

LEGISLATION GOVERNING CONTINUING PROFESSIONAL DEVELOPMENT IN THE BUILT ENVIRONMENT PROFESSIONS IN SOUTH AFRICA

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In South Africa, with effect from 26 January 2001, the Council for the Built Environment Act (no 43 of 2000), serves as over-arching legislation governing the six professions operating in the built environment under the jurisdiction of the Minister of Public Works. In terms of this Act, architects, engineers, landscape architects, project and construction managers, quantity surveyors and property valuers are confronted with an entirely new framework of statutory terms and conditions, including the introduction of *mandatory* continuing professional development.

Since 1995, the South African government has strongly promoted a policy of lifelong learning supported by skills enhancement and development programmes in all sectors of the economy, but the built environment professions have generally been conspicuously inactive in formalizing their respective CPD systems. Regardless of collective or individual responses by registered practitioners in the built environment professions, the Council for the Built Environment Act removes all doubt regarding the responsibilities of professional councils in the built environment relative to the establishment and management of continuing professional development within their respective fields of administration. Evaluation of feedback data to date suggests general acceptance of the principle of mandatory CPD but problems in the establishment of appropriate and sustainable enforcement mechanisms by the relevant statutory councils.

Keywords: built environment, professional, CPD, legislation, statutory councils.

INTRODUCTION

The business environment for built environment professions in South Africa has been fundamentally affected by recent legislations regulating professional practice and statutory councils, including requirements for continuing professional development (CPD). This paper presents a brief review of the enactment of the relevant legislations and the reactions of built environment professionals to date. In doing so, the paper highlights the principle and benefits of mandatory CPD, and problems in the establishment of appropriate and sustainable enforcement mechanisms by the relevant statutory councils of the built environment professions.

In South Africa, the Council for the Built Environment (CBE) Bill was introduced as a section 75 Bill to the National Assembly during the second session of Parliament in 2000 by the Minister of Public Works. Public comment was invited, to reach the Portfolio Committee on Public Works by 1 June 2000 (DPW, 2000). Section 75 Bills are concerned with matters *other* than pressing issues which would give practical effect to the national Constitution, for example the protection of human rights.

The legislation was approved for proclamation and implementation, following signature by the President and implemented as the Council for the Built Environment Act (no 43 of 2000) on 26 January 2001 (DPW, 2001).

The purpose of the CBE Act is “*to provide for the establishment of a juristic person to be known as the Council for the Built Environment; to provide for the composition, functions, powers, assets, rights, duties and financing of such a council and to provide for matters connected therewith*” (DPW, 2001). “*Matters connected therewith*” is a direct reference to CBE over-arching governance of the six professions operating in the built environment under the jurisdiction of the Minister of Public Works, in terms of legislation implemented on 26 January 2001. The six professions are:

- architecture (the Architectural Profession Act no 44 of 2000)
- engineering (the Engineering Profession Act no 46 of 2000)
- landscaping (the Landscape Architectural Profession Act no 45 of 2000)
- project and construction management (the Project and Construction Management Professions Act no 48 of 2000)
- property valuation (the Property Valuers Profession Act no 47 of 2000)
- quantity surveying (the Quantity Surveying Profession Act no 49 of 2000)

With effect from 26 January 2001, the statutory councils of the foregoing professions were effectively placed “under new management” of the CBE. The objects of the CBE (section 3 (a) to (i) of the CBE Act) include: promotion of ongoing human resource development in the built environment (3 (c)); facilitation of participation by the built environment professions in integrated development in the context of national goals (3 (d)); promotion of liaison in the built environment in the field of training ... and promotion of the standards of such training ... (3 (g)); while also serving as a forum where representatives of the built environment professions may discuss the required qualifications, standards of education, training and competence, promotion of professional status, and legislation impacting on the built environment (3 (h))

Section 4 of the CBE Act states that the Council may provide advice and consultation on national policy that could impact on the built environment, human resource development in relation to the built environment professions and the recognition of new professions (4 (f)); and ensure the consistent application of policy by the councils for the professions with regard to...key elements of competence testing of registered persons (4 (k)(iii)).

