

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA
NOTICE 78 OF 2018



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

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**INVITATION TO COMMENT ON DRAFT POWERS, PRIVILEGES AND
IMMUNITIES OF PARLIAMENT AND PROVINCIAL LEGISLATURES
AMENDMENT BILL, 2018**

Notice is hereby given that the Ad Hoc Committee on the Review of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act intends to introduce the draft Powers, Privileges and Immunities of Parliament and Provincial Legislatures Amendment Bill, 2018.

Interested persons are invited to submit written comment on the draft Powers, Privileges and Immunities of Parliament and Provincial Legislatures Amendment Bill by 16h00 on 26 March 2018. Comments received after the closing date will not be considered.

Should you require the Memorandum on the Objects of the Bill in any of the official languages, please contact the Committee Secretary (details below).

Kindly direct all enquiries and written submissions to the Committee Secretary, Ms Nombongo Mongo:

By email: nmongo@parliament.gov.za

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Issued by Dr M S Motshekga, MP

**Chairperson: Ad Hoc Committee on the Review of the Powers,
Privileges and Immunities of Parliament and Provincial Legislatures
Act**

REPUBLIC OF SOUTH AFRICA

**DRAFT POWERS, PRIVILEGES AND IMMUNITIES OF PARLIAMENT
AND PROVINCIAL LEGISLATURES AMENDMENT BILL**

(As initiated by the Ad Hoc Committee on the Review of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, as a Committee Bill, for introduction in the National Assembly (proposed section 75); prior notice of introduction published in Government Gazette No. 41456 of 23 February 2018)

(The English text is the official text of the Bill)

(AD HOC COMMITTEE ON THE REVIEW OF THE POWERS, PRIVILEGES AND
IMMUNITIES OF PARLIAMENT AND PROVINCIAL LEGISLATURES ACT)

[B— 2018]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2003, so as to amend a definition; to provide that the arrest and removal, on the order of a presiding officer, of a person who creates or takes part in any disturbance on the precincts is not applicable to a member; to provide that a provincial legislature may choose to either appoint a standing committee or establish an *ad hoc* committee to deal with disciplinary action against members of a provincial legislature for contempt of that provincial legislature; to provide that the Speaker of a provincial legislature exercises control and authority over the precincts on behalf of that provincial legislature; to clarify vague sections in the Act; to effect technical and grammatical corrections; and to provide for matters connected therewith.

PREAMBLE

BEARING IN MIND that the Constitutional Court found, in the case of *Democratic Alliance v Speaker of the National Assembly and others*, CCT 86/15, that freedom of speech in the National Assembly and the National Council of Provinces as contemplated in sections 58(1)(a) and 71(1)(a) of the Constitution is only subject to the relevant House's respective rules and orders and cannot be regulated in an Act of Parliament;

AND BEARING IN MIND that the immunities provided for in sections 58(1)(b) and 71(1)(b) of the Constitution are absolute,

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

Amendment of section 1 of Act 4 of 2004

1. Section 1 of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2003 (Act No. 4 of 2004) (hereinafter referred to as the “principal Act”), is hereby amended by the substitution for the definition of “disturbance” of the following definition:

“**‘disturbance’** means any act which interferes with or disrupts or which is likely to interfere with or disrupt the proceedings of Parliament or a House or committee but does not include an act committed by a member in the exercise of his or her privilege contemplated in sections 58(1) and 71(1) of the Constitution;”.

Amendment of section 7 of Act 4 of 2004

2. Section 7 of the principal Act is hereby amended by the substitution for paragraph (f) of the following paragraph:

“(f) fail or refuse to comply with **[an] a lawful** instruction by a duly authorised staff member regarding—

- (i) **[the] his or her presence [of persons]** at a particular meeting in the precincts; or
- (ii) the possession of any article, including a firearm, in the precincts or any part thereof.”.

Substitution of section 11 of Act 4 of 2004

3. The following section is hereby substituted for section 11 of the principal Act:

“Persons creating disturbance

11. A person, other than a member, who creates or takes part in any disturbance in the precincts while Parliament or a House or committee is meeting, may be arrested and removed from the precincts, on the order of the Speaker or the Chairperson or a person designated by the Speaker or Chairperson, by a staff member or a member of the security services.”.

