

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
PLANNING PROFESSION
BILL**

[B 76—2001]

*(As agreed to by the Portfolio Committee on Agriculture and Land Affairs
(National Assembly))*

[B 76A—2001]

ISBN 0 621 32193 1

No. of copies printed 800

AMENDMENTS AGREED TO

PLANNING PROFESSION BILL [B 76—2001]

CLAUSE 1

1. On page 3, from line 38, to omit “an associate planner, a candidate planner or a professional planner” and to substitute “a registered person”.
2. On page 3, from line 40, to omit the definition of “associate planner”.
3. On page 4, after line 1, to insert:

“National Qualifications Framework” means the National Qualifications Framework as defined in section 1 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);
 “planner” means a person who exercises skills and competencies in initiating and managing change in the built and natural environment in order to further human development and environmental sustainability as contemplated in section 2(a), and who is registered in one or more of the categories contemplated in section 13(4);
4. On page 4, in line 3, to omit “associate” and to substitute “technical”.
5. On page 4, in line 4, after “rule” to insert “made by the Council”.
6. On page 4, in line 4, after “regulation” to insert “made by the Minister”.
7. On page 4, in line 8, to omit “associate planners.”.
8. On page 4, in line 9, before “or” to insert “, technical planners”.

CLAUSE 2

1. On page 4, in line 20, after “to” to insert “the Council and”.
2. On page 4, from line 38, to omit paragraphs (c), (d), (e) and (f) and to substitute:

(c) The Council and the planning profession must—

 - (i) strive to achieve the transformation of the profession to ensure its legitimacy and effectiveness;
 - (ii) strive to achieve high standards of quality and integrity in the profession;
 - (iii) promote the profession and pursue improvements in the competence of planners through the development of skills, knowledge and standards within the profession; and
 - (iv) promote environmentally responsible planning which will ensure sustainable development.

CLAUSE 3

1. On page 4, from line 53, to omit subsection (3).

CLAUSE 4

1. On page 5, from line 2, to omit subsections (1), (2) and (3) and to substitute:

(1) The Council consists of the following members appointed by the Minister after the nomination and selection processes referred to in subsection (3) have taken place:

- (a) Two planners in the full-time employ of the Department;
- (b) One planner in the employ of a Provincial Government;
- (c) Two planners in the employ of the municipal sphere of government, one of whom shall be from a municipality which is mainly rural in character and the other from a municipality which is mainly urban in character;
- (d) Three planners from the planning education and training sector;
- (e) No more than three but at least one person to represent the interests of communities who are or may be affected by planning decisions; and
- (f) Three planners in private practice.

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

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

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

- (a) publishing a notice in the *Gazette* and at least one national newspaper and any other appropriate media, indicating the categories of members to constitute the Council, the number of representatives to be appointed in each category and the persons or bodies entitled to nominate persons in the specified categories;
- (b) inviting all interested persons, voluntary associations, institutions and organisations to submit nominations; and
- (c) taking any other steps he or she deems necessary.

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

2. On page 5, from line 42, to omit subsection (6) and to substitute:

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

CLAUSE 5

1. On page 5, from line 51, to omit subsection (1) and to substitute:

(1) The Minister must not appoint as a member of the Council a person who—

- (a) is not a South African citizen or a permanent resident, and is not ordinarily resident in the Republic of South Africa;
- (b) is an unrehabilitated insolvent;
- (c) is declared by a court of law to be mentally incompetent or is detained under the Mental Health Act, 1973 (Act No. 18 of 1973);
- (d) has been convicted, whether in the Republic of South Africa or elsewhere, of an offence involving dishonesty and for which he or she was sentenced to imprisonment without the option of a fine;
- (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 found guilty of unfair discrimination on the ground of race as contemplated in section 7 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000);
- (h) is a political representative at the national, provincial or municipal sphere of government; or
- (i) is not, in the Minister's opinion, a fit and proper person to be so appointed.

