

NSBE Response to the Policy Document of the Proposed Amendments of the Statutory Regulatory Framework of the Built Environmental Professions.

Reference Documents

1. Proposed SACBE Policy Document
(Attached)
2. Review of the CBE report by CSIR
(Attached)
3. Council for the Built Environment (CBE) Act 2000
4. Engineering Professions Act (EPA) 2000
5. Quantity Surveying Profession (QSP) Act 2000
6. National Society of Black Engineers Constitution
(Attached)
7. The Association of South African Quantity Surveyors
constitution
8. Response Document by the Association of South African
Quantity Surveyors
9. Comments on the Policy Document by the Engineering
Council of South Africa

1. INTRODUCTION

- 1.1 The National Society of Black Engineers (NSBE) is a voluntary association focused on addressing challenges in the professional engineering sector. We have a membership of 430 black Engineers spread across the country, of which 270 are registered with ECSA in various categories of registration. We have more than 500 affiliate students in various tertiary institutions.

Our vision

“To ensure full participation of black engineers in the mainstream economy, wealth creation and distribution”.

Our Mission

- a) To promote public awareness of engineering and the opportunities for Blacks in the profession.
 - b) To strive to increase the number of black students studying engineering at both undergraduate and post graduate levels.
 - c) To function as a representative body on issues and developments that affects the careers of black engineers.
 - d) To encourage the participation of black engineers in the mainstream economy, wealth creation and distribution.
- 1.2 NSBE received an invitation from the Department of Public Works (DPW) to participate in a closed consultative workshop which was organized specifically for the internal stakeholders. The workshop took place on the 18th of March 2008, and was attended by our President, Mr. Siphon Madonsela in his capacity as the chairperson of CBE, our Deputy President Miss Lebo

Leshabane, and Mr. Richard Mkhonta, a member of our National Executive Committee.

- 1.3 After the Consultative workshop, NSBE Leadership consulted with its members, to formulate a consolidated formal NSBE response to DPW. We further encouraged our members to participate in their individual capacity throughout the consultative process that will lead to the final (SACBE) Act.
- 1.4 NSBE has been concerned for some time that the built environment policy does not yield the desired transformation, access to the professions, transparency in the regulation of the professions, and the desired impact that addresses the needs of the professional environment. We are of the view that there are constraints in the policy and legislation, as well as in the implementation of the policy and the monitoring thereof. We therefore embrace the initiative by Government's proposal to amend the statutory regulatory framework of the Built Environment Professions, as it also addresses our concerns. NSBE shares the same view with the DPW that a review of the current legislative framework, within which the built environment professions operate, is warranted

2 COMMENTS ON THE POLICY

- 2.1 We believe that the findings of DPW's mid-term review, emanating from a study commissioned by the DPW in 2003, are more relevant today than they were in 2003. The findings identified the following challenges facing the built environment professions:

- *The emigration of Built Environment professionals.*

Comment: This is a product of many factors some of which may fall outside the influence of policy. We live in a competitive global village and we are competing for a limited pool of global skills. Whilst the Government is doing its part to counter emigration caused by factors which are not related to built environment

circumstances, we need to play our part as built environment professionals to encourage inflow of global skills and on the same note retain local skills. It is however worrying that where we have an advantage of attracting international professional skills, our own systems tend to disappoint us by unnecessarily delaying the registration of the recruited professionals brought by Government to address the skills shortage problems. Sometimes our systems are a cause of migration from the built environment to other careers, however, the proposed policy suggests a swift and transparent mechanism that will address such challenges.

- *Limited access to built environment educational programs, particularly for historically disadvantaged individuals. (PDI's)*

Comments: Fourteen years into our democratic dispensation, we still do not have the demographic profile that is representative of the PDI's in most classes of higher education where the built environment professions are taught. This policy proposes a better access to the built environment professions. We look forward to the development of regulations regarding the accreditation of academic institutions, which we certainly hope will encourage and facilitate access to the built environment profession by the PDI's especially in the former white universities.

- *Limited opportunities for potential graduates to get practical training in work places, a requirement for graduating.*

Comments: There is no mention of Continuous Professional Development (CPD) in the Policy. We propose that CPD should feature in the Bill or as a regulation. CPD must compel registered persons to mentor both graduates and undergraduates as part of the requirement to retain their compulsory registration status. This will ensure that opportunities are open for all, continuous development of graduates and undergraduates and sustainability of the profession. We propose the new bill should factor in the principle of this arrangement.

- *The low levels of registration of built environment professionals with the professional councils, resulting in insufficient funding for professional councils;*

Comments: We believe that the compulsory registration defined in the relevant regulation will eliminate the problem of low numbers of registered persons. Our belief is underpinned by the proposed approach of defining the scope of the built environment professions, as opposed to the current Identification of Work for specified categories of registration. We consider the latter to be tantamount to job reservation, unfair discrimination, and unconstitutional. The scoping approach will have fewer hassles in defining the boundaries of professional practice for all qualified practitioners. This proposed approach will ultimately solve the problem of low numbers of registered persons, and subsequently funding.

