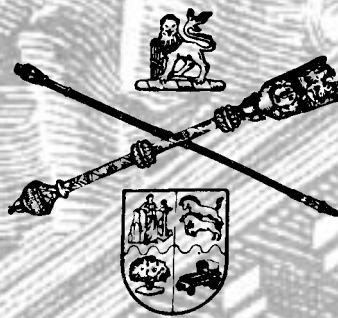


Parliament of the Republic of South Africa



PROCEDURAL DEVELOPMENTS IN THE NATIONAL ASSEMBLY

Fifth Session – Second Parliament
July to December 2003

8



Parliament of
the Republic of
South Africa

PROCEDURAL DEVELOPMENTS IN THE NATIONAL ASSEMBLY

A record of recent events and developments of a procedural nature in the National Assembly of the Parliament of the Republic of South Africa. This eighth issue covers the period from July to December 2003.

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PRESIDING OFFICERS & OTHER OFFICE BEARERS

1. MOTION CONGRATULATING SPEAKER ON RECEIVING THE NORTH-SOUTH PRIZE OF THE COUNCIL OF EUROPE

On 20 November 2003, on a motion by Mr J Durand, the House congratulated the Speaker on having been awarded the North-South Prize of the Council of Europe for 2003. The prize is awarded annually to a person from the global North and a person from the global South who have demonstrated strong and visible commitment and outstanding achievement regarding human rights protection. Similar congratulations were extended to the Speaker by the NCOP on the same day.

PROCEDURAL & RELATED ISSUES

2. SCHEDULING AND CANCELLATION OF PLENARY MEETING IN CONSTITUENCY PERIOD

On 25 June, the Joint Programme Committee (JPC) set aside two weeks at the end of the third term for constituency work, namely from 29 September to 10 October. However, in order to enable members to assist with voter registration, the JPC agreed on 22 September to adjust the dates and extend the constituency period to 7 November, a total of six weeks.

The Committee further agreed that, if required, the NA and NCOP would have plenary meetings on 21 October and 22 October, in accordance with their respective needs, to consider legislation that had been finalised by committees and other urgent matters.

The National Assembly Programme Committee, at its meeting on Thursday, 25 September, provisionally scheduled the following for a plenary meeting on 21 October: members' statements, the second reading debates on five bills and the consideration of matters relating to the establishment of the Pan African Parliament.

On 14 October, the Secretary to the National Assembly was requested by the Speaker to inform all parties that it had been decided, after consultation, to cancel the proposed plenary for 21 October and to reschedule the programmed business for 11 November, the date on which the first plenary meeting of the fourth and final term was due to be held.

Committees that had been meeting to finalise bills for the plenary meeting of 21 October were asked to proceed with their work as planned.

3. ELECTION OF PAP MEMBERS

On 26 November, members of the National Assembly were required to elect 5 members to the Pan African Parliament. The House had previously agreed with the recommendation of the AU Working Group that 3 of the 5 members would be women.

When the order came before the House, the presiding officer (the Deputy Speaker) announced that she had received the following 6 nominations: Dr F N Ginwala (ANC); Mr M J Mahlangu (ANC-NCOP); Mrs M A A Njobe (ANC); Mr C W Eglin (DA); Prof H Ngubane (IFP) and Dr B L Geldenhuys (NNP).

The presiding officer called for further nominations, but there were none.

As only 5 members had to be elected, the presiding officer announced that members of the National Assembly would be called upon to vote for each candidate in turn and that the 5 candidates with the largest number of supporting votes would be duly elected, provided that the result met the requirement that 3 of the successful candidates were women.

The vote resulted in the following:-

Dr F N Ginwala
– 264 votes in support; none against;
24 abstentions

Mr M J Mahlangu
– 263 votes in support; none against;
26 abstentions

Mrs M A A Njobe
– 260 votes in support; none against;
25 abstentions

Mr C W Eglin
– 46 votes in support; 234 against;
5 abstentions

Prof H Ngubane
– 270 votes in support; 10 against;
7 abstentions

Dr B L Geldenhuys
– 241 votes in support; 41 against;
3 abstentions

The National Assembly accordingly elected Dr F N Ginwala; Mr M J Mahlangu; Mrs M A A Njobe; Prof H Ngubane and Dr B L Geldenhuys as members of the Pan African Parliament.

Later on the same day, the NCOP also by motion elected these 5 members to the Pan African Parliament.

4. REQUEST FOR BILL TO BE FAST-TRACKED

On 20 November, the Joint Subcommittee of the Joint Programme Committee met and in terms of Joint Rule 216(2), agreed to a request from the Leader of Government Business to

fast-track the *Electoral Laws Second Amendment Bill* [B73-2003], a section 75 bill.

The decision of the Joint Subcommittee was ratified by resolution in both the National Assembly and the National Council of Provinces on 25 November. That enabled Parliament to shorten any period in the legislative process to make it possible for the bill to be passed by the adjournment of the parliamentary session for 2003.

The bill was passed by the NA on 25 November and by the NCOP on 27 November.

5. SPLITTING OF BILLS BEFORE INTRODUCTION

National Environmental Management: Protected Areas Bill

The Minister of Environmental Affairs and Tourism, in a letter to the Speaker dated 18 June, proposed the introduction in the National Assembly of the National Environmental Management: Protected Areas Bill which, in the opinion of the state law advisers, was a mixed bill. The bill, in other words, contained both section 75 and section 76 provisions.

Before the bill's introduction and tagging – the latter in terms of the Rules is undertaken only after formal introduction – the parliamentary law advisers in a provisional opinion concurred with the view expressed by the state law advisers, namely that the bill was mixed.

As Parliament does not have a procedure for dealing with mixed bills, the Secretary to the National Assembly, under direction of the Speaker, wrote to the Minister to request him to have alterations effected to the bill that would enable him to present a bill or bills that would, by his own preliminary findings, be capable of processing in Parliament.

On 16 July, the Minister responded by requesting that the splitting of the bill be done during the “parliamentary phase” of the bill's processing as had been done on a previous occasion when a mixed bill was introduced and split by the portfolio committee. The Deputy Speaker, on 30 July, wrote back to the Minister, telling him that she had been informed that the bill had already been split by the state law advisers, in consultation with the Minister's department, and a certified manuscript of the section 76 provisions as a separate bill had been made available to Parliament for introduction.

The *National Environmental Management: Protected Areas Bill*, a section 76 bill, was introduced in the National Assembly on 5 August. The bill was passed by the National Assembly on 27 November and referred to the National Council of Provinces for consideration by that House.

Children's Bill

Towards the end of October, Parliament received a certified manuscript of the Children's Bill for introduction. In their accompanying certificate, required in terms of the Rules, the state law advisers found that the bill contained both section 75 and section 76 provisions.

As mentioned above, Parliament has no procedure for dealing with mixed bills, so the Deputy Speaker wrote to the Minister of Social Development on 24 October, requesting him to split the bill before its formal introduction.

The section 75 bill was introduced on 12 November in the National Assembly and referred to the Portfolio Committee on Social Development and the Joint Tagging Mechanism (JTM) for classification in terms of Joint Rule 160. The Committee, in terms of Rule 249(3), was instructed by the Speaker to consult the Portfolio Committee on Justice and Constitutional Development, the Joint Monitoring Committee on Improvement of Quality of Life and Status of Children, Youth and Disabled Persons and any other committee that had a direct interest in the substance of the bill.

The parliamentary law advisers, in their legal opinion to the JTM in November, expressed the view that the Children's Bill, as introduced, still contained section 76 provisions and therefore recommended that the bill should be classified as a mixed bill. By the end of the parliamentary year, the tagging of the bill was still outstanding.

