

EAPASA

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**Environmental Assessment
Practitioners Association
of South Africa**

Advancing environmental assessment practice in South Africa



Email: registrar@eapasa.org / Website: www.eapasa.org

EAPASA Malpractice Policy

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1. Introduction

1.1. A key objective of EAPASA is to register, depending on their experience:

1.1.1. Environmental Assessment Practitioners (Registered EAPs); or

1.1.2. Candidate Environmental Assessment Practitioners (Candidate EAPs).

1.2. Once registered, EAPs become members of the Association and must comply with the prescribed Code of Ethical Conduct and Practice, and failure to do so constitutes improper conduct.

1.3. EAPASA is obliged, as a registration authority, to, amongst other things:

1.3.1. uphold and apply the code of conduct and impose sanctions on those members who fail to adhere thereto;

1.3.2. promote quality assurance regarding environmental assessment practice;

1.3.3. facilitate the transformation and restructuring of environmental assessment practice profession;

1.3.4. ensure the professionalisation of environmental assessment practitioners through continued training and development support, which must also focus specifically on support for candidate black people, women, youth and people with disabilities in order to achieve the progressive transformation and restructuring of the profession that is representative of the demographics of the country; and

1.3.5. promote awareness of the purpose and practice of environmental assessment in South Africa.

1.3.6. Ensure that EAPs carry out their work with integrity and in accordance with acceptable norms of professional conduct.

1.3.7. Ensure that in the execution of their duties, EAPs do not prejudice public and environmental health and safety.

1.4. In terms of regulation 10 of the Section 24H Registration Authority Regulations of the National Environmental Management Act (NEMA), Act 107 of 1998, EAPASA must develop, administer and enforce a code of conduct regulating the ethical and professional conduct for registered environmental assessment practitioners and registered candidate environmental assessment practitioners.

1.5. Registered persons are subject to the disciplinary supervision of EAPASA. The Code of Ethical Conduct and Practice lays down standards which must be complied with.

1.6. It is an overriding obligation under the code of conduct that, in carrying out professional work, a registered person is expected to act with due skill, competency and integrity.

2. Purpose of the Malpractice Policy

2.1. This Malpractice Policy serves to:

- 2.1.1. provide EAPASA members and complainants with an overview of the procedures to be implemented by EAPASA in discharging its statutory obligations; and
- 2.1.2. supplement and give effect to the EAPASA Constitution, EAPASA Code of Conduct and Ethical Practice, the NEMA and the Section 24H Registration Authority Regulations.

3. Definitions

- 3.1. **“Improper conduct”** means a transgression of the EAPASA Code of Ethical Conduct and Practice.
- 3.2. **“Registered EAP”** means a person admitted to and included on the Register of Environmental Assessment Practitioners who meets the requirements for registration in terms of the criteria, standards and process of the Section 24H Registration Authority Regulations of the National Environmental Management Act (NEMA), Act 107 of 1998, as amended, who is thereby authorised to hold primary responsibility for the planning, management, co-ordination or review of environmental impact assessments and associated Environmental Management Programmes (EMPrs), either in the role of assessor or in the role of a reviewer.
- 3.3. **“Candidate EAP”** means a Candidate Environmental Assessment Practitioner, registered in terms of the criteria, standards and process of the Section 24H Registration Authority Regulations who has the required formal qualification, or similar, but does not have the required professional experience for registration as a Registered EAP.
- 3.4. **“The Committee” or “The Professional Conduct Committee”** means the Professional Conduct Committee constituted in terms of clause 6.2.1 of this policy.
- 3.5. **“Complaint”** means any information or allegation relating to or regarding improper conduct by a person registered with EAPASA, which comes to

the attention of the Registrar or the Board, in accordance with the Rules of EAPASA for the lodging of complaints.

3.6. **“Complainant”** means any persons who has submitted a complaint to EAPASA in respect of a Registered EAP or Candidate EAP. A complainant does not have to be directly affected and can be an interested party.

3.7. **“EAP” or “Environmental Assessment Practitioner” means**, depending on the context and unless otherwise specified, both a Candidate EAP and a Registered EAP.

3.8. **“PCC”** means the Professional Conduct Committee, being an *Ad Hoc* Committee of the Board of EAPASA charged with the responsibility of implementation of this policy.

4. How to deal with Misconduct

4.1. EAPASA is mandated to enforce the Code of Ethical Conduct and Practice and to discharge obligations arising from its designation as the single registration authority, conferred in accordance with the NEMA and applicable Regulations.

4.2. In discharging its obligations, EAPASA is obliged to consider and take any reasonable steps necessary for the protection of the public and the environment in their dealings with EAPs.

4.3. In pursuance of the discharge of its duties and obligations mentioned above, EAPASA must investigate:

4.3.1. any act of alleged improper conduct by an EAP; and/or

4.3.2. any complaint, charge or allegation of improper conduct against an EAPs, who engage in Environmental Impact Assessment (EIA)-related activities including but not limited to planning, management, co-ordination, or review of EIA and Environmental Management Programmes (EMPr) as stated in the Subregulation 14 of the NEMA S24H Regulations, 2016.

4.4. In executing its functions, EAPASA adheres to the Code of Ethical Conduct and Practice, made in terms of the Rule Book of EAPASA and the EAPASA Constitution and as may be amended from time to time.

4.5. Investigations conducted in terms of this Policy are directed towards the professional conduct of Registered and Candidate EAPs and the remedial action that falls within the powers and competence of EAPASA.

