

DRAFT RULE TO REMOVE THE PUBLIC PROTECTOR, THE AUDITOR-GENERAL OR A MEMBER OF A COMMISSION ESTABLISHED BY CHAPTER NINE OF THE CONSTITUTION FROM OFFICE IN TERMS OF SECTION 194 OF THE CONSTITUTION

DEFINITIONS

For the purpose of a section 194(1) enquiry in terms of these rules –

“incapacity” means a permanent or temporary physical or mental condition, or a legal impediment, that renders the office-holder unable to perform his or her duties of office efficiently and effectively.

“incompetence” means a demonstrated and sustained failure by the office-holder to perform his or her duties efficiently and effectively, with “incompetent” having a corresponding meaning;

“member of a Commission” means a member of a Commission established by Chapter Nine of the Constitution

“misconduct” means unlawful conduct arising out of bad faith or gross negligence, dishonest conduct or improper conduct;

“panel” means the independent panel appointed under this Rule to conduct any preliminary enquiry on a motion initiated in a Section 194 enquiry

“section 194” means Section 194 of the Constitution, 1996

“Section 194 Committee” means the committee established under these Rules to conduct a section 194 enquiry, and “Committee” has a corresponding meaning in this Rule

“Section 194 Enquiry” means an enquiry initiated by the Assembly to remove the Public Protector or the Auditor General or a member of a Commission established by Chapter Nine of the Constitution, under section 194 of the Constitution and this rule.

PROCEDURES TO GIVE EFFECT TO SECTION 194 OF THE CONSTITUTION

Initiation of Section 194 enquiry

- (1) Any member of the Assembly may, by way of a substantive notice of motion in terms of Rule 124(6), initiate proceedings for a section 194 enquiry, provided that –
 - (a) the motion must be limited to a clearly formulated and substantiated charge on the grounds specified in section 194, which must *prima facie* show that the Public Protector, the Auditor General or a member of a Commission:
 - (i) committed misconduct;

- (ii) suffers from an incapacity to perform the functions of office; or
 - (iii) is incompetent in the performance of the functions of office;
- (b) all evidence relied upon in support of the motion must be attached to the motion, with the understanding that if additional evidence becomes available at any time after the motion is moved but before the section 194 committee concludes its business, such evidence will be filed with the office of the Speaker and brought to the attention of the section 194 committee forthwith;
 - (c) the charge must relate to an action or conduct performed in person by the Public Protector, the Auditor General or the member of a Commission concerned; and
 - (d) the motion is consistent with the Constitution, the law and these rules.
- (2) For purposes of proceedings to remove in terms of section 194, the term “charge” must be understood as the grounds for averring the removal from office of the Public Protector, the Auditor General or the member of a Commission concerned.

Compliance with criteria

Once a member of the Assembly has given notice of a motion to initiate proceedings in a section 194 enquiry the Speaker may consult the member to ensure the motion is compliant with the criteria set out in this Rule.

Referral of motion

- (1) When the motion is in order, the Speaker must immediately refer the motion, and any supporting documentation provided by the member, to the Section 194 Committee established under this Rule for the purposes of conducting a Section 194 Enquiry.
- (2) The Speaker must inform the Assembly and the President of such referral without delay.

The Section 194 Committee

Establishment

A Section 194 Committee is established to consider motions in terms of section 194 of the Constitution, for the removal from office of the Public Protector, Auditor General or member of a Commission referred to it in terms of this Rule.

Composition and appointment

- (1) The Section 194 Committee consists of the number of Assembly members that the Speaker may determine, provided that –
 - (a) half of its members must be members of opposition parties

represented in the Assembly;

- (b) the opposition parties in the Assembly shall be represented on the committee in proportion to the number of seats they hold in the Assembly, provided that where the number of members of the committee does not allow for each party in the Assembly to have its own representative on the committee, one of the members of the committee shall be appointed by the parties not otherwise represented.

Chairperson

The Committee must elect one of its members as Chairperson.

