



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA



PROCEDURAL
DEVELOPMENTS
IN THE NATIONAL ASSEMBLY

Fifth Session,
Fifth Parliament
January to May 2019

ISSUE: 26



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 26th issue covers the last session of the Fifth Parliament from January to May 2019. Where no year appears next to a particular month in the text, the reference is to 2019.

CONTENTS

MEMBERS

1. Membership of the National Assembly (NA)
See Annexure 1

PROCEDURAL AND RELATED ISSUES

2. Suspension of rules
3. Lapsed business revived
4. Motion on dissolution of National Assembly
5. Members ordered to withdraw from Chamber for remainder of day's sitting for disregarding authority of Chair
6. Amendments proposed to Motion in House
7. Presiding officer counted for purposes of establishing a quorum

LEGISLATION AND COMMITTEES

8. Postponement of decision of question
9. Foreign Service Bill rejected by NCOP and returned to NA for reconsideration
10. Withdrawal of Bills
11. Private Members' Legislative Proposals and Committee Bills
12. Report of ad hoc committee to amend section 25 of Constitution, 1996
13. Permission to inquire into amending other provisions of Airports Company Act (No 44 of 1993)

STATUTORY FUNCTIONS

14. Recommendation of candidates to fill vacancies on SABC Board
15. Removal of Chairperson of ICASA
16. Request for filling of vacancy in ICASA Council
17. Request for filling of vacancies in Commission for Gender Equality
18. Determination of remuneration of members of Financial and Fiscal Commission
19. Filling of vacancies on PanSALB
20. Confirmation of recommendation by Minister of Police not to renew term of office of Executive Director of IPID
21. Correspondence on removal from office of Adv N Jiba and Adv L Mrwebi
22. Report of PC on Justice and Correctional Services on request for Assembly to expedite procedure to remove Public Protector
23. Request for filling of vacancy on Public Service Commission (PSC)
24. Re-appointment of Deputy Auditor-General

MEMBERS

- [1] MEMBERSHIP OF THE NATIONAL ASSEMBLY**
See Annexure 1.

PROCEDURAL AND RELATED ISSUES

[2] SUSPENSION OF RULES

Assembly Rule 290(2)(a) provides inter alia that the debate on the Second Reading of a Bill may not commence before at least three working days have elapsed since the committee's report was tabled. On 26 February and 13 March, this rule was suspended in order to have a debate on the Second Reading of the Customs and Excise Amendment Bill and the Division of Revenue Bill, respectively.

Rule 290(2)(b) provides that the debate on the Second Reading of a Bill, introduced by a committee, may not commence before at least three working days have elapsed since the Bill was introduced. The rule was suspended on 20 March in order to have a debate on the Second Reading of the National Minimum Wage Amendment Bill. The Portfolio Committee on Labour introduced the Bill.

[3] LAPSED BUSINESS REVIVED

Assembly Rule 351(1) provides that all motions and all other business, other than Bills, on the Order Paper on the last sitting day of an annual session of the National Assembly (NA), lapse at the end of that day. Rule 333(1) provides that all Bills introduced in the NA and which on the last sitting day of a session of the NA appear on the Order Paper for First or Second Reading, lapse at the end of that day unless the NA decides otherwise.

On 19 February, the NA resolved to revive business that had lapsed at the end of the 2018 annual session. Business revived included the Road Accident Benefit Scheme Bill, the Firearms Control Amendment Bill, the Restitution of Land Rights Bill and various committee reports. In terms of practice, lapsed business is revived from the stage it had reached at the end of the annual session. However, the motion before the House was amended by the Chief Whip of the Majority Party to revive the Road Accident Benefit Scheme Bill

from the "Second Reading" stage, instead of the stage it had reached at the end of the 2018 annual session, which was "Decision of Question on Second Reading". The amendment as moved by the Chief Whip of the Majority Party was agreed to.

[4] MOTION ON DISSOLUTION OF NATIONAL ASSEMBLY

Section 49(1) of the Constitution, 1996 provides that the NA is elected for a term of five years. Section 49(2) provides that if the NA is dissolved in terms of section 50 (which provides that the President must dissolve the NA, before the expiry of its term, if the NA adopts a resolution to dissolve with a supporting vote of the majority of its members, and three years have passed since the NA was elected), or when its term expires, the President, by proclamation must call and set dates for an election, which must be held within 90 days of the date the NA was dissolved or its term expired. A proclamation calling and setting dates for an election may be issued before or after the expiry of the term of the NA. In terms of section 49(3), the NA remains competent to function from the time it is dissolved, or its term expires, until the day before the first day of polling for the next NA.

On 7 February, during his state-of-the-nation address (SONA), the President, Mr M C Ramaphosa, announced that following engagements with the Electoral Commission and the Premiers of all provinces, he intended to proclaim Wednesday, 8 May as the date of the general election for national and provincial governments.

Following the President's announcement of the intended election date, a question arose for the first time since 1994 concerning the date on which the term of the NA of the Fifth Parliament had commenced, and consequently when it would expire, and when the President could issue the proclamation. Three possible positions regarding the date of commencement of the NA were identified, namely –

- (a) The date of the last election;
- (b) The date the Electoral Commission designated the members; or
- (c) The date of the first sitting and swearing in of members.

