

National Assembly

Guide to Procedure

2004



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FOREWORD

When the new Democratic Parliament was opened on 9 May 1994, more than half of the Members sworn in had never set foot in the South African Parliament, let alone understand the Procedures to be followed.

Thus, between 9 May 1994 and the first Joint Sitting on 24 May, the parliamentary officials (senior staff) conducted intense induction workshops to take the Members through the then existing Rules and Proceedings.

Newly-elected Chairpersons of Committees had to hit the ground running and were largely assisted by Committee Clerks. Service Officers were on their feet throughout the day helping Members to find, first their own offices and then Committee Rooms.

The form of address varied between “Honourable” and “Comrade” and the dress code was simply defined as “clean and decent”, in keeping with the prevailing weather. With the rapid experimental changes which saw “all Committees open unless declared otherwise”, and an acceptance of English as the language of record in order to break an impasse where Members demanded the right to use any of the eleven official languages, there was not enough time for Table Staff to prepare anything more than simple guides for members in dealing with Legislation and unparliamentary language.

It is therefore with pride and a real sense of achievement that we present the first comprehensive Guide to Procedure. Our gratitude extends to all those who made inputs to this effort: presiding officers, Committee Chairpersons, Party Whips, Legal Advisers and Table Staff. It was, however, the laborious and concentrated efforts of a former Under Secretary at the Table of the National Assembly that enabled us to produce a Guide that gives the Constitutional and Rules basis to the practical conventions and practices that are generally referred to as Procedure.

I have no doubt that this Guide will be appreciated by both Members and Staff, particularly those who will be joining the Third Parliament of South Africa. It is a fitting tribute to the celebrations of the first decade of our Democracy.

S MFENYANA
SECRETARY TO PARLIAMENT

March 2004

INTRODUCTION

To those not directly involved in the functioning of the National Assembly, the proceedings and procedures are often mystifying and consequently disempowering. This Guide is therefore an attempt to provide a structured and comprehensive overview of the constitutional and other statutory provisions, the Assembly and Joint Rules, and established practices and conventions which, taken together, provide the framework within which the members exercise their powers and functions as elected public representatives.

The National Assembly, since its inception in 1994, has undergone fundamental transformation to shape it into an institution that can effectively play its constitutional role of meeting the needs and expectations of the public. This Guide reflects the proceedings and procedures that are in place in February 2004, ie at the close of the Second Parliament. However, the process of transformation is ongoing. Fundamental issues currently under review include: Parliament's oversight function; scrutiny of delegated legislation; Parliament's Powers and Immunities legislation; and the financial administration of Parliament.

Furthermore, as the National Assembly is still a young institution, there are rules and provisions that have not yet been subjected to practical application and in respect of which no precedents have been set or practices developed. Further substantive changes to the manner in which the Assembly functions can therefore be expected in due course, which will necessitate regular updating of this Guide.

The Guide is not intended to be an authoritative reference work on National Assembly procedure. For details of procedural applications, recourse would still need to be had to the Constitution, the Rules themselves, House resolutions, rulings by presiding officers and other authoritative sources.

Given the many sources from which the Guide was compiled and the time constraints against which it was produced, omissions and inaccuracies may have occurred. Any comments or criticisms would therefore be gratefully received with a view to adjusting future editions.

Acknowledgements

This Guide to procedure could not have been produced without the dedicated work over many years of Table Staff and other parliamentary officials who maintained a record of practices and procedures as they developed.

In particular, my thanks and appreciation are due to Peter Lilienfeld, former Undersecretary to the National Assembly, who spent many months gathering and sifting all the information and then single-handedly wrote it up to produce a first draft, and after editing, a second and final draft.

KASPER HAHNDIEK
SECRETARY TO NATIONAL ASSEMBLY

March 2004

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LIST OF ABBREVIATIONS USED

ACP-EU	African, Caribbean and Pacific Group of Countries – European Union
ATC	Announcements, Tablings and Committee Reports (a document which forms part of the Minutes of both Houses)
Constitution	The Constitution of the Republic of South Africa, No 108 of 1996
Council	National Council of Provinces
CPA	Commonwealth Parliamentary Association
CWF	Chief Whips’ Forum
EPC	Extended Public Committee
Icasa	Independent Communications Authority of South Africa
Interim Constitution	Constitution of the Republic of South Africa, No 200 of 1993
IPU	Inter-Parliamentary Union
JPC	Joint Programme Committee
JRC	Joint Rules Committee
JSC	Judicial Service Commission
JTM	Joint Tagging Mechanism

LOGB	Leader of Government Business
MDDA	Media Development and Diversity Agency
NA	National Assembly
NAPC	National Assembly Programme Committee
NARC	National Assembly Rules Committee
NCOP	National Council of Provinces
Pansalb	Pan South African Language Board
PAP	Pan African Parliament
SABC	South African Broadcasting Corporation
SADC	Southern African Development Community
SADC-PF	Southern African Development Community – Parliamentary Forum
SALGA	South African Local Government Association
SCOPA	Standing Committee on Public Accounts

THE NATIONAL ASSEMBLY AND ITS CONSTITUTIONAL ROLE

1. POWER, JURISDICTION AND ROLE

South Africa's Constitution prescribes in some detail the role of the National Assembly and its powers and legislative jurisdiction.

Role and function: The National Assembly, as one of the two Houses of Parliament, is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinising and overseeing executive action.¹

In addition to electing the President, the Assembly has the power to remove the President on specified grounds, and may by a motion of no confidence force the resignation of the Cabinet or the President and the Cabinet (see Chapter 3 – “The President and Parliament”).² The Assembly may also, in certain circumstances, dissolve itself and thus force an election.³

Legislative authority and jurisdiction: The Government is constituted as national, provincial and local spheres of government, and the legislative authority of specifically the national sphere of government is vested in Parliament. The legislative authority of the other spheres of government is vested elsewhere.

The Assembly may pass legislation with regard to any matter, excluding matters falling into “functional areas of exclusive provincial legislative competence” listed in Schedule 5 to the Constitution. (These include municipal matters.) However, it may pass legislation relating to such (Schedule 5) matters when necessary to maintain national security, economic unity or essential national standards, to establish minimum standards, or to prevent unreasonable and prejudicial action by a province.⁴

1 Constitution, section 42

2 Constitution, sections 89 & 102

3 Constitution, section 50

4 Constitution, sections 42-44

For constitutional requirements relating to the participation of minority parties and financial and administrative support to parties, see Chapter 4 – “Parties in the Assembly”.

Recommendations/requests by provinces: A provincial legislature may recommend to the Assembly that it adopt legislation concerning any matter outside the legislature’s authority, or where an Act of Parliament takes precedence over a provincial law. A province may also, by resolution supported by a two-thirds majority of its members, ask the Assembly to change its name.

Other legislative powers: The Assembly may also amend the Constitution, and may assign any of its legislative powers, except the power to amend the Constitution, to another legislative body.

The National Council of Provinces: (Also called “the Council” or “the NCOP”.) As the other House of Parliament, it participates in the legislative process to ensure that provincial interests are taken into account. “Section 76” legislation (relating to provincial matters) may be introduced in the Council. Except in the case of this type of legislation introduced in the Council, the Assembly can override legislative decisions of the Council (see Chapter 12 – “Legislative procedure”).

Powers: Section 55 of the Constitution states that the Assembly –

1. may “consider, pass, amend or reject” any legislation before the Assembly;
2. may initiate or prepare legislation except money bills; and
3. must provide for mechanisms to –
 - (a) ensure that all executive organs of state in the national sphere of government are accountable to it;

- (b) maintain oversight of the exercise of national Executive authority, including the implementation of legislation, and
- (c) maintain oversight of any organ of state.

Section 56 provides that the Assembly or any of its committees may summon any person to give oral or written evidence before it or report to it and may compel any person or institution to comply with a summons or requirement in this regard. It may also receive petitions, representations or submissions from any interested person or institution.

Other powers are provided for in legislation (see Chapter 17 – “Procedures relating to appointments and other statutory functions”).

2. CO-OPERATIVE GOVERNMENT

The Constitution requires the Assembly, as an organ of state in the national sphere, *inter alia*, to –

1. exercise its powers and perform its functions in a manner that does not encroach on the integrity of government in other spheres;
2. respect the constitutional status, institutions, powers and functions of government in another sphere;
3. provide effective, transparent, accountable and coherent government for the republic as a whole; and
4. co-operate with other organs of state in mutual trust and good faith. If involved in a dispute with another organ of state, it must exhaust all other remedies before approaching a court to resolve the dispute.⁵

⁵ Constitution, Chapter 3 – “Co-operative Government”

3. THE NATIONAL ASSEMBLY WITHIN PARLIAMENT

General: South Africa has a bicameral Parliament supported by a joint administration. While the National Assembly is the House directly elected by the South African electorate, the National Council of Provinces is elected by the provinces and represents them to ensure that provincial interests are taken into account in the national sphere of government. It does this mainly by participating in the national legislative process and by providing a national forum for public consideration of issues affecting the provinces.

Roles in legislative process: The respective roles of the two Houses in relation to legislation are dealt with in Chapter 12 – “Legislative procedure” of this Guide.

Constitutional provisions concerning joint business: The Constitution requires the Houses to establish a joint rules committee to make Rules and Orders concerning the joint business of the Assembly and the Council. These Joint Rules deal mainly with the joint committee system and the joint legislative process.⁶

Role of presiding officers: The Speaker of the Assembly and the Chairperson of the Council jointly represent Parliament, and head the joint parliamentary establishment which, under the Secretary to Parliament, supports both Houses (see Chapter 2 – “Presiding officers and other office-bearers”).

System of joint committees: Parliament conducts its internal affairs by way of a system of standing joint committees and subcommittees, primary among which is the Joint Rules Committee, presided over by the Speaker and the Chairperson of the Council (see Chapter 6 – “Organisation of Parliament”). These joint committees are, for the most part, composed of the internal “House” committees of the two Houses.

Communication between the Houses: Official communication between the Houses takes place by message, recorded in the ATC.

6 Constitution, section 45

4. PARLIAMENTARY PRIVILEGE

Parliamentary privilege is described in Erskine May's *Parliamentary Practice*⁷ as –

... the sum of the peculiar rights enjoyed by each House collectively ... and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law.

The primary privileges are the right of freedom of speech, limited only by the Assembly's own Rules and practices, and the right of unfettered access to Parliament by members. Privilege also extends to the immunity that the law provides for those who participate in the proceedings of Parliament, to the extent and as provided for in the relevant legislation. Finally, it is within the authority and power of each of the Houses of Parliament to enforce that immunity. May points out that fundamentally "... it is only as a means to the effective discharge of the collective functions of the House that the individual privileges are enjoyed by members." A violation of such rights and immunities is called a breach of privilege and is punishable. The Speaker is the guardian of the rights and privileges of the Assembly.

These privileges and immunities afford members the freedom to raise important and contentious issues in Parliament without fear of prosecution.

Internal arrangements: The Constitution provides that the Assembly may determine and control its internal arrangements, proceedings and procedures; and make Rules and Orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement.⁸

Privileges and immunities: Cabinet members, Deputy Ministers and members of the National Assembly –

7 Erskine May, *Parliamentary Practice*, 22nd ed, 1997

8 Constitution, section 57

1. have freedom of speech in the Assembly and in its committees, subject to its Rules and Orders; and
2. are not liable to civil or criminal proceedings, arrest, imprisonment or damages for –
 - a) anything that they have said in, produced before or submitted to the Assembly or any of its committees; or
 - b) anything revealed as a result of anything that they have said in, produced before or submitted to the Assembly or any of its committees.⁹

The Constitution provides that other privileges and immunities of the Assembly, Cabinet members and members of the Assembly may be prescribed by national legislation. The Powers and Privileges of Parliament Act, No 91 of 1963, which predates the Constitution and is valid to the extent that it does not conflict with it, provides for this.

In terms of the 1963 Act, which is to be superseded by a new Act, control of expenditure and the appropriation of moneys for the services of Parliament are vested in the presiding officers.¹⁰ While Parliament does as a matter of course comply with Treasury directives concerning expenditure, this principle of financial autonomy is an important aspect of Parliament's independence of the Executive.

*5. RELATIONSHIP WITH THE EXECUTIVE*¹¹

See also Chapter 3 – “The President and Parliament”.

The first task of the Assembly after a general election is to elect the President from among its members. Usually the leader of the majority party is elected. The President is both Head of state and head of the national Executive.

⁹ Constitution, section 58

¹⁰ Powers and Privileges of Parliament Act, No 91 of 1963, section 31

¹¹ For a list of constitutional provisions dealing with relations with the Executive, see the footnote to “Relations with the Executive” in Chapter 7 – “Sources of Assembly procedure”

On assuming office, the President loses his or her membership of the Assembly. The President may continue to attend and speak in the Assembly, but may not vote.¹²

The President forms a government by appointing a Cabinet mainly from elected members of the Assembly (although in addition a maximum of two non-members may be appointed.) Cabinet members are called Ministers. The President also appoints Deputy Ministers to assist the members of the Cabinet, and may appoint up to two from outside the Assembly. The Cabinet is the principal policy-making and decision-making body of government. Most Ministers are allocated a portfolio, which is usually a government department of which the Minister is the political head.

Generally speaking, therefore, the party with the largest number of members elected to Parliament by the electorate, becomes the governing party, since the leader of that party is appointed Head of State and appoints a government. Cabinet members have been appointed from other parties besides the majority party. A coalition of parties can form the government.

Members of the Cabinet are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions. They must act in accordance with the Constitution and provide Parliament with full and regular reports concerning matters under their control.¹³

Parliament is thus a multiparty body representing the different shades of political opinion in the country. The Executive, sitting in Parliament, is required to seek the approval of Parliament for legislation, including the legislation incorporating its annual budget; and Parliament is required to scrutinise and oversee executive action.¹⁴ In this way Parliament represents the people and ensures government by the people under the Constitution.

The Constitution allows the Assembly, through a motion of no confidence, to compel the President to reconstitute the Cabinet, or to force the resignation of the President and the Cabinet.¹⁵

12 Constitution, section 54

13 Constitution, section 92

14 See Issue 4, Item 14 of Procedural Developments in the National Assembly on relationship between Parliament and the Executive

15 Constitution, section 102

Limitations on power of the Assembly

Broadly speaking, Parliament is able to impose its will on the Executive only by way of legislation, and any other resolution of the Assembly, while it may be politically persuasive, is not binding on the Executive.

However, there are exceptions to this general rule. One such exception is a motion of no confidence in the Executive as specified in section 102 of the Constitution (see “Motions of no confidence” in Chapter 3 – “The President and Parliament”).

The Assembly also has certain constitutionally and statutorily imposed functions whereby it takes binding decisions, for example in the appointment of certain office-bearers (see Chapter 17 – “Procedures relating to appointments and other statutory functions”).

Communication of resolutions

Assembly resolutions are formally communicated to the President by the Secretary to Parliament.¹⁶ However, the practice has developed that resolutions affecting the Executive are also communicated under the Speaker’s signature directly to the relevant Minister or other executive authority. At the Speaker’s discretion, follow-up letters inquiring about progress may also be sent.

Leader of Government Business

The Constitution provides that the President must appoint a member of the Cabinet to be the Leader of Government Business in the National Assembly.¹⁷ This officer-bearer is *ex officio* a member of the Assembly Programme Committee and the Joint Programme Committee (see Chapter 10 – “Programming of business”).

16 Assembly Rule 317

17 Constitution, section 91

The Joint Rules of Parliament provide that this office-bearer is responsible for –

1. the affairs of the national Executive in Parliament;
2. the programming of parliamentary business initiated by the national Executive, within the time allocated for that purpose;
3. arranging the attendance of Cabinet members, as appropriate, in respect of parliamentary business generally; and
4. performing any other function provided for by the Joint Rules or a resolution of the Assembly or the Council or resolutions adopted in both Houses.¹⁸

In terms of the Assembly Rules, the Speaker must consult the leader in determining the period for which a money bill is referred to the portfolio committee on public finance.¹⁹

Process for stopping of funds to a province

The Constitution provides for the Executive on its own initiative to stop the transfer of funds to a province in certain circumstances.²⁰ Parliamentary approval for such a step is required within 30 days. Joint Rules make provision for a process in this regard.²¹

Security services

National security is subject to the authority of Parliament and the national Executive.²² The Constitution provides that multiparty parliamentary committees must have oversight of all security services in a manner determined by national legislation or the Rules and Orders of Parliament.²³

18 Joint Rule 150

19 Assembly Rule 290(3)

20 Constitution, section 216

21 Joint Rules 223-30

22 Constitution, section 198

23 Constitution, section 199(8)

*Employment of the Defence Force – President:*²⁴ Only the President, as head of the national Executive, may authorise the employment of the Defence Force in co-operation with the police service, in defence of the Republic, or in fulfilment of an international obligation. When the Defence Force is employed in one of these ways, the President must promptly inform Parliament, of –

1. the reasons for the employment of the Defence Force;
2. any place where the force is being employed;
3. the number of people involved; and
4. the period for which the force is expected to be employed.

The President also has a statutory duty to inform Parliament of the expenditure incurred or expected to be incurred.

If Parliament is not sitting, the President must provide the information required to the appropriate oversight committee, namely the Joint Standing Committee on Defence.

*Employment of the Defence Force – Minister of Defence:*²⁵ The Defence Act, No 42 of 2002, empowers the Minister of Defence to employ the Defence Force for other purposes and to inform Parliament accordingly. Section 18(1) of the Act provides that the President or the Minister of Defence may authorise the employment of the Defence Force for service inside the Republic or in territorial waters to –

1. preserve life, health or property in emergency or humanitarian situations;
2. ensure the provision of essential services;
3. support any department of state; and
4. effect national border control.

24 Constitution, section 201(2); Defence Act, No 42 of 2002, section 18(1)

25 *Procedural Developments in the National Assembly*, Issue 6, Item 26

In such a case of authorisation under the Defence Act, Parliament may by resolution within seven days after receiving the information –

1. confirm the authorisation of employment;
2. order the amendment of the authorisation;
3. order the substitution for the authorisation of another appropriate authorisation; or
4. order the termination of the employment of the Defence Force.

Appointment of civilian Inspector General of Intelligence Services: The President appoints a civilian Inspector General of Intelligence Services once the appointment has been approved by a two-thirds majority of all members of the Assembly (See Chapter 17 – “Procedures relating to appointments and other statutory functions”.)

*State of national defence:*²⁶ If the President declares a state of national defence, he or she must inform Parliament promptly and in detail of the reasons, any place where the Defence Force is employed, and the number of people involved. If Parliament is not sitting, Parliament must be summoned to an extraordinary sitting within seven days of the declaration, which lapses unless approved by Parliament within seven days.

Public administration

The Public Service Commission is accountable to the National Assembly and must report to it annually.²⁷ Five of the fourteen commissioners are appointed, and may be removed, on the recommendation of the Assembly by majority decision.²⁸

26 Constitution, section 203

27 Constitution, sections 196(5) & (6)

28 Constitution, sections 196(7), (8) & (11)

6. RELATIONS WITH THE JUDICIARY

General: In terms of the Constitution, Cabinet members, Deputy Ministers and members of the National Assembly have freedom of speech in the Assembly and its committees and are not liable to civil or criminal proceedings, arrest, imprisonment or damages for their parliamentary activities. Section 57 of the Constitution stipulates that the Assembly determines and controls its internal arrangements, proceedings and procedures.

Other provisions of the Constitution specify in various ways how the Assembly conducts its business. Examples are the provisions relating to legislative procedure and public access. In conducting its business the Assembly must comply with the Constitution. The courts have jurisdiction to adjudicate on such compliance. In one instance where a suspended member challenged her suspension in court, the courts considered whether the Assembly had the authority, in terms of section 57, to suspend a member as a punishment for making a speech which was not obstructive or disruptive of proceedings, but which was nevertheless open to justifiable objection.²⁹ It was concluded that in view of section 58(1), which guarantees freedom of speech in the Assembly subject to its Rules and Orders, the Assembly did not have that authority unless its Rules and Orders provided accordingly.

Appointment and removal of judges: The President in terms of various procedures, consults leaders of parties represented in the Assembly, and the Judicial Service Commission (“JSC”) – which includes members of the Assembly – before appointing the Chief Justice and the Deputy Chief Justice. He consults the JSC before appointing the President and Deputy President of the Supreme Court of Appeal. He appoints the judges of all other courts on the advice of the JSC.³⁰ The President must also consult the leaders of all parties in the Assembly before appointing four members of the JSC.³¹

29 *Procedural Developments in the National Assembly*, Issue 1, Item 18

30 Constitution, section 174

31 Constitution, section 178(1)(j)

The President must remove a judge from office upon adoption of a resolution by the Assembly, supported by a two-thirds majority of its members, calling for his or her removal.³²

Judicial Service Commission: This body, which plays a role in the appointment and removal of judicial officers, includes six persons designated by the Assembly from among its members, at least three of whom must be members of opposition parties represented in the Assembly.³³

Sub Judice Rule: The Assembly Rules specify that no member shall refer to any matter on which a judicial decision is pending. The purpose is to avoid interference in the sphere of the judiciary. See Chapter 11 – “Rules of debate and maintenance of order” for a discussion of this Rule and how it is implemented.

Role of Constitutional Court vis-à-vis Parliament: The Constitutional Court has the following functions in relation to the Assembly:

1. The President of the Court determines the date of the first sitting of the Assembly after an election.³⁴
2. The President of the Court presides over the election of a Speaker³⁵ and President³⁶ in the Assembly. He also determines the date of an election for the President in the event of a vacancy.³⁷
3. The President of the Republic may refer a bill to the Constitutional Court for a decision on its constitutionality. The Court’s decision on its constitutionality is final.³⁸
4. Members of the Assembly may apply to the Constitutional Court for an order declaring that all or part of an Act of Parliament is unconstitutional.³⁹

32 Constitution, section 177

33 Constitution, section 178(1)(h). See also “Judicial Service Commission” in Chapter 17 – “Procedures relating to appointments and other statutory functions”

34 Constitution, section 51(1)

35 Constitution, section 52(2)

36 Constitution, section 86(2)

37 Constitution, section 86(3)

38 Constitution, section 79

39 Constitution, section 80

5. Signed copies of Acts of Parliament are entrusted to the Constitutional Court for safekeeping.⁴⁰
6. The Court decides disputes between national organs of state concerning their constitutional status, powers or functions.⁴¹
7. It decides on the constitutionality of a bill in certain circumstances.
8. It decides on the constitutionality of any amendment to the Constitution.
9. It decides whether Parliament or the President has failed to fulfil a constitutional obligation.
10. It makes the final decision whether an Act of Parliament or conduct of the President is constitutional.
11. The Constitutional Court is the final authority on constitutional issues.⁴²

7. RELATIONS WITH “CHAPTER 9” INSTITUTIONS AND OTHER AGENCIES

See Chapter 17 for the role of the Assembly in regard to these constitutionally determined institutions – the Auditor-General, the Public Protector, commissions and other agencies.

8. THE NATIONAL ASSEMBLY AND THE PUBLIC

Public access and involvement: The Constitution provides that the Assembly –

1. must facilitate public involvement in the processes of the Assembly and its committees, conduct its business in an open manner, and hold its sittings, and those of its committees, in public.

40 Constitution, section 82

41 Constitution section 167

42 Constitution section 167

2. may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society.
3. may take reasonable measures to regulate public access, including access of the media, to the Assembly and its committees, and for the searching of any person and, where appropriate, the refusal of entry to, or the removal of, any person.⁴³

Members of the public are permitted, within the limits imposed by practical considerations, to attend debates and committee meetings. On rare occasions, on grounds that must be demonstrably justifiable, committees may hold closed meetings from which the public are excluded.

See also “Assembly Chamber” in Chapter 8 – “Sessions and sittings”.

⁴³ Constitution section 59

PRESIDING OFFICERS AND OTHER OFFICE-BEARERS

1. SPEAKER

The Speaker, as the head and representative (with the Chairperson of the Council) of the legislative arm of the State, has manifold responsibilities that embrace constitutional, statutory, procedural and administrative powers and functions. Although affiliated to a political party, the Speaker is required to perform the functions of that office fairly and impartially in the interests of the Assembly and Parliament.

The duties of a Speaker, as the principal office-bearer in the Assembly, fall broadly into three categories –

1. Presiding over sittings of the Assembly, maintaining order, and applying and interpreting its Rules, conventions, practices and precedents (these duties are shared with the other presiding officers);
2. Acting as representative and spokesperson for the Assembly and (with the Chairperson of the Council) for Parliament in the outside world; and
3. In conjunction with the Chairperson of the Council, acting as chief executive officer for Parliament. In the context of Parliament as an institution of the state, the role of the two presiding officers and that of the Secretary to Parliament broadly correspond to those of the Minister and director-general of a state department. Each presiding officer is subject to the authority of his or her House of Parliament.

The Speaker is equivalent in rank to a Cabinet Minister.

The term “Speaker” dates from the 13th century and derives from the role of the early Speakers in Westminster as spokesperson for the House in its dealings with the Crown.

Section 90 of the Constitution makes provision for circumstances in which the Speaker may act as President.

Election and vacation of office¹

Election: At its first meeting after an election, and after members have taken the oath or affirmation, the House elects a Speaker from among its members by secret ballot (see “First sitting after an election” in Chapter 8 – “Sessions and sittings”). The same process is followed to fill a vacancy in the office of Speaker.

Tenure and vacation of office: The Speaker holds office for the duration of the term of an Assembly, and is eligible for re-election. The Speaker ceases to hold office when he or she ceases to be a member of the Assembly.

In terms of section 52(4) of the Constitution, the Assembly may remove the Speaker by resolution. A majority of the members must be present when the resolution is adopted.

Presiding duties

Presiding duties in the Assembly are shared with the Deputy Speaker and the Chairperson and Deputy Chairperson of Committees.

The first task of a Speaker is to chair plenary meetings of the Assembly. This entails maintaining order, interpreting and ensuring compliance with the Rules and practices of the House, and in general ensuring the smooth conduct of proceedings. The Speaker is required to act fairly and impartially and to ensure that the rights of all parties, including minority parties, are protected. In all his or her actions, the Speaker must uphold the dignity and good name of the House.

Procession and formalities: At the start of a sitting the Speaker is preceded into the Chamber by the Serjeant-at-Arms, who announces her or

¹ Constitution, section 52; & Part A of Schedule 3; Assembly Rule 13

him. After calling for a moment of silence for prayer or meditation, the Speaker makes formal announcements as required and presides over proceedings for the day as reflected on the Order Paper and in accordance with the Rules and practices. In the course of doing so, he or she calls upon members to speak in accordance with lists of speakers provided by the whips. Where a decision is required, the Speaker puts the question to the Assembly and ascertains the Assembly's decision.

At the conclusion of business for the day, the Speaker adjourns the House. The Speaker may also, when necessary, interrupt or suspend proceedings.²

There is no specific dress requirement for the Speaker; however, it may be expected that the Speaker will dress formally.

Applies and interprets Rules and practices: In presiding over meetings of the Assembly, the Speaker ensures that they are conducted in an orderly fashion and according to laid-down procedures and practices. He or she interprets and applies the Rules, responds to members' points of order and gives rulings where necessary.

Rulings: In giving a ruling on procedure – either at his or her own initiative or in response to a point of order – the Speaker is guided by the Rules and conventions, as well as precedent. It is in her or his discretion to hear argument on a point of procedure, and to decide when he or she is ready to give a ruling. A considered ruling may be given at a later stage, after consulting Hansard. The Speaker may give a private ruling in writing, for example in response to a letter from a member.

There is no appeal to the Speaker for a member who is unhappy with a ruling by one of the other presiding officers. However, the Assembly may by resolution refer a matter that has been ruled on, to the Speaker or to the Assembly Rules Committee. An aggrieved member, if unable to resolve an issue with the presiding officer in question, may request that the subject matter of a ruling – not the ruling itself – be placed on the agenda of the Assembly Rules Committee for consideration of relevant practices.

² Assembly Rule 30

The Speaker may give a ruling or frame a rule to cover a situation for which the Rules of the Assembly do not provide. Such a rule remains in force until considered by the Rules Committee³. Acting jointly with the Chairperson of the Council, he or she may do the same in respect of the Joint Rules.⁴

Maintaining order: One of the Speaker's vital functions in the Chair is to maintain order in the House. It is in the nature of Parliament that debate can be robust. The Rules provide the Speaker with disciplinary powers of varying severity to enable him or her to deal with various situations appropriately (see "The Chair's powers to maintain order" in Chapter 11 – "Rules of debate and maintenance of order".) It is customary, however, for such powers to be used sparingly where possible. Usually, where a member has expressed him or herself in a way deemed unacceptable by the Speaker, the relevant member will be instructed to withdraw the expression, and on compliance, the matter is regarded as settled and should not be referred to again. A more serious offence, such as defying the authority of the Chair, may lead to a member being directed to withdraw from the Chamber for the rest of the day, and grave offences may lead to longer periods of suspension.

All members, including the Cabinet and President, are equally subject to the discipline of the Chair.

If the Speaker during a debate calls for order for the purpose of addressing the House on any matter, all members, including the member speaking, fall silent and hear him or her without interruption

Impartiality: Although affiliated to a political party, the Speaker is required to act impartially and to protect the rights of all parties. Equally, he or she is entitled to support from all members, whatever their political affiliation.

The Speaker may take part in debate from the floor but by convention does so sparingly. An exception is when reporting on matters relating to

3 Assembly Rule 2

4 Joint Rule 2

Parliament and its administration. He or she generally avoids becoming involved in political controversy in his or her capacity as Speaker.

Voting: The Speaker, or any other officer while presiding, has no deliberative vote, but must cast a deciding vote when there is an equal number of votes on both sides of the question. However, the presiding officer may cast a deliberative vote when a question must be decided with a supporting vote of at least two-thirds of the members.⁵

Duties as representative of the Assembly and of Parliament

The Speaker is the spokesperson for the House in its relations with the Council, the other arms of government – the Executive and the Judiciary – and with other outside bodies and persons. In this role Speakers are careful to maintain the authority of the House, and to protect its rights and privileges.⁶

Important official communications from and to the Assembly are signed by and addressed to the Speaker. The Speaker receives delegations from other Parliaments and special visitors on behalf of the House. On formal occasions the Speaker represents the House and plays a central ceremonial role.

In representing the House the Speaker represents and is responsible to the House and the totality of its members, whether in government or opposition. As Speaker, he or she is not responsible to the Executive Government and seeks to preserve the House's independence from it.

Together with the Chairperson of the Council, the Speaker is the representative of Parliament in its relations with the Executive and outside authorities and persons.

5 Constitution, section 53(2)

6 *Procedural Developments in the National Assembly*, Issue 4, Items 15 & 18 for discussion of role of Speaker representing the Assembly

Supervision of the administration of Parliament

The Speaker and the Chairperson of the Council are the political heads of the parliamentary administration.

The Speaker *ex officio* chairs the main internal committees of the Assembly: the Rules Committee; its Subcommittee on International Relations; the Programme Committee; and, with the Chairperson of the Council, he or she co-chairs the Joint Rules Committee and its Joint Subcommittee on International Relations and the Joint Programme Committee. He or she is an *ex officio* member of the Chief Whips' Forum and of the Joint Tagging Mechanism.

The Speaker and Chairperson play a role analogous to that of a Minister of State in relation to a government department, their authority being derived from their respective Houses. The permanent head of the “department” is the Secretary to Parliament.

The parliamentary precincts are under the control and management of the presiding officers. The Speaker exercises singular authority over the National Assembly area in Parliament.

For details of how Parliament is administered, see Chapter 6 – “Organisation of Parliament”.

2. DEPUTY SPEAKER

After an election the Assembly elects a member to the position of Deputy Speaker after the Speaker has been elected. The procedure is similar to that for the election of Speaker, but the Speaker presides. The Deputy Speaker is elected for the duration of the House.

The Deputy Speaker takes the Chair of the Assembly whenever requested to do so by the Speaker – in practice, this is usually done in terms of a roster of presiding officers.

While in the Chair the Deputy Speaker has the same procedural powers and functions as the Speaker.

The Deputy Speaker is *ex officio* member – and where indicated below *ex officio* chair – of the following committees and other bodies –

1. Rules Committee and Joint Rules Committee; (also the reduced Joint Rules Committee (Joint Rule 62) which may take decisions in recess);
2. Subcommittee and Joint Subcommittee on Support for Members;
3. Subcommittee and Joint Subcommittee on Internal Arrangements (chair and co-chair);
4. Subcommittee and Joint Subcommittee on International Relations;
5. Programme Committee (presides when the Speaker is not available) and Joint Programme Committee;
6. Disciplinary committee, when one is convened (chair);
7. Chief Whips' Forum; and
8. Joint Tagging Mechanism.

In terms of National Assembly Rule 16, the Deputy Speaker acts as Speaker whenever the Speaker is absent or unable to perform the functions of the office of Speaker.

3. CHAIRPERSON OF COMMITTEES

The Chairperson of Committees is elected as a presiding officer for the duration of the House, and takes the Chair whenever requested to do so by the Speaker (usually in accordance with a roster).

He or she acts as Speaker whenever both Speaker and Deputy Speaker are absent (Rules 16(2) and 17); and may be appointed to chair an Extended Public Committee (Rule 33).

The Chairperson serves *ex officio* on the Assembly Rules and Joint Rules Committees, the Subcommittee and Joint Subcommittee on International Relations, the Programme Committee and Joint Programme Committee, and the Chief Whips' Forum. He or she presides as chair over the Committee of Chairpersons (Rules 196-7), and implements policy or guidelines on the scheduling and co-ordination of meetings of all committees.⁷

The practice has developed that the Chairperson may participate as an ordinary member in all House activities, except when presiding at a sitting of the House, acting as Speaker, or performing his or her other functions of office. The Chairperson should not preside over a debate if he or she has taken part in that debate.

4. DEPUTY CHAIRPERSON OF COMMITTEES

The Deputy Chairperson of Committees is elected as a presiding officer for the duration of the House, and takes the Chair whenever requested to do so by the Speaker (usually in accordance with a roster).

He or she acts as Speaker whenever the Speaker, Deputy Speaker and Chairperson of Committees are absent (Rule 16(2)), may act as Chairperson of Committees (Rule 17) and may be appointed to chair an Extended Public Committee (Rule 33).

⁷ Assembly Rule 224

The Deputy Chairperson serves *ex officio* on the Rules and Joint Rules Committees, the Programme Committee and Joint Programme Committee, the Chief Whips' Forum, and the Committee of Chairpersons (Rules 196-7), presiding over the latter committee when the Chairperson of Committees is not available.

The practice has developed that the Deputy Chairperson may participate as an ordinary member in all House activities, except when presiding at a sitting of the House, or acting as Speaker, or performing his or her other functions of office. The Deputy Chairperson should not preside over a debate if he or she has taken part in that debate.

5. WHIPS

Whips are party-political functionaries. The term “whip” is derived from the fox-hunting term “whipper-in”, someone who kept the hounds from straying from the pack. In modern parliamentary terminology, a whip is a member designated by his or her party to assist in the smooth running of the party and the functioning of the House. A whip does this by –

1. organising party business;
2. keeping members informed of business;
3. supplying lists of members to serve on standing and select committees;
4. securing members' attendance for meetings and divisions;
5. co-operating with whips of other parties in arranging the parliamentary functioning;
6. acting as intermediaries between leaders and rank and file within the party;
7. arranging for members to speak in debates;

8. day-to-day management of party participation in processes in the Assembly; and
9. when the electronic voting system is not used, acting as tellers during divisions.

Some whips, particularly those of the majority party, focus on specific duties, such as programming of business and arranging lists of members to speak in debates.

Appointment of whips

A whip is appointed by the Speaker on the recommendation of the party, and receives remuneration from Parliament additional to that received by an ordinary member. The number of whips that a party may appoint is proportional to the number of its members. Currently one whip may be appointed for every 8.69 members (proportion decided by the National Assembly Rules Committee). In determining the number of whips in terms of this formula, the Chief Whip and Deputy Chief Whip of the Majority Party and the Chief Whip of the Opposition are not taken into account.

Parties with too few members to qualify for a whip in terms of the formula may group together for purposes of requesting the Speaker to appoint a whip from amongst them in order to facilitate their participation.

Chief Whip and Deputy Chief Whip of the Majority Party

The Chief Whip, assisted by his or her deputy, manages the majority party's participation in Assembly business and by virtue of his or her party being the majority, also has certain duties in relation to the proceedings of the House. He or she performs the following functions –

1. Arranges business on the Order Paper, subject to the Rules and the directives of the Programme Committee, and the concurrence of the Leader of Government Business where Government business is concerned.⁸
2. Is responsible for discipline among majority party members, ensuring for example that enough members are in the House to form a majority in the event of a division.
3. Chairs the Chief Whips' Forum (see below) and is responsible for political consultation among parties in the Assembly.
4. Moves most formal procedural motions in the Assembly which are not initiated by opposition parties.
5. Considers requests by committees to sit beyond the seat of Parliament or during sittings of the Assembly (subject in some instances to consultation with the Speaker) (Rule 223).

For further specific duties of the Chief Whip of the Majority Party, see the following Assembly Rules –

Rule 20 – Leave of absence (not currently applicable)

Rule 24 – Change of venue of House

Rule 131 – First meetings of committees

Rule 139 – Conferring powers of committees

Rule 163 – Policy matters requiring decision during recess

Rule 188 – *Ex officio* membership of Programme Committee

Rules 201, 303 – Decision on portfolio committee that is to deal with a matter

Rules 210, 214, 228 – Appointment of committee members

Rules 266, 277, 281 – Mediation

8 Assembly Rule 222

Rule 296 – Second vote on bills rejected through absence of members

Rule 319 – Designation of Parliamentary Counsellors

Chief Opposition Whip

The Chief Whip of the Opposition is appointed by the Speaker on the recommendation of the largest minority party, and is the chief spokesperson for that party on matters relating to the organisation of parliamentary business and the smooth functioning of Parliament. He or she is an *ex officio* member of the Chief Whips' Forum, the Programme Committee and the Joint Rules Committee.

Chief Whips' Forum

See that heading in Chapter 16 – “Parliamentary committees”.

6. LEADER OF THE OPPOSITION

As the leader of the largest party in the Assembly that is not in government, and thus potential alternative Head of State, by convention the Leader of the Opposition enjoys a special status in Parliament. The post is specified in the Constitution⁹ and the Rules¹⁰ and is accorded a specific salary.

The leader has no specific duties in terms of the Rules, but is generally the first opposition spokesperson in the most important parliamentary debates.

⁹ Constitution, section 57(2)(d)

¹⁰ Assembly Rule 21

7. LEADER OF GOVERNMENT BUSINESS

The President appoints the Leader of Government Business (LOGB) from the Cabinet in terms of the Constitution¹¹ – the leader is usually a senior Minister. The LOGB is responsible for –

1. the affairs of the national Executive in Parliament;
2. liaison between the Executive and Parliament;
3. the programming of parliamentary business initiated by the national Executive, in particular the legislative programme and compliance with parliamentary deadlines for submission; and
4. arranging the attendance of Cabinet Ministers, as appropriate, in respect of parliamentary business generally.¹²

The LOGB is an *ex officio* member of the Programme Committee, and this committee, as well as the Chief Whip of the Majority Party, must act in concurrence with him or her when dealing with Government business.¹³

The LOGB has a small staff in Parliament. For a discussion of the functions of this office, see “Office of Leader of Government Business” in Chapter 10 – “Programming of business”.

8. PARLIAMENTARY COUNSELLORS

Rule 319 provides that the Speaker, in consultation with the chief whips of the parties of the President of the Republic and of the Deputy President respectively (usually the same party), may designate two members of the Assembly as Parliamentary Counsellors, one to the President and the other to the Deputy President. The counsellors are charged with facilitating

11 Constitution, section 91(4)

12 Joint Rule 150

13 Assembly Rules 190(e) & 222. (See also Rule 290(3) – Referral of money bill to Assembly committee)

communication between the Assembly and the offices of the President and Deputy President respectively.

Chairperson of parliamentary committee

The role of the chairperson of a parliamentary committee is dealt with in Chapter 16 – “Parliamentary committees”.

THE PRESIDENT AND PARLIAMENT

1. INTRODUCTION

Election

The President of the Republic is both Head of State and head of the national Executive. He or she is elected by the National Assembly from amongst its members at its first meeting after an election. (See Chapter 8 – “Sessions and sittings” for a discussion of the process.) Since it is customary for the majority party to nominate its leader for the post, the President is likely to be leader of the majority party, or senior leader of a coalition of parties.

The member who is elected President loses membership of the Assembly, but may attend, and speak in, the Assembly – in effect becoming a non-voting member.

Choosing the Executive

The President chooses the Cabinet primarily from among Assembly members (the Constitution allows a maximum of two Ministers and two Deputy Ministers to be chosen from outside the Assembly). The President and the Cabinet are accountable, collectively and individually, to Parliament for the exercise of their powers and the performance of their functions. They are required by the Constitution to provide Parliament with full and regular reports concerning matters under their control.

Powers of the Assembly

The Assembly may force the President to reconstitute the Cabinet. It does so by passing a motion of no confidence in the Cabinet, excluding the President.

Such a motion must be supported by a majority of its members. The Assembly may also force the President and the Cabinet and Deputy Ministers to resign, by passing a motion of no confidence in them supported by a majority of its members.¹

The Assembly may remove the President from office by a resolution supported by two-thirds of its members on the grounds of a serious violation of the Constitution or the law, serious misconduct or inability to perform the functions of office.²

2. POWERS AND FUNCTIONS OF PRESIDENT IN RELATION TO THE ASSEMBLY³

Formation and conduct of Government

The President –

1. appoints the Deputy President, Ministers and Deputy Ministers, primarily from among members of the Assembly, to form the Executive, assigns their powers and functions, and may dismiss them. (Up to two Ministers and two Deputy Ministers may be appointed from outside the Assembly).
2. is, with the Cabinet, accountable collectively and individually to Parliament for the exercise of his or her powers and the performance of his or her functions.

Parliamentary business

The President –

1. appoints a member of the Cabinet to be the Leader of Government Business in the Assembly.⁴

1 Constitution, section 102

2 Constitution, section 89

3 Constitution, section 84

4 Constitution, section 91(4); Joint Rule 149

2. customarily delivers the “State-of-the-Nation” address to a joint sitting of Parliament on the first sitting day of a new Parliament or of an annual session of Parliament. The Speaker reports the address in full to the Assembly (it is printed in the Minutes), and a major debate is held on the address over several days.⁵
3. assents to and signs bills, thereby making such bills Acts of Parliament.
4. may refer a bill back to the Assembly for reconsideration of the bill’s constitutionality.⁶
5. may refer a bill to the Constitutional Court for a decision on the bill’s constitutionality.⁷
6. must, when three years have passed since the Assembly was elected, if the Assembly has adopted a resolution to dissolve supported by a majority of its members, dissolve the Assembly and call an election. Such an election must be held within 3 months.⁸
7. may summon the Assembly, the Council or Parliament to an extraordinary sitting to conduct special business.⁹
8. answers a maximum of six questions during parliamentary question time in the Assembly once every parliamentary term (in other words, three to four times per annum) (see Chapter 13 – “Questions to the Executive”).

