

# **NATIONAL COUNCIL OF PROVINCES**



**Rules of the National Council of Provinces**

**10<sup>th</sup> Edition**

# RULES OF THE NATIONAL COUNCIL OF PROVINCES

10th Edition: December 2021



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

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## CHAPTER 1: APPLICATION OF RULES

### 1. Definitions

(1) In these Rules, unless the context indicates otherwise –

- (a) “**Act**” means the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004;
- (b) “**ATC**” means the document entitled Announcements, Tablings and Committee Reports;
- (c) “**classification**” with reference to a Bill, means the classification of a Bill in terms of joint rule 160 (6) or the reclassification of a Bill in terms of joint rule 163, and “**tagging**”, “**classify**” and “**classified**” have corresponding meanings;
- (d) “**Constitution Amendment Bill**” means a Bill to which section 74 of the Constitution applies;
- (e) “**constituency day**” means a day determined by the Programme Committee or by resolution of the Council on which no business of the Council is scheduled, unless determined otherwise;
- (f) “**constituency period**” means a period determined by the Programme Committee or by resolution of the Council during which the business of the Council is interrupted;
- (g) “**Chairperson**” means Chairperson of the National Council of Provinces referred to in section 64(2) of the Constitution;
- (h) “**Chief Whip**” means the Chief Whip of the Council elected in terms of rule 14 of these Rules;
- (i) “**Council**” means the National Council of Provinces referred to in section 42(1)(b) of the Constitution and NCOP has a corresponding meaning;
- (j) “**delegate**” with reference to the Council, means a permanent or special delegate to the Council referred to in section 60 of the Constitution;
- (k) “**document**” means any written instrument, and includes any electronic or other device in or on which information, including visual material is recorded, stored or kept;
- (l) “**Gazette**” means the national Government Gazette;



- (m) “**Head of Delegation**” means a Premier or a member of the province’s delegation designated by the Premier contemplated in section 60(3) of the Constitution.
- (n) “**House Chairperson**” means a delegate elected as such in terms of section 64(7) of the Constitution;
- (o) “**JTM**” means the Joint Tagging Mechanism established in terms of joint rule 151;
- (p) “**leave period**” means a period determined by the Programme Committee or by resolution of the Council as a leave period during which the business of the Council is interrupted;
- (q) “**money Bill**” means a Bill to which section 77 of the Constitution applies;
- (r) “**motion**” means a proposal made by a delegate that the House or a committee does something, orders something to be done or expresses an opinion concerning a particular matter;
- (s) “**notice of motion**” means a notice given on any sitting day for a motion to be moved on the next succeeding sitting day and is usually preceded by the words “Honourable Chairperson I hereby give notice that I shall move at the next sitting that the House”;
- (t) “**motion without notice**” means a proposal made by a delegate that the House or a committee does something, orders something to be done or expresses an opinion concerning a particular matter and is usually preceded by the words “Honourable Chairperson I hereby move without notice that the House . . .”;
- (u) “**Officer Presiding**” means the delegate presiding over the proceedings of the House;
- (v) “**Party Representative**” means a delegate, other than a Provincial Whip, designated as such to represent a party in any structure established by the Council;
- (w) “**Party Whip**” means a delegate, other than a provincial whip, designated as such to represent a party in any structure established by the Council, provided the party is represented by 7 or more members in the Council;
- (x) “**Permanent Deputy Chairperson**” means the Deputy Chairperson of the Council elected in terms of section 64(2) of the Constitution;
- (y) “**permanent delegate**” means a permanent delegate to the Council designated as such in terms of section 60(2)(b) of the Constitution;

- (z) “**person in charge**”, with reference to a Bill introduced –
- (i) in the Council by a Council member, means that member; or
  - (ii) in the Council by a Council committee, means the chairperson or another member of the committee designated by the committee;
- (aa) “**petition**” means a complaint or request or a representation or a submission addressed by a petitioner to the Council seeking redress on any matter falling within the jurisdiction of the Council;
- (bb) “**Programming Whip**” means the Whip responsible for programming matters referred to in rule 22;
- (cc) “**Provincial Whip**” means a permanent delegate to the Council who is appointed as a Whip of the provincial delegation, and acts as a link between the Council and the provincial legislature;
- (dd) “**recess**” with reference to the Council, means a period determined as recess by the Programme Committee, or by resolution of the Council, during which the business of the Council is interrupted;
- (ee) “**section 75 Bill**” means a Bill to which the procedure prescribed in section 75 of the Constitution applies;
- (ff) “**section 76(3) Bill**” means a Bill to which the procedure prescribed in section 76 (1) or (2) of the Constitution applies;
- (gg) “**section 76(4) Bill**” means a Bill to which section 76(1) of the Constitution applies;
- (hh) “**section 76(5) Bill**” means a Bill to which section 76(1) of the Constitution applies;
- (ii) “**Secretary**” means, unless the context indicates otherwise, the Secretary to the Council;
- (jj) “**special delegate**” means a special delegate to the Council envisaged in section 60(2)(a) of the Constitution;
- (kk) “**sitting day**”, with reference to the Council, means a day on which the Council sits and it includes committee meetings;

(ll) “**Parliamentary Protection Services**” means any person employed, appointed, assigned, delegated or contracted by Parliament to perform security and protection functions within the precincts of Parliament;

(mm) “**Whippery**” means the Chief Whip, Programming Whip and Provincial Whips;

(nn) “**working day**” means any day of the week except –

(i) Saturday and Sunday; or

(ii) a public holiday in terms of the Public Holidays Act, 1994 (Act 36 of 1994); and, if such a holiday falls on a Sunday, also the Monday.

## **2. Unforeseen matters**

(1) The Chairperson of the Council may give a ruling or make a rule on a matter for which these Rules do not provide.

(2) A rule made by the Chairperson remains in force until the Rules Committee has decided on it.

## **3. Suspension of Rules**

The Council may, by resolution, dispense with or suspend a provision of these Rules for a specific period or purpose.

## **4. Application of Rules to members of the national executive, local government representatives or officials**

Except where provided otherwise, these Rules apply to delegates, a Cabinet member, a Deputy Minister, a local government representative or an official in the national government or a provincial executive participating in the proceedings of the Council as the case may be, in terms of sections 66 and 67 of the Constitution.

## **5. Public participation and access**

(1) Members of the public may participate in the proceedings of the Council by –

(a) attending sittings of the Council or meetings of Council committees;

(b) submitting petitions to the Council on any matter within the Council’s competence; and

(c) responding to public or specific invitations to comment in writing or make verbal representations on Bills or other matters before, or which are due to come before the Council.

- (2) Public participation in terms of subrule (1) is subject to, and must be exercised in accordance with, the applicable provisions of these Rules and the Constitution.
- (3) The public has access to all official notices to delegates and to all documents tabled in or submitted to the Council, in a manner consistent with the Constitution, these Rules and any other relevant legislation.

## **CHAPTER 2: PRESIDING AND OTHER OFFICERS**

### **6. Election of Chairperson and Deputy Chairpersons of the Council**

- (1) Whenever it is necessary to elect a Chairperson, the Secretary must inform the Council of that fact and after consultation with the Chief Justice, announce a time at and the date on which the Council must proceed to elect a Chairperson in accordance with section 64 of the Constitution.
- (2) Whenever it is necessary to elect a Deputy Chairperson, the Secretary must inform the Council of that fact, and after consultation with the Chairperson of the Council, announce a time at and the date on which the Council must proceed to elect a Deputy Chairperson in accordance with section 64 of the Constitution.
- (3) Whenever it is necessary to elect a Second Deputy Chairperson, the Secretary must inform the Council of that fact, and after consultation with the Chairperson of the Council, announce a time at and the date on which the Council must proceed to elect a Second Deputy Chairperson in accordance with section 64(3) of the Constitution.

### **7. Election of other presiding officers**

- (1) The Council may elect from among its delegates other presiding officers to assist the Chairperson and Deputy Chairpersons of the Council in the performance of their functions in accordance with section 64(7) of the Constitution.
- (2) A permanent delegate elected under this rule holds office until that person's term as a permanent delegate expires, or when that person resigns or is removed from office in terms of rule 26.

## **8. Consultation**

The Chairperson of the Council must exercise the powers and perform the functions of the office of the Chairperson after consulting other presiding officers and the Chief Whip wherever these Rules or the proper functioning of the Council requires such consultation.

## **9. Delegation of functions**

The Chairperson of the Council may delegate to a Deputy Chairperson, other presiding officers, a committee or delegate, any function vested in him or her.

## **10. Acting Chairperson**

(1) Whenever the Chairperson of the Council is absent or unable to perform the functions of Chairperson, or during a vacancy in the office of Chairperson, an office-bearer in the order below acts as Chairperson:

- (a) The permanent Deputy Chairperson.
- (b) The House Chairpersons.

(2) An acting chairperson has the responsibilities, powers and functions of the Chairperson.

## **11. Functions of the Permanent Deputy Chairperson**

The Permanent Deputy Chairperson shall –

- (1) convene the three spheres through Sectoral Parliament programmes with the focus of catalysing priorities emanating from the Constitution and other legislative and policy instruments;
- (2) facilitate executive compliance with respect to recommendations set out in Sectoral Parliaments and executive commitments made during Sectoral Parliaments;
- (3) track and monitor implementation progress to inform the oversight mandate of Parliament in respect of Sectoral Parliaments and Ministerial Briefings;
- (4) develop and oversee an institutional deliberation tracking system for executive commitments made during Sectoral Parliaments and Ministerial Briefings;
- (5) develop a spatial-intelligence oversight strategy, to complement existing processes and systems; and
- (6) exercise political oversight and three-sphere coordination in the referral and processing of executive undertakings, so as to track NCOP oversight deliverables.

## **12. Relief of Chairperson**

The Deputy Chairperson or another presiding officer or a delegate must take the Chair during a sitting of the Council whenever requested to do so by the Chairperson of the Council.

## **13. Absence of all presiding officers**

If all the presiding officers are unavoidably absent, the Council may elect one of its members to act as Chairperson of the Council for that day only, the question being put by the Secretary.

## **14. Election of Chief Whip of the Council**

- (1) The Council must elect, from among its permanent delegates, a Chief Whip of the Council.
- (2) A delegate elected under this rule holds office until that person's term as a permanent delegate expires or resigns as the Chief Whip of the Council or is removed from office in terms of rule 26.

## **15. Functions of the Chief Whip of the Council**

- (1) The Chief Whip of the Council shall –
  - (a) co-ordinate the business of the House;
  - (b) ensure quorum in the House and that members attend and participate in programmes and business of the Council;
  - (c) coordinate the Speakers' List;
  - (d) oversee the effective functioning of the Whippers; and
  - (e) perform any other function that the Chairperson of the Council or the House may from time to time assign to him or her.

## **16. Acting Chief Whip**

- (1) Whenever the Chief Whip is absent, he or she may designate any member of the Whippers to fulfil the functions of the Chief Whip until his or her return.
- (2) Whenever the Chief Whip is unable to perform the functions of the Chief Whip, the Chairperson may appoint an Acting Chief Whip.

## **17. The Whippers**

### **Establishment**

There is a Whippers.

## **18.Composition**

(1) The Whippery consists of –

- (a) the Chief Whip of the Council;
- (b) the Programming Whip; and
- (c) the Provincial Whips.

(2) A political party represented in the Council that does not have a Provincial Whip may be represented by a party representative.

(3) A political party represented in the Council that does not have a Provincial Whip and has seven or more members is entitled to a Party Whip.

## **19.Appointment of Provincial Whips**

(1) A provincial legislature may designate one of the permanent delegates in its delegation as a Provincial Whip.

(2) In the absence of the Premier, the Provincial Whip performs the functions of the head of delegation.

## **20.Functions of the Provincial Whip**

The Provincial Whip shall –

- (1) co-ordinate the business of the provincial delegation;
- (2) assist the Chief Whip in fulfilling his or her duties;
- (3) ensure a link between the NCOP and provincial legislature;
- (4) coordinate the participation of the provincial delegation in the NCOP processes and proceedings;
- (5) facilitate the briefing of the provincial legislature on legislation or any other matter that is before the Council; and
- (6) perform any other function that the Chairperson, the Chief Whip or the Council may assign to him or her.

## **21.Acting Provincial Whip**

(1) If the Provincial Whip is absent, the Provincial Whip may appoint a permanent delegate from the delegation of the province concerned, to act as Provincial Whip.

- (2) Whenever the Provincial Whip is unable to perform the functions of the Provincial Whip, the Chief Whip may designate a delegate from the delegation concerned to perform the functions of the Provincial Whip until the Provincial Whip returns or a new Provincial Whip is designated.
- (3) An acting Provincial Whip has the responsibilities, powers and functions of the Provincial Whip.

## **22. Programming Whip**

- (1) The Council must elect, from among its permanent delegates, a Programming Whip of the Council.
- (2) A delegate elected under this rule holds office until that person's term as a permanent delegate expires or resigns as the Programming Whip or is removed from office in terms of rule 26.

## **23. Functions of the Programming Whip**

The Programming Whip shall –

- (1) ensure drafting of the parliamentary programme in consultation with the Chief Whip and Presiding Officers;
- (2) ensure proper programming of plenaries, meetings of committees and other activities of the Council; and
- (3) brief the Whippersy and Programme Committees on the Programme of the Council.

## **24. Committee Whips**

The Chief Whip may, from time to time, designate a member of the Whippersy to assume the responsibility of a Whip of the Select Committee.

## **25. Functions of Committee Whip**

The Committee Whip shall -

- (1) enforce discipline in the attendance of meetings of select committees; and
- (2) ensure that select committees conduct their business without disruption.

## **26. Removal of presiding and other officers from office**

- (1) The Council may, by a resolution moved by the head of a provincial delegation and supported by at least five provincial delegations, remove from office the Chairperson or a



Deputy Chairperson of the Council or another presiding officer or the Chief Whip of the Council.

(2) A draft resolution –

(a) may not be placed on the Order Paper unless the head of delegation, giving notice of the draft resolution, has the support of at least five other heads of delegation;

(b) may not be moved within seven working days of the day on which it appears on the Order Paper for the first time;

(c) must set out the reasons for the proposed removal from office in sufficient detail to enable the officer concerned to reply; and

(d) may provide for the date on which the removal will be effective.

(3) The officer concerned may not preside over proceedings of the Council when his or her removal from office is considered.

(4) After the draft resolution has been moved–

(a) the mover may explain the reasons for the proposed removal in a speech not exceeding 10 minutes;

(b) the officer concerned must be given an opportunity to address the Council; and

(c) each Provincial Whip, in a speech not exceeding three minutes, may explain the reasons for the vote of the province concerned.

(5) The draft resolution lapses if it is not moved on the day on which it is scheduled for debate or, on being put to the vote, is rejected by the votes of at least six provinces.

## **27. Functions of the House Chairperson Committees**

The House Chairperson Committees shall –

(1) ensure the compilation of the programmes by the Select Committees that are in compliance with their strategic plans;

(2) provide reports to the Programme Committee regarding legislation and committee activities;

(3) monitor the support provided to committees;

(4) facilitate the drafting of committee budgets;

(5) track the processing of legislation by committees;

- (6) co-ordinate the strategic and business plans and programmes of Select Committees' activities;
- (7) convene and chair the Committee of Chairpersons of Committees to exchange information and perspectives;
- (8) consider and approve Committees' request for travel for purposes of oversight; and
- (9) perform any function which the Chairperson of the Council or the Council may, from time to time, delegate to him or her.

## **28. Functions of the House Chairperson Members' Support and International Relations**

The House Chairperson Members' Support and International Relations shall –

- (1) continuously monitor and report on the implementation of the policies relating to Members' Facilities;
- (2) ensure the review of the benefits for Members;
- (3) monitor and report on the needs of members with disabilities;
- (4) convene and chair the Joint Committee on Members' Interests;
- (5) facilitate the participation of Delegates in international fora;
- (6) ensure the tabling of reports of delegations in the House; and
- (7) perform any functions which the Chairperson of the Council or the Council may, from time to time, delegate to him or her.

## **CHAPTER 3: COUNCIL MEMBERS**

### **29. Proof of appointment or designation**

- (1) When a provincial legislature appoints a person as a permanent delegate or designates a person as a special delegate to the Council, the appointment or designation must be communicated in writing to the Secretary by the provincial legislature concerned.
- (2) When the Premier of a province designates a member to head the delegation on the Premier's behalf, the designation must be communicated in writing to the Chairperson of the Council by the Premier.
- (3) A communication in terms of subrule (1) or (2), whatever the case may be, must indicate
  - (a) the date from which the appointment as a permanent delegate takes effect;
  - (b) the period or purpose for which the designation as a special delegate is made; or
  - (c) the period for or the circumstances in which the delegate is designated to head the delegation on the Premier's behalf.

### **30. Oath or solemn affirmation**

- (1) Before permanent delegates begin to perform their functions in the Council they must swear or affirm faithfulness to the Republic and obedience to the Constitution in accordance with item 4 to Schedule 2 of the Constitution.
- (2) The oath or solemn affirmation by permanent delegates must be made before the Chief Justice or a judge designated by the Chief Justice unless it is by a permanent delegate filling a vacancy in a delegation, in which case it may be made before a presiding officer of the Council.

### **31. Absence of permanent delegates**

- (1) A person ceases to be a permanent delegate of the Council if that person is absent, voluntarily and without leave, from sittings of the Council and meetings of its committees for 15 consecutive days.
- (2) A permanent delegate seeking leave of absence from the Council for 15 or more consecutive days must apply for such leave from the Council.
- (3) The application for leave of absence must state the reasons for the leave of absence and the period for which leave of absence is sought.
- (4) If the leave of absence is rejected by the Council, the reasons for such rejection must be communicated to the affected delegate.

### **32.Loss of Membership due to absence from sittings of House**

- (1) Where a delegate loses membership as a result of absence referred to in rule 31, the Chairperson of the Council must without delay inform the delegate, the provincial legislature, the party that nominated the delegate and the Provincial Whip concerned.

## **CHAPTER 4: SITTINGS OF THE COUNCIL**

### **33. Conduct of business and proceedings**

The Council must conduct its business and those of its committees in accordance with the Constitution, these Rules, resolutions of the Council and parliamentary practice.

### **34. Sitting days**

- (1) The Council sits only on a working day, unless determined otherwise by the Chairperson or resolution of the Council.
- (2) Subrule (1) does not apply to a sitting of the Council called by the President in terms of section 42(5) or 203(2) of the Constitution.

### **35. Sitting times**

The sitting time of the Council is 10h00 or any other time as the Chairperson of the Council may determine, until the Council is adjourned for the day.

### **36. Seat of the Council**

- (1) The Council sits at the seat of Parliament.
- (2) The Council may sit at a place other than the seat of Parliament on the grounds of public interest, security or convenience, provided the Council, by resolution -
  - (a) identifies the public interest, security or convenience that is the reason for the change of venue;
  - (b) approves the change of venue to a specified place and for a specified period; and
  - (c) specifies the estimated costs of effecting the change of venue and maintaining it for the specified period.

### **37. Order Paper**

The business of the Council to be attended to at a sitting of the Council must be set out on an Order Paper arranged by the Chief Whip of the Council after consulting the Chairperson of the Council.

### **38. Minutes of Proceedings**

The proceedings of the Council must be minuted by the Secretary and formally recorded in the Minutes of Proceedings.

### **39. Opportunity for silent prayer or meditation**

At the commencement of the proceedings of the Council the officer presiding must afford delegates an opportunity for silent prayer or meditation.

### **40. Interruption, suspension or adjournment of proceedings**

- (1) The officer presiding at a sitting of the Council may interrupt or suspend or adjourn the proceedings of the Council to another day.
- (2) During an adjournment, the Chairperson of the Council may change the date for the resumption of business.

### **41. Admission of the public**

- (1) Sittings of the Council are open to the public, including the media, subject to section 72 of the Constitution.
- (2) The Chairperson of the Council must –
  - (a) set aside places for the public in the Chamber where the Council sits; and
  - (b) determine the entrances and routes through which the public may gain access to those places.
- (3) The Chairperson of the Council may take reasonable measures to –
  - (a) regulate public access, including access of the media, to the Council and its
  - (b) committees;
  - (c) regulate the conduct of the public in the public gallery; and
  - (d) provide for the searching of any person, or other property in that person's possession
  - (e) and, where appropriate, the refusal of entry to, or the removal of, any person from the proceedings of the Council or those of its committees.

### **42. Order to leave sittings**

The officer presiding at a sitting of the Council may order a member of the public to leave the Chamber when it is necessary to give effect to the measures referred to in rule 41(3).

### **43. Removal of persons**

- (1) When instructed by the officer presiding, the Usher must remove or arrange for the removal of a person –

- (a) who, without permission, is present in that part of the Chamber designated for delegates only or in another place which is out of bounds for that person; or
- (b) who disrupts the proceedings of the Council, causes a nuisance, or does not withdraw from the Chamber when ordered to do so in terms of rule 42.

#### **44. Visiting Heads of State**

The Chairperson of the Council, after consultation with the other Presiding Officers, Chief Whip and Provincial Whips, may invite any Head of State who is on a state visit to the Republic, to address the Council.

## **CHAPTER 5: ORDER IN MEETINGS AND RULES OF DEBATE**

### **PART 1: ORDER IN MEETINGS**

#### **45. Freedom of speech**

Delegates –

- (1) have freedom of speech in the Council and in its committees and subcommittees, subject to these Rules and the Constitution; and
- (2) are not liable to any civil or criminal proceedings, arrest, imprisonment or damages for –
  - (a) anything they have said in, produced before or submitted to the Council or any of its committees or subcommittees; or
  - (b) anything revealed as a result of anything said in, produced before or submitted to the Council or any such committee or subcommittee.

#### **46. Movement in Chamber**

- (1) A delegate may not –
  - (a) pass between the officer presiding and a delegate addressing the Chair; or
  - (b) stand in any of the passageways in the Chamber.

#### **47. Delegates may not converse aloud**

During a debate in the Council, no delegate may converse aloud.

#### **48. Delegates may not be interrupted**

No delegate may interrupt another delegate who is addressing the Chair, except to call attention to a point of order or a question of privilege.

#### **49. Order at adjournment**

When a sitting of the Council adjourns, the delegates must rise and remain in their places until the officer presiding has left the Chamber.

#### **50. Precedence of presiding officer**

Whenever the officer presiding rises during a debate in the Council, a delegate addressing or seeking to address the Chair must take his or her seat and allow the officer presiding to be heard without interruption.