After much deliberation on the matter, during which legal opinions were obtained, the date of the first

sitting and swearing in of members, namely, 21 May 2014, was determined as the commencement of the term. The view was supported by the understanding that as a matter of general practice, the “term of office” of a person could only commence when that person assumed office. Therefore, the NA could not be said to have commenced its business (“assumed office”) when it could not meet or exercise its powers.

Motion on Dissolution of Assembly

The motion to dissolve the NA read as follows:

The Chief Whip of the Majority Party moved: That the House –

- (1) notes that section 50(1) of the Constitution, 1996 provides that the President must dissolve the National Assembly if the Assembly has adopted a resolution to dissolve with a supporting vote of a majority of its members;
- (2) further notes that in terms of section 49(4) of the Constitution, the Assembly remains competent to function from the time it is dissolved or its term expires, until the day before the first day of polling for the next Assembly;
- (3) acknowledges the President’s announcement, on 7 February 2019, that the general elections will take place on 8 May 2019; and
- (4) resolves –
 - (a) to dissolve the National Assembly in terms of section 50(1) of the Constitution; and
 - (b) to suspend Rules 333(2) and 351(2) to prevent bills and other business from lapsing when the House is dissolved.

Before putting the motion to the House for decision on 21 February, the Speaker announced that she had received a letter from the President of the Republic in respect of the dissolution of the NA and proclamation of the date for an election.

The motion was accordingly agreed to with 249 members voting in favour of it (a vote was conducted through the electronic voting system to establish the majority needed (201), as required in terms of section 50(1)(a) of the Constitution, 1996).

In light of section 49(3) of the Constitution, 1996 and the Assembly Rules, the NA, by resolution, agreed to suspend the rules relating to the lapsing of business before the House when it is dissolved or its term expires so that it could continue to sit after it had dissolved.

[5] MEMBERS ORDERED TO WITHDRAW FROM CHAMBER FOR REMAINDER OF DAY’S SITTING FOR DISREGARDING AUTHORITY OF CHAIR

- (a) On Tuesday, 5 March, the House debated a Draft Resolution on the renaming of the Cape Town International Airport to Winnie Madikizela-Mandela International Airport in honour of the struggle veteran. Ms N P Sonti having disregarded the authority of the Chair was in terms of Assembly Rule 70(1) ordered by the Deputy Speaker to withdraw from the Chamber for the remainder of the day’s sitting. When the member refused to leave the Chamber, the Deputy Speaker, in accordance with Rule 73(1), called upon the Serjeant-at-Arms to remove the member from the Chamber. The member thereupon withdrew from the Chamber.
- (b) On Wednesday, 6 March, during questions for oral reply, Ms H O Mkhalihi having disregarded the authority of the Chair was in terms of Assembly Rule 70(1) ordered by the Deputy Speaker to withdraw from the Chamber for the remainder of the day’s sitting. When the member refused to leave the Chamber, the Deputy Speaker, in accordance with Rule 73(1), called upon the Serjeant-at-Arms to remove the member from the Chamber. The member thereupon withdrew from the Chamber.
- (c) On Tuesday, 19 March, Ms P T van Damme having disregarded the authority of the Chair was in terms of Assembly Rule 70(1) ordered by the House Chairperson to withdraw from the Chamber for the remainder of the day’s sitting. The member thereupon withdrew from the Chamber.

[6] AMENDMENTS PROPOSED TO MOTION IN HOUSE

On 5 March, Mr J S Malema moved a motion commemorating the passing of Ms W Madikizela-Mandela and proposing that the House support the call to rename Cape Town International Airport after her. Following the debate on the motion, the Chief Whip of the Majority Party moved an amendment to the effect that the House supports the consultation process underway to rename the airport, and that a number of names, including that of Ms W Madikizela-Mandela, had been put forward. The House agreed to the motion as amended by the Chief Whip of the Majority Party.

[7] PRESIDING OFFICER COUNTED FOR PURPOSES OF ESTABLISHING A QUORUM

Section 53(1)(a) of the Constitution, 1996 states that, except where it provides otherwise, a majority of the members of the NA must be present before a vote may be taken on a Bill.

On Tuesday, 12 March, the House divided on the Traditional Courts Bill [B 1B - 2017]. The result of the division was as follows: AYES -195, NOES - 5 and no abstentions. The attention of the presiding officer was drawn to the possibility that a quorum may not be present, to which the presiding officer responded that given that the presiding officer was counted as part of the quorum in terms of Rule 98(4), a quorum was indeed present at the time of voting. In terms of this rule, a presiding officer must be counted for purposes of establishing whether a quorum is present. The question was agreed to and the Bill was accordingly read a second time.

LEGISLATION AND COMMITTEES**[8] POSTPONEMENT OF DECISION OF QUESTION**

On Tuesday, 12 March, after the House deliberated on the Second Reading debate on the Financial Matters Amendment Bill [B 1B - 2019], a question was put that the Bill be read a second time. In accordance with section 53 of the Constitution, 1996 and Assembly Rule 96(a), a majority of the members of the NA must be present before a vote may be taken on a Bill or an amendment to a Bill. Out of the 400 members of the NA, 201 had to be present before a vote could be taken on the Bill.

