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ASSESSMENT AND  
MANAGEMENT STRATEGY

## **SUBTHEME 5: QUALITY ASSURANCE AND INDEPENDENCE OF ENVIRONMENTAL ASSESSMENT PRACTITIONERS**

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## 1. INTRODUCTION

Environmental Assessment Practitioners (EAPs) within government, parastatals and the private consulting sectors perform a pivotal role in the implementation of Chapter 5 of the National Environmental Management Act, Act 107 of 1998 (NEMA). Chapter 5 provides for Integrated Environmental Management and provides inter alia for the identification of activities that may have a detrimental impact on the environment and for which environmental authorisation is required. It enables a range of environmental assessment tools and specific procedures and processes to be applied in the appropriate context to inform a decision or environmental authorisation and its implementation. Even though 'activities' are defined in NEMA as policies, programmes, plans and projects, to date regulations have only been published for project-level Environmental Impact Assessment processes and Environmental Management Frameworks.

The effectiveness of Integrated Environmental Management is directly dependent on the quality and ethical values of professionals working in the environmental assessment field. Internationally, quality assurance, including the ethical conduct of EAPs, is enabled through professional registration or certification processes and independent peer review.

### 1.1 PROBLEM STATEMENT

While NEMA and the EIA Regulations provide for Registration Authorities for EAPs there is as yet no legal requirement for EAPs to be registered as a quality assurance mechanism. This situation however is being addressed currently. The Environmental Assessment Practitioners Association of South Africa (EAPASA), which will apply to be recognised as a registration authority in terms of section 24H of NEMA, is to be launched imminently (7 April 2011), however, this is the first step in a process of providing for quality assurance in environmental assessment practice. The Environmental Impact Assessment and Management Strategy needs to chart a trajectory in which proposed systems for registration can be improved and adapt in time to new demands in a changing context. Further, EAP independence and objectivity in practice, currently specified in the EIA Regulations, requires specific attention as this has been identified as a major issue by stakeholders impacting the quality of professional work and thus the efficiency and effectiveness of environmental assessment in South Africa.

The problem statement on the subtheme compiled by the Project Steering Committee:

*Inadequate provision for ensuring quality assurance and independence and certification of Environmental Assessment Practitioners (EAPs).*

## 1.2 OBJECTIVE

The objective compiled by the Project Steering Committee:

*To ensure quality, independence and certification of EAPs.*

## 1.3 GOALS

The Goals compiled by the Project Steering Committee

*Goal 1: To ensure that professional work done by EAPs is of an acceptable quality and in line with quality requirements determined in subtheme 11:*

*Goal 2: To ensure that EAPs act independently and [are] professionally objective*

*Goal 3: To facilitate and improve the proposed EAPs or alternative Environmental Practitioner professional registration process also in line with new proposed tools in subtheme 9.*

## 1.4 COMMENTS ON STRATEGY FRAMEWORK

In the review of the documentation for the EIA&MS, specifically the Theme and Subtheme Objectives and Goals, a number of questions arise as to the challenge of emerging with an integrated Strategy for which there is a clear vision (overarching goal), mission (purpose), outcomes (goals/objectives) and outputs (objectives) as well as prioritised activities or plan of action.

Effective strategies and planning approach generally use a hierarchical logic that will enable an integrated yet systematic strategy that can be monitored and evaluated. A logic planning model needs to settle on the broadly accepted strategic planning terms and definitions for outcomes and results within the hierarchy. It is broadly accepted that Goals are a high level set of outcomes while objectives are more specific results of strategies.

## 1.5 TERMS OF REFERENCE AND METHOD FOR COMPILING SPECIALIST INPUT

The following tasks apply to the specialist study for Subtheme 5: Quality Assurance and Independence of EAPs.

- a. Compile goals and objectives for subtheme 5.
- b. Research existing proposed process for registration of EAPS.
- c. Investigate existing professional registration requirements of professions relevant to EAPS.
- d. Identify lack of professional registration requirements in applicable professions – if at all professional registration is a requirement.
- e. Research alternative methods/ requirements/ processes for ensuring independence of EAPS and other environmental practitioners and for ensuring quality.
- f. Propose alternative methods/ requirements/ processes for ensuring independence of EAPS, other EPs and for ensuring quality.
- g. Identify problem areas which may prevent implementation and present draft report
- h. Present to Project Steering Committee meeting.
- j. Finalise Report.

The following methodology is applied to the specialist study:

1. *Quality assurance and benchmarking of EAPs and other professional bodies.*
  - a) Scoping and selection of a set of relevant professional bodies to be reviewed in consultation with the Sub Theme Task Group (STTG);
  - b) Document review and interviews (telephonic) to identify key mechanisms for quality assurance including the key criteria used for registration for comparison with the proposed system for registration of EAPs in SA;
  - c) Analysis and write-up of findings for draft report for comment and input by client and STTG), including key recommendations for consideration by future Registration Authority and DEA.
2. *Independence of EAPs:*
  - a) Synthesise the main issues regarding the existing national legal requirement for independence of EAPs;
  - b) Scope and select a set of case studies for research, in consultation with STTG members on which to interrogate alternative mechanisms for ensuring the

independence of EAPs. These are likely to be drawn mostly from international case studies.

- c) Analysis and write-up of alternative options for enabling independence in the context of the existing statutes and regulations and in terms of the proposed EAP registration system. Set out analysis and recommendations in draft report.

The final specialist report will respond to the comments received on the draft submitted in terms of both quality assurance and independence.

## **2. BACKGROUND**

### 2.1 CONTEXT

The need for professional quality assurance and the need for Environmental Assessment Practitioners to undertake their work in an independent and objective manner have been the major drivers behind initiatives in South Africa seeking certification/registration processes within the industry and government. This need follows logically from the key role that EAPs play within existing and proposed environmental authorisation processes and tools and mechanisms for the implementation of Chapter 5 of the National Environmental Management Act, Act 107 of 1998 (NEMA), Integrated Environmental Management. The role of EAPs has been established in the enabling statutes (Environmental Conservation Act, Act 73 of 1989; National Environmental Management Act, Act 107 of 1998) and associated regulations and reinforced through subsequent statute amendments and revisions to regulations. Current legal framework for both quality assurance and independence are presented in section 3.1 below.

In parallel with the development process of legal mechanisms to enable effective Integrated Environmental Management, there have been initiatives to provide for certification/registration of EAPs, in South Africa and Southern Africa. The Interim Certification Board (ICB) of EAPSA (Environmental Assessment Practitioners of South Africa) has provided a voluntary certification system for EAPs in SA since 2001. SACNASP (South African Council for Natural and Scientific Professions) provides for the registration of natural scientists and environmental scientists working as EAPs who hold a science qualification. The SAIE&ES (South African Institute of Ecologists and Environmental Scientists) provides for the certification of ecologists and environmental scientists.

In 2005 a Consultative Process was initiated through a Memorandum of Understanding between the ICB and the Department of Environmental Affairs to achieve the establishment of a Registration Authority (RA) for EAPs as envisaged in Section 24H of NEMA (Amendment Act 8 of 2004). On the basis that the Consultative Process has achieved its three planned outcomes: agreement on the content of a proposal for the establishment of a registration authority (as set out in the Final Draft Proposal for the Establishment of a Registration Authority for EAPs in SA); registration of a qualification for Environmental Assessment Practice in terms of the NQF; and, providing for the legal enabling mechanisms for making registration compulsory, the Environmental Assessment Practitioners' Association of South Africa will be launched on 7 April 2011. EAPASA will apply to the Minister to be recognised as a Registration Authority for EAPs. An important aspect of the proposed RA is that it caters for EAPs in private consulting, in government as regulatory review and those in parastatals managing environmental assessment processes.

These initiatives summarised above are presented in more detail in section 3.2 below (and will be reflected against examples viewed as good practice internationally in the completed analysis).

To a large degree, the successful implementation of Integrated Environmental Management in South Africa rests on the competencies and ethical values of EAPs in private sector consulting, within parastatals as managers of processes and within government as regulatory reviewers. It is in all of these specific roles that professional competencies and ethical values can be applied to strive towards sustainability (Weaver, *et al* 2008).

It is important to note from the outset that one of the key factors to consider in EAP quality assurance and independence are a rapidly changing physical and social environment and policy context. An assumption in looking forward to implementation of an effective EIA&MS that enables quality assurance and independence mechanisms for EAPs is that an adaptive management approach will be adopted. This adaptive management approach must be based on a sound analysis, a logical strategy, evaluation and review in order to respond to a rapidly changing context.

## 2.2 DEFINITIONS AND CONCEPTS

The following key definitions provide an important basis for the analysis of the current trends, challenges and potential solutions in improved quality assurance and independence for EAPs in South Africa.



The Final Draft Constitution for the EAPASA uses the following definition of “environmental assessment:

“Environmental assessment” means the process of identifying, analysing, assessing, evaluating and communicating the potential environmental risks and impacts of an activity in its area of influence, and finding ways of improving the environmental sustainability of the outcome by due consideration of feasible alternatives, appropriate mitigation of adverse impacts and enhancement of benefits, and the equitable distribution of these impacts and benefits, with the appropriate engagement of relevant stakeholders. It includes environmental impact assessment, strategic environmental assessment, sustainability assessment, environmental management plans, etc., and their implementation, and may involve the integration of a range of specialist findings.”

### **2.2.1 Environmental Assessment Practitioner**

Section 1 of the NEMA Amendment Act, Act 8 of 2004 provides the following definition:

“‘environmental assessment practitioner’, when used in Chapter 5, means the individual responsible for the planning, management and coordination of environmental impact assessments, strategic environmental assessments, environmental management plans or any other appropriate environmental instruments introduced through regulations;”

“registered environmental assessment practitioner / registered EAP” means an environmental assessment practitioner registered with an appointed registration authority contemplated in section 24H of the Act;”

The Final Draft Constitution for the EAPASA uses the following definition:

“EAP means an environmental assessment practitioner, namely a person responsible for the planning, management, co-ordination and review of environmental impact assessments, strategic environmental assessments, environmental management plans or any other environmental assessment instruments introduced through legislation, either in the role of assessor or in the role of a reviewer of existing assessments.”

Environmental Assessment Practitioners of South Africa’s definition of an EAP:

“... someone who co-ordinates, manages and integrates the various components of environmental assessment throughout the planning process” (EAPSA, 2002)

In relation to the above definitions it is important to note the following:

- Quality assurance can only be attained when ALL EAPs, regardless of where they are employed, fulfill competence and ethical practice criteria.
- The Proposed RA (EAPSA) provides for the registration of all EAPs.
- The Act envisages the role and competencies of EAPs beyond the narrow confines of project-level EIA as prescribed in the EIA Regulations and defines this role as all mechanisms and tools envisaged in Chapter 5: Integrated Environmental Management. It follows logically then, that any quality assurance mechanisms to be put in place for EAPs need to embrace the full spectrum of environmental assessment tools.
- While EIAs and EMFs are currently the key regulatory tools, the Advanced Certificate for Environmental Assessment Practice has included the core set of competencies that are required for a full spectrum of environmental assessment tools. The proposed registration authority’s proposes to register EAPs, regardless of which specific environmental assessment tools they apply.

