

**ICB DEAT Consultative Process towards the establishment of a Registration Authority
for Environmental Assessment Practitioners in South Africa**

Comments and Responses Report for Draft Proposal Distributed in October 2007.

1. COMMENTS FROM ORGANISATIONS

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| Comments on the establishment of the proposed new registration Board | | | | |
| 1 | General | SACLAP | <ul style="list-style-type: none"> • The presently registered professional landscape architects undertaking environmental impact assessments as a core function within their practice will in future have to register under the proposed Board for Environmental Impact Practitioners. That means dual registration will be required should such an individual wish to continue as a registered professional landscape architect as well. • These individuals will have to apply for registration with the proposed Board within the framework of the core competencies proposed providing that all individuals presently working as environmental impact practitioners are treated equally and / or will be required to undertake the same registration process as others. • Should the individuals presently certified by the Interim Certification Board for Environmental Practitioners (ICB) be exempted from the registration process, SACLAP will insist that those identified and to the satisfaction of this Council deemed to be competent in terms of the proposed core competencies be exempted from the registration process as well. SACLAP will use the same criteria to evaluate eligible registered professional landscape architects as being proposed for registration in the discussion document. • SACLAP will not apply to the Department of Environmental Affairs and Tourism as a dual registration authority for Environmental Impact Practitioners. • SACLAP will inform and update registered professionals on matters pertaining to the proposed Board. It is the duty of SACLAP to protect the rights of registered professional landscape architects as required in the Landscape Architectural Professions act 2000 (Act No 45, 2000) | <p>All specialists will need to be registered in their fields, e.g. as architects, engineers, etc.</p> <p>The agreement is that the new Board will decide on how to deal with ICB, SACNASP and SACLAP EA certified individuals.</p> |

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| | | | <ul style="list-style-type: none"> The academic qualification required for registration of an environmental impact practitioner must include the recognition of the professional qualifications for landscape architects of those presently practising in the field of environmental assessment. The proposed Board will have to in future make inputs to the educational requirements for the purpose of acceptance of the professional landscape architects qualification as a basic qualification (as a recognised equivalent) for an environmental impact practitioner. | Any level 7 qualification will be considered as long as it includes the content of new SAQA EAP qualification. |
| 2 | General | SACNASP | <ul style="list-style-type: none"> The Council for Natural Scientific Professions and its mandate (in accordance to the Natural Scientific Professions Act, 2003 [Act 27 of 2003]) should feature in the document - e.g. the Council is to protect the public in general from those practising and consulting in natural science. The Council must also protect the profession as per the Act from those not registered, but practising and consulting. The Council for Natural Scientific Professions should be listed with the organisations which were “to be engaged for normal response to the draft proposal” as listed on page 3 of the draft proposal. | Omission addressed |
| Comments on the Draft Constitution | | | | |
| 3 | General comments | Environmental Law Association | The constitution appears to focus more on the establishment of a Board rather than with the regulation, rights and duties of its members. It seems the members of association are subordinate to the board rather than the board accountable to its members. A more democratic structure would be preferable. | The amendments make explicit the rights of members and duties of the Board and committees |
| 4. | General comments | Environmental Law Association | The constitution is not structured in a logical and user friendly way. For example the Board’s powers are contained throughout the constitution rather than in one place. | Powers and functions consolidated and gaps such as sanctions addressed. |
| 5 | General | SACNASP | Section 24H of NEMA allows for the establishment of an “authority”. Yet the draft uses the term Board. This causes immediate confusion as there is another “Board” that is created under the Association’s constitution. I suggest that to avoid confusion the Association’s name be simply “Environmental Assessment Practitioners Authority. ” | Changes have been affected to the name of the association to reduce confusion. |
| 6 | General | SABTACO | The development and support of environmental black professionals in the built environment is key and largely includes issues pertaining to transformation and gender. | Noted and addressed |

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| 7 | General | IAIASa | <p>All branches were asked to respond to the draft document and this submission represents the IAIAsa National Executive Committee’s understanding of the salient points from the responses received. Because of the diverse nature of our membership (derived from consultants, government, academia and NGOs), there is a wide range of interests represented within IAIAsa. As such, a unified response regarding the proposal is not possible. For this reason, the principles that emerge from the responses are summarised below and the individual responses received are included in their entirety. The issues outlined below are thus supported by individual submissions and responses, which are appended.</p> <ul style="list-style-type: none"> • There is broad support for a move to regularise the profession and to improve its status. For this reason the establishment of a Registration Board is SUPPORTED. However we earnestly request that thought is given to the registration and certification of specialists who may not wish to practice as an EAP, e.g. ECOs, Public Participation specialists, Biodiversity specialists, etc. • The principle of improving the practice of impact assessment is SUPPORTED. We would suggest that the focus on assessment to the exclusion of monitoring and reporting should be revised. • The principle of transformation and greater representivity of those previously disadvantaged by race, gender or disability is SUPPORTED. However, the mechanisms by which this is to be achieved requires greater thought as there are pitfalls attached to using quotas blindly. We suggest that consideration is given to weighting qualifications in terms of experience and trust more heavily than race and gender. • The principle of sector representivity on the Board is SUPPORTED. • However we believe that the inclusion of ‘ancillary’ professions, such as engineers is not necessary. We would support the inclusion of representation from tertiary education institutions that are involved with training EAPs. • The principle of regular elections and alternation of persons on the Board is SUPPORTED. However the mechanisms to achieve this require further thought and refinement. • The principle of training and mentorship of new entrants is SUPPORTED. There are however, reservations regarding the extent | <p>As the comments made by the branches are not convergent, these must be dealt with as individual comment and have a different weighting to the NEC’s comments</p> <p>This registration authority will only register EAPs as defined in NEMA section 24. There is no reason why amendments cannot be made in the future a further category created. All specialists (planners, engineers, etc) need to be registered within their specialist professions. Representivity criteria are balanced with competence for Board members.</p> <p>Not intended. Educational representation included.</p> <p>Refined.</p> <p>Training and mentorship will not be the RA function.</p> |

