



**SOUTH AFRICAN COUNCIL
FOR THE
LANDSCAPE ARCHITECTURAL PROFESSION**

PO Box 36, Fourways, 2055
Tel: (011) 462-6967
Fax: (011) 462-9284
Cell: 082 442-6114
E-mail: saclap@newla.co.za

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The Chair Person
Portfolio committee: Department of Public Works
C/o
CEO
Council for Built Environment
PO Box 915
Groenkloof
0027

Attention: Mr Bheki Zulu

**SACLAP COMMENTS on
THE BUILT ENVIRONMENT PROFESSIONS BILL (B53-2008)
to the
PARLIAMENTARY PORTFOLIO COMMITTEE, DEPARTMENT OF PUBLIC WORKS**

INTRODUCTION

On 7 March 2008 the South African Council of the Landscape Architectural Profession (SACLAP) received the policy document on the proposed amendments of the Statutory Regulatory Framework of the Built Environment Professions from the office of the CEO of the Council for the Built Environment ("CBE") together with a schedule thereunto under the heading "Provisional Timelines for Draft CBE Bill" as published in General Notice (No. 337 of 2008) in Government Gazette No. 30852.

Our Acting Registrar, Johan Barnard, attended the DPW/CBE workshop on the proposed amendments of the Statutory Regulatory Framework of the Built Environment Professions, hosted to inform the professional bodies regarding this policy document on 18 March 2008.

SACLAP drafted comments on the presented document which was circulated to council members via email for comment and input, and this was submitted on 28 March to the CBE (as we did not receive the extension of time as was indicated at the first workshop).

The Council of SACLAP called a special Council meeting on 3 April to discuss this matter as well as to ratify the submission made on 28 March 2008. Our President, Hendrik van der Hoven, as well as our representative on the CBE, Sonette Smit attended the public workshop on 4 April. Our voluntary organization, ILASA, was not represented at the public workshop and SACLAP could not engage with them due to the limited time frame.

It was unclear with whom the policy document on the proposed amendments had been prepared although a CSIR document was mentioned which we have to date been unable to obtain a copy of. We are unaware of any professional body which had been consulted regarding this drastic deviation from the modifications circulated in November 2007 of the current acts. This includes members of the Built Environment Council.

SACLAP never received confirmation that the comments submitted on the policy document was indeed considered or rejected in leading up to the publication of the Built Environment Professions Bill [B53-2008] ("the Bill"). SACLAP was alerted to this publication by the office of the CEO of the CBE on 26 June 2008.

At SACLAP's EXCO meeting held on 3 July 2008 it was determined that the earliest we could set up a workshop with the profession, including SACLAP Council was 9 August. A workshop has indeed been confirmed for 16 August where this bill and its implications will be discussed with the landscape professionals. This submission is therefore based on SACLAP's understanding of the current draft bill and with no wider consultation within the profession.

SPECIFIC COMMENTS ON THE CURRENT BILL

The Bill threatens the autonomy of all the professional Councils. The Landscape Architects have lobbied for more than 10 years to obtain autonomy, as we were previously a Board under the

Architects Act, act 73 of 1970. We greatly appreciated the new suite of Built Environment legislation in 2000 which gave each of the Building Professions our own “voice” and jurisdiction.

SACLAP disagrees totally with the statement contained in the first paragraph of the Memorandum on the Objects of the Built Environment Professions Bill, 2008 where it is stated that the regulated professions have “*grappled with issues of access to the professions, transformation, the lack of a macro-strategy for built environment professions and other shortcomings in the present regulatory model*”. We have provided in reasonable time any and all information requested by the CBE as well as DPW. SACLAP is totally unaware of any case of non cooperation between the Professional Councils or between any of the Councils and the CBE currently. If there are such cases, SACLAP has participated in several initiatives and forums where both Department of Public Works and the CBE have been present to have raised this concern.

SACLAP disagrees with the apparent philosophy underpinning the Bill which seems to be that one body (the intended South African Council for the Built Environment) will be able to control and regulate all aspects mentioned in the Bill. In addition to this it also give the Minister power to over rule discussions by the proposed boards.

The current Identification of Work process will address the requirement of compulsory registration for persons performing identified work is adequate and should be implemented by the Council for the Built Environment without delay. This is reinforced by the introduction of the Continued Professional Development process with periodical renewal.

Section 51(2) of the Bill provides that SACLAP will cease to exist from the date of the first meeting of the intended South African Council for the Built Environment, but no mention is made as to what will happen in this transition (as was done in the current legislation, act 45 of 2000). All this time and effort of practicing professionals in the years leading up to the 2000 suite of legislation will be erased in one brush stroke. The Bill is silent what will happen with the processed and activities which have

been established by the current SACLAP Council including presentation made to the current Council for the Built Environment.

The fact that only the intended South African Council for the Built Environment will be a juristic person, is unfortunate. The present professional councils, will be stripped of their respective legal personalities, roles and responsibilities. This will have legal consequences for all councils. SACLAP will in future not be able to take legal action in its own name and will have to rely on the Built Environment Council to take such decision with the inherent risk of future conflict of interest between the Council and its various professional boards.

It is submitted that the provisions of section 16(3) of the Bill which provides that a decision by a professional board on a matter that falls entirely within its ambit is not subject to ratification by the Council. However, the Bill is silent on identification of matters falling entirely within the ambit of the professional boards. In addition it is provided in section 4(1)(a) that the intended South African Council for the Built Environment must control and exercise authority over professional boards and determine the policy and must make decisions in terms thereof.

