



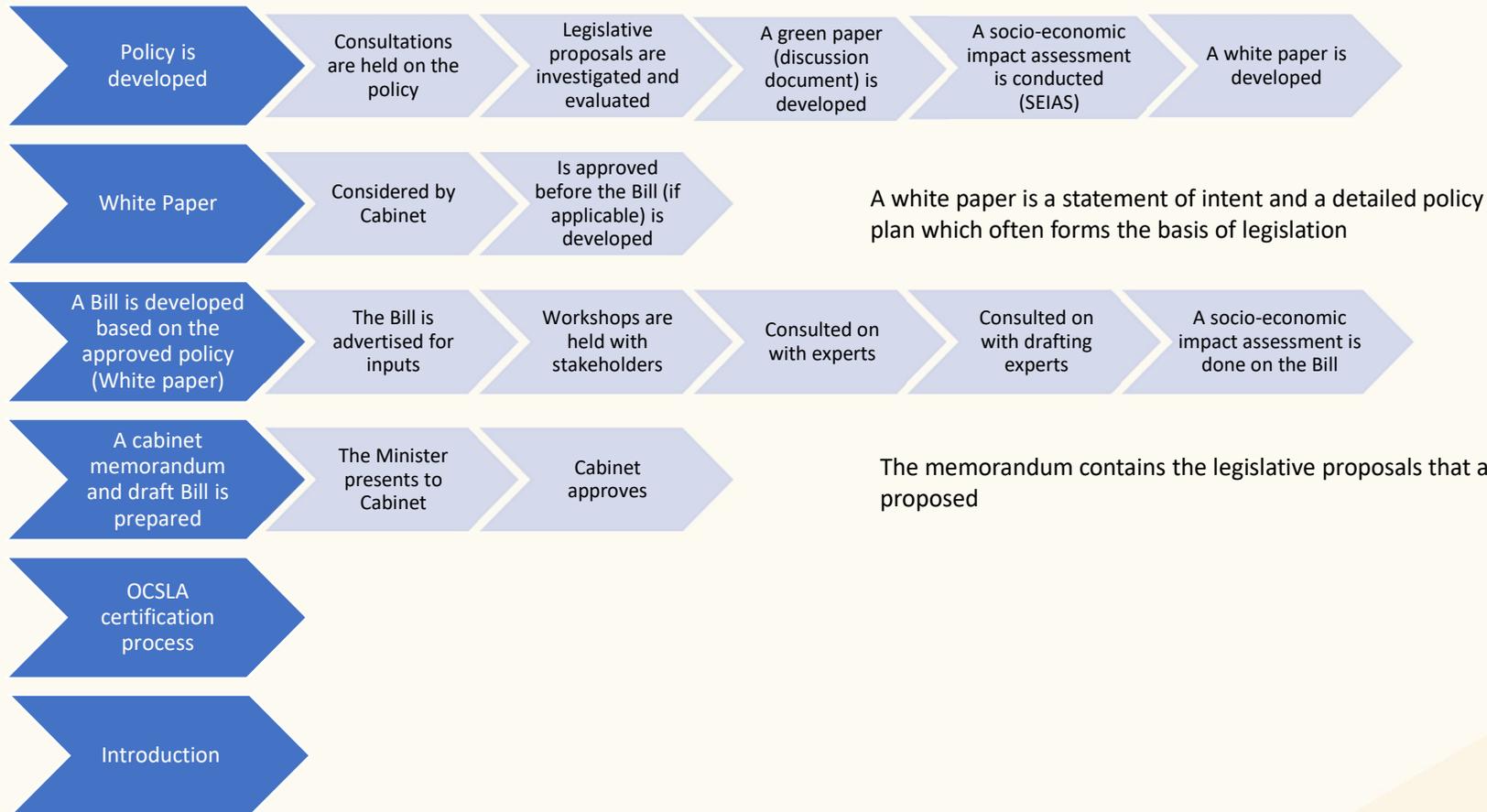
PARLIAMENT
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Legislative processes

7th Parliament induction

Development of legislation by the Executive

By the time a Minister introduces a Bill, it has gone through a lengthy process



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Types of Bills: Who can introduce what and where?