4.6. Where a complaint is brought against an unregistered EAP(s), the complainant shall be referred to the relevant Competent Authority (CA). It is not EAPASA'S intention nor within its

competency to deal with compensation for damages on behalf of any person or enforce specific performance against any person. To the extent necessary, civil and/or criminal proceedings remain available to interested persons or complainants as may be applicable.¹

4.7. In events where an unregistered person contravenes the rules set out in this policy, clause 4,6 will apply.

4.8. EAPASA is responsible for administering the code of conduct and must ensure that the code is available to all members of the public at all reasonable times – it is on the website www.eapasa.org.

4.9. All Registered and Candidate EAPs must comply with the code of conduct and failure to do so constitutes improper conduct.

4.10. Engaging in EIA activities without being registered with EAPASA also constitutes improper conduct

5. Professional Conduct Committee

5.1. The EAPASA Professional Conduct Committee

5.1.1. Clause 10.4.10.6.1 of the EAPASA Constitution makes provision for the Board to establish a Professional Conduct Committee (PCC). This committee is an *ad hoc* committee convened on an as-and-when-necessary basis and whose proceedings are governed by the provisions of this Policy read with the relevant charter.

5.1.2. The PCC is responsible for:

5.1.2.1. responding to complaints regarding the conduct or practices of Registered EAPs or Candidate EAPs;

5.1.2.2. investigating complaints and/or conducting hearings based on the procedures applicable in terms hereof or as specified in any EAPASA Policy from time to time; and

5.1.2.3. to recommend decisions to the EAPASA Board in respect of matters referred to it including appropriate sanctions to be imposed where relevant.

5.2. Composition of the Professional Conduct Committee

5.2.1. The PCC must consist of at least three (3) persons selected by the Board.

¹ SACAP, 'Rules for Investigations, Disciplinary Hearings and Appeals', p.1

5.2.2. In composition of the PCC, the Board must ensure that two of the members are Registered EAPs, at least one person is Black, and one is female.

5.2.3. The Committee may be assisted by experts of its choice who will form part of the committee; provided that:

5.2.3.1. such experts may not exceed Two (2) unless a higher number is expressly approved by the Board;

5.2.3.2. one person is

5.2.3.2.1. an admitted attorney or advocate, practicing as such for at least five (5) years and with experience relevant to the administration of a member-based association, organisation or entity; and

5.2.3.2.2. a Registered EAP and a subject matter expert relevant to the particular matter for consideration by the PCC.

5.2.3.3. Assisting experts shall only have an advisory capacity and no voting rights in the decision making process of the PCC.

5.3. Procedures for dealing with misconduct

5.3.1. The following general procedure shall be applied by EAPASA in executing functions in accordance with this policy:

5.3.1.1. On identification of an alleged contravention or on receipt of a complaint, a PCC will be convened by the Registrar in accordance with the rules set by the Board and from such members eligible for appointment to the PCC.

5.3.1.2. The PCC shall, within 72 hours of being convened, take a decision whether to investigate the alleged contravention or complaint, taking into account the Registrar's recommendation.

5.3.1.3. Where the PCC decides to investigate the alleged contravention or allegation, the EAP must be advised of the alleged contravention or complaint, in writing and within a period of 5 working days from the convening of the PCC. Such written notification shall be via registered or electronic mail.

- 5.3.1.4. The EAP shall be afforded a period of 10 working days, from the period referred to in 6.3.1.3, to provide written representations in respect of the alleged contravention or complaint. Any extension of this period shall be pursuant to the receipt of a written request and for such a period as may be determined at the sole discretion of the PCC, which extended period may not exceed a further 10 day working period.
- 5.3.1.5. The PCC may elect to hold a hearing (formal enquiry) or dismiss the alleged contravention or complaint within a period of a maximum of 90days from expiry of the period referred to in 6.3.1.4. For the avoidance of doubt, the convening of a hearing, deliberations and finalisation of the PCC's recommendation shall be confined to the 90day working period referred to in this clause, or such period as practically possible in the circumstances.
- 5.3.1.6. In the event the PCC elects to convene a hearing, details of the time and place for the hearing shall be communicated promptly to the EAP to afford the EAP a period of no less than 7 working days to prepare for the hearing. The PCC may also elect to convene the hearing through the use of electronic/virtual meeting tools.
- 5.3.1.7. An EAP is entitled to be represented at the hearing so convened by any person who is a Registered EAP. Legal representation in proceedings of the PCC is prohibited save as may be specifically authorised in terms of this policy.
- 5.3.1.8. Where an EAP seeks to have a legal representative during the PCC proceedings, the EAP must submit a written application setting forth compelling reasons for such no less than 5 working days prior to the date set for a hearing.
- 5.3.1.9. The PCC may grant the EAP a right to professional legal representation at its sole absolute discretion, taking into account the nature of the charges brought against the EAP; the degree of legal or factual complexity involved; the potential seriousness of the consequences of an adverse finding; and any other factors which the PCC in its discretion considers relevant in light of the circumstances which prevail in the particular case.
- 5.3.1.10. The PCC may appoint an EAP with at least fifteen years' experience as a prosecutor to gather and lead evidence before the PCC.

5.3.1.11. Depending on the nature of the contraventions or alleged complaint, the PCC may retain legal representation. Where the PCC retains legal representation, the EAP shall automatically be entitled to legal representation without the need for an application as envisaged in 5.3.1.8.

5.3.2. The Board may prescribe forms for use in connection with the conduct of such enquiries and hearings, which forms are to be used insofar as practically possible.

