

SACPCMP

The South African Council for the Project and Construction Management Professions

— CONSTRUCTING NEW PERSPECTIVES —

SACPCMP POLICY ON CODE OF CONDUCT FOR REGISTERED PERSONS

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Acronyms and Abbreviations

CBE	The Council for the Built Environment
PPPI	Public Policy Priority Issues
PAJA	Promotion of Administrative Justice Act, Act 3 of 2000
SACPCMP	The South African Council for the Project and Construction Management Professions

Definitions

Act, the	In this policy 'the Act' refers to the founding legislation of the Council which is the Project and Construction Management Professions Act 48 Of 2000.
Consistency	The quality of always behaving in the same way or of having the same standard. The quality of being consistent usually implies a positive sense of dependability.
Credibility	the quality of being trusted and inspiring belief.
Objectivity	Being independent from bias, prejudice and judgement.
Registered Person	Is defined in the Act as a person registered under the categories referred to in section 18 of the Act.
Transparency	The quality of being clear, open and honest.

1. Introduction

The South African Council for the Project and Construction Management Professions (SACPCMP) was established by section 2 of the Project and Construction Management Professions Act (No. 48 of 2000) hereafter referred to as 'the Act' to regulate Project and Construction Management professions to protect the public. It does so, through amongst others providing for the registration of professionals.

Built Environment professionals are entrusted by clients and the public with a responsibility to offer their services in a professional, honest and ethical manner. It is thus required by the SACPCMP to ensure that high professional and ethical standards are upheld by professionals. The aim of this policy is to set out the principles that govern the development and implementation of a Code of Conduct for registered persons.

2. Legislative and Policy Framework

Chapter two of the Constitution of the Republic of South Africa (Act 108 of 1996) comprises the bill of rights which enshrines the fundamental human rights of citizens which must be upheld by all. The rights of clients and the public should be protected through the articulation of a professional code which will ensure ethical and professional service is rendered by professionals.

The Policy and Criteria for Recognising a Professional Body and Registering a Professional Designations for the Purposes of the National Qualifications Framework Act, Act 67 of 2008 requires that Professional Bodies publish a code of conduct and operate a mechanism for reporting and investigating registered persons who have allegedly contravened the code and protect the public interest in relation to services provided by its registered persons and the associated risks.

According to section 27 of the Act the SACPCMP must draw up a code of conduct for registered persons and that all registered persons must comply with the code of conduct and failure to do so constitutes improper conduct.

This Policy on Code of Conduct utilises the guidelines of the Code of Ethics Handbook of the Ethics Institute as well as the CBE *Policy Framework on Code of Conduct*.

3. Policy Prescripts

3.1. Persons bound by the Code of Conduct

- 3.1.1. Only persons registered with the SACPCMP must commit to adhere to the Code of Conduct. This includes those registered as Professionals, in specified categories and candidates. Non-compliance with the Code of

Conduct constitutes improper conduct which may lead to disciplinary processes against a registered person, as stipulated in the Act.

- 3.1.2. The Code of Conduct guides the relationship between the SACPCMP and registered persons and must not impinge on the area of contract law or aspects of common law regulating the behaviour of the individual.

3.2. Principles of the Code of Conduct

- 3.2.1. The Code of Conduct indicates the general principles, values and standards which registered persons in the built environment are required to uphold in performing their services and duties. The following should be considered in the development of such a code:

- (i) Contributing meaningfully to the sustainable development of society and the environment
- (ii) aligning the standards of the profession to universally and constitutionally accepted expectations regarding human rights and dignity;
- (iii) Promoting adherence to standards;
- (iv) Adhering to legislation;
- (v) Creating a clear and unambiguous common understanding of the ethical standards that are expected in the profession;
- (vi) Promoting ethical behaviour;
- (vii) Preventing unethical behaviour;
- (viii) The need to enforce rules;
- (ix) Desiring to inculcate professional values;

- 3.2.2. The Code of conduct will be based on the following principles:

- (i) Consistency
- (ii) Transparency
- (iii) Objectivity
- (iv) Credibility

- 3.2.3. Core Elements of the code of conduct will centre around the following aspects:

- (i) Public interest
- (ii) Environmental protection
- (iii) Clients and employers
- (iv) Personal and business ethics

- (v) The integrity of the profession
- (vi) Administrative functions of registered persons

3.3. Format of the Code of Conduct

- 3.3.1. The Code of Conduct must be in the format of rules formulated according to section 36 of the Act to regulate the conduct of registered persons.
- 3.3.2. As prescribed in section 27 of the Act the formulation of the Code of Conduct must be done in consultation with the CBE, voluntary associations and registered persons.

3.4. Dissemination of the Code of Conduct

- 3.4.1. According to section 27 of the Act the SACPCMP must ensure that the code of conduct is available to all members of the public at all reasonable times.
- 3.4.2. The SACPCMP must provide the CBE with a copy of the code of conduct.

3.5. Implementation of the Code of Conduct

- 3.5.1. The SACPCMP requires that registered persons uphold the code of conduct at all times during their professional practice.
- 3.5.2. The SACPCMP is empowered through the Act to investigate allegations of improper conduct and institute disciplinary proceedings against a registered person, where applicable.