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| | | | <p>to which this is provided for in the draft, and further refinement and clarification is sought.</p> <ul style="list-style-type: none"> The principle of accountability and transparency is SUPPORTED. However we believe there are flaws in the current proposal especially with regard to the lack of review of decisions by the Board and denial of any appeal against its decisions. | Changes are affected to improve accountability and an appeal process. |
| 8 | General | Conference comments | <ul style="list-style-type: none"> An appeals clause should be added, even though the legal advice to date has recommended otherwise. The process of appeals and who would hear them remains a challenge. While the organisation will not be a council, through DEAT's recognition, work will be reserved for those registered by the board. The Constitution is too detailed in places – some of these issues need to be left to the future Board. | <p>See amendments</p> <p>Noted</p> <p>Amended for consistency</p> |
| 9 | Definitions | Environmental Law Association | Are all the definitions needed? For instance, clause 3.3 refers to "Registered Members" (as distinct from a "REAP"). Both "Registered" and "Members" are defined; Registered then refers to the "Register"; the "Register" is in turn defined as "the register of EAPs in clause 3"; "EAP's are defined; "Members" are defined as the people admitted to membership of the Association from time to time in terms of clause 7"; "Association is defined as "the voluntary association referred to in clause 1.1". It is therefore necessary to refer to five definitions and three clauses to find out what a "registered Member" is. | Constitution provides for founding members who do not need to be registered – see revisions to definitions |
| 10 | Definitions | Environmental Law Association | The definition of "executive committee" should be consistent with clause 10.2.1. | Amended for consistency. |
| 11 | Definitions | Environmental Law Association | The definition of HDI in 2.8 does not include black owned companies and close corporations. | It is not supposed to – it refers to individual persons as would be EAPs or members, board members, executive committee members. |
| 12 | Definitions | Environmental Law Association | Both PDI (2.10) and HDI (2.8) are defined but do not appear to be used. | Noted. The constitution refers specifically to race and gender Definitions not needed here – included in relevant legislation. |
| 13 | Definitions | SABTACO | Ref to item 3.4.2: We state that HDI be used and not only PDI. | Amended as above |

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| 14 | Definitions 2.1 | SACNASP | It is a nonsense to call a General Meeting held every two years an annual meeting. Using the acronym GM rather than AGM will do no harm. This will also avoid confusing readers of the constitution. | Agree and amended accordingly |
| 15 | Definitions 2.14 | Botanical Society | <i>Definitions and Interpretation (2.14) "RREAP"</i> – Does the definition of a Registered Review Environmental Assessment Practitioner include the representatives of a Competent Authority who are responsible for 'checking' (Reg 14) and/or 'considering' (Regs 25, 31 and 35) applications for environmental authorisation in terms of GN R. 385 of 21 April 2006? Such inclusion is viewed as <u>desirable</u> . Due to their specific responsibilities, function and powers in the arena of environmental governance, the training requirements and professional development of 'statutory' RREAPs would have to be distinguished from that of RREAPs in the private sector. This aspect needs to be clarified. | The registration system includes professionals working in government. One category has been proposed with candidate level. |
| 16 | Definitions 2.4 | SACNASP | this should stand if the name of the Association is changed. Otherwise it causes confusion. | Not resolved yet |
| 17 | Definitions 2.7 | SACNASP | the definition is unacceptable. As it stands this would allow the Board to nominate a single contractor (not a member of the Association or with any knowledge of Environmental Assessments) to take over "all or any of the functions of the Board". | This power of delegation has been tempered |
| 18 | Definitions 2.8 and 2.10 | SACNASP | There is redundancy here. Section 1 of Act 4 Of 2000 lists "race" as one of the discriminatory mechanisms. PDI thus includes HDI. | Noted |
| 19 | Definitions | Conference | <ul style="list-style-type: none"> ▪ Definition of transformation should be added ▪ Definition of "black" should be added. | Not really useful to try to define transformation – no official definition found. Included need for transformation charter. Definition of black has been included. |
| 20 | Clause 3 | Environmental Law Association | We suggest that the appointment (and maintenance of) the association as a registration authority in terms of section 24H of NEMA should be an objective (as opposed to the purpose). | Purpose must be focussed on registration of EAPs. |
| 21 | | Environmental Law Association | Object and objectives really mean the same thing (see 3.1 and 3.2). | Agreed – see amendments |
| 22 | | Environmental Law Association | Transformation should certainly be made an objective. | See changes to objectives |

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| 23 | | Conference comments | Suggest that the second objective be split into two separate objectives, one dealing specifically with transformation and a separate one for CPD. Further, she suggested that the objective of pursuing a council be removed entirely. | Amended |
| 24 | Clause 3.3 | Environmental Law Association | It is the registration body (as opposed to the members) that are registered in terms of section 24H of NEMA; | Members are registered and registration body is recognised by Minister. |
| 25 | Clause 3.3 | Environmental Law Association | The reference should just be to NEMA (and not to the Amendment Act, 2004). | Amended |
| 26 | Clause 3.4.2 | Environmental Law Association | This clause should be split in two. Two separate ideas are conflated as it stands. Then renumber remaining clauses of 3.4 3.4.2 To promote continued professional development for EAPs in South Africa.3.4.3 To promote the empowerment of previously disadvantaged individuals within the EA field and the transformation of EA practice; | Amended |
| 27 | Clauses 3.4 & 3.5 | Environmental Law Association | The use of "EAPs" in clause 3.4 and 3.5 appears to be incorrect. The association can only register and regulate the affairs of its members, not all EAPs (at least until there is an amendment to NEMA which is only likely after the association has been established). | Compulsory requirement will be included in law after transitional phase. All <i>practicing</i> EAPs will be regulated by the authority, after effective date. |
| 28 | 3.5.6: | SABTACO | 3.5.6: Noted | |
| 29 | Clauses 4 & 5 | Environmental Law Association | We propose a provision aimed at protecting and safeguarding the funds of the association as opposed to giving the Board wide unfettered discretion. | Discretion tempered. |
| 30 | Clause 4.1 | Environmental Law Association | The definition of association funds and the way it is used in clause 4.1 should be uniform. | Constitution deals with assets, including funds as defined by NPO Act |
| 31 | Clause 4.4 | SACNASP | "environment professions" should read "environmental assessment professions". Environmental scientists are one of the environment professions and are already covered by a Council. The same probably applies to other professions that deal with the environment. | Amended |
| 32 | Clause 5 | Environmental Law Association | Are these the "Associations' powers" or the "Boards' Powers"? | Registration authority's powers is the emphasis. "members" empower Board to act in interests of quality assurance rather than the interests of the members of the association See |