5.3.3. The PCC will determine its own procedures for the conduct of proceedings of hearings convened by the PCC.

5.3.4. The procedure to be followed at a hearing shall include a minimum of the following:

5.3.4.1. The Prosecutor appointed by the PCC shall have a duty to begin proceedings and present the evidence against the EAP;

5.3.4.2. The EAP will have an opportunity to respond to the case presented through cross examination;

5.3.4.3. The EAP shall be afforded an opportunity to present his/her evidence;

5.3.4.4. The Prosecutor will have an opportunity to respond to the case presented through cross examination;

5.3.4.5. The members of the PCC may examine all witnesses as may be necessary and in their discretion to the extent that it becomes necessary in the opinion of the PCC to enable the members of the PCC to take a decision, and

5.3.4.6. After all evidence has been presented, the PCC will adjourn to consider all evidence and to make its decision.

6.3.5. The PCC will take a decision that either finds the EAP:

5.3.5.1. not guilty;

5.3.5.2. guilty on all or some of the charges proffered against the EAP; and determine an appropriate sanction against the EAP, which may include;

5.3.5.2.1. suspension of the member from the Association for a specified period (for a maximum period as determined in accordance with the schedule of penalties approved by the Board); or

5.3.5.2.2. expulsion of the EAP from the Association; and/or

5.3.5.2.3. a fine determined by the PCC, which fine will not exceed the maximum amount for such fines as may be determined by the Board from time to time.

5.3.6. The Chairperson of the PCC shall forward the decision of the PCC to the Registrar within 5 days from the date of the decision.

5.3.7. The Registrar shall, within 2 days of receipt of the Chairperson's report, advise the EAP and any complainant (where relevant) in writing of the decision of the PCC and the Registrar shall furnish a summary of the record of decision of the PCC to the next Board Meeting.

5.3.8. The EAP or the Complainant shall have a period of 5 working days from receipt of a decision of the PCC to note an intention to appeal the findings of the PCC to the Appeals Committee and a further period of 14 working days from the date of receipt of the record and written reasons for the PCC's decision, to submit an appeal to the Appeals Committee.

5.3.9. The details of the PCC hearing and outcomes may be published after a decision has been made, in accordance with a procedure as may be approved by the Board, following the expiry of the 5 working day period within which an appeal may be lodged to the Appeals Committee.

5.3.10. If an EAP refuses or fails to attend a PCC hearing, fails to comply with the lawful issued directives of the PCC or fails to conduct themselves in a professional manner during the proceedings of the PCC, the PCC shall be entitled to proceed without input from such member and to conclude its hearing or investigation and to make such a finding as it deems fit.

5.3.11. All documentation, proceedings and outcomes which are the subject of the PCC deliberations remain confidential until such time as a decision is made.

6. Appeals Committee

6.1. Clause 10.4.10.6.2 of the EAPASA Constitution makes provision for the Board to establish an Appeals Committee. This committee is an *ad hoc* committee convened on an as-and-when-necessary basis and whose proceedings are governed by the provisions of this Policy read with the relevant charter.

6.2. Any person affected by a decision of the PCC or the Registration Committee may lodge an appeal with the Appeals Committee in respect of any decision made by the PCC or the Registration Committee.

6.3. No appeal shall be made in respect of the decisions of the Appeals Committee.

6.4. The Appeals Committee shall be constituted by:

6.4.1. three (3) members who shall:

6.4.1.1. include at least 2 Board Members who are registered EAPs;

6.4.1.2. include 1 independent member who shall be a person with appropriate legal experience, being an Advocate (who served as such for at least five (5) years); and

6.4.1.3. ensure that at least one person is Black and one person is Female.

6.5. The Appeals Committee will receive the findings of the PCC or the Registration Committee within 14 working days of the noting of an appeal by an EAP or a complainant.

6.6. The EAP or the complainant shall have 14 working days from the date of receipt of the PCC's record and reasons for its decision to submit an appeal against the decision of the PCC by delivering a written notice of appeal to the Appeals Committee which should at least contain the following information:

6.6.1. the name, postal, email addresses and telephone numbers of the appellant and their representatives;

6.6.2. whether the whole or part of the finding and/or sentence is appealed against and if in part, which part, and

6.6.3. the grounds on which the appeal is lodged specifying the findings of fact and/or rulings of law appealed against.

6.7. Once an Appellant has filed his/her appeal, the Registrar of the Association shall be afforded a period of 10 working days to submit representations on behalf of the Association in respect of the appeal submitted.

6.8. Within 5 working days of receipt of the Registrar's submission or on expiry of the 10 working day period referred to in 7.7, the Appeals Committee will consider the application submission from the Registrar (where relevant) and make a decision to either:

6.8.1. dismiss uphold the appeal wholly or in part based on the written submissions;

6.8.2. hold a hearing to provide the appellant, Registrar or interested party an opportunity to make oral submission to amplify any written submission received;

6.8.3. set aside or vary the finding, disciplinary action or both.

6.9. The details of the Appeals Committee hearing and outcomes may be published after a decision has been made, in accordance with a procedure as may be approved by the Board, after 10 working days from the date on which the Appeals Committee decision is delivered.

7. Lodging of a compliant

7.1. **Any person** who feels aggrieved by an act or omission of an EAP or who reasonably believes that an EAP is guilty of misconduct, may lodge a complaint with the EAPASA Registrar.

7.2. Any person lodging a complaint of improper conduct against an EAP with EAPASA must lodge the complaint in terms of the prescribed form accompanied by a sworn affidavit (For the Form and Affidavit, see Annexures A and B, copies of which are available on the Association's website: www.eapasa.org) and be signed by the complainant or by his or her duly authorised representative.