The explicit reference to “*the registration of professionals*” in the preambles to each of the respective Acts (numbers 44 to 49 inclusive) governing the built environment professions domiciled within the Department of Public Works, clearly indicates the initiative taken by government, and conveys the express intention of the State to participate in the statutory administration of those professions. Currently, the CBE holds no jurisdiction over the other two professions concerned with spatial planning associated with the built environment, namely land surveying and town and regional planning, which are administered by the Department of Land Affairs.

CPD WITHIN THE LOCAL AND GLOBAL BUSINESS ENVIRONMENT

Welsh and Woodward (1989) have identified competence, meeting the demands of consumerism, avoidance of litigation, maintenance of standards, quality assurance, and competitiveness as underlying factors supporting the growing importance of CPD.

According to FIG (1995), the attributes which contribute to professional success are: professional / technical ability, organizational / management competence, analytical / entrepreneurial skills, positive interpersonal relationships, and self-management (personal discipline).

Potential Impact of CPD on Professional Practices

In principle, with the implementation of formalized, focussed and fully integrated continuing professional development the following outcomes may be anticipated (adapted from Willie, 1991 and FIG, 1995):

- Planned processes of business development in a professional practice will be structured
- Needs of individual employees will be linked to organizational goals and strategies
- Procedures for establishing the career objectives of individual staff members and reviewing / monitoring achievement of those objectives should be established
- “Learning / mentoring contracts” (plans and strategies) may be agreed between employer and employee at the time of the latter’s appointment
- Training and development of individuals should be viewed as an investment in human resource management
- On-the-job performance, skills enhancement and knowledge-based training will be a combined objective
- Pre-course (attendance) and post-course (evaluation) skills levels assessments will be considered essential
- CPD will be accepted as an essential “learning experience”, not simply a “training exercise”
- Enhanced skills and knowledge should be translated into action and measurably improved performance, demonstrated and assessed *via* day-to-day professional practice activities
- Willing participation by individual employees will be acknowledged as flexible and may include distance-, self-development and interactive learning programmes

International experience indicates that the introduction of CPD systems by professional bodies has given rise to specific matters of concern, which include: resistance by the general membership of organizations to the imposition of mandatory systems (Hughes, 1995; ASAQS Gauteng Chapter, 2000; ASAQS Free State Chapter, 2000); the awarding of “points” for participation in various defined categories of professional skills-enhancement activities (RICS, 1993; Van der Dussen, *et al.*, 2000); inherent weaknesses associated with voluntary systems, introduced as an alternative to mandatory systems, ostensibly to avoid practitioner resistance (Hughes, 1995); development of successful practitioner-compliance monitoring programmes (RICS, 1993); in-house organizational record keeping and database management; accreditation of available programmes and presenters; availability of appropriate skills-enhancement opportunities (Le Roux, 2000) and the capacity of individual practitioners to adjudicate the true relevance to their personal career-development of available skills-enhancement programmes.

While mandatory CPD policies and systems are not universally popular, in South Africa current legislation enforces the establishment of life long learning policies and systems in all fields of economic activity and employment. Furthermore, the strong relationship between ICEC and the ASAQS affirms the latter’s *mandatory* CPD

system. ICEC does not accredit voluntary CPD programmes. The benefits of ICEC membership enjoyed by ASAQS members – international reciprocity and global interaction – have encouraged the ASAQS to meet ICEC requirements and standards, current legislation notwithstanding.

NATIONAL GOAL: SUSTAINED SKILLS ENHANCEMENT

The South African Qualifications Authority (SAQA)

The first post-apartheid legislation passed by the National Assembly following the April 1994 elections was the South African Qualifications Authority Act no 58 of 1995 (Asmal, 2000). Following promulgation of the SAQA Act, the Skills Development Act no 97 of 1998 and the Skills Development Levies Act no 9 of 1999 succeeded in focusing the attention of the SACQS on the South African government's national goals and intentions relative to sustained skills enhancement in *all* fields of employment, and registration of qualifications on the National Qualifications Framework, for which the SAQA acts as implementing agency.

The SAQA mission is “*to ensure the development and implementation of a National Qualifications Framework which contributes to the full development of each learner and to the social and economic development of the nation at large*” (SAQA, 2000).

The National Qualifications Framework (NQF)

The NQF was established by the Department of Education (DoE) in consultation with the Department of Labour (SAQA, July 2000). NQF-registration is of particular significance to *all* institutions offering education and training in South Africa because accreditation of an institution's qualifications by SAQA generates government subsidies which fund the presentation of the institutions' courses (certificate-, diploma-, under- and post-graduate degree programmes), and is the key to registration of their qualifications on the NQF (SAQA, 2000).

