

No. 16, 1948.]

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.

ACT

To confer certain powers and privileges upon provincial councils; to provide for certain matters in connection with the proceedings of provincial councils and for matters incidental thereto; and to amend the South Africa Act, 1909.

*(English Text signed by the Governor-General.)
(Assented to 24th March, 1948.)*

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

Definitions.

1. In this Act, unless the context otherwise indicates—
 - “chairman” means the member of a provincial council for the time being presiding over such council;
 - “clerk” means the clerk of a provincial council;
 - “committee” means any standing, sessional, special or select committee of a provincial council;
 - “member of parliament” means a member either of the Senate or of the House of Assembly;
 - “officer of a provincial council” means the clerk or clerk-assistant of a provincial council, and such other officers or persons as may be appointed from time to time to the staff of a provincial council;
 - “officer of Parliament” means an officer of Parliament as defined in section one of the Powers and Privileges of Parliament Act, 1911 (Act No. 19 of 1911).

Power to order the attendance of witnesses.

2. (1) A provincial council and any committee which is duly authorized by the provincial council to send for persons, documents, or papers, may order any person to attend before the provincial council or before such committee, and to produce any paper, book, record or document in the possession or under the control of such person: Provided that no member or officer of Parliament shall be required to attend before a provincial council or before any such committee.

(2) Any order made under sub-section (1) shall be notified to the person required to attend or to produce a paper, book, record or document (as the case may be) by a summons under the hand of the clerk issued by direction of the chairman.

(3) In every such summons there shall be stated the date and hour when and the place where the person summoned is required to attend, and the particular paper, book, record or document which he is required to produce.

(4) The summons shall be served on the person mentioned therein by any person whom the clerk has authorized to effect such service, either by delivering to him a copy thereof or by leaving a copy thereof at his usual or last known place of abode with some adult person, and there shall be paid or tendered to the person so summoned, if he does not reside within six miles of the place where he is required to attend, such sum for his expenses as may be prescribed by any rule of the provincial council.

Examination of witnesses.

3. (1) A provincial council or any committee may require that any facts, matters or things relating to the subject of the enquiry before the provincial council or the committee be verified or otherwise ascertained by the oral examination of witnesses and may cause any such witnesses to be examined upon oath, which the chairman or the chairman of the committee, or any person specially appointed by the chairman or the chairman of the committee for that purpose, may administer: Provided that where any witness conscientiously objects to take an oath he may make a solemn affirmation or declaration.

(2) The same rules relating to privileged evidence which are for the time being observed by the Supreme Court of South Africa shall be observed in the case of evidence before a provincial council or any committee.

Objection to answer questions or to produce papers, etc. to be reported to provincial council for decision.

4. If a person ordered to attend or produce any paper, book, record or document before a provincial council or any committee refuses to answer any question that may be put to him or to produce any such paper, book, record or document on the ground that the same is of a private nature and does not affect

the subject of the enquiry, the chairman or the chairman of the committee (as the case may be) may report the refusal with the reasons therefor, to the provincial council, and such council may thereupon excuse or order the answering of the question, or excuse or order the production of such paper, book, record or document.

Offences by witnesses.

5. (1) Any person summoned to attend or to produce any paper, book, record or document before a provincial council or any committee who, without sufficient cause (the onus of proof whereof shall rest upon him) fails to attend at the time and place specified in the summons, or to remain in attendance until the conclusion of the enquiry or until he is excused by the chairman or the chairman of the committee from further attendance, or having attended, refuses to be sworn after he has been required by the chairman or the chairman of the committee to do so, or having been sworn and not having been excused in terms of section *four*, fails to answer fully and satisfactorily any question lawfully put to him, or not having been excused in terms of section *four*, fails to produce any paper, book, record or document in his possession or under his control and which he has been summoned to produce, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

(2) Any person who, before a provincial council or any committee (and whether or not that person has been sworn), after being duly cautioned as to his liability to punishment under this sub-section, wilfully and corruptly makes a false answer to any question material to the subject of the enquiry which may be put to him during the course of any examination, shall be guilty of an offence and liable on conviction to the penalties prescribed by law for perjury.

Certificate issued to witness making full disclosure to be a bar to civil or criminal proceedings in respect of his evidence.

6. (1) Every witness before a provincial council or a committee who answers fully and faithfully any questions put to him by the provincial council or committee to its satisfaction shall be entitled to receive a certificate under the hand of the chairman or the chairman of the committee (as the case may be), stating that such witness was upon his examination so required to answer and did answer any such question.

(2) Upon production of such certificate to any court of law, that court shall stay any proceedings civil or criminal except for a charge of perjury against such witness for any act or thing done by him before that time and revealed by the evidence of such witness, and may, in its discretion, award to such witness such expenses as he may have been put to by the institution of the proceedings.

