

BOARD NOTICES • RAADSKENNISGEWINGS

BOARD NOTICE 527 OF 2023



RULES FOR INQUIRY INTO ALLEGED IMPROPER CONDUCT

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1. LIST OF ANNEXURES

Annexure A Affidavit to Lodge a Complaint of Improper Conduct

2. LIST OF ABBREVIATIONS AND DEFINITIONS

SACPCMP	South African Council for the Project and Construction Management Professions.
Act, the	Refers to the Project and Construction Management Professions Act 48 of 2000.
Appeal	Refers to an application for reversal or review of Council decision.
Complainant	Refers to a party/person making a formal complaint of alleged improper conduct against a registered person.
Council, the	South African Council for the Project and Construction Management Professions established by section 2.
Disciplinary Hearing	Refers to a hearing in terms of section 31 of the Project and Construction Management Professions Act 48 of 2000.
Disciplinary Tribunal	A tribunal appointed in terms of section 30 of the Project and Construction Management Professions Act 48 of 2000.
Inquiry	An official investigation conducted in terms of section 28 of the Project and Construction Management Professions Act 48 of 2000.
Investigation Committee	Committee established by the Council according to section 17 of the Project and Construction Management Professions Act 48 of 2000, to investigate allegations of improper conduct against registered persons.
Prima Facie	"at first sight", "at first view", or "based on first impression", before investigation. or sufficient to establish a fact or raise a presumption unless disproved or rebutted
Registered Person	A person registered under one of the categories referred to in Section 18 and 19 of the Project and Construction Management Professions Act 48 of 2000, and in good standing under the Act.
Respondent	Party/registered person against whom an allegation of improper conduct is filed.
Specified Categories	the SACPCMP recognises specified categories in the South African built environment that may fall under its ambit, linked to section 18 (1)(c) of the Act, read in conjunction with sections 19, 20 and 21.

3. APPLICABLE LEGISLATION AND/OR POLICIES

- 3.1. The South African Council for the Project and Construction Management Professions (SACPCMP) is empowered by section 36 of the Project and Construction Management Profession Act 48 of 2000 (the Act) to make rules with regard to any matter that is required or permitted to be prescribed in terms of the Act and any other matter for the better execution of the Act or in relation to any power granted or duty imposed by the Act.
- 3.2. The Rules for Inquiry into Alleged Improper Conduct are based on sections 17, 27, 28, 29, 30 and 31 of the Project and Construction Management Act, Act No. 48 of 2000.
- 3.3. With regards to complaints received through the SACPCMP Fraud Hotline, the Protected Disclosure Act, Act 26 of 2000 (as amended) may apply.
- 3.4. Information obtained in the course of any inquiry will be protected under the Protection of Personal Information Act, Act 4 of 2013 and the Promotion of Access to Information Act, Act 2 of 2000.

- 3.5. In the implementation of these rules the SACPCMP, to give effect to the right to administrative action that is lawful, reasonable and procedurally fair and to the right to written reasons for administrative action as contemplated in section 33 of the Constitution of the Republic of South Africa, applies the principles of the Promotion of Administrative Justice Act, Act 3 of 2000.

4. REQUIREMENTS FOR INQUIRY INTO IMPROPER CONDUCT

- 4.1. It is acknowledged that the Council is mandated to take any steps it considers necessary for the protection of the public and the environment in their dealings with registered persons for the maintenance of the integrity and the enhancement of the status of the Project and Construction Management Professions and specified categories under the Act.
- 4.2. In pursuance of the Council's right and obligation mentioned in 4.1. above, the Council must investigate an act of alleged improper conduct by a registered person and/or investigate a complaint, charge or allegation of improper conduct against a registered person brought by any person.
- 4.3. An investigation mentioned in 4.2 above is directed towards the professional conduct of a registered person and is thus predicated on obtaining evidence to determine whether a charge or charges may be preferred against a registered person with regards to the gazetted Rules of Conduct for Registered Persons (Board Notice 139 of 2017).
- 4.4. An investigation mentioned in 4.2 above is directed towards the professional conduct of a registered person and does not intend to recover damages on behalf of any person or enforce specific performance against any person and as such, is not meant to replace civil and/or criminal litigation.
- 4.5. An investigation is an administrative process and not a court process. Given the nature of the process, investigations may take several months to conclude.
- 4.6. It is furthermore acknowledged that the Council may take any steps which it considers necessary where, as a result of project and construction management related undertakings, public health and safety is prejudiced.