The broad role envisaged for EAPs is further emphasised in the following NEMA amendments:

NEM Amendment Act, Act 56 of 2002 of section 1 of Act 107 of 1998 changed the definition of “activities” in Chapter 5 to include “policies, programmes, plans and projects”.

NEM Amendment Act, Act 62 of 2008 lists the broad range of tools and associated procedures which may be used in implementation of Chapter 5.

“24 (5)(bA) laying down the procedure to be followed for the preparation, evaluation and adoption of prescribed environmental management instruments, including—

- (i) environmental management frameworks;
- (ii) strategic environmental assessments;
- (iii) environmental impact assessments;
- (iv) environmental management programmes;

- (v) environmental risk assessments;
- (vi) environmental feasibility assessments;
- (vii) norms or standards;
- (viii) spatial development tools;
- (ix) any other relevant environmental management instrument that may be developed in time;”

### **2.2.2 Quality assurance**

The South African Qualifications Authority’s directorate of Quality Assurance and Development provide the following generic definition for quality assurance:

“quality assurance means the process of ensuring that the degree of excellence specified is achieved” (SAQA 2002).

In environmental professional quality assurance systems reviewed in the process of establishing EAPSA, the following key dimensions are common to most systems of quality assurance in environmental assessment practice:

- Competence (including academic training, experience and core competencies)
- Ethical conduct
- Review

Mechanisms for professional quality assurance generally involve certification and/or registration for professionals by a professional registration or certification body. A subtle difference in meaning of these terms is that certification is often referred to as the process of assessment against a set of criteria, whereas registration is often referred to being admitted to the register of professionals.

The legislative framework provided in South Africa uses the term ‘registration’. To avoid confusion, this report will adopt the locally relevant term ‘registration’ meaning admittance to a professional register on the basis of having met the criteria for registration in South Africa.

The existing and proposed quality assurance mechanisms for EAPs in South Africa are presented in section 3.3 and 3.4 below.

### **2.2.3 Independence**

The definition of professional independence is provided for in the EIA Regulations:

“*independent*”, in relation to an EAP or a person compiling a specialist report or undertaking a specialised process or appointed as a member of an appeal panel, means—

(a) that such EAP or person has no business, financial, personal or other interest in the activity, application or appeal in respect of which that EAP or person is appointed in terms of these Regulations other than fair remuneration for work performed in connection with that activity, application or appeal; or

(b) that there are no circumstances that may compromise the objectivity of that EAP or person in performing such work;’

Quality assurance and independence are inextricably linked. There are many views on the nature of independence and whether the above requirements and even signing a declaration of independence can achieve good quality and ethical practice. Many would argue that working within prescribed standards does not guarantee that values and individual judgement will not come into play. Further, regulations or registration do not absolve professionals of their responsibility to apply their professional judgment.

A key sector that is required to be professionally independent by law is that of chartered accountants and auditors. While different from substantive point of view, the professional roles in terms of the requirements for independence are quite similar. The following useful definition is used by the American Institute of Certified Public Accountants:

“Professional” independence is a group of characteristic actions resulting from the duty of care that arises out of the social contract with the public who has granted the profession exclusive rights of title and/or practice in return for the obligation of self-regulation. This contract is one based on trust and confidence. It is demonstrated by an objective application of professional judgment and expert knowledge to a given set of circumstances. Objectivity is a state of mind, a quality that lends value to the member’s services. It is a distinguishing feature of the profession. The principle of objectivity imposes the obligation to be impartial and intellectually honest.’

### 3. STATUS QUO

#### 3.1 EXISTING LEGAL FRAMEWORK

##### 3.1.1 Quality assurance

The legal framework providing for quality assurance are included various aspects NEMA and the EIA Regulations and include the provisions for registration of EAPs as well as the quality control by the relevant authority (presumably by EAPs employed in government) to address concerns regarding professional work standards in authorisation processes.

The enabling provisions in NEMA (as amended by Amendment Act, Act 8 of 2004) for enabling registration are as follows:

- 24(5) The Minister, and every MEC with the concurrence of the Minister, may make regulations consistent with subsection (4)-
- (e) specifying that specified tasks performed in connection with an application for an environmental authorisation may only be performed by an environmental assessment practitioner registered in accordance with the prescribed procedures;

The above provision emphasises the intention to ensure that the future registration authority has a purview for quality assurance including, but beyond project-based environmental impact assessments.

Section 24H of the National Environmental Management Amendment Act, Act 8 of 2004 sets out the following requirements and procedure for the establishment of registration authorities:

**“24H. Registration authorities**

- (1) An association proposing to register its members as environmental assessment practitioners may apply to the Minister to be appointed as a registration authority in such manner as the Minister may prescribe.
- (2) The application must contain -
- (a) the constitution of the association;
- (b) a list of the members of the association;
- (c) a description of the criteria and process to be used to register environmental assessment practitioners;
- (d) a list of the qualifications of the members of the association responsible for the assessment of applicants for registration;

(e) a code of conduct regulating the ethical and professional conduct of members of the association; and

(f) any other prescribed requirements.

(3) After considering an application and any other additional information that the Minister may require, the Minister may -

(a) by notice in the Gazette, appoint the association as a registration authority; or

(b) in writing addressed to the association, refuse the application, giving reasons for such refusal.

(4) The Minister may, for good cause and in writing addressed to the association, terminate the appointment of an association as a registration authority.

(5) The Minister must maintain a register of all associations appointed as registration authorities in terms of this section.” (inserted by Act 8/2004).

“(6) The Minister may appoint as registration authorities such number of associations as are required for the purposes of this Act and may, if circumstances so require, limit the number of registration authorities to a single registration authority.” (inserted by Act 62 of 2008)

Other quality assurance mechanisms are included within the role of applicants as set out in the 2010 EIA regulations:

### **Appointment of EAPs to manage applications**

16. (1) Before conducting basic assessment or S&EIR, an applicant must appoint an EAP at own cost to manage the application.

(2) The applicant must—

(a) take all reasonable steps to verify whether the EAP to be appointed complies with regulation 17(a) and (b); and

(b) provide the EAP with access to all information at the disposal of the applicant regarding the application, whether or not such information is favourable to the applicant.

Section 17 of the 2010 EIA Regulations provides for a level of quality assurance combining both competency and independence.

**General requirements for EAPs or a person compiling a specialist report or undertaking a specialised process**

17. An EAP appointed in terms of regulation 16(1) must—

- (a) be independent;
- (b) have expertise in conducting environmental impact assessments, including knowledge of the Act, these Regulations and any guidelines that have relevance to the proposed activity;
- (c) perform the work relating to the application in an objective manner, even if this results in views and findings that are not favourable to the applicant;
- (d) comply with the Act, these Regulations and all other applicable legislation;
- (e) take into account, to the extent possible, the matters referred to in regulation 8 when preparing the application and any report relating to the application; and
- (f) disclose to the applicant and the competent authority all material information in the possession of the EAP that reasonably has or may have the potential of influencing—
  - (i) any decision to be taken with respect to the application by the competent authority in terms of these Regulations; or
  - (ii) the objectivity of any report, plan or document to be prepared by the EAP in terms of these Regulations for submission to the competent authority.

Regulation 18 provides for a quality control mechanism by EAPs working in relevant authorities:

**“Disqualification of EAPs or a person compiling a specialist report or undertaking a specialised process**

18. (1) If the competent authority at any stage of considering an application has reason to believe that the EAP managing an application specialist report or undertaking a specialised process may not comply with the requirement of regulation in respect of the application, the competent authority must—

- (a) notify the EAP and applicant of the reasons therefore and that the application is suspended until the matter is resolved; and
- (b) afford the EAP and applicant an opportunity to make representations to the competent authority regarding the independence of the EAP, in writing.

(2) An interested and affected party may notify the competent authority of suspected non-compliance with regulation 17.

(3) Where an interested and affected party notifies the competent authority of suspected non-compliance with regulation 17, the competent authority must investigate the allegation.

(4) The notification referred to in subregulation (2) must be submitted in writing and must contain documentation supporting the allegation, which is referred to in the notification.

(5) If, after considering the matter, the competent authority is unconvinced of compliance with regulation 17 by the EAP or person compiling a specialist report or undertaking a specialised process, the competent authority must in writing, inform the EAP or person compiling a specialist report or undertaking a specialised process and the applicant accordingly and may—

(a) refuse to accept any further reports or input from the EAP or person compiling a specialist report or undertaking a specialised process in respect of the application in question;

(b) request the applicant to –

(i) commission, at own cost, an external review by an independent person or persons of any reports prepared or processes conducted by the EAP or person compiling a specialist report or undertaking a specialised process in connection with the application;

(ii) to redo any specific aspects of the work done by the previous EAP or person compiling a specialist report or undertaking a specialised process in connection with the application; and

(iii) to complete any unfinished work in connection with the application; or

(c) request the applicant to take such action as the competent authority requires to remedy the defects.

(6) If the application has reached a stage where a register of interested and affected parties has been opened in terms of regulation 55, the applicant must inform all registered interested



and affected parties of any suspension of the application as well as of any decisions taken by the competent authority in terms of subregulation (5)".

Regulations 22 (Content of basic assessment reports), 28 (Content of a Scoping report), and 31(2) (Environmental assessment reports) require that details are provided on the expertise of the EAP to carry out the relevant assessment procedures.

Independent review, an essential part of quality assurance together with competency of EAPs and the application of professional ethics and is provided for by NEMA section 24 (5)(i) providing for regulation of review processes

24(5)" (i) prescribing review mechanisms and procedures including criteria for, and responsibilities of all parties in, the review process;

### **3.1.2 Independence**

The legal framework for EAPs independence of EAPs is provided for by the definition in Section 1 of NEMA and Regulation 17 of the EIA Regulations (as set out above), Regulations 21, 26 and 32 include the requirements for declaration of independence by EAPs as well as specialists.

Regulation 31(2)(n) includes the specific requirement for the application of professional judgment in terms of "a reasoned opinion" in the content of environmental impact assessment reports:

"31(2) An environmental impact assessment report must contain all information that is necessary for the competent authority to consider the application and to reach a decision contemplated in regulation 35, and must include—....

(n) a reasoned opinion as to whether the activity should or should not be authorised, and if the opinion is that it should be authorised, any conditions that should be made in respect of that authorisation;..."

In certain circumstances an EAP can apply, in terms of regulation 50 for exemption from regulation 17, however it is common practice since the publication of the 2010 EIA Regulations for such exemption applications to be advertised, evaluated by the relevant authority and concluded prior to the application for the proposed activity is received.

