



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA



**PROCEDURAL
DEVELOPMENTS**
IN THE NATIONAL ASSEMBLY

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PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

PROCEDURAL DEVELOPMENTS IN THE NATIONAL ASSEMBLY

A record of recent events and developments of a procedural nature in the National Assembly of the Parliament of the Republic of South Africa. The 23rd issue covers the third session of the Fifth Parliament from January to December 2016. Where no year appears next to a particular month in the text, the reference is made to 2016.

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CONTENTS

PRESIDING OFFICERS, OFFICE-BEARERS AND OTHER OFFICE-HOLDERS

1. Appointment of Chief Whip of the Majority Party.....4

MEMBERS

2. Membership of the Assembly.....4
3. Condolence motions.....4

PROCEDURAL AND RELATED ISSUES

4. Motions of no confidence in President of the Republic.....4
5. Ruling on recusal of Speaker during consideration of section 89 motion (Removal of President).....4
6. Motion for removal of President of the Republic.....5
7. Appointment of members to chair Extended Public Committees.....6
8. Physical removal of members from Chamber.....6
9. Bills returned to Assembly for consideration of President's reservations7
10. Abolition of Governance Model.....8
11. Suspension of Rules.....9
12. Permission to inquire into amending other provisions of legislation.....10
13. First Report of NA Rules Committee, 2016.....10
14. Second Report of NA Rules Committee, 2016.....10
15. Third report of NA Rules Committee, 2016.....11
16. NA Rules Committee Guidelines and Determinations.....11

LEGISLATION AND COMMITTEES

17. Establishment of Ad Hoc Committee into the South African Broadcasting Corporation.....12

18. Establishment of Ad Hoc Committee on the Review of the Powers and Privileges Act.....12
19. Establishment of Ad Hoc Joint Committee to consider allegations of non-disclosure by the Leader of the Opposition.....13

MONEY BILLS AND RELATED MATTERS

20. Review of Money Bills Amendment Procedure and Related Matters Act.....14

STATUTORY FUNCTIONS

21. Candidate nominated for appointment as Inspector-General of Intelligence Services.....14
22. Request by Minister of Police following Constitutional Court judgment on head of Independent Police Investigative Directorate (IPIID).....14
23. Filling of vacancies in Land Bank Board.....15
24. Candidate nominated for appointment to the Electoral Commission.....15
25. Request for removal of Media Development and Diversity Agency (MDDA) Board member.....16
26. Filling of vacancy in South African Human Rights Commission (SAHRC).....16
27. Filling of vacancies in Independent Communications Authority of South Africa (ICASA).....17
28. Nomination of candidates for Agricultural Research Council (ARC).....17
29. Filling of vacancies in Media Development and Diversity Agency Board (MDDA).....18
30. Filling of vacancies in Public Service Commission (PSC).....18
31. Filling of vacancies in Commission for Gender Equality (CGE).....18
32. Filling of vacancies in National Youth Development Agency (NYDA).....19
33. Public Protector: Recommendation for Appointment.....19

PRESIDING OFFICERS, OFFICE-BEARERS AND OTHER OFFICE-HOLDERS

[1] APPOINTMENT OF CHIEF WHIP OF THE MAJORITY PARTY

On 5 April, the Speaker announced the appointment of Mr J M Mthembu as the Chief Whip of the Majority Party. Mr Mthembu replaced Mr S P Sizani, who resigned as a Member of Parliament.

MEMBERS

[2] MEMBERSHIP OF THE ASSEMBLY

See Annexure 1.

[3] CONDOLENCE MOTIONS

See Annexure 2

PROCEDURAL AND RELATED ISSUES

[4] MOTIONS OF NO CONFIDENCE IN PRESIDENT OF THE REPUBLIC

On 1 March, the Leader of the Opposition, Mr M A Maimane, moved a motion that the House, in terms of section 102(2) of the Constitution, resolves that it has no confidence in President Jacob G Zuma on the grounds that his irrational, irresponsible and reckless leadership has done immeasurable damage to the economy; eroded investor confidence; dramatically weakened the Rand; and placed fiscal and economic stability at risk.

The effect of section 102(2) of the Constitution is that should the National Assembly pass a motion of no confidence in the President, supported by a majority of its members, the President and the other members of the Cabinet and any Deputy Ministers must resign. The motion was rejected by 225 votes to 99 after debate.

On 10 November, Mr Maimane moved a further motion that the House resolves, in terms of section

102(2) of the Constitution, that it has no confidence in President Zuma on the grounds that:

1. under his irrational, irresponsible and reckless leadership –
 - a) important institutions of state have been captured by private interests;
 - b) state resources, notably state security, law enforcement and prosecuting authorities have been mobilised to shield those interests from public scrutiny and investigation;
2. the President has allegedly attempted to evade accountability to the Public Protector and frustrated her efforts to fulfil her constitutional mandate; and
3. his derelict leadership has resulted in a collapse of public confidence in the President of the Republic, a government at war with itself and that this ultimately has undermined efforts to restore confidence in the South African economy.

The motion was rejected by 214 votes to 126 after debate.

[5] RULING ON RECUSAL OF SPEAKER DURING CONSIDERATION OF SECTION 89 MOTION (REMOVAL OF PRESIDENT)

On 5 April, the House considered a motion in the name of the Leader of the Opposition to remove the President from office in terms of section 89(1)(a) of the Constitution. [See item 6]

Before the motion was moved, Mr N F Shivambu rose on a point of order to request the Speaker to recuse herself from presiding over the proceedings related to the debate since she was a respondent in the case: *Economic Freedom Fighters and Others v the Speaker of the National Assembly and Others* (CCT 143/15) and *Democratic Alliance and Others v the Speaker of the National Assembly and Others* (CCT 171/15). This case relates to the EFF and DA approaching the Constitutional Court after being dissatisfied with the manner in which the President and the NA had dealt with the remedial action recommended by the Public Protector in her report on the investigation

of the security upgrades at the President's Nkandla home. The court found that the NA had acted unconstitutionally in that the resolution passed by the House absolving President Zuma from compliance with the remedial action taken by the Public Protector in terms of section 182(1)(c) of the Constitution was inconsistent with sections 42(3), 55(2)(a) and (b) and 181(3) of the Constitution. The court ruled that the Assembly resolution was invalid and it was therefore set aside.

Following Mr Shivambu's request, the Speaker gave parties an opportunity to express themselves on the matter in the House. Mr Shivambu's point of order was supported by members from some opposition parties. Business was subsequently suspended for 83 minutes for further consultation among parties.

When business resumed, the Speaker ruled that nothing in the Constitution or the Rules required her to recuse herself in the consideration of the section 89 motion. She clarified that the court judgment made an order relating to the National Assembly. She added that should the House feel it necessary for any deviation from the ordinary way in which proceedings were managed, it could discuss that in the right forum and a proper decision could be taken. She further clarified that the role of the Speaker was to preside over proceedings, apply the rules and maintain order. The House proceeded with the debate and considered the motion after the Speaker's ruling.

[6] MOTION FOR REMOVAL OF PRESIDENT OF THE REPUBLIC

On 5 April, Mr M A Maimane moved a motion that the House -

1. notes the Constitutional Court judgment in *Economic Freedom Fighters and Others v the Speaker of the National Assembly and Others* (CCT 143/15) and *Democratic Alliance and Others v the Speaker of the National Assembly and Others* (CCT 171/15) -
 - a) confirming the legal principle that, absent a judicial review, the Public Protector's findings and remedial actions are binding and must be implemented, as held by the Supreme Court of Appeal in *South African Broadcasting Corporation SOC Limited and Others v the Democratic Alliance and Others* (393/20015) [2015] ZASCA 156;
 - b) finding that President Zuma's failure to comply with the remedial action taken by the Public Protector as set out in her report "Secure in Comfort" dated 19 March 2014 is unlawful and inconsistent with the Constitution of the Republic of South Africa, 1996 ("the Constitution"); and
 - c) finding that President Zuma's actions in requesting the Police Minister Nathi Nhleko to determine the amount he should repay for the costs of upgrading his private home in Nkandla to be inconsistent with the remedial action as directed by the Public Protector and therefore inconsistent with the Constitution;
2. acknowledges that President Zuma thus seriously violated the Constitution when he undermined the Public Protector's findings by instituting parallel investigative processes and when he failed to implement the Public Protector's remedial action;
3. further notes -
 - a) the Constitutional Court judgment in *Democratic Alliance v President of the Republic of South Africa and Others* (CCT122/11) [2012] ZACC that the President of the Republic of South Africa's action to appoint Mr Menzi Simelane as the National Director of Public Prosecutions is inconsistent with the Constitution and invalid;
 - b) the Constitutional Court judgment in *Justice Alliance of South Africa v President of Republic of South Africa and Others, Freedom Under Law v President of Republic of South Africa and Others, Centre for Applied Legal Studies and Another v President of Republic of South Africa and Others* (CCT 53/11, CCT 54/11, CCT 62/11) [2011] ZACC 23 that the decision of the President of the Republic of South Africa to request the Chief Justice of South Africa to continue performing active service as Chief Justice in terms of section 8(a) of the Judges Remuneration and Conditions of Employment Act, 2001 (Act No 47 of 2001) is inconsistent with the Constitution and invalid; and

- c) the Supreme Court of Appeal Judgment in *President of the Republic of South Africa v M & G Media Limited* (998/13) [2014] ZACSA 124 where it was held that the President's conduct amounted to an abuse of process which cannot be tolerated; and
4. condemns the actions of the President and resolves to remove President Zuma from office in terms of section 89(1)(a) of the Constitution.

Section 89(1)(a) of the Constitution provides, *inter alia*, that the National Assembly, by a resolution adopted with a supporting vote of at least two thirds of its members, may remove the President from office only on the grounds of a serious violation of the Constitution or the law.

Section 89(2) stipulates that "Anyone who has been removed from the office of President in terms of subsection (1)(a) or (b) may not receive any benefits of that office, and may not serve in any public office."

The motion moved by the Leader of the Opposition in terms of section 89(1)(a) of the Constitution was rejected by 235 votes to 143 after debate.

[7] APPOINTMENT OF MEMBERS TO CHAIR EXTENDED PUBLIC COMMITTEES

Extended Public Committees (EPCs) were scheduled from 19 April to 12 May for the purpose of debating budget votes. An average of four debates were scheduled each sitting day, except for Fridays, where only two debates were scheduled.