Functions and powers of committee

- (1) The Committee must, when the Speaker has referred a motion for a section 194 enquiry, proceed with the enquiry and establish the veracity and, where required, the seriousness of the charges and report to the Assembly thereon.
- (2) The Committee –
 - (a) may, in its discretion, afford any member of the Assembly an opportunity to place relevant written or recorded information before it within a specific timeframe;
 - (b) must provide the Public Protector, the Auditor General or the member of a Commission concerned immediately with copies of the charges and all information before the Committee relating to the enquiry;
- (3) Upon the initiation of the enquiry, the Committee shall consider whether the suspension of the Public Protector, the Auditor-General or member of a Commission concerned is required, and shall report thereon to the President for a decision under section 194(3)(a) of the Constitution.
- (4) The Committee may, at its own instance and discretion, require the Speaker to appoint an independent panel in terms of these Rules to conduct a preliminary enquiry and to report to the Committee;
- (5) The Committee must ensure that the enquiry is conducted in a reasonable and procedurally fair manner, within a reasonable timeframe.
- (6) The Committee must afford the Public Protector, the Auditor General or the member of a Commission concerned the right to be heard in his or her own defence and to be assisted by a legal practitioner or other expert of his or her choice.
- (7) For the purposes of performing its functions, the Committee has all the powers applicable to Parliamentary committees as provided for in the Constitution, applicable law and the Rules of the Assembly.

Decisions

A question before the Committee is decided when a quorum in terms of Rule 162(2) is present and there is agreement among the majority of the members present,

provided that, when the Committee reports, all views, including minority views, expressed in the Committee must be included in its report.

Report to the National Assembly

- (1) Once the Committee has concluded the enquiry, it must report to the Assembly forthwith.
- (2) The report of the Committee must contain findings and recommendations including the reasons for such.
- (3) The report must be scheduled for consideration and debate by the Assembly, with due urgency, given the programme of the Assembly.
- (4) If the report recommends that the Public Protector, the Auditor General or the member of a Commission concerned be removed from office, the question must be put to the Assembly directly for a vote in terms of the rules and, if the question is supported by at least two thirds of the members of the Assembly, the President shall remove the Public Protector, the Auditor General or the member of a Commission concerned with immediate effect in terms of section 194(3)(b) of the Constitution.

Independent panel for preliminary enquiries

Establishment

The Speaker must, if and when required at the instance of the Section 194 Committee, establish an independent panel to conduct a preliminary enquiry on any specified matter required to be determined by the Section 194 Committee in a motion initiated under Section 194.

Composition and appointment

- (1) The panel consists of three fit and proper, competent, experienced and respected South Africans, which may include a judge, and who collectively possess the necessary legal competence and experience.
- (2) The Speaker shall appoint the panel, after giving political parties represented in the National Assembly reasonable opportunity to put forward nominees for consideration for the panel, and after the Speaker has given due consideration to all persons so nominated.
- (3) If a judge is to be appointed to the panel, the Speaker must do so in consultation with the Chief Justice.

Chairperson

The Speaker must appoint one of the panellists as chairperson of the panel.

Functions and Powers

- (1) The panel –

- (a) must be independent and subject only to the Constitution, the law and these rules, which it must apply impartially and without fear, favour or prejudice;
- (a) must conduct any preliminary enquiry of fact or law, relating to a motion proposing a Section 194 enquiry referred to it by the Speaker at the instance of the Section 194 Committee, and must make a recommendation to the Section 194 Committee, within 30 days whether sufficient evidence exists to show that the Public Protector, the Auditor General or the member of a Commission concerned:
 - (i) committed misconduct;
 - (ii) suffers from an incapacity to perform the functions of office; or
 - (iii) is incompetent in the performance of the functions of office; and
- (b) in considering the matter –
 - (i) may, in its sole discretion, afford any member an opportunity to place relevant written or recorded information before it within a specific timeframe;
 - (ii) must provide the Public Protector, the Auditor General or the member of a Commission concerned immediately with copies of all information available to the panel relating to the enquiry;
 - (iii) must provide the Public Protector, the Auditor General or the member of a Commission concerned with a reasonable opportunity to respond, in writing, to all relevant allegations against him or her;
 - (iv) must not hold an oral hearing and must limit its enquiry to the relevant written and recorded information placed before it by members in terms of this rule; and
 - (v) must in its report include any findings, including the reasons for such findings, upon which its recommendation is based and any minority view of any panellist must be contained in its report.

- (2) The panel may determine its own working arrangements strictly within the parameters of the procedures provided for in this rule.

Quorum

The panel may proceed with its business when three panellists are present and remain present.

Consideration of panel report

Any report completed by the panel must be scheduled for consideration by the

Section 194 Committee, with due urgency, given the programme of the Committee.

GENERAL

- (1) The Assembly will make the final and binding decision relating to any matter dealt with in this Rule.
- (2) Any recommendation made by the independent panel or finding by the Section 194 Committee or any decision made by the Speaker in terms of this Rule is not final and binding on the Assembly, including on any decision the Assembly intends to make in terms of this Rule.

BENEFITS ON REMOVAL FROM OFFICE

If the Public Protector, the Auditor General or a member of a Commission is removed from office, the benefits of such office-holder must strictly be dealt with in terms of the relevant provisions of the Constitution and applicable legislation.