

## 1. Third Report of National Assembly Rules Committee, 2019

The Speaker of the National Assembly, as Chairperson of the National Assembly Rules Committee, presents the Third Report of the Rules Committee as follows:

### A. INTRODUCTION

The National Assembly Rules Committee (Rules Committee) met on 10 September and 26 November 2019, respectively, to deliberate on various rule amendments and determinations as required by the rules. The meeting of 26 November considered proposals and recommendations from the Subcommittee on Review of Assembly Rules on the following matters referred to it by the Rules Committee, namely –

- (1) Statements by Members
- (2) Sequence of Proceedings; and
- (3) New Rules in respect of the Removal of Office-Bearers in Institutions Supporting Constitutional Democracy (including a consequential amendment to Rule 88 dealing with reflections upon judges and certain other holders of public office).

Having now considered these proposals and recommendations the Rules Committee reports as follows:

### B. STATEMENTS BY MEMBERS

Rule 132(5) provides that at the conclusion of statements by members, a Minister or Deputy Minister present may be given an opportunity to respond, for not more than two minutes, to any statement. On 26 November 2019, the Rules Committee agreed that the time allocated to Ministers or Deputy Ministers to respond to members' statements should be increased to three minutes. The Rules Committee therefore recommends that the House agree to amend Rule 132(5) as follows:

#### **Rule 132(5)**<sup>1</sup>

At the conclusion of statements by members, a Minister or Deputy Minister present may be given an opportunity to respond, for not more than **[two]** three minutes, to any statement.

The Rules Committee also determined the number of permissible ministerial responses to members' statements at seven ministerial responses. This is in line with Rule 132(6) which provides that the Rules Committee determines the number of permissible ministerial responses to members' statements.

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<sup>1</sup> Words in **bold** type in square brackets indicate omissions from existing rules. Words underlined with a solid line indicate insertions.

## C. SEQUENCE OF PROCEEDINGS

In terms of Rule 47 – Sequence of Proceedings – Members’ Statements are scheduled after motions without notice. Over time, however, a concern was raised that to facilitate sufficient opportunity for ministerial responses to members’ statements the sequence of proceedings should be amended to ensure that Members’ Statements are taken towards the start of proceedings on days that they are scheduled. The Rules Committee therefore recommends that the House agree to amend Assembly Rule 47 as follows:

### Rule 47. Sequence of proceedings

- (1) Subject to the Constitution and these rules, and unless altered by resolution of the House, the business on each sitting day of the House must follow the following sequence of events:
  - (a) opportunity for silent prayer or meditation;
  - (b) announcements from the Chair;
  - (c) swearing in of new members;
  - (d) formal motions moved by the Chief Whip;
  - (e) when scheduled by the Programme Committee, opportunity for statements by members and responses to statements by Cabinet members;
  - (f) statements by Cabinet members; and
  - (g) orders of the day and notices of motion on the Order Paper, which must be dealt with in sequence; provided that precedence must be given to questions on question days.
  
- (2) Subject to Subrule (1), and unless altered by resolution of the House, the business on any sitting day of the House may additionally include any event below, after the business under Subrule (1) has been completed and if included during any sitting must follow the following sequence of events:
  - (a) Any other formal motions;
  - (b) motions without notice;
  - (c) **[opportunity for statements by members and responses to statements by Cabinet members];**
  - (c) notices of motion; and
  - (d) petitions.

## D. NEW RULES - REMOVAL OF OFFICE-BEARERS IN INSTITUTIONS SUPPORTING CONSTITUTIONAL DEMOCRACY

Section 194(1) of the Constitution, 1996 states that the office-bearers and commissioners in Institutions Supporting Constitutional Democracy (Chapter Nine of the Constitution) may be removed from office on specific grounds. While the Constitution and the rules do set out a broad framework for Parliament to exercise its functions in terms of Section 194, there was a view that, to ensure clarity and uniformity, specific rules were required in respect of the removal of these office-bearers and commissioners. To this effect, the Committee recommends the insertion of the following new rules:

#### **Part 4: Removal from office of a holder of a public office in a State Institution Supporting Constitutional Democracy**

##### **Definitions**

For the purposes of Part 4 -

**“holder of a public office”** means a person appointed in terms of Chapter 9 of the Constitution;

**“incapacity** includes —

- (a) a permanent or temporary condition that impairs a holder of a public office’s ability to perform his or her work; and
- (b) any legal impediment to employment;

**“incompetence”** in relation to a holder of a public office, includes a demonstrated and sustained lack of —

- (a) knowledge to carry out; and
- (b) ability or skill to perform,

his or her duties effectively and efficiently;

**“member of a commission”** means a member of a commission established under Chapter 9 of the Constitution;

**“misconduct”** means the intentional or gross negligent failure to meet the standard of behaviour or conduct expected of a holder of a public office; and

**“section 194 enquiry”** means an enquiry by the Assembly to remove a holder of a public office in terms of section 194 of the Constitution and these rules.

##### **Initiation of section 194 enquiry**

## **129R<sup>2</sup>. Initiation of Section 194 enquiry**

- (1) Any member of the Assembly may, by way of a notice of a substantive motion in terms of Rule 124(6), initiate proceedings for a section 194(1) 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 holder of a public office:
    - (i) committed misconduct;
    - (ii) is incapacitated; or
    - (iii) is incompetent;
  - (b) the charge must relate to an action performed or conduct ascribed to the holder of a public office in person;
  - (c) all evidence relied upon in support of the motion must be attached to the motion; and
  - (d) the motion is consistent with the Constitution, the law and these rules.
- (2) For purposes of proceedings in terms of section 194(1), the term “charge” must be understood as the grounds for averring the removal from office of the holder of a public office.