If there is a vacancy in the office of President, and the Assembly fails to elect a new President within 30 days after the vacancy occurred, the Acting President must dissolve the Assembly.¹⁰

5 Assembly Rule 10

6 Constitution, section 79; Joint Rules 202-12

7 Constitution, section 79

8 Constitution, sections 49(2) & (3) & 50.

9 Constitution, section 42(5)

10 Constitution, section 50(2)

Executive actions involving Parliament

The President –

1. must inform Parliament when the Defence Force is employed for specific purposes (see “Security Services” in Chapter 1 – “The National Assembly and its constitutional role”).
2. may declare a state of national defence, to be approved by Parliament (see Chapter 1).¹¹
3. must grant or withhold consent to the Assembly proceeding with any business in respect of which a Minister is not in charge, if the business affects state-owned land or property.¹²
4. after consulting the Judicial Service Commission and the leaders of parties represented in the National Assembly, appoints the Chief Justice and the Deputy Chief Justice.
5. must consult the leaders of all parties in the Assembly before designating certain members of the Judicial Service Commission (see Chapter 17 – “Procedures relating to appointments and other statutory functions”).
6. is responsible for the appointment and dismissal of the Auditor-General, the Public Protector and other public office-bearers in terms of Chapter 9 of the Constitution, on the basis of Assembly resolutions (see Chapter 17 – “Procedures relating to appointments and other statutory procedures”).
7. appoints and may remove the members of the Public Service Commission on the recommendation of inter alia the Assembly.¹³
8. appoints an Inspector-General of Intelligence on the recommendation of the Assembly supported by two-thirds of its members.

11 Constitution, section 203

12 Assembly Rule 318

13 Constitution, section 196(7)

3. SPECIAL PROVISIONS RELATING TO THE PRESIDENT

Membership

On being elected, the President ceases to be a member of the Assembly. The President, and any member of the Cabinet or Deputy Minister who is not a member of the Assembly may attend and address the Assembly, but may not vote.¹⁴ When the President takes his or her seat in a Chamber of Parliament, the Rules apply to him or her as they do to a Minister.¹⁵

Parliamentary Counsellor

See that heading in Chapter 2 – “Presiding officers and other office-bearers”.

Term of office

When an election of the Assembly is held, the President, Cabinet and Deputy Ministers remain competent to function until the election of the new President.¹⁶

Messages from President

All communications from the President to the Assembly are by message, except when the President takes his or her seat in the House or in a joint sitting. The message is printed in the Minutes of Proceedings and may be read to the House by the presiding officer. Either it may be placed on the Order Paper for consideration, or else, at the presiding officer’s discretion, the ordinary business of the House may be interrupted to give it precedence.¹⁷

14 Constitution, section 54

15 Assembly Rule 5

16 Constitution, section 94

17 Assembly Rule 120

Role of Constitutional Court

Only the Constitutional Court may decide that the President has failed to fulfil a constitutional obligation. The Court also makes the final decision whether the conduct of the President is constitutional.¹⁸

Remuneration

Section 2(1) of the Remuneration of Public Office-Bearers Act, No 20 of 1998, stipulates that the remuneration payable to the President is determined by resolution of the Assembly after taking into account, among other things, the recommendations of the Independent Commission for the Remuneration of Office-Bearers.

¹⁸ Constitution, section 167

PARTIES IN THE ASSEMBLY

1. INTRODUCTION

R*epresentation:* Political parties represent significant national interest groups. The number of seats a party has in the Assembly is in proportion to the number of voters that voted for it in the previous election; subject to floor-crossing (see “Crossing the floor” below).

Majority party/ies: The Assembly elects the President from among its members. In effect this will usually mean that the leader of the majority party – or a coalition of parties forming a majority – is elected. The President appoints the Executive, namely Ministers of the Cabinet and Deputy Ministers, and assigns to them defined responsibilities for specific areas of government. The majority party is therefore the party in power.

Minority parties: The Constitution stipulates, in section 57(2)(b) and (d), that the Rules and Orders of the Assembly must provide that –

1. minority parties may participate in the proceedings of the Assembly and its committees “in a manner consistent with democracy”; and
2. the leader of the largest opposition party be recognised as the Leader of the Opposition.¹ (Assembly Rule 21 clarifies this as the leader of the largest party in the Assembly that is not in government.)

Following international practice, a member of a party that is not the majority party, chairs the Standing Committee on Public Accounts (SCOPA).

The term “opposition party” has been interpreted as including minority parties one or more of whose members are in the Cabinet.²

¹ The term “largest” has been taken to mean the party with the largest number of seats. Where the largest opposition parties have the same number of seats, the discretion has in the past, in provincial legislatures and in overseas parliaments, been given to the Speaker to decide who is Leader of the Opposition. Speakers of other South African legislatures have taken actual electoral support, in other words, number of votes, into account in deciding this

² *Procedural Developments in the House of Assembly*, Issue 1, Item 17

For notes on opposition office-bearers, see Chapter 2 – “Presiding officers and other office-bearers”.

2. ELECTORAL SYSTEM AND PARTY LISTS³

Parties are currently elected in accordance with a “pure” proportional representation system. Before elections, parties draw up electoral lists (also known as “party lists”) of potential members of the Assembly. Voters vote for the party of their choice and parties gain seats in the Assembly strictly according to the support they receive.

There are three kinds of party lists –

1. a national list for the Assembly;
2. regional lists for the Assembly; and
3. provincial lists for the provincial legislatures.

Only lists 1 and 2 above are relevant to the Assembly.

The information required for an electoral list is: The order in which individuals are to appear in the list, and surnames, first names and identity numbers.

Filling of Assembly seats after the election⁴

Seats in the Assembly must be filled from the lists of candidates submitted by the various political parties and published by the Electoral Commission.⁵ These lists may be national and/or regional lists. The lists denote the names of candidates in a fixed order of preference, as determined by each party. The Electoral Commission, after votes have been counted in an election, must designate the representatives of the parties from the lists.⁶

3 See Schedule 2 of the Interim Constitution, 1993, as amended by Annexure A to Schedule 6 to the 1996 Constitution. See also the following provisions of the 1996 Constitution: Items 6(3) & (4) of Schedule 6, & sections 46 to 48 and 105 to 107

4 Item 16 of Schedule 2 of Interim Constitution, 1993

5 Item 2 of Schedule 2 of Interim Constitution, 1993

6 Item 16 of Schedule 2 of Interim Constitution, 1993

Where a candidate is no longer available, for whatever reason, the next person on the list must be designated. Where a candidate's name appears on more than one list, it is for the party to decide from which list he or she is to be designated.

Supplementation of lists⁷

Lists of candidates may not be supplemented before the Electoral Commission has designated representatives. After the representatives have been designated, a list may be supplemented once during the first 12 months after the designation of representatives by the addition of an equal number of names at the end of the list, if –

1. a member is elected as President or to any other executive office and as a result resigns as a member;
2. a member is appointed as a permanent delegate to the Council;
3. a name is deleted from a list after having appeared on more than one list;
or
4. a vacancy has occurred and the appropriate list is depleted.

Review of lists⁸

A party may review its undepleted lists (as previously supplemented) within seven days after the expiry of a period of 12 months after the designation of candidates by the Electoral Commission. Thereafter the lists may be reviewed once annually – at any time, once a year. The following rules apply to the review of lists –

1. All vacancies may be supplemented.
2. No more than 25% of candidates may be replaced.

⁷ Items 17 to 20 of Schedule 2 of Interim Constitution, 1993

⁸ Item 21 of Schedule 2 of Interim Constitution, 1993

3. The fixed order of lists may be changed.

When a list is to be reviewed, the political party concerned, through its head office and/or through the office of its chief or senior whip in the Assembly, must furnish the updated information to the Secretary to Parliament. Reviewed lists for the Assembly do not include the names of current members of the Assembly.⁹ The different lists do not have to be reviewed at the same time.

This information must be provided by authorised signatories – see “Information required from parties” in this chapter.

Filling of vacancies¹⁰

A party must fill a vacancy by nominating a person –

1. whose name appears on the list from which the vacating member was nominated; and
2. who is the next qualified and available person on the list.

3. CROSSING THE FLOOR¹¹

The Constitution has been amended to make provision for two 15-day “window” periods during the five-year life of a parliament, during which Assembly members may change their party membership while retaining their seats in the Assembly. These periods run from 1 to 15 September in the second and fourth years after an election.

During this period, by giving written notification to the Speaker –

1. a member may change party membership once;

9 However, the names of current Assembly members may be on lists for provincial legislatures and the names of members of provincial legislatures may be on national or regional lists for the Assembly. The names of permanent delegates to the Council may appear on all 3 kinds of lists

10 Item 23 of Schedule 2 of Interim Constitution, 1993

11 Schedule 6A of the Constitution, inserted by the Constitution of the Republic of South Africa Amendment Act, No 2 of 2003. See *Procedural Developments in the National Assembly* Item 19, Issue 5 and Item 21, Issue 7

2. a party may merge, subdivide, or subdivide and merge once only; and
3. a member may resign from a party to form another party.

The changes take effect on the day on which the Speaker receives notification, and are announced in the House and published in the ATC. The altered composition of the Assembly must be published in the *Gazette* within seven days after expiry of the period. Also within seven days, new political parties and parties that gained members during the window period must submit to the Secretary one new list of candidates.

Thus, new parties will have one new list from which to fill vacancies, while parties which gain seats during the window period will have the new list, plus one or more old lists. The new list may not be supplemented or reviewed.

Interim arrangements during window period

During the course of the window period, members stay in their old offices, and parties must make interim arrangements to accommodate new members in regard to seating and other practical considerations. If there is a vote (division) in the Assembly, a whip of the new party to which a member belongs must inform the Table how the member is voting. The Assembly adapts its functioning and operations to the new party situation at the end of the window period.

4. PROPORTIONALITY IN ASSEMBLY PROCEDURES

Section 57 of the Constitution requires that minority parties be enabled to participate in proceedings “in a manner consistent with democracy” and stipulates that the Rules and Orders must be drafted with due regard for representative and participatory democracy. Accordingly, it is necessary to

provide for opportunities for participation on a democratic basis in a wide range of procedures by a large number of parties of widely differing sizes.

Thus the Assembly must ensure that adequate provision is made to have the full range of political views heard, certainly on major issues, while providing for the principle of proportionality.

In many instances, proportionality of representation is aided by smaller parties forming into groups for the purposes of allocating opportunities. For example, five parties with a total membership of twelve are formed into a group. Each of the five parties will be allocated a “slot” on every fifth occasion that the opportunity comes round. This is done in the case of procedures such as statements by members, allocating places on international delegations, and allocating party motions.

In some instances, such as declarations of vote and responses to ceremonial or condolence motions, applying proportionality is inappropriate. In such instances, in order to save time, parties may agree to limit the time allocated to all parties. For example, it may be agreed that declarations of vote for all parties are limited to two minutes instead of three.

Allocation of seating in the Chamber

This is settled through negotiation among the whips. While in general senior members are allocated seats in front rows, the leaders and senior members of smaller parties cannot necessarily expect to occupy front-row seats.

Speaking time in debates

Speaking time, overall and per party, and the sequence of speaking “slots”, are determined by agreement among the whips, and lists of speakers for each debate are subsequently compiled accordingly by Table staff.

Whenever there has been a readjustment of the size of parties – after an election or a “window period” for crossing the floor (see above) – a guideline allocation of time and slots is worked out, which forms the basis for subsequent speakers’ lists.

The practice has developed that the majority party allocates a proportion of its speaking time in debates to minority parties, to assist their participation.

All parties are allocated a broadly proportionate global time for the budget vote debates and can choose how much of their time to use on each budget vote.

Time taken by Ministers to introduce and reply to budget debates is allocated separately (as “executive” time) and does not come out of the allocation to the majority party.

See Chapter 10 – “Programming of business”.

Decisions on allocation of opportunities

Guideline decisions on procedures for proportional participation in Assembly proceedings are taken by the Assembly Rules Committee, the Chief Whips’ Forum and through negotiation. Decisions on the order of questions during Question Time are taken by the Chief Whips’ Forum,¹² while decisions on the order of members’ statements and on committee size and makeup are taken by the Assembly Rules Committee.

In other instances, a sequence is arranged through negotiation among whips. Where proportionality is not at issue, parties speak in order of size.

12 Assembly Rule 108

Whips and organising of business

Each party, whether entitled to a whip or not, is entitled to have a representative attend whips' and programming meetings, and parties that do not have whips, receive all documentation sent to whips.

Committee membership – House and portfolio committees¹³

The size and composition of committees (where not stipulated in the Rules) is determined by the Assembly Rules Committee. This takes place after a change in the composition of the Assembly following an election or floor-crossing. Committee composition is generally on the basis that the majority party retains a majority, while generally a limited number of seats are made available for the smaller parties. Those parties must determine among themselves which of them takes the seat on a particular committee.

Special provision has in the past been made to increase the size of particular committees, to accommodate more participation by smaller parties where this is desired.

Any member may in any case attend and speak, but not vote, in a committee of which he or she is not a member.

Each party receives documentation in respect of all committees, including those committees on which it does not have representation.

Committee chairpersons are usually members of the majority party. However, it is the custom, following international practice, that the chairperson of the Standing Committee on Public Accounts is chaired by a member of the opposition.

See also “Parties and Assembly committees” and “Parties and joint committees” in Chapter 16 – “Parliamentary committees”.

13 Assembly Rule 125

5. FINANCIAL AND ADMINISTRATIVE SUPPORT TO PARTIES

Two forms of financial assistance are provided –

1. The Constitution stipulates that the Rules and Orders of the Assembly must provide for financial and administrative assistance to each party represented in the Assembly, in proportion to its representation, to enable the party and its leader to perform their functions in the Assembly effectively.¹⁴ This assistance is provided by Parliament.¹⁵
2. In addition, funds are provided via the Electoral Commission to support political activities outside of Parliament by parties represented in Parliament. The funds are allocated to parties on a proportional basis and may be used for any purposes “compatible with [their] functioning as a political party in a modern democracy”. This support is provided via the Electoral Commission in terms of the Public Funding of Represented Political Parties Act, No 103 of 1997, and is not dealt with further here.¹⁶

Process of determining assistance

The Joint Rules Committee (“JRC”) has responsibility under Joint Rule 56(1) for determining the provision of facilities and other support for Assembly and Council members¹⁷ and monitoring and overseeing the implementation of policy in this regard.

Types of support

The following assistance is provided to parties:

1. Financial assistance

Constituents’ allowance

¹⁴ Constitution, section 57(2)(c)

¹⁵ Particulars of support can be obtained from the Finance Section of Parliament

¹⁶ The Joint Subcommittee on the Funding of Represented Political Parties makes recommendations concerning regulations in terms of section 10 of the Act. Particulars of this subcommittee are provided in Chapter 16 – “Parliamentary committees”

¹⁷ “The JRC may develop, formulate and adopt policy concerning the joint business of the Houses in respect of the provision of facilities and other support for Assembly and Council members.”

2. Administrative assistance (includes support for the party leadership and general support)

- a) Support and research staff
- b) Office administration
- c) Capital costs

The **constituents' allowance** is paid to enable a political party to establish and maintain an infrastructure to serve the interests of constituents and enable its members to render a service, not related to their political affiliation, to all their constituents. Such a service must be available equally to all members of the public.

Constituency offices are established by political parties that determine their location and allocate members to serve them. These must be separate from party political offices.

Administrative assistance in the form of support staff and infrastructure is provided to enable parties to function effectively.

Offices for members and party staff and caucus rooms are provided in the parliamentary buildings.

6. INFORMATION REQUIRED FROM PARTIES

Several provisions of the Constitution require notice or information to be given to Parliament by political parties in relation to membership of the Assembly. The following is a list of these instances, with an indication of the channel to be followed –

1. Notification of loss of membership of a party, resignations and nomination of persons to fill vacancies must be directed to the Speaker.

2. Submissions to supplement or review lists of candidates must be directed to the Secretary to Parliament.
3. Parties must notify the Speaker in writing of the name(s) of the person(s) authorised to submit all such notices on behalf of the party. The Speaker must immediately be informed in writing of any changes of persons so authorised.
4. Notices must be signed only by the persons so identified, and not by others on their behalf.
5. For reference purposes, parties should file up-to-date copies of their constitutions with the office of the Speaker.
6. Written notification directly from the member concerned that he or she has resigned from a party or from the Assembly is also acceptable.

All such notifications must indicate the operative date. Dating may not be retrospective. In the event that the operative date supplied by the member differs from the date supplied by the authorised party office-bearer, the date supplied by the latter will be taken as correct.



MEMBERS OF THE ASSEMBLY

1. ELIGIBILITY AND LOSS OF MEMBERSHIP

Eligibility for membership of the Assembly is provided for in section 47 of the Constitution, as follows:

47. (1) Every citizen who is qualified to vote for the National Assembly is eligible to be a member of the Assembly, except -
- a. anyone who is appointed by, or is in the service of, the state and receives remuneration for that appointment or service, other than –
 - b. i. the President, Deputy President, Ministers and Deputy Ministers; and
ii other office-bearers whose functions are compatible with the functions of a member of the Assembly, and have been declared compatible with those functions by national legislation;
 - c. permanent delegates to the National Council of Provinces or members of a provincial legislature or a Municipal Council;
 - d. unrehabilitated insolvents;
 - e. anyone declared to be of unsound mind by a court of the Republic; or
 - f. anyone who, after this section took effect, is convicted of an offence and sentenced to more than 12 months imprisonment without the option of a fine, either in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic, but no one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined, or until the time for an appeal has expired. A disqualification under this paragraph ends five years after the sentence has been completed.

- (2) A person who is not eligible to be a member of the National Assembly in terms of subsection (1)(a) or (b) may be a candidate for the Assembly, subject to any limits or conditions established by national legislation.
- (3) A person loses membership of the National Assembly if that person –
- a. ceases to be eligible; or
 - b. is absent from the Assembly without permission in circumstances for which the Rules and Orders of the Assembly prescribe loss of membership. (NB: Currently there is no such Rule.)
- (4) Vacancies in the National Assembly must be filled in terms of national legislation.

In addition to the above, a member loses membership of the Assembly –

1. if that person ceases to be a member of the party which nominated him or her as a member (for example owing to expulsion from the party);¹ or
2. on resignation as a member.

Members retain their membership until the day before the first day of polling for the next Assembly.²

2. TAKING THE OATH OR AFFIRMATION

A member becomes a full member when he or she is duly elected. However, before members begin to perform their functions in the Assembly, they must swear or affirm faithfulness to the Republic and obedience to the Constitution.³

1 Annexure A of Schedule 6 to the Constitution, Item 13; Annual Report of Parliament 1997 p 3

2 Section 49(1) & (4) of the Constitution

3 Section 48 and Schedule 2 of the Constitution

The wording of the oath or affirmation is as follows:

I, A.B., swear/solemnly affirm that I will be faithful to the Republic of South Africa and will obey, respect and uphold the Constitution and all other law of the Republic, and I solemnly promise to perform my functions as a member of the National Assembly to the best of my ability.

(In the case of an oath: So help me God.)

See “Swearing-in of members” in Chapter 8 – “Sessions and sittings” for making the oath or affirmation at the start of a new parliament.

In the course of a session, a person who has been designated to fill a casual vacancy is escorted to the Table by not more than two whips, and takes the oath or affirmation facing the Table. This is normally done immediately after the moment of silence that opens the sitting. Having taken the oath or affirmation, the member approaches the presiding officer, who congratulates him or her. The member then goes to his or her allocated seat, signs the appropriate form and immediately returns it to the presiding officer, who adds his or her signature. The member receives a copy of the signed form for his or her records.

It is also possible to make the oath or affirmation in the Speaker’s Chambers. Here, too, it is customary for a new member to be accompanied by a whip of the relevant party.

3. RIGHTS AND DUTIES

(See also “Privileges and immunities” in Chapter 1 – “The National Assembly and its constitutional role”.)

A member represents his or her party, and the voters who voted for that party, in carrying out the parliamentary functions of the Assembly, namely –

1. representing the people.
2. ensuring government by the people under the Constitution, by –
 - a) electing the President;
 - b) providing a national forum for public consideration of issues;
 - c) passing legislation; and
 - d) scrutinising and overseeing executive action.⁴

A member carries out these multiple responsibilities by –

1. participating in the various proceedings of the Assembly,
2. being a member of parliamentary committees and taking part in their proceedings,
3. communicating with and assisting constituents, both as a member of a party and through constituency offices,
4. assisting in the functioning of the Assembly, for example as a whip or other office-bearer, and
5. supporting and promoting his or her party.

Commissioner of Oaths: Members of both Houses are ex officio commissioners of oaths, and as such have the authority to administer an oath or affirmation or take a solemn or attested declaration (affidavit) from any person anywhere in South Africa.⁵

4. REMUNERATION AND BENEFITS

Members' remuneration is determined by the President under powers delegated to him by Parliament in terms of legislation,⁶ after taking into

4 Section 42(3) of the Constitution

5 Section 7 of the Justices of the Peace and Commissioners of Oaths Act, 1963. See also the parliamentary Circular to All Members L6/2000

6 Section 3 of the Remuneration of Public Office-bearers Act, No 20 of 1998

consideration, among other things, the recommendations of the Independent Commission for the Remuneration of Public Office-bearers.

A member who holds different public offices simultaneously is only entitled to the benefits of the office for which he or she earns the highest income.

Members are provided by the Parliamentary Service with the following facilities and benefits, all of which are subject to limits and conditions –

1. Travel warrants for a specific number of journeys by air or land. Subject to certain conditions, travel warrants may be used by dependants.
2. Reimbursement for daily commuting during sessions.
3. Reimbursement for travel to and from airports, and parking at airports.
4. Transportation of motor vehicles once a year.
5. Relocation costs as a result of becoming or ceasing to be a member.
6. Allocation of telephone units.
7. Travel and other expenses in respect of attendance of approved committee meetings at other venues or while Parliament is not sitting.
8. Office equipment, furniture and stationery.
9. Electronic version of statutes.

See also “Financial and administrative support to parties” in Chapter 4 – “Parties in the Assembly”.

5. ATTENDANCE

Currently a member registers attendance of a meeting of the Assembly by filling in an attendance slip and personally depositing it in one of the boxes in the Chamber provided for this purpose. Chamber service staff are instructed not to deposit attendance slips in the boxes on members' behalf.

Committee secretaries are responsible for recording attendance at committees.

The Constitution stipulates⁷ that a member loses membership if absent from the Assembly without permission in circumstances for which the rules of the Assembly prescribe loss of membership. At present there is no such rule.

Members' absence from Parliament on parliamentary working days is controlled by party whips.

6. MAKING A SPEECH IN THE ASSEMBLY

A member who is to address the House in a particular debate should consult the whips for information on the debate. The whips have the list of speakers in that debate, which specifies which members will take part, in what sequence and the time allowed for each speech. (Parties sometimes make changes to the list in the course of the day's proceedings.) A member who is due to speak should proceed to the waiting bench close to the podium in good time, bearing in mind that the previous speaker might end early.

Disabled members are provided for in various ways. Members who are unable to speak from the podium are permitted to speak from their seats, or have other special arrangements made, such as speaking from a wheelchair in front of the podium. In the case of deaf members, provision is made for interpreters to stand on the floor of the Chamber. Provision is also made for

7 Section 47(3)(b) of the Constitution

providing documents in Braille. Arrangements in this regard may be discussed and arranged between party whips and staff.

Delivering a speech: Most speeches in the National Assembly are delivered from the podium in front of the Speaker, although in some circumstances, the “floor” microphones may be used. Only one member at a time may address the House. A speech is always addressed to the presiding officer. Members should not simply read their speeches. It is a courtesy to acknowledge the previous speaker, even if one does not respond in any detail. Members may not address or make reference to any person or persons in the public gallery.⁸

See also Chapter 11 – “Rules of debate and maintenance of order”.

Podium clock: There is a digital clock at the podium that shows the member speaking, in minutes and seconds, how much time is left for his or her speech. A warning amber light will flash briefly when there is one minute of speaking time left. When the time is up, a red light flashes. The presiding officer will stop a member who exceeds the time available.

“Injury time”: Current practice, subject to the discretion of the presiding officer, is for additional time to be allowed to a member whose speech has been substantially interrupted by points of order, provided they were not caused by the member’s own conduct.⁹

*“Maiden” or first speeches:*¹⁰ It is a convention that a member’s first speech in the House is uncontroversial and heard in silence. However, if such a speech is controversial or provocative, and members respond with interjections, the Chair will not enforce the convention.

Floor microphones: There are microphones on the floor for use by members raising questions and points of order from the floor, and for occasions when contributions from the floor are permitted.

8 *Annotated Digest of Rulings* 1994-99, p 98

9 *Annotated Digest of Rulings* 1994-99, pp 140

10 *Annotated Digest of Rulings* 1994-99, pp 129-31

Hansard and interpretation¹¹

A member may speak in the Assembly in any of the official languages. Currently all languages are interpreted into English and Afrikaans. Parliamentary documents are currently available in those two languages. Members wishing to speak in any of the other official languages are requested to alert the Table staff in advance, to ensure that the appropriate interpreting staff are on hand. Interpretation services are not generally available in committees.

Members are entitled to receive an unrevised transcript of their speeches, paperback copies of the Hansard record, and bound volumes of the debates for the year.

7. ETHICS AND MEMBERS' INTERESTS

A committee of both Houses of Parliament develops standards of ethical behaviour for MPs and administers a code of conduct (see the Schedule to the Joint Rules). In terms of this code, a Register of Members' Interests is kept by a senior official, the Registrar of Members' Interests. Within 30 days of the opening of Parliament after an election, and once a year after that, members must, on the form provided, disclose particulars of their financial interests and those of their spouses, dependants and permanent companions. Most of this information is open to the public. The confidential part of the register includes details about the monetary value of MPs' interests and details relating to spouses, dependent children and permanent companions of MPs.

Pecuniary interest: Section 11 of the Powers and Privileges of Parliament Act, No 91 of 1963, reads as follows –

1. Subject to the provisions of subsection (3), a member shall not in or before Parliament or any committee vote upon or take part in the discussion of any matter in which he has a direct pecuniary interest.

¹¹ *Annotated Digest of Rulings 1994-99*, p 50. A new language policy is under consideration

2. Any member who contravenes subsection (1) may be adjudged guilty of contempt of Parliament by the House of which he is a member and shall be liable to the penalties provided in this Act for such contempt.
3. The provisions of subsection (1) shall not apply to any vote or discussion concerning any remuneration or allowance to be received by members in their capacity as such, or to any interest which a member may have in any matter in common with the public generally or with any class or section thereof.

It has been held that for this to be a qualification, a member's interest must be immediate and personal and not of a general or remote character. It must also be specifically a pecuniary, that is financial, interest.

8. VACATION OF SEAT

See also "Information required from parties" in Chapter 4 – "Parties in the Assembly".

Resignation: A member submitting his or her resignation from the Assembly must comply with the following –

1. A letter of resignation must be addressed to the Speaker of the National Assembly, contain the full names of the resigning member and a return address, and be signed by the member herself/himself. No-one may sign the letter on the member's behalf.
2. The letter must be correctly dated, must specify the effective date of resignation and also indicate the last working day. If the effective date of resignation is not specified, the date of the letter will be regarded as the effective date of resignation.

3. Letters may be hand-delivered or sent by post. A faxed copy will be accepted provided the member concerned duly signs it. Resignation by email is not accepted.
4. Members should copy their letters of resignation to the most senior whip of their party.
5. Resignations may not be retrospective.
6. As a resignation is a unilateral act that is irreversible, where uncertainty exists it is advisable for members to consult the Secretary or Undersecretaries of the National Assembly.

Vacation of seat owing to expulsion from party: In terms of the Constitution a person loses membership of the Assembly if that person ceases to be a member of the party that nominated him or her. Loss of membership of the Assembly therefore follows automatically when a member ceases to be a member of the party that nominated him or her as a member of the Assembly.

In order to enable the Assembly to implement the constitutional provisions in these circumstances, the Speaker needs to be informed authoritatively that a member has ceased to be a member of his or her party. The following process is followed when the Speaker receives written notification of a member's expulsion from his or her party –

1. The notification is checked to verify that it is signed by an authorised person and that the operative data is included.
2. The party in its notification should state whether all internal party remedies available to the member have been exhausted and the expulsion is therefore final.
3. The affected member is then informed in writing under the Speaker's authority that notice of his/her expulsion from the party has been received

and that as from the date the member has ceased to be a member of the party which nominated him or her as a member of the Assembly, the member vacates his or her seat in the Assembly in terms of the Constitution.

4. The party is thereupon entitled to nominate a person to fill the vacancy, and such new member is sworn in at the earliest opportunity.

Candidacy for an office of profit: A member does not lose membership of the Assembly by being a candidate for an office of profit such as membership of a municipal council. However, membership would be lost on actual appointment to such a body.

9. DISCIPLINARY PROCEDURES

1. While in the Chamber, a member is subject to the disciplinary powers of the presiding officer (see “The Chair’s powers to maintain order” in Chapter 11 – “Rules of Debate and Maintenance of Order”).
2. Any offence committed involving a breach of the privileges or proceedings of the House will be dealt with as the Assembly may decide. In cases of serious allegations, the Assembly has in the past by resolution referred such matters to an *ad hoc* committee charged with investigating and reporting to the House.
3. The report of such a committee may, where appropriate, include recommendations as to a sanction. However, in terms of a ruling by the Supreme Court of Appeal, only such sanctions that are prescribed in the Assembly Rules may be imposed.¹² On various occasions members have been subject to censure and a reprimand.

¹² See Assembly Table files on suspension of certain members

4. A breach of the Code of Conduct is dealt with by the Committee on Ethics and Members' Interests, which may investigate and recommend to the Assembly sanctions or other steps that it deems necessary.¹³
5. For any wrongdoing not involving parliamentary privileges or proceedings, a disciplinary committee chaired by the Deputy Speaker may be appointed by the Speaker to investigate the matter.¹⁴ See that heading in Chapter 16 – “Parliamentary committees”.

*10. PERSONAL EXPLANATIONS*¹⁵

A member may ask the presiding officer for an opportunity to give a personal explanation where a material part of his or her speech has been misquoted or misunderstood, or in order to explain matters of a personal nature. See “Personal Explanations” in Chapter 9 – “Types of business in plenary”.

11. BENEFITS FOR FORMER MEMBERS

Relocation: Persons who are not re-elected after an election and must return to their home base may, subject to certain conditions, transport their belongings back to their place of residence at the expense of Parliament.

General: Former members of Parliament are allowed, on production of a parliamentary photo-permit (obtainable from the Permit Office through the Serjeant-at-Arms) to enter the parliamentary building complex, but are not allowed to invite visitors into any part of the complex, and specifically may not conduct tours of the complex on their own.

They may make use of the refreshment rooms (the main dining rooms, coffee lounges and bar lounges) and the parliamentary library and reading rooms – provided that this is not done to the detriment of serving members.

13 See in particular items 12 to 20 of the Code of Conduct published in the Joint Rules. For an example of proceedings, see *Procedural Developments in the National Assembly*, Item 16, Issue 6

14 Assembly Rule 194

15 Assembly Rule 69

The rules of the Parmed medical scheme make provision for continued membership by former members and widows/widowers of deceased members.

Travel: Former members who have served a minimum of five consecutive years in Parliament either before or after 1994, are entitled to four single economy class air tickets for every year of service up to a maximum of 15 years. Tickets not used in the applicable year are forfeited. Tickets are for the use of the former member, and for his or her spouse or partner when accompanying the former member.¹⁶

¹⁶ As per resolution in Assembly Minutes, 27 November 2003



ORGANISATION OF PARLIAMENT

1. INTRODUCTION

The Constitution provides that Parliament, and the Assembly specifically, may determine and control its internal arrangements, proceedings and procedures, and determines its own rules and procedures, subject to the provisions of the Constitution.¹

The Assembly is the directly elected House of Parliament in a bicameral joint establishment. The other Chamber, the National Council of Provinces, represents the provinces at the national level, and is indirectly elected. A joint parliamentary administration provides procedural and administrative services to both Houses.

The Constitution requires the two Houses of Parliament to establish a Joint Rules Committee to make Rules and Orders concerning the joint business of the Assembly and Council.²

The Joint Rules of Parliament make provision for matters relating to joint business, including, and in particular, that of joint committees of Parliament.

2. THE JOINT ESTABLISHMENT

The Parliamentary Administration provides the administrative machinery for the efficient conduct of the National Assembly and the National Council of Provinces and their committees and a range of services and facilities for members of Parliament.

1 Constitution, sections 45(1) & 57(1).

2 Constitution, section 45(1)

Joint Rules Committee (JRC)³

The JRC (see Chapter 16 – “Parliamentary Committees”) is jointly chaired by the Speaker and the Chairperson of the Council and makes Rules and Orders concerning joint business. It also develops, formulates and adopts policy concerning the joint business of the Houses in respect of the management, administration and functioning of Parliament.

The JRC is composed of the Rules Committees of the two Houses of Parliament.

Joint Rule 56 outlines the functions and powers of the Committee in detail and is therefore reproduced here in full:

56. (1) The Joint Rules Committee may –

- (a) develop, formulate and adopt policy concerning the joint business of the Houses in respect of –
 - (i) the management, administration and functioning of Parliament;
 - (ii) the financial management and policy of Parliament, including the sources of funding, the budget, income and expenditure of Parliament;
 - (iii) the provision of facilities and other support for Assembly and Council members;
- (b) make recommendations to the Houses concerning Parliament’s annual budget;
- (c) monitor and oversee the implementation of policy on all matters referred to in paragraph (a);
- (d) lay down guidelines, issue directives and formulate regulations regarding any aspect of policy referred to in this rule;

3 Joint Rules 53-63

- (e) prescribe the style in which draft legislation must be drafted, including the form and format of bills and amendments to bills;
 - (f) apart from the subcommittees mentioned in Joint Rule 63 (1) (a) to (i), appoint any other subcommittees to assist it with the performance of any of its functions or the exercise of any of its powers;
 - (g) in terms of section 45 of the Constitution make joint Rules and Orders concerning the joint business of the Houses, including joint Rules and Orders –
 - (i) to determine procedures to facilitate the legislative process, including setting a time limit for completing any step in the process; and
 - (ii) to regulate its own business and that of any other joint committee or any joint subcommittee;
 - (h) deal with all matters relating to the funding of political parties, including the making of recommendations to the President for the enactment of regulations for the purposes of section 10 of the Public Funding of Represented Political Parties Act, 1997 (Act 103 of 1997); and
 - (i) perform any other functions assigned to it by legislation, the other provisions of the Joint Rules or resolutions adopted in the Assembly and the Council.
- (2) The Joint Rules Committee may deal with a matter falling within its functions and powers –
- (a) on its own initiative; or
 - (b) when referred to it for consideration and report by –
 - (i) the Assembly or the Council, or both;

- (ii) the Speaker or the Chairperson of the Council, or both; or
- (iii) the Assembly Rules Committee or the Council Rules Committee.

Decision-making⁴

A question before the Joint Rules Committee is decided when there is agreement on the question between –

1. the majority of the members of the Assembly component; and
2. the majority of the members of the Council component.

The Rule specifies “a majority of the members of the committee” and not “a majority of those present”.

Since in the Council component each province has one vote, five provinces must vote in favour of the question, for it to be carried.

Reconsideration: If either House rejects a report by the committee, the committee must reconsider the question. On reconsideration, the question is decided by the majority of the votes cast jointly between the two components, provided that the votes are weighted in such a way that the two components have an equal number of votes. A decision reached in this way, unless it concerns the Joint Rules, is binding on both Houses. In the case of a disputed decision relating to the Joint Rules, the committee must either withdraw the amendment or new rule, or rephrase it in a way acceptable to both Houses.

Decision-making during recess: If during recess a matter of policy arises that requires an immediate JRC decision, the Speaker and Chairperson may convene a meeting of Assembly and Council office-bearers who may be available. The Assembly office-bearers in question are –

1. Speaker
2. Deputy Speaker

4 Joint Rules 57-8

3. Chief Whip and Deputy Chief Whip of the Majority Party
4. Chairperson and Deputy Chairperson of Committees
5. Chairperson of the Subcommittee of the Assembly Rules Committee under whose jurisdiction the matter in question falls
6. The most senior whip of each of the other parties in the Assembly
7. A committee chairperson designated by the Committee of Chairpersons in the Assembly.

Decisions taken in this way must be published in the ATC within three days.⁵

Implementation: The Speaker and the Chairperson of the Council, acting jointly, are responsible for the implementation of policy determined by the JRC. With the concurrence of the JRC they may appoint task teams to assist them in these responsibilities.⁶

Subcommittees of the JRC

To assist it in its task, the JRC has eight subcommittees provided for in the Joint Rules.⁷ It may also appoint other subcommittees. Membership of these subcommittees is not restricted to members of the JRC.

The subcommittees report only to the JRC and may not issue directives relating to any aspect of the control and management of the joint administration.⁸

Unless otherwise indicated below, these joint subcommittees consist of the members of the relevant House subcommittees, and are jointly chaired by the chairpersons of the House subcommittees.

5 Joint Rule 62

6 Joint Rule 61

7 Joint Rules 63-89

8 Joint Rule 63

Besides the functions cited below, a subcommittee must perform any function and may exercise any power assigned to it by the JRC.

*Subcommittee on the Parliamentary Budget:*⁹ Makes recommendations on the development, formulation and adoption of policy regarding the financial management of Parliament; the sources of funding, resources, income and expenditure of Parliament; and the preparation of Parliament's annual budget. It also monitors and oversees the implementation of policy on these matters.

*Subcommittee on Review of the Joint Rules:*¹⁰ Makes recommendations regarding the proceedings, procedures, rules, orders and practices of Parliament; and the development, formulation and adoption of policy thereon.

*Subcommittee on Support for Members:*¹¹ Makes recommendations on the development, formulation and adoption of policy regarding the provision of facilities, including training for members, and other support for Assembly and Council members; monitors and oversees implementation of policy and makes recommendations in this regard.

The subcommittee must consult the Joint Subcommittee on the Parliamentary Budget on any of its recommendations that has financial implications for Parliament. If that subcommittee disagrees, the two subcommittees must report the disagreement to the JRC.

The Deputy Speaker and Permanent Deputy Chairperson of the Council are ex officio members of the subcommittee.

*Subcommittee on Internal Arrangements:*¹² Makes recommendations on the development, formulation and adoption of policy regarding the administration and management and functioning of Parliament, including staff; infrastructure; household services and catering; human resource development and training; information systems and the library; and public relations and public education. It also monitors and oversees the

9 Joint Rules 64-66

10 Joint Rules 67-69

11 Joint Rules 70-72

12 Joint Rules 73-75

implementation of policy on these matters and makes recommendations in this regard to the JRC.

The Deputy Speaker and Permanent Deputy Chairperson of the Council are ex officio members and joint chairpersons of the subcommittee.

*Subcommittee on International Relations:*¹³ The composition of this subcommittee, which is chaired jointly by the Speaker and Chairperson of the Council, is determined in detail in Joint Rule 76.

The subcommittee may make recommendations on the development, formulation and adoption of policy regarding Parliament's international relations, including relations with other Parliaments and international organisations; membership of international parliamentary organisations; visits abroad by parliamentary groups; and the hosting and receiving of delegations from abroad. It may also monitor and oversee the implementation of policy on these matters and make recommendations in this regard.

A question before the Subcommittee is decided by consensus among the members of the Subcommittee. If consensus cannot be reached, all views must be reported to the JRC.

*Subcommittee on Funding of Political Parties:*¹⁴ The subcommittee consists of ten members of the majority party; three members of the biggest minority party; two members of the second biggest minority party; and one member of each of the other parties. The Speaker and the Chairperson of the Council, acting jointly, appoint the members of the Subcommittee on the advice of the relevant chief or most senior whips.

The subcommittee must elect a chairperson from one House, and a deputy chairperson from the other House.

The subcommittee may make recommendations concerning the enactment of regulations referred to in section 10 of the Public Funding of Represented Political Parties Act, No 103 of 1997.

13 Joint Rules 76-79

14 Joint Rules 80-83

A question before the subcommittee is decided by consensus among the members of the Subcommittee. Failing consensus, all views must be reported to the JRC.

*Subcommittee on Delegated Legislation:*¹⁵ Must investigate and make recommendations on possible mechanisms that could be used by legislators to maintain oversight of the exercise of legislative powers delegated to the executive.¹⁶

*Joint Subcommittee on Powers and Privileges:*¹⁷ The Joint Rules provide for such a subcommittee but it is not currently appointed.

The Joint Administration

The two Houses are served by a joint parliamentary administration, headed by the Secretary to Parliament who is "...responsible for the regulation of all matters connected with the business of the National Assembly, subject to such directions as he or she may receive from the Speaker or the House".¹⁸ As such, the Secretary is overall head of procedural services and often performs a ceremonial role. Procedural and related services are provided by –

1. The National Assembly Table, which is headed by the Secretary to the National Assembly and provides procedural and related services to the Assembly. Advice is provided both in the Chamber and otherwise. See "Procedural services" below.
2. The Council Table, headed by the Secretary to the NCOP, which provides procedural services to the Council as well as liaison services between the Council and provinces and municipalities.
3. The Legislation and Oversight Division, headed by a Divisional Manager, which provides documentary and procedural services jointly to both Houses, including Hansard (transcription of debates) and interpreting

15 Joint Rules 84-86

16 Section 101 (4) of the Constitution provides for national legislation to determine procedures for subordinate legislation to be tabled in and approved by Parliament

17 Joint Rules 87-89

18 Assembly Rule 331

services; support of committees; support of the procedure for questions to Ministers; production of legislative and parliamentary documents; and research and library services.

4. The Law Advice Office, headed by the Chief Law Adviser.
5. The Office of the Leader of Government Business, which assists in the planning and scheduling of government business.
6. An International Relations section, which supports interaction with other parliaments.

Other sections of the administration support public education, public and media relations and parliamentary international relations, and provide financial and household services.

The Secretary to Parliament publishes an annual report on all aspects of the administration, including financial statements. A separate report is also published annually covering parliamentary events and activities of members.

The parliamentary precincts – control and security

The precincts of Parliament, defined as the buildings and areas that comprise the parliamentary complex, are under the control of the two presiding officers.