### 3.2 INTERNATIONAL GOOD PRACTICE REVIEW FOR QUALITY ASSURANCE OF EA PRACTICE

While legal systems may differ, there are many similarities in the challenges of professional quality assurance and independence of EAPs. Woodley & Morgan (2004) have reviewed EAP registration systems worldwide. Some of the findings are summarised below:

- *Environment Institute of Australia and New Zealand*  
Environmental degree, 5 years experience in environmental practice in past 10 years, nominated by 3 respected EAPs, at least 2 referee statements, commitment to ongoing training and professional improvement, statement of ethical conduct. Reviewed every 2 years.
- *Academy of Board Certified Environmental Professionals (USA)*  
Bachelors degree and minimum 9 years professional environmental experience; 5 years in responsible charge. Masters degree substitutes for 1 year experience, PhD for 2. 8 letters of recommendation, examination, maybe interview. Application reviewed by 7 members.
- *Canadian Environmental Certification Approvals Board*  
Tertiary education, minimum 5 years experience, 3 peer evaluators, commitment professional development, tied to code of ethics. Reviewed every 5 years.
- *Institute Environmental Management and Assessment (UK)*  
Experience, competence, skills. Log of continuing professional development, submitted with application for annual renewal.
- *National Registry of Environmental Professionals (USA)*  
Bachelors degree, 5 years work experience, exam (plus lower categories)
- *Institute of Professional Environmental Practice (USA)*  
Bachelors degree, 15 years of professional work (10 in responsible charge), written and oral exam, 3 references, code of ethics.

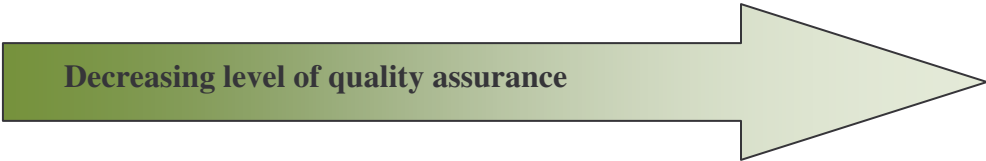
Criteria common to all systems are:

- Education
- Professional experience

- Core competencies
- Continuing professional development
- Code of conduct or ethics tied to disciplinary process

A number of African and Southern African countries have identified the need to establish registration systems for EAPs. Southern African Institute for Environmental Assessment (SAIEA) has been assisting organisations within the SADC region in charting such processes.

**FIGURE 1: METHODS OF QUALITY ASSURANCE FOR EA CONSULTANTS IN SOUTHERN AFRICA AND TWO COUNTRIES IN EAST AFRICA (Adapted from: Walmsley and Tshipala 2009)**



Country	Certification scheme for EIA consultants	Registration system for EIA consultants based on professional criteria	Consultants for a given EIA to be approved by authorities before commencing with the EIA	List of 'approved' consultants held by environmental authority
Angola	X	Yes	Yes	X
Botswana	In progress	Yes	X	X
DRC	X	X	X	X
Lesotho	In progress	X	Yes	Yes
Madagascar	X	X	X	X
Malawi	X	X	X	Yes
Mauritius	X	X	Yes	X
Mozambique	X	Yes	Yes	X
Namibia	X	X	X	X
South Africa	In progress	X	X	X
Swaziland	In progress?	X	X	X
Tanzania	X	Yes	X	X
Zambia	X	X	Yes	X
Zimbabwe	X	X	X	Yes
Rwanda	X	X	Yes	Yes
Uganda	Yes	X	X	X

**Note:** only South Africa requires the EIA consultants to sign statements of independence.

The EA systems identified that may provide other approaches to enabling quality assurance and independence include systems in Canada, the Netherlands and Australia.

### 3.2.1 Certified Environmental Assessment Practitioner Programme Australia & New Zealand

The Development of the Certified Environmental Assessment Practitioner Programme (CEnvP) Scheme has been supported by the Australian Government Department of Sustainability, Environment, Water, Population and Communities. It provides for general environmental practitioners, and specialist environmental assessment and ecological specialist categories.

The criteria for standard applications are:

- an environment-related degree;
- five years of relevant environmental experience over the past ten years;
- three referees prepared to vouch for your skills, performance and professional conduct;
- a signed statement of ethical conduct;
- commitment to a minimum over two years of 50 hours of continued professional development;
- and
- additional supporting evidence of claim including at least two referee reports.

Impact Assessment Specialisation certification criteria are:

- an environment-related degree
- a completed application form with application fee
- an up to date CV covering the last 10 years
- 2 signed Referee Reports from nominees in the IA field, one must be external to your current workplace
- a list 3 referees prepared to vouch for your skills, performance and professional conduct (should include the two completing referee reports above)
- signed commitment to specialist CPD requirements, which means that 50% of your 100 points of CEnvP CPD every two years must be directly related to your specialist category
- work experience signatures for 10 years of professional environmental practice, 5 of which must be directly related to IA.
- a list of documents (minimum of 5) that you will provide at interview to demonstrate the required competencies for IA practice. These supporting documents should reflect a minimum of 3 years active IA practice.
- a signed statement of ethical conduct.

- signed Statement of Claim witnessed by an Authorised Signatory, stating that all the information you have given is true, accurate and complete.

### **3.2.2 Canadian Environmental Certification Approvals Board**

The Canadian Environmental Certification Approvals Board (CECAB) was established to oversee the development and administration of a voluntary certification program for environmental professionals in Canada. The system initially included the following designations:

- The Canadian Certified Environmental Practitioner (CCEP) and Canadian Environmental Practitioner-in-Training (CEPIT) designation was launched in 2000.

On August 1, 2010, all of the above designations merged under the credential EP – Environmental Professional, with specializations to recognize a specific area of work, i.e. EP(GHG).

- Canadian Environmental Practitioner-in-Training - CEPIT
- Canadian Certified Environmental Practitioner - CCEP
- Certified Environmental Auditor - CEA
- Certified Environmental Sustainable Forest Management Auditor - CEA(SFM)
- Environmental Management Systems Auditor - EMS(A)
- Environmental Management Systems Lead Auditor - EMS(LA)
- Environmental Professional-Greenhouse Gas Quantifier - EP(GHG)
- Environmental Professional-Greenhouse Gas Verifier - EP(GHG)

While Environmental Careers Organisation Canada acts as the certifying body for Environmental Professionals, the Canadian Environmental Certification Approvals Board (CECAB), made up of composed of environmental stakeholders from across Canada, ensure impartiality by overseeing the administration, evaluation and ratification processes for the certification and re-certification of candidates. CECAB also undertakes disciplinary action related to violations of the Environmental Professional (EP) Code of Ethics.

Criteria for Canadian Certified Environmental Practitioner:

- Completed formal post-secondary education in a Canadian institution or have acceptable academic and/or experiential equivalencies, subject to CECAB's approval.
- Acquired a minimum of five years of relevant environmental work experience while working in Canada, substantiated through reference letters should CECAB require such evidence.

Practitioners who do not have the required Canadian work experience have to enrol, first, in the CEPIT (in training) program.

- Possess a profile of environmental competencies, skills and knowledge that meet or exceed the requirements documented in CCHREI's occupational standards for environmental employment.
- Successfully undergo CECAB's online certification process in one or more of CCHREI's environmental employment subsectors.

### **3.2.3 Canadian Environmental Assessment Agency**

The Canadian Environmental Assessment Agency is a federal body accountable to the Minister of the Environment. The mission of the Agency is to better integrate Canada's environmental goals with its economic, social and cultural values. It:

- Manages the environmental assessment process for most major projects subject to the *Canadian Environmental Assessment Act*.
- Provides funding to support public participation in environmental assessments.
- Serves as the coordinator for consultation with Aboriginal groups during the environmental assessments for projects it manages.
- Advances the science and practice of environmental assessment through research and development.
- Promotes high-quality assessment through training and guidance.
- Promotes the use of strategic environmental assessment as a key tool to support sustainable decision making.

Where necessary, review panels are appointed.

### **3.2.4 Netherlands Commission for Environmental Assessment (NCEA)**

The NCEA is a private foundation, funded by government subsidies to act as an independent expert committee and has mandatory involvement in all environmental impact assessments for projects (EIA) and a substantial amount of strategic environmental assessments for plans (SEA). The NCEA advises competent authorities at two stages of the assessment process: the scoping exercise to identify the required content of the environmental studies and the review of the quality of the information compiled. When providing advice the NCEA takes public comments into account.

The NCEA can call upon 700 Dutch and international experts with a collective expertise covering all environmental fields working for governmental organisations, research institutes or universities and private companies. They are hired on a project-by-project base. In every project, a project team is created, usually counting 3-6 experts. The role of the NCEA is to safeguard the quality of environmental information that is required for political decision. The NCEA does not advise on whether projects or plans are to be realized. Neither does the NCEA proclaim a preference for one of the described alternatives. The most important characteristics of the NCEA are its independency and expertise.

The NCEA also provides a knowledge platform on EIA/SEA. It supplies interested parties with information on EIA/SEA procedures, examples, relevant legislation etc.

### 3.3 EXISTING CERTIFICATION/REGISTRATION FOR EAPS IN SOUTH AFRICA

There are three key bodies providing for the registration or certification of EAPs. The Interim Certification Board (ICB) of EAPSA (Environmental Assessment Practitioners of South Africa) has provided a voluntary certification system for EAPs in SA since 2001 providing mostly for EAPs working in the private consulting sector. SACNASP (South African Council for Natural and Scientific Professions) provides for the registration of natural scientists and environmental scientists working as EAPs who hold a science qualification. The SAIE&ES (South African Institute of Ecologists and Environmental Scientists) provides for the certification of ecologists and environmental scientists.

Table 1 presents a summary (modified version of table compiled by Chantal Matthys, DEA) of the three key bodies currently registering EAPs.

**Table 1: Summary of key requirements for existing EAP registration organizations in SA**

Dimensions	Interim Certification Board (ICB) for Environmental Assessment Practitioners of South Africa	South African Council for Natural Scientific Professions (SACNASP)	Southern African Institute of Ecologist and Environmental Scientist (SAIE&ES)
<b>Professional representation</b>	The ICB was founded and is supported up of representatives from 17 participating organisations from diverse fields and professions	Scientific professionals in a range of fields	Scientific professionals in a range of fields
<b>Legal Standing</b>	Voluntary	Governed by the Natural Scientific Professions Act, 1993 (Act 106 of 1993); compulsory for professional natural scientists	Voluntary
<b>Formal qualification</b>	A degree in environmental practice from a South African university or Technikon (or recognised equivalent);	BSc Honours in Natural Science	Honours degree (or equivalent) in an appropriate discipline, and a further postgraduate degree in ecology, environmental science or

Dimensions	Interim Certification Board (ICB) for Environmental Assessment Practitioners of South Africa	South African Council for Natural Scientific Professions (SACNASP)	Southern African Institute of Ecologist and Environmental Scientist (SAIE&ES)
	OR A degree from a South African university or Technikon (or recognised equivalent) PLUS a further post-graduate degree or short course in environmental practice, from a South African University or Technikon (or recognised equivalent); OR A degree.	At least one subject that can be used to qualify the applicant in one of the professions as listed in Annexure I, section A of Act  Human, as opposed to natural scientists, are not eligible to register with SACNASP. Environmental practitioners without a natural science degree, similarly, cannot register with SACNASP.	equivalent
<b>Professional Experience</b>	Degree in environmental practice and/or a degree plus postgraduate degree in environmental practice - 3 years subsequent experience in responsible charge Degree and a short course or diploma in environmental practice - 5 years subsequent experience in responsible charge Diploma in environmental practice - 6 years subsequent experience in responsible charge An academic qualification with no formal training in environmental practice - more than 6 years subsequent experience in responsible charge	3 years minimum	3 years
<b>Core Competencies</b>	Ten areas in which core competency must be demonstrated.	-	-
<b>Codes of Conduct and/or Ethics, and disciplinary procedures</b>	Yes	To be drawn up	Yes
<b>References/ referees/sponsors</b>	2 sponsors who are either ICB referees or certified EAPs	2 referees. At least one referee to be registered with SACNASP	2 referees already registered with SAIE&ES

Currently, (other than the proposed Registration Authority), there is no registration system that is compulsory and that caters for the range of professionals working as EAPs.