### **51. Irrelevance or repetition**

The officer presiding may order a delegate addressing the Chair to stop speaking if that delegate, despite warnings from the Chair, persists in irrelevant or repetitive arguments.

### **52. Delegate ordered to leave**

- (1) The officer presiding may order a delegate to leave the Chamber immediately for the remainder of the day's sitting, if the officer presiding is of the opinion that –
  - (a) the delegate is deliberately contravening a provision of these Rules;
  - (b) the delegate is in contempt of or is disregarding the authority of the Chair; or
  - (c) the delegate's conduct is grossly disorderly.
- (2) A delegate ordered to leave the Chamber may not participate in any parliamentary activities during that day.

### **53. Censure of delegate**

- (1) If an officer presiding is of the opinion that the behaviour of a delegate is of such a serious nature that an order to leave the Chamber for the remainder of the day's sitting is inadequate, the officer presiding may order the offending delegate to leave the precincts of Parliament until the Chairperson of the Council has announced what action is to be taken against the delegate.
- (2) If the Chairperson did not preside at the sitting, the officer presiding must immediately report the matter to the Chairperson.
- (3) The Chairperson may –
  - (a) if the offending delegate is a special delegate, report him or her to the provincial legislature concerned; or
  - (b) suspend the offending delegate if that delegate is a permanent delegate.
- (4) Any action taken by the Chairperson against an offending delegate must be announced in the Council.

### **54. Period of suspension**

- (1) The suspension of a permanent delegate on the first occasion during an annual session continues for 5 working days, on the second occasion for 10 working days, and on any subsequent occasion for 20 working days.

(2) During a suspension the permanent delegate concerned may not enter the precincts of Parliament.

### **55. Apologies**

(1) A permanent delegate who has been suspended or whose suspension is being considered may submit a written apology to the Chairperson.

(2) The Chairperson may accept or reject the apology, and if accepted –

(a) may revoke the suspension, or

(b) where the suspension was under consideration, authorise the delegate to return to

(c) the precincts of Parliament; and

(d) must inform the Council accordingly.

(3) An apology accepted by the Chairperson must be recorded in the minutes of proceedings.

### **56. Grave disorder**

In the event of grave disorder at a sitting of the Council, the officer presiding may suspend the proceedings or adjourn the sitting.

### **57. Debating of charges against delegate**

If a charge for contravention of these Rules is made against a delegate, that delegate must be given the opportunity to be heard.

## **PART 2: RULES OF DEBATE**

### **58. Delegates to address Chair**

A delegate must address the Chair when speaking and, if possible, must stand while doing so.

### **59. Calling of delegates**

- (1) A delegate may speak in a debate in the Council only when called upon to do so by the officer presiding.
- (2) The officer presiding must call delegates in accordance with –
  - (a) a list of speakers for the debate; and
  - (b) the times allocated for speeches by delegates.
- (3) The list of speakers must be prepared by the Chief Whip after consultation with the chairperson of a relevant committee or the provincial whip, and, if the debate concerns a matter to be decided in terms of section 75 of the Constitution, the party representatives or Party Whips.

### **60. Time limits for speeches**

- (1) Except where these Rules provide otherwise, delegates may not speak in a debate in the Council for longer than the time allocated to them in the list of speakers.
- (2) If times have not been allocated –
  - (a) the President, the Deputy President, and the delegate in charge of the business before the Council, may speak for as long as it is necessary; and
  - (b) other delegates may not speak on a budget vote for longer than 10 minutes at a time, or, on any other business before the Council, for longer than 30 minutes at a time.

### **61. Offensive and unbecoming language**

- (1) No delegate may –
  - (a) use offensive or unbecoming language in the Council; or
  - (b) deliberately make a statement which the delegate knows to be false.

### **62. Reference to a delegate by name**

- (1) No delegate may refer to any delegate by his or her first name or names only.

### **63.Reflection upon previous Council decisions and on judges, etc.**

- (1) No delegate may reflect upon any decision of the Council taken in the same annual session, except for the purpose of moving that such decision be amended or rescinded.
- (2) No delegate may reflect upon the honour of a judge, or of the holder of an office whose removal from office is dependent upon a decision of the Council, except upon a substantive motion in the Council alleging facts which, if true, would in the opinion of the Chairperson warrant the removal from office of the judge or the holder of that office.

### **64.Matters pending before the courts**

No delegate may reflect on the merits of any matter on which a judicial decision is pending.

### **65.Rule of anticipation**

- (1) No delegate may anticipate the discussion of a matter appearing on the Order Paper.
- (2) In determining whether an address to the Council is out of order on the ground of anticipation, the officer presiding must consider whether it is probable that the matter anticipated will be discussed in the Council within a reasonable time.

### **66.Explanations**

- (1) During a debate in the Council, a delegate may be allowed to explain a previous speech but only when and to the extent that the speech has been misquoted or misunderstood in a material respect.
- (2) The delegate giving the explanation may not introduce any new matter.
- (3) A delegate may, with the prior consent of the officer presiding, explain a matter of a personal nature to the Council.
- (4) The delegate may not speak for longer than three minutes and is strictly confined to vindicating own conduct.
- (5) No debate on an explanation may be allowed.

### **67.Acting for absent delegate**

If the delegate in charge of a motion or an order of the day is absent from the Council, another delegate authorised by the absent delegate may take charge of the motion or order.

### **68.Rights of delegate to speak**

- (1) No delegate may interrupt another delegate whilst speaking, except –

- (a) to call attention to a point of order;
- (b) a question of privilege; or
- (c) at the discretion of the Presiding Officer, on a point of clarity to request permission to put a question to the delegate.

## **69. Points of order**

- (1) A delegate may raise a point of order at any time during the proceedings of the House by stating that he or she is rising on a point of order.
- (2) A point of order must be confined only to a matter of parliamentary procedure or practice, or a matter relating to unparliamentary conduct, as defined, and must be raised immediately when the alleged breach of order occurs.
- (3) The delegate raising the point of order must refer to the exact rule, or at least the principle or subject matter, on which the point of order is based.
- (4) If the delegate fails to comply with subrule (3), the Presiding Officer may require him or her to do so, and if he or she fails or does not adequately do so, the Presiding Officer may summarily rule that it does not amount to a point of order or that the matter is out of order.
- (5) The Presiding Officer may, at his or her discretion, allow delegates to address the Presiding Officer briefly on a point of order that has been raised.
- (6) The Presiding Officer must give a ruling, and may give his or her ruling or decision on the point of order immediately, or defer the decision to the earliest opportunity thereafter by way of a considered ruling.
- (7) No point of order may be raised in response to a ruling given in terms of subrule (4).
- (8) No other delegate may raise another point of order before the Presiding Officer has ruled on the first point of order.
- (9) No delegate may raise a point of order again or a similar point of order, if the Presiding Officer has ruled that it is not a point of order or that the matter is out of order.
- (10) Delegates may not disrupt proceedings by raising points of order that do not comply with this rule.
- (11) When a point of order is raised during a debate, the delegate called to order must resume his or her seat, and after the point of order has been stated to the Presiding Officer

by the member raising it, the delegate raising the point of order must likewise immediately resume his or her seat when he or she has concluded his or her submission or if the Presiding Officer asks him or her to do so.

(12) The Presiding Officer's ruling on a point of order is final and binding, and may not be challenged or questioned in the House.

(13) A delegate who is aggrieved by a Presiding Officer's ruling on a point of order may subsequently, in writing to the Chairperson of the Council, request that the principle or subject matter of the ruling be referred to the Rules Committee.

(14) The Rules Committee may deal with the referral in terms of subrule 13 as it deems fit, provided that it must confine itself to the principle underlying, or subject matter of, the ruling concerned, and may not in any manner consider the specific ruling which is final and binding.

#### **70. When reply allowed**

(1) A reply must be allowed by the delegate or member of the executive or representative of organised local government –

(a) who introduced a subject for discussion; or

(b) who is in charge of the order of the day under discussion.

#### **71. Debate closed**

A reply to a debate closes a debate unless the officer presiding decides otherwise.

## **CHAPTER 6: DECISION OF QUESTIONS**

### **PART 1: GENERAL**

#### **72.Determination of a day for decision of postponed questions**

Whenever expedient the Chairperson may determine a day for the decision of questions by the Council.

#### **73.Postponement of decisions**

When the debate on a question is concluded in the Council, the Presiding Officer may postpone the decision on the question.

#### **74.Postponed questions put without further debate**

A question that was postponed after the debate on it was concluded in the Council, must be put without further debate.

#### **75.Questions put again**

If the Presiding Officer has put a question and it is not heard or understood, the question must be put again.

#### **76.Question fully put**

- (1) No delegate, except a delegate who is permitted to make a declaration of vote, may speak to any question after it has been fully put by the Presiding Officer.
- (2) A question to be decided by the votes of individual delegates is fully put when the voice of both the "Ayes" and the "Noes" has been given on it or electronic voting thereon has been closed.
- (3) A question to be decided by the votes of provincial delegations is fully put when heads of delegations or a person designated as such votes on the question.

#### **77.Absence of quorum for decisions**

- (1) When a question before the Council is to be decided by the votes of individual delegates and fewer than one third of the delegates are present when the vote is to be taken, the bells must be rung for three minutes.
- (2) If at least one third of the delegates are still not present after the bells have been rung, the officer presiding must postpone the decision of the question.

## **PART 2: VOTING BY INDIVIDUAL DELEGATES**

### **78. Declaration of vote**

When a question to be decided by the votes of individual delegates has been fully put, the officer presiding may allow each political party in a speech not exceeding three minutes, to state the reasons why the party is in favour of or against the question.

### **79. Recording of opposition**

Whenever a question to be decided by the votes of individual delegates is put by the officer presiding, any delegate, instead of demanding a division, may request that the objection of that delegate or party, be formally recorded in the minutes of proceedings.

### **80. Demand for division**

- (1) After a question has been put and the officer presiding has indicated whether the "Ayes" or the "Noes" have it, any delegate may demand a division.
- (2) If fewer than four delegates support the demand for the division, the officer presiding must forthwith declare the decision on the question.
- (3) If four or more delegates support the demand, a division must take place without debate.

### **81. Procedure for divisions**

- (1) A division takes place in accordance with the following procedure:
  - (a) the officer presiding must order the bells to be rung for three minutes or less if agreed to by the Provincial Whips, and, after the bells have rung, order the doors to the Chamber to be locked;
  - (b) the bells need not be rung if all the delegates entitled to vote are present in the Chamber;
  - (c) when the doors have been locked, no delegate is allowed to enter or leave the Chamber until the result of the division has been declared;
  - (d) the officer presiding must put the question by calling delegates to vote "in favour of", "against" or "abstain";
  - (e) the Secretary must record the names and votes of the delegates; and
  - (f) when the names and votes have been recorded the officer presiding must declare the result of the division.



## **82. Points of order during division**

While a division is in progress, delegates may speak to a point of order arising out of or during the division.

## **83. Confusion or error during division**

In the event of confusion or error in a division, the procedure set out in rule 81 must be repeated. If there is an inaccuracy in the numbers of the votes and these numbers can be corrected in another way, the procedure need not be repeated.

## **84. Correction of Minutes**

If the numbers have been inaccurately reported or any errors occur in the names on the division lists, the officer presiding must order the minutes of proceedings to be corrected.

## **PART 3: VOTING BY PROVINCES**

## **85. Bells to be rung before questions are put**

- (1) Before a question that is to be decided by the votes of provinces is put, the officer presiding must enquire whether all heads of delegations are present in the Chamber.
- (2) If fewer than five heads of delegations are present, in the case of a section 76 Bill or any other question to be decided by a vote of at least five provinces, the officer presiding must order the bells to be rung for three minutes.
- (3) If fewer than six heads of delegations are present, in the case of section 74 legislation or any other question to be decided by a vote of at least six provinces, the officer presiding must order the bells to be rung for three minutes.
- (4) If after the bells have been rung in terms of subrules (2) and (3) and the required number of heads of delegations is not present, the officer presiding must postpone the decision on the question.
- (5) The bells need not be rung if all the heads of delegations are present in the Chamber.

## **86. Declarations of vote**

- (1) If all the delegation heads are present, the officer presiding –
  - (a) must put the question; and

(b) may allow each province, in a speech not exceeding three minutes by the head of delegation or another delegate authorised by the head of delegation, to state the reasons why the province is in favour of or against the question.

### **87.Voting**

- (1) After the question has been put and the rule 86(b) declarations of vote (if any) have been made, the Provincial Whips or heads of delegation present must cast the provinces' votes in accordance with their mandates.
- (2) After the votes have been cast and recorded the Presiding Officer must declare the result of the vote, which vote must be recorded in the minutes of proceedings.

### **88.Mandates**

Mandates must be in a format prescribed in terms of the Mandating Procedures of Provinces Act.

### **89.Voting on international agreements**

- (1) No mandate is required when the House votes on international agreements provided in terms of section 231(2) of the Constitution, however, the heads of the provincial delegations must cast a vote on behalf of their provinces.
- (2) In the absence of the head of the provincial delegation, a delegate may vote on behalf of the province.
- (3) A decision is agreed to when at least five or more provinces vote in favour of the adoption of an international agreement.

## CHAPTER 7: MOTIONS

### 90. Nature of motions

- (1) Any delegate may propose –
  - (a) a matter for discussion in the Council; or
  - (b) a draft resolution for approval by the Council.

### 91. Same question rule

- (1) A matter proposed for discussion in the Council may not in substance be the same as a matter that has been discussed in the Council during the preceding six months.
- (2) A draft resolution proposed for approval by the Council may not in substance be the same as a draft resolution which has been approved or rejected by the Council during the preceding six months.
- (3) Paragraph (a) does not prevent the Council from amending or rescinding any order, resolution or vote on the previous draft resolution.

### 92. No amendment to draft resolution

- (1) No amendment to a draft resolution may be proposed, except an amendment –
  - (a) on a question of privilege;
  - (b) to replace the name of a member in the draft resolution with the name of another member; or
  - (c) allowed by the officer presiding.

### 93. Motions without notice

- (1) Notice of a motion must be given, except when –
  - (a) an amendment to a draft resolution is proposed in terms of these Rules;
  - (b) a motion arises out of a question of privilege;
  - (c) the postponement or discharge of, or giving precedence to, an order of the day is proposed;
  - (d) the referral of a Bill to a committee is proposed;
  - (e) the delegate in charge proposes a draft resolution on the report of a committee immediately after the debate on the report has been concluded;

- (f) all the heads of delegation or Provincial Whips present unanimously agree that the motion be dispensed with without notice;
  - (g) these Rules specifically provide otherwise; and
  - (h) the officer presiding rules that notice may be dispensed with in any particular case;
- (2) Motions without notice –
- (a) must be consistent with the Constitution, the law and these rules;
  - (b) must deal with substantive matters which fall under the competence of the Council;
  - (c) must consist of a clear proposed resolution;
  - (d) may not be the same in substance as a draft resolution that has been approved or rejected by the House during the same session;
  - (e) may not propose to issue an instruction to the executive;
  - (f) must observe the principles of co-operative government in accordance with Chapter 3 of the Constitution;
  - (g) may not take longer than one and a half minutes to read out; and
  - (h) if objected to or after expiry of time limit, may not be proceeded with and becomes a notice of a motion to be printed in full in the Order Paper, unless otherwise directed by the Presiding Officer.
- (3) If a proposed motion is preceded by another motion of the same substance that has already been approved or rejected by the House on the same day, the proposed motion falls away and may not be read out and moved.

#### **94. Notice of motion**

- (1) A notice of motion in the form of a draft resolution must —
- (a) be submitted in writing;
  - (b) deal with a subject within the competence of the Council;
  - (c) be concise;
  - (d) refer to a single substantive matter;
  - (e) not take longer than one and a half minutes to read out;
  - (f) not be proceeded with if it exceeds the time limit and will be printed in full in the Order Paper; and
  - (g) comply with any of the Rules and relevant guidelines approved by the Rules Committee.

### **95. Acting for absent delegate**

A delegate authorised by an absent delegate may give notice of a motion on behalf of that delegate.

### **96. Chairperson may amend notices**

A notice of motion which offends against practice, these Rules or the Constitution may be amended or otherwise dealt with as the Chairperson may determine.

### **97. Question of privilege**

An urgent motion directly concerning the privileges of the Council takes precedence over other motions and orders of the day.

### **98. Withdrawal and lapsing of motion**

- (1) A delegate who has proposed a motion may move without notice that it be withdrawn.
- (2) A motion on the Order Paper which has not been disposed of when the Council rises on the last sitting day in any year, lapses.

## CHAPTER 8: DEBATES ON MATTERS OF PUBLIC IMPORTANCE

### 99. Debates on Presidential Addresses

The Annual Address by the President or Deputy President must be debated in the Council immediately after the President or the Deputy President has delivered the Address.

### 100. Ministerial Briefings

(1) After consultation with other Presiding Officers and the Chief Whip, and in accordance with the Council Programme, the Chairperson may from time to time schedule Ministerial Briefing Sessions by members of the national executive, provincial executive and organised local government to brief delegates on matters affecting the three spheres of government.

(2) The rules of debate apply to Ministerial Briefings.

### 101. Matters of public importance

(1) A delegate may, on any sitting day of the Council, request the Chairperson in writing to allow a matter of public importance to be debated by the Council.

(2) The Chairperson may grant the request and –

(a) place the matter on the Order Paper or, if it is an urgent matter and the Council is sitting, allow the debate to take place on the day the request is made after having considered the availability of special delegates or the relevant Cabinet member or Deputy Minister or a member of the Executive Council to participate in the debate;

(b) allocate time for the debate; and

(c) arrange for a Cabinet member or a Deputy Minister or a member of the Executive Council to participate in the debate.

(3) Such a debate may not exceed the time allocated for it by the Chairperson.

(4) Questions of privilege may not be debated under this rule.

(5) Matters already debated by the Council during an annual session may not be debated under this rule during the same session.

(6) Rule 65 does not apply to this debate.

## **102. Public debate on constitutional amendments**

- (1) The particulars of a proposed constitutional amendment referred to in section 74(5)(c) of the Constitution, must be submitted to the Chairperson within seven days after those particulars were published in the Gazette in accordance with section 74(5)(a).
- (2) The Chairperson must –
  - (a) table the particulars at the first sitting of the Council after their receipt; and
  - (b) place the particulars on the Order Paper for discussion on a day determined by the Chairperson.
- (3) The debate on the particulars or on any specific part of the draft amendments to which the particulars relate, may not exceed the time allocated for it by the Chairperson.
- (4) The Secretary must supply a copy of the particulars to delegates before the day determined for the debate.

## **103. Virtual and hybrid meetings and sittings**

### **Application of the Rules**

- (1) These Rules apply to virtual or hybrid –
  - (a) meetings of committees;
  - (b) sittings of the House;
  - (c) Ministerial Briefings and briefings of provincial legislatures by permanent delegates on Bills or any matter affecting provinces;
  - (d) the consideration of mandates or any matter affecting provinces; and
  - (e) facilitation of public involvement.

### **Notice and documents**

- (2) All meetings of committees or sittings of the House or Ministerial Briefings shall be in accordance with the Programme of the Council (the Programme).
- (3) For the purposes of –
  - (a) Sittings of the House and Ministerial Briefings, the Programme shall be sufficient notice of such sittings or briefings; and
  - (b) Committee meetings, the chairperson of that Select Committee shall be responsible for the issuing of all notices of the meeting.

- (4) All documents relating to Committee meetings, Ministerial Briefings and sittings of the House shall be distributed by any electronic means to which Members have access.

### **Quorum**

- (5) The quorum requirements for Committee meetings or sittings of the House shall be those as determined by the Constitution and the Rules of the Council.

### **Voting**

- (6) In a Select Committee meeting or a sitting of the House, delegates shall be entitled to cast their votes either electronically or by voice.
- (7) For the purposes of voting –
- (a) in a sitting of the House, the Secretary of the Council shall maintain a system that is capable of verifying the votes of delegates cast either electronically or by voice; and
  - (b) in a Select Committee meeting, the officers responsible for supporting the Select Committee shall maintain a system that is capable of verifying the votes of delegates cast either electronically or by voice.

### **Briefing by departments or any entity**

- (8) Departments may brief Select Committees on any matter by electronic or physical means determined by the Select Committees.
- (a) Where a matter affects provinces, members of the relevant committee of a provincial legislature may access the briefing of the Select Committee by the department or any other entity appearing before the Select Committee.
  - (b) The Chairperson of the relevant Select Committee must inform a provincial legislature where a matter affects provinces or any other entity or members of the public of the date and time of the meeting at least three days or within a reasonable time before the meeting.
  - (c) The place of the briefing shall be deemed to be the National Council of Provinces.
  - (d) Where members of the relevant committee of the provincial legislature had access to the initial briefing, a briefing by the permanent delegates shall not be necessary.
  - (e) The Rules of the Council shall apply to the briefing.



### **Rules applicable to briefings by permanent delegates**

- (9) In the event that the relevant provincial legislature committee could not access the briefing as provided for in 8(d) above, the following Rules shall apply:
- (a) Each permanent delegate shall be afforded an opportunity to brief his or her provincial legislature on a Bill or any matter affecting provinces which is before the Council at the time appointed for such briefing.
  - (b) The place of the briefing shall be deemed to be the provincial legislature.
  - (c) The Rules of that provincial legislature shall apply.

### **Chairperson**

- (10) The meeting shall be chaired by the chairperson of the relevant committee of that provincial legislature.
- (11) The chairperson shall have the powers of the chairperson of a committee as provided for in the Rules of that provincial legislature.

### **Minutes and records**

- (12) The provincial legislature must maintain the minutes and records of the proceedings.
- (13) The minutes referred to in (12) above shall constitute the records of that provincial legislature.

### **Conferral of negotiating and final mandate**

- (14) Subject to the provisions of the Mandating Procedures of Provincial Legislatures Act, the relevant committee of each provincial legislature shall, in terms of the processes determined by that provincial legislature confer on its delegates the authority to either negotiate or vote on the matter that serves before the relevant Select Committee of the Council.
- (15) The authority so conferred shall be communicated to the relevant delegate and the Secretary to the Council by electronic means to which the delegate and the Secretary to the Council have access.