In their capacity as custodians of the rights and privileges of the members of the Houses, the presiding officers, on behalf of the Houses, have ultimate authority and responsibility in respect of security matters, subject to any orders of the Houses and any policy directives by the respective rules committees. Thus, within the precincts, the police and other agents of the Executive act under the authority of the presiding officers.

This jurisdiction is based on custom and practice and the inherent powers vested in the presiding officers (subject to the Constitution and any orders of the Houses) to maintain proper arrangements for the functioning of parliament.

The term “parliamentary precincts” also covers any other area used at any time for formal Parliamentary proceedings, for example, a committee meeting at a venue beyond the seat of Parliament.

Records¹⁹

The Minutes of Proceedings and other relevant parliamentary papers such as the Order Paper and the Announcements, Tablings and Committee Reports (ATC) are printed and supplied to members each sitting day. Question Papers are published at regular intervals. The Minutes of Proceedings signed by the Secretary, are the official Journals of the Assembly. See Chapter 15 – “Parliamentary Papers” for a description of these documents.

Custody of papers: The Secretary has custody of all records and other papers of the Assembly, which always remain on the precincts unless the Speaker gives leave for their removal.

The Rules currently provide that only a member of this House has access to, or is entitled to take extracts from or make copies of, papers laid upon the Table. If the House has ordered that the contents of any such paper shall not be made public, or if such paper is marked as being confidential, no member shall divulge such contents, under pain of breach of privilege.²⁰ However, current practice is that tabled papers are accessible to the public, except where for good reason they have been declared confidential.

19 Assembly Rules 327-30

20 Assembly Rule 330. However, this Rule may have to be reconsidered in the light of constitutional provisions

3. THE ASSEMBLY ADMINISTRATION

Assembly Rules Committee

The Assembly Rules Committee (see Chapter 16 – “Parliamentary Committees”) is chaired by the Speaker and makes Rules and Orders concerning House business). It also develops, formulates and adopts policy concerning the exclusive business of the Assembly in respect of the management, administration and functioning of the Assembly.

Since Assembly Rules 161 & 162 outline in detail the functions and powers of the Committee and the functions of the Speaker in this regard, the text of the relevant Rules is quoted here for easy reference:

Functions and powers

161. (1) The Rules Committee may –

- (a) develop, formulate and adopt policy concerning the exclusive business of the Assembly in respect of –
 - (i) the management, administration and functioning of the Assembly;
 - (ii) the financial management and policy of the Assembly, including the sources of funding, the budget, income and expenditure of the Assembly;
 - (iii) the proceedings, procedures, Rules, orders and practices concerning the business of the Assembly; or
 - (iv) the provision of facilities and other support for Assembly members;
- (b) make recommendations to the Assembly concerning the Assembly’s

- annual budget;
- (c) monitor and oversee the implementation of policy on all matters referred to in paragraph (a);
 - (d) make recommendations to the Joint Rules Committee on any matter falling within the functions and powers of the Committee;
 - (e) lay down guidelines, issue directives, and formulate regulations regarding any aspect of policy referred to in this Rule;
 - (f) appoint committees or subcommittees to assist it with the performance of any of its functions or the exercise of any of its powers;
 - (g) recommend to the Assembly Rules and Orders concerning the business of the Assembly; and
 - (h) perform any other functions assigned to it by legislation, the other provisions of these Rules or resolutions of the Assembly.
- (2) The Committee may deal with a matter falling within its functions and powers –
- (a) on its own initiative; or
 - (b) when referred to it for consideration and report by –
 - (i) the Assembly; or
 - (ii) the Speaker.

Implementation of policy

- 162.** (1) The responsibility for the implementation of policy determined by the Rules Committee vests in the Speaker subject to the decisions of the Rules Committee and resolutions of the Assembly.

- (2) The Speaker, with the concurrence of the Rules Committee, may appoint task teams to assist the Speaker in executing the responsibility mentioned in Sub-rule (1).

If during recess a matter of policy arises that requires an immediate Rules Committee decision, the Speaker may convene a meeting of specified office-bearers who may be available. Decisions taken in this way must be published in the ATC within three days after the Assembly reconvenes.²¹

Subcommittees of the Assembly Rules Committee

To assist it in its task, the Rules Committee has subcommittees on –

- (a) *The National Assembly Budget*²²
Composition: 3 from majority party; 1 each from 3 largest minority parties; 1 each from 2 of the other minority parties. Rules Committee appoints chairperson.
- (b) *Support for Assembly Members*²³
Composition: Same as (a) above, but subcommittee appoints chairperson.
- (c) *Review of the National Assembly Rules*²⁴
Composition: Same as (a) above. Rules Committee appoints chairperson.
- (d) *Internal Arrangements*²⁵
Composition: the Deputy Speaker; 5 from majority party; 1 from each of the 3 largest minority parties; 1 from each of 3 other minority parties. Deputy Speaker is chairperson.
- (e) *International Relations*²⁶
Composition: Speaker and Deputy Speaker; 3 from majority party; 1 each from 3 largest minority parties; 1 each from 2 of the other minority parties; 1 from Portfolio Committee on Foreign Affairs, designated by

21 Assembly Rule 163

22 Assembly Rules 166-168

23 Assembly Rules 169-171

24 Assembly Rules 172-174

25 Assembly Rules 175-177

26 Assembly Rules 178-180

27 Assembly Rules 181-183

that Committee; the Chairperson of Committees; and 3 chairpersons of Assembly Committees designated by the Committee of Chairpersons. Chaired by Speaker.

(f) *Delegated Legislation*²⁷

Composition: Same as (a) above. Rules Committee appoints chairperson.

(g) *Powers and Privileges of Parliament*²⁸

Composition: The Speaker, and as in (a) above. Speaker is chairperson. The Subcommittee on Powers and Privileges of Parliament has not been appointed.

The Rules Committee may also appoint other subcommittees.

The functions of the above subcommittees are the same as those of the corresponding joint subcommittees (see *Subcommittees of the Joint Rules Committee* above) but relate specifically to the Assembly rather than to Parliament as a whole. Subcommittees make recommendations to the Assembly Rules Committee, and may only take a matter to a Joint Subcommittee of the JRC if authorised to do so by the Rules Committee.²⁹

A subcommittee may not issue directives relating to any aspect of the control and management of the administration of the Assembly.³⁰

Membership of subcommittees of the Rules Committee is not restricted to members of the Rules Committee.

Procedural Services

Procedural services are provided by the National Assembly Table, a division of the Joint Administration of Parliament. The division is headed by the Secretary to the National Assembly, who is appointed by the Assembly. He or she is assisted by undersecretaries and other staff, and is the principal adviser to the Speaker and other presiding officers, and to Assembly

28 Assembly Rules 184-186

29 Assembly Rule 164(3)

30 Assembly Rule 165(4)

members generally, in relation to proceedings of the Assembly. Members of the Table perform *inter alia* the following functions –

1. Accurate written records of formal decisions and proceedings.
2. Advice and guidance on procedure, oral and written, in the Chamber and otherwise.
3. Servicing and providing technical procedural advice to internal (“House”) committees.
4. Drafting of rules, motions, and other procedural documents.
5. Processing statutory obligations of the Assembly (for example, relating to appointments to institutions supporting democracy).
6. Maintaining the institutional memory on procedure.

The *Legislation and Proceedings Section* produces the ATC and the Question Paper and assists with the production of the Minutes and the Order Paper. It has a major role to play in the preparation of bills and in the processing and tracking of legislative and other Assembly business.

The *Clerk of the Papers* is in charge of the Papers Office that manages parliamentary papers and supplies members of both Houses with papers.

The *Committee Section* provides administrative, technical and procedural support to committees other than “House committees”

The *Serjeant-at-Arms* is responsible for compliance with security policy in and around the Chamber and galleries, and implements related instructions from the Speaker and other presiding officers. He or she also performs ceremonial functions, among others leading the procession into the Chamber at the start of proceedings.



SOURCES OF ASSEMBLY PROCEDURE

The sources of Assembly procedure are –

1. The Constitution
2. The Parliamentary Rules
3. Statutes other than the Constitution, notably the Powers and Privileges of Parliament Act, No 91 of 1963 (due to be superseded by a new Act)
4. Parliament has also passed various other laws imposing functions and duties on itself, such as the appointment of persons to various offices
5. Rulings by presiding officers
6. Convention and practice

1. THE CONSTITUTION

The functioning of the Assembly is determined by the Constitution in three ways. Firstly, the Constitution lays down the functions and composition of the Assembly, and the structure of democratic government within which it functions. Secondly – particularly with reference to the legislative procedure, but also in other respects – it broadly determines the nature of, and in some instances provides specifically for, Assembly procedure. Thirdly, it stipulates that the Assembly determines and controls its internal arrangements and proceedings, and that it makes Rules and Orders concerning its business.

Together with the freedom to determine its own procedures, provision is made, in line with international parliamentary practice, for parliamentary privilege and immunities. Primary among these is the right to freedom of

speech, subject only to the Rules of Parliament. The Constitution provides that parliamentary privilege may be regulated by statute.

The Constitution determines the functioning and procedures of the Assembly in the following respects:

*Functions of the Assembly:*¹ The Constitution specifies the broad functions of the Assembly and makes provision for certain specific functions.

Rules of the Assembly: The Constitution makes the following references to the Rules of Parliament –

1. Assembly Rules, what they must provide for: section 57(2)
2. Compelling compliance with summons to give evidence: section 56(c)
3. Composition of Assembly part of mediation committee: section 78(1)
4. Election of other presiding officers: section 52(5)
5. Freedom of speech subject to Rules: section 58(1)(a)
6. Losing membership through absence from the Assembly: section 47(3)(b)
7. Publication of constitutional amendment: section 74(5)
8. Reconsideration of bill referred back: section 79(2)
9. Sittings other than at seat of Parliament: section 51(3)

*Legislative authority:*² The Constitution outlines the range of the Assembly's legislative authority, particularly in relation to the other House of Parliament and to the provincial and local spheres of government.

Relations with the Executive: As the directly elected House of Parliament, the Assembly elects and may remove the President, and oversees the

1 Constitution, section 42(3). In this regard see Chapter 1 of this Guide. For appointment and dismissal of office-bearers see Chapter 17 of this

2 Constitution, sections 43 & 44

Executive, which is accountable to it. Together with the Council, the Assembly considers and may adopt legislation, which is binding on the Executive. The Assembly may amend the Constitution. Except in respect of certain powers conferred by the Constitution and by statute, the Assembly does not have power to bind the Executive except through legislation. The President may in certain circumstances dissolve the Assembly.

The following is a list of constitutional provisions relating to Parliament and the Assembly –

1. Cabinet & Leader of Government Business, selection of, from among Assembly members & others: section 91
2. Choosing the President & scrutinising and overseeing executive action: sections 42(3) & 222
3. Co-operative government: Chapter 3
4. Dissolving Assembly, President's role in: section 50
5. Election, President's role in calling: section 49(2)
6. International agreements: section 231
7. Legislative process, sections 73-81 (in particular 79 & 81) & 84(2)(a)-(c)
8. Motions of no confidence in the Executive, effect of: section 102
9. National security, defence and policing, sections: 198(d); 199(8); 201(3) & (4); 203; & 210
10. Powers of the Assembly to hear evidence and call for papers: section 56
11. Powers to consider and initiate legislation and for accountability and oversight: sections 55 & 92(2)-(3)
12. President may summon Parliament to an extraordinary sitting: sections 42(5), 51(2) & 84(2)(d)

13. President, Election of: sections 86 & 87
14. President, removal of, by Assembly: section 89
15. Privileges and immunities of Cabinet members before a joint committee: section 45(2)
16. Privileges and immunities of inter alia Cabinet members: section 58
17. Public finance: sections 216(3)-(5); 219
18. Public Service Commission, role of Assembly in: Chapter 10
19. Qualification for membership of Assembly: section 47(1)(a)
20. Rights of Executive members who are not Assembly members: section 54
21. State institutions supporting constitutional democracy, accountability to the Assembly of, and the role of the Assembly in appointment and removal of office-bearers: Chapter 9
22. States of emergency: section 37

*Relations with the Judiciary:*³ The Constitution provides for the independence of the courts; stipulates that the Constitutional Court decides on constitutional issues, including disputes between organs of state as to their constitutional status, powers or functions; and provides for a role for the Assembly in the appointment and dismissal of judges. The Chief Justice has a primary role in proceedings on the first day after an election.

*Composition, election and membership of Assembly:*⁴ Provides parameters for the electoral system and the number of members, and stipulates qualifications for membership.

3 Constitution, sections 165(2) (independence of courts); 167(4) (only Constitutional Court decides on certain constitutional issues involving Parliament); sections 174, 177 & 178 (appointment and dismissal of judges)

4 Constitution, sections 46 & 47

*Duration and dissolution of Assembly:*⁵ Determines the maximum length of a term of the Assembly, and the circumstances in which the Assembly may be dissolved prior to the end of that term.

*Powers and privileges:*⁶ Confers the special powers and privileges that a parliament requires to perform its functions, and makes provision for national legislation in this regard.

*Rules:*⁷ Stipulates that the Assembly and Parliament must make Rules and Orders to determine and control their internal arrangements and proceedings. Chapter 4 (“Parliament”) of the Constitution, and certain provisions in other chapters, contain both specific and broad specifications for the rules (see “The Assembly Rules” below).

*Presiding officers:*⁸ Provides for election and removal of, and voting by, presiding officers, and circumstances in which the Speaker may be appointed Acting President.

Decisions: Stipulates in section 53 how decisions are taken by the Assembly. Quorums and majorities for decisions on various matters are specified in the following sections –

1. Amendments to Constitution: section 74
2. Appointment & removal of members of state institutions supporting constitutional democracy: section 193(5) & 194(1)
3. Appointment and removal of certain members of the Public Service Commission: section 196(8) & (11)
4. Appointment of inspector to monitor intelligence services: section 210

5 Constitution, sections 50, 51 & 102

6 Constitution, sections 55, 56, 57 & 58

7 Constitution, sections 45, 56, 57, 58 & 59. See also “National legislative process” – sections 73-80. Other references to the Rules are in sections 47 (losing membership through absence), 51 (sittings other than at the seat of Parliament), 52 (election of other presiding officers), 56 (compelling compliance with summons or requirement), 74(5) (publication of particulars of constitutional amendment), 78 (mediation committee), 79 (reconsideration of bill), 199 (committee scrutiny of security services) & 216 (stopping transfer of funds to an organ of state)

8 Section 52; Part A of Schedule 3 of the Constitution; and Rules made by Chief Justice for election of President and presiding officers. Section 53(2) provides for voting by a presiding officer. Section 90(1)(d) provides that in certain circumstances the Speaker is Acting President

5. Bill changing seat of Parliament: section 76(5)
6. Bills rejected by the Council: section 76(1)(i)
7. Extension of state of emergency: section 37(2)(b)
8. Motions of no confidence in President or Cabinet: section 102
9. Removal of judges: section 177
10. Removal of President: section 88
11. Removal of Speaker: section 52(4)

*Sittings and recess periods:*⁹ Makes provision for –

1. first sitting after an election;
2. determining by the Assembly of time and duration of other sessions and sittings;
3. summoning of Assembly and Parliament to an extraordinary sitting by the President; and
4. sittings of the Assembly at places other than its seat.

*Opening day:*¹⁰ The Constitution makes specific provision for the necessary procedures in the Assembly on the first sitting day after an election.

*Guidelines for functioning:*¹¹ Provides broad guidelines for the functioning of Parliament in respect of language, accountability and oversight; participation in proceedings by parties in accordance with democracy; and public access and involvement.

*Legislative process:*¹² Provides in detail for different types of legislation and the processes whereby each may be considered and passed or rejected.

9 Constitution, sections 42(5) & (6) & 51

10 Constitution, sections 48, 51(1), 52, 86, Part A of Schedule 3, Rules made by Chief Justice

11 Constitution, section 6 (language); Chapter 3 (relations with other organs of state); sections 55(2) (accountability and oversight); 57(2) (participation consistent with democracy); 59 (public access and involvement)

12 Constitution, sections 73-81

*Role in state of emergency:*¹³ Provides that a state of emergency may be prolonged beyond 21 days by Assembly resolution only and sets other requirements in this regard.

*Other specific requirements:*¹⁴ Provides that the Rules must make provision for –

1. the establishment, composition, powers, functions, procedures and duration of its committees;
2. financial and administrative assistance to political parties;
3. recognition of the Leader of the Opposition; and
4. appointment of Leader of Government Business.

2. THE RULES

Parliament has three sets of *formal rules*: The Joint Rules of Parliament, the Rules of the National Assembly, and the Rules of the National Council of Provinces.

THE ASSEMBLY RULES¹⁵

Nature and status: The standing Rules of the Assembly, together with the Joint Rules of Parliament, are designed to ensure that parliamentary business is conducted in the Assembly effectively and in an orderly, fair, open and predictable way. The Rules should reflect the requirement that “all parties in the country ... respect the will of the majority, while the majority, in its turn, respects the validity and legitimacy of the smaller groups and their concerns.”¹⁶

*Constitutional requirements:*¹⁷ The Assembly is the sole determinant of its Rules, subject only to the Constitution, which requires that the Rules –

13 Constitution, section 37

14 Constitution, sections 57(2) & 91(4)

15 For a statement of the function of the Rules, see *Annotated Digest of Rulings 1994-99*, p 143

16 Speaker’s Ruling, *Annotated Digest of Rulings 1994-1999*, pp 81 & 143

17 Constitution, section 57

1. be made with due regard to representative and participatory democracy, accountability, transparency and public involvement, and
2. must provide, amongst other things, for –
 - a) The establishment, composition, powers, functions, procedures and duration of its committees; and
 - b) The participation in the proceedings of the Assembly and its committees of minority parties represented in the Assembly, in a manner consistent with democracy.

Drafting and amendment of Rules: It is standard practice that new draft Rules, and proposed changes to the Rules, are considered by the Assembly Rules Committee, usually on the basis of recommendations by the Rules Subcommittee. The Rules Committee then makes recommendations thereon to the Assembly and the Assembly decides on the proposals by resolution.

Despite the above, rule changes may be made directly in the House, having originated in other committees or forums such as the Programme Committee. The current system of Questions to Ministers was developed in the Chief Whips' Forum.

Suspension or varying of Rule: Since the Rules are determined by the Assembly, a rule may be varied or suspended by resolution of the House. Such a suspension by resolution is, however, limited in its operation to the particular purpose for which it is approved.¹⁸

A rule may only be varied or suspended by a House resolution and, in terms of the Rules, any such motion requires notice (unless notice is dispensed with by unanimous consent). Therefore rule changes cannot be “sprung upon” the House unless it can be done without a single dissenting voice.¹⁹

NOTE: It is not possible to overcome this requirement of notice in any particular case by first suspending Rule 97 (which stipulates that motions

18 Assembly Rule 3

19 Assembly Rule 97

require notice). This is because a motion to suspend that Rule would itself require notice, and this would of course be equivalent to giving notice of the original motion.

Arrangement among whips: No valid arrangement among Whips can be made that is contrary to the Rules.

Application: The Rules apply also to the President and the Cabinet, including any Minister or Deputy Minister who is not a member of the Assembly.²⁰

Unforeseen eventualities: The Speaker may give a ruling or frame a Rule to cover a situation for which the Rules do not provide. Such a Rule remains in force until a meeting of the Rules Committee has decided thereon. Since the Rules provide for most eventualities, this provision is not often applicable.²¹

Implementation: It is the responsibility of the Speaker and other presiding officers to implement the Rules in the spirit of the Constitution (see “Rulings by presiding officers” below). It is also required of every member to respect and abide by the Rules, and to give the presiding officers co-operation in their efforts to apply the Rules fairly and effectively.

THE JOINT RULES

Nature and status & constitutional requirements: The Constitution provides²² that Parliament must establish a joint rules committee to –

make Rules and Orders concerning the joint business of the Assembly and Council, including Rules and Orders –

- (a) to determine procedures to facilitate the legislative process, including setting a time limit for completing any step in the process;
- (b) to establish joint committees composed of representatives from both

20 Assembly Rules 5 & 6

21 Assembly Rule 2

22 Constitution, section 45

- the Assembly and the Council to consider and report on bills envisaged in sections 74 and 75 that are referred to such a committee;
- (c) to establish a joint committee to review the Constitution at least annually; and
 - (d) to regulate the business of –
 - (i) the Joint Rules Committee;
 - (ii) the Mediation Committee;
 - (iii) the Constitutional Review Committee; and
 - (iv) any joint committees established in terms of paragraph (b).

For details of the committees mentioned, see the relevant sections of this Guide in Chapters 6 – “Procedural management and services” and 16 – “Parliamentary committees”.

Contents of the Joint Rules

The Joint Rules address the following areas of parliamentary functioning:

*Joint sittings of the Houses:*²³ Joint sittings are held in the Assembly Chamber, with additional benches brought in. Either the President, or the Speaker and the Chairperson of the Council acting jointly, may call a joint sitting. Either of the two presiding officers, by arrangement between themselves, presides.

At such a sitting the Assembly Rules on discipline apply to an Assembly member, and the Council rules to a Council member. The Assembly Rules on access of the public to the Chamber apply; however, the Chairperson of the Council must be consulted where necessary.

23 Joint Rules 7-14

*Joint committee system:*²⁴ For a discussion of these Rules, see Chapter 16 – “Parliamentary committees”.

*Leader of Government Business in Parliament:*²⁵ Appointment and role of this office-bearer (see Chapter 3 – “The President and Parliament”).

*Joint Tagging Mechanism:*²⁶ Establishment, functions and other aspects of the functioning of this joint body (see Chapter 12 – “Legislative procedure”).

*Joint legislative process:*²⁷ Refinement of the joint and inter-House aspects of the legislative process, subject to the Constitution. Makes provision for time limits and fast-tracking of legislation.

*Stopping of funds to provinces:*²⁸ Refinement of processes in this regard.

*Code of Conduct for Assembly members and permanent members of the Council:*²⁹ Members are required to register their financial interests and those of their spouses, dependants and permanent companions every year. The Code is set out in a schedule to the Joint Rules.

Amendment or suspension of Joint Rules³⁰

Rules may be amended by resolution of both Houses. A Joint Rule may be dispensed with or suspended in the same way, but this should be for a specific period or purpose, and any such suspension is limited to the particular purpose for which it has been approved.

Unforeseen eventualities³¹

The Speaker and the Chairperson of the Council, acting jointly, may give a ruling or make a rule in respect of any matter for which the Joint Rules do not provide.

24 Joint Rules 15-158

25 Joint Rule 149

26 Joint Rules 151-158

27 Joint Rules 159-222

28 Joint Rules 223-230

29 Schedule to the Joint Rules

30 Joint Rules 3 & 4

31 Joint Rule 2

COUNCIL RULES

The Council Rules perform for the Council the same function as the Assembly Rules perform for the Assembly.

3. STATUTES OTHER THAN THE CONSTITUTION

A number of statutes impact on the functioning of the Assembly. These can be categorised as –

1. legislation that directly relates to Parliament (in some instances, required or specifically provided for in the Constitution); and
2. legislation not directly relating to Parliament, which impacts on Assembly functioning, for example by imposing a function on the Assembly.

Legislation relating directly to parliament

These Acts are the following:

1. The Powers and Privileges of Parliament Act, No 91 of 1963 (to be superseded)
2. The Electoral Act, No 73 of 1998
3. The Public Funding of Represented Political Parties Act, No 99 of 1997
4. The Remuneration of Public Office Bearers Act, No 20 of 1998

Legislation not directly relating to parliament

Such legislation, and the procedures that flow therefrom, are dealt with in Chapter 17 – “Procedures relating to appointments and other statutory functions”.

4. RULINGS BY PRESIDING OFFICERS

Rulings from the Chair form an important part of the practice and procedure of the House. Rulings commonly involve interpretation of the Rules and their application to particular practical situations. However, a ruling may be made in the absence of a specific provision in the Rules.³²

A presiding officer may give a ruling either in response to a point of order raised by a member, or on his or her own initiative. A private ruling is sometimes given not in the House, but in writing – for example, in response to a letter addressed to the Speaker by a member.

In giving a ruling on a matter, a presiding officer bears in mind previous rulings from the Chair, in the interests of maintaining and upholding established practice in a fair and consistent way. Thus rulings serve as precedents and as such, become part of the established practice governing the functioning of the Assembly. The presiding officer is not bound by precedent, however, and has discretion to vary previous rulings in the light of specific circumstances.

Whereas a presiding officer interprets and applies the Rules and ensures that the powers and immunities of the Assembly are observed, it is not the duty of the Chair to adjudicate on points of law or interpret statutes.

A digest of rulings by Assembly presiding officers is prepared on conclusion of a Parliament.³³

³² Assembly Rule 2

³³ *Annotated Digest of Rulings 1994-1999*

5. PRACTICES AND CONVENTIONS

Assembly procedures also develop through practice and convention. Inter-party co-operation, particularly in the Chief Whips' Forum and the Programme Committee, leads to the formation of established modes of operation that are accepted and recognised by parties. Examples are such matters as the inter-party agreements on speakers' lists and committee membership.

SESSIONS AND SITTINGS

This chapter deals primarily with how the Assembly manages time and organises its functioning, with reference also to types of sittings and the Chamber. It consists of the following sections –

1. Commencement and term of a Parliament and the Assembly
2. Annual sessions and types of parliamentary days
3. Routine of daily business
4. Types of sittings
5. The Assembly precincts and Chamber

Programming of parliamentary business is dealt with in Chapter 10 – “Programming of business”.

1. COMMENCEMENT AND TERM OF A PARLIAMENT AND THE ASSEMBLY

Situation after Assembly has been dissolved before an election

After dissolving prior to an election, the National Assembly remains competent to function up to the day before election day.¹ The previous Cabinet remains competent to function after the election, until the person elected President by the new Assembly, assumes office.²

Proceedings after an election

The Electoral Commission must declare the result of an election within seven days of the date of an election (unless granted an extension by the Electoral Court).³

1 Constitution, section 49(4)

2 Constitution, section 94

3 Section 57 of Electoral Act, No 73 of 1998

The Assembly must have its first sitting not more than 14 days after the result of the election is declared. The time and date of the sitting are determined by the Chief Justice.⁴

Prior to the first sitting, it is customary for party representatives (who in 1999 included whips from the previous parliament) to meet at Parliament in order to reach agreement on arrangements for the first sitting day (for example provisional seating arrangements) and the subsequent conduct of proceedings.

First sitting after an election⁵

The following business is conducted at the first sitting after an election: Swearing in of all members, election of Speaker, election of Deputy Speaker, and election of President (in 1999, proceedings were in that order).

The Chief Justice presides over the swearing in of members and the election of the President and the Speaker, and makes rules prescribing the procedure for the meeting. At the first sitting after the 1999 election, business was conducted as follows –

1. *Swearing in of members:* Members approached the Table in groups of up to ten.⁶ Standing before the Table, they made the oath or affirmation simultaneously in the language of their choice, before returning to their seats to sign the necessary forms, which had been placed in advance on members' desks. Members not able to be present were later sworn before the President of the Constitutional Court⁷ in the Speaker's Chambers. In 1999 the process lasted approximately 75 minutes.
2. *Election of Speaker:* A nomination form must be completed for each candidate and signed by two members of the Assembly; and the nominee

4 Constitution, section 51, as amended

5 Constitution, sections 48, 52 & 86-7, and Schedules 2 & 3; Assembly Rules 7-12; Rules for Election of President made by the Chief Justice. See *Procedural Developments in the National Assembly*, Items 1 to 5, Issue 1, for a description of the sequence of events at the first sitting after the 1999 election

6 It should be ascertained in advance from parties which language each member wishes to use, and whether he or she is taking the oath or affirmation. Party representatives co-operate to determine the groups in which members are called to the Table

7 Now the Chief Justice

must indicate acceptance in writing, either on the form or in another way. The presiding officer swears in staff as Returning Officer (usually the Secretary to Parliament) and Assistant Returning Officers (usually members of the Table staff) to assist with a ballot. (A ballot is only held if there is more than one candidate.)

The presiding officer announces the nominees, but does not allow debate. If there is only one candidate, that person is declared elected.

In case there is more than one nominee, provision must be made for a secret ballot in accordance with Schedule 3, Part A, of the Constitution and the Rules made by the Chief Justice. Schedule 3 makes provision for procedure in the event of a deadlock. In 1999 conducting a secret ballot took approximately one hour, the necessary ballot papers having been printed in advance.

Once elected, the Speaker is conducted to the Chair by the Serjeant-at-Arms.

The Chief Justice leaves the Chair, and from the Chair the Speaker expresses a sense of the honour conferred upon him or her.

3. *Election of Deputy Speaker:* This is conducted in the same way as the election of the Speaker, except that the Speaker presides. Once elected, the Deputy Speaker is not conducted to the Chair, but takes the seat allocated to the Deputy Speaker in the Assembly.⁸

In 1999, because the election for the post of Deputy Speaker was contested, it was decided after nominations to delay the ballot until the end of proceedings that afternoon, to allow the election of the President to take place at the time scheduled.

4. *Election of President:* This is conducted in the same way as the election of the Speaker, with the Chief Justice (formerly entitled the President of the Constitutional Court) presiding. In 1999, having declared the President elected, the President of the Constitutional Court, on behalf of all present, congratulated the newly elected President on his election.

8 In 1999 the Deputy Speaker addressed the Assembly on being elected

On election, the President ceases to be a member of the Assembly. He or she must assume office within five days by taking the oath or affirmation in accordance with Schedule 2 of the Constitution.

5. *Conclusion of proceedings:* When the above business is concluded, the Assembly will normally adjourn for a period of several days, to enable the new President to be sworn in and choose his or her Cabinet. This is followed by the official opening of the new Parliament, and the first item of plenary business is usually the President's State of the Nation address to Parliament (see under "Joint Sittings" below) delivered at a ceremonial joint sitting.
6. *Assistance to members:* In 1999 each new member was provided with copies of the Rules and the Constitution as well as other relevant documentation. In addition, a four-day briefing session was presented for new and returning members.

Term of a Parliament⁹

The Assembly is elected for a term of five years.¹⁰ However, once three years have passed since the Assembly was elected, if the Assembly adopts a resolution to dissolve, supported by a majority of its members, the President must dissolve the Assembly and call a new election.

In addition, if there is a vacancy in the office of President, and the Assembly fails to elect a new President within 30 days after the vacancy occurred, the Acting President must dissolve the Assembly, after which an election must take place.

At the end of a term of the Assembly, any business still before the Assembly or any of its committees – including legislation not yet passed – lapses.

⁹ Constitution, section 50

¹⁰ The Council does not, strictly, have a term, since there is not a requirement that provincial legislatures hold elections simultaneously. Since 1994, however, all provincial elections have been held simultaneously with elections for the Assembly, so that the practical effect has been a five-year "term" for that House

Numbering of Parliaments: Parliaments are numbered starting with the 1994 Parliament. Thus, the 2004 Parliament is the third Parliament.¹¹

2. ANNUAL SESSIONS AND TYPES OF PARLIAMENTARY DAYS

Commencement of session

1. An annual session; and
2. A session after an election, after the initial sitting at which the President is elected, and once the President has been sworn in, usually commences with a formal, ceremonial joint sitting, at which the President delivers a State of the Nation address to Parliament.

Although in the case of (2) above this address marks the formal beginning of the parliamentary term, in the case of (1) the Assembly, on occasion, begins proceedings – particularly committee work – prior to the President’s address.

The joint sitting at which the President delivers his or her address, usually takes place on a Friday morning, and either the Speaker or the Chairperson of the Council, by arrangement between them, presides. No other debate takes place at that sitting. During the following week a debate of approximately three days is held on the address. This is one of the major general debates of the parliamentary year.

Ceremonial for State of the Nation address

The opening sitting proceeds as follows¹² –

1. The official programme begins on a Friday morning with three processions – the provincial Speakers, the provincial premiers and the judiciary – proceeding to the Assembly Chamber via the main entrance.

¹¹ However, after the adoption of the 1996 Constitution (during the course of the First Parliament) the period from adoption of the Constitution (which marked the start of the Council) until the 1999 election was known as “the Second Parliament” and the parliamentary papers are marked accordingly. The relevant parliamentary papers may be identified by date

¹² Based on the 2003 Opening

2. The presidential cavalcade arrives in the parliamentary precincts. The President alights, is welcomed by the presiding officers and their deputies, and proceeds to the Assembly Chamber.
3. In the past a theme for the occasion has been selected which is depicted in the form of music, dance and/or a tableau. There is a guard of honour, usually non-military. Broadcast and photographic opportunities are provided to the media.
4. In the Chamber, members of both Houses must be seated before the procession enters. Each of the nine provinces is represented by its full quota of six permanent and four rotating members, seated in the removable cross-benches. A delegation of ten SALGA members also occupies seats in the cross-benches.
5. Members' guests, representatives of statutory and constitutional bodies, the Judges President, provincial Speakers, Directors-General of State departments, guests from civil society approved by the presiding officers and staff of the Presidency and Parliament are accommodated in the National Assembly Galleries, the Officials' Bays to the right and left of the Speaker's Chair and via audiovisual relay from Room E249 and the Old Assembly Chamber.
6. *In the Chamber:* The presiding officers and the President enter the Chamber in procession, preceded by the Serjeant-at-Arms and the Usher of the Black Rod and followed by the Secretary to Parliament. The President delivers the address. No other debate takes place. On conclusion of the speech, the presiding officer adjourns the sitting. Members wait while the procession leaves the Chamber.
7. The presiding officers host a lunch after the address for invited guests only.

Other arrangements after a general election

After a general election a considerable amount of co-ordination is required among parties, to decide on a large number of issues that are determined by party proportions. Examples are: The size and membership of committees, the allocation of speaking time in debates, the number of whips per party and the allocation of opportunities for Questions and Members' Statements. After the 1999 general election, the Speaker convened an "Interim Rules Committee" made up of members nominated by the parties to consider matters of this nature. It sat until the Assembly Rules Committee was formally convened.¹³

Sessions, sitting days and working days

Annual session: The average annual session is usually divided into four shorter sessions, each between one and a half and three months long, separated by recesses consisting of "constituency days" and "leave days" (see below).

Kinds of parliamentary days: The parliamentary year is divided into –

1. Sessions consisting of –

- a) *sitting days:* on which sittings of the plenary take place (and committees may also sit, but not during a plenary sitting, unless with permission).
- b) *committee days:* on which the House does not sit, but committee sittings take place.
- c) *study group days:* set aside for meetings of party study groups.

2. Recesses consisting of –

- a) *constituency days:* set aside for members to attend to duties relating to the constituencies allocated to them.

¹³ *Procedural Developments in the National Assembly*, Item 14, Issue 1

b) *leave days.*

Often the first few days of a session consist of committee days, to enable the committees to generate work for the plenary to consider.

Sitting weeks during session:¹⁴ The week's sittings are planned by the Assembly Programme Committee, and although the pattern of sittings may vary considerably from week to week, depending on the workload and other factors, the following is typical –

Mondays: If the programme of work permits the entire day is set aside for meetings of party study groups. However, a Monday may be a committee day or, if the programme requires it, a plenary sitting may be held from 14:00.

Tuesdays: The morning is available for committee sittings. A plenary sitting starts at 14:00.

Wednesdays: Plenary sitting starts at 15:00 with Questions to the Executive.

Thursdays: Party caucuses are held on Thursday mornings. Plenary sitting starts at 14:00.

Fridays: Usually set aside as committee days, but may be used for plenaries. Friday plenaries start at 09:00 in the morning and usually end before 13:00.

Saturdays and Sundays: Not parliamentary working days.

Working hours:¹⁵ The Rules stipulate that on Mondays to Thursdays, the House starts at 14:00 “or such later time as the Speaker determines” to adjournment.

14 Assembly Rule 23

15 Assembly Rule 23

On Wednesdays it is normal for the House to start at 15:00 (to allow for Cabinet meetings. On Wednesdays, members of the Executive answer questions in the House).

Early and extended sittings: By decision of the Assembly Programme Committee in 1998, it is only in exceptional circumstances that a sitting will extend beyond 18:00, and unfinished business should be dealt with the following day. Nevertheless, the Assembly does, when circumstances require, sit until late evening. On such occasions business may or may not be suspended for supper.

The House may resolve to sit at an earlier time on any day. In addition, the Speaker has on occasion, in consultation with whips, by agreement varied the starting time of a sitting for good reason, without a House resolution.¹⁶

Adjournments to a later sitting day: The presiding officer may, in consultation with the Leader of Government Business, adjourn the Assembly to a later day than the next sitting day, and will announce such later day. During the adjournment, the Speaker may change the day on which the Assembly is to resume.¹⁷

End of annual session

All motions and all other business, except bills, appearing on the Order Paper on the last sitting day of an annual session of the Assembly, lapse at the end of that day.¹⁸ Bills on the Order Paper at this time also lapse, unless the Assembly decides otherwise.¹⁹

Business which is not on the Order Paper but which is before a parliamentary committee, does not lapse at the end of an annual session. In contrast to business on the Order Paper, the agenda of a parliamentary committee is not automatically cleared at the end of an annual sitting.

16 *Procedural Developments in the National Assembly*, Item 8, Issue 7

17 Assembly Rule 30

18 Assembly Rule 316

19 Assembly Rule 298

Dissolution of the Assembly

All business before the Assembly or any of its committees, including bills, lapses at the end of the last sitting day of a term of the Assembly, or when the Assembly is dissolved.²⁰

3. ROUTINE OF DAILY BUSINESS

The sequence of proceedings on any sitting day is primarily determined by the Rules, subject to House resolutions and Programme Committee decisions.

Prior to start of sitting:

1. In the morning members receive parliamentary papers such as the Order Paper for that day, the Minutes, the Announcements, Tablings and Committee Reports (ATC), and, if appropriate, the Question Paper.
2. The bells ring (and green lights flash in the passages) for ten minutes prior to the start of the day's sitting, to alert members to the start of a sitting. Members take their seats in the House.

Procession: The Serjeant-at-Arms, bearing the parliamentary Mace, which represents the authority of the Speaker and the National Assembly, leads a procession consisting of the Speaker (or other presiding officer) and Table staff into the House from behind the Speaker's Chair. When the Serjeant-at-Arms announces the presiding officer, all members rise in their seats. The presiding officer ascends to the chair and nods to both sides of the House. Members nod in response.

Opportunity for prayer or meditation:²¹ With all members standing, the presiding officer calls for a moment of silence to afford members an opportunity for silent prayer or meditation.

²⁰ Assembly Rules 298 & 316. But see *Procedural Developments in the National Assembly*, Item 5, Issue 5, for revival of lapsed business by resolution

²¹ Assembly Rule 28

After the opportunity for prayer or meditation the Serjeant-at-Arms puts the Mace in its designated place, and withdraws.

Sequence of proceedings:²² Unless otherwise determined, business follows the following sequence (see also “Questions to Members of the Executive” below):

1. Opportunity for prayer or meditation
2. Announcements from the Chair, if any
3. Notices of motion, if any
4. Formal motions, if any
5. Opportunity for statements by members (Usually Tuesdays and Thursdays, and Fridays when the Assembly is sitting)
6. Opportunity for statements and personal explanations by Cabinet members, if any
7. Petitions, if any
8. Orders of the Day and notices of motion, dealt with in the sequence in which they appear on the Order Paper.²³

Questions to Members of the Executive: On Wednesdays, Questions to Members of the Executive take precedence and are taken immediately after the opportunity for prayer or meditation, and any announcements from the Chair.

Altering the sequence of proceedings: The sequence of business on the Order Paper may be changed on a particular day by majority resolution. No notice is required for such a resolution.

²² Assembly Rule 29; *Procedural Developments in the National Assembly*, Item 9, Issue 4

²³ For giving precedence to item not for that day, see *Annotated Digest of Rulings 1994-99*, p 78

For a discussion of how the business of the Assembly is determined and programmed, see Chapter 10 – “Programming of business”.

4. TYPES OF SITTING

Besides sittings of the Assembly to conduct its plenary business, the Assembly may sit jointly with the Council as provided for in the Constitution. In addition, the Assembly Rules provide for mechanisms (extended public committees and appropriation committees) that enable the Assembly to debate legislation simultaneously in more than one venue. In contrast to some other parliaments, the Assembly has no “Committee of the Whole House”.

Assembly sittings

The Assembly, sitting in plenary, is the National Assembly proper and the decision-making organ. Other forums, such as committees, report to the Assembly.

Joint sittings²⁴

A joint sitting of both Houses may be called by the presiding officers jointly or by the President, and is not a decision-making forum. A joint sitting is called for the following purposes –

1. The President’s State of the Nation address, delivered at the start of a new parliament or annual session, or another special address by the President.
2. To enable a Head of a foreign State to address Parliament. This is always by invitation of the presiding officers.²⁵ (Besides members and the President and Cabinet, only a Head of State may address Parliament constituted as such. A Head of Government addresses, not Parliament, but a gathering of members of parliament, although this may take place in the Assembly Chamber.)

24 Constitution, sections 42(5), 84(2)(d), & 203; Joint Rules 7-14

25 Assembly Rule 43

3. For occasional important joint debates.
4. In connection with the declaration of a state of national defence.²⁶
5. For any other “special business” (referred to as such in the Constitution but not defined).

Between 1999 and 2003, joint sittings were held for addresses by the President and by visiting Heads of State, for special ceremonial events such as the farewell to ex-President Mandela and the Millennium Debate, and for a substantive debate on the national response to the Report of the Truth and Reconciliation Commission.

Joint sittings are held in the Assembly Chamber. For this purpose, cross-benches are installed on the floor of the House for members of the Council, leaving an aisle between them up the centre of the Chamber for ceremonial processions.

Joint sittings are presided over either by the Speaker or by the Chairperson of the Council, by arrangement between them. As regards discipline, Assembly Rules apply to Assembly members, and Council Rules to Council members. There are no joint “rules of debate”. Freedom of speech is not explicitly extended to joint sittings in the Constitution, but is also not conclusively excluded.

Extended public committees (EPCs)²⁷

These are mechanisms that enable the Assembly to conduct more than one public debate simultaneously, in order to expedite the legislative or budgetary programme. Sittings are arranged by decision of the Assembly Programme Committee. When two EPCs sit simultaneously, usually one is in Room E249 and the other is in the Assembly Chamber.

No decision may be taken by an EPC – it is a forum for debate only. Thus no motion may be moved in this body. Where applicable, the rules of debate

²⁶ Constitution, section 203(2)

²⁷ Assembly Rules 31-39; *Annotated Digest of Rulings, 1994-99*, p 17

that apply in a plenary sitting of the Assembly, apply also in these committees.

Membership: The members of an EPC are the members of the portfolio committee that considered the bill, and all other members who attend its proceedings – thus it is not necessary to designate its members. The Speaker appoints a presiding officer as Chair (but does not preside him or herself). The chairperson may request any member of the EPC to relieve him or her.