In terms of Rule 98(1), if the attention of the presiding officer is called to the absence of the prescribed quorum when a question is put for decision, the presiding officer may, amongst other things, direct that the bells be rung for five minutes, or such longer time as the presiding officer may direct but not exceeding 15 minutes. A division was demanded, the bells were rung and the House divided. In accordance with Rule 98(3)(a), the electronic voting system was utilised to establish whether a quorum was present. It was established that a quorum was not present as there were 199 members present in the House (194 AYES and 5 NOES).

As the result of the division had shown that the majority of the members of the NA were not present for a vote to be taken on the Bill, as required by section 53 of the Constitution and Rule 96(a), the decision of question in respect of the Bill was postponed.

[9] FOREIGN SERVICE BILL REJECTED BY NCOP AND RETURNED TO NA FOR RECONSIDERATION

Joint Rule 181 provides that if the NA approves the Second Reading of a section 75 Bill, the Secretary to Parliament must without delay submit the Bill to the Chairperson of the National Council of Provinces (NCOP), for the NCOP to deal with the Bill in terms of its rules.

Assembly Rule 307 provides that if the NCOP rejects a section 75 Bill referred to it in terms of Joint Rule 181 or passes the Bill subject to amendments, the Speaker must refer the Bill and any amendments proposed by the NCOP to the portfolio committee concerned or any other appropriate NA committee for a report on the NCOP's rejection of the Bill or on the amendments proposed by the NCOP.

Section 75(c) of the Constitution, 1996 provides that if the NCOP rejects the Bill or passes it subject to amendments, the NA must reconsider the Bill, taking into account any amendments proposed by the NCOP, and may pass the Bill again, either with or without amendments, or decide not to proceed with the Bill.

On 28 March, the NCOP considered the report of the Select Committee on Social Services on the Foreign Services Bill [B 35B - 2015] (National Assembly - sec 75) and unanimously agreed not

to pass it. The Bill was referred back to the NA on the same day and lapsed at the end of the Fifth Parliament.

[10] WITHDRAWAL OF BILLS

Assembly Rule 334 provides that a person in charge of a Bill introduced in the NA may withdraw the Bill at any time before the Second Reading of the Bill is decided. During the period under review, two Bills were withdrawn before the Second Reading stage as follows:

- On 16 January, the Minister of Justice and Correctional Services, Adv T M Masutha, wrote to the Speaker to inform her that he had decided to withdraw the Criminal Procedure Amendment Bill [B15-2018] in terms of Assembly Rule 334. The reason given by the Minister was that applicants who had successfully challenged the constitutionality of section 18 of the Criminal Procedure Act (No 51 of 1977) had turned their attention to section 12(4) of the Prescription Act (No 68 of 1969). The Act regulates when prescription in civil cases starts to run, lists a limited number of sexual offences and excludes the majority of common and statutory law offences. The Minister stated that he was not opposing the constitutional challenge against section 12(4) of the Prescription Act as he had done with section 18 of the Criminal Procedure Act. He further informed the Speaker that he had instructed his department to prepare a Bill in which both pieces of legislation would be amended.
- In a letter dated 25 February, the Minister of Communications informed the NA that in September 2018, the then Minister of Telecommunications and Postal Services, Dr Siyabonga Cwele, had submitted to Parliament the Electronic Communications Amendment Bill [B 31 - 2018] with the intention to amend sections of the Electronic Communications Act (No 36 of 2005). She indicated that pursuant to deliberations on the Bill in the Portfolio Committee on Telecommunications and Postal Services it had become apparent that Parliament was unlikely to finalise the Bill before the 2019 national and provincial elections.

She further indicated that the portfolio committee had provided a report on the Bill follow-

ing public consultations, recommending that the department needed to engage in further consultations with the industry on contentious aspects of the Bill. She advised the NA that there were also outstanding issues related to the correct tagging of the Bill, which required further clarification, and requested that the Bill be withdrawn.

The Speaker announced the withdrawal of the Bills in the ATCs of 24 January and 26 February, respectively.

[11] PRIVATE MEMBERS' LEGISLATIVE PROPOSALS AND COMMITTEE BILLS

Section 73(2) of the Constitution, 1996 provides that only a Cabinet member or a Deputy Minister, or a member or committee of the NA, may introduce a Bill in the Assembly. Members of the NA and committees, in terms of section 73(2), introduced the following Bills as follows:

(A) Amendment of National Minimum Wage Act (No 9 of 2018)

On 24 January, the Portfolio Committee on Labour published a legislative proposal seeking permission from the NA, in terms of Rule 273, to amend the National Minimum Wage Act (No 9 of 2018) in order to correct a technical error due to a consequential amendment to section 17(4) of the Act. Rule 273 provides that an Assembly committee intending to introduce a Bill in the NA must, for the purposes of obtaining the Assembly's permission, table a memorandum on the proposed Bill.