7.3. A complaint should:

7.3.1. specify the act, non-compliance with code, omission or such other conduct constituting misconduct by an EAP. The non-compliance with code, omission or such other conduct constituting misconduct must be informed by the Code of

Ethical Conduct and Practice which sets the standards through which the conduct of EAPs are assessed;

7.3.2. include all supporting evidence relating to each alleged contravened rule;

7.3.3. identify witnesses who may be able to provide evidence in support of the complaint;

7.3.4. indicate the complainant's willingness to –

7.3.4.1. assist the PCC with the investigation or with obtaining material information in respect of the complaint; and

7.3.4.2. appear before the PCC and the Appeals Committee (where necessary) at the time and place specified in a notice issued by the Chairperson of the PCC or the Chairperson of the Appeals Committee, to give evidence and to produce any document or object. The Appeals Committee may also elect to convene the hearing through the use of electronic/virtual meeting tools.

7.4. The Registrar, upon receipt of a complaint with information of conduct which *prima facie* points to improper conduct by an EAP, must refer the complaint to the PCC to determine whether the EAP should be charged.

7.5. The Registrar and PCC shall be under no obligation to conduct a formal enquiry in respect of every complaint submitted to the Association. Misunderstandings and disputes which may arise between EAPs and their clients, but that do not amount to a breach of the Code of Ethical Conduct and Practice will not be entertained by the Association.

7.6. A duly completed complaint form and supporting documents may be sent to EAPASA in one of the following ways:

7.6.1. Email to the following email address: complaints@eapasa.org

7.6.2. Hand Delivery or Courier to the EAPASA Office,

Unit 12B Centuria Park
265 Von Willich Avenue

Highveld Techno Park,
Centurion, 0157

7.7. EAPASA only has jurisdiction to investigate complaints of improper conduct brought against EAPs (Registered and Candidate Environmental Assessment Practitioners) registered as such with EAPASA.

7.8. Any person who is not registered in any of the listed categories is referred to as a non-registered person and will be prohibited from providing services of an Environmental Assessment Practitioner after 08 February 2022.

7.9. Complaints received against non-registered persons are referred to the relevant environmental Competent Authority and/or the South African Police Services for investigation.

7.10. The submission and/or subsequent investigation of a complaint of improper conduct does not replace any civil or criminal proceedings against an EAP. EAPASA's disciplinary processes can run concurrently with such proceedings and consequently, nothing prevents a complainant from instituting any civil proceedings against an EAP after submitting a complaint with EAPASA.

8. Proceedings after a complaint been received

8.1 Once a complaint has been received, the Registrar will refer the complaint to the PCC for investigation along with the Registrar's recommendation on whether the complaint should be entertained further. The procedures followed by the PCC are as outlined in clause 6.3 herein.

8.2. The investigation and consideration of complaints lodged with the Association is strictly confined to, non-compliance with the code or such other conduct constituting misconduct relating to the provision of professional services. The process is punitive in nature and not restorative. Neither the PCC nor the Appeals Committee can compel an EAP to perform or give effect to any obligation.

9. Publication of findings and sanctions

9.1. The EAPASA Registrar may, at the discretion of the PCC and recommendation of the Registrar and depending on the merits of the case publish the findings and sanction imposed by the PCC or the Appeals Committee, subject to the provision of clauses 6.3.9 or 7.9, as may be applicable, on the EAPASA website.

ANNEXURE A: EAPASA FORM FOR LODGING A COMPLAINT AGAINST A REGISTERED EAP

NAME AND SURNAME OF COMPLAINANT	
TELEPHONE NUMBER OF COMPLAINANT	
CELL NUMBER OF COMPLAINANT	
EMAIL ADDRESS OF COMPLAINANT	
NAME OF REGISTERED OR CANDIDATE EAP	
REGISTRATION NUMBER OF EAP OR CANDIDATE EAP	
DATE OF APPOINTMENT OF EAP BY COMPLAINANT (WHERE APPLICABLE)	
HAS A MEETING BEEN CONVENED WITH THE EAP	
NATURE OF COMPLAINT	
DATE DISPUTE AROSE	
ARE YOU ACTIONING ON YOUR BEHALF OF OR FOR ANOTHER?	

ANNEXURE B: AFFIDAVIT TEMPLATE

I, the undersigned, _____ **(your name)** do hereby declare under oath the following:

I am the complainant in this matter, an adult _____ **(gender i.e. male, female or transgender; and occupation)** and I _____ **reside/carry** out _____ **business** at

_____ **(physical address).**

The contents herein contained fall within my personal knowledge and are both true and correct, unless specified otherwise.

The person against whom this complaint is lodged (hereinafter referred to as "the EAP") is _____,
_____ **(registration number)** (if known), an adult _____ **(gender and occupation)** who ordinarily carried out business at _____ **(name and address of company that EAP works for)** (if known to complainant).

Details of other persons involved in this matter are (e.g. Developer, Project Manager, Specialist Consultants, and their level of involvement):

I am dissatisfied with (please outline clearly what you are dissatisfied with, provide specific information, including dates, work agreed on, the clauses of the Code of Ethical Conduct and Practice which have been allegedly transgressed):

I have attached the following documents:

6.1 A copy of the form (appointment of EAP, if applicable to complaint)

YES

NO

6.2 Any documents and or records (including electronic data relating to the work such as reports, environmental standards and specifications, calculations, contractual documents, photographs or the like) which will serve to illustrate or substantiate any of the complaint, as listed below:

I know and understand the contents of this declaration.
I have no objection to taking the prescribed oath.
I consider the prescribed oath as binding on my conscience.

DEPONENT

It is hereby certified that the aforesaid declaration was signed and sworn in my presence on this the ____ day of _____ 20__, at _____, the deponent having confirmed and acknowledged:

- a) That the deponent knows and understands the contents of this declaration;
- b) That the deponent has no objection to taking the prescribed oath; and
- c) That the deponent considers the prescribed oath as binding on the deponent's conscience.

