

REPUBLIC OF NAMIBIA

NATIONAL ASSEMBLY

ENVIRONMENTAL ASSESSMENT
PROFESSIONS BILL

(As read a First Time)

(Introduced by the Minister of Environment and Tourism)

[X.# - 2013]

BILL

To provide for the establishment, constitution, powers and functions of the Environmental Assessment Professionals Council of Namibia; to provide for the registration of environmental assessment professionals; to specify the education and training and qualifications of persons practicing as environmental assessment professionals; to provide for control over the practicing of environmental assessment professions; and to provide for incidental matters.

ARRANGEMENT OF SECTIONS

PART 1 PRELIMINARY

1. Definitions

PART 2 ENVIRONMENTAL ASSESSMENT PROFESSIONALS COUNCIL OF NAMIBIA

2. Establishment of the Environmental Assessment Professionals Council of Namibia
3. Objectives of Council
4. Constitution of Council
5. Co-opted members
6. Persons disqualified from being members of Council
7. Tenure of office of members and filling of vacancies
8. Vacating of office by members of Council
9. President and other office-bearers of Council
10. Functions, duties and powers of Council
11. Meetings and procedures at meetings of Council
12. Committees of Council
13. Remuneration
14. Funds of Council
15. Banking account
16. Bookkeeping and auditing
17. Reports to Minister
18. Secretary and staff of Council

PART 3 ENVIRONMENTAL ASSESSMENT PROFESSIONS: QUALIFICATIONS FOR REGISTRATION AND REGISTRATION AS ENVIRONMENTAL ASSESSMENT PROFESSIONAL

19. Environmental assessment professions
20. Registration of environmental assessment professionals
21. Recognition of qualifications
22. Certificate of registration
23. Cancellation of registration

24. Suspension due to illness
25. Effect of cancellation or suspension from register
26. Return of certificate of registration
27. Restoration of name to register
28. Keeping of register and status of register
29. Registration fees
30. Prohibition of use of title unless registered

PART 4
DISCIPLINARY MATTERS

31. Code of professional conduct
32. Unprofessional conduct
33. Disciplinary powers of Council
34. Institution of unprofessional conduct proceedings
35. Inquiry by Council
36. Effect of inquiry proceedings on civil or criminal liability
37. Summoning of persons by Council
38. Penalties for unprofessional conduct
39. Penalties for false evidence

PART 5
GENERAL PROVISIONS

40. Appeal against certain decisions
41. Regulations
42. Rectification of errors
43. Restriction of liability
44. Delegation of power
45. Short title and commencement

SCHEDULE

BE IT ENACTED by the Parliament of the Republic of Namibia as follows:

PART I
PRELIMINARY

Definitions

1. In this Act, unless the context otherwise indicates;

“annual fee” means the annual registration fee contemplated in section 29(1);

“assessment” means the process of identifying, predicting and evaluating –

- (a) the significant effects of activities on the environment, and

- (b) the risks and consequences of activities and their alternatives and options for mitigation with a view to minimize the effects of activities on the environment and to maximize the benefits and to promote compliance with the principles set out in section 3 of the Environmental Management Act, 7 of 2007;

“Council” means the Environmental Assessment Professions Council of Namibia established in terms of section 2;

“environment” means the complex of natural and anthropogenic factors and elements that are mutually interrelated and affect the ecological equilibrium and the quality of life, including –

- (a) the natural environment that is the land, water and air, all organic and inorganic material and all living organisms, and
- (b) the human environment that is the landscape and natural, cultural, historical, aesthetic, economic and social heritage and values;

“environmental assessment profession” means any of the disciplines referred to in section 19, and associated with conducting, preparing, implementing, managing and regulating environmental assessments, strategic assessments, environmental management plans and environmental audits including but not limited to scientific, ecological, social, economic and financial disciplines;

“environmental assessment professional” means any person conducting work of an environmental assessment nature by virtue of their education, training and experience;

“financial year” means the financial year of the Council referred to in section 16(4);

“Minister” means the Minister responsible for environment;

“Ministry” means the Ministry responsible for the administration of matters relating to the environment;

“NQA” means the NQA established by the Namibian Qualifications Authority Act, 1996 (Act No. 29 of 1996);

“prescribed” means prescribed by regulation made under this Act;

“register” when used as a noun means the register referred to in section 28 and when used as a verb means to register as an environmental assessment practitioner as contemplated in section 20;

“registered person” means a person registered in terms of section 20 in any of the environmental assessment professions;

“secretary” means the secretary of the Environmental Assessment Practitioners Council of Namibia referred to in section 18;

“this Act” includes any regulation or notice made or issued under this Act; and

“unprofessional conduct” means improper or dishonourable or unworthy conduct, or conduct which, when regard is had to the profession of the registered person, is improper or disgraceful or dishonourable or unworthy, and includes acts and omissions specified in terms of section 31(1).

PART 2
ENVIRONMENTAL ASSESSMENT PRACTITIONERS COUNCIL OF NAMIBIA

Establishment of the Environmental Assessment Practitioners Council of Namibia

2. There is established a juristic body to be known as the Environmental Assessment Practitioners Council of Namibia.

Objectives of Council

3. The objectives of the Council are to –
- (a) promote environmental assessment professions in Namibia by providing a self-regulatory juristic body, registration with which confirms a qualified environmental assessment professional as having a recognised level of professional competence and subscribing to a code of professional conduct;
 - (b) control and exercise authority in respect of all matters affecting levels of competence and codes of conduct with respect to environmental assessment professions;
 - (c) promote the interests of environmental assessment as a profession in its entirety by any other means available to the Council; and
 - (d) communicate to the Minister information on matters of public interest acquired by the Council in the course of the performance of its functions under this Act.

Constitution of Council

4. (1) The first Council which must hold office for a period of one year consists of five members appointed by the Minister, who must, subject to the provisions of section 6, belong to any of the environmental assessment professions.