6. PROGRESS WITH SYSTEM FOR MANAGING NOTICES OF MOTION

Members' statements were formally introduced as a new procedure in the National Assembly at the beginning of 2003. This enabled notices of motion, which had over time effectively become a mechanism for members to make statements, to be restored to their original purpose of enabling members to initiate business for consideration or decision by the House where that was the express intention. Guidelines covering both members' statements and notices of motion were agreed by the Chief Whips' Forum and were published in the ATC of 13 February. These matters were more fully described in previous issues of this publication (*See Item 1, Issue 6; and Item 11, Issue 7*).

However, a system for the selection and scheduling of motions of which notice had been given continued to receive attention in the latter half of 2003. Proposals in this regard were developed by a monitoring committee of the Chief Whips' Forum, chaired by the Deputy Chairperson of Committees. The proposals in broad terms were that party whips should in consultation with the relevant

members review their notices of motion given in the course of the year and published on the Order Paper and withdraw those that had effectively gone stale. The Chief Whips' Forum would then look at the remaining motions and attempt to reach broad agreement on which motions to prioritise for consideration by the House. For this purpose the Programme Committee would be requested to provide a minimum of two slots per four weeks of session for members' motions.

These proposals have not yet been formally adopted, but on the basis of the agreement reached in the monitoring committee, most of the parties did in fact review their members' published notices of motion and in the course of September authorised the withdrawal of those that had gone stale, while listing the remaining motions in order of the parties' priorities with a view to the selection process to be undertaken by the Chief Whips' Forum.

Due to time constraints, the process had not been taken further by the time the annual session ended, and in terms of the Rules all notices of motion on the Order Paper lapsed on the last sitting day for the year, 27 November.

Review of guidelines

Concerning the Guidelines for notices of motion that had been approved by the Chief Whips' Forum and published in the ATC, the Speaker in a ruling in the House on 11 June concerning an irregular notice of motion, reminded members that practices for notices of motion were in the process of being developed. She went on to inform members that the whips had decided to review the guidelines for notices of motion that had been published in February and that, pending the outcome of that review, she would continue to base her rulings on the Rules and established practice.

Before the Speaker gave this ruling, the Chief Whip of the Opposition, Mr D H M Gibson, on 5 June gave notice of a particularly lengthy motion. The Chairperson of Committees, then presiding, interrupted him with an appeal to cut his notice of motion short, if possible, "in keeping with the current discussions and guidelines". Mr Gibson then justified the length of his notice of motion by referring to discussions that had taken place that day between the Whips and the Speaker. The Chief Whip of the Majority Party contested the outcome of the discussions referred to by Mr Gibson and held that the motion was not in line with the established understanding (Hansard, 5 June).

The Chairperson of Committees subsequently on 12 June issued a written ruling, which was circulated to all parties, noting the Speaker's ruling in the House the previous day and stating that "on the basis applied by the Speaker, Mr Gibson's notice of

motion complies with the Rules and established practice and is in order". He went on to request that the Whips speedily finalise their review of applicable criteria and appealed to members in the interim to "make every effort to maintain the intended distinction between notices of motion and members' statements".

No formal outcome of a review of the guidelines was announced during 2003, but the practice subsequently indicates that the appeal of the Chairperson of Committees was heeded by all parties.

7. APPLICATION OF RULE OF ANTICIPATION TO MEMBERS' STATEMENTS

The Guidelines on members' statements published in the ATC of 13 February provide that the normal rules of debate apply to statements.

During members' statements, on 18 November, a member made a statement on a matter that had been specifically scheduled for debate in the House the following day. The Speaker was requested on a point of order to consider whether the statement should not have been disallowed on the grounds of the Rule of Anticipation.

In response, the Speaker in a ruling on 27 November agreed that the member in making the statement had clearly anticipated and pre-empted the scheduled debate. Noting that members' statements were a new feature of proceedings, she confirmed that the Chair would apply the Rule of Anticipation (Rule 68) to members' statements "in circumstances where there is a clear opportunity in the near future for a member to make his/her input on a particular subject".

She therefore appealed to members generally to observe the Rule of Anticipation when making statements and to raise a point of order when they thought a member was transgressing the Rule.

She noted in passing that the Rule of Anticipation in essence did not impose a limitation on members' freedom of speech, but required of them to make their input at the appropriate time (Hansard, 27 November).

QUESTION TIME IN THE HOUSE

8. PUBLICATION OF WRITTEN QUESTIONS DURING A CONSTITUENCY PERIOD

On 25 September, Mr M J Ellis of the DA wrote to the Speaker, requesting *inter alia* that written questions be published in the constituency period scheduled from 29 September to 7 November. The practice to date had been not to publish Question Papers



in constituency weeks as members are expected to focus on their constituency work during such periods.

A sitting of the National Assembly had provisionally been scheduled for 21 October, ie in the middle of the constituency period, so the Questions Office had earlier informed members that questions for written reply would be published in that week. Though the plenary was subsequently cancelled (*See Item 2 above*), the publication of questions for written reply went ahead.

Furthermore, the Deputy Speaker, in response to Mr Ellis's request, informed him that she had agreed that questions for written reply could be published weekly from 24 October until 28 November, ie the end of the fourth term. Question Papers were therefore published in the three weeks preceding the start of plenaries on 10 November.

MEMBERS

9. ALLEGATIONS OF UNDISCLOSED FINANCIAL INTERESTS OF DEPUTY PRESIDENT

Allegations concerning financial interests and liabilities of the Deputy President were reported on by the media during the course of the year. These allegations led to an investigation by the Public Protector into an alleged breach of the Executive Ethics Code and a separate investigation by the Joint Committee on Ethics and Members' Interests into an alleged breach of the Code of Conduct for Members of Parliament.

Public Protector's Report

The Chief Whip of the Opposition in the National Assembly, Mr D H M Gibson, in terms of the Executive Members' Ethics Act, 1998, lodged a complaint with the Public Protector of an alleged breach of the Executive Ethics Code by the Deputy President, Mr J G Zuma. After conducting an investigation into the allegations, the Public Protector reported to the President who in accordance with the Act submitted a copy of the Report to the National Assembly on 14 October together with his comments (ATC of 16 October).

Concerning allegations affecting the Deputy President as contained in a draft charge sheet in terms of which a financial adviser to Mr Zuma, Mr S Shaik, was to be charged in court by the prosecuting authorities of, *inter alia*, fraud and corruption, the Public Protector reported that he had decided not to investigate the allegations at that stage as such an investigation would be improper and unlawful, based on the fact that the relevant matters were *sub judice*.

Concerning other allegations that had been made relating to the non-disclosure of

financial interests and liabilities, the Public Protector reported that these had been properly declared in the confidential part of the Register.

The President, in his letter to Parliament accompanying the Report, stated that he accepted the findings of the Public Protector.

The letter and Report were tabled in the Assembly and referred to the Joint Committee on Ethics and Members' Interests.

Report of Joint Committee on Ethics and Members' Interests

The Joint Committee also investigated a complaint concerning the alleged non-disclosure of benefits by the Deputy President in the members' Register of Financial Interests. Details of the alleged non-disclosures had been forwarded to the Speaker by the National Prosecuting Authority and these were made available to the Joint Committee.

In its report to the National Assembly dated 19 November (ATC of 19 November), the Joint Committee, in the absence of evidence to the contrary, accepted the Deputy President's submissions that certain loan agreements he had entered into were in fact interest-bearing and accordingly were not financial benefits that needed to be disclosed. The Joint Committee accordingly found that there had been no breach of the Code.

The Joint Committee's report was adopted by the Assembly on 25 November with a number of parties recording their dissent.

10. ALLEGED BREACHES OF CODE OF CONDUCT BY MEMBERS

Apart from its investigation into an alleged breach of the Code of Conduct by the Deputy President (*See Item 9 above*), the Joint Committee on Ethics and Members' Interests also investigated allegations of breaches of the Code by two other members of the National Assembly and reported its findings to the Assembly on 19 November (ATC of 19 November).