- 2. On page 6, in line 8, to omit "Registrar" and to substitute "Minister".
- 3. On page 6, in line 9, to omit paragraph (c).
- 4. On page 6, in line 10, to omit paragraph (d) and to substitute:
 - (c) is, in the Minister's opinion, after consultation with the Council, incapable of performing his or her duties due to ill health;
- 5. On page 6, from line 15, to omit paragraph (f) and to substitute:
 - (e) was appointed under section 4(1) (a), (b), (c), (d) and (f) and—
 - (i) his or her appointment has ceased; or
 - (ii) he or she is not, within one year from the date of the publication of the rules contemplated in section 8(2)(d) or within such extended period as the Minister may approve, a registered person.

CLAUSE 6

- 1. On page 6, in line 20, to omit "who are not members of the Council".
- 2. On page 6, from line 26, to omit subsection (2).
- 3. On page 6, from line 32, to omit subsection (4) and to substitute:
 - (3) The Council must establish an Education and Training Committee which must—
 - (a) serve solely as a committee on educational and training matters; and
 - (b) advise or assist the Council as the Council may determine on—

- (i) matters contemplated in section 8(4);
- (ii) the methods and procedures for the assessment and registration in the various categories of registered persons:
and
- (iii) all educational, training, skills development and related matters.

CLAUSE 8

1. On page 7, from line 4, to omit paragraph (c) and to substitute:
 - (c) must determine the manner of convening meetings and the procedure at meetings of the Council and any committee, the quorum for committee meetings and the manner in which minutes of all meetings must be kept;
2. On page 7, in line 11, to omit “by means of rules”.
3. On page 7, in line 21, to omit paragraph (d) and to substitute:
 - (d) must within 90 days of its first meeting, or within such extended period as the Minister may approve, prescribe the manner in which any person must apply for registration and the qualifications necessary for such application;
4. On page 7, from line 24, to omit paragraph (e).
5. On page 7, in line 27, to omit “by means of rules”.
6. On page 7, in line 36, to omit “by means of rules”.
7. On page 7, in line 40, after “education” to insert “and training”.
8. On page 7, in line 46, after “has” to insert “a department, school or faculty of planning”.
9. On page 7, in line 51, to omit “planning” and to substitute “training”.
10. On page 7, in line 59, to omit “of persons”.
11. On page 8, in line 1, to omit “give advice or render assistance to” and to substitute “advise or assist”.
12. On page 8, in line 4, to omit “my means of rules”.
13. On page 8, in line 6, to omit “determine conditions relating to, the nature, and extent” and to substitute “facilitate the provision”.
14. On page 8, in line 10, to omit “must” and to substitute “may”.
15. On page 8, after line 18, to insert:
 - (g) may open, operate and close such current or savings bank accounts with a registered commercial bank as it may require to effectively perform its functions and duties.
16. On page 8, from line 25, to omit paragraph (c).

17. On page 8, in line 35, to omit “to protect” and to substitute “of protecting”.
18. On page 8, from line 37, to omit paragraph (g).
19. On page 8, in line 41, to omit paragraph (i) and to substitute:
 - (g) may from time to time insure, through a registered insurer, against any risk to which the Council, its members, its employees or registered persons may be exposed;
20. On page 8, from line 50, to omit paragraph (j).
21. On page 8, in line 52, to omit “take any measures it considers” and to substitute “do anything”.
22. On page 8, after line 53, to add:
 - (i) must obtain the Minister’s prior written approval, which may be granted subject to such reasonable conditions as he or she may impose, before—
 - (i) investing funds, borrowing or lending money or entering into any lease, whether as lessor or lessee, if the period of the transaction will be longer than 12 months, and the value exceeds an amount prescribed by the Minister from time to time by publication of an appropriate notice in the *Gazette*; and
 - (ii) acquiring, other than as a lessee, or disposing of or encumbering immovable property, irrespective of its value; and
 - (j) must invest its funds only in registered financial institutions considered appropriate by the Department of the National Treasury.

CLAUSE 9

1. On page 8, in line 60, after “time” to insert:

on reasonable grounds and on notice of the purpose of the meeting
2. On page 9, from line 1, to omit subsection (4) and to substitute:
 - (4) The chairperson must convene a special meeting on request by—
 - (a) the Minister; or
 - (b) at least one third of the Council members, on notice of the purpose of the meeting.
3. On page 9, after line 12, to add:
 - (8) The minutes of, and the reports tabled at, the meetings or proceedings of the Council must be forwarded to the Minister within 30 days after the conclusion of each meeting or proceeding.