The NQF is described as a social construct...a lifelong learning system that brings together South Africans from a variety of socio-economic backgrounds representing a variety of worldviews, thinking, practice and experience to negotiate and define quality through the synthesis of these, representing a unique opportunity for implementing a total quality approach to education and training in South Africa that is in keeping with the objectives and principles of an integrated lifelong learning system which enjoys national and international recognition and credibility (SAQA, 2000).

The Council for the Built Environment and The Skills Development Act

The objects of the Council for the Built Environment Act corroborate and confirm the purpose of those reflected in the Skills Development Act (No 97 of 1998), *viz.*: promotion of ongoing human resource development, facilitation of integrated development in the context of national goals, and promotion of training and promotion of the standards of such training.

The Skills Development Levies Act (No 9 of 1999)

To support the objects of the Skills Development Act, with effect from 1 April 2000, the Skills Development Levies Act requires all employers in all sectors of economic activity, to register with the South African Revenue Service (SARS) and pay a monthly levy, based on their monthly wage / salary bill to the SARS. SARS-registered employers who enrol their employees for *SAQA-accredited* skills-enhancement training courses in terms of the NQF, are permitted to claim

reimbursement of the course fees *pro rata* to their monthly levies paid *i.e.* a tax refund (ASAQS, 2000).

RESPONSE TO LEGISLATION

Despite publication of draft Bills leading to implementation on 26 January 2001 of the new legislation governing the built environment professions and the parliamentary Portfolio Committee on Public Works having invited comment on the respective Bills, the Association of South African Quantity Surveyors was the *only* professional organization affected by the new legislation to inform its members – during 1995, following the implementation of the SAQA Act no 58 of 1995, and regularly thereafter – of the anticipated statutory effect on the overall administration of the profession and statutory requirements relative to continuing professional development. Discussions on the draft legislation in Cape Town, Province of the Western Cape were held on 6 June 2000 (Times Media Ltd, 2000), opportunities being afforded to all the built environment professions to inform their members of pending implications of the legislation, including CPD.

On 1 January 1999, the South African Council for Quantity Surveyors (SACQS) invoked its authority in terms of the Quantity Surveyors Act 1970 (No 36 of 1970, as amended) to introduce its mandatory CPD policy, prescribe compliance with that policy by quantity surveyors registered in terms of that Act as a prerequisite to annual renewal of registration, and delegate the administration and management of the policy to the Association of South African Quantity Surveyors. Prior to this date, mandatory systems of life long learning, ongoing human resource development, continuing professional development, and sustained skills enhancement were unknown amongst the built environment professions in South Africa.

Before 1 January 1998, the *only* statutory professional council, which had investigated the introduction of *compulsory* professional skills upgrading for registered practitioners, was the former South African Medical Council (currently known as the Health Professions Council of South Africa).

The introduction by the SACQS (in terms of Act no 36 of 1970) of a mandatory CPD system for registered quantity surveyors (with effect from 1 January 1999) as a prerequisite to renewal of annual registration was criticized as “illegitimate” and “unconstitutional” by certain registered quantity surveyors (Van der Dussen, *et al.*, 2000) whose publicly-stated threats to challenge in a court of law the introduction of a mandatory CPD system by the SACQS, have not materialized. On 8 December 1998, the SACQS, supported by the ASAQS, circulated a booklet to all registered quantity surveyors and quantity surveyors in-training, setting out the details of its CPD system which came into effect on 1 January 1999.

During the first semester of 2000, copies of the SACQS booklet were given to representatives of the South African Institute of Architects and the South African Association of Consulting Engineers following their informal discussions with the Director of the QS EduTech Centre of the ASAQS on the introduction of appropriate CPD systems by professions operating in the built environment. To date, the statutory councils governing registered practitioners in architecture, engineering, landscape architecture, project and construction management and property valuation in South Africa appear to have maintained a state of denial that CPD in their respective fields is a statutory requirement and have not published any information on their intended implementation of CPD (ASAQS Northern Cape Chapter, 2000).