COMMISSIONER OF OATHS

Full names: _____

Address: _____

Rank/office held: _____

Area for which appointed: _____

NOTES:

- 1. The first step is to seek clarity or attempt to resolve matters directly with the EAP. If you are still unable to resolve the issue(s), please fill in the Complaint Form.
- 2. The complaint form must be in **English** and typed. No handwritten affidavits will be accepted.
- 3. If you are a Registered or Candidate EAP, please include your registration number and discipline.
- 4. A copy of the complaint and supporting evidence will be made available to the EAP concerned in terms of the *audi alteram partem* rule.

5. Please send the completed Complaint Form, Affidavit and any supporting documents via email, courier or hand delivery, to (*we do not advise using post*):

Dr Patrick Sithole
EAPASA Registrar
12B Centurus,
Centuria Office Park,
265 Von Willich Avenue,
Centurion, Pretoria, 0157 Email: complaints@eapasa.org and registrar@eapasa.org

ANNEXURE C: SANCTIONS

NB: All the charged EAPs and their contraventions and penalties will be published on the EAPASA website for a period not exceeding 5 years which will be in line with their registration cycles.

SANCTIONS TO BE IMPOSED

Should a Registered EAP be found:

1. Guilty of contravention of the Rules of the Code of Conduct of Registered EAP for the first or second time within the 5 years of the registration cycle.
 - The Registered EAP is liable for an amount of R20 000 per contravened rule.
2. Guilty of contravention of the Rules of the Code of Conduct of Registered EAP for the third time within the 5 years of registration cycle.
 - The registered EAP still liable for an amount of R20 000 per contravened rule, with temporary suspension of being a Registered EAP. The EAP can practice as a Candidate EAP for a year and will be mandatory that they work under the supervision of a mentor/Registered EAP. The Registrar will assign the EAP a mentor. The EAP is liable for all the cost, including peer review by the mentor.
3. Guilty of contravention of the Rules of the Code of Conduct of Registered EAP for the fourth time within the 5 years of registration cycle.
 - Expulsion takes place, EAP blacklisted for 5 years before they are eligible to reapply.

4. Further Sanctions include:

4.1. Guilty of contravention of the Rules of the Code of Conduct of Registered EAP for the first time within the 5 years of the registration cycle, the Registered EAP will be liable for one and/or more of the following sanctions, subject to the severity of the contravention.

- a) Warning
- b) Public service (e.g, Rehabilitation of a heavily polluted area)
- c) Mandatory mentorship with a university student
- d) Mandatory mentorship under a Registered EAP
- e) Audit of the EAP's work (work or reports submitted to EAPASA or work peer reviewed by a registered EAP recommended by EAPASA)
- f) Mitigation (Rehabilitation order/ number of sessions with professional conduct programs or therapist)
- g) Yearly mandatory contribution to EAPASA conferences over a period of time.
- h) Writing EAPASA physical board exams (Emphasis on reenforcing Core Competency questions)

- i) Fine
- j) Revocation of membership

4.2. Guilty of contravention of the Rules of the Code of Conduct of Registered EAP for the second or third time within the 5 years of registration cycle, the Registered EAP will be liable for two and/or more of the following sanctions, subject to the severity of the contravention.

- a) Mandatory mentorship under a Registered EAP
- b) Audit of the EAP's work
- c) Mitigation (Rehabilitation order/ number of sessions with professional conduct programs or therapist)
- d) Yearly mandatory contribution to EAPASA conferences over a period of time.
- e) Writing EAPASA physical board exams (Emphasis on reenforcing Core Competency questions)
- f) Fine
- g) Revocation of membership

4.3. Guilty of contravention of the Rules of the Code of Conduct of Registered EAP for the fourth time within the 5 years of registration cycle, the Registered EAP will be liable for two and/or more of the following sanctions, subject to the severity of the contravention.

- a) Mitigation (Rehabilitation order/ number of sessions with professional conduct programs or therapist)
- b) Fine
- c) Yearly mandatory contribution to EAPASA conferences over a period of time.
- d) Writing EAPASA physical board exams (Emphasis on reenforcing Core Competency questions)
- e) Revocation of membership.

Proposed Sanctions Details

1. Warning

This is the least harsh form of sanctions for EAPs that contravene the Malpractice Policy rules because of ignorance, mistake or poor advice. This sanction highlights the specific nature of the violation and provides an opportunity for the member to rectify their behaviour and ensure compliance going forward.

2. Public service

Assigning the member to engage in community service related to environmental causes can be an effective way to raise awareness about the importance of environmental protection. It provides an opportunity for the member to actively contribute to environmental initiatives, learn about sustainable practices, and foster a sense of responsibility towards the environment.

3. Mandatory mentorship under a Registered EAP

Requiring the member to undergo mandatory mentorship under a Registered EAP can provide guidance from an experienced professional. The mentor can assist the member in understanding and adhering to best practices, ethical considerations, and regulatory requirements in environmental assessment. Pairing the member with an experience EAP who will peer review all the sanctioned EAP's work. This will mediate the quality issues which lead to the EAP being sanctioned.

4. Audit of the EAP's work

The EAP is required to submit all work done to EAP. The audit may examine specific projects, reports, or assessments, checking for accuracy, completeness, and adherence to relevant laws and regulations.

5. Mitigation (Rehabilitation order/number of sessions with professional conduct programs)

Mitigation measures aim to address any underlying issues contributing to the malpractice. This could involve a rehabilitation order, which may include a specific number of sessions with professional conduct programs or therapists. Such sessions can help the member reflect on their actions, understand the impact of their behaviour, and develop strategies to prevent future violations.

