

GENERAL NOTICE**ALGEMENE KENNISGEWING****NOTICE 1650 OF 2001
PARLIAMENT OF THE
REPUBLIC OF SOUTH AFRICA****PUBLICATION OF *POWERS AND
IMMUNITIES OF PARLIAMENT BILL***

The *Ad Hoc* Committee on Powers and Privileges of Parliament (National Assembly) intends introducing the *Powers and Immunities of Parliament Bill*, 2001, in the National Assembly in September 2001. A draft of the said Bill is hereby published in accordance with National Assembly Rule 241, read with Rule 239. Interested persons and institutions are invited to submit written comments on the draft legislation **before 1 August 2001**, to the following persons:

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**S MFENYANA,
SECRETARY TO PARLIAMENT**

Date: 11 July 2001

**KENNISGEWING 1650 VAN 2001
PARLEMENT VAN DIE
REPUBLIEK VAN SUID-AFRIKA****PUBLIKASIE VAN *POWERS AND
IMMUNITIES OF PARLIAMENT BILL***

Die *Ad Hoc* Komitee oor Bevoegdhede en Voorregte van die Parlement (Nasionale Vergadering) beoog om die *Powers and Immunities of Parliament Bill*, 2001, in September 2001 in die Nasionale Vergadering in te dien. 'n Konsep van die Wetsontwerp word hierby gepubliseer ooreenkomstig Reël 241 van die Nasionale Vergadering, saamgelees met Reël 239. Belanghebbende persone en instansies word genooi om **voor 1 Augustus 2001** skriftelike kommentaar oor die konsepwetgewing aan die volgende persone voor te lê:

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**S MFENYANA,
SEKRETARIS VAN DIE PARLEMENT**

Datum: 11 Julie 2001

BILL

To define and declare certain powers and immunities of Parliament, members of the National Assembly and delegates to the National Council of Provinces; and to provide for matters incidental thereto.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Chapter 1

DEFINITIONS

Definitions

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1. In this Act, unless the context indicates otherwise—

‘**Chairperson**’ means the Chairperson of the National Council of Provinces and, in the absence or incapacity of the Chairperson, the permanent Deputy Chairperson referred to in section 64(2) of the Constitution;

‘**committee**’ means a committee or subcommittee consisting of members and established in accordance with the standing rules; 10

‘**House**’ means the National Assembly or the National Council of Provinces;

‘**joint committee**’ means a committee consisting of members of both Houses;

‘**joint rules**’ means the rules referred to in section 45 of the Constitution;

‘**journals**’ means any recording of the proceedings of Parliament or a committee, including minutes, transcripts and tape recordings; 15

‘**member**’ means—

(a) a member of the National Assembly, and includes a Minister who is not such a member;

(b) a permanent delegate to the National Council of Provinces; or 20

(c) a special delegate to the Council, while acting as a special delegate.

‘**Parliament**’ means the National Assembly or the National Council of Provinces or both the Assembly and the Council, as the context requires;

‘**police**’ means the South African Police Services;

‘**Secretary**’ means the Secretary to Parliament; 25

‘**Speaker**’ means the Speaker of the National Assembly and, in the absence or incapacity of the Speaker, the Deputy Speaker of the Assembly;

‘**staff member**’ means the Secretary and any other person appointed to the staff of Parliament;

‘**standing rules**’ means the rules made by the National Assembly and the National Council of Provinces under sections 57 and 70 of the Constitution, respectively, as well as the joint rules; 30

‘**the Constitution**’ means the Constitution of the Republic of South Africa, 1996.

Precincts of Parliament

2. (1) For the purposes of this Act, the precincts of Parliament is the area of land and any building or part of a building under Parliament’s control, or provided or used for the purposes of Parliament, including— 35

- (a) the chambers in which the proceedings of the Houses are conducted and the galleries and lobbies of the chambers;
 - (b) every part of the buildings in which the chambers are situated, and any forecourt, yard, garden, enclosure or open space appurtenant thereto;
 - (c) committee rooms and other meeting places provided or used exclusively for Parliament's purposes; 5
 - (d) the offices of members and staff members; and
 - (e) any other building or part of a building provided or used in connection with the proceedings of Parliament, while so used.
- (2) The Chairperson and the Speaker, subject to the standing rules and any directions of the Houses, have the control and management of the precincts of Parliament. 10
- (3) The Chairperson and the Speaker may describe and delineate the precincts of Parliament.