Business: Because of the composition of an EPC, only one bill, or else a group of bills falling within a single portfolio, can be discussed by a particular EPC.²⁸ This business appears on the Order Paper of the Assembly below any Assembly business, under the bold head “Extended Public Committee”. A separate Minute is produced reflecting the business conducted at an EPC.

Business in an EPC is conducted in the same way as in a sitting of the Assembly, beginning with a procession and a moment for silent prayer or meditation. The presiding officer directs the Table to read the first Order of the Day, after which the debate is conducted with reference to a list of speakers. At the conclusion of a debate no decision is taken, but the question of the decision on the second reading of the bill will appear on the next Assembly Order Paper. An EPC dissolves on conclusion of its business, on the same day that it is appointed.

Generally speaking, uncontroversial bills on which there is broad agreement are debated in EPC, as well as, on occasion, Budget Votes.

EPCs have been infrequently convened in recent years.

Appropriation Committees

While provision is made in the Rules for appropriation committees, this mechanism has not thus far been used. While similar in most respects to EPCs, an appropriation committee is different in two respects –

²⁸ Assembly Rule 31 adds “or any provision of a bill”. However, an appropriation committee is usually convened to debate the second reading of a bill

1. it is established to discuss a vote in a schedule to an appropriation bill, or a provision of a taxation bill; and
2. it is appointed by resolution.

Interruption, suspension and adjournment of proceedings²⁹

A sitting of the Assembly can be suspended, without being adjourned, by the presiding officer. A suspension may be to enable members to take a meal between the afternoon and evening parts of a sitting, or to deal with a procedural issue, or for another reason. If the suspension involves interrupting a particular proceeding such as a debate, the presiding officer will first announce that the debate is interrupted, before suspending the sitting. In doing so, he or she will customarily provide the reason for the suspension, and give an indication of the time at which the sitting is expected to resume. The bells are rung before business is resumed.

Proceedings on an item of business may also, by exception, be interrupted by urgent business. For example, the presiding officer may, usually after consultation with whips, interrupt a debate to enable a Minister to make an urgent announcement.

The presiding officer adjourns the Assembly when the day's sitting has ended. Normally this is done when all the business for the day on the Order Paper has been completed. However, usually in consultation with the whips, he or she may adjourn the House before completion of proceedings on the Order Paper.

The presiding officer may, in consultation with the Leader of Government Business, adjourn the House until a later parliamentary working day than the following sitting day, and in such a case will usually announce the date of the next sitting day. During such an adjournment, the Speaker may bring forward or postpone the date of the next sitting.

²⁹ Assembly Rule 30

5. THE ASSEMBLY CHAMBER

Floor

Only members, the Cabinet and Chamber service staff are normally allowed onto the floor of the Assembly Chamber during a sitting.

The Rules give the Speaker the power to admit non-members to the floor of the Chamber.³⁰ The most common instance of this is when the Speaker, in consultation with the Leader of the House, invites any Head of State on a state visit to the Republic, to address a Joint Sitting or the Assembly.³¹

Bays³²

There are a number of bays in the Assembly to enable the public and other groups to attend debates, namely the Public Gallery, the Press Bay, the Officials' Bays, the Diplomats' Bay, the Speaker's Bay and the President's Bay.

Public Gallery: Members of the public may obtain a ticket to attend a sitting of the Assembly and view proceedings from the Public Gallery. Visitors are required to "present a neat and clean appearance",³³ and to refrain from causing any interruption or disturbance of proceedings. This would include any form of participation such as commenting or applauding.³⁴

Photographs may not be taken without permission, nor may any parcels, firearms or electronic devices be brought into the Gallery.

Members are expected to take care not to introduce visitors who they have any reason to suppose will behave in a disorderly way on the Gallery.

30 Assembly Rule 40 provides: "The power to admit strangers to the precincts of this House or an extended public committee or an appropriation committee of this House, and the places set apart for them in a Chamber, shall vest in the Speaker, subject to the provisions of the Constitution."

31 Assembly Rule 43

32 *Annotated Digest of Rulings 1994-99*, p 99-103

33 Resolution of the National Assembly Rules Committee, 23 May 1994

34 *Annotated Digest of Rulings 1994-99*, pp 99-101

With certain exceptions, members are not permitted to refer to persons in the public galleries.

Security in the bays: The Serjeant-at-Arms is in charge of security in the Chamber and may, either on his or her own initiative, or under the instructions of the presiding officer, remove any stranger from the floor of the Chamber, and any stranger who, having been admitted to a Bay, is guilty of misconduct, or does not withdraw when required to do so.

The Press Gallery is available for journalists who have been accredited by the Speaker to report parliamentary proceedings. Such journalists must comply with specific guidelines laid down by the Speaker.

The Officials' Bays, to the right and left of the Speaker's Chair, are for the use of government officials and ministerial secretaries who need to attend the debate either to assist their Ministers or to take note of debates relating to their departments.

The Diplomats' Bay, President's Bay and Speaker's Bay are for diplomatic representatives and guests of the President and the Speaker respectively.

Withdrawal of strangers

Assembly Rule 41 gives the presiding officer the authority to order "strangers" – namely anyone who is not a member of the Assembly – to withdraw.

Control of precincts

See "The parliamentary precincts – control and security" in Chapter 6 – "Organisation of Parliament".



TYPES OF BUSINESS IN PLENARY

This chapter lists and describes the main types of business conducted by the Assembly in plenary. It excludes “in-house” business such as election of presiding officers and decision of questions, which are described elsewhere in the Guide. Also covered elsewhere are legislative and questions procedures, which are dealt with in Chapters 12 and 13 respectively.

This chapter deals with –

1. Motions
2. Consideration of committee reports
3. Discussion of matters of public and urgent public importance
4. Statements by Assembly members
5. Statements by Cabinet members
6. Address by President
7. Personal explanations
8. Messages
9. Address by visiting Head of State or Head of Government
10. Written instruments other than legislation (including international agreements and petitions).

1. MOTIONS¹

General

A motion is a proposal by a member or a party that the Assembly do something, order something to be done or express an opinion with regard to some matter. It may, however, also be a proposal that the House discuss some matter. Essentially, there are two types of motion –

Draft resolution: When a motion has as its object that the House take a decision on a matter, it is a draft resolution. A motion is moved by a member of the Assembly. Advance notice is normally required either orally or in writing.

Subject for discussion: Such a motion provides an opportunity for the House to debate a particular topic without the House being required, at the end of the debate, to take a decision. A member or party proposing such a motion should identify it as a subject for discussion. A subject for discussion may be in the name of a member or a party.

Both types of motion allow of a full discussion, subject to the rules of debate.

1.1 DRAFT RESOLUTIONS

Types

Draft resolutions may be further divided into –

1. Substantive motions, which are independent, self-contained proposals concerning a concrete item of business.
2. Formal motions, which are substantive motions of a specifically procedural nature, including motions to amend sitting hours, to postpone

1 Assembly Rules 94-102

or give precedence to an order of the day. As they normally deal with the business of the House, they are usually introduced by the Chief Whip of the Majority Party.

3. Amendments, which are motions to change other motions.

Another form of draft resolution which may be distinguished is a motion, adoption of which has constitutional consequences. Examples are a motion of no confidence in terms of section 102 of the Constitution, or a motion to dissolve in terms of section 50.

Guidelines for draft resolutions

Generally, draft resolutions should be short and succinct and framed so as to express with as much clarity as possible the distinct opinion or decision of the House.² According to guidelines agreed by the Chief Whips' Forum and published in the ATC of 13 February 2003, a draft resolution –

1. must deal with matters within the competence of the National Assembly,
2. must deal with only one substantive matter,
3. must consist of a clear and succinct proposed resolution or order of the House. Any extraneous matter meant to motivate a decision should be omitted, and can be put forward when the member introduces the motion in the House,
4. must not contain statements, quotations or other matters not strictly necessary to make the proposed resolution or order intelligible,
5. is subject to the Rule of Anticipation³. A notice of motion on the Order Paper on a particular topic will therefore block all other notices on substantively the same topic,
6. may not be the same in substance as a draft resolution that has been approved or rejected during the same session,⁴

2 For case where motion as adopted required revision, see *Procedural Developments in the National Assembly*, Item 6, Issue 6

3 Assembly Rule 68

4 Assembly Rule 95

7. may not contain unbecoming or offensive expressions,
8. may not issue an instruction to the Executive,
9. should observe the principles of co-operative government (Chapter 3 of the Constitution), and
10. a signed written copy must be handed to the Table immediately after notice has been given in the House.

Rules of debate apply: All motions are subject to the rules of debate of the House, including the rule on offensive language and the *sub judice* rule.

Staff are available to assist with the formal drafting of motions and amendments. Staff routinely edit motions and notices of motion for grammar, form and style. No substantive changes are made without consulting the member concerned. Motions requiring substantive changes are returned to the member with comments.

Motions without notice

A motion which would otherwise require notice, may be moved without notice provided not a single member present objects. It is common practice – but not required – to consult the other parties before the House meets when seeking to move a motion without notice, and to inform the presiding officer of the intention to do so. Motions without notice are to be moved when the presiding officer calls for any formal motions in terms of Rule 29, usually near the beginning of the day’s sitting. A signed copy must be presented at the Table.

When a motion is moved without notice, the presiding officer gives members the opportunity to object. If there is any objection, the motion is not moved. In this case it may instead be converted to a notice of motion.

Notice of motion⁵

Notices of motion should be limited to matters that members specifically intend should be brought before the Assembly for debate or decision.

With some exceptions (listed below) notice must be given of every motion, since in principle the House must be informed in advance of any substantive motion, to give members and parties time to prepare to debate it.

Giving notice of a motion can only be dispensed with provided each and every member present in the House agrees. If therefore a member wishes to move a motion without notice, the party whip should consult with other parties in advance to obtain their consent. If this is not done, members are unlikely to agree to a motion being proceeded with where no notice has been given.

Exceptions: The following motions do not require notice: Motions –

1. By way of amendment to a draft resolution;
2. Raising a point of order or a question of privilege;
3. For the postponement or discharge of, or giving precedence to, an order of the day;
4. Referring a bill to a committee;
5. By the member in charge, proposing a draft resolution on the report of a committee immediately after the debate on the report has been concluded;
or
6. In regard to which notice is dispensed with by the unanimous concurrence of all the members present.

Contingent notices: Members may give contingent notices of motion, that is, notices that particular motions will be moved contingent upon some event

⁵ Assembly Rules 97 & 98; *Annotated Digest of Rulings 1994-99*, p 66-70

occurring in the course of proceedings of the Assembly, such as the moving of another motion.

*Speaker may amend notices:*⁶ The Speaker may amend “or otherwise deal with” a notice of motion which offends against practice or the Assembly Rules. Speaker Ginwala has established the practice of not amending offending notices but ruling them out of order and referring them back to the member concerned.

Procedure

Notice can be given of a motion by reading the motion aloud in the House when the presiding officer calls for notices of motion, or by delivering to the Secretary a signed copy of the notice on any parliamentary working day. The leave of the House is required to give oral notice of a motion at any other time.

Having given oral notice of a motion in the House, a member is required immediately afterward to deliver to the Table a signed, written copy of that notice. If the signed version differs from the oral version, the written version is treated as a standard written notice of motion, while the verbal notice is not placed on the Order Paper. The member is advised accordingly.

If authorised to do so, a member may give notice of a motion on behalf of another member.

Oral notices of motion given on any sitting day by agreement and Speaker’s authority, appear on the Order Paper of the second sitting day thereafter. A written notice of motion received by the Secretary before 12:00 on any day, will appear on the Order Paper for the following sitting day.

When notice has been given of a motion, the full text is printed on the Order Paper once. Thereafter it is listed as a page reference under “Further Business”, until it is programmed for debate when it will once again be published in full.

6 Assembly Rule 100

Scheduling of notices of motion

Notices of motion are scheduled for consideration by decision of the Assembly Programme Committee.

Effect of notice

A “notice of motion” merely indicates an intention on the part of a member to move a motion in the House if and when it is programmed for consideration by the House.

A notice of motion remains the property of the member until he or she actually moves it in the House. If the member chooses not to move the motion at the time for which it has been programmed, the motion lapses (unless the member has authorised another member to move it on his or her behalf). This distinguishes a motion from an “Order of the Day” which is not dependent upon being moved by a member.

A member may withdraw a notice of motion appearing in his or her name on the Order Paper by written instruction to the Secretary.

Once a motion has been formally moved in the House, it becomes the property of the House and may only be withdrawn with the approval of the House. (The member who has moved the motion, may move without notice that it be withdrawn.)⁷ If any amendments to the motion have been moved, they must be withdrawn before the motion itself can be withdrawn.

Consideration of motions by Assembly

When the point in the proceedings is reached where a notice of motion on the Order Paper comes up for discussion, the member in whose name the motion stands, rises and formally moves the motion. This may be done by reading it out, or by moving it with reference to the motion as it appears on the Order Paper. The member may then introduce and motivate the motion if time has been set aside for a debate.

⁷ Assembly Rule 102

Members may move amendments to the motion, provided the amendments are allowed by the presiding officer.⁸ At the conclusion of the debate, the member who introduced the motion is usually – in accordance with the list of speakers – given an opportunity to respond to the debate. The motion, as well as any amendments, are thereupon put for decision by the Chair.

Amendments

An amendment is a motion, subsidiary to the main motion, which proposes to change it. As such, it is subject to the rules and practices governing motions, including that a signed copy of an amendment that is moved, must be provided to the Table.

Amendments are of three kinds. They may propose to –

1. leave out words in the motion;
2. delete words in the motion and substitute other words in their place; or
3. insert words in the motion.

Amendments must be relevant to the motion, and may not introduce a new subject or extend the scope of the original motion. An amendment may be proposed to an amendment. An amendment is subject to the approval of the Speaker, who will not allow an amendment that is out of order or frivolous. As in the case of motions, Table staff or Legislation and Proceedings staff may be consulted in regard to formulation of amendments.

The Speaker has in the past proposed an amendment from the Chair as part of its function to assist the House in coming to a decision. Where the proposal from the Chair is not generally accepted, the Chair would withdraw the proposal.⁹

⁸ Assembly Rule 96(c)

Putting amendments: The presiding officer decides on the order in which amendments are put at the end of the debate. In doing so, he or she will generally seek to enable each party to record its vote in favour of or against each amendment, where feasible.

Motions of no confidence in the President or the Cabinet,¹⁰ motions to dissolve the Assembly¹¹ and motions for removal of President¹²

The following motions of no confidence are provided for in the Constitution and have specific constitutional consequences.

If the Assembly, by a vote supported by a majority of its members –

1. Passes a motion of no confidence in the Cabinet excluding the President, the President must reconstitute the Cabinet.
2. Passes a motion of no confidence in the President, the President and the other members of the Cabinet and any Deputy Ministers must resign.
3. At least three years after it was elected, adopts a resolution to dissolve.

In addition, the Assembly may remove the President on specified grounds by a resolution adopted with a supporting vote of at least two-thirds (267) of its members.

Motions containing allegations concerning certain office-bearers

See “Reflections on judges and other office-bearers (substantive motions)” in Chapter 11 – “Rules of debate and maintenance of order”.

Motions containing allegations against members

9 Parliamentary archives 25 Jan 2000

10 Constitution, section 102

11 Constitution, sections 50(1) & 102

12 Constitution, section 89

See “Reflections upon members of the Assembly” in Chapter 11 – “Rules of debate and maintenance of order”.

Motions of condolence

A motion of condolence is usually moved at the point in proceedings when the presiding officer calls for formal motions. Often, but not always, it is a motion without notice. It is normally, but not always, adopted without debate. Generally in the case of a motion of condolence in respect of a member, there is a brief debate, and on adoption, members rise and observe a moment of silence.

The Secretary sends a copy of a motion of condolence to the family of the deceased.

Effect of draft resolution

Broadly speaking, Parliament only imposes its will through legislation. A draft resolution adopted by the Assembly is of persuasive force, and only binds the House itself. The House cannot, for example, by resolution instruct a member of the public, or the Executive, to take certain action.

The following are exceptions (the list is not comprehensive) –

1. In the case of the Constitution, a motion of no confidence in the President or the Cabinet;¹³ a motion to dissolve (in certain circumstances);¹⁴ a resolution leading to removal of the President¹⁵ or other office-bearers, or the appointment of office-bearers.¹⁶
2. Where the Assembly has, through legislation, imposed certain responsibilities on itself, mainly in respect of appointment of office-bearers¹⁷.

The Secretary sends a copy of an Assembly resolution to a body or person to which such a resolution relates. Where applicable, the resolution is directly

13 Constitution, section 102

14 Constitution, section 50

15 Constitution, section 89

16 Constitution, Chapter 9

17 For examples, see Chapter 17 of this Guide – “Procedures relating to appointments and other statutory functions”

communicated to the relevant Minister or executive authority under the Speaker's signature.

1.2 SUBJECTS FOR DISCUSSION

A subject for discussion provides an opportunity for the House to debate a particular topic without the House being required, at the end of the debate, to take a decision. The wording of a subject for discussion should be limited to identifying the topic, which should be clearly established. A topic that is too vague or broad will lead to an unstructured debate. A member proposing such a motion should identify it as a subject for discussion.¹⁸ A motion proposing a subject for discussion also requires prior notice.

Subcategories of subjects for discussion

Party motions:¹⁹ On a rotational basis determined by whips and the Programme Committee, parties are given an opportunity to initiate debate in the House by way of a motion. By agreement and practice, party motions are restricted to subjects for discussion.

Members' motions by ballot:²⁰ The Programme Committee identifies slots in the programme of the House for individual members to initiate debates. A member's name is drawn by ballot in the Deputy Speaker's Office (the names of Executive members are excluded). Party whips are notified of the date and time of the draw and are invited to attend. The member whose name is drawn may then introduce a motion for debate. As with party motions, members' motions are, by agreement and practice, restricted to subjects for discussion.

Debates on national issues ("Speaker's debates"):²¹ The purpose of these debates, which are scheduled by decision of the Programme Committee, is to consider important national issues not on a party-political

18 *Annotated Digest of Rulings 1994-99*, p 61 (wording of subject does not require formal amendment)

19 *Procedural Developments in the National Assembly*, Item 22, Issue 1

20 *Procedural Developments in the National Assembly*, Item 22, Issue 1

basis (although not excluding party views), but rather as a mechanism for the collective leadership in the Assembly to give the country guidance on such national issues. Sufficient time is provided to allow for meaningful discussion. Such debates could give rise to resolutions reached by consensus. (It has happened that on conclusion of a debate of this kind, the Majority Party Chief Whip has moved a motion based on the debate.)

When such a debate is scheduled at the proposal of the Speaker on a topic selected by the Speaker, the debate is categorised as a “Speaker’s debate”.²²

Slots for motions of this kind are determined by the Programme Committee, which also determines which of the above types of motion the slot will accommodate.

Debates on matters of public importance and urgent public importance

See that heading below.

LEGISLATIVE PROCEDURES

See Chapter 12 – “Legislative Procedure”.

QUESTIONS TO THE EXECUTIVE

See Chapter 13 – “Questions to the Executive”.

2. CONSIDERATION OF COMMITTEE REPORTS

In practice a committee report that is placed on the Order Paper for consideration requires a decision of the House. If no debate is scheduled, then in terms of Rule 137(3)(b), the chairperson of the committee, or a person designated by the committee, briefly introduces the report, highlighting any recommendations. After the introduction or a debate on the report, a motion

²¹ *Procedural Developments in the National Assembly*, Item 20, Issue 1; Issue 2, Item 3

²² *Procedural Developments in the National Assembly*, Item 4, Issue 3

is put from the floor (usually by the Chief Whip of the Majority Party or the Deputy) that the House either adopt the report, note the report or take whatever other action is deemed desirable. This is recorded in the Minutes of Proceedings.²³

Taking decisions in terms of legal requirements

Where a committee report contains a recommendation on a decision required from the House in terms of legal requirements (examples: ratification of international agreements and recommendations on appointment of office-bearers) the Order Paper entry, although deriving from the committee report, reflects the actual decision required to be taken. This actual question, rather than simple adoption of the report, is then put to the House by the presiding officer for decision, and minuted accordingly.

Where a committee report includes other recommendations for consideration, the relevant committee report will be placed on the Order Paper as a separate item.²⁴

3. DISCUSSION OF MATTERS OF PUBLIC AND URGENT PUBLIC IMPORTANCE²⁵

The Rules on debates of this kind make special provision to reconcile the needs of private members with the unobstructed progress of Government business and other programmed business. They make it possible for private members to request the Speaker to allow discussion of matters that they consider of sufficient immediate public importance to take precedence over other programmed business in certain circumstances. Members of all parties may use this mechanism.

The Speaker has discretion to grant or disallow such a request, applying agreed criteria for this purpose.²⁶ On finding merit in a request, he or she

²³ *Procedural Developments in the National Assembly*, Item 4, Issue 6

²⁴ *Procedural Developments in the National Assembly*, Item 3, Issue 6

²⁵ Assembly Rules 103-104; *Procedural Developments in the National Assembly*, Item 23, Issue 1; Item 5, Issue 2; Item 7, Issue 4

consults the Leader of Government Business, after which the matter goes to the programming whips to find a slot for the debate. The Speaker will not consider requests made during recess.

Withdrawal of request: While no rule provides for withdrawal of a request for such a debate, it has been held that following the principle that even bills can be withdrawn by the member in charge before the Second Reading is decided, a member is entitled to withdraw a request.²⁷

Matter of public importance (Rule 103)

At the latest, the request should be made before adjournment on the previous sitting day.

In exercising his or her discretion, the Speaker is guided by the following criteria –

1. The request must deal with a matter for which the Government can be held responsible.
2. The matter must be definite and specific.
3. The request must not deal with more than one matter.
4. The request will not be granted if the matter can be considered by some other means in the near future.
5. The *sub judice* rule applies.
6. The rule of anticipation applies.
7. If approved, the date and time of the debate will be subject to the availability of the responsible Minister.

Matter of urgent public importance (Rule 104)

²⁶ For case where request to alter topic was turned down, see *Procedural Developments in the National Assembly*, Item 8, Issue 6

²⁷ *Procedural Developments in the National Assembly*, Item 9, Issue 6

This Rule provides for a request for such a debate to be received by 12:00 on a sitting day, for that debate to be held on the same day. (This Rule has not been used yet since 1994.)

The criteria that the Speaker would use when considering such a request, include –

1. The subject matter must be of so serious a nature that it requires immediate attention.
2. The subject must relate to a specific matter of recent occurrence, and not to a general state of affairs or to a matter of policy.
3. Such a request should only be allowed under very special circumstances (for example a sudden emergency).
4. The request must not deal with more than one matter.
5. The request should not be granted if the matter can be dealt with by some other means in the near future.
6. The request must concern a matter for which the Government can be held responsible or that comes within the scope of Ministerial action. (A proposal has been rejected because it concerned matters for which a provincial legislature was responsible.)
7. The matter must be raised at the earliest opportunity.
8. Adequate notice must be given to the responsible Minister.
9. The *sub judice* rule applies.

Practice: Whereas it is the practice for a “Rule 103” debate to be published on the Order Paper under the name of the member who requested it, more recently – particularly where parties have joined in requesting a

debate – the matter has been denoted as having been at the request of the parties concerned.

4. STATEMENTS BY ASSEMBLY MEMBERS²⁸

This is a process in terms of Rule 105 whereby members (who are not members of the Executive) are afforded the opportunity to make brief statements on any matter. Provision is also made for Executive members to respond to statements directed to them or made in respect of their portfolios.

Time allocation:

1. Statements are taken on Tuesdays and Thursdays, and on Fridays when the House sits on a Friday. Members' statements may be dispensed with by agreement in the Programme Committee. In terms of Rule 29 members' statements follow opportunities for notices of motion and formal motions in the House.
2. The order of party rotation in which the presiding officer "sees" members for statements, is determined by the Rules Committee to allow for party participation in a manner consistent with democracy.
3. The time allocated to members' statements in terms of Rule 105 is as follows:
 - a) A maximum of fourteen members' statements of not longer than 1½ minutes.
 - b) A maximum of five Ministers are accorded the opportunity to respond for 2 minutes each. The opportunity for Ministers to respond will follow the expiry of members' time. In the absence of a particular Minister, the relevant Deputy Minister or a Minister from the same Cabinet cluster may, in that order, be given an opportunity to respond.

²⁸ Rule 105; ATC 13 Feb 2003; *Procedural Developments in the National Assembly*, Item 19, Issue 1; Item 15, Issue 3; for introduction of, see *Procedural Developments in the National Assembly*, Item 1, Issue 6

Guidelines on members' statements:

The following guidelines were agreed to by the Chief Whips' Forum and published in the ATC of 13 February 2003:

1. Members' statements may cover any subject that a member wishes to raise relevant to the national sphere of government, including topical international and national issues and constituents' matters.
2. The normal rules of debate apply, including –
 - a) Unparliamentary language.
 - b) *Sub judice* rule.
 - c) Rule of anticipation.
 - d) Reflections on judges and other specified public office-bearers (Rule 66).
 - e) Allegations against other members require a substantive motion.
3. Statements need not be submitted in writing and are recorded in Hansard.
4. As with speeches, a member's statement is concluded when his/her time expires.
5. If a member, for whatever reason, fails to utilise the opportunity to make a statement, the party to which that member belongs, forfeits that opportunity.

5. STATEMENTS BY CABINET MEMBERS²⁹

A Cabinet member may make a “factual or policy” statement relating to government policy, any executive action or other similar matter of which the Assembly should be informed. The Minister in question asks the Speaker for an opportunity to make such a statement, which should not be longer than 20

29 Assembly Rule 106

minutes. The Rule provides that whenever possible, a copy of the statement should be provided to the leader of each party when or before the statement is delivered.

The words “factual or policy statement” signify that such a statement is not used for party-political purposes.³⁰

Following a statement, each party may respond for not more than 3 minutes, in order of size of party. Recent practice has been for the House at the beginning of an annual session to adopt a resolution varying such times for the duration of the year. By agreement the House has also on occasion dispensed with party responses.³¹

6. ADDRESS BY PRESIDENT

While the President participates in some debates in the Assembly, a President’s Address is a formal occasion on which the President, as Head of State, addresses Parliament (or a House) on an important matter.

A President’s address may be delivered –

1. at a joint sitting;
2. to the Assembly; or
3. to the Council.³²

A President’s address is delivered at the commencement of a new Parliament after an election subsequent to the first sitting at which the President is elected. He or she delivers a State of the Nation address at the start of an annual session of Parliament. Such an address, delivered at a joint sitting, is thereafter debated separately in the two Houses of Parliament.

30 *Procedural Developments in the National Assembly*, Item 19, Issue 1

31 *Procedural Developments in the National Assembly*, Item 15, Issue 3; Item 22, Issue 4; Item 3, Issue 5

32 See “Joint Sittings” in Chapter 8 – “Sessions and sittings”

The President has also addressed a joint sitting on a matter of national importance, followed by a debate in joint sitting.³³

7. PERSONAL EXPLANATIONS³⁴

Any member may, at the discretion of the presiding officer, be permitted to give a personal explanation during debate. This is allowed only to enable a member to respond where a material part of his or her speech has been misquoted or misunderstood. A personal explanation may not be used to court controversy or make a political statement, nor may a member introduce any new matter. No debate is allowed on the explanation.

A member may also, with the prior consent of the presiding officer, explain matters of a personal nature, but such matters may not be debated. The member must confine himself or herself strictly to the vindication of his or her own conduct and may not speak for longer than three minutes.

Presiding officers may request the text of a personal explanation prior to giving consent.

A personal explanation may be delivered from a floor microphone.

8. MESSAGES

Messages from the President³⁵

All communications to the Assembly from the President are delivered –

1. by message;
2. in a joint sitting; or
3. by the President addressing the Assembly.

33 See Minutes of Joint Sitting for 31 October 2001 – Address by President and debate on New Partnership for African Development

34 Assembly Rules 69 & 58(2)(b); *Procedural Developments in the National Assembly*, Item 26, Issue 1

35 Assembly Rule 120

A message from the President may, at the discretion of the presiding officer, be read out in the House by him or her, or printed in the Minutes.

Consideration of the message may be placed on the Order Paper, or else the presiding officer, at the request of the Leader of Government Business, may interrupt business in order that precedence may be given to the consideration of the message.

A message whereby the President calls a sitting of Parliament is not considered.³⁶

Messages to the President³⁷

In terms of the Rules, a message from the Assembly to the President is signed by the Speaker and the Secretary.

Messages from the Council³⁸

A message received from the Council is either –

1. recorded in the Minutes (usually by way of the ATC which is an extension of the Minutes of Proceedings); or
2. made known as the Speaker may determine.

9. ADDRESS BY VISITING HEAD OF STATE OR HEAD OF GOVERNMENT³⁹

Guidelines for such addresses have been laid down in the National Assembly Rules Committee and the Joint Rules Committee, as follows:

A Head of State on a state visit may, by invitation of Parliament or of either House, address Parliament in joint sitting, or the House in question.

36 Constitution, section 42(5)

37 Assembly Rule 119

38 Assembly Rule 118

39 JRC Minutes 7 May 2002; Assembly Programme Committee Minutes 29 March 2001; Assembly Rules Committee Minutes 20 June 1994; Assembly Rule 43

The invitation is not an automatic part of a state visit. Assembly Rule 43 provides that the Speaker, acting after consultation with the Leader of Government Business, may invite any Head of State who is on a state visit to the Republic, to address the Assembly.

A *Head of Government* who is not a Head of State may be invited to address members of Parliament (or of the Assembly) but not during a sitting of Parliament. Such an address, if delivered to members of the Assembly or of Parliament as a whole, is usually delivered in the Assembly Chamber while the House is not sitting.

*10. WRITTEN INSTRUMENTS OTHER THAN LEGISLATION*⁴⁰

Nature of written instruments

A written instrument is an item received by the Assembly, other than draft legislation, that must be formally dealt with in the parliamentary process. Such written instruments include the following –

1. A report submitted to the Assembly by a Minister for tabling.
2. A report submitted to the Assembly in terms of legislation for tabling.
3. All applications to the Assembly (in writing) in terms of legislation in order to activate a parliamentary process (for example the appointment of a “Chapter 9” office-bearer; see Chapter 17 – “Procedures relating to appointments and other statutory functions”).
4. All international agreements submitted to the Assembly in terms of section 231 of the Constitution.
5. All special petitions, and other petitions of a general nature.

Tabling and referral

All such instruments must be tabled by the Speaker without delay (if received during recess, they are tabled on the first sitting day when the Assembly resumes its sittings) and referred to the appropriate committee. If there is doubt as to which committee is involved, the Speaker decides in consultation with the Chief Whip of the Majority Party, subject to any decision by the Rules Committee or a House resolution.

If the matter is referred to more than one committee, the referral may be accompanied by an instruction as to –

1. whether the committees must confer, and
2. which of the committees should report, if a report is required.

Report on written instrument

Where a committee produces a report on a written instrument, the report, together with any specific matter that the committee requests should be considered by the Assembly, is placed on the Order Paper.

International agreements⁴¹

In terms of the Constitution, international agreements fall into two categories –

1. *Agreements that only bind the Republic after they have been ratified by resolution in the Assembly and the National Council of Provinces*

A copy of such an agreement must be submitted to the Speaker together with an explanatory memorandum, the contents of which are specified in the Constitution and in Assembly Rule 306. The agreement is tabled and referred to the relevant portfolio committee. The Speaker may instruct the committee

41 Constitution, section 231; Assembly Rules 306-308

to consult the portfolio committee responsible for foreign affairs and any other Assembly committee that has a direct interest in the substance of the agreement. In addition, the committee may confer with the equivalent Council committee.

Having considered the agreement, the committee must report to the Assembly, stating whether it recommends approval or rejection of the agreement. The report must be placed on the Order Paper for decision, with or without debate.

Once the Assembly has considered the matter, its decision is conveyed to the Presidency. The same is done in respect of the Council, since the approval of both Houses is required for ratification.

2. Agreements of a technical, administrative or executive nature, or that do not require either ratification or accession.

Such an agreement is referred in the normal way to the relevant portfolio committee, which may or may not report to the Assembly on the matter.

Petitions⁴²

Any person, group of persons or organisation⁴³ has the right to petition Parliament, seeking redress or relief of some kind. Petitions are classified as general or special petitions. A special petition is one requesting a pension or other specific or personal relief from the state that is not authorised by law. A general petition is any other petition.

1. A petition must be –
 - a) in the form prescribed by the Speaker;
 - b) in one of the official languages;

42 Constitution, section 56(d); Assembly Rules 309-315

43 This has been interpreted as referring also to non-citizens. See petition of Swazi Royal Families, 2002, *Procedural Developments in the National Assembly*, Item 24, Issue 6

44 Other arrangements can be made where the petitioner/s is/are unable to sign (see Rule 311)

- c) signed by the petitioners themselves (unless the Speaker decides otherwise).⁴⁴
2. A petition must be lodged by a member⁴⁵ with the Secretary to Parliament, who, via the Clerk of the Papers, submits it to the Speaker for approval and tabling, together with advice thereon by the parliamentary law advisers.
3. If the Speaker approves the petition, it is tabled in the Assembly. (The Constitution also makes provision for petitions to be received by the Council.)
4. Once tabled, the Speaker must –
 - a) If it is a special petition, refer it to the Committee on Private Members’ Legislative Proposals and Special Petitions; or
 - b) If it is a general petition, refer it to the relevant portfolio committee, or to an appropriate committee.

It is then for the Assembly to consider the report of the relevant committee, and take a decision. In the case of a special petition, if the relevant committee finds merit in the petition, it may recommend that a bill be introduced granting relief, for example granting a government pension to the petitioner.

Instructions to committees

See that heading in Chapter 16 – “Parliamentary committees”.

⁴⁵ In a case where a private person lodged a petition directly, the Speaker was deemed to have condoned this by tabling the petition in the Assembly. See petition of Swazi Royal Families, 2002

PROGRAMMING OF BUSINESS

This chapter deals with the way the business of the Assembly and of Parliament is programmed and organised. It should be read in conjunction with Chapter 8 – “Sessions and sittings”.

1. BRIEF OVERVIEW OF PROGRAMMING PROCEDURE

1. The “shape” of a parliamentary year in broad outline – the dates of the sessions and legislative cycles for the year – is generally determined the previous year at a meeting of the Joint Programme Committee (JPC), chaired by the Speaker and the Chairperson of the Council.
2. The Assembly Programme Committee meets weekly during session to organise and determine, within the broad parameters set by the JPC, the business of the Assembly in the short and medium term. While dealing with day-to-day business it also plays an important role in establishing practice. The committee is chaired by the Speaker.
3. The lion’s share of parliamentary business emanates from the Government, and much of this is legislation. The Leader of Government Business, appointed by the President, plays a key role in co-ordinating the legislative programme and, where necessary, requesting Parliament to fast-track a bill.
4. While the contents of the daily Assembly Order Paper and the sequence of business are largely determined by the decisions of the Assembly Programme Committee, the Chief Whip of the Majority Party (or the programming whip acting on his or her behalf) takes day-to-day decisions on the arrangement of business on the Order Paper, guided also by events and daily requirements. In doing so, he or she consults the Speaker and the Leader of Government Business where appropriate.¹

¹ Assembly Rule 222 (“with the concurrence of the LOGB”)

5. The Assembly Programme Office, on the basis of information received from the programming whips and the various parties, prepares lists of speakers, reflecting sequence and duration of speeches, for each debate (see “Speakers’ Lists” below).

2. ROLE-PLAYERS IN PROGRAMMING OF BUSINESS

The production of a programme for all parliamentary business that takes into account the needs of both the Executive and Parliament, is a complex and ongoing process that requires regular inputs from several sources. The most important of these are –

1. The various programme committees and subcommittees (Joint, Assembly and Council).
2. The Speaker and the Chairperson of the Council.
3. The Leader of Government Business.
4. The majority party chief whips in both Houses.
5. The programming whips, acting for the Chief Whip of the Majority Party.
6. The Chairperson of Committees in both Houses, liaising in respect of committee proceedings.
7. Parliamentary officials at the Tables and in the Legislation and Proceedings and Committee Sections, providing technical assistance and advice.

2.1 JOINT PROGRAMME COMMITTEE (JPC)²

Establishment and composition

This is a senior committee, chaired by the Speaker and the Chairperson of the Council and consisting of the Leader of Government Business and the senior office-bearers of both Houses, including whips from all parties (see Joint Rule 91 for composition).

Functions and powers

The committee usually sits two or three times per year. At a meeting towards the end of the calendar year it determines the broad parliamentary programme for the subsequent year. It is responsible for determining the annual programme of Parliament, including the legislative programme. It monitors and oversees the implementation of Parliament's annual legislative programme and may set deadlines for the introduction of bills. It is also concerned with the functioning of joint committees and subcommittees. It takes decisions on prioritisation of business, and may set time limits for steps in the legislative process and timeframes for the passage of bills through Parliament. It is also responsible for fast-tracking of bills (but see "Joint Programme Subcommittee" below). It does not normally report to the Houses.

In order to perform its task, the committee requires the Executive to provide it with a provisional legislative programme for the year, listing the bills the Executive intends introducing, together with timeframes showing when each bill is expected to be ready for introduction. Also required is a detailed programme for Budget Votes and the other stages of the Main Appropriation Bill.

See also "Role of JPC" under paragraph 3 below.

2 Joint Rules 90-96

Joint Programme Subcommittee³

Since meetings of the JPC are infrequent, a Joint Programme Subcommittee is authorised to perform the ongoing work of the committee, in particular considering requests for fast-tracking of bills and for extension of time limits (see “Fast-tracking of bills” under “Planning of legislative programme” below).

Joint Rule 216 stipulates that the subcommittee may only take a decision on fast-tracking when the Speaker and the Chairperson of the Council are present.

2.2 ASSEMBLY PROGRAMME COMMITTEE (NAPC)⁴

The task of this Committee is to manage the programme of business of the Assembly. While the Joint Programme Committee, which sits infrequently – usually not more than twice a year – determines the broad outlines of the annual programme and timetable of Parliament, the NAPC meets weekly during session, to –

1. decide on the short and medium-term legislative and other programme of the Assembly including, where necessary, the functioning of committees;
2. adjust the annual programme of the Assembly; and
3. monitor and oversee the implementation of the Assembly’s annual programme.

When the committee prioritises or postpones government business, it must do so in concurrence with the Leader of Government Business.⁵

The committee is chaired by the Speaker and consists of the presiding officers, the Leader of Government Business, and whips of all parties, including the Chief Whip of the majority party. Traditionally it meets on

3 Joint Rule 96

4 Assembly Rules 187-19

5 Assembly Rule 190(e)

Thursday mornings during session to consider a draft weekly programme prepared by the Technical Programme Committee.

See also “Role of Assembly Programme Committee” under paragraph 3 below.

Technical Programme Committee

Prior to the meeting of the programme committee a technical programme committee consisting of staff and office-bearers meets (usually on Tuesdays in session) to prepare programming proposals for consideration by the Assembly Programme Committee. It consists of –

1. staff of the National Assembly Table
2. programming whips from the Office of the Chief Whip of the Majority Party
3. a representative of the Office of the Leader of Government Business
4. representatives of the Committee Section
5. representatives of the Legislation and Proceedings Section
6. a representative or whip from the Council.

Besides preparing a draft programme for the subsequent week, for the consideration of the NAPC, the technical committee also plans medium-term programming, subject to the broad programme set by the JPC.

In order to perform these functions, the technical committee –

1. determines proposed legislation for the forthcoming period, establishes the urgency of each item, and proposes deadlines for introduction.

2. receives reports on committees' progress with their deliberations on legislation, and proposes timeframes for completing steps in the legislative process.
3. receives reports on availability of Ministers for debates on legislation, votes and motions.
4. establishes from whips how much time parties require for specific debates.
5. adapts the draft programme by factoring in the needs and requirements of the Assembly (for example committee timeframes and members' business).

Once the Assembly Programme Committee has considered and amended the draft programme as prepared by the Technical Committee, it is published as a weekly programme.

2.3 OFFICE OF LEADER OF GOVERNMENT BUSINESS⁶

This office is housed in Parliament, and while its staff are appointed by the Secretary to Parliament, the Office is responsible to the Leader of Government Business. Its functions are as follows –

1. it is responsible for the affairs of the national Executive in Parliament.
2. it programmes parliamentary business initiated by the national Executive, within the time allocated for that purpose by the Assembly Programme Committee.
3. it arranges the attendance of Cabinet members in respect of parliamentary business, and informs parliament of the availability of Ministers.

6 See paragraph 7 of Chapter 3 – “Presiding officers and other office-bearers” & Joint Rules 149-150

4. it determines which legislation is forthcoming for a specific term of Parliament, and its urgency, and where necessary processes fast-tracking of a bill.
5. it liaises with committees to determine when legislation is available.

A representative of this office attends meetings of the Technical Programme Committee.

2.4 OFFICE OF CHIEF WHIP OF MAJORITY PARTY

The programming responsibilities of this office include –

1. Tracking of bills after introduction, in conjunction with Programme Office.
2. Liaising with committee chairpersons on progress with bills.
3. Daily arrangement of business on the Order Paper.
4. Setting time limits for debates.
5. Allocating debating time to parties.

These responsibilities are carried out in a process of consultation with whips of all parties, and subject to decisions of the Assembly Programme Committee. The programming whip is primarily concerned with this function on a day-to-day basis.

2.5 SPEAKER/CHAIRPERSON OF ASSEMBLY PROGRAMME COMMITTEE

Programming responsibilities include –

1. Overseeing implementation of NAPC decisions.
2. Consultation with Council presiding officers on decisions affecting joint business.
3. Adjustment of Assembly proceedings to implement fast-tracking decisions.
4. As Speaker, approving requests for “snap debates”.
5. As Speaker, exercising general control over functioning of House and proper application of relevant Rules.

3. PROGRAMMING THE BUSINESS OF A PARLIAMENTARY YEAR

3.1 ROLE OF JOINT PROGRAMME COMMITTEE (JPC) (see also paragraph 2.1 above)

The JPC at a meeting towards the end of the calendar year determines the broad outlines of the parliamentary year, as follows:

Recess: Recess periods are determined, and divided into “leave periods” and “constituency periods”.

Sessions: Start and end dates of the terms for the year – usually three or four – are determined, and divided into committee and plenary weeks. Provision may also be made for periods for member training.