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Sections 44, 73 - Constitution

Who?

- **National Assembly**
 - Money Bills or Bills dealing with Equitable shares and allocations of revenue (S214): **Only** the **Cabinet member responsible for national financial** matters.
 - All other Bills: **A Cabinet member, Deputy Minister** (“Executive Bills”), **a member** (“Member Bills”) **or committee** (“Committee Bills”) of the National Assembly, may introduce a Bill in the Assembly.
- **National Council of Provinces**
 - Only **a member** (“Member Bills”) **or committee** (“Committee Bills”) of the National Council of Provinces may introduce a Bill in the Council.
- **What and where?**
- **National Assembly:**
 - **Any Bill** may be introduced in the National Assembly.
 - Bills dealing with **schedule 5 matters** (exclusive provincial legislative competence) – only in so far as **section 44(2)** allows.
 - I.e. Section 74 (constitutional amendments), section 75 (Bills not affecting Provinces), section 76 (Bills affecting provinces) and section 77 (Money Bills)
- **National Council of Provinces**
 - A Bill referred to in **section 76 (3)** may be introduced in the National Council of Provinces
 - Schedule 4 matters, NCOP delegates’ voting, Municipal representation, Public Protector, Public Administration, Public Service Commission, Public Service



Pre-introduction, Introduction and First Reading

A person **intending to introduce** a Bill (or to submit a proposal to the NCOP to initiate):

- must submit a draft of the Bill, objectives of the Bill and estimated date of introduction to Parliament to alert committees (JR 201 (2024));
- must give notice of that intention to introduce in the Government Gazette (NAR 276 / NCOPR 190); and
- must publish the draft Bill or an explanatory summary in the Government Gazette (NAR 276 / NCOPR 190).

Note: All NCOP Bills are introduced by a delegate or a Committee – See NCOPR 186 to 189 for Committee Bill processes.

A person introduces a Bill by submitting a copy thereof, the abovementioned Gazette, a supporting memo containing required information such as financial implications of the Bill, and certification of constitutionality and compliance with drafting standards to the Speaker (NAR 279 / NCOPR192).

NAR282, 283 and 284: **All Bills introduced in the Assembly may have a first reading** (excluding Committee Bills)

- If a Bill has a first reading (requested with introduction), the Bill is only referred to a committee after that first reading.
- If no first reading was requested on a Bill, it is referred to a committee.
 - Appropriation and Division of Revenue Bills are only referred after adoption of the fiscal framework by both Houses.
- NAR 285: The debate on the First Reading of a Bill must be conducted on the principles of the Bill as contained in its Long Title.



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Classification of Bills

Referral for classification is announced in the ATC (JR249)

Why classify? To determine which Constitutional procedure must be followed.

- Different procedures have different requirements:
 - Prescribed content e.g. S 74 and S77 - may ONLY deal with constitutional / with money bill matters.
 - Specific public participation requirements (s74(5) & (6))
 - Procedure in and between the Houses and voting differ for each type
 - Mediation is only applicable to section 74 and 76 bills
 - Role of provincial legislatures e.g. Section 74(8) - Approval of affected province is required

Test:

1. Eliminate S74 and S77

- Does the Bill amend the Constitution? “Yes”: = Section 74
- Does the Bill deal with appropriation of money; impose / abolish taxes, levies, duties or surcharges; authorise direct charges against the National Revenue Fund? “Yes”: = Section 77

2. Answer to Question 1 = “no”: Consider section 76

- Must consider each provision of the Bill – not the overall subject matter of the Bill
 - Does any provision in substantial measure fall within a functional area listed in Schedule 4?
 - Does any provision deal with NCOP delegates’ voting, Municipal representation, Public Protector, Public administration, Public Service Commission, Public service?