In terms of NA Rule 33 (8th Edition, 2014) and NA Rule 54 (9th Edition, 2016) the Chair of an EPC/Miniplenary may be taken by a House Chairperson or a member appointed by the Speaker for that purpose. On 18 April, the Speaker announced that Ms L M Maseko, Mr M R Mdakane, Ms Y N Phosa, Ms X S Tom, Mr B L Mashile and Ms T C Memela were appointed in terms of Rule 33 to chair EPCs.

[8] PHYSICAL REMOVAL OF MEMBERS FROM CHAMBER

Interim Rules for the removal of members from the Chamber were agreed to by the NA Rules Committee on 28 July 2015 and adopted by the House on 30 July 2015. [See Issue 22, Item 8]

On 4 May, after having disregarded the authority of the Chair and causing a disruption, a number of members were ordered, in terms of Rule 51 (8th Edition, 2014) to leave the House. Rule 51 provides that if the presiding officer is of the opinion that a member is deliberately contravening a provision of the rules, or that member is in contempt of or is disregarding the authority of the Chair, or that member's conduct is grossly disorderly, he or she may order the member to withdraw immediately from the Chamber for the remainder of the day's sitting.

The members refused to leave the Chamber, whereupon the Speaker called the Serjeant-at-Arms to remove them in terms of Rule 53A(1). This rule states that if a member refuses to leave the Chamber when ordered to do so by the presiding officer in terms of Rule 51 or Rule 52, the presiding officer must instruct the Serjeant-at-Arms to remove the member from the Chamber and the precincts of Parliament forthwith.

Rule 53A(2) states that if the Serjeant-at-Arms is unable in person to effect the removal of the member, the presiding officer may call upon the Parliamentary Protection Services to assist in removing the member from the Chamber and the precincts of Parliament.

The members continued to refuse to leave the Chamber after the intervention of the Serjeant-at-Arms and the Speaker called upon members of the Parliamentary Protection Services to assist in removing them in terms of Rule 53A(2).

In terms of Rule 53A(3), a member removed from the Chamber in terms of Rule 53A(2) is immediately automatically suspended for the period prescribed in Rule 54. The suspension of a member on the first

occasion during a session continues for 5 parliamentary working days, on the second occasion for 10 parliamentary working days, and on any subsequent occasion for 20 parliamentary working days.

The presiding officer's report on the removal of the members, together with the unrevised Hansard, Assembly Minutes and related video recordings of the House proceedings were referred to the Rules Committee in terms of Rule 53A(12), which provides that the Speaker must refer the incident within 24 hours to a subcommittee of the Rules Committee. Since a subcommittee had not been established at the time the members were removed from the Chamber; the matter was referred to the Rules Committee for consideration of the circumstances of their removal.

On 17 May, under the same circumstances and for the same reasons as set out on 4 May, a number of members were ordered to leave the House. They again refused and had to be physically removed by the Parliamentary Protection Services.

The presiding officer's report on the members' removal, together with the unrevised Hansard, Assembly Minutes and video recordings of the House proceedings related to the incident, were referred to the Rules Committee in terms of Rule 53A(12) for consideration of the circumstances of their removal.

At its meeting of 17 May, the NARC decided to refer the matter to the Subcommittee on Review of Assembly Rules for consideration. The subcommittee met on 18 May to consider *inter alia* the presiding officer's report and parliamentary documents related to the incident and the circumstances that led to the removal of members from the Chamber in terms of Assembly Rule 53A(12). The subcommittee proposed amendments to Rule 53A and its application which included that Chamber support officials should be in uniform; that members ordered to leave the Chamber should be singled out by name where practical; and that adequate security measures should be in place to control visitors' conduct in the precincts. The report was considered and agreed to by the NARC on 24 May.

[9] BILLS RETURNED TO ASSEMBLY FOR CONSIDERATION OF PRESIDENT'S RESERVATIONS

A. PERFORMING ANIMALS PROTECTION BILL

In a letter addressed to the Speaker, dated 8 August, the President informed the Speaker that he was returning the Performing Animals Protection Bill [B9B-2015] (the Bill) to the National Assembly for consideration of his reservations about its constitutionality.

The President indicated that after he had carefully considered the Bill, the submission he had received on the process followed by the National Council of Provinces (NCOP) during voting on the Bill and the explanation provided by the Chairperson of the NCOP on the process followed, he was of the view that the NCOP had failed to adhere to the procedure outlined in section 75(2) of the Constitution and Rule 61 of the rules of the NCOP.

In terms of section 79(1) of the Constitution, the President referred the Bill to the Assembly for consideration on the basis that the NCOP had failed to adhere to the procedure outlined in section 75(2) of the Constitution and Rule 61 of the rules of the NCOP during the voting on the Bill.

The Bill and the President's reservations thereon were referred to the Portfolio Committee on Agriculture, Forestry and Fisheries for consideration and report. The Committee reported on the Bill and the President's reservations on 16 August. The Committee recommended that since the President's reservations related to the NCOP, the matter be referred to the NCOP for further processing. The House considered and adopted the committee's report and referred the Bill and the President's reservations on the Bill to the NCOP on 24 August.

B. FINANCIAL INTELLIGENCE CENTRE AMENDMENT BILL

In a letter, dated 28 November, the President informed the Speaker that after the Financial Intelligence

Centre Amendment Bill (B33B – 2015) was passed by Parliament and referred to him for assent and signing into law, he had given consideration to it in its entirety and to certain submissions regarding its constitutionality.

After consideration of the Bill and having applied his mind to it, the President was of the view that the proposed new section 45B(1C), which amends section 45B of the principal Act by the introduction of warrantless searches was likely to be unconstitutional because a search limits the right to privacy prescribed in section 14 of the Constitution and that for it to pass constitutional muster, the limitation must be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including those factors that are listed in section 36(1)(a) to (e) of the Constitution. The President felt that the proposed section 45B(1C) might not meet this standard of justification because:

- a) Searches that may result in criminal prosecution offer the strongest reason of the warrant requirement and in those circumstances, legislation that authorises warrantless searches, such as section 45B(1C), must provide a constitutionally adequate substitute for a warrant;
- b) Non-compliance with the Act may constitute a criminal offence; and
- c) Information gathered by an inspector in terms of the proposed section 45B(1C) may result in criminal prosecution.

Notwithstanding the above, the President felt that the authority to conduct searches under the proposed section 45B(1C) was impermissibly overbroad.

The President was of the view that even though the purpose to be served by the Bill was very important and pressing, the proposed section 45B(1C) did not, in the respects identified, and others that the National Assembly might identify, meet all of the concerns set out in paragraphs 36 to 43 of the Constitutional Court judgment in the matter of *Estate Agency Affairs Board v Auction Alliance (Pty) Ltd and Others* 2014 (4) BCLR 373 (CC).

The President indicated that in terms of section 79(1) of the Constitution, he either had to assent to and sign a Bill referred to him by the Assembly or, if he had reservations about the constitutionality of the Bill, refer it back to the Assembly for consideration. In terms of section 79(1) of the Constitution, the President referred the Bill to the National Assembly for reconsideration.

The Bill and the President's reservations on the Bill were referred to the Standing Committee on Finance in terms of Joint Rule 203 for consideration and report on 30 November. This matter was not concluded during the 2016 parliamentary session.

[10] ABOLITION OF GOVERNANCE MODEL

The Governance Model of Parliament was passed by the NA and the NCOP, respectively on 29 March 2007. The Model transferred the administrative governance of Parliament from the Joint Rules Committee to the Parliamentary Oversight Authority (POA). [See Issue 13, Item 10]

In 2009, Parliament adopted the *Financial Management of Parliament and Provincial Legislatures Act (No 10 of 2009)*. The Act prescribed that Parliament must establish an oversight mechanism which must maintain oversight over the financial management of Parliament. This occurred when both Houses adopted the first report of the Joint Rules Committee on 26 November 2015, which contained new joint rules establishing the Joint Standing Committee on the Financial Management of Parliament (the Oversight Mechanism). [See Issue 22, Item 21]

On 5 April, the National Assembly considered a motion in the name of the Chief Whip of the Majority Party, to abolish the Governance Model of Parliament. In light of the new joint rules establishing the Standing Committee on the Financial Management of Parliament, the resolution recognised that the Governance Model was inconsistent with the Act, and it was accordingly abolished. The House agreed to the motion. The NCOP passed a similar resolution to the same effect on 3 May.

[11] SUSPENSION OF RULES

NA Rule 3 (8th Edition, 2014) provides that any provision of the rules relating to the business or proceedings at a meeting of the NA or of a committee may be suspended by resolution of the House. Rule 3(1) and (2) (8th Edition, 2014) provides that the suspension of any provision shall be limited in its operation to the particular purpose for which such suspension has been approved. The new Rule 4(1) and (2) (9th Edition, 2016) equally provides that the suspension of any provision must be limited in its operation to the particular purpose and period for which such suspension has been approved.

The following rules were suspended during the course of 2016:

Rule 29 (8th Edition, 2014) / Rule 47 (9th Edition, 2016)

Rule 29 provides for the sequence of proceedings, which provide for, *inter alia*, the sequence in which the House considers notices of motion, formal motions and notices of motion on the Order Paper. The rule was suspended on the following days:

- On 23 February, to limit business to the introduction of the Appropriation Bill and the Revenue Laws Amendment Bill, and the tabling of the Division of Revenue Bill and related matters;
- On 15 March, to limit business for the sitting on 17 March, to Questions to the President;
- On 15 March, to take notices of motions and motions without notice after orders of the day for the sitting on 16 March;
- On 5 April, to deal with motions on the Order Paper before notices of motion and motions without notice;
- On 4 May, to provide that the sequence of proceedings for 17 May would be reflected on the Order Paper as agreed to by the Programme Committee;
- On 4 May, in order not to have notices of motion or motions as referred to in Rule 97(g) for that day and 5, 12, 18 and 19 May. Rule 97(g)

provides that every motion requires notice, except a draft resolution in regard to which notice is dispensed with by the unanimous concurrence of all the members present. The suspension of Rule 29 allowed the House to proceed with its business on the identified days, without scheduling notices of motion, or motions without notice; and

- On 12 May, in order not to have notices of motion or motions without notice on 17 May.