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| | | | | changes affected to board's powers |
| 33 | Clause 5 and Schedule 1 | Environmental Law Association | The power of the Board "To invest the Association Funds as it sees fit in its sole and absolute discretion" in Schedule 1 is inconsistent with the requirements of the NPO Act, regulations and draft constitution (which should perhaps be reviewed to ensure the inclusion of appropriate safeguards) – the usual requirement is that funds may only be invested in registered financial institutions. Speculative investment should not be permitted. | Clarified. The intention is not to give "unfettered power" but to ensure that the constitution does not constrain the Board in attaining financial sustainability. |
| 34 | Clause 5 and Schedule 1 | Environmental Law Association | Why does the Board have the power "to take over investments and assets forming the subject matter of donations made to the Association"? | There may be a related organisation which wishes to cede assets to the association. |
| 35 | Clause 5 and Schedule 1 | Environmental Law Association | Clause 5 and Schedule 1 as a whole should be reconsidered and brought in line with the requirements of the NPO Act and good corporate governance. | These sections have been rationalised, some moved to schedules. These sections were originally drafted by an NPO legal expert for specific compliance with the NPO Act. |
| 36 | Clause 6 | Environmental Law Association | Clause 6 sets out the limits and qualifications of the association powers whereas clause 5 only sets out the powers of the board. The association's powers are not set out anywhere. | Have inserted two clauses related to the limited powers of the Association. |
| 37 | Clause 6 | Environmental Law Association | Clause 6 basically reflects the Income Tax Act. It renders the rest of the constitution cumbersome and user unfriendly by saying that its "provisions will override any other inconsistent or contradictory terms of this constitution". The constitution should be drafted in a manner which ensures that the powers of the association are clearly set out comply with section 30 (assuming it is applicable which seems unlikely). | Have removed all of this to Schedule 2 except a provision that, if it qualifies as a public benefit org, its powers are limited by the Income Tax Act |
| 38 | Clause 6.1 | SACNASP | Delete "It is intended that" - self evident. | Amended |
| 39 | Clause 7.1 | SACNASP | What prevents the 88 practitioners already registered by the ICB from being the initial members? | Other bodies such as SACNASP and SACLAP request same treatment as ICB - new Board will decide. |
| 40 | Clause 7.2.1 | SACNASP | Once again processing all those practitioners already registered with the ICB seems a waste of time and effort. The Association has to start somewhere, why not use the existing base of certified practitioners? | Other bodies such as SACNASP and SACLAP request same treatment as ICB - new Board |

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| | | | | will decide. |
| 41 | Clause 7.3 | SACNASP | A minimum of five members for the association is a nonsense. This should be at least 50. The provision for members to merely appoint anyone without any qualification so as to make up numbers does nothing to promote the purpose and objective of professional quality assurance. This provision needs to be amended. | Draft interim set up steps included, minimum numbers changed to 40. |
| 42 | Clause 7 | Environmental Law Association | Clause 7.2.2 and clause 7.4 appear to be contradictory. | Deleted 7.3 and 7.4 |
| 43 | Clause 7.4 | SACNASP | This clause completely negates the Associations Purpose, Objectives and Functions. Delete in its entirety. | Deleted 7.3 and 7.4 |
| 44 | Clause 7.5 | Environmental Law Association | The power of the Board in cause 7.5 should at least be qualified by the word "reasonably" i.e. "if it reasonably believes". | Amended |
| 45 | Clause 7.5 and sub-clauses | SACNASP | No provision is made for disciplinary hearings or for the "accused" to be properly heard and represented. The Board is given very wide ranging powers to terminate a member's livelihood. More thought is needed regarding this clause. | Appeal process included |
| 46 | Clause 7.6 | SACNASP | Explicit provision must be made for termination of membership if a member is found to be in breach of the Association's code of ethics. | Amended |
| 47 | Clauses under 8 | SACNASP | Change AGM to GM as these are no annual meetings. | Amended |
| 48 | Clause 8.2 | SACNASP | Delete "general". Also the clause makes it permissive (may) whether a meeting is called or not. Who decides whether to call a meeting or not? How can members of the Association force a meeting if the Chairperson (or Board) decides against this? There should be some recourse for members to be able to force a meeting if the need arises. | Amended – order changed and "will" included. |
| 49 | Clause 9 | Environmental Law Association | Is the limitation of the right of members of the association to elect members of the Board to only where a vacancy arises as a result of (i) voluntary resignation or resignation following the "drawing of lots" or (ii) their removal by the Board in terms of clause 9.9 intentional? What about voting out and replacing inefficient board members by the members themselves? | Provision is made for this through voting at general meetings Every second cycle members come up for replacement/re-election |
| 50 | Clauses under 9.5 | SACNASP | The proposed composition of the board is problematic in several ways: - As proposed over one third of the Board need have no experience of Environmental assessment Practice. How does this contribute to assuring quality practice? | Board selection quality criteria have been included After detailed consideration the |

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| | | | <ul style="list-style-type: none"> - This section is predicated on the notion of quotas. Quotas might be a way of promoting black engagement in the profession but will not in themselves promote quality in professional practice. The need for quotas to promote quality needs re-examination. - The proposed quotas are highly discriminatory against white males and are heavily biased in favour of black females (who could according to the proposals make up the entire Board). - The South African Qualifications Authority is given a seat on the Board and not other statutory bodies with closer links to Environmental Practice, e.g. South African Council for Natural Scientists? As the registration of Environmental Scientists and Environmental Practitioners will inevitably lead to overlap the Board would be better served by having SACNASP as a member. - National and provincial government are allotted seats twice, under 9.5.1 and 9.5.4. | <p>Working Group has recommended that the representation requirements remain detailed.</p> <p>The make up of the Board is intended to serve as an example of transformation of the industry. It is also possible that there could be six white males or seven black males represented on the Board or six females.</p> <p>Place on Board kept for relevant educational /professional body representation</p> <p>EAPs playing regulatory role at provincial level are proposed to represent EAPs and not government</p> |
| 51 | Clause 9.5 | SACNASP | The board members should either be elected <i>or</i> appointed (clause 9.5). | Elected by members, appointed by Board. |
| 52 | Clause 9.5 | SABTACO | Our recommendation is that the clause" as far as is practical and possible" be removed as it can become a loop hole. | Suggested alternative wording |
| 53 | Clause 9.5 and subsidiary clauses | SABTACO | 9.5.1; 9.5.2; 9.5.6; and 9.5.7 - Noted | |
| 54 | Clause 9.5.3 | Environmental Law Association | We suggest clause 9.5.3 be amended to read "one representative of the SAQA or of the academic or education sector relevant to environmental assessment" | Left more open as a category of membership of board |
| 55 | Clause 9.5.5 | Environmental Law Association | We suggest clause 9.5.5 be amended to read " <i>members of the wider community who have a demonstrated interested in the environment or environmental assessment</i> ". | Amended - demonstrated commitment to environmental conservation and sustainable development in SA. Other |