- (16) The chairperson of the relevant Select Committee of the Council shall call upon a delegate of each of the provinces to state the negotiating or final position of a province on a matter before the Select Committee.
- (17) Production of an electronic or hard copy of such authority shall be *prima facie* proof of the conferral of such authority, unless the contrary is proved.
- (18) The venue of the meeting shall be deemed to be the National Council of Provinces.
- (19) For the purposes of voting in a Sitting of the House, the Secretary of the Council shall maintain a system that is capable of verifying the votes of delegates cast either electronically or by voice.
- (20) For the purposes of voting in a Select Committee meeting, the officers responsible for supporting the Select Committee shall maintain a system that is capable of verifying the votes of delegates cast either electronically or by voice.

### **Powers, privileges and immunities**

- (21) Delegates have the same powers, privileges and immunities which they ordinarily enjoy in Committees and House proceedings.

### **Compliance with hybrid meetings or sittings**

- (22) Delegates who are physically present in the Chamber or Committee Room must –
  - (a) connect to the virtual platform as well as insert their cards to register on the Chamber system;
  - (b) switch off the sound on their gadgets;
  - (c) ensure that the microphones on their gadgets are muted and remain muted at all times;
  - (d) use the floor microphones;
  - (e) wear face masks at all times;
  - (f) occupy seats marked for that purpose;
  - (g) switch on their videos if they want to speak/address the Chair;
  - (h) maintain social distancing at all times;
  - (i) use the RAISE HAND function if they wish to speak.
- (23) All delegates may participate in the discussions through the chat room.

## **Facilitation of public involvement**

- (24) Subject to section 72(1)(a) of the Constitution, a Select Committee must facilitate public involvement on matters before it by electronic or physical means determined by the Select Committee.

## CHAPTER 9: COMMITTEE SYSTEM

### PART 1: INTRODUCTION

#### **104. Council committees**

- (1) The Council has the following committees:
- (a) the Rules Committee;
  - (b) the Programme Committee;
  - (c) the Select Committees;
  - (d) the Committee of Chairpersons established in terms rule of 165;
  - (e) any other committees established by the Rules Committee or the Chairperson of the Council or by resolution of the Council.
- (2) Before any Council committee or other Council structure is established, the proposal must first be referred to the Rules Committee for a report and recommendation. If the proposal to establish a committee or other Council structure is contained in draft legislation before a select committee, the select committee must first refer the proposal to the Rules Committee for a report and recommendation before it considers the proposal.

#### **105. Subcommittees**

- (1) A committee –
- (a) has such subcommittees as are established by these Rules; and
  - (b) may appoint a subcommittee only when –
    - (i) there is provision for such appointment in these Rules; or
    - (ii) authorised by the Rules Committee or by resolution of the Council.
- (2) Subrule (1) does not prevent a committee from assigning a task to one or more of its members for a purely internal or administrative purpose.

#### **106. Application of Rules to committees and subcommittees established in terms of legislation**

- (1) These Rules also apply to a committee or subcommittee established in terms of Legislation, and for that purpose, such committee or subcommittee must be regarded as having been established in terms of these Rules.

## PART 2: RULES APPLICABLE TO ALL COMMITTEES

### 107. Composition of committees

- (1) Each province is entitled to be represented by at least one delegate in a committee, except where these Rules provide otherwise
- (2) A member of a committee or subcommittee may at any time be replaced or withdrawn by –
  - (a) the Chairperson, on the recommendation of the Chief Whip, if the delegate represents a province in the committee; or
  - (b) a party, if the delegate represents a party in the committee.
- (3) Special delegates have the same rights in committees as permanent delegates.
- (4) When committee members are appointed, the need for women to be fairly represented in committees must be taken into account. If women are not fairly represented in committees, the Chairperson of the Council, the Chief Whip and the heads of delegation must consider methods of achieving their fair representation.
- (5) The names of the members of a committee or subcommittee must be published in the ATC in the name of the Chairperson.

### 108. Alternates

- (1) Alternates may be appointed for one or more specific members of a committee or subcommittee.
- (2) An alternate acts as a member when the member for which the alternate was appointed
  - (a) is absent; or
  - (b) has vacated his or her seat, until the vacancy is filled.

### 109. Chairperson

- (1) Unless these Rules provide otherwise –
  - (a) a committee must elect one of its members as the chairperson of that committee; and
  - (b) the principal committee of a subcommittee must appoint the chairperson of that subcommittee.
- (2) Subject to these Rules and the directions of the committee, or the principal committee in the case of a subcommittee, the chairperson of a committee or subcommittee –

- (a) chairs the meetings of the committee or subcommittee;
- (b) may act in any matter on behalf of and in the best interest of the committee or subcommittee when it is not practical to arrange a meeting of the committee or subcommittee to discuss that matter, if that matter concerns –
  - (i) a request by a person to give evidence or make oral representations to the committee or subcommittee;
  - (ii) any other request to the committee or subcommittee; and
  - (iii) the initiation of any steps or decisions necessary for the committee or subcommittee to perform its functions or exercise its powers; and
  - (iv) performs the functions, tasks and duties and exercises the powers that these Rules, legislation, resolutions of the Council and the committee, or the principal committee in the case of a subcommittee, assigns to him or her.

#### **110. Acting chairperson**

- (1) If the chairperson of a committee or subcommittee is absent or unable to perform the functions of chairperson, the committee or subcommittee may elect one of its members as acting chairperson unless these Rules provide otherwise.
- (2) An acting chairperson performs the functions and may exercise the powers of the chairperson.

#### **111. First meetings of committees**

- (1) The Secretary must call the first meeting of a committee within five working days after the names of the members of the committee have been announced.
- (2) If the Council is in recess the Secretary must notify the relevant House Chairperson, the members of the committee and the Chief Whip of the Council of the time and place of the meeting at least 10 working days before the meeting.

#### **112. Meetings of Council committees and subcommittees**

- (1) Committees and subcommittees meet whenever necessary and as determined in accordance with these Rules, the Programme of the Council and the decisions and directives of the relevant House Chairperson.

- (2) When determining the frequency with which committees must meet, the Programme Committee or the relevant House Chairperson must take into account requests of committees to meet urgently or to meet jointly with Assembly committees.
- (3) A meeting of a committee or subcommittee may be called in terms of subrule (1) –
- (a) by the chairperson of the committee;
  - (b) by the Chairperson of the Council, if the chairperson of the committee is not available;  
or
  - (c) by resolution of the Council.
- (4) A meeting of a subcommittee may be called in terms of subrule (1) –
- (a) by the chairperson of the subcommittee; or
  - (b) by the chairperson of the principal committee.
- (5) When a meeting is called, the members of the committee or subcommittee must –
- (a) be given notice of the venue and time of the meeting; and
  - (b) be provided with all relevant documents, including an agenda or details of the purpose of the meeting.
- (6) A meeting which has as an agenda item a matter affecting provinces must be called with at least 72 hours' notice, except in an exceptional case and after the chairperson of the relevant committee has consulted with the relevant House Chairperson, Chief Whip and provincial whips.

### **113. Meetings and functioning of committees and subcommittees**

- (1) The House Chairperson responsible for committees is responsible for scheduling and coordinating meetings of all committees and subcommittees, and must for this purpose consult the committee chairpersons and the whips.
- (2) The House Chairperson responsible for committees, may issue directives and guidelines on –
- (a) the venues for committee and subcommittee meetings;
  - (b) the scheduling and functioning of committees and subcommittees; and
  - (c) the control of funds for the functioning of committees and subcommittees.

#### **114. Quorums and decisions**

- (1) A committee may proceed with business irrespective of the number of delegates present, but when a question is to be decided, delegates representing at least five provinces must be present.
- (2) A question is decided by a supporting vote of at least five provinces.

#### **115. Order in meetings**

Rules 45, 50, 56, 57, 61 and 62 with the necessary changes required by the context, apply to meetings of committees and subcommittees.

#### **116. Charges against delegates**

If any information charging a permanent delegate comes before a committee, the committee may not proceed upon that information, but must report it to the Chairperson without delay.

#### **117. Interruption, suspension or adjournment**

The chairperson of a committee or subcommittee may interrupt or suspend the proceedings or adjourn the meeting, and may change the date for the resumption of business of the committee.

#### **118. Referral of official written instruments to committees**

- (1) Except where these Rules provide otherwise, the Chairperson must refer to a relevant committee
  - (a) all Bills introduced in, or referred to the Council;
  - (b) all reports and other written instruments tabled in the Council, or submitted for tabling in the Council by a member of the national- or a provincial executive or in terms of legislation; and
  - (c) all requests, applications and other written submissions made to the Council in terms of legislation as part of or to activate a parliamentary process prescribed by such legislation.
- (2) If there is doubt as to which committee is the relevant committee, the Chairperson must refer the issue subject to these Rules or any directions of the Rules Committee or a resolution of the Council.



- (3) If a matter is referred to two or more committees, the referral may be accompanied by an instruction –
- (a) whether the committees must confer; and
  - (b) which of them must report.

### **119. Referral of Strategic Plans, Annual Performance Plans**

- (1) After tabling by Ministers, the Chairperson must in terms of Rule 118, refer strategic plans, annual performance plans and any relevant documentation related to the budget to relevant Select Committee/s for the assessment of the policy performance of the departments and their entities.
- (2) Each committee must prepare a Policy Assessment and Recommendations (PAR) Report detailing recommendations for improvements in policy implementations to strengthen and improve service delivery by the department.
- (3) The Policy Assessment and Recommendations Report (PARR) must be tabled by the chairperson of the relevant Select Committee as part of the policy debates of the budget votes of a department and its entities.
- (4) Each Minister must be allowed time to respond to the Policy Assessment and Recommendations (PAR) Report during a policy debate or within six months after the tabling and or adoption of a Policy Assessment and Recommendations Report (PARR).

### **120. Reporting**

- (1) A committee must report to the Council on a matter referred to it –
  - (a) when the Council is to decide the matter in terms of the Constitution, these Rules, a resolution of the Council or legislation;
  - (b) if the committee has taken a decision on the matter, whether or not the Council is to decide the matter as contemplated in paragraph (a); and
  - (c) on all other decisions taken by it, except those decisions concerning its internal business.
- (2) A committee must report to the Council on its activities at least once per quarter.
- (3) A chairperson or another delegate designated by the committee –
  - (a) must present a committee report to the Council; and

- (b) may request to explain the report in the Council.
- (4) A committee may not present a minority report, but must reflect minority views in the committee in its reports.
- (5) If a committee reports on a matter other than a matter mentioned in subrule (1)(a) and is of the view that its report, or a specific matter mentioned in the report, should be considered by the Council, it may make a request to that effect in the report. When such a request is granted the matter must be placed on the Order Paper.
- (6) The co-chairperson of a joint committee or another delegate designated by the co-chairperson must present the report to the Council and may request to explain the report.
- (7) A subcommittee must report to its principal committee.

### **121. General powers of committees**

- (1) For the purposes of performing its functions a committee may, subject to the Constitution, legislation, these Rules and resolutions of the Council –
  - (a) summons any person to appear before it to give evidence on oath or affirmation, or to produce documents;
  - (b) receive petitions, representations or submissions from interested persons or institutions;
  - (c) conduct public hearings;
  - (d) determine its own procedure;
  - (e) exercise any other powers assigned to it by the Constitution, legislation, these Rules or resolutions of the Council.
- (2) A committee may sit at a venue beyond the seat of Parliament, or on a day that is not a working day, or at a time the Council is sitting, or a day on which the Council is not sitting or during recess of the Council –
  - (a) only with the permission of the relevant House Chairperson and after consultation with the Chief Whip of the Council; and
  - (b) with the approval of the Chairperson of the Council.

## **122. Conferral of committees**

- (1) Two or more committees of the Council may meet jointly to consider a matter referred to them by the Council or the Chairperson of the Council.
- (2) When a matter is referred to two or more committees, the referral may be accompanied by an instruction that the committees must confer.
- (3) The Council or the Chairperson of the Council must identify one of the committees as the committee in charge. The chairperson of the committee in charge presides over meetings, but the committees involved must present a single report.
- (4) Each province has only one vote at a meeting of Council committees referred to in subrule 1. When a matter falls under section 75 of the Constitution, the participation and voting rights of delegates on committee meetings referred to in subrule 1 are the same as the rights that they have on the separate committees.

## **123. Subcommittees**

- (1) A subcommittee established by or in terms of these Rules –
  - (a) is accountable to its principal committee;
  - (b) must carry out its functions and exercise its powers within a framework determined by its principal committee and in accordance with these Rules and any directives or guidelines issued by the principal committee;
  - (c) may consult another subcommittee or any other committee;
  - (d) may only make recommendations to its principal committee; and
  - (e) must report to its principal committee regularly or when requested by the principal committee.
- (2) A subcommittee has the powers referred to in rule 121 only when assigned to it in terms of these Rules or by a resolution of the Council.
- (3) When a committee which has the power to establish a subcommittee, establishes a subcommittee, it –
  - (a) must define the subcommittee's functions;
  - (b) must designate a chairperson for the subcommittee;

- (c) may determine a period within which the subcommittee must report to it; or
- (d) may delegate any of its powers to the subcommittee which the subcommittee requires for the performance of its functions.

(4) A subcommittee referred to in subrule (3) ceases to exist –

- (a) when it has completed the functions for which it was established; or
- (b) if it is dissolved earlier by the principal committee.

#### **124. Persons appearing before committees and subcommittees**

Any person, including counsel and attorneys, appearing before a committee or subcommittee must observe the directions and conform to the procedures determined by the chairperson of the committee or subcommittee.

#### **125. Attendance by non-members**

(1) A delegate who is not a member of a committee or subcommittee –

- (a) may attend a meeting of the committee or subcommittee; and
- (b) may speak on a matter before the committee or subcommittee subject to any reasonable restrictions the committee chairperson may impose, but may not vote.

#### **126. Local government representatives**

(1) A representative of organised local government designated in terms of section 67 of the Constitution –

- (a) may attend the meeting of the committee or subcommittee; and
- (b) may speak in the meeting, but may not vote.

#### **127. Admission of the public**

(1) Meetings of committees and subcommittees are open to the public, including the media, and the chairperson may not exclude the public, including the media, from the meeting, except when –

- (a) the Constitution, legislation, these Rules or resolutions of the Council provide for the committee or subcommittee to meet in closed session; or
- (b) the committee or subcommittee is considering a matter which is –

- (i) of a private nature that is prejudicial to a particular person;
  - (ii) protected under parliamentary privilege, or for any other reason privileged in terms of the law;
  - (iii) confidential in terms of legislation; or
  - (iv) of such a nature that its confidential treatment is for any other reason reasonable and justifiable in an open and democratic society.
- (2) A decision in terms of subrule (1) to exclude the public must be taken by the committee or subcommittee concerned, provided that the committee or subcommittee may at any time –
- (a) before the start of the meeting decide that the meeting must take place in closed session; or
  - (b) close the meeting for a decision by the committee or subcommittee whether the committee or subcommittee should consider any matter in closed session.
  - (c) The committee or subcommittee may at any time during the meeting open the meeting to the public.
- (3) The Chairperson of the Council must –
- (a) set aside places for the public for committee and subcommittee meetings; and
  - (b) determine the entrances and routes through which the public can gain access to the places where committees and subcommittees meet.
- (4) The Chairperson of the Council may take reasonable measures –
- (a) to regulate public access, including access of the media, to the meetings of committees and subcommittees; and
  - (b) to provide for the searching of any person, or other property in that person's possession, and, where appropriate, the refusal of entry to, or the removal of, any person from a committee meeting.

## **128. Exclusion of members of the public from meetings**

- (1) The chairperson of a committee or subcommittee may –
- (a) order a member of the public to leave the meeting –

- (i) when the public is excluded from a meeting in terms of rule 127 (1); or
- (ii) when necessary to give effect to the measures taken by the Chairperson of the Council under rule 127(4); or
- (iii) order a person referred to in rule 127 to leave the meeting if that person does not comply with a ruling of the presiding member.

### **129. Exclusion of other persons from meetings**

When the public is excluded from a meeting of a committee or subcommittee in terms of rule 127(1), the member presiding may order a staff member, a member or official of the executive or a member of Parliament or a provincial legislature who is not a member of the committee or subcommittee, also to leave the meeting.

### **130. Removal of persons**

- (1) When instructed by the chairperson, the Usher of the Black Rod must remove or arrange for the removal of any person who –
  - (a) without permission, is present in that part of a committee room designated for members of the committee or subcommittee only;
  - (b) disrupts the proceedings of a committee or subcommittee, causes a nuisance; or
  - (c) does not leave when ordered to under rule 128 or 129.

### **131. Publication of proceedings, evidence, reports, etc.**

- (1) All documents officially before, or emanating from a committee or subcommittee are open to the public, including the media, but the following documents and recordings may not be published and their contents may not be disclosed, except with the permission of the committee or subcommittee, or by order of the Chairperson of the Council, or by resolution of the Council:
  - (a) the proceedings of or evidence taken by or placed before the committee or subcommittee while the public were excluded from a meeting in terms of rule 127 (1);
  - (b) any report on or summary of such proceedings or evidence;
  - (c) any document placed before or presented to the committee or subcommittee as a confidential document and accepted by it as a confidential document;

- (d) any document submitted, or to be submitted, to members of the committee or subcommittee as a confidential document by order of the chairperson of the committee or subcommittee; or
  - (e) any document after its submission to members declared by the chairperson as a confidential document.
- (2) The permission, order or resolution authorising the publication or the disclosure of the contents of documents mentioned in subrule (1) may provide that specific parts of or names mentioned in the document or recording may not be published or disclosed.
- (3) For the purposes of subrule (1), a document is officially before a committee or subcommittee when –
- (a) the chairperson places the document or causes or permits the document to be placed before the committee or subcommittee; or
  - (b) a person appearing before the committee or subcommittee as a witness or to make representations, presents the document to the committee or subcommittee.
- (4) Subrules (1) (c) and (d) apply only to documents that –
- (a) contain private information that is prejudicial to a particular person;
  - (b) are protected under parliamentary privilege, or for any other reason are privileged in terms of the law;
  - (c) are subject to a media embargo until the embargo expires; or
  - (d) are of such a nature that their confidential treatment is for any other reason reasonable and justifiable in an open and democratic society.

### **PART 3: RULES COMMITTEE**

#### **132. Establishment**

There is a Rules Committee.

#### **133. Composition**

- (1) The Rules Committee consists of –
- (a) the Chairperson of the Council;
  - (b) the Permanent Deputy Chairperson;

- (c) the Chief Whip of the Council;
- (d) the House Chairpersons;
- (e) the Programming Whip; and
- (f) Provincial Whips.

(2) A party that does not have a Provincial Whip may be represented by a party representative.

(3) A party that is entitled a Party Whip may be represented by such a Whip.

#### **134. Chairperson**

The Chairperson of the Council is the chairperson of the Rules Committee.

#### **135. Functions and Powers**

(1) The Rules Committee may –

- (a) develop, formulate and adopt policy concerning the exclusive business of the Council in respect of the proceedings, procedures, rules, orders and practices concerning the business of the Council;
- (b) make recommendations to the Joint Rules Committee on any matter falling within the functions and powers of that Committee;
- (c) appoint subcommittees to assist it with the performance of any of its functions or the exercise of any of its powers; and
- (d) perform any other functions assigned to it by legislation, these Rules or resolutions of the Council.

(2) The 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 Council; or
  - (ii) the Chairperson of the Council.

#### **136. Decisions**

(1) Each province has one vote in the Rules Committee.



(2) All questions before the Rules Committee are agreed to when at least five provinces vote in favour of the question.

### **137. Subcommittees**

(1) The Rules Committee has the following subcommittees:

- (a) the Subcommittee on Review of the Council Rules;
- (b) any other subcommittees appointed in terms of rule 135(1)(c).

(2) When appointing the members of a subcommittee, the Rules Committee may appoint any delegate who is not a member of the Rules Committee.

(3) Rule 131(1) and (2) apply to all subcommittees of the Rules Committee.

### **Subcommittee on Review of the Council Rules**

### **138. Composition**

(1) The Subcommittee on Review of the Council Rules consists of permanent delegates appointed in such a way that –

- (a) the majority party has three representatives; and
- (b) two members, each of whom must belong to a different minority party, represent the minority parties.

### **139. Chairperson**

(1) The Rules Committee must appoint one of the members of the Subcommittee as the chairperson of the Subcommittee.

(2) If the chairperson is not available, the remaining members must elect another member to act as chairperson.

### **140. Functions and powers**

(1) The Subcommittee may make recommendations to the Rules Committee regarding –

- (a) the proceedings, procedures, rules, orders and practices of the Council; and
- (b) perform any other function and exercise any other power assigned to it by the Rules Committee.

### **141. Decisions**

(2) A question before the Subcommittee is decided by consensus.

(3) If consensus cannot be reached, all views in the Subcommittee must be reported to the Rules Committee.

## **PART 4: PROGRAMME COMMITTEE**

### **142. Establishment**

There is a Programme Committee.

### **143. Composition**

(1) The Programme Committee consists of –

- (a) the Chairperson of the Council;
- (b) the Deputy Chairpersons of the Council;
- (c) the House Chairpersons;
- (d) the Chief Whip of the Council;
- (e) the Programming Whip; and
- (f) the Provincial Whips.

(2) A party that does not have a Provincial Whip may be represented by a party representative.

(3) A party that is entitled a Party Whip may be represented by such a Whip.

### **144. Chairperson**

The Chairperson of the Council is the chairperson of the Programme Committee.

### **145. Functions and powers**

(1) The Programme Committee –

- (a) must prepare and, if necessary, from time to time adjust the annual programme of the Council, subject to any relevant decision of the Joint Programme Committee;
- (b) must monitor and oversee the implementation of Parliament's annual programme in the Council including the legislative programme;
- (c) may make recommendations to the Joint Programme Committee on any matter falling within the functions and powers of that Committee;
- (d) may take decisions and issue directives and guidelines to prioritise any business of the Council; and

(e) must perform any other function, and may exercise any other power, as may be assigned to it by resolution of the Council.

#### **146. Decisions**

A question before the Programme Committee is agreed when at least five provinces vote in favour of the question.

#### **147. Subcommittee**

The Programme Committee may appoint a subcommittee from among its members to perform any of its functions or exercise any of its powers as it may assign to the subcommittee.

### **PART 6: SELECT COMMITTEES**

#### **148. Establishment**

- (1) The Rules Committee must, for the duration of the Council, establish select committees to deal with legislation, oversight and other matters concerning the affairs of government or any matter that may be referred to the select committees.
- (2) Any number of divisions of affairs of government may be clustered under any single select committee as the Rules Committee may determine.
- (3) The Rules Committee must determine the number of members of each select committee provided that wherever possible each provincial delegation shall have at least one representative.

#### **149. Publication of names of committee members**

The Chairperson of the Council must publish a list of names of all permanent delegates of the Council appointed to select committees.

#### **150. Election of Chairperson of Committee**

- (1) Whenever it is necessary to elect a chairperson of a committee, a committee must elect one of its members as the chairperson of the committee. The question must be put by the secretary to the committee.
- (2) The question may be decided only if a majority of the members of the committee is present.
- (3) The question is decided by a majority of the votes cast.

### **151. Acting chairperson**

If the chairperson is not available or is unable to perform the functions of the chairperson, the remaining members of the committee must elect another of its members to act as chairperson.

### **152. Composition**

- (1) The membership of a select committee must be composed so as to deal both with matters falling under sections 75 and 76 of the Constitution and any other matter.
- (2) Each province is entitled to at least one permanent delegate nominated by its provincial whip.

### **153. Quorums and decisions**

- (1) Except when a question is to be decided, business may proceed irrespective of the number of delegates present.
- (2) When a question is to be decided in terms of section 76 of the Constitution –
  - (a) committee members representing at least five provinces, or six provinces in the case of a constitutional amendment, must be present; and
  - (b) a question is agreed to if at least five provinces, or six provinces in the case of a constitutional amendment, vote in favour of the question.
- (3) When a question is to be decided in terms of section 75 of the Constitution –
  - (a) at least one third of the members of the committee must be present before a vote may be taken on a question;
  - (b) the question is decided by the majority of the votes cast; and
  - (c) if there is an equal number of votes on each side of a question, the chairperson must cast a deciding vote in addition to a vote as an ordinary member.

## **PART 6A: COMMITTEE ON FINANCE**

### **154. Establishment**

There is a Committee on Finance.

### **155. Composition**

The Committee on Finance consists of the number of delegates as the Rules Committee may determine, provided that wherever possible, each provincial delegation shall have one representative.

### **156. Chairperson**

- (1) The Committee on Finance must elect one of its members as the chairperson of the committee.
- (2) If the chairperson is not available, or is unable to perform the functions of the chairperson, the remaining members must elect another member to act as chairperson.

### **157. Functions and powers**

The Committee on Finance has those powers and functions referred to in section 4(2) of the Money Bills Amendment Procedure and Related Matters Act, 2008.

### **158. Consultation with the National Assembly Committee on Finance**

The Committee on Finance may meet or consult or exchange views with the National Assembly Standing Committee on Finance on matters of common interest or when directed to do so by the Chairperson or resolution of the Council.

## **PART 6B: COMMITTEE ON APPROPRIATIONS**

### **159. Establishment**

There is a Committee on Appropriations.

### **160. Composition**

The Committee on Appropriations consists of the number of delegates as the Rules Committee may determine, provided that wherever possible each provincial delegation shall have one representative.

### **161. Chairperson**

- (1) The Committee on Appropriations must elect one of its members as the chairperson of the committee.
- (2) If the chairperson is not available or is unable to perform the functions of the chairperson, the remaining members must elect another member to act as chairperson.

## **162. Functions and powers**

The Committee on Appropriations has those powers and functions referred to in section 4(3) of the Money Bills Amendment Procedure and Related Matters Act, 2008.

## **163. Consultation with the National Assembly Standing Committee on Appropriations**

The Committee on Appropriations may meet or consult or exchange views with the National Assembly Standing Committee on Appropriations on matters of common interest, or when directed to do so by the Chairperson or by resolution of the Council or in terms of legislation.

## **164. Publication of names of committee members**

The Chairperson of the Council must publish a list of names of all permanent delegates of the Council appointed to the Committees on Finance and Appropriations in the ATC.

## **PART 7: COMMITTEE OF CHAIRPERSONS**

### **165. Establishment**

There is a Committee of Chairpersons.

### **166. Composition**

(1) The Committee of Chairpersons consists of –

- (a) the House Chairperson responsible for Committees;
- (b) the House Chairperson responsible for Members' Support and International Relations;  
and
- (c) the Chairpersons of Committees.

### **167. Chairperson**

- (1) The House Chairperson responsible for Committees is the chairperson of the Committee of Chairpersons.
- (2) If the House Chairperson responsible for Committees is not available or is unable to perform the functions of the chairperson, another House Chairperson acts as the chairperson of the Committee.
- (3) If both House Chairpersons are unavailable, the Committee may elect one of its members to perform the functions of the chairperson.

## **168. Functions and powers**

The Committee of Chairpersons may make recommendations to the Rules Committee or the Programme Committee regarding any matter relating to the scheduling or functioning of any Council committee or subcommittee.

## **PART 8: AD HOC COMMITTEES**

### **169. Establishment**

- (1) An ad hoc committee may be established –
  - (a) by resolution of the Council; or
  - (b) during an adjournment of the Council for a period of more than 14 days, by the Chairperson of the Council after consulting the Chief Whip of the Council.
- (2) A decision by the Chairperson of the Council to establish an ad hoc committee in terms of subrule (1)(b) must be tabled in the subsequent sitting day after the decision was taken.
- (3) An ad hoc committee may only be established for the performance of a specific task.
- (4) The resolution of the Council or decision of the Chairperson establishing an ad hoc committee must include time frames for –
  - (a) the completion of any steps in performing the task; and
  - (b) the completion of the task.
- (5) An ad hoc committee has those powers referred to in rule 121 only as are specified in the resolution or decision establishing the committee.
- (6) An ad hoc committee ceases to exist –
  - (a) when it has completed the task for which it was established; or
  - (b) if it is dissolved earlier by the Council or the Chairperson of the Council.

### **170. Composition**

- (1) The resolution establishing an ad hoc committee must either specify the number of members to be appointed or the names of the members who are appointed to the committee.
- (2) The Chairperson of the Council must appoint the members if –
  - (a) the resolution of the Council does not specify the names of the committee members;
  - or

(b) the Chairperson establishes the ad hoc committee.

(3) The names of the members appointed must be published in the ATC without delay.



## CHAPTER 10: LEGISLATIVE PROCESS

### PART 1: GENERAL

#### 171. Legislative powers of Council

- (1) The national legislative authority as vested in Parliament in terms of section 44 (1) of the Constitution confers on the Council the power –
- (a) to participate in amending the Constitution in accordance with section 74 of the Constitution;
  - (b) to pass, in accordance with section 76 of the Constitution, legislation with regard to any matter within a functional area listed in Schedule 4 of the Constitution and any other matter required by the Constitution to be passed in accordance with section 76; and
  - (c) to consider, in terms of section 75 of the Constitution, any other legislation passed by the Assembly.
- (2) The Council may, in terms of section 44(2) and in accordance with section 76(1) of the Constitution, pass legislation falling within a functional area listed in Schedule 5 of the Constitution, when it is necessary –
- (a) to maintain national security;
  - (b) to maintain economic unity;
  - (c) to maintain essential national standards;
  - (d) to establish minimum standards required for the rendering of services; or
  - (e) to prevent unreasonable action taken by a province which is prejudicial to the interests of another province or to the country as a whole.
- (3) Only the following Bills may be introduced in the Council:
- (a) any Bill falling within a functional area listed in Schedule 4.
  - (b) any Bill providing for legislation envisaged in section 65(2), 163, 182, 195(3) and (4), 196 and 197 of the Constitution.
- (4) In exercising its legislative powers, the Council may, in terms of section 68 of the Constitution, –

- (a) consider, pass, amend, propose amendments to or reject any legislation before the Council, in accordance with Chapter 4 of the Constitution; and
- (b) initiate or prepare legislation falling within a functional area listed in Schedule 4 or other legislation referred to in section 76(3), but may not initiate or prepare money Bills.

#### **172. Initiation of legislation by delegates or committees**

- (1) Delegates or committees may, in terms of the Constitution and these Rules, initiate legislation.
- (2) Only a committee or delegate may, in terms of section 73(4) of the Constitution, introduce a Bill in the Council.

#### **173. Initiation of legislation by national executive or provinces**

Legislation initiated by the national executive or a provincial executive or legislature for introduction in the Council may, in terms of these Rules, be introduced only by a Council member or committee.

#### **174. Application of this Chapter**

This Chapter must be read with Chapter 4 of the Joint Rules.

### **PART 2: SECTION 76(3), (4) OR (5) BILLS**

#### **175. Chairperson's functions when section 76 (3), (4) or (5) Bills are received from Assembly**

- (1) When a section 76(3), (4) or (5) Bill has been passed by the Assembly and is referred to the Council in terms of joint rule 184(1), the Chairperson of the Council must –
  - (a) submit a copy of the Bill or an electronic copy thereof together with the annexures, if any, to the Speaker of each provincial legislature for consideration and the conferral of authority on their delegations to vote on the Bill;
  - (b) inform the Council accordingly; and
  - (c) refer the Bill to the relevant committee.

## **176. Opportunity for public input**

When a Bill has been referred to a committee, the committee may arrange its own business in a manner that allows the facilitation of public involvement in the process.

## **177. Committee's functions**

(1) The committee to which the Bill is referred –

- (a) must enquire into the subject of the Bill; and
- (b) if it is a Bill amending provisions of an Act, may seek the permission of the Council to enquire into amending other provisions of that Act;
- (c) may, or if ordered by the Chairperson of the Council must, consult with any other committee that has a direct interest in the substance of the Bill;
- (d) may consult the person in charge of the Bill, or the relevant Cabinet member if the Bill was initiated by the national executive;
- (e) may require any suitable person to brief the committee on the objects and substance of the Bill;
- (f) may consult with the relevant Assembly committee or chairperson of that committee;
- (g) may recommend that the time limit for the Council's consideration of the Bill be extended;
- (h) may consult the JTM on whether any amendments to the Bill proposed in the committee –
  - (i) may affect the classification of the Bill; or
  - (ii) may render the Bill constitutionally or procedurally out of order within the meaning of Joint Rule 161;
- (i) may not propose an amendment that –
  - (i) changes the classification of the Bill;
  - (ii) renders the Bill constitutionally or procedurally out of order within the meaning of Joint Rule 161;
- (j) may, in accordance with provincial mandates, recommend approval or rejection of the Bill or present an amendment Bill; and
- (k) must report to the Council in accordance with rule 178.

## **178. Committee report**

(1) The committee to which a Bill is referred must table in the Council –

- (a) its report;
- (b) the Bill that has been agreed on by it, or, if it has not agreed on a Bill, the Bill as referred to it; and
- (c) the Explanatory Memorandum which was introduced with the Bill or, if the Explanatory Memorandum has been amended by the committee, the amended Explanatory Memorandum.

(2) In its report the committee –

- (a) must, in accordance with provincial mandates, state whether it recommends approval of the Bill with or without amendments, or rejection of the Bill;
- (b) must specify each amendment if an amended Bill was agreed on by it, and each amendment that was considered and, for a reason other than it being out of order, was rejected by it;
- (c) must indicate that –
  - (i) all amendments are constitutionally and procedurally in order within the meaning of Joint Rule 161; and
  - (ii) no amendment affects the classification of the Bill;
- (d) must, if it is not a unanimous report, specify how many of the provinces have voted against the Bill;
- (e) may specify such details or information about its enquiry and any representations or evidence received or taken by it, as it may consider necessary for the purposes of the debate on the Bill;
- (f) may report on any matter arising from its deliberations on the Bill but which is not necessarily related to the Bill; and
- (g) may recommend to the Council that any matter contained in the report be placed on the Order Paper for consideration either before or after the Council considers the Bill.

### **179. Consideration of committee report and Bill by Council**

- (1) The Chairperson of the Council must place the Bill and the committee report thereon on the Order Paper for consideration.
- (2) The chairperson or other member of the committee who tables the report in the Council on behalf of the committee, may, if the committee has so recommended in its report, explain the report.
- (3) A Bill is passed by the Council if it is supported by at least five provinces.

### **180. Consequences of approval of amendment or rejection of section 76(3), (4) or (5) Bills**

- (1) A section 76(3), (4) or (5) Bill must be referred –
  - (a) to the President in terms of section 76(1)(b) of the Constitution and joint rule 185(1)(a) if the Council approves the Bill as passed by the Assembly;
  - (b) to the Assembly in terms of section 76(1)(c) of the Constitution and joint rule 185(1)(b) if the Council amends the Bill as passed by the Assembly; or
  - (c) to the Mediation Committee in terms of section 76(1)(d) of the Constitution and joint rule 186(1)(a) if the Council rejects the Bill as passed by the Assembly.

### **181. Process if mediation successful**

- (1) The Chairperson of the Council must table a notice in the Council stating that the Council's version has been agreed on by the Mediation Committee if the Mediation Committee has agreed on the Bill as amended by the Council and as referred to the Assembly in terms of section 76(1)(g) of the Constitution and rule 178(1)(b).
- (2) The Chairperson must place a Bill agreed on by the Mediation Committee on the Order Paper for debate and decision, if that Bill is –
  - (a) the version as passed by the Assembly and which the Council has either amended or rejected in terms of rule 178 (1)(b) or (c); or
  - (b) another version of the Bill.
- (3) If the Mediation Committee is unable to agree within 30 days of the Bill's referral to it, the Bill lapses.

## **PART 3: BILLS IN TERMS OF SECTION 76(2)**

### **PROCEDURE BEFORE INTRODUCTION OF BILLS INITIATED BY COUNCIL MEMBERS IN TERMS OF SECTION 73(4)**

#### **182. Council's requirements for Bill introduction**

- (1) A Council member intending to introduce a Bill in the Council in terms of section 73(4) (other than on request by the national executive or a provincial executive or legislature) must submit to the Chairperson of the Council a Memorandum which –
  - (a) sets out particulars of the proposed legislation;
  - (b) explains the objects of the proposed legislation; and
  - (c) states whether the proposed legislation will have financial implications for the state and, if so, gives an account of those implications.

#### **183. Referral of proposals to the relevant committee**

- (1) The Chairperson of the Council must refer the member's memorandum to the relevant committee for consideration and report.
- (2) If the Committee recommends that the proposed legislation be proceeded with, it may express itself on the desirability of the proposal.

#### **184. Council's consideration of proposal**

The Chairperson of the Council must submit the memorandum to the Speaker of each provincial legislature to enable the legislature to develop its position with regard to the proposed legislation.

#### **185. Preparation of draft Bill**

- (1) The delegate concerned must –
  - (a) prepare a draft Bill, and a memorandum setting out the objects of the Bill, in a form and style that complies with any prescribed requirements;
  - (b) consult the JTM for advice on the classification of the Bill; and
  - (c) comply with rule 190.

- (2) The Secretary must reimburse a member for any reasonable expenses the member may have incurred in giving effect to subrule (1), provided that those expenses were approved by the Chairperson of the Council before they were incurred.

### **PROCEDURE BEFORE INTRODUCTION: SECTION 76(2) BILLS INITIATED BY COUNCIL COMMITTEES**

#### **186. Council's requirements for Bill introduction**

- (1) A Council committee intending to introduce a Bill in terms of section 73(4) in the Council must table in the Council a memorandum which –
- (a) sets out particulars of proposed legislation;
  - (b) explains the objects of the proposed legislation; and
  - (c) states whether the proposed legislation will have financial implications for the state and, if so, gives an account of those implications.
- (2) The Chairperson of the Council must send a copy of the committee's memorandum to the Speaker of each provincial legislature to enable the legislature to develop its position with regard to the proposed legislation.

#### **187. Consideration of proposal**

The Council may express itself on the desirability of the proposal.

#### **188. Preparation of draft Bill**

- (1) The committee must –
- (a) prepare a draft Bill, and a memorandum setting out the objects of the Bill in a form and style that complies with any prescribed requirements;
  - (b) consult the JTM for advice on the classification of the Bill; and
  - (c) comply with rule 190.
- (2) If the committee, in terms of rule 190, chooses to publish the draft Bill and not an explanatory summary of the Bill, it is not bound to publish the Bill as it is to be introduced. Instead, the committee may publish any version of the draft Bill prepared by it in terms of subrule (1)(a).
- (3) The committee must report to the Council when it publishes the draft Bill.

### **189. Consultation with affected parties**

(1) Before introducing the Bill, the committee –

- (a) must arrange its business in such a manner that interested persons and institutions have at least three weeks after the draft Bill, or particulars thereof have been published to participate in the processing of the proposed legislation;
- (b) must consult the JTM for advice on the classification of the draft Bill; and
- (c) may in view of any comments received in terms of paragraph (a), or advice given in terms of paragraph (b) amend the draft Bill before its introduction.

### **PUBLICATION OF BILLS INTRODUCED IN TERMS OF SECTION 76(2)**

### **190. Prior notice and publication of draft legislation**

(1) A Bill to be dealt with in terms of section 76(2), whether initiated by a Council member or committee or introduced by a Council member or committee on request of the national executive or a provincial executive or legislature, may be introduced in the Council only if –

- (a) prior notice of its introduction has been given in the Gazette; and
- (b) an Explanatory Memorandum of the Bill, or the draft Bill, has been published in the Gazette. The draft Bill must be published if the Chairperson of the Council so directs.

(2) The notice referred to in subrule (1)(a) must contain an invitation to interested persons and institutions to participate in the processing of the draft legislation within a specified period.

### **191. Notice withdrawing proposed legislation**

(1) If a Council committee or member decides not to proceed with the introduction of a Bill after rule 190 has been complied with, the committee or delegate must without delay inform the Secretary in writing of the decision.

(2) The Secretary must publish a notice in the Gazette stating that the proposed legislation has been withdrawn.



## INTRODUCTION OF BILL TO BE DEALT WITH IN TERMS OF SECTION 76(2)

### 192. Method of introduction

- (1) A Council member or committee may introduce a Bill by submitting either to the Chairperson of the Council or the House –
  - (a) a copy of the Bill or a copy of the Gazette referred to in rule 190; and
  - (b) an Explanatory Memorandum which must –
    - (i) state that the Bill is introduced in terms of section 76(2);
    - (ii) explain the objects of the Bill;
    - (iii) give an account of the financial implications of the Bill;
    - (iv) contain a list of all persons and institutions that have been consulted in preparing the Bill; and
    - (v) a certificate that the Bill is constitutionally in order.
- (2) The Bill must contain on its cover page –
  - (a) a reference to the name of the member or committee introducing it; and
  - (b) a statement to the effect that the Bill is introduced –
    - (i) with the permission of the Council; or
    - (ii) on request of the national executive or a provincial executive or legislature.

### 193. Classification of Bills

- (1) When a Bill is introduced in the Council in terms of rule 192(1), the Chairperson of the Council must refer the Bill to the JTM for classification in terms of joint rule 160.
- (2) The classification of the Bill and all findings of the JTM must be –
  - (a) conveyed to the select committee or other Council committee to which the Bill was referred; and
  - (b) tabled in the Council.

### 194. Reintroduction of Bills ruled out of order by JTM

- (1) If the JTM classifies a Bill as constitutionally or procedurally out of order, the Bill may not be proceeded with.
- (2) Subrule (1) does not prevent a Bill –

- (a) from being corrected and reintroduced, if it was found to be defective because of its content; or
  - (b) from being reintroduced in accordance with the correct procedure, if it was found to be procedurally defective.
- (3) A Bill reintroduced in the Council in terms of this rule must follow the same procedure as if it were introduced for the first time, except that the steps prior to introduction as prescribed by the Council Rules do not apply if no substantive new provisions were added to the Bill.

### **PROCEDURE AFTER INTRODUCTION**

#### **195. Chairperson's functions when section 76(2) Bills are introduced**

- (1) After a Bill is introduced in terms of section 76(2) the Chairperson of the Council must –
- (a) refer the Bill to the relevant select committee; and
  - (b) send a copy of the Bill and the annexures thereto, if any, to the Speaker of each provincial legislature for consideration and conferral of authority on its delegation to vote on the Bill.
- (2) A committee to which the Bill has been referred must deal with the Bill in accordance with rule 176.
- (3) Rules 177, 178 and 179 apply.

#### **196. Consequences of approval or rejection of Bill dealt with in terms of section 76(2)**

- (1) A Bill dealt with in terms of section 76(2) –
- (a) must be referred to the Assembly in terms of joint rule 184(2), if the Council passes the Bill; or
  - (b) must be referred to the Mediation Committee if the Council rejects the Bill.

## **RECONSIDERATION OF A BILL DEALT WITH IN TERMS OF SECTION 76(2) IF AMENDED BY ASSEMBLY**

### **197. Bill referred to Select Committee**

- (1) If the Assembly amends a Bill referred to it in terms of joint rule 184(2), the Chairperson of the Council must refer the amended Bill to the relevant committee for consideration and report.
- (2) The committee to which the Bill, as amended by the Assembly, is referred to –
  - (a) may consult the relevant Assembly committee or the chairperson of that committee;
  - (b) may not propose any amendments to the Bill; and
  - (c) may consult the JTM on whether any of the Assembly's amendments –
    - (i) affect the JTM's classification of the Bill; or
    - (ii) renders the Bill constitutionally or procedurally out of order within the meaning of joint rule 161.

### **198. Committee report**

- (1) The committee to which the Bill, as amended by the Assembly, is referred must table in the Council –
  - (a) its report and recommendations; and
  - (b) the Bill agreed to by the committee.
- (2) When the report is tabled the Chairperson of the Council must place the report and the Bill on the Order Paper for debate and decision.

### **199. Debate and decision**

- (1) The debate on the report and the Bill as amended by the Assembly must be confined to –
  - (a) the matters dealt with in the report; and
  - (b) the question whether the amended Bill should be passed or not.
- (2) No amendments may be proposed to the Bill as amended by the Assembly.

- (3) If the Council passes the Bill in accordance with section 65(1) of the Constitution, the Secretary to Parliament must, without delay, submit the Bill to the President for signature and assent.
- (4) If the Council rejects the Bill, the Bill as amended by the Assembly must be referred to the Mediation Committee in terms section 76(2)(d) of the Constitution and joint rule 186(2)(b).

#### **200. Process if mediation successful**

- (1) If the Mediation Committee has agreed on the Bill as passed by the Council or the Bill as amended by the Assembly or another version of the Bill as contemplated in section 76(1)(d)(ii) or section 76(2)(h) of the Constitution, the Chairperson of the Council must –
  - (a) table a notice in the Council indicating the version on which the Mediation Committee has agreed; and
  - (b) place the Bill agreed on by the Mediation Committee on the Order Paper for debate and decision.
- (2) Rule 181, with the necessary changes required by the context, applies.
- (3) No amendments may be proposed to the Bill as agreed on by the Mediation Committee.

#### **201. Unsuccessful mediation**

If the Mediation Committee fails to agree on the Bill 30 days after the Bill has been referred to it, the Bill lapses.

### **PART 4: SECTION 75 BILLS**

#### **202. Chairperson's functions when section 75 Bills received from Assembly**

- (1) When a Bill passed by the Assembly is referred to the Council in terms of joint rule 181, the Chairperson of the Council must –
  - (a) submit a copy of the Bill and the accompanying memorandum to the Speaker of each provincial legislature for information; and
  - (b) refer the Bill to the relevant committee for consideration and report.
- (2) Rules 176, 177 and 178 apply.

### **203. Amendments after Bill placed on Order Paper**

- (1) After a Bill has been placed on the Order Paper but before the Council decides on the Bill, a delegate may place proposed amendments to the Bill on the Order Paper.
- (2) If the Bill has not been agreed to by the committee or if the committee has recommended its rejection, no amendments may be proposed under this rule.
- (3) The proposed amendments delivered to the Secretary after 12:00 on any working day may be placed on the Order Paper only after the expiry of 24 hours, unless the Chairperson of the Council directs otherwise.
- (4) The following amendments are out of order and may not be proposed under this rule:
  - (a) amendments that affect the principle of the Bill and in respect of which the Council has not given any instruction.
  - (b) amendments that change the classification of the Bill.
  - (c) amendments that would render the Bill constitutionally or procedurally out of order within the meaning of Joint Rule 161.
  - (d) amendments that are out of order for any other reason.
- (5) The Chairperson's ruling on whether an amendment is out of order is final. If the JTM has made a finding on the amendment, the Chairperson is bound by the finding.
- (6) No amendment, which has the same effect as an amendment previously rejected by the committee, may be placed on the Order Paper, unless the Chairperson of the Council directs otherwise.
- (7) If a proposed amendment has been placed on the Order Paper for the day on which the Bill is to be put for decision by the Council, the Chairperson may, before putting the question on the Bill –
  - (a) recommit the Bill together with amendments, if any, for reconsideration to the committee or joint committee which considered the Bill or another committee; or
  - (b) put the proposed amendment for decision by the Council and then the Bill as a whole, including any approved amendment.
- (8) A Council committee to which a Bill is recommitted must deal with the Bill in terms of rule 204. A joint committee to which a Bill is recommitted must deal with the Bill in terms of joint rule 170.

(9) A Bill may not be recommitted to a committee more than once in terms of this rule.

#### **204. Report to and decision of Council on amendments**

(1) If a Bill is recommitted in terms of rule 203(7) (a) to a Council committee, the committee

–

(a) may consider only the clauses in respect of which amendments were placed on the Order Paper and consequential amendments that have to be effected;

(b) may consult the JTM on whether any of the amendments –

(i) affect the JTM's classification of the Bill; or

(ii) renders the Bill constitutionally or procedurally out of order within the meaning of Joint Rule 161;

(c) must specify in the report each amendment agreed to by the committee; and

(d) must specify in the report each amendment placed on the Order Paper in terms of rule 203(7)(b) but rejected by the committee;

(e) may not agree on any amendment that may –

(i) change the classification of the Bill; or

(ii) render the Bill constitutionally or procedurally out of order within the meeting of Joint Rule 161; and

(iii) must table its report together with the Bill in the Council.

(2) The report of the committee must be placed on the Order Paper for the consideration of

–

(a) any proposed amendments agreed to by the committee; and

(b) any proposed amendments specified in the report in terms of subrule (1)(d) and moved in the Council.

(3) A motion in terms of subrule (2)(b) may be moved without notice.

(4) The Council must first decide on the amendments and then on the Bill as a whole, including any approved amendments.

(5) A Bill is passed if the Bill and any amendments are agreed to by the Council in terms of section 75(2) of the Constitution.

## **205. Consequences of approval of amendment or rejection of section 75 Bills**

(1) The Bill must be referred to –

- (a) the President in terms of joint rule 182, if the Council passes the Bill as passed by the Assembly; or
- (b) the Assembly in terms of joint rule 183, if the Council rejects or proposes amendments to the Bill as passed by the Assembly.

### **PART 5: SECTION 74 BILLS**

## **206. Tabling of public comments on Bills amending the Constitution**

When any written comments received from the public and the provincial legislatures on constitutional amendments referred to in section 74(1), (2) or (3)(b) of the Constitution are submitted to the Chairperson of the Council in terms of section 74(6)(b), the Chairperson of the Council must table those amendments forthwith in the Council.

## **207. Procedure when section 74 Bills received from Assembly**

(1) When a Bill amending the Constitution that has been passed by the Assembly is referred to the Council in terms of section 74(1), (2) or (3)(b) for consideration, the Chairperson of the Council must –

- (a) submit a copy of the Bill and the accompanying memorandum, if any, to the Speaker of each provincial legislature for consideration and conferral of authority on its delegation to vote on the Bill; and
- (b) refer the Bill to the relevant committee.
- (c) Rules 176, 177, 178 and 179 with the necessary changes required by the context, apply.

(2) A Bill is passed by the Council if it is agreed to by the Council with the supporting vote of at least six provinces.

## **208. Consequences of approval, amendment or rejection of section 74 Bills**

(1) A section 74 Bill must be referred to –

- (a) the President if the Council passes the Bill as passed by the Assembly; or
- (b) the Assembly if the Council amends the Bill as passed by the Assembly; or

(c) the Mediation Committee if the Council rejects the Bill as passed by the Assembly.

## **PART 6: PETITIONS**

### **209. Form of petitions**

Petitions must be in the form prescribed by the Chairperson of the Council in accordance with Guidelines determined by the Rules Committee.

### **210. Language of petitions**

A petition must be in one of the official languages.

### **211. Signing of petitions**

- (1) Unless the Chairperson of the Council decides otherwise, every petition must be signed by the petitioner.
- (2) Persons unable to write must make their mark on the petition in the presence of two witnesses, who must sign the petition in that capacity.

### **212. Lodging and approval by Chairperson of the Council**

Each petition must be deposited with the Secretary, who must submit it to the Chairperson of the Council for approval before it is tabled in the Council.

### **213. Referral of petitions to committees**

If approved, the Chairperson of the Council must publish the petition on the ATC and refer it to the Committee on Petitions and Executive Undertakings for consideration and report.

### **214. Powers of committee**

- (1) A committee to which a petition has been referred may, with the permission of the Chairperson of the Council, refer the subject matter of the petition to the executive or a particular government department or other administrative agency for further attention.
- (2) A committee considering a petition may recommend to the House any course of action it deems fit and proper.

### **215. Petitioner and others to be informed**

At least 90 days after receipt of the petition, the committee shall, in writing, inform a petitioner of the outcome or other course of action with regard to the petition and the reasons therefore.



## **PART 7: MISCELLANEOUS**

### **216. Same Bill may not be introduced more than once**

When a Bill has been passed or has been rejected during any annual session, no Bill of the same substance may be introduced in that year except by leave of the Council.

### **217. Lapsing and resumption of proceedings on Bills and any business before the Council**

- (1) All Bills which have not yet been passed by the Council, and any business before the Council when it rises on the last sitting day in any term lapses, but may be reinstated on the Order Paper during the next ensuing session by resolution of the Council.
- (2) The proceedings on the Bill shall resume at the stage at which the Bill was when it lapsed.
- (3) The approval or rejection of a draft resolution for the resumption of proceedings on a Bill does not prohibit the introduction of a Bill of the same substance during the same or an ensuing session, or during an ensuing recess.

### **218. Time for consideration of a Bill**

- (1) The Council may not consider or pass a Bill before at least three working days have lapsed, since the committee report was tabled –
  - (a) unless it is a Bill before the House in terms of joint rule 216; or
  - (b) an urgent Bill before the House.

### **219. Legislative cycle**

- (1) All sections 76(3), (4), (5) and 74(1), (2) and (3) Bills must be dealt with in a manner that will ensure that provincial legislatures have sufficient time to consider the Bill, facilitate public involvement in the processing of the Bill, and confer authority on the provincial delegation to negotiate and vote on the Bill.
- (2) Depending on the substance of the Bill, the period for the consideration of the Bill is at least eight weeks.
- (3) In the event that the substance of the Bill requires more time than the eight-week period, the Chairperson of the Council may, at the request of the Chairperson of the relevant committee or Speaker of a provincial legislature, extend the period.

## **220. Withdrawal of a Bill**

- (1) The person in charge of a Bill may withdraw the Bill at any time before the Bill has been disposed of in the Council.
- (2) A member of Cabinet may, with the permission of the Chairperson of the Council, withdraw a Bill at any time before the Bill has been disposed of in the Council.
- (3) A member of Cabinet may, with the permission of the Chairperson of the Council, withdraw a Bill remitted to the Council in terms of joint rule 205(1) or 206(2)(b).

## CHAPTER 11: QUESTIONS

### PART 1: GENERAL

#### 221. Notice

- (1) Except as otherwise provided in these Rules or with the prior consent of the Chairperson of the Council –
  - (a) notice must be given for each question by placing it on the Question Paper; and
  - (b) no question for oral reply may be asked on the day on which notice thereof is given.
- (2) A delegate who wants to give notice of a question must deliver a signed copy of the notice to the Secretary for placement on the Question Paper, indicating the day for the question.
- (3) A delegate may give notice of a question on behalf of an absent delegate, provided the delegate has been authorised to do so by the absent delegate.
- (4) A notice of a question which offends against the practice or these Rules may be amended or otherwise dealt with as the Chairperson of the Council may decide.
- (5) No question may be addressed to any person other than a member of the Cabinet.

#### 222. Question days

The Chairperson of the Council, after consultation with the Chief Whip, must from time to time determine days and times for replies to oral questions.

#### 223. Placing and arrangement

- (1) Questions delivered to the Secretary before 12:00 on any day may appear on the Question Paper on the second working day thereafter and not earlier.
- (2) Subject to this rule, the Secretary must place the questions on the Question Paper in such a way that each party represented in the Council has an opportunity to put a question to a member of the executive, subject to proportional representation.

#### 224. Questions to President

- (1) Questions to the President must be scheduled at least once every six months.
- (2) The number of questions to the President is limited to six questions per question session.
- (3) Questions for oral reply must be dealt with in the following order:
  - (a) Questions to the President standing over from previous question days; and
  - (b) new questions to the President.

(4) Questions to the President must relate to broad policy matters regarding national and/or international issues within the scope of the official responsibilities of the President.

### **225. Questions to Deputy President**

(1) Questions to the Deputy President must be scheduled for a question day at least once every quarter.

(2) The number of questions to the Deputy President is limited to six questions per question day.

(3) Questions for oral reply must be dealt with in the following order:

(a) questions to the Deputy President standing over from previous question days; and

(b) new questions to the Deputy President.

(4) Questions to the Deputy President must relate to the functions allocated to the Deputy President by the President.

### **226. Questions to members of Cabinet**

(1) Questions for oral reply to members of Cabinet must be dealt with in the following order:

(a) questions to Ministers standing over from previous question days; and

(b) new questions to Ministers.

## **PART 2: QUESTIONS FOR ORAL REPLY**

### **227. Period after notice**

A question for oral reply may be placed on the Question Paper for reply on a question day at least 5 working days after the day on which it appears on the Question Paper for the first time.

### **228. Form of question**

(1) A delegate who wants an oral reply to a question must distinguish it by an asterisk.

(2) If the Chairperson of the Council is of the opinion that a question deals with matters of a statistical nature, the Chairperson may direct that it be placed on the Question Paper for written reply.

(3) Questions for oral reply are limited to four questions per delegate per question day.

(4) A question for oral reply may not contain more than five subdivisions.

- (5) No more than six questions for oral reply may be put to a Minister in respect of any one government department on any particular question day.
- (6) If a delegate in whose name a question for oral reply is standing comes up for reply is not in the House or is not represented by another delegate, the question lapses unless the person who is to reply to the question elects to reply to the question or tables the reply.
- (7) The restrictions imposed by subrules (1), (2), (3), (4) and (5) do not apply to questions for written reply placed on the Question Paper for oral reply in terms of rule 231.

### **229. Times allotted**

- (1) Subject to rule 222, a sitting of the Council or part thereof may be dedicated for oral questions.
- (2) The reply to a question for oral reply may not exceed five minutes.
- (3) Only four supplementary questions may be allowed per question.
- (4) A supplementary question may not exceed two minutes.
- (5) The reply to a supplementary question may not exceed four minutes.
- (6) Written replies to questions for oral questions that have not been reached on the expiry of the time allotted and those portions of questions that have not been replied to at the expiry of the period of five minutes referred to in subrule (2), must be handed to the Secretary for inclusion in the official report of the Debates of the Council.

## **PART 3: QUESTIONS FOR WRITTEN REPLY**

### **230. Form of questions**

- (1) A question for written reply may not contain more than 15 subdivisions.
- (2) Questions for written reply are limited to three per delegate in respect of any one working week.

### **231. Written reply not given**

If the responsible Cabinet member has not replied in writing to a question within 10 working days of the day for which the question was set down for written reply, and the delegate in whose name the question stands so requests, the Secretary must place the question on the Question Paper for oral reply.

## CHAPTER 12: MISCELLANEOUS

### PART 1: COMMUNICATION WITH THE EXECUTIVE

#### **232. Communication by the President**

- (1) The President may communicate with the Council –
  - (a) by addressing the Council; or
  - (b) by correspondence; or
  - (c) by delegation.
- (2) The Chairperson of the Council must –
  - (a) present any message received from the President to the Council by reading it out at a meeting of the Council or by publishing it on the ATC; and
  - (b) if the message is to be considered by the Council, either interrupt the business of the Council and give precedence to the consideration of the message or place it on the Order Paper.

#### **233. Debates on State of the Nation Address and annual address by the President or Deputy President**

- (1) When the President has delivered the State of the Nation Address, the Chief Whip of the Council may place it on the Order Paper of the Joint Sitting for debate.
- (2) The annual address by the President or Deputy President must be debated in the Council immediately after the President or the Deputy President has delivered the address.

#### **234. Executive statement**

- (1) A member of the executive may make a factual or policy statement relating to government policy, any executive action or other similar matter of which the Council should be informed.
- (2) Except where the Chairperson determines otherwise, the time allocated for a member of the executive making an executive statement in terms of subrule (1) may not exceed 20 minutes.
- (3) Whenever possible, a copy of an executive statement must be delivered to the delegates at the sitting or before the time the statement is made in the Council.

- (4) After any executive statement has been made, the member of the executive concerned may, if applicable, table background information.
- (5) Following any executive statement, a delegate from each provincial delegation or where applicable each party may comment on the executive statement.
- (6) Comments referred to in subrule (5) shall not exceed three minutes per province and where applicable per party.

### **235. Resolutions affecting the executive**

Resolutions of the Council affecting the executive must be communicated to the President by the Chairperson of the Council, and a response may be communicated to the delegate or committee that initiated the resolution.

### **236. Advice, recommendation or approval of the Council or a committee of the Council to the executive**

- (1) When the Chairperson of the Council receives a request for the advice, recommendation or approval in terms of an Act of Parliament, the Chairperson must refer it to the relevant committee for consideration and report or to a committee established for that purpose for consideration and report.
- (2) The Secretary must supply a copy of the request together with a notification of the referral to each member of the committee.
- (3) In the case of a request for the advice, recommendation or approval of a committee, the Secretary must supply a copy of the report to the authority that made the request.

## **PART 2: INTERVENTIONS**

### **237. National interventions in provinces**

- (1) Whenever the national executive intervenes in a provincial administration in terms of section 100(1)(b) of the Constitution, the national executive must notify the Council, and such notice must contain reasons for the intervention.
- (2) The Chairperson of the Council must refer the matter to the relevant committee of the Council for consideration and report.
- (3) The Committee must –
  - (a) investigate whether or not the intervention was necessary;

- (b) afford the provincial administration concerned and the national executive the opportunity to state their case; and
  - (c) report to the Council within 90 days of the matter having been referred to it.
- (4) The report of the Committee must –
- (a) recommend whether or not the intervention should be approved; and
  - (b) be placed on the Order Paper for consideration.
- (5) If the Council approves the intervention, the committee must review the intervention on a continuous basis, and report to the Council.
- (6) The Chairperson of the Council must communicate any relevant resolution of the Council to the national executive, the Speaker of the relevant provincial legislature and the Premier of the province concerned.

### **238. Provincial interventions in local government**

- (1) Whenever a provincial executive intervenes in a municipality in terms of section 139 of the Constitution, the provincial executive must notify the Council of the intervention, and the notice must explain the reasons for the intervention.
- (2) The Chairperson of the Council must refer the matter to the relevant committee of the Council.
- (3) The Committee must –
- (a) investigate whether or not the intervention was necessary;
  - (b) afford the municipality concerned and the provincial executive the opportunity to state their case;
  - (c) confer with the select committee responsible for finance matters, if the intervention is for the purpose of maintaining economic unity; and
  - (d) report to the Council within 90 days of the matter having been referred to it.
- (4) The report of the Committee must –
- (a) recommend whether or not the intervention should be approved; and
  - (b) be placed on the Order Paper for consideration.



- (5) If the Council approves the intervention, the committee must review, on a continuous basis, whether or not it is necessary to continue the intervention, and report to the Council.
- (6) The Chairperson of the Council must communicate any relevant resolution of the Council to the Speaker of the provincial legislature concerned, the municipality, and to the Premier of the province concerned.

### **PART 3: CONTEMPT**

#### **239. Establishment**

There is a Standing Committee appointed in terms of section 12(2) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004 (the Act).

#### **240. Composition**

- (1) The committee consists of Council delegates appointed in such a manner that –
  - (a) the majority party has three representatives; and
  - (b) two delegates, each of whom must belong to a minority party.

#### **241. Chairperson**

The Deputy Chairperson is the chairperson of the Committee.

#### **242. Functions and Powers of the standing committee**

- (1) The Chairperson of the Council may refer any matter relating to contempt of Parliament to the standing committee for consideration and report.
- (2) The committee must enquire into and table a report in the House on its findings and recommendations in respect of any alleged misconduct or contempt of Parliament as defined in section 13 of the Act.
- (3) An enquiry by the committee must follow the procedure contained in the Schedule to these Rules.
- (4) The committee must recommend an appropriate penalty in accordance with section 25(2) of the Act.
- (5) After receiving the request referred to in subrule 1, the committee must, without delay, forward a copy of the complaint to the delegate or witness concerned.
- (6) In considering the complaint, the committee may consider verbal or written representations by the delegate or witness concerned.

### **243. Fines**

The amount of a fine imposable under the Act for each of the offences mentioned therein, and for each offence referred to in these Rules or any resolution of the Council, must be determined in every case by an order or a resolution of the Council; but such fine may not exceed the equivalent of one month's salary and allowances payable to the delegate concerned by virtue of the Remuneration of Public Office Bearers Act, 1998, except where otherwise provided in the Act.

### **244. Recovery of fines**

All fines must be recovered by the Secretary to Parliament and paid into Parliament's bank account.

### **245. Fines remitted and persons discharged**

A fine or a portion of a fine may be remitted by order of the Council.

### **246. Grievances**

- (1) A person, other than a delegate, who feels aggrieved by a statement or remark made by a delegate or witness in or before a House or committee about that person, may submit a written request to the Secretary to have a response recorded.
- (2) The committee referred to in section 12(2) of the Act must, subject to these rules, consider the request and, if approved, publish the response of the person in the appropriate parliamentary paper.

## **PART 4: WITNESSES**

### **247. Witness expenses**

Subject to the approval of the Chairperson of the Council, the Secretary to Parliament may pay to witnesses a reasonable sum for travelling and attendance time and for transport expenses actually incurred.

## **PART 5: OFFICE OF SECRETARY AND RECORDS OF COUNCIL**

### **248. Minutes of Proceedings**

- (1) The Minutes of Proceedings of the Council must be minuted by the Secretary and published.

(2) Minutes of the proceedings of each committee must be minuted by an official of Parliament designated by the Secretary and, after having been approved by the committee or subcommittee, be published in the ATC.

#### **249. Journals of Council**

The Minutes of Proceedings constitute the Journals of the Council.

#### **250. Papers**

(1) The Secretary has custody of all papers tabled in the Council or submitted to committees of the Council.

(2) Papers are open to all delegates and to all members of the public, but if the Council has ordered that the content of any paper may not be made public, or if it is marked as being confidential, neither the paper nor its contents may be divulged to anyone except a delegate.

#### **251. General duties of Secretary**

(1) The Secretary is responsible for the regulation of all matters connected with the business of the Council, subject to the direction of the Chairperson of the Council.

(2) The Secretary may authorise any staff member to exercise a power or perform a function vested in him or her in terms of these Rules.

## **SCHEDULE**

### **PROCEDURE TO BE FOLLOWED IN THE INVESTIGATION AND DETERMINATION OF ALLEGATIONS OF MISCONDUCT AND CONTEMPT OF PARLIAMENT**

#### **Notification of delegate**

1. A delegate charged with misconduct or contempt must receive written notice of all allegations and charges against him or her. The notification must be delivered to the delegate at least five working days before the hearing.
2. The notice must clearly indicate the date, time and venue of the hearing, that the delegate is entitled to be assisted by a fellow delegate and that the delegate may request the Committee to allow legal representation by a person who is not a delegate.
3. If it is not possible to serve the notice personally on the delegate, the Sheriff may be requested to serve such notice.
4. Depending on the complexity of the matter, the Committee may on application allow the delegate charged to be represented by a legal counsel who is not a delegate.

#### **Suspension of member**

5. In order to facilitate an investigation in terms of section 12 of the Act against a permanent delegate in circumstances where there is a possibility that the permanent delegate may interfere with evidence or witnesses or in circumstances where the allegations are of a very serious nature, the Chairperson of the Council may request the House to suspend the permanent delegate. Such suspension may be with or without remuneration and may not be for longer than 30 days. A permanent delegate who has been suspended must leave the parliamentary precinct, and may not, during the period of suspension, without the permission of the Chairperson –
  - Enter the precinct of Parliament for whatever purpose; or
  - Participate in any activity of Parliament or any committee.
6. The Chairperson of the Council must in writing inform the permanent delegate and the Speaker of the relevant provincial legislature of the suspension prior to it taking effect.

#### **Explanation by delegate**

7. If the delegate wishes to give an explanation after receiving the notice, he or she may do so either verbally or in writing.

8. The explanation referred to in 7 above may be presented at the hearing.

### **Initiator**

9. The Committee must nominate a permanent delegate or a person who is duly qualified, but who is not a member of the Committee, to act as the initiator for the duration of the hearing.

10. The initiator may present the evidence regarding the allegations and may cross-examine the permanent delegate and any witness giving evidence on behalf of the permanent delegate.

11. At the conclusion of the hearing, the initiator may address the Committee on the evidence presented before it and may also propose a penalty to be recommended by the Committee in its report.

### **Plea to charge**

12. The initiator must put the charge(s) to the permanent delegate and the Chairperson must request the permanent delegate to plead to the charge(s).

13. If the permanent delegate so wishes, he or she may give an explanation of the plea.

14. If the permanent delegate refuses to enter a plea, the Chairperson must enter a plea of not guilty.

### **Hearing**

15. The permanent delegate has a right to be present and be heard at the hearing.

16. If after receiving the notice, the permanent delegate fails, without just cause, to attend the hearing, the Committee may proceed in the absence of the permanent delegate.

17. The Committee, initiator and the permanent delegate may call witnesses.

18. Members of the Committee may put questions to the permanent delegate, but only through the Chairperson or with the permission of the Chairperson.

19. After all the witnesses have been called, the permanent delegate or fellow permanent delegate may make a closing argument or statement.

### **Penalty**

20. If the Committee finds the permanent delegate guilty of misconduct or contempt, the permanent delegate must be given an opportunity to present mitigating factors or circumstances to the Committee before the Committee reports to the House.

- 21.** The representation referred to above may be verbal or in writing.
- 22.** The initiator may also address the Committee on aggravating factors or circumstances.

**ANNEXURE A**  
**PETITIONS GUIDELINES**

**1. Definition of a Petition**

A Petition means a complaint, request, a representation or a submission by a petitioner to the Chairperson of the National Council of Provinces in terms of the Rules.

**2. Purpose of submitting a Petition**

The purpose of submitting a petition is for the Council to offer relief, where it is reasonably possible, to a petitioner who can show that he or she or it has exhausted all other lawful or appropriate avenues of relief.

**3. Types of petitions**

(1) A petition may take one of the following forms –

- (a) a single petition, which is an individual submission from a single petitioner, concerning a particular matter;
- (b) an association petition, which is a submission from an association or single petitioner mandated by an association to submit the petition, concerning a particular matter;
- (c) a collective petition, which is a collection of signatures from a number of petitioners concerning a particular matter; and
- (d) a mass or group petition, which comprises an individual or group submission from a number of petitioners, concerning the same or a substantially similar matter.

**4. Requirements of Petitions**

**(1) Formal Requirements**

A petition must –

- (a) comply with Annexure B attached hereto;
- (b) be legible;
- (c) not contain defamatory or improper language or statements; and
- (d) deal with a matter that falls within the jurisdiction of the NCOP.

**(2) Substantive Requirements**

A petition must not –

- (a) have been considered by the Committee previously, except if that petition, in the opinion of the Committee, contains new information that may materially impact on the outcome of re-consideration of the matter;
- (b) be in respect of a matter that a petitioner has not yet brought to the attention of a relevant body or if the petitioner has brought it to the attention of the relevant body, the relevant body has not been afforded reasonable time to consider the matter;
- (c) concern a matter pending in a court of law, tribunal, forum, investigative institution or body contemplated within the Constitution or any other law;
- (d) concern the conviction and sentencing of a person by a criminal court or judgment made by a civil court of law;
- (e) originate from a prisoner and connected to his or her case;
- (f) seek to review or overturn the proceedings of judgment of a competent court; and
- (g) if submitted by a Member, should not deal with a matter that is already before any parliamentary Committee.

## **5. Relief**

- (1) A petition must request a form of relief, be it general or specific, which can entail the following –
  - (a) amendment of pending or enacted legislation;
  - (b) reconsideration of a general or administrative decision affecting the petitioner;
  - (c) reasonable and practicable steps to be taken to grant relief to the petitioner; and
  - (d) any other form of relief deemed by the Committee to be reasonable.

The Committee may refuse to consider a petition if it does not comply with the abovementioned formal and substantive requirements.

## **6. Appeals**

- (1) In the event that the petitioner is not satisfied with the outcome of the petition, he/she can write to the Chairperson requesting further action on the matter.
- (2) A petition which has been finally considered by the House cannot be reopened in the absence of compelling new evidence that was available when the petition was first heard, but which the petitioner decided not to use.



(3) A claim that new evidence exists must be substantiated to the Chairperson's satisfaction before a similar petition is allowed to proceed.

## **7. Lapse of petitions**

(1) At the end of a parliamentary term, petitions that are before the Committee lapse but may be reinstated by resolution of the House.

(2) The above guideline does not prohibit the submission of a petition with the same subject matter as the one which has lapsed.

## **8. Supplementary Guidelines**

The Rules Committee may make supplementary guidelines to complement and better achieve the purpose of these guidelines.

**ANNEXURE B**  
**FORM OF A PETITION**

1. Petition to be addressed to the Council

.....  
.....

2. Full names of petitioner

.....  
.....

3. If applicable, name of person, association, or group on whose behalf the petitioner is acting

.....  
.....

4. Address of petitioner

.....  
.....

5. Contact details of petitioner

.....  
.....

6. Statement of grievance

.....  
.....

7. Institutions approached before submitting a petition to the NCOP

.....  
.....

8. Action required (Petitioner to ask for remedy within the Council's competence)

.....  
.....

9. Signature or mark of petitioner

.....

## ANNEXURE C

### GUIDELINES ON EXECUTIVE UNDERTAKINGS

#### 1. Definitions

In these Guidelines, unless the context indicates otherwise, the following words carry the meaning set out below –

“**Committee**” means the Select Committee on Petitions and Executive Undertakings or any other committee of Parliament mandated with scrutinising the implementation of Executive Undertakings;

“**Executive Undertakings**” means any assurances, commitments, resolutions, pledges or promises that are given or made by the member of the executive from time to time. Such executive undertakings may be made or given during Oral Question time, debates, debates on Bills or any other proceedings of the House;

“**Guidelines**” means the guidelines contained in this document;

“**member of the executive**” means a Minister or a member of the Cabinet

#### 2. Interpretation

(1) Any person applying or interpreting these Guidelines must interpret the provisions so as to give effect to sections 42(4), 92(2) and 92(3)(a) and (b) of the Constitution and the relevant Rules of the Council.

(2) In determining whether a statement amounts to an Executive Undertaking, regard must be had to expressions in Annexure D.

#### 3. Functions of the committee

(1) The Committee must –

(a) scrutinise the Undertakings given or made, from time to time, and ensure proper implementation of those Executive Undertakings;

(b) comment on delays in the implementation of Executive Undertakings and the adequacy of actions taken in relation to the implementation of Executive Undertakings;

(c) report on the extent to which Executive Undertakings have been implemented and where implemented, whether such implementation has taken place within the prescribed time; and

(d) exercise any other functions as may from time to time be delegated to it by the Chairperson or resolution of the Council.

#### **4. Procedure and time limits**

- (1) The Executive Undertakings must be communicated to the relevant member of the executive who made the Undertaking.
- (2) The Chairperson of the Council must request the relevant member of the executive to provide the Council with progress reports on the implementation of the executive Undertaking within the time period stated in the Undertaking by the member of the executive.
- (3) In the event that a member of the executive does not stipulate the time period within which the Undertaking will be implemented, the Chairperson must request the member of the executive to furnish the Council with the time period within which he or she intends to implement the Undertaking.
- (4) In the event that a member of the executive fails to provide the time period within seven working days of receiving the formal request, the Chairperson of the Council must determine the time period within which the Undertaking is to be implemented.
- (5) In determining the time period, the Chairperson of the Council may take into consideration, amongst other things, the nature of the Undertaking, the cost implications of the Undertaking and the public interest in the implementation of the Executive Undertaking.
- (6) The member of the executive may, on valid grounds, request an extension of the time so determined by the Chairperson of the Council for the implementation of the Undertaking.
- (7) The Chairperson of the Council is the final authority on whether the time period determined for the implementation of an Executive Undertaking is reasonable or not.

#### **5. Progress reports by the member of the executive**

- (1) The Committee may require a member of the executive to provide it with progress reports on the implementation of the Undertaking.
- (2) After scrutinising the action taken by a Department to implement the Undertaking, and the extent to which it has actually been implemented and whether such implementation has taken place within the prescribed time, the Committee may make recommendations to the Council.

## ANNEXURE D

### STANDARD LIST OF STATEMENTS OR EXPRESSIONS THAT CONSTITUTE EXECUTIVE UNDERTAKINGS

The below statements or expressions constitute executive undertakings, but is however not a closed list –

1. The matter is under consideration.
2. I shall look into it.
3. Enquiries are being made.
4. I shall inform the Honourable Member.
5. This is primarily the concern of the Department.
6. I shall write to the Department.
7. I assure the House all suggestions by Honourable Members will be carefully considered.
8. I shall study the conditions on the spot during my tour.
9. I shall consider the matter.
10. I will suggest to the department.
11. We will put the matter in the shape of a resolution.
12. I shall see what can be done about it.
13. I will look into the matter before I can say something.
14. The suggestions will be taken into consideration.
15. The matter will be considered at the.....to be held on.....
16. The matter is still under examination and if anything is required to be done, it will certainly be done.
17. The matter will be taken up with the Department of .....
18. I have no information, but I am prepared to look into the matter.
19. Efforts are being made to collect the necessary data.
20. The suggestion will be borne in mind while framing the ...
21. If the Honourable Member so desires, I can issue further instructions.
22. Copy of the report, when finalised, will be tabled in Parliament.
23. I shall supply it to Honourable Members.
24. I think it can be done.
25. We shall have to find that out.

26. I will draw the attention of the Department who I hope will take adequate steps in this direction.
27. It is a suggestion for action which will be considered.
28. All the points raised by various Members will be considered and the results will be communicated to each Member.
29. Information is being collected and will be tabled in the House.
30. I am reviewing the position.
31. In future their demands will be considered/examined.
32. The case is pending in Court. Action will be taken as soon as a judgement on the matter is handed down.
33. Certainly, action will be taken.
34. It will be executed during the current financial year.
35. It will be included in the ..... (year) Budget.
36. It is being or will be examined in accordance with the financial position.
37. It may be considered after taking into account the financial resources.
38. All specific points on which information is asked for will be provided.

## **ANNEXURE E**

### **STANDARD OPERATING PROCEDURES AS PER RULE 52: MEMBER REFUSING TO LEAVE CHAMBER**

- 1.** If a delegate refuses to leave the Chamber, the Presiding Officer asks the Usher-of-the-Black-Rod to remove the delegate from the Chamber.
- 2.** The Usher-of-the-Black-Rod approaches the delegate to explain in a respectful manner that the instruction of the officer presiding must be complied with, and that failure to do so can constitute a grave offence and have serious implications, including that the delegate may need to be physically removed from the Chamber.
- 3.** If the delegate still refuses to leave, the Usher-of-the-Black-Rod indicates to the Presiding Officer that the delegate refuses to comply, whereupon the officer presiding informs the House that the Parliamentary Protection Services are to be called upon to assist.
- 4.** The Parliamentary Protection Services personnel enter the Chamber upon the instruction of the officer presiding, and proceed to remove the delegate(s) concerned under the direction of the Usher-of-the-Black-Rod.
- 5.** Members of the public in the gallery who participate in disorderly conduct will be removed by the Parliamentary Protection Services.

## ANNEXURE F

### RULINGS OF PRESIDING OFFICERS 4<sup>TH</sup> EDITION, JUNE 2019

#### Unparliamentary language

##### FACTS

A member at the podium said a previous speaker was speaking “nonsense”. Another member rose on a point of order to ask whether it was parliamentary for one member to say another member is speaking “nonsense”. As the Presiding Officer did not hear the statement, she reserved her ruling on the matter.

##### QUESTION TO BE CONSIDERED

Whether it is parliamentary for a member to say another member is speaking “nonsense”?

##### RULING

Use of the word “*nonsense*” does not amount to unparliamentary language *per se*; however, the context and the tone in which the word was used should be taken into account when making a ruling. Therefore, the context within which the word was used was deemed unparliamentary, as it was meant to demean a member’s integrity. (Chairperson of the NCOP)

##### FACTS

A member objected to another member referring to him as a “coward” and requested the Presiding Officer to rule whether it was parliamentary for a member to be called a “coward”.

##### QUESTION TO BE CONSIDERED

Whether it is parliamentary for a member to call another member a “*coward*”?

##### RULING

Calling a member a “*coward*” is unparliamentary, as it is not in keeping with the decorum of the House. (Chairperson of the NCOP)



## **FACTS**

A member rose to object to a remark made by another member, who said "*if all the Ministers could be so honest, it could be a better country*".

## **QUESTION TO BE CONSIDERED**

Whether it was parliamentary for a member to say that "if all the Ministers could be so honest, it could be a better country".

## **RULING**

In terms of rule 30, a member of the Council has freedom of speech in the Council and its committees. However, it is subject to rule 46(a), which stipulates that "no member may use offensive or unbecoming language in the Council".

It is the function of the Presiding Officer to determine whether a particular remark made in the debate is offensive and contrary to the rules or not. In arriving at the decision, the Presiding Officer will be guided by any precedent Parliament has set for itself. On a number of occasions since the inception of the Council, Presiding Officers have ruled that members may not imply improper motives or cast personal reflections on the integrity of other members or members of the national executive, nor verbally abuse them in any other way. If such allegations, whether made directly or indirectly, were to be generally allowed in debates in the House, they would not only seriously undermine delegates or members of the executive in the performance of their duties, but also undermine the image and effectiveness of Parliament to function as the Constitution intends. This approach is in keeping with the practice in other parliamentary jurisdictions.

As allegations are equally offensive and damaging whether they are made indirectly or put forward by way of a question, she appealed to members not to abuse their freedom of speech and to refrain from making remarks which could be regarded as offensive. Such remarks are neither worthy of the dignity of the House, nor conducive to orderly and effective debate.

The remark casts aspersions on members of the executive by implying that they are not honest, and as such was ruled to be unparliamentary. The member was asked to withdraw the remark. (Chairperson of the NCOP)

## **FACTS**

A member objected to a remark made by another member who was addressing the House and said that “*other members of the Council are deceitful*”. Given that the Presiding Officer did not hear the remark the ruling was reserved.

## **QUESTION TO BE CONSIDERED**

Whether it is parliamentary to refer to members as “deceitful”?

## **RULING**

Section 71 of the Constitution, read with rule 30 of the Council, guarantees every member of the Council freedom of speech in the proceedings of the House and its committees. However, the privilege of freedom of speech is not absolute and is limited by rule 46. Members should guard against making insinuations that are offensive to other members, unbecoming of honourable members, not in keeping with the decorum of the House, or not conducive to orderly debate.

The remark was ruled unparliamentary, and the member was requested to withdraw it.  
(Chairperson of the NCOP)

## **Use of mother tongue languages during debates**

### **FACTS**

A member objected to a statement made by another member that “*members use their mother tongues in order for other members not to hear what they are saying*”. The member was asked whether she made the statement, which she denied. The Presiding Officer undertook to verify by consulting Hansard.

### **QUESTION TO BE CONSIDERED**

Whether the member had made the statement and if she did, whether it is unparliamentary?

### **RULING**

The Hansard records revealed that the member said the following: “*Chairperson, Honourable Minister, Honourable members, usually when the ANC wants to say something that not everybody will understand properly, it is done in the speaker’s mother tongue*”.

Section 30 of the Constitution provides that everyone has the right to use the language of their choice. Furthermore, the Use of Official Languages Act (Act No 23 of 2011) seeks to promote the parity of esteem and equitable treatment of official languages of the Republic. Parliament provides Translation Services to cater for members who do not understand certain languages.

Members were requested to refrain from making statements which imply that members use their mother tongues to prevent other members from understanding. Members were encouraged to use their mother tongue languages. The member was requested to withdraw the remark, which she did. (Chairperson of the NCOP)

## **Motions, amendments, and withdrawals**

### **FACTS**

While moving a notice of a motion, a member alleged that the absence of the Minister who was scheduled to respond to Oral Questions was as a result of her taking an extended holiday in Europe at the expense of tax payers. Another member objected to the notice of a motion on the grounds that the Minister was on official business abroad.

The Presiding officer requested that the information be verified in order to enable him to make a ruling on the matter.

### **QUESTION TO BE CONSIDERED**

Whether allegations made by the member were true and, if so, whether or not they are unparliamentary?

### **RULING**

Information received showed that the Minister was attending the International Labour Organisation (ILO) Governing Body meeting in Geneva, Switzerland from 12-16 November 2012. The meeting was followed by an International Symposium on Challenges of Social

Protection held in Paris, France on 19 November 2012. Thereafter, the Minister attended a panel discussion of BRICS members on “Technical Cooperation and Social Protection Floors Implementation” held in India.

Members have freedom of speech in the House, but such freedom is subject to the rules of the Council, in particular rule 46, which provides that “no member may deliberately make a statement in the Council, which the member knows is false”. Thus the motion could not be proceeded with. (Chairperson of the NCOP)

### **Motions, amendments, and withdrawals**

#### **FACTS**

A member moved a motion which, *inter alia*, called on the Speaker of the National Assembly to clarify issues relating to the loan on the President’s private residence in Nkandla.

#### **QUESTION TO BE CONSIDERED**

Whether or not the Council may direct or order a Presiding Officer of another House to do something?

#### **RULING**

The Council may not direct or order a Presiding Officer of another House (National Assembly); any action required to be taken by the Presiding Officer(s) of the National Assembly should be raised in the Assembly. Thus, the relevant part of the motion was excluded from the text of the motion and reprinted in the next Order Paper. (Chairperson of the NCOP)

### ***Sub judice rule***

#### **FACTS**

A member moved a motion without notice that the House notes the plight of residents of Lenasia whose houses were demolished as a result of failure to get authority to build houses on land owned by the municipality. Another member objected to the motion on the grounds

that the matter was before a court and as such *sub judice*. The Presiding Officer reserved his ruling in order to check whether the matter is indeed before the court.

### **QUESTION TO BE CONSIDERED**

Whether or not above matter is before a Court of Law?

### **RULING**

The matter was before the Gauteng High Court and as such in contravention of Rule 57, which provides that “No delegate may reflect on the merits of any matter on which a judicial decision is pending”. Thus, the motion could not be proceeded with. (Chairperson of the NCOP)

## **Matters before courts**

### **FACTS**

A member objected to a notice of a motion made by another member on the grounds that it contravenes Rule 48 of the Council, which reads: “[no] member, while addressing the Council, may reflect on the merits of any matter on which a judicial decision is pending”. The notice of a motion related to allegations of farm neglect by the member of the Council. Paragraph 4 of the motion called on the committee of the Council to investigate the matter.

### **QUESTION TO BE CONSIDERED**

Whether the notice of a motion was in contravention of Council Rule 48.

### **RULING**

At the time the motion was moved, the matter was still under investigation and, as such, no formal charges had been laid. Therefore, the notice of a motion does not contravene Rule 48. However, the prayer requested in terms of paragraph 4 of the motion falls outside the constitutional mandate of the Council, as the motion related to a personal and private matter.

In accordance with Rule 80, paragraph 4 of the motion should be expunged from the next Order Paper. (House Chairperson: Committees).

## **Casting aspersions on the Presiding Officer**

### **FACTS**

During the debate on Parliament's Budget Vote, a member suggested to the Council that consideration be given to putting in place a system where retired judges from the Constitutional Court and other High Courts are appointed to be Presiding Officers of this House. A member rose on a point of order against this proposal and requested the Presiding Officer to make a ruling as to whether "*it was parliamentary for a member to cast aspersions on the Presiding Officer by saying that judges should preside*"

### **QUESTION TO BE CONSIDERED**

Whether the statement casts aspersions on the Presiding Officer by saying that the Council should have judges presiding?

### **RULING**

The statement made by the honourable member was a mere suggestion to the House of the possibility of having retired judges appointed as Presiding Officers.

Practice of this House, and parliaments in general, is that if a member holds a different view or differs from the speaker, either regarding party or policy matters, the member should use the opportunity allocated to him or her during debate on those matters, instead of rising on a point of order. This is what debates are about. Members are not to rise on frivolous points of order and in so-doing interrupt the speaker on the floor. Members should raise genuine points of orders. The Rules guide members regarding what constitutes a point of order.

## **Unparliamentary language**

### **FACTS**

A member rose on a point of order to enquire whether it was parliamentary to "*imply that the Democratic Alliance was behind the third force*".

## **QUESTION TO BE CONSIDERED**

Whether it was parliamentary to imply that the Democratic Alliance was behind the third force?

## **RULING**

Unparliamentary language means different things in different jurisdictions and to different persons and members. Sometimes it strikes members as odd that some words and phrases are deemed unparliamentary, while others are permitted as being part of the cut and thrust of debate. The context in which particular words are used can affect their meaning, making them more or less acceptable to the person at whom they are directed.

At times members wish to express their views forcefully and to engage in robust debate. That is acceptable. However, it is not acceptable where the tone or the nature of the remarks becomes so ill-tempered and bad-mannered that it borders on discourtesy and disorder, rather than civil debate.

The guiding principles as to whether the words used in a debate are out of order are the perceived motive for using the words and whether something dishonourable is being attributed to another member. Words or phrases used in a debate which do not impugn the honour of the member will not be ruled out of order.

Expressions by the honourable member directed at the party are not unparliamentary, as they do not reflect on the integrity of another member. (Chairperson of the NCOP).

## **FACTS**

A member rose on a point of order in reaction to another honourable member's speech, when the honourable member said "*yiva ke lawundini ndikubalisele*". This is a Xhosa proverb which could be translated loosely as meaning 'Behold and let me tell you'.

## **QUESTION TO BE CONSIDERED**

Whether it was parliamentary for a member to refer to another member as "lawundini"?

## **RULING**

Research revealed that the honourable member was not misleading the House when saying that in rural Eastern Cape you can use it interchangeably i.e. you can either use it offensively or politely depending on the context. When one looks at the writings of Ndungana and Majamba, one of them said: “He he, ndiyeva lawundini.” This is interpreted as, “I say so” or “if you say so, mfondini.” The word used by the honourable member was not meant to offend and therefore would not be unparliamentary. However, members should be aware that, for instance, coloured people would object if you use the same word in the North West Province, as they would feel denigrated. Members are once more cautioned to be mindful of how they use words or phrases which might mean one thing in their own constituencies but something very different to other members. (Chairperson of the NCOP).

### **Participation of special delegates in the Council**

#### **FACTS**

Two members raised points of orders saying that the MEC of the Western Cape appeared to be tabling the budget of her department rather than debating the Minister’s speech.

#### **QUESTION TO BE CONSIDERED**

Whether the NCOP should prescribe to special delegates what to say during a debate?

#### **RULING**

The participation of special delegates in the National Council of Provinces is important, as it ensures that the NCOP’s mandate to ensure that provincial interest is taken into account in the national sphere of government is realised. Provinces have the prerogative to delegate any member as a special delegate to attend plenaries of the NCOP. Such members may range from members of the executive to members of the provincial legislatures. Therefore, their contributions to Council debates will always be determined by what they want to bring to the House and to any given debate. It would be very difficult for the NCOP to prescribe to special delegates what to say. In view of this, the MEC from the Western Cape Province was within her rights to include what she thought relevant during the debate in the House. (Chairperson of the NCOP).



## Unparliamentary language

### FACTS

During the Policy debate on Budget Vote Number 14: Arts and Culture, a member rose on a point of order to enquire whether it was parliamentary for a member to refer to another member as a “waste”.

### QUESTION TO BE CONSIDERED

Whether it is parliamentary to refer to another member as “a waste”?

### RULING

Based on the unrevised Hansard, no reference was made to the honourable member as “a waste”. In the light of this, the point of order could not be upheld. (Chairperson of the NCOP).

## Unparliamentary language (Joint Sitting)

### FACTS

A point of order was raised against a remark made by the Minister of Human Settlements, when she said: *“Now that the madam has found another hired native in the form of the honourable member, he will forever be grateful to the ANC for having fought in the struggle so that today a black man is such a sought-after commodity that he is hand-picked to do the bidding of somebody else”*.

### QUESTION TO BE CONSIDERED

Whether the Minister’s remark was parliamentary?

### RULING

There is nothing unparliamentary about a native being referred to as a native. There is nothing unparliamentary about a native being hired by anybody, and when used separately, there is nothing untoward or unparliamentary about it. However, in the context used by the Minister, the remark is offensive and may perpetuate the stereotype that “natives” are always for hire.

In view thereof, the Minister must withdraw the remarks she made. (Chairperson of the NCOP).

### **Reflecting upon the competence or honour of judges (Joint Sitting)**

#### **FACTS**

A point of order was raised in reaction to the following statement made by the Minister of Human Settlements, *“In this province (Western Cape), there is a scam readily available, day in, day out. Right now, we sit with a scam that has been covered up with the complicity of the media. Millions were spent by the City of Cape Town on a scam called ‘World Design Capital’. And what has happened here is that the judges were paid to judge in favour of the City of Cape Town”*.

#### **QUESTION TO BE CONSIDERED**

Whether the Minister’s statement is in conflict with Rule 14(J) of the Joint Rules, which prohibits members from reflecting upon competence or honour of the judges?

#### **RULING**

The purpose of Rule 14(J) of the Joint Rules is to protect the integrity and the independence of the judiciary and not individuals sitting on a procurement or competition panel. The judges referred to in Rule 14(J) are members of the judiciary. The judges that the Minister referred to in her statement are not members of the judiciary. Reference to judges in this context is therefore not unparliamentary (Chairperson of the NCOP).

### **Amendment to Minutes of the House (Joint Sitting)**

#### **FACTS**

During the State of the Nation Address on 12 February 2015, the leader of the opposition brought to the attention of the Presiding Officer allegations of cell phone signal jamming in the House.

On 17 February 2015, a member rose on a point of order, questioning the quality of the Minutes of Thursday, 12 February 2015, claiming that the Minutes were not complete and,

moreover, were not a true reflection of what happened in the House on the day i.e. allegations of cell phone jamming amongst other things.

The member referred to section 20 of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, which recognises minutes as evidence, which might be required by a Court of Law. The member indicated that the proceedings of Thursday evening may very well lead to legal action, and members may be aware that legal proceedings could already have been instituted.

### **QUESTION TO BE CONSIDERED**

Whether the Minutes of the sitting of Thursday, 12 February 2015 are a true reflection of what transpired in the House on that day?

### **RULING**

The Minutes of Proceedings is the official record of business transacted in the House and the decisions taken by the House during a plenary session. All decisions are recorded, with the exception of the State of the Nation Address by the President. The Minutes are a concise record of business transacted in the House. In general, the Minutes of the Houses or a Joint Sitting do not reflect individual points of order, the decision of a political party, or individual members who voluntarily leave the House.

However, the Minutes would reflect decisions, major or unusual occurrences, and rulings from which a particular action resulted, for example when the Presiding Officer gives a considered ruling where a member is ordered to withdraw remarks. Where proceedings are suspended, this would also be reflected. Together, the Minutes and the Hansard transcript form the official record of proceedings and should be read together. Should there be an instance where these records are required by a court, both the Minutes of proceedings and the Hansard would be provided to the court.

In view of this, the Minutes of proceedings of 12 February 2015 have been reprinted to reflect the matter of the jamming of cellular signal. This decision was made in view of the uniqueness of that situation. Members were encouraged to submit the matter for consideration by the Rules Committees, including the Joint Rules, if they thought that the Minutes of the House or both Houses should follow a different format. (Chairperson of the NCOP).

## **Rule 81 of the NCOP Rules**

### **FACTS**

A member raised a point of order requesting the Presiding Officer to state the rule that does not allow a certain member to rise on a question of privilege in terms of Rule 81.

### **QUESTION TO BE CONSIDERED**

Whether there is a Rule that prohibits a member from rising on a question of privilege in terms of Rule 81?

### **RULING**

The member did not rise on a motion directly concerning the privileges of the Council, let alone an urgent one, as required by Rule 81 of the Rules. Had it been that the member intended to move an urgent motion that directly concerned privileges of the House, precedence could have been given in terms of Rule 81. In view of this, the point of order was not sustained. (Chairperson of the NCOP).

## Rule 49 (1) of the NCOP Rules

### FACTS

A member raised a point of order in terms of Rule 49(1) (Rule of anticipation) of the NCOP Rules, objecting to a statement made by another member, indicating that there is a committee in another House of Parliament that was dealing with the very same issue.

### QUESTION TO BE CONSIDERED

Whether Rule 49(1) can be used to object to a matter that is before a committee of another House of Parliament?

### RULING

Rule 49(1) of the NCOP Rules clearly stipulates that “[no] member, while addressing the Council, may anticipate the discussion of a matter appearing on the Order Paper”. This rule further stipulates that “in determining whether an address to the Council is out of order on the ground of anticipation, the officer presiding must consider whether it is probable that the matter anticipated will be discussed in the Council within a reasonable time”.

In the context of the NCOP, the Rule of Anticipation does not extend to cover matters before committees of the National Assembly. The matter that has been objected to does not appear on the Order Paper of the Council, nor is there an indication that the matter will be deliberated upon by the Council within a reasonable time, as required by Rule 49. In view hereof, the Rule of Anticipation is not applicable in this instance. (House Chairperson: Committees).

## Question of privilege in terms of Joint Rule 14 L (a) (Joint Sitting)

### FACTS

The Chief Whip of the Opposition raised a question of privilege in terms of Joint Rule 14 L (a) enquiring whether it is appropriate for members of the VIP Protection Unit, who are tasked with protecting the executive, to be screening Members of Parliament on their way to the House.

### QUESTION TO BE CONSIDERED

Whether it is appropriate for members of the VIP Protection Unit, who are tasked with protecting the executive, to be screening Members of Parliament on their way to the House?

## **RULING**

Section 4 of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 stipulates that Members of the security services may enter upon or remain in the precincts of Parliament for the purposes of performing any policing function, if so permitted and authorised by the Presiding Officers. The responsibilities of the South African Police Service are also provided for in clause 8.2.3 of the Security Policy of Parliament, where it is stated, inter alia, that they are responsible for the access control system and chamber security. Further, clause 8.5.4 provides that, for the purposes of their own safety and that of others, Members will be required to have all their possessions x-rayed or manually searched.

It should be noted that, in terms of section 199(1) of the Constitution of South Africa, the security services of the Republic consist of a single police service, which includes the VIP Protection Unit. Whenever necessary, members of the VIP Protection Unit may be part of the members of the South African Police Service which carries out security functions in Parliament.

The incident that the Chief Whip of the Opposition referred to took place during the State of the Nation Address, where all arms and other organs of the State collaborate. Although the Chief Whip of the Opposition indicated that Members of Parliament were screened by the members of the VIP Protection Unit, he did not indicate that they were in any way impeded from performing their functions as Members of Parliament as a result.

Having enquired into the matter, it was established that some members of the VIP Protection Unit did screen Members of Parliament as part of the South African Police Service duties. Under normal circumstances, this is not the practice. It is only in exceptional circumstances that this approach is taken. Members were encouraged to report to the Presiding Officers any incidents that inhibit them from carrying out their functions as Members of Parliament as a result of any screening done by any of the Protection Services' members in and around Parliament. (Chairperson of the NCOP).

## Unparliamentary language (Joint Sitting)

### FACTS

A member rose on a point of order on the grounds that a remark made by the honourable Minister is derogatory towards his or her leader. The Minister of Human Settlements was recorded as having said, "Thank you very much to Honourable Holomisa for the suggestion of an economic indaba resembling that of Convention for a Democratic South Africa (CODESA). The rest of Honourable Holomisa's rumblings are not worth mentioning here right now".

### QUESTION TO BE CONSIDERED

Whether the statement made by the minister is unparliamentary?

### RULING

The member did not specify which part of the speech by the Honourable Minister of Human Settlements was derogatory. It was assumed that the member was referring to the word "rumblings". The word "rumblings" is defined as "To talk or to write in a discursive or aimless way". The guiding principles as to whether the words used in a debate are out of order centre on the motive attributed to the member who used them and whether something dishonourable is being attributed to another member. Words or phrases used in a debate which do not in any way impugn on the honour of a member will not be ruled out of order. The point of order raised by the member could not be upheld. (Chairperson of the NCOP).

## Gross disorderly conduct

### FACTS

On 9 March 2016, during the Oral Questions Session to the Deputy President, a member rose to ask a follow-up question relating to a question published in her name. According to the report submitted by the Deputy Chairperson on the matter, the member referred to matters unrelated to the question, spoke without being recognised, and referred to matters which were *sub judice*. Further, despite caution from the Presiding Officer, the member

continued with her actions to the extent of insulting a member and accusing the Presiding Officer of protecting the Deputy President. Her actions warranted suspension from the House.

The Chairperson, when delivering her ruling on the incident, referred to the above report which was submitted to her in terms of Rule 38(2) of the NCOP Rules by the Deputy Chairperson in respect of the matter. In terms of the report, the conduct of the member caused grave disorder in the House; bordered on contempt and a breach of the privilege of the freedom of speech. The Deputy Chairperson's report concluded that due to the gravity of member's conduct, the order to leave the House was inadequate.

### **QUESTION TO BE CONSIDERED**

Whether the conduct of the member warrants suspension in accordance with Rule 38(3)(b).

### **RULING**

In terms of Rule 38(1), the Chairperson is required to announce what action is to be taken against a member. Rule 38(3)(a) compels the Chairperson to report an offending member to the Legislature that appointed him or her, in this case, the Gauteng Provincial Legislature. In terms of Rule 38(3)(b), the Chairperson has the discretion to suspend the member concerned. Rule 39 (1) provides that the suspension of a permanent delegate on the first occasion during the annual session continues for five working days.

Based on the report by the Deputy Chairperson, the Chairperson decided not to suspend the member as authorised by Rule 38(3)(b). Instead, the matter was referred to the Standing Committee to be appointed in terms of Section 12(2) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act. This, given that according to the report, the member's conduct may border on contempt and a breach of the privilege of freedom of speech in terms of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act. (Chairperson of the NCOP).

## **Removal of a Member from the House**

### **FACTS**



During the sitting of 15 March 2016, a member was found to have disregarded the authority of the Presiding Officer after he refused to leave the House, despite being requested to do so by the Presiding Officer several times. Subsequently, the Presiding Officer invoked Rule 38, whereby he ordered the member to leave the precincts of Parliament until the Chairperson of the NCOP announced the action to be taken against the member.

The Chairperson referred to the sitting of 15 March 2016 (above), specifically to the removal of a member from the House. She further made reference to the report she received from the House Chairperson.

### **QUESTION TO BE CONSIDERED**

Whether the conduct of the member warranted removal from the Chamber?

### **RULING**

When formulating rulings, presiding officers are guided by a number of factors, which include previous rulings on similar matters.

Having had regard to such precedence, the removal of the member for the remainder of the day's sitting was adequate, given the nature of the offence. Members were cautioned to adhere to rulings and the orders of the Presiding Officers. It is of utmost importance to maintain the dignity of the House, and that includes recognising the authority of the Chair. Members were implored to treat the Presiding Officers with the same courtesy and respect they expect from them. (Chairperson of the NCOP).

## **Unparliamentary language**

### **FACTS**

A member raised a point of order against a remark made by another member, who said "*you are visually impaired, open your eyes*" while the member on the podium was visually disabled. When the member was asked whether she made the statement, she acknowledged having made the statement and indicated that it was a figure of speech. She further indicated that, in English, when you say to somebody 'open your eyes', it is a figure of speech, which means that someone should observe the facts of a situation.

## **QUESTION TO BE CONSIDERED**

Whether the statement is unparliamentary?

## **RULING**

Our languages are rich with metaphor, which in some instances may be misconstrued as derogatory or offensive depending on the context. In this matter, the honourable member used a figure of speech which may be construed as insensitive. The member did not intend to offend the member who was at the podium at that time. Having regard to Rule 46, which provides that members may not use offensive or unbecoming language towards other members, commonly known as “unparliamentary language”. This must be balanced with freedom of speech. This rule is broadly framed to allow the Presiding Officer to take into consideration, amongst other things, the context and tone of particular remarks and inference.

Words used by the honourable member did not amount to unparliamentary language. (House Chairperson: Committees).

## **FACTS**

During the policy debate on Budget Vote Number 17: Social Development, members rose on points of order against remarks made by another member, who said “You know this white man! This white man must not tell me that I am wasting time. This white man must never! Jesus, a white person telling me? Jesus! A racist white person telling me to sit down; I will never! He must never tell me!”

## **QUESTION TO BE CONSIDERED**

Whether the statement is unparliamentary?

## **RULING**

The points of order relate to matters raised when members were in private discussion. Members are all aware that Presiding Officers are not privy to the private discussions between members, as their focus is on the speaker at the podium. Notwithstanding this, the

conduct of the members sometimes results in the disruption of the House. What then disrupted the House was that members heard another member say:

*“You know this white man! This white man must not tell me that I am wasting time. This white man must never! Jesus, a white person telling me? Jesus! A racist white person telling me to sit down; I will never! He must never tell me!”*

There are two matters to consider; firstly, the behaviour of the member and secondly, the language used in the House. Members are aware of their privilege of freedom of speech in the Council and its committees. Similarly, members should also be aware that Rule 46(a) provides that no member may use offensive or unbecoming language in the House. In keeping with the decorum of the House, members are required to afford each other mutual respect by referring to and addressing one another in a respectful manner. Referring to another member as ‘this man’, or ‘this white man’, or ‘a racist white person’ is disrespectful and offensive.

There is a procedure to be followed if one member feels aggrieved by the conduct or utterances of another member. There is no doubt that, if the member had opted to follow that procedure, the Presiding Officer would have been able to attend to and address the matter. Unfortunately, the member chose to display behaviour, not only contrary to the decorum of the House but also to her position as a public representative.

Members will recall that there have been rulings in this House on calling another member a racist. It should be reiterated that it is not parliamentary to call another member a racist, regardless of the situation or context.

The conduct and the language used by the member were not in keeping with the decorum of the House. In fact, it is unbecoming and unacceptable. (House Chairperson: International Relations and Members’ Support).

## **Statement by Deputy Chairperson on behaviour of Members**

### **FACTS**

The Presiding Officer referred to previous rulings regarding unacceptable behaviour of members which undermined the decorum of the House. The Presiding Officer indicated that

the Presidium *has noticed that some members have taken it upon themselves to want to question, debate, overturn, and in some instances, defy the officer presiding.*

## **RULING**

Owing to above concerns, the Presiding Officer made the following statement:

*“I would like to refer members to Council Rules 35 and 37.*

*Rule 35 states: “Whenever the officer presiding rises during a debate in the Council, a member addressing or seeking to address the Chair must sit down and allow the officer presiding to be heard without interruption.*

*Rule 37 states:*

- (1) The officer presiding may order a member to leave the Chamber immediately for the remainder of the day’s sitting if the officer presiding is of the opinion that -*
  - (a) the member is deliberately contravening a provision of these Rules;*
  - (b) the member is in contempt of or is disregarding the authority of the Chair; or*
  - (c) the member’s conduct is grossly disorderly.*

*Members should be mindful that, as honourable members, we are supposed to conduct ourselves in a manner befitting of the decorum of this august House. To interject when an officer presiding is addressing the House, or to call to question the ruling of the officer presiding after it was delivered is totally unacceptable, and is tantamount to contempt and/or disregarding the authority of the officer presiding.*

*As officers presiding, we have the responsibility to conduct proceedings of the House and to protect speakers at the podium in order to ensure that the business of the House is not compromised. Members might have noticed that we always encourage them, in case a member is not satisfied with the decision of the officer presiding, to write and bring that matter to the attention of the Chairperson of the Council. Therefore, there should not be any justification for members who are not satisfied with rulings of the officer presiding to disrupt proceedings of the House.*

*I therefore call upon all members to co-operate with us and to afford us the opportunity to conduct the business of the House, uninterrupted. Failure to do this will leave us with no other option but to protect the decorum of the House and enforce the Rules". (Deputy Chairperson of the NCOP).*

### **Statement by Chairperson of the NCOP on unparliamentary language and behaviour of Members**

Owing to concerns regarding behaviour of members in previous sittings, the Presiding Officer made the following statement:

*"Honourable Members, I have in the previous weeks observed with concern the deterioration of the language used in the House. I could not help but observe that the language used by members was increasingly falling foul of the accepted parliamentary language. Some bordered on sheer intimidation or threats. Others bordered on naked racism and disrespect. Although the debates may be robust and members may heckle, the language must remain within the bounds of acceptable parliamentary practices and conventions.*

*Freedom of speech is one of revered privileges accorded to Members of Parliaments the world over. This is to allow members to freely express their views and represent, to the best of their ability, their constituencies without interference or hindrance from outside bodies. This privilege belongs to both individual members and a collective body of members. So important is this privilege, that it may only be limited by the Rules. To my mind, Members have adopted the Rules that limit the exercise of this privilege. These Rules need to be adhered to. Defy them, the House descends into disorder. Defy them, the Officer Presiding is entitled by the Rules to meet out the penalty provided for in the Rules.*

*It is therefore concerning to hear members using language and words with pejorative meaning against each other in the name of privilege of freedom of speech. Words such as "there is a smell of alcohol in the House" uttered by a member on 7 June 2017 during the debate on Social Development clearly suggest that members are not sober; "you stay in a house full of dog fur" uttered by the Minister of Social Development on the same date" suggests that a member is dirty or stays in an unhygienic condition.*

*The threats of assault issued by a member to another member on the same day are clearly intended to intimidate members in the performance of their constitutional functions.*

*The racist words such as “this white man”; “a racist white person who hijacked the struggle” uttered by a member referring to another member are clearly intended to impair the dignity of a member and are inconsistent with every democratic tenet that this House stands for.*

*The belittling word such as “sies” uttered by a member on 13 June 2017 during the debates on Rural Development and Land Reform and Agriculture, Forestry and Fisheries is intended to impair the dignity of members.*

*A phrase such as “you have no balls” uttered by a member during the same debate is clearly not in consonance with the decorum and dignity of the House.*

*I have deliberately taken time on this matter merely because of the importance I attach to the privilege of freedom of speech accorded specifically to members alone. I expect no less from the members of this House. The very constituencies that we represent expect better from us”. (Chairperson of the NCOP).*

## **Unparliamentary language**

### **FACTS**

During the Policy Debate on Budget Vote 36: Water and Sanitation a member raised a point of order against a statement made by another member as follows, *“I rise on a point of order; the member is misleading the public, the honourable member said Nomvula Mokonyane paid for the conference millions. She knows very well that is not true”.*

Owing to the fact that the Presiding Officer could not hear what was said, she asked the member whether she made the statement. The member denied making the statement. The Presiding Officer undertook to consult Hansard and revert with a ruling.

Having consulted Hansard, it was ascertained that the member did not make the statement as alleged. She is recorded to have said, *“it seems that the self-proclaimed “Mama Action”, which is Nomvula Mokonyana, was only really active in being responsible for frivolous*

*spending in her department by this, I am speaking about the 2 billion that will be spent on the Reserve Bank....”*

### **QUESTION TO BE CONSIDERED**

Whether the statement can be deemed unparliamentary?

### **RULING**

In arriving at her ruling, the Presiding Officer indicated that as members are at liberty to exercise their freedom of speech as enshrined in the Constitution and the Rules, this should not permit them to rise on frivolous points of orders, as that could potentially degenerate proceedings of the House.

She pointed out that recently points of orders were being raised as a response to what the speaker on the podium was saying, as was the case in the current matter. She urged members to guard against raising points of order as responses, especially when they hold a different view to the speaker on the podium. The practice of this House, and parliaments in general, is that where the member holds a different view or differs from the speaker on the podium, he or she should use the opportunity allocated to him or her when debating to raise those matters, rather than rising on points of order. This is what debates are all about.

She then ruled that the allegations made by one member against another member cannot be substantiated, and therefore the point of order cannot be upheld; it was a response to the speaker on the podium.

She further appealed to members to debate matters instead of rising on contrived points of order. (House Chairperson: International Relations and Members' Interests)

### **Deliberately misleading the House**

### **FACTS**

During the debate on Budget Votes number 20 and 23, a member rose on a point of order and stated that another member was misleading the country by stating that “*The DA under the National Party killed people and individuals at Vlakplaas*”.

The Presiding Officer committed to consult Hansard and revert with a ruling, as he did not hear the member's remark. According to Hansard, the member said "*shame on DA for selling their manifest after killing innocent people during the time of the National Party Programmes*".

### **QUESTION TO BE CONSIDERED**

Whether the member had made such statements as alleged by the other member, and, if so, did she deliberately mislead the House?

### **RULING**

In arriving at her ruling, the Presiding Officer indicated that what the member said sounded similar and could have been interpreted as "*the DA killed people*".

As previously ruled in this House, all members of Parliament have freedom of speech, which is expressly constitutionalised in section 71 and further embedded in Council Rule 30. References to political parties is not unparliamentary.

The courts have favoured the use of robust and emotive language during parliamentary debates, as held in the Constitutional Court Judgement of ***Democratic Alliance v African National Congress***; and I quote: "*Political life in democratic South Africa has seldom been polite, orderly, and restrained. It has always been loud, rowdy, and fractious. That is not a bad thing. Within the boundaries the Constitution sets, it is good for democracy, good for social life, and good for individuals to permit as much open and vigorous discussion of public affairs as possible.*"

It is evident from the judgements laid down by the courts that members' freedom of speech is tantamount to the promotion of an environment that is representative of an open and democratic society.

He ruled that the point of order as raised by the member is not sustained. He cautioned members to take heed of previous rulings delivered in this House and further to encourage members to advocate for an environment that promotes robust debates, rather than to rise on contrived points of order. (Deputy Chairperson of the NCOP).



## Unparliamentary language

### FACTS

During the Policy Debate on Budget Vote No 26: Energy, a member rose on a point of order and alleged that another member was misleading the public. “*Where did he see Zuma looting?*”

The Presiding Officer undertook to consult Hansard and revert with a ruling, as he did not hear the member’s remark. Having consulted Hansard, the member is recorded to have said the following: “*We should condemn and actually imprison President Zuma, the Guptas, and Mr Brain Molefe for looting from government, through inflating the controversial 1 064 locomotive tender to which the Gupta-linked businesses scored from R38 billion to R54, 5 billion with these inflective.*”

### QUESTION TO BE CONSIDERED

Whether the statement can be deemed unparliamentary?

### RULING

In arriving at his ruling, the Presiding Officer referred to Section 71 of the Constitution, read with the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, and Council Rule 30 which affords members of the Council freedom of speech. This fundamental privilege is crucial, as it recognises that members should be free to speak their minds in debates, without fear or favour.

It was held in the Supreme Court of Appeal case of Chairperson of the Nation Council of Provinces v Malema that the Constitution does not allow a Presiding Officer to limit a member’s freedom of speech, unless authorised by the Rules of Parliament or a standing order.

In previous rulings, Presiding Officers have discouraged members from referring to persons who are not Members of Parliament and who are unable to reply in their own defence.

In both the Westminster system and our own South African system, members have a responsibility to protect the public, not only from outright slander, but also from any slur directly or indirectly implied.

He ruled that making an allegation against a non-member of Parliament is not unparliamentary but appealed to members to avoid, as much as possible during the course of debate, mentioning people outside of Parliament who are unable to reply in their own defence, as they are not Members of Parliament. (Deputy Chairperson of the NCOP)

### **Statement by the Chairperson of the NCOP on disorderly conduct**

#### **FACTS**

During the sitting of 6 June 2018, when the House Chairperson of International Relations and Members' Interests (House Chairperson) was presiding, a member rose on a point of order on the basis that other members contravened Rule 32 of the Council, in that they were conversing very loudly.

Furthermore, that the member on the podium was drowned out by frivolous points of order that came from members of the EFF. The member, while addressing the Presiding Officer on a point of order, submitted that such conduct constituted grave disorder, thereby referring to Rule 41.

The member also submitted that the House Chairperson could have suspended the proceedings or adjourned the sitting in terms of Rule 41. The Presiding Officer, however, dismissed the point of order. The member objected to the ruling, remained standing, and persisted with the point of order several times. The House Chairperson ordered the member to leave the House, which she refused to do, arguing that the ruling was biased. The House Chairperson ordered the Usher of the Black Rod to remove the member. The member continued to resist. The House Chairperson then requested the Parliamentary Protection Services to assist in removing the member from the House. The member submits that she was assaulted in the process.

The Chairperson of the NCOP informed the House that she received a letter from the member on 7 June 2018 requesting that they meet. The Chairperson indicated that she met with the member.

In her letter, the member reaffirmed the sequence of events as follows:

- that at the plenary of the 6th, she rose on a point of order based on NCOP rules 32 and 33, to request that the House Chairperson addresses the decorum of the House, as the EFF was disrupting the member on the podium during his speech on the policy debate on Vote 24;
- that despite clear evidence from the member on the podium being drowned out by the racket of the EFF members, including the frivolous points of order aimed at disrupting the member on the podium, the House Chairperson ruled that her point of order was void;
- that in objection to the ruling of the House Chairperson, she remained standing in order for the House Chairperson to recognise her and rule upon her point of order; In response the House Chairperson yelled at her to sit down;
- that she requested the House Chairperson to restore the order of the Council, which she could have done by applying Rule 41;
- that her microphone was switched off, and she was ordered to leave the Council;
- that she made a statement regarding the House Chairperson's ruling as biased; and that she did not want to leave the Council;
- the House Chairperson requested the Usher of the Black Rod and the Parliamentary Security Protection Services to remove her from the Council. Upon this instruction from the House Chairperson, the Parliamentary Protection Services physically forced her out of the Council and assaulted her.

In her letter, the member also calls for the House Chairperson to tender an apology in Council on the grounds that her rights were violated and, furthermore, that the House Chairperson should not preside until the matter has been resolved.

The Chairperson indicated that she had an opportunity to discuss the matter with House Chairperson regarding the other violations of the member's rights and the assault.

In her report, House Chairperson states that, *"I then cautioned her that if she continues to speak without being recognised, I would order her to leave the House. Having disregarded my authority, I then ordered the member to withdraw from the Chamber for the remainder of the sitting"*.

The Chairperson further indicated she had the opportunity to look at the recordings of the proceedings of that day. From the recordings, it is quite apparent that:

- Firstly, the record specifically confirms that member rose and stated the following, *"The decorum of this House for the past 15 minutes was terrible. We cannot continue in this way;"*
- Secondly, the Presiding Officer ruled her out of order;
- Thirdly, the Presiding Officer ordered her to take her seat and indicated that failure to do so would result in her being removed from the House;
- Fourthly, she refused to take her seat and persisted in speaking; and
- Fifthly, she refused to leave the House when ordered to do so, and she was ultimately removed with the assistance of two women from the Parliamentary Protection Services.
- It is also noticeable that several members were standing at the time that the member was speaking. There appeared to be an altercation between herself and the Presiding Officer.
- It also appears that before she was removed, she resisted attempts to leave the House. It also appears that on her way out she attempted to hold onto desks. Except for the pushing and shoving, the recording does not reveal any signs of the member being assaulted.

The Chairperson pointed out that one of the issues that we must also put on the record is that, outside that specific door, there is no camera coverage. Therefore, she was unable to

tell whether, once the member stepped out of the door, she was assaulted or not. That is something that needs to be attended to, as Presiding Officers do not want to be seen to be unable to deal with a situation when it confronts them.

## **RULING**

In arriving at her ruling, the Chairperson indicated that it is correct that Rule 32 prohibits members from conversing aloud. However, it has been ruled in the past that while heckling is allowed, members must not be drowned out. So, members can converse, but not drown each other out. Rule 32 does not completely prohibit members from conversing. It only says that you should not be heard above the one that is on the podium. It is also correct that Rule 33 authorises members to interrupt a member who is speaking at the podium by raising a point of order.

The decision whether members converse aloud lies with the Presiding Officer. Equally, it is for the Presiding Officer to decide when a point of order is valid. Members are requested not to attempt to assist the Presiding Officers, but rather to leave the decision to rule a member out of order to the person who is presiding.

Rule 35, on the one hand, allows the Presiding Officer to be heard without interruption. This rule compels any member speaking to take his or her seat while the Presiding Officer addresses the House. An altercation with a presiding officer is therefore prohibited. For a member to persist in speaking after having being ordered to take his or her seat, is therefore in contravention of Rule 35.

Rule 37 authorises the Presiding Officer to order the member to leave immediately, should the Presiding Officer be of the opinion that the member is deliberately contravening a provision of Rule 37, or that the member is in contempt of or disregarding the authority of the Chair, or the member's conduct is grossly disorderly.

The Chairperson indicated that the House Chairperson has informed her that she formed an opinion as required by Rule 37, and that her opinion is supported by the following words from the recording, "Having disregarded my authority, I then ordered the member to withdraw from the Chamber".

It is important to mention that, in a democratic society, members are allowed to exercise their right to speak. However, it is also critical that members respect the authority of the Presiding Officers. The impartiality of the Presiding Officer is one of the foremost values that the integrity of the South African Parliament must be measured by. Presiding Officers have the responsibility to preserve parliamentary integrity, to maintain the decorum of the House, to ensure the smooth running of the business of the House, and to maintain law and order. Presiding Officers should be civil; they should be courteous; and they should be reasonably patient towards all members of this House. Temperament is an important aspect of the role of the Presiding Officer. Important attributes in a Presiding Officer includes, but are not limited to, attentiveness, courtesy, open-mindedness, patience, absence of arrogance, listening skills, decisiveness, even-handedness in the treatment of all members, a fostering of a general sense of fairness, and the absence of bias.

What is critical in a Presiding Officer is attentiveness and control over the proceedings of the House. As observed from the recordings, the Presiding Officer was a bit overwhelmed on that day as a result of the situation in the House. Honourable members, at times in the midst of very tense and heated debates, Presiding Officers tend to be overwhelmed by such pressure of listening to and hearing you clearly, and responding in a particular manner without the intention of stifling the debate in the House. Presiding Officers are just human beings. Sometimes they also get impatient; they lose track of what you are saying because they are trying to calm things down, but Presiding Officers must try to be one and all of the things that were enumerated.

Because of an overwhelming situation that the House Chairperson found herself in, some members were not given sufficient opportunity to speak or were interrupted while attempting to. It is critical that Presiding Officers should afford members an opportunity to raise their points of order without hindrance. Points of order should not be frivolous and should not be intended to stifle or frustrate debates. Presiding Officers should apply the rules before arriving at a conclusion that a point of order is out of order.

Members were urged not to abuse the rule on points of order, as this abuse has the potential to cause the House to degenerate into chaos. A chaotic House is the antithesis of a robust debate.

The Chairperson highlighted the following:

- Firstly, the member persisted in speaking when ordered to stop;
- Secondly, she further refused to leave the House when she was ordered;
- Thirdly, although she felt her rights were infringed, she should have left the House as ordered; and
- Lastly, when all of us as Presiding Officers preside, we need to hear out a member's point of order before we rule.

*"I want to say that the assault allegation by the honourable member is serious. As I have indicated, there is no recording. Now, in no democratic society, or any society at all, must a public representative feel that they are under the threat of an assault from anybody, least of all when they walk in the corridors where they are representatives. So, we will make sure that it never happens that our members are subjected to any threats or actual assaults."*

The Chairperson implored members to respect one another, to respect the Constitution, to respect the rules of the House, and all South African laws. Also importantly, to respect all South Africans who look to them for leadership. Furthermore, members were asked to remember who they are, why they are here, what they are doing here, and how they come across to those people who have sent them here when they behave the way they behave in the House. (Chairperson of the NCOP)

## **Deliberately misleading the House**

### **FACTS**

During the Oral Questions Session to the Minister in the Presidency for Planning, Monitoring and Evaluation, a member rose on a point of order and said the following: *"Chairperson, on a point of order: The Minister just said now that the precursor and the following party of the National Party is the DA and that was mentioned before in this House and there was a ruling about that, which is clearly false. [Interjections.] It is deliberately misleading because the DA comes from the DP and the DP comes from the PFP and the PFP does not come from the National Party"*.

The Presiding Officer undertook to consult Hansard and revert with a ruling, as he did not hear the member's remark.

### **QUESTION TO BE CONSIDERED**

Whether the statement by the Minister deliberately mislead the House?

### **RULING**

In arriving at his ruling, the Presiding Officer referred to Section 71 of the Constitution read with the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act and Council Rule 30, which affords members of the Council and Cabinet Members freedom of speech in the Chamber.

He indicated that this privilege recognises that members should be free to speak their minds in debates without fear or favour. It is at the heart of privileges of Parliament, which are an integral part of our Constitutional arrangements. However, in exercising the privilege, one would expect that everyone in the House would always be prudent in their tone and choice of words.

One of our roles as officers presiding is to create a space that allows members during debates to express themselves, probe others and listen to others. Every member in this House has the right to hold his or her own views and the right to express those views in this Chamber.

To raise points of order out of every heated exchange in the House would render proceedings unworkable. As previously ruled in this House, the officers presiding cannot be expected to adjudicate on the accuracy or otherwise of every statement, as this would lead to endless disputes of facts.

A deliberate misleading of the House involves an intent to mislead and/or knowledge that the statement would mislead. It would be virtually impossible to prove that a member deliberately misled the House. Members must be allowed to present different interpretations of debates or events in political discourse. However, we will never allow remarks directed specifically at another Member that question that Member's integrity, honesty or character.



In view of this, he ruled that the point of order raised by the member cannot be upheld.  
(Deputy Chairperson of the NCOP)

### **Statement by the Deputy Chairperson on the conduct of the Members**

Honourable members, I would like to make some comments on the recent behaviour of some members of the House, I would like to stress the point that I refer to some members.

As Presiding Officers, we have noted that some members have taken it upon themselves to want to question, debate, overturn and in some instances defy the officer presiding. I would like to refer members to Council Rules 35 and 37, which provides as follows;

Rule 35 states whenever the officer presiding rises during a debate in the Council, a member addressing or seeking to address the Chair must sit down and allow the officer presiding to be heard without interruption.

Rules 37 state, the officer presiding may order a member to leave the Chamber immediately for the remainder of the day's sitting if the officer presiding is of the opinion that–

- the member is deliberately contravening a provision of the Rules
- the member is in contempt of or is disregarding the authority of the chair, or
- the member's conduct is grossly disorderly.

Members should be mindful that as honourable members, we are supposed to conduct ourselves in a manner befitting the decorum of this august House. To interject an officer presiding while addressing the House or to call to question the ruling of the officer presiding after it was delivered, is totally unacceptable and is tantamount to contempt and/or disregarding the authority of the officer presiding.

As officers presiding we have a responsibility to conduct proceedings of the House and to protect speakers on the podium in order to ensure that the business of the House is not compromised. Members may have noticed that we always encourage members if they are not satisfied with a decision of a presiding officer, to write and bring that matter to the attention of the Chairperson. Therefore, there should not be any justification for members who are not satisfied with rulings of officers presiding to disrupt proceedings of the House.

I therefore call upon all members to cooperate with Presiding Officers and afford Presiding Officers the opportunity to conduct the business of the House un-interrupted. Failure to comply will leave us with no option but protect the decorum of the House and enforce the rules. (Deputy Chairperson of the NCOP)

## **Ruling by the Chairperson of the NCOP on the proposed amendments to Electoral Laws Amendment Bill [b 33b – 2018] (National Assembly – Sec 75) in terms of Rule 212 of the NCOP**

### **FACTS**

The Office of the Secretary to the NCOP received proposed amendments from Hon Hattingh at 14:00 on 8 January 2019. The proposed amendments were purportedly submitted in terms of Rule 212 of the Rules of the National Council of Provinces. The proposed amendments sought to amend the Electoral Laws Amendment Bill [B33B – 2018]. In terms of Rule 212(1)(a), after a Bill has been placed on the Order Paper but before the Council decides on the Bill, any member may place proposals for amending the Bill on the Order Paper. It was in terms of this Rule that the hon member purportedly submitted the proposed amendments.

### **RULING**

The purported proposed amendments seek to amend certain provisions of the Electoral Act which are not covered by the Electoral Laws Amendment Bill [B33B- 2018]. The Bill is classified as a Bill not affecting provinces. It is therefore to be dealt with in terms of Section 75 of the Constitution.

The Bill was passed by the National Assembly and referred to the National Council of Provinces, as required by Section 75(1) of the Constitution. Section 75(1)(a) of the Constitution enjoins the National Council of Provinces to pass the Bill, pass the Bill subject to proposed amendments or reject the Bill.

The Bill was then referred to the Select Committee on Social Services, now referred to as the committee, for consideration and to report to the House.

Rule 210(1)(a) requires the committee to which the Bill is referred, to inquire into the subject of the Bill and the committee has done so. According to the report presented by the chairperson of the committee, the committee reports the Bill without proposing amendments.

In terms of Rule 212(1)(a), after a Bill has been placed on the Order Paper but before the Council decides on the Bill, any member may place proposals for amending the Bill on the Order Paper. It is in terms of this Rule that the hon member purportedly submitted the proposed amendments.

The purported, proposed amendments were accordingly placed on the Order Paper of 10 January 2019, in terms of Rule 212. Rule 212(3)(a) prohibits, amongst others, proposed amendments that may render a Bill constitutionally or procedurally out of order, within the meaning of joint Rule 161 or amendments that are out of order for any other reason. Rule 210(1)(h), which applies to the consideration of the Bill by the committee, is similarly worded. It prohibits a committee from proposing an amendment that may render the Bill constitutionally or procedurally out of order within the meaning of joint Rule 161.

In terms of joint Rule 161(2)(a), to which Rule 212 refers, a Bill is procedurally out of order if the procedure prescribed in either the Assembly or the Council rules as a precondition for the introduction of a Bill in the particular House has not been complied with. As indicated above, the Bill was classified as a Bill not affecting provinces, to be dealt with in terms of the procedure prescribed in Section 75 of the Constitution. Needless to say, the Constitution does not envisage the introduction of these types of Bills in the National Council of Provinces. Unlike Bills affecting provinces, which the National Council of Provinces may amend, the House is only confined to passing these types of Bills subject to proposed amendments.

To be precise, Section 68(b) of the Constitution, dealing with the powers of the National Council of Provinces, empowers the National Council of Provinces to initiate or prepare legislation falling within a functional area listed in schedule 4 or other legislation referred to in Section 76(3). The electoral law is neither one of those functional areas, nor does it fall within the category of legislation referred to in section 76(3).

Bill B33B of 2018, that served before the committee, seeks to amend certain provisions of various laws including the Electoral Act of 1998. In particular, the Bill seeks to amend Sections 7, 8, 11, 20, 24, 28, 38, 40, 41, 86, 87 as well as schedule 1 of the Act. Except for

Section 11, these provisions do not appear in any of the hon. member's purported proposed amendments, nor do they deal with matters that the hon. member seeks to insert in the Bill.

On the other hand, the hon. member's proposals seek to amend Sections 2, 3, 4, 10, 11 and 33 of the Act. The only common provision between the hon. member's proposals and the Bill is reference to Section 11 of the Act. But this is where the similarities end. Although the Bill also seeks to amend Section 11 of the Act, the provision in Section 11 that the hon. member proposes to amend is not the same as the one that the Bill seeks to amend. While the Bill seeks to amend Section 11(2) of the Act, the hon. member proposes the amendment to Section 11(1) of the Act.

Having regard to the purported proposed amendments by the hon. member, they cannot be properly classified as proposed amendments within the meaning of Rule 212 of the Rules of the National Council of Provinces. They effectively amount to a new Bill which the hon. member seeks to introduce through Rule 212. This will be inconsistent, not only with the Constitution, but also with the Rules. As indicated above, this is a matter that does not affect provinces within the meaning of the Constitution and can therefore not be introduced for the first time in the National Council of Provinces. Should these proposed amendments be allowed, they will render the Bill both constitutionally and procedurally out of order. These proposed amendments would suitably be introduced in the National Assembly.

When the hon. member wrote to the Chairperson about these purported amendments, he said that he does so in the name of his party. Advice therefore would be that he requests his party to introduce these in the National Assembly, if he so wishes.

Having considered the purported proposed amendments by the hon. member, the Chairperson came to the conclusion that they are constitutionally and procedurally out of order.

In terms of Rule 212(3)(b), the ruling by the Chairperson on whether an amendment is out of order, is final.

Had the hon. member's proposed amendments been in order, the Chairperson of the NCOP could have been compelled by Rule 212(5) to either recommit the Bill to the committee or to

put the proposed amendments to the House before the Bill as a whole is decided on.  
(Chairperson of the NCOP)

## Unparliamentary expressions

List of words, expressions, and phrases that are regarded as unparliamentary by the NCOP:

1. Reference to a Member as “*sexist*”.
2. Reference to Members as “*voting cows*”.
3. Reference to awarding work for “*sex favours*”.
4. Reference to a Member as “*a child*”.
5. Reference to a Member as “*poppie*”.
6. Reference to a Member as “*darling*”.
7. Reference to the President as a “*womaniser*”.
8. Reference to Presiding Officers as “*bullies*” and “*Trigger happy*”.
9. Reference to the (then) President as “*Zuma*” not “*President Zuma*”.
10. Use of words such as “*guts*” and “*insist*”, such as “if the member has guts, I insist that he takes my question”.
11. Reference to Members as “*empty tins*”.
12. Reference to Members and a political party as “*coming from apartheid regime*”.
13. Reference to a Minister as “*a minister by default*”.
14. Reference to Members as “*racist*”.
15. Statement such as “*there is a smell of alcohol in the House*”, which clearly suggests that Members are not sober.
16. Use of the word “*sies*”, which can be interpreted as demeaning.
17. Reference to a Member as “*this white man*”; or “*a racist white person who hijacked the struggle*”.

18. Use of the words "*you have no balls*" is unacceptable.
19. Use of the words "*you stay in a house full of dog fur*" – suggests that a Member is dirty or stays in unhygienic conditions.
20. Reference to a Member as "*this man*". A Member should always be addressed with respect and as "*the Honourable Member*".
21. Reference to a Member as a "*straatmeid*".
22. Reference to a Member as a "*white boy*".
23. Reference to a Member as a "*concubine*".
24. Reference to Department of Home Affairs as "*Department of Corrupt Affairs*".
25. To say a Member is talking "nonsense".
26. Calling a Member a "*coward*".
27. To say a Member should "*shut up and sit down*".
28. To say the President "*received bribes*".
29. Reference to the departments name incorrectly e.g. *Department of Horror Affairs* rather than *Department of Home Affairs*.
30. Reference to a Member's speech as "*bullshit*".
31. Reference to a Member as "*this white woman*".
32. To say to a Member "*you have a black heart*".
33. Reference to a Member as "*this racist white man*".
34. To say "*the member is not sober*".
35. Calling a member "*an empty vessel*".
36. Calling a Member a "*stupid*".

37. Calling a Member a *“liar”*.
38. Calling a Member a *“stooge”*.
39. Calling a Member a *“fool”*.
40. Reference to a member as *“insane”*.