Deadlines for submission of legislation: For each term, the JPC determines deadlines for the introduction of legislation by the Executive. Submission of a bill within deadline is not a guarantee that its consideration

will be finalised during that term, since the passage of bills is subject to political and other considerations; but usually this will happen. “Introduction” here signifies due compliance with the relevant Rules.⁷ Bills introduced late will be processed in the normal way but Parliament is not committed to processing such bills within the relevant term.⁸

*Requirements for compliance with deadline:*⁹ In order to meet the deadline –

1. the draft bill as agreed to by Cabinet must have been submitted to the presiding officers by the relevant Minister as required by Joint Rule 159;
2. the draft bill or explanatory memorandum, or the explanatory summary of the draft bill, should have been published in the Gazette as determined by Assembly Rule 241 or Council Rule 186; and
3. the bill (including the memorandum on its objects) as certified by the state Law Advisers, should have been received by Parliament.

Important inputs from the Executive, which form part of this broad programme, are –

1. The date of the President’s State of the Nation address early in the year.
2. Budget Day, which marks the start of the extended procedure whereby Parliament considers the budget of the Executive, including those of the various government departments.
3. The government’s legislative programme.
4. Dates for questions to the President.

Other important data affecting the programme are the 4-week Council legislative cycles¹⁰ and public and school holidays.

7 *Procedural Developments in the National Assembly*, Item 14, Issue 6

8 *Procedural Developments in the National Assembly*, Item 38, Issue 1

9 For origin of requirements, see *Procedural Developments in the National Assembly*, Item 14, Issue 6

10 Because the NCOP must consult provinces and obtain a voting mandate in respect of section 76 and section 74 bills, processing of such bills involves a cycle lasting four weeks

Production of this annual programme enables the two House programme committees to proceed with planning and to “flesh out” the broad programme with the necessary detail. It is also an important document for the provincial legislatures, government departments and monitoring and lobbying groups.

3.2 ROLE OF THE ASSEMBLY PROGRAMME COMMITTEE (see paragraph 2.2 above)

This committee, chaired by the Speaker, sits on Thursday mornings during session – its first meeting is usually held in the week before the start of a term. At a meeting of the committee, both political and technical inputs are made on the draft weekly programme produced by the Technical Committee (see that heading under paragraph 2.2 above) and on the programming of business for the remainder of the term and/or the year.

Based on these inputs, a final programme for the week ahead is produced on green paper and distributed to all members. Information on the Council programme is included on this weekly programme (the Council programme committee sits on Tuesdays).

Decisions are reached by consensus. Where consensus is not reached, matters may be referred to the Chief Whips’ Forum¹¹ for further consultations before resubmission to the Programme Committee for decision.¹²

3.3 PLANNING OF LEGISLATIVE PROGRAMME

The JPC requires the Executive to provide Parliament with a provisional legislative programme for the year, listing the bills the Executive intends introducing, together with timeframes showing when each bill is expected to be ready for introduction. A detailed programme for Budget Votes and the other stages of the Main Appropriation Bill is also decided upon in consultation with the Executive.

11 See Chapter 16 – “Parliamentary Committees”

12 *Annotated Digest of Rulings 1994-99*, p 96-97 – presiding officer does not determine Order Paper

Deadlines for introduction of bills

Parliament informs the Executive of deadlines by which bills must be introduced to be processed in any particular parliamentary term. (See “Deadlines for submission of legislation” above.)

Time limits for bills¹³

The time limits for stages of the legislative process are laid down in the Rules and are dealt with in Chapter 12. If it is not possible to meet a time limit set for a particular step in the process, this fact and the circumstances of the delay must, within a reasonable time before the time limit expires, be brought to the attention of the JPC or its subcommittee and an extension or other assistance requested.

4. FAST-TRACKING OF BILLS¹⁴

Fast-tracking is a process whereby a Joint or House rule or rules are dispensed with in order to expedite the prompt passage of an urgent bill through Parliament. A request for fast-tracking may only be made by the Leader of Government Business, in the case of a bill initiated by the Executive. In the case of any other bill, the request may be made by the member in charge. The decision to fast-track can only be made by the JPC, or by its subcommittee when both the Speaker and the Chairperson of the Council are present. The decision must be ratified by both Houses on their first sitting day after the decision. A request must be well-motivated, and the Joint Programming Committee has agreed to the following guidelines in determining the merits of individual fast-tracking requests:

¹³ Joint Rules 213-15

¹⁴ Joint Rule 216; *Procedural Developments in the National Assembly*, Item 27, Issue 6; Items 46 & 47, Issue 4; Item 25, Issue 3; Items 19 & 25, Issue 2; & Items 41-2, Issue 1

Criteria for consideration of fast-tracking requests:

Urgency of request

1. The Leader of Government Business (LOGB) is required to show that prompt passage of the bill is a matter of urgency.
2. The request for fast-tracking of the bill must therefore specify –
 - a) why fast-tracking is necessary under the circumstances;
 - b) whether a delay in the passage of the bill will seriously affect the interests of the state or the general public; and
 - c) how those interests will be affected.

Content of bill

1. The LOGB must give the Committee an indication of the content of the bill.
2. The request for fast-tracking must therefore specify –
 - a) whether the bill introduces significant changes in policy;
 - b) whether public participation took place before the request for fast-tracking was made;
 - c) whether there is any opposition to the bill;
 - d) whether the bill is technical in nature; and
 - e) the length of the bill.
3. If the bill extends the term of office of a council or statutory body, the JPC or its subcommittee will only approve the request for fast-tracking if the LOGB can show compelling reasons why it should be approved.

4. The request for fast-tracking must therefore explain why the bill in question was not introduced in Parliament before the council or statutory body's term of office expired or when it was close to expiration.

Classification of bill

The request for fast-tracking must be accompanied by an opinion from the state Law Adviser on the classification of the bill.

Implications of bill

1. The implications of the bill must be set out in a separate memorandum to the fast-tracking request.
2. The memorandum must specifically address –
 - a) the implications of the bill, financial or otherwise, for provinces; and
 - b) whether funds are available to implement the legislation if the bill is passed immediately.

Bill before Parliament

If the bill has not yet been introduced in Parliament, the LOGB must indicate when the bill will be placed before Parliament.

Capacity of Parliament to fast-track bill

The LOGB must show that the request for fast-tracking can be adequately accommodated within the current parliamentary programme.

Consideration should also be given to the type of legislation involved. If it is a bill concerning the provinces ("section 76 bill") then consideration must be given to the 4-week legislative cycle of the Council, required to inform the provincial legislatures and obtain voting mandates.

If the bill is a constitutional amendment (“section 74 bill”) then some time limits are constitutionally determined and cannot be overridden.

5. SPEAKERS’ LISTS¹⁵

The programming function also involves preparation of a “speakers’ list” for each debate. Such a list contains the following information –

1. The subject of the debate and the date on which it is to take place.
2. The type of sitting (Assembly, extended public committee or joint debate).
3. The time allocated for the debate as a whole.
4. The speaking time allocated to each party.
5. The sequence and length of the speaking “slots” allocated to each party and to a Minister.
6. The names of speakers.
7. The language each speaker is to use (required for the Interpretation Service).

Speakers’ lists are prepared in advance on the basis of information supplied by party whips. Running adjustments to the list are a matter for the Whips, not the Chair.¹⁶ Adjustments during a sitting are effected by whips approaching the Table, after consultation with other parties. There is an understanding among whips that the government “duty whip” for the day must be consulted. The Chair “sees” members in accordance with the list provided to the Chair by Table staff.

¹⁵ *Annotated Digest of Rulings 1994-99*, pp 132-8

¹⁶ *Annotated Digest of Rulings 1994-99*, pp 133-5

Principles of allocation

There is a constitutional requirement that parties participate in proceedings “in a manner consistent with democracy”.¹⁷ Thus parties are allocated time broadly in accordance with the number of seats each has in the Assembly. Because strict proportionality would leave very small parties with insufficient time to argue their case, the practice has developed that some of a majority party’s time is allocated to smaller parties. A party will not normally be denied the opportunity to have its say in any particular debate. However, a party may waive its right to participate in a particular debate.

The practice is followed of allocating time, separate from party time, to a Minister who has Ministerial responsibility in respect of the subject of the debate.

Standard allocation of time to parties

After an election or whenever there is a change in party strength, the whips work out a standard proportional allocation of time as among parties. This serves thenceforth as a “rule of thumb” for allocating times.

Allocation of time for particular debates

At the weekly programming meeting, decisions are taken by consensus on the amount of time allocated to each debate (this may be preceded by consultation with the relevant portfolio committee where appropriate and negotiation among parties). The total time set aside for a debate is then apportioned to the Executive and to parties in accordance with the predetermined standard allocation (see above paragraph) although variations on this may be agreed by consensus in particular cases.

In some instances – such as certain responses to a Ministerial statement – time is not allocated proportionally; instead, each party is given a short time

¹⁷ Constitution, section 52(2)(b)

to make a statement. Even in these cases, however, the smaller parties may be allocated a briefer time – for example, four minutes for larger parties and two minutes for smaller parties.

Allocation of time for debates on budget votes

The practice has developed that parties are given a global allocation of time for all debates on budget votes, and it is then for each party to decide how to allocate the time among budget votes.

RULES OF DEBATE AND MAINTENANCE OF ORDER

The Constitution gives members “...freedom of speech in the Assembly ... subject to its Rules and Orders”.¹ Both of these principles – freedom of speech, and the rules that the Assembly imposes on itself to ensure orderly debate – are fundamental to the effective conduct of parliamentary business.

The Rules relating to order and debate² are aimed not at limiting freedom of speech, but at guiding debate in the context of that freedom so as to allow reasoned and open consideration of controversial issues.³

The Rules also seek to promote the responsible exercise of the privilege of freedom of speech. This privilege, regarded as essential to parliaments across the world, entitles a member to strongly express sentiments and opinions that may be deeply offensive to other members, and indeed detrimental to groups and individuals. The procedures imposed by the Rules are designed to allow this to be done in an orderly fashion.

1. ORDER IN MEETINGS OF THE ASSEMBLY

Role of the presiding officer

It is the duty of the presiding officer to maintain order in the Assembly.⁴ The Rules vest in the Chair a graded series of disciplinary measures aimed at enforcement of the Rules and conventions of the House. These range from directing a member to withdraw offending words, to suspending a member and suspending debate.

The Chair seeks to avoid the use of such powers where possible, and the conduct of proceedings is most effective when debate, however intense, is

1 Constitution, section 58(1)

2 Assembly Rules 44-74

3 See also “The Assembly Rules” in Chapter 7 – “Rules and Procedures”

4 See “The Chair’s powers to maintain order” below

conducted in a spirit of respect for the honour and dignity of all members and of the House itself.⁵

All members are entitled to equal respect and consideration from the Chair. The Chair may, however, afford additional protection from interjections where a Minister or office-bearer of the Assembly is speaking in that capacity rather than as a member of a political party.⁶ This protection may also be extended on occasion to the Leader of the Opposition and the leaders of other parties as the senior spokespersons for those parties. The purpose of doing so is to enable the House to be informed about important matters of policy emanating from the office in question.

Members' conduct and decorum in the Chamber

The underlying principle is that of showing respect to the House and to other members.⁷ Conduct should not cause a disruption to proceedings. Members are required –

1. **To be seated when the bells stop ringing** to mark the start of proceedings. This requirement of an orderly commencement is not enshrined in the Rules, but is a convention confirmed by several rulings from the Chair.
2. **To dress** according to their personal tastes, provided such dress is in accordance with the dignity of the House.
3. **To bow to the Chair** on entering or leaving or moving to a different part of the Chamber.⁸

5 The Speaker's role has been described as follows: "The maintenance of order, which is essential to assure full and unfettered discussion in a deliberative assembly, is a matter on which it is impossible to lay down any rigid principles for guidance. Everything depends upon the atmosphere. It may be necessary at times for the Speaker to be very vigilant and immediately check the slightest divergence from the strict path of relevancy; at other times a not too rigid interpretation of relevancy may ease a strained situation or assist progress ..." (Speaker Lowther, p 25, *A Speaker's commentaries Vol II* Westminster: London, Edward Arnold 1925)

6 *Annotated Digest of Rulings 1994-99*, p 53

7 *Annotated Digest of Rulings 1994-99*, p 53

8 Assembly Rule 45(1)

4. **Not to move onto the floor area of the Chamber in front of the benches, or to “break the line”** between a person speaking from the floor, and the Chair.⁹
5. **Not to stand in the passages or gangways.**¹⁰ This Rule is firmly imposed by presiding officers, and there have been several rulings in this regard.
6. **Not to converse aloud during debate.**¹¹ A quiet conversation between two members will not be objected to, but noise tending to drown out the member speaking or to distract attention from what is being said, will be stopped.
7. **Not to interrupt the member who has the floor,**¹² except to call attention to a point of order or a question of privilege.

*Interjections:*¹³ This Rule is not interpreted to mean that a member must be heard in silence. The Chair has discretion to allow interjections to the extent that they are relevant to the debate and not disruptive. On 5 March 1996, the Deputy Speaker ruled: “I do not mind interjections, and I like a lively House, but please, the interjections must be relevant to the debate.” A member should avoid attempting to conduct a dialogue with the member at the podium.

*Drowning out or disruption:*¹⁴ The volume and frequency of interjections, heckling or interruptions must not prevent the member at the podium from being heard. The Chairperson of Committees ruled on 28 May 1998: “I do not mind interjections, but they must not be aimed at drowning out whoever is addressing the House. The interjections must be sensible.”

9 Assembly Rule 45(2)

10 Assembly Rule 45(2)

11 Assembly Rule 46; *Annotated Digest of Rulings 1994-99*, pp 73 & 96

12 Assembly Rule 47; *Annotated Digest of Rulings 1994-99*, pp 36-7 & 71-77

13 *Annotated Digest of Rulings 1994-99*, pp 75-77

14 *Annotated Digest of Rulings 1994-99*, pp 71-72

Question to member speaking: Another type of interruption that is allowed in practice is when a member, during debate, rises to ask the Chair whether the member at the podium is willing to answer a question. The Chair will then seek an indication from the member speaking as to whether he or she is willing to respond. A negative response requires the questioner to resume his or her seat. The Chair will not allow this form of interruption to be used deliberately to disrupt the member speaking.

8. **Not to use offensive or unbecoming language,** see “Offensive or unbecoming language” under “Rules of Debate” below.
9. **Not to bring food into the Chamber.** Members are, however, permitted to drink water.
10. **On leaving the Chamber, to do so quietly and unobtrusively** especially when many members are leaving simultaneously.
11. **To attend in the Chamber during debates.** Members’ regular absence from House sittings may be construed as a sign of disrespect to other members and the House. It is the responsibility of the party whips to ensure that their members attend plenaries in sufficient numbers, particularly when a quorum is required to enable the House to take a decision.
12. **On adjournment, to rise and remain in their places until the presiding officer has left the Chamber.**¹⁵
13. **Sit in the waiting benches before being called to the podium.** Members should anticipate their speaking turn and take their place in the waiting bench in good time, not leaving it till the last minute. Once there, they should sit quietly and not make interjections. Other members should not insult, ridicule or otherwise interfere with a member on his or her way to or from the waiting bench or podium.

¹⁵ Assembly Rule 48

Articles in the Chamber

Articles: There is no Rule in this regard. Articles are on occasion brought into the Chamber if they are of particular significance to a member's speech. A 1998 ruling from the Chair stipulated that members could bring non-threatening objects into the Chamber in order to refer to them.¹⁶ However, members should not introduce threatening or offensive objects.

Newspapers: Presiding officers have on several occasions ruled that members may not read newspapers or magazines in the Chamber, unless it is done in preparation for a speech which the member is about to deliver. Reading a newspaper in the Chamber for any other purpose is unacceptable.¹⁷

Party symbols: It has been agreed in the Chief Whips' Forum that party symbols of whatever kind should not be displayed.

Technological aids:

1. *Cellphones* must be switched off.
2. *Portable computers* (laptops) are not currently allowed although this matter is receiving further consideration.

2. RULES OF DEBATE

Member to address Chair¹⁸

The requirement that the member speaking addresses the Chair, is imposed by the Rules, and assists the Chair to control the debate. Furthermore, it prevents dialogue between members that may lead to disorder. In addition, when a member speaks through the Chair a direct attack on another member is avoided.

¹⁶ *Annotated Digest of Rulings 1994-99*, p 2

¹⁷ *Annotated Digest of Rulings 1994-99*, p 3

¹⁸ Assembly Rule 58

The rule applies also to a member rising to pose a question to the member speaking.

Member not to read speech¹⁹

Rule 62 stipulates: “A member shall as far as possible refrain from reading his or her speech, but may refresh his or her memory by referring to notes.” This Rule has not been strictly observed or enforced, mainly because of the limited time at members’ disposal.

Reading of speeches is not conducive to interactive debate, but is indispensable for formal policy statements and other formal occasions.

Unparliamentary language and gestures²⁰

Rule 63 states simply: “No member shall use offensive or unbecoming language.” There are very few expressions that are of themselves unparliamentary. If the use of a word or phrase is challenged and it does not fall into the category of expressions that are outright unparliamentary, the Chair will, in the main, refer to the context in which it was used to determine whether it was parliamentary.

Presiding officers have pointed out that nothing is gained by using extreme language or remarks or expressions that could be perceived as rude, offensive or threatening.

An offensive remark is not rendered parliamentary by being quoted, used hypothetically, put in the form of a question or stated as a figure of speech, such as a simile.

Accusing a member of a lie – a deliberate untruth – or of deliberately misleading the House is always unparliamentary. It is not unparliamentary to state that a member has provided false information, provided intent is not implied. It follows from this that a member’s word is accepted. If a member

19 Assembly Rule 62

20 A much-quoted extract from Erskine May is: “Good temper and moderation are the characteristics of parliamentary language.” See also Assembly Rule 63; and *Annotated Digest of Rulings 1994-99*, pp 1150-8

has good grounds to question whether another member's word should be accepted, a substantive motion may be submitted (see "*Reflections upon members of the Assembly*" below).²¹

It is not for the Chair to judge the accuracy or otherwise of statements made in the House.²²

Obscene and coarse remarks are seldom allowed. Personal remarks referring to a member's physical appearance are almost always unacceptable. The same applies to causing other disturbances, such as making animal noises.

A list of unparliamentary words and expressions has been compiled by the Table. However, this list is used only as a guideline by the Chair, as the context will determine whether, indeed, a particular remark or expression was unparliamentary.

At whom remarks are directed: Remarks or expressions that may be ruled to be unparliamentary when directed at a member, would normally be allowed if used to refer to a party.²³

Gestures: The same general principles as apply to language, apply to the use of gestures. Since gesturing is a part of communication, the context will determine whether a gesture is intended to give offence, show disrespect or threaten. If the Chair considers that the gesture was offensive, he or she will call upon the member to apologise.

*Allegations of racism:*²⁴ Allegations of racism against any member are never parliamentary, regardless of the context. Racist terms, even when used in a historical context, should be avoided. It has been pointed out by a Speaker of the Assembly²⁵ that in view of South Africa's history, it is incumbent on members actively to take the lead in ridding our society of its racist heritage. She added that when participating in debates, members had a

21 See also *Annotated Digest of Rulings 1994-99*, p 54

22 *Annotated Digest of Rulings 1994-99*, p 95 ("... the Speaker should not determine what is true and what is untrue. I think there are different points of view and ... members are allowed to express them.")

23 *Annotated Digest of Rulings 1994-99*, pp 152

24 *Annotated Digest of Rulings 1994-99*, pp 155-8; *Procedural Developments in the National Assembly*, Item 5, Issue 4

25 *Procedural Developments in the National Assembly*, Item 6, Issue 4

unique opportunity actively to inculcate and promote the values of tolerance and inclusivity and to set standards in that regard.

Reference to other Members²⁶

By decision of the Rules Committee, a member should refer to another member in a respectful manner. The Chair exercises its discretion in this regard. It is against the Rules to refer to another member by his or her first names only, and nicknames are not permissible. It has been ruled that a member, when referring to another member, should refer to him or her as “honourable”, and this is the generally accepted mode of address in the House.

In line with the assumption that a member may always be expected to act honourably, a member’s word is accepted.²⁷

Where a member intends to attack or criticise another member in debate, it is a convention that he or she gives prior notice to the member of that intention.²⁸

*Reflections upon members of the Assembly:*²⁹ Making unsubstantiated allegations against the integrity of any member is unparliamentary, nor may improper or unworthy motives be imputed to them. While Rule 66 does not apply to members of the Assembly, the House has by resolution³⁰ confirmed a Speaker’s ruling to the effect that –

1. a member who wishes to bring any improper conduct on the part of another member to the attention of the house, should do so by way of a separate substantive motion, comprising a clearly formulated and properly substantiated charge; and
2. except upon such a substantive motion, members should not be allowed to impute improper motives to other members, or cast personal reflections on their integrity as members, or verbally abuse them in any way.

26 Assembly Rules 61 & 63; *Annotated Digest of Rulings 1994-99*, pp 73-4

27 *Annotated Digest of Rulings 1994-99*, p 54

28 *Annotated Digest of Rulings 1994-99*, p 25

29 *Annotated Digest of Rulings 1994-99*, pp 158-9. ATC 13 June 1997 & 16 Sept 1997; Annual Report 1997, Chapter 10 par 18.

30 Minutes 16 Sept 1997; ATC 13 June 1997, p 395

In the case in question, a committee had been appointed to investigate allegations made by a member against another member. The committee expressed the view that “it would be undesirable and impracticable to instruct a committee of the House to investigate the truth or otherwise of every future unparliamentary remark or allegation ... ” and recommended “that such matters be referred to a committee for investigation only in exceptional circumstances, when for example it is alleged that a breach of parliamentary privilege has occurred or that a Minister has knowingly misled the House”. In the case in question, the committee considered it unnecessary to continue investigating the truth or otherwise of the allegations, but recommended that the member who had made the allegations, which were unparliamentary, be ordered to withdraw them unconditionally. The recommendation was accepted.

Reflections upon judges and other office-bearers (substantive motions)³¹

Reflections on the judicial system as a whole do not transgress Rule 66.³²

Rule 66 prohibits any reflection “... upon the competence or honour of a judge of a superior court, or of the holder of an office (other than a member of the Government) whose removal from such office is dependent upon a decision of this House”, unless this is done in the form of a substantive motion. (A list of such office-bearers may be found in section 5 of Chapter 17 – “Procedures relating to appointments and other statutory functions”.) Such a substantive motion, if it is to be approved for consideration, must allege facts that, if true, would in the opinion of the Speaker *prima facie* warrant a decision to remove the relevant office-bearer. Usually it is a motion to refer the allegation to a committee for investigation and report. Where notice is given of such a motion, it is good practice that it be considered by the Assembly without delay.

31 Assembly Rule 66; *Annotated Digest of Rulings 1994-99*, p 185

32 *Annotated Digest of Rulings 1994-99*, pp 121

This is an instance where the Assembly (in terms of section 58(1) of the Constitution) although having the privilege of freedom of speech, imposes restrictions on itself, in that it regulates (without prohibiting) the exercise of that freedom of speech.

Reference to public officials, individuals and organisations by name

There is no specific reference in the Rules to the mention of organisations and individuals by name, and such references, whether in debate or notices of motion, are fairly common, although the context and circumstances vary. Essentially the only restrictions in the Rules are related to maintenance of order: for example, unparliamentary language (with reference to members), the sub judice Rule and reflections upon judges, etc.

Importance of discretion: Discretion and restraint are appropriate when exercising this right, in view of the public impact of references by name to individuals or organisations. In the event of a critical reference, the individual or organisation has no opportunity to respond. In exercising their right of freedom of speech, members should do so as public representatives and in the public interest, and not for personal motives. Ill-considered use of freedom of speech, whether by way of promotional or critical references, could bring Parliament into disrepute. The onus is on individual members to exercise restraint, since ruling such a reference out of order would infringe the constitutional right of freedom of speech.

Financial interest: It is unethical for a member to use the right of freedom of speech to refer to a company in which he/she has a financial interest for purposes of promoting that company.

*Minister is responsible for actions of department:*³³ The Chair has in the past pointed out, when public servants have been criticised, that it is the Minister who takes responsibility for their activities, and called upon members, in exercising their right of freedom of speech, to exercise

³³ *Annotated Digest of Rulings 1994-99*, pp 104-5

discretion. Thus, in practice, members should refrain from addressing/referring to public officials by name. If they do so, they should do so responsibly, with caution and only in exceptional circumstances.

Reflections upon decisions and statutes of the same session³⁴

No member may reflect upon any decision of this House of the same annual session, except to move that such decision be amended or rescinded. The same applies to any statute passed during the same session, except in order to move for its amendment or repeal.

***Sub judice rule*³⁵**

Rule 67 states: “No member shall refer to any matter on which a judicial decision is pending.” This is a restriction which the House imposes on itself in order to avoid debate “which could involve substantial danger of prejudice to proceedings before a court”, and in recognition of the judiciary as a separate arm of government.³⁶

The Chair is concerned to apply the Rule in such a way as to impose the minimum limitation on open debate.

The practice has been to allow members to refer to matters before the courts but not to discuss their merits. Members should not say anything that tries to predetermine the outcome of the case, or comment on matters that are part of evidence before a court.

Irrelevance or repetition³⁷

A member must direct his or her speech to the question under discussion. If a member strays from the subject or persists in repeating arguments already used, the Chair may interrupt and call on him or her to keep to the question

34 Assembly Rules 64-5

35 Assembly Rule 67; *Annotated Digest of Rulings 1994-99*, pp 147-9. See also “Relations with the judiciary” in Chapter 1 – “The National Assembly and its constitutional role”

36 Odgers *Australian Senate Practice*, 8th ed. Canberra, Australian Government Printing Service, 1997

37 Assembly Rule 50

before the House. If the member persists in irrelevance or repetition, the Chair may at its discretion direct the member to discontinue his or her speech.

“General” debates such as the President’s State of the Nation address enable a member to range over the entire spectrum of government activity and in such debates this rule is not normally invoked. In other instances – for example a technical amendment of legislation – the scope of debate may be very narrow.

Same question rule³⁸

The purpose of this rule is to avoid the House being asked to decide on the same matter a second time during an annual session. It provides that an item may not be placed on the Order Paper that is the same in substance as a matter that has been discussed during the same annual session. This includes draft resolutions (although a draft resolution of the same session may be amended or rescinded).

Whether a matter raised is indeed the same as a previous matter, is a question for the Speaker to decide. The rule is in fact seldom applied, since a motion is seldom the same in essence as a previous one; and circumstances may in the meantime have changed.

Rule of anticipation³⁹

In debating any issue, a member may not anticipate the discussion of a subject that appears on the Order Paper for a future date, nor may an item of business be placed on the Order Paper if it is on the same subject as an existing item on the Order Paper.

In ruling on this, the Chair should consider the probability that the matter anticipated will indeed be discussed “within a reasonable time”, and if that is improbable, may allow the discussion to go forward. The object of the Rule is to avoid duplication.

38 Assembly Rule 95

39 Assembly Rule 68; for application to Questions, see *Procedural Developments in the National Assembly*, Item 8, Issue 3 & Item 12, Issue 6

The public gallery

The Chair has ruled that members may not directly address the public or individuals in the gallery. This does not, however, prevent any member from referring to non-members of the House through the Chair. However, the House cannot engage with the gallery. A House sitting is a meeting only of its elected members.

Members of the public attend House sittings to observe and not to participate in the proceedings.

Explanations⁴⁰

See Chapter 9 – “Types of business in plenary”.

3 POINTS OF ORDER⁴¹

Raising a point of order: A point of order may be raised when a member is of the opinion that a Rule or accepted parliamentary practice is being transgressed. The member may bring this transgression to the attention of the presiding officer by taking a “point of order”.⁴²

The transgression must be brought to the attention of the Chair immediately when it occurs. If a point of order is not taken immediately, the

40 Assembly Rule 69

41 Assembly Rules –

- Rule 47 (member speaking may be interrupted by)
 - Rule 58 (member may raise point of order from the floor)
 - Rule 70 (procedure on raising point of order)
 - Rule 72 (right to speak to a point of order)
 - Rule 90 (may speak to a point of order during division)
 - Rule 97 (motion raising point of order does not require notice)
- See also *Annotated Digest of Rulings 1994-99*, pp 123-8

42 Assembly Rule 70 states:

When a point of order is raised, the member called to order shall resume his or her seat, and after the point of order has been stated to the presiding officer by the member raising it, the presiding officer shall give his or her ruling or decision thereon either forthwith or subsequently.

Chair is not obliged to give a ruling on it.⁴³ The member must direct attention to the point complained of, and submit it to the decision of the Chair.⁴⁴ It is for the Chair to decide whether and to what extent a point of order may be discussed, and when the Chair is prepared to rule, no further discussion will be allowed.

The Chair will not make rulings on hypothetical situations.⁴⁵

It is practice for a member to inform the Speaker in advance of his or her intention to raise a major issue that may require a considered ruling.

Must relate to a point of procedure or order: A valid point of order restricts a member's right not to be interrupted. Accordingly, such an interruption is only allowed if it calls attention to a point of order or a point of privilege. In other words, it must relate to the Rules or to parliamentary practice.

One of the functions of the Chair is to protect the rights of members. Therefore the Chair will not allow members to raise what are clearly not valid points of order. For example, points of order should not be used to respond to matters raised by the member speaking or to dispute facts.⁴⁶

Must be succinct and to the point: The point of order must also be put first, before being elaborated upon. It is not in order to make a speech leading up to the point of order.⁴⁷

Members should not raise spurious points of order to disrupt the member speaking or in an attempt to respond to the member speaking:

43 On 5 August 1998, when a member attempted to raise a point of order against certain allegations made in a speech earlier that day, the Deputy Speaker ruled: "Hon member, I am sorry, but I have to stop you right away, because you are raising an issue about something that occurred some time ago. When you want to raise a point of order, you should raise it immediately, when the incident is taking place, or immediately thereafter."

44 *Annotated Digest of Rulings 1994-99*, pp 83-92

45 *Annotated Digest of Rulings 1994-99*, p 195

46 On 13 Feb 1998 the Deputy Speaker ruled that "points of order must be about the order of proceedings ... not about the content of members' speeches", and on 3 May 1995 the Speaker ruled, when it became clear that a member wanted to correct a statement made by another member: "That is not a point of order. That is an opinion. You can only rise on a point of order." The offended member should seek an opportunity in debate to raise a disagreement, or ask a party colleague who has a speaking turn, to respond to a particular point."

47 *Annotated Digest of Rulings 1994-99*, pp 84-5

The Chair will regard this as an abuse of the rules of procedure, and this practice lays a member open to not being recognised by the Chair.⁴⁸

Who may raise a point of order? A point of order may be taken by any member. However, in practice it is often the whips who take points of order on behalf of their party and its members.

Presiding officer's discretion: When a point of order is taken, the presiding officer is obliged to respond by giving a ruling or decision. If it is ruled that the point of order is valid, he or she will take appropriate corrective action. If the response is that the member speaking may continue, the presiding officer is in effect dismissing the point of order.

The presiding officer may give a ruling immediately or give a considered ruling at a later stage.

A ruling from the Chair is final and may not be challenged or questioned. For that reason, a presiding officer may refuse to hear further points of order on a matter once a ruling has been given, particularly in the case of a considered ruling.⁴⁹

Members' recourse: If a member is unhappy with a particular ruling, the first recourse is to take up the matter privately with the relevant presiding officer, either in person or by letter. There is no appeal to the Speaker in respect of rulings given by other presiding officers. The member may request that the subject of the ruling – namely, the principle involved – be referred to the Rules Committee for consideration.

As a last resort, in the event of serious disagreement, the aggrieved member may by notice introduce a motion in the House on the matter, so that the House can take a decision on the matter.

48 *Annotated Digest of Rulings 1994-99*, pp 89-90

49 *Annotated Digest of Rulings 1994-99*, p 87-9

4 THE CHAIR'S POWERS TO MAINTAIN ORDER⁵⁰

Directing member to withdraw unparliamentary language⁵¹

In the course of debate, a presiding officer may, either on his or her own accord, or in response to a point of order, direct a member to withdraw words or refrain from behaviour that, in the presiding officer's opinion, is unparliamentary or otherwise unacceptable. Such words are to be withdrawn, or behaviour ceased, unconditionally and without further debate or discussion.

Member ordered to withdraw from the Chamber⁵²

If the Chair considers that a member is deliberately contravening a provision of these Rules, or is in contempt of or is disregarding the authority of the Chair, or behaves in a grossly disorderly way, the Chair may order the member to withdraw immediately from the Chamber for the remainder of the day's sitting.

Except in unusual and severe cases, in most instances the member will be afforded an opportunity to withdraw offending words or apologise for behaviour on the spot. Often it is only in response to the member's refusal to do so that he or she is then ordered to withdraw for the rest of the day, on the grounds of defiance of the authority of the Chair.

Naming or suspension of member⁵³

If a presiding officer feels that in a particular case an order to withdraw for the rest of the day is inadequate, he or she may —

- (a) if it is the Speaker, suspend the member; or
- (b) if it is not the Speaker, name the member. Thereupon the Speaker,

50 Assembly Rules 49-56

51 *Annotated Digest of Rulings 1994-99*, pp 160-1

52 Assembly Rule 51

53 Assembly Rules 52, 53 & 55

after consulting with the presiding officer, may take such action as is considered necessary. The action decided upon, is announced in the House.

Withdrawal from precincts: A member ordered to withdraw from the Chamber or suspended or named must in the normal course withdraw immediately from the precincts of Parliament. However, if the presiding officer in question was not the Speaker, and the member is a Minister or Deputy Minister, then the Speaker, after consultation with the presiding officer, will order the member to withdraw from the precincts of Parliament or take such other action as he or she deems necessary. This action is announced in the House and appears in the Minutes. Until this announcement has been made, the member in question may not return to the precincts.

Period of suspension: When a member is suspended, the first such period of suspension in any parliamentary session is for five parliamentary working days, the second for ten, and on any subsequent occasion for twenty.

Expression of regret and discharge of suspension: A member who has been suspended or named may submit to the Speaker a written expression of regret. If the Speaker approves this expression of regret, he or she may permit the member to resume his or her seat. If so, the Speaker informs the Assembly accordingly, and the expression of regret as approved by the Speaker appears in the Minutes of Proceedings.

Presiding officer to be heard in silence⁵⁴

Whenever the presiding officer addresses the House during a sitting, any member then speaking or intending to speak must resume his or her seat. The presiding officer is then heard without interruption.

54 Assembly Rule 49

Grave disorder in plenary⁵⁵

If a situation of grave disorder should occur in plenary, the Chair may adjourn the meeting, or may suspend the proceedings for a period to be stated by him or her.

55 Assembly Rule 56

LEGISLATIVE PROCEDURE

1. INTRODUCTION

The system whereby Parliament passes legislation is determined primarily by the Constitution but also by the Joint Rules of Parliament and the House Rules of the Assembly and the Council. It involves several categories of bill, each of which is subject to a different procedure.

Note: Except where otherwise indicated, in this Chapter reference is made to bills initiated by the Executive.

See “Bills” in Chapter 15 – “Parliamentary papers” for a discussion of the front page and contents.

2. GENERAL PROVISIONS RELATING TO LEGISLATION

Legislative categories¹

The main legislative categories are –

1. Ordinary bills not affecting the provinces (“section 75 bills”).
2. Ordinary bills affecting the provinces (“section 76 bills”)
 - a) introduced in the Assembly; and
 - b) introduced in the Council.
3. Money bills
 - a) Main appropriation bill.
 - b) Other money bills.

¹ Constitution, sections 73-77

4. Bills amending the Constitution

- a) directly affecting provinces or the Council.
- b) not directly affecting provinces or the Council.

Mixed bills: Bills which incorporate features of two or more of categories (1) to (4) above are constitutionally out of order and may not be proceeded with.

Initiation of bills

By whom: Bills may be initiated by –

1. the Executive;
2. private members; and
3. parliamentary committees (but not a joint committee).²

Only the Minister of Finance may introduce a money bill.

Where may bills be introduced: Any bill may be introduced in the Assembly.

Only a section 76 bill (“ordinary bill affecting the provinces”) may be introduced in the Council.

Tagging (classification) of bills³

As soon as a bill is introduced, it is referred to the Joint Tagging Mechanism (JTM) to be classified into one of the above categories.

² Joint Rule 32(2)

³ Joint Rules 151-8 & 244-5; *Procedural Developments in the National Assembly*, Item 38, Issue 4; Item 21, Issue 5

Joint Tagging Mechanism: This body consists of the Speaker and Deputy Speaker, and the Chairperson and permanent Deputy Chairperson of the Council, advised by parliamentary legal staff.

The function of the JTM is to examine all bills that come before Parliament in order to –

1. classify (or “tag”) them (see Legislative categories above); and
2. check whether they are constitutionally and procedurally in order.

The JTM also serves as a consultative structure to ensure that amendments to a bill do not render it out of order, and to advise whether amendments affect the classification of a bill.

Explanatory memorandum: The explanatory memorandum accompanying a bill must include an opinion by the departmental or state Law adviser as to the classification of the bill. The JTM takes this into account in reaching a finding.

Tabling of findings: JTM findings are tabled in the ATC and conveyed to the relevant committee. The following is an example of an ATC entry of this kind:

ANNOUNCEMENTS:

National Assembly and National Council of Provinces:

The Speaker and the Chairperson:

- (1) The Joint Tagging Mechanism (JTM) on 18 September 2002 in terms of Joint Rule 160(3), classified the following Bill as a section 75 Bill:

- (i) ***Higher Education Amendment Bill*** [B 25 - 2002]
(National Assembly - sec 75).

Final ruling: For the purposes of all parliamentary proceedings the finding of the JTM is final and binding on both Houses.

Versions of bills

Bill number: When a bill is introduced, it is allocated a number. For example, the number **B 25-2002** is given to the 25th bill to be introduced in 2002 (the “B” stands for bill). The cover of the bill reflects by which Minister (or member or committee) it has been introduced.⁴

Amended bill: When a committee adopts amendments to a bill, the amendments are published in a version of the bill referred to as the “A” version (for example **B 25 A-2002**), while the entire bill, as amended, is published as the “B” version (**B 25 B-2002**) and is marked “As amended by the (Portfolio/Joint/Ad hoc) Committee on ...”.

*Redrafted bill:*⁵ Where a Committee redrafts a bill rather than merely amending it, a “B” version is published, marked “As presented by the (Portfolio/Joint/Ad hoc) Committee on ...”. An “A” version is not published.

Additional versions of the bill, numbered “C”, “D” and so on, may result from further amendments of the bill at a later stage of its progress through the legislative procedure.

Language of bills⁶

Joint Rule 220 provides that any bill must be in one of the official languages. The language in which a bill is introduced is the official text for the purposes of parliamentary proceedings.

The official text of the bill must be translated into at least one of the other official languages before the official text is sent to the President for assent, and the official translation/s must accompany the official text.

The cover page of a bill specifies which language is the official text, and which is the translation.

4 See also “Bills – Front Page” in Chapter 15 – “Parliamentary Papers”

5 Assembly Rule 249(3)(g)

6 Joint Rules 220-222; Constitution, section 6(1), 6(2) & 6(3)(a); *Procedural Developments in the National Assembly*, Item 33, Issue 4

Language of amending bills: The official text of an amending bill need not be in the same language as the principal Act, but in that case one of the official translations must be in the same language.⁷

By Rules Committee decision a bill will not be scheduled for debate in the Assembly unless a translation has been received of the bill as introduced.

Withdrawal of bill⁸

The person in charge of a bill introduced in the Assembly may withdraw it at any time before the Second Reading is decided. The Council Rules contain a similar provision.

Programming of legislation, including time limits and fast-tracking

See Chapter 10 – “Programming of business”.

3. SECTION 75 BILLS (ORDINARY BILLS NOT AFFECTING THE PROVINCES)

Description

A “Section 75 bill” is an ordinary bill not affecting the provinces. In other words, it does not amend the Constitution and does not deal with the “functional areas of concurrent national and provincial legislative competence” listed in Schedule 4 to the Constitution. Section 75 bills initiated by the Executive are the most common type of legislation.

Role of Council: While the Council considers and may propose amendments to or reject a section 75 bill, the Assembly can reject the changes and can pass such a bill which has been rejected by the Council, by passing it again.

7 Joint Rule 222

8 Assembly Rule 299; Council Rule 231

In contrast to other decisions by the Council, for a decision on a section 75 bill each delegate has one vote (in other decisions, voting is by province).

Pre-introduction⁹

Submission of draft bill to presiding officers: Once a bill is approved by Cabinet, the draft of the proposed bill, with an explanatory memorandum explaining its objects, is submitted to the Speaker and the Chairperson of the Council for referral to the relevant portfolio (Assembly) and select (Council) committees, to assist them in planning their work and enable them to acquaint themselves with the bill. This procedure does not apply to the Main Appropriation Bill or to bills in respect of which premature disclosure may result in prejudice.¹⁰

Prior notice of introduction: Before a bill may be introduced, prior notice of its publication must be given in the Government Gazette together with an explanatory summary or the draft text of the bill.¹¹ However, this prior notice need not be given where the member in charge of the bill has, in consultation with the Speaker, certified the bill as an urgent matter.¹²

Introduction and referral¹³

Introduction: When the relevant state department and the state Law Advisers are satisfied with the text of a bill, it is certified by the state Law Advisers in at least one language and delivered, together with its explanatory memorandum, to the Legislation and Proceedings Unit of Parliament.

Certification: The state Law Advisers certify a bill as being consistent with the Constitution, and properly drafted in the form and style that conforms to legislative practice. If the bill is not so certified, it must be accompanied by a report by a state Law Adviser on why it has not been certified.

9 Joint Rule 159 & Assembly Rules 233, 241 & 242

10 Joint Rule 159(4)

11 Assembly Rule 241

12 Assembly Rules 233(2) & 241(5)

13 Joint Rule 159; Assembly Rules 243 & 246-248; *Procedural Developments in the National Assembly*, Item 28, Issue 4

After the bill has been proofread by the Legislation and Proceedings Unit in consultation with the state Law Advisers, a number is allocated to it and it is printed.

A notice is then printed in the ATC of the introduction of the bill in the Assembly by the relevant Minister, and the bill is distributed.

First Reading of bill: In the vast majority of cases the bill as introduced is regarded as having been read a first time. However, the Rules allow a Minister to request a 15-minute first reading speech to introduce the bill, which may be followed by a 3-minute statement by each party.¹⁴

Referral: As soon as a bill is read a first time, the Speaker in most instances refers it to the appropriate portfolio committee. This is usually announced in the same ATC entry that announces introduction of the bill.¹⁵

However, the Assembly may by resolution decide to refer the bill to any other Assembly committee, or the Houses may refer the bill to a joint committee.¹⁶

This is an example of an ATC entry announcing the introduction and referral of a bill:

National Assembly and National Council of Provinces:

The Speaker and the Chairperson:

(1) The following Bill was introduced by the Minister of Education in the National Assembly on 18 September 2002 and referred to the Joint Tagging Mechanism (JTM) for classification in terms of Joint Rule 160:

(i) Higher Education Amendment Bill [B 25 - 2002] (National Assembly - sec 75) [Bill and prior notice of its introduction published in Government Gazette No 23828 of 9 September 2002.]