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| 56 | Clauses 9.5 | Conference Comments | <ul style="list-style-type: none"> ▪ Rashida Thomas , SABTACO explained that the concerns regarding clause-9.5 were that it would water-down issues of representivity. ▪ William Mngoma, KZN Department of Agriculture and Environmental Affairs and Working Group member explained that the working group had tried to strike a delicate balance in terms of presenting EA professionals. ▪ Bernadette Volmans ILASA suggested that the targets for representivity are very ambitious and that perhaps there should be a "phase in" clause. ▪ Carmen du Toit, SABTACO and Working Group member explained that the representation targets were already a minimum and that they could easily be reached and that the "escape clause" such as in 9.5 should be removed. ▪ Justine Sweet, ELA recommended that there may be other legal phrasings that could assist by including a clause that states that in the case where best efforts have been employed to obtain the representation and that if it is not attained, proof of effort is required. ▪ Richard Fuggle explained that the way in which the representivity requirements operate there will be direct discrimination of white males. Further there is a concern that the constitution does not mention other issues of quality assurance of the Board members, the Registration Sub Committee or any other subcommittee. He also indicated that the constitution allocated far ranging discretion on the Board members and this may need to be moderated more, with obligation to consult members, and other mechanisms for accountability. Specific examples included the discretion to admit or reject anyone as well as the need to include termination of Board membership and registration if in transgression of code of ethics. ▪ Susie Brownlie, SAIE&ES felt that quality assurance was ultimately the intended outcome and that this would need to be implicit in the | <p>Phase in not practical for set up of RA and application to minister and recognition of RA Need an escape clause or risk compromising the functioning of the Board</p> |

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| | | | <p>selection criteria of members of the board as well as members of sub committees.</p> <ul style="list-style-type: none"> ▪ Jeremy Boswell, SAACE and SAICE suggested that the clauses could be rewritten to aim for the destination of “representative of the country” and that the actual numbers should not be included in the constitution. ▪ Maitland Seaman, Interim Certification Board Chairman, suggested that we should implement what ever is legally competent with regard to the overall aims of transformation. ▪ Carmen du Toit, SABTACO requested all to recognise that the issues of competence and representivity should not be conflated. ▪ SAQA should not be mentioned directly but a training and education authority position provided for or a representative from another professional council – Council for Built Environment, for example. ▪ Add the breach of code of ethics as well as the fraud issues for termination of members. ▪ Only have one Board, do not have the transitional arrangements in the constitution therefore remove 9.3. ▪ Re 9.4 edit to read “at least 13 members” ▪ RE 9.5 Remove “as far as is practically possible” and replace with “Seek to...” ▪ Prepare a transformation charter and integration within business plan ▪ Re 9.5.1 – leave unchanged except refer to EAPs in government too. ▪ Re 9.5.2 Include explicit reference to consultants ▪ Replace 9.5.3 - “3 ex-officio members drawn from relevant professional statutory councils ▪ Re 9.5.4 - remove “or provincial” and specify national ▪ Re 9.5.6 – amend to read “at least 50% female with exception of ex- | <p>Have included space for “educational institution”</p> <p>In general – have put in criteria in line with these</p> <p>Still require an initial board to establish the association Edited</p> <p>Charter is something the new Board should do. Haven’t done the consultants or the prof stat councils as think the statement of quality criteria is better than nominating groups</p> <p>Done Have used which ever is relevant in context</p> |

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| | | | <p>officio components”</p> <ul style="list-style-type: none"> ▪ Re 9.5.7 - amend to read “at least 50% female with exception of ex-officio components” ▪ Remove 9.6 replace with transformation charter. ▪ Why exclude ex-officio category from racial representivity requirements? ▪ The Board cannot control the representivity of other Boards, the current ICB representation of professional bodies is a case in point ▪ The competence of the Board members must be prioritised as a requirement for relevant Board positions. ▪ There needs to be a fall back clause included in case a specific representation cannot be met as set out by the constitution, otherwise it can be found to be operating illegally and all of its decisions, including the register can be questioned. The other option is to exclude this detailed representivity aspect from the constitution. ▪ Is it not ill-advised to leave out SAQA, seeing they will be an important partner in the qualifications standard generation process? ▪ Note that SAQA is not involved in issuing certificates of competence; this is undertaken by the relevant educational institutions. ▪ Need to include reference to private consulting in 9.5.2 ▪ Be cautious regarding the size of the Board, ultimately this leads to high operational expenses. ▪ Concern was raised in relation to how interests will be represented and whether individuals are on the Board in their individual or organisational capacity. If they are there representing their organisations interests how will they adequately look after the interests of EAPs in general? ▪ Concern with term “ex-officio” should we rather not call these non-voting members? | |