(2) Subsequent Councils must consist of five members appointed by the Minister of whom –

- (a) four are elected in the prescribed manner by persons registered as environmental assessment professionals; and
- (b) one is a staff member as defined in the Public Service Act, 1995 (Act No. 13 of 1995) who must be a registered environmental assessment professional designated by the Minister from among persons in full-time employment of the public service.

- (3) As soon as possible after members of the Council have been appointed –
 - (a) in case of an appointment made under subsection (1), the Minister must cause the names of the members of the Council and the date of commencement of their term of office to be published in the Gazette; or
 - (b) in case of an appointment made under subsection (2), the secretary must cause the names of the members of the Council and the date of commencement of their term of office to be published in the Gazette.

Co-opted members

5. (1) The Council may, subject to subsection (2), nominate one or more registered persons to be appointed by the Minister as co-opted members of the Council.

- (2) The co-opted members referred to in subsection (1) –
 - (a) serve as co-opted members for a period of one year but are eligible for re-appointment;
 - (b) have no voting power on any or all matters discussed by the Council;
 - (c) may not be counted when determining quorums of the Council; and
 - (d) must be excluded from any meeting of the Council wherein any professional disciplinary matter relating to any registered environmental assessment professional is being discussed.

Persons disqualified from being members of Council

- 6.** A person may not be appointed as a member of the Council if he or she –
- (a) is not a Namibian citizen or a person lawfully admitted to Namibia for permanent residence therein;
 - (b) has been de-registered in terms of this Act or has allowed his or her registration to lapse; or
 - (c) is disqualified from registration in terms of this Act by virtue of section 20(4).

Tenure of office of members and filling of vacancies

7. (1) Subject to subsection (2), a member of the Council, other than a member appointed in terms of section 4(2)(b), holds office for a period of three years from the date of his or her appointment, but must, on the expiration of such period, continue to hold office for a further period, not exceeding three months, until his or her successor has been appointed.

(2) If a member of the Council dies or vacates his or her office before the expiration of the period for which he or she was appointed, the Minister may, subject to section 6, appoint

a suitable person to fill the vacancy until a person has been appointed as a member in accordance with section 4.

(3) Any member whose period of office has expired is eligible for re-appointment but a member of the Council may not hold office for more than six consecutive years.

Vacating of office by members of Council

8. A member of the Council vacates his or her office, if he or she -
- (a) becomes subject to any disqualification contemplated in section 6;
 - (b) in writing under his or her hand, addressed and delivered to the secretary of the Council, resigns from his or her office;
 - (c) has been absent from more than two consecutive meetings of the Council without its leave;
 - (d) is convicted of an offence involving dishonesty and is sentenced therefore to a term of imprisonment without the option of a fine;
 - (e) is removed from the Council in the public interest by the Minister after consultation with the Council; or
 - (f) was designated under section 4(2)(b) and he or she ceases to be in the full-time employment of the public service, or if the Minister terminates his or her designation.

President and other office-bearers of Council

9. (1) At the first meeting of every newly constituted Council and thereafter as the occasion arises, the members of the Council must from among the members referred to in section 4(1)(a) elect a president, vice-president and such other office-bearers as may be required, and the president, vice-president or such other office-bearer holds office during his or her term of office as a member of the Council, unless he or she resigns or ceases to be a member of the Council.

(2) If the president or vice-president of the Council dies or vacates his or her office before the expiration of the period contemplated in subsection (1), the members of the Council must elect from among the members referred to in section 4(1)(a) a president or vice-president, as the case may be, and the member so elected acts as president or vice-president for the unexpired part of the period of office for which his or her predecessor was elected.

(3) If for any reason the president is absent or unable to act as president, the vice-president must perform all the functions and exercise all the powers of the president.

(4) If both the president and vice-president are absent from any meeting, the members present must elect one from their number to preside at that meeting and the person so presiding may at such meeting during such absence perform the functions and exercise the powers of the president.

(5) If the office of any office-bearer becomes vacant, the members of the Council must at the first meeting after such vacancy has occurred, elect from among their number a successor to the office-bearer, and the member so elected holds office for the unexpired portion of the period of office of his or her predecessor.

(6) An office-bearer may vacate his or her office without terminating his or her membership of the Council.

Functions, duties and powers of Council

10. (1) In addition to any other functions, duties or powers conferred on the Council by this Act or by any other law, the Council has the following functions, duties and powers –

- (a) to register any person required to be registered in terms of this Act;
- (b) to remove any name from the register in accordance with section 23 or, upon payment of the prescribed fee, restore such name to such register in accordance with section 27;
- (c) to appoint examiners and moderators, conduct examinations and grant certificates, and charge such fees in respect of such examinations or certificates as may be prescribed;
- (d) keep and maintain a register as contemplated in section 28;
- (e) to decide upon the form of register and certificates to be kept, maintained or issued under this Act, the reviewing thereof and the manner in which alterations thereto may be effected;
- (f) to consider any matter affecting the environmental assessment professions and make representations or take such action in connection therewith as the Council deems advisable;
- (g) upon application by any person, to recognize in accordance with the regulations of the NQA any qualifications held by such person in respect of the environmental assessment professions (whether such qualifications have been obtained in Namibia or elsewhere) as being equal, either wholly or in part, to any prescribed qualifications, whereupon such person may, to the extent to which such qualifications have been so recognized, be deemed to hold such prescribed qualifications;
- (h) to determine the requirements that persons applying to be registered and registered persons under this Act must comply with to maintain their registration;
- (i) subject to section 12(4), to consider and give its final decisions on recommendations made by a committee of the Council;

- (j) to appoint and dismiss personnel and determine the remuneration and other conditions of service which it deems fit for the carrying out of the Council functions;
- (k) advise the Minister on any matter relating to the environmental assessment professions;
- (l) to perform such other functions as may be prescribed in respect of the Council; and
- (m) generally to do all such things as Council deems necessary or expedient to achieve the objectives of this Act.

