government Gazette* No. 28216 of 18 November 2005, under Notice 1226 of 2005 and under the initial proposed short title of *Surveying Profession Bill*, for public comment. After publication, various stakeholders were consulted, including the SACPTS. Workshops were also held in the various provinces and were attended by members of the public and the provincial Institutes of Land Surveyors, Mine Surveyors, the Institute for Technical Surveyors and the Geo-information Society of South Africa. A further workshop was held on 24 June 2010 where the Bill was discussed in detail with representatives from all relevant stakeholders.

### **5. PARLIAMENTARY PROCEDURE**

5.1 The State Law Advisers and the Department of Rural Development and Land Reform 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.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.