### 3.4 PROPOSED REGISTRATION AUTHORITY FOR EAPS

#### 3.4.1 Summary of the process of establishment of Registration Authority for EAPs in SA

In terms of a Memorandum of Understanding<sup>1</sup> signed between the Department of Environmental Affairs and the Interim Certification Board, a Consultative Process has been underway since early 2006 regarding the establishment of a Registration Authority for Environmental Assessment Practitioners, as provided for in section 24H of the National Environmental Management Act.

The establishment of the proposed Environmental Assessment Practitioners Association of South Africa (EAPASA) is imminent with the launch date for the body set for 7 April 2011. Once established EAPASA will apply formally to be recognised as a Registration Authority in terms of section 24H of NEMA.

At the time of the initiation of the Consultative Process the following were identified as key challenges to be addressed:

- Ensuring redress to the legacy of historical inequality in access to opportunities in education and training and professional work in South Africa.
- Ensuring that a Registration Authority would be representative in its board composition and provide for an accessible registration system rather than one that is exclusive.
- Ensuring that an EAP qualification standard could provide an equitable basis to assess the competencies of EAPs and enable the accreditation of education and training programmes;
- Accommodating professionals working in government who while not undertaking environmental assessments require the same level of competency to perform their statutory review role.
- Accommodating the range of professionals in professional practice as EAPs with varying educational backgrounds, such as planners, environmental scientists and managers, engineers, and landscape architects.

The planned outcomes of the Consultative Process are:

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<sup>1</sup> On 5 December 2005, the Department of Environmental Affairs and Tourism (DEAT) and the Interim Certification Board (ICB) concluded and signed a Memorandum of Understanding to enable the ICB to co-ordinate a consultative process with key stakeholders towards the establishment of a registration authority for environmental assessment practitioners in South Africa as provided for in section 24H of the National Environmental Management Amendment Act, Act No 8 of 2004. This MoU was amended in July 2007.

- Outcome 1: Establishing a representative and recognised association that would establish a Registration Authority and agreed registration system that is legally competent in terms of section 24H of NEMA Amendment Act, Act 8 of 2004;
- Outcome 2: Registration of a qualification for environmental assessment practice within the National Qualifications Framework in collaboration with the South African Qualifications Authority (SAQA); and,
- Outcome 3: Conclusion of relevant enabling legal mechanisms making it compulsory for EAPs to be registered.

In terms of achieving Outcome 1:

- The Consultative Process has enabled Provincial meetings, two National Stakeholder Conferences and numerous stakeholder progress updates as well as liaison and presentation opportunities regarding the Proposal for the Establishment of a Registration Authority;
- Three drafts of the Proposal for the establishment of the proposed Registration Authority have been circulated for comment to national stakeholders;
- A Working Group mandated with the task of developing the Draft Final Proposal has concluded this task through six working sessions and the Draft Final Proposal which was first reviewed by the DEA Legal Unit in November 2008 was advertised for comment in February 2009;
- The Working Group is satisfied that all issues have been addressed sufficiently and that stakeholders should move forward to the establishment of the Environmental Assessment Practitioners Association of South Africa (EAPASA). Once established, the Board of EAPASA will formally submit an application to the Minister to be recognised as a Registration Authority for EAPs.

In terms of achieving Outcome 2:

- The DEA and SAQA signed a Joint Implementation Plan in May 2007 and a Task Team of Subject Matter Experts was established through a nomination and selection process;
- The Qualification Task Team held four working sessions that developed the content of the Qualification with core Exit Level Outcomes<sup>2</sup> ;

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<sup>2</sup> Exit Level Outcomes are the outcomes to be achieved by a qualifying learner at the point at which he or she leaves the programme leading to a qualification and achievement of which entitles the learner to a qualification

- The draft Qualification was advertised for comment in the Government Gazette on 30 April 2008 and the Advanced Certificate: Environmental Assessment Practice (Level 7) was registered in terms of the National Qualifications Framework in November 2008.
- The registration of the Qualification marks a major achievement. For the first time, a qualification standard exists against which qualifications and training offerings can be benchmarked. It also enables the necessary systems for Recognition of Prior Learning<sup>3</sup>, which is a mechanism provided for in the National Qualifications Framework, for individuals who have qualified previously or who have been working in the environmental assessment field prior to the registration of the qualification. The qualification is a key criterion for registration and a cornerstone of the proposed registration system.

In terms of achieving Outcome 3:

- Recent amendments to the NEMA EIA Regulations have enabled alignment of terms and definitions within the current Final Draft Proposal.
- On receipt of the application from the new Board, the Minister may choose to recognise the body and may then publish a notification of the registration authority's recognition, as well as a date by which all EAPs practicing in South Africa will need to be registered. It is foreseen that the published effective date will allow for a phase-in period of between 18 months and three years.

The MoU is supporting a number of other key parallel tasks in the process, including:

- Securing funding for first three years of operation of the RA
- The development of Recognition of Prior Learning system
- Finalisation of the formal implementation plan for officials
- Training for the members of the Registration Committee of the RA
- Engaging education & training institutions, and
- Establishing a mentorship system.

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<sup>3</sup> Recognition of Prior Learning is defined by SAQA as the comparison of the previous learning and experience of a learner, howsoever obtained, against the learning outcomes required for a specified qualification, and the acceptance for purposes of qualification of that which meets the requirements.

### 3.4.2 Overview of the contents of Final Draft Proposal for Registration Authority for EAPs

The Final Draft Proposal which is to be submitted in its final form by the appointed Board of EAPASA has been structured specifically to meet the requirements of Section 24H, as follows:

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<b>PART 1: PREAMBLE</b>
<b>PART 2: CONSTITUTION OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONERS ASSOCIATION OF SOUTH AFRICA</b>
<b>PART 3: RULE BOOK OF ASSOCIATION OF ENVIRONMENTAL ASSESSMENT PRACTITIONERS OF SOUTH AFRICA</b>
SECTION 1: CODE OF ETHICAL CONDUCT AND PRACTICE
SECTION 2: CRITERIA AND PROCEDURE FOR REGISTRATION
SECTION 3: GUIDELINES FOR CONTINUING PROFESSIONAL DEVELOPMENT
SECTION 4: DISCIPLINARY COMMITTEE PROCEDURES
SECTION 5: APPEAL PROCEDURE
<b>PART 4: PROPOSED STRUCTURE FOR THE ENVIRONMENTAL ASSESSMENT PRACTITIONERS BOARD OF SOUTH AFRICA</b>
<b>PART 5: LOGICAL FRAMEWORK FOR THE ENVIRONMENTAL ASSESSMENT PRACTITIONERS ASSOCIATION OF SOUTH AFRICA</b>

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A draft business plan (based on a logical framework methodology) has set out the key outcomes, outputs and actions as well as resource requirements for the RA for the first three years, after which the body should become self-sustaining through registration fees.

One of the key tasks of the future RA will be applying to be accredited as the **Education and Training Quality Assurance Body**<sup>4</sup> (ETQA) for environmental assessment practice. This role will assist significantly in ensuring that education and training offerings for EAPs can be accredited in terms of the SAQA-registered EAP qualification – the Advanced Certificate: Environmental Assessment Practice.

A key issue that has provided some confusion in the process is **the legal personality of the proposed Registration Authority**. Section 24H of NEMA specifies that: ‘(1) An association proposing to register its members as environmental assessment practitioners may apply to the Minister to be appointed as a registration authority in such manner as the Minister may prescribe’. The proposal for EAPASA has therefore structured its constitution as ‘voluntary association’ in terms of its legal personality. This does not mean that registration will be voluntary as once the Minister has accepted the EAPASA proposal and recognised it as a Registration Authority and provided for a phase-in period, it will be illegal to practice as an EAP if not registered with EAPASA. This institutional approach is slightly different from the Institutes and Councils of, for example, the planning professionals; however,

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<sup>4</sup> ETQA – Education and Training Quality Assurance Body is a Body accredited in terms of section 5 (1)(a)(ii) of the SAQA Act, responsible for monitoring and auditing achievements in terms of national standards or qualifications, and to which specific functions relating to the monitoring and auditing of national standards or qualifications have been assigned in terms of section 5 (1)(b)(i) of the Act

it will result in the same effect – improved quality assurance. Further, it is the legal framework, i.e. the letter of Section 24H of NEMA, and the need for compulsory and inclusive EAP registration which has directed the process of the establishment of the RA.

It is possible that in the future the Registration Authority may undergo an institutional metamorphosis, perhaps as a part of a Council for Environmental Professionals. However, such a body is likely to have a wider purview than environmental assessment as envisaged NEMA Chapter 5.

### 3.4.3 Summary of the Registration Authority’s proposed registration criteria and process

Using the dimensions from table 1, the following summarises the proposed EAPASA Registration Authority registration system.