Appropriate and Sustainable Enforcement Mechanisms

In response to the foregoing scenario, the research of which this paper forms a part is attempting, among other objectives, to establish the most effective mechanisms for the implementation of mandatory CPD that will engender the widest buy-in by built environment professionals. As part of the preliminary fieldwork for this research, non-scheduled non-standardized interviews were held during 2000 and 2001 with a convenience sample of registered practitioners representing the built environment professions in South Africa. There was unanimous support among the interviewees for the *principles* inherent in the *concept* of continuing professional development as defined by the RICS (1993):

Continuous professional development is the systematic maintenance, improvement and broadening of knowledge and skills and the development of personal qualities necessary for the execution of professional and technical duties throughout the practitioner's working life.

In response to the question “*In the context of the South African business environment, are there benefits to be derived from (mandatory) formal CPD?*” the interviewees identified keeping abreast of current developments, maintenance of appropriate levels of knowledge and competence, limitation of business risk, reduction of professional indemnity claims, and enhanced client service as direct benefits. These responses affirm the abovementioned opinion of Welsh and Woodward (1989).

The problem lies, therefore, not in the acceptance of the *principle* by those who are expected to perform in terms of legislation, but in the establishment – by the statutory professional councils – of enforcement mechanisms, both appropriate and sustainable, to encourage practitioner compliance with statutory “rules and regulations”; manage their respective *mandatory* CPD systems, effectively administer their CPD databases; accredit available, appropriate and relevant skills-enhancement programmes; and establish credibility in terms of the foregoing.

Currently, amongst SACQS-registered quantity surveyors on the one hand, the perceived “threat” of withdrawal of statutory registration resulting from non-compliance with the SACQS CDP system and, on the other hand, a genuine desire to enhance personal skills appear to be the main reasons for participation in CPD activities.

On 29 March 2000, the SACQS postponed the date for initial submissions of CPD records by registered quantity surveyors from 30 June 2000, to 30 June 2001 (SACQS, 2000). While an electronic database has been structured by the QS EduTech Centre to record and support the management of the SACQS / ASAQS CPD system, the following aspects have yet to be tested and / or developed:

- the extent of practitioner compliance;
- accreditation of available / relevant skills enhancement programmes other than those currently offered by SACQS / RICS-accredited tertiary universities (Cape Town, Free State, Natal, Port Elizabeth, Pretoria, Witwatersrand) and SACQS-accredited Technikons (Cape, Port Elizabeth);
- the establishment of credibility in terms of the foregoing.

CONCLUSION

The likely impact of legislation on CPD can be summarized as follows. On 26 January 2001 a series of Acts of Parliament, including the Council for the Built

Environment Act no 43 of 2000 was implemented by the Department of Public Works, establishing a new system of governance of the built environment professions in South Africa, with particular reference to continuing professional development or lifelong learning. The professions affected by the January 2001 legislation were architecture, engineering, landscaping, project and construction management, property valuation, and quantity surveying.

Prior to the introduction of the CBE Act and the Acts pertaining to the six professions operating within to the Department of Public Works, previously implemented legislation via the South African Qualifications Authority Act No 58 of 1995, Skills Development Act No 97 of 1998, and the Skills Development Levies Act No 9 of 1999 had established statutory support for national goals relative to the ongoing development of lifelong learning policies, human resources, and skills enhancement programmes. The CBE may be described as a “council of (statutory professional) councils” which, in terms of the CBE Act (section 3 (h)), will serve as a forum where representatives of the statutory councils of the built environment professions may discuss matters of mutual interest and concern, including: required qualifications, standards of education, training and competence, promotion of professional status, and legislation impacting on the built environment (DPW, 2001).

The mandatory CPD system prescribed by the SACQS with effect from 1 January 1999, requiring compliance by SACQS-registered quantity surveyors as a prerequisite to renewal of annual registration, effectively demonstrates SACQS foresight, insight and support of the government’s efforts to develop and implement quality management policies in the Republic of South Africa.

Current legislation governing the built environment professions in South Africa demands that each profession institute its own *mandatory* CPD system. While mandatory CPD policies may not be universally popular, preliminary research indicates that potential economic benefits arising from the implementation of structured / managed CPD programmes – to both individuals and the professional firms in which they are employed – will outweigh any perceived disadvantages. It is therefore imperative to establish the most appropriate and sustainable mechanisms for the implementation of mandatory continuing professional development for built environment professionals in South Africa.

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