(2) To enable it to perform the functions and duties referred to in subsection (1) or in this Act, the Council is empowered to -

- (a) acquire by purchase, lease, exchange, or otherwise, any movable or immovable property or any interest in movable or immovable property;
- (b) sell, lease, exchange, pledge, mortgage or otherwise deal with any movable or immovable property of the Council;
- (c) enter into contracts and to decide the manner in which contracts must be entered into on behalf of the Council;
- (d) make or accept donations;
- (e) borrow money on the security of the assets of the Council or accept and administer any trust or donation;
- (f) collect or receive moneys due to the Council;
- (g) obtain information necessary to achieve its objects and perform its functions, including requiring any registered person in writing to submit to the Council such information as the Council may consider necessary; and
- (h) do all such things as it may regard necessary or expedient in order to achieve the objects of this Act.

Meetings and procedures at meetings of Council

11. (1) The first meeting of the Council must be held at such time and place as the Minister may determine, and thereafter meetings of Council must be held at such times and venues as the president of the Council may determine, except that the Council must meet at least twice annually.

(2) The president of the Council must on receipt of a written request stating clearly the purpose for which a meeting is to be convened and signed by -

- (a) a majority of members of the Council; or

- (b) at least one-third of the registered persons, convene a special meeting, to be held within 30 days after the date of receipt of such request, on such date and at such place as he or she may determine;
- (3) The majority of the members of the Council constitute a quorum for any meeting of the Council.
- (4) The decision of the majority of members of the Council present at any meeting of the Council constitutes a decision of Council, and in the event of an equality of votes, the person presiding at such meeting has a casting vote in addition to his or her deliberative vote.
- (5) No decision taken by the Council or act performed under the authority of the Council is invalid by reason only of a vacancy on the Council or of the fact that a person who was not entitled to sit as a member of the Council sat as a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of the members of the Council who were present at the time and entitled to sit as members.
- (6) If a member of the Council or his or her spouse, including a spouse in a customary union or his or her child or any other member of his or her household, or his or her partner, agent or business associate, has a direct or indirect financial interest in any matter to be considered at any meeting of the Council, that member must forthwith disclose the nature and extent of the financial interest at that meeting and thereafter the Council must determine whether or not the member may participate in discussions relating to that matter.
- (7) The Council may make rules in relation to the holding of, and procedures at its meetings.
- (8) The Council and any committee of the Council referred to in section 12 must cause a record to be kept of the proceedings of its meetings.
- (9) A member who fails to comply with subsection (6) commits an offence and on conviction is liable to a fine not exceeding N\$12 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Committees of Council

- 12.** (1) The Council may establish one or more committees to assist it in the performance of its duties, functions or exercise of its powers and may -
- (a) appoint, for such period as the Council may determine, as members of that committee such members of the Council and such other persons as it may think fit;
- (b) designate a member of that committee as chairperson thereof; and
- (c) do any other act which is necessary to enable the committee to perform its duties or functions.

(2) The Council may assign or delegate to a committee established under subsection (1) such of its duties, functions or powers as it may think fit, but is not divested of any duty, function or power which it may have assigned or delegated to a committee, and may amend or withdraw any decision of any such committee.

(3) A committee to which the Council has delegated the power to inquire into any case of alleged unprofessional conduct and to impose a penalty in respect thereof in accordance with section 38 may, despite the expiry of the tenure of office of the members of that Council, continue to exercise such power until the conclusion of such inquiry.

(4) Despite subsection (2), no penalty imposed by any committee established in terms of subsection (1) other than a caution, a reprimand, or a reprimand and a caution, is of force and effect until confirmed by the Council.

(5) The Council may issue directives with regard to the manner of convening and the procedures to be followed at meetings of a committee established in terms of subsection (1).

Remuneration

13. (1) Members –

(a) of the Council; and

(b) of any committee who are not members of the Council,

who are not in full time employment of the public service may be paid such remuneration or allowances, as well as such other benefits, as the Council, with the concurrence of the Minister, may determine.

(2) Any remuneration, allowance or benefit contemplated in subsection (1) may differ from member to member according to the office held and duties and functions performed by the member concerned.

Funds of Council

14. (1) The funds of the Council consist of -

(a) application fees for registration, registration and annual fees and examination fees and any other fees payable under this Act;

(b) the fines and costs referred to in section 38;

(c) any moneys received by the Council by virtue of donations;

(d) any interest or dividends derived from investments made in terms of section 15;

(e) moneys advanced to the Council in terms of subsection (3); and

(f) any other moneys accruing to the Council from any other source.

(2) The Council must utilize its funds for defraying expenses in connection with the exercise of its powers and the performance of its functions and duties, but moneys received by virtue of a donation must be utilized in accordance with the conditions, if any, determined by the donor concerned.

(3) The Minister may, in consultation with the Minister responsible for finance, advance to the Council out of monies appropriated by Parliament for that purpose such amounts as he or she may think necessary in order to enable the Council to carry out its functions and duties.

(4) Any money advanced in terms of subsection (3) must be made on such conditions and is repayable at such times as the Minister may, in consultation with the Minister responsible for finance, determine.

Banking account

15. The Council must cause the money in its fund to be paid into an account at a financial institution and may within Namibia invest any unexpended portion of its funds and may establish such reserve funds and pay therein such amounts as it may deem necessary or expedient which are not immediately required for the purposes mentioned in this Part.

Bookkeeping and auditing

16. (1) The Council must, in accordance with generally accepted accounting principles, cause full accounts to be kept of all moneys received or expended by it.

