



RULES, PRACTICE AND PROCEDURE IN THE HOUSE

*Induction Handbook for
Members of Parliament and Provincial Legislatures*

A publication of the South African Legislative Sector



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FOREWORD

In the fourth parliamentary term (2009-2014), the South African Legislative Sector under the leadership of the Speakers' Forum pioneered professional development programmes for members of Parliament and provincial legislatures. These programmes were designed to ensure systematic development of members to enable them fulfil their constitutional responsibilities as representatives of the people of South Africa.

Over time, the Sector has successfully developed and implemented accredited programmes, tailor-made to meet the development needs of members. This has been achieved through partnerships with various institutions of higher learning.

To enhance the learning experience of members, we present a series of seven (7) Induction Handbooks which have been crafted by the South African Legislative Sector committed to building stronger Legislatures through collaboration.

On behalf of the Speakers' Forum of the South African Legislative Sector, we trust that all new and returning Members will find the information contained in the Members' Induction Handbooks a useful guide over the next five years.

Capacitated Parliaments are stronger Parliaments and this is good for our democracy. When you know more, you do more.

M.V. Sisulu, MP

Chairperson: Speakers' Forum of South Africa

June 2009 – May 2014

PREFACE

The Induction Programme is the first step in a series of the broader South African Legislative Sector Capacity Building Programmes. It lays a solid foundation for other subsequent programmes and is based on the work that members are expected to carry out as part of their overall responsibility to the South African people. The Capacity Building Programmes enable members from different education and development backgrounds to enter at various levels and have an opportunity to exit at Post Graduate Level.

This is one of the seven (7) Induction Handbooks focusing on core business areas of the South African Legislative Sector:

- Module 1: Rules, Practice and Procedure in the House
- Module 2: Legislative Process
- Module 3: Committee Procedures, Practice and Systems
- Module 4 Oversight and Accountability
- Module 5: Financial Oversight
- Module 6: Public Participation
- Module 7: International Relations and Protocol

A sincere word of gratitude is extended to the members of the Speakers' Forum for their vision, unwavering support and political guidance, my colleagues in the Reference Group of the Speakers' Forum on Capacity Building (Mr M Mthimkhulu, Mr K Phala and Ms B Tunyiswa) for their dedication and insight in the development and implementation of the broader Capacity Building Programme.

This would not have been possible without the involvement in content development by Secretaries of Parliament, National Assembly, National Council of Provinces and Provincial Legislatures organised through Secretaries Association of Legislatures of South Africa (SALSA). We thank the Legislative Sector Support for ensuring that this vision is realised in the design and development of the handbooks and implementation of the broader Capacity Building Programme.

We hope this handbook will add value to your role as you navigate the Legislative Sector environment.

M.A. Tsopo, MPL

**Chairperson: Speakers' Forum Reference Group on Capacity Building
June 2009 – May 2014**

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Ms Sandisiwe Schalk
Executive Director and Project Leader

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1 INTRODUCTION

The general purpose of parliamentary procedure is to facilitate the transaction of business and to promote cooperation and order in the House. On authority of Erskine May, rules are necessary because it is dangerous to rely on the inspiration of the moment for standards of action or conduct. Hence, rules are developed for three necessary purposes:

- Orderly procedure. Without it, the House could result in confusion, chaos and disorder.
- The protection and liberty of the minority. It ensures fairness towards the minority by giving each member the right to voice an opinion.
- The expression of the will of the majority by allowing for the majority to make decisions effectively and efficiently.

While each Legislature may create its own set of rules, these tend to be more alike than different. Procedure in the Legislature is intended to ensure that there is a balance between the Government's need to get its business through the House, and the members' responsibility to debate that business without immobilizing the proceedings of the House.

South African¹ Legislatures vary in size; the number of members; the budgets appropriated; a diversity of individuals and groups in society and as a result carry out their similar constitutional mandates slightly 'differently'. These 'differences' may, however, give rise to various approaches when attempting to resolve 'legislature-wide' challenges with regard to rules, practice and procedure in the House. This Framework, therefore, is an attempt to provide a generic description of all rules, practices and precedents.

This Framework aims to set standards for the effective induction of all new and returning members, but does not aim to be prescriptive in nature. In developing this document the rules, processes, procedures and conventions of the National Assembly, National Council of Provinces and all provincial legislatures were scrutinised and generic approaches developed.

This Framework therefore seeks to create a common understanding of the standards which the individual induction modules of legislative institutions should meet. It is envisaged that this compendium of generic rules, practice and procedure in the House will form part of the training programme for all Members.

2 1 In this document the word legislature is used generically to include 'parliament'.



2 OBJECTIVES

The objectives for developing this Module are to:

- develop a generic approach to the induction process and corporate governance;
- introduce and expose members to the processes and procedures of the House;
- ensure that members are fully informed about the House Rules; and
- expose members to the business of the Legislature
 - o Politically, and
 - o Administratively.



3 UNIT 1: CORPORATE GOVERNANCE

3.1 UNDERSTANDING CORPORATE GOVERNANCE IN THE LEGISLATIVE ENVIRONMENT

Corporate governance is a complex issue, as it is the system according to which organisations are directed and controlled. Jean-Paul Page (2005) argues that corporate governance begins with power - who holds the power in an organization, how it is delegated and exercised, its purpose, and what control mechanisms the power-holders use. With power comes the responsibility of decision making, the right to choose, and the option to delegate. Power in an organisation is not absolute because it is always exercised within guidelines or constraints.

Corporate governance essentially involves balancing the interests of the many stakeholders in an organisation – in the legislative environment these include its Members representing different political parties, government departments led by the Cabinet (Members of the Executive Council), management (Accounting Officer, and relevant senior officials), NGOs, NPOs, CBOs, financiers, and civil society. Since corporate governance also provides the framework for attaining an organisation’s objectives, it encompasses practically every sphere of management, from strategic plans, action plans and internal controls to performance measurement and corporate disclosure.

OECD² defines corporate governance as follows:

*"Procedures and processes according to which an organisation is directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among the different participants in the organisation – such as the board, managers, and other stakeholders – and lays down the rules and procedures for decision-making. Corporate governance also provides the structure through which the objectives of the organisation are set, and the means of attaining those objectives and monitoring performance are determined"*³. (OECD, 1999, p. 11)

In April 2009, the President of the RSA assented to the Financial Management of Parliament Act (FMFA). The objects of this Act are as follows:

- to ensure transparency, accountability and sound management of the revenue, expenditure, assets and liabilities of Parliament;
- to ensure a consultative relationship between Parliament and the National Treasury, conducted at a high level and based on respect for -
 - 0 the constitutional status of Parliament;
 - 0 the constitutional requirements for the tabling of money bills;
 - 0 budget processes, standards of generally recognized accounting practice, uniform expenditure classifications and the treasury norms and standards established in terms of the Public Finance Management Act; and
 - 0 the fiscal policy of the national government;
- to provide the National Treasury with —
 - 0 an opportunity to make comments on proposed annual budgets and adjustments budgets of Parliament;
 - 0 information on the proposed annual budget and adjustments budgets of Parliament for inclusion in the national annual budget and adjustments budgets; and
 - 0 regular information on expenditure by Parliament;

2 Organisation for Economic Co-operation and Development.

3 <https://stats.oecd.org/glossary/detail.asp?ID=6778> & <http://perfres.net/resourcesgovdef.asp>.

- to provide for parliamentary oversight of Parliament’s budgeting and expenditure through an appropriate oversight mechanism of Parliament; and
 - o to establish norms and standards for managing the financial affairs of provincial legislatures.⁴

The FMPA Amendment Bill⁴ was introduced on 3 July 2013 to amend the FMPA, 2009, so as to deal with the financial management of provincial legislatures; to align the provisions dealing with the oversight mechanism with the Public Finance Management Act for purpose of reporting and auditing; to delete certain references to “provincial legislatures” in the Public Finance Management Act, 1999; and to provide for matters connected therewith.

Whilst Parliament is guided in its corporate governance decisions by the FMPA, Provincial Legislatures have had to develop their own governance arrangements. Most Provincial Legislatures have, in the interim, developed systems that speak to governance arrangements. The following structures may be found:

- a Governance Board made up of an executive authority - comprising the Speaker, Chief Whip and multi-party representatives - responsible for controlling the revenue, expenditure, assets and liabilities of the legislature; and
- a Provincial Parliamentary Service that provides administrative support services to the Members to enable them to perform their functions optimally.

⁴ The Financial Management of Parliament Act (FMPA) is in the process of being amended to incorporate all provincial Legislatures as a result of the Concourt judgment whereby the Court ruled all of the Provincial Finance Acts unconstitutional. The Court suspended the declarations of invalidity for a period of 18 months, because an immediate declaration of invalidity would have resulted in a legislative lacuna which would have negatively impacted the interests of good governance. The parties have been ordered to file a report by 9 September 2013 to inform the Court as to the steps they have taken to remedy the defect.

Corporate Governance systems in the Legislative environment also include, amongst others, guidelines regarding the preparation of the legislature's strategic plan and annual performance plan; annual budget and adjustments budget; annual appropriations and approvals; and all aspects that speak to expenditure including unauthorised expenditure, financial misconduct, and virements between main divisions.

Because Provincial legislatures have been anticipating the enactment of the FMPA Amendment Bill, some have opted to, as an interim measure, adapt provisions of the Public Finance Management Act (PFMA) as it relates to their governance system. Others have developed their own corporate governance systems, as indicated in the example earlier. It is therefore clear, that all Legislatures have functional corporate governance systems they subscribe to.

3.1.1 THE ADMINISTRATION OF PARLIAMENT AND PROVINCIAL LEGISLATURES

The Secretary is responsible for the regulation of all matters connected with the business of the Legislature, subject to such directions as he or she may receive from the Speaker/Chairperson or the House. He or she is therefore overall responsible for procedural services that are provided to the House.

3.1.1.1 THE ROLE AND DUTIES OF THE SECRETARY TO THE LEGISLATURE

The Secretary to the Legislature is the head of the administration and is its Accounting Officer⁵. As the Accounting Officer, he/she has to ensure, amongst others, that:

- resources are used effectively, efficiently, economically and transparently;
- full and proper records of the financial affairs of the Legislature are kept;
- the Legislature maintains effective, efficient and transparent systems of financial management, risk management, internal control and internal audit;

- the Legislature complies with any obligations relating to taxes, levies, duties, pensions, medical aid and auditing that may be imposed by legislation;
- unauthorised, irregular and fruitless and wasteful expenditure and other losses are prevented, and appropriate steps are taken where such expenditure has occurred;
- accurate written records of formal decisions and proceedings are kept;
- advice and guidance on procedure in the Chamber and related structures is provided;
- service and technical procedural advice to internal committees are provided;
- rules, motions and other procedural documents are drafted;
- statutory obligations of the Legislature (i.e. relating to appointments to statutory bodies) are processed;
- the institutional memory of procedure is maintained;
- disciplinary actions are taken against employees who have allegedly committed an act of financial misconduct; and
- House Resolutions are communicated.

Furthermore, the Secretary to the Legislature is the ultimate head for the procedural services.