6. Writing EAPASA physical board exams (Emphasis on reinforcing Core Competency questions and NEMA)

Requiring the member to write physical board exams administered by EAPASA ensures their competency in environmental assessment practices. These exams assess the member's knowledge, understanding, and ability to apply environmental assessment principles, methodologies, and regulations effectively.

7. Fine

The registered EAP is liable for an amount of R20 000 per contravened rule.

8. Revocation of membership

Revoking membership is a severe consequence and will be reserved for repeated or severe violations of the Malpractice Policy. It entails the removal of the member from EAPASA, effectively terminating their participation. The EAP will be blacklisted for 5 years before they are eligible to reapply.

EAPASA, is committed to supporting the growth and development of our EAPs. While the disciplinary hearing outcome necessitates the imposition of sanctions, we also recognize the importance of providing opportunities for improvement and rehabilitation. We encourage EAPs to take the process of getting sanctioned as a learning experience and an opportunity for personal and professional growth.

CODE OF CONDUCT AND ETHICAL PRACTICE

Preamble

The overriding objectives for the Code of Conduct and Ethical Practice is to strive for excellence in the Environmental Assessment Practice, to protect the environment against unsound Environmental Impact Assessment practices and the delivery of services to the public with due care, skill, diligence and integrity, applying all relevant knowledge in the process.

Should these objectives not be met, Registered Practitioners are subject to the disciplinary supervision of the Association. The Rules lay down standards of professional conduct and ethical practice which must be complied with. Failure to do so may result in a disciplinary hearing.

Regulation 10 of the S24H Regulations requires the Association to draw up a Code of Conduct ("Code") for Registered Practitioners. All such persons shall comply with the Code and failure to do so may constitute improper conduct.

Any failure to comply with the provisions of this Code shall be dealt with in line with the disciplinary procedures as set out in the Malpractice Policy.

Where a particular conduct is not specifically stipulated in this Code it does not mean that such conduct cannot form the basis of disciplinary proceedings. Each case shall be judged on its merits, and there may be circumstances in which unacceptable or improper conduct or serious professional incompetence is found even where there has been no breach of the express terms of this Code. The rules in this Code are not exhaustive.

A disciplinary order may be made against any Registered Practitioner convicted of a criminal offence that has material relevance to such person's fitness to practise as a Registered Practitioner.

Definitions:

"Association" means the association, as more fully described in clause 2 of the EAPASA Constitution, known as the Environmental Assessment Practitioners Association of South Africa, a non-profit entity duly registered in accordance with Section 24H of the NEMA.

"Cancelled" means the voluntary dissolution of registration by a registered professional, without them being found guilty of improper conduct; these professionals are still bound by their findings, specifications or documents conducted prior and/or on the date of dissolution.

“Competent Authority (CA)” means the government departments in the One Environmental System (OES) which are the Department of Mineral Resources and Energy (DMRE), the Department of Forestry, Fisheries and the Environment (DFFE) and the Department of Water Affairs and Sanitation (DWS) and their provincial and local divisions as envisioned in the National Environmental Laws Amendment Act 02 of 2022.

“Environmental Assessment (EA)” 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 alternative, appropriate mitigation of adverse impacts and enhancement of benefits, the preparation of related environmental management programmes and their implementation, the equitable distribution of these impacts and benefits, with the appropriate engagement of relevant stakeholders, and may involve the integration of a range of specialist findings.

“Environmental Assessment Practitioner (EAP)” means a registered individual in terms of S24H of the NEMA, that is responsible for the planning, management, co-ordination or review of environmental impact assessments, strategic environmental assessments, environmental management programmes or any other appropriate environmental instruments introduced through regulations, as defined in section 1 of the NEMA.

“Environmental Impact Assessment (EIA)” means a systematic process of identifying, assessing and reporting environmental impacts associated with an activity and includes basic assessment and S&EIR; as defined in Regulation 1 of the EIA Regulations, 2014 as amended.

“NEMA” means the National Environmental Management Act 107 of 1998, as amended.

“Persons/Professionals” – any person registered under the Councils of the Built Environment and/or EAPASA.

“Professional Conduct Committee (PCC)” means the decision-making authority that evaluates the conduct of a Registered/Candidate EAPs as established by the EAPASA Board, in accordance with the EAPASA Constitution or policies developed pursuant to the Constitution.

“Public” means any natural or juristic persons, group or class of people whose environmental wellbeing has been materially and adversely affected by the improper conduct of an EAP, as envisioned in Section 4 of the Promotion of Administrative Justice Act 3 of 2000.

“Candidate EAP or Registered Candidate EAP” means an EAP who is registered in terms of the criteria, standards and process determined by the EAPASA Board in accordance with

Section 24H Regulations, who has a required formal qualification, or equivalent, but does not have the required professional experience for registration as a Registered EAP.

“Registered EAP” means an EAP who is registered in terms of the criteria, standards and process determined by the Board in accordance with Section 24H Regulations and the applicable Policies, Regulations and such other instruments as may be applicable from time to time.

“Registered Practitioners” here within refers to both Registered and Candidate EAPs.

“S24H Regulations” means the NEMA, 1998, S24H Registration Authority Regulations, 2016.

“EIA Regulations” means the NEMA, 1998, Environmental Impact Assessment Regulations, 2014, as amended.

“Terminate” means that EAPASA reserves the right to discontinue registration of an EAP that is found guilty of Section 49A of the NEMA, and/or Regulation 14 of the S24H Regulations in accordance with Section 49B of the NEMA.

“Suspend” means that EAPASA reserves the right to withhold registration for a determined period of time for an EAP that is found guilty of Section 49A of the NEMA, and/or Regulations 9 and/or 14 of the S24H Regulations in accordance with Section 49B of the NEMA.