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| | | | <ul style="list-style-type: none"> ▪ The Board nomination committee that will be discussed later in the day needs to take account of race, gender and professional experience. ▪ Leave out fall-back clause as this negatively impacts on the credibility of the organisation. ▪ Co-option can be used to address gaps if the profile not met through nominations. It was noted that this was already provided for within the draft. ▪ Vacancy of board positions - there needs to be process specified in the constitution that enables nomination within a specified time-frame. Need to address | <p>Included</p> <p>Overall have tried to find a balance, kept "quotas" but included, "quality criteria for nomination"</p> |
| 57 | Clause 9.6 | SABTACO | Item 9.6: The proposed recommendation from SABTACO is to remove this clause and replace with: "If, after election, the complement falls foul of clause 9.5, then the elected officials are authorised and mandated to co-opt members to the executive in line with the spirit of Item 9.5". | Co-option can end up being "undemocratic" must aim to elect rather. The cooption should therefore a fall back at the nomination state where people could be approached to commit to stand for election. The election process then takes 9.5 into account. |
| 58 | Comment on box pg? | SABTACO | Our recommendation is also that all executive committees and sub-committees to have a representivity and gender condition attached to it. | Representivity clause included for subcommittees. |
| 59 | Clause 9.9 | SACNASP | This appears to be a highly undemocratic clause. If members of the association duly elect a person why should a majority of the Board be allowed to dismiss them? | This clause only applies in extreme cases where member is abusive, consistently absent etc Left in but tempered. The intention of the clause is to ensure that the Board is able to deal with people who may undermine its ability to function effectively. |

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| 60 | Clause 9.10 | SACNASP | This clause allows (together with 9.9) for the Board to dismiss one third of its members and to then make appointments of persons (who need not be members of the association or have any knowledge of Environmental Assessments, to their place.) Not desirable, or at all democratic. | The two sections have been combined, but Board acts in interests of quality assurance primarily and not the members/registered EAPs Have qualified it |
| 61 | Clauses under 9 | Environmental Law Association | check the cross referencing with clause 11. | cl 9.10 was not the correct reference (probably 9.9) and there are misalignments in 9 and 11 in terms of the removal of board members. See above Moved and consolidated |
| 62 | Clauses under 10 | SACNASP | As this section makes provision for more than one executive committee the heading should read <u>Executive Committees</u> . | Amended for consistency |
| 63 | Clause 10.2.1 | Environmental Law Association | Those persons appointed by the Board must at least be members of the Association and/or suitably qualified for the function they will be performing. | Board criteria amended – are not all supposed to be registered/members – some act purely in public interest |
| 64 | Clause 10.4 | SACNASP | It is not fair or reasonable that the Board is given power to remove executive committee members on a whim. The second sentence of clause should be deleted, or if there is good reason for it, be amended to say that such action should be for good and substantial cause. | Amended |
| 65 | Clause 10.4 | SACNASP | Although the main purpose of this Authority is to ensure quality in Environmental Assessments this constitution gives far more attention to race and gender than to the professional qualities needed to ensure professional competence. No further sub-clauses relating to race and gender should be introduced. Far better to include a sub-clause stipulating respect of peers, professional competence and experience. | Representivity clauses maintained with increased emphasis on competence and experience |
| 66 | Clauses 10.5 and 10.6 | SACNASP | These clauses are out of place. They relate to the Board and should be transferred to section 9. | Have moved them and the others have been consolidated. |
| 67 | Clause 10.6 | Environmental Law Association | we suggest that this be qualified - notwithstanding such delegation the Board will remain accountable to its members? Consider whether delegation of any and/or all powers to a contractor is desirable? In addition, consider inserting a clause allowing objections to appointments by members. | Board acts in interests of quality assurance primarily and not the members/registered EAPs |

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| 68 | Clauses under 10.7 | Environmental Law Association | Clause 10.7 – 10.7.1 (registration committee) - This does not appear to comply with section 24H which provides that an application for appointment must include a list of “the qualifications of <u>the members of the association responsible for the assessment</u> of applicants for registration.” That is members must be responsible for assessment not co-opted board members who are not members of the association. | See proposed representation on reg sub com – would comply with s24H. |
| 69 | Clause 10.7.2 | SACNASP | Of all the statutory requirements that have a bearing (and influence) on Registration of Environmental Practitioners SAQA is probably the least important. The requirements of SACNASP and other Environment Professional Councils need greater recognition. I suggest that the comma in the sentence be converted to a full-stop and the wording after that deleted. | Refer to formal qualification requirements – not limited to SAQA. |
| 70 | Clause 10.7.4 | Environmental Law Association | Clause 10.7.4 – the board must ensure that at least two REAPS and two RREAPS serve on the registration committee and as far as is practical, two of whom should be black and two of whom should be female. | Suggested amendment included. (See SABTACO comment) |
| 71 | Clause 10.7.4 | SACNASP | Comment as for 10.4 above. | See response above |
| 72 | Clause 10.7.4 | SABTACO | 10.7.4 – Noted | |
| 73 | Clause 10.7.5 | Environmental Law Association | The purpose of clause 10.7.5 is unclear. | Amended |
| 74 | Clauses under 12 | SACNASP | There is ambiguity in this section in the use of “the chairperson”. The context suggests that sometimes this refers to the Chair of the Board and at other times the Chair of the meeting. Clarity is needed. | Chair of the Board or meeting as appropriate |
| 75 | Clause 12.1 | SACNASP | The Registration Committee is in essence a “technical committee” and should have its own chairperson who is not the Board Chair. It is more important that this committee experience continuity and as this committee will meet more frequently than the Board it is imperative that its chair have the time and energy to devote to it. It must be stipulated that the Chair of the Registration Committee should be a respected and experienced REAP or RREAP. | Amendment included. |
| 76 | Clause 13 | Environmental Law Association | Board members should be required to attend a minimum number of meetings per year, if not all. | Amendment included |
| 77 | Clause 13.3 | SACNASP | The reference to Clause 7 is an error. Should be Clause 9. | Amended |
| 78 | Clause 13.3 | Environmental Law Association | Break up the two sentences as the second sentence is a separate point and should have its own number. | Amended |