“Yes”: = Section 76

- It is NOT enough that the Bill affects provinces – it must affect them iro an area listed in S76

3. Answer to Question 1 and 2 = “no”: The Bill is a section 75



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Referral to Committee and Committee process

- JR 249: The referral of a Bill to an Assembly or Council committee or a joint committee is announced in the ATC.

Process in the Committee (see NAR 286 and NCOPR 177 and 178)

1. Informal discussion on the principles and subject of the Bill, including a briefing on the Bill and consideration of any public comments received when the intention to introduce was published;
2. Adoption of a motion of desirability: Are the principles of the Bill accepted? Is there a need for the Bill?;
3. Invitation for further public comment and submissions on the substance of the Bill:
 - i. Public hearings may be held – the decision to hold hearings will depend on the nature of the Bill and of the comments received. *(See slide on public involvement)*
 - ii. The committee must consider the comments received, and may request inputs from the Department or other experts;
4. Deliberation by members, taking into consideration proposed amendments and comments and proposals received and evidence presented
 - i. The Committee may effect amendments to the Bill *(see slide on Amendments to Bills)*;
5. Formal consideration of the Bill, clause by clause, including amendments formally proposed; and
6. Consideration and adoption of the committee's report and final version of the Bill.



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Facilitation of public involvement

S59 and 72 Constitution: The Houses must facilitate public involvement in the legislative and other processes of the Houses and their committees. (Also see NAR 286(6)(c))

The Courts require that Parliament provides:

- “**meaningful opportunities for public participation** in the law-making process”; AND
- “take measures to ensure that **people have the ability or capacity to take advantage of the opportunities** provided.”

The level of engagement with the public (e.g. whether to hold public hearings) depends on various factors e.g.

- Parliament’s rules;
- the nature & importance of the legislation;
- the impact of the legislation on the public;
- any time constraints; and
- efficiency in the law making process.

In this regard legislatures have “a significant measure of discretion in determining how best to fulfil their duty to facilitate public involvement” in its processes, provided they act reasonably.

Doctors for Life International v The Speaker ao [2006] CCT12/05, Par 128, 146;

Land Access Movement of South Africa v Chairperson of the NCOP [2016] ZACC 22 Par 60-61

(See slide on amendments for further requirements iro public involvement)



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Amendments to Bills

NAR 286. Process in committee (also see NCOPR 171)

“(4)(k) The committee may recommend approval or rejection of the Bill or present with its report an amended Bill or a redraft of the Bill, provided that in the case of a redraft the subject of the Bill has not been extended without the permission of the Assembly as contemplated in Paragraphs (b) and (c);”

- Amendments flow from:
 - Facilitation of public involvement (public submissions);
 - Deliberation in the Committee;
 - Oversight exercises done by the Committee;
 - Responses from the Department to questions or issues raised by the public;
 - Advice on legal questions that arise; etc.

Public involvement after amendments were made: [Where amendments are material, deal with new issues that the public may not have been aware of \(e.g. extending the scope\), calling for further comment is advisable:](#)

Truworths v Minister dti [2018] JOL 39718 (WCC) (dealt with regulations, but the same principle applies to primary legislation): “[43] It was submitted, correctly, on behalf of the respondents, that the Minister is not obliged to re-advertise for comment. However, where the Minister changes the draft regulations in a material respect, calling for further comment might under certain circumstances be advisable.”

South African Veterinary Association v Speaker of the National Assembly and Others

The alteration to the Section 16 of the Amendment Bill which added the requirement that veterinarians be licensed to compound and dispense medicines was an extension of the subject of the Bill for which the Committee ought to have sought the NA’s permission.