5. CLARIFICATION OF IMPROPER CONDUCT

- 5.1. The professional conduct of registered persons is guided and informed by the gazetted Rules of Conduct for Registered Persons (Board Notice 139 of 2017) to which all registered persons must adhere and comply.
- 5.2. The Council can only investigate a complaint related to an allegation against a Registered Person. As such, the Council cannot investigate the conduct of unregistered persons.
- 5.3. The Council can only investigate a complaint related to a transgression of the Rules of Conduct for Registered Persons (Board Notice 139 of 2017).

6. INQUIRY PROCEDURE

6.1. Information and complaints/allegations of improper conduct

- 6.1.1. Any person lodging a complaint of improper conduct against a registered person with the Council must lodge the complaint in the form of an affidavit (Annexure A) or an affirmation, must detail the specific act or acts relating to the alleged improper conduct and must submit evidence in support of it.

- 6.1.2. The Registrar, upon receipt of a complaint referred to in paragraph 6.1.1. which prima facie points to the improper conduct by a registered person or information of conduct which prima facie points to improper conduct by a registered person, must refer the complaint or the information to the Investigation Committee to determine whether the registered person should be charged.
- 6.1.3. Once the matter is referred to the Investigation Committee the Registrar must inform the complainant and the respondent (registered person), within five (5) working days that the case has been received by Council and of the inquiry process to follow.

6.2. Information in relation to whistleblowing – SACPCMP Fraud Hotline reports

With regards to whistleblowing using the SACPCMP Fraud Hotline:

- 6.2.1. Disclosures may be lodged using the SACPCMP Fraud Hotline as it relates to section 8 (c) of the Protected Disclosure Act.
- 6.2.2. Protected disclosures may be lodged anonymously through the SACPCMP Fraud Hotline.
- 6.2.3. Whistle blowers lodge disclosures on a voluntary basis using the SACPCMP Fraud Hotline and as such the SACPCMP shall not be liable for any damages or otherwise suffered by a whistleblower directly relating to the lodging of the disclosure with the SACPCMP.
- 6.2.4. The SACPCMP will take all reasonable steps to protect the whistleblower/s with regards to the processing of any personal information or identifying information that may place a whistle blower at risk of danger or occupational detriment.
- 6.2.5. Whistle blowers will be protected under the Protected Disclosure Act if:
 - a) the complaint is lodged in good faith,
 - b) the complaint is lodged with the reasonable belief that the concern falls within the mandate of the SACPCMP,
 - c) the information and allegations are substantially true, and
 - d) the nature of the conduct in the complaint is raised about crime, failure to comply with any legal duty, miscarriage of justice, danger to health and safety, damage to the environment, discrimination and the deliberate cover-up of any of these.
 - e) It applies to concerns about past, present and future malpractice.
- 6.2.6. It is an offence under section 9b of the Protected Disclosure Act amendment bill, if a whistleblower knowingly makes a false disclosure, who should have been reasonably aware that the information they provided was false, where there was an intention to cause harm, and where harm was suffered; this person may be liable to a fine, to imprisonment for up to two years, or to both a fine and imprisonment.
- 6.2.7. It will be determined, based on sections 4 and 5 of these rules whether a protected disclosure is within the jurisdiction of the SACPCMP to investigate.

- 6.2.8. The Registrar, upon positive determination of paragraph 6.2.6 above, must refer the complaint or the information of conduct to the Investigation Committee to determine whether the registered person should be charged.
- 6.2.9. Feedback regarding a protected disclosure will be provided to the whistleblower through the SACPCMP Fraud Hotline within 21 days.
- 6.2.10. Once the matter is referred to the Investigation Committee the Registrar must inform the complainant and the respondent (registered person), within five (5) working days, that the case has been received by Council and of the inquiry process to follow.

6.3. Role Players in Inquiry process

- 6.3.1. The **Investigation Committee** is constituted according to section 17 of the Act to investigate a matter brought against a registered person. Thus, the committee considers all complaints that are lodged, directs investigation thereof to ensure consideration of all relevant facts and will resolve to make recommendations to Council for a decision.
- 6.3.2. The Investigation Committee will appoint a **Panel of Investigators** from which an investigator or company will be delegated to gather evidence regarding a matter brought against a registered person on behalf of the Investigation Committee.