3.1.1.2 THE ROLE OF THE SERGEANT-AT-ARMS/USHER OF THE BLACK ROD

The Serjeant-at-Arms/Usher of the Black Rod is responsible for, amongst others –

- the security of the Chamber;
- assisting the Presiding Officer with the maintenance of order in a sitting by removing disorderly persons from the House or galleries;
- recording of members' attendance, ceremonial and protocol services;
- being the custodian of the Mace/Black Rod, which is the symbol of the authority of the Presiding Officers and the Houses;

- managing Chamber support staff; and
- performing ceremonial duties of the Legislature.

3.1.1.3 ROLE OF HANSARD

Everything said in the House is recorded and transcribed. The verbatim report of what is said is commonly known as “Hansard”. The Hansard provides a clear and independent record of all the debates in the House. In essence, it is a full report, in the first person, of all the speakers. It allows for a member to make a speech in any of the official languages, and while there is simultaneous interpreting in the House this speech is also then captured and transcribed in the Hansard. All debates in the House are recorded, after which they are transcribed. An unrevised copy is made available to members for perusal. A final bound volume is made available to all Members and all volumes can be obtained from the Library.

3.1.1.4 PROCEDURAL STAFF

Procedural staff provide advice to the Presiding Officers and any Member on questions of procedure. Procedural staff, amongst other duties, –

- advise the presiding officers, and Members of the Legislature;
- compile procedural guides for House Sittings;
- assist members with the compilation of draft resolutions;
- are responsible for the compilation and distribution of daily Papers e.g.
 - 0 Order Paper;
 - 0 Announcements, Tablings and Committee (ATC) Reports;
 - 0 Question Paper – Oral and Written; and
 - 0 Minutes of House Proceedings; and
- prepare the business calendar for a particular session.

3.1.1.5 CLERK OF PAPERS⁶

The tabling of papers in the Legislature done under the authority of the presiding officers. The office of the Clerk of Papers is responsible for the co-ordination and administration of the tabling process.

The office of the Clerk of the Papers prepares the relevant entry for publication in the Announcements, Tablings and Committee Reports (ATC). Papers that have been handed to the office of the Clerk of Papers are deemed to have been presented to the Legislature on the day on which they are recorded in the ATC.

Papers are tabled –

- to give effect to the constitutional requirement that members of the Cabinet must provide the Legislature with full and regular reports concerning matters under their control;
- to enable the Legislature to maintain oversight of the exercise of the respective executive authority, including the implementation of legislation;
- to assist the Secretary as the information officer; and
- to give effect to statutory requirements that papers be tabled.

⁶ Tabling means the presentation of a paper to Parliament as a means of reporting to Parliament for the paper to be officially before the Parliament for its consideration. The term comes from the early days of Parliament when Ministers would physically lay papers on the table of the House. The papers would be recorded in the minutes of the House and would then be officially before Parliament for its consideration. With the development of parliamentary procedure, this was changed and papers had to be submitted to the office of the Clerk of papers to record them as tabled in Parliament.

3.2 SEATING ARRANGEMENTS

The seating arrangements in the Legislatures are negotiated and settled among the parties at the Whips' Forum. After an election party whips attempt to reach consensus on the seating arrangements in the chamber. Seating arrangements are done in accordance with the size of parties represented. Seniority in terms of the position held in Legislature is also considered. Often where there are disagreements on the seating arrangements the Speaker makes the final determination.

3.3 ACCESS FOR PEOPLE LIVING WITH DISABILITIES

The Chamber and its committees should be accessible to both Members and people living with disabilities. Legislatures should provide demarcated parking bays for Members and people living with disabilities, sign language services should be available during the sittings of the House and in committee meetings, and Braille facilities should be provided as soon as the need is identified.



4 UNIT 2: SOURCES OF PARLIAMENTARY PROCEDURES AND RELATED MATTERS

Parliamentary procedure and processes can be defined as the framework within which a legislative body conducts its business. This framework is governed by four sources, viz.

- Statute;
- Standing Rules, Joint Rules and Resolutions of the House;
- Rulings from the Chair; and
- Practice or Convention.

4.1 STATUTES

The *Constitution of the Republic of South Africa, 1996*, lays down the functions and composition of the Legislature and the structure of the democratic government within which it functions. It is the primary source affecting the proceedings and procedures in the Legislature, as it makes provision on how it should be established, what its functions are and it stipulates that the Legislature determines and controls its internal arrangements and proceedings, by making Rules and Orders concerning its business.

The latter includes the establishment of, amongst others, the Rules Committee, Programme Committee for the determining of its internal arrangements, proceedings and procedures; the making of rules and orders concerning its business; and how the legislative process should be conducted.

Other Acts that relate to legislatures include the *Public Funding of Represented Political Party Act*, 99 of 1997, *National Council of Provinces (Permanent Delegates Vacancies) Act*, 17 of 1997, *Remuneration of Public Office Bearers Act*, 20 of 1998; *Electoral Act*, 73 of 1998; *Determination of Delegates (National Council of Provinces) Act*, 98 of 1998; *Powers and Privileges and Immunities of Parliaments and Legislatures Act*, 2004 and *Financial Management of Parliament Act*, 2009.

4.2 RULES⁷, JOINT RULES AND RESOLUTIONS

The second main basis for procedure consists of the standing rules, the Joint Rules of Parliament⁸ and the Resolutions of the House. The Rules are made by the House, through its Rules Committee and the Joint Rules by the Joint Rules Committee. Both sets of rules can be amended or repealed by the respective Legislatures. They are designed to regulate the proper conduct of the business of the Legislature in particular circumstances and to ensure that it fulfils its statutory obligations. The purpose of the rules is to safeguard the participation of Members in the proceedings of the House and committees.

Resolutions of the House are usually taken to provide for a situation not foreseen in the Rules and in respect of which a decision has to be taken. They carry the same weight as a Rule and may even provide for the suspension of a Rule or a proceeding provided for in the Rules and practices of the House.

4.3 RULINGS FROM THE CHAIR

Rulings from the Chair form an important part of the practice and procedure of the House. Rulings commonly involve interpretation of the Rules and their application to particular practical situations. However, a ruling may be made in the absence of a specific provision in the Rules.

A presiding officer may give a ruling either in response to a point of order raised by a member, or on his or her own initiative. A private ruling is

⁷ Rules are referred to as Standing Rules at a number of Provincial Legislatures.

⁸ Applicable to Parliament only.

sometimes given not in the House, but in writing – for example, in response to a letter addressed to the Speaker/Chairperson by a member.

In giving a ruling on a matter, a presiding officer bears in mind previous rulings from the Chair, in the interests of maintaining and upholding established practice in a fair and consistent way. Thus rulings serve as precedents and as such, become part of the established practice governing the functioning of the Legislature. The presiding officer is not bound by precedent, however, and has discretion to vary previous rulings in the light of specific circumstances.

Whereas a presiding officer interprets and applies the Rules and ensures that the powers and immunities of the Legislature are observed, it is not the duty of the Chair to adjudicate on points of law or interpret statutes but the presiding officer has a duty to ensure that business is conducted within the precepts of the law.

4.4 PRACTICE AND CONVENTION

Practice can be defined as that part of procedure which develops during the course of sittings of the House or its committees. Interparty co-operation, particularly among whips and in programme committees, leads to the formation of established modes of operation that are accepted and recognised by parties. It also develops by way of precedents when there are no Rules set down.

Some practices and usage have been in place for a long time and may be defined as the usual and regular method of proceedings. For example, the Presiding Officers bowing to the right and left before the start of the proceedings; reading of orders are examples of earlier usage, which have evolved into conventions. However, no convention or practice can limit any provision of the rules.

5. PARLIAMENTARY PAPERS

Parliamentary papers in the House are of two kinds:

- **House papers**, namely -
 - o Order Paper
 - o Question Paper (and Internal Question Paper)
 - o Minutes of Proceedings
 - o Announcements, Tablings and Committee Reports (known as the 'ATC')
 - o Weekly programme
- **Papers laid upon the Table ("tabled")**: These are papers submitted to the House for its consideration or information in terms of statutes, an order of the House or the Rules. They may emanate from the Executive or elsewhere.

6. PRESIDING OFFICERS AND OTHER OFFICE BEARERS

The following are office bearers in respect of whose election or appointment provision is made in the Constitution and or the Rules, as the case may be:

- The Speaker / Chairperson of the Council;
- The Deputy Speaker / Deputy Chairpersons of the Council;
- The House Chairpersons / Chairperson of Committees;
- The Chief Whip of the Majority Party / Chief Whip of the Council;
- Provincial Whips⁹;
- Programming Whip;
- Party Whip;
- Delegated Whip;
- Leader of Government Business (LOGB)
- Leader of the Opposition; and
- Parliamentary Counsellors¹⁰.

⁹ Only applicable to the NCOP.

¹⁰ Only applicable to the National Assembly.

6.1 THE ROLE OF THE PRESIDING OFFICER (SPEAKER / CHAIRPERSON OF THE COUNCIL)

Presiding duties in the House are shared with the Deputy Speaker/Deputy Chairperson of the NCOP and House Chairpersons.

The task of a Speaker/Chairperson is to chair plenary meetings of the House. This entails maintaining order; interpreting and ensuring compliance with the Rules and practices of the House; and in general ensuring the smooth conduct of proceedings. The Presiding Officer is required to act fairly and impartially and to ensure that the rights of all parties are protected. In all his or her actions, the Presiding Officer must uphold the dignity and good name of the House.

In presiding over meetings of the House, the Presiding Officer ensures that they are conducted in an orderly fashion and according to laid-down procedures and practices. He or she interprets and applies the Rules, responds to members, points of order and gives rulings where necessary.

In giving a ruling on procedure – either at his or her own initiative or in response to a point of order – the Presiding Officer is guided by the Rules and conventions, as well as precedent. It is in her or his discretion to hear argument on a point of procedure, and to decide when he or she is ready to give a ruling. A considered ruling may be given at a later stage, after consulting Hansard and considering the matter fully. The Presiding Officer may give a private ruling in writing, for example in response to a letter from a member.

There is no appeal to the Speaker/Chairperson for a member who is unhappy with a ruling by one of the other presiding officers. An aggrieved member, if unable to resolve an issue with the presiding officer in question, may request that the subject matter of a ruling – not the ruling itself - be placed on the agenda of the Rules Committee for consideration of relevant practices. The Speaker/Chairperson may give a ruling or frame a rule to

cover a situation for which the Rules do not provide. Such a rule remains in force until considered by the Rules Committee.

One of the Presiding Officer's vital functions in the Chair is to maintain order in the House. It is in the nature of the Legislature that debate can be robust. The Rules provide the Speaker/Chairperson with disciplinary powers of varying severity to enable him or her to deal with various situations appropriately. It is customary, however, for such powers to be used sparingly where possible. Usually, where a member has expressed him or herself in a way deemed unacceptable by the Presiding Officer, the relevant member will be instructed to withdraw the expression, and on compliance, the matter is regarded as settled and should not be referred to again. A more serious offence, such as defying the authority of the Chair, may lead to a member being directed to withdraw from the Chamber for the rest of the day, and grave offences may lead to longer periods of suspension.

All members, including those who serve in the Executive, are equally subject to the discipline of the Chair. If the Presiding Officer during a debate calls for order for the purpose of addressing the House on any matter, all members, including the member speaking, fall silent and hear him or her without interruption. Although affiliated to a political party, the Presiding Officer is required to act impartially and to protect the rights of all parties. Equally, he or she is entitled to support from all members, whatever their political affiliation.