## **129S. Compliance with criteria**

Once a member 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.

## **129T. Referral of motion**

When the motion is in order, the Speaker must –

- (a) immediately refer the motion, and any supporting documentation provided by the member, to an independent panel appointed by the Speaker for a preliminary assessment of the matter; and
- (b) inform the Assembly and the President of such referral without delay.

## **Independent panel to conduct preliminary assessment into Section 194 enquiry**

## **129U. Establishment**

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<sup>2</sup> The numbering of the rules would follow Rule 129A-Q, which concern the removal of the President in terms of Section 89 of the Constitution. This would be a temporary arrangement until the rules are re-printed, at which point both would be separate rules and be re-numbered accordingly.

The Speaker must, when required, establish an independent panel to conduct any preliminary inquiry on a motion initiated in a section 194 enquiry.

#### **129V. Composition and Appointment**

- (1) The panel must consist of three fit and proper South African citizens, which may include a judge, and who collectively possess the necessary legal and other competencies and experience to conduct such an assessment.
- (2) The Speaker must appoint the panel after giving political parties represented in the Assembly a 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 appointed to the panel, the Speaker must do so in consultation with the Chief Justice.

#### **129W. Chairperson**

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

#### **129X. Functions and powers of the panel**

- (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;
  - (b) must, within 30 days of its appointment, conduct and finalise a preliminary assessment relating to the motion proposing a section 194 enquiry to determine whether there is *prima facie* evidence to show that the holder of a public office –
    - (i) committed misconduct;
    - (ii) is incapacitated; or
    - (iii) is incompetent; and
  - (c) 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 without delay provide the holder of a public office with copies of all information available to the panel relating to the assessment;
    - (iii) must provide the holder of a public office with a reasonable opportunity to respond, in writing, to all relevant allegations against him or her;
    - (iv) must not hold oral hearings and must limit its assessment to the relevant written and recorded information placed before it by

- members, or by the holder of a public office, in terms of this rule;  
and
  - (v) must include in its report any recommendations, including the reasons for such recommendations, as well as any minority view of any panellist.
- (2) The panel may determine its own working arrangements strictly within the parameters of the procedures provided for in this rule.

### **129Y. Quorum**

The panel may proceed with its business when the chairperson and one other panellist is present.

### **129Z. Consideration of panel recommendations**

- (1) Once the panel has made its recommendations the Speaker must schedule the recommendations for consideration by the Assembly, with due urgency, given the programme of the Assembly.
- (2) In the event the Assembly resolves that a section 194 enquiry be proceeded with, the matter must be referred to a committee for a formal enquiry.
- (3) The Speaker must inform the President of any action or decision emanating from the recommendations.

### **Committee for section 194 Enquiry**

#### **129AA. Establishment**

There is a committee to consider motions initiated in terms of section 194 and referred to it.

#### **129AB. Composition and Appointment**

- (1) The committee consists of the number of Assembly members that the Speaker may determine, subject to the provisions of Rule 154.
- (2) Notwithstanding Rule 155(2), the members of the committee must be appointed as and when necessary.

#### **129AC. Chairperson**

The committee must elect one of its members as chairperson.

#### **129AD. Functions and powers of the committee**

- (1) The committee must, when the Assembly has approved the recommendations of the independent panel in terms of Rule 129Z proceed to conduct an enquiry and establish the veracity of the charges and report to the Assembly thereon.

- (2) The committee must ensure that the enquiry is conducted in a reasonable and procedurally fair manner, within a reasonable timeframe.
- (3) The committee must afford the holder of a public office 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, provided that the legal practitioner or other expert may not participate in the committee.
- (4) 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 these rules.

#### **129AE. 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.

#### **129AF. Report to the National Assembly**

The report of the committee must contain findings and recommendations including the reasons for such findings and recommendations.

- (1) The report must be scheduled for consideration and debate by the Assembly, with due urgency, given the programme of the Assembly.
- (2) If the report recommends that the holder of a public office be removed from office, the question must be put to the Assembly directly for a vote in terms of the rules, and if the required majority of the members support the question, the Assembly must convey the decision to the President.

### **E. AMENDMENT TO RULE 88 – REFLECTIONS UPON JUDGES AND CERTAIN OTHER HOLDERS OF PUBLIC OFFICE**

At present, Assembly Rule 88 provides that no member may reflect on the competence or integrity of the holder of a public office in a state institution supporting constitutional democracy whose removal from such office is dependent upon a decision of the House, except upon a motion, which, if true, would in the opinion of the Speaker, *prima facie*, warrant such a decision. Given the proposed Rules 129R-129AF the Rules Committee recommends that the following consequential amendment to Rule 88 should be made as follows –

#### **Rule 88. Reflections upon judges and certain other holders of public office**

No member may reflect on the competence or integrity of a judge of a superior court, the holder of a public office in a state institution supporting constitutional democracy referred to in section 194 of the Constitution or any other holder of an office (other than a member of the government), whose removal from office is dependent upon a decision of the House, except upon a separate substantive motion in the House presenting clearly formulated and properly substantiated charges [**which, if true, would in the opinion of the Speaker, *prima facie* warrant such a decision**].

Report to be considered.