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| 79 | Clause 13.4.1 | Environmental Law Association | 13.4.1 – state 8 votes rather than 2/3 | No – this will vary depending on the number making up the quorum – it is votes of those who ATTEND a quorated meeting |
| 80 | Clause 13.5.1 | Environmental Law Association | 13.5.1 – state 7 rather than half | No – this will vary depending on the number making up the quorum – it is votes of those who ATTEND a quorated meeting |
| 81 | Clause 16 | Environmental Law Association | Add on to the end of the sentence – “ <i>at least one of whom must be a board member</i> ”. | Moved to Clause 3 and consolidated there |
| 82 | Clause 18 | Environmental Law Association | These clauses do not appear to add anything to the constitution and are apparently inconsistent with its provisions. | Amended |
| 83 | Clause 19 | Environmental Law Association | Is it the intention of the constitution that the constitution, its objectives, composition of the board etc may be amended by just two-thirds of 25% of the members? | Yes it is not practical to require more. |
| 84 | Clause 21 | Environmental Law Association | Why is the board under no duty to furnish reasons for its decisions? Surely this is a requirement of fair, transparent and accountable governance? Have the requirements of fair administrative justice been considered? | Included requirements for furnishing reasons and appeal process |
| 85 | Clause 21 | SACNASP | This appears to be a whitewash clause to prevent members of the Association holding the Board to account. It is inappropriate in the constitution of an Association that purports to be acting in the public interest and in an open and transparent manner. The clause should be deleted in its entirety. | Deleted with some trepidation |
| 86 | Clause 22 | Environmental Law Association | The provisions of this clause should be integrated into the relevant provisions of the constitution in order provide a useful and user friendly document for the board and members. If necessary a separate checklist can be prepared to ensure the NPOA requirements are met. What about the NPOA reporting requirements? | Amended |
| 87 | Schedule 1 | Environmental Law Association | It seems these powers are more akin to those of the directors of a private company than to a board which is required to responsibly administer funds for the benefit of its members. | Board acts in interest of quality assurance but is accountable in terms of the public mandate and good governance. Amended to clarify |

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| 88 | 18.1 / Schedule 1 Clause 10.9 | Environmental Law Association | Clause 18.1 of the constitution should be amended to be in line with 10.9 of schedule 1. | Amended as well as aligning 10.9 to Sched 1 and 18.1 – restriction of operations to SA |
| 89 | Schedule 2 | Environmental Law Association | The initial composition should as far as reasonably possible mirror the ongoing composition of the board set out in the constitution. | See amendments “membership” and “registered EAP” requirements. |
| 90 | Schedule 2 | SABTACO | Refer to Schedule 2: There should be a representivity and gender clause inserted. | Amended for consistency |
| Rule Book of the Environmental Assessment Practitioners Board | | | | |
| 91 | Intro | Environmental Law Association | The Book refers to “consultation requirements set out in the Constitution.” However, there do not appear to be any such consultation requirements. | Amended to include consultation requirements. |
| 92 | Section 2 | Botanical Society of South Africa | <p><i>Requirement that candidate REAPs undertake EAs under supervision (Section 2, Rule Book)</i> – The principle of a mandatory, pre-registration candidature is supported. However, is the proposal in its current formate practicable and fair? The following concerns refer:</p> <ul style="list-style-type: none"> – This proposal depends on having a corpus of REAPs who are willing, able and readily available to supervise, review and/or sign off work undertaken by candidates; – The requirement for supervision must not penalise applicants in terms of reduced efficiency due to delays or additional costs; and <p>The professional development and economic security of candidate REAPs must not be compromised due to inefficiencies in the proposed system of supervision.</p> <p>Given the uncertainties raised here, and particularly the question as to whether we can realistically look forward to conditions that would be optimal for an effective, credible and efficient system of industry-dependent mentoring and supervision of candidate REAPs, <u>three complementary alternatives are proposed</u>:</p> <ul style="list-style-type: none"> a) The state must be responsible for establishing and maintaining an efficient and accountable system of supervision, review and/or ‘signing off’ of work submitted by candidate REAPs (this can co-managed with the proposed registration board and funded by a | This is on par with all other professional bodies’ “candidate” limitations |

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| | | | <p>compulsory training levy on applications);</p> <p>b) Consideration should be given to limiting candidate REAPs to undertaking 'basic assessments' only, and requiring that applicants be informed from the outset of the 'candidate' status of the EAP and that any work submitted by the latter may be subject to random review by an RREAP appointed by the state (and funded by a training levy); and</p> <p>c) The registration system needs to be flexible and innovative enough to accommodate those candidate EAPs whose geographical location and focus of work may make 'signed up' mentorship impractical and unduly expensive (especially for individuals working in rural areas, away from major centres), as well providing for a shorter period of mentorship and candidature where the candidate clearly demonstrates a high degree of professional competency and practical commitment to the Code of Ethics.</p> | <p>System proposed is as "simple" as possible to enable start-up. These alternative models are noted and forwarded to Board for future consideration.</p> |
| 92 | Section 2 And transitional arrangements | Conference comments | <ul style="list-style-type: none"> ○ Request direct recognition of the effort made by individuals "certified" under the ICB. ○ The ICB transition needed to be specifically dealt with by the new board with options presented and may need to be considered within the constitution. ○ Organisations such as ICB and SACLAP should be dealt with in the same manner. ○ There should be a period of between one and five years for continuing professional development to be proven by individuals admitted to the register under this clause. <p>The working group reported the following recommendations:</p> <ul style="list-style-type: none"> ▪ The ICB 88 are an excellent resource for the new Board and can potentially bridge the gap that potentially exists in the "operationalisation" of the new registration board. But need: | <p>All certifying/registering bodies to be treated equally – the transition will be a decision of the new board</p> <p>Suggest 5 years</p> |

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| | | | <p>industry. It overcomplicates a system where in general the competencies need to be the same but the professional experience may need to be different. However, professional experience is required within the specific area of practice as registration criteria, so there only needs to be one category.</p> <ul style="list-style-type: none"> ▪ Perhaps the two “categories of private sector consulting” and regulatory EAPs would be better categories. ▪ Review role in the context of peer review should be undertaken by individuals with experience. Meeting basic levels of competence does not mean that one is necessarily fit to play a review role. ▪ The system should be designed to enable migration between private sector consulting and government. The years of relevant experience is what will count in meeting registration criteria. The overall principle is to broaden accessibility for registration, not provide lower standards. ▪ There is not much difference between the competencies for the reviewer and assessor categories as presented in the draft proposal ; one is “do” and other “evaluate”. | <p>Amended to one category</p> <p>Peer review/expert reviewers should be appointed on the basis of expertise for the specific case</p> <p>Catered for through one qualifications and registration category</p> <p>One category now</p> |
| Code of Ethics | | | | |
| 93 | General | SACNASP | The Constitution needs to stipulate that a member not adhering to the Code of Ethics can be de-registered. See comment 14 above. | Amended |
| 94 | Clause 1 | Environmental Law Association | amend “as far as possible” to read “as far as reasonable and practical” | Amended |
| 95 | Clause 8 | Environmental Law Association | it may be preferable to refer to the provisions of the Prevention and Combating of Corrupt Activities Act, 2004 so as to avoid this clause being misconstrued and preventing legitimate marketing activities. | Amendment made |
| 96 | Clause 9 | Environmental Law Association | to the best of their ability – this should be amended to provide for a minimum standard? Perhaps, as far as is reasonable and practical? | Amended to “use best information available” |
| 97 | Clause 11 | SACNASP | Clause 11 of the Code of Ethics should include that EAPs should “collaborate with suitably qualified professionally registered persons to practice and consult in subject areas where they (the EAPs) are relatively inexperienced”. | Noted. Wording assumes broader application and includes point raised. |