(2) The Council must cause to be prepared in each year a statement of its income and expenditure during its last preceding financial year and a balance sheet showing its financial position at the end of that financial year and must, after the statement and balance sheet have been audited by an auditor appointed by the Council, cause copies thereof to be transmitted to every member of Council, and cause a copy thereof to be open for inspection at the office of the Council by any registered person.

(3) The Council must in each year, within six months after the close of its financial year, submit to the registered persons a report in regard to its activities during that financial year, together with a copy of the audited statement of income and expenditure and the balance sheet referred to in subsection (2) in respect of that financial year.

(4) The financial year of the Council ends on 31 March of each year, unless the Council with the approval of the Minister determines otherwise.

Reports to Minister

17. (1) The Council must in each year, not later than six months after the end of its financial year, submit to the Minister a report on its activities during that financial year, together with a copy of the audited balance sheet and report referred to in section 16(2) in respect of that financial year.

(2) The president of the Council may from time to time submit to the Minister reports on the activities of the Council which in the opinion of the Council should be brought to the Minister's notice.

(3) The Council must at the request of the Minister or the Permanent Secretary of the Ministry furnish him or her with advice on any matter related to the environmental assessment professions or matters incidental thereto.

Secretary and staff of Council

18. The Council –

- (a) must appoint a secretary who must perform the duties and functions, and exercise the powers conferred on him or her by this Act, including such additional duties, functions and powers as determined by the Council or as may be prescribed;
- (b) may appoint other persons as the Council may consider necessary to assist the secretary in exercising any of the powers or performing any of the duties or functions conferred on the secretary by this Act; and
- (c) must determine the remuneration or allowances that may be paid to the secretary and other persons employed by the Council, who are not in the full-time employment of the public service.

PART 3

ENVIRONMENTAL ASSESSMENT PROFESSIONS: QUALIFICATION FOR REGISTRATION AND REGISTRATION AS ENVIRONMENTAL ASSESSMENT PROFESSIONAL

Environmental assessment professions

19. (1) The environmental assessment professions comprise any of the environmental assessment disciplines specified in the Schedule.

(2) The Minister may, on the recommendation of the Council, by notice in the Gazette amend the Schedule by adding to it any other environmental assessment discipline or removing any of the environmental assessment disciplines specified therein.

(3) A person may in the manner provided in section 20 apply to be registered as an environmental assessment professional in any of the of the environmental assessment professions.

Registration of environmental assessment professional

20. (1) Any person who wants to be registered as an environmental assessment professional in any of the environmental assessment professions must apply for such registration to the Council in the prescribed manner and such application must be accompanied by the prescribed fees.

(2) If after consideration of an application made under subsection (1) the Council is satisfied that the applicant;

- (a) holds a qualification which is prescribed;
- (b) has a level of expertise that in the opinion of Council is equivalent to such period or level of experience as prescribed; or
- (c) has passed an examination that may be prescribed,

the Council must, subject to the provisions of subsection (4), grant the application for registration as an environmental assessment professional in the relevant environmental assessment profession and cause a certificate of registration to be issued to him or her.

(3) If after consideration of any such application the Council is satisfied that the applicant complies with the requirements of subsection (2), and

- (a) has at least an additional five years applicable and relevant experience in a particular field of environmental assessment; and
- (b) for at least two of the years referred to in paragraph (a) has a proven capacity for working independently or without supervision as supported by such evidence as may be prescribed,

the Council must, subject to the provisions of subsection (4), grant the application for registration as a lead environmental assessment professional and/or a reviewer and cause a certificate of registration to be issued to him or her to that effect.

(4) The Council may refuse to register any person if he or she -

- (a) has at any time been removed from an office of trust on account of unprofessional conduct;
- (b) is convicted of an offence involving dishonesty and is sentenced therefore to a term of imprisonment without the option of a fine;
- (c) has been declared mentally ill by a competent court in terms of the Mental Health Act, 1973 (Act No. 18 of 1973);
- (d) is disqualified from registration in terms of a penalty imposed under this Act; or
- (e) is an unrehabilitated insolvent or has entered into an agreement with his or her creditors.

(5) A person who is registered as an environmental assessment professional, if the prescribed annual fee or portion thereof is paid up, is entitled –

- (a) to describe himself or herself as a registered environmental assessment professional or registered lead environmental assessment professional as the case may be; and
- (b) to indicate his or profession or make it known by using for all purposes the title “E.A.Nam.” or “L.E.A.Nam” after his or her name in case of a registered environmental assessment professional or a registered lead environmental assessment professional, respectively.

Recognition of qualifications

21. (1) To enable the Council to determine whether any particular qualification should be recognised or continue to be recognised for the purposes of registration under this Act, it may call upon the applicant to –

- (a) provide certified copies of all qualifications in the official language of Namibia; and
- (b) obtain from the NQA verification that any curricula offered, the training provided or the standards of education required for the passing of any particular examination conducted by any educational institution, environmental assessment institute or other examination body are in accordance with the standards of already recognised qualifications or comply with minimum standards which the Council may lay down.

(2) If the NQA is unable to provide verification as laid out in subsection (1)(b), the Council may refuse to recognise the qualification concerned for the purposes of section 18 or, where such recognition had previously been accorded, withdraw such recognition in respect of persons after a date determined by the Council.

(3) If the Council, after an enquiry in terms of subsection (1) or (2), determines that any particular qualification issued by any educational institution, environmental assessment institute or other examining body, does not qualify for recognition for the purposes of section 18, or, where such recognition has already been accorded, decides that such recognition must be withdrawn with effect from a date determined by the Council, such refusal or withdrawal of recognition must be reported, in writing, to the controlling authority of the educational institution, environmental assessment institute or other examining body concerned.

(4) The Council may, in its discretion, rescind or amend any decision arrived at in terms of subsection (2) or (3).