6.4. Conflict of Interest

- 6.4.1. All investigations must be conducted without bias, in an impartial and objective manner. No-one with an actual or perceived conflict of interest should be appointed or remain the investigator on any matter. Thus, the investigator must be someone as independent of the events being investigated as possible.
- 6.4.2. Once a potential conflict of interest becomes apparent to any of the parties involved in the inquiry it is required of that person to immediately inform the Investigation Committee of this conflict.
- 6.4.3. The Investigation Committee, once it is made aware of any potential or confirmed conflict of interest with regard to the inquiry must address such immediately to resolve the conflict of interest.

6.5. Investigation

- 6.5.1. Once the committee has reviewed the nature of the complaint of improper conduct against a registered person, the Registrar must within seven (7) working days furnish any registered person whose conduct is the subject of a complaint received in terms of sub-rule 6.1. and 6.2. or who has committed an act which may render him or her guilty of improper conduct, a written copy of the complaint and/or information related to the conduct.
- 6.5.2. The Registrar must inform the registered person –
 - a) Of the right to be represented or assisted by another person; and
 - b) That he/she is not obliged to make any statement and any statement so made may be used in evidence against the registered person.

- 6.5.3. The Investigation Committee must investigate a matter brought against a registered person; and obtain evidence to determine whether or not in its opinion the registered person concerned may be charged and, if so, recommend to the council the charge or charges that may be preferred against that registered person.
- 6.5.4. The Investigation Committee will consider the investigation report of the delegated investigator on a matter in determining whether to prefer charges against a registered person. With regards to investigation reports the following applies:
- a) Investigation reports are strictly intended for SACPCMP investigation purposes only and are under no circumstances available to any other party.
 - b) These reports are privileged documents in terms of section 37 of the Promotion to Access Information Act (Act no 2 of 2000) and belong to the SACPCMP.
 - c) The complainant and respondent will be notified of the outcome of the investigation once concluded.
- 6.5.5. The Investigation Committee must afford the registered person the opportunity to respond to the complaint and all other evidence considered against him/her. The registered person will have ten (10) days to respond in every instance.
- 6.5.6. The Investigation Committee or persons assigned by the Investigation Committee including people appointed to investigate the complaint may, with due consideration of the provision section 28 (3) of the Act, question the registered person concerned.
- 6.5.7. The Investigation Committee must consider whether the matter ought to be reported to any of the other Councils in the Built Environment or to any other stakeholder.

6.6. Findings of the Investigation Committee

The findings of the Investigation committee, after consideration of the evidence obtained during an investigation and report thereof, may be one of the following:

6.6.1. No prima facie evidence of improper conduct

This decision does not in any way mean that a valid dispute does not exist between the parties, which may be pursued through civil/ criminal litigation. The decision means no transgression/breach of the code of conduct was found.

6.6.2. Decision to conduct peer counsel with the respondent

The decision arises when there is either insufficient evidence of improper conduct or that the conduct given all the circumstances, does not warrant charges to be preferred. The finding implies, however, that the respondent's behaviour warrants advice or guidance from his/her peers which would be handled by peers nominated by the Investigation Committee who are practicing in the same discipline as the respondent.

6.6.3. An advisory letter to the registered person

Where the outcome of the investigation establishes that conduct took place that warrants formal reprimand/caution, a letter shall be sent to the registered person in this regard. A letter shall only be sent where in the light of all circumstances, in the opinion of the Investigation Committee, the conduct does not warrant formal charges to be preferred.

6.6.4. Recommendation to prefer charges

The recommendation arises when the Investigation Committee finds prima facie evidence of improper conduct. It will then recommend to the Council to prefer charges against the respondent.

Should the Council take the decision to prefer charges in terms of Section 30 of the Act, the council must appoint a disciplinary tribunal to hear a charge of improper conduct if a person charged:

- a) denies the charge; or
- b) fails to comply with section 29(3)(b) of the Act.

6.7. Council decision regarding Investigation Committee recommendation

6.7.1. The Council must, after considering a report of the Investigation Committee in terms of section 28(2)(b) and (4) of the Act, charge a registered person with improper conduct if the council is convinced that sufficient grounds exist for a charge to be preferred against such a registered person.