The Speaker/Chairperson may take part in debate from the floor but by convention does so sparingly. An exception is when reporting on matters relating to the Legislature and its administration. He or she generally avoids becoming involved in political controversy in his or her capacity as Speaker/Chairperson. The Speaker/Chairperson, or any other officer while presiding, has no deliberative vote, but must cast a deciding vote when there are an equal number of votes on both sides of the question. However, the presiding officer may cast a deliberative vote when a question must be decided with a supporting vote of at least two-thirds of the members.

6.2 DUTIES AS REPRESENTATIVE OF THE LEGISLATURE

The Speaker/Chairperson is the representative of the House in its relations with the other arms of government - the Executive and the Judiciary - and with other outside bodies and persons. In this role the Speaker/Chairperson is careful to maintain the authority of the House, and to protect its rights and privileges.

Important official communications from and to the Legislature are signed by and addressed to the Speaker/Chairperson. The Speaker/Chairperson receives delegations from other Parliaments and special visitors on behalf of the House. On formal occasions the Speaker/Chairperson represents the House and plays a central ceremonial role.

As Speaker/Chairperson, he or she is not a member of the Executive Government.

6.3 SUPERVISION OF THE ADMINISTRATION OF THE LEGISLATURE

In certain Legislatures, the Speaker is responsible for the supervision of the administration of the Legislature. In others, the Secretary to the Legislature as the Accounting Officer is responsible for the supervision of the administration of the Legislature and the Speaker of the Legislature is the Executive Authority.

6.4 RESPONSIBILITY OF THE SPEAKER / CHAIRPERSON OF THE COUNCIL

It is:

- to provide a strategic direction and political leadership;
- to preside over debates in the House and responsible for enforcing and interpreting all Rules and practices and for the preservation of order and decorum in the proceedings of the House;
- to represent or be the spokesperson for the House in its relations with authorities or persons outside Parliament;

- as the Head of the Legislature, responsible for its overall direction and management;
- to Chair the Rules and Programme committee meetings;
- to ensure that there is an effective and efficient relationship with the Legislature, the Executive, the Provinces and Local Government;
- to oversee that the Legislature fulfils its oversight role in terms of its constitutional mandate; and
- to ensure that the processing and passing of legislation is dealt with in accordance with the procedures set out in the Constitution and the Rules.

6.5 JOINT RESPONSIBILITY OF THE SPEAKER OF THE NATIONAL ASSEMBLY AND THE CHAIRPERSON OF THE COUNCIL¹¹

The Chairperson of the Council acting jointly with the Speaker of the National Assembly is the Executive Authority of Parliament.

The Executive Authority, inter alia, must –

- 0 conclude a written performance agreement for the Accounting Officer annually; oversee the preparation of the strategic plan, annual performance plan, budget and adjustments budgets;
- 0 provide political leadership and ensure the development of the annual joint parliamentary programme framework;
- 0 provide policy and strategic direction on Parliament’s international engagements;
- 0 oversee the budget of Parliament;
- 0 monitor and implement parliamentary policies and procedures; and
- 0 account to Parliament for the sound financial management of Parliament.

6.6 THE ROLE OF THE DEPUTY SPEAKER¹²/ DEPUTY CHAIRPERSON

Whenever the Speaker / Chairperson of the Council is absent or unable to perform the functions of Speaker/Chairperson, or during a vacancy in the

¹¹ This is applicable to Parliament only.

¹² Applicable to all Legislatures.

office of Speaker/Chairperson, the Deputy Speaker/Deputy Chairperson acts as Speaker/Chairperson.

As an acting Speaker/Chairperson, the Deputy Speaker/Deputy Chairperson has the responsibilities, powers and functions of the Speaker/Chairperson as set out in the Rules and Joint Rules.

A Deputy Speaker / Deputy Chairperson must take the Chair during a sitting of the House whenever requested to do so by the Speaker/Chairperson of the Council.

6.7 THE ROLE OF THE HOUSE CHAIRPERSONS / CHAIRPERSON OF COMMITTEES

The House Chairperson / Chairperson of Committees, amongst others, acts as a presiding officer and takes the Chair whenever requested to do so by the Speaker/Chairperson of the Council or whenever the Speaker/Chairperson of the Council and Deputy Speaker/Deputy Chairperson of the Council is absent.

6.8 THE ROLE OF THE CHIEF WHIP OF THE MAJORITY PARTY / CHIEF WHIP OF THE COUNCIL

While the responsibilities of the Chief Whip of the Majority Party and the Chief Whip of the Council may vary between the Houses, their responsibilities generally are to:

- oversee the functioning of the whippery;
- in consultation with whippery, ensure that Members attend and participate in Committees and plenary sessions;
- facilitate and oversee the activities of the Multiparty and Provincial Whips¹³ Forums;
- co-ordinate the House business by-
 - o liaising with the Office of the Leader of Government Business (LOGB) in respect of attendance by the members of the Executive to the House;

- o facilitating members' attendance and a quorum in the House;
- o facilitating the arrangement of the order of speakers for a particular debate; and
- o moving motions with regards to the business of the House.
- arrange business on the Order Paper, subject to the Rules and the directives of the Programme Committee, in concurrence with the LOGB where Government Business is concerned;
- serve as member of committees that deal with the functioning of Parliament, such as the Chief Whips' Forum, Joint Programme Committee, Parliamentary Budget Forum, Parliamentary Oversight Authority¹⁴, etc.
- establish and maintain good working relations with the Whips of other parties/Provincial Whips on a basis of mutual trust so that the work of Legislatures can be facilitated;
- allocate members of the party/provincial delegation to Committees and other structures in the Legislature;
- arrange for swearing-in, orientation, training and the settling-in of new Members;
- liaise with Provincial Chief Whips/of the Council in drafting provincial programme that will coincide with the NCOP Provincial Week programme¹⁵;
- co-ordinate the application for leave of absence for Members; and
- ensure, in consultation with the Presiding Officers and Programming Whip that the parliamentary programme does not interfere with days allocated for political work.

6.9 THE ROLE OF THE CHIEF WHIP OF OPPOSITION¹⁶

The Chief Whip of the Opposition is the chief spokesperson for that party on matters relating to the organisation of parliamentary business and the smooth functioning of Parliament. He or she is a member of the Chief Whips' Forum and the Programme Committee.

¹⁴ Applicable to NA and NCOP only.

¹⁵ To deliberate and concur on NCOP Provincial Week programme and logistics.

¹⁶ Applicable to NA and Provincial Legislatures only.

6.10 THE ROLE OF THE PROVINCIAL WHIPS¹⁷

The overall responsibility of the Provincial Whip is to:

- ensure that the NCOP maintains a strong link with the provincial legislatures;
- act as de facto leaders of their provincial delegations by ensuring that members of their provincial delegations have the necessary support to carry out their responsibilities;
- co-ordinate the multi-party delegations from their respective provinces and ensure that they are informed of planned activities of the NCOP and other issues pertaining to the promotion of their provincial interests;
- assist the Chief Whip in fulfilling his or her duties as required by the NCOP;
- ensure that members of their provincial delegation attend Select Committee meetings, plenary sittings and carry out their responsibilities as delegated by their Provincial Legislatures; and
- liaise with their provinces around the submission of names of special delegates to participate in debates in order to facilitate the finalisation of Speakers list.

6.11 THE ROLE OF THE PROGRAMMING WHIP¹⁸

The overall responsibility of the Programming Whip¹⁹ is to:

- compile and present the programme of the Legislature; and
- participate in the Technical Programme Committee meetings, in order to provide information on the NA/NCOP's programme²⁰.

17 Applicable to the NCOP only; however impacts to some extent on the work of the provincial Legislature

18 Applicable to the NCOP only

19 This role is performed by the Chief Whip/ Programming Authority in the Provincial Legislatures.

20 Applicable only to the NA and NCOP

6.12 DELEGATED WHIPS (NCOP)

Delegated Whips are delegated to assist the Chief Whip in facilitating and managing the daily operations of the NCOP. They assist the Chief Whip and Presiding Officers with the day-to-day political management and co-ordination of the activities and business of the NCOP.

There are six Duty Whips in the NCOP:

- Duty Whip responsible for transport within parliamentary precincts and parliamentary villages;
- Duty Whip responsible for processing of leave in consultation with the Chief Whip;
- Duty Whip responsible for housing in parliamentary villages;
- Duty Whip responsible for resources;
- Duty Whip responsible for questions and motions; and
- Duty Whip responsible for programming.

6.13 THE ROLE OF PARTY WHIPS²¹

Whips are appointed to ensure the smooth functioning of the legislature. They are party-political functionaries and their functions may vary from party to party. Some Whips focus on specific duties and each party determines what these are. They co-operate with the Whips of other parties and provincial whips in ensuring that the Legislature implements its constitutional mandate.

6.14 THE ROLE OF THE LEADER OF GOVERNMENT BUSINESS (LOGB)²²

The President/Premier appoints the Leader of Government Business in terms of the Constitution. The LOGB is responsible for:

- the affairs of the National/Provincial Executive in the Legislature;
- ensuring that cabinet members attend to their parliamentary responsibilities; and

²¹ Applicable to the NA and certain provincial legislatures only.

²² Applicable to the NA and Provincial Legislatures.

- performing any other function provided for by the Rules or a resolution of the House.

The LOGB is an *ex officio* member of the Programme Committee, and this committee must act in concurrence with him or her when dealing with Government business.

6.15 THE ROLE OF THE LEADER OF THE OPPOSITION²³

As the leader of the largest party in the House that is not in government, the Leader of the Opposition, by convention enjoys a special status in the Legislature. The leader has no specific duties in terms of the Rules, but is generally the first opposition spokesperson in the most important parliamentary debates.

6.16 THE ROLE OF PARLIAMENTARY COUNSELLORS²⁴

The Speaker, in consultation with the chief whips of the parties of the President of the Republic and of the Deputy President respectively, may designate two members of the Assembly as Parliamentary Counsellors, one to the President and the other to the Deputy President. The counsellors are charged with facilitating communication between the Assembly and the offices of the President and Deputy President respectively.

At most provincial legislatures Parliamentary Liaison Officers²⁵ fulfil the role of liaising between the Legislature and the Department of the Premier on matters affecting the Department.

24 23 Applicable to the NA and Provincial Legislatures.

24 Applicable to NA only.

25 These are officials are employed by the Department and not the Legislature.



7 UNIT 3: PROGRAMMING OF BUSINESS

This section deals with the way the business of the Legislature is programmed and organised.

7.1 BRIEF OVERVIEW OF PROGRAMMING PROCEDURE

The “shape” of a parliamentary year in broad outline – the dates of the sessions and legislative cycles for the year – is generally determined at a meeting of the Programme Committee (Authority)/ Joint Programme Committee (JPC), chaired by the Speaker²⁶ or the Speaker and the Chairperson of the Council.

The Programme Committee meets weekly during session to organise and determine the business of the Legislature in the short and medium term. While dealing with day-to-day business it also plays an important role in establishing practice. The lion’s share of parliamentary business emanates from the Government, and much of this is legislation. The Leader of Government Business plays a key role in co-ordinating the legislative programme and, where necessary, requesting the Legislature to fast-track a bill.