Evidence of proceedings in a provincial council or committee not to be given without leave.

7. (1) No member of an executive committee of a province or of a provincial council and no officer of a provincial council or shorthand writer employed to take minutes of evidence before a provincial council or any committee, shall, without the special leave of the provincial council first having been obtained, give evidence elsewhere in respect of the contents of such evidence or of the contents of any manuscript or document laid before the provincial council or committee or in respect of any proceedings or examination had before the provincial council or any committee.

(2) Such special leave may be given after a dissolution or during a recess or adjournment of a provincial council by the chairman or, in his absence or other incapacity, by the clerk.

Penalty for printing false copy of reports, papers, etc.

8. Any person who prints any report, paper, minutes or votes and proceedings of a provincial council or any committee as purporting to have been printed by the government printer, the provincial council printer, or by or under the authority of the provincial council, or any committee, or of the chairman; and the same is not so printed, or tenders in evidence any such copy as purporting to be so printed, knowing that the same was not so printed, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding three years.

Protection of provincial council publications.

9. Any person being a defendant in any civil proceedings or an accused in any criminal proceedings instituted for or on account or in respect of the publication by such person or by his servant by order or under the authority of a provincial council or any committee, of any report, paper, minutes or votes and proceedings, may, on giving to the plaintiff or prosecutor (as the case may be) twenty-four hours written notice of his intention, bring before the court in which such civil or criminal proceedings are being held, a certificate under the hand of the chairman, or of the clerk, stating that the report, paper, minutes or votes and proceedings, in respect whereof such civil or criminal proceedings have been instituted,

were published by such person or his servant by order or under the authority of the provincial council or any committee, together with an affidavit verifying such certificate, and such court shall thereupon immediately stay such civil or criminal proceedings and the same and every process issued therein shall be deemed to be finally determined.

Publication of proceedings without malice.

10. In any civil or criminal proceedings instituted for or on account or in respect of the publication of any extract from or abstract of any such report, paper, minutes, or votes and proceedings as mentioned in section *nine*, if the court or jury (as the case may be) is satisfied that such extract or abstract was published *bona fide* and without malice, judgment or verdict (as the case may be) shall be entered for the defendant or accused.

Certain persons not to receive compensation for promotion or opposition to draft ordinances, etc.

11. (1) No member of the executive committee of a province or of a provincial council and no attorney or parliamentary agent who, in the practice of his profession, is a partner or in the service of any such member, shall accept or receive either directly or indirectly any fee, compensation, gift or reward for or in respect of the promotion of or opposition to any draft ordinance, resolution, matter or thing submitted or intended to be submitted for the consideration of the provincial council or any committee.

(2) Any person who contravenes the provisions of sub-section (1) shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand pounds.

(3) The court which has convicted any person of a contravention of this section may order the person convicted to repay the amount or the value of any fee, compensation, gift or reward accepted or received by him.

(4) Any order made by a court in terms of sub-section (3) shall have the effect of and may be executed as a civil judgment of that court.

Member not to vote upon any matter in which he has a direct pecuniary interest.

12. (1) A member of the executive committee of a province or of a provincial council shall not in or before the provincial council or any committee vote upon or take part in the discussion of any matter in which he has a direct pecuniary interest.

(2) Any member of the executive committee of a province or of a provincial council who contravenes the provisions of sub-section (1) shall be guilty of an offence and liable on conviction to the penalty prescribed in sub-section (2) of section *eleven*.

(3) The provisions of this section shall not apply to any vote or discussion concerning any remuneration or allowance to be received by a member of the executive committee of the province or of the provincial council in his capacity as a member of the executive committee of the province or in his capacity as a member of the provincial council, or to any interest which any such member may have in any matter in common with the public generally or with any class or section thereof.

Persons disturbing proceedings of a provincial council.

13. (1) Any person who creates or joins in any disturbance in a provincial council or in the vicinity of a provincial council while the same is sitting, whereby the proceedings of the provincial council are or are likely to be interrupted, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds, or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

(2) Any person creating or joining in any disturbance in a provincial council during its actual sitting may be arrested by any person without warrant on the verbal order of the chairman.

Substitution of section 77 of the South Africa Act, 1909.

14. The following section is hereby substituted for section *seventy-seven* of the South Africa Act, 1909:

“Freedom of speech in Provincial Councils. 77. There shall be freedom of speech in the provincial council and no administrator or any other member of the executive committee of a province and no member of a provincial council shall be liable to any civil or criminal proceedings, arrest, imprisonment or damages by reason of any matter or thing which he may have brought by petition, draft ordinance, resolution, motion, or otherwise, or have said before the provincial council, or by reason of his vote in such council.”

Short title.

15. This Act shall be called the Powers and Privileges of Provincial Councils Act, 1948.