Rule 253 (8th Edition, 2014) / Rule 290 (9th Edition, 2016)

Rule 253(1) (8th Edition, 2014) / Rule 290(2)(a) (9th Edition, 2016), which provides, *inter alia*, that the Second Reading debate on a bill may not commence before at least three working days have elapsed since the committee's report was tabled, was suspended for conducting Second Reading debates as follows:

- On 15 March, for the Revenue Laws Amendment Bill [B4B - 2016];
- On 16 March, for the Division of Revenue Bill [B2 - 2016];
- On 18 May, for the Appropriation Bill [B3 - 2016];
- On 15 November, for the Division of Revenue Amendment Bill [B15 - 2016];
- On 29 November, for the Rates and Monetary Amounts and Amendment of Revenue Laws Bill [B19 - 2016], the Rates and Monetary Amounts and Amendment of Revenue Laws (Administration) Bill [B20B - 2016], the Taxation Laws Amendment Bill [B17B - 2016] and the Tax Administration Laws Amendment Bill [B18 - 2016]; and
- On 6 December, for the Finance Bill [B21 - 2016] and Adjustments Appropriations Bill [B16 - 2016].

Rule 108(2) (9th Edition, 2016)

Rule 108(2) (9th Edition, 2016), which provides that the time allocated to a member of each party for making a declaration of vote must be determined

by the Rules Committee and must take into account the proportional strength of the party in the House was suspended on 27 October and 8 November to limit the time allocated to members wishing to make declarations on behalf of their parties on Budgetary Review and Recommendation Reports, to no more than two minutes for the remainder of the session.

Rule 20 (8th Edition) / Rule 36 (9th Edition, 2016)

Rule 20 (8th Edition) / Rule 36(2) (9th Edition, 2016), which provides that leave may be requested of the House by motion for a member's absence in excess of 15 consecutive sitting days was suspended on 2 November, pending discussion of its application by the relevant structures. The discussion around the application of the rule was not finalised in the 2016 parliamentary session.

[12] PERMISSION TO INQUIRE INTO AMENDING OTHER PROVISIONS OF LEGISLATION

Rule 286(4)(c) (9th Edition, 2016) provides that a committee, if it is dealing with a bill that amends provisions of legislation, must, if it intends to propose amendments to other provisions of that legislation, seek the permission of the Assembly to do so.

On 16 November, the Assembly considered and approved a request from the Portfolio Committee on Transport to amend other provisions in the *Administrative Adjudication of Road Traffic Offences Act (No 46 of 1998)*.

[13] FIRST REPORT OF NA RULES COMMITTEE (NARC), 2016

After an extensive review of the rules of the National Assembly, which started in 2012 (see Issue 18, Item 8), the NARC reported comprehensively amended rules (9th Edition) on 24 May in its first report for 2016. These rules are not reproduced here, but can be accessed at www.parliament.gov.za. The House agreed to the new rules on 26 May.

The revised rules of the Assembly contain a number of new features designed in order, *inter alia*, to strengthen the ability of the House to carry out its constitutional functions; codify best past practices and application of the rules; simplify and modernise the rules; promote political representation and accountability; promote debate and responsiveness to public concerns; promote decorum, order and discipline; and enhance oversight over the National Executive.

[14] SECOND REPORT OF NA RULES COMMITTEE (NARC), 2016

On 12 May, before giving a ruling on the use of court judgments or relevant documentation to cast aspersions on the character of a person, the Deputy Speaker stated that on a few occasions remarks were made in the House which upon being ruled out of order by the presiding officer, members would contend that the remarks were merely quotations from a court judgment or other relevant document. He indicated that as members had sought clarity on the matter, he had decided to give a ruling in the hope of providing this clarity.

The ruling stated, *inter alia*, "Therefore, hon members, while it may indeed be permissible to quote from court judgments and other relevant documents and do so accurately, it is not acceptable to use such quotations and other such means to abuse other members or cast aspersions on the character or person of another member." The Chief Whip of the Opposition subsequently wrote to the Speaker requesting that the ruling be reviewed formally by the Rules Committee, with specific reference to quoting of judgments of the courts of the Republic. His submission was that the ruling was an unnecessary and unwarranted restriction of the freedom of speech enjoyed by members. In terms of parliamentary procedure, if a member is unhappy with a particular ruling, the first recourse is to take up the matter privately with the relevant presiding officer, either in person or by letter. There is no appeal to the Speaker in terms of rulings given by other presiding officers. The member may also request that the principle or subject matter of the ruling be referred to the Rules Committee for consideration (NA Rule 92(12)(a)).

On 17 May, the NARC referred the matter to the Subcommittee on Review of Assembly Rules for processing. The subcommittee met on 18 May to consider the referral. In addition to considering the Deputy Speaker's ruling and previous rulings of a similar nature, the subcommittee afforded the Chief Whip of the Opposition an opportunity to make oral representations. It also considered a written submission by the Deputy Speaker in which he explained the principle of the ruling.

The subcommittee in its report recommended that certain principles be affirmed, namely, that accusations against a member or personal reflections on a member's integrity are equally offensive and damaging irrespective if they are made by way of inference, hypothesis, quotation, question or other figures of speech and literary devices; members who wish to bring allegations of wrongdoing on the part of another member to the attention of the Assembly should only do so by way of a substantive motion; court judgments involve findings and relate to a factual state of affairs and not allegations, and therefore members should be able to quote from them but must do so accurately; and despite a court finding, members should not verbally abuse each other through name-calling as disparaging and insulting personal remarks attributed to any member do not contribute meaningfully to debate. Lastly, the subcommittee recommended that in instances where there is dispute about the accuracy of a quotation, presiding officers should be able to exercise discretion in ruling on these matters, which may include studying the Hansard to determine the context and to verify the facts.

The NARC, at its meeting on 24 May, unanimously adopted the report of the subcommittee. The report was not placed before the House as a decision was not required (ATC, 2 June, pp 87-89).

[15] THIRD REPORT OF NA RULES COMMITTEE (NARC), 2016

The third report of the NARC dealt with rule amendments to motions without notice (ATC, 18 November, pp 2-3). On 16 November, the NARC adopted - as a standing order in accordance with section 57 of the Constitution, which deals with the

internal arrangements, proceedings and procedures of the Assembly - the following pertaining to motions without notice (Rule 123, 9th Edition, 2016):

That the National Assembly:

- a) In terms of Rule 4 suspend Rule 123(2)(d) (iv), which provides for a procedure whereby notice of a motion may be dispensed with; and
- b) Agrees to the following standing order for the duration of the Fifth Parliament: That -
 - (i) subject to the other provisions of Rule 123, a member may be given an opportunity to read out and move a motion without notice in the House unless at least five parties including the majority party and the largest minority party have notified the Secretary to the National Assembly at least 30 minutes before the sitting of the House commences that they have an objection to the motion being moved without notice; and
 - (ii) subject to the conditions for a notice to be read, once a motion is read in the House, any member may then object to the motion being proceeded with without notice in which case such a motion will not be put for decision but will be considered to be a notice and submitted as such.

The Assembly agreed to this standing order on 6 December.

[16] NA RULES COMMITTEE (NARC) GUIDELINES AND DETERMINATIONS

New Rule 7 provides that the NARC may issue directives and lay down guidelines to assist with the implementation of the rules and orders of the House. Three sets of guidelines were developed during 2016 to achieve this purpose (ATC 17 August, 6 September and 25 November).

The guidelines and determinations developed and contained in the above ATCs were in relation to, *inter alia*, draft resolutions; subjects for discussion; motions of

condolence; motions of no confidence in the President and Cabinet; fines for absences from committee meetings; time allocation per party for declaration of votes; motions without notice; members' statements and ministerial responses; executive statements; the composition of the Subcommittee on Review of Assembly Rules; removal from office of the Speaker or Deputy Speaker; appointment and responsibilities of whips; the number of whips to be allocated to parties represented in the Assembly; procedures to be followed for electronic and manual voting; and questions. The guidelines and determinations are captured in detail in Annexure 3.

LEGISLATION AND COMMITTEES

[17] ESTABLISHMENT OF AD HOC COMMITTEE INTO THE SOUTH AFRICAN BROADCASTING CORPORATION

In 2015 and 2016, a number of allegations of maladministration and general management instability at the South African Broadcasting Corporation (SABC) featured prominently in the media and public domain. In general, the allegations painted a picture of an organisation that was in serious trouble and in desperate need of intervention.

On 3 November, a motion was moved by the Chief Whip of the Majority Party noting the need to ensure that the South African Broadcasting Corporation (SABC) processes were fair and reasonable, and gave effect to the rules of natural justice. The motion proposed the establishment of an ad hoc committee to inquire, in terms of section 15A(1)(b) of the *Broadcasting Act (No 4 of 1999)*, into the ability of the SABC Board to discharge its duties as prescribed in the Act, including:

- a) looking into the financial status and sustainability of the SABC;
- b) the response by the SABC to the Public Protector Report: When Governance and Ethics Fail, recent court judgments, and the ruling by the Independent Communications Authority of South Africa (ICASA) that the SABC withdraws its decision to ban coverage of violent protests at the broadcaster;
- c) the current Board's ability to take legally binding decisions in light of the resignation by some non-executive members of the Board;
- d) the Board's adherence to the Broadcasting Charter;
- e) the Board's ability to carry out its duties as contemplated in section 13(11) of the Broadcasting Act;
- f) human resources related matters such as governance structures, appointments of Executives and termination of services of the affected Executives; and
- g) the decision making processes of the Board, the committee to –
 - (i) consist of 11 members, as follows: ANC 6, DA 2, EFF 1 and other parties 2;
 - (ii) exercise those powers in Rule 167 that may assist it in carrying out its task;
 - (iii) incorporate in its work, as appropriate, the proceedings and work of the Portfolio Committee on Communications in this regard; and
 - (iv) report to the National Assembly by no later than 28 February 2017.

This matter was not concluded during the 2016 parliamentary session.