Certificate of registration

22. (1) If the Council –

- (a) grants an application for registration, the secretary must register the applicant and issue to that applicant a certificate of registration in the prescribed form;

- (b) cancels the registration of a registered person or suspends the registration of a person, the secretary must indicate in the register the cancellation or suspension and in writing notify the person concerned.

(2) The secretary must issue a duplicate certificate to any registered person who has lost the original registration certificate issued to him or her in terms of the Act and who has submitted a written application for the issue to him or her of a duplicate registration certificate, together with the appropriate prescribed fee.

Cancellation of registration

23. (1) The Council may, subject to subsection (4), cancel the registration of any registered person or impose restrictive conditions upon him or her if -

- (a) subsequent to his or her registration, he or she becomes subject to any of the disqualifications mentioned in section 20(4);
- (b) his or her registration was made in error or based on information which subsequently proved to be false;
- (c) he or she is found guilty of unprofessional conduct and the Council determines that the registration be cancelled;
- (d) fails to pay any prescribed annual fee or levy or any portion of either, and payable by him or her, within 60 days after such fee or levy or portion thereof becomes due or within such further period as the Council may in any particular case determine; or
- (e) fails to comply with any requirements determined under section 10(1)(h) or any other prescribed requirements.

(2) The Council must at the written request of any environmental assessment professional cancel his or her registration, but the cancellation does not affect any liability incurred by such prior to the date of such request.

(3) The Council may, before cancelling the registration of an environmental assessment professional in terms of this section, on such conditions or restrictions as the Council considers necessary, suspend the registration of that person to enable it to properly conduct an investigation whether the registration should be cancelled or not.

Suspension due to mental illness

24. (1) Whenever it appears to the Council from information under oath or affirmation that a registered person has become mentally ill to such an extent that it would be contrary to the public interest or professional interest to allow him or her to continue in practice the Council may, if it thinks fit, hold an inquiry in respect of such environmental assessment professional.

(2) If after having held an inquiry the Council is satisfied that such registered person is in fact mentally ill, it may order the registration of such person to be suspended for a specified period.

(3) The Council may extend the period of operation of any order made under this section for any period determined by it, or withdraw such order.

Effect of cancellation or suspension from register

25. (1) Any registered person whose registration has been cancelled or suspended in terms of section 23, or whose registration has been suspended in terms of section 24, who performs or continues to perform the acts specified in section 30 commits an offence and on conviction is liable to the penalties specified in that section.

(2) The cancellation or suspension of registration of a registered person under this Act does not affect any civil, criminal, or disciplinary liability incurred by him or her prior to such suspension or cancellation, including the liability for the payment of any outstanding annual fees.

(3) The certificate of registration of the registered person referred to in subsection (1) is regarded as cancelled until the period of cancellation or suspension has expired or his or her appeal against such penalty is upheld, or until his or her registration has been restored to the register by the Council.

Return of certificate of registration

26. (1) Any person whose registration as an environmental assessment professional, has been cancelled under section 23 must return to the registrar his or her certificate of registration within 30 days from the date upon which he or she is directed by written notice by the secretary.

(2) Any person who fails to comply with any direction given under subsection (1) commits an offence and on conviction is liable to a fine not exceeding N\$6 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

Restoration of name to register

27. (1) Subject to subsection (2), a person whose name has been cancelled from the register in terms of section 23 may apply to the Council, in the prescribed form and manner, to have his or her name restored to the register.

(2) An application referred to in subsection (1) must be accompanied by –

- (a) such documents and information as may be prescribed in respect of such application;
- (b) such additional documents and information as the Council may require; and
- (c) the prescribed application fee in respect of such application for restoration.

- (3) On receipt of an application under subsection (1), the secretary may –
 - (a) restore the registration of a person if he or she is satisfied that the applicant has complied with the conditions which led to the cancellation of the registration or that the circumstances which led to the cancellation of the registration no longer exist; or
 - (b) refuse the application, if the secretary is satisfied that the applicant has not complied with the applicable provisions of subsection (2).
- (4) If the secretary has any doubt relating to any application referred to in subsection (1), he or she must refer the application for restoration concerned to the Council for consideration and a decision.
- (5) Any person who is aggrieved by the decision of the secretary made in terms of subsection (3) may request that the application be referred to the Council for re-consideration and a decision.
- (6) The secretary must –
 - (a) inform in writing a person who has applied to the Council in terms of subsection (1) for the restoration of his or her registration, of any decision made in terms of subsection (3) or (4), as the case may be, and in case of the secretary's or the Council's refusal to grant the application for restoration, the reasons for such refusal; and
 - (b) if the registration has been restored, issue to the applicant a certificate of registration in the prescribed form.

Keeping of register and status of register

28. (1) The Council must keep and maintain a register for purposes of this Act and the register must at all reasonable times be open for inspection by any member of the public upon the payment of any prescribed fees.

- (2) The secretary must –
 - (a) enter in the register, the names and addresses and such other particulars as may be determined by the Council or as may be prescribed of each person registered in terms of this Act;
 - (b) make in the register, any necessary alterations in the name, address or prescribed particulars of a registered person;
 - (c) delete from the register, the name of a registered person who dies; and
 - (d) when required to do so under this Act or pursuant to regulations made under this Act –

- (i) indicate in the register, the registration of an applicant or the suspension of the registration of a registered person; or
 - (ii) cancel in the register the registration of a registered person; and
- (e) generally in connection with the register, comply with this Act and any prescribed requirements.
- (3) The register is prima facie proof of all matters directed or authorised by this Act to be noted therein.
- (4) A certificate signed by the secretary –
- (a) of the entry of the name of a person in the register is prima facie evidence that the person is registered in terms of this Act;
 - (b) that the name of a person has been deleted from or does not appear in the register is prima facie evidence that the person is not a registered person; and
 - (c) that the registration of a registered person has been suspended for a period specified in that certificate is prima facie evidence that the person has been suspended for that period.
- (5) A copy of any entry in the register or of a document in the custody of the secretary or the Council, or an extract from the register or from any such document, certified by the secretary, may be admitted as evidence in any court of law without further proof or production of the original.
- (6) The Council may issue to any person who wishes to obtain a certified copy of an entry in, or a certified extract from, the register, such a document upon payment of the appropriate fee as prescribed.