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| 98 | Clause 18 | Environmental Law Association | should refer to the objectives of the Association rather than the Board. | Amended |
| 99 | | Environmental Law Association | Note the difference between shall and will – “will” normally implies the imperative whereas “shall” the future tense. Must is better used as there is no confusion. | Amended for consistency and meaning |
| 100 | | Conference comments | <ul style="list-style-type: none"> ▪ The title should be amended to “code of ethical conduct”. ▪ The Board must be cautious as these mechanisms can be abused by external parties who may have an “axe to grind” with particular officials or consultants and so there needs to be adequate linkage to the provisions for appeal within the EIA regulations. ▪ The code and mechanisms need to be very precise otherwise there will be many complaints and no results, or otherwise potential operational paralysis with the weight of lengthy court battles. ▪ Make sure that the wording applies to all EAPs request legal review of code and mechanisms. ▪ Note that mechanisms for sanction, discipline and appeal can result in enormous legal costs if not limited in some way. Other organisations have special reserve funds dedicated to these eventualities. ▪ Professional indemnity and insurance may need to be further conditions for registration – there may be group benefits through the registration authority? ▪ Need to check legal wording “shall” and “will”. ▪ Check clauses 7 and 16 for consistency. ▪ Government has various codes of good practice, disciplinary codes and Batho Pele principles, these will obviously also apply to individuals in these roles. ▪ Clauses 11 and 12 are very similar. ▪ Concern regarding 12 in terms of what constitutes relevant expertise | <p>Amended</p> <p>Amended, legal review in process</p> <p>Checked Checked</p> <p>Amended for consistency</p> <p>Amended to qualify Amended to reflect They are not the only ones but it is possible to have ethical</p> |

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| | | | <p>and experience.</p> <ul style="list-style-type: none"> ▪ The Board should only respond in a case once the formal EIA process has been concluded. ▪ Clauses 3, 5 and 6 may not belong in a code of ethics as they are very procedural. ▪ Need to define sustainable development in terms of NEMA. ▪ Professional rates are an ethical issue. | <p>requirements regarding procedures</p> <p>Amended</p> <p>Definition implicit – but refer to NEMA</p> <p>Issues of rates not included</p> |
| Section 2: Criteria and procedure for registration | | | | |
| 101 | General | Environmental Law Association | There should be no distinction between reviewers and practitioners and the public and private sector. Keep things simple. | Over whelming response at 2 nd National Conference – amended to include one category with candidate level |
| 102 | General | Environmental Law Association | The ICB 88 should be considered on the same basis as everyone else – unless the Minister exempts them. | All previously registering/certifying bodies to be treated equitably |
| 103 | General | Environmental Law Association | It should be noted that until NEMA is amended the association may only regulate its members not all EAPs. Accordingly paragraph 1 is incorrectly drafted. This section sets out a process for the determination of criteria. It should be noted that in terms of section 24H until the criteria have been determined the association cannot be appointed as a registration authority. | Noted |
| 104 | General | Environmental Law Association | Criteria for registering and re-registering should be developed <i>in consultation with members and other interested and affected parties.</i> | Amended to reflect this. |
| 105 | Clauses under 2.2 | SACNASP | This suggests that the entire registration process will be “on hold” until (1) SAQA has developed and registered qualification standards, (2) there is a geographical spread of educational institutions (i.e. universities) offering accredited courses. As this may (and probably will) take several years the entire current initiative stands to be discredited through this delay. | Qualification is in place, incentive for training offerings to align to standard. All previously qualified will need to be RPL’d this requires a set of trained assessors for this field. |
| 106 | Clause 2.2(c) | SACNASP | Demonstration of competence in practice must be a professional judgement by peers and not linked to SAQA. | Subject experts have determined the qualification criteria that SAQA and others will use. Deleted this provision |

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| 107 | Clause 3 | Environmental Law Association | Registration by the Board: there is a large gap between the circumstances in which the Board must register an applicant and those in which it may refuse registration. That is, there are circumstances when the Board is not obliged to register an applicant but does not have the discretion to refuse the registration. What happens in those circumstances? | Amended to add in a couple of additional clauses for refusal of registration –e.g. candidate does not meet the criteria |
| 108 | Clause 3.3(b) | SACNASP | If the Board is to set and mark examinations provision should be made in the constitution for such activity as well as for a committee to handle this. | Included to keep option open – one of the assessment tools/ assessment framework based on qualification |
| 109 | Clause 4.1 | SACNASP | should include a sub-clause making it explicit that registration can be cancelled for no compliance with the Code of Ethics. | Amended to include Inserted in 3.4 and cross referred |
| 110 | Clause 4.3 | SACNASP | is unnecessary and pedantic. | Amended |
| 111 | Clause 5.1 | SACNASP | There will need to be a delay period between passing of the legislation that makes registration compulsory and this going into effect. Otherwise the delays that registration is seeking to circumvent will be inevitable. | DEAT is considering publishing a date 18 months to 3 years of the requirement to be registered. Any changes to law will be subject to a public consultation process. |
| 112 | Clause 5.3 | SACNASP | The concept of “Registrar” introduced here for the first time appears to be sensible and practical. But there is no mention of this important position in the Constitution. This must be rectified. | Included provisions for registrar – although constitution does not exclude this and in the future – where lower registration application rates may not necessitate this position Included at discretion of Board in Const |
| 113 | Clauses 5.3 and 5.4 | SACNASP | There is a mismatch in terminology between “Registration Committee” (in the Constitution) and “Registration sub-committee” in present context. | Amended |
| 114 | Clause 5.5 | SACNASP | Surely it should be <u>the Registrar</u> (and not the Board) who will compile and update the register of EAPs? | Practically/on executive basis, the registrar, but the responsibility remains that of the Board |
| 115 | Clause 5.4 | Environmental Law Association | Associates are not referred to elsewhere. | Amended – associates not relevant |