On 19 February, the NA gave permission for the portfolio committee to proceed with its legislative proposal to amend the Act. The committee submitted a committee Bill on 19 March. The Bill was passed by the NA on 20 March and transmitted to the NCOP for concurrence. [See Item 2 above regarding the suspension of Rule 290(2)(b) to consider the National Minimum Wage Amendment Bill]

(B) Public Investment Corporation Amendment Bill [B 1 - 2018] and Decision of Question that the Bill not be read a second time

The Standing Committee on Finance (the Committee)

resolved in October 2017 to introduce a committee Bill to address the Public Investment Corporation's (PIC) investment choices. Mr D Maynier who was a member of the Committee, introduced the Public Investment Corporation Amendment Bill [B 1- 2018], which covered most of the matters the Committee had resolved it would address through a committee Bill.

The Committee and Mr Maynier could not agree on merging the two Bills, and the Committee resolved to introduce its Bill, and sought the House's permission to do so.

Rule 332 provides that when a Bill has been passed or had been rejected during a session in any year, no Bill of the same substance may be introduced in the NA in that year except by leave of the NA or where otherwise provided in the Assembly Rules. Although this rule provides that no Bill of the same substance can be introduced in the same annual session in which the NA had passed or rejected a Bill of the same substance, the NA had not yet taken a decision on the Bill that Mr Maynier had introduced. The House gave permission for the Committee to proceed with its Bill on 29 May.

The Committee processed both Bills, both with the same name, simultaneously. Both Bills sought to provide greater transparency and governance in the PIC. The Committee published one report on 13 February, covering both its committee Bill and Mr Maynier's Bill.

Rule 286(4)(i) provides that a committee, after due deliberation, has to consider a motion of desirability on the subject matter of a Bill and, if rejected, has to immediately table the Bill and its report on the Bill. On 15 February, the Committee published two reports, which replaced the one report, covering both Bills, published on 13 February. In the two reports, the Committee reported on each Bill separately, and presented the committee Bill and Mr Maynier's Bill, which it said was undesirable, for the Assembly's consideration.

On 26 February, the House considered both Bills. Due to an absence of a quorum when Mr Maynier's Bill was put for decision to the House, the decision of question was postponed. The House considered and passed the

committee Bill and put the decision of question on Mr Maynier's Bill thereafter. The House agreed not to proceed with Mr Maynier's Bill.

(C) Regulation of Gatherings Amendment Bill [B 47 - 2018]

The Regulation of Gatherings Amendment Bill [B 47 - 2018] was introduced by Adv A W Alberts on 28 November 2018 and tagged by the Joint Tagging Mechanism (JTM) as a section 76 Bill. The Bill sought to amend the Regulation of Gatherings Act (No 205 of 1993) in order to prohibit protests outside schools, youth care centres and places that provided early childhood development education. Assembly Rule 286(4)(i) provides that the committee, after due deliberation, had to consider a motion of desirability on the subject matter of the Bill and, if rejected, had to immediately table the Bill and its report on the Bill. The Portfolio Committee on Police resolved, after deliberation, that the Bill was undesirable. The Bill and the Committee's report thereon lapsed at the end of the Fifth Parliament in terms of Rule 333(2).

(D) Electoral Amendment Bill [B 24 - 2018]

The Electoral Amendment Bill [B 24 - 2018] was introduced by Mr M Waters on 12 July 2018 and tagged by the JTM as a Bill to which section 75 of the Constitution applied. The Bill sought to apply a single form of identification for South African voters living abroad, to provide for increased geographical coverage of registration and voting stations in foreign countries, to provide for voting to take place on weekends and for special votes in elections for a provincial legislature of persons who resided ordinarily outside the Republic. Most of the matters the Bill sought to address were logistical in nature. The Bill also sought to provide for South Africans residing abroad to participate in provincial elections, as that was ordinarily only allowed for persons residing within the Republic. The Portfolio Committee on Home Affairs resolved that the Bill was undesirable in terms of Rule 286(4)(i). This rule provides that the committee, after due deliberation, has to consider a motion of desirability on the subject matter of the Bill and, if rejected, has to immediately table the Bill and its report on the Bill. The Bill and the Committee's report thereon lapsed at the end of the Fifth Parliament in terms of Rule 333(2).

(E) National Health Amendment Bill [B 8 – 2019]

The National Health Amendment Bill [B 8 – 2019] was introduced by Ms D Carter on 27 February and referred to the Portfolio Committee on Health for consideration and report. The Bill was tagged by the JTM as a Bill to which section 75 of the Constitution applied. The Bill sought to amend the National Health Act (No 61 of 2003) so as to amend a definition and insert new definitions, to provide for the legal recognition and requirements of a durable power of attorney for health care and a living will, and to provide for matters connected therewith. The Bill lapsed at the end of the Fifth Parliament in terms of Rule 333(2), which provides that all Bills before the NA or any Assembly committee on the last sitting day of a term of the NA or when the Assembly is dissolved, lapse at the end of that day.