Application

This Code of Conduct applies to a Registered or Candidate Environmental Assessment Practitioners in whatever capacity they may work or act in, as a natural person, whether in private or public practice, as sole practitioner, partner, director or employee (whether as Registered or Candidate Environmental Assessment Practitioner) and whether in the employ of another Registered Practitioner or not.

If a Registered or Candidate Environmental Assessment Practitioner fails to comply with any provision of the NEMA; section 24H Registration Authority Regulations; EAPASA Constitution, Code of Conduct, Malpractice Policy and/or any other Rules; published in terms thereof, which is deemed by the Association or Professional Conduct Committee to constitute improper conduct, shall proceed with disciplinary action against such Registered or Candidate Practitioner.

In the event of any improper conduct committed prior to the effective date of this Code of Conduct, the Association or Professional Conduct Committee shall have authority to charge a registered or candidate practitioner under the Code of Conduct applicable at time of the incident.

Rule 1 – Integrity

Registered Practitioners Shall-

- 1.1. take into consideration the standard of honesty and integrity that underpin this Code of Conduct when performing Environmental Impact Assessment work;
- 1.2. at all times act with honesty and integrity and avoid any action or situation which may be detrimental to the esteem and dignity of the profession; or conduct which brings the profession into disrepute;
- 1.3. 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, private, or any other conflicting interests;
- 1.4. not make any statement which is contrary to their professional opinion or which they know or ought to have known to be misleading, unfair to others or discreditable to the profession;
- 1.5. not knowingly undertake work in circumstances or under conditions or terms that would compromise their ability to carry out their responsibilities and fulfil their commitments to their clients or employers;
- 1.6. not misrepresent, or knowingly permit misrepresentation of their own or any other persons' academic or professional qualification or competency, nor exaggerate their degree of responsibility for any environmental impact assessment work;
- 1.7. notify the Association without delay if they become subject to any disqualification as contemplated in Regulation 18(1) of the Section 24H Regulations as failure to do so may be deemed by the Association as improper conduct;
- 1.8. 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 providing false, biased or undocumented claims or accusations, or by any other malicious action;

- 1.9. remain bound by these rules, even after the occurrence of non-payment of the annual registration fees and after suspension or termination of registration in terms of Regulation 9 of the Regulations, due to failure to pay prescribed annual registration fees;
- 1.10. not practice as a registered or candidate environmental assessment practitioner during the period in which their registration has been suspended or terminated in terms of Regulation 9 of the Regulations, due to failure to pay annual prescribed registration fees;
- 1.11. not practice as an EAP after their registration has been suspended or terminated in terms of Regulation 20 of the Regulations due to being found guilty of improper conduct by the PCC, CA and/or Association;
- 1.12. shall not practice EAP after their registration has been cancelled;
- 1.13. in the instance that an EAP decides to cancel their registration, any findings or work conducted during their tenure as an EAP can still be sanctioned for any improper conduct;
- 1.14. treat clients and fellow EAPs with due dignity, respect, and courtesy;
- 1.15. in giving advice, exercise impartiality and independent professional judgement; and
- 1.16. not engage in any activities in any manner including, but not limited to of dishonesty, fraud, forgery, deceit, misrepresentation, bias, corruption or bribery.

Rule 2 – Competency

Registered Practitioners Shall –

- 2.1. be duly qualified in accordance with the Criteria and Procedural Guideline;
- 2.2. discharge their duties to the employer, client, agent, associate, and the public with due skill, diligence and competence;
- 2.3. where reasonably possible, make appropriate arrangements for the fulfilment of professional obligations in the event of incapacity and/or absence from work, and/or inability to perform work;

- 2.4. only undertake EIA or EA work which is identified for the category of registration in which they are registered in terms of Regulation 15 of the Regulations and in accordance with the registration categories in force;
- 2.5. where work is carried out by a registered candidate under their supervision, take responsibility for ensuring that such candidate is appropriately registered, competent to perform the task, and is adequately supervised;
- 2.6. shall ensure that registered candidates do not have any financial interest in an EIA practice or multidisciplinary practice that performs EA work other than in respect of bona fide remuneration for their services; and
- 2.7. a registered EAP candidate must perform work under the direction, control and/or continual supervision of a registered EAP professional entitled to perform such work and who must assume responsibility for any such work performed by the candidate EAP.
- 2.8. regularly undertake continuing professional development activities in order to ensure that they keep up to date with developments in the practice of EIAs and to enhance and maintain their professional expertise and competence.
- 2.9. in either public or private employ 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;
- 2.10. 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;
- 2.11. 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);

- 2.12. Conduct her/his work at the highest possible standard reasonable to be expected from a professional in that position.

Rule 3 - Promotion of services

Registered Practitioners Shall –

- 3.1. only communicate and promote themselves and their professional services with honesty, describing both in a manner that is related only to the work of the professional categories of registration represented in a practice;
- 3.2. credit the EIA and/or EA work done during a period as a principal or employee of another environmental assessment practice and shall make clear reference and description to such practice;
- 3.3. ensure that the name under which an environmental assessment practice operates is not misleading or capable of being confused with that of another practice; and
- 3.4. not use the EIA and/or EA work prepared by another registered professional without written authority from the originating registered professional;
- 3.5. not use a registered EAP's details without their knowledge, approval or consent. This refers to the EAPASA registration number, Name, Surname, Curriculum Vitae, and/or any other personal information that serves as a means of identity;

Rule 4 - Administrative functions

Registered Practitioners Shall –

- 4.1. ensure that before they undertake any professional work, they have entered into a written agreement with the client or employer which must, inter alia, include:
- (a) proof of professional registration;
 - (b) the scope of EA work;
 - (c) the scope of service to be provided;
 - (d) the allocation and limitation of responsibilities;
 - (e) the fees payable for the EIA and/or EA work or services, the method of fee calculation (if appropriate), and the stage(s) at which fees will be payable;
 - (f) provision for dispute resolution;
 - (g) termination of the agreement;

(h) details of professional indemnity insurance; including –

- I. name of the insurer;
- II. the name of the insured;
- III. amount of cover;
- IV. policy number; and
- V. validity period.

