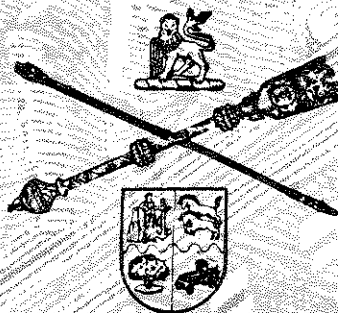


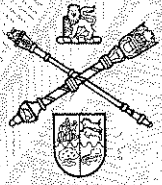
Parliament of the Republic of South Africa



**PROCEDURAL DEVELOPMENTS
IN THE NATIONAL ASSEMBLY**

**Sixth Session – Second Parliament
January to April 2004**

9



Parliament of
the Republic of
South Africa

PROCEDURAL DEVELOPMENTS IN THE NATIONAL ASSEMBLY

A record of recent events and developments of a procedural nature in the National Assembly of the Parliament of the Republic of South Africa. The ninth issue covers the period from January to April 2004.

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MEMBERS

1. WRITTEN REPRIMAND OF MEMBER FOR BREACH OF CODE OF CONDUCT

As reported in the previous issue (see *Item 10, Issue 8*), the Assembly on 25 November 2003 adopted a report of the Joint Committee on Ethics and Members' Interests in which the committee had recommended, *inter alia*, that a written reprimand be issued to Mr A M Maziya, MP, for failing to disclose in the Register of Members' Interests income he had received from certain financial interests.

As the Assembly went into recess soon after adopting the committee's report, namely on 27 November 2003, effect could not immediately be given to issuing the written reprimand. The reprimand was communicated to Mr Maziya by the Speaker on 19 January and was subsequently published in full in the ATC on 2 February.

2. LEADER OF OPPOSITION'S RIGHT OF FIRST RESPONSE IN CERTAIN DEBATES

The Rules provide that members are called to participate in a debate in accordance with a list of speakers for that debate (Rule 59). When, on 9 February, the debate on the President's state-of-the-nation address commenced, the list of speakers indicated that a Minister and majority party (ANC) member would be the first speaker. When he was duly called to speak, the Chief Whip of the Opposition, on a point of order, queried the speaking order, saying that "this must be the only parliamentary democracy in the world where an ANC speaker responds to the President instead of the Leader of the Opposition". The Speaker, referring to a decision that had been taken by all parties in 1996, confirmed that the Leader of the Opposition had the right to make the first response, if he wished. She then allowed the Minister to continue, but added: "I would suggest, in future, that we abide by that decision or change it" (Hansard, 9 February 2004).

PROCEDURAL AND RELATED ISSUES

3. DISSOLUTION OF NATIONAL ASSEMBLY OF SECOND PARLIAMENT

Dissolution of National Assembly before expiry of its term

The National Assembly is elected for a term of five years and dissolves upon the expiry of that term. However, section 50 of the Constitution provides that the Assembly can dissolve before

the expiry of its term. If it adopts a resolution to dissolve before the expiry of its term with a supporting vote of the majority of its members, and if three years have passed since the Assembly was elected, the President must dissolve the Assembly and, in terms of section 49(2) of the Constitution, call for an election to be held within 90 days of its dissolution.

The term of the National Assembly of the Second Parliament was due to expire on 2 June 2004. Following on a letter she had received from the President on 4 February, the Speaker announced, after his state-of-the-nation address to a Joint Sitting of Parliament on Friday, 6 February, that the National Assembly would commence debating the President's address on Monday, 9 February, at which time he would propose the date for the 2004 general election.

Announcement by President and consideration of resolution

On that Monday the President announced that the general election of 2004 would take place on 14 April. He added that it was envisaged publishing the proclamation dissolving the Assembly and confirming the election date in the *Government Gazette* on 11 February, subject to the approval by the National Assembly of a resolution to dissolve.

Immediately after the President's announcement, the following resolution moved without notice by the Chief Whip of the Majority Party was adopted with the requisite supporting vote: That the House —

- 1) noting the proposal by the President in his announcement in the National Assembly today to call an election on 14 April 2004, in accordance with section 50(1) of the Constitution resolves to dissolve;
- 2) notes that in terms of section 49(4) of the Constitution it remains competent to function until the day before the first day of polling for the next Assembly; and
- 3) resolves to suspend Rule 298 and Rule 316 to prevent bills and other business from lapsing when the House is dissolved.

(*Minutes of the National Assembly*, 9 February)

The National Assembly was dissolved by the President on 10 February. A proclamation to this effect appeared in the *Gazette* on 11 February. (*Government Gazette*, Vol 464, No 26020)

Rising of the House

Though the House was dissolved on 10 February, it continued with its work until 27 February. At the end of business on that day, the Speaker announced that the House would rise, thereby indicating that it would cease to sit for business.