Section 5 has serious implications for continued existence of all voluntary associations, without being clear as to their future involvement within this framework – we note that currently they have not been consulted on the implications.

In terms of Section 6, the composition of the new Council, should the present seven councils be retained as professional boards in terms of the Bill, it would mean that the Council will consist of 19 members. Of these 19 members only 7 will represent the various professions this will benefit smaller professions, but compromise more complex professions like the Engineering. Currently there is already pressure the current councils need to be more representative of each category of registration within each profession. Surely the Council should consist mainly of representatives of the boards.

We however do support the inclusion of community members and people with a legal back ground and have never had a problem with the contributions of members of the state to the current Council.

The requirement in section 11(1) of the Bill that the chairperson of each and every committee must be a Council member is also a concern. Although we can understand the reasoning for this it places huge onus on the few professional Council members in terms of meetings. Some Councils already have 20 committees, which means that some committees will be chaired by Council members with no professional back ground, but yet leading the committee deciding on professionals futures

The provision in section 12(2) that the Registrar is the secretary of each professional board is good news for smaller boards, but does not seem to understand the workload of the larger professions. It is therefore a concern that one person (the intended Registrar of the South African Council for the Built Environment) would be able to do all the work relating to the Council as well as the work of secretary of all of the professional boards. The intended professional boards will, presumably, continue to bear its present workload.

The qualification contained in section 13(6)(e) of the Bill that the Registrar is to take effective and appropriate steps to prevent unauthorized, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct, is good, but is it enforceable? No such qualification exists in the Public Finance Management Act.

The provision in section 13(6)(j) that the financial statements must be submitted within two months after the end of each financial year to an independent auditor for auditing, is also impractical and not in line with that the aforementioned policy document on the proposed amendments of the Statutory Regulatory Framework of the Built Environment Professions which stated that the financial statements of the Council for the Built Environment were audited annually by the Auditor-General.

The additional requirement casts an onerous financial obligation upon the intended South African Council for the Built Environment with a very limited time frame.

The provisions of section 15 is of grave concern to SACLAP. It is submitted that it is safe to assume that the Minister will, in terms of section 15(1), establish a professional board with regard to the each profession. Although section 15(3) provides for the Minister to consult with representative bodies or persons, the Minister is not obliged in terms of the provisions of the Bill to follow any advice in this regard. The powers afforded to the Minister in section 15(2) to, after consultation with the intended South African Council for the Built Environment, change or reconstitute the professional boards and establish other professional boards, are concerning. It means simply that the Minister may in future, after consulting the South African Council for the Built Environment, rule the conduct of the intended professional boards.

Section 15(5) of the Bill, which provides for the constitution of the professional boards, requires comment. It is disconcerting that a maximum number of professionals on each board is prescribed, but in the case of community representatives no maximum number is determined (on the contrary a minimum number of community representatives is determined). It therefore appears that professionals will be in the minority on their boards just like they will be in the minority insofar as it concerns representation at Council level – SACLAP is concerned that this will not work to the advantage of self regulation of each profession?

The provisions of section 18 of the Bill fail to recognize all the current Council's efforts during the last few years to address the problem of compulsory registration by its drafting of identity of work regulations and the submission thereof to the Minister. The Bill complicates matters unnecessarily by separating the aspect of compulsory registration from the definition of the scope of built environment professions. The scope of a profession cannot be defined without defining the acts that are particular to that profession. By separating compulsory registration from registration for practicing profession, it appears that each professional will, in future, have to apply twice to register

in order to practice his/her profession – once in an application to the Registrar in terms of section 18 to practice as a built environment profession and a second time to a professional board in terms of section 31 to practice in a specific profession.

Insofar as it concerns qualification prescribed for registration (section 25) of the Bill, it is submitted that the failure, in the Bill, to afford sufficient representativity at Council level is unfortunate and potentially to the detriment of those officials entrusted with decision-making regarding prescribed qualifications entitling registration in terms of the intended new legislation, due to a lack of understanding.

In section 28(1) of the Bill, it is provided that a professional board may decide to register any person not permanently resident within the Republic to practice such profession – however, the period of such practice must be “as the Council may determine”. SACLAP fails to understand why it would be necessary for a foreigner who wants to become involved in education and training in the field of a built environment profession in South Africa, need to be registered to practice in South Africa. It is also noteworthy that section 28 does not contain any qualification requirements for such a foreign person.

Insofar as unprofessional conduct by a registered person is concerned, the “prescribed fine” provided for in section 39(3)(d) should be particularized.

It is noteworthy that it is not provided in sections 48 and 49 that the intended professional boards will play any role when regulations or rules are made in terms of the Bill. It is respectfully submitted that this is just another example of the emasculation of the professional councils / boards.

Conclusion

Due to the limited time frame and the fact that SACLAP could not work through all the implications and legalities implications of this bill SACLAP reserves the right to furnish further comment on the proposed changes in the Regulatory Statutory Model applicable to the Built Environment.

It took SACLAP at least 3 years to get on with it's duties in terms of the current legislation – should this momentum now be obliterated and restarted more time will be lost to catch up with the far reaching initiatives of the more established councils. The Architects have succeeded in transforming their council, grow their administration and register a significant number of architectural professional in the past 3 years, but even for them it took time to get their operation in the right direction.

SACLAP also wishes to make oral representations on the Bill at any hearings that are to be held at a date in the future.

Johan Barnard

Acting Registrar

Cell: + 27 82 442 6114

Tel: + 27 11 462 6967

Fax: + 27 11 462 9284

email: saclap@newla.co.za

cc President SACLAP – Mr Hendrik van der Hoven