- *The lack of integrated planning and action by the professional councils and the CBE. The current legislative framework provides for the professional councils and CBE to be independent juristic bodies and accordingly resulting in a weak link between the CBE and the professional councils especially in executing Government policy and the legislative mandates;*

Comments: There is surely a need of streamlining our legislative framework. The proposed consolidation of councils into a single (SACBE) structure will certainly optimize the utilization of scarce resources and exploit leadership synergies. All professions would be served with equal impact and vigor, regardless of the number of professionals in any of the built environment professions. Reliance on volunteers will be a matter of the past. The optimization of resources would result in all professional boards being adequately staffed, as opposed to the current situation where some of the professional councils do not have staff members.

The subsidiary arrangement between SACBE and the professional boards will create a strong link between the two parties. It will eliminate the independent juristic bodies while at the same time retaining autonomy through clear distinction

between the powers and functions of the SACBE and those of the professional boards.

We propose that the role played by the Minister as the Executive Authority to be defined to ensure alignment of Government objectives with that of the SACBE as they evolve with time. We appreciate that the proposed policy will continue to give the opportunity of autonomous self regulation to the built environment professions.

3 RESPONSES BY OTHER PARTIES

We were privileged to see various responses from other parties, on the proposed policy. The Engineering Council of South Africa (ECSA) published their comments through their website. We received comments of The Association of South African Quantity Surveyors through an e-mail. We note this wide publication and circulation of their comments, and the impact their views may have to those who receive their comments.

NSBE would like to register their disagreement with their positions in general. We fully support the policy and believe that it is long overdue. Therefore the views expressed by ECSA are not shared by our members, some of whom happen to be registered with ECSA.

Consultations

3.3 We wish to address the issue of consultations between and among the stakeholders which has become so significant. ECSA wanted to consult “with its many and varied stakeholders in its constituency”. ECSA claims that “In order to participate properly in the legislative process ECSA will have to consult with at least the following:-

- *34 Statutorily recognized Voluntary Organizations listed in Annexure 1;*
- *Other voluntary organizations representing practitioners in the engineering profession who are not formally recognised;*
- *Other Professional Councils in the Built Environment;*

- *Academic institutions who offer education programmes in engineering; and*
- *Employer organizations such as government departments and major industries”.*

The above ECSA proposal needs to be interrogated as to whether they have the duty to consult the above bodies, or the mandate to represent their comments in the proposed policy. Section 25 of the Engineering Profession Act provides for the recognition of voluntary associations. Section 26 of the EPA provides for consultation of ECSA with all voluntary associations, any person, any body, or any industry, specifically on the Identification of Work. No empowering provisions appear in the EPA that mandates ECSA to consult stakeholders in its own constituency in the development of a new legislative policy. ECSA does not have “its own constituency”, as there is never a time where professional councils have to seek mandates from some constituency, unless if they are a body representative of interest of a constituency. ECSA’s roles are clearly spelt out in their empowering Act.

It is concerning that some voluntary associations are holding a conversed view of similar representation by their relevant professional councils. The Association of South African Quantity Surveyors (ASAQS) says *“in terms of the current legislation, the VA’s fall wholly under the statutory Councils and there is no direct link between the VA’s and CBE. The VA’s thus have one “boss” as it were – their applicable statutory Council”.*

None of the Acts that establish all the built environment professional councils have this arrangement. The constitution of ASAQS clearly locates its objects and powers on the interests of its members. It does not make any mention of its subsidiary to any professional council or its representation by a professional council. The NSBE constitution outlines clearly what we stand for. NSBE has made an application for recognition with ECSA and we expect a relationship as defined in the EPA, unless otherwise it is agreed upon upfront.

Furthermore ASAQS states: *“Under the current legislation, all the division and interest groups of the VA’s are represented on the statutory Councils. In this way the interests of all divisions are catered for and their voices are heard on the statutory Councils to report any concerns of the VA’s to the CBE”*.

Professional councils are a regulatory instrument and have a duty to ensure the rule of law in the profession. Voluntary associations serve the interests of their members. Combining the two in one structure could generate conflict. In the current legislations, VA’s are exclusively privileged to nominate people that will serve in the professional councils. It seems that the privilege is misconstrued as implying their representation in the composition of councils. NSBE is of the view that every citizen of the country should be invited to nominate members who will serve in the professional boards. In essence the regulatory role is there to serve the interest of the public and the environment, and not of the voluntary association.

4 CONCLUSION

NSBE fully supports the policy and we look forward to the implementation of the Bill. We will continue to contribute positively in the process and hope that through our contributions, the process will be enriched and simplified

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