Application of Act in case of committee meeting beyond seat of Parliament

3. In so far as it may be necessary for the achievement of the objects of this Act in the case of a committee which performs its functions beyond the seat of Parliament, this Act applies as if the premises where the committee meets for the performance of its functions were within the precincts of Parliament. 15

Chapter 2

FREEDOM OF SPEECH 20

Freedom of speech and proceedings of Parliament

4. (1) Subject to sections 45(2), 58(1) and 71(1) of the Constitution there is freedom of speech and proceedings in Parliament and committees, and that freedom may not be challenged or questioned in any court or place outside Parliament.
- (2) Subject to section 71(1) of the Constitution, subsection (1) does not apply to 25 persons who are not Cabinet members or members.
- (3) The freedom of speech referred to in subsection (1)—
- (a) is subject to the relevant standing rules, including rules on the manner, the form and the venue in which the freedom may be exercised;
 - (b) must be exercised in accordance with the rulings of the Speaker, the 30 Chairperson and persons presiding at meetings of Parliament or committees, as the case may be, in terms of the standing rules.
- (4) A member who wilfully contravenes a standing rule or ruling referred to in subsection (3) is guilty of contempt of Parliament within the meaning of section 8. The fact that the member has withdrawn, or has apologised for, a statement made by the 35 member, or has been ordered in terms of the standing rules to withdraw from the chamber or from the precincts of Parliament on account of such a statement, does not preclude disciplinary action against the member in terms of section 9.
- (5) For the purposes of this section, "proceedings" means all words spoken and acts done in the course of, or for the purposes of or incidental to, the formal meetings, and the 40 transaction of the business, of Parliament or a committee and, without limiting the generality of the foregoing, includes—
- (a) the giving of evidence or the making of a presentation before the Parliament or a committee;
 - (b) the presentation or submission of a document to the Parliament or a 45 committee;
 - (c) the preparation of a document for the purposes of or incidental to the transaction of any such business; and
 - (d) the formulation, making or publication of a document, including a report, by 50 or pursuant to an order of the Parliament or a committee.

Chapter 3

IMMUNITIES, INDEPENDENCE AND PROTECTION OF MEMBERS

Immunities

5. The persons who have freedom of speech in Parliament in terms of the Constitution or section 4 are not liable to civil or criminal proceedings, arrest, imprisonment or damages for— 5

- (a) anything that they have said in, produced before or submitted to Parliament or a committee, including any petition, bill, report, resolution or motion;
- (b) the preparation of any document for the purposes of paragraph (a); or
- (c) anything revealed as a result of anything that they have said in, produced before or submitted to Parliament or a committee. 10

Interference with Parliament or members

6. A person may not—

- (a) improperly interfere with the free exercise by Parliament or a committee of its authority, or with the free performance by a member of his or her functions as a member; 15
- (b) threaten, obstruct or insult a member proceeding to or going from a meeting of Parliament or a committee; or
- (c) assault, threaten or insult a member, or deprive a member of any benefit, on account of the member's conduct in Parliament or a committee. 20

Improper influence of members

7. (1) A person may not, by fraud, intimidation, force, insult or threat of any kind, by the offer or promise of any inducement or benefit of any kind, or by other improper means—

- (a) influence a member in his or her conduct as a member. 25
- (b) induce a member to be absent from Parliament or a committee; or
- (c) attempt to compel a member to declare himself or herself in favour of or against any proposition or matter pending or expected to be brought before Parliament or a committee.

(2) A member may not— 30

- (a) ask for, receive or obtain any property or benefit for the member or another person; or
- (b) enter into any contractual arrangement, 35

on the understanding that the member will be influenced in the performance of the member's functions or in voting on any matter before Parliament or a committee.

Chapter 4

CONTEMPT OF PARLIAMENT

Contempt of Parliament by members

8. (1) Subject to the Constitution, Parliament has all the powers which are necessary for enquiring into and pronouncing upon any act, matter or thing declared in this Chapter to be contempt of Parliament by a member, and taking the disciplinary action provided therefore. 40

(2) A member is guilty of contempt of Parliament if the member—

- (a) wilfully fails or refuses to obey any rule, order or resolution of Parliament;
- (b) contravenes section 6 or 7; 45
- (c) creates or joins in any disturbance in the precincts of Parliament within the meaning of section 10;
- (d) commits an act which is intended to bring Parliament in contempt or to impede the functioning of Parliament or a committee; or
- (e) commits an act which in terms of this Act or the standing rules constitutes 50 contempt of Parliament.