While the contents of the daily Order Paper and the sequence of business are largely determined by the decisions of the Programme Committee, the

²⁶ At some provincial Legislatures the Programme Committee is chaired by the Chief Whip of the ruling party.

Chief Whip of the Majority Party (or the programming whip as delegated by the Chief Whip) takes day-to-day decisions on the arrangement of business on the Order Paper, guided also by events and daily requirements. In doing so, he or she consults the Speaker/Chairperson and the Leader of Government Business where appropriate.

7.2 ROLE-PLAYERS IN PROGRAMMING OF BUSINESS

The production of a programme for all parliamentary business takes into account the needs of both the Executive and the Legislature and is a complex and ongoing process that requires regular inputs from several sources as identified in the various Rules of the Legislature.

7.2.1 THE ROLE OF PROGRAMME COMMITTEE

The role of the programme committee is to organise and schedule the business of the Legislature. This process consists of consultations and presentations, amongst others, by the Whip responsible for programming, and the Sections that deal with Bills and Committees.

The business of each sitting day is scheduled on agreement by the party representatives, with regard to the various obligations and the legislative framework, thereby ensuring the smooth running of the business of the Legislature. Decisions on prioritisation, postponement and issuing directives and guidelines pertaining to the business of the Legislature may be taken by the Programme Committee; however, these decisions may be made in consultation with the Leader of Government Business, where applicable.

7.2.2 FUNCTIONS AND POWERS OF THE JOINT PROGRAMME COMMITTEE (JPC)²⁷

The Joint Programme Committee (JPC) is a senior committee which is chaired by the Speaker and the Chairperson of the Council. The committee consists of the Leader of Government Business (or his representative), and the senior office bearers of both Houses, including whips of all parties.

The programme for the forthcoming year is generally determined in broad outline by the JPC. This programme is adjusted as is necessary by the Programme Committees of the Houses; however, deviation should not be substantial from the existing outline as agreed to by the JPC.

At the end of each term the JPC meets to agree to the broad outline of the next term/s. The Committee meet approximately twice or thrice a year. The JPC is also concerned with the functioning of the joint committees and their subcommittees. The JPC sets time frames and internal deadlines for the passage of bills through both Houses, taking into account the number of weeks required by the NA and the NCOP in order to constitutionally fulfil their mandate.

The JPC, through its subcommittees, is also responsible for the fast tracking of bills. The Executive is required to provide the JPC with a provisional legislative programme which includes the bills that the Executive intends to introduce and their legislative timeframes.

7.3 SEQUENCE OF HOUSE BUSINESS

The sequence of House business is determined by the Rules and the Programme Committee. In terms of the Rules, and unless otherwise determined in specific cases, business proceeds in the following manner each day: opportunity for prayer or meditation; announcements from the Chair; notices of motion; formal motions; opportunity for Member's statements; opportunity for Ministerial Statements; Petitions; Orders of the Day and Questions.

Orders of the Day are dealt with in the order in which they appear on the Order Paper; however, the sequence can be altered by motion.



8 UNIT 4: RULES OF DEBATE AND MAINTENANCE OF ORDER

The Constitution gives members “freedom of speech” in the Legislature, “subject to its Rules and Orders”. Both of these principles are there to ensure orderly debate and are fundamental to the effective conduct of parliamentary business.

The Rules relating to order and debate are aimed not at limiting freedom of speech, but at guiding debate in the context of that freedom so as to allow reasoned and open consideration of controversial issues.

The Rules also seek to promote the responsible exercise of the privilege of freedom of speech. This privilege, regarded as essential to parliaments across the world, entitles a member to freely and strongly express sentiments and opinions on issues. The procedures imposed by the Rules are designed to allow this to be done in an orderly fashion. By statute this freedom cannot be questioned in any court of law or any place outside Parliament.

The House plays a critical role in exercising and upholding the principles of democracy enshrined in our Constitution. The rules of debate and conventions of the Houses are based on the principle of maintaining order and decorum in the House. The rules of debate therefore relate to, *inter*

alia, the use of unparliamentary language and gestures; interruptions or interjections; the raising of points of order; conduct in the House; the mode of dress; and attendance. Members have to temper their speech and utterances so as to conform to the parliamentary standards of propriety.

8.1 POWERS AND PRIVILEGES

Parliamentary privilege is described as the sum of the rights enjoyed by the Legislature and their members without which they could not discharge their functions, and which exceed those powers possessed by other institutions and organisations²⁸. The primary parliamentary privileges are the right of freedom of speech and the right to unfettered access to the Legislature. These privileges allow members to attend and raise contentious issues in the Legislature without fear of hindrance or prosecution.

Other privileges and immunities are elaborated on in the *Powers, Privileges and Immunities of Parliaments and Provincial Legislatures Act (No. 4 of 2004)*. This Act, *inter alia*, refers to the summoning and privileges of witnesses before Parliament as well as matters pertaining to the publications and broadcasting of parliamentary proceedings. In respect of the former, the act stipulates that Parliament may summon any person and institution to give evidence. Witnesses are obligated to give evidence, answer questions or produce documents even despite the fact that such evidence could expose them to criminal or civil proceedings. Evidence given under oath may not, however, be used against the witness in court with some exceptions.

The Act also establishes a special committee, called the *Powers and Privileges Committee*, to enquire into and pronounce on matters associated with possible breaches of parliamentary privilege by members. A breach of privilege is called contempt of Parliament.

8.2 ORDER IN MEETINGS

8.2.1 ROLE OF PRESIDING OFFICER

It is the duty of the presiding officer to maintain order in the House. The Rules vest in the Chair a graded series of disciplinary measures aimed at enforcement of the Rules and conventions of the House. These range from directing a member to withdraw offending words, to suspending a member and suspending debate. In making a ruling, the Speaker draws upon a full range of procedural information and examines the precedents from South Africa and elsewhere to determine how the Rules have been applied and interpreted in the past.

The Chair seeks to avoid the use of such powers where possible, and the conduct of proceedings is most effective when debate, however intense, is conducted in a spirit of respect for the honour and dignity of all members and of the House itself.

All members, irrespective of the Party they represent, are entitled to equal respect and consideration from the Chair.

8.2.2 MEMBERS' CONDUCT AND DECORUM IN THE HOUSE

As well as rules which must be observed by members when speaking, there are also established rules and practice relating to the conduct of members and decorum in the House. Some of these rules are contained in the Rules, while others rely on rulings of the Presiding Officer and the good sense and common courtesy of members.

The underlying principle is that of showing respect to the House and to other members. Conduct should not cause a disruption to proceedings. Members are required –

- To be seated when the bells stop ringing to mark the start of proceedings. This requirement of an orderly commencement is not enshrined in the Rules, but is a convention confirmed by several rulings from the Chair.
- To dress according to the good sense and judgment of members, subject to any rulings and in accordance with the dignity of the House.
- To bow to the Chair on entering or leaving or moving to a different part of the Chamber.
- Not to move onto the floor area of the Chamber in front of the benches, or to “break the line” between a person speaking from the floor, and the Chair.
- Not to stand in the passages. This Rule is firmly imposed by presiding officers, and there have been several rulings in this regard.
- Not to converse aloud during debate. A quiet conversation between two members will not be objected to, but noise tending to drown out the member speaking or to distract attention from what is being said, will be stopped.
- Not to interrupt the member who has the floor, except to call attention to a point of order or a question of privilege. In certain instances the following may be allowed:
 - o *Interjections*: The Chair has discretion to allow interjections to the extent that they are relevant to the debate and not disruptive.
 - o *Drowning out or disruption*: The volume and frequency of interjections, heckling or interruptions must not prevent the member at the podium from being heard.
 - o *Question to member speaking*: Another type of interruption that is allowed in practice is when a member, during debate, rises to ask the Chair whether the member speaking/at the podium is willing to answer a question. The Chair will then seek an indication from the member speaking as to whether he or she is willing to

respond. A negative response requires the questioner to resume his or her seat. The Chair will not allow this form of interruption to be used deliberately to disrupt the member speaking.

- Not to use offensive or unbecoming language.
- Not to bring food into the Chamber. Members are, however, permitted to drink water.
- On leaving the Chamber, to do so quietly and unobtrusively especially when many members are leaving simultaneously.
- To attend in the Chamber during debates. Members' regular absence from House sittings may be construed as a sign of disrespect to other members and the House. It is the responsibility of the party whips to ensure that their members attend plenaries in sufficient numbers, particularly when a quorum is required to enable the House to take a decision.
- On adjournment, to rise and remain in their places until the presiding officer has left the Chamber.
- Sit in the waiting benches before being called to the podium²⁹. Members should anticipate their speaking turn and take their place in the waiting bench in good time, not leaving it till the last minute. Once there, they should sit quietly and not make interjections. Other members should not insult, ridicule or otherwise interfere with a member on his or her way to or from the waiting bench or podium.

8.2.3 ARTICLES IN THE CHAMBER

Articles: Articles are on occasion brought into the Chamber if they are of particular significance to a member's speech. Members are entitled to quote from documents during the course of debate, including reading excerpts from newspapers, books and other publications and documents. A member is limited to reading reasonable lengths of extracts from such documents, and it is up to the Chair to determine what constitutes a reasonable length.

Members may bring non-threatening objects into the Chamber in order to refer to them. However, members should not introduce threatening or offensive objects.

Newspapers: Presiding officers have on several occasions ruled that members may not read newspapers or magazines in the Chamber, unless it is done in preparation for a speech which the member is about to deliver. Reading a newspaper in the Chamber for any other purpose is unacceptable.

Party symbols: Party symbols of whatever kind should not be displayed by members in the Chamber.

Technological aids: The use of technological aids has become increasingly prominent in the House³⁰. The practice has nevertheless been that members may make use of small electronic devices provided they do not create a disturbance.

8.3 RULES OF DEBATE

Member to address Chair

The requirement that the member speaking addresses the Chair, is imposed by the Rules, and assists the Chair to control the debate. Every member who wants to speak must rise in his or her place addressing the Chair or as otherwise prescribed by the Rules.

Addressing the Chair prevents dialogue between members that may lead

³⁰ On 2 May 2012, the Deputy Speaker (Ms N C Mfeketo) ruled " ...We know that in this Chamber there have been rulings to the effect that laptops and cellphones may not be used during proceedings. ... at the moment we do not have a Rule, but we as members know that we have been quietly allowing people to speak from their laptops and that this makes things much easier. I want to emphasise that this does not mean distracting behaviour such as taking pictures or answering cellphones in the Chamber will be allowed. We selectively say that you can use something that assists you in doing your work better until such time as the Rules Committee processes the issue".

to disorder. In addition, when a member speaks through the Chair, a direct attack on another member is avoided. The rule applies also to a member rising to pose a question to the member speaking.

Member not to read speech

A member shall as far as possible refrain from reading his or her speech, but may refresh his or her memory by referring to notes.

Unparliamentary language

No member shall use offensive or unbecoming language. If the use of a word or phrase is challenged, the Chair will refer to the context in which it was used to determine whether it was parliamentary.

An offensive remark is not rendered parliamentary by being quoted, used hypothetically, put in the form of a question or stated as a figure of speech, such as a simile.