[18] ESTABLISHMENT OF AD HOC COMMITTEE TO REVIEW POWERS AND PRIVILEGES ACT

Following the forceful removal of members from the Chamber during the State of the Nation Address (SONA) on 12 February 2015, in terms of section 11 of the *Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004 (Act 4 of 2004)*, the DA launched proceedings in the High Court, Cape Town Division, seeking a declaratory order that section 11 of the Act is constitutionally invalid. This section, which deals with persons creating a disturbance, states that a person who creates or takes part in any disturbance in the precincts while Parliament or a House or committee is meeting, may be arrested and removed from the precincts, on the order of the Speaker or the Chairperson or a person designated by the Speaker or Chairperson, by a staff member or a member of the security services. The party asked the court to read

in words that would exclude members of Parliament from the “person” liable to be arrested and removed in terms of section 11 of the Act. It argued that section 11 should be made applicable only to persons who are not members of Parliament. The court found that section 11 of the Act is constitutionally invalid as it impermissibly curtails a member’s privilege of free speech in Parliament by providing for the arrest of members who create or take part in a disturbance. The court suspended the order of constitutional invalidity for a period of 12 months to afford Parliament an opportunity to remedy the defect in the Act.

The DA subsequently took the matter to the Constitutional Court, seeking confirmation of the High Court order declaring section 11 of the Act constitutionally invalid. The party also challenged certain findings of the High Court. The Constitutional Court held that the word “person” in section 11 includes a member. It ruled that in as far as the section allows for the arrest of a member, it constitutes an infringement of parliamentary free speech and directly infringes the immunities from criminal proceedings, arrest and imprisonment provided for in the Constitution. It held that section 11 of the Act was constitutionally invalid to the extent that it applies to members of Parliament. The constitutional defect was cured by reading in the words “other than a member” after the word “person” in section 11 of the Act to ensure that the section does not apply to members. Section 11 therefore continues to apply to non-members.

Following the declaration of invalidity of section 11 of the Act by the Constitutional Court in *Democratic Alliance v Speaker of the National Assembly and Others* (2016) ZACC 8, the House, on 19 May, resolved to establish an Ad Hoc Committee on the Review of the Powers and Privileges Act. The mandate of the Ad Hoc Committee was to review the Act, taking into account the judgment of the Constitutional Court, bring it in line with developments relating to parliamentary powers and privileges, and introduce a bill in accordance with the Assembly Rules.

The deadline given to the Ad Hoc Committee by which to report was 28 October. When it became apparent that the Ad Hoc Committee would not have completed its task by 28 October, its deadline was extended to 3 June 2017.

[19] ESTABLISHMENT OF AD HOC JOINT COMMITTEE TO CONSIDER ALLEGATIONS OF NON-DISCLOSURE BY THE LEADER OF THE OPPOSITION

On 16 March, the Joint Committee on Ethics and Members’ Interests reported that, following media reports that the Leader of the Opposition had failed to disclose certain sponsorships he had received in support of his nomination for party leader at the elective conference of the DA, Mr M A Maimane had written to the Office of the Registrar for Members’ Interests on 29 October 2015 rectifying the disclosure by submitting details of the sponsors and the value of the sponsorships.

After deliberation on the matter on 24 November 2015, the Joint Committee found that Mr Maimane had breached section 10.1.1.1 of the Code of Ethical Conduct and Disclosure of Members’ Interests for failing to disclose the receipt of a sponsorship in support of his campaign for party leadership. The Joint Committee proceeded to recommend 7 days salary deduction and a reprimand in the House.

On 14 March, Mr Maimane submitted a complaint to the Joint Committee alleging, amongst others, that the finding and procedure followed by the Joint Committee was procedurally unlawful and requested that the process be started afresh.

Mr Maimane approached the Western Cape High Court seeking a review and setting aside of the recommendations of the Joint Committee, i.e. the finding of guilt and the sanctions.

On 18 May, the House referred the report back to the Joint Committee for further consideration and report. On 23 June, the High Court of South Africa, Western Cape Division in *Maimane and Other v Chairperson of the Joint Committee on Ethics and Members’ Interests, Parliament and Others, Case No: 4606/16*, reviewed and set aside, amongst others, the recommendations of the Joint Committee and referred the matter back for reconsideration. The Court further ruled that none of the members of the Joint Committee who had participated in the decision taken on 17 February and 16 March may participate in the reconsideration of the matter.

The House resolved on 13 September to establish an Ad Hoc Joint Committee in terms of Joint Rule 138 to reconsider the allegation of non-disclosure by the Leader of the Opposition and report to it by 10 November.

Because the Ad Hoc Joint Committee on Ethics and Members' Interests was not ready to report by 10 November, the House on 9 November resolved to extend the deadline by which the Committee was to report to 31 March 2017.

MONEY BILLS AND RELATED MATTERS

[20] REVIEW OF MONEY BILLS AMENDMENT PROCEDURE AND RELATED MATTERS ACT

The *Money Bills Amendment Procedure and Related Matters Act (No 9 of 2009)* was promulgated into law by the President on 14 April 2009. Various technical challenges became apparent with the implementation of the Act. [See Issue 18, Item 29]

The National Assembly agreed on 19 May to a draft resolution, in the name of the Chief Whip of the Majority Party, to instruct the Standing Committee on Finance to review the Act and report to the House by 30 September.

The House instructed the Committee to evaluate the application of the legislation, but not limited to, the timeframes and sequencing associated with the different financial instruments and bills, the procedures to be developed in the rules; and report on any other matter related to the implementation of the Act.

On 27 September, the Committee tabled a progress report on its review. The Committee resolved to conduct a workshop with all stakeholders on a future convenient date. The Committee further resolved to report to the House annually on progress.

STATUTORY FUNCTIONS

[21] CANDIDATE NOMINATED FOR APPOINTMENT AS INSPECTOR-GENERAL OF INTELLIGENCE SERVICES

The term of office of the previous Inspector-General of Intelligence Services, Ms F Radebe, ended in 2015.

Prior to the consideration of the report of the Joint Standing Committee on Intelligence (JSCI) which recommended Mr Cecil Burgess to the President for appointment as the Inspector-General of Intelligence Services by the House on 16 March, the Deputy Speaker, who was presiding at the time, made a statement to the effect that he had been informed that after consultation amongst party whips, the Deputy Chief Whip of the Majority Party would move a motion in terms of Rule 97(c)(8th Edition). In terms of this rule, every motion requires notice, except a motion for the postponement or discharge of, or giving precedence to, an order of the day. In terms of the motion, the House resolved to refer the report back to the JSCI for further consideration and report.

The JSCI reported on 23 November, and requested the House to consider recommending Mr Isaac S Dintwe for appointment by the President as Inspector-General of Intelligence Services. On 29 November, the House agreed to the recommendation of the JSCI.

[22] REQUEST BY MINISTER OF POLICE FOLLOWING CONSTITUTIONAL COURT JUDGMENT ON HEAD OF INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE (IPID)

In 2015, the Minister of Police suspended the IPID Head, Mr R McBride, pending disciplinary action by him in terms of the provisions of the *Independent Police Investigative Directorate Act (No 1 of 2011)*. Mr McBride approached the Pretoria High Court seeking an order declaring, amongst others, section 6(6) of the Act invalid. The High Court declared the impugned sections invalid. As an interim measure, it read in to the Act the provisions of the *South African Police Service Act (No 68 of 1995)*, specifically section 17DA(3) to 17DA(7).

The section provides for parliamentary oversight over the removal of the head of the Directorate of Priority Crime Investigation (DPCI).

The decisions of the Minister to suspend Mr McBride and institute disciplinary action against him were set aside by the Court. The disciplinary action was suspended for 30 days, to allow Parliament and the Minister time to institute action against Mr McBride under the read in provisions from the SAPS Act, if they so decided. The declaration of invalidity of the High Court was referred to the Constitutional Court for confirmation. The Constitutional Court confirmed the High Court's declaration of invalidity.

On 12 October, the Speaker announced in the ATC that a letter, dated 7 September, had been received from the Minister of Police requesting the Assembly to mandate the Portfolio Committee on Police to consider exercising its powers in terms of section 6(6) of the *Independent Police Investigative Directorate Act (No 1 of 2011)* as amended by the Constitutional Court in *McBride v Minister of Police and Another* [2017] ZACC 30. The Speaker referred the Minister's letter to the Portfolio Committee on Police for consideration.

The Speaker received a further letter, dated 10 November, from the Minister requesting the Assembly to mandate the Portfolio Committee on Police to consider exercising its powers in terms of section 17DA(3) to 17DA(7) of the SAPS Act as read into section 6(6) of the IPID Act by the Constitutional Court. The Minister's letter was referred to the Portfolio Committee on Police for consideration.

This matter was not concluded during the 2016 parliamentary session.

[23] FILLING OF VACANCIES IN LAND BANK BOARD

See Issue 15, Item 36; Issue 16, Item 36 and Issue 17, Item 51

In a letter, dated 6 May, the Minister of Finance invited the relevant parliamentary committees, in terms of section 4(2) of the *Land and Agricultural Development Bank Act (No 15 of 2002)*, to nominate

three candidates with a background in credit risk, risk management, financial management and auditing, as well as development finance and human resource management for appointment to the Board of the Land Bank. The deadline for the relevant parliamentary committees to nominate candidates for appointment to the Board of the Land Bank was 30 May. On 11 May, the Speaker tabled and referred the Minister's letter to the Standing Committee on Finance and Portfolio Committee on Agriculture, Forestry and Fisheries for consideration.

On 26 May, the Portfolio Committee on Agriculture, Forestry and Fisheries recommended the following four candidates for appointment to the Board of the Land Bank: Prof Gilingwe Peter Mayende, Ms Boitumelo Gwendolyn Mahuma, Ms Fezeka Maqwati and Mr Gcinuhlanga Charity Madasa.

The Speaker transmitted the list of recommended candidates to the Minister of Finance, as the House was not required to take a decision on the matter.

[24] CANDIDATE NOMINATED FOR APPOINTMENT TO THE ELECTORAL COMMISSION

See Issue 10, Item 44 and Issue 12, Item 43

The Electoral Commission (EC), consisting of five members, was established on 1 July 1997 for a period of seven years. In terms of section 6 of the *Electoral Commission Act (No 51 of 1996)*, the National Assembly must by resolution recommend for appointment to the Electoral Commission by the President, candidates nominated by a committee of the House. Such nominations are made from a list of eight candidates submitted to the committee by a panel chaired by the Chief Justice in terms of section 6(2)(d) of the *Electoral Commission Act*. The panel established in terms of section 6(3) of the *Electoral Commission Act* comprises the Chief Justice (Chairperson), a representative of the South African Human Rights Commission, a representative of the Commission for Gender Equality and the Public Protector.