3.5.3. Allegations of and Inquiry into Improper Conduct

- (i) The SACPCMP investigates complaints related to allegations against registered persons. As such, the SACPCMP cannot investigate the conduct of unregistered persons.
- (ii) The SACPCMP investigates complaints related to transgressions of the Code of Conduct for registered persons.
- (iii) According to section 28 of the Act, any allegations of improper conduct brought against a registered person must be investigated.
- (iv) The investigation procedure is prescribed in section 28 of the Act.
- (v) Rules must be formulated according to section 36 of the Act outlining the process of inquiry into alleged improper conduct. The inquiry process will thus be governed by the gazetted *Rules for Inquiry into Alleged Improper Conduct*.

3.5.4. Disciplinary Procedures

- (i) The Disciplinary Procedure of the SACPCMP commences once charges are preferred against a registered person following an investigation.
- (ii) The Disciplinary Procedure is prescribed in sections 29 to 31 of the Act.
- (iii) The registered person against whom charges are preferred must submit a written plea to the SACPCMP with regards to the charges against them.
- (iv) If a registered person charged admits that he or she is guilty of the charge, he or she is considered to have been found guilty of improper conduct as charged, after he or she has explained his or her conduct.
- (v) The SACPCMP may, subject to section 32(2), impose a penalty contemplated in section 32(3)(a) or (b) on a registered person who has admitted guilt in terms of paragraph (a).
- (vi) If a registered person charged denies the charge or fails to submit a written plea the SACPCMP must appoint a disciplinary tribunal to hear the charge of improper conduct.
- (vii) The Disciplinary Tribunal proceedings are governed by the *Policy on Appeals and Tribunals*.
- (viii) If the registered person charged is found guilty of improper conduct, or if he or she admits that he or she is guilty of the charge the Disciplinary Tribunal may take a decision on action against the registered person as outlined in section 32 (3) (a) of the Act.
- (ix) The SACPCMP must publish the findings of the Disciplinary Tribunal and the sanctions imposed against registered persons in terms of section 32 (3) (a) of the Act in the Gazette.
- (x) The SACPCMP must give effect to the decision of the disciplinary tribunal.
- (xi) According to section 33 of the Act, a registered person found guilty of improper conduct may appeal to the SACPCMP against a finding of the disciplinary tribunal or against the sentence, or both. Appeals are governed by the *Policy on Appeals and Tribunals*.

3.6. Review of the Code of Conduct

The Code of Conduct for registered persons must be reviewed once in the term of office of the SACPCMP and/or when necessary.

4. PAJA Imperatives

To give effect to the right to administrative action that is lawful, reasonable and procedurally fair and to the right to written reasons for administrative action as contemplated in section 33 of the Constitution of the Republic of South Africa.

4.1. Procedurally fair Administrative Action

- (1) Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.
- (2) A fair administrative procedure depends on the circumstances of each case.

In order to give effect to the right to procedurally fair administrative action, an administrator (SACPCMP), must:

- i. give a person adequate notice of the nature and purpose of the proposed administrative action.
- ii. Provide a reasonable opportunity to make representations.
- iii. Provide a clear statement of the administrative action.
- iv. Provide adequate notice of any right of review or internal appeal, where applicable; and
- v. Provide adequate notice of the right to request reasons for the administrative action to give effect to the right to procedurally fair administrative action.

In order to give effect to the right to procedurally fair administrative action, an administrator (SACPCMP) may, in his or her or its discretion, also give a person

- vi. The opportunity to obtain assistance and, in serious or complex cases, legal representation.
- vii. The opportunity to present and dispute information and arguments; and
- viii. The opportunity to appear in person.

If it is reasonable and justifiable in the circumstances, an administrator (SACPCMP) may depart from any of the requirements referred to above. In determining whether a departure is reasonable and justifiable, an administrator (SACPCMP) must consider all relevant factors, including:

- ix. the objects of the empowering provision.
- x. the nature and purpose of, and the need to take, the administrative action.
- xi. the likely effect of the administrative action.

- xii. the urgency of taking the administrative action or the urgency of the matter; and
- xiii. the need to promote an efficient administration and good governance.

Where an administrator (SACPCMP) is empowered by any empowering provision to follow a procedure which is fair, the administrator may act in accordance with that different procedure.

An administrator (SACPCMP) must convene an internal tribunal to hear a case convened by a person aggrieved and seeking relief for just administrative action. The tribunal shall follow the same procedure as that of a case of against a professional for misconduct.

4.2. Remedies of Administrative Action

The tribunal, in proceedings for review, may grant any order that is just and equitable, including orders directing the administrator (SACPCMP):

- i. to give reasons; or
- ii. to act in the manner the tribunal requires.
- iii. prohibiting the administrator from acting in a particular manner.
- iv. setting aside the administrative action and
- v. remitting the matter for reconsideration by the administrator, with or without directions; or
- vi. in exceptional cases, substituting or varying the administrative action or correcting a defect resulting from the administrative action; or
- vii. directing the administrator or any other party to the proceedings to pay compensation.
- viii. declaring the rights of the parties in respect of any matter to which the administrative action relates.
- ix. granting a temporary interdictor or temporary relief or
- x. as to costs.

5. Version Control

5.1. Maintenance of the policy

The current policy will be reviewed every five (5) years and will be scheduled. Unscheduled reviews will be triggered by the following:

- i. Legislation changes
- ii. Benchmarking (changes in benchmarks or new benchmarks)
- iii. Changes in technology

5.2. Dissemination

The policy will be made available to SACPCMP stakeholders and the general public on the SACPCMP website after publishing in the Government Gazette. It will be disseminated externally on request.