Disciplinary action against members for contempt of Parliament

9. (1) If Parliament finds a member guilty of contempt of Parliament, the member may in addition to any other penalty to which he or she is liable under this Act or any other law—
- (a) be cautioned or reprimanded; 5
 - (b) be fined an amount not exceeding R5 000; or
 - (c) be suspended for a period not exceeding 30 working days, as defined in the relevant standing rules, whether or not Parliament or any committee is scheduled to meet during that period.
- (2) All fines payable under subsection (1) may be recovered— 10
- (a) by deducting specified instalments from the members' remuneration; or
 - (b) if not so recovered, by means of civil action in a competent court.
- (3) All fines under subsection (1)(c) which are paid or recovered must be paid into Parliament's bank account.
- (4) A member who has been suspended under subsection (1)(c) must leave the 15 precincts of Parliament, and may not, during the period of suspension—
- (a) enter the precincts for whatever purpose;
 - (b) make use of travel or any other facilities provided to members by Parliament.
- (5) The suspension of a member under subsection (1)(c) does not affect that member's remuneration as a member in terms of the Remuneration of Public Office Bearers Act, 20 1998 (Act No. 20 of 1998).
- (6) Subject to the Constitution, a House does not have the power to expel a member from membership of the House.
- (7) This section does not affect the power of the Speaker or the Chairperson or a person presiding at a meeting of Parliament or a committee, under any other law or the 25 common law or the standing rules, to censure a member who deliberately contravenes any provision of the standing rules or disregards the authority of the Chair or acts in a disorderly or disruptive manner.

Chapter 5**PROTECTION OF PARLIAMENT 30****Persons creating disturbance**

10. (1) A person who creates or joins in any disturbance in the precincts of Parliament while Parliament or a committee is meeting may be arrested and removed from the precincts, without warrant on the verbal order of the Speaker or the Chairperson, by a staff member or a member of the police. 35
- (2) Without limiting the generality of subsection (1), a member is regarded to be creating a disturbance if he or she refuses to comply with a standing rule, an order or a resolution of Parliament or a ruling of the person presiding at a meeting of Parliament or a committee, despite an order by that person to comply therewith.

Offences relating to Parliament 40

11. A person, other than a member, who—
- (a) while Parliament or a committee is meeting, creates or joins in any disturbance within the precincts of Parliament, whereby the proceedings of Parliament or a committee are or are likely to be disrupted; 45
 - (b) commits any act which is intended to bring Parliament in contempt or to impede the functioning of Parliament or a committee; or
 - (c) contravenes an instruction by a duly authorised staff member regarding the presence of persons at a particular meeting or regarding the possession of any article, including a firearm, in the precincts of Parliament or any part thereof, 50
- commits an offence and is liable to a fine or to imprisonment for a period not exceeding two years or to both the fine and the imprisonment.

Arrest of persons and service of process within precincts of Parliament

12. (1) A person may not within the precincts of Parliament—

- (a) serve or tender for service or execute any summons, subpoena or other process issued by a court; or
- (b) except as authorised by section 10, arrest another person, without the express permission of the Speaker or the Chairperson or a person authorised by the Speaker and the Chairperson. 5
- (2) A person who contravenes subsection (1) commits an offence and is liable to a fine or to imprisonment for a period not exceeding six months.

Presence of security services in precincts of Parliament

13. Members of the security services, including the police, may enter upon or remain in or perform any function in the precincts of Parliament only with the permission and under the authority of the Speaker or the Chairperson. 10

Chapter 6

MEMBERS AND STAFF

Duty of criminal court in respect of members

14. When a member of the National Assembly or a permanent delegate to the National Council of Provinces has been convicted of an offence and sentenced to more than 12 months' imprisonment without the option of a fine, the court sentencing that person must in writing inform the Speaker or the Chairperson, as the case may be, of the nature of the offence and the sentence imposed. 15

Attendance of members before court 20

15. (1) In any civil proceedings in a court that is situated outside the seat of Parliament in which a member is required to attend as a witness or defendant, the Speaker or the Chairperson or a person designated by the Speaker or Chairperson may issue a certificate stating that the member is required to attend to important business in Parliament, and that certificate shall be sufficient proof of such requirement, and the member shall be absolved from attending pending completion of that business. 25
- (2) Such a certificate may be issued only if the member is required in Parliament on important parliamentary business.
- (3) The standing rules must prescribe the circumstances in which parliamentary business will be considered important for the purposes of this section. 30

Giving evidence of proceedings

16. (1) No member or staff member, and no person employed to take minutes of evidence given before Parliament or a committee, may give evidence elsewhere regarding the contents of the minutes or the evidence given or of any document before Parliament or a committee, without first having obtained the leave of the House concerned. 35
- (2) During a recess or adjournment of Parliament the Speaker or the Chairperson or a person designated by the Speaker or Chairperson may give such leave.