[12] REPORT OF AD HOC COMMITTEE TO AMEND SECTION 25 OF CONSTITUTION

In (Issue 25, Item 21), it was reported that the Constitutional Review Committee (CRC) was mandated by the NA and the NCOP to embark on a process to obtain the views of the public on the possible amendment of section 25 of the Constitution, 1996 to allow for the state to expropriate land in the public interest without compensation, and mechanisms for expropriating land without compensation. The CRC was expected to engage in a public participation process in order to get the views of all stakeholders about the necessity of, and the mechanisms for expropriating land without compensation.

It was also reported that the NA and the NCOP adopted the report of the CRC on 4 and 5 December 2018, respectively, with recommendations.

On 6 December 2018, the NA resolved to establish an ad hoc committee in terms of Rule 253, to initiate and introduce legislation amending section 25 of the Constitution, 1996 and have regard to the recommendations as contained in the CRC report. The NA further resolved that the ad hoc committee should consist of 11 voting members of the NA, as follows: African National Congress 6, Democratic Alliance 2, Economic Freedom Fighters 1 and other parties 2; and consist of 14 non-voting members of the NA, as follows: African National Congress 2, Democratic Alliance 1, Economic Freedom Fighters 1 and other

parties 10. The ad hoc committee was also required to exercise those powers as set out in Rule 167 that might assist it in carrying out its task and was given 31 March as the deadline by which it was expected to report.

The ad hoc committee could not complete its task by the end of the Fifth Parliament and on 19 March recommended that the matter be concluded in the Sixth Parliament.

[13] PERMISSION TO INQUIRE INTO AMENDING OTHER PROVISIONS OF AIRPORTS COMPANY ACT (NO 44 OF 1993)

Assembly Rule 286(4)(c) provides that if a Bill amends provisions of legislation, a committee must, if it intends to propose amendments to other provisions of that legislation, seek the permission of the NA to do so.

The Portfolio Committee on Transport, in its interim report dated 19 February, following its consideration of the Airports Company Amendment Bill [B5 – 2018], which sought to amend the Airports Company Act (No 44 of 1993), submitted a request for the permission of the NA to inquire into amending other provisions of the Act.

The NA acceded to the Committee's request on 28 February.

STATUTORY FUNCTIONS

[14] RECOMMENDATION OF CANDIDATES TO FILL VACANCIES ON SABC BOARD

(See Issue 25, Item 39)

In terms of section 13 of the Broadcasting Act (No 44 of 1999), the President appoints twelve non-executive members to serve on the South African Broadcasting Corporation Board (SABC Board), on the advice of the NA. The members of the Board hold office for such period as the President may determine which period must however not exceed five years.

On 16 May, 19 July and 6 December 2018, as reported in (Issue 25, Item 39), eight positions on the Board

became vacant. The Speaker received requests from the Minister of Communications and the President, respectively, to commence with the process of filling the eight vacancies and referred the requests to the Portfolio Committee on Communications (the Committee) for consideration and report.

Following the recruitment process, the Committee recommended that Ms Mary Papayya, Ms Jasmina Patel, Dr Marcia Socikwa, Ms Mamodupi Mohlala-Molaudzi, Ms Bernedette Muthien, Adv Benjamin Motshedi Lekalakala, Prof Sathasivan Cooper and Mr David Maimela, be appointed to the Board.

On 19 March, the NA adopted the report of the Committee recommending the above members for appointment to the Board.

[15] REMOVAL OF CHAIRPERSON OF ICASA

In (Issue 25, Item 29), it was reported that the matter of the removal of Mr Manyaba Rubben Mohlaloga as the chairperson of the Independent Communications Authority of South Africa (ICASA), who was convicted on charges of fraud and money laundering on 15 January 2018, was before the Portfolio Committee on Communications (the Committee).

The Committee met on 29 May 2018 and was of the view that, based on the convictions, there was a reasonable apprehension that Mr Mohlaloga could not continue in a position of trust and authority. The Committee accordingly recommended that the Minister of Communications suspend Mr Mohlaloga as councillor and chairperson of ICASA, in terms of section 8(3)(c) of the Independent Communications Authority of South Africa Act (No 13 of 2000) until such time as the NA finalised the removal process.

On 12 March, the Committee deliberated on the matter of the ICASA Council chairperson following his sentencing by the Pretoria Specialised Commercial Crimes Court. The Committee noted that Mr Mohlaloga was granted leave to appeal his sentence but not his conviction. The Committee noted that Mr Mohlaloga's attorneys informed Parliament that he intended petitioning the Judge President of the North Gauteng High Court to grant him leave to appeal the conviction. Having considered the matter, the Committee

resolved that Mr Mohlaloga be removed as councillor and council chairperson of ICASA, in terms of section 6(1)(j) of the Act, with immediate effect.

On 19 March, the NA adopted the report of the Committee. The recommendation for the removal of Mr Mohlaloga as councillor and Council chairperson of ICASA was accordingly agreed to.

[16] REQUEST FOR FILLING OF VACANCY IN ICASA COUNCIL

On 22 April, the Minister of Communications, Ms S Ndabeni-Abrahams, informed the Speaker that there was a vacancy in the ICASA Council as a result of the removal of Mr Rubben M Mohlaloga as a councillor and chairperson of the Council, and requested that a recruitment process be initiated to fill the vacancy that had arisen.