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| 116 | Clause 6 | Environmental Law Association | Referees should be REAPs. | Only one category suggested in revised proposal |
| 117 | Clause 6.1 | SACNASP | Assigning of referees should also be the task of the Registrar. | Included - bit more qualified |
| | Clause 6.2 | SACNASP | This is an outdated provision. Referees must be Registered EAPs, and in the interim until Registration is legislated the ICB Certified EAPs could act in this capacity. | Stakeholders do not see this pool limited to ICB EAPs – what about SACNASP and SACLAP |
| Proposed Criteria for Registration | | | | |
| 118 | Clause1 | SACNASP | One of the main contributory factors to the poor quality of EAPs in South Africa is the fact that persons with only a three year degree in environmental practice deem themselves to be professionally trained. No other profession accepts a basic three-year first degree as adequate for professional registration. A four year degree in a discipline is a requirement for SACNASP registration as an Environmental Scientist. A minimum of four-year degrees prior to professional registration is also the norm for other Environmental Professionals, Planners, Architects, and Engineers. If there is to be accord and uniformity between the statutory bodies registering the Environment Professions a minimum of a four year degree or three year degree plus honours must be applied by the EAP Registration Authority: a three year degree should not be acceptable. | EAP qualification is at SAQA level 7 which is at an four-year/honours/ professional degree or higher diploma |
| 119 | Clause 3 | SACNASP | Demonstration of competence in practice must be a professional judgement by peers and not linked to SAQA. | See above |
| Continuing Professional Development | | | | |
| 120 | General | SABTACO | Section 3 of Schedule 4 on Continuing Professional Development (to ensure continued registration) must include the transformation of skills and the development of young Black environmental professionals, in particular, from registered members. | Agreed – see specific amendments |
| 121 | General | Conference comments | <ul style="list-style-type: none"> ▪ It is difficult for professionals to plan their CPD one year ahead, consider changing requirements in this regard – the registration board needs evidence not plans. ▪ Professionals should only submit reports after five years. ▪ Criteria should include the need to develop young black practitioners ▪ Recognise individuals context, for example training is paid for in government and other institutions whereas smaller private concerns do not have access to similar “free” training opportunities. ▪ Only develop and implement these elaborate systems once the registration system is working. | <p>The CPD section included as guidelines</p> <p>Recommended Supported - but within the limitations of employment and only as individuals – not companies Race and gender profile of mentees required in CPD reporting</p> |

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| Measures for Sanction and Discipline | | | | |
| 122 | General | Environmental Law Association | We propose that an internal appeal for those who have been refused registration should be included. Essentially, <i>"it avoids wasting the courts' time with complaints that could have been settled sooner and more cheaply by officials chosen specifically for that purpose"</i> (Hoexter). | Amended to include appeals process |
| 123 | General | Environmental Law Association | It does not appear that "the accused's" constitutional and administrative law rights have been properly considered? There is also no appeal procedure. The procedure is very vulnerable to costly High Court review procedures (see above). | Amended to include appeals process |
| 124 | | Environmental Law Association | There should be a clear distinction between complaints regarding the EAP and complaints regarding the procedure – clearly, procedural complaints relate to the EIA process. | Amended to include appeals process |
| 125 | Section 4 | Botanical Society of South Africa | <p><i>Measures for sanction and discipline of members (Section 4, Rule Book) –</i> The convening of a disciplinary committee presupposes, <i>a priori</i>, serious infringements of the Code of Ethics that hold potentially severe disciplinary repercussions for the EAP in question. A less drastic, and less cumbersome, alternative for dealing with complaints is suggested (it is assumed that some form of pre-investigation, filtering mechanism will be in place to sift out unwarranted, unjustified or irrelevant issues).</p> <p>We propose that provision also be made for <u>mandatory independent review of environmental applications</u> where these may have been compromised due to alleged breaches of the Code of Ethics. This is viewed as a more efficient and affordable alternative to an <i>ad hoc</i>, investigatory tribunal that needs to be reconvened on a case-by-case basis.</p> <p>National and provincial guidelines that outline the circumstances when such reviews would be justifiable and desirable, the procedures to be followed, and the actions/remedies that could emerge from such a review process would strengthen public accountability of EAPs, EA processes and public faith in the regulatory system. Such a review system can be linked to section 24I of NEMA (Act 10 of 1998) which provides for the appointment of external specialists to review environmental assessments. This is a matter that could, conceivably, be subject to a Memorandum of Agreement or similar pact between the proposed registration board and the competent authorities.</p> | <p>Amended to include appeals process Board is free to institute such filtering mechanisms as it deems fit</p> <p>This would require an amendment to NEMA EIA Regulations – beyond the scope of the establishment of the authority</p> <p>Suggestion forwarded to Board for inclusion in filtering sanction/review process – however, this currently most often refers to a panel of subject specialists such as botanists etc.</p> |

2. INDIVIDUAL COMMENTS:

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| 128 | | Individual comment: Liam Witlow | I have received the information document on the qualification process proposed. It seems very confusing and as far as I can ascertain it applies to new qualifications issued at tertiary institutions. What happens to those of us currently practicing, who have tertiary qualifications issued prior to the finalisation of the SAQA process. Will these qualifications be recognised and if so what will the process be? Will qualification certificates be issued to qualifying EAPs? How long wil the process take to get the required qualification? What is the process moving forward with regards to formalising this Qualification? | RPL process will cater for this SAQA Advanced Certificate of EAP Level 7 concluded – waiting for registration. |
| 129 | | Individual comment: Phillip Rosenthal | CPD requirements need to accommodate those working part time as practitioners | Board to consider part-time professional s on a case by case basis |

NOTE: IAIAAsa branch meeting records are and comments were also received from Vaal, Western Cape and KZN (branches). These are available on request. The National Executive Committee's comments however have been included. The IAIAAsa NEC has indicated that it finds great difficulty in presenting a national organisational position at any level of detail due to the diversity of interests it represents. The Working Group suggests an overall response using a "frequently asked questions" (FAQ) approach and reference to the summary of registration requirements set out in the Draft Proposal.