The Chief Justice of the Republic of South Africa wrote a letter dated 25 February to the Speaker, submitting

a list of eight (8) candidates and their abbreviated curricula vitae in terms of section 6(4) of the *Electoral Commission Act* and requested the Assembly to recommend a candidate to the President of the Republic for appointment to the Electoral Commission. On 2 March, the Speaker tabled and referred the request to the Portfolio Committee on Home Affairs for consideration and report.

On 15 March, the committee recommended that the House approve the nomination of Ms Janet Yetta Love for appointment to fill the vacancy in the EC. The House duly approved the recommendation by a majority of members of the Assembly on 16 March.

[25] REQUEST FOR REMOVAL OF MEDIA DEVELOPMENT AND DIVERSITY AGENCY (MDDA) BOARD MEMBER

A letter, dated 7 December 2015, was received from the President of the Republic informing the Assembly that Mr Thamsanqa Ntteni, appointed to the board of the MDDA with effect from 19 June 2015 on the recommendation of the NA on 3 June 2015, was not eligible for appointment in terms of section 5(f) of the *Media Development and Diversity Agency Act (No 14 of 2002)*. The letter further requested that the House commence with the process of his removal from office in accordance with section 6(2) of the Act. On 16 March, the Speaker tabled and referred the request to the Portfolio Committee on Communications for consideration and report.

In terms of section 5(f) of the Act, a person may not be appointed as a member of the board if he or she has been convicted of a crime specified in Schedule 1 to the Criminal Procedure Act (No 51 of 1977) and has been sentenced to a period of imprisonment of not less than one year without the option of a fine. The President's letter indicated that Mr Ntteni was convicted of culpable homicide in 1998 and sentenced to direct imprisonment, without an option of a fine, for a period of more than one year.

The Portfolio Committee on Communications conducted an extensive investigation into the matter and requested a legal opinion from the Constitutional

and Legal Services Office in Parliament. On 22 May, the Constitutional and Legal Services Office verified, through the Department of Justice, that Mr Ntteni was convicted and sentenced to direct imprisonment, without an option of a fine, for a period of more than one year. Mr Ntteni was thus disqualified to be appointed to the MDDA Board in terms of section 5(f) of the MDDA Act and his appointment was to be treated as invalid.

Furthermore, Mr Ntteni confirmed that he never took up the position on the board. Therefore, the position on the board had remained vacant. In this case, the process of removal of an MDDA Board member in terms of section 6(1)(a) subject to subsection (2) of the MDDA Act was not applicable to Mr Ntteni as he was never a member of the board. The legal advice obtained by the committee recommended that the NA, in terms of its rules, proceed to advertise and fill the vacant position on the board of the MDDA.

[26] FILLING OF VACANCY IN SOUTH AFRICAN HUMAN RIGHTS COMMISSION (SAHRC)

On 1 April 2015, the Speaker tabled and referred to the Portfolio Committee on Justice and Correctional Services a request from the Minister of Justice and Correctional Services that the Assembly recommend, in terms of section 193(4) and (5) of the Constitution, a suitable candidate for appointment as full-time commissioner to the SAHRC to fill a vacancy that arose following the operationalisation of the South African Human Rights Commission Act (No 40 of 2013). On 21 October 2015, the Speaker tabled and referred another letter to the Committee requesting it to recommend a suitable candidate for another vacancy for a full-time commissioner which would occur upon the expiry of the term of office of Dr Pregs Govender on 30 November 2015.

On 17 May, the Committee recommended Mr Andre Hurlley Gaum and Mr Edward Nkhangweleni Lambani as full-time commissioners. The House considered this recommendation on 23 August, but on a motion by the Chief Whip of the Majority Party, agreed that the committee's report be referred back to the Committee for further consideration and report.

In the interim, another letter, dated 2 June, was received by the Speaker requesting the Assembly to initiate the process for the filling of the resultant vacancies in accordance with section 193(4) and (5) of the Constitution and as provided for in section 8(3) of the South African Human Rights Commission Act (No 40 of 2013). The letter informed the Assembly of the resignation of part-time commissioner Ms J Y Love with effect from 31 May; and reminded the Assembly of the imminent expiry of the terms of office of the following commissioners:

- a) Adv L M Mushwana (full-time commissioner and chairperson) on 14 October;
- b) Ms L Mokate (full-time commissioner) on 30 September;
- c) Adv B J Malatji (full-time commissioner) on 30 September; and
- d) Dr T Titus (part-time commissioner) on 30 September.

On 23 June, the Speaker tabled and referred the request to the Portfolio Committee on Justice and Correctional Services for consideration and report. On 24 August, the Committee decided that the process must start afresh and that all seven vacancies at the Commission should be re-advertised. On 1 November, the Committee tabled its report in which it recommended the following candidates for appointment as commissioners:

- a) Adv Andrew Hurlley Gaum (Full-time)
- b) Ms Devikarani Priscilla Sewpal Jana (Full-time)
- c) Prof Bongani Christopher Majola (Full-time)
- d) Ms Matlhodi Angelina Makwetla (Full-time)
- e) Adv Joseph Bokankatla Malatji (Full-time)
- f) Mr Andrew Christoffel Nissen (Part-time)
- g) Mr Jonas Ben Sibanyoni (Part-time)

The Committee further recommended that the NA recommend that Prof Majola be appointed as Chairperson and Ms Jana as Deputy Chairperson of the Commission. On 15 November, the Assembly agreed to the Committee's recommendation with a majority of 262 members as required by section 193(5)(b)(ii) of the Constitution.

[27] FILLING OF VACANCIES IN INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA (ICASA)

The Minister of Communications in a letter, dated 4 December 2015, to the Speaker, in terms of section 5(1B) of the *Independent Communications Authority of South Africa Act, (No 13 of 2000)* requested that the House approve the following candidates, namely: Mr Paris Mashile, Mr Kaebetswe Modimoeng, Ms Bontlenyana Mokhele and Mr Peter Zimri for appointment to ICASA.

On 16 February, the Committee agreed to the recommended candidates. The House approved the above-mentioned candidates on 15 March.

The Speaker received a further letter, dated 30 November, from the Minister of Communications informing the Assembly that the terms of office of ICASA councillors, Ms Nomvuyiso Batyi and Ms Katharina Pillay, would expire on 31 January 2017; and requested the Assembly to commence with the process of filling the vacancies in terms of section 5 of the *Independent Communications Authority of South Africa Act (No 13 of 2000)*. This matter was not finalised during the 2016 parliamentary session.

[28] NOMINATION OF CANDIDATES FOR AGRICULTURAL RESEARCH COUNCIL (ARC)

In a letter to the Speaker, dated 10 May, the Minister of Agriculture, Forestry and Fisheries, invited the relevant parliamentary committee to nominate candidates to serve on the Agricultural Research Council in terms of section 9(3)(a)(i) of the *Agricultural Research Act (No 86 of 1990)*. This request was referred to the Portfolio Committee on Agriculture, Forestry and Fisheries for consideration on 1 June. The House is not required in terms of the Act to take a decision on this request by the Minister.

On 29 November, the Committee reported that the curriculum vitae of the following candidates were forwarded to the Minister for consideration:

1. Dr Moraka Nakedi Makhura
2. Prof Phatu William Mashela
3. Ms Busisiwe Clara Ndlovu
4. Mr Edward Zoyisile Njadu
5. Mr Joseph Muzikayifani Khehla Nkosi
6. Mr Katlego George Lefifi
7. Mr Ngaletsane Marcus Kgatla
8. Ms Natalie Carol McAskill
9. Mr Boy Johannes Nobunga
10. Dr Joyce Magoshi Chitja
11. Ms Dora Ndaba
12. Mr Allan Henry Bishop
13. Dr Saskia van Oosterhout
14. Ms Bongwiwe Kali
15. Dr Tshimangadzo Lucky Nedambale
16. Prof Aldo Stroebel
17. Dr Beason Mwaka
18. Mr Clive Douglas Kneale
19. Dr Sibusiso Vil-Nkomo
20. Ms Muhle Joyce Mashiteng
21. Dr Lesley Thulani Luthuli
22. Mr Tale Ramosweu Daniel Motsepe

The Act limits the role of the Committee to submitting names for consideration by the Minister. There is no role for the Assembly in the appointment of the Council Members.

[29] FILLING OF VACANCIES IN MEDIA DEVELOPMENT AND DIVERSITY AGENCY BOARD (MDDA)

A letter, dated 20 June, was received from the President of the Republic informing the Assembly that in terms of section 8(2) of the *Media Development and Diversity Agency Act (No 14 of 2002)*, the term of office of MDDA board member Mr Jabulani Blose expired on 31 January, and the term of office of Mr Roland A Williams would expire on 31 December. The President requested the Assembly to commence with the process of recommending, in accordance with the principles set out in section 4(1)(b) of the Act, suitable candidates to fill these vacancies. On 30

June, the Speaker referred the request to the Portfolio Committee on Communications for consideration and report. The Committee did not finalise this matter in the 2016 parliamentary session.

[30] FILLING OF VACANCIES IN PUBLIC SERVICE COMMISSION (PSC)

The President of the Republic in a letter, dated 27 May 2016, requested that the Assembly approve fit and proper persons in accordance with section 196(8)(a) of the Constitution to fill the vacancies that would arise in the PSC when the terms of office of the following commissioners expired in August, September and October, respectively: Ms P C Nzimande, Adv R K Sizani and Ms L V Sizani. The Speaker referred the matter to the Portfolio Committee on Public Service and Administration as well as Planning, Monitoring and Evaluation for consideration and report on 1 June. The Committee reported on 30 November that it recommended Mr Richard Khaliphile Sizani, Ms Clara Phumelele Nzimande and Dr Tholumuzi Bruno Luthuli for appointment to the PSC. The House agreed with this recommendation on 6 December.

[31] FILLING OF VACANCIES IN COMMISSION FOR GENDER EQUALITY (CGE)

A letter, dated 20 April, was received from the President, requesting the Assembly to initiate the necessary processes, in accordance with section 193(5) of the Constitution and the relevant provisions of the *Commission on Gender Equality Act (No 39 of 1996)*, for the Assembly to recommend suitable candidates for the filling of vacancies in the Commission for Gender Equality (CGE) when the terms of office of the following commissioners expired: Ms Janine Hicks on 31 May, Mr Mfanozelwe Shozi (Chairperson) on 30 January 2017 and Ms Thoko Mpumlwana on 31 May 2017. This request was tabled in the ATC of 3 May.