- 4.2. not change the terms of appointment including the scope of work without the written instruction or approval of the client or employer, including but not limited to carry out professional work within the agreed time or within a reasonable time;
- 4.3. ensure that at the completion of each milestone the client or employer signs off where the scope of work involves more than one stage;
- 4.4. only issue any findings, specifications or documents in respect of work performed or administered by them or by a person in their employ which bears their name and/or registration number or the name of their EA practice;
- 4.5. in the case that a registered EAP details have been used on an application or project in which the said EAP has consulted or assisted, ensure that the application or project is subjected to review by an independent EAP;
- 4.6. attend to all corrections requested by the national, provincial and local authorities, and independent EAP on the findings, specifications or documents prepared by them within a reasonable time;
- 4.7. issue certificates that are based on the correct facts on site;
- 4.8. take adequate and appropriate professional indemnity insurance to cover all environmental assessment work undertaken;
- 4.9. when requested by the EAPASA, provide evidence of professional indemnity insurance within a specified time;

- 4.10. within 30 (thirty) days of change of personal details, such as email address, physical and postal addresses, telephone and numbers of the practice, inform the Association in writing thereof and ensure that such details are kept updated;
- 4.11. keep all plans, records, certificates, and/or findings, specifications and documents commencing from the start of work and up to a period of 5 (five) years from date of final completion;
- 4.12. not disclose confidential information obtained from clients except with written permission and in compliance with the Protection of Personal Information Act 4 of 2013;
- 4.13. keep their clients or employer informed in writing about the progress on work undertaken on their behalf within a reasonable time and of any issue which may significantly affect its quality or cost, and any other considerations which may substantially affect the project; and
- 4.14. take responsibility for work carried out by their subordinates, including EAPs registered as candidates.

Rule 5 - Establishment of an environmental assessment practice

- 5.1. Any registered principal who conducts EIAs and or EAs in any form shall within 30 (thirty) days of the establishment of the practice, register it with the Association, giving full details of the practice name, address from which the practice is conducted, type of practice supported with corresponding registration details, and names of partners, shareholders, directors, and employees undertaking EA work in the practice;
- 5.2. The Association shall be informed in writing of any changes in name, type, address, and composition of a practice and its termination, within 30 (thirty) days of the relevant occurrence;
- 5.3. The registered principals of a practice shall display their registration certificates in a prominent place in their physical and/or virtual workplace;
- 5.4. A registered EAP shall not, except with the permission of the Association and under such conditions as the Association may prescribe, enter into any professional relationship or

association for purposes of performing EA work with any person who is not a registered person or a registered professional of a closely allied profession. Permission will not be granted if the person concerned:

5.4.1. is disqualified from registration under any provisions of the Regulations or from membership of any closely allied profession;

5.4.2. is qualified to register under any category provided for under the Regulations but has not done so;

5.5. A person registered in the category of a candidate shall not establish an EA practice, act as a principal or a shareholder in an EA practice;

5.6. Letterhead:

The letterheads of the EAP shall display the following:

(a) Name of the EA practice or the EAP themselves, and their registration number(s); (b) The type of EAP:

(i) Registered EAP

(ii) Candidate EAP

(c) The professional designation and qualifications;

(d) Physical and postal address, telephone, email, Companies and Intellectual Property Commission (CIPC) and value-added-tax (VAT) registration numbers, if applicable;

(e) Registered persons shall use their titles and EAPASA registration number in all EA reports and other documentation relating to their work in the EA profession, prepared by or for them.

(f) Practices or registered professionals may not display the Association's logo on any corporate stationery or letterheads, as it is protected in terms of trade mark laws.

Rule 6 - Public interest and environmental protection

Registered Practitioners –

Shall, in the performance of their duties -

6.1. take all reasonable measures to the best of their knowledge/expertise to minimise any adverse impact on the environment;

- 6.2. respect the constitutional rights of individuals and communities that could be affected by their work;
- 6.3. comply with the NEMA, EIA Regulations, S24H Regulations and any other environment laws or any other applicable law governing the environment and EA work;
- 6.4. where appropriate, advise a client or employer in writing how best to conserve and enhance the quality of the environment and its natural resources; and
- 6.5. when providing professional advice to a client or employer, and such advice is not accepted, inform them in writing of any consequences which may be detrimental to the health, safety or interests of the public;
- 6.6. advise the incorporation of environmental considerations from the earliest stages of policy, plan, programme or project conception;
- 6.7. include the incorporation of environmental considerations throughout all stages the project life cycle, including, but not limited to the policy, plan, programme or project development;

Rule 7- Foreign EAP Practitioners

- 7.1. All foreign EA professionals must comply with the NEMA, EIA regulations, S24H of the Regulations to practice EIAs or EA work lawfully in South Africa.
- 7.2. No foreign EA professionals shall be authorised to practise EIAs or EA work in South Africa unless they have applied and have been granted registration by Association for the duration of the specific contract.

Rule 8 - Disciplinary procedures

Disciplinary procedures are set out in Malpractice Policy and in the Investigations and Disciplinary Hearings and Appeal procedure published under Board Notice.

Repeal of Rules

The Rules published under the Code of Conduct, 2024 are hereby repealed, subject to section 12(2) of the Interpretation Act 33 of 1957.

Short Title

This Schedule is called the Code of Conduct, 2026.