Registration fees

29. (1) A registered person must within 30 days of registration in terms of this Act or within such extended period as the Council may determine and thereafter at the beginning of each financial year pay to the Council the appropriate prescribed annual fee.

(2) The Council may on application and on good cause being shown, grant any person an exemption, or a further exemption, either in whole or in part, from payment of the annual fee payable by such person.

(3) The Council may adjust the basic registration or annual fees payable in terms of this section at the beginning of a financial year.

Prohibition of use of title unless registered

30. (1) Any person who, not being registered under this Act, pretends to be or by any means whatsoever holds himself or herself out or allows himself or herself to be held out as a registered person, commits an offence and on conviction is liable to a fine not exceeding

N\$12 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) Any person or juristic person who with full knowledge of this Act and the qualifications of its employees falsely –

- (a) pretends to employ registered persons or by any means whatsoever holds himself, herself or itself out or allows himself, herself or itself to be held out as employing registered persons; or
- (b) causes any person in his, her or its employees to use any name, title, description or symbol indicating or which is calculated to lead persons to infer that they are registered persons, commits an offence and on conviction is liable –
 - (i) in case of natural person, to a fine not exceeding N\$12 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment; or
 - (ii) in case of a jurist person to a fine not exceeding N\$24 000.

PART 4 DISCIPLINARY MATTERS

Code of professional conduct

31. (1) The Council may from time to time issue a code of professional conduct or rules specifying the acts or omissions by registered persons which constitute unprofessional conduct and in respect of which the Council may conduct inquiries and disciplinary proceedings in terms of the provisions of this Part.

(2) No code of professional conduct or rules issued in terms of subsection (1) or any amendment thereto or withdrawal thereof is of any force until approved by the Minister in writing and published by the Council in the Gazette.

Unprofessional conduct

- 32.** (1) A registered person is guilty of improper conduct if he or she –
- (a) fails to comply with any provision of the code of professional conductor rules made in terms of section 31;
 - (b) fails or refuses to comply or complies insufficiently, with a lawful instruction of the Council;
 - (c) commits an offence in practicing his or her profession; or
 - (d) contravenes or fails to comply with any regulation made under section 41.

(2) The powers of the Council to inquire into and deal with any complaint, charge or allegation relating to a registered person are not limited to the acts or omissions specified in subsection (1).

(3) Any registered person who is found guilty of unprofessional conduct is liable to any of the penalties provided for in section 38.

Disciplinary powers of Council

33. (1) The Council has the power to inquire into cases of unprofessional conduct of which a registered person is alleged to have committed, and if such person is found guilty of such conduct, to impose in respect thereof any penalty provided for in section 38, but if the said conduct forms, or which the Council has reason to believe is likely to form, the subject of criminal or civil proceedings in a court of law, the Council may postpone the inquiry until such proceedings have been concluded.

(2) If any penalty imposed under subsection (1) consists of or includes a fine or an order as to costs and the person concerned fails to pay such fine or costs within 30 days of the date on which the penalty is imposed or the order is made, the Council may after having afforded such person an opportunity to be heard, suspend such person's registration in terms of this Act until such time as such fine or costs are paid.

(3) The amount of the fine or costs, if ordered in favour of the Council, contemplated in subsection (2) must be paid into the funds of the Council.

Institution of unprofessional conduct proceedings

34. (1) A person who wishes to lodge a complaint of unprofessional conduct on the part of a registered person must do so by lodging the complaint with the Council in the prescribed manner.

(2) The Council must take due cognisance of any complaint lodged with it under subsection (1), or any facts or information which come to its notice that *prima facie* indicate unprofessional conduct on the part of a registered person and may institute such further investigations as it may deem necessary.

(3) For purposes of subsection (2) the Council may –

(a) in accordance with section 12, establish a disciplinary committee consisting of such number of persons as may be necessary;

(b) call for such further information from a complainant referred to in subsection (1), as it may deem necessary; or

(c) cause such further investigation to be made and may seek such legal advice or other assistance, as it deems necessary.

(4) Any Council member who has a vested interest in, or involvement immediately and in writing recuse himself or herself from any investigation or enquiry into such matter.

(5) The Council must, in the prescribed manner, notify any registered person referred to in subsection (1) of the nature of the alleged unprofessional conduct being investigated or of the complaint lodged and afford him or her the opportunity of giving an explanation of the matter, in writing, within 30 days from the date of such notice, and must at the same time advise him or her that, should he or she elect to furnish such explanation, it may be used in evidence.

(6) If the Council considers that prima facie evidence exists of unprofessional conduct it must proceed with an inquiry in accordance with section 35.

Inquiry by Council

35. (1) If the Council decides to hold an inquiry it must in the prescribed manner notify the defendant of its decision and what is expected of the defendant, and if no committee has been established under section 34(3)(a), establish a disciplinary committee to conduct the enquiry on behalf of Council and delegate to the disciplinary committee any powers which the Council may exercise under this section or section 38.

(2) The notice referred to in subsection (1) must be in the prescribed form and must be served in the prescribed manner.

(3) The person whose conduct is being inquired into by the Council is entitled to appear by himself or herself or to be represented by some other person duly authorised in writing on his or her behalf and to produce evidence, call and examine witnesses on his or her behalf and cross-examine witnesses.

(4) Any further proceedings relating to an inquiry under this section and the conduct of proceedings, including the admissibility of evidence at the inquiry must be as prescribed.