Lapsed business

In its resolution to dissolve, the Assembly suspended the Rules that would have resulted in all business before the House and its committees lapsing upon its dissolution. However, from polling day the Assembly was no longer competent to function and hence all business that it had before it lapsed on that day.

The business that lapsed included the following bills:

- 4 section 76 bills that were introduced in the Assembly and were still before Assembly committees.
- 1 section 76 bill that had been introduced in and passed by the NCOP and was before a committee of the Assembly as the second House.
- 8 section 75 bills that were still before Assembly committees.
- 1 section 75 bill that had been passed by both Houses and was back with the Assembly for consideration of amendments proposed by the NCOP.
- 1 Constitution Amendment Bill, which was still before an Assembly committee.
- The Appropriation Bill. The Minister of Finance had introduced the Appropriation Bill on 18 February and the Portfolio Committee on Finance had reported on its consideration of the Budget on 26 February. The Assembly had a wide-ranging four-hour debate on the Budget on 27 February, the last sitting day, and, following a division, the bill was read for the first time. The report of the Finance committee was also adopted.

Furthermore, 4 section 75 bills that had been passed by the Assembly were still before the NCOP when it went into recess.

Other items of business that lapsed in the Assembly were 11 committee reports and two notices of motion which were all on the Order Paper under "Further Business".

Tablings after dissolution

As the House had ceased to function on 27 February and members had dispersed, the question arose as to what should be done in respect of papers received for tabling after the dissolution of the House, as the purpose of tablings is to inform members of papers that have been received and of their referral to committees in terms of the Rules.

On 4 March the Speaker received a letter from the Minister of Minerals and Energy in which the Minister, in accordance with Joint Rule 159, stated her intention to introduce the Energy Regulator Bill. The Speaker wrote to the Minister, informing her that the House had finalised its work and that committees were no longer meeting. It was therefore not possible for the Speaker to table the draft bill and refer

it to the relevant committee for its information as required in terms of the above-mentioned Joint Rule. The Minister was also informed, however, that the notice of the intention to introduce a draft bill would be retained for tabling and referral in the new Parliament.

Legacy reports

The concept of "legacy reports" was first mentioned in the last meeting of the Joint Rules Committee on 19 August 2003 when the Speaker proposed that a comprehensive experiential report be compiled in which the current Parliament provided guidelines to the next Parliament.

The concept was further formalised when several portfolio committees published reports in the ATC containing specific recommendations to their successors on the business and bills that had been before those committees when the Assembly was dissolved. The Chief Whips' Forum also listed its outstanding matters to be handed over to its successor in the new Parliament.

At the final meeting of the Programme Committee on 19 February, it was agreed that the staff would put together a list of matters that had not been finalised by the current Parliament so that the new Parliament would have a proper record of those matters.

4. REFLECTIONS ON INTEGRITY OF AUDITOR-GENERAL

A Joint Investigating Team (the JIT) consisting of the Auditor-General, the Public Protector and the National Director of Public Prosecutions investigated strategic defence procurement packages and submitted a report to Parliament in September 2000 (the JIT Report). After various committees had considered the JIT Report, the Assembly on 13 August 2002 accepted the Report and adopted the related committee recommendations (see *Item 18, Issue 6*).

However, during 2003 allegations appeared in the media that the Auditor-General, after consulting certain members of the executive on a draft JIT Report, had "heavily edited" it and omitted material findings from it before presenting the final JIT Report to Parliament. These allegations were subsequently also referred to in the National Assembly at various times. The Auditor-General, in response, presented a Special Report to Parliament on the allegations, which was tabled on 25 June and referred to the Standing Committee on Public Accounts (SCOPA). In his introduction to the Special Report the Auditor-General expressed concern that the integrity and independence of the Auditor-General, as a constitutional institution supporting democracy, was being eroded by the allegations. He was accordingly presenting Parliament with the pertinent facts

and would rely on Parliament “to deal with these facts appropriately so that the integrity and status of this Chapter 9 institution can be upheld”.

In the Special Report (in paragraph 6), the Auditor-General dealt with relevant statements and motions that had been made in Parliament and expressed the view that there may have been a transgression of Rule 66 of the National Assembly, which provides that no member shall reflect upon the competence or honour of a public office-bearer whose removal from office is dependent on a decision of the House, except by way of a substantive motion alleging facts which, if true, would in the opinion of the Speaker *prima facie* warrant such a decision.

SCOPA's report on these matters, dated 14 November 2003 (ATC 8 December), came before the Assembly on 24 February. SCOPA indicated that it had engaged in open and frank interaction with the Auditor-General concerning the allegations. It noted that “while the Auditor-General had no choice but to consult the executive in terms of section 4(6) of the Auditor-General Act, that provision does not oblige the Auditor-General to follow the advice or views of the executive”. SCOPA's finding was that “the evidence shows that the JIT Report was not in any significant way changed or limited as a result of the consultation”. SCOPA went on to report that “in the present case no evidence was found to indicate that the Auditor-General had not at all times performed his functions independently and impartially and with due regard to his constitutional mandate and responsibility”.