Accusing a member of a lie – a deliberate untruth – or of deliberately misleading the House is always unparliamentary, but it is not unparliamentary to state that a member has provided false information, provided intent is not implied. It follows from this that a member's word is accepted. If a member has good grounds to question whether another member's word should be accepted, a substantive motion³¹ may be submitted. It is not for the Chair to judge the accuracy or otherwise of statements made in the House.

Obscene and coarse remarks are not allowed. Personal remarks referring to a member's physical appearance are almost always unacceptable. The same applies to causing other disturbances, such as making animal noises.

Gestures

The same general principles applicable to language, apply to the use of gestures. Since gesturing is a part of communication, the context will

³¹ For further information on Substantive Motions please see page 45.

determine whether a gesture is intended to give offence, show disrespect or threaten. If the Chair considers that the gesture was offensive, he or she will call upon the member to apologise.

Allegations of racism

Allegations of racism against any member are never parliamentary, regardless of the context.

Reference to other Members

Members should refer to each other in a respectful manner. Generally no Member may refer to another Member by his/her first name or names only. It has therefore become practice for members to address each other as “honourable”.

Reflections upon members of the House

Making unsubstantiated allegations against the integrity of any member is unparliamentary, nor may improper or unworthy motives be imputed to them.

A member who wishes to bring an allegation of improper conduct on the part of another member to the attention of the House, should do so by way of a separate substantive motion, comprising a clearly formulated and properly substantiated charge; and except upon such a substantive motion, members should not be allowed to impute improper motives to other members, or cast personal reflections on their integrity as members, or verbally abuse them in any way.

Reflections upon decisions and statutes of the same session

No member may reflect upon any decision of this House of the same annual session or within the timeframe as prescribed by the Rules, except

to move that such decision be amended or rescinded. The same applies to any statute passed during the same session, except in order to move for its amendment or repeal.

Sub judice rule

No member shall refer to any matter in a substantive way on which a judicial decision is pending. This is a restriction which the House imposes on itself in order to avoid debate which could involve substantial danger of prejudice to proceedings before a court, and in recognition of the judiciary as a separate arm of government.

Irrelevance or repetition

A member must direct his or her speech to the question under discussion. The presiding officer, after having called attention to the conduct of a Member who persists in irrelevance or repetition of arguments, may direct the Member to discontinue his or her speech.

Same question rule

The purpose of this rule is to avoid the House being asked to decide on the same matter a second time during an annual session. It provides that an item may not be placed on the Order Paper that is the same in substance as a matter that has been discussed during the same annual session. This includes draft resolutions (although a draft resolution of the same session may be amended or rescinded).

Whether a matter raised is indeed the same as a previous matter, is a question for the Speaker/Chairperson to decide.

Rule of anticipation

No Member may anticipate the discussion of a matter appearing on the Order Paper. In determining whether a discussion is out of order on the

ground of anticipation, the Presiding Officer must have regard to the probability that the matter anticipated will be discussed in the House “within a reasonable time”. The object of the Rule is to avoid duplication.

The public gallery

Members may not directly address the public or individuals in the gallery. This does not, however, prevent any member from referring to non-members of the House through the Chair. However, the House cannot engage with the gallery. A House sitting is a meeting only of its elected members. Members of the public attend House sittings to observe and not to participate in the proceedings.

8.4 POINTS OF ORDER

Raising a Point of Order

A point of order is raised to call the attention of the Presiding Officer to alleged breaches of the Rules or established convention during debate.

The transgression must be brought to the attention of the Chair immediately when it occurs. It is for the Chair to decide whether and to what extent a point of order may be discussed, and when the Chair is prepared to rule, no further discussion will be allowed. The Chair will not make rulings on hypothetical situations.

Must relate to a point of procedure or order

A valid point of order restricts a member’s right not to be interrupted. Accordingly, such an interruption is only allowed if it calls attention to a point of order or a point of privilege. In other words, it must relate to the Rules or to practice. The Chair will not allow members to raise what are clearly not valid points of order.

Must be succinct and to the point

The point of order must be put first, before being elaborated upon. It is not in order to make a speech leading up to the point of order.

When a point of order is raised, the Member called to order shall resume his or her seta, and after the point of order has been stated to the Presiding Officer, he or she shall give a ruling or decision thereon either forthwith or subsequently.

Members should not raise spurious points of order to disrupt the member speaking or in an attempt to respond to the member speaking

The Chair will regard this as an abuse of the rules of procedure.

Presiding officer's discretion

When a point of order is taken, the presiding officer is obliged to respond by giving a ruling or decision. If it is ruled that the point of order is valid, he or she will take appropriate corrective action. If the response is that the member speaking may continue, the presiding officer is in effect dismissing the point of order. The presiding officer may give a ruling immediately or give a considered ruling at a later stage.

A ruling from the Chair is final and may not be challenged or questioned. For that reason, a presiding officer may refuse to hear further points of order on a matter once a ruling has been given, particularly in the case of a considered ruling.

Member's Recourse

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/Chairperson in respect of

rulings given by other presiding officers. The member may request that the subject of the ruling – namely, the principle involved – be referred to the Rules Committee for consideration.

8.5 THE CHAIR'S POWERS TO MAINTAIN ORDER

Directing member to withdraw unparliamentary language

In the course of debate, a presiding officer may, either on his or her own accord, or in response to a point of order, direct a member to withdraw words or refrain from behaviour that, in the presiding officer's opinion, is unparliamentary or otherwise unacceptable. Such words are to be withdrawn, or behaviour ceased, unconditionally and without further debate or discussion.

Member ordered to withdraw from the Chamber

If the Chair considers that a member is deliberately contravening a provision of the Rules, or is in contempt of or is disregarding the authority of the Chair, or behaves in a grossly disorderly way, the Chair may order the member to withdraw immediately from the Chamber for the remainder of the day's sitting.

Except in unusual and severe cases, in most instances the member will be afforded an opportunity to withdraw offending words or apologise for behaviour on the spot. Often it is only in response to the member's refusal to do so that he or she is then ordered to withdraw for the rest of the day, on the grounds of defiance of the authority of the Chair.

Presiding officer to be heard in silence

Whenever the presiding officer addresses the House during a sitting, any member then speaking or intending to speak must resume his or her seat. The presiding officer is then heard without interruption.

Grave disorder in plenary

If a situation of grave disorder should occur in plenary, the Chair may adjourn the meeting, or may suspend the proceedings for a period to be stated by him or her. If a presiding officer is of the opinion that a contravention committed by a Member of the House is of so serious a nature that an order to withdraw from the Chamber for the remainder of the day's sitting is inadequate, the Speaker/Chairperson may, amongst others³², suspend the Member.

In the event of grave disorder at a meeting, the presiding officer may adjourn the meeting, or may suspend the proceedings for a period prescribed in the Rules.



9 UNIT 5: TYPES OF BUSINESS IN PLENARY

9.1 STATEMENTS BY MEMBERS

A Member, other than a Member of the Executive, may be recognised by the presiding officer to make a statement on any matter. Members of each party are entitled to make a number of statements, minority parties being given an opportunity to participate in a manner consistent with democracy. Provision is also made for Executive members to respond to statements directed to them or made in respect of their portfolios.

Normal rules of debate apply when a Member makes a statement. This means that the statement cannot contain, amongst others, unparliamentary language or reflection on matters that are before the courts. As with speeches, a member's statement is concluded when his/her time expires. If a member, for whatever reason, fails to utilise the opportunity to make a statement, the party to which that member belongs, forfeits that opportunity.

Statements need not be in writing, but are recorded in Hansard. The NCOP Rules do not make provision for Members' Statements.

9.1.1 Statements by Cabinet Members

A Cabinet member may make a “factual or policy” statement relating to government policy, any executive action or other similar matter of which the House should be informed. The Minister in question asks the Speaker for an opportunity to make such a statement. The time allocation for Ministerial Statements is prescribed in the Rules. The Rule provides for a copy of the statement to be provided to the leader of each party when or before the statement is delivered. Following a statement, each party may respond in a manner prescribed in the Rules.

The NCOP Rules do not make provision for Statements by Ministers.

9.1.2 Explanations by Members

Members are allowed to make explanations in the House. This happens only when a material part of a Member’s speech has been misquoted or misunderstood. The Member afforded this opportunity may not, however, introduce any new matter, and no debate is allowed upon his/her explanation. Members may also explain matters of a personal nature in the House, but such matters may not be debated and the Member must confine himself or herself strictly to the vindication of his or her own conduct.

The presiding officer may request a Member to provide him/her with the text of the explanation prior to making a decision on whether to grant an opportunity for an explanation.

9.2 MOTIONS

A motion is a proposal by a member that the House do something, order something to be done or express an opinion with regard to some matter. It may, however, also be a proposal that the House discuss some matter. Essentially, the Rules provide for two types of motions to come before the

House, namely subjects for discussion (debate only) and draft resolution for consideration (decision with or without debate). Subjects for discussion and draft resolutions require prior notice.

Motions may either be on notice (Notice of Motion normally commencing with the words "I hereby give notice that in the next sitting I shall move that . . .") or without a notice (Motions without Notice). Notice of Motion normally commences with the words "I hereby give notice that in the next sitting I shall move that . . ." Motion without Notice normally commences with the words "I hereby move that . . ."

9.2.1 Effect of notice

A "notice of motion" merely indicates an intention on the part of a member to move a motion in the House if and when it is programmed for consideration by the House.

A notice of motion remains the property of the member until he or she actually moves it in the House. If the member chooses not to move the motion at the time for which it has been programmed, the motion lapses (unless the member has authorised another member to move it on his or her behalf). This distinguishes a motion from an "Order of the Day" which is not dependent upon being moved by a member. A member may withdraw a notice of motion appearing in his or her name on the Order Paper by written instruction to the Secretary.

Once a motion has been formally moved in the House, it becomes the property of the House and may only be withdrawn with the approval of the House. (The member, who has moved the motion, may move without notice that it be withdrawn). If any amendments³³ to the motion have been moved, they must be withdrawn before the motion itself can be withdrawn.

9.2.2 Subject for discussion

A subject for discussion provides an opportunity for the House to debate a particular topic without the House being required, at the end of the debate, to take a decision. The wording of a subject for discussion should be limited to identifying the topic, which should be clearly established. The wording determines the scope and focus of the debate. A topic that is too vague or broad will lead to an unstructured general debate.

A member proposing such a motion should identify it as a subject for discussion. A motion proposing a subject for discussion also requires prior notice.

9.2.3 Draft Resolutions

Draft resolutions may be further divided into

Substantive motions, which are independent, self-contained proposals concerning a concrete item of business.

Erskine May³⁴ defines a substantive motion as “a proposal made for the purpose of eliciting a decision of the House”. Pettifer³⁵ adds that a substantive motion “may take the form of a proposal made to the House by a Member that the House do something, order something to be done, or express an opinion with regard to some matter. It must be phrased in such a way that, if agreed to, it will purport to express the judgment or will of the House”.

A motion may be phrased in such a manner that it is a proposal that the House discuss some matter. Essentially, the Rules provide for two types of motions to come before the House, namely subjects for discussion (debate only) and draft resolution for consideration (decision with or without debate). These type of motions require prior notice.

³⁴ Erskine May, *Parliamentary practice*, Butterworths Lexis Nexus, London, 2004, p382.

³⁵ Pettifer, JA (ed) *Australia House of Representatives Practice*, Commonwealth of Australia, Canberra, 1981, p398.