**Table 2: Summary of the proposed Registration System**

Dimensions	Environmental Assessment Practitioners’ Association of South Africa
Professional representation	<p><b>EAPS Represented through initiating organisations which have been identified as national stakeholders in the Consultative Process:</b>  <i>Associations, Councils and Institutes:</i></p> <ol style="list-style-type: none"> <li>1. Association for the Advancement of Black Scientists, Engineers and Technologists (AABSET)</li> <li>2. Association of Consulting Town and Regional Planners (ACTRP)</li> <li>3. South African Council for Natural Scientific Professions (SACNASP)</li> <li>4. South African Council for the Landscape Architectural Profession (SACLAP)</li> <li>5. Environmental Law Association (ELA)</li> <li>6. South African Affiliate of the International Association for Impact Assessment (IAIAsa)</li> <li>7. Institute of Landscape Architects of South Africa (ILASA)</li> <li>8. Institute of Waste Management (IWM)</li> <li>9. The South African Association for Consulting Engineers (SAACE)</li> <li>10. South African Black Technical and Allied Careers Organisation (SABTACO)</li> <li>11. South African Institute of Architects (SAIA)</li> <li>12. South African Institute for Civil Engineers (SAICE)</li> <li>13. Southern African Institute of Ecologists and Environmental Scientists (SAIE&amp;ES)</li> <li>14. South African Planning Institute (SAPI)</li> <li>15. Water Institute of Southern Africa (WISA)</li> <li>16. South African Institute for Engineering and Environmental Geologists (SAIEG)</li> <li>17. South African Institute for Environmental Practitioners (SAIEP)</li> <li>18. South African Institute for Environmental Health (SAIEH)</li> </ol> <p><i>National Government Departments:</i></p> <ol style="list-style-type: none"> <li>19. Department of Environmental Affairs (DEA)</li> <li>20. Department of Minerals and Energy (DME)</li> <li>21. Department of Science and Technology (DST)</li> <li>22. Department of Rural Development and Land Reform (DRDLR)</li> <li>23. Department of Water Affairs (DWA)</li> <li>24. Department of Agriculture, Forestry and Fisheries (DAFF)</li> <li>25. Department of Cooperative Governance (DCG)</li> </ol> <p><i>Provincial Departments:</i></p> <ol style="list-style-type: none"> <li>26. Department of Agriculture, Conservation and Environment (Gauteng)</li> </ol>

Dimensions	Environmental Assessment Practitioners' Association of South Africa
	27. Department of Agriculture Conservation and Environmental Affairs (North West) 28. Department of Economic Affairs, Environment and Tourism (Eastern Cape) 29. Department of Finance and Economic Development (Limpopo) 30. Department of Agriculture and Environment Affairs (KwaZulu Natal) 31. Department of Tourism, Environment and Conservation (Northern Cape) 32. Department of Environmental Affairs and Development Planning (Western Cape) 33. Department of Agriculture, Conservation and Environmental Affairs (Mpumalanga) 34. Department of Tourism, Environmental and Economic Affairs (Free State)
<b>Legal Standing</b>	Proposed to be recognized as a Registration Authority in terms of section 24H of NEMA. Once recognised by Minister and after phase-in period, registration will be compulsory.
<b>Registration Categories</b>	Registered Environmental Assessment Practitioner (REAP) Candidate Environmental Assessment Practitioner (Candidate EAP)
	Formal certificate of competence. A SAQA accredited qualification, the Advanced Certificate: Environmental Assessment Practice, NQF Level 7, has been established and includes specified exit level outcomes and associated assessment criteria for the assessment of competence arising from formal study or recognition of prior learning. Registration would require an Advanced Certificate: Environmental Assessment Practice: a) Issued by an accredited educational programme, OR b) Issued by a competent and accredited assessor based on a Recognition of Prior Learning assessment.
<b>Professional Experience</b>	Nature and length of professional experience necessary for effective practice as an EAP. The minimum requirements for appropriate professional experience <sup>5</sup> are as follows: a) A minimum of three years appropriate professional experience; and b) A minimum of three Environmental Assessments (EAs) or Reviews, at an appropriate scale, conducted in that time in which the applicant has held primary responsibility for the conduct or review of the EAs and which demonstrate the required level of competence given the context of the EAs in each of the Exit Level Outcomes listed below and, as relevant, adequately meet the criteria specified for each of these in the Advanced Certificate: Environmental Assessment Practice: ELO 1: Demonstrate a conceptual understanding of the environment; sustainable development; environmental assessment; and, integrated environmental management. (Range: Conceptual understanding includes but is not limited to performance, quality, function, structure and thresholds). ELO 2: Demonstrate the ability to think holistically, systemically, systematically, spatially and in an integrative manner and to discern what is relevant to decision-making. ELO 3: Identify and apply environmental assessment and management procedures and methods. ELO 4: Review and monitor environmental assessment procedures and methods. ELO 5: Conduct applied research activities in a specific context. (Note: An EAP is not required to conduct specialist studies). ELO 6: Meet specific communication requirements at all levels through environmental reporting processes and stakeholder engagement.
<b>Core Competencies</b>	See above Exit Level Outcomes above

<sup>5</sup> Appropriate professional experience refers to relevant experience in the field of environmental practice associated with environmental assessment – demonstrating competence in the required areas.

Dimensions	Environmental Assessment Practitioners' Association of South Africa
<b>Continuing Professional Development</b>	Requirements to report on CPD every five years in order to maintain registration status. Re-registration thus occurs every five years.
<b>Codes of Conduct and/or Ethics, and disciplinary procedures</b>	Code of Ethical Conduct and Practice Disciplinary Committee Procedures Appeal Procedure
<b>References / Referees/ Sponsors</b>	Two anonymous referees assigned by the Board to assist in the assessment of the application for registration

The proposed EAPASA Code of Ethical Conduct and Practice is included below for reference in terms of how issues of objectivity, independence and professional responsibility are addressed.

### Box 1: EAPASA Code of Ethical Conduct and Practice

All REAPs (Registered Environmental Assessment Practitioners) and Candidate EAPs who are admitted to the Register of Environment Assessment Practitioners Board are required to adhere to the following Code of Ethical Conduct and Practice:

1. Environmental assessment practitioners shall carry out their professional activities, as far as reasonable and practical, in accordance with principles of sustainable development, and in compliance with the relevant environmental legislation.
2. Environmental assessment practitioners shall at all times place the integrity of the environment, including conservation and long term sustainable use of the biophysical environment and the social welfare, health and safety aspects of the socio-economic environment, above any commitment to sectional or private interests.
3. Environmental assessment practitioners shall advise the incorporation of environmental considerations from the earliest stages of project conception or policy development.
4. Environmental assessment practitioners shall not conduct professional activities in a manner involving dishonesty, fraud, deceit, misrepresentation or bias.
5. Environmental assessment practitioners will not neglect or subvert good professional practice in order to secure personal gain, or attempt to injure the reputation or opportunities for employment of another environmental assessment practitioner by false, biased or undocumented claims or accusations, by any other malicious action, or by offers of gifts or favours.
6. Environmental assessment practitioners will clearly differentiate between facts and opinions in their work.
7. Environmental assessment practitioners will, to the best of their ability, keep informed of advances in environmental assessment practice, and will integrate such knowledge into their professional activities.
8. Environmental assessment practitioners will inform a prospective client or employer of any professional or personal interests which may impair the objectivity of their work.
9. Environmental assessment practitioners in either public or private employ shall not undertake, review or make decisions based on environmental assessment work where they have a vested or other financial interest in decisions or actions that may arise from the assessment.
10. Environmental assessment practitioners will use the best available information. Where enough relevant and reliable information cannot be obtained, this deficiency must be explicitly stated in the findings or the review of an environmental assessment, in terms of any assumptions and limitations in the environmental assessment or review, the risks to the environment, levels of confidence in predictions, and implications for decision making of information deficiencies.
11. Environmental assessment practitioners must take responsibility for the findings or review of the environmental assessment for which they are responsible. (It is noted that the environmental assessment practitioner cannot be held responsible for

- decisions made by other parties, purportedly based on the findings of the environmental assessment or review.)
12. Environmental assessment practitioners must conduct professional activities, as far as appropriate, in an interdisciplinary manner and recognise the need to collaborate with suitably qualified persons in subject areas where they are relatively inexperienced or unspecialised.
  13. Environmental assessment practitioners should undertake particular environmental assessment work in a position of responsible charge where they are competent to do so. This must be applied without impediment of transformation or prejudice in accessing work opportunities in new fields.
  14. Environmental assessment practitioners shall not advertise their professional services in a self-laudatory manner or in a manner that may discredit the profession.
  15. Environmental assessment practitioners shall not misrepresent or allow or permit misrepresentation of their own or their associates' academic or professional qualifications, or exaggerate their degree of responsibility for any work of a professional nature.
  16. Environmental assessment practitioners shall actively discourage misrepresentation or misuse of work carried out by them or performed under their direction.
  17. Where an environmental assessment practitioner is employed by an organization that is either the proponent of development or stands to benefit directly from development proposed by an outside party, and undertakes environmental assessment work for that organization (so-called 'in house' work), his/her environmental assessment work must be subject to review by an independent environmental assessment practitioner.
  18. Environmental assessment practitioners will demonstrate commitment to the purpose and objectives of the Association, and comply with the provisions of this Constitution and any Rules of the Association.
  19. An EAP must conduct her/his work at the highest possible level of work reasonable to expect from a person in that position.

### 3.5 PROFESSIONAL REGISTRATION REQUIREMENTS OF RELATED PROFESSIONS

The following three related professional bodies provide useful comparisons for professional quality assurance and independence.

#### *South African Council for Planners - SACPLAN*

The South African Council for Planners (SACPLAN) is the statutory Council of nominated members appointed in terms of the Planning Profession Act, Act 36 of 2002 (PPA) to regulate the Planning Profession in terms of the Act. While the Act requires planners to be registered by SACPLAN certain results need to be achieved in order for this enabling legal requirement to be implemented, including the determination of planning competencies and the generation and registration of a national planning qualification standard in terms of SAQA and the National Qualifications Framework this as well as the consultation process on identification and reservation for work, t.

#### *South African Council for the Landscape Architectural Profession - SACLAP*

The South African Council for the Landscape Architectural Profession (SACLAP) was established as a statutory council in terms of Section 2 of the South African Council for the Landscape Architectural



Profession Act, Act 45 of 2000. The Council evolved out of the Board of Control for Landscape Architects (BOCLASA), which functioned under the Council of Architects in terms of The Architectural Act, Act 73 of 1970. SACLAP is also in the process of identification and reservation of work for planners. Currently, the SACLAP system includes a category for environmental management within which it includes environmental impact assessment; however core competencies have not been aligned with the National Certificate: Environmental Assessment Practice, Level 7.

*Engineering Council of South Africa – ECSA*

The Engineering Council of South Africa registers professional engineers in various specialist fields under the Engineering Profession Act, Act 46 of 2000. This as well as other Acts provide for the reservation of work of an engineering nature for the exclusive performance by registered persons. The compulsory registration under Act 46 of 2000 is still being developed.

It is important to note that the above registration bodies which are established through acts of parliament are also subject to the National Environmental Management Act. Hence, the requirement for professionals to ensure that they work within the principles of NEMA and promote sustainable development could be interpreted as a direct, rather than an inferred legal requirement for professional practice.