Effect of inquiry proceedings on civil or criminal liability

36. (1) The institution of –

(a) unprofessional conduct proceedings against a registered person does not prejudice the right of any person, body or institution to institute civil proceedings, or the Prosecutor-General to institute criminal proceedings, or an employer to take disciplinary action against that registered person; or

(b) civil or criminal proceedings against a registered person, or the fact that an employer has taken disciplinary action against a registered person, does not prejudice the right of the Council to institute unprofessional conduct proceedings against that registered person, or from imposing penalties on that person for unprofessional conduct, arising from or based on the same facts.

(2) Any incriminating reply or information obtained, or incriminating evidence directly or indirectly derived from questioning in an unprofessional conduct inquiry is not admissible as evidence against the person concerned in criminal or civil proceedings in a court of law.

(3) Despite subsection (2), incriminating evidence referred to in that subsection is admissible in criminal proceedings where the person stands trial on a charge of the contravention of any of the provisions of section 37(3) or (4).

(4) The acquittal or the conviction of a registered person by a court of law upon a criminal charge does not bar the Council from bringing proceedings against him or her under this Act on a charge of unprofessional conduct, even if the facts set forth in the charge of unprofessional conduct would, if proved, constitute the offence set forth in the criminal charge on which he or she was so acquitted or convicted or any other offence of which he or she might have been convicted at his or her trial on the said criminal charge.

(5) Whenever in the course of any proceedings before any court of law or in the course of an investigation in terms of any law it appears to the court or to the person in charge of the investigation that there is prima facie evidence of unprofessional conduct on the part of a registered person, the court or the person in charge of the investigation must direct that a copy of the record of the proceedings or the investigation or such part thereof as is material to the issue, be transmitted to the Council.

(6) If the unprofessional conduct with which any registered person is charged amounts to an offence of which he or she has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court is, on the identification of such registered person as the person referred to in the record, sufficient proof of the commission by him or her of such offence, unless the conviction has been set aside by a superior court.

Summoning of persons by Council

37. (1) For the purpose of any investigation or inquiry under section 34 or 35, the Council may –

- (a) summon any person who in its opinion may be able to give material information concerning the subject of the investigation or inquiry or who is believed to have in his or her possession or custody or under his or her control any book, document or thing which has any bearing on the subject of the investigation or inquiry to appear before it at a time and place specified in the summons, to be questioned or to produce that book, document or thing and the Council may retain for examination any book, document or thing so produced;
- (b) call, and by its president or any other person presiding at the inquiry, administer an oath to, or accept an affirmation from, any person present at the investigation or inquiry who was or could have been summoned under paragraph (a) and question him or her and require him or her to produce any book, document or thing in his or her possession or custody or under his or her control;
- (c) appoint any person to advise the Council at such investigation or inquiry on matters pertaining to law, procedure or evidence, or to adduce evidence and to examine or cross-examine witnesses.

(2) A summons for the attendance before the Council of any person or for the production of any book, document or thing must be –

- (a) in the prescribed form;
 - (b) signed by the president of the Council or a person authorised thereto by him or her; and
 - (c) served in the prescribed manner.
- (3) If any person who has been duly summoned under this section –
- (a) fails, without sufficient cause, to attend at the time and place specified in the summons;
 - (b) fails, without sufficient cause, to remain in attendance until excused from further attendance by the president of the Council;
 - (c) refuses to be sworn in or to affirm as a witness;
 - (d) fails or refuses without sufficient cause to answer fully and satisfactorily to the best of his or her knowledge and belief all questions lawfully put to him or her concerning the subject of the inquiry; or
 - (e) fails or refuses without sufficient cause to produce any book, document or thing in his or her possession or custody or under his or her control which he or she has been required to produce, he or she commits an offence, except that in connection with the questioning of any such person or the production of any such book, document or thing, the law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce any book, document or thing before a court of law, applies.
- (4) Any person who intentionally hinders any member, employee or officer of the Council in the exercise of any power conferred upon him or her by or under this section commits an offence.
- (5) Any person convicted of an offence under subsection (3) or (4) is liable to a fine not exceeding N\$12 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Penalties for unprofessional conduct

38. (1) Every registered person who, after an inquiry conducted by the Council in terms of this Part, is found guilty of unprofessional conduct or who admits that he or she is guilty of the charge concerned, is liable to any one or more of the penalties consisting of –

- (a) a reprimand or a caution;
- (b) payment of a fine not exceeding the prescribed amount;
- (c) cancellation of the name of that registered person from the register which may include –

- (i) temporary disqualification from registration in terms of this Act for a specified period not exceeding three years; or
- (ii) permanent disqualification from registration in terms of this Act.

(2) The Council may, in investigation or inquiry proceedings under this Part, make an order as to reasonable costs incurred by the Council or any person in connection with an investigation or inquiry conducted into the alleged unprofessional conduct by any registered person.

(3) The Council may recover any fine imposed in terms of subsection (1)(b) or costs ordered in terms of subsection (2) by means of proceedings in a competent court for the benefit of the funds of the Council.

(4) The Council must –

- (a) set out fully in writing its findings and the penalties, if any, imposed in terms of this section; and
- (b) make such findings and the penalties known to any prescribed body or person in writing.

(5) The Council may in relation to a decision of a disciplinary committee as contemplated in section 12(4) –

- (a) suspend the operation of any punishment imposed in terms of subsection (1)(b) or (c) for a period not exceeding three years from the date on which such punishment is imposed;
- (b) postpone the coming into operation of any punishment imposed in terms of subsection (1)(c);
- (c) reduce any punishment imposed in terms of subsection (1)(b) or (c); or
- (d) substitute any punishment referred to in subsection (1)(b) or (c), provided that the punishment imposed in this manner may not be more severe than the punishment originally imposed.

(6) The secretary must in the prescribed manner inform a registered person who has been found guilty of unprofessional conduct in terms of this Part, whether or not that registered person was present at the inquiry concerned.