Formal motions, which are substantive motions of a specifically procedural nature, including motions to amend sitting hours, to postpone or give precedence to an order of the day. As they normally deal with the business of the House, they are usually introduced by the Chief Whip of the Majority Party.

Motion which has constitutional consequences

Another form of draft resolution which may be distinguished is a motion, adoption of which has constitutional consequences. Examples are a motion of no confidence or a motion to dissolve in terms of the Constitution.

9.2.3.1 Guidelines for draft resolutions

Generally, draft resolutions should be short and succinct and framed so as to express with as much clarity as possible the distinct opinion or decision of the House. A draft resolution -

- must deal with matters within the competence of the Legislature;
- must deal with only one substantive matter;
- must consist of a clear and succinct proposed resolution or order of the House. Any extraneous matter meant to motivate a decision should be omitted, and can be put forward when the member introduces the motion in the House;
- must not contain statements, quotations or other matters not strictly necessary to make the proposed resolution or order intelligible;
- is subject to the rule of anticipation. A notice of motion on the Order Paper on a particular topic will therefore block all other notices on substantively the same topic;
- may not be the same in substance as a draft resolution that has been approved or rejected during the same session;
- may not contain unbecoming or offensive expressions;
- may not issue an instruction to the Executive;
- should observe the principles of co-operative government (Chapter 3 of the Constitution), and

- must be handed to the Table immediately after notice has been given in the House (a signed written copy).

Rules of debate apply: All motions are subject to the rules of debate of the House, including the rule on offensive language and the *sub judice* rule.

10. GENERAL GUIDELINES FOR NOTICES OF MOTION

Notices of motion should be limited to matters that members specifically intend should be brought before the House for debate or decision. With some exceptions (listed below) notice must be given of every motion, since in principle the House must be informed in advance of any substantive motion, to give members and parties time to prepare to debate it.

Giving notice of a motion can only be dispensed with provided each and every member present in the House agrees.

Exceptions

Exceptions to the following motions do not require notice:

- By way of amendment to a draft resolution;
- Raising a point of order or a question of privilege;
- For the postponement or discharge of, or giving precedence to, an order of the day;
- Referring a bill to a committee;
- By the member in charge, proposing a draft resolution on the report of a committee immediately after the debate on the report has been concluded; or
- In regard to which notice is dispensed with by the unanimous concurrence of all the members present.

Contingent notices

Members may give contingent notices of motion, that is, notices that particular motions will be moved contingent upon some event occurring in the course of proceedings of the Legislature, such as the moving of another motion.

Speaker may amend notices

The Speaker may amend or otherwise deal with a notice of motion which offends against practice or the Rules.

10.1 Procedure for giving notice of a motion

Notice can be given of a motion by reading the motion aloud in the House when the presiding officer calls for notices of motion, or by delivering to the Secretary a signed copy of the notice on any parliamentary working day.

The leave of the House is required to give oral notice of a motion at any other time. Having given oral notice of a motion in the House, a member is required immediately afterward to deliver to the Table a signed, written copy of that notice. If the signed version differs from the oral version, the written version is treated as a standard written notice of motion, while the verbal notice is not placed on the Order Paper. The member is advised accordingly.

If authorised to do so, a member may give notice of a motion on behalf of another member. Oral notices of motion given on any sitting day, if in order, appear on the Order Paper thereafter.

A written notice of motion received by the Secretary before 12:00 on any day, will appear on the Order Paper for the second sitting day thereafter.

When notice has been given of a motion, the full text is printed on the Order Paper once. Thereafter it is listed as a page reference, until it is programmed for debate when it will once again be published in full.

Amendments

An amendment is a motion, subsidiary to the main motion, which proposes to change it. As such, it is subject to the rules and practices governing motions, including that a signed copy of an amendment that is moved, must be provided to the Table.

Amendments are of three kinds. They may propose to –

- leave out words in the motion;
- delete words in the motion and substitute other words in their place; or
- insert words in the motion.

Amendments must be relevant to the motion, and may not introduce a new subject or extend the scope of the original motion. An amendment may be proposed to an amendment. An amendment is subject to the approval of the Speaker, who will not allow an amendment that is out of order or frivolous. As in the case of motions, procedural staff may be consulted in regard to formulation of amendments.

The Speaker has in the past proposed an amendment from the Chair as part of its function to assist the House in coming to a decision. Where the proposal from the Chair is not generally accepted, the Chair would withdraw the proposal.

Putting amendments: The presiding officer decides on the order in which amendments are put at the end of the debate. In doing so, he or she will generally seek to enable each party to record its vote in favour of or against each amendment, where feasible.

11. MOTIONS OF NO CONFIDENCE IN THE PRESIDENT/ PREMIER OR THE CABINET, MOTIONS TO DISSOLVE THE HOUSE AND MOTIONS FOR REMOVAL OF THE PRESIDENT/PREMIER

The following motions of no confidence are provided for in the Constitution and have specific constitutional consequences.

If the House, by a vote supported by a majority of its members –

- Passes a motion of no confidence in the Cabinet excluding the President/ Premier, the President/Premier must reconstitute the Cabinet;
- Passes a motion of no confidence in the President/Premier, the President/ Premier and the other members of the Cabinet and any Deputy Ministers must resign.

In addition, the House may remove the President/Premier on specified grounds by a resolution adopted with a supporting vote of at least two-thirds of its members.

The House, by a vote supported by a majority of its members may also, at least three years after it was elected, adopt a resolution to dissolve.

11.1 EFFECT OF DRAFT RESOLUTION

Broadly speaking, a Legislature only imposes its will through legislation. A draft resolution adopted by the House is of persuasive force, and only binds the House itself. The House cannot, for example, by resolution instruct a member of the public, or the Executive, to take certain action.

A resolution is sent to the institution or person to which such a resolution relates. Where applicable, the resolution is directly communicated to the relevant Minister or executive authority.

11.2 MOTIONS WITHOUT NOTICE

Guidelines for motions without notice

- A motion which would otherwise require notice may be moved without notice provided not a single member present objects.
- It is common practice to consult the other parties before the House meets when seeking to move a motion without notice, and to inform the presiding officer of the intention to do so.
- Motions without notice are to be moved when the presiding officer calls for them, usually near the beginning of the day's sitting.
- A signed copy must be presented at the Table.
- When a motion is moved without notice, the presiding officer gives members the opportunity to object. If there is any objection, the motion is not moved. In this case it may instead be converted to a notice of motion.

12. CONSIDERATION OF COMMITTEE REPORTS

In practice a committee report, including a report on a bill that is placed on the Order Paper for consideration, requires a decision of the House. If no debate is scheduled, then the chairperson of the committee, or a person designated by the committee, briefly introduces the report, highlighting any recommendations. After the introduction or a debate on the report, a motion is put from the floor (usually by the Chief Whip of the Majority Party) that the House either adopts the report, notes the report or takes whatever other action is deemed desirable.

13. DISCUSSION OF MATTERS OF PUBLIC AND URGENT PUBLIC IMPORTANCE

The Rules on debates of this kind make special provision to reconcile the needs of private members with the unobstructed progress of Government business and other programmed business. They make it possible for private

members to request the Speaker to allow discussion of matters that they consider of sufficient immediate public importance to take precedence over other programmed business in certain circumstances. Members of all parties may use this mechanism.

The Speaker has discretion to grant or disallow such a request, applying agreed criteria for this purpose. On finding merit in a request, he or she consults the Leader of Government Business, after which the matter goes to the programming structures to find a slot for the debate.

13.1 MATTER OF PUBLIC IMPORTANCE

At the latest, the request should be made before adjournment on the previous sitting day. In exercising his or her discretion, the Speaker is guided by the following criteria –

- The request must deal with a matter for which the Government can be held responsible.
- The matter must be definite and specific.
- The request must not deal with more than one matter.
- The request will not be granted if the matter can be considered by some other means in the near future.
- The sub judice rule applies.
- The rule of anticipation applies.
- If approved, the date and time of the debate will be subject to the availability of the responsible Minister/MEC.

13.2 MATTER OF URGENT PUBLIC IMPORTANCE

This Rule provides for a request for such a debate to be received at a specific time on a sitting day, for that debate to be held on the same day.

The criteria that the Speaker would use when considering such a request, include that –

- The subject matter must be of so serious a nature that it requires immediate attention.

- The subject must relate to a specific matter of recent occurrence, and not to a general state of affairs or to a matter of policy.
- Such a request should only be allowed under very special circumstances (for example a sudden emergency).
- The request must not deal with more than one matter.
- The request should not be granted if the matter can be dealt with by some other means in the near future.
- The request must concern a matter for which the Government can be held responsible or that comes within the scope of Ministerial action. (A proposal has been rejected because it concerned matters for which a provincial legislature was responsible.)
- The matter must be raised at the earliest opportunity.
- Adequate notice must be given to the responsible Minister/MEC.
- The sub judice rule applies.

14. DECISION OF QUESTIONS

All questions before the House are decided by majority decision. This may or may not involve counting of votes. The process of taking a vote in the House is known as a “division”.

Voting is public and transparent and is reflected in full in the Minutes of Proceedings. The only exception to this is the secret ballot whereby the President/Premier, Speaker/Chairperson and Deputy Speaker/Deputy Chairperson are elected if their election is contested.

In a division, members’ votes are recorded using the electronic voting system, where applicable. All members present in the House when the question is put must vote. The name and vote (or abstention from voting) of each member is recorded. Voting may however also be done manually.

14.1 WHEN DECISION TAKEN

A question may come before the House for decision –

- when debate on the matter has been concluded;
- without a debate being conducted on the matter; or
- at a time subsequent to the conclusion of a debate on the matter, after a decision of the question has been postponed. A decision is postponed –

- 0 to ensure that there is a quorum when the question is put;
- 0 because the House has set aside time for a series of decisions to be taken simultaneously, for example on the Votes in a main appropriation bill;
- 0 because the debate took place in an Extended Public Committee³⁶; or
- 0 because a second vote is being taken where a decision requiring a special majority, failed to obtain that majority.

14.2 QUORUMS

Except where a special majority is required by the Constitution, the following quorums are required for voting –

- a majority of members must be present before a vote may be taken on legislation; and
- at least one third of the members must be present before a vote may be taken on any other question before the House.

If quorum challenged: If, when a question is put for decision, the presiding officer is alerted to the possible absence of a quorum, he or she must direct that the bells be rung for five minutes. If after that time there is no quorum, he or she may either suspend proceedings or postpone the decision of the question. Alternatively, where a division has been called, presiding officers have directed that the presence or absence of a quorum may be determined by the result of electronic voting/manual voting.

Quorum not present: Where the result of a division shows that the required quorum was not present for the decision, this means that no decision has been taken, and the decision is deferred.

14.3 STANDARD PROCEDURE FOR DECIDING A QUESTION (WHERE NO SPECIAL MAJORITY IS REQUIRED BY THE CONSTITUTION)

The following procedure is followed when the Constitution does not require the decision to be taken by a special majority:

The Chair announces the Question to be decided, by saying: "The Question before the House is—" [e.g. "... that the bill be read a second time"; "that the motion moved by X be agreed to"].

