



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

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**Legal Opinion**  
**[Confidential]**

**TO:** Chairperson: Subcommittee on the Review of the  
National Assembly Rules [Adv T Masutha]

**COPY:** Secretary to Parliament

**DATE:** 21 October 2009

**SUBJECT:** Members' Right to Introduce Legislation

**LEGAL ADVISER:** Ms R Mathabathe

**REF:** 168/2009

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## Legal Opinion

1. The Chairperson of the Subcommittee on the Review of the National Assembly Rules ("the Chairperson") requests an opinion on whether Parliament's procedure for dealing with members' legislative proposals is unconstitutional.
2. This question arose after Dr Ambrosini, a member of the National Assembly ("NA"), addressed a letter to the Speaker in which he argues that the screening of members' legislative proposals by the Committee on Private Members' Legislative Proposals and Special Petitions is unconstitutional in that it takes away members' rights to introduce legislation.
3. Dr Ambrosini argues that the procedure has the effect of taking his and his colleagues' rights away completely as opposed to just suspending them whilst ensuring that the proposal is in line with the public interest amongst other things.
4. Section 55(1)(b) of the Constitution, which deals with powers of the NA, provides that the NA may, in exercising its legislative power, **initiate or prepare** legislation except money Bills. This provision gives the NA the power to initiate or prepare legislation other than money Bills.
5. Section 73(2) of the Constitution, which sets out the national legislative process, provides that only a member of Cabinet, a Deputy Minister, a member or committee of the NA, may **introduce** a Bill in the NA. This section then goes on to provide that only the Minister responsible for finance may introduce a money Bill or legislation envisaged in section 214 of the Constitution.
6. The Constitution clearly distinguishes the initiation or preparation of legislation from the introduction of Bill. It gives the power to initiate and prepare legislation to the NA and then allows or permits members and committees of the NA to introduce.
7. In my view sections 55 and 73(2) must be read together. Section 55 positively assigns the power to initiate or prepare legislation to the NA. The NA acts through its members and committees, and as such section 73(2) allows or permits the members and committees to introduce Bills.
8. The Constitution only provides for rights in Chapter 2 dealing with the Bill of Rights, and in Chapter 4 it provides for powers and duties of Parliament and not rights. It is my view therefore that neither members nor committees of the NA have the right to introduce legislation. They are channels through which the NA may exercise its power to initiate or prepare legislation and thus are constitutionally empowered to introduce Bills.
9. Section 57(1) of the Constitution provides that the NA may determine and control its internal arrangements, proceedings and procedures. This includes how the NA intends to exercise its power to initiate or prepare legislation and the procedure members and committees of the NA may use to introduce Bills. The NA Rules contains such determinations and controls.
10. Rule 230 of the NA Rules provides that the NA initiates legislation through its members or committees with the permission of the NA.

11. Rule 234 provides that a member intending to initiate legislation must submit a memorandum containing the particulars of the proposed legislation, explaining the objects thereof and setting out financial implications of the proposed legislation to the Speaker for the purpose of obtaining permission.
12. Rule 235 requires the Speaker to refer this memorandum to the Committee on Private Members' Legislative Proposals and Special Petitions ("the Committee"), which committee must consider the proposal, consult with the Portfolio committee in whose jurisdiction the subject matter falls and recommend to the House to either give permission to the member to proceed with the propose legislation or to refuse such permission.
13. The Committee does not make a decision in respect of the proposal. It considers the member's proposal and make recommendations to the House which then decides whether or not to permit the member to proceed with the proposal.
14. This is similar to the process followed by the executive where the power to initiate or prepare legislation lies with the executive, is exercised through Cabinet members and Deputy Ministers who may introduce Bills, and Cabinet has a procedure for approving legislation before it is introduced in Parliament.
15. It is my view therefore that the NA has the power to initiate or prepare legislation, that it exercises that power through its members and committees who are empowered to introduce legislation but must go through the process provided for in the rules before Bills may be introduced.
16. I am of the view further that members or committees of the NA do not have the **right** to introduce legislation and as such there cannot be an infringement if there is no right to begin with.
17. The rules provide a procedure for exercising the NA's power and does so by establishing the Committee which considers the proposal and recommends to the House which decides whether a member may proceed with their proposal before it may be introduced.
18. I am of the view, therefore that the procedure is not unconstitutional.



**R Mathabathe**  
**Parliamentary Legal Adviser**