Amendment of section 12 of Act 4 of 2004

4. Section 12 of the principal Act is hereby amended by the insertion in subsection (5) of the word “or” at the end of paragraph (f).

Substitution of section 22 of Act 4 of 2004

5. The following section is hereby substituted for section 22 of the principal Act:

“Liability for acts done under authority of Parliament

22. No person is liable [**in**] for damages or otherwise for any act done in good faith in terms of this Act, or under the authority of a House or committee and within the legal powers of the House or committee, or under any order or summons issued by virtue of those powers.”.

Amendment of section 23 of Act 4 of 2004

6. Section 23 of the principal Act is hereby amended by the insertion in subsection (2) of the word “or” at the end of paragraph (a).

Amendment of section 24 of Act 4 of 2004

7. Section 24 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) the registrar or clerk of the court sentencing that **[person]** member or that permanent delegate must in writing inform the Speaker or the Chairperson, as the case requires, of the nature of the offence and the sentence imposed; and”.

Amendment of section 25 of Act 4 of 2004

8. Section 25 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The committee referred to in section 12(2) must, subject to the standing rules, consider the request and, if approved, publish the response of the aggrieved person in the appropriate parliamentary paper.”.

Amendment of section 28 of Act 4 of 2004

9. Section 28 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for the full stop at the end of paragraph (f) of “; and”;

(b) by the addition in subsection (2) after paragraph (f) of the following paragraph:

“(g) disturbance, must be construed as excluding an act committed by a member in the exercise of his or her privilege contemplated in section 117(1) of the Constitution.”; and

(c) by the addition after subsection (2) of the following subsection:

“(3) For the purposes of section 12(2), a provincial legislature may choose to either appoint a standing committee or establish an *ad hoc* committee.”.

Insertion of section 28A in Act 4 of 2004

10. The following section is hereby inserted in the principal Act after section 28:

“Control over precincts of provincial legislature

28A. The Speaker of a provincial legislature, subject to this Act and that legislatures’ rules and resolutions, exercises control and authority over the precincts on behalf of that legislature.”.

Amendment of section 29 of Act 4 of 2004

11. Section 29 of the principal Act is hereby amended by the insertion in subsection (2) of the word “or” at the end of paragraph (a).

Amendment of section 30 of Act 4 of 2004

12. Section 30 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) the registrar or clerk of the court sentencing that **[person]** member must in writing inform the Speaker of the provincial legislature of the nature of the offence and the sentence imposed; and”.

Substitution of section 32 of Act 4 of 2004

13. The following section is hereby substituted for section 32 of the principal Act:

“Short title

32. This Act is called the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, [2003] 2004.”

Short title

14. This Act is called the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Amendment Act, 2018.

MEMORANDUM ON THE OBJECTS OF THE POWERS, PRIVILEGES AND IMMUNITIES OF PARLIAMENT AND PROVINCIAL LEGISLATURES AMENDMENT BILL, 2018

1. INTRODUCTION

- 1.1 The Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2003 (Act No. 4 of 2004), (hereinafter referred to as the “principal Act”), came into operation on 7 June 2004. The main purpose of the principal Act is to define and declare certain powers, privileges and immunities of Parliament, provincial legislatures, members of the National Assembly, delegates to the National Council of Provinces; and to provide for incidental matters thereto.
- 1.2 On 18 March 2016, the Constitutional Court, in the *Democratic Alliance v Speaker of the National Assembly and others* CCT 86/15 matter (“the judgment”), declared section 11 of the principal Act to be invalid in that it applied to members. The Constitutional Court ruled that the omission of the words “other than a member” after the word “person” at the beginning of section 11 of the principal Act is declared to be inconsistent with the Constitution. The Constitutional Court further stated that section 11 of the principal Act is to be read as though the words “other than a member” appear after the word “person” at the beginning of the section. The Constitutional Court also found that parliamentary free speech as contained in sections 58(1)(a) and 71(1)(a) of the Constitution is subject only to rules and orders and may not be regulated in an Act of Parliament.