- Consensus: The Chair then asks: "Any objection?" and pauses for an answer. If there is no objection, the Chair states: "No objection. Agreed to." At this point, the question has been agreed to.
- Objection: If there is objection, the Chair then puts the Question to the House, in the following terms: "I put the Question. Those in favour will say 'Aye'; those against, 'No'". Question not heard or understood: If the question is not heard or understood, the Chair puts the question again.
- Members respond by saying "Aye" or "No". The Chair then judges, on the voices and on probability, whether the "Ayes" or the "Noes" are in the majority, and states: "I think the [Ayes/Noes] have it". No further debate: At this point the Question has been fully put, and no further debate on the subject is allowed. Declarations of vote: At this point, the Chair may grant the opportunity for declarations of vote.
- If there is no disagreement with the assessment by the Chair of who is in the majority, the Chair proceeds to confirm the assessment, with the words: "And so they have".
- In this case the decision, not being opposed, is taken by consensus, and no voting takes place.
- If there is objection to the Question being agreed to as assessed by the Chair, this can be expressed in two ways:
 - o by parties requesting that their objection be recorded (this will be reflected in the Minutes of Proceedings); or
 - o by calling for a formal division.

14.4 DECLARATIONS OF VOTE

When a decision is to be taken by the House, the presiding officer has a discretion to permit one member of each political party to state the reasons why his or her party is in favour of or against the question. In applying discretion, the practice is for the presiding officer to be disinclined to allow declarations where debate on the question has just been concluded.

Usually, but not necessarily, declarations of vote are made where there is opposition to the question. In the vast majority of cases, they are made when a division is held. One exception to this is the day when the votes of the main appropriation bill are taken. During this procedure, which often involves multiple divisions, declarations of vote are often made even on those votes where there is no objection.

14.5 DIVISION

Calling for division: If a party strongly opposes a proposed decision, it may wish to take the matter to a vote. In this case a member (usually a whip) rises when the Chair has made its assessment and, addressing the Chair, states that his or her party calls for a division.

Bells rung: At this, the Chair will announce

"A division having been called, the bells will be rung for [as prescribed by the Rules] minutes."

Division bells are then rung to alert members not in the Chamber to the fact that a division is taking place and their attendance in the House is required. During this time, members should return to their designated seats in order to vote.

Doors closed: The Secretary at the Table informs the Chair when it is time for the bells to stop ringing. When the bells stop ringing, service officers

close the doors to the Chamber, and no member is allowed to enter or leave until the result of the division has been announced.

Member calling for division to remain and vote with minority: The member who called for the division may not leave the Chamber until the result of the division is declared, and must vote with the minority.

Further divisions: If further divisions are required to dispose of the question, or if there is a series of divisions for any reason, the period during which the bells are rung for a second and subsequent divisions, is usually shortened at the discretion of the presiding officer, who announces this to the House.

Confusion or error: Where confusion or error occurs in relation to a division, another division is held, unless the results can be corrected in another way. Minutes may be corrected if numbers have been inaccurately reported.

Points of order during division: It is in order to rise on a point of order during a division, provided the point of order has to do with a matter that arises out of or during the division.

14.6 VOTE OF PRESIDING OFFICER

The presiding officer has no deliberative vote and therefore does not vote, except –

- when there is an equal number of votes on each side of a question. In this case, he or she must cast a deciding vote; or
- when a question must be decided with a supporting vote of at least two thirds of the members, he or she may cast a deliberative vote.

14.7 TAKING DECISIONS ON MATTERS OTHER THAN BILLS AND MOTIONS³⁷

The Constitution and other laws require the Assembly to take decisions on matters other than bills and motions. An example is the ratification of international agreements. Such matters are considered by a committee before coming before the Assembly for consideration. Instead of coming before the House in the form of a committee report with recommendations, the relevant Order Paper entry reflects the actual decision to be taken. If the relevant committee report on the issue includes additional recommendations flowing from its consideration of the matter, the committee report is placed on the Order Paper for separate consideration.

14.8 VOTING IN THE NCOP

General rule

Except where the Constitution provides otherwise, each province has one vote, which is cast on behalf of the province by the head of its delegation. All questions to be decided in terms of section 65 of the Constitution before the NCOP are agreed when at least five provinces vote in favour of the question.

Quorum

One third of the members are required to be present before a decision could be taken in terms of section 75 of the Constitution, however, where decision are required in terms of section 65 of the Constitution five provinces are required except where the Constitution provides otherwise.

³⁷ This section is applicable to the NA and NCOP only.

Exceptions to the rule

Bills amending the Constitution

Whenever the NCOP is entitled to vote on a Bill amending the Constitution, the question is decided with a supporting vote of at least six provinces.

Ordinary Bills not affecting provinces (S75 and S77 Bills)

Section 65 does not apply when the NCOP votes on an ordinary Bill not affecting the provinces. In this instance each delegate in a provincial delegation has one vote. The question is decided by a majority of the votes cast, but if there are an equal number of votes on each side of the question, the presiding officer must cast a deciding vote.

14.9 JUDICIAL SERVICE COMMISSION

In terms of the Constitution, the Judicial Service Commission consists of, amongst others, four permanent delegates to the NCOP designated by the NCOP with a supporting vote of at least six provinces.

14.10 MAGISTRATE'S COMMISSION

The Magistrate's Commission consists of, amongst others, four permanent delegates to the NCOP, designated by the NCOP, with a supporting vote of at least six provinces.

14.11 PROCEDURES IN THE NCOP³⁸

General principles

The Chairperson of the NCOP may determine a day for the decision of questions by the NCOP. When the debate on a question is concluded in the NCOP, the presiding officer may postpone the decision of the question. A question that was postponed after the debate on it was concluded in the NCOP must be put without further debate.

60 ³⁸ This process is deemed important for all Members including those at provincial Legislatures.

A question to be decided by the votes of provinces is fully put when put immediately before an opportunity for declaration of votes is or may be given.

A question to be decided by the votes of individual members is fully put when the voice of both the "Ayes" and the "Noes" has been given on it.

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

Each delegation head must from time to time submit to the Secretary a list of the names of persons who serve as special members in the provincial delegation for the respective matters on the Order Paper which must be decided by the votes of individual members. A dispute, on which a person is entitled to vote as a special member on any particular question, must be settled by referring to the latest relevant list before the vote on that question is taken.

Voting by individual members

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

Whenever a question to be decided by the votes of individual members is put by the presiding officer, any member, instead of demanding a division, may request the opposition of that member, or of that member's party, to be formally recorded in the Minutes of Proceedings. The presiding officer may order that a division takes place if four or more members request that their opposition be formally recorded.

After a question has been put and the officer presiding has indicated whether the “Ayes” or the “Noes” have it, any member may demand a division. If fewer than four members support the demand for the division, the presiding officer must declare the decision on the question. If four or more members support the demand, a division must take place and without debate.

Procedure for divisions

A division takes place in accordance with the following procedure:

- The presiding officer must order the bells to be rung and, after the bells have rung for three minutes, order the doors to the floor of the Chamber to be locked;
- When the doors have been locked, no member is allowed to enter or leave the Chamber until the result of the division has been declared;
- The presiding officer must put the question again and call for members to vote and members abstaining to take their seats in areas designated by the officer presiding. Any persons referred to in sections 66³⁹ and 67⁴⁰ of the Constitution may not vote;
- The Secretary must record the names and numbers of votes cast;
- When the names and numbers have been recorded the presiding officer must declare the result of the division.

While a division is in progress, members may speak to a point of order arising out of or during the division. In the event of confusion or error in a division, the procedure set out above must be repeated, but if there is an inaccuracy in the numbers of the votes and these numbers can accurately be corrected in another, less cumbersome, way the procedure need not be repeated.

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

Voting by Provinces⁴¹

Before a question that is to be decided by the votes of provinces is put, the presiding officer must order the bells to be rung three times for 30 seconds at a time, separated by 10-second intervals. The bells need not be rung if all the delegation heads are present in the Chamber.

If all the delegation heads are present or if not all the delegation heads are present and at least three minutes have elapsed since the bells have stopped ringing, the presiding officer –

- must put the question; and
- on request, may allow each province, in a speech not exceeding three minutes by the delegation head or another member authorised by the delegation head, to state the reasons why the province is in favour of or against the question.

After the question has been put and declarations of vote (if any) have been made, the delegation heads present must cast the provinces' votes in accordance with their mandates. Voting takes place by allowing each delegation head in turn to cast the province's vote, which vote must be recorded in the Minutes. After the votes have been cast and recorded the presiding officer must declare the result of the vote.

Mandates⁴¹

Mandates mean the conferral of authority by a provincial legislature on its delegation to the NCOP to cast a vote on a question. There are three kinds of mandates, namely –

- negotiating mandate;
- final mandate; and
- voting mandate

The head of a provincial delegation is responsible for communicating the official mandate of the province to the NCOP.

⁴¹ NCOP delegates representing Provinces.

International Agreements

NCOP Rule 73A specifically provides as follows:

- No mandate is required when the House votes on International Agreements provided in terms of section 231(2) of the Constitution, however, the head of the provincial delegation must cast a vote on behalf of the province.
- In the absence of the head of the provincial delegation a member may vote on behalf of the province.
- A decision is agreed to when at least five or more provinces vote in favour.

Electronic voting

Permanent delegates are issued with voting cards which would indicate their name, province and party. A question to be decided by the votes of provinces is fully put immediately before an opportunity for declaration of votes is or may be given. A question to be decided by the votes of individual members is fully put when the voice of both the "Ayes" and the "Noes" has been given on it. When a question before the NCOP is to be decided by the votes of individual members and fewer than one third of the members are present when the vote is to be taken, the bells must be rung for three minutes. If at least one third are still not present after the bells have been rung, the presiding officer must postpone the decision of the question.

Each delegation head must from time to time submit to the Secretary a list of the names of persons who serve as special members in the provincial delegation for the respective matters on the Order Paper which must be decided by the votes of individual members. A dispute, on which person is entitled to vote as a special member on any particular question, must be settled by referring to the latest relevant list before the vote on that question is taken.

15. QUESTIONS TO THE EXECUTIVE

The Constitution stipulates that members of the Cabinet are accountable collectively and individually to the Legislature for the exercise of their powers and the performance of their functions. The procedure for putting questions to the Executive is one of the ways in which the Legislature holds the Executive to account.

Questions may be put for oral and written reply to the President, the Deputy President, Premier and Cabinet Ministers/MECs on matters for which they are responsible. Members hand in signed questions to the Questions Office, marked for oral or written reply. A member may give notice or take charge of a question on behalf of an absent member if the member has been authorised to do so by the absent member.

Questions are edited under the authority of the Speaker/Chairperson, in terms of the requirements set out below, and made available to government departments to enable them to prepare replies for their Ministers/MECs.

15.1 RULES AND CONVENTIONS APPLICABLE TO CONTENT OF QUESTIONS

Questions placed on the Question Paper are required to conform to a series of rules and conventions aimed at ensuring that this procedure remains an effective mechanism for obtaining information from the Executive.

15.2 FORM OF QUESTIONS

Object of questions:

The object of questions is to –

- obtain information; and
- press for action.

Questions must be phrased according to these objectives.