The Bill has been referred to the Portfolio Committee on Education of the National Assembly.

14 Assembly Rule 247(3)

15 For referral of bills on intelligence matters to ad hoc committee, see *Procedural Developments in the National Assembly*, Item 20, Issue 6

16 Assembly Rule 247(5)

Committee process¹⁷

This paragraph does not deal with committee procedure as such. The discussion below is limited to outputs of the committee and interaction between the committee and the Assembly.

Function of committee: A committee may recommend approval or rejection of a bill or present, with its report, an amended version or a redraft of the bill.

In amending or redrafting a bill, the committee is confined to the subject of the bill and, if it is an amending bill, to the subject of the amendment/s. If the committee wishes to go beyond this, it requires an instruction from the Assembly to do so.¹⁸

Report of committee: The list of required contents of a committee's report on a bill may be found in the Rules.¹⁹ Among other things, the committee –

1. must provide a list of all amendments rejected by the committee.
2. if it is not a unanimous report –
 - a) specify in which respects there was not consensus; and
 - b) in addition to the majority report, express any views of a minority in the committee.
3. may report on any matter arising from its deliberations on the bill but not necessarily related to it.

A committee's report on a bill is not normally considered by the Assembly unless it contains recommendations other than those on the bill itself. In this case the report may recommend separate consideration of these recommendations and be placed on the Order Paper for consideration.

¹⁷ Assembly Rules 249-250; Joint Rules 165-171

¹⁸ Assembly Rule 254(3)

¹⁹ Assembly Rule 251; Joint Rule 168

Second Reading stage²⁰

In order to distinguish between different stages in the passage of a bill through the Assembly, the consideration of a bill by the Assembly, once a committee has reported on it, is called the “Second Reading”. (The term derives from the Westminster parliamentary tradition.) A period of three days after a committee’s report on a bill has been tabled, must elapse before the debate on the Second Reading may commence.

Order Paper entry: An entry is printed on the Order Paper in the following terms:

Second Reading debate - **Higher Education Amendment Bill**
[B 25B - 2002] (National Assembly - sec 75) - (Minister of Education).

Initially the above Order Paper entry will appear under the general heading of “Further Business”, but on the day the bill is to be debated, it will appear under Orders of the Day.

Debate on Second Reading: The debate on the bill in the Assembly (the “Second Reading” debate) is conducted on the subject of the bill. In the case of a bill amending legislation, the debate should be confined to the subject of the proposed amendments. Such a debate may take place in an Extended Public Committee (see Chapter 8 – “Sessions and Sitings”) but a decision on adoption of the Second Reading may only be taken by the Assembly.

The debate is preceded by the Secretary at the Table of the House reading the relevant item on the Order Paper. If the Second Reading is approved, the Secretary reads out the short title of the bill.

*Amendments proposed by members before decision on Second Reading:*²¹ After a bill has been placed on the Order Paper for Second Reading but

²⁰ Assembly Rules 253-257

²¹ Assembly Rule 254

before the Assembly decides on the Second Reading, a member may place amendments on the Order Paper. Amendments previously rejected by the committee may only be so placed on the Order Paper by the Minister in charge. These amendments must be in order and must not affect the principle of the bill or change its classification. The Speaker's decision on this is final.

Where amendments have been placed on the Order Paper, at the conclusion of the Second Reading debate, the Speaker may either –

1. recommit the bill and amendment/s to the committee; or
2. put the amendment/s for decision by the Assembly and then the Second Reading of the bill as a whole, including any approved amendment.

The Committee may only consider the amendments and report on them. When the report comes before the Assembly again, the Speaker puts the amendment/s for decision, after which the Assembly takes a decision on the Second Reading (see Chapter 15 – “Decision of Questions”).

By approving the Second Reading, the Assembly passes the bill.²² Thereafter it goes to the Council for its consideration.

Proceedings before and after consideration by the Council²³

If the Assembly passes the Second Reading of the bill, it is submitted without delay to the Council.²⁴ The Council must do one of the following –

1. pass the bill;
2. pass the bill subject to amendments proposed by it; or
3. reject the bill.

²² Assembly Rule 253(4) & (5)

²³ Constitution, section 75(1)(a)-(d); Joint Rules 181-3; Assembly Rules 269-72

²⁴ Joint Rule 181

If the Council passes the bill, it is submitted to the President for assent (see “Procedure on adoption of bill” below).

If the Council rejects the bill or passes it subject to amendments, the Speaker must refer the bill and any amendments back to the relevant Assembly portfolio committee or any other appropriate committee for –

1. a report on the Council’s rejection of the bill or on the amendments; and
2. recommendations on whether the bill should be passed again, with or without any amendments, or whether it should not be proceeded with.

When the report is tabled, the bill comes up for debate and decision. The Assembly may pass the bill again, either with or without amendments, or decide not to proceed with the bill, without referring it again to the Council.²⁵

Procedure on adoption

See “Procedure on adoption of bill” below.

4. SECTION 76 BILLS (ORDINARY BILLS AFFECTING THE PROVINCES)

Description

A “section 76 bill” is an ordinary bill that deals with the “functional areas of concurrent national and provincial legislative competence” listed in Schedule 4 to the Constitution (see subsections (3) to (6) of section 76 of the Constitution). Such a bill can be introduced either in the Assembly or in the Council.

²⁵ Assembly Rule 272; Joint Rules 181-3

Pre-introduction

Same as for section 75 bills.

Introduction and referral

Introduction in either House: A section 76 bill may be introduced in either the Assembly²⁶ or the Council.²⁷

If it is introduced in the Assembly, the procedure for introduction and referral is the same as for section 75 bills (see above).

If a bill is introduced in and passed by the Council, it is referred to the Assembly and goes through the same procedure as if it had been introduced in the Assembly.

Referral: Same as for section 75 bills.

Committee procedures²⁸

The procedure is the same as for section 75 bills.

Process between Houses

Council amendments: The Council may amend a section 76(1) bill. (In the case of a section 75 bill, the Council may only propose amendments.) When a section 76(1) bill is amended by the Council, then²⁹ –

1. if the relevant portfolio committee chairperson so recommends, the bill may be placed directly on the Assembly Order Paper for debate and decision, or
2. the bill may go to the relevant committee for a report and recommendation on the Council's amendments. In this case, the relevant committee may

26 Constitution, section 76(1)

27 Constitution section 76(2)

28 Assembly Rules 249-50; Joint Rules 165-171

29 Assembly Rule 274

not propose amendments to the bill before them, but may consult the JTM on whether any of the Council amendments affects the classification of the bill.

Amendments by either House: Any amendment of a section 76 bill by either House must be passed by both Houses before the bill is submitted to the President for assent. The various procedures that may result from interaction between the Houses are detailed in section 76 of the Constitution and in Assembly Rules 273-282 and Joint Rules 184-190.

Mediation

If the Houses fail to agree on a section 76 bill, the bill goes to a mediation committee³⁰ consisting of members of both Houses. If mediation fails, then –

1. in the case of a section 76 bill introduced in the Assembly, the Assembly may nevertheless pass the version of the bill it prefers, by a two-thirds majority.
2. if the section 76 bill was introduced in the Council, the bill lapses.

The various procedural possibilities are described in full in section 76 of the Constitution.

For a discussion of the mediation committee, see that heading in Chapter 16 – “Parliamentary committees”.

Procedure on adoption

See “Procedure on adoption of bill” below.

30 Joint Rules 104-110 and Constitution, section 78

5. MONEY BILLS AND THE BUDGET PROCEDURE³¹

General

A money bill is defined in section 77 of the Constitution³² as follows –

77. (1) A bill is a money bill if it –

- (a) appropriates money;
- (b) imposes national taxes, levies, duties or surcharges;
- (c) abolishes or reduces, or grants exemptions from, any national taxes, levies, duties or surcharges; or
- (d) authorises direct charges against the National Revenue Fund, except a bill envisaged in section 214 authorising direct charges.

(2) A money bill may not deal with any other matter except –

- (a) a subordinate matter incidental to the appropriation of money;
- (b) the imposition, abolition or reduction of national taxes, levies, duties or surcharges; or
- (c) the authorisation of direct charges against the National Revenue Fund.

A money bill follows section 75 procedure, and may only be introduced in the Assembly. Only the Minister of Finance may introduce a money bill.

A special procedure³³ is laid down in the Assembly Rules for the introduction and consideration of the Main Appropriation Bill or another bill that appropriates money for the ordinary annual services of the government or that imposes taxes, levies or duties for that purpose. (The Minister must consult the Speaker when exercising a choice of procedure in introducing a money bill.)³⁴

31 Constitution, section 77; Assembly Rules 284-95

32 Constitution, section 77, as amended by the Constitution of the Republic of South Africa Second Amendment Act, No 61 of 2001

33 Assembly Rules 286-95

34 See Note to Assembly Rule 288

At present there is no procedure for amending a money bill. However, legislation may be passed providing for a procedure for Parliament to amend money bills. Such legislation is not yet in place.

The annual budget is drawn up with reference to medium-term financial policy as reflected in the Medium Term Expenditure Framework. Budgeting within this medium-term framework is examined by the Joint Budget Committee (see that heading in Chapter 15 – “Parliamentary Committees”).

Main Appropriation Bill (the Budget)

Description: The Main Appropriation Bill is the annual bill that appropriates money for the ordinary annual services of the government. The bill consists mainly of a Schedule made up of Votes. Each Vote represents the projected annual budget of a specific department of state or other state agency. There is a separate Vote for Parliament.

Pre-introduction: When a bill is introduced in terms of the special procedure, the normal pre-introduction measures for bills generally do not apply. Instead, the procedure described below is followed.

Introduction: The Minister of Finance delivers an introductory speech in the Assembly on the appointed day. This is the Budget address, a statement of how the Government intends to raise taxes and allocate resources for the coming year, together with a general overview of state finances. In delivering the address, the Minister lays on the Table, among other papers, the bill, the Estimates of Expenditure and Revenue, a Budget Review, and Income Tax and Customs and Excise proposals.

Referral: On the day it is introduced, the bill, together with its accompanying documentation, is referred to the Portfolio Committee on Finance. The Rules prescribe a maximum period of seven consecutive Assembly working days for consideration of the bill by the committee (this

period is sometimes extended by resolution of the House). At the same time, the bill is placed on the Order Paper for First Reading.

First Reading: The First Reading debate may not be conducted before the committee has presented its report. This is traditionally a general political debate.

Consideration of Votes and Schedule: Once the First Reading has been passed, a debate is held on each of the various Votes, over the course of several weeks. These debates provide the opportunity for a full discussion of all areas of government activity.

These proceedings make up a major portion of the parliamentary year and constitute an important part of the process whereby Parliament fulfils its oversight duties.

Once debates have been conducted on all the Votes, the Assembly takes a separate decision on each Vote in the Schedule, and then on the Schedule itself. (Decisions on the Votes are generally postponed and programmed to be taken on a single sitting day.) Thereafter the bill comes up for Second Reading. The Second Reading debate on the Main Appropriation Bill is by convention a brief general debate.

Referral to Council: If the Second Reading is approved, the bill is referred to the Council for concurrence.

Other money bills

A money bill other than the Main Appropriation Bill is dealt with in terms of section 75 procedure but may only be introduced by the Minister of Finance.

The term “money bill” covers most legislation emanating from Chapter 13 of the Constitution, ie legislation relating to macro-economic policy and the financial administration of the state, and includes bills abolishing or

reducing, or granting exemptions from, national taxes and other charges, or authorising the withdrawal of money from the National Revenue Fund. See the statutory definition under “General” above.

Referral of money bills to committee³⁵

The Rules require that money bills be referred to the Portfolio Committee on Finance. Where appropriate, such a bill that deals with the sphere of a particular portfolio committee may also be referred to that committee in order to accommodate consideration of sector-specific aspects. However, the Portfolio Committee on Finance reports on the bill to the House.

6. BILLS AMENDING THE CONSTITUTION³⁶

Types of constitutional amending bill

These are of two kinds –

1. Constitutional amendments that need to be passed only by the Assembly. These bills are submitted to the Council merely for a public debate in that House.
2. Bills that must be passed by both Houses. In respect of these, therefore, the Council has a power of veto. They are the following –
 - a) Amendments to sections 1 and 74 of the Constitution.
 - b) Amendments to Chapter 2 of the Constitution.
 - c) Any amendments that relate to matters affecting the Council, or that alter provincial boundaries, powers, functions or institutions; or that deal specifically with a provincial matter.

³⁵ *Procedural Developments in the National Assembly*, Item 29, Issue 7

³⁶ Constitution, section 74; Assembly Rules 258-267; Joint Rules 172-80

Furthermore, if such amendments concern only a specific province or provinces, the amendments must be approved as well by the province or provinces concerned. In such a case the relevant province effectively has a veto power.

Constitutional amendments that may be passed by the Assembly alone may not be contained in a bill that contains constitutional amendments that are required to be passed also by the Council.³⁷

Pre-introduction

At least 30 days before introducing a bill amending the Constitution, the relevant Minister must publish in the Government Gazette particulars of the proposed amendment for public comment. Particulars must also be submitted to the provincial legislatures for their views. The Minister must also submit the particulars to the Council for a public debate, if the proposed amendment is not an amendment that is required to be passed by the Council (see “Types of constitutional amending bill” above).

Introduction and referral

Introduction: When a bill amending the Constitution is introduced, any written comments received from the public and provincial legislatures must also be submitted.

Referral: The bill is referred to the appropriate committee, usually the portfolio committee that deals with constitutional affairs.

Second Reading

Time limit: The bill may not be put to the vote in the Assembly within 30 days of its introduction or, if it was tabled while the Assembly was in recess, from the date of tabling.

³⁷ Joint Rule 172

Special majorities: Constitutional amendments require to be passed by special majorities, as specified in subsections 74(1) to (3) of the Constitution. Most amendments require the bill to be passed by a supporting vote in the Assembly of at least two-thirds of all members (a minimum of 267 members).

Voting procedures: The constitutional requirement of a special majority requires use of the electronic voting system even where there is no dissent, to ensure that the requirement is complied with.

Constitutional amendment bills not affecting provinces

If the amending bill does not affect the provinces, then if the Assembly approves the Second Reading, it is submitted to the President for assent.

Constitutional amendment bills affecting provinces

If the Assembly approves the Second Reading, the bill is submitted to the Council to deal with the bill in terms of Council Rules. If the bill is approved by the Council, it is submitted to the President for assent.

Amendments by Council: The Council may amend the bill in which case the amendments must be considered by the Assembly. If so, the bill is either recommitted or the amended bill is considered directly by the Assembly.³⁸

*Mediation:*³⁹ In the event of disagreement between the Houses on a constitutional amendment bill affecting the provinces, the Joint Rules provide for referral of the bill to a mediation committee. However, where mediation fails, the bill lapses.

38 Assembly Rule 264

39 Joint Rules 177-80

7. PRIVATE MEMBERS' BILLS⁴⁰

The Rules of the Assembly state that members require the permission of the Assembly to introduce a bill, and stipulate the procedure to be followed.

The Rules set out several steps to be followed –

1. The member must submit to the Speaker a memorandum that sets out the proposed legislation and explains its objects, stating any financial implications it may have and whether those implications would be a determining factor in considering the legislation.
2. The Speaker must table the memorandum and refer it to the Committee on Private Members' Legislative Proposals and Special Petitions⁴¹ ("the Committee").
3. The Committee, having consulted the relevant portfolio committee, must either recommend that the member be permitted to proceed, with or without conditions, or that permission be refused.
4. The Committee's recommendations, together with the member's original memorandum and any report by the relevant portfolio committee, are then tabled for the consideration of the House, which may approve the proposal (with or without conditions), refer it back to the Committee, or refuse permission to proceed.
5. If permission is given for the bill to proceed, the member must prepare a draft bill, and a memorandum setting out the objects of the bill, in the correct form. In doing so, he or she must consult the Joint Tagging Mechanism and comply with the relevant Rules concerning prior notice and publication of the bill. The Rules provide that the Speaker must reimburse the member for reasonable expenses incurred in complying with the provisions of this paragraph, provided the expenses were approved by the Speaker before they were incurred. (Staff try to assist

⁴⁰ Constitution, section 73(2); Assembly Rules 209-13, 230 & 234-7

⁴¹ Assembly Rules 209-13

with shorter bills; longer and more complex or technical bills may be beyond staff capacity.)

6. Once this stage is reached, the Assembly proceeds with the bill in the normal way. The introducing member is in charge of the bill.

8. *BILLS INTRODUCED BY COMMITTEE*⁴²

The Rules of the Assembly state that Assembly committees require the permission of the Assembly to introduce a bill, and stipulate the following procedure to obtain permission –

1. The committee proposing to introduce a bill must table in the Assembly a memorandum that sets out the particulars and explains the objects of the proposed bill, including details of any financial implications.⁴³ The Speaker must place the proposal on the Order Paper for decision.
2. The Assembly may give permission for the bill to be proceeded with – with or without conditions – and express itself on the desirability of the bill. It may also refer it back to the committee, or refuse permission.
3. If permission to proceed is granted, the committee must prepare in the prescribed form a draft bill, together with a memorandum that sets out and explains the objects of the bill. It must consult the Joint Tagging Mechanism and comply with the relevant rules for introduction.⁴⁴ At this point the committee publishes the bill for public comment and may hold public hearings. In terms of Rule 240, the committee must give officials of any relevant state department sufficient opportunity to state their case before the committee. The bill may then be finalised and formally introduced.
4. Since the bill has at this stage already been processed by the committee, it is immediately placed on the Order Paper for Second Reading and not again referred to any committee.

⁴² Constitution, section 73(2); Assembly Rules 230 & 238-40

⁴³ Assembly Rule 238(1)

⁴⁴ Assembly Rule 248 or, if a constitutional amendment, Rule 258

9. PROCEDURE ON ADOPTION OF A BILL⁴⁵

When a bill has been passed by Parliament, it is submitted without delay to the President, who assents to and signs it. It thereupon becomes an Act of Parliament, is allocated an Act number and is published in the Gazette. It comes into effect when published, or on a date determined in terms of the Act itself. The copy signed by the President is kept by the Constitutional Court.

*Referral back by President:*⁴⁶ If the President has reservations about the constitutionality of the bill, he or she may refer it back to the Assembly for reconsideration.

The bill is referred to an Assembly committee that considers the President's reservations, confers, if relevant, with the corresponding Council committee, and reports to the Assembly.⁴⁷ The Joint Rules provide in detail for the options open to the Assembly (Joint Rules 205-8).

*Application by members of Assembly to Constitutional Court:*⁴⁸ An application, which must be supported by at least one third of the members of the Assembly, to the Constitutional Court for an order declaring that all or part of an Act of Parliament is unconstitutional, may be made within 30 days of the signature and assent to the Act by the President.

45 Constitution, sections 79-82;

46 Constitution, section 79; Joint Rules 202-8

47 Constitution, section 79(3); Joint Rule 203

48 Constitution, section 80

QUESTIONS TO THE EXECUTIVE

Section 92 of the Constitution stipulates that members of the Cabinet are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions. The procedure for putting questions to the Executive is one of the ways in which Parliament holds the Executive to account.¹

Questions may be put for oral and written reply to the President, the Deputy President and Cabinet Ministers on matters for which they are responsible. Two hours are set aside on Wednesdays for questions for oral reply, and this “Question Time” has precedence over other business on those days.

The Speaker may direct that an additional 30 minutes be added to Question Time to accommodate questions standing over from a previous question day owing to the absence of the responsible Minister.²

Members hand in signed questions to the Questions Office, marked for oral or written reply. A member may give notice or take charge of a question on behalf of an absent member if the member has been authorised to do so by the absent member.³ The questions are edited under the authority of the Speaker, in terms of the requirements set out below, and made available to government departments to enable them to prepare replies for their Ministers. Questions are printed on a green Question Paper.

The President answers six questions once per term in accordance with the annual parliamentary programme. The Deputy President answers four questions during ordinary Question Time, generally once every two weeks.

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- 1 Section 55(2) of the Constitution provides that –
The National Assembly must provide for mechanisms
(a) to ensure that all executive organs of state in the national sphere of government are accountable to it; and
(b) to maintain oversight of
(i) the exercise of national Executive authority, including the implementation of legislation; and
(ii) any organ of state
- 2 Assembly Rule 109(3)
3 Assembly Rule 107(7)

Ministers are divided into three clusters for the purposes of questions, and each week, in rotation, a cluster is questioned.

Assembly Rules 107 to 117 relate to questions procedure.

1. RULES AND CONVENTIONS APPLICABLE TO CONTENT OF QUESTIONS

Questions placed on the Question Paper are required to conform to a series of rules and conventions aimed at ensuring that this procedure remains an effective mechanism for obtaining information from the Executive. Questions may therefore be edited by the Questions Office under the authority of the Speaker.⁴

1.1 FORM OF QUESTIONS

Object of questions

The object of questions is to –

1. obtain information; and
2. press for action.

Questions must be phrased accordingly.

Rules of debate applicable

The rules of debate (see Chapter 11 – “Rules of debate and maintenance of order”) are applicable to questions – thus, a question is not permissible which –

1. contains offensive expressions.

⁴ Assembly Rule 107(6) provides: “If a notice of a question offends against the practice or these Rules the Speaker may either amend the question or return it to the member who submitted it.” The Questions Office acts under the authority of the Speaker

2. casts a reflection on the conduct or character of persons – whose conduct may only be challenged in a substantive motion;
3. anticipates discussion on an order of the day.
4. repeats in substance questions already answered in that annual session, or that the Minister has refused to answer. However a similar question different in some respects may be asked; and the same question may be put to different Ministers to the extent that they have a responsibility in terms of their portfolios.
5. criticises decisions of either House of Parliament.
6. publishes any name or statement not strictly necessary to make the question intelligible.⁵
7. refers to the merits of a *sub judice* matter.
8. makes discourteous reference to a friendly foreign country or its Head of State.

Arguments and expressions

Questions may not –

1. express an opinion or seek the expression of one.
2. contain arguments, inferences or imputations.
3. contain unnecessary epithets.
4. contain rhetorical, controversial, ironical or offensive expressions.
5. contain extracts from newspapers or books, or paraphrases or quotations from speeches.

5 For where a request was made to make a name public, see *Annotated Digest of Rulings 1994-99*, p 40

The facts on which a question is based may be set out briefly, but the questioner is responsible for ascertaining the accuracy of the facts.

Practical exclusions

Questions may not –

1. only provide information;
2. convey a particular point of view;
3. constitute a speech, or be excessively long;
4. refer to communications between an individual member (other than the questioner) and a Cabinet member;
5. be based on a hypothetical proposition;
6. seek an opinion on a question of law, such as interpretation of a statute, an international document or a Cabinet member's own powers. However it is in order to ask under what statutory authority a Cabinet member acted in a particular instance;
7. seek a solution to a legal question;
8. raise questions which would require an impractically extensive answer;
9. seek information on matters of past history for the purposes of argument;
10. be trivial, vague or meaningless; or
11. be a repeat of other questions, with trivial variations.

1.2 SCOPE OF QUESTIONS TO MINISTERS

Questions must relate to matters for which Cabinet members are officially responsible. Accordingly the following criteria are applied –

1. Requests for information are not usually accommodated in respect of matters falling under local or other statutory authorities.
2. It is not in order to ask for information about matters that are the responsibility of bodies or persons not responsible to the government, such as banks, the Stock Exchange, joint stock companies, employers' organisations and trade unions.
3. Questions relating to semi-state bodies are restricted to matters for which Cabinet members are responsible by statute or other legislation. However, questions on national statistics in relation to these bodies are in order.
4. Questions may not refer to the consideration of matters by a commission or a parliamentary committee or deal with matters within the jurisdiction of the chairperson of a parliamentary committee or a House of Parliament.
5. Questions may not be asked about the action of a Cabinet member for which he or she is not responsible to Parliament.
6. It is not in order to put a question to a Cabinet member for which another Cabinet member is more directly responsible, or to ask a Cabinet member to influence a colleague.
7. Questions suggesting amendments to a bill before the Assembly or in committee are inadmissible unless such amendments may only be moved by a Cabinet member.

8. It is inadmissible to ask a Cabinet member whether statements in the Press or by private persons or unofficial bodies are accurate, or to call for comment on statements by persons in other countries (unless the statement is contained in a message from another government).
9. Questions may not seek information about the internal affairs of other independent countries, unless such countries form part of a common organisation through which the information is obtainable.
10. It is permissible to ask questions calling on Cabinet members to grant relief to South African citizens in foreign countries who are under arrest, or to protect persons or companies from discrimination in foreign countries; but questions on the actions of foreign states in refusing entry to South African citizens have not been allowed.
11. Questions requiring information that is readily accessible are not allowed.
12. It is in order to ask for a Cabinet member's intentions with regard to matters for which they are officially responsible, and to ask for administrative or legislative action in regard to such matters.

1.3 SCOPE OF QUESTIONS TO PRESIDENT AND DEPUTY PRESIDENT

The President may be asked questions about matters of national or international importance. These may include –

1. matters for which the Government is responsible, excluding matters for which a line Minister is directly responsible.
2. his or her public duties.
3. the granting of honours.

4. the dissolution of Parliament.
5. the definition of the responsibilities of Cabinet members.
6. whether statements made by Cabinet members (not Deputy Ministers, who are not members of the Cabinet) on public occasions represent the policy of the Government.

He/she may also be asked to furnish a copy of a speech made by him or her outside Parliament. A speech made by the President on a public occasion may only be questioned by calling for a copy and asking whether it represents Government policy.

Note:

1. Matters of a party political nature are out of order.
2. Questions may not seek an opinion.

When the President is not answering questions, these questions must be directed to the Deputy President.

Questions for oral reply relating to the Presidency must be directed to the Deputy President or the Minister in the Presidency.

2. QUESTION PAPERS

There are two types of question paper, the “Question Paper” and the “Internal Question Paper”. Both are printed on green paper.

Question Paper

The Question Paper appears on the Monday preceding a particular question day and is delivered to all members. It is an agenda for oral questions, and therefore reflects the questions for oral reply on a given question day.

Internal Question Paper

The Internal Question Paper –

1. is a running, up-to-date record of all questions not yet replied to;
2. contains questions for both oral and written reply;
3. appears on Tuesdays, Thursdays and Fridays during session; and
4. is the document whereby notice is given of questions.

The Internal Question Paper indicates which questions for oral reply are standing over and which are appearing for the first time. It also indicates which questions for written reply have not yet been answered.

A limited number of these papers is supplied to the presiding officers, whips, members, each state department, staff, the Library of Parliament and the Press.

The three Internal Question Papers issued in the course of a sitting week differ in the following way –

- 1, The Tuesday Internal Question Paper contains all the questions for oral reply for the next Wednesday and, as the first Internal Question Paper of the week, a summary of all questions for written reply that have not yet been replied to.

2. The Thursday Internal Question Paper contains the questions for oral reply rearranged in the order in which they will be answered on the next Wednesday.
3. The Friday Internal Question Paper contains all the questions for written reply received during that parliamentary working week. It contains a summary of all questions for oral reply that still have to be answered. Questions to the President appear in Friday's Internal Question Paper when applicable.

3. QUESTIONS FOR ORAL REPLY: GENERAL

The following information is valid for all questions for oral reply:

Format of questions

A question for oral reply may not contain more than five subdivisions.⁶

Members are allowed to ask for a maximum of two figures in oral questions.

A question for oral reply which is of a statistical nature may be converted into a question for written reply (dates are not regarded as statistical).⁷

Questions transferred for oral reply⁸

Where a question for written reply has not been answered within ten working days (in practice this is interpreted as ten parliamentary working days) from the day on which that question was set down for reply, then if the member in whose name the question stands so requests, the question is placed on the Question Paper for oral reply. However, if the reply arrives by 12:00 on the day on which it is to be replied to, the question is not called in the House.

6 Assembly Rule 108(2)

7 Assembly Rule 108(3)

8 Assembly Rule 117

Time limits for replies⁹

The reply to a question is limited to three minutes. However, if the Chair considers that the matter is of sufficient importance, up to an additional two minutes may be added to this time.

The reply to a supplementary question is limited to two minutes.

Order of questions on question day

On question day the categories of questions for oral reply are dealt with in the following order –

1. Questions to the Deputy President (every second week as applicable).
2. Questions for written reply by the Deputy President transferred for oral reply.
3. Questions for oral reply to the Deputy President standing over.
4. Urgent questions (see that heading below).
5. Questions to Ministers.
6. Questions for written reply to Ministers transferred for oral reply.
7. Questions for oral reply to Ministers standing over.

On days on which the President answers questions there are no questions to the rest of the Cabinet.

⁹ Assembly Rule 113

Party order of questions

The order of parties in which questions are asked is –

1. determined by the Chief Whips' Forum from time to time (at the start of a Parliament and after a floor-crossing period);
2. based on the number of seats a party has in the Assembly, and
3. usually the same as that applicable to Members' Statements in the Assembly.

A party is not obliged to ask a question and if it does not do so, the next party's question will be called.

The party sequence of questions to any cluster of Ministers, or to the President or Deputy President, starts from the point at which it was interrupted on the previous occasion. In the case of the President, the sequence begins with the majority party at the start of a parliament, and rotates until the end of that parliament. However, an instance of members crossing the floor may lead to an adjustment.¹⁰ For the clusters of Ministers and the Deputy President, the sequence starts anew every year and every parliament.

Supplementary questions

Four supplementary questions of one minute each, arising from the reply to a question, are allowed;. The member who asked the question is given the first opportunity to ask a supplementary question. It is in the discretion of the presiding officer to decide who may ask the other supplementary questions. A member who asks a supplementary question is entitled to express an opinion or make a statement, but should not make a speech. The Chair decides whether the supplementary question is in order.¹¹

¹⁰ Assembly Rules 108(9) and 109(6)

¹¹ *Annotated Digest of Rulings 1994-99*, p 109

The reply to a supplementary question is limited to two minutes.

A supplementary question must consist of only one question.

A question already answered cannot be held over for supplementaries.¹²

Notice period

The notice period for questions for oral reply to the President, Deputy President and Ministers respectively, in terms of the Rules, may in an exceptional case be shortened or waived with the prior consent of the Speaker.¹³

4. QUESTIONS FOR ORAL REPLY: QUESTIONS TO THE PRESIDENT

The President answers questions of national or international importance once per term in accordance with the annual parliamentary programme. The questions are sifted in a process involving the Speaker, to ensure that only questions satisfying the set criteria are put to the President.

At any other time questions relating to the President must be directed to the Deputy President.

Notice of questions

Questions to the President must be submitted to the Questions Office by 12:00 on the Monday, 16 days prior to the Wednesday on which they are due to be answered. The approved questions are published by the Friday, 12 days before question day.

¹² *Annotated Digest of Rulings 1994-99*, p 112

¹³ Assembly Rule 107(1)

If more than one question is submitted, parties must indicate the order of priority.

Any questions not published are returned to the member who submitted them.

Number of questions

The President answers a maximum of six questions on each occasion. This excludes –

1. questions on the Question Paper because they stood over; and
2. written questions transferred for oral reply.

Order of questions

The order in which questions are asked by parties is based on the numerical strength of parties in the House and is the same as for questions to Ministers. At the start of question time the sequence is continued from where it was interrupted during the previous question session. This rotation continues for the duration of a parliament.

Questions standing over

The President may request that a question for oral reply stand over until another question day. In this case that question stands over until his or her next question day.

Generally speaking, questions to the President do not stand over.

5. QUESTIONS FOR ORAL REPLY: QUESTIONS TO THE DEPUTY PRESIDENT

Questions for oral reply can be addressed to the Deputy President, who answers four questions every second week, before questions to Ministers.

When the President is not answering questions, questions that would otherwise be directed to him must be directed to the Deputy President.

The Deputy President will not answer questions –

1. in the week that the President answers questions; or
2. in the week when he or she (the Deputy President) is answering questions in the Council.

The arrangement concerning order of questions is the same as for Ministers.

Nature of questions to the Deputy President

Questions to the Deputy President can be wide-ranging. Mostly such questions will be questions of national or international importance. If the President is not answering questions, the Deputy President will act on his or her behalf.

Notice of questions¹⁴

Questions to the Deputy President must be submitted by party representatives in prioritised order before 12:00 on the Monday nine days before the question day for publication on the Tuesday. Any such questions not published will be returned to the party representatives who may resubmit them for a later date.

14 Assembly Rule 110(6)

Number of questions

The Deputy President will answer a maximum of four questions on each day on which he or she answers questions. This excludes –

1. questions on the Question Paper because they stood over; and
2. written questions transferred for oral reply.

The time allocated for such questions forms part of the total time for questions.

Order of questions¹⁵

The order of questions by parties for oral reply to the Deputy President is determined on the basis of the numerical strength of parties in the House and is the same as that which applies to questions to Ministers.

Questions standing over

Generally speaking, questions to the Deputy President do not stand over.

Questions transferred for oral reply

These are dealt with on the same basis as those to Ministers

6. QUESTIONS FOR ORAL REPLY: QUESTIONS TO MINISTERS¹⁶

Procedure

A member who gives notice of a question must give the Questions Clerk a signed copy of the notice on A4 paper, indicating clearly that the question is

15 Assembly Rule 110(5)

16 Assembly Rule 109

for oral reply. Questions are placed on the Internal Question Paper in the order in which they are received.

For the purposes of questions for oral reply, portfolios are grouped into three clusters, as follows:

Cluster 1 – Peace and Security: Defence, Foreign Affairs, Safety and Security, Correctional Services, Justice and Constitutional Development, Intelligence.

Cluster 2 – Social Services and Governance: Home Affairs, Education, Social Development, Housing, Public Service and Administration, Communications, Water Affairs and Forestry, Health, Sport and Recreation, Minister in the Presidency, Provincial and Local Government.

Cluster 3 – Economics: Finance, Public Works, Public Enterprises, Trade and Industry, Labour, Agriculture and Land Affairs, Transport, Environmental Affairs and Tourism, Minerals and Energy, Arts, Culture, Science and Technology.

The clusters rotate on a weekly basis. Thus each cluster of Ministers will usually answer questions every three sitting weeks.

Prioritising of questions¹⁷

Questions for oral reply appear in the Internal Question Paper in the order in which they are received. At this point, parties may rearrange their questions in order of priority, using Tuesday's Internal Question Paper as a basis. The Questions Office then arranges all these questions in a party sequence, starting with the party with the most members. The sequence is determined by the Chief Whips' Forum when required, and is usually the same as that for Members' Statements. The Internal Question Paper for Thursday shows the questions in the order in which they have been prioritised.¹⁸

17 Assembly Rule 108(7)

18 Assembly Rule 108(9)

Notice of questions

Questions must be placed on the Order Paper at least six working days before the question day on which they are to be answered.

Number of questions

No member may ask more than two questions per question day.

Urgent questions¹⁹

A member who wants an urgent question to be placed on the Question Paper for a day on which it would not be dealt with by a particular cluster, should hand in the question to the Speaker, clearly indicating that it is an urgent question. The request is dealt with as if it were a request for a debate on a matter of public importance (see that heading in Chapter 9 – “Types of business in plenary”). It must be submitted at the latest by 12:00 on the Tuesday in the week before the week in which it is to be answered. The Speaker must consult the Leader of Government Business before approving it. Accommodation of such a question is subject to the availability of the responsible Minister.

Application may be made to put an urgent question to any member of Cabinet, including the President and the Deputy President.²⁰ No time is added to Question Time to accommodate an urgent question.

Questions standing over

A Cabinet member may request that a question for oral reply stand over until another question day, in which case it stands over until the next question day for that cluster.

¹⁹ Assembly Rule 112

²⁰ *Procedural Developments in the National Assembly*, Item 13, Issue 7

If a question put during question time stands over because the Minister is not in the House to answer, and the member who asked the question so requests, the question will be put on the next Question Paper for reply out of cluster.²¹ Thirty minutes may, by direction of the Speaker, be added to the next question day to accommodate such a question or questions.

Other questions regarded as standing over are those questions not reached during Question Time for which replies are not handed in by 12:00 on the day following question day.

A question may stand over only once. If it stands over again, the Question Paper must be endorsed to the effect that the question has not been replied to.²² Such endorsement is done by placing a bold black line around the question(s).

7. QUESTIONS FOR WRITTEN REPLY

Questions for written reply may be addressed to the President, the Deputy President and Ministers. Such questions are not dealt with in the House but appear on the Internal Question Paper. These are usually not very urgent or they require long and statistical replies.

Questions with replies prepared by the relevant departments and signed by the Minister, are distributed to all the stakeholders: the member who asked the question, the Speaker, the press, Hansard, the Secretary to Parliament and the Papers Office. The questions together with replies are published as part of Hansard in a separate booklet called *Questions and Replies of the National Assembly*.

Format of questions for written reply

These may not exceed five paragraphs and/or fifteen subdivisions.²³ As a matter of practice, questions should not exceed five paragraphs in length.

21 Assembly Rule 109(3)

22 Assembly Rule 114(2)(b)

23 Assembly Rule 116(2)

The Questions Office, under the authority of the Speaker, exercises discretion in determining the length of questions allowed in accordance with the Rule.

Notice of questions

A question for written reply received before 12:00 on a Tuesday will appear on the Internal Question Paper on the Friday of that week.

Number of questions allowed

Number of written questions per Minister: There is no limit to the number of written questions that may be put to the President, Deputy President and Ministers.

Number of written questions per member: Each member may ask three questions for written reply per week.

Procedure to be followed by members

A member who wishes his or her question to be dealt with as a question for written reply, should indicate this clearly at the top left of the page. It must be typed on A4 paper and signed.

Questions are placed on the Internal Question Paper in the order in which they are received.²⁴

Questions for written reply transferred for oral reply²⁵

If a member does not receive a reply to his or her question for written reply within 10 parliamentary working days after it has appeared on the Internal

²⁴ Assembly Rule 107(4)

²⁵ Assembly Rule 117

Question Paper for the first time, that member is entitled to instruct the Questions Clerk to place such question for oral reply on the Question Paper.

Questions so transferred are additional to the quota of ten questions per state department and the two questions for oral reply to which a member is entitled.

Summary of unanswered questions

A summarised list of questions for written reply not yet replied to is published once a week on the Internal Question Paper, usually on Tuesdays.

Endorsement of Internal Question Paper²⁶

Questions which have not been replied to within ten working days (taken as ten parliamentary working days) are endorsed to the effect that they have not been replied to. This is done by placing a bold black line around them on the summary.

Withdrawal of questions for written reply

A member who wishes to withdraw a question for written reply must instruct the Questions Office accordingly. This will be indicated on the summarised list of questions for written reply on the Internal Question Paper and the relevant Office or Department will be informed.

²⁶ Assembly Rule 116(5)

8. REPLIES TO QUESTIONS²⁷

Members of the Executive have discretion as to the answers they provide to a question. When a member complained that a Minister had not answered his question, the Deputy Speaker responded by reminding members that –

... the Chair regulates the proceedings in the House, (but) it is not possible for the Chair to dictate to Ministers how they should reply to questions. If members are dissatisfied, there are political processes available to them to be critical of the manner in which Ministers deal with questions.

The Chair has however called on Ministers to reply succinctly.

A Minister may propose to table, rather than read out, a lengthy reply. However, the House may insist that it be read out.²⁸

Questioner need not be present: It has been ruled that it is not in order for a Minister to withhold an answer because the member who put the question, is not present.

²⁷ *Annotated Digest of Rulings 1994-99*, pp 106-116

²⁸ *Annotated Digest of Rulings 1994-99*, p 108



DECISION OF QUESTIONS

1. INTRODUCTION¹

All questions before the Assembly are decided by majority decision. This may or may not involve counting of votes. The process of taking a vote in the Assembly is known as a “division”.

Voting is public and transparent and is reflected in full in the Minutes of Proceedings.²

In a division, members’ votes are recorded using the electronic voting system. The name and vote (or abstention from voting) of each member is recorded. Voting may however also be done manually (see “When electronic system is not in use” below).

When decision taken

A question may come before the House for decision –

1. when debate on the matter has been concluded;
2. without a debate being conducted on the matter;³ or
3. at a time subsequent to the conclusion of a debate on the matter, after a decision of the question has been postponed.⁴ A decision is postponed –
 - a) to ensure that there is a quorum when the question is put;
 - b) because the House has set aside time for a series of decisions to be taken simultaneously, for example on the Votes in a main appropriation bill;

1 Constitution, section 53; Assembly Rules 75-93

2 The only exception to this is the secret ballot whereby the President, Speaker and Deputy Speaker are elected if their election is contested

3 Parties may agree that a question be considered without debate. Assembly Rule 262, on the process for a constitutional amendment bill, also provides that in certain circumstances voting takes place without debate. There is no debate on the election of the President, the Speaker or Deputy Speaker

4 Assembly Rule 76

- c) because the debate took place in an Extended Public Committee (see that heading in Chapter 8); or
- d) because (in terms of Assembly Rule 296) a second vote is being taken where a decision requiring a special majority, failed to obtain that majority.

2. QUORUMS⁵

Except where a special majority is required by the Constitution, the following quorums are required for voting –

1. a majority (201) of members must be present –
 - a) before a vote may be taken on legislation; and
 - b) on a resolution to remove the Speaker or Deputy Speaker from office.
2. at least one third (134) of the members must be present before a vote may be taken on any other question before the Assembly.

(See also “Special majorities” below.)

When there is no objection to a decision, and the presence of a quorum is not challenged, questions are decided on the presumption that there is a quorum present.

If quorum challenged: If, when a question is put for decision, the presiding officer is alerted to the possible absence of a quorum, he or she must direct that the bells be rung for five minutes. If after that time there is no quorum, he or she may either suspend proceedings or postpone the decision of the question.⁶ Alternatively, where a division has been called, presiding officers have directed that the presence or absence of a quorum may be determined by the result of electronic voting.

⁵ Constitution, section 53; Assembly Rules 25 & 26

⁶ Assembly Rule 26 (“Absence of quorum”)

Quorum not present: Where the result of a division shows that the required quorum was not present for the decision, this means that no decision has been taken, and the decision may be deferred.⁷

3. STANDARD PROCEDURE FOR DECIDING A QUESTION (WHERE NO SPECIAL MAJORITY IS REQUIRED BY THE CONSTITUTION)

The following procedure is followed when the Constitution does not require the decision to be taken by a special majority.

1. The Chair announces the Question to be decided, by saying: “The Question before the House is – ” [eg “ ... that the bill be read a second time”; “that the motion moved by X be agreed to”].