Matters in which members have direct financial interest

17. (1) Subject to subsection (3), a member may not in or before Parliament or a committee vote, or take part in the discussion of, any matter in which the member has a direct financial interest. 40
- (2) A member who contravenes subsection (1) commits an offence and is liable to a fine not exceeding R5 000.
- (3) Subsection (1) does not apply to— 45
- (a) any vote or discussion in connection with the remuneration or allowances to be received by members in their capacity as members; or
- (b) an interest in a matter which a member has in common with the public generally, or with any category or section of the public.

Receiving of compensation prohibited

18. (1) No member, and no person who is a spouse or life partner or in the service of a member, and no staff member, may receive or accept any bribe, fee, compensation, gift or reward for or in respect of the promotion or opposition to anything, including a bill, resolution, report, matter or rule, submitted or proposed or intended to be submitted to or brought before Parliament or a committee for consideration. 5

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding R5 000 and, in addition, to repayment or forfeiture of the amount or the value of the bribe, fee, compensation, gift or reward concerned.

Offences relating to members and staff 10

19. A person, other than a member, who—
 (a) contravenes section 6 or 7(1); or
 (b) hinders or obstructs a staff member in the execution of his or her duty or while proceeding to or going from Parliament in the course of or in connection with the staff member's official duties, 15
 commits an offence and is liable to a fine or to imprisonment for a period not exceeding 12 months or to both the fine and the imprisonment.

Chapter 7**WITNESSES****Attendance before Parliament or committee** 20

20. Parliament or any committee may request or summon any person to appear before it to give evidence or to produce any document in his or her possession or custody or under his or her control.

Summoning of witnesses

21. (1) A summons in terms of section 20 must be issued by the Secretary on the instructions of the Speaker or the Chairperson or the chairperson of the committee concerned. 25

(2) The summons must state—

- (a) the name of the person summoned;
- (b) the name or designation of the person who must serve the summons; 30
- (c) the time, place and venue at which the person summonsed is required to appear; and
- (d) a description of the document, if any, which that person is required to produce.

(3) The summons must be served on the person mentioned therein by delivering a copy of the summons— 35

- (a) to that person; or
- (b) at that person's usual or last known place of residence or of employment or business, to a person apparently over the age of 18 years and apparently residing or employed there.

(4) A person summonsed in terms of this section, other than a person in the full-time employment of the state or an organ of the state, is entitled to be paid an amount for his or her expenses as approved by the Speaker or Chairperson in accordance with the standing rules. 40

Examination of witnesses

22. When Parliament or a committee requires that anything be verified or otherwise ascertained by the oral examination of a witness, the person presiding at the enquiry may— 45

- (a) call upon and administer an oath to, or accept an affirmation from, any person present at the enquiry who was or could have been summonsed in terms of section 21; and 50

- (b) examine any person referred to in paragraph (a) or require that person to produce any document in that person's possession or custody or under his or her control which may have a bearing on the subject of the enquiry.

Privilege of witnesses

23. In connection with the examination of any person by, or the production of any document before, Parliament or a committee in terms of section 22, the law relating to privilege, as applicable to a witness summonsed to give evidence or to produce a document before the High Court of South Africa applies. 5

Witnesses not liable to legal proceedings

24. (1) Except in the case of perjury or any offence under section 25, a witness who is in possession of a certificate referred to in subsection (2) is not liable to any civil or criminal proceedings, arrest, imprisonment or damages by reason of anything relevant to the subject of the enquiry concerned, revealed or said by the witness in the course of giving evidence before Parliament or a committee. 10

(2) If a witness has answered fully and satisfactorily all questions put to him or her by Parliament or a committee, the witness is, at his or her request, entitled to receive a certificate signed by the person presiding at the enquiry, stating that the witness did so answer all questions. 15

Offences relating to witnesses

25. (1) A person who— 20

(a) has been duly summonsed in terms of section 21 and who fails, without sufficient cause—

(i) to attend at the time and place specified in the summons; or

(ii) to remain in attendance until excused from further attendance by the person presiding at the enquiry; 25