In the case of Mr D A A Olifant, the allegation was dismissed, but flowing from the finding the Joint Committee urged the member and all other members "to exercise caution in their financial dealings in order to avoid the public perception of impropriety that can affect the good standing of Parliament".

In the case of Mr A M Maziya, the Joint Committee found that he had breached the Code in that he had partially disclosed his financial interests but had failed to disclose income received. The Joint Committee recommended that he be cautioned in respect of the details of shareholding and that he be issued with a written reprimand by the Speaker in respect of the non-disclosure of income.

Both Reports were adopted by the National Assembly on 25 November (the IFP dissenting to the adoption of the Report on Mr Maziya), after they had been introduced by the chairperson of the Joint Committee.

11. DISCIPLINARY STEPS AGAINST MEMBER FOR ABUSE OF TRAVEL AND PARMED FACILITIES

Allegations of the abuse of air travel vouchers and Parmed facilities against Mr B M Ntuli, MP were brought to the attention of the Speaker by the Deputy Speaker in March 2003. Having satisfied herself that the allegations warranted further investigation, she requested the Disciplinary Committee on 18 August, chaired by Mr G Q M Doidge, MP, as the Deputy Speaker who normally chairs the Committee is the Chairperson of the Parmed Board, to investigate the allegations and advise the Speaker on appropriate action.

The Committee presented its report to the Speaker on 17 September. Later that day, the Speaker announced her decision in the House. That decision, based on the findings and recommendations of the Committee was that:

Charges investigated by the Committee

- Members' travel facilities: the member had registered dependants who did not qualify in terms of Parliament's official policy. He had allowed adults to travel on child dependants' vouchers and had allowed non-registered persons to travel on dependants' vouchers. The amount involved exceeded R56 100.
- Parmed facilities: the member was charged with defrauding Parliament and its members by allowing his fiancée to receive treatment and confinement in his daughter's name, and allowing a non-dependant to receive medical treatment in the name of another daughter.

Committee findings

- The Committee reported that the member admitted infringement of the rules in relation to all the charges and pleaded guilty to defrauding Parliament on each specific charge.
- The Committee further reported that, after he had agreed to provide evidence under oath, he initially misled the Committee, despite being warned that lying to the Committee would constitute contempt of Parliament. In addition, the Committee found the member in contempt of Parliament and it regarded this in a very serious light.
- The Committee recommended that the member receive a severe reprimand from the Speaker in the House.
- The Committee further recommended that as there was *prima facie* evidence of

fraud in respect of the travel vouchers and Parmed facilities, the Speaker should refer the relevant information and documentation to the Director of Public Prosecutions and to the political party, the ANC, for further investigation.

- It recommended that the exact extent of travel abuse be identified and recovered from the member.
- It recommended further that all travel benefits for the member and his dependants be immediately withdrawn for the remainder of the term in Parliament.

Speaker's decision

The Speaker accepted the Committee's findings and recommendations. The member was not present in the House at the time when the Speaker announced her decision. She nevertheless proceeded in his absence to issue the severe reprimand in the House. The text of the reprimand was printed in full in the Minutes (Minutes of 17 September).

The Speaker went on to inform the House that the Disciplinary Committee had requested that their view, which she fully endorsed, that the member was not worthy of holding public office, be conveyed to the House. This sentiment would also be referred to the member's political party for attention.

Mr Ntuli, on the same day, 17 September, tendered a letter of resignation from Parliament.

12. FACILITIES FOR FORMER MEMBERS

On 27 November, the National Assembly passed a resolution, effective from 2003, to make available to former members who had served a minimum of five consecutive years in Parliament from 1994 onwards, four single air tickets for every year of service up to a maximum of fifteen years, subject to the following conditions:

- (a) tickets are for the personal use of the former member and his or her spouse/partner when accompanying the former member;
- (b) except for tickets accruing in 2003, which can be rolled over for use in 2004, tickets not used in the year applicable are forfeited; and
- (c) tickets are issued for economy class.

The National Assembly further agreed effective from 2003 to make available to former members who had served a minimum of five consecutive years in Parliament in total either before or after 1994, four single air tickets for every year of service up to a maximum of fifteen years, subject to the same conditions as in the above category. The House further resolved to rescind any previous resolution regarding travel facilities for former members.

13. LEAVE COMMITTEE OF THE NATIONAL ASSEMBLY

The management of leave for members has been on the agenda of the National Assembly Rules Committee since early in 2002.

At its meeting on 23 October 2002, the Rules Committee in the context of implementing sanctions for non-attendance of meetings by members, requested the Chief Whips' Forum to set up a Leave Committee consisting of 4 to 5 members to look at cases of exceptional leave applications. This committee was accordingly set up and composed as follows: Chairperson: Deputy Speaker; ANC 3; DA 1; NNP 1; IFP 1 and smaller parties 1 each.

On 11 June 2003 the Rules Committee extended the mandate of the Leave Committee to "produce a document on management of leave, putting a policy framework in place, and report back to the next meeting in respect of any policy gaps".

The Leave Committee submitted a draft leave policy document to the Rules Committee on 19 November. At this meeting it was agreed that parties would consider a sanction of R500 per day being imposed in respect of unauthorised absence of members, as proposed by the Leave Committee. Implementation details would be looked at thereafter. The matter was not concluded during 2003.

LEGISLATION, COMMITTEES AND FORUMS

14. TIMEFRAMES FOR PASSAGE OF CRIMINAL PROCEDURE AMENDMENT BILL

The *Criminal Procedure Amendment Bill* [B57B-2002] was introduced in the National Assembly and referred to the Portfolio Committee on Justice and Constitutional Development on 3 October 2002. The Committee reported to the House on 29 August 2003 and the Assembly passed the Bill on 9 September. The bill was then sent to the Council for its concurrence.

The Select Committee reported to the NCOP on 8 October. In its report the Committee raised the concern that although the bill was introduced in the National Assembly during the 2002 session of Parliament, it was only referred to the National Council of Provinces on 9 September 2003 and included an amendment to provide for its commencement by no later than 1 November 2003. The Committee pointed out that the commencement date placed the National Council of Provinces under considerable pressure to deal with legislation that had been with the National Assembly for approximately

one year within the space of three to four weeks. The Committee also pointed out that the commencement date placed undue pressure on the President to assent to and sign the bill before 1 November 2003.

The Select Committee then proposed an amendment to the commencement date to omit "1 November 2003 or any earlier date as the President may determine" and to substitute "a date fixed by the President", and stated that care should in future be taken to avoid situations where the Council and the President are perceived to be unduly pressurized to concur with, or assent to, new legislation.

The National Assembly subsequently passed the bill with the commencement date of "1 January 2004 or any earlier date as the President may determine."

15. NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS BILL

The *National Environmental Management: Protected Areas Bill* [B39B-2003] was introduced on 5 August. The purpose of the bill is to bring the system of protected areas in line with the new constitutional and legal order, as well as government's policies and programmes.

Clause 19 of the bill provides that the declaration of an area as a special nature reserve, or as part of an existing special nature reserve, may not be withdrawn and no part of a special nature reserve may be excluded from the reserve except by resolution of the National Assembly.

The Minister or MEC may by notice in the Gazette declare an area as a nature reserve or as part of an existing nature reserve and assign a name to the nature reserve. Clause 24(1) of the bill provides that such declaration may only be withdrawn, in the case of a declaration by the Minister, by resolution of the National Assembly. The bill was passed by the National Assembly on 22 September and by the National Council of Provinces on 26 November.