2. **Consensus:** The Chair then asks: “Any objection?” and pauses for an answer. If there is no objection, the Chair states: “No objection. Agreed to.” At this point, the question has been agreed to.

3. **Objection:** If there is objection, the Chair then puts the Question to the House, in the following terms: “I put the Question. Those in favour will say ‘Aye’; those against, ‘No’”.

Question not heard or understood: If the question is not heard or understood, the Chair puts the question again.

4. Members respond by saying “Aye” and/or “No”. The Chair then judges, on the voices and on probability, whether the “Ayes” or the “Noes” are in the majority, and states: “I think the [Ayes/Noes] have it.”

No further debate: At this point the Question has been fully put, and no further debate on the subject is allowed

Declarations of vote: At this point, the Chair may grant the opportunity for declarations of vote (see that heading overleaf).

⁷ *Annotated Digest of Rulings 1994-99*, pp 28 & 118

5. If there is no disagreement with the assessment by the Chair of who is in the majority, the Chair proceeds to confirm the assessment, with the words: “And so they have”.

In this case the decision, not being opposed, is taken by consensus, and no voting takes place.

6. If there is objection to the Question being agreed to as assessed by the Chair, this can be expressed in two ways:

a) by parties requesting that their objection be recorded; or

b) by calling for a formal division (see “Division” below).

Recording objection: A member (usually a whip) of any party or parties in the minority may rise when the Chair has made its assessment (see ‘3’ above) and state: “I request that the objection of [party’s name] be recorded.” The Chair confirms that that party’s objection will be recorded in the Minutes of Proceedings. When this happens, the question is decided, and the Minutes reflect the following:

Question agreed to ([name of party/ies] dissenting).

Recording abstentions: A request has in the past been complied with for a party to have its abstention from the decision recorded where there was no division.⁸

Declarations of vote⁹

When a decision is to be taken by the Assembly, the presiding officer has a discretion to permit one member of each political party to state, in a speech of not more than 3 minutes, the reasons why his or her party is in favour of or against the question. Normally no questions may be put from the floor to a member making a declaration of vote.

⁸ *Procedural Developments in the National Assembly*, Item 10, Issue 4

⁹ *Assembly Rule 81; Annotated Digest of Rulings 1994-99*, p 30

The opportunity for declarations of vote is usually requested and negotiated in advance. In applying discretion, the practice is for the presiding officer to be disinclined to allow declarations where debate on the question has just been concluded.

Usually, but not necessarily, declarations of vote are made where there is opposition to the question. In the vast majority of cases, they are made when a division is held. One exception to this is the day when the votes of the main appropriation bill are taken. During this procedure, which often involves multiple divisions, declarations of vote are often made even on those votes where there is no objection.

Shorter period: By prior agreement, declarations of vote may be limited to periods shorter than three minutes. The House has on occasion adopted a resolution to formalise the agreement.

Written declaration: Rule 81(2) makes provision for a written declaration of vote, but this has not been used.

Division¹⁰

Calling for division: If a party strongly opposes a proposed decision, it may wish to take the matter to a vote. In this case a member (usually a whip) rises when the Chair has made its assessment (see ‘3’ above) and, addressing the Chair, states that his or her party calls for a division.

Bells rung: At this, the Chair will announce

“A division having been called, the bells will be rung for 5 minutes.”

Division bells are then rung throughout the parliamentary buildings, and coloured lights on wall units throughout the building flash to indicate which House is dividing (green for Assembly, red for Council). This is to alert members not in the Chamber to the fact that a division is taking place and

¹⁰ *Annotated Digest of Rulings 1994-99*, p 33

their attendance in the House is required. During this time, members should return to their designated seats in order to vote.

Doors closed: The Secretary at the Table informs the Chair when it is time for the bells to stop ringing. When the bells stop ringing, service officers close the doors to the Chamber, and no member is allowed to enter or leave until the result of the division has been announced.

Voting procedure using electronic system: The presiding officer reminds members that each member must vote from his or her allocated seat in the Chamber, and states: “Voting will now commence.” The Table activates the voting system.

Guided on procedure by the presiding officer, members vote by pressing buttons of different colours on the electronic consoles on their desks. When the voting system is activated, members vote “Yes”, “No” or “Abstain”. (A member who abstains is present for the purposes of the quorum.) If a member presses more than one button, the last button pressed before the time for voting ends, is the one recorded by the system.

After a few moments, once the presiding officer has checked whether all members have voted, the voting system is deactivated, and the result of the division is printed out electronically at the Table. The Secretary at the Table passes a written record of the result to the Chair, who thereupon announces the numerical result (Ayes, Noes and abstentions).

Shortly afterwards, a print-out of all the names of those who voted and abstained is available at the Table. Whips are entitled to scrutinise the print-out and to make minor adjustments or corrections. Any such changes must be signed by the whip in question. All names on both sides of a division are printed in the Minutes.

Member calling for division to remain and vote with minority:¹¹ The member who called for the division may not leave the Chamber until the result of the division is declared, and must vote with the minority.

11 Assembly Rule 88

Further divisions: If further divisions are required to dispose of the question, or if there is a series of divisions for any reason, the period during which the bells are rung for a second and subsequent divisions, is usually shortened to 15 seconds at the discretion of the presiding officer, who announces this to the House.

Confusion or error:¹² Where confusion or error occurs in relation to a division, another division is held, unless the results can be corrected in another way. Minutes may be corrected if numbers have been inaccurately reported.

Points of order during division:¹³ It is in order to rise on a point of order during a division, provided the point of order has to do with a matter that arises out of or during the division.

Vote of presiding officer¹⁴

The presiding officer has no deliberative vote and therefore does not vote, except –

1. when there is an equal number of votes on each side of a question. In this case, he or she must cast a deciding vote;¹⁵ or
2. when a question must be decided with a supporting vote of at least two thirds of the members, he or she may cast a deliberative vote.

4. SPECIAL MAJORITIES

The Constitution requires special majorities in the Assembly for decisions on the following:

1. **extension of state of emergency** [section 37(2)(b)]
First extension: Supporting vote of a majority of members (minimum 201 Ayes).

12 Assembly Rules 92 & 93

13 Assembly Rule 90

14 Constitution, section 53(2)

15 There is no constitutional or statutory provision relating to the use of a casting or deciding vote. However, a presiding officer may wish to keep the question open for the subsequent decision of the House and avoid changing the status quo, where possible

Any subsequent extension: Supporting vote of at least 60% of the members (minimum 240 Ayes).

NB: A resolution on extension of a state of emergency may only be adopted following a public debate in the Assembly.

2. **amendments to the Constitution** [section 74]
Sections 1 & 74: Supporting vote of at least 75% of members (minimum 300 Ayes)
Any other provision of the Constitution: Supporting vote of at least two thirds of members (minimum 267 Ayes)
3. **section 76 bills rejected by the Council** [section 76]
Section 76(1)(e), (i) & (j): Supporting vote of at least two thirds of members (minimum 267 Ayes)
4. **bill changing seat of parliament** [section 76(5)]
Supporting vote of a majority of the members (minimum 201 Ayes)
5. **removal of President** [section 89]
Supporting vote of at least two thirds of members (minimum 267 Ayes)
6. **motions of no confidence in President or Cabinet** [section 102]
Vote supported by a majority of members (minimum 201 Ayes)
7. **removal of judges** [section 177]
Supporting vote of at least two thirds of members (minimum 267 Ayes)
8. **appointment and removal of members of Human Rights Commission, Commission for Gender Equality, and Electoral Commission and the Auditor-General and Public Protector** [section 193(5) & 194(1)]
Recommendation for appointment: Supporting vote of at least 60 per cent of members (minimum 240 Ayes)

Recommendation for removal of Public Protector or Auditor-General:
Supporting vote of at least two thirds of members (minimum 267 Ayes)
Recommendation for removal of a member of a Commission: Vote supported by a majority of members (minimum 201 Ayes)

9. **appointment and removal of certain members of the Public Service Commission** [section 196(8) & (11)]
Vote supported by a majority of members (minimum 201 Ayes)
10. **inspector to monitor intelligence services** [section 210]
Approval of appointment: Supporting vote of at least two thirds of members (minimum 267 Ayes)

Vote count always conducted when special majority required: When the Constitution requires a decision to be taken by a special majority, then in all cases, even where there is consensus on the question, the electronic voting system is used to record whether a sufficient number of members is in favour of the question.

5. TAKING DECISIONS ON MATTERS OTHER THAN BILLS AND MOTIONS

The Constitution and other laws require the Assembly to take decisions on matters other than bills and motions. An example is the ratification of international agreements. Such matters are considered by a committee before coming before the Assembly for consideration. Instead of coming before the House in the form of a committee report with recommendations, the relevant Order Paper entry reflects the actual decision to be taken. If the relevant committee report on the issue includes additional recommendations flowing from its consideration of the matter, the committee report is placed on the Order Paper for separate consideration.¹⁶

¹⁶ *Procedural Developments in the National Assembly*, Item 3, Issue 6

6. WHEN ELECTRONIC SYSTEM NOT IN USE

In the case of breakdown of the electronic voting system, Whips have in the past carried out a physical count of their party members and announced the number of members and how the party is voting. If a member wishes to vote outside party lines, that member approaches the Table to record the member's vote. Using this method, individual votes are not minuted, but only the total votes cast per party.

When this has been done, the Minutes of Proceedings have reflected only the numbers and the parties involved, and not the names of the individual members voting.¹⁷

“Fewer than four” Rule: Assembly Rule 84, not applied in electronic voting, may be applied in manual voting. It provides that if the presiding officer finds that fewer than four members support the call for a division, he or she forthwith declares the result of the division.

“Fewer than 15” Rule: This Rule (Assembly Rule 87) is also not applied to electronic voting, but could be applied for manual voting. It states that when, on a division taking place, fewer than 15 members appear on one side, the presiding officer forthwith declares the result of the division.

In both cases, those few members on one side are recorded in the Minutes.

Multiple decisions relating to motion and amendments

See “Amendments” in Chapter 9 – “Types of business in plenary”.

¹⁷ *Procedural Developments in the National Assembly*, Item 38, Issue 6

PARLIAMENTARY PAPERS

Parliamentary papers in the Assembly are of two kinds:

A. House papers, namely –

1. Order Paper (blue)
2. Bill (white)
3. Question Paper (and internal Question Paper) (green)
4. Minutes of Proceedings (white)
5. Announcements, Tablings and Committee Reports (known as the “ATC”) (white)
6. Weekly programme (green)

(The colours indicated above refer to Assembly House papers. Some equivalent Council papers are printed on different colours.)

B. Papers laid upon the Table (“tabled”): These are papers submitted to the Assembly for its consideration in terms of statutes, an order of the Assembly or the Rules. They may emanate from parliamentary committees, the Executive or elsewhere.

A. HOUSE PAPERS

1. ASSEMBLY ORDER PAPER

The Order Paper is the agenda for plenary sittings of the National Assembly. It is printed on blue paper and issued to members on the morning of every sitting day. (The Council Order Paper is printed on yellow paper.)

(On session days when there is no plenary sitting of the Assembly, a paper with the heading “Meetings of Committees” is published in place of the Order Paper. It is printed on blue paper on days when the Council is sitting, and on white paper when neither House is sitting.)

The Order Paper is divided into different sections –

Heading

Besides the main heading, containing the name of the document and the date, the heading includes –

Date and page number: The top line of each page is a “running header” containing the date of the Order Paper and the page number. (Pages are numbered from the beginning of an annual sitting and, in an election year, from the first sitting after the election.)

Order Paper Number: Each Order Paper is numbered. The number No 62–2003] *Fifth Session, Second Parliament* signifies the Order Paper for the 62nd sitting day in the fifth session of the Second Parliament, in the year 2003. (See “Numbering of Parliaments” in Chapter 8 – “Sessions and sittings”.)

“Meeting of House” section (agenda for the day)

This first section is the agenda of the day’s sitting. The time the House convenes is reflected, and the different types of business, such as “Questions”, “Members’ Statements”, “Motions” and “Orders of the Day”, are indicated by bold headings against the margin.

In the case of “Members’ Statements”, the heading alone appears. In other cases, such as “Orders of the Day” and “Motions”, each item of business under that heading is detailed (see “agenda items” below).

In the case of “Questions” the Order Paper provides additional information, such as the office-bearer or cluster of Ministers answering Questions to the Executive that day. The Question Paper provides details of the questions.

Agenda items: The following are some examples of agenda items on the Order Paper:

Consideration of stage of bill: The item on the Order Paper will reflect –

1. the stage of the bill (for example, “Introduction” or “Second Reading debate”) that is to be taken.
2. the name and number of the bill.
3. the House of Parliament in which it was introduced and the constitutional provision under which it was introduced, for example (National Assembly – sec 75).
4. the Minister or other person in charge of the bill.

Consideration of committee report: The Order Paper item contains the following information –

1. number (if relevant) of report.
2. name of the committee or other body that produced the report.
3. date and number of page of ATC on which the text of the report appears.
4. title of report.

Motion: The Order Paper item will reflect –

1. whether the motion is a subject for discussion or a draft resolution.
2. in the case of a draft resolution, the person introducing it and the wording.
3. in the case of a subject for discussion, the topic and, where applicable, the name of the member introducing it.

Further business

Business under this heading is ready for consideration by the House, but is not to be considered on the day in question. Items may range from Orders of the Day to motions of which notice has previously been given. There is no guarantee that such business will eventually be considered by the Assembly. Placement of business on the Order Paper is a matter for the Programme Committee, subject to the Rules.

Appendixes

The appendixes to the Order Paper contain important information, updated daily, on the business of the House, in particular the legislative process. They can be consulted to determine the stage of the process that a bill has reached. The titles of the appendixes are largely self-explanatory – the following are common examples –

1. bills at various stages of the legislative process, for example (the list is not comprehensive) –
 - a) in draft form, being prepared by committees and not yet introduced.
 - b) referred, or to be referred, to committees (including the type of bill and the name of the committee).
 - c) referred to Joint Tagging Mechanism.
 - d) read a 2nd time in the Assembly and sent to the Council for concurrence.
 - e) returned to Assembly for consideration of Council amendments.
 - f) rejected by Council.
 - g) section 75 bills to which Council amendments were proposed.
 - h) agreed to by Council and sent to Assembly for concurrence.
 - i) returned to Council for consideration of Assembly amendments.
2. international agreements, including all agreements not yet finalised by both Houses, in chronological order by date of tabling, with information on progress. This list therefore serves as a monitoring mechanism.
3. legislative proposals referred to committee on private members' legislative proposals and petitions (or the equivalent Council committee).
4. meetings of Assembly, Council and Joint Committees. This list includes information on the agenda, venue, date and time of each meeting.

2. *BILLS*

A bill is a proposal for a new law or for a change to one or more existing laws. Most are introduced by the Executive, but some are introduced by private members or parliamentary committees. If adopted by Parliament, a bill becomes law and is called an Act. Bills relating to the provinces (“section 76 bills”) may be introduced in the Council; all other bills are introduced in the Assembly.¹ A bill comes before the Assembly in a standard format, as follows:

Front page

1. If the bill has been prepared in two languages, then the front page is split in two by a horizontal line in the middle of the page, and information is presented in both languages – one above and one below the line.
2. The front page of a bill reflects the words “Republic of South Africa” followed by the title of the bill in bold capital letters.
3. Below the title, in italics, information is provided on the process that the bill has followed, including, where appropriate: in which House it was introduced; the provision of the Constitution determining its process through parliament; in which Government Gazette an explanatory summary was published; and by which committee it has been amended.
4. Below the additional information, the name of the person (usually a Minister) or committee that introduced the bill is provided.
5. The number of the bill appears in the bottom left-hand corner, in square brackets, for example: **[B 23–2003]**. In this instance, the “B” stands for “bill”, the “23” is the number of the bill, and “2003” refers to the year in which it was introduced. When a committee adopts amendments to a bill, the amendments are published in a version of the bill referred to as the “A” version (for example **B 25 A-2002**). The entire bill, including the

¹ See Chapter 12 – “Legislative process”

amendments, is also published as the “**B**” version (**B 25 B-2002**).² Additional versions of the bill, numbered “C”, “D” etc, may result from further amendments of the bill at a later stage of its progress through the legislative procedure which involves both Houses.

6. The number of copies of the bill printed and the International Standard Book Number (ISBN) are reflected in small print at the bottom of the page.

Contents of bill

Type of bill: A bill may be either a new draft law, or else it may propose to change provisions of an existing Act (an amendment bill). Amendment bills are far more common than bills that represent new draft Acts.

Long title: The long title sets out in brief terms the purposes of the bill.

Clauses: A separate paragraph in a bill with its own subject heading is called a clause. In an Act, such a paragraph is called a section.

In the case of an amendment bill, most clauses are sections of the existing Act, showing the proposed alterations. Inserted words are underlined, and words proposed to be deleted are printed in bold within square brackets. Some clauses insert entirely new sections.

Memorandum on the objects of the bill: All bills must be accompanied by a supporting memorandum.³ Besides discussing the objects, this memorandum specifies the parties consulted in the drafting of the bill, its financial implications for the state, and the opinion of the law advisers concerning the parliamentary process that the bill must follow in terms of the Constitution.

2 Where a Committee redrafts a bill rather than merely amending it, a “B” version is published, marked “As presented by the (Portfolio/Joint/Ad Hoc) Committee on ...”. An “A” version is not published

3 Assembly Rule 243

3. QUESTION PAPER

Question papers contain details of questions put to the Executive during Question Time (usually on Wednesdays in the Assembly). See Chapter 13 – “Questions to the Executive” for a detailed description of Question Papers and Internal Question Papers.

4. MINUTES OF PROCEEDINGS

The National Assembly “Minutes of Proceedings” is the official record of the business transacted in, and the decisions taken by, the Assembly sitting in plenary. All decisions are recorded, but with the exception of the state-of-the-Nation address by the President and major rulings from the Chair, speeches are not recorded.

An issue of the Minutes is published for each sitting of the Assembly. The Minutes of any particular sitting day are usually issued to all members on the morning after the sitting day in question.

Numbering

Minutes are numbered. The number

No 62–2003] Fifth Session, Second Parliament

at the top left of the front page signifies the Minutes of the 62nd sitting day of the fifth session of the Second Parliament, which took place in 2003.

Style

Besides the date, page number, minute number and main heading, the Minutes consist of separate, numbered items of business. While Hansard is a

verbatim record of debates, the Minutes are a verbatim record of decisions made by the House.

Each set of Minutes is signed by the Secretary to Parliament. (The original Minutes signed by the Secretary to Parliament constitute the Journals of the National Assembly.)

Content

Typical items are as follows –

1. the first and second items invariably reflect the time the Assembly convened as well as the presiding officer taking the Chair, followed by a moment of silence for prayer or meditation.
2. the wording of motions and amendments moved, with or without notice, including by whom they were moved.
3. questions to the Executive.
4. members' Statements.
5. announcements from the Chair, for example concerning House membership issues or other House matters.
6. messages received from the other House or from the President.
7. legislative business conducted, including stages of a bill.
8. in the case of a division (vote) on any matter, the list of names of members voting on both sides of the question, together with the names of those abstaining, and the total number of votes cast in each category; and other details such as those parties that made a Declaration of Vote.
9. consideration (in other words, debate and/or decision) of committee reports, including the subject of the report.

10. suspension and resumption of business.

The time taken by particular items of business is also recorded in the Minutes.

*5. ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS
(ATC)*

Strictly speaking, the contents of this document form part of the Minutes of Proceedings of both Houses of Parliament. It is published separately from the Minutes of the Houses for reasons of economy, and contains, in respect of both the National Assembly and the Council –

1. announcements by presiding officers in respect of both Houses;
2. documents tabled in either or both Houses; and
3. committee reports submitted to either or both Houses.

A document “on” the ATC may be printed in full, or else – where it is long or of limited general interest – it may be mentioned by name only. In the latter case, a copy of the document may be obtained on request from the Clerk of the Papers, and members of the committee to which the document is referred, are provided with copies.

Common types of announcement are:

1. assent to bills by President
2. classification of bills by Joint Tagging Mechanism
3. introduction and withdrawal of bills, translations of bills submitted, other stages of legislative process⁴

4 Joint Rule 219 specifies what announcements must be made in the ATC concerning stages of a bill

4. membership of the Assembly and of joint committees and House committees
5. messages from Council concerning bills passed by the Council and transmitted to Assembly
6. referral of tabled papers to committees

Tablings: For a discussion of tablings, see section B of this chapter.

Reports of parliamentary committees: These are made available to members and to the public by being published on the ATC.

B. PAPERS LAID UPON THE TABLE OR “TABLED”

When documents are officially presented to the Assembly or to Parliament, they are said to be “tabled”, in other words, laid on the Table of the Assembly and/or the Council.

Such documents may include reports, returns and statements of all kinds from Ministers, government departments and other authorities, parliamentary committee reports and reports of statutory bodies.

Purpose

Papers are tabled in Parliament –

1. *to give effect to statutory requirements that such a paper be tabled.* In terms of the Constitution, several state institutions (including the Auditor-General, the Public Service Commission, and other institutions supporting democracy) must report to Parliament at least annually.⁵

5 Constitution, sections 216(5)(a), 196(6)(a) and 181(5)

2. *to provide information for the parliamentary process.* Section 92(3)(b) of the Constitution requires members of the Cabinet to provide Parliament with full and regular reports concerning matters under their control. Papers aimed at complying with this requirement are those papers which are considered by the Government to be of interest to Parliament but whose presentation is not necessarily required by statute. Examples of such papers are statements of government policy, such as Green and White Papers.
3. *to enable Parliament to fulfil its task of oversight of the Executive.*

Examples:

1. Section 17 of the Interpretation Act stipulates that a list of Proclamations and Government Notices containing rules and regulations made under Acts of Parliament, must be tabled in Parliament. A summarised entry is made in the ATC.
2. In terms of the Auditor-General Act, No 12 of 1995 and the Constitution, audit reports must be submitted to Parliament by the Auditor-General. (These are automatically referred to the Standing Committee on Public Accounts (SCOPA).)
3. Section 231(2) of the Constitution provides for Parliament to consider international agreements (see “International Agreements” in Chapter 9 – “Types of Business”).

The purpose of tabling is to make the contents of a paper known to members (but see “confidential papers” below). Copies are also made available to the media in Parliament. Tabling is thus an important link in the process of ensuring accountability and transparency.

The tabling process

Tabling originated as a process whereby, at the commencement of each sitting day, Ministers physically laid papers upon the Table of the House. Nowadays, however, papers are normally not physically placed on the Table of a House, but are handed in at the Papers Office, where the Clerk of the Papers prepares a suitable entry for insertion in the *Announcements, Tablings and Committee Reports (ATC)*. Certain papers, however – notably taxation proposals and documents relating to the main budget – are still physically laid on the Table of a House by the Minister. Papers may be physically tabled if the Minister deems it desirable, for example when making a statement in connection with the relevant papers.

It is custom that only a member of the Executive and the Speaker may table a document. A departmental official bringing a paper to the Clerk of the Papers for tabling, is acting under the Minister’s authority.

The ATC reflects in which House or Houses the paper is being tabled.

When papers may be tabled: Documents are not tabled during recess.

Referral of written instruments to committees⁶

The Speaker refers to the appropriate committee without delay –

1. all reports and other written instruments submitted by a member of the Executive or in terms of legislation for tabling in the Assembly.
2. all requests, applications and other written submissions made to the Assembly in terms of legislation to activate a parliamentary process prescribed by legislation (see Chapter 17 – “Procedures relating to appointments and other statutory functions”).
3. all international agreements submitted to the Assembly in terms of section 231 of the Constitution.

⁶ Assembly Rule 303

4. all special petitions and other petitions of a general nature,
5. any other written instrument required to be tabled in terms of the Rules.
6. any other instrument that must be referred to a committee.

If there is doubt as to the appropriate committee to which to refer the papers, the Speaker decides in consultation with the Chief Whip, subject to the Rules or a resolution of the Assembly. If a matter is referred to two or more committees the referral may be accompanied by an instruction —

1. that the committees must confer; and
2. which of them must report, if a report is required.

Confidential papers⁷

Where confidential documents have been submitted to Parliament, it has been practice to publish the names of the documents in the ATC. Such documents are kept confidential while controlled access by relevant persons is provided.

In the past the following system has been adopted –

1. the documents are received by the Speaker or his/her nominee and the Secretary to Parliament or his/her nominee.
2. the documents are placed in a safe set aside for this purpose equipped with a dual lock. One key is held by the Speaker or his/her nominee, and the other by the Secretary to Parliament or his/her nominee.
3. gaining access to the documents requires both principals (or their nominees) to unlock the safe and take the documents to a controlled venue.
4. the venue is guarded, and supervised by the Serjeant-at-Arms.

⁷ See “Handling of confidential documents” and “List of confidential documents published” (pp 6 & 7) & Item 17 “Status of confidential documents before committees” of Issue 4 of *Procedural Developments in the National Assembly*

5. on entering the venue, Members must identify themselves, sign a register and record their time of entering and leaving the venue. No cameras or recording devices may be brought in.
6. the documents are formally made available to specified members. A register is kept in which each member signs for each document that he or she peruses.
7. members are cautioned that the contents of the documents may not be disclosed.



PARLIAMENTARY COMMITTEES

1. INTRODUCTION

Scope of chapter: This chapter is not a detailed guide to procedure within committees. The focus is on committee procedure in relation to the functioning of the Assembly.

Nature of parliamentary committees¹

Some tasks of the Assembly, in particular those involving detailed consideration of matters, are more appropriately performed by a smaller group than the Assembly sitting in plenary. For this purpose, in accordance with the Constitution,² the Assembly in its rules establishes a range of committees with assigned powers and functions to assist it with its work. The committees are required to report regularly on their activities and to make recommendations as appropriate to the Assembly for decision.

Thus, a parliamentary committee consists of a number of members appointed by a House to perform a specific function and report back to the House.

The composition of Assembly committees reflects, as far as is practicable, the numerical strengths of the parties represented in the Assembly.

Committees are appointed to deal with two main areas of work: the work of Parliament (such as legislation and oversight) and Parliament's internal arrangements and procedures.

There are joint committees consisting of members of both Houses³ as well as committees specific to and appointed by each House.

1 See *Procedural Developments in the National Assembly*, Item 16, Issue 4 for discussion of powers and functions of committees

2 Constitution, sections 45, 55-9; see also chapter on legislative process

3 Constitution, section 45

Types of committee

The Rules make provision for several categories of committee –

1. assembly committees appointed by the Assembly and consisting of Assembly members only.
2. joint committees appointed by, and consisting of members of, both Houses.
3. committees dealing with the work of the Assembly (such as portfolio committees).
4. committees dealing with the internal affairs and functioning of the Assembly and of Parliament (“House” or “internal” committees).
5. committees established in terms of the Constitution or other legislation.
6. *ad hoc* committees, constituted by resolution of the House/s.
7. council committees equivalent to National Assembly committees.
8. subcommittees.

Some of the above committees are specifically identified in either the Joint Rules or the Assembly Rules, while others are established by resolution.

2. RULES AND CONVENTIONS APPLICABLE TO ALL COMMITTEES

Powers of committees generally

A committee draws its mandate from and is accountable to the House/s that created it. It functions in terms of the Rules laid down by the House/s. It has the power to report and make recommendations to the House/s but no powers to make decisions, save in respect of its internal proceedings. (There are a

few exceptions to this, chiefly where a parliamentary committee is given special powers by statute; see Chapter 17 – “Procedures relating to appointments and other statutory functions”.) Section 45 of the Constitution makes provision for the establishment and functions of certain parliamentary committees such as the Joint Rules Committee and the Mediation Committee.

A parliamentary committee generally has the following powers⁴ (subject to the Constitution, legislation, the Rules and House resolutions) –

1. to summon any person to appear before it to give evidence on oath or affirmation, or to produce documents.
2. to receive petitions, representations or submissions from interested persons or institutions.
3. to conduct public hearings.
4. to permit oral evidence on petitions, representations, submissions and any other matter before the committee.
5. to determine its own procedure.
6. to meet at a venue determined by it, which may be a venue beyond the seat of Parliament.
7. to meet on any day and at any time.
8. to confer with another parliamentary committee.

Broad functions of committees

Committees play a vital role in the parliamentary process, helping Parliament perform its constitutional functions. The following are the main functions of committees (the list is not comprehensive) –

4 Constitution, section 56; Joint Rule 32; Assembly Rule 138

1. oversight of the Executive, including monitoring of government departments and statutory bodies.
2. consideration (and sometimes drafting or redrafting) of legislation.
3. controlling the internal functioning of Parliament.
4. consideration of private members' legislative proposals.
5. consideration of petitions.
6. consideration of international treaties and agreements.

Committees are one of the mechanisms required by the Constitution to ensure accountability by and oversight of the Executive.⁵ In addition, committees give effect to the constitutional concept of “participatory democracy” by holding public hearings and affording the public the opportunity to contribute to their deliberations.⁶

Committee reports⁷

Since a committee conducts its business on behalf of the Assembly (or in the case of a joint committee, on behalf of both Houses) it must report on its business. It reports on matters for decision, decisions the committee has taken (except those concerning its internal business) and matters on which it has been unable to reach a decision. It must also report at least once a year on its activities.⁸

An Assembly committee processing legislation must submit a report in accordance with Assembly Rules 251-2.

A committee may not submit a minority report; however, a committee report dealing with legislation must, if it is not unanimous, specify any lack of consensus, and in addition to the majority report, express any minority views.

5 Constitution, section 55(2)

6 Constitution, section 57(1)(b)

7 Assembly Rules 137 & 251; Joint Rule 31; *Annotated Digest of Rulings 1994-99*, p 19

8 Exceptions: the Joint Programme Committee and the Mediation Committee are not required to report to the Houses

Presence of members of Parliament at committee meetings⁹

Any Assembly member (and in a joint committee, any member of Parliament) who is not a member of (or co-opted to) a particular committee, may attend and speak in that committee, but may not vote.

Public access¹⁰

The Constitution requires that parliamentary committees conduct their business in an open manner in public. Reasonable measures may be taken to regulate public access, including access to the media.

The Assembly may only exclude the public, including the media, from a sitting of a committee “if it is reasonable and justifiable to do so in an open and democratic society”. Assembly Rule 152 and Joint Rule 47 specify when such exclusion is deemed reasonable, namely when –

1. legislation, the Rules or House resolutions provide for the committee or subcommittee to meet in closed session; or
2. the committee/subcommittee is considering a matter which is –
 - a) of a private nature that is prejudicial to a particular person;
 - b) protected under parliamentary privilege, or for any other reason privileged in terms of the law;
 - c) confidential in terms of legislation; or
 - d) of such a nature that its confidential treatment is for any other reason reasonable and justifiable in an open and democratic society.

(Examples of closed meetings are meetings of the Mediation Committee, and some meetings of the Joint Committee on Ethics and Members’ Interests.)

⁹ Assembly Rule 153; Joint Rule 48

¹⁰ Constitution, section 59; Assembly Rule 152; Joint Rule 47

See also the abovementioned Rules for the process of deciding on meeting in closed session.

Parliament may provide for the searching of any person and, where appropriate, the refusal of entry to, or the removal of, any person from a committee.

Members of committees

*Term and cessation of membership:*¹¹ Members of both Assembly and joint committees are appointed for the term of the Assembly.

Membership ceases when a whip of the party to which the relevant member belongs, notifies the Speaker in writing that the member is to be replaced or withdrawn.

*Alternate members:*¹² The Joint and Assembly Rules provide that alternates may be appointed for one or more specific members of a committee in accordance with the same procedure in which an ordinary committee member is appointed. An alternate may act for another member only when that other member is absent or has vacated office.

It is the practice that alternate members of a committee are routinely provided with the papers of the committee. (See “Rules applicable to subcommittees” below for alternate members on subcommittees.)

*Co-opted members:*¹³ The Joint and Assembly Rules provide that if a committee member and the alternate are both absent from a committee meeting, the chair may co-opt any other member to act as a member of the committee. A co-opted member has the rights of a full member.

*Charges against members:*¹⁴ If any information charging an Assembly member comes before a committee, the committee may not proceed upon that information, but must report it to the Speaker without delay.

11 Joint Rule 22; Assembly Rule 128

12 Joint Rule 21; Assembly Rule 127

13 Joint Rule 28; Assembly Rule 134

14 Joint Rule 30; Assembly Rule 136

Rules applicable to subcommittees¹⁵

(These are general rules, to which exceptions may be stipulated in the Rules in particular cases)

A subcommittee is appointed by its parent committee to assist it in its task. It is accountable to the parent committee and must carry out its task within any framework or guidelines set for it. It may only make recommendations to the parent committee.

A parent committee appoints from among its members the Chairperson, members and any alternate members of its subcommittee. (An exception: The Rules provide that members of the subcommittees of the Assembly Rules Committee and the Joint Rules Committee need not be members of the respective parent committees.)

A parent committee may delegate any of its powers to its subcommittee, and may instruct it to perform any of its functions. It may also determine time-frames within which the subcommittee must complete its task, and determine the nature and timing of its reports.

A subcommittee may proceed with business when no quorum is present. Decisions are reached by consensus. Where no consensus is possible, all views must be reported to the parent committee.

¹⁵ Joint Rules 34-43; Assembly Rules 140-9

3. NATIONAL ASSEMBLY COMMITTEES

3.1 RULES AND CONVENTIONS APPLICABLE TO ASSEMBLY COMMITTEES GENERALLY

(See also “Rules and conventions applicable to all committees” above.)

Appointment¹⁶

Except where the Assembly Rules provide otherwise, the parties appoint the members of a committee and advise the Speaker. The names are published in the ATC.

Chairpersons¹⁷

In most cases a committee elects its own chairperson (some exceptions, specified in the Rules, are dealt with below). A chairperson’s duties are as follows –

1. presides at meetings of the committee.
2. may act on behalf of and in the best interests of the committee when a meeting of the committee to discuss the matter is not practical, if it is a matter of –
 - a) A request to the committee; or
 - b) Taking steps or decisions necessary for the committee to perform its functions or exercise its powers.
3. must exercise a casting vote, in addition to his or her vote as a member, where an equal number of votes is cast on both sides of a question.

16 Assembly Rule 126

17 Assembly Rule 129

Other functions, duties and powers may be imposed on a chairperson by the committee, an Assembly resolution, or legislation.

Unlike the presiding officers of the Assembly, a committee chairperson does not have disciplinary powers. The chairperson acts under the direction, and with the consent, of the committee. In taking decisions, he or she should reflect its will. In the absence of the chairperson, the committee may elect another of its members to perform the functions and exercise the powers of the chair.

Parties and Assembly committees

In Assembly committees (and in the Assembly component of joint committees) parties are entitled to representation substantially in proportion to their numerical strength in the Assembly. Exceptions to this are –

1. where the Rules prescribe otherwise; and
2. where the number of members in the committee does not allow for all parties to be represented.

The Rules also provide that, with a few exceptions, where practicable each party is entitled to a least one representative on a committee.¹⁸ However, even where the number of members in a committee does allow for participation by all parties, it may not be possible in practice for members of small parties to be members of all committees. (After the 1999 general election, a meeting was held with Assembly representatives of smaller parties with a view to accommodating their needs. Broad agreement was reached on an arrangement for representation, which involved increasing the size of some portfolio committees.)¹⁹

Where a party does not have a seat on a committee, this does not prevent its Assembly members from attending meetings and addressing the

18 Assembly Rule 125

19 *Procedural Developments in the National Assembly*, Item 14, Issue 1

committee (see “Presence of members of Parliament at committee meetings” above).

The papers of all committees are provided to all parties.

Quorum²⁰

A majority of the members of the committee constitutes a quorum. A committee may proceed with business in the absence of a quorum, but requires a quorum for decisions. A question before a committee is decided when there is agreement among the majority of the members present.

Powers²¹

See above for general powers of a parliamentary committee.

In addition, an Assembly committee (but not a joint committee) has the power to initiate legislation.

Documents before a committee

Documents “officially before, or emanating from” a committee or subcommittee are open to the public, including the media. A document is officially before the committee when the presiding member places it before the committee or permits it to be so placed.

Instances of documents which may not be made public are detailed in Assembly Rule 157.²²

20 Assembly Rule 133

21 Assembly Rules 138-9, 230, 238-40

22 Rule 157 specifies that documents may not be made public if they –
contain private information that is prejudicial to a particular person;
are protected under parliamentary privilege, or for any other reason are privileged in terms of the law;
are confidential in terms of legislation;
are subject to a media embargo, until the embargo expires; or
are of such a nature that their confidential treatment is for any other reason reasonable and justifiable in an open and democratic society

For the process followed in respect of confidential documents in the possession of Parliament, see “Confidential papers” in Chapter 15 – “Parliamentary Papers”.

3.2 PORTFOLIO COMMITTEES²³

Establishment and composition

Portfolio committees are established in terms of Assembly Rule 199. After the 1999 election, the Assembly Rules Committee agreed that there would be 25 portfolio committees, mirroring government departments, to deal with government affairs. The standard size was set at 17, although some had 19 members as the result of negotiations with smaller parties on committee membership (see “Parties and Assembly committees” above).

Functions

Assembly Rule 201 stipulates in detail the functions of portfolio committees, as follows:

A portfolio committee –

- (a) must deal with bills and other matters falling within its portfolio as are referred to it in terms of the Constitution, legislation, the Rules, or by resolution of the Assembly;
- (b) must maintain oversight of —
 - (i) the exercise within its portfolio of national Executive authority, including the implementation of legislation;
 - (ii) any executive organ of state falling within its portfolio;
 - (iii) any constitutional institution falling within its portfolio; and

23 Assembly Rules 199-203

- (iv) any other body or institution in respect of which oversight was assigned to it;
- (c) may monitor, investigate, enquire into and make recommendations concerning any such executive organ of state, constitutional institution or other body or institution, including the legislative programme, budget, rationalisation, restructuring, functioning, organisation, structure, staff and policies of such organ of state, institution or other body or institution;
- (d) may consult and liaise with any executive organ of state or constitutional institution; and
- (e) must perform any other functions, tasks or duties assigned to it in terms of the Constitution, legislation, the [Assembly] Rules, the Joint Rules or resolutions of the Assembly, including functions, tasks and duties concerning parliamentary oversight or supervision of such executive organs of state, constitutional institutions or other bodies or institutions.

Bills and amendments to bills referred to a portfolio committee must be considered by it in accordance with the Assembly and Joint Rules.

If there is doubt as to which portfolio committee must deal with a specific matter, the Speaker, in consultation with the Chief Whip of the Majority Party, must decide the question.²⁴

Decisions²⁵

A question before a portfolio committee is decided by a majority of the members present, there being a quorum present. A quorum is a majority of the members of the committee.

24 Assembly Rule 201(3)

25 Assembly Rules 133 & 202

3.3 INTERNAL OR “HOUSE” COMMITTEES AND OTHER STRUCTURES

These are committees established to attend to the internal functioning of the Assembly and Parliament. Unlike other parliamentary committees, they are not serviced by the Committee Section.

Rules Committee of the National Assembly²⁶

In terms of sections 57(1) and 57(2) of the Constitution, Parliament has full power to regulate its internal affairs. The Constitution authorises the National Assembly to make Rules and Orders to regulate its business and proceedings. Assembly Rules 158-65 make provision for the Assembly Rules Committee, the most senior Assembly committee.

The committee is chaired by the Speaker and consists of the presiding officers and senior members of all parties. After the 1999 general election, the size of the committee was set at 45. It is the policy-making body in respect of Assembly –

1. rules and procedures;
2. management and administration;
3. financial management, policy and budget; and
4. facilities and support for members.

A smaller body of office-bearers may, in terms of Assembly Rule 163, take decisions during recess on urgent matters. Such decisions must be published in the ATC when the House resumes.

26 Assembly Rules 158-86

Responsibility for the implementation of policy determined by the committee vests in the Speaker, subject to guidance by the committee and the Assembly.

The National Assembly Table Division services and provides technical support to the committee.

Subcommittees of the Assembly Rules Committee²⁷

The Rules provide for seven permanent subcommittees of the Rules Committee, dealing with, respectively: the Assembly budget; support for members; review of the Assembly Rules; internal arrangements; international relations; delegated legislation; and powers and privileges. Membership of these subcommittees is not confined to members of the Assembly Rules Committee. The composition, powers and functions of these subcommittees are stipulated in the Assembly Rules.

Programme Committee of the Assembly²⁸

See Chapter 10 – “Programming of business”.

Committee on Public Accounts²⁹

The committee has the specialised function of considering the financial statements of all government departments and constitutional institutions, as well as audit reports on those statements, Auditor-General’s reports, and other financial statements or reports referred to it. It may also initiate any investigation in its area of competence, and may perform other functions assigned to it concerning parliamentary financial oversight or supervision.

In terms of the Rules the committee appoints its own chairperson. Traditionally, in this Parliament and by international practice, it is chaired by

27 Assembly Rules 165-86

28 Assembly Rules 187-94

29 Assembly Rules 204-8

a member of an opposition party. The committee currently has the same composition as a portfolio committee (17 members).

Committee on Private Members' Legislative Proposals and Special Petitions³⁰

The committee has the specialised function of considering and making recommendations to the Assembly on –

1. all legislative proposals (draft bills) made by Assembly members (see Chapter 12 – “Legislative procedure”); and
2. all special petitions referred to the Committee (see Chapter 9 – “Types of business in plenary”).

During the 1999-2004 Parliament, the committee was composed of 16 members.

***Ad hoc* committees³¹**

Ad hoc committees are established by resolution of the Assembly to perform a specific task. (During a recess the Speaker may establish such a committee after consulting the Chief Whip of the Majority Party and the most senior whips of each of the other parties. Such a decision by the Speaker must be ratified by House resolution at the first opportunity.) The resolution establishing the committee must –

1. specify the task assigned to the committee.
2. set time-frames for –
 - a) the completion of any steps in performing the task; and
 - b) the completion of the task.

30 Assembly Rules 209-13

31 Assembly Rules 214-16

3. specify the number of members or else the names of the members appointed.
4. specify which general powers (see Assembly Rule 138) are vested in the committee.

The names of the members are published in the ATC.

An *ad hoc* committee ceases to exist when it has completed its task and reported to the Assembly; or if it has not completed its task by deadline. In practice the Assembly has extended a committee's deadline by resolution, on being requested to do so in an interim report.

Committee of Chairpersons³²

The function of the committee is to make recommendations to the Rules Committee or the Programme Committee concerning the scheduling or functioning of Assembly committees. It consists of the Chairperson and Deputy Chairperson of Committees (the Chairperson presides), the chairperson of every Assembly committee, and the Assembly chairperson or co-chairperson of every joint committee. (Chairpersons of *ad hoc* committees may be co-opted.)