On 7 May, the Speaker referred the request to commence the process of filling the vacancy in terms of section 5 of the Independent Communications Authority of South Africa Act (No 13 of 2000) to the Portfolio Committee on Communications for consideration and report. The matter had not been finalised by the end of the Fifth Parliament.

[17] REQUEST FOR FILLING OF VACANCIES IN COMMISSION FOR GENDER EQUALITY

In (Issue 25, Item 31), it was reported that the ad hoc committee to identify suitable candidates for filling vacancies in the Commission for Gender Equality (CGE) could not complete its task by 16 November 2018, and the NA extended its deadline to report to 28 February. On 26 February, the NA further extended the deadline by which the ad hoc committee had to complete its task to 15 March. The ad hoc committee met on 12 and 13 March to conduct interviews for the shortlisted candidates.

Following the recruitment process, the ad hoc committee recommended Ms Octavia Lindiwe Ntuli-Tloubatla as a full-time commissioner; Ms Jennifer Smout as a full-time commissioner; Mr Mbuyiselo Botha as a full-time commissioner; Dr Tlaleng Mofokeng as a full-time commissioner; Ms O'hara Ngoma-Diseko as a full-time commissioner; Ms Nomasonto Grace Mazibuko as a part-time commissioner; Ms Dibeela

Gertrude Mothupi as a part-time commissioner; and Busisiwe Deyi as a part-time commissioner, for appointment.

The ad hoc committee also agreed to recommend two additional candidates, namely, Advocate Bhekizenzo Tembe and Ms Priscilla Lynnette Fundisile Nzimande for appointment in case some candidates declined appointment.

The ad hoc committee noted that the majority of the political parties represented in the committee were in support of the report, except for the Democratic Alliance, which reserved its right to support the report.

On 19 March, the NA considered the report of the ad hoc committee and agreed to the nomination of the above persons in accordance with section 193(5)(b)(ii) of the Constitution.

[18] DETERMINATION OF REMUNERATION OF MEMBERS OF FINANCIAL AND FISCAL COMMISSION

On 22 August 2018, the chairperson of the Independent Commission for the Remuneration of Public Office Bearers (the Commission), Judge C J Musi, submitted recommendations to the President as contemplated in section 9(1) of the Financial and Fiscal Commission Act (No 99 of 1997).

Section 9(1) of the Act, as amended by the Financial and Fiscal Commission Amendment Act (No 4 of 2015) provides that members of the Financial and Fiscal Commission (FFC) are entitled to such remuneration, allowances and other benefits as determined by the President, from time to time, by notice in the Gazette, taking into consideration the recommendations of the Commission, and approved by the NA.

On 6 December 2018, the notice from the President on the determination of remuneration of members of the FFC, dated 26 October 2018, was referred to the Standing Committee on Finance (the Committee). The notice had previously, erroneously been referred to the Standing Committee on Appropriations on 13 November 2018.

The remuneration of members of the FFC was last

adjusted in 2012. The Commission had based its final recommendations for the full-time chairperson and the part-time deputy chairperson and other members of the FFC on the salary scales determined by the Department of Public Service and Administration for senior managers in the public service.

The determination applied retrospectively from 1 April 2018. In its report tabled on 12 February, the Committee supported the Commission's determination.

The NA adopted the report of the Committee on 26 February.

[19] FILLING OF VACANCIES ON PANSALB

The Pan South African Language Board (PanSALB) derives its mandate from section 6(5) of the Constitution, 1996. The Board is appointed for a term of five years, and members are eligible for reappointment for one further term only.

In terms of the Pan South African Language Board Amendment Act (No 10 of 1999), the Minister, after consultation with the relevant committee, must appoint an ad hoc committee to invite the general public to nominate persons for appointment as members of the Board. The Minister of Arts and Culture complied with this provision of the Act, and subsequently all nomination documents including curriculum vitae of nominees were submitted to the NA and, on 30 October 2018, were referred to the Portfolio Committee on Arts and Culture (the Committee) for processing.

The Committee tabled its report on 22 February for consideration by the NA. In its report, the Committee recommended Bilankulu Nkensani Gertrude, Chilwane Prudence, Dabideen Preetha, Dichabe Seipati Bernice, Dlavane Fio Dolly Gaesebeng, Gqabu Cinga, Maahlamela Tebogo David, Maartens Mariaan Magdalena, Makubu-Badenhorst Lolie, Mbuli Thulani John, Mthembu Aubbrey Greyling, Muthien Bernadette, Mudau Ntshengedzeni Edward, Rasana Nomakhosazana and Maleboa Manfred Kgomotso for appointment to the Board.

The NA adopted the report of the Committee on 5 March.

[20] CONFIRMATION OF RECOMMENDATION BY MINISTER OF POLICE NOT TO RENEW TERM OF OFFICE OF EXECUTIVE DIRECTOR OF IPID

On 5 September 2018 and 13 November 2018, Mr R J McBride, the Executive Director of the Independent Police Investigative Directorate (IPID), wrote to the Minister of Police, Mr B H Cele, enquiring whether the Minister intended to “retain or renew” his contract.