Section 3(1) of the Act provides that the CGE shall consist of no fewer than seven and no more than 11 commissioners. In terms of section 3(2) of the Act, the President appoints commissioners. [See Issue 19, Item 39].

On 27 October, the House established an Ad Hoc Committee on Filling of Vacancies in the Commission for Gender Equality and instructed it to submit a report with recommended candidates to the House by 31 January 2017.

[32] FILLING OF VACANCIES IN NATIONAL YOUTH DEVELOPMENT AGENCY (NYDA)

On 6 August 2015 and 23 January, the Minister of Planning, Monitoring and Evaluation wrote to the Speaker and the Chairperson of the NCOP, requesting Parliament to recommend seven candidates for appointment to the board of the NYDA in terms of section 9 of the *National Youth Development Agency Act (No 54 of 2008)* as the term of the Board would expire on 31 March.

The House resolved on 23 February to establish an Ad Hoc Joint Committee on Appointment of Board Members to National Youth Development Agency in terms of Joint Rule 138 to consider the Minister's request, and report by 15 March. The Ad Hoc Joint Committee reported on 30 March and recommended that the following seven candidates be appointed to the NYDA Board: Messrs T Tshefuta, Y Pillay, T Josophiu, and N Makako and Mmes B Hlongwa, Z Majози and N Maponopono.

On 5 April, the House agreed to a motion that the Report of the Ad Hoc Joint Committee be referred back to the Committee that originally considered it for further consideration and report. Because the Ad Hoc Joint Committee had ceased to exist by this time, the House, furthermore, resolved to re-establish the Ad Hoc Joint Committee on Appointment of Board Members to NYDA with the same composition, membership, chairperson and powers as its predecessor. It was required to report by 19 May.

The deadline for reporting by the Ad Hoc Joint Committee was later extended to 26 May. The Ad Hoc Joint Committee completed its work and reported on 24 May, and ceased to exist.

On 1 November, just before the House was supposed to consider the matter of the appointment of the National

Youth Development Agency Board members, the Chief Whip of the Majority Party moved a motion to re-establish the Ad Hoc Joint Committee on Appointment of Board Members to National Youth Development Agency with the same composition, membership, mandate and powers as its predecessor. In terms of the motion, which was agreed to by the Assembly and the Council, the Ad Hoc Joint Committee was instructed to incorporate in its work the proceedings and all the work of the previous Committee. The re-established Ad Hoc Joint Committee was given a deadline of 7 December by which to report. This deadline was further extended to 31 March 2017.

[33] PUBLIC PROTECTOR: RECOMMENDATION FOR APPOINTMENT

See Issue 15, Item 38

In terms of section 193(4) of the Constitution read with section 1A of the *Public Protector Act (No 23 of 1994)*, the President, on the recommendation of the Assembly, must appoint the Public Protector. On 15 October 2009, Advocate Thulisile Nomkhosi Madonsela was appointed Public Protector by the President for a non-renewable seven-year term with unanimous support from the NA. Her term of office would end on 14 October.

On 24 May, the House, in accordance with section 193(5) of the Constitution, appointed an Ad Hoc Committee to Nominate a Person for Appointment as Public Protector. The Committee consisted of 11 members, composed as follows: ANC – 6; DA – 2; EFF – 1; and other parties – 2. The Committee had to report to the House by 31 August.

The Committee considered the method of previous ad hoc committees mandated to nominate a person for appointment as Public Protector. Although these committees had developed their own processes, the Committee deemed it necessary to develop its own processes to complement the relevant constitutional and legal framework and made use of a range of tools to establish the suitability of candidates. Furthermore, in its report dated 30 August, the Committee acknowledged that it was acutely aware and welcomed the intense public interest that its work attracted. In

this regard, the Constitution provides for public access to and involvement in the NA. The provision states that the NA must facilitate public involvement in its legislative and other processes, conduct its business in an open manner, and hold its meetings in public.

To facilitate public participation in the appointment process, the Committee agreed to an open and transparent process. The advertisements requesting nominations or applications for the position of Public Protector from members of the public, for example, appeared in all official languages in various newspapers throughout the country. The advert also appeared on Parliament's website. The Committee received 78 nominations/applications, of which 16 were declined. The names of all candidates together with their curriculum vitae were published on Parliament's website for public comment. The Committee received more than 100 submissions from members of the public in respect of the candidates. Prior to the shortlisting process, all candidates had to complete a questionnaire that was modelled on the one used by the Judicial Service Commission for judicial appointments. The questionnaire also contained disclosure provisions. In addition, the Committee agreed that the academic qualifications of shortlisted candidates would be verified and that Parliament should facilitate screening of the candidates. Members of civil society undertook their own evaluation process and made their findings available to the Committee for information purposes.

Fourteen candidates were shortlisted for interviews. Of these, eight were females and the remaining six were males. The interviews were conducted at Parliament on 11 August, commencing at 08:00 am and ended on 12 August at 03:10 am. As the interviews were being broadcast live on the dedicated DSTV parliamentary channel, the Committee agreed to interview all shortlisted candidates in one sitting to ensure that no candidate was advantaged by following the interviews on television.

The Committee recommended Advocate Busisiwe Joyce Mkhwebane for nomination as Public Protector on 24 August. On 7 September, the Assembly agreed to this recommendation. The President duly appointed Adv Mkhwebane with effect from 15 October for a non-renewable seven-year term.

ABBREVIATIONS

ATC	Announcements, Tablings and Committee Reports (a daily parliamentary paper which is effectively an appendix to the Minutes of Proceedings)
ARC	Agricultural Research Council
CGE	Commission for Gender Equality
DPCI	Directorate for Priority Crime Investigation
EC	Electoral Commission
EPC	Extended Public Committee (a mechanism that enables the NA to conduct more than one public debate simultaneously)
ICASA	Independent Communications Authority of South Africa
IPID	Independent Police Investigative Directorate
JRC	Joint Rules Committee
JSCD	Joint Standing Committee on Defence
JSCI	Joint Standing Committee on Intelligence
JSCFMP	Joint Standing Committee on Financial Management of Parliament
LOGB	Leader of Government Business
MDDA	Media Development and Diversity Agency
Minutes	Minutes of Proceedings of the NA
MP	Member of Parliament
NA	National Assembly
NAMC	National Agricultural Marketing Council
NAPC	NA Programme Committee
NARC	NA Rules Committee
NCOP	National Council of Provinces
NYDA	National Youth Development Agency
POA	Parliamentary Oversight Authority
PSC	Public Service Commission
RSA	Republic of South Africa
SABC	South African Broadcasting Corporation
SAHRC	South African Human Rights Commission
SAPS	South African Police Service
SONA	State of the Nation Address

PARTIES

ANC	African National Congress
DA	Democratic Alliance
EFF	Economic Freedom Fighters
IFP	Inkatha Freedom Party
NFP	National Freedom Party
UDM	United Democratic Movement
FF Plus	Freedom Front Plus
Cope	Congress of the People
ACDP	African Christian Democratic Party
AIC	African Independent Congress
Agang SA	Agang SA
PAC	Pan Africanist Congress of Azania
APC	African People's Convention

Annexure 1

MEMBERSHIP OF THE ASSEMBLY

In the third session of the 5th Parliament, several vacancies occurred in the NA. Some were due to resignations and others as a result of members passing away.

In terms of Item 23 of Schedule 1A to the *Electoral Act (No 73 of 1998)*, casual vacancies have to be filled by parties nominating the next qualified and available member from the same candidates' list from which the member vacating the seat had originally been nominated.

The following vacancies occurred and were filled during 2016:

- Mr S P Mashatile (ANC – GP) resigned with effect from 5 February 2016. Replaced by Ms D Z Senokoanyane with effect from 5 February 2016.
- Mrs J C Moloi-Moropa (ANC – National) resigned with effect from 29 February 2016. Replaced by Mr S N Buthelezi with effect from 29 February 2016.
- Mr P S Sizani (ANC – National) resigned with effect from 2 March 2016. Replaced by Mrs W S Newhoudt-Druchen with effect from 2 March 2016.
- Ms J M Maluleke (ANC – NW) resigned with effect from 3 June 2016. Replaced by Mr P D N Maloyi with effect from 3 June 2016.
- Ms M A Scheepers (ANC – FS) resigned with effect from 30 June 2016. Replaced by Mr T M Manyoni with effect from 13 September 2016.
- Dr M B Goqwana (ANC – National) resigned with effect from 27 June 2016. Replaced by Mr W B Maphanga with effect from 5 September 2016.
- Ms R E Nyalungu (ANC – National) passed away on 21 July 2016. Replaced by Ms N G Tolashe with effect from 5 September 2016.
- Mr B M Bhanga (DA – EC) resigned with effect from 6 August 2016. Replaced by Ms T M Mbabama with effect from 8 November 2016.
- Ms A T Lovemore (DA – EC) resigned with effect from 6 August 2016. Replaced by Ms C King with effect from 8 November 2016.
- Mr A G Whitfield (DA – National) resigned with effect from 6 August 2016. Replaced by Ms H Bucwa with effect from 8 November 2016.
- Mr A M Matlhoko (EFF – NW) resigned with effect from 19 August 2016. Replaced by Mr Z R Xalisa with effect from 24 August 2016.
- Mr M C Masina (ANC – National) resigned with effect from 23 August 2016. Replaced by Mr M Gungubele with effect from 5 September 2016.
- Ms P Ntobongwana (EFF – National) resigned with effect from 23 August 2016. Replaced by Mr L G Mokoena with effect from 25 August 2016.
- Ms A Matshobeni (EFF – EC) resigned with effect from 23 August 2016. Replaced by Ms L A Mathys with effect from 24 August 2016.
- Mr B A Nesi (ANC – EC) passed away on 2 October 2016. Replaced by Ms N B Dambuza with effect from 14 October 2016.
- Mrs Z B N Balindlela (DA – National) resigned with effect from 14 November 2016. Replaced by Mr R K Purdon with effect from 14 November 2016.
- Mr S M Gana (DA – National) resigned with effect from 14 November 2016. Replaced by Mr M R Bara with effect from 14 November 2016.