(7) When a person has been found not guilty of unprofessional conduct, the registrar must inform that person of the findings of the Council in the prescribed manner.

(8) A finding made, or a penalty imposed, by the Council at an inquiry conducted in terms of this Part is, unless appealed against in terms of section 40, of force and effect after the date determined by the Council.

(9) Despite subsection (7), if an appeal is lodged against a penalty for the cancellation or suspension of any registered person from the register, such penalty remains effective until the appeal has been finally determined.

Penalties for false evidence

39. Any person who gives false evidence on oath or after have made an affirmation at any investigation or inquiry conducted in terms of this Part, knowing such evidence to be false, commits an offence and on conviction is liable to the penalties prescribed by law for the crime of perjury.

PART 5 GENERAL PROVISIONS

Appeal against certain decisions

40. (1) Any person aggrieved by a finding or decision made, a penalty imposed or the refusal or failure to make a finding or a decision by –

- (a) the Council in relation to the registration of a person as an environmental assessment professional or the suspension or cancellation of such registration or to any matter provided for in this Act; or
- (b) the Council in relation to any matter provided for in this Act or as may be prescribed, may, within the prescribed period and in the prescribed manner, appeal to the Minister by -
 - (i) lodging with the Minister a written notice of appeal stating the grounds of appeal; and
 - (ii) serving upon the Council a copy of that notice of appeal.

(2) On receipt of the copy of the notice of appeal in terms of subsection (1), the Council must as soon as possible furnish the Minister with its reasons for the finding or decision which is the subject of the appeal.

(3) The Minister may give such decision as he or she considers appropriate in an appeal in terms of subsection (1).

(4) Any person, including the Council, aggrieved by any decision of the Minister in terms of subsection (3) may appeal to the High Court against such decision.

(5) A notice of appeal relating to an appeal in terms of subsection (1) must be lodged, in the prescribed form and manner, with the registrar of the High Court within a period of 30 days after the date upon which the decision appealed against was made.

(6) The High Court may allow, on good cause shown, an appeal to be lodged after the expiry of the period of 30 days specified in subsection (5).

- (7) The High Court may –
 - (a) request the Minister or the Council in writing to furnish the High Court with such documents or particulars as it may require;
 - (b) refer the matter to the Minister for further consideration;
 - (c) allow or dismiss an appeal lodged in terms of this section;
 - (d) make an order reversing or amending the decision of the Minister appealed against, if it is of the opinion the Minister has not acted in accordance with this Act;
 - (e) make an order relating to the payment of costs; or
 - (f) make such other order as it may consider appropriate.

Regulations

41. (1) The Minister may, after consultation with the Council, make regulations not inconsistent with this Act relating to –

- (a) matters that are in terms of this Act required or permitted to be prescribed by regulation;
- (b) the manner in which an applicant must apply for registration under this Act;
- (c) the fees payable to Council in respect of –
 - (i) an examination or part thereof which is conducted by or on behalf of the Council;
 - (ii) registration and annual fees payable to the Council by a person as long as he or she remains registered;
 - (iii) the portion of such annual fees payable in respect of part of a year and the date on which such annual fee or portion thereof becomes payable; and
 - (iv) the granting of exemption from the payment of such annual fees or portion thereof,
- (d) the calling of, procedure at, keeping of records of, and quorum at, meetings of the Council or of a committee of the Council;
- (e) the keeping, custody and publication of a register of persons registered in terms of this Act; and
- (f) generally all matters that it deems necessary or expedient to prescribe in order to achieve the objectives of this Act.

(2) Regulations made under subregulation (1) may authorise the Council to, by notice in the Gazette, amend any of the standards of qualifications made in terms of those regulations.

(3) Any regulation made in terms of subsection (1) may provide penalties for the contravention thereof except that no such penalty may exceed a fine of N\$12 000 or imprisonment for a period of two years.

Rectification of errors

42. Whenever anything which is required to be done or performed in terms of this Act on or before a specified day or at a specified time or during a specified period has not been so done or performed the Minister may, if he or she is satisfied that such failure was due to error or oversight and that it is in the interest of the environmental assessment professions to do so, authorise such thing to be done or performed on or before such other day or at such other time or during such other period, as he or she may direct, and anything so done or performed is of full force and deemed to have been lawfully done or performed in accordance with this Act.

Restriction of liability

43. A member of the Council or of any committee established in terms of this Act, any officer or employee of the Council, or the secretary, is not liable in respect of anything done or omitted to be done in good faith in the exercise of a power or the performance of a duty or function in terms of this Act, or anything that may result from anything so done or omitted.

Delegation of power

44. (1) The Minister may delegate in writing to a senior staff member in the Ministry all or any of the powers conferred upon him or her by this Act other than the powers conferred upon him by section 41.

(2) Any person to whom any power has been delegated under subsection (1) must exercise that power subject to the directions of the Minister.

(3) The Minister may at any time revoke in writing any such delegation, and the delegation of any power does not prevent the exercise of that power by the Minister himself or herself.

Short title and commencement

45. (1) This Act is called the Environmental Assessment Professions Act, 2014 and comes into operation on a date to be determined by the Minister by notice in the Gazette.

(2) Different dates may be determined under subsection (1) in respect of the different provisions of this Act.

SCHEDULE

Indicative disciplines which may be registered as environmental assessment professions:

- (a) Natural sciences (botany, entomology, ichthyology, ornithology, zoology, etc)
- (b) Earth sciences (geology, paleontology, hydrology, climatology, oceanography, geography, cartography, etc)
- (c) Human and social sciences (anthropology, archaeology, social sciences, medicine and human health, etc)
- (d) Planning and environmental sciences (town & regional planning, environmental management, etc)
- (e) Economics (environmental and natural resource economics)
- (f) Environmental engineering
- (g) Law (environmental and human rights, etc)

First draft (CJB) – 30 September 2013