Concerning the remarks that had been made by members in the Assembly and the possible transgression of Rule 66, SCOPA reported that it had not considered this aspect in any detail since it did not have the authority to investigate possible transgressions of the Rule. However, noting that Parliament has a constitutional duty to assist and protect the Auditor-General and the other Chapter 9 institutions, through legislative and other measures, to ensure their independence, impartiality, dignity and effectiveness, SCOPA recommended that the paragraph in the Special Report that dealt with the statements and motions in the Assembly be referred to the Speaker “for such action as may be considered appropriate”.

SCOPA's report was adopted by the Assembly, with the DA and the ACDP dissenting (*Minutes of the National Assembly*, 24 February). The Assembly was due to rise on 27 February and, with this in view, the Speaker immediately after the adoption of the report made a statement in the House which was printed in full in the Minutes, as follows:

Hon members, in the Report the House just adopted the Public Accounts Committee recommends that the Auditor-General's

concerns, as expressed in paragraph 6 of his Special Report, about the possible transgression of Rule 66 be referred to me “for such action as may be considered appropriate”. The Auditor-General also wrote to me directly to voice his concerns.

The purpose of Rule 66, a rule made by this House, is to protect the integrity and independence of judges, the Auditor-General and office-bearers of other constitutional structures and to prevent unwarranted and unsubstantiated attacks in this House on their honour or competence. Parliament pre-eminently should be committed to upholding and protecting the independence and standing of those institutions, which are required to play a key role in our constitutional democracy.

If there are grounds for an investigation of the conduct of such office-bearers, this House has available the mechanism of a substantive motion, and procedures for such substantive motions still need to be worked out. Although steps were taken by the Chair at the time to restrain members from transgressing Rule 66, various members were disinclined to observe the letter and spirit of the Rule. This is both unacceptable and regrettable.

I would therefore strongly recommend that the next Parliament should give serious attention to all facets of the interrelationship between Parliament and the constitutional institutions supporting democracy, on the one hand to prevent those institutions from being undermined within Parliament and, on the other hand, to establish effective accountability mechanisms.

This ruling will be passed on to the next Parliament.

5. OUTSTANDING REPLIES TO QUESTIONS

It was reported in Issue 7 (see *Item 12*) that on 4 March 2003 the National Assembly Rules Committee approved a system to monitor delayed replies to members' questions. The system was, however, not implemented as Parliament wanted to obtain inputs from the Executive.

On 20 January the Speaker addressed letters to six Ministers with regard to outstanding replies to questions after the relevant cut-off dates, namely:

- Written questions: six weeks since date of first publication.
- Oral questions: questions not answered on the second occasion when they had already stood over once.

The Speaker also addressed a letter to the Leader of Government Business informing him



that reminders had been sent to the relevant Ministers regarding outstanding replies to questions.

Replies were received from four of the Ministers. The replies were sent to the members concerned and the Questions Office retained copies for record purposes. The Speaker also announced by way of an ATC entry on 16 February that in respect of all questions to which replies had not been received by the end of 2003, she had communicated with the Ministers involved and replies had been received from some of them.

6. NEW SOUND, VOTING, INTERPRETATION AND COMPUTER NETWORK SYSTEM IN CHAMBER

The Joint Rules Committee on 24 August 2001 decided in principle that the sound and voting system of the NA Chamber should be replaced. It was agreed that specifications for the new system should be drawn up in consultation with the Presiding Officers and Whips.

During the course of 2002 and 2003 specifications were developed. These included the upgrading of the interpretation system and the installation of a computer monitor on each member's desk, providing members with information resources required for plenary meetings. Installation of the system was budgeted for in the 2003-04 financial year.

Work on the installation of the new system began in November 2003 and the system was largely functional when Parliament opened on 6 February.

Interpretation devices: The specifications provide for interpretation devices to be provided for all seats in the public gallery and gallery bays, and for the upgrading of the interpretation devices at members' desks. The new upgraded interpretation devices for members' desks were, however, not immediately available and members continued to use the existing devices. The new interpretation devices for members are expected to be installed before the 3rd Parliament meets.

Voting system: Previously members were required to insert a voting card into the voting device at their desks before recording their vote. The new system provides for a personalised computer monitor at each member's desk, which eliminates the need for voting cards. However, a member must be at his/her own desk to record a vote.

Computer monitor: Each member has a touch screen monitor at his/her desk. Members are able to access the speakers' lists, Order Paper, Question Paper, House Rules and the Constitution via this monitor. The system also has a messaging system that allows Table staff to

send messages to members.

Other facilities: The system also has a facility that allows a member to draw the attention of the Chair when the member wishes to speak. This "request to speak" facility is currently only used during Question Time.

In addition members are now able to summon service staff by simply pressing a button.

Training: Members were given individual and group briefings on the use of the computer and voting system by NA Table staff.

7. SPEAKER'S BAY REVERTS TO ORIGINAL LOCATION

In Issue 7 it was reported that the Speaker's Bay in the gallery of the National Assembly Chamber had been moved to that part of the gallery directly in front of the Speaker's Chair. This was done because all seats in the Speaker's previous bay did not provide a clear view of the podium (see *Item 41, Issue 7*).

After considering various logistical problems with the positioning of the "new" bay, the Speaker decided that the bay revert back to its original position provided that arrangements were made to ensure that all seats had a clear view of the podium. As a consequence, adjustments were made to certain seats in the bay to provide a clear view of the podium. This work was completed in time for the state-of-the-nation address on 6 February.

8. FAST-TRACKING OF BILL

On 18 February the Joint Subcommittee of the Joint Programme Committee agreed to a request from the Leader of Government Business to fast-track the Division of Revenue Bill [B4-2004], a section 76 bill. Fast-tracking would enable Parliament to shorten any period in the legislative process relating to the bill, in order to make it possible for the bill to be passed by both Houses before the end of the term of the Second Parliament.

The decision of the Subcommittee was ratified by resolution, in accordance with Joint Rule 216(4), by both the National Assembly and the National Council of Provinces on 19 February. The bill was passed by the National Assembly on 24 February and transmitted to the NCOP for concurrence. The bill was passed by the NCOP on 4 March.

9. REINTRODUCTION OF BILL AFTER FURTHER SPLIT

On 12 November 2003, the Minister of Social Development submitted the Children's Bill for introduction in the National Assembly after certain section 76 provisions, rendering it a

mixed bill, had been removed at the request of Parliament (see *Item 5, Issue 8*). The bill was presented as only containing section 75 provisions.

However, in their legal opinion to the JTM, the parliamentary law advisers expressed the view that Chapters 14 and 15 of the bill as introduced still did not fall within the ambit of section 75. In other words, the bill remained a mixed bill and Parliament has no procedure to deal with such bills.

The JTM did not make a finding on the classification of the bill and on 19 January the Speaker wrote to the Minister to indicate that she was returning the bill to him with the request that a further split be done to remove all mixed provisions. She went on to say that the bill was thereby effectively withdrawn from Parliament, but invited him to reintroduce the bill once it had been split further.

The Minister replied to the Speaker's letter on 22 January, urgently requesting her to allow the reintroduction of the Children's Bill [B70-2003] as printed, but subject to the deletion of Chapter 14 and Chapter 15. The Minister further asked that certain definitions referring to concurrent competencies, contained in Schedule 4 to the Constitution, also be deleted.

As the Minister had complied with the request to effect a further split, the Deputy Speaker agreed on 26 January that the bill could be reprinted with the provisions indicated by the Minister deleted. The reprinted bill was tabled on 28 January. Though it retained the same bill number, it was indicated on the cover that it was a reintroduced version of the bill.

The Portfolio Committee on Social Development, as the primary committee processing the bill, indicated that it would not be able to consider the bill in the time available before the Assembly dissolved for the general election. The Programme Committee accordingly agreed not to proceed with the bill and it lapsed at the end of the life of the Second National Assembly.

LEGISLATION AND COMMITTEES

10. PROGRESS WITH FINANCIAL ADMINISTRATION OF PARLIAMENT AND PROVINCIAL LEGISLATURES BILL

On 23 September 2003, the National Assembly had agreed to 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 (see *Item 16, Issue 8*).

On 27 November 2003, 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 to no later than 28 February.

The committee reported to the House on 26 February (ATC, p 562) that due to its heavy legislative workload it had been unable to give due consideration to the subject. It accordingly recommended that the matter stand over for consideration by the new Parliament.

11. JOINT BUDGET COMMITTEE REPORT ON CHALLENGES FACED BY SA HUMAN RIGHTS COMMISSION (SAHRC)

On 9 June 2003, the annual report of the SAHRC was tabled in Parliament and Chapter 13 of the report was referred to the Portfolio Committee on Finance for consideration. On 27 August 2003, that referral was withdrawn and Chapter 13 was referred instead to the Joint Budget Committee.

Section 184(1) of the Constitution mandates the SAHRC to monitor and assess the observance of human rights, including social and economic rights, while section 184(3) of the Constitution empowers the SAHRC to request information from relevant organs of state on measures adopted in order to give effect to the socioeconomic rights in the Bill of Rights.

In its report, the SAHRC outlined its processes and the challenges facing it since commencing its work in 1997. The following are some of the challenges and concerns raised by the SAHRC:

- The response rate to questionnaires sent to the three spheres of government was poor and most departments did not provide any responses. There was a lack of response from Parliament, except for letters of acknowledgement of receipt of the report.
- In 1998 and 1999, many departments were subpoenaed by the Commission to provide information in terms of the SAHRC Act, which proved to be a costly exercise.
- The Commission experienced capacity problems as it was difficult for five to seven people to monitor the three spheres of government.
- Following the judgment of the Constitutional Court in the Grootboom case, the Commission also began enquiring into how those measures gave effect to the rights of poor, vulnerable and marginalized communities. The Commission hardly received any replies to this enquiry.
- The Commission had taken the initiative to request a range of indicators from departments, but there was concern about the Government's capacity to provide such indicators in the short term.

- The unavailability of adequate information systems in Government departments compels the Commission to rely on other documents, such as the Auditor-General's report, thereby affecting the credibility of the process.

Joint Budget Committee recommendations

The following were some of the recommendations put forward by the Joint Budget Committee in its report of 17 February (ATC 20 February) in response to the report of the SAHRC:

- There was a need for a structured relationship between the committee, the National Treasury and the Commission, and the committee should consider the inputs of both the National Treasury and the Commission.
The committee agreed that the budget is the primary instrument of objective realisation of policies, because as much as the human element is important, if funds are not available then human resources will be lacking.
- In order to achieve the desired goals, departments should be pressed to include a synopsis in regard to human rights in their strategic plans.
- The committee noted that the information that was received by the Commission was not verified and suggested that it would be better if information were backed by practical examples.
- The National Treasury felt that the accountability system should be improved in order to get better performance and that the Commission could use information from the National Treasury Information System which would assist it in achieving better monitoring mechanisms.
- Portfolio committees should urge departments to provide the necessary information.
- The National Treasury had a role to play as to how the money it allocates is used by departments.
- The committee needed to consider its role in the process of engaging with the National Treasury and the Commission. There are weaknesses in the parliamentary process with regard to the budget process and evaluating the outputs of departments.
- The committee noted that its successor in the new Parliament after elections should be given guidelines in respect of its areas of responsibility and adequate resources.

The committee's report was adopted by the House on 27 February without debate.

12. POWERS, PRIVILEGES AND IMMUNITIES OF PARLIAMENT AND PROVINCIAL LEGISLATURES BILL

On 17 February, the National Assembly adopted the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Bill. The bill was subsequently also adopted by the National Council of Provinces on 26 February. The purpose of the bill is to define and declare the powers, privileges and immunities of Parliament, provincial legislatures, members of the National Assembly, delegates to the National Council of Provinces and members of the provincial legislatures.

The bill is the product of a parliamentary process that started in 1997 with the appointment of the Joint Subcommittee on Powers and Privileges of Parliament (a subcommittee of the Joint Rules Committee), whose main function was to make recommendations to transform the existing law and practice on parliamentary powers and privileges. The Subcommittee prepared a draft bill, which was referred by each of the Houses of Parliament to an ad hoc committee. The Ad Hoc Committee on Powers and Privileges of Parliament (National Assembly) prepared an amended draft of the bill for introduction in the National Assembly. The main objective of the bill is to enact legislation envisaged in sections 58(2), 71(2) and 117(2) of the Constitution.

The Constitution sets out the most significant powers, privileges and immunities of Parliament and provincial legislatures and their members that are necessary to enable them to carry out their constitutional functions. Some of these powers, privileges and immunities are traditional in parliamentary systems of government, namely:

- The power of a legislature to determine and control its own proceedings;
- Freedom of speech of members of legislatures; and
- Members' immunity from civil and criminal proceedings for anything said in a legislature or a committee of the legislature.

The Constitution provides that "other privileges and immunities" may be prescribed by national legislation. The applicable legislation in respect of Parliament, namely the Powers and Privileges of Parliament Act, 1963 (Act No 91 of 1963), was dated and in some respects inconsistent with the Constitution.

In summary, the bill provides as follows:

Precincts

The precincts of Parliament are defined as the area of land and every building or part of a building under Parliament's control. In a

situation where a House or committee convenes beyond the seat of Parliament, the Act applies as if the premises where the House or committee is sitting were within the precincts of Parliament. The Speaker of the National Assembly and the Chairperson of the National Council of Provinces exercise joint control and authority over the precincts on behalf of Parliament.

Members of the security services may perform policing functions in the precincts only with the permission and under the authority of the presiding officers.

Privileges, independence and protection of members and Parliament

The President and members of Parliament are given the same privileges and immunities in a joint sitting of the National Assembly and the National Council of Provinces as they have before the Assembly and the Council.

The Speaker or the Chairperson may issue a certificate stating that a member is required to attend to business in Parliament when a member is required to attend a court as a witness in any civil or criminal proceedings.

A member of Parliament or staff member must first obtain the leave of the House before giving evidence in any court or place outside Parliament regarding the contents of journals or evidence given before a House or committee.

Disciplinary action against a member for contempt of Parliament

Parliament's jurisdiction in respect of any contempt of Parliament is limited to its members. The Act makes provision for a House to appoint a standing committee to enquire into and pronounce upon any matter declared by the Act to be in contempt of Parliament by a member. Before a House may take any disciplinary action against a member the standing committee must (i) enquire into the matter in accordance with a procedure that is reasonable and procedurally fair, and (ii) table a report on its findings and recommendations in the House.

When a House finds a member guilty of contempt, the House may impose any one or more of the following penalties:

- A formal warning;
- A reprimand;
- An order to apologise to Parliament or the House or any person;
- The withholding of any specified facility provided to members by Parliament;
- A fine not exceeding the equivalent of a month's salary and allowances payable to the member;
- The suspension of a member, with or

without remuneration, for a period not exceeding 30 days; and

- The removal, or the suspension for a specified period, of the member from any parliamentary position occupied by the member.

Witnesses

A House or committee may summon any person to appear before it to give evidence on oath or affirmation, or to produce documents. Such a summons must be issued by the Secretary on the instructions of the Speaker or the Chairperson, or the chairperson of the committee concerned acting in accordance with a resolution of the committee and with the concurrence of the Speaker or the Chairperson. Evidence given under oath or affirmation by a person before a House or committee may not be used against that person in any court or place outside Parliament, except in criminal proceedings where the person stands trial on a charge of perjury.

Publications and broadcasting

No person is liable to civil or criminal proceedings in respect of the publication of any report, paper or minutes of Parliament or a House or committee by order or under the authority of the Houses, or the House or committee concerned; and no person may broadcast or televise or otherwise transmit by electronic means the proceedings of Parliament or of a House or committee, or any part of those proceedings, except by order or under the authority of the Houses or the House concerned, and in accordance with the conditions, if any, determined by the Speaker or Chairperson in terms of the standing rules.

Protection of members of public

A member of the public who feels aggrieved by a remark made about him or her in Parliament by a member or a witness may submit a written request to the Secretary to have a response recorded. The standing committee must consider the request and, if approved, publish the person's response in the appropriate parliamentary paper.

Penalties

Penalties for contravention of provisions of the Act include fines and imprisonment for periods ranging from 12 months to 15 years.

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

In *Item 17, Issue 8* it was reported that the NA, on 20 November 2003, passed the Protection of Constitutional Democracy Against Terrorist and Related Activities Bill. The bill was subsequently



sent to the NCOP for concurrence. On 24 February, the NCOP passed the bill with proposed amendments. The report of the Assembly's Portfolio Committee on Safety and Security on the amendments was placed on the Order Paper for consideration on the last sitting day, 27 February, under *Further Business*. In terms of Rule 298, the bill lapsed.

14. INTRODUCTION BY COMMITTEE OF PUBLIC AUDIT BILL

In compliance with a resolution of the Assembly on 24 June 2003, an ad hoc committee introduced the Public Audit Bill in the Assembly on 3 February. (For processes leading up to this, see *Item 27, Issue 7* and *Item 20, Issue 8*.) The main objects of the bill are: to give effect to the provisions of the Constitution establishing and assigning functions to the Auditor-General; to provide for the auditing of institutions in the public sector; and to provide for accountability arrangements of the Auditor-General. When enacted, this legislation will repeal statutory arrangements that were previously in place concerning the public auditing function.

In its report accompanying the bill (ATC 11 February), the ad hoc committee recommended that the Assembly, through its Rules Committee, should establish a committee of the House with, as its sole mandate, conducting oversight over the Auditor-General. This mechanism would therefore replace the Audit Commission which was established by the Audit Arrangements Act, No 122 of 1992, and which comprised members of the National Assembly and of the National Council of Provinces as well as members of civil society.

When the ad hoc committee's report and the bill came before the House on 17 February, the report was noted and the bill was passed after a debate. However, the National Council of Provinces was unable to complete its consideration of the bill before the end of the second Parliament, and the bill therefore lapsed.

15. WITHDRAWAL OF SCOPA REPORTS

The chairperson of SCOPA wrote to the Speaker in February asking that certain SCOPA reports that were published in the ATC of 8 December 2003 be withdrawn as they contained incorrect information. The errors related to references to unauthorised expenditure in these reports that SCOPA had not yet dealt with.

The Speaker acceded to the request and instructed that the reports be withdrawn from the ATC. The following SCOPA reports of 2003 were accordingly withdrawn in the ATC of 17 February: 116th, 122nd, 123rd, 124th, 126th, 127th, 128th, and 133rd.

The correct versions of these reports were

subsequently tabled and published in the ATC of 26 February.

16. SCOPA REPORT ON GUIDELINES FOR ACCOUNTING OFFICERS, MINISTERS AND OTHER PERSONS APPEARING BEFORE IT

The National Assembly adopted the 138th report of the Standing Committee on Public Accounts (SCOPA) on 24 February. The report outlines the constitutional and other legislative framework within which the committee operates, and provides detailed guidelines for accounting officers and other persons appearing before it.

In its oversight role, SCOPA reviews the annual reports and financial statements of all executive organs of state and constitutional institutions once they have been referred to it. In the event of the Auditor-General's report containing a finding of a material problem or irregularity, SCOPA requests the Auditor-General's office to present a report to it. SCOPA may thereafter conduct a hearing and summon the relevant government department's accounting officer or the Minister concerned to appear before it. After the hearing, SCOPA reports back to the National Assembly with its findings and recommendations.

The following are some of the guidelines relating to the conduct of public hearings:

Conduct of witnesses giving evidence before SCOPA

The person who is specifically identified in the notice to attend a hearing, ordinarily the accounting officer of the relevant department, must appear at the hearing in person. Such a person must have up to date information on the subject matter of the hearing and should, wherever possible, personally respond to the questions put to him/her.

Those who accompany the person so notified must be kept to a minimum. The person notified to attend the hearing may be called upon to justify the presence of those accompanying him/her and the associated costs occasioned by their attendance.

Witnesses may be required to give evidence under oath or affirmation.

Any documents or information relating to the subject matter of the hearing which may be requested, must be delivered to SCOPA no less than 10 working days before the date of the hearing.

The documents or information relating to the subject matter of the anticipated hearing must reflect the date and stamp of the secretariat

upon which the documents are so received, 30 copies must be supplied, and the name must be indicated of the witness who is responsible for the submission thereof to SCOPA. Such documents or information must deal with the subject matter of the anticipated hearing clearly, accurately and succinctly and must contain facts that are material and relevant to the subject matter of the enquiry.

Conduct of hearings

The procedure to be followed at the hearings and the agenda for the hearings will be determined by the chairperson of SCOPA. Hearings of SCOPA are held in public unless the matter before it is of such a nature that it is reasonable and justifiable in an open and democratic society to exclude the public and the media.

Hearings will commence punctually at the time and place designated in the notice of the meeting. During hearings, the chairperson of SCOPA shall be referred to as "chairperson" and members of the committee shall be referred to as "honourable member" or "member". Representatives of the Auditor-General and of the National Treasury will be present at the hearings of SCOPA and will be entitled to furnish evidence at those hearings.

Confidential evidence

If a witness believes that the evidence he/she is required to give is of a confidential nature, he/she must give the chairperson of the committee at least seven days notice prior to the date of the hearing informing the chairperson that the evidence is confidential and the reasons for which it is submitted that such evidence is of a confidential nature.

The chairperson shall, after consultation with the committee, determine whether such evidence is of a confidential nature, and in the event that it is determined that such evidence is of a confidential nature, make the appropriate determination for the form and nature of the proceedings to be followed in respect of such evidence.

Recording and broadcasting of evidence

Hearings of SCOPA are recorded. Copies of transcripts of evidence are sent to the chairperson and to the relevant witness. The witness is required to furnish written confirmation of the acceptance of the accuracy of the contents of the transcript of evidence. Proceedings are also broadcast.

Witness expenses

Witnesses other than accounting officers, Ministers and certain government officials are entitled to recover witness expenses subject to the approval of the Speaker.

Follow-up and replies

SCOPA tables its reports containing its findings and recommendations in the National Assembly. Replies to recommendations and findings from departments must be brief and concise and deal with the subject matter of the report. The replies must also contain details of all remedial or corrective steps that have been taken. The relevant accounting officer or witness must sign replies.

17. SCOPA REPORT ON OUTSTANDING ANNUAL REPORTS

Section 65(2) of the Public Finance Management Act sets deadlines for the submission to Parliament of annual reports and financial statements by government departments and public entities. It stipulates that on failure to meet the deadline, a written explanation must be tabled.

In its 136th report for 2003, tabled on 8 December 2003, the Standing Committee on Public Accounts expressed concern regarding the high number of 2001-02 annual reports that had still not been tabled in Parliament at the end of August 2003. The committee noted that at least 30 reports were still outstanding, 16 months after the end of the 2001-02 financial year. The responsible departments were listed in the report.

Noting that the annual reports are an essential accountability mechanism for Parliament to fulfil its oversight function, the committee recommended that Parliament urgently consider appropriate measures to demand accountability from the defaulting departments and public entities in terms of section 65 of the Public Finance Management Act. The report was adopted by the Assembly on 24 February.

STATUTORY FUNCTIONS

18. ICASA VACANCIES

In terms of section 5 of the Independent Communications Authority of South Africa Act, Act No 13 of 2000, the President appoints seven persons as full-time members of the Council of Icasa on the recommendation of the Assembly.

On 26 January, the Speaker received a letter from The Presidency, informing her that the term of office of three councillors was due to expire in June 2004. In the light of the uncertainty at that time regarding the date of the next general election, the National Assembly was requested to commence the process of finalising names for recommendation to the President as expeditiously as possible.