CLAUSE 10

1. On page 9, after line 23, to add:

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

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

CLAUSE 11

1. On page 9, in line 25, to omit “vice-chairperson” and to substitute “deputy chairperson”.

CLAUSE 12

1. On page 9, in line 49, after “and” to insert “may”.

CLAUSE 13

1. On page 10, from line 4, to omit subsection (1) and to substitute:

(1) The categories of registered persons are:

- (a) Candidate planner;
- (b) technical planner; and
- (c) professional planner.

2. On page 10, from line 8, to omit subsection (2) and to substitute:

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

3. On page 10, from line 10, to omit subsection (3) and to substitute:

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

4. On page 10, from line 13, to omit subsection (4) and to substitute:

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

- (a) in the case of a person applying for registration as a candidate planner—
 - (i) is registered for, or has completed, an accredited planning educational programme at the National Qualifications Framework level 5 or higher; and
 - (ii) is, in the Council’s opinion, a fit and proper person to engage in planning work under the control and supervision of a technical or a professional planner or such other person or institution as determined by the Council;
- (b) in the case of a person applying for registration as a technical planner—

- (i) has completed an accredited planning educational programme at the National Qualifications Framework level 6 or higher;
 - (ii) has undergone practical training of not less than two years or as may be prescribed by the Council; and
 - (iii) has passed a competency assessment determined by the Council;
 - (c) in the case of a person applying for registration as a professional planner—
 - (i) has completed an accredited planning educational programme at the National Qualifications Framework level 7 or higher;
 - (ii) has undergone practical training of not less than two years or as may be prescribed by the Council; and
 - (iii) has passed a competency assessment determined by the Council,
 or that the applicant possesses such other qualifications as defined in the South African Qualifications Authority Act, 1995, as may be determined for the relevant category from time to time by the South African Qualifications Authority in terms of that Act and by the Council.
5. On page 10, in line 33, to omit “A” and to substitute “Only a”.
 6. On page 10, in line 33, to omit “under” and to substitute “in”.
 7. On page 10, from line 37, to omit subsection (7) and to substitute:
 - (7) The Council must not register any person who—
 - (a) is an unrehabilitated insolvent whose insolvency was caused by his or her negligence or incompetence in performing planning work;
 - (b) is declared by a court of law to be mentally incompetent or is detained under the Mental Health Act, 1973;
 - (c) has been convicted, whether in the Republic of South Africa or elsewhere, of an offence involving dishonesty and for which he or she was sentenced to imprisonment without the option of a fine;
 - (d) has been removed from an office of trust on account of improper conduct;
 - (e) has had his or her name removed from any professional register on account of misconduct and who has not been reinstated; or
 - (f) is not, in the Council’s opinion, a fit and proper person to be registered.

CLAUSE 14

1. On page 10, from line 52, to omit subsection (1) and to substitute:
 - (1) The registration of a registered person who—
 - (a) becomes disqualified on any ground referred to in section 13(7);
 - (b) was erroneously registered;
 - (c) was registered on the basis of incorrect information; or
 - (d) fails, without good reason and in the absence of an arrangement for deferred payment, to pay any amount owing to the Council on the due date or any extended date,
 may be cancelled in terms of this section.
2. On page 11, in line 6, to omit subsection (2) and to substitute:
 - (2) The Council must notify such a person of the intention to cancel his or her registration and call for representations to be made within a specified reasonable time.

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

3. On page 11, in line 13, to omit "that investigation has" and to substitute "any resultant misconduct proceedings have".

4. On page 11, from line 14, to omit subsection (4) and to substitute:

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

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

(b) resigned; or

(c) wishes to be registered in a different category,
may apply to be re-registered.

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

CLAUSE 15

1. On page 11, in line 27, after "reasons" to insert "on affidavit".

CLAUSE 16

1. On page 11, in line 31, to omit "kinds" and to substitute "areas".
2. On page 11, in line 34, to omit "by means of rules".
3. On page 11, from line 42, to omit paragraph (d).
4. On page 11, in line 44, to omit "subsection" and to substitute "subsections (2) and".