Annexure 2

CONDOLENCE MOTIONS AND TRIBUTES TO FORMER MEMBERS

- Ms Dene Smuts was a Democratic Alliance former Member of Parliament and played a noteworthy role in the constitutional negotiations of the early 1990s where she contributed significantly to the writing of the Bill of Rights and in defining a process for political appointments. The Assembly agreed to the motion on her passing on 24 May.
- Ms Raesibe Eunice Nyalungu was an African National Congress Member of Parliament and served in the Portfolio Committee on Agriculture, Forestry and Fisheries; the Standing Committee on Public Accounts as well as the Standing Committee on Appropriations from 2009 to 2016. The Assembly agreed to the motion on her passing on 23 August.
- Rev Makhenkesi Stofile was a former African National Congress Member of Parliament and former Minister of Sport and Recreation from 2004 – 2010. He served as South Africa's Ambassador to Germany and at the time of his passing was the Chancellor of the University of Fort Hare. The Assembly agreed to the motion on his passing on 1 September.
- Mr Bonisile Nesi was an African National Congress Member of Parliament from 2009 to 2016. In 2009, he joined the National Council of Provinces and served on the Cooperative Governance and Traditional Affairs; and Petitions and Private Members' Legislative Proposals Committees. In 2014, he became a Member of the National Assembly and served on the Portfolio Committees on Home Affairs as well as Defence and Military Veterans until his passing. The Assembly agreed to the motion on his passing on 25 October.
- Mr Mewa Ramgobin was a former African National Congress Member of Parliament until 2009. He was among those elected to the democratic Parliament following the 1994 elections. He remained as a Member of Parliament until 2009. The Assembly agreed to the motion on his passing on 27 October.
- Ms Maria Ntuli was a former African National Congress Member of Parliament from 1994 to 2014 and served in various committees, including

the Joint Committee on the Improvement of Quality of Life and Status of Women as well as Portfolio Committee on Trade and Industry. She also served as the Deputy Minister of Social Development until 2014. The Assembly agreed to the motion on her passing on 27 October.

Annexure 3

GUIDELINES AND DETERMINATIONS DEVELOPED BY THE NA RULES COMMITTEE

16 AUGUST 2016

Part A

Chapter 7 (Guidelines)

Guidelines in terms of NA Rules 124 and 126 for notices of motions are as follows:

1.A. Guidelines for draft resolutions and subjects for discussion

- (1) Draft resolutions must be short and succinct and framed so as to express with as much clarity as possible the distinct opinion or decision of the House;
- (2) Draft resolutions must comply with the criteria and other requirements as incorporated in the Rules themselves, and specifically Rules 123(2)(c) and 128;
- (3) The wording of a subject for discussion must be limited to clearly identifying the proposed topic, which should be clearly established. The wording determines the scope and focus of the debate;
- (4) When notice has been given of a motion, the full text is printed on the Order Paper once; and
- (5) Thereafter, it is listed as a page reference under Further Business, until it is programmed for debate when it must once again be published in full.

1.B. Guidelines for motions of condolence

- (1) The Assembly must always stand to acknowledge the passing of a serving member of the House but this should be accompanied by an appropriate motion on the Order Paper and a debate. This must include members of the Executive who are not members of the National Assembly;

- (2) The Assembly must stand to acknowledge the passing of a former member (after 1994) or of a member of the National Council of Provinces, but a debate on the motion only takes place on the recommendation of the Chief Whips' Forum to the National Assembly Programme Committee;
- (3) The Assembly may consider and debate a motion, placed on the Order Paper, to acknowledge the passing of a prominent person; and
- (4) The Assembly may, at the discretion of the Speaker, stand to acknowledge the passing of a prominent person.

1.C (Rule 129): Guidelines for Motions of No Confidence in the President and Cabinet

- (1) The guidelines for motions of no confidence in terms of Rule 129 are the same as those for other motions, as applicable.

Chapter 3 (Determinations)

(1) Rule 39(1): Amount of fine to be imposed for absence from committees.

- (a) A fine of R1000 is determined for each day of absence. The NA Rules Committee will, from Parliament to Parliament, determine the fine.

(2) Rule 40(2): A committee to hear appeals relating to sanctions for non-attendance.

- (a) The Disciplinary Committee envisaged by Rule 216 is such a committee.

Chapter 6 (Determinations)

(1) Rule 108(2): Time allocation per party for declaration of votes in line with the principle of proportionality.

- (a) The time allocated for declaration of votes is as follows: ANC 6, DA 4, EFF 2, and all other parties 1 minute.

Chapter 7 (Determinations)**(1) Rule 123(2)(b): Motions without notice**

- (a) With respect to motions without notice, the number of motions without notice and the time allocated for such motions follow the same sequence used for members' statements. The sequence is as follows:
- (i) ANC, DA, EFF, ANC, IFP, Group 1, ANC, Group 2, ANC, DA, ANC, Group 3, ANC, DA, and ANC
 - (ii) Group 1: NFP (6), UDM (4), FF Plus (4) = 14 members
 - (iii) Group 2: Cope (3), ACDP (3), APC (1) = 7 members
 - (iv) Group 3: AIC (3), Agang SA (2), PAC (1) = 6 members

Chapter 9 (Determinations)**(1) Rule 132(4) and (6): Members' statements and ministerial responses**

- (a) The party sequence for members' statements is as follows: ANC, DA, EFF, ANC, IFP, Group 1, ANC, Group 2, ANC, DA, ANC, Group 3, ANC, DA, and ANC.
- (i) Group 1: NFP (6), UDM (4), FF Plus (4) = 14 members
 - (ii) Group 2: Cope (3), ACDP (3), APC (1) = 7 members
 - (iii) Group 3: AIC (3), Agang SA (2), PAC (1) = 6 members
- (b) Ministerial responses to members' statements are limited to the current practice of six Ministers.

(2) Rule 133(5): Executive statements

- (a) The current practice as decided by the Rules Committee is retained, which is as follows: ANC 12, DA 8, and EFF 4, all other parties 3 minutes.

Chapter 12 (Determinations)**(1) Rule 198: Composition of Subcommittee on Review of Assembly Rules**

- (a) The Subcommittee consists of 8 members allocated as follows: ANC 3; DA 2; EFF 1; other parties 2.

6 SEPTEMBER 2016**Part A
Chapter 6 (Determinations)****(1) Rule 108(2): Time allocation per party for declaration of votes in line with the principle of proportionality.**

- (a) The time allocated for declaration of votes is as follows: ANC 7, DA 5, EFF 4, and all other parties 3 minutes.

Chapter 7 (Determinations)**(1) Rule 123(2)(b): Motions without notice**

- (a) The sequence for moving motions without notice in the House is as follows:
- ANC, DA, EFF, ANC, IFP, NFP, ANC, EFF, UDM, FF Plus, DA, ANC, Cope, ACDP, ANC, AIC, Agang SA, ANC, APC, PAC, DA and ANC.

Chapter 9 (Determinations)**(1) Rule 132(4) and (6): Members' statements and ministerial responses**

- (a) The party sequence for members' statements is as follows: ANC, DA, EFF, ANC, IFP, Group 1, ANC, Group 2, ANC, DA, EFF, ANC, Group 3, ANC, DA, and ANC.
- (i) Group 1: NFP (6), UDM (4), FF Plus (4) = 14 members
 - (ii) Group 2: Cope (3), ACDP (3), APC (1) = 7 members
 - (iii) Group 3: AIC (3), Agang SA (2), PAC (1) = 6 members

16 NOVEMBER 2016

Chapter 3: Presiding Officers and Members

(1) Removal from office of Speaker or Deputy Speaker (Rule 28)

1. A notice of a motion to remove the Speaker or Deputy Speaker, as the case may be, must be given in the House or in writing on any other parliamentary working day;
2. The notice of motion to remove the Speaker or Deputy Speaker must comply with the rules generally and those on notices of motion and may not contain statements, arguments or other matters not strictly necessary to make the proposed resolution intelligible;
3. If the notice of motion relates to the removal of the Speaker or Deputy Speaker for alleged improper or unethical conduct, the motion must comply with Rule 85;
4. A notice of motion given in the House to remove the Speaker or Deputy Speaker must be delivered during the time allocated to parties by the Programme Committee for members of political parties to give notices of motion;
5. A member may propose an amendment to a motion to remove the Speaker or Deputy Speaker provided it complies with the rules for amendments to motions generally; and
6. The Speaker may not preside in the House when a motion to remove the Speaker is debated or voted on; and the Deputy Speaker may not preside when a motion to remove the Deputy Speaker is debated or voted on.

(2) Appointment and responsibilities of whips (Rule 33(3)(a))

1. A joint request to the Speaker by political parties which do not qualify for a whip to have

one or more whips appointed to represent them or to alter a previous appointment in terms of Rule 33(3)(a) must –

- (a) contain the name(s) of the member(s) nominated for appointment as a whip; and
- (b) be endorsed/signed by the leaders or duly authorised persons of the relevant parties affected by such request/nomination.

1. In considering a request to appoint a whip or to alter an appointment previously made in terms of Rule 33(3)(a), the Speaker must ensure that –

- (a) the member nominated for appointment as a whip is a member of one of the relevant parties affected by such nomination;
- (b) the parties jointly are entitled to the number of whips nominated for appointment, in line with the formula agreed to by the Rules Committee in terms of Rule 33(1); and
- (c) the request and nomination have been endorsed [signed] by the leaders or duly authorised persons of the parties affected by such request/nomination.

2. Once the Speaker is satisfied that the request and nomination complies with the rules and guidelines of the House, the Speaker must appoint the whip(s) and thereafter publish the name(s) of the appointed whip(s) in the ATC in terms of Rule 33.

(3) Rule 33(1): Determination of the number of whips to be allocated to parties represented in the House

- (1) The current formula of 1 whip to 6 members is retained. The NA Rules Committee will determine the formula for appointing whips for each Parliament.

Chapter 6: Decision of Questions

Rules 103 and 104 require predetermined procedures by the Speaker to be followed for electronic voting and manual voting respectively.

(1) Electronic Voting

- (a) In terms of the Rules, every member present in the Chamber when the question is put with the doors barred must vote or record an abstention;
- (b) The presiding officer will request members to be in their allocated seats before voting can commence;
- (c) Once the electronic system has been activated, the presiding officer will direct members to indicate whether they are 'for', 'against' or 'abstain from' the question by pressing the relevant button on the electronic system;
- (d) Members press the yes, no or abstain button on the electronic consoles at their seats when directed by the presiding officer; and
- (e) The presiding officer announces when the voting is closed. If a member has experienced problems with the recording of their vote, they must draw the attention of the Chair and may in person or through a whip of his or her party inform the Secretary at the table of his or her vote.
- (c) After the five minutes have elapsed, the doors of the Chamber will be barred/locked;
- (d) The presiding officer will request members to be in their allocated seats before voting can commence;
- (e) The presiding officer will request members in favour of the question to raise their hands;
- (f) The presiding officer appoints party whips as tellers and directs them to count the number of members that are in favour of the question;
- (g) Thereafter the same procedure is followed with members against the question and members abstaining, in that order;
- (h) Whips are directed to submit the results of the manual vote to the Secretary at the Table;
- (i) A member who wishes to vote against the party vote may inform the Table staff accordingly in person; and
- (j) The Minutes of Proceedings will only indicate how parties voted and members' names would not be reflected as is done when an electronic voting system is used.

(2) Manual Voting Procedure (When electronic system is inoperable)

- (a) When a question is put to the House and a member calls for a Division, the presiding officer may determine that a manual vote will take place;
- (b) The presiding officer will announce that the bells will be rung for five minutes in order to alert members to a call for a Division having being made;

Chapter 10: Guidelines for Questions (Rule 134(4) and (6))**(1) Editing of Questions (Rule 134(6))**

- (a) Whenever questions are edited this is done under the authority of the Speaker and in accordance with the guidelines as approved by the Rules Committee; and

- (b) When a question is edited in terms of rules and guidelines, the member who submitted the question, or the party to which the member belongs, must be consulted before the edited question is published.

(2) Object of Questions

1. The purpose of parliamentary questions is to:
 - (a) obtain information; and/or
 - (b) press for action on matters related to the official responsibility of Cabinet members.

(3) General Form and Content of Questions

2. A question must:
 - (a) deal with only one substantive matter;
 - (b) comply with the Constitution, the law and the Rules;
 - (c) be subject to the rule of anticipation; and
 - (d) not contain unbecoming or offensive expressions.
3. A question is not permissible which –
 - (a) contains offensive expressions;
 - (b) casts a reflection on the conduct or character of persons whose conduct may only be challenged in a substantive motion;
 - (c) anticipates discussion of matters on the Order Paper or that is scheduled to be placed on the Order Paper within a reasonable time;
 - (d) requests details or deals with the merits of any matter on which a judicial decision in a court of law is pending;
 - (e) repeats, in substance, questions already answered in that annual session, or that is awaiting an answer, or that the Minister has refused to answer or that is a class of question substantively the same as another. However, a similar question different in some respects may be asked and the same question may be put to different members of the Cabinet to the extent that they have a responsibility in terms of their portfolios;

- (f) criticises decisions of either House of Parliament;
- (g) publishes any name or statement not strictly necessary to make the question intelligible, unless the Cabinet member has used the name or statement or it has been cited in a charge before a court; and
- (h) is of a statistical nature when put as a question for oral reply by asking for more than two figures (dates are not regarded as statistical).

4. Questions may not –
 - (a) express an opinion or seek the expression of one;
 - (b) contain arguments, inferences or imputations;
 - (c) contain unnecessary descriptive words or phrases added to or substituted for a person's name (epithets);
 - (d) contain rhetorical, controversial, ironical or offensive expressions; and
 - (e) contain extracts from newspapers or books, or paraphrases or quotations from speeches. The facts on which a question is based may be set out briefly, but the questioner is responsible for ascertaining the accuracy of the facts.

5. In addition, questions may not –
 - (a) only provide information;
 - (b) convey a particular point of view;
 - (c) constitute a speech, or be excessively long;
 - (d) refer to communications between an individual member (other than the questioner) and a Cabinet member;
 - (e) be based on a hypothetical proposition;
 - (f) seek an opinion on a question of law, such as an interpretation of a statute, an international document or a Cabinet member's own powers. However, it is in order to ask under what statutory authority a Cabinet member acted in a particular instance;
 - (g) seek a solution to a legal question;

- (h) raise questions which would require an impractically extensive answer;
 - (i) seek information on matters of past history for the purposes of argument;
 - (j) be trivial, vague or meaningless; or
 - (k) be a repeat of other questions with some trivial variations.
6. While it is the basic tenet of all questions that a question should be related to a Cabinet member's official responsibility, the following criteria are applied:
- (a) Requests for information are not usually accommodated in respect of matters falling under local or other statutory authorities;
 - (b) It is not in order to ask for information about matters that are the responsibility of bodies or persons not responsible to the Government, such as banks, the Stock Exchange, employers' organizations and trade unions;
 - (c) Questions relating to semi-state bodies are restricted to matters for which Cabinet members are responsible by statute or other legislation. However, questions on national statistics in relation to these bodies are in order;
 - (d) Questions may not refer to matters under consideration of a parliamentary committee or deal with matters within the jurisdiction of the chairperson of a parliamentary committee or a House of Parliament;
 - (e) Questions may not be asked about the action of a Cabinet member for which he or she is not responsible to Parliament;
 - (f) It is not in order to put a question to a Cabinet member for which another Cabinet member is more directly responsible, or to ask a Cabinet member to influence a colleague;
 - (g) Questions suggesting amendments to a Bill before the Assembly or in Committee are inadmissible unless such amendments may only be moved by a Cabinet member;
 - (h) It is inadmissible to ask a Cabinet member whether statements in the press or by private persons or unofficial bodies are accurate, or to call for comment on statements by persons in other countries (unless the statement is contained in a message from another government);
- (i) Questions may not seek information about the internal affairs of other independent countries, unless such countries form part of a common organisation through which the information is obtainable;
 - (j) It is permissible to ask questions calling on Cabinet members to grant relief to South African citizens in foreign countries who are under arrest or to protect persons or companies from discrimination in foreign countries; but questions on the actions of foreign states in refusing entry to South African citizens have not been allowed;
 - (k) Questions that require information that is readily accessible are not allowed; and
 - (l) It is in order to ask for a Cabinet member's intentions with regard to matters for which that Cabinet member is officially responsible and to ask for administrative or legislative action in regard to such matters.
7. The form and content recorded herein may be further developed by Rulings of the Speaker with regard to any matter not recorded herein.
- (4) Form and Content of Questions to the President**
- (1) While the above criteria on form and content apply to questions generally, some additional specific criteria have been established in respect of questions to the President.
 - (2) The President represents the executive authority of the Republic, and while delegating these responsibilities to members of the Cabinet, he or she does not abdicate overall responsibility. The President performs the powers and functions and the executive authority within a unitary state.
 - (3) Questions to the President may relate to –
 - (a) Matters in respect of the powers and functions of the President and the executive authority of the Republic that he/she represents;

- (b) Matters for which the Government is responsible – this may include line function responsibilities of Ministers where they give rise to issues of national or international concern;
- (c) Broad matters of national or international importance that are topical;
- (d) Matters of provincial or local concern to the extent that such questions give effect to the unitary nature of the Constitution of the RSA, 1996, that provides for intervention in the affairs of provincial and local spheres of government;
- (e) The granting of honours;
- (f) The dissolution of Parliament;
- (g) The definition of the responsibilities of Cabinet members;
- (h) Statements made by Cabinet members (not Deputy Ministers, who are not members of the Cabinet) on public occasions and whether such statements represent the policy of the Government; and
- (i) A speech made by the President on a public occasion outside Parliament and whether it represents Government policy.

(5) Guidelines on Criteria for Questions to the Deputy President

- (1) While the President is assisted by the Deputy President in the execution of the functions of government, the President allocates responsibilities to the Deputy President from time to time. Questions to the Deputy President must relate to these responsibilities, and a list of these responsibilities must be maintained for each Parliament, in accordance with information officially received from the Leader of Government Business in terms of the Rules.

(6) An Authorised Representative (Rule 137(7))

- (a) The person designated by a party to deal with its questions is deemed to be the authorised representative;
- (b) The party must advise the Speaker in

writing of its authorised representative at the beginning of each Parliament;

- (c) Such a person liaises with the Speaker with regard to all matters related to the questions of the members of its party; and
- (d) The Speaker must also liaise with the relevant representative in the event that any matters arise with regard to the questions of the members of the relevant party.

(7) Party order for questions (Rule 134(4))

- (1) The current practice is retained.

(8) Ministerial clusters for questions (Rule 138(1))

- (1) The current practice remains unchanged until further notice.

(9) System to monitor questions (Rule 136(1))

1. Rule 136 provides that the Speaker, in consultation with the Rules Committee, must establish a system to monitor and report regularly to the House on questions that have been endorsed as unanswered on the Question Paper in terms of Rules 143(2), 144(5) and 146(3).

2. The following system to monitor and report on questions that have been endorsed as unanswered is proposed:

- (a) The Speaker submits a written report every quarter to the Rules Committee on questions endorsed on the Question Paper as “Unanswered” in terms of the Rules, the period of time over which they have appeared as endorsed, the responsible Ministers and any communication sent or received by the Speaker in that regard;
- (b) The Rules Committee must set up a permanent subcommittee which must meet at least quarterly to receive and consider the Speaker’s reports;

- (c) The subcommittee would be composed of the number of members and party representation as determined by the Rules Committee;
- (d) The subcommittee would be chaired by the Deputy Speaker or other designated presiding officer and also include, in its membership, the Leader of Government Business or a designated representative;
- (e) The subcommittee would receive and engage with the Speaker's report and invite relevant Ministers to respond on why questions to them have been endorsed as "Unanswered";
- (f) The subcommittee would then report within a specified time to the Rules Committee on its findings in each case and any recommendations to address identified challenges or concerns. The subcommittee's report should specifically include information on responses it has received from the executive; and
- (g) The Rules Committee would then consider the subcommittee's report and it would, in accordance with Rule 136, report to the House on the outcome of the monitoring process, including any findings and recommendations with a view to strengthening effective executive accountability to the Assembly. Appropriate recommendations could be developed by the Rules Committee, responding to the circumstances in any particular case.

Chapter 12: Committee System

- (1) The guidelines required for committee programmes and meetings in terms of the Rules were deferred for purposes of further consultation and discussion.



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OF THE REPUBLIC OF SOUTH AFRICA

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