The letter was tabled on 29 January and referred to the Portfolio Committee on Communications for consideration and report.

The committee, having met on 20 February to consider the nominations, published its report on 25 February recommending that the House, in accordance with section 5 of the Act, make a recommendation to the President that Dr T Cohen, Adv Z R Masiza and Mr P Mashile be appointed as councillors.

The National Assembly approved of the nominations on 27 February with the DA, IFP, ACDP, NA and IAM dissenting.

19. CONDITIONS OF SERVICE OF PUBLIC PROTECTOR

In terms of section 2(2) of the Public Protector Act (Act No 23 of 1994) the National Assembly, on the advice of a committee appointed for this purpose, determines the remuneration and other terms and conditions of employment of the Public Protector. The Act further provides in section 2(5) that the Public Protector can approach the committee with regard to any matter pertaining to the office of the Public Protector.

On 11 August 2003 the Speaker received a written request from the Minister for Justice and Constitutional Development for the National Assembly to effect adjustments to the Public Protector's conditions of service. The document was tabled on 18 August 2003 and referred to the Portfolio Committee on Justice and Constitutional Development on 23 August 2003 (ATC No. 98 p. 837) for consideration and report to the House.

The committee, in its report dated 25 February, recommended that the House amend the remuneration and other terms and conditions of employment of the Public Protector with effect from 1 September 2003. The committee further recommended that the Department of Justice and Constitutional Development undertake a comparative review of the remuneration and conditions of employment of the National Director of the Prosecuting Authority, the Public Protector and Commissioners of the South African Human Rights Commission and to table the review within three months of the adoption of these recommendations by the National Assembly.

The report was adopted by the National Assembly on 27 February.

20. EXCISION OF LAND FROM NATIONAL PARK

Section 2(3) of the National Parks Act, 1976 (Act No 57 of 1976) provides that no land included in a national park shall be alienated,

excluded or detached from the park, except under the authority of a resolution of Parliament.

The Minister of Environmental Affairs and Tourism submitted for parliamentary approval a request to exclude a portion of land from the Augrabies Waterfall National Park.

On 11 February, the Portfolio Committee on Environmental Affairs and Tourism published a report (ATC 18 February) recommending approval of the Minister's request to exclude the remainder of Farm 498 (Melkbosrand), in extent 4 137 ha, from the Augrabies Waterfall National Park, situated in the administrative district of Gordonia, Northern Cape.

The Minister's request was approved by the NA on 19 February without debate and by the NCOP on 25 February.

INTERNATIONAL PARLIAMENTARY RELATIONS

21. WORKING GROUP ON AFRICAN UNION

Inaugural and First Sessions of Pan-African Parliament

On 26 November 2003, the National Assembly elected Dr F N Ginwala (Speaker); Mr M J Mahlangu (Deputy Chairperson of the NCOP); Mrs M A A Njobe (ANC); Prof H Ngubane (IFP) and Dr B L Geldenhuys (NNP) as members of the Pan-African Parliament (see *Item 3, Issue 8*).

The Inaugural and First Sessions of the Pan-African Parliament were held from 18 to 20 March in Addis Ababa, Ethiopia, and attended by the five South African members of the Pan-African Parliament and three observers, namely Ms B Mbete (Deputy Speaker), Mr C W Eglin (DA) and Adv Z L Madasa (ACDP).

Committee on African Union

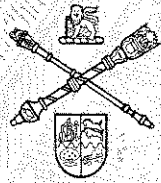
In its Eighth Report, adopted by the Assembly on 8 September 2003, the Working Group recommended that Parliament consider establishing a committee on the African Union. This committee could process all issues relating to the African Union and its organs, in consultation with the delegates. The committee would also discuss mandates for the delegation and receive reports emanating from the PAP for processing with a view to tabling them in the Houses. In its Eleventh Report, adopted on 26 February, the Working Group recommended that the next Parliament prioritise the establishment of this committee.

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
AEB	Afrikaner-Eenheidsbeweging
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



Parliament of
the Republic of
South Africa

SUBJECT INDEX TO ISSUES 1 TO 9 OF PROCEDURAL DEVELOPMENTS IN THE NATIONAL ASSEMBLY SECOND PARLIAMENT (1999-2004)

- Key:** The number references are to the Issue and Item within the Issue, respectively. The Issue number appears in italics.
- Note:** In this index, related subjects have been grouped together into a number of broad categories in order at the same time to provide an overview of the range of subjects within each category.

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International Parliamentary relations

Legislation and Committees (which include bills that substantially affect the National Assembly and Parliament, and procedure-related developments in committees).

Members

Money bills and budgetary matters

Presiding officers and other office-bearers

Procedural and related issues (which include the processing of bills, and issues relating to the Chamber of the National Assembly)

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