6.7.2. The registered person concerned will be furnished with a charge sheet within 21 days which must inform the registered person charged:

- a) of the details and nature of the charge;
- b) that he or she must, in writing, admit or deny the charge;
- c) that he or she may, together with the admission or denial, submit a written explanation regarding the improper conduct with which he or she is charged; and
- d) of the period, namely, within seven (7) days of being furnished with the charge sheet, within which his or her written plea in terms of paragraph 6.6.4 must be submitted to the Council.

6.7.3. The registered person against whom charges are preferred are advised to fully acquaint and familiarise themselves with the stipulations of the Act including, but not limited to sections 29 and 33.

6.8. Proof of service

6.8.1. A party must prove that a document was served in terms of these rules by, providing:

- a) A copy of proof of mailing the document by registered post to the other party
- b) If a document was served by hand:
 - i. With a copy of a receipt signed by, or on behalf of, the other party clearly indicating the name and designation of the recipient and the place, time and date of service, or
 - ii. With a statement confirming service signed by the person who delivered a copy of the document to the other party or left it at any premises
- c) If a document was sent by electronic mail, electronic acknowledgement of receipt by the respondent or other party.

6.8.2. If proof of service in accordance with paragraph 6.7.2 is provided, it is presumed, until the contrary is proved, that the party on whom it was served has knowledge of the contents of the document.

6.8.3. The Council may accept proof of service in a manner other than prescribed in this rule as sufficient.

7. APPEALS

- 7.1. According to section 33 of the Act, a registered person is found guilty of improper conduct may appeal to the Council against a finding of the disciplinary tribunal or against the sentence or both.
- 7.2. To appeal the aggrieved registered person must:
 - 7.2.1. make payment of the prescribed fees and
 - 7.2.2. lodge the appeal within 30 days after the disciplinary tribunal has informed the registered person of its decision.
- 7.3. Appeals are governed by the SACPCMP's Appeal Policy

ANNEXURE A

AFFIDAVIT TO LODGE A COMPLAINT OF IMPROPER CONDUCT IN TERMS OF SECTION 28 OF
THE PROJECT AND CONSTRUCTION MANAGEMENT PROFESSIONS ACT

For Office Use Only	
Date Complaint Received	
Case number	

I, the undersigned, _____ (*Full names*), an adult (*male/female*) residing at

_____, with ID number:

Telephone/cell phone number: _____

and email address: _____.

do hereby state the following under oath/ affirmation:

1.

I am the complainant in this matter and the facts deposed to in this affidavit are within my personal knowledge and are both true and correct:

2.

2.1. The person against whom this complaint is lodged (is _____ (*Full names*), an adult
(*male/female*) _____ (*Category of registration if known*) who resides at

_____.

2.2. The registered person has ordinarily carried on business at _____

_____ (*name and address of company that
registered person works for*)

3.

Other persons involved in this matter are; (*details of others involved in the matter, e.g Project Manager*) are

4.

I am dissatisfied with (*Outline clearly what you are dissatisfied with, provide specific information, which have been allegedly transgressed according to Board Notice 139 of 2017*)

5.

I have attached the following documents;

1.	
2.	
3.	
4.	
5.	
6.	

6.

The following are my witnesses:

1. Name: _____

Relationship: _____

Contact number: _____

Email address: _____

Allegation to support:

2. Name: _____

Relationship: _____

Contact number: _____

Email address: _____

Allegation to support:

3. Name: _____

Relationship: _____

Contact number: _____

Email address: _____

Allegation to support:

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 he/she knows and understands the contents of this declaration;
- b) That he/she has no objection to taking the prescribed oath;
- c) That he/she considers the prescribed oath as binding on his/her conscience.

COMMISSIONER OF OATHS

Full names: _____

Address: _____

Rank/office held: _____

Area for which appointed: _____



RULES FOR INQUIRY INTO IMPROPER CONDUCT: CALL FOR COMMENT

This submission of comments (call for comments) must be submitted, no later than 16:00 on 10 December 2023, to: Ms Mapula Ramolotja, SACPCMP Operations Office via email: Mapula.Ramolotja@sacpcmp.org.za

Name & Surname	
Designation	
Organisation	
Contact Detail (should clarification be sought)	
Comments or queries	
1. Comment:	
Suggested Amendment:	
2. Comment:	
Suggested Amendment:	
3. Comment:	
Suggested Amendment:	
4. Comment:	

Suggested Amendment:
5. Comment:
Suggested Amendment:
6. Comment:
Suggested Amendment:
7. Comment:
Suggested Amendment:
Any other comments, suggestions and amendments: