



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

## FACT SHEET **5** | FREEDOM OF SPEECH

In terms of section 58(1) of the Constitution, Cabinet members, Deputy Ministers and members have freedom of speech in the Assembly and in its committees, subject to the rules and orders that the House may impose on itself. This privilege insulates them from civil or criminal proceedings, arrest, imprisonment or damages for anything that they have, inter alia, said in the Assembly or its committees. In *De Lille v The Speaker of the National Assembly* (1998 (3) SA 430 (C)), the Cape Provincial Division of the High Court held that the freedom of speech conferred by section 58 is not subject to the general limitation under section 36 of the Constitution. In terms of this section, the rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society. The Court ruled that section 58 can only be limited in terms of the rules and orders of the Assembly.

The Constitution, in section 58(2) prescribes that other privileges and immunities of Cabinet members and members of the Assembly may be prescribed by national legislation. The Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004 (Act No 4 of 2004), as amended, gives effect to this provision.

The limitation of freedom of speech by the rules and orders of the Assembly seeks to promote the responsible exercise of the privilege. In dealing with a matter involving the freedom of speech in the Assembly, the Constitutional Court ruled that immunising the conduct of members from criminal and civil liability promotes freedom of speech and expression, encourages democracy and full and effective deliberation, removes the fear of repercussion for what is said, and advances effective democratic government. Section 45(2) of the Constitution extends this privilege to Cabinet members, members of the Assembly and delegates to the Council before a joint committee.

These provisions also apply to proceedings in mini-plenaries and other forums of the Assembly.

In *Democratic Alliance v Speaker of the National Assembly and Others* CCT 86/15, the Constitutional Court held that Parliament is a body that functions through a deliberative process and that its decisions are the result of that process. It further held that that process can only be meaningful if all members of Parliament are given room freely to make their points and express their opinions, because without freedom of speech in Parliament, products of the parliamentary system would be but a sham which could be harmful to democracy itself. In addressing the matter of the purpose of free speech, the Court held that South Africa is a constitutional democracy, a hard-won democracy that came at a huge cost to many, and further that "...the importance of our democracy therefore cannot be overstated and it is the duty of all, especially the three arms of state, jealously to safeguard that democracy".