On 24 January, the Minister addressed a letter to Mr McBride informing him that his term of office was ending on 28 February, and further that the Minister did not intend to renew it. Consequently, Mr McBride addressed two letters to both the Minister and the chairperson of the Portfolio Committee on Police (the Committee), wherein he expressed a view that the Minister did not have the power to decide on the renewal or not of his contract, and that only the Committee had that authority.

The Minister also addressed a letter to the chairperson requesting the Committee to consider the matter and confirm or reject his recommendation regarding Mr McBride’s contract. Upon learning of the direct referral of the matter by the Minister to the Committee, the Speaker addressed a letter to the Minister requesting him to address his request to her as the Speaker, for onward transmission to the Committee.

On 4 February, the Minister wrote to the Speaker regarding the referral of the matter to the Committee. On 6 February, the Speaker referred the matter to the Committee for its consideration and report to the NA.

Parallel to this process, Mr McBride had initiated an urgent application in the North Gauteng High Court in which the Minister of Police was the First Respondent, and the Committee the Second Respondent. Consequently, an order was granted by agreement on 12 February in the following terms:

- First, the committee would take a decision regarding the renewal of Mr McBride’s appointment on or by 28 February. Second, the matter would be postponed to the urgent roll on 26 February for that purpose. Third, the committee would report by 22 February on progress in taking a decision on renewal of Mr McBride’s appointment.

Lastly, all parties would be entitled to make submissions to the court on whether any further orders should be granted, including but not limited to whether the Committee should be given a further period to make a decision on the renewal of Mr McBride’s appointment and whether his term of office ought to be extended pending the Committee’s decision.

Following the referral of the matter to the Committee by the Speaker and the execution of the court order, the Committee then determined a process and programme to deal with the matter with a view to having it finalised on or about 28 February.

The Committee tabled its report on 28 February for the NA’s consideration. On 14 March, the NA agreed to the report of the Committee confirming the recommendation of the Minister that the term of office of Mr McBride not be renewed.

[21] CORRESPONDENCE ON REMOVAL FROM OFFICE OF ADV N JIBA AND ADV L MRWEBI

The Presidency wrote to the Speaker on 3 May, informing the NA that the President was required by section 12(6)(b) of the National Prosecuting Act (No 21 of 1998) to communicate the removal of Adv N Jiba and Adv L Mrwebi from office in the National Prosecuting Authority (NPA) within 14 days after such removal if Parliament was then in session or, if Parliament was not then in session, within 14 days after the commencement of its next ensuing session. The letter further indicated that, since the Presidency was aware that Parliament was then not in session, the required action in terms of section 12(6)(b) of the Act would be taken when the next session of Parliament began.

Section 12(6)(c) of the Act stipulates that Parliament has to, within 30 days after the message communicated in terms of section 12(6)(c) has been tabled, as soon thereafter as reasonably possible, pass a resolution as to whether or not the restoration to his or her office of the National Director or Deputy National Director of a person so removed, is recommended.

The Speaker announced the letter from the Presidency on 7 May, which was on the eve of the dissolution of the NA. The matter had not been finalised by the end of the Fifth Parliament.

[22] REPORT OF PORTFOLIO COMMITTEE ON JUSTICE AND CORRECTIONAL SERVICES ON REQUEST FOR ASSEMBLY TO EXPEDITE PROCEDURE TO REMOVE PUBLIC PROTECTOR

The Speaker received a letter dated 16 February 2018 from the Chief Whip of the DA, Mr J H Steenhuisen, requesting that the NA expedite procedures to remove the Public Protector, Adv B Mkhwebane, from office in terms of section 194 of the Constitution, 1996 read with section 2(1)(c) of the Public Protector Act (No 23 of 1994). The letter was referred to the Portfolio Committee on Justice and Correctional Services (the Committee) for consideration and report.

After considering the request, the Committee in its report, indicated that after giving Mr Steenhuisen an opportunity to motivate the request to expedite proceedings to remove the Public Protector, it agreed that the Public Protector also be afforded an opportunity to respond to the allegations in writing, which she did.

The Committee reported that it noted that the Constitution, 1996 in section 194(1) provided misconduct, incapacity or incompetence as grounds upon which the Public Protector may be removed from office, and further that the section also regulated the process for the removal.

After deliberations were concluded on the matter, the Committee was of the view that section 194 of the Constitution, 1996 and section 2(1)(c) of the Public Protector Act envisaged a factual inquiry into the fitness of the Public Protector. It was of a further view that it was the NA that had to determine that the Public Protector's conduct rendered her unfit to hold office, and that this discretion could not be replaced by the court's view, however pertinent.