CLAUSE 17

1. On page 12, in line 4, to omit subsections (1) and (2) and to substitute:

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

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

2. On page 12, in line 12, to omit "8(6)(c)" and to substitute "30(2)".
3. On page 12, from line 14, to omit "made under section 8(6)(c)".
4. On page 12, in line 17, to omit "by means of rules".
5. On page 12, from line 19, to omit subsection (6).

6. On page 12, in line 22, to omit “demand” and to substitute “request”.
7. On page 12, in line 24, to omit “he or she” and to substitute “it”.
8. On page 12, in line 25, after “reasons” to insert “on affidavit”.
9. On page 12, from line 26, to omit subsection (8).

CLAUSE 18

1. On page 12, from line 31, to omit subsection (1) and to substitute:

(1) The Council must include in its rules a code of conduct for registered persons.
2. On page 12, from line 34, to omit subsection (2).
3. On page 12, in line 41, to omit “injure”.
4. On page 12, in line 41, after “unfairly” to insert “injure”.
5. On page 13, from line 8, to omit paragraph (h) and to substitute:

(h) not to disclose confidential information acquired in the course of his or her duties unless required by law to do so or by circumstances to prevent substantial injury to third persons;
6. On page 13, from line 22, to omit subsection (5) and to substitute:

(4) A registered person is guilty of improper conduct if he or she—

 - (a) performs work reserved for registered persons in connection with any matter which is the subject of a dispute or litigation, on condition that payment for such work will be made only if such dispute or litigation ends in favour of the person for whom such work is performed;
 - (b) performs work reserved for registered persons during any period for which he or she is suspended under this Act;
 - (c) commits an offence in the performance of his or her work as a registered person;
 - (d) accepts remuneration for the performance of work reserved for registered persons from any person other than his or her client or employer without the prior approval of such client or employer;
 - or
 - (e) fails to comply with the provisions of this Act.

CLAUSE 19

1. On page 13, from line 44, to omit subsection (1) and to substitute:

(1) The Council must appoint one or more investigating officers as it deems fit to investigate any charge of improper conduct.
2. On page 13, in line 49, to omit “by any person”.
3. On page 13, in line 52, to omit “to an investigating committee” and to substitute “for investigation”.

4. On page 13, in line 54, to omit “committee” and to substitute “officer”.
5. On page 13, in line 59, to omit “committee” and to substitute “officer”.
6. On page 13, in line 60, to omit “committee” and to substitute “officer”.
7. On page 14, in line 1, after “another” to insert “registered”.
8. On page 14, in line 5, to omit “committee” and to substitute “officer”.

CLAUSE 20

1. On page 14, in line 9, after “the” to insert “investigation”.
2. On page 14, in line 9, to omit “and recommendations of the investigating committee”.
3. On page 14, in line 13, to omit subsection (2) and to substitute:

(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.
4. On page 14, in line 22, to omit “must” and to substitute “may”.
5. On page 14, in line 24, to omit subsection (4) and to substitute:

(4) The Council may, if a registered person charged—
 (a) has admitted that he or she is guilty of the charge; and
 (b) the sanctions contemplated in subparagraphs (i) and (ii) of section 23(3)(a) may be imposed in respect of such charge,
 find such registered person guilty without referring the charge to a disciplinary tribunal and may impose an appropriate sanction.
6. On page 14, in line 27, to omit subsection (5).

CLAUSE 21

1. On page 14, in line 40, to omit paragraph (b) and to substitute:

(b) admits the charge and the sanctions contemplated in subparagraphs (iii) and (iv) of section 23(3)(a) may be imposed in respect of such charge.
2. On page 14, in line 42, after “three” to insert “registered persons or”.
3. On page 14, in line 43, to omit “10” and to substitute “five”.

CLAUSE 22

1. On page 14, in line 50, to omit subsection (1) and to substitute:

(1) The Registrar must perform the administrative functions necessary to support the functioning of a disciplinary tribunal.
2. On page 14, in line 52, after “hearing,” to insert “summons the person charged, or”.

3. On page 15, in line 10, to omit “registered” and to substitute “subpoenaed”.
4. On page 15, in line 10, to omit “concerned”.
5. On page 15, from line 15, to omit “at the hearing who was subpoenaed in terms of subsection (2)(a)”.
6. On page 15, from line 17, to omit subsection (5).
7. On page 15, in line 32, to omit subsection (6).
8. On page 16, in line 1, after “may” to insert “unlawfully”.
9. On page 16, after line 17, to add:

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

CLAUSE 23

1. On page 16, from line 22, to omit paragraph (b).
2. On page 16, in line 28, to omit subsection (2) and to substitute:

(2) The Council or a registered person found guilty of improper conduct in terms of this Act may offer evidence, including calling witnesses, to establish any aggravating or mitigating circumstances which the disciplinary tribunal must consider in determining an appropriate sanction.
3. On page 16, after line 46, to insert:

(c) The disciplinary tribunal may, but is not obliged to, award costs as may be just against the Council or the registered person charged.
4. On page 16, from line 49, to omit subsection (5) and to substitute:

(5) The Council must publish the outcome of the disciplinary hearing in its annual report and may publish it in any other manner it considers fit.
5. On page 16, in line 52, to omit “disciplinary tribunal” and to substitute “Registrar”.

CLAUSE 24

1. On page 17, from line 1, to omit subsection (2) and to substitute:

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

- (a) Three persons who have been practising or teaching planning 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.

2. On page 17, from line 9, to omit subsection (3) and to substitute:

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

3. On page 17, from line 11, to omit subsection (4) and to substitute:

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

4. On page 17, in line 13, to omit subsection (5).
5. On page 17, in line 20, to omit "4(2), (3), (4) and (5)", and to substitute "4(3), (4), (5) and (6)".

CLAUSE 25

1. On page 17, in line 28, to omit "vice-chairperson" and to substitute "deputy chairperson".
2. On page 17, from line 36, to omit subsection (5).

CLAUSE 26

1. On page 17, in line 51, to omit "vice-chairperson" and to substitute "deputy-chairperson".

CLAUSE 27

1. On page 18, in line 7, to omit "by means of rules".
2. On page 18, after line 17, to insert:
 - (c) award costs as may be just.

CLAUSE 28

1. On page 18, in line 23, to omit “appropriate”.
2. On page 18, in line 26, to omit “appropriate”.
3. On page 18, in line 29, to omit “appropriate”.

CLAUSE 29

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Professional fees

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

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

CLAUSE 30

1. On page 18, in line 47, after “or” to insert “voluntary”.
2. On page 19, in line 9, after “and” to insert “voluntary”.

CLAUSE 35

1. On page 20, in line 9, after “sections” to insert “13(2), 13(5),”.
2. On page 20, in line 11, to omit “section” and to substitute “sections 13(2), 13(5) or”.
3. On page 20, in line 12, to omit “received by” and to substitute “payable to”.
4. On page 20, in line 13, to omit “in contravention of section 16(3)” and to substitute “during the period of such contravention”.
5. On page 20, after line 27, to add:

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

CLAUSE 36

1. On page 20, from line 36, to omit subsection (3).

2. On page 20, in line 40, to omit subsection (4) and to substitute:

(3) Subject to subsections (4) and (5) any person who, at the commencement of this Act, is registered and practises in terms of the Town and Regional Planners Act, 1984—

- (a) as a town and regional planner in training, is entitled to be registered under this Act as a candidate planner;
 - (b) as a town and regional planning technician, is entitled to be registered under this Act as a technical planner;
 - (c) as a town and regional planner, is entitled to be registered under this Act as a professional planner,
- and must, on applying for registration in terms of this Act, be registered accordingly and issued with the appropriate registration certificate.

3. On page 20, in line 46, to omit subsection (5) and to substitute:

(4) A person contemplated in subsection (3) may, pending his or her registration in terms of this Act and notwithstanding the repeal of the Town and Regional Planners Act, 1984, continue to use his or her professional title and may continue to perform planning work as if that Act had not been repealed, for a transitional period which shall end no later than 12 months after the date of publication of the rules contemplated in section 8(2)(d) or on such later date as the Minister may determine and publish in an appropriate notice in the *Gazette*.

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

CLAUSE 39

1. On page 21, in line 14, to omit “2001” and to substitute “2002”.

LONG TITLE

Long Title rejected.

NEW LONG TITLE

1. That the following be a new Long Title:

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