(b) has been called upon under section 22(a) and who refuses to be sworn in or to make an affirmation as a witness; or

(c) fails, without sufficient cause—

(i) to answer fully and satisfactorily any question lawfully put to him or her under section 22(b); or 30

(ii) to produce any document in his or her possession or custody or under his or her control which he or she has been required to produce under section 22(b),

commits an offence and is liable to a fine or to imprisonment for a period not exceeding 12 months or to both the fine and the imprisonment. 35

(2) A person who—

(a) threatens, obstructs or in any way unduly influences another person in respect of evidence to be given before Parliament or a committee;

(b) induces another person to refrain from giving evidence to or producing a document before Parliament or a committee; 40

(c) assaults or penalises or threatens another person, or deprives that person of any benefit, on account of the giving or proposed giving of evidence before Parliament or a committee;

(d) with intent to deceive Parliament or a committee, produces to Parliament or the committee any false, untrue, fabricated or falsified document; or 45

(e) wilfully furnishes Parliament or a committee with information, or make a statement before it, which is false or misleading,

commits an offence and is liable to a fine or to imprisonment for a period not exceeding two years or both the fine and imprisonment.

Chapter 8**PARLIAMENTARY PUBLICATIONS****Protection in respect of publications**

26. (1) No person is liable to civil or criminal proceedings, arrest, imprisonment or damages in respect of the publication of— 5
- (a) any report, paper or minutes of Parliament or a committee by order or under the authority of Parliament or a committee; or
 - (b) any extract from or abstract of any report, paper or minutes of Parliament or a committee if such extract or abstract was published in good faith and without malice. 10
- (2) No member or staff member is liable to civil or criminal proceedings, arrest, imprisonment or damages in respect of the publication to a member of a document that has been submitted to or is before Parliament or a committee.

Offences relating to unauthorised publishing

27. (1) No person may publish— 15
- (a) any document if the publication of that document is prohibited by or in terms of the standing rules or an order or a resolution of Parliament;
 - (b) any document purporting that such document has been printed under the authority of Parliament, a committee, the Speaker or the Chairperson, while it has not been published under such authorisation; or 20
 - (c) any document purporting that such document is an account of proceedings of Parliament or a committee, while it is not such an account.
- (2) A person who contravenes subsection (1) commits an offence and is liable to a fine or to imprisonment for a period not exceeding three years.

Admissibility of journals as evidence 25

28. In any proceedings before a court or any other tribunal in which the proceedings of Parliament are relevant, a copy of the journals printed or purporting to have been printed by order of Parliament or the Speaker or Chairperson, is admissible as evidence of the journals without any proof being given that the copy was so printed.

Chapter 9 30**GENERAL****Financial arrangements in respect of Parliament**

29. The control of the expenditure and the appropriation of moneys for the services of Parliament is vested in the Speaker and the Chairperson, and their authorisation for such expenditure and appropriation of moneys is, subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999), in all respects good, valid and effectual. 35

Speaker, Chairperson or committee may act on behalf of Parliament

30. (1) Subject to the standing rules, Parliament may authorise the Speaker, the Chairperson or a committee to perform any act which may be performed by Parliament under this Act. 40
- (2) For the purposes of performing an act referred to in subsection (1), the Speaker, Chairperson or committee has the powers with which Parliament is vested in terms of this Act for the performance of that act.

Liability for acts done under authority of Parliament

31. No person is liable in damages or otherwise for any act done in good faith in terms of this Act, or under the authority of Parliament or a committee and within the legal powers of Parliament or a committee or under any warrant or summons issued by virtue of those powers. 45

Repeal of Laws

32. The laws mentioned in the Schedule are repealed to the extent specified in the third column.

Short title

33. This Act is called the Powers and Immunities of Parliament Act, 2001. 5

SCHEDULE

LAWS REPEALED (*section 32*)

No. and year of law	Short title	Extent of repeal	
Act No. 91 of 1963	Powers and Privileges of Parliament Act, 1963	The whole	5
Act No. 62 of 1967	Powers and Privileges of Parliament Amendment Act, 1967	The whole	
Act No. 33 of 1974	Parliamentary Service Act, 1974	Sections 13,14,15,16,17 and 18	10
Act No. 95 of 1984	Powers and Privileges of Parliament Amendment Act, 1984	The whole	15
Act No. 99 of 1985	Powers and Privileges of Parliament Amendment Act, 1985	The whole	
Act No. 98 of 1992	Powers and Privileges of Parliament Amendment Act, 1992	The whole	20