Often a grey area – each case to be considered on own merits



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Committee Bills

NAR 273 to 275 / NCOPR 186 to 189

- Committee adopts and tables a **memorandum** setting out the particulars and objects of the proposed Bill; whether it has financial implications; and the views of the Executive on the proposed Bill.
 - The Committee must thus develop a policy that will inform the Bill, before the Bill can be developed.
 - Sources to develop a policy: Department; Constitutional Court read in; Content Adviser / Researcher develop a policy in accordance with Committee discussions.
- Once the Assembly has approved the memorandum, **the Committee develops a Bill.**
 - Parliament's Legal Services has the capacity to assist a Committee in this regard.
- Draft 1
 - Consult **JTM** on classification (and NHTKL if applicable);
 - **Report** on the Bill to the House;
 - Advertise **intention to introduce and call for comments** (public involvement)
 - **Interested persons** must be given at least three weeks after publication to comment.
 - Relevant **Department / Organ of State** must be given sufficient opportunity to make submissions to the Committee.
- Deliberations, amendments, further consultations etc. until the Committee is satisfied that the draft can be introduced:
 - The Committee adopts the Bill and a report that speaks to the Bill;
 - The Committee again consults the JTM on the classification of that Bill;
 - The findings of the **JTM** as per NA Rule 275(c) is tabled with the Bill when it is introduced.
 - Parliament's Legal Service certifies the Bill as per NAR 279.
 - The Committee **introduces** the Bill by submitting a copy thereof and a supporting memorandum to the Speaker.
- Bill has a **second reading** and if adopted, is transferred to the second House.

Takes on average 19-40 weeks (4 to 8 months) in the first House to develop the Bill (i.e. not including policy development)



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Second reading (NAR 290 / NCOPR 179, 196)

- The debate on the Second Reading of a Bill must be conducted on the subject of the Bill, or if it is an amendment Bill, on the subject of the proposed amendments.
- The Assembly passes a Bill if it approves the Second Reading of the Bill in accordance with Sections 53(1)(a) and (c) of the Constitution.
- The Assembly rejects a Bill if it rejects the Second Reading of the Bill or, subject to Rule 331, fails to approve the Second Reading with the appropriate majority.
- Amendments before second reading: NAR291 / NCOPR203 (S75): When a Bill is on the Order Paper for Second Reading, a member may place amendments to clauses of the Bill on the Order Paper.
 - May not be made iro a Bill that was rejected by the Committee;
 - May not be an amendment already rejected by the Committee (there is an exception for the relevant Minister / Deputy Minister to bring such proposed amendments to the House);
 - Amendments that affect the principle of the Bill (without permission of the Assembly);
 - amendments that change the classification of the Bill;
 - amendments that would render the Bill constitutionally or procedurally out of order; and
 - amendments that are out of order for any other reason.



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Second House, Mediation and Assent

- JR249: the referral of a Bill from one House to the other is announced in the ATC.
- The Bill is then referred to a Committee – for the processes here [see slides 6 \(Committee process\); 7 \(public involvement\) and 8 \(amendments\)](#).
- The Committee reports on the Bill and the second House considers that Bill and any amendments proposed (section 75, 77 Bills) or made (section 74, 76 Bills).
- JR216 to 218 (section 74 Bills); JR224 to 226 (section 75 Bills); and JR227 to 228 (section 76 Bills):
 - If the second House passes the Bill without amendments, the Bill is referred to the President for assent.
 - If the second House:
 - Proposes amendments to a section 75 Bill, the Bill is referred to the Assembly to consider the amendment proposals. The Assembly decides to accept or not to accept the proposals and after that decision, the Bill is referred to the President for assent.
 - Makes amendments to a section 74 or 76 Bill, the Bill is referred back to the first House for consideration of those amendments. If accepted, the Bill is referred to the President for assent. If not accepted, the Bill is referred for mediation.
- [A mediation committee](#) must consider the Bill within 30 days of its establishment, and may:
 - adopt the NA version of the Bill (then the NCOP must vote on the mediated Bill);
 - adopt the NCOP version of the Bill (then the NA must vote on the mediated Bill); or
 - Adopt a new version of the Bill (then both Houses must vote on the Bill).
- [Once adopted by both Houses, the Bill is sent for assent.](#)
- The President considers the Bill and [either assents to it, or refers it back to Parliament](#) if he has concerns about its constitutionality (Section 79 of the Constitution).



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THE END