2. OBJECTS OF THE BILL

- 2.1 The Powers, Privileges and Immunities of Parliament and Provincial Legislatures Amendment Bill, 2018 (“the Bill”), addresses the judgment by providing that a “disturbance” does not include an act committed by a member

in the exercise of his or her freedom of speech as contemplated in sections 58(1) and 71(1) of the Constitution; and providing that the arrest and removal, on the order of a presiding officer, of a person who creates or takes part in any disturbance on the precincts is not applicable to a member. The Bill, *inter alia*, further provides that a provincial legislature may choose to either appoint a standing committee or establish an *ad hoc* committee to deal with disciplinary action against members of a provincial legislature for contempt of that provincial legislature; provides that the Speaker of a provincial legislature exercises control and authority over the precincts on behalf of that provincial legislature; clarifies vague sections in the Act; and effects technical and grammatical corrections.

3. CONTENTS OF THE BILL

- 3.1 Clause 1 amends section 1 of the principal Act by amending the definition of “disturbance” so that it excludes an act committed by a member in the exercise of his or her privilege as contemplated in sections 58(1) and 71(1) of the Constitution.
- 3.2 Clause 2 amends section 7(f) of the principal Act to clarify that no person may fail or refuse to comply with a lawful instruction by a duly authorised staff member regarding such person’s presence at a particular meeting in the precincts.
- 3.3 Clause 3 amends section 11 of the principal Act by providing for the “read-in” provision of the Constitutional Court in the *Democratic Alliance v Speaker of the National Assembly and others* CCT 86/15 judgment.
- 3.4 Clause 4 amends section 12(5)(f) of the principal Act by inserting the word “or” at the end of that section so that it is clear that either of the penalties listed may be imposed.
- 3.5 Clause 5 amends section 22 of the principal Act by replacing the phrase “liable in damages” with the more widely used phrase “liable for damages”.

- 3.6 Clause 6 amends section 23(2)(a) of the principal Act by inserting the word “or” at the end of that section to distinguish the different alternatives between section 23(2)(a) and (b).
- 3.7 Clause 7 amends section 24(a) of the principal Act to make it clear who “person” refers to by replacing the word “person” with the words “member or that permanent delegate”.
- 3.8 Clause 8 amends section 25(2) of the principal Act so that it is clear that the response of the aggrieved person must be published.
- 3.9 Clause 9 amends section 28 of the principal Act by the addition of paragraph (g) to subsection (2) to provide that the definition of “disturbance” must be construed as excluding an act committed by a member in the exercise of his or her privilege contemplated in section 117(1) of the Constitution when being applied to provincial legislatures. Clause 9 further amends section 28 by adding a new subsection (3) to provide that, for the purposes of section 12(2), a provincial legislature may choose to either appoint a standing committee or establish an *ad hoc* committee.
- 3.10 Clause 10 inserts a new section 28(A) in the principal Act to provide that the Speaker of a provincial legislature exercises control and authority over the precincts on behalf of that legislature.
- 3.11 Clause 11 amends section 29(2)(a) of the principal Act by inserting the word “or” at the end of that section to distinguish the different alternatives between section 29(2)(a) and (b).
- 3.12 Clause 12 amends section 30(a) of the principal Act to make it clear who “person” refers to by replacing the word “person” with the word “member”.
- 3.13 Clause 13 amends section 32 of the principal Act by replacing and correcting the year “2003” with “2004”
- 3.14 Clause 14 provides for the short title.

4. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

None.

5. FINANCIAL IMPLICATIONS FOR THE STATE

None.

6. DEPARTMENTS, BODIES OR PERSONS CONSULTED

The following stakeholders were consulted—

- [to be completed before the introduction of the draft Bill]

7. PARLIAMENTARY PROCEDURE

7.1 The Committee proposes that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provisions to which the procedures set out in section 74 or 76 of the Constitution apply.

7.2 The Committee is of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.