16. FINANCIAL ADMINISTRATION OF PARLIAMENT AND PROVINCIAL LEGISLATURES BILL

The Joint Rules Committee at its meeting on 19 September deliberated on the mechanism for a Bill on Financial Administration of Parliament to be initiated by Parliament. The Committee decided that a draft resolution be placed on the Order Paper of the National Assembly and the National Council of Provinces directing both the Portfolio Committee on Finance and the Select Committee on Finance to consider legislative proposals concerning the draft bill.

On 23 September the National Assembly adopted a motion instructing the Portfolio Committee on Finance to consider the subject

of the financial administration of Parliament with a view to introducing a bill dealing with the matter and to report to the House by no later than the end of November 2003.

The Committee was unable to complete its work on the subject by the end of November and on 27 November the Assembly agreed to a motion to extend the date by which the Committee was to report to the House in accordance with the resolution adopted on 23 September 2003 to no later than 28 February 2004.

17. PROTECTION OF CONSTITUTIONAL DEMOCRACY AGAINST TERRORIST AND RELATED ACTIVITIES BILL

The *National Assembly passed the Protection of Constitutional Democracy against Terrorist and Related Activities Bill* [B12B-2003] on 20 November. The bill, *inter alia*, seeks to introduce measures to enable the Republic to combat the financing of terrorism, to facilitate the investigation of terrorist acts by providing for investigating powers and to provide for parliamentary supervision in respect of any notice issued by the President, pursuant to resolutions of the Security Council of the United Nations. In terms of clause 25 of the bill the President is required to give notice by proclamation in the Gazette of a specific entity that the Security Council of the United Nations has identified as being-

- (a) "An entity who commits, or attempts to commit, any terrorist and related activity or participates in or facilitates the commission of any terrorist and related activity; or
- (b) An entity against whom Member States of the United Nations must take the actions specified in Resolutions of the said Security Council, in order to combat or prevent terrorist and related activities".

Every such Proclamation must, in terms of the bill, be tabled in Parliament for its consideration and decision.

18. PREVENTION AND COMBATING OF CORRUPT ACTIVITIES BILL

The *National Assembly passed the Prevention and Combating of Corrupt Activities Bill* [B19 B-2002] on 27 November. The Bill provides for "offences in respect of corrupt activities relating to specific persons". These include offences relating to members of a legislative authority, which includes Parliament, provincial legislatures and municipal councils.

A member of the legislative authority is prohibited from accepting any gratification for the benefit of himself or another person in order to, personally or by influencing another person to act, in an improper manner as

specified in the Act with reference to information acquired in the course of the exercise or carrying out of duties arising out of a constitutional or any legal obligation.

A member of the legislative authority is also prohibited from acting or influencing another person to act in a manner that amounts to the abuse of a position of authority, a breach of trust or the violation of a legal duty or a set of rules.

Furthermore, other persons are prohibited from giving any gratification to a member of the legislative authority, whether for the benefit of that member or for the benefit of another person, to act in any manner described above.

According to the provision, the actions concerned on the part of a member include-

- "(a) absenting himself or herself from;
- (b) voting at any meeting of;
- (c) aiding or assisting in procuring or preventing the passing of any vote in;
- (d) exerting any improper influence over the decision making of any person performing his or her functions as a member of; or
- (e) influencing in any way, the election, designation or appointment of any functionary to be elected, designated or appointed by,

the legislative authority of which he or she is a member or of any committee of that legislature".

A person found guilty of any of the offences mentioned above may be liable for any of the following penalties -

- (a) a fine or imprisonment up to life imprisonment;
- (b) imprisonment for a period not exceeding 18 years; or
- (c) imprisonment for a period not exceeding three years.

The bill also provides that any person who holds a position of authority and who knows or ought reasonably to have known of the commission of any offence under chapter 2 of the bill involving an amount of R100 000 or more, must report such knowledge or suspicion to any police official. The police official concerned must, upon receipt of the report, deal with it in the manner directed by the National Commissioner of the South African Police Services.

The Commissioner is required to publish the directions contemplated above in the Gazette within three months of the commencement of the Act. The directions must be tabled in Parliament before publication thereof in the Gazette.



19. JUDICIAL MATTERS SECOND AMENDMENT BILL

The National Assembly passed the *Judicial Matters Second Amendment Bill* [B41 B-2003] on 12 November 2003. Clause 7 of the bill provides that the National Director of Public Prosecutions must submit a report to the Cabinet member responsible for the administration of Justice within 14 days after the end of January and of July of each year. The report should contain the particulars indicated in the Table of Awaiting Trial Accused in respect of each accused whose trial has not yet commenced and who, by the end of the month in question, has been in custody for a continuous period exceeding-

- (a) 18 months from date of arrest, where the trial is to be conducted in a High Court;
- (b) 12 months from date of arrest, where the trial is to be conducted in a regional court; and
- (c) six months from date of arrest, where the trial is to be conducted in a magistrate's court.

The Cabinet member responsible for the administration of justice must table the report in Parliament within 14 days after receiving it.

20. INTRODUCTION BY COMMITTEE OF PUBLIC AUDIT BILL

As reported in the previous Issue (*See Item 23, Issue 7*), the Assembly on 24 June 2003 by resolution established an ad hoc committee with the mandate to introduce a bill on the objects contained in a legislative proposal received from the Audit Commission reviewing the public auditing function. The Committee was required to complete its task by 19 September.

On 18 September the House by resolution gave the Committee an extension to 26 September, when it was given a further extension to 28 November. On 25 November, two days before the Assembly's adjournment for the year, the Committee issued a progress report indicating that a final draft of the bill had been approved and that it was being prepared for publication and introduction. The report was adopted by the House on 27 November. In terms of the Rules a committee may introduce a bill only when the Assembly is in session. Introduction of the bill would therefore await the commencement of the 2004 session.

21. JUDICIAL OFFICERS (AMENDMENT OF CONDITIONS OF SERVICE) BILL

The *Judicial Officers (Amendment of Conditions of Service) Bill* [B72B-2001] was passed by the National Assembly on 26 June 2003. The following provisions relate specifically to Parliament.

Appointment of acting magistrate

The Minister for Justice and Constitutional Development may, after consultation with the head of the court concerned, appoint any fit and proper person in the place of any magistrate who is not available or appoint such person to act as a magistrate in addition to any magistrate of a regional division for a period determined by the Minister at the time of the appointment, but the period so determined may not exceed three months. The Minister must inform Parliament and the Magistrates Commission whenever any vacancy in the office of a magistrate has remained unfilled for a continuous period exceeding three months.

Remuneration of magistrates

Magistrates are entitled to such salaries, allowances or benefits as determined by the President by notice in the Gazette and approved by Parliament. The notice issued by the President in this regard must be submitted to Parliament for approval before publication. Parliament must by resolution approve the notice, whether in whole or in part, or disapprove the notice. The remuneration of magistrates shall not be reduced except by an Act of Parliament.

Suspension of a magistrate

The Minister may provisionally suspend a magistrate on the advice of the Magistrates' Commission. A report in which the provisional suspension of a magistrate and the reasons for such action are made known, must be tabled in Parliament by the Minister within seven days of such suspension, if Parliament is then in session, or, if Parliament is not then in session, within seven days after the commencement of its next ensuing session. Parliament must pass a resolution as to whether or not the provisional suspension of the magistrate is confirmed as soon as is reasonably possible. If Parliament passes a resolution that the provisional suspension is not confirmed, the suspension lapses.

The provisional suspension of a magistrate lapses after 60 days from the date of the suspension unless the Commission, within that period, commences its inquiry into the allegations in question by serving a written notice containing the allegations concerned on the magistrate. The inquiry referred to above must be concluded as soon as possible, and the Commission must submit a report on the progress in respect of that inquiry to Parliament every three months. Parliament may, at any stage pending the conclusion of the inquiry or a resolution referred to above, pass a resolution setting aside the suspension of the magistrate concerned, whereupon the suspension shall lapse.

If the Commission recommends that a magistrate be removed from office on the

grounds of misconduct, continued ill-health or incapacity to carry out the duties of his/her office efficiently, the Minister must suspend that magistrate from office or, if the magistrate is at that stage provisionally suspended, confirm the suspension. A report in which the suspension of a magistrate and the reason for such action are made known, must be tabled in Parliament by the Minister within 14 days of such suspension, if Parliament is then in session or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session. Parliament must pass a resolution as to whether or not the restoration to his or her office of a magistrate so suspended is recommended as soon as is reasonably possible. After a resolution has been passed by Parliament, the Minister shall restore the magistrate concerned to his or her office or remove him or her from office, as the case may be.

If the Commission determines that the remuneration of a magistrate shall be reduced or withheld during a period of suspension, a report regarding that determination and the reason for it must be tabled in Parliament by the Minister within seven days of such determination, if Parliament is then in session or, if Parliament is then not in session, within seven days after the commencement of its next ensuing session. Parliament must, as soon as is reasonably possible, consider that report and pass a resolution as to whether or not the determination concerned is confirmed, either with or without amendment, or set aside. If Parliament passes a resolution that the determination is set aside, that determination shall lapse with effect from the date when the determination was first made.

Salary, allowances and benefits of office-bearers

The Independent Commission for the Remuneration of Public Office-Bearers shall publish annually the salary, allowances or benefits of any office-bearer and the resources which are necessary to enable an office-bearer to perform his/her functions effectively. Such recommendations must be published in the Gazette at least once a year in respect of each category of office-bearers and must be submitted to Parliament before publication.

Remuneration of constitutional court judges and judges

Any person who holds office as a Constitutional Court judge or as a judge, whether in an acting or permanent capacity, shall be paid an annual salary and such allowances or benefits as determined by the President by notice in the Gazette and approved by Parliament. A notice issued as stated above must be submitted to Parliament for approval before publication. Parliament must, by resolution approve the notice, whether in whole or in part or disapprove the notice.

22. ELECTORAL LAWS AMENDMENT BILLS

(1) Electoral Laws Amendment Bill

Prior to the enactment of the *Electoral Laws Amendment Bill* [B54D-2003] there was no legal mechanism governing the electoral systems to be used in the 2004 general elections. The 1999 elections were conducted in terms of the transitional arrangements set out in schedule 6 of the Constitution. Section 46 of the Constitution requires Parliament to, *inter alia*, pass an Act in terms of which an electoral system can be determined for the 2004 general elections.

The *Electoral Laws Amendment Bill* was introduced by the Minister of Home Affairs on 1 September 2003 and was referred to the Portfolio Committee on Home Affairs. The objects of the bill include revising voter registration, voters' rolls, voting districts, voting stations; making provision for prisoners who are awaiting trial only to vote; repealing obsolete provisions; providing assistance to disabled persons and conciliation in disputes. The bill amends various provisions of the Electoral Act, 1998, the Electoral Commissions Act, 1996 and schedule 2 of the Interim Constitution which details the system of representation in the NA and provincial legislatures. New provisions inserted by the bill include:

Voters' Roll

The Chief Electoral Officer must provide, upon the payment of a fee, copies of the voters' roll to all the registered political parties contesting the elections. It is an offence to use the voters' roll for purposes other than the elections. Besides political parties, anyone using the voters' roll will face a fine or will be imprisoned for up to one year or will face both a fine and imprisonment.

Prisoners

A person who is in prison on election day for the National Assembly or a provincial legislature and whose name appears on the voters' roll for another district is deemed registered for the voting district in which he/she is in prison. He/she may only vote if he/she is not serving a prison sentence without the option of a fine.

Electoral System

The lists of candidates; the allocation of seats; the designation of candidates from lists as representatives in those seats; and the filling of vacancies in the elections to the National Assembly and provincial legislatures must conform to Schedule 1A of the Electoral Act, 1998.

Allocation of seats

9A. The final allocation of seats to a party will be based on provisional allocations of such



seats unless recalculated and/or adjusted. If a party forfeits a seat that was allocated to it, the seats provisionally allocated to other parties must be recalculated.

Designation of Representatives

A party must indicate to the Electoral Commission from which list a candidate will be designated or in which legislature a candidate will serve. If a party fails to do so the name of such a candidate must be deleted from all the lists.

Vacancies

A party must fill a vacancy by nominating a person from its original list or, where applicable, from a list submitted by a party in terms of item 5(2) of Schedule 6A to the Constitution. The members of a party represented in the legislature but which dissolves or ceases to exist must vacate their seats. The seats in question must be allocated to the remaining parties.

Party Registration

A party shall apply to the Chief Electoral Officer, on a prescribed application form, for registration. The application shall be accompanied by, among others, the required documentation, the deed of the party's foundation; the prescribed amount; and that party's constitution.

Rejection of Party Registration

The Chief Electoral Officer may not register a party if fourteen days have not elapsed since the submission of the application; if a proposed name or symbol resembles that of any other registered party; or if the proposed name or symbol contains anything which portrays the propagation or incitement of violence or hatred or which causes serious offence to any section of the population on the grounds of race, gender, sex, ethnic origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language; or which indicates that persons will not be admitted to membership or welcomed as supporters of the party on the grounds of their race, ethnic origin or colour.

Change of Party's Name or Symbol

A party wishing to change its registered name or symbol must apply, on the prescribed form, to the Chief Electoral Officer. After satisfying him/herself, he/she shall withdraw the registration certificate issued to a party, and issue a new registration certificate reflecting the change.

Cancellation of Registration of Party

The Electoral Commission may direct the Chief Electoral Officer to cancel the registration of a party when it is satisfied that such a party no longer functions or has no intention to

participate or has not participated in a national, provincial or municipal general election.

Passage of bill

On 19 September the report of the Portfolio Committee on the bill was tabled in the ATC. On 22 September the Chief Whip of the Majority Party moved a motion that Rule 253(1) be suspended for the purposes of conducting the Second Reading debate on the bill. In terms of this rule the debate on the Second Reading of the bill may not commence before at least 3 working days have elapsed. The bill was passed by the NA on 26 September and by the NCOP on 21 October.

(2) Electoral Laws Second Amendment Bill

On 20 November the Joint Subcommittee of the Joint Programme Committee agreed to a request from the Leader of Government Business (LOGB) to fast-track the *Electoral Laws Second Amendment Bill* [B73-2003]. The bill was referred to the Portfolio Committee also on 20 November. The objects of the bill are to amend the long title of the Electoral Laws Amendment Act, 2003, by substituting the more acceptable phrase "voters with disabilities" for the politically insensitive phrase "handicapped voters", and to amend the same Act so as to enable citizens who are temporarily absent from the Republic due to study, employment, sport, vacation or business activities to apply for special votes.

During the public hearings on the bill the IEC proposed an amendment which would make provision for special votes to be cast due to a temporary absence from the Republic for study, employment or business activities. The amendment, however, was voted down by a majority of members on the Committee. The Committee agreed that special provision should only be made for government officials and their households to vote abroad.

The bill was passed by the NA on 25 November and by the NCOP on 27 November.

23. ARMAMENTS CORPORATION OF SOUTH AFRICA, LIMITED BILL

The *Armaments Corporation of South Africa, Limited Bill* [B18-2003] was introduced on 20 March and was passed on 18 November. The purpose of the bill is to accommodate the significant changes which occurred during the 1990s in respect of the Armaments Corporation of South Africa, Limited which was established by section 2 of the Armaments Development and Production Act, 1968 (Act No. 57 of 1968). Some of the changes were that:

- the functions of developing and manufacturing armaments were transferred from the Corporation to Denel (Pty) Ltd;

- control over conventional armament was transferred to the National Conventional Arms Control Committee; and
- the creation of the Defence Secretariat in 1995 led to greater control over the acquisition of armament by the Department of Defence.

In terms of clause 7(3) of the bill, no member of the NA, NCOP, a provincial legislature or a municipal council may be appointed as a member of the Board of Directors of the Corporation.

24. MEDIATION COMMITTEE ON LIQUOR BILL

The Mediation Committee was established in terms of section 78 of the Constitution and Joint Rules, with a view to finding agreement between the two Houses, in respect of provisions of the *Liquor Bill*.

The *Liquor Bill* [B 23B – 2003] was passed by the NA as a section 76 bill on 2 September 2003, and referred to the NCOP for concurrence. The NCOP passed the bill with amendments, and transmitted it to the NA for consideration.

The bill was then referred to the Portfolio Committee on Trade and Industry for a report and recommendation on the amendments.

When the bill as amended came before the Assembly, the Deputy Chief Whip of the Majority Party, on 13 November, moved that the House refuse to pass the Liquor Bill as amended by the Council, to which motion the House agreed. The Bill was accordingly referred to the Mediation Committee on 18 November in terms of Joint Rule 186(1)(b) of the Joint Rules of Parliament.

In terms of section 78 of the Constitution, a Mediation Committee consists of one delegate from each provincial delegation in the NCOP, designated by the delegation; and nine members of the National Assembly elected by the House.

The National Assembly on 18 November elected its representatives on the Committee in accordance with the Constitution and National Assembly Rules 225 and 226.

The Mediation Committee met on 19 November and, after deliberations, agreed to submit another version of the bill. The *Liquor Bill* [23F – 2003] was submitted by the Committee on 20 November and passed by both Houses.

25. PUBLIC ACCOUNTS COMMITTEE'S OVERSIGHT OF FINANCIAL STATEMENTS OF PARLIAMENT

The Committee on Public Accounts (SCOPA) is mandated in the Rules to consider the financial statements, audit reports and any reports issued by the Auditor-General on the affairs of any executive organ of state, constitutional institution or other public body.

Although itself a forum of Parliament, it decided to consider the Annual Reports of Parliament and the Reports of the Auditor-General on the annual financial statements of Parliament for the years 2000/01 and 2001/02 and held hearings on those reports.

In its Forty-Eighth Report for the year, dated 14 August 2003 (ATC of 5 September) it reported to the Assembly on its findings.

The Committee noted the continuing uncertainty pertaining to the legislative financial management framework applicable to Parliament relative to the Public Finance Management Act, No 1 of 1999, (PFMA) which represents the public sector financial management best practice framework. The Committee noted with concern the slow progress being made with the introduction of a legislative framework for Parliament and the nine provincial legislatures and accordingly recommended "that Parliament urge the Presiding Officers of Parliament to facilitate the process of introducing draft legislation in this regard within the next twelve months". (For progress with the introduction of the relevant bill (*See Item 16 above*).

The PFMA in Section 3(2) provides that-

To the extent that a provision of this Act applies to -

Parliament, any controlling and supervisory functions of the National Treasury in terms of that provision are performed by the Speaker of the National Assembly and the Chairperson of the National Council of Provinces, acting jointly.

The Committee noted that in one financial year Parliament's budget had been exceeded by R17,463 million which would have been regarded as unauthorised expenditure if the relevant provisions of the PFMA had been applicable. The Committee therefore strongly recommended "that Parliament urge the Presiding Officers of Parliament to develop regulations consistent with Treasury Regulations to regulate the use of funds which..... might be regarded as unauthorised".

The Committee in its report also made recommendations on various matters of detail concerning the financial management of Parliament.

The Assembly adopted the Committee's report on 22 September without debate.

26. COMMUNIQUE OF STEERING COMMITTEE ON PROTOCOL TO THE TREATY ESTABLISHING THE AFRICAN ECONOMIC COMMUNITY (AEC) RELATING TO THE PAN AFRICAN PARLIAMENT (PAP STEERING COMMITTEE)

At its second meeting held on 8 and 9 December, the Steering Committee issued a further Communique in which, *inter alia*, it



requested National Parliaments, which had not done so, to nominate and elect their 5 Members to the Pan African Parliament and submit the names of their representatives before 10 February 2004 to the AU Commission.

27. REPORTS OF THE WORKING GROUP ON AFRICAN UNION AND ELECTION OF PAP MEMBERS

The Working Group on the African Union was established by Assembly resolution on 16 November 2001 to consider the implementation of the Constitutive Act of the African Union. In the period under review, the Working Group tabled three reports, namely, the eighth, ninth and tenth reports. The Working Group, in its tenth report tabled on 19 November, recommended that the House elect the 5 members who are to serve on the Pan African Parliament, in terms of the PAP Protocol. On 26 November, the 5 members were elected (*See Item 3 above*).

28. TRADITIONAL LEADERSHIP AND GOVERNANCE FRAMEWORK BILL

The *Traditional Leadership and Governance Framework Bill* [B58B-2003] was introduced on 4 September. The purpose of the bill is to regulate matters associated with traditional leadership so as to achieve the overall objectives set out in the White Paper on Traditional Leadership and Governance, taking cognizance of the gender issue. The bill seeks to provide a national framework and norms and standards in terms of which provincial legislation will be enacted that will take into account provincial specifics.

The bill deals with a range of issues, including, the recognition of traditional communities and traditional councils; leadership positions within the institution of traditional leadership; roles and functions of traditional leadership; and dispute resolution and establishment of a commission on traditional leadership disputes and claims.

On 11 November the NA adopted the report of the Portfolio Committee on Provincial and Local Government which dealt with the bill (ATC of 29 October).

A legislative programme is necessary to attend to outstanding issues from the White Paper and as a consequence of the passing of the Traditional Leadership and Governance Framework Bill. Some of these would include:

- Amendment of the legislation on the National House of Traditional Leaders and the various Provincial Houses of Traditional Leaders;
- Regulations required to be passed in terms of this bill;
- Amendments to legislation dealing with the pension, medical aid and other benefits of traditional leaders;

- Legislation assigning additional functions to traditional leadership as envisaged in the White Paper, where necessary;
- Repeal or amend pre-1994 legislation dealing with traditional leadership.

The Committee concluded its report by stating that in view of the State's commitment to providing greater resources to, and enhancing the capacity-building programmes of, traditional leaders, there is a need for the Executive and Parliament to monitor the activities of traditional leadership institutions appropriately. The bill was passed by the NA on 11 November and by the NCOP on 26 November.

Referral of Parliamentary bills to National House of Traditional Leaders

The bill specifically provides (in clause 18) that any parliamentary bill pertaining to customary law or customs of traditional communities must, before it is passed by the House of Parliament where it was introduced, be referred by the Secretary to Parliament to the National House of Traditional Leaders for its comments. The National House must, within 30 days from the date of such referral, make any comments it wishes to make.

29. IMPLEMENTATION PLAN IN RESPECT OF RECOMMENDATIONS OF THE JOINT AD HOC SUBCOMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

Introduction

At the beginning of 1999, Parliament engaged the services of a consultant to research Parliament's oversight functions and to:

- (a) Identify areas in which Parliament is required to exercise oversight;
- (b) Assess existing Parliamentary mechanisms and procedures to hold the Executive accountable; and
- (c) Make recommendations to improve the efficiency and effectiveness of Parliamentary oversight.