In *South African Reserve Bank and Public Protector, Speaker of Parliament and Others, where the Reserve Bank sought to set aside the Public Protector's remedial actions in her Report of 2017-18 into the Alleged Failure to Recover Misappropriated Funds*, the North Gauteng High Court concluded that the Public Protector risked a charge of hypocrisy and incompetence if she did not hold herself to an equal or higher standard than that to which she held those subject to her writ. The court further held that her dismissive and procedurally unfair approach to important matters placed before

her by prominent role players in the affairs of the state would tarnish her reputation and damage the legitimacy of the office. It advised that the Public Protector would do well to reflect more deeply on her conduct of that investigation and the criticism of her by the Governor of the Reserve Bank and the Speaker of Parliament [sic].

The Committee noted that legal proceedings related to the above judgement were ongoing and that, as such, it believed that it would be premature for removal proceedings to be instituted against the Public Protector; and recommended that the NA not support the request to expedite proceedings to remove the Public Protector from office.

[23] REQUEST FOR FILLING OF VACANCY ON PUBLIC SERVICE COMMISSION (PSC)

Section 196 of the Constitution, 1996 provides for the establishment of the Public Service Commission (PSC). The section further provides that the PSC is independent and must be impartial and must exercise its powers and perform its functions without fear, favour or prejudice in the interest of the maintenance of effective and efficient public administration and a high standard of professional ethics in the public service. The PSC, which is accountable to the NA, is composed of 14 commissioners appointed by the President.

On 2 April, the President wrote to the Speaker, requesting the NA in terms of section 4(1) of the Public Service Commission Act (No 46 of 1997), to initiate a process to fill a vacancy that would occur when the term of office of Ms S S Nkosi as a commissioner came to an end on 23 April.

The Speaker referred the President's letter to the Portfolio Committee on Public Service and Administration as well as Planning, Monitoring and Evaluation (the Committee) for consideration and report.

The Committee did not finalise the matter by the time the Fifth Parliament dissolved.

[24] RE-APPOINTMENT OF DEPUTY AUDITOR-GENERAL

In terms of section 31 of the Public Audit Act (No 25 of 2004), which provides for the appointment of the Deputy Auditor-General, the Auditor-General must consult the Standing Committee on the Auditor-General when he or she appoints the Deputy Auditor-General. Following the necessary consultation processes, Ms T Ratsela was on 1 April 2014 appointed as the Deputy Auditor-General by the Auditor-General, Mr K Makwetu, for a period of five years in terms of the Act.

Section 31(2) of the Act provides that the incumbent Deputy Auditor-General may be re-appointed to serve one additional five-year term. The Act does not require the Auditor-General to consult the Standing Committee in the event that he or she decides to re-appoint the incumbent.

On 26 February, the Auditor-General informed the Standing Committee that, in terms of section 31(2) of the Act, he intended to re-appoint Ms Ratsela to serve an additional term from 1 April to 31 March 2024.

In its report dated 26 February, which was tabled in the ATC of 17 April, the Standing Committee indicated that it welcomed the re-appointment of Ms Ratsela.

ABBREVIATIONS

ATC -	Announcements, Tablings and Committee Reports
CGE -	Commission for Gender Equality
CSIR -	Council for Scientific and Industrial Research
CRC -	Constitutional Review Committee
ICASA -	Independent Communications Authority of South Africa
IPID -	Independent Police Investigative Directorate
FFC -	Financial and Fiscal Commission
JTM -	Joint Tagging Mechanism
NA -	National Assembly
NCOP -	National Council of Provinces
NPA -	National Prosecuting Authority
PanSALB -	Pan South African Language Board
PIC -	Public Investment Corporation
SABC -	South African Broadcasting Corporation
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 NATIONAL ASSEMBLY**

In the last session of the Fifth Parliament, several vacancies occurred in the NA. Some were due to resignations and others as a result of members passing away or losing their membership in terms of section 47(3)(c) of the Constitution, 1996. 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 2019:

Ms N A Mnisi (ANC – MP) passed away on 18 September 2018. Replaced by Ms M M Khayiyana with effect from 21 February 2019.

Ms B E E Molewa (ANC – National) passed away on 22 September 2018. Replaced by Mr A V Mahlangu with effect from 21 February 2019.

Mr M S Motimele (ANC – LP) resigned with effect from 30 November 2018. Replaced by Mr N E Seabi with effect from 21 February 2019.

Mr K M N Gigaba (ANC – National) resigned with effect from 13 November 2018. Replaced by Ms N Maqubela with effect from 21 February 2019.

Mr S Mokgalapa (DA – National) resigned with effect from 11 February 2019.

Dr Z Luyenge (ANC – EC) resigned with effect from 15 February 2019. Replaced by Ms G B Fanta with effect from 21 February 2019.

Mr S C Mncwabe (NFP – National) resigned with effect from 31 March 2019.

Mr M C Mabika (NFP – KZN) resigned with effect from 1 April 2019.

Mr F Adams (ANC – WC) resigned with effect from 15 April 2019.

Mr M L Shelembe (NFP – KZN) resigned with effect from 16 April 2019.

Mr B H Holomisa (UDM – National) resigned with effect from 30 April 2019.

Mr N L S Kwankwa (UDM – National) resigned with effect from 30 April 2019.

Dr P J Groenewald (FF Plus – National) resigned with effect from 6 May 2019.



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

Parliament of the Republic of South Africa,
P O Box 15, Cape Town 8000.