15.3 RULES OF DEBATE APPLICABLE TO QUESTIONS

The rules of debate are also applicable to questions – thus, a question is not permissible which –

- contains offensive expressions;
- casts a reflection on the conduct or character of persons – whose conduct may only be challenged in a substantive motion;
- anticipates discussion on an order of the day;
- repeats in substance questions already answered in that annual session, or that the Minister/MEC has refused to answer. However a similar question different in some respects may be asked; and the same question may be put to different Ministers/MECs to the extent that they have a responsibility in terms of their portfolios;
- criticises decisions of the House;
- publishes any name or statement not strictly necessary to make the question intelligible;
- refers to the merits of a sub judice matter; and
- makes discourteous reference to a friendly foreign country or its Head of State.

15.4 ARGUMENTS AND EXPRESSIONS

Questions may not –

- express an opinion or seek the expression of one;
- contain arguments, inferences or imputations;
- contain unnecessary epithets;
- contain rhetorical, controversial, ironical or offensive expressions;
- 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.

15.5 PRACTICAL EXCLUSIONS

Questions may not –

- only provide information;
- convey a particular point of view;
- constitute a speech, or be excessively long;
- refer to communications between an individual member (other than the questioner) and a Cabinet member;
- be based on a hypothetical proposition;
- seek an opinion on a question of law, such as 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;
- seek a solution to a legal question;
- raise questions which would require an impractically extensive answer;
- seek information on matters of past history for the purposes of argument;
- be trivial, vague or meaningless; or
- be a repeat of other questions, with trivial variations.

15.6 SCOPE OF QUESTIONS TO MINISTERS/MECs

Questions must relate to matters for which Cabinet members are officially responsible. Accordingly the following criteria are applied –

- Requests for information are not usually accommodated in respect of matters falling outside the competencies of the Legislature.
- It is not in order to ask for information about matters that are the responsibility of institutions or persons not responsible to the Government.
- Questions relating to semi-state bodies are restricted to matters for which Cabinet members are responsible by statute or other legislation.
- Questions may not refer to the consideration of matters by a commission or a committee or deal with matters within the jurisdiction of the chairperson of a committee or the House.

- Questions may not be asked about the action of a Cabinet member for which he or she is not responsible to the Legislature.
- 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.
- Questions suggesting amendments to a bill before the House or in committee are inadmissible unless such amendments may only be moved by a Cabinet member.
- 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).
- 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.
- 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.
- It is in order to ask for a Cabinet member's intentions with regard to matters for which they are officially responsible, and to ask for administrative or legislative action in regard to such matters.

15.7 SCOPE OF QUESTIONS TO PRESIDENT AND DEPUTY PRESIDENT⁴²

The President may be asked questions about matters of national or international importance. These may include –

- Matters for which the Government is responsible, excluding matters for which a line Minister is directly responsible;
- His or her public duties;
- The granting of honours;

- The dissolution of the National Assembly;
- The definition of the responsibilities of Cabinet members;
- Whether statements made by Cabinet members (not Deputy Ministers, who are not members of the Cabinet) on public occasions represent the policy of the Government.

He/she may also be asked to furnish a copy of a speech made by him or her outside Parliament. A speech made by the President on a public occasion may only be questioned by calling for a copy and asking whether it represents Government policy.

Note:

- Matters of a party political nature are out of order.
- Questions may not seek an opinion.

When the President is not answering questions, these questions must be directed to the Deputy President.

Questions for oral reply relating to the Presidency must be directed to the Deputy President or the Minister in the Presidency.

15.8 QUESTION PAPERS

There are two types of question paper, the "Internal Question Paper" and the "Question Paper"⁴³

The Internal Question Paper –

- is a running, up-to-date record of all questions not yet replied to;
- contains questions for both oral and written reply; and
- is the document whereby notice is given of questions.

The Internal Question Paper indicates which questions for oral reply are standing over and which are appearing for the first time.

⁴³ Historically the two types were known as the Internal and External question papers, because the external question paper was printed externally. However, since the previously known "internal" question paper is also printed externally, the semantic content of the term has changed.

The Question Paper (for oral questions only) is also known as an agenda for oral questions, and therefore reflects the questions for oral reply on a given question day.

The following information is valid for all questions for oral reply:

15.9 FORMAT OF QUESTIONS

A question for oral reply may not contain more than five subdivisions. Members are allowed to ask for a maximum of two figures in oral questions. A question for oral reply which is of a statistical nature may be converted into a question for written reply (dates are not regarded as statistical).

15.10 ORDER OF QUESTIONS ON QUESTION DAY

On question day the categories of questions for oral reply are dealt with in the following order –

- Questions to the Deputy President/Premier.
- Urgent questions (where applicable).
- Questions to Ministers/MECs.

On days on which the President answers questions there are no questions to the rest of the Cabinet⁴⁴.

15.11 SUPPLEMENTARY QUESTIONS

Supplementary questions arising from the reply to a question are allowed. The member who asked the question is given the first opportunity to ask a supplementary question. It is in the discretion of the presiding officer to decide who may ask the other supplementary questions. A member who asks a supplementary question is entitled to express an opinion or make a statement, but should not make a speech. The Chair decides whether the supplementary question is in order. A supplementary question must consist of only one question.

15.12 QUESTIONS FOR ORAL REPLY: QUESTIONS TO THE PRESIDENT

The President answers questions of national or international importance once per term in accordance with the annual parliamentary programme⁴⁵. The questions are sifted in a process involving the Speaker, to ensure that only questions satisfying the set criteria are put to the President. At any other time questions relating to the President must be directed to the Deputy President.

15.13 QUESTIONS FOR ORAL REPLY: QUESTIONS TO THE DEPUTY PRESIDENT

Questions for oral reply can be addressed to the Deputy President⁴⁶, who answers four questions every second week, before questions to Ministers. The Deputy President will not answer questions⁴⁷ –

- in the week that the President answers questions; or
- in the week when he or she (the Deputy President) is answering questions in the Council.

The arrangement concerning order of questions is the same as for Ministers.

15.13.1 NATURE OF QUESTIONS TO THE DEPUTY PRESIDENT

Questions to the Deputy President can be wide-ranging. Mostly such questions will be questions of national or international importance. If the President is not answering questions, the Deputy President will act on his or her behalf.

⁴⁵ Applicable to NA and NCOP only.

⁴⁶ Applicable to the NA.

⁴⁷ Applicable to NA and NCOP only.

15.14 QUESTIONS FOR ORAL REPLY: QUESTIONS TO PREMIER/QUESTIONS TO PREMIER WITHOUT NOTICE

The Premier answers questions of provincial importance in accordance with the programme of the Legislature which could include questions to the Premier without notice at some Legislatures.

15.15 QUESTIONS FOR ORAL REPLY: QUESTIONS TO MINISTERS/MECS

Ministers/MECs answer questions in respect of the portfolios and in accordance with the programme of the Legislature.

15.16 PROCEDURE

A member who gives notice of a question must give the Questions Clerk a signed copy of the notice, indicating clearly that the question is for oral reply.

15.17 PRIORITISING OF QUESTIONS

Questions for oral reply appear in the Internal Question Paper in the order in which they are received. In the NA, at this point, parties may rearrange their questions in order of priority, using Tuesday's Internal Question Paper as a basis. The Questions Office then arranges all these questions in a party sequence, starting with the party with the most members. The sequence is determined by the Chief Whips' Forum when required, and is usually the same as that for Members' Statements.

15.18 URGENT QUESTIONS⁴⁸

A member who wants an urgent question to be placed on the Question Paper for a day on which it would not be dealt with by a particular cluster, should hand in the question to the Speaker, clearly indicating that it is

72 ⁴⁸ Applicable to NA (and NCOP) only.

an urgent question. The request is dealt with as if it were a request for a debate on a matter of public importance. It must be submitted at the latest by 12:00 on the Tuesday in the week before the week in which it is to be answered or on a day and time as required by the Rules of the specific Legislature. The Speaker must consult the Leader of Government Business before approving it. Accommodation of such a question is subject to the availability of the responsible Minister.

Application may be made to put an urgent question to any member of Cabinet, including the President and the Deputy President. No time is added to Question Time to accommodate an urgent question.

15.19 QUESTIONS STANDING OVER

A Cabinet member may request that a question for oral reply stand over until another question day. If a question put during question time stands over because the Minister/MEC is not in the House to answer, and the member who asked the question so requests, the question will be put on the next Question Paper for reply.

A question may stand over only once. If it stands over again, the Question Paper must be endorsed to the effect that the question has not been replied to. Such endorsement is done by placing a bold black line around the question(s). At a number of provincial Legislatures it has become practice that questions for oral reply that stand over are transferred for written reply.

15.20 QUESTIONS FOR WRITTEN REPLY

Questions for written reply may be addressed to the President, the Deputy President, the Premier and Ministers/MECs. Such questions are not dealt with in the House but appear on the Internal Question Paper. These are usually not very urgent or they require long and statistical replies.

Questions with replies prepared by the relevant departments and signed by the Minister/MEC, are distributed to all the stakeholders: the member who asked the question, the Speaker/Chairperson, the press, Hansard, the Secretary to Parliament⁴⁹ and the Papers Office. The questions together with replies are published as part of Hansard.

15.21 FORMAT OF FOR WRITTEN REPLY

These may not exceed five paragraphs and/or fifteen subdivisions. As a matter of practice, questions should not exceed five paragraphs in length. The Questions Office, under the authority of the Speaker/Chairperson, exercises discretion in determining the length of questions allowed in accordance with the Rule.

15.22 PROCEDURE TO BE FOLLOWED BY MEMBERS

A member, who wishes his or her question to be dealt with as a question for written reply, should indicate this clearly at the top left of the page. It must be signed. Questions are placed on the Internal Question Paper in the order in which they are received.

15.23 QUESTIONS FOR WRITTEN REPLY TRANSFERRED FOR ORAL REPLY

If a member does not receive a reply to his or her question for written reply within ten parliamentary working days after it has appeared on the Internal Question Paper (Question Paper) for the first time, that member is entitled to instruct the Questions Office to place such question for oral reply on the Question Paper.

15.24 WITHDRAWAL OF QUESTIONS FOR WRITTEN REPLY

A member who wishes to withdraw a question for written reply must instruct the Questions Office accordingly. This will be indicated on the summarised list of questions for written reply.

15.14 REPLIES TO QUESTIONS

Questioner need not be present: it is not in order for a Minister/MEC to withhold an answer because the member who put the question is not present.

16. HOUSE RESOLUTIONS

House resolutions are formally communicated to the President/Premier by the Secretary of the Legislature. However, the practice has developed that resolutions affecting the Executive are also communicated under the Speaker's/Chairperson's signature directly to the relevant Minister/MEC or other executive authority. At the Speaker's/Chairperson's discretion, follow up letters inquiring about progress may also be sent.

17. LAPSING OF BUSINESS

17.1 Lapsing of business on the last sitting day of the annual session or term or when the Legislature is dissolved

All motions and other business, other than bills on the Order Paper on the last sitting day of an annual session or last sitting of a term or when the Legislature is dissolved, lapse at the end of that day.

Such business may be revived by way of a motion adopted by the House.

17.2 Lapsing of bills on the last sitting day of the annual session or term or when the Legislature is dissolved

All bills introduced in the House and which on the last sitting day of an annual session, appear on the Order Paper for First or Second Reading, lapse at the end of that day unless the Legislature decides otherwise.

All bills before the Legislature or a committee on the last sitting day of a term of the Legislature or when the Legislature is dissolved, lapse at the end of that day. A bill may be revived by way of a motion adopted by the House.



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