The research was to be conducted against the background that:

- (a) The Constitution gives Parliament specific responsibilities for oversight of the Executive. In terms of section 42(3) of the Constitution the functions of the National Assembly include scrutiny and oversight of Executive action;
- (b) Section 55(2) of the Constitution places an obligation on the National Assembly to provide for mechanisms to ensure that executive organs of state in the national sphere of government are accountable to it; and to maintain oversight of the exercise of national executive authority and any organ of state; and

- (c) Parliament had not yet put in place sufficient mechanisms and procedures to fulfill its oversight functions and to hold state departments and organs of state accountable.

The consultant's report was submitted to Parliament in July 1999. The Joint Rules Committee (JRC) established an ad hoc Joint Subcommittee on Oversight and Accountability and referred the consultants' report to this committee for consideration and to make recommendations to the Joint Rules Committee on its findings.

The Joint Subcommittee engaged in a series of meetings and interviewed key Parliamentary role-players before presenting the Joint Rules Committee with its final report on 3 September 2002.

On 25 March 2003, the Joint Rules Committee approved the recommendations contained in the Joint Subcommittee's report and requested that an implementation plan be considered in respect of the recommendations contained in the report.

Implementation plan

On 19 August, the Joint Rules Committee adopted the following implementation plan:

Implementation Mechanism

The Presiding Officers being the implementing authority of Parliament will require the assistance of a dedicated Task Team, which will be chaired/convened jointly by the Presiding Officers. The Task Team should consist of key Members who will be able to dedicate time and commit the resources of their office to the process. In this regard the following people should be considered: The Chief Whip and Deputy Chief Whip of the majority party or their representatives, the Chairpersons of Committees of the two Houses, two (or more) chief whips from opposition parties and six to ten other Members.

The Task Team will in turn have three components:

(1) The Chair of Committees Component

This component should be chaired jointly by the Chairpersons of Committees of the two Houses. The aspects that this component will consider and report to the Task Team on will be:

- (a) The drafting of the Best Practice Guide for Committees to capture *inter alia* the best oversight practices of committees;
- (b) Drafting guidelines for Portfolio and Select Committees to allow for joint planning of oversight work;
- (c) Drafting protocols to ensure structured communication between committees of the two Houses;
- (d) Capacity development in Select and Portfolio Committees; and

- (e) Developing a data compilation or record keeping system and monitoring and tracking mechanism in the Committee Section.

This component will require the technical assistance of and work closely with the Head of the Committee Section and draw in further technical capacity from within Parliament.

(2) The Budget Legislation Component

This component will be chaired jointly by the Chairpersons of the Budget Committee and should essentially develop legislation referred to in Section 77(2) of the Constitution. This component will conduct research and develop a draft policy in terms of section 77(2) and finally draft proposed legislation. In addition, this component will require the technical assistance of researchers and legal advisers/drafters.

(3) The Projects Component

The tasks of this component include:

- (a) The drafting of the Constitutional "Landscape" document including commentary from key constitutional negotiators;
- (b) An audit of the various bodies exercising public powers or performing public functions and the resulting delineation process; and
- (c) Developing a draft proposal toward a policy to be adopted in terms of section 55(2)(b)(ii) of the Constitution.

This component may also be tasked with drafting the option preferred by the JRC in regard to formalized Accountability Standards.

Immediately Implementable Matters

(1) Chapter 9 Institutions

The matters regarding the resolutions on organising workshops, debates and discussions and the consultative process aimed at engaging the Institutions Supporting Democracy, are matters that the presiding officers could implement without delay.

(2) Vision and Mission

There is already a process underway to develop a Vision and Mission Statement for Parliament and this process should continue and feed into the Task Team for strategic planning and refining for adoption at the JRC.

(3) Subcommittee on Review of Rules

There should be a rule drafted through the Joint Subcommittee on the Review of Rules to implement the resolution requiring each new Parliament to assess and review its oversight capabilities at least once during its five year life-span.



The matter of programming more oversight debates should also immediately be referred to the Programme Committee for implementation.

Conclusion

The one matter still outstanding relates to Accountability Standards and the JRC is yet to consider which of the two options given in the Subcommittee's report it will adopt, or if indeed a third option should be considered.

30. OVERSIGHT FUNCTIONS OF JOINT STANDING COMMITTEE ON INTELLIGENCE EXTENDED

The functions of the Joint Standing Committee on Intelligence (JSCI) were altered in 2002 (*See Item 21, Issue 6*) to include oversight of the administration, financial management and expenditure of the Intelligence Services.

The *General Intelligence Laws Amendment Bill* [B47D – 2003] now specifically extends that oversight function also to the "Intelligence Service Entities" which include Comsec, the National Academy of Intelligence and the Office for Interception Centres as defined in Intelligence Laws.

Furthermore, the Intelligence Service Council is required to report annually to the Minister on its activities and findings. The Minister in turn must submit the report to the JSCI. The bill provides that the report must not contain confidential information that would be detrimental to national security.

Passage of bill

The *General Intelligence Laws Amendment Bill* was tabled and introduced on 15 August 2003. As the Assembly was not sitting at the time, by decision of the Speaker on 22 August the bill was referred to an ad hoc committee which was instructed to confer with the Joint Standing Committee on Intelligence and the appropriate committee of the NCOP (ATC of 22 August). The use of an ad hoc committee for bills on intelligence matters has become the practice (*See Item 20, Issue 6*).

The bill was passed by the Assembly on 25 September, without debate. After the NCOP had passed it with a proposed amendment on 13 November, the Assembly passed an amended version of the bill on 26 November.

BUDGETARY MATTERS & MONEY BILLS

31. MONEY BILL (PENSIONS SECOND SUPPLEMENTARY BILL) REJECTED BY NCOP

A member of the public petitioned the National Assembly in 1995 and again in 2001 for additional pension benefits. A bill giving

effect to the successful petition of 1995 was not finalised by the end of the life of the Parliament and therefore lapsed. In regard to the petition submitted in 2001, on 14 November 2002 the National Assembly, on the recommendation of the Portfolio Committee on Private Members' Legislative Proposals and Petitions, granted the petitioner a monthly pension of R2 353,48 with effect from 1 December 2002.

The *Pensions Second Supplementary Bill* [B 59-2003] (a money bill) was introduced to give effect to this decision of the National Assembly.

The bill was passed by the NA on 11 November and referred to the NCOP for concurrence. On 20 November the NCOP rejected the bill.

In terms of section 75(1)(c) of the Constitution and Assembly Rule 295, the bill was put directly on the Order Paper of the Assembly for reconsideration. On 25 November the bill was, on a motion by the Deputy Chief Whip of the Majority Party, passed again. The bill was accordingly sent to the President for assent.

32. TEXTUAL CORRECTIONS TO REVENUE LAWS AMENDMENT BILL

On 25 November, after the First reading debate on the *Revenue Laws Amendment Bill* [B 71-2003] had been concluded and before the question that the bill be read a first time had been put, the Chairperson of Committees informed the House that at the request of the Minister of Finance certain textual corrections should be made to the bill as printed. The Chairperson announced the nature of the corrections and thereupon put the Question: "That the bill, with the textual corrections, be read a first time". The textual corrections were also printed in the Minutes (*See Item 28, Issue 7*).

STATUTORY FUNCTIONS OF THE NATIONAL ASSEMBLY

33. SEASPACE APPROVAL BY THE NATIONAL ASSEMBLY

In terms of section 6 (1) of the Sea-Shore Act, No 21 of 1935, "any alienation, letting or permission with regard to the sea-shore or the sea which is not authorised elsewhere in this Act, or in any other law, may only take place with the approval, by resolution, of the National Assembly".

On 2 May, the Minister of Environmental Affairs and Tourism tabled a proposal for the leasing of water space in terms of the above-mentioned Act to the Maribus Industries (Pty) Ltd Seaweed (*Gracilaria*) Cultivation Project.

The Maribus Industries needed the water space in order to engage in mariculture of seaweed in the St Helena Bay area for a period of 15 years. According to the Department, the benefits of this activity would include job creation for between 15 to 50 people.

On 15 May, the proposal was referred to the Portfolio Committee on Environmental Affairs and Tourism for consideration and report. The Portfolio Committee reported on the matter on 14 August and the National Assembly approved the Lease on 5 September.

34. SOUTH AFRICAN BROADCASTING CORPORATION (SABC) BOARD

In terms of section 13 of the Broadcasting Act 44 of 1999, the President appoints twelve non-executive members to serve on the SABC Board, on the advice of the National Assembly. The members of the Board hold office for such period as the President may determine, which period must however not exceed five years.

The Minister of Communications wrote to the Speaker indicating that the tenure of the current non-executive members of the SABC Board was to expire in March 2004, and further requested that the process of appointing a new SABC Board be initiated during the current Parliamentary session.

The Minister's letter was tabled in the ATC of 30 June and referred to the Portfolio Committee on Communications for consideration and report. The Committee was requested to report to the House by 7 November.

The Portfolio Committee reported on 17 November, and on 19 November the House after a division, approved that the following persons as nominated by the Committee, be recommended for appointment as non-executive members of the SABC Board: S E Funde, A Gilwald, N Gosa, F Lagadien, A Maralack, E T Mazwai, A Mbeki, K, Mkhonza, C Msomi, C Qunta, D Swartz and A Trikamjee.

35. PUBLIC SERVICE COMMISSION

In terms of section 196(7) of the Constitution, five Commissioners of the Commission are appointed by the President following the approval of the National Assembly after a public notice process and a recommendation by a committee of the National Assembly.

The Speaker received correspondence, dated 10 September, from the Presidency for the filling of vacancies in the Public Service Commission. The letter requested for approval in terms of section 4(1) of the Public Service Commission Act No 46 of 1997, by the National Assembly of the appointment of five fit and proper persons as contemplated in Section 196 (10) of the Constitution to enable the filling of the following vacancies:

- (a) Two existing vacancies for national commissioners;
- (b) With effect from 1 January 2004, the two vacancies for national commissioners which would arise when the term of office of two commissioners expired on 31 December 2003;
- (c) With effect from 1 July 2004, the vacancy for a national commissioner, which would arise when the term of office of commissioner Prof S S Sangweni expired on 30 June 2004.

The President further advised in the letter that in view of the limited sittings in 2004 due to elections it seemed advisable that the process in the National Assembly regarding the vacancies be finalized before the end of the 2003 Parliamentary session and the names be forwarded to his office by the end of November 2003.

The letter was referred, on 23 September, to the Portfolio Committee on Public Service and Administration for consideration and report. On 18 November, the National Assembly, on the recommendation of the Portfolio Committee on Public Service and Administration, approved the following persons for appointment or reappointment to the Public Service Commission:

N Mxakato-Diseko

K Mokgalong

J H Ernstzen (Existing commissioner), with effect from 1 January 2004.

E G Bain (Existing Commissioner) with effect from 1 January 2004.

S S Sangweni (Existing Commissioner) with effect from 1 July 2004.

36. APPOINTMENT OF CHAIRPERSON OF LOTTERIES BOARD

The Lotteries Act of 1997, in section 3(3), determines that the Chairperson of the National Lotteries Board shall be appointed only after "the relevant committee of the National Assembly has made recommendations to the Minister". The portfolio committee's recommendation in regard to a suitable candidate could, therefore, be made directly to the Minister without the House having to approve the recommendation.

However, in a letter to Speaker dated 24 November, the Minister of Trade and Industry requested that the Portfolio Committee on Trade and Industry's recommendation be placed on the Order Paper for consideration by the House on 27 November (the last sitting day for the year).

The Committee's report was published in the ATC on 26 November and on 27 November the House approved the Committee's recommendation of Mr J A Foster for appointment as Chairperson of the National Lotteries Board.

37. MAGISTRATES COMMISSION APPOINTMENT

The Magistrates Commission includes 4 persons designated by the National Assembly from amongst its members, at least two of whom must be members of opposition parties represented in the Assembly (Section 3(1) of the Magistrates Act).

A vacancy arose in the Commission with the resignation from the Assembly of Mr M A Mzizi on 7 March 2003. The Minister for Justice and Constitutional Development wrote to the Speaker on 25 April requesting the facilitation of the designation of a member to replace Mr Mzizi.

The other members serving on the Commission were Adv S P Holomisa (ANC), Ms F I Chohan-Khota (ANC) and Dr J T Delpont (DA).

The Secretary to the National Assembly, under the direction of the Speaker, sent a memorandum to all parties requesting them to discuss the filling of the vacancy and if they agreed on a nomination, this should be brought to the House for approval by means of a draft resolution. If there was no agreement, nominations should be submitted to the Speaker in order for the House to decide the matter by vote.

Two nominations were received and the Speaker instructed that the matter be put on the Order Paper of 27 November.

However, before the order was called, the second nomination received was withdrawn. There was thus only one nominated candidate, Mr S N Swart of the ACDP, who was duly elected as member of the Magistrates Commission.

38. PETITION FROM THE SWAZI ROYAL FAMILIES AND SWAZI CHIEFS/NATION

On 13 December 2002, the Petition of the Swazi Royal Families and Swazi Chiefs/Nation was referred to the Portfolio Committees on Foreign Affairs and Provincial Affairs and Local Government for consideration, the Committees to confer and the Portfolio Committee on Foreign Affairs to report to the Assembly (*See Item 24, Issue 6*).

The petitioners were requesting Parliament to intervene in the matter between the Kingdom of Swaziland and the Republic of South Africa to finalise the historic border between Swaziland and South Africa in favour of incorporating a disputed area into Swaziland. The petitioners were requesting that Parliament assist by urging and encouraging the national executive to honour in good faith earlier promises and to give these promises and the present petition urgent attention.

The Portfolio Committee on Foreign Affairs reported on the matter on 23 September. In its report, the Committee submitted that it had no locus standi or authority to consider the issues raised by the petitioners. It expressed the view that any consideration of the issues raised in the

Petition must be preceded by transparent and full consultation of all South African citizens likely to be affected by it. It stated further that while it recognised the constitutional standing of traditional authorities, including the Swazi Royal Families, it recognised also that the constitutional rights to citizenship of South African citizens of Swazi ethnic origin take precedence.

The Committee therefore recommended that the petitioners be referred to the Executive, which has both the authority and the power to respond to the issues raised in the petition. On 18 November, the House adopted the report of the Committee thereby endorsing its views and recommendations on the matter.

CHAMBER

39. ADDITIONAL LOCATIONS FOR WHEELCHAIRS IN CHAMBER

Following on approval by the Speaker, on 8 July work commenced on providing the potential for 17 additional locations for wheelchairs in the Chamber. Existing fixed seats were altered so as to enable these seats to be converted for wheelchair access at short notice. The work was completed on 2 September.

ABBREVIATIONS USED

ATC	Announcements, Tablings and Committee Reports (daily parliamentary paper which is effectively an appendix to the Minutes of Proceedings)
Minutes	Minutes of the National Assembly
NA	National Assembly
NCOP	National Council of Provinces
PC	Portfolio Committee
SCOPA	Standing Committee on Public Accounts

Parties:

ANC	African National Congress
DA	Democratic Alliance
IFP	Inkatha Freedom Party
NNP	New National Party
UDM	United Democratic Movement
ACDP	African Christian Democratic Party
FF	Freedom Front
UCDP	United Christian Democratic Party
PAC	Pan Africanist Congress of Azania
FA	Federal Alliance
MF	Minority Front
AZAPO	Azanian People's Organisation
NA	National Action
IAM	Independent African Movement
ID	Independent Democrats
ADP	Alliance for Democracy & Prosperity
PJC	Peace & Justice Congress