**Table 3: Key dimensions of related professional registration systems**

<b>Dimensions</b>	<b>Engineering Council of South Africa</b>	<b>South African Council for Planners</b>	<b>South African Council for the Landscape Architectural Profession</b>
<b>Professional representation</b>	44 voluntary organisations are recognised by ECSA under three different categories	he South African Association of Consulting Professional Planners and the South African Planning Institute work in close collaboration with SACPLAN	Institute for Landscape Architecture in South Africa is registered as a voluntary association
<b>Legal Standing</b>	The Engineering Profession Act, 2000, Act 46 of 2000	Planning Profession Act, 2002, Act 36 of 2002	South African Council for the Landscape Architectural Profession Act, Act 45 of 2000
<b>Registration Categories</b>	(a) Professional, which is divided into- (i) Professional Engineer; (ii) Professional Engineering Technologist; (iii) Professional Certificated Engineer; or (iv) Professional Engineering Technician; or (b) Candidate which is divided into- (i) Candidate Engineering Technologist; (ii) Candidate Certificated Engineer; or (iii) Candidate Engineering Technician; or (c) Specified Categories, prescribed by the council.	Professional Planner Candidate Planner Technical Planner	Landscape Architect Landscape Technologist Landscape Technician Landscape Assistant Candidate Landscape Architect Candidate Landscape Technologist Candidate Landscape Technician Candidate Landscape Assistant
<b>Registration Criteria</b>	Vary according to category Qualification recognised by Council Three years relevant experience Referees' recommendation	Vary according to category Qualification recognised by Council Three years relevant experience	Vary according to category and process Qualification recognised by Council Two years relevant experience Referees/peers recommendation and mentors report
<b>Professional Experience</b>	At least three years of professional experience for professional registration, set out in terms of guidelines.	Three years with specific structured experience, set out in terms of guidelines and signed by supervisors	Various depending on appropriate registration process, but usually two years.
<b>Continuing Professional Development</b>	Requirement for reregistration according to point system, accumulated per year	Requirement for reregistration according to point system, accumulated per year	Requirement for reregistration according to point system, accumulated per year
<b>Codes of Conduct and/or Ethics, and disciplinary procedures</b>	Code of Conduct for Registered Persons	Planning Profession Principles and Code of Conduct applies to all registered persons	Draft Code of Conduct (published for public comment in Jan 2011)
<b>References / Referees/ Sponsors</b>	Two referees reports, one of which may be that of a mentor		Recommendations by two registered peers and mentor, in the case of Candidate upgrading to full professional status.

## 4. ANALYSIS

### 4.1 PROBLEM IDENTIFICATION

The following key issues have been synthesized from the issues arising out of the REE Study and resulting conference as well as those gathered through review of documentation and interviews with key informants. While the issues of related to independence are inextricably linked to quality assurance in terms of ethical practice they are presented separately in the sections below.

Two issues that have been raised in the terms of reference and by the Steering Committee which do not specifically fit into the framework provided below are the issue of establishment and regulation of professional consulting fees and the issue of *pro bono* work. There is a concern that the requirement for environmental authorisation and the costs involved of employing a consultant are prohibitive for small-scale developments or community-led initiatives.

While certain registration bodies of related professions provide professional fee schedules, for example, SACPLAN and ECSA, the Department of Public Service and Administration also publishes a schedule annually for guidance on consultants employed by the public sector. These rates are benchmarked against employment levels in government. In discussion with planning and engineering professionals it is clear that these rates schedules provide an upper rather than a lower limit for rates and do not enable more cost effective professional work. Most professionals do not use these rates as it would result in their services being uncompetitive.

The contribution to society in undertaking *pro bono* work cannot be enforced, however it can be encouraged. As such the proposed EAPASA CPD system allows professionals to gain points for *pro bono* work.

#### 4.1.1 Lack of clarity of the role of EAPs

Regardless of the content of NEMA and its Regulations, there are wide-ranging views on the role of the EAP in implementing Chapter 5 of NEMA. These views range from finding the best way for a development to proceed where the no-go option is really just a “null hypothesis” through to informing desirability of a development where the no-go option is an actual potential outcome.

Perhaps these varying perceptions are borne out by a blunt instrument - the data on numbers of applications application not authorised. Obviously, a far more textured and layered view would be the

review of how the mitigation hierarchy is implemented in the assessment and decision-making processes.

A key issue that has been long debated in the industry is the role of the EAP in making recommendations for the decision. There is a continuum of views that includes the role of the EAP as making specific recommendations on the desirability of the proposals and recommending the best environmental alternative through to only presenting the impacts of the various alternatives. Many in government would argue that the requirement for EAPs to provide a reasoned opinion with respect to the desirability of a proposal in terms of Regulation 31 solidifies the essential role that EAPs should play; in other words, the application of reasoned professional judgment. As a comparison, the Commission for Environmental Assessment in the Netherlands which reviews all EIR Reports on behalf of the relevant authorities does so in terms of quality assurance being limited to the quality of the information and methodologies employed. It does not advise on the decision for the relevant authority.

The concept of neutrality for EAPs requires further debate in the sector. Should EAPs be neutral to the outcome or should they be promoting the best outcomes for sustainable development, the environment and society?

The proposed EAPASA Code of Ethical Conduct and Practice sets out the following in terms of the role of the EAP:

- “1. Environmental assessment practitioners shall carry out their professional activities, as far as reasonable and practical, in accordance with principles of sustainable development, and in compliance with the relevant environmental legislation.
2. Environmental assessment practitioners shall at all times place the integrity of the environment, including conservation and long term sustainable use of the biophysical environment and the social welfare, health and safety aspects of the socio-economic environment, above any commitment to sectional or private interests.”

The issues independence and objectivity are discussed in section 4.2.3 below.

#### 4.1.2 Existing regulatory system's unintended consequences for perceptions and reality of quality and ethics of practice

EAPs are in an invidious position when it comes to their role and unintended consequences of the Regulations that have been promulgated under Chapter 5 of NEMA. A number of issues have arisen:

- *The regulatory system has resulted in the removal of the need for the application of professional judgment by EAPs in both the consulting and regulatory sectors.* For example, there are always special cases as the identification of activities cannot possibly anticipate all eventualities, however, there is insufficient discretion afforded the relevant authorities to decide whether an activity should require an environmental authorisation. In effect the lack of a screening mechanism and some level of discretion results in necessary development being subject to inefficient administrative processes. Examples cited by key informants include situations where not undertaking the activity timeously could result in significant impacts, such as the rehabilitation of sewer lines or the need for an authorisation when the merits of the case really suggest otherwise. While the exemption avenue is available, this is seen as adding significantly to the timeframe and many proponents would rather just 'jump through the hoops' of the relevant authorisation process.
- *The regulatory system is detailed in terms of process and procedures. This has the consequence of aiming for the minimum requirement rather than good practice,* an effect that seems to impact specifically the quality of public participation processes. Good methodological practice could often exceed minimum requirements. The financial imperative of proponents would generally aim to meet minimum legal requirements.
- *Once the formal application process has been initiated, in practice it is unlikely that the nature of the project, its design, etc. will be improved prior to the assessment of impacts.* The consequences of starting at the beginning of the process in terms of resubmission and the time delays involved mean that much focus could be on the mitigation of impacts. This does not result in best practice from an Integrated Environmental Management Perspective or in the intended efficiencies in the system.
- *Perceptions of quality of EAPs stretch way beyond their own practice, but are influenced by the EA systems themselves.* Development proponents and communities do not necessarily understand how EAPs are subject to these unintended inefficiencies in the system and hence, a perception of incompetence and ineffectiveness is one which can be created. In other

words, the lack of discretion in relevant authorities in how the regulations are applied, results in inefficiencies and perceptions of the ineffectiveness of EA.

- *Erroneous conflation of quality and independence.* While quality assurance in environmental assessment practice includes requirements for ethical professional conduct, the signing of a declaration of independence does not ensure quality in terms of competence in the assessment process. To date, the regulatory system has emphasised the need for independence over quality assurance. There is obviously the intention to rectify this situation through the establishment of the Registration Authorities for EAPs. Issues relating to independence, objectivity and lack of bias are presented below.
- *The detailed level of regulation of EA is not resulting in the desired improved environmental outcomes.* EA systems and efforts to improve efficiency are too focused on administrative process and are not enabling improvements to environmental quality. Suggestions are made to look at the National Water Act's implementation strategy which is implementing a full policy cycle. In other words, monitoring the outcome of the regulation of water resources in terms of the resource quality objectives.
- *Implementation, monitoring, enforcement and evaluation/review parts of integrated environmental management system are not receiving adequate attention.* The results of this include that the quality of assessment and decisions can never really be verified. Further, implementation of conditions of authorisation and the actual impacts on the environment are ineffectively managed.

#### **4.1.3 Independence and objectivity**

The key issues in relation to independence reflect the diversity of views in government, NGOs and consultants as well as individuals working in parastatals.

- *There are strongly opposing views on the issue of 'independence' that are unlikely to be resolved in the short-term;* many consulting and parastatal groups reflecting that it is not meaningful and that objectivity should be the required outcome. The independence definitions and clauses in the Regulations have been supported strongly through environmental advocacy groups.
- *Independence and objectivity are seen to be undermined through the employment relationship or through direct payment for services.* Most EAPs working in private practice will concur with the view that independence of the EAP is the first issue to be raised in a

contentious development, regardless of the individuals practice record. Due to the fact that EAPs are engaged and paid by development proponents at the stage when there is already a fixed proposal ready for application undermines fundamentally the position of independence. There is also a very strong view from individuals working in parastatals that retain the services of EAPs for many projects that EAPs are ultimately forced to serve the needs of the client and may be influenced to do so. A large proportion of stakeholders engaged in public participation processes of EIAs in South Africa would tend to question the independence and objectivity of the EAPs. Alternative options that have been raised include the establishment of a roster for EAPs rather than allowing a client-consultant relationship to develop as well as enabling payment for consulting services through government or an interceding authority or body.

- *Individuals working in a specific sector sometimes have the best knowledge to improve the environmental sustainability of proposals but are in effect excluded from the EAP role.* While the section 50 exemption option is available, many EAPs in practice would suggest that applications for exemption from independence are far too risky for most clients, given the potential for 'vexatious' legal challenges. They would rather suggest that an independent contractor is employed.
- *The exclusion from compiling Environmental Management Plans (EMPs) in terms of the Regulations and associated guidelines could result in unnecessary inefficiencies.* This opinion has been expressed from two points of view. First, where a company is responsible for the original assessment being excluded from compiling the EMP due to their historic involvement in the process; second where a company involved in implementation, for example design engineers, cannot undertake an EMP for the construction phase. While the latter may seem appropriate, there is a significant concern regarding the competence of individuals who do not have on-site environmental management experience. Perhaps this relates less to the problem of independence and more to the issues of competence areas of EAPs.
- *There is currently no sanction mechanism in place for unethical practice by EAPs (or for poor professional practice).* While the EAPs in relevant authorities can use Regulation 18 to disqualify a specific individual, until such time as the Registration Authority becomes effective and there is a legal requirement to be registered, there will be no catch-all sanction mechanisms for poor or unethical practice. Further, as the proposed registration of EAPs includes individuals working in the relevant authorities, there is currently no accessible sanction mechanism for EAPs in this category or for those who work for parastatals. Once the

Registration Authority becomes effective, there will be recourse to stakeholders who observe poor or unethical conduct or practice. Included in the proposed system are a disciplinary process and an appeal process in line with the provisions of the Promotion of Just Administration Act.