Assembly Rule 224 provides that the Chairperson of Committees must implement any policy or directive on the scheduling and co-ordination of meetings of committees.

Disciplinary committee³³

This committee – which by custom is constituted only when necessary – is chaired by the Deputy Speaker and, at the Speaker's request, investigates any alleged infringement by an Assembly member that does not involve the

32 Assembly Rules 195-8 & 224

33 Assembly Rules 191-4

privileges or proceedings of Parliament. Besides the Deputy Speaker, the Rules stipulate that it consists of a senior whip from each party in the Assembly nominated by the party; and any other member/s designated by the Speaker. By agreement, the committee, when constituted, has usually consisted of the Deputy Speaker and whips of the larger parties only.

The committee reports to the Speaker, whose decision it is to decide how to proceed.

Chief Whips' Forum³⁴

The Forum consists of –

1. the Speaker and Deputy Speaker.
2. the Chief Whip and Deputy Chief Whip of the Majority Party.
3. the most senior whip of each of the other parties. (A whip may designate another whip to take his or her place.)
4. a committee chairperson designated by the Committee of Chairpersons.
5. the practice exists that the smaller parties which do not have whips send a representative to meetings.

The Forum customarily meets in closed session once a week. It is not a decision-making body but acts as an inter-party forum for the discussion and co-ordination of matters for which the whips are responsible. It meets once a week during session and is chaired by the Chief Whip of the Majority Party. It has become practice for the Speaker and Deputy Speaker not to attend the weekly meetings.

34 Assembly Rules 217-21

4. JOINT COMMITTEES³⁵

4.1 RULES AND CONVENTIONS APPLICABLE TO JOINT COMMITTEES GENERALLY

See also “Rules and conventions applicable to all committees” above.

Establishment and appointment

Certain joint committees and subcommittees are specifically provided for in the Joint Rules. Others, such as ad hoc joint committees, are established by resolution of both Houses.

The Joint Rules provide for the composition of a number of joint committees. Where composition is not specified, the Speaker, after consulting the relevant chief or senior whips of the relevant parties, appoints members of the Assembly component while the Council Chairperson appoints the Council component after consulting the heads of the provincial delegations. Names are announced in the ATC.

Composition

In a joint committee, except where specifically otherwise prescribed in the Joint Rules –

1. party representation in the Assembly component is the same as in an Assembly committee.
2. in the Council component, provinces rather than parties are entitled to equal representation.

³⁵ Constitution, section 45; Joint Rules 15-158

Term of office³⁶

Members of a joint committee are appointed for the term of the National Assembly.

Chairpersons³⁷

The method of designation of chairpersons is stipulated individually in the Joint Rules for each joint committee.

When a joint committee has co-chairs, the chairs must either co-chair meetings, or else agree that one of them takes the chair on any particular occasion.

If a joint committee has a single chairperson, that chairperson has a casting vote in addition to the chairperson's vote as a member. Co-chairs have casting votes within their components, where the components take decisions separately.

Duties: A chairperson's duties are as follows:

1. chairs or co-chairs meetings of the committee.
2. may act on behalf of and in the best interests of the committee when a meeting of the committee to discuss the matter is not practical, if it is a matter of –
 - a) a request to the committee; or
 - b) taking steps or decisions necessary for the committee to perform its functions or exercise its powers.

Unlike the presiding officers of the Assembly and the Council, a committee chairperson does not have disciplinary powers. The chairperson acts under the direction, and with the consent, of the committee. In taking decisions, the chairperson should reflect its will.

36 Joint Rule 22

37 Joint Rules 23 & 24

Calling of meetings³⁸

A meeting of a joint committee may be called by the chairperson or co-chairs, or by the Joint Rules Committee. In the absence of one co-chair, the other co-chair may call a meeting.

Reporting to Houses³⁹

A joint committee must report to both Houses on all decisions, except those concerning its internal business, and must do so at least once a year. (Exceptions: the Joint Programming Committee and the Mediation Committee.)

A joint committee may not submit a minority report. However, where a joint committee considering legislation fails to reach unanimity, it must in its report specify where there was no consensus, and reflect the views of a minority in the committee.

Failure to reach consensus or inability to report

If a Joint Committee fails to reach consensus, or if it is unable to report on a bill or an amendment referred to it, then either –

1. the joint committee must report to the Houses that it cannot reach consensus; or
2. the chairpersons of the committee must inform the Speaker and the Chairperson of the Council that the committee was unable to reach consensus.

The bill is then dealt with in terms of the rules of the respective Houses.

38 Joint Rules 25 & 26

39 Joint Rules 31 & 168; *Annotated Digest of Rulings 1994-99*, p 19

Parties and joint committees

In the Assembly component of joint committees, parties are entitled to representation substantially in proportion to their numerical strength in the Assembly, except insofar as the Joint Rules specifically prescribe the membership (see paragraphs relating to individual committees) and allowing for the limited number of seats.

The Council component of most joint committees is province-based rather than composed on a party-proportional basis.

Where a party does not have a seat on a joint committee, this does not prevent its representatives, from either House, from attending meetings and addressing the committee. See “Presence of members of parliament at committee meetings” under “Rules and conventions applicable to all committees” above.

Quorum and decisions⁴⁰

A joint committee may proceed with business in the absence of a quorum. For provisions on decision-making by a specific joint committee, see the Joint Rules on the committee in question.

Powers⁴¹

See above for general powers of a parliamentary committee.

A joint committee does not have the power to initiate legislation.

40 Joint Rule 27; Joint Rules relating to specific joint committees

41 Joint Rule 32

4.2 JOINT RULES COMMITTEE (JRC)⁴²

Establishment and composition⁴³

Section 45 of the Constitution requires the two Houses of Parliament to establish a Joint Rules Committee “to make Rules and Orders concerning the joint business of the Assembly and Council ...”. The committee consists of the Rules Committee of the Assembly and that of the Council sitting together. A representative of organised local government (SALGA) may attend and speak but may not vote.

For details of the Joint Rules Committee, see Chapter 6 – “Organisation of Parliament”.

4.3 SUBCOMMITTEES OF THE JOINT RULES COMMITTEE⁴⁴

The Joint Rules make provision for specific subcommittees of the Joint Rules Committee. The subcommittees are appointed to make recommendations to the JRC in their subject areas and, in the case of the subcommittees on the Parliamentary Budget, Support for Members, Internal Arrangements and International Relations, to monitor and oversee implementation of policy.

Subcommittees may not issue directives relating to the control and management of the parliamentary administration. They must perform any additional function assigned to them by the JRC.

In most instances, the House components of the subcommittees also meet separately to deal with House-specific matters.

For details of the subcommittees of the Joint Rules Committee, see Chapter 6 – “Organisation of Parliament”.

42 Constitution, section 45; Joint Rules 53-62

43 Joint Rules 53-5 & 59-60

44 Joint Rules 56(1)(f) & 63-89

4.4 JOINT PROGRAMME COMMITTEE (JPC)⁴⁵

See Chapter 10 – “Programming of Business”.

4.5 CONSTITUTIONAL REVIEW COMMITTEE⁴⁶

Establishment and composition

The Constitution requires Parliament to establish a joint Constitutional Review Committee consisting of 45 Assembly members and 24 Council members, as well as a representative of organised local government who may attend and speak in the committee but may not vote. The committee elects a chairperson and deputy chairperson, who must be members of different Houses.

Functions and powers

The committee is required to review the Constitution “at least annually” and to report to the Houses. In doing so, it must each year before 1 May invite the public, through the media, to submit written representations on any constitutional matter. It must then identify and consider those constitutional matters that it wishes to review.

4.6 MEDIATION COMMITTEE⁴⁷

Establishment and composition

The committee is established in terms of section 78 of the Constitution and consists of nine Assembly members appointed in terms of Assembly Rule 225, and one Council member from each province. Each component elects a co-chair. It is practice to appoint the committee anew each time the need for mediation arises.

45 Joint Rules 90-96

46 Constitution, section 45(1)(b) & (c); Joint Rules 97-103

47 Constitution, sections 45, 76 & 78; Joint Rules 104-110, 177, 186-90 & 212; Assembly Rules 225-7 & Chapter 13, parts 4, 5 & 6

Functions and powers

Section 76 bills on which there is disagreement between the Houses are referred to the Mediation Committee. The task of the committee is to consider bills referred to it in terms of Joint Rule 177, 186 or 212 (2) with a view to finding agreement between the two components of the Committee on a version of the bill. The committee may require any person to appear before it or produce relevant documents, and may consult any parliamentary committee. It is not required to report to the Houses in terms of Joint Rule 31. Meetings of the committee are closed, in order to facilitate negotiation and mediation.

Decisions

A question before the Mediation Committee is decided when there is agreement on the question between at least five members in the Assembly component, and at least five members in the Council component. Each of the co-chairpersons has a vote as a member but has no casting vote.

See “Mediation” in Chapter 12 – “Legislative procedure”.

4.7 COMMITTEES ON SECURITY SERVICES⁴⁸

Joint Committee on Oversight of Security Matters⁴⁹

This committee, which has oversight of the Defence Force and the Police, was established to give effect to section 199(8) of the Constitution, which reads:

To give effect to the principles of transparency and accountability, multiparty parliamentary committees must have oversight of all security services in a manner determined by national legislation or the Rules and Orders of Parliament.

48 Joint Rules 117-20

49 Constitution, section 199(8); Joint Rules 117-9

The committee is required to carry out an annual review of the security services and report to both Houses before the end of May each year.

Joint Standing Committee on Intelligence⁵⁰

This committee is established in terms of the Intelligence Services Control Act, No 40 of 1994, and must perform the oversight function concerning the intelligence services as required by section 199(8) of the Constitution, including financial oversight.

Joint Standing Committee on Defence⁵¹

This committee is established in terms of section 228(3) of the Interim Constitution (which continues in force) and reads –

The committee shall be competent to investigate and make recommendations regarding the budget, functioning, organisation, armaments, policy, morale and state of preparedness of the National Defence Force and to perform such other functions relating to parliamentary supervision of the Force as may be prescribed by law.

Parties with ten or more seats in the Assembly are represented in terms of a formula provided in Joint Rule 120B.

4.8 JOINT COMMITTEE ON ETHICS AND MEMBERS' INTERESTS⁵²

Establishment and composition

The committee consists of 18 Assembly and 9 Council members, and elects a chairperson and deputy chairperson from different Houses.

50 Joint Rule 120. For alteration of oversight functions, see *Procedural Developments in the National Assembly*, Item 21, Issue 6; and Item 30; Issue 8

51 Joint Rule 120A & 120B

52 Joint Rules 121-7 and Schedule to Joint Rules

Functions and powers

The purpose of this committee is twofold. Its task is, firstly, to implement the Code of Conduct (see the Schedule to the Joint Rules) and secondly, to develop standards of ethical conduct for members of Parliament. The Code relates to members' financial interests, and involves compliance by members with the Register of Members' Interests, which is a partially public record, renewed annually, of members' financial interests. It is administered by the Registrar of Members' Interests, a senior member of the staff of Parliament.

Procedure

A meeting of the committee to discuss a matter relating to a specific member is closed. Decisions are by agreement among the majority of members present at a meeting, provided at least half are present. Members of the committee, as well as the Registrar and the Registrar's staff, swear an oath of confidentiality.

The committee may investigate any breach of the Code by a member, reach a finding, and recommend a penalty to the relevant House.

4.9 JOINT BUDGET COMMITTEE⁵³

This joint committee, consisting of 15 Assembly members and 8 Council members, considers the budget in terms of the Medium Term Expenditure Framework, in order to allow Parliament to have an input during the drafting stage of the budget. This committee was first appointed during 2001 by resolution of both Houses. It was reappointed with revised functions in 2002.

⁵³ For establishment and detailed functions of committee, see *Procedural Developments in the National Assembly*, Item 28, Issue 6

4.10 JOINT MONITORING COMMITTEES

Joint Monitoring Committee on Improvement of Quality of Life and Status of Women⁵⁴

During the 1999-2004 Parliament, the committee consisted of 17 Assembly and 9 Council members. In terms of Joint Rule 131, it –

1. must monitor and evaluate progress with regard to the improvement in the quality of life and status of women in South Africa, with specific reference to the Government's commitments –
 - a) to the Beijing platform of action;
 - b) with regard to the implementation of the Convention on the Elimination of Discrimination against Women; and
 - c) to any other applicable international instruments.
2. may make recommendations to both or either of the Houses, or any joint or House committee, on any matter arising from paragraph (a) or (b).

A question before the committee is decided by a simple majority of its members.

Joint Monitoring Committee on Improvement of Quality of Life and Status of Children, Youth and Disabled Persons⁵⁵

During the 1999-2004 Parliament, the committee consisted of 17 Assembly and 9 Council members. Its task is to monitor and evaluate progress with regard to the improvement in the quality of life and status of children, youth and disabled persons in South Africa, with special reference to the Government's commitments in respect of any applicable international instruments and to duties and responsibilities in respect of any applicable legislation; and to make recommendations to the Houses or any committee.

54 Joint Rules 128-32

55 Joint Rules 132A-132E

A question before the committee is decided by simple majority of its members.

Joint Monitoring Committee on Reconstruction and Development⁵⁶

Although provision is made for such a committee in the Joint Rules, the committee was not appointed after the 1999 elections.

4.11 JOINT COMMITTEES ON BILLS⁵⁷

Provision is made in the Joint Rules, in terms of the Constitution, for the establishment of joint committees on bills. Such a joint committee consists of the relevant Assembly portfolio committee and the corresponding Council select committee sitting jointly and co-chaired by the respective chairpersons. A question is decided by agreement between the Assembly component and the Council component.

Instead of establishing a joint committee on a bill, the practice has developed for Assembly and Council committees, where necessary, to be set up separately and confer.

4.12 AD HOC JOINT COMMITTEES⁵⁸

Establishment and composition

An *ad hoc* joint committee may be established for the performance of any specific task. It is established either by resolution adopted in both Houses; or, if both or either of the Houses are in recess, by decision of the Speaker and the Chairperson of the Council, acting jointly after consulting the Chief Whip of the Majority Party in the Assembly and the Chief Whip of the Council. A decision taken in this way is subject to ratification by both Houses at the first opportunity.

56 Joint Rules 133-7

57 Constitution, section 45(1)(b); Joint Rules 111-6

58 Joint Rules 138-41

Such a committee has co-chairs, one from each House, elected by the respective House components.

Resolution establishing the committee: The resolution establishing the committee must include –

1. the task of the committee.
2. time-frames for the completion of any steps, and for completion of the task. On completion, the committee ceases to exist.
3. either the names of the committee members, or the number from each House.
4. those powers in Joint Rule 32 that are to be vested in the committee.

Decisions: Decisions are by agreement between the Assembly and Council components, a vote having been taken in each according to the applicable House rules.

4.13 JOINT COMMITTEES APPOINTED BY ASSEMBLY AND COUNCIL RESOLUTION⁵⁹

The Houses, acting jointly, may establish any joint committee. A resolution establishing such a committee must specify –

1. the functions of the committee.
2. either the names of the members, or the number of members from each House.

The House components each elect a co-chairperson. Unless the appointing resolution provides otherwise, decisions are by agreement between the

59 Joint Rules 142-6

Assembly component and the Council component, in terms of portfolio committee rules and select committee rules respectively.

4.14 JOINT TAGGING MECHANISM (JTM)⁶⁰

For the functions of the JTM, see Chapter 12 – “Legislative procedure”.

Composition

The JTM consists of the Speaker and Deputy Speaker, and the Chairperson and permanent Deputy Chairperson of the Council.

Operating procedure

The JTM is advised by the legal staff of Parliament. Decisions are reached by consensus. Consensus is reached when all available presiding officers agree, provided at least one presiding officer from each House agrees. If there is no consensus, a second legal opinion must be obtained, preferably from a constitutional expert. The JTM must be available at short notice.

⁶⁰ Joint Rules 151-8

PROCEDURES RELATING TO APPOINTMENTS AND OTHER STATUTORY FUNCTIONS

1 INTRODUCTION

The Assembly has statutory and constitutional functions in respect of a number of national bodies and institutions. Most of these functions have to do with the appointment and dismissal of office-bearers. Most also involve committee work, leading to a committee report which is considered by the plenary. In some instances, legislation has specified a direct role for the committee per se, the authority of the Assembly not being invoked.

Standard appointment procedure

In most instances of appointments, notification is received from the appointing authority and is tabled. The matter is referred to a portfolio or other existing committee, or else an ad hoc committee is appointed by resolution. Where the matter concerns both Houses, either the matter is referred to a joint committee, or the committees of the two Houses may be directed to confer. In most instances the task involves a deadline, to ensure that vacancies are timeously filled. Some statutes set requirements in respect of the process to be followed. The Assembly considers the committee's report and takes a decision. In the case of state institutions supporting democracy ("Chapter 9 Institutions") a decision may require a special majority.

The decision of the Assembly on such a matter is conveyed to the relevant authority by the Speaker in writing.

Number of candidates that may be recommended: In cases where the President or other office-bearer makes appointments on the advice of the Assembly or Parliament, it is necessary that only one candidate be recommended for each vacant post, unless otherwise specified in a particular Act.¹

¹ Legal advice, parliamentary archives

2. APPOINTMENT OF OFFICE-BEARERS AND OTHER PROCEDURES IN RELATION TO “CHAPTER 9” AND OTHER INSTITUTIONS

Listed below in alphabetical order are institutions in regard to which the Assembly has statutory obligations. A brief indication is provided of the procedures involved. The list may not be comprehensive, in view of continuing changes to the Statute Book.

Included in the list are some processes that do not directly require Assembly procedures, for example involving the appointment of Assembly members to institutions by the President, or consultation of party leaders in appointments.

Cases where removal from office of an office-bearer requires Assembly intervention, are listed separately.

Agricultural Marketing Council, National:² The Council consists of ten members. Criteria for five categories of member are specified in the relevant Act. When a member of the Council is to be appointed, the Minister calls for nominations (which must specify whether nominees are available on a full or part-time basis) and appoints a selection committee (two members of which are the “chairpersons of the parliamentary committees or their delegates”). The selection committee compiles a short list of candidates in accordance with the criteria in the Act and submits it to the Secretary to Parliament for submission to “the parliamentary committees”. The Act specifies that the parliamentary committees shall, within 30 days after they have placed the consideration of the shortlist on their agendas, jointly recommend to the Minister a list of not less than 3 candidates for each of the categories. The Minister thereupon appoints candidates from this list. Appointments are for a period not exceeding four years, and a retiring member is eligible for reappointment

Audit Commission: The Audit Commission consists, among others, of ... eight members of Parliament appointed by the President for such period,

2 Marketing of Agricultural Products Act, No 47 of 1996, as amended

not exceeding five years, as he may determine in each case at the time of the appointment, who shall not be members of the Executive authority or attached to the state administration, and whose knowledge of and experience in auditing, financial management and administration, and membership of the political parties represented in Parliament at the time of each appointment, he shall also take into consideration.³

Auditor-General:⁴ Appointed by the President on the recommendation of the National Assembly for a fixed, non-renewable term of between five and ten years. Persons recommended must be nominated by a committee of the Assembly that is proportionally composed of all parties represented in the Assembly; and approved by the Assembly by a resolution adopted with a supporting vote of at least 60% of the members of the Assembly.

An ad hoc committee, composed proportionately, is appointed. The process followed by such a committee in 1999 was as follows: publication of advertisement, development of criteria and guidelines, draw up shortlist of candidates, conduct interviews, decide on candidate for nomination and report to House.⁵

Communications Authority, Council of the Independent (ICASA):⁶ According to section 5 of the Act, the Council consists of –

... seven full-time councillors appointed by the President on the recommendation of the Assembly according to the following principles, namely –

1. participation of the public in the nomination process;
2. transparency and openness; and
3. publication of a short list of candidates for appointment, with due regard to subsection (3) and section 6.

3 Section 12 of Audit Arrangements Act, No 120 of 1992

4 Section 193(4) & (5) & section 194 of the Constitution

5 Assembly Minutes 8 Sept 1999; ATC 14 Oct 1999; Minutes 20 Oct 1999

6 Sections 5, 8 & 9 of the Independent Communications Authority of South Africa Act, No 13 of 2000

Subsection (3) stipulates criteria for the selection of candidates. Section 6 of the Act lists disqualifications for the post.

The Chairperson holds office for a period of five years from date of appointment, while the other councillors hold office for a period of four years (their terms are staggered). A councillor may be reappointed for one additional term.

A letter from the Presidency informing the Assembly of vacancies is referred by the Speaker to the Portfolio Committee on Communications for consideration and report. The committee, in accordance with the statutory requirements, identifies candidates for consideration by the House and reports to the Assembly, which takes a decision on the recommendations.⁷

Constitutional Court, judges of:⁸ The President, after consulting the Judicial Service Commission and the leaders of the parties represented in the Assembly, appoints the Chief Justice and the Deputy Chief Justice. The other judges of the Constitutional Court are appointed by the President after consulting the Chief Justice and the leaders of parties represented in the Assembly. The procedure is set out in section 174 of the Constitution, as amended.

A Constitutional Court judge holds office for a non-renewable term of 12 years, or until he or she attains the age of 70, whichever occurs first, except where an Act of Parliament extends his or her term of office.

Drug Authority, Central:⁹ Twelve members are appointed by the Minister after –

1. the Minister has invited nominations; and
2. “... the parliamentary committees for welfare of the Assembly and the Council have made recommendations to the Minister in relation thereto after a transparent and open process of considering [the nominations]”.

The Act specifies criteria for appointment.

7 *Procedural Developments in the National Assembly*, Issue 2, Item 34; Issue 3, Item 28; Issue 5, Item 39; and Issue 7, Item 33

8 Constitution, section 174

9 Section 2 of Prevention and Treatment of Drug Dependency Act, No 20 of 1992; Assembly Minutes 26 Jan 2000

The term of office of members may not exceed five years, but members may be reappointed. A person may be appointed for the unexpired portion of an office that falls vacant.

In the past, a motion moved by the Minister for Welfare and Population Development was adopted in the Assembly directing the Portfolio Committee on Welfare and Population Development to consider the nominations received by the Ministry for the appointment, and to make recommendations to the Minister; the committee, subject to Council concurrence, to confer with the equivalent Council committee. The report of the committee, recommending candidates, was then considered by the Assembly.¹⁰

Electoral Commission: The commission consists of five members, one of whom is a judge. The President, on the recommendation of the Assembly, appoints the Electoral Commission in accordance with criteria specified in section 6 of the Electoral Commission Act, No 51 of 1996. The term of office is seven years. A member may be re-appointed for one additional term.

The process is as follows –

1. a panel chaired by the Chief Justice submits a list of no fewer than eight candidates to the relevant Assembly committee.
2. the committee, which must be proportionally composed of members of all parties represented in the Assembly, nominates members from the list.
3. a list must be approved by the Assembly by a resolution adopted with a supporting vote of a majority of the members of the Assembly.¹¹

Gender Equality, Commission for:¹² Section 193 of the Constitution requires that the President, on the recommendation of the National Assembly, appoint the members of the Commission for Gender Equality.

¹⁰ *Procedural Developments in the National Assembly*, Issue 2, Item 37

¹¹ Section 193 of the Constitution

¹² *Procedural Developments in the National Assembly*, Issue 6, Item 32; Issue 5, Item 37; Issue 4, Item 52

In terms of the Commission for Gender Equality Act, No 39 of 1996, the Minister submits a list of names to the Assembly for consideration. The commission consists of a chairperson and between seven and eleven members, who must have a record of commitment to the promotion of gender equality; and be persons with applicable knowledge or experience. Members may be appointed on a part-time or full-time basis, for not longer than five years. Between two and seven members are appointed on a full-time basis. A member may be reappointed for one additional term.

The Assembly must recommend persons nominated by a committee of the Assembly proportionally composed of members of all parties represented in the Assembly; and approved by the Assembly by a resolution adopted with a supporting vote of a majority of the members of the Assembly.¹³ In the past, on receipt of notification of a vacancy, the Assembly has by resolution appointed an ad hoc committee to perform this function.

Gambling Board, National – Chairperson and two members:¹⁴ The Minister appoints the Chairperson and members of the board, in accordance with specified procedures and criteria. The Chairperson and two of the members “... shall be appointed only after the Minister has through the media and by notice in the Gazette invited nominations of persons as candidates for the respective positions on the Board, and the parliamentary committees concerned have made recommendations to the Minister in relation thereto after a transparent and open process of considering persons so nominated, having due regard to the objects of the Board ...” Members are appointed for a period not exceeding five years, determined by the Minister on appointment, and may be reappointed for one further term.

The Portfolio Committee on Trade and Industry considers and submits a report to the Assembly for consideration recommending a candidate or candidates.¹⁵

Human Rights Commission:¹⁶ The Commission consists of full-time and part-time members, of whom no fewer than five are full-time members.

13 Section 193 of the Constitution

14 Section 3(3) of the National Gambling Act, No 33 of 1996

15 *Procedural Developments in the National Assembly*, Issue 1, Item 47

16 Constitution, section 193; section 3 of Human Rights Commission Act, No 54 of 1994

Members are appointed by the President as full-time or part-time members on the recommendation of the National Assembly for a period determined by the President not exceeding seven years. Members may be reappointed for one additional term.

The Assembly must recommend persons nominated by a committee of the Assembly proportionally composed of members of all parties represented in the Assembly; and approved by the Assembly by a resolution adopted with a supporting vote of a majority of the members of the Assembly. In the past an ad hoc committee has been appointed by resolution to nominate persons.¹⁷

Intelligence, Inspector-General of:¹⁸ The President must appoint this official on the nomination of the Joint Standing Committee on Intelligence, the nomination to be approved by the Assembly by a resolution supported by at least two thirds of its members.¹⁹ If any nomination is not approved by the Assembly, the committee must nominate another person. Conditions of service are determined by the President with the concurrence of the Committee. The term of office is not specified.

The Joint Standing Committee advertises the post and considers applicants. It then submits a recommendation to the Assembly in the form of a report.

Judicial Services Commission:²⁰ The Commission includes *inter alia* –

- “1. six persons designated by the National Assembly from among its members, at least three of whom must be members of opposition parties represented in the Assembly;
2. four permanent delegates to the National Council of Provinces designated together by the Council with a supporting vote of at least six provinces; [and]

17 *Procedural Developments in the National Assembly*, Issue 4, Item 52; Issue 5, Item 40

18 Section 7 of the Intelligence Services Control Act, 1994, as amended; section 210(b) of Constitution

19 *Procedural Developments in the National Assembly*, Issue 7, Item 35; Issue 2, Item 38

20 Section 178(1) of Constitution

3. four persons designated by the President as head of the national Executive, after consulting the leaders of all the parties in the National Assembly;”

A notice of the vacancy/ies is circulated to all chief whips. The designation of Assembly members is by majority resolution of the Assembly.²¹ (The procedure followed during the 1999-2004 Parliament was to that described under “Magistrates Commission” below.)

Section 178(3) of the Constitution provides that members of the Commission designated by the Council serve until they are replaced together, or until any vacancy occurs. Other members serve until they are replaced by those who designated or nominated them.

Library and Information Services, Panel to appoint members of the National Council for:²² Twelve members of the council are appointed by the Minister of Arts, Culture, Science and Technology, after a process of public nomination. In terms of this process, the Minister “must appoint a panel, after the composition was approved by the Portfolio Committee on Arts, Culture, Science and Technology, consisting of persons with experience or expertise in library and information services to compile a short list of not more than 15 candidates ...” The period of office of members is determined by the Minister and may not exceed three years. Members may be reappointed for one additional term.

Lotteries Board (Chairperson):²³ A chairperson is appointed after the Minister has invited interested parties to nominate suitable persons and “the relevant committee of the Assembly has made recommendations to the Minister after a transparent and open process of considering persons so nominated, having due regard to the functions of the board.” The chairperson, like other members of the Board, is appointed for a term determined by the Minister not exceeding five years, and is eligible for reappointment for one further term.

21 *Procedural Developments in the National Assembly*, Issue 4, Item 52; Issue 3, Item 30

22 Sections 5 & 7 of the National Council for Library and Information Services Act, No 6 of 2001

23 Section 3(3) of Lotteries Act, No 57 of 1997

Magistrates Commission:²⁴ The commission is composed *inter alia* of –

- “1. four persons designated by the Assembly from among its members, at least two of whom must be members of opposition parties represented in the Assembly; and –
2. four permanent delegates to the Council and their alternates designated together by the Council with a supporting vote of at least six provinces.”

The Assembly designates members by resolution.²⁵ The period of office is not more than five years, and members may be reappointed.

The Speaker circulates to chief whips of all parties the letter from the Minister of Justice requesting designations. After consultations among the whips of the smaller parties, a resolution is adopted by the House designating the members. In the absence of agreement, nominations are submitted to the Speaker by parties so that the House can vote on the matter. In the House, the Speaker announces the nominations received and calls for any further nominations. The presiding officer then puts the name of each nominated member for decision by the House. For a member to be designated, a majority of the votes must be cast in his or her favour (Section 54(1)(c) of the Constitution). A quorum of one third of members is required.

Media Development and Diversity Agency (MDDA):²⁶ Six out of the nine members of the Board are appointed by the President on the recommendation of the Assembly according to principles of: public participation in nomination process; transparency; and the publication of a shortlist of candidates. The term of office of the Chairperson is five years, while that of other members is three years – the terms are staggered. Members may be appointed for one additional term.

Vacancies: In the event of a vacancy occurring that cannot be filled from the list of nominees produced in terms of section 4 of the Act – “...

24 Section 3 of Magistrates Act, No 90 of 1993

25 *Procedural Developments in the National Assembly*, Issue 4, Item 52; Issue 1, Item 49

26 Sections 4 and 5 of Media Development and Diversity Agency Act, No 14 of 2002

1. the Assembly must, as soon as possible, request nominations;
2. the Assembly must compile a shortlist ... and must make recommendations ...; and
3. the President must appoint a member from the recommendations ...”

The Speaker tables the letter from the Presidency in the ATC and refers it for consideration and report to the Portfolio Committee on Communications. The committee, having complied with the provisions of the Act and invited the public to submit nominations, submits its recommendation to the Assembly for decision.²⁷

Pan African Parliament²⁸

The South African Parliament is represented in the Pan African Parliament by five members of Parliament, at least one of whom must be a woman. In terms of the Protocol of the Pan African Parliament, representation must “reflect diversity of political opinions in the National Parliament”. The term of a member runs concurrently with his or her term in the National Parliament, unless a member is withdrawn in terms of the Protocol on the Pan African Parliament or ceases to be a member.

Members are drawn from the Assembly and the Council, and are appointed by resolution of both Houses.

Pan South African Language Board (Pansalb):²⁹ Between 11 and 15 members are appointed as follows: The Minister, after consultation with the relevant Assembly portfolio committee, appoints an ad hoc committee of not fewer than 9 to invite the general public to make nominations. The portfolio committee shall, in a consensus-seeking manner –

1. from the nominations forwarded to it by the ad hoc committee, compile a short list, with due regard to specified considerations, of not more than 25;

²⁷ *Procedural Developments in the National Assembly*, Issue 6, Item 33; Issue 5, Item 34

²⁸ Articles 4 & 5 of the *Protocol relating to the Pan African Parliament*

²⁹ Section 5 of the Pan South African Language Board Act, No 59 of 1995

2. interview, in a public and transparent manner, each of the candidates on the shortlist; and
3. compile and forward to the Minister a final short list of not more than 20 with due regard to considerations specified.

The Minister, after consultation with the portfolio committee, appoints from the short list. A member is appointed for five years and may be reappointed for one additional term.

Public Protector:³⁰ Appointed by the President on the recommendation of the National Assembly for a non-renewable term of seven years. Persons recommended must be nominated by a committee of the Assembly that is proportionally composed of all parties represented in the Assembly; and approved by the Assembly by a resolution adopted with a supporting vote of at least 60% of the members of the Assembly.

During the 1999-2004 Parliament, an ad hoc committee was appointed to make a recommendation to the Assembly.³¹

Public Service Commission:³² In terms of the Constitution, five commissioners are appointed by the Assembly. In addition, one is nominated by the Premier of each province.

The five Assembly commissioners must be –

1. recommended by a committee of the Assembly that is proportionally composed of members of all parties represented in the Assembly; and
2. approved by the Assembly by a resolution adopted with a supporting vote of a majority of its members.

The Constitution specifies that an Act of Parliament must regulate the procedure for the appointment of commissioners.

30 Constitution, sections 182-183 & 193

31 *Procedural Developments in the National Assembly*, Issue 5, Item 38; Issue 6, Item 34

32 Section 196(7), (8), (9), (11) & (12) of Constitution. Section 3 of the Public Service Commission Act, No 46 of 1997

The Public Service Commission Act provides that whenever the President is required to appoint an “Assembly” Commissioner, the President must address a request in writing to the Speaker that a fit person as in section 196(1) of the Constitution be approved of as soon as practicable by the Assembly in terms of section 196(8)(a). A committee as in section 196(8)(a)(i) of the Constitution must be appointed and must submit recommendations for consideration by the Assembly. Persons are invited by public notice to apply for vacancies. A commissioner is appointed for a term of five years, renewable for one additional term.³³

In 1998, on receipt of a letter requiring approval of nominees, an ad hoc Assembly committee was appointed by resolution. The resolution required the committee to submit to the Assembly for approval, the manner in which it was to conduct its business. The committee submitted its recommendations to the Assembly for consideration.³⁴

Railway Safety Regulator, National – Panel for appointment of members of the board of the:³⁵ For purposes of appointing the members of the board, a panel, appointed by the minister, *which may include representatives of the relevant committees of Parliament*, must compile a shortlist from which the Minister may appoint persons.³⁶

Road Accident Fund Board:³⁷ Parliament does not play a direct role in the appointment of members of this body. However, the Minister of Transport is empowered to establish a selection committee consisting, inter alia, of one member of the Portfolio Committee on Transport, designated by that committee; and one member of the Select Committee on Transport. (The Minister may fill an occasional vacancy by appointing any other person to serve for the unexpired portion of a term of office.)

South African Broadcasting Corporation (SABC) Board:³⁸ The twelve non-executive members of the board are appointed by the President on the advice of the Assembly, in a manner ensuring –

33 Section 196(10) of the Constitution

34 See Assembly Minutes, 17 March 1998, for criteria and timeframe used

35 Section 8 of the National Railway Safety Regulator Act, No 16 of 2002

36 *Procedural Developments in the National Assembly*, Issue 5, Item 44

37 Section 10 of the Road Accident Fund Act, 1996, as amended

38 Section 13 of the Broadcasting Act No 4 of 1999

1. participation by the public in a nomination process;
2. transparency and openness; and
3. that a short-list is published.

Criteria on the basis of which the members are appointed, are detailed in section 13(4) of the Broadcasting Act, No 4 of 1999. The President determines the term of office of each appointee, up to a maximum of five years. A member appointed to fill a casual vacancy, holds office for the unexpired period.

The matter has in the past been referred to the Portfolio Committee on Communications, which has submitted recommendations to the Assembly for consideration.³⁹

SADC Parliamentary Forum:⁴⁰ The delegation of the South African Parliament consists of the presiding officers and three members of Parliament; provided that in the election of the three representatives, Parliament must ensure equitable representation of women and political parties. A representative of the Forum serves for a period of five years unless he or she ceases to be a member of, or is replaced by, his or her national Parliament.

Members are appointed by resolution of both Houses.

Security Officers Interim Board:⁴¹ The Minister of Safety and Security appoints –

1. one member “who, in the Minister’s opinion, is an independent person, as the chairperson, in consultation with the Portfolio Committee...”
2. five members in various categories “after such consultation with national associations, organisations, trade unions or federations [and] in consultation with the portfolio committee on Safety and Security ...”

³⁹ *Procedural Developments in the National Assembly*, Issue 1, Item 48

⁴⁰ Article 6(3) of SADC Constitution

⁴¹ Section 5 of the Security Officers Act, No 92 of 1987, as amended

A member is appointed for a period not exceeding three years, determined by the Minister.

Social Development, Advisory Board on:⁴² The Minister of Social Development must appoint 9 to 11 members in accordance with requirements specified in the Act. The Minister must invite nominations from organisations in the social development sector and the public. The nominees must be appointed “only after the parliamentary committees on Social Development of the Assembly and the Council have made recommendations to the Minister regarding such appointments”. Members are appointed for a period of three years, and may be reappointed for one additional term.

Youth Commission, National:⁴³ Five members are appointed by the President “on the advice of a committee of Parliament constituted in terms of the rules of Parliament, according to the following principles, namely –

1. participation by the public in the nomination process;
2. transparency and openness; and
3. the publication of a shortlist of candidates for appointment.”

Commissioners are appointed for a period determined by the President, not exceeding five years, and may be reappointed.

This matter has in the past been referred to the Joint Monitoring Committee on Improvement of the Quality of Life and Status of Children, Youth and Disabled Persons.⁴⁴

When a letter concerning the appointments is received from the Presidency, it is tabled and referred by Assembly resolution to the Joint Monitoring Committee (the equivalent process is required in the Council). The committee advertises the posts and interviews candidates, and submits a list of recommended candidates. According to legal advice from the President’s Office, the number of candidates recommended must match the number of vacancies.⁴⁵

42 Section 5 of the Advisory Board on Social Development Act, No 3 of 2001

43 Section 4(1) of the National Youth Commission Act, No 19 of 1996, as amended

44 *Procedural Developments in the National Assembly*, Issue 3, Item 31; Issue 2, Item 35; Issue 1, Item 45

45 Legal advice, parliamentary archives

3. OTHER CONSTITUTIONAL AND STATUTORY FUNCTIONS

The following functions imposed under a number of statutes, do not involve the appointment of office-bearers. The list is not comprehensive. An audit of all such statutory functions of the Assembly, the Council and Parliament is to be undertaken.

Standard practice

In most instances, notification is received by the Speaker from the relevant executive authority. The letter is tabled and referred to a portfolio or other existing committee, or else an ad hoc committee is appointed by resolution. Where the matter concerns both Houses, either the matter is referred to a joint committee, or the committees of the two Houses may be directed to confer. The Assembly considers the committee's report and takes a decision.

Ambassador, extension of term of office: See “Public service, extension of term of officer” below.

Agricultural levies, Approval of recommendations on, by parliamentary committees:⁴⁶ A levy under the *Marketing of Agricultural Products Act*, No 47 of 1996, may not be introduced, amended or repealed unless the parliamentary committees on agriculture (of both Houses) have been consulted.⁴⁷

Criminal Law Amendment Act, 1997, Extension of period of operation of sections of:⁴⁸ Sections 51 and 52 of the said Act expire two years after the Act commences, but this period may be, and has been, extended for two years at a time by the President with the concurrence of both Houses, expressed by resolution.⁴⁹

Disaster management, role in:⁵⁰ If a national organ of state fails to submit details of its disaster management plan to the National Disaster

46 Section 15 of the Act

47 *Procedural Developments in the National Assembly*, Issue 5, Item 36, Issue 4, Item 53 & Issue 3, Item 29

48 Section 53 of Act 105 of 1997

49 *Procedural Developments in the National Assembly*, Issue 4, Item 51

50 Section 25(3)(b) of the Disaster Management Act, No 57 of 2002

Management Centre, the Minister of Provincial and Local Government must take steps to ensure this is done, including reporting the failure to Parliament (meaning both Houses).

Section 59(4) of the relevant Act further provides that regulations in terms of this legislation must be referred to the Council.⁵¹

Land in national park, deproclamation of:⁵² Land in a national park may not be alienated or excluded except under the authority of a resolution of Parliament. A resolution by both Houses is required, and in the Assembly the matter has been referred to the Portfolio Committee on Environmental Affairs and Tourism.⁵³

Legal Aid guide, ratification of:⁵⁴ A guide to legal aid produced by the Legal Aid Board must annually be tabled in Parliament for ratification by both Houses. This has in the past been referred to the Portfolio Committee on Justice and Constitutional Development.⁵⁵

Public Protector and staff of the Office of, employment benefits of:⁵⁶ The Assembly determines the remuneration and other conditions of service of the Public Protector, and approves the determination of the conditions of services of his/her staff. In the past this matter has been referred to the Portfolio Committee on Justice and Constitutional Development.⁵⁷

A document detailing conditions of employment of staff must be tabled in the Assembly within 14 days after such a determination has been made. If the Assembly disapproves of any determination, the determination ceases to be of force to the extent that it is disapproved.

Public Service, Extension of service of officer of:⁵⁸ An officer may be retained beyond retirement age ... “for further periods which may not, except with the approval of Parliament [both Houses] granted by resolution, exceed in the aggregate two years.” In the past such a request concerning an ambassador, received from the Minister of Foreign Affairs, was referred to

51 *Procedural Developments in the National Assembly*, Issue 5, Item 43

52 Section 2 of the National Parks Act, No 57 of 1976

53 *Procedural Developments in the National Assembly*, Issue 6, Item 31

54 Legal Aid Amendment Act, No 20 of 1996

55 *Procedural Developments in the National Assembly*, Issue 5, Item 42

56 Public Protector Act, No 23 of 1994

57 *Procedural Developments in the National Assembly*, Issue 6, Item 36

58 Section 16(7) of the Public Service Act, 1994

the Portfolio Committee on Public Administration, which was required to confer with the Portfolio Committee on Foreign Affairs.⁵⁹

4. OFFICE-BEARERS WHOSE DISMISSAL IS DEPENDENT UPON AN ASSEMBLY DECISION

The removal from office of the following office-bearers is dependent upon a decision of the Assembly. (This list may not be comprehensive.)

Such a decision is taken by resolution, with the requisite majority. Most “Chapter 9 institutions” specify a special majority.

These office-bearers, in addition to judges of a superior court (not magistrates), are protected by Rule 66, which provides that no member may reflect upon their competence or honour, “except upon a substantive motion in this House alleging facts which, if true, would in the opinion of the Speaker *prima facie* warrant such a decision”.

⁵⁹ *Procedural Developments in the National Assembly*, Issue 5, Item 35

Office-bearer or body	Special majority, if any, required for dismissal
Auditor-General	At least two thirds
Cultural, Religious and Linguistic Communities, Commission for the Promotion and Protection of the Rights of	No special majority
Electoral Commission	A majority of the members of the Assembly
Gender Equality, Commission for	A majority of the members of the Assembly
Human Rights Commission	A majority of the members of the Assembly
ICASA (Section 8, Act 13 of 2000)	No special majority
Judges of a superior court (not magistrates)	At least two thirds
Media Development and Diversity Agency	No special majority
National Director and Deputy Houses National Director of Public Prosecutions ⁶⁰	“An address from each of the in the same session praying for ... removal ...”
Public Protector	At least two thirds
Public Service Commission	A majority of the members of the Assembly

60 Section 12(6) & (7) of the National Prosecuting Authority Act, No 32 of 1998

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