The proposed EAPASA Rule Book's Code of Ethical Conduct and Practice includes the following ethical codes:

- “6. Environmental assessment practitioners will clearly differentiate between facts and opinions in their work.
- 8. Environmental assessment practitioners will inform a prospective client or employer of any professional or personal interests which may impair the objectivity of their work.
- 9. Environmental assessment practitioners in either public or private employ shall not undertake, review or make decisions based on environmental assessment work where they have a vested or other financial interest in decisions or actions that may arise from the assessment.
- 17. Where an environmental assessment practitioner is employed by an organization that is either the proponent of development or stands to benefit directly from development proposed by an outside party, and undertakes environmental assessment work for that organization (so-called ‘in house’ work), his/her environmental assessment work must be subject to review by an independent environmental assessment practitioner.”

While issues of independence and objectivity remain very contentious ones in the industry and in civil society, the future EAPASA supports the principles of ensuring objectivity and ensuring that there is no direct pecuniary interest in the outcome of the environmental assessment process. The adoption of the proposed Code of Ethical Conduct and Ethics conforms to best practice internationally.

Of the 16 southern African EA systems reviewed by Walmsley and Tshipala (2009), South Africa was the only country that has independence as a regulatory requirement; however many of the other country's regulators interviewed wished that independence was a regulatory requirement in their country (pers. com. Bryony Walmsley).



#### 4.1.4 Quality assurance in practice

The foundations of quality assurance in environmental assessment practice are competence (including academic training, experience and core competencies), ethical conduct, and review. As stated in section 1, there is as yet not specific requirement for EAPs to be registered, although increasingly, tender documents as well as clients and stakeholders in are requiring that individuals be certified in terms of the existing voluntary system provided through EAPSA.

While the future Registration Authority, EAPASA has been modeled on best practice internationally, there will always be a need for quality assurance to adapt to changing demands for environmental assessment practice. Further, the registration authority should not be seen as the panacea for all that is dysfunctional in EA practice. It will need the co-ordinated support and partnership of a number of stakeholders in strengthening the foundations of competence, ethics and review.

The following are potential gaps that may need to be addressed in the future:

- The proposed EAPASA registration system has provided for two categories, Registered Environmental Assessment Practitioner (REAP) and Candidate Environmental Assessment Practitioner (Candidate EAP) and linked to three key sets of criteria of Certificate of Competence (formal qualification), relevant experience and ethics. It has been established in this manner to provide for a core set of competencies which are relevant to the implementation of a range of IEM tools and mechanisms; however as practice evolves there be a requirement for specialist areas to be developed in the future?
- There is no current professional registration home for public participation practitioners, social impact assessment practitioners or other specialists that are involved in environmental assessment processes, however, many would argue that specialist inputs into these processes requires quality assurance beyond, for example just the relevant specialist's practitioner professional body.
- There is no current environmental practice registration home for environmental control officers (operational level), environmental management inspectors, building inspectors, etc. yet this arena is where the 'impacts hit the ground' and effective monitoring and enforcement could significantly improve environmental outcomes.
- There is no specific requirement in related professional body's e.g., spatial planners and civil engineers to comply with a set of environmental ethical standards of practice, yet one could

argue that these professionals play an important role in implementation of IEM at the planning and implementation stages.

- There is no specific requirement for registration of practitioners implementing authorizing aspects of specific environmental management act.

## **Competence**

Competence in quality assurance is usually viewed as the combination of formal qualification and relevant professional experience. The following key issues are relevant to improving the attainment of competence of EAPs in South Africa:

### Formal education and training:

- *Lack of a co-ordinated and content specific skills development programme for Integrated Environmental Management in South Africa.* While the Environmental Sector Skills Plan (ESSP) is still in the process of development, it has not identified in a content-specific manner the competencies and specific skills areas needing development in Integrated Environmental Management.
- *Alignment of education and training programmes with the EAP Qualification:* The EAP Qualification includes has described a core set of competencies which are relevant to the implementation of environmental assessment tools and mechanisms. While an urgent need to establish the proposed EAPASA as the Education and Training Quality Assurance body in order that training offerings at institutions of higher learning can be accredited to the qualification standard. (The ESSP recommends that an Environmental SETA be established.) A strategy is underway within the DEA and proposed Registration Authority to systematically engage universities etc., to encourage these processes. It is important to note that it is not just environmental science and management programmes that could be accredited. It would be desirable for planning, landscape architecture, sustainability and engineering programmes to provide, should it be deemed appropriate, similarly tailored programmes that could be accredited in terms of the qualification standard.
- *Lack of formal learnerships in identified areas of need.* Initiatives within the national DEA as well as parastatals (TCTA) indicate that there are specific needs for learnerships. First would be the need for learnerships to bridge the experience and competence gap recent graduates in order that they can meet the requirements for registration as a REAP. Second would be a

range of learnerships aimed at enabling competence in specific areas. For example, DEA may consider developing a learnership programme for more junior case officers to undergo a structured learning process towards registration. Another useful and relevant example in the context of the recognition that implementation in the IEM cycle has been neglected, is that of a learnership aimed at the environmental management professional undertaking project implementation in large infrastructure projects.

- *Lack of formal mentorship and internship programmes.* These programmes could effectively be structured learning processes, designed around the needs of the individual entering the programme. While the future Registration Authority proposes that internship and mentorship programmes be developed in partnership with other players in the sector, the success of this programme. Internships require real work opportunities under a supervisor (a REAP) with a mentor as a third party (preferably also a REAP).

## Review

Internationally, peer or expert review is recognised as a key quality assurance tool. While the South African regulatory system provides for the appointment of review, the following issues arise in an analysis of how the review mechanisms are applied:

- *Existing 'regulatory review' as quality assurance mechanism is 'end of pipe' and does not improve effectiveness or efficiency of the IEM system.* The first point of peer review of an environmental impact report is usually the EAP who performs as a case officer in the relevant authority. These 'regulatory EAPs' can also use Regulation 18 should they feel that the consulting EAP is not competent to undertake the work. However, at this stage where an application is being reviewed from a regulatory perspective, the opportunity has already been lost to reduce the administrative burden on government and improve efficiency in the system. The current mode of 'regulatory EAPs' spending a large proportion of their time checking to see whether the correct information has been provided means that less emphasis is placed on the review from a desirability point of view. Many would argue that this 'end of pipe' quality control should not be the emphasis of EAPs in government. This situation is planned to change with the proposed Registration Authority.
- *Post hoc and ad hoc review are not the most effective approach in enabling quality assurance.* The provision for the appointment of independent review is used on an ad hoc

basis and also usually only to advise the relevant authority post the assessment process. This is not the most effective stage for the articulation of review with an environmental assessment process. Further, the fact that the appointment of a review panel or expert is discretionary is both an advantage and a disadvantage. The advantage is the fact that there is at least a level of discretion; however the disadvantages include the fact that an internationally recognised quality assurance mechanism is not being effectively institutionalized in the system.

### **Standards of practice**

Subtheme 11 has identified a range of guidelines for different tools of Integrated Environmental Management in which there has been a significant focus on practice guidelines leading up to a decision. The identified need is for further focus on standards of practice for implementation, monitoring and evaluation in IEM.

### **Monitoring quality of practice**

As identified above and by many other subthemes in the EIAMS thus far, the IEM strategy to date has focused mostly on the planning and decision-making outcomes of the overall system which would include the following components (NOTE: This is a slight adaptation of the systems diagram presented by Madeleine Oosthuizen):

- Policy level outcomes (the normative framework)
  - Long term: Constitutional Environmental Right, NEMA Principles, Sustainable Development targets
- Planning level outcomes:
  - Medium-term (Five-year): Medium-term Framework Outcome 10 targets, Environmental Sector Strategic Plan targets
  - Spatial tools: Bioregional Plans/Biodiversity Plans, Catchment Management Plans, EMFs, SDFs, SEA
- Decision-making outcomes:
  - Environmental authorisations in terms of section 24 of NEMA and conditions of authorisation
- Implementation and monitoring outcomes:
  - Implementation, monitoring and enforcement of conditions of environmental authorisations and environmental management plans and programmes.
- Evaluation and review outcomes:

- Evaluation of the achievement of the targets and the reasons for achievement
- Review of elements of the normative and planning level outcomes.

The challenge for quality assurance is to focus beyond the provision of registered EAPs to the continual improvement of practice in South Africa. There are two essential articulation points for monitoring and evaluation that can assist in the improvement of the quality of EA practice.

- Monitoring and evaluation of the actual impacts realized in implementation of the activity authorised. This will provide significant insights into both the planning and the decision-making outcomes.
- The monitoring and evaluation of overall outcomes of the IEM system. In other words, the selection of indicators that would assist in determining whether the system is supporting the improvement of environmental quality and contributing to sustainable development.

#### **4.1.5 Transformation of the EAP sector**

As described in Subtheme 6, the legacy of unequal education and professional employment opportunities on the basis of race and gender has left a major transformation challenge to the environmental assessment practice sector. The proposal for EAPASA has addressed these issues directly in a number of ways:

- The required representation of on the Board and the Registration has been detailed specifically in terms of race and gender;
- It has enabled the establishment of an EAP Qualification and is establishing a Recognition of Prior Learning System to enable equal access to registration;
- It includes the proposal for the establishment of an internship and mentorship programme (run in partnership with other institutions) which can enable specific access to new entrants to the EA field;
- It is committed to developing a transformation strategy.

While the EAPASA has addressed these issues of transformation directly, there are many other players that need to contribute within their own capacities.

#### 4.2 TOWARDS PRINCIPLES FOR THE EIAMS

On the basis of review of similar systems internationally and the perceived shortcomings of the existing and proposed systems for quality assurance and independence and objectivity of EAPs, the following are principles for consideration by the Task Teams and Steering Committee:

- The *role of the EAP* in EA in South Africa is a unique one in terms of professional role and ethics, the development outcomes that need to be sought are *not neutral but pursuant of the best environmental outcome* in the circumstances, based on an explicit set of values, embodied in government policy and societal values.
- Quality assurance mechanisms are not static once off institutional solutions and require ongoing *monitoring and evaluation and review*.
- The quality of practice and ethics is the responsibility of individual practitioners. Attempts to 'regulate away' the need and responsibility for the application of *professional judgment* and discretion are not enabling quality assurance in professional practice. Mechanisms to enable discretion without undermining the rights of stakeholders need to be considered.
- Environmental assessment is by its nature a *value-based* and driven process, it is not possible to provide detailed specifications (e.g. engineering design specifications) for each and every situation, however making values explicit in the assessment and evaluation process will improve quality of practice and decision-making.
- Independence and objectivity are contentious but nonetheless are enshrined in the Regulations as well as the Code of Ethical Conduct and Practice. Consideration should be given to piloting on a trial basis *alternative ways of enabling objectivity* in cases where Regulation 50 is used for exemption to Regulation 17.
- A co-ordinated and *content-specific skills development programme* needs to be undertaken for EAPs in the IEM sector.
- *Review* needs to be pursued as a third and essential component of quality assurance in ways that are meaningful in improving quality of practice. The effect could be two-fold, on quality of work and enable independent review.
- Standards of practice need to be pursued for *implementation phases* of the IEM system.
- Quality assurance mechanisms are not static once off institutional solutions and require *ongoing monitoring and evaluation and review*.
- The EAP sector needs a *transformation strategy* linked to skills development, mentorship and internship programmes.

## 5. SYNTHESIS: PROPOSALS AND RISKS

### 5.1 INTRODUCTION

The proposals in this section are presented to the Task Group and the Steering Committee for their consideration. Some of these proposals are partly identified in current processes, including the establishment of the Registration Authority for EAPs and initial engagement in the DEA proposed implementation plan for EAPs in government. They are intended to contribute to the attainment of the following outcomes:

The goal compiled by the Project Steering Committee:

To ensure quality, independence and certification of EAPs.

The objectives compiled by the Project Steering Committee

Goal 1: To ensure that professional work done by EAPs is of an acceptable quality and in line with quality requirements determined in subtheme 11:

Goal 2: To ensure that EAPs act independently and [are] professionally objective

Goal 3: To facilitate and improve the proposed EAPs or alternative Environmental Practitioner professional registration process also in line with new proposed tools in subtheme 9.

A key assumption made in the following proposals is that the proposed Registration Authority in the form of EAPASA will contribute significantly to quality assurance in EA practice, both through the legal requirement to be registered and the sanction mechanisms proposed.

### 5.2 IMPROVING COMPETENCE

Key aspects to be considered in improving competence of EAPs in government, parastatals and private practice are: formal qualifications and training; learnerships, mentorship and internships; and, establishing standards of practice.

#### **Proposals:**

- Establish the future Registration Authority as the Education and Training Quality Assurance Body for environmental assessment practice in terms of section 24 of NEMA.
- Engage institutions of higher learning in accrediting their relevant educational programmes in the environmental field. Target planning and landscape architecture fields which are often associated with EA practice.

- Develop a content-specific skills development strategy and implementation plan for EAPs. This would involve a capacity needs assessment focused on the outcomes of the EIAMS, including identified needs in implementation phase of IEM and requirements in other related disciplines.
- Develop specific learnership programmes to address identified needs in EA practice, including for example, skills associated with the development and implementation of environmental management plans and training new entrants to the field.
- Develop internship and mentorship programme aimed at addressing transformation in the sector and in facilitating the registration of new entrants. (Mentorship has been included in the proposed Continuing Professional Development (CPD) guidelines as one way of attaining CPD points.
- Develop a long-term monitoring and research programme (in partnership with academic and research institutions) on a selected set of environmental assessment processes in order to review the effectiveness of the assessment, implementation of conditions of approval and environmental outcomes predicted. Enable a direct feedback of findings into the improvement of practice.
- Identify and institute a set of performance indicators for the proposed Registration Authority (see draft business plan/logical framework for proposals) which the Minister and the public can use to evaluate the effectiveness of the body.

**Risks:**

The following risks and potential problems have been identified with respect to the above proposals:

- The EAPASA is not recognised by the Minister as the Registration Authority in terms of section 24H of NEMA.
- The role of ETQA is not assigned to the proposed Registration Authority.
- The response of institutions of higher learning does not match the urgency of implementing the registration system, delaying the first 'batch' of graduates with the *Certificate in Environmental Assessment Practice (Level 7)*.
- The internship programme does not secure sufficient work placement opportunities

### 5.3 INSTITUTIONALISING REVIEW

In the case studies reviewed in the Netherlands and Canada, it is clear that independent peer review can significantly contribute to quality assurance in practice. The nature of the review should mirror the decision points currently set in the Regulations rather than being post-hoc or end of assessment process. This will enable the implementation of the reviewer's advice early on in the process and thus



provide more potential for improved practice. It is important to note that environmental management plans should also form part of the review process.

**Proposals:**

- Compile a 'Listing Notice 4' for activities or environments for which external peer review is mandatory. Note that this should not dispense with the relevant authority's discretion to require review for any activity. Consider the following alternatives for institutionalising reviews:
  - Appointment of reviewers is undertaken by the proponent on the advice of the relevant authority on the basis of their relevant experience.

OR

- Establish a Commission on Environmental Assessment or permanent national and provincial EA review panels which can be supplemented by relevant experts, funded by government through a set fee obtained via proponents.
- Develop guidelines for the selection of reviewer.
- Undertake an evaluation of the existing review guidelines with a view to improvement of quality.
- Develop a monitoring and research programme to establish the effectiveness of the instituted review system.

**Risks:**

- Review mechanisms may appear costly and not find favour in budget allocation, although, this should result in increased efficiency in EA processes.

#### 5.4 ETHICS IN PRACTICE

Alternative mechanisms to independence identified in case studies involve a combination of agency intervention, e.g. Canadian Environmental Assessment Agency, which provides for key parts of the stakeholder engagement processes. It is important to note that regardless of the legal requirement for independence, all relevant codes of ethics and practice require objectivity and ethical professional judgment.

**Proposal:**

- Monitor all Regulation 50 – based exemptions from Regulation 17 and assess the impacts on quality of assessment work in terms of the application of objective professional judgment.

- Support the implementation and enforcement of the proposed Code of Ethical Conduct and Practice of the Registration Authority (EAPASA).

**Risks:**

- The Minister does not recognise EAPASA as the Registration Authority.
- The EAPASA will take about three years to become operational in terms of a phase-in period for the legal requirement to be registered; however as soon as the Minister has made the announcement in terms of recognising it as the Registration Authority, applications for registrations can be processed. Any EAP admitted to the register will therefore be subject to the Rule Book of the EAPASA, including the Code of Ethical Conduct and Practice as well as the disciplinary and appeal procedures.

## 5.5 INVESTIGATING FUTURE REGISTRATION NEEDS

While the EAPASA has focused on the registration of EAPs as defined in NEMA and the Regulations, needs have been expressed in the public participation and social impact assessment fields to establish registration requirements. The need for quality assurance of specialists contributing to EA processes or IEM tools has also been raised, not in relation to their specialist content competencies, but rather their competencies in participating in environmental assessment processes and methodologies. It is important to note that a dual requirement for registration of professionals is not desirable. Further, individuals involved in implementation of environmental management programmes at a technical level and in inspection and enforcement have also expressed a need for quality assurance in practice.

**Proposals:**

- Investigate the addition of a technical-level EAP category with specific identification of work to be undertaken by such persons.
- Engage relevant professional registration bodies for specialists to explore ways of improving quality in EA practice.
- In parallel with the implementation of the proposed EAPASA system, investigate in the medium to long-terms the establishment of a Council for Environmental Professions, under which a range of generalist and specialist practitioners could be registered.

**Risks:**

- Other professional bodies view quality assurance strategies as impinging on their domain of registration and do not co-operate.

- The proposal for the Council for Environmental Professions may impact a range of other existing registration bodies and be seen as a threat, impinging on the domain of work already regulated.

## **6. CONCLUSION**

Quality assurance in environmental assessment practice has been on the agenda in the sector in South Africa since the promulgation (and possibly before) of the first generation of EIA regulations under the Environmental Conservation Act. After the voluntary certification was provided by EAPSA in 2001 there has been an ongoing quest to enable the compulsory registration of EAPs. This mechanism is close to fruition through the EAPASA as the proposed Registration Authority for EAPs. The establishment and operationalisation of this body is just a first step in addressing the ongoing challenges in quality assurance. It will need to evolve together with a changing context for practice.

Quality assurance in environmental assessment practice includes the requirement for ethical practice. Ethical practice usually involves the requirement for objectivity and the application of independent professional judgment. A key question that requires debate in the sector is whether or not an EAP should be neutral to the outcome of an assessment process. Should EAPs be promoting the best outcome for sustainable development, the environment and society?

Key mechanisms for quality assurance include competence, review and ethics. Each of these dimensions has been explored using case studies and key informant opinions, and proposals for improving the application of these dimensions as well as the risks for implementation have been presented. Comment and debate on these proposals and the findings of this study are welcomed.

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## **APPENDIX A: CODES OF ETHICS - EXAMPLES**

### **CODE OF ETHICS CEnvP AUSTRALIA AND NEW ZEALAND**

Certified Environmental Practitioners (CEnvPs) are required to uphold the Code of Ethics adopted by the Environment Institute of Australia and New Zealand.

The following Code of Ethics and Professional Conduct was adopted by the Council of the Institute in April 1989 and ratified by members of the Institute in a General Meeting on the 10th day of October 1989. Until revoked or amended in accordance with the Rules of Association this Code of Ethics and Professional Conduct is that governing the professional activities of members of the Institute and Certified Environmental Practitioners.

- The member shall carry out his or her professional activities, as far as possible, in accordance with emerging principles of sustainable development and the highest standards of environmental protection.
- The member shall at all times place the integrity of the natural environment and the health, safety and welfare of the human community above any commitment to sectional or private interests.
- The member shall be personally accountable for the validity of all data collected, analyses performed, or plans developed by the member, and for the scrutiny of all data collected, analyses performed or plans developed under the member's direction.
- The member shall actively discourage misrepresentation or misuse of work the member has performed or that which was performed under the member's direction.
- The member shall conduct professional activities, as far as appropriate, in an interdisciplinary manner and recognise the need to collaborate with suitably qualified persons in subject areas where the member is less experienced.
- The member shall ensure the incorporation of environmental protection considerations from the earliest stages of project design or policy development.
- The member shall not conduct professional activities in a manner involving dishonesty, fraud, deceit, misrepresentation or bias. The member shall not advertise or present the member's services in a manner that may bring discredit to the profession.
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### **ENVIRONMENTAL PROFESSIONAL (EP) CODE OF ETHICS ECO CANADA**

All ECO Canada certified members, staff, volunteers, committee members and board members are required to abide by the Environmental Professional (EP) Code of Ethics. All certified members, staff, volunteers, committee members and board members must:

- ▣ Recognize the responsibility for environmental stewardship and protection of the public through the use of sound scientific practices in the conduct and representation of work undertaken.
- ▣ Endeavour at all times to enhance the public regard for the certification and the profession.
- ▣ Conduct all affairs in a manner reflecting the highest ethical standards. Be honest and candid and perform work with integrity and due care.
- ▣ Hold in strict confidence, except as required by law, all information concerning the business and affairs of the employer or client acquired in the course of the professional relationship, and not use this information for personal gain.
- ▣ Avoid situations that are explicitly or implicitly in conflict of interest with their employer or client, without the knowledge and consent of their employer or client. Remain free of any influence, interest, or relationship that impairs professional judgment, independence, impartiality or objectivity.
- ▣ Strive to serve the employer and client in a conscientious, diligent and efficient manner.
- ▣ Be competent, having the skills, knowledge and experience to perform the required work.
- ▣ Represent qualifications and competencies, or advertise services, only through factual representation without exaggeration.
- ▣ Not be associated with any report, statement, or representation known to be false or misleading.
- ▣ Commit to honest, thorough, and straightforward communication in the performance of professional duties.
- ▣ Conduct oneself toward others with fairness and good faith.
- ▣ Endeavour to continuously improve his/her skills and proficiency through practice, education and professional development.
- ▣ Maintain proper regard in all work for the safety and welfare of all persons and for the physical environment affected by the work.