

Review of NA Rules
Inputs from CLSO

GENERAL EXPLANATORY NOTES

- [] - Words in bold type in square brackets indicate omissions from existing Rules.
- _____ - Words underlined with a solid line indicate insertions in existing Rules.

A reference to "Ambrosini Case" is a reference to the case of Oriani-Ambrosini, MP v Sisulu, MP Speaker of the National Assembly (CCT 16/12) [2012] ZACC 27; 2012 (6) SA 588 (CC) (9 October 2012)

"Bill" to be written with a Capital letter wherever it appears.
"committee" to be written with small letters wherever it appears.

CHAPTER 13
LEGISLATIVE PROCESS
Part 1: Introduction

229. Legislative powers of Assembly

- (1) The national legislative authority as vested by the Constitution in Parliament confers on the Assembly, in terms of section 44(1) of the Constitution, the power —
 - (a) to amend the Constitution;
 - (b) to pass legislation with regard to any matter, including a matter within a functional area listed in Schedule 4 of the Constitution, but excluding, subject to Subrule (2), a matter within a functional area listed in Schedule 5; and
 - (c) to assign any of its legislative powers, except the power to amend the Constitution, to any legislative body in another sphere of government.

Comment [cr1]: (1) Repeats the Constitution. No other comments.

- (2) The Assembly may, as part of the legislative process contemplated in terms of section 44(2) of the Constitution, pass legislation falling within a functional area listed in Schedule 5 of the Constitution, when it is necessary —
 - (a) to maintain national security;
 - (b) to maintain economic unity;
 - (c) to maintain essential national standards;
 - (d) to establish minimum standards required for the rendering of services; or
 - (e) to prevent unreasonable action taken by a province which is prejudicial to the interests of another province or to the country as a whole.

Comment [cr2]: (2) Repeats the Constitution, but substitutes "Parliament" for "Assembly" (Section 44(2) reads "Parliament may intervene, by passing legislation ...), which could cause a different interpretation: See proposed amendment

- (3) Any Bill [bill falling within the Assembly's legislative powers] may in terms of section 73(1) of the Constitution be introduced in the Assembly.
- (4) In exercising its legislative powers, the Assembly in terms of section 55 of the Constitution may —
 - (a) consider, pass, amend or reject any legislation before the Assembly; and
 - (b) initiate or prepare legislation, except money [bills] Bills.

Comment [cr3]: (3) Although the interpretation in practice is probably the same, the Constitution simply states "Any Bill may be introduced in the National Assembly". As the Constitution does not envisage a limitation, and as it is impossible to think of a Bill that will not fall within the Assembly's legislative powers, we propose this wording.

230. Initiation of legislation by Assembly

Comment [cr4]: (4) No comments

- (1) The Assembly initiates or prepares legislation in terms of these Rules for introduction as envisaged in section 73(2) of the Constitution through –
 (a) its committees [and members] acting with the permission of the Assembly [in terms of these Rules]; or
 (b) its members.

Alternative (K Hahndiek): The Assembly initiates legislation through its committees [and members] acting with the permission of the Assembly and through members in terms of these Rules.

Comment [cr5]: (1) The Ambrosini case, par 75: "A reading of Rule 230(2) suggests that the requirement extends to the exercise of the section 73(2) power. Those words that impose the permission requirement on individual members are therefore unconstitutional." A proposal is made to align this rule with Rule 229(4)(b) (including "prepares"), Rule 231 (2) (including "introduction"), as well as Interim Rule (a) (including "section 73(2)").

- (2) Save for a money Bill or legislation envisaged in section 214 of the Constitution, any [Any] committee or member of the Assembly may in terms of section 73(2) of the Constitution introduce a [bill] Bill in the Assembly that has been initiated or prepared in terms of Subrule (1).

Alternative (K Hahndiek):
 (2) Any committee [or member] of the Assembly may in terms of section 73(2) of the Constitution introduce a bill in the Assembly that has been initiated in terms of Subrule (1).
 (3) Any member of the Assembly may in terms of section 73(2) of the Constitution introduce a bill in the Assembly that has been initiated in accordance with these Rules.

Comment [cr6]: (2) Section 73(2) has provisos that are not included in the Rules. It is proposed that this be included. It is also proposed that it be aligned with Rule 229(4) (including "prepared")

231. Initiation of legislation by national executive

- (1) The national executive may prepare and initiate legislation in terms of section 85(2)(d) of the Constitution for introduction in the Assembly.
 (2) Such legislation may be introduced in the Assembly by a Cabinet member or a Deputy Minister in terms of section 73(2) of the Constitution, but only the Minister of Finance may introduce a money [bill] Bill or a Bill which provides for equitable shares and allocations of revenue as envisaged in section 214 of the Constitution.

Comment [cr7]: (1) No comment

Comment [cr8]: (2) Section 73(2) also provides for another exemption, namely Bills that provide for legislation envisaged in section 214. To provide members with clarity (and to avoid blank cross referencing) this wording is proposed

232. Application of this Chapter

- (1) The Rules set out in Parts 1, 2, 3 and [12] 10 of this Chapter apply to [bills] Bills of all types to the extent that those Rules are not inconsistent with the Rules for specific types set out in Parts 4 to [11] 9 of this Chapter.
 (2) This Chapter must be read with Chapter 4 of the Joint Rules.

Comment [cr9]: (1) There is no part 11 or 12. It is also not clear why Part 1 is excluded.

Comment [cr10]: (2) No Comment

**Part 2: Steps prior to introduction
 Bills initiated by Cabinet members and Deputy Ministers**

233. Submission of legislative proposals to Speaker

- (1) A Cabinet member or Deputy Minister intending to introduce a [bill] Bill in the Assembly must, [comply with] as is set out in Joint Rule 159, before the [bill] Bill is introduced, submit to the Speaker -

Comment [cr11]: (1) and (2) No Comment

Comment [cr12]: As per request of task team – the wording of JR 159 included

(a) the draft of the proposed Bill as approved by Cabinet, whether or not the draft has been legally or technically formalised as a proper draft Bill; and

(b) a memorandum explaining the objects of the proposed legislation.

[(2) The Speaker, at the request of a Cabinet member or Deputy Minister, may dispense with this Rule with regard to any particular bill.]

Bills initiated by Assembly members in individual capacity

[234. Submission of legislative proposals to Speaker

(1) An Assembly member intending to introduce a bill in the Assembly in an individual capacity (other than as a Cabinet member or Deputy Minister) must, for the purpose of obtaining the Assembly's permission in terms of Rule 230 (1), submit to the Speaker a memorandum which —

(a) sets out particulars of the proposed legislation;

(b) explains the objects of the proposed legislation; and

(c) states whether the proposed legislation will have financial implications for the State and, if so, whether those implications may be a determining factor when the proposed legislation is considered.

(2) The Speaker must table the member's memorandum in the Assembly.]

[235. Referral of proposals to committee

(1) The Speaker must refer the member's memorandum to the Committee on Private Members' Legislative Proposals and Special Petitions.

(2) The Committee may consult the portfolio committee within whose portfolio the proposal falls.

(3) After considering the member's memorandum, the Committee must recommend that permission either be —

(a) given to the member to proceed with the proposed legislation; or

(b) refused.

(4) If the Committee recommends that the proposed legislation be proceeded with, it may —

(a) express itself on the desirability of the principle of the proposal;

(b) recommend that the Assembly approve the member's proposal in principle; or

(c) recommend that permission be given subject to conditions.]

[Rule 235 substituted, 22 June 2011]

[235A. Criteria for consideration of proposals

(1) The Committee will confine its consideration of the legislative proposal to whether it -

(a) goes against the spirit, purport and object of the Constitution;

(b) seeks to initiate legislation beyond the legislative competence of the Assembly;

(c) duplicates existing legislation or legislation awaiting consideration by the Assembly or Council;

(d) pre-empts similar legislation soon to be introduced by the national executive;

(e) will result in a money bill; or

(f) is frivolous or vexatious.]

[Rule 235A Inserted, 22 June 2011]

[236. Consideration of legislative proposal by Assembly

Comment [cr13]: As per request of task team – Speaker cannot dispense a Joint Rule

Comment [cr14]: 234: Ambrosini case, par 77: "This Rule stands to be declared constitutionally invalid in its entirety because the portion that imposes the permission requirement cannot be severed from the Rule and still leave the rest capable of practical implementation." Propose deletion in full.

Comment [cr15]: K Hahndiek: Information required in Rule 234(1)(a)-(c) will be provided in the explanatory memorandum to the bill as required by Rule 243 in respect of all bills.

Comment [cr16]: 235: Ambrosini case, par 78: "This Rule is so intertwined with the permission requirement that the deletion of only the reference to the permission requirement would denude it of any substance and meaning. It is therefore unconstitutional in its entirety and invalid." Propose deletion in full.

Comment [cr17]: K Hahndiek: Rules 209-13 relating to the role and functions of the Committee on Private Members' Legislative Proposals and Special Petitions will need to be amended suitably.

Comment [cr18]: 235A: Ambrosini case, par 79: "This Rule is to be severed only because it is meaningless in the absence of Rule 235, to which it owes its existence. This must, however, not be understood as a pronouncement on the constitutional validity of its substance, for that issue does not arise."

Comment [cr19]: Criteria in 235A: Although the criteria contained in here could be considered by a Committee on the motion of desirability (for Executive and Private Member's Bills), it is not necessary to spell this out. (a), (b) and (e) will be relevant whether captured or not; (c) and (d) will be brought to the attention of the relevant Committee during due deliberation on the Bill and then the Committee must decide... [1]

Comment [cr20]: 236: Ambrosini case, par 80: "This Rule is constitutionally invalid in its entirety. It is an embodiment of the permission requirement." Propose deletion in full.

(1) The Committee on Private Members' Legislative Proposals and Special Petitions must table in the Assembly the member's memorandum and the Committee's recommendation, including any views of a portfolio committee on the financial or other implications of the proposal.

(2) The Speaker must place the Committee's report together with the member's proposal on the Order Paper for a decision.

(3) The Assembly may —

(a) give permission that the proposal be proceeded with;

(b) refer the proposal back to the Committee or the portfolio committee concerned for a further report; or

(c) refuse permission.

(4) If the Assembly gives permission that the proposal be proceeded with, it may, if it so chooses —

(a) express itself on the desirability of the proposal; or

(b) subject its permission to conditions.]

237. Preparation of draft [bill] Bill

(1) [If the Assembly gives permission that the proposal be proceeded with, the] A member who intends to initiate or prepare legislation, in an individual capacity (other than as a Cabinet member or Deputy Minister), for introduction in the Assembly as contemplated in Rule 230 [concerned] must

Alternative (K Hahndiek):

(1) [If the Assembly gives permission that the proposal be proceeded with, the member concerned] An Assembly member intending to introduce a Bill in the Assembly in an individual capacity must —

(a) prepare a draft [bill] Bill, and a supporting memorandum setting out the objects of the [bill] Bill, in a form and style that complies with any prescribed requirements, including those set out in rule 243; and

(b) [consult the JTM for advice on the classification of the bill; and]

(c) comply with Rule 241 or, if it is a proposed constitutional amendment, with Rule 258.

(1A) If the member publishes a draft Bill in terms of Rule 241 or 258, the member may introduce the Bill after taking into consideration any public comments..

(2) The [Secretary must reimburse a member] Speaker is only liable for [any] reasonable [expenses incurred by the member in giving effect to Subrule (1), provided that those expenses were approved by the Speaker before they were incurred] costs incurred in the publication of a Bill as contemplated in Rule 241: Provided that—

(a) such publication is facilitated through the Office of the Speaker; and

(b) where a member decides to re-publish a Bill in an annual session, for whatever reason, the Speaker is not liable for the costs of such re-publication.

Bills initiated by Assembly Committees

238. Submission of legislative proposals to Speaker

Comment [cr21]: 237(1): Ambrosini case, par 81: "Rule 237(1) reinforces the permission requirement created by Rule 230, by subjecting the process through which a member prepares a draft Bill to the prior permission of the Assembly. The Rule subjects the power of individual members to prepare a Bill, with a view to introducing it in the Assembly, to the Assembly's veto... This is plainly unconstitutional."

Comment [cr22]: 237: Propose that this Rule be used as a base for the inclusion of the Interim Rules, while aligning the requirements with that of Executive Bills.

Comment [cr23]: 237(1)(a) Insertions copied from Rule 243(1)(c)

Comment [cr24]: (b) It is recommended that this rule be deleted as the JTM must also be approached after introduction. This is an unnecessary additional step — especially if provision is made for advice to be given to the Member in 243(1)(c)(v) as proposed.

Comment [cr25]: If the member must introduce the published Bill, valuable Committee time is taken up to correct the Bill, or to address the issues that came up in submissions. This can be done prior to introduction with the Member indicating the amendments that relates to public submissions when addressing the Committee.

Comment [cr26]: (2) As per Interim Rule (e)

Comment [cr27]: K Hahndiek: Consider the cost implications of the preparation of the draft bill and its prepublishing, as well as the cost to Parliament to have the bill printed and the cost of its translation into at least one other official language (in the latter regard, see comments on Joint Rule 220, below).

Option: One option would be that the member would be reimbursed only if the Assembly passes the bill (with or without amendments).

Comment [cr28]: (2) — Proviso: Proposal to avoid abuse of the rule. Ambrosini case par 88-89 allows this. Publication is currently done via this Office. Further, requiring consultation beforehand should limit the need to republish. The proposal in Subrule (1A) will also assist ... [2]

(1) An Assembly committee intending to introduce a **[bill] Bill** in the Assembly must, for the purpose of obtaining the Assembly's permission in terms of Rule 230(1), table in the Assembly a memorandum which —

- (a) sets out particulars of the proposed legislation;
- (b) explains the objects of the proposed legislation; **[and]**
- (c) states whether the proposed legislation will have financial implications for the State and, if so, gives an account of those implications~~[.]~~; **and**
- (d) sets out the views of the Executive on the objects of the proposed legislation.**

(2) The Speaker must place the **[proposal] proposed legislation** on the Order Paper for decision.

(3) The Assembly may —

- (a) give permission that the **[proposal] proposed legislation** be proceeded with;
- (b) refer the **[proposal] proposed legislation** back to the committee for reconsideration; or
- (c) refuse permission.

(4) If the Assembly gives permission that the **[proposal] proposed legislation** be proceeded with, it may, if it so chooses —

- (a) express itself on the desirability of the **[proposal] proposed legislation**; or
- (b) subject its permission to conditions.

Comment [cr29]: 238(1): Should something not be included on the Department's views on the Bill?

Comment [cr30]: Consistency – see the paragraphs above

239. Preparation of draft **[bill] Bill**

(1) If the Assembly gives permission that the **[proposal] proposed legislation** be proceeded with, the committee must —

- (a) prepare a draft **[bill] Bill**, and a memorandum setting out the objects of the **[bill] Bill** in a form and style that complies with any prescribed requirements, including those set out in rule 243; and
- (b) consult the JTM for advice on the classification of the **[bill] Bill**; and
- (c) comply with Rule 241 or, if it is a proposed constitutional amendment, with Rule 258.

(2) If the committee chooses in terms of Rule 241 or 258 to publish the draft **[bill] Bill**, it is not bound to publish the **[bill] Bill** as it is to be introduced. Instead, the committee may publish any version of the draft **[bill] Bill** prepared by it in terms of Subrule (1)(a).

(3) The **[Committee] committee** must report to the Assembly when it publishes the draft **[bill] Bill**.

[Note: From here the procedures in the next Part apply. See Rule 243, etc.]

240. Consideration of draft **[bill] Bill** before introduction

Before introducing its **[bill] Bill**, the committee —

- (a) must **[arrange its business in such a manner that] give** interested persons and institutions **[have]** a period of at least three weeks after the draft **[bill] Bill** or particulars of the draft **[bill] Bill** have been published in terms of Rule 241 or 258, to comment on the proposed legislation;
- (b) must give **[officials of any relevant State department or other executive organ of State a] the relevant department in the national executive authority or executive organ of state in the national sphere of government** sufficient opportunity to **[state their case before] make submissions to** the committee;
- (c) must consult the JTM for advice on the classification of the draft **[bill] Bill**; and
- (d) may in view of any comments received in terms of paragraph (a) or (b) or advice given in terms of paragraph (c), adjust the draft **[bill] Bill** before its introduction.

Comment [cr31]: K Hahndiek: This Rule is applicable to bills initiated by Assembly committees. Consider making these provisions applicable also to members' bills before introduction. In particular, provide for a committee when considering a member's bill to apply (a) and (b), viz. time for public comment and an opportunity for comment from the Executive.

Comment [cr32]: Plain language

Comment [cr33]: Also see Rule 249(3)(aA) - it is proposed that this be made applicable to PMBs as well.

Comment [cr34]: Plain language

All bills generally

241. Prior notice and publication of draft legislation

(1) A [bill] Bill may be introduced in the Assembly only if —

- (a) a copy of the draft legislation has been submitted to the Speaker in terms of Rule 233, if it is a [bill] Bill initiated by the national executive and that Rule is applicable;
- (b) prior notice of its introduction has been given in the Gazette; and
- (c) an explanatory summary of the [bill] Bill, or the draft [bill] version of the Bill [as it is to be introduced] intended for introduction, has been published in the Gazette.

(1A) When intending to introduce a Bill in the Assembly, an Assembly member acting in individual capacity must, as soon as possible after publication contemplated in Subrule (1)(c), submit to the Speaker the explanatory summary of the Bill, or the draft Bill, as appropriate.

(1B) The Speaker must refer the explanatory summary of the Bill, or the draft Bill, as appropriate, contemplated in Subrule (1A) to the responsible portfolio committee in order -

- (a) to assist the committee in planning its work; and
- (b) to make the committee members aware of the policies proposed.

(2) If the [bill] Bill [as it is to be introduced] is published, the notice referred to in Subrule (1)(b) must contain an invitation to interested persons and institutions to submit written representations on the draft legislation to the [Secretary] Speaker within a specified period.

(3) If the draft [bill] Bill itself is published, a memorandum setting out the objects of the [bill] Bill must also be published.

(4) This Rule does not apply to —

- (a) constitution amendment [bills] Bills, which must be dealt with in terms of Rule 258; and
- (b) money [bills] Bills when the special procedure set out in Rule 287(2) is followed.

(5) Subrule (1) (b) and (c) does not apply to a [bill] Bill that has been certified by the member in charge of the [bill] Bill, in consultation with the Speaker, as an urgent matter.

242. Notice withdrawing proposed legislation

(1) If a Cabinet member, Deputy Minister, committee or member decides not to proceed with the introduction of a [bill] Bill after Rule 241 has been complied with, the Cabinet member, Deputy Minister, committee or member must without delay inform the [Secretary] Speaker in writing of the decision.

(2) The [Secretary] Cabinet member, Deputy Minister, committee or member referred to in Subrule (1) must publish a notice in the Gazette stating that the proposed legislation has been withdrawn.

(3) The Speaker is liable for the reasonable costs incurred by a committee or member in publication of the notice contemplated in Subrule (2).

Part 3: Introduction of bills and first and second readings

Introduction and related matters

243. Introduction of bills in Assembly

(1) A Cabinet member or Deputy Minister or an Assembly member or committee introduces a [bill] Bill (other than a [bill] Bill mentioned in Subrule (4)) by submitting to the Speaker —

- (a) a copy of the [bill] Bill or, if [the] a draft of the [bill] Bill [as it is introduced] was published in terms of Rule 241(1)(c), a copy of the Gazette concerned;

Comment [cr35]: It is accepted that this requirement is to prevent a version of the Bill being published that is very different from that being introduced. However, this also prevents the person in charge from taking public comments into account. Furthermore, as it is not a requirement to publish the Bill it is unclear why this should be a requirement at all.

Comment [cr36]: (1A) and (1B): As Member's Bills must be slotted into the legislative programme of Portfolio Committees now, it is proposed that this rule be amended to read similar to Joint Rule 159, which is a requirement that the Executive must comply with. That will allow Committees to plan ahead for a Private Member's Bill to be introduced. In practice, Members in any event send their proposals to the Speaker for publication.

Comment [cr37]: It is accepted that this requirement is to prevent a version of the Bill being published that is very different from that being introduced. However, this ... [3]

Comment [cr38]: IR (d) states "may". It is recommended that it be "must" as per the NA Rules.

Comment [cr39]: K Hahndiek: [Note that in terms of subrule (5) the member in charge of the bill, as an individual member, may also apply to have the bill certified as an urgent matter. This is ... [4]

Comment [cr40]: Recommend that this notice must go to the Speaker as this is a legislative process that affects the business of the Assembly.

Comment [cr41]: It isn't clear why this duty must fall on Parliament when it is the person in charge of the Bill that is withdrawing the Bill

Comment [cr42]: A consequence of the proposed amendment to Subrule (2)

Comment [cr43]: Ambrosini case, par 82: "Rule 243(3) further reinforces the permission requirement with regard to the introduction of a Bill... The offending words in this Rule ... [5]

Comment [cr44]: It is accepted that this requirement is to prevent a version of the Bill being published that is very different from that being introduced. However, this ... [6]

- (b) the explanatory summary referred to in Rule 241(1)(c), if a draft of the [bill] Bill itself was not published; and
- (c) a supporting memorandum which must —
- (i) state whether the [bill] Bill is introduced as a proposed section 75 [bill] Bill, a section 76(1) [bill] Bill, or a money [bill] Bill [or a mixed section 75/76 bill];
 - (ii) explain the objects of the [bill] Bill;
 - (iii) give an account of the financial implications of the [bill] Bill for the state;
 - (iv) contain a list of all persons and institutions that have been consulted in preparing the [bill] Bill; [and]
 - (v) if the [bill] Bill is introduced by a Cabinet member or a Deputy Minister, include a legal opinion by a State law adviser, or a law adviser of the State department concerned, on the classification of the [bill] Bill and any other question in respect of which the JTM is required to make a finding in terms of Joint Rule 160[.]; and
 - (vi) if the Bill is introduced by a committee or an Assembly member, include a legal opinion by a Parliamentary Legal Adviser, on the classification of the Bill and any other question in respect of which the JTM is required to make a finding in terms of Joint Rule 160.

(1A) A [bill] Bill introduced by a Cabinet member or Deputy Minister must be certified by the Chief State Law Adviser or a state law adviser designated by him/her as being -

- (a) consistent with the Constitution; and
 - (b) properly drafted in the form and style which conforms to legislative practice.
- (1B) If a Bill is not certified as contemplated in subrule (1A), the Bill must be accompanied by a report or legal opinion by a state law adviser mentioned in subrule (1A) on why it has not been so certified.

[Subrules (1A) and (1B) inserted, September 2002]

(1C) A Bill introduced by a committee or an Assembly member must be certified by the Chief Parliamentary Legal Adviser or a Parliamentary Legal Adviser designated by him or her as being —

- (a) consistent with the Constitution; and
- (b) properly drafted in the form and style which conforms to legislative drafting practice.

(1D) If a Bill is not certified as contemplated in Subrule (1C), the Bill must be accompanied by a report or legal opinion by a Parliamentary Legal Adviser mentioned in Subrule (1C) on why it has not been so certified.

(2) A [bill] Bill introduced by a Cabinet member or Deputy Minister must contain on its cover page a reference to that Cabinet member or Deputy Minister as the person introducing the [bill] Bill.

(3) A [bill] Bill introduced by —

- (a) an Assembly member; or
- (b) committee with the Assembly's permission in terms of Rule [236(3) or] 238(3),

must —

[(a)] (i) be accompanied by a statement to that effect; and

[(b)] (ii) contain on its cover page a reference to the name of the member or the committee as the member or committee introducing the [bill] Bill.

Comment [cr45]: The Bill is only after introduction classified. At introduction its classification is a proposal only.

Comment [cr46]: Due to the Tongane case, there are no more mixed Bills

Comment [cr47]: (iv) Was not included in the Interim Rules, but must be required if the quality of legislation introduced in Parliament is to be of a high standard. Some Bills MUST be consulted on with designated persons prior to introduction. If not done, there is no mechanism to provide for the Bill to be stopped until it gets to the Portfolio Committee. If consultations are listed, at least the member can be warned of a procedural flaw in the Bill's legislative process

Comment [cr48]: (v) This is optional and for the Task Team to consider. Parliament has created capacity to assist members and such a requirement could assist a Member or a Committee on more than one aspect of the Bill (as the Adviser will have to look at the whole Bill to provide this opinion and can thus advise on drafting and legal errors as well)

Comment [cr49]: K Hahndiek: Subrule (1A) and (1B): In respect of bills introduced by the Executive, certification by State law advisers is required regarding consistency with the Constitution and that the bill is "properly drafted in the form and style which conforms to legislative practice"
Query: Consider how such certification is to be obtained for members' bills, and at what stage? (Presumably during committee consideration, if not before).

Comment [cr50]: This is optional and for the Task Team to consider. Parliament has created capacity to assist members and Committees and such a requirement could assist Parliament. Introduction will not be refused if the Bill is not certified, but the Member or Committee will do well to reconsider a Bill that is ... [7]

Comment [cr51]: Ambrosini case, par 88-89 allows for this

Comment [cr52]: Ambrosini case: "The offending words in this Rule are unconstitutional only insofar as they apply to individual members." See proposal

Alternative (K Hahndiek): (3) A bill introduced by an Assembly **[member or]** committee with the Assembly's permission in terms of Rule **[236(3) or]** 238(3), must —

(a) be accompanied by a statement to that effect; and

(b) contain on its cover page a reference to the name of the **[member or]** the committee as the member or committee introducing the **[bill] Bill**.

Further Alternative (K Hahndiek): (3) A bill introduced by an Assembly member or committee in terms of these Rules must -

(a) be accompanied by a statement to that effect; and

(b) contain on its cover page a reference to the name of the member or the committee as the member or committee introducing the bill.

(4) This Rule does not apply to —

(a) constitution amendment **[bills] Bills**, which must be introduced in accordance with Rule 260; and

(b) money **[bills] Bills** when the special procedure set out in Rule 287(2) is followed.

(5) Bills initiated by Assembly members or committees may be introduced only when the Assembly is in session, unless certified by the member in charge of the Bill, in consultation with the Speaker, as an urgent matter.

Comment [cr53]: Recommendation. The Sexual Offences Amendment Bill had to be introduced urgently. If that was not in session, it could have been problematic.

244. Classification of bills

(1) When a **[bill] Bill**, other than a Bill initiated by an Assembly Committee, is introduced in the Assembly in terms of Rule 243 or 260, the Secretary must refer the **[bill] Bill** to the JTM for classification of the **[bill] Bill** in terms of Joint Rule 160.

(1A) The findings of the JTM contemplated in Rule 240(c) in respect of a Bill initiated by an Assembly Committee must be tabled in the Assembly with the Bill when it is introduced.

(2) The classification of the **[bill] Bill** and all findings of the JTM must be —

(a) conveyed to the portfolio or other committee considering the **[bill] Bill**; and

(b) tabled in the Assembly.

Comment [cr54]: But Committee Bills are read a 1st time and immediately placed on the order paper for a 2nd reading (rule 247(7)). It is also required that a Committee consult the JTM beforehand (239(b) and 240(c)). Should one of these referrals (before and after introduction to the JTM) not be deleted?

Comment [cr55]: Why the Secretary? The Bill etc was submitted to the Speaker so far.

Comment [cr56]: No comment

245. Reintroduction of bills ruled out of order by JTM

A **[bill] Bill** reintroduced in the Assembly in terms of Joint Rule 162 must follow the same procedure as if it were introduced for the first time, except that the steps prior to introduction as prescribed by the Assembly Rules do not apply if no substantive new provisions were added to the **[bill] Bill**.

First and Second Reading procedures

246. When First and Second Reading procedures are applicable

(1) All **[bills] Bills** introduced in the Assembly have a First Reading and a Second Reading in the Assembly after their introduction, and all **[bills] Bills** introduced in and as passed by the Council have a First Reading and a Second Reading in the Assembly after their referral to the Assembly.

(2) The First and Second Reading procedures do not apply if a **[bill] Bill** or a version of the **[bill] Bill** is referred back to the Assembly from either the Council or the Mediation Committee in terms of section 75 or 76 of the Constitution or a provision of the Joint Rules.

Comment [cr57]: K Hahndiek: Rules 246 – 248: Note: All bills have a first and second reading in the Assembly (but this is subject to programming). Query: Has the First Reading procedure been amended since the 7th edition of the Rules?

Comment [cr58]: 1st and 2nd reading procedures are only applicable to Bills introduced. SubRule (2) is thus superfluous. If retained, provision should also be made for section 79(1) referrals.

247. Procedure when Assembly in session

(1) If the Assembly is in session when a **[bill] Bill** is introduced in the Assembly by a Cabinet member or Deputy Minister or when a **[bill] Bill** introduced by a Cabinet member or Deputy Minister, in and as passed by the Council is referred for the first time to the Assembly —

(a) the person in charge of the **[bill] Bill** must —

(i) submit to the Secretary a notice of First Reading of the **[bill] Bill**; and

(ii) if that person wishes to give an introductory speech, request in the notice an opportunity for such a speech; and

(b) the Speaker must table in the Assembly the **[bill] Bill** and the supporting memorandum and, if there is one, also the explanatory summary.

(2) (a) Once notice has been given in terms of Subrule (1)(a)(i), the **[bill] Bill** must be placed on the Order Paper for First Reading.

(b) No amendment to a **[bill] Bill** is allowed on the First Reading of the **[bill] Bill**.

(3) (a) If the person in charge of a **[bill] Bill** has requested an opportunity for an introductory speech; in terms of Subrule (1)(a)(ii) and the request has been granted —

(i) that person may, at the First Reading, in a speech not exceeding 15 minutes, explain the background to the **[bill] Bill** and the reasons for and the objects of the provisions of the **[bill] Bill**; and

(ii) one member of each party in the Assembly may make a statement on the **[bill] Bill** on behalf of the party in a speech not exceeding three minutes.

(b) Once the speeches have been made the **[bill] Bill** is regarded as having been read a first time.

(4) If the person in charge of a **[bill] Bill** has not requested an opportunity for an introductory speech in terms of Subrule (1)(a)(ii) or has made a request but the request has not been granted, the **[bill] Bill** as tabled is regarded as having been read a first time.

(5) When a **[bill] Bill** has been read a first time the Speaker must refer the **[bill] Bill** and its annexures —

(a) to the portfolio committee under which the subject of the **[bill] Bill** falls;

(b) by resolution of the Assembly to any other Assembly committee; or

(c) to a joint committee, if this is required by a decision in terms of Joint Rule 166.

(6) If the **[bill] Bill** is referred to an Assembly committee, the committee must deal with the **[bill] Bill** in accordance with Rule 249. If the **[bill] Bill** is referred to a joint committee, the Joint Rules apply.

(7) Subrule (5)(a) and (b) does not apply to a **[bill] Bill** initiated and introduced by an Assembly committee. Instead, the **[bill] Bill** must directly be placed on the Order Paper for Second Reading unless the **[bill] Bill** is referred to a joint committee.

248. Procedure during recess

(1) If the Assembly is in recess when a **[bill] Bill** is introduced in the Assembly or when a **[bill] Bill** introduced in and as passed by the Council is referred for the first time to the Assembly, the Speaker must refer the **[bill] Bill** and its annexures —

(a) to the portfolio committee within whose portfolio the subject of the **[bill] Bill** falls;

(b) with the concurrence of the person in charge of the **[bill] Bill**, to any other Assembly committee;
or

(c) to a joint committee, if this is required by a decision in terms of Joint Rule 166.

(2) A **[bill] Bill** referred to a committee in terms of Subrule (1) is regarded as having been read a first time.

Comment [cr59]: IR (h) indicates that first reading of Bills are different to PMB. Committee Bills have a combined first and second reading

Comment [cr60]: STP or Speaker?

Comment [cr61]: No Comment

(3) The **[bill] Bill**, together with its annexures, must be submitted to the members of the committee at least 14 days before the date appointed for a meeting of the committee, unless the Assembly or, if the **[bill] Bill** is referred to a joint committee, both Houses, are due to meet during that period.

(4) If the **[bill] Bill** is referred to an Assembly committee, the committee must deal with the **[bill] Bill** in accordance with Rule 249. If the **[bill] Bill** is referred to a joint committee, the Joint Rules apply.

249. Process in committee

(1) If a **[bill] Bill** has been published for public comment in terms of Rule 241 or 258, the Assembly committee to which the **[bill] Bill** is referred must **[arrange its business in such a manner that] give** interested persons and institutions **[have] an opportunity to comment on the [bill] Bill.**

(2) If a **[bill] Bill** has not been published for public comment, and the committee to which the **[bill] Bill** is referred considers public comment on the **[bill] Bill** to be necessary, it **must facilitate public involvement and** may by way of invitations, press statements, advertisements or in any other manner, invite the public to comment on the **[bill] Bill.**

[2A] A committee to which a Bill introduced by an Assembly member in his or her individual capacity, has been referred must provide reasonable notice to the person in charge of the Bill before it considers the Bill.

(3) The committee —

(a) must inquire into the subject of the **[bill] Bill** and report on it to the Assembly;

[aA] must, if the Bill was introduced by a member in his or her individual capacity, give the relevant department in the national executive authority or executive organ of state in the national sphere of government sufficient opportunity to make submissions to the committee on the objects and particulars of the Bill;

Alternative: (K Hahndiek):

[i] if it is a bill introduced by an individual member, must give officials of any relevant State department or other executive organ of State a sufficient opportunity to state their case before the committee.

(b) if **[it is a bill] the Bill [amending] amends** provisions of legislation, **[may] must, if it intends to propose amendments to other provisions of that legislation, seek the permission of the Assembly to [inquire into amending other provisions of that legislation] do so;**

(c) may, or if ordered by the Speaker must, consult any other committee **from either House** that has a direct interest in the substance of the **[bill] Bill;**

(d) may consult the **[member] person** in charge of the **[bill] Bill;**

(e) may consult the JTM on whether any amendments to the **[bill] Bill** proposed in the committee —

(i) may affect the classification of the **[bill] Bill;** or

(ii) may render the **[bill] Bill** constitutionally or procedurally out of order;

(f) may not propose an amendment that —

(i) affects the classification of the **[bill] Bill**, except as provided in Subrule (4) and Joint Rule 163; or

(ii) renders the **[bill] Bill** constitutionally or procedurally out of order within the meaning of Joint Rule 161;

[fA] after due deliberation, must consider a motion of desirability on the subject matter of the Bill and if rejected, must immediately table its report on the Bill;

Comment [cr62]: Plain language

Comment [cr63]: The Doctors for Life case indicated that the content of a Bill determines the level of involvement required. This rule could be amended to reflect that sentiment

Comment [cr64]: The Committee must facilitate public involvement. Use of the word "may" refers to the manner in which that may be achieved, but there is a risk that it might be interpreted as a discretion on whether to facilitate public involvement at all.

Comment [cr65]: IR (i), aligned with NA Rules

Comment [cr66]: To mimic Rule 240(b) that relates to Committee Bills, so as to (b) a that Bills are aligned to Executive Policy and can be implemented by the Executive.

Comment [cr67]: Why is the permission required? If it is for purposes of considering policy implications, should Committees not also request permission for additions to Bills that do not amend an Act (a New Bill)?

Comment [cr68]: This can be interpreted to mean that there is a discretion whether to ask permission. That is not the case. See proposed amendment.

Comment [cr69]: Committees have expressed uncertainty as to whether they have this right

Comment [cr70]: Aligning with the definitions

Comment [cr71]: IR (i) and (j). It is recommended that this should apply to all Bills

(g) may recommend approval or rejection of the **[bill] Bill** or present with its report an amended **[bill] Bill** or a redraft of the **[bill] Bill**;

(fB) if the motion of the desirability is adopted, the committee can proceed to deliberate on the details of the legislation;

(h) must report to the Assembly in accordance with Rule 251; and

(i) may report to the Assembly on a Bill introduced in the Assembly and classified as being subject to section 18(1) of the Traditional Leadership and Governance Framework Act, 2003, only after 30 days have passed since the referral to the National House of Traditional Leaders in terms of Rule 332.

[Rule 249(3)(i) inserted, 13 September 2005]

(4) The committee may propose an amendment that changes the classification of a section 75 to a section 76 Bill, or section 76 to a section 75 Bill **[bill to a mixed 75/76 bill]** only if the JTM is of the view that the **[bill] Bill** as amended is unlikely to lead to unmanageable procedural complications.

[**Note: Subrule (4) must be suspended until the proposed procedure for mixed bills is implemented.**]

Comment [cr72]: To accommodate IR (k). It is recommended that this applies to all Bills

Comment [cr73]: K Hahndiek: Consider, in respect of members' bills, introducing a provision that the committee must first consider and decide on the desirability of the bill.

Comment [cr74]: Due to the Tongwane case there are no more mixed Bills

250. Referral to Assembly committee if joint committee fails to report

(1) If a **[bill] Bill** has been referred to a joint committee in terms of Rule 247(5)(c) or 248(1)(c) and that joint committee fails to present a report or fails to reach consensus on the **[bill] Bill**, the Speaker must refer the **[bill] Bill** and its annexures —

(a) to the portfolio committee within whose portfolio the subject of the **[bill] Bill** falls; or

(b) by resolution of the Assembly, to any other Assembly committee.

(2) The committee to which the **[bill] Bill** is referred must deal with the **[bill] Bill** in accordance with Rule 249.

Comment [cr75]: No comment

251. Committee's report

(1) The Assembly committee to which a **[bill] Bill** is referred must table in the Assembly —

(a) its report;

(b) the **[bill] Bill** that has been agreed on by it, or, if it has not agreed on a **[bill] Bill**, the **[bill] Bill** as referred to it; and

(c) the supporting memorandum which was introduced with the **[bill] Bill** or, if the memorandum has been amended by the committee, the amended memorandum.

(2) The committee may report to the Assembly only after the JTM has classified the **[bill] Bill** and has made its findings on the **[bill] Bill**.

(3) In its report the committee —

(a) must state the JTM's classification of and findings on the **[bill] Bill**;

(b) must state whether it recommends approval of the **[bill] Bill** with or without amendments, a redraft of the **[bill] Bill**, or rejection of the **[bill] Bill**;

(c) must specify each amendment if an amended **[bill] Bill** (other than a redraft of the **[bill] Bill**) was agreed on by it, and each amendment that was considered and, for a reason other than its being out of order, was rejected by it;

(d) must specify each amendment rejected by the committee if a redrafted **[bill] Bill** was agreed on by it;

(e) must, if it is not a unanimous report —

(i) specify in which respects there was not consensus; and

Comment [cr76]: K Hahndiek: Consider including in subrule (3) that in the case of a member's bill, the committee must specify in the report relevant details concerning the views expressed by the Executive on the bill.

- (ii) in addition to the majority report, express any views of a minority in the committee;
- (f) may specify such details or information about its enquiry and any representations or evidence received or taken by it, as it may consider necessary for the purposes of the debate on the **[bill] Bill**;
- (g) may report on any matter arising from its deliberations on the **[bill] Bill** but which is not necessarily related to the **[bill] Bill**; and
- (h) may recommend to the Assembly that any matter contained in the report be placed on the Order Paper for separate consideration either before or after the Assembly considers the **[bill] Bill**.

Comment [cr77]: This phrase needs to be clarified. It is not a minority report, nor an opportunity to list amendments not accepted.

252. Explanation of report

The chairperson or other member of the committee who tables the report in the Assembly on behalf of the committee, may, if the committee has so recommended in its report, address the Assembly in order to explain the report.

Comment [cr78]: No Comment

253. Second Reading

- (1) (a) If a **[bill] Bill** has been referred to an Assembly or joint committee, the debate on the Second Reading of the **[bill] Bill** may not commence before at least three working days have elapsed —
 - (i) since the committee’s report was tabled; or
 - (ii) if a committee member has addressed the Assembly in terms of Rule 252, since the address was delivered.
- (b) If a **[bill] Bill** has not been referred to a committee, the debate on the Second Reading of the **[bill] Bill** may not commence before at least three Assembly working days have elapsed since the **[bill] Bill** was introduced.
- (2) (a) The debate on the Second Reading of a **[bill] Bill** must be conducted on the subject of the **[bill] Bill**.
- (b) The debate on the Second Reading of a **[bill] Bill** that amends legislation must be conducted on the subject of the proposed amendments.
- (3) No motion may be moved during the debate.
- (4) The Assembly passes a **[bill] Bill** if it approves the Second Reading of the **[bill] Bill** in accordance with section 53(1)(a) and (c) of the Constitution, except that the Second Reading of —
 - (a) a constitution amendment **[bill] Bill** must be approved in accordance with Rule 262 (2) or (3); and
 - (b) a **[bill] Bill** determining the seat of Parliament must be approved in accordance with section 76(5) of the Constitution.
- (5) The Assembly rejects a **[bill] Bill** if it rejects the Second Reading of the **[bill] Bill** or, subject to Rule 296, fails to approve the Second Reading with the appropriate majority.

Comment [cr79]: When would this be?

[Note: See Rule 296 if **[bill] Bill** fails to obtain special majority due to the absence of members.]

254. Amendments proposed by members before decision of Second Reading

- (1) (a) After a **[bill] Bill** has been placed on the Order Paper for Second Reading but before the Assembly decides on the Second Reading, a member may, subject to Subrule (4), place amendments to clauses of the **[bill] Bill** on the Order Paper.
- (b) A **[bill] Bill** that has been rejected by the committee which considered it may not be amended under this Rule.

Comment [cr80]: This is such an important Subrule that it is recommended this be clearly stated here.

(2) Amendments delivered to the Secretary after 12:00 on any working day may be placed on the Order Paper for the second sitting day thereafter and not earlier, unless the Speaker determines otherwise in a particular case.

Comment [cr81]: Or Speaker?

(3) (a) The following amendments are out of order and may not be proposed under this Rule:

- (i) Amendments that affect the principle of the [bill] Bill and in respect of which the Assembly has not given any instruction.
- (ii) Amendments that change the classification of the [bill] Bill, except as provided for in Joint Rule 163.
- (iii) Amendments that would render the [bill] Bill constitutionally or procedurally out of order within the meaning of Joint Rule 161.
- (iv) Amendments that are out of order for any other reason.

(b) The Speaker's ruling on whether an amendment is out of order or in order, is final. If the JTM has made a finding on the substance of the amendment the Speaker is bound by the finding.

(4) No amendment which has the same effect as an amendment previously rejected in the committee may be placed on the Order Paper, except when it is a [bill] Bill of which a Cabinet member or Deputy Minister is in charge and that Cabinet member or Deputy Minister places such an amendment on the Order Paper.

Comment [cr82]: What is the reason for this?

(5) If an amendment has been placed on the Order Paper and the debate on the Second Reading has been concluded, the Speaker may either —

- (a) recommit the [bill] Bill for reconsideration to the committee which considered the [bill] Bill or, if it is a [bill] Bill introduced by an Assembly committee, to that committee, together with the amendment; or
- (b) put the amendment for decision by the Assembly and then the Second Reading of the [bill] Bill as a whole, including any approved amendment.

(6) An Assembly committee to which a [bill] Bill is recommitted must deal with the [bill] Bill in terms of Rule 255.

(7) A [bill] Bill may not be recommitted to a committee more than once in terms of this Rule.

255. Referral of amendments proposed in Assembly to Assembly committee

(1) If a [bill] Bill is recommitted in terms of Rule 254(5) to an Assembly committee, the committee —

- (a) may consider only those clauses of the [bill] Bill in respect of which amendments have been placed on the Order Paper and any consequential amendments that have to be effected;
- (b) may consult the JTM on whether any of the amendments —
 - (i) affects the JTM's classification of the [bill] Bill; or
 - (ii) renders the [bill] Bill constitutionally or procedurally out of order within the meaning of Joint Rule 161;
- (c) must mention in its report each amendment agreed on by the committee;
- (d) must specify in the report each amendment placed on the Order Paper by the person in charge of the [bill] Bill but rejected by the committee;
- (e) may not agree on any amendment that —
 - (i) changes the classification of the [bill] Bill, except as provided for in Subrule (3) or joint Rule 163; or
 - (ii) renders the [bill] Bill constitutionally or procedurally out of order within the meaning of Joint Rule 161; and
- (f) must table its report together with the [bill] Bill in the Assembly.

Comment [cr83]: Should a Committee not be allowed to approach the Assembly for permission to consider another clause?

Comment [cr84]: This rule is specifically tied to Subrule (2) and Rule 257(1)(b). However, should the committee not also report on amendments proposed by other members that placed amendments on the order paper?

(2) Subrule (1) (d) applies only if the person in charge of the [bill] Bill is a Cabinet member or a Deputy Minister.

(3) The committee may agree on an amendment that changes the classification of a section 75 to a section 76 Bill, or a section 76 section 75 Bill [bill to a mixed section 75/76 bill], but only if the JTM is of the view that the [bill] Bill as amended is unlikely to lead to unmanageable procedural complications.

[**Note: Subrule (3) should be suspended until the procedure for mixed bills is implemented.**]

Comment [cr85]: This rule is specifically tied to Subrule (2) and Rule 257(1)(b). However should the committee not rather report on rejected amendments brought by any member?

Comment [cr86]: Due to Tongwane case there is no need for mixed Bills

256. Referral to Assembly committee if joint committee fails to report

(1) If a [bill] Bill is recommitted to a joint committee in terms of Rule 254(5), and that joint committee fails to present a report or fails to reach consensus on any amendments, the Speaker must refer the [bill] Bill and its annexures —

- (a) to the portfolio committee within whose portfolio the subject of the [bill] Bill falls; or
- (b) by resolution of the Assembly, to any other Assembly committee.

(2) The committee to which the [bill] Bill is referred must deal with the [bill] Bill in terms of Rule 249.

Comment [cr87]: No comments

257. Consideration of Assembly or joint committee's report

(1) The report of the Assembly or joint committee to which a [bill] Bill has been recommitted or referred must be placed on the Order Paper for consideration of —

- (a) the amendments agreed on by the committee; and
- (b) any amendment specified in the report in terms of Rule 255(1)(d) or Joint Rule 170(1)(d) and which is moved in the Assembly, which motion may be moved without notice.

(2) Before the Assembly decides on the Second Reading of the [bill] Bill, the Speaker must put the amendment or amendments to the vote.

Comment [cr88]: Why are these amendments proposed by Cabinet Ministers / Deputy Ministers treated differently from other amendments?

Part 4: Specific Rules applicable to constitution amendment bills

Specific Rules relating to Parts 1 and 2 matters

258. Requirements prior to introduction of constitution amendment bill

(1) A Cabinet member or a Deputy Minister, or a member or committee of the Assembly, intending to introduce a [bill] Bill amending the Constitution must, before introducing the [bill] Bill, comply with section 74(5) of the Constitution.

(2) When the person or committee intending to introduce the [bill] Bill publishes particulars of the [bill] Bill in the Gazette in accordance with section 74(5), the publication must contain —

- (a) a notice stating the intention to introduce the [bill] Bill; and
- (b) an invitation to interested persons and institutions to submit written representations on the draft constitutional amendment to the person or committee intending to introduce the [bill] Bill.

(3) If a version of the draft [bill] Bill itself, as it is intended to be introduced, is published, a memorandum setting out the objects of the [bill] Bill must also be published.

Comment [cr89]: As discussed before: This prevents the person in charge from taking public submissions into account

Comment [cr90]: Rule 233 is only applicable to the Executive and not to members or Committees. Furthermore, Rule 233 does not result in introduction (must comply with JR 159). Surely it is only after an ATC introduction (Rule 260) that a notice of withdrawal is necessary? If it is after publication, the rule number can be changed to 259A (See insertion)

259. Notice withdrawing proposed constitutional amendment

(1) If a Cabinet member, Deputy Minister, committee or member decides not to proceed with the introduction of a [bill] Bill after Rule [233] 260 has been complied with, the Cabinet member, Deputy Minister, committee or member must without delay inform the Secretary in writing of the decision.

Comment [cr91]: Or the Speaker

(2) The ~~[Secretary]~~ Cabinet member, Deputy Minister, committee or member must publish a notice in the Gazette stating that the proposed legislation has been withdrawn.

~~(3) The Secretary is liable for the reasonable costs incurred by a committee or member in publication of the notice contemplated in Subrule (2).~~

Comment [cr92]: As discussed before – it is recommended that this task falls to the member in charge.

Comment [cr93]: A consequence of the proposed amendment to Subrule (2)

260. Introduction of constitution amendment bills

(1) A Cabinet member or Deputy Minister or an Assembly member or committee introduces a constitution amendment **[bill] Bill** by submitting to the Speaker —

(a) a copy of the **[bill] Bill**, or if the **[bill] Bill** itself, as it is introduced, has been published in the Gazette to give effect to section 74(5) of the Constitution, a copy of the Gazette;

(b) a supporting memorandum which must —

(i) state that the **[bill] Bill** is introduced as a constitution amendment **[bill] Bill**;

(ii) explain the objects of the proposed constitutional amendment;

(iii) give an account of the financial implications of the proposed constitutional amendment for the state;

(iv) contain a list of all persons and institutions that have been consulted in preparing the **[bill] Bill**; **[and]**

(v) if the **[bill] Bill** is introduced by a Cabinet member or a Deputy Minister, include a legal opinion by a State law adviser, or a law adviser of the State department concerned, on the classification of the **[bill] Bill** and any other question in respect of which the JTM is required to make a finding in terms of Joint Rule 160; and

~~(vi) if the Bill is introduced by a committee or Assembly member, include a legal opinion by a Parliamentary Legal Adviser, on the classification of the Bill and any other question in respect of which the JTM is required to make a finding in terms of Joint Rule 160; and~~

(c) any written comments on the **[bill] Bill** envisaged in section 74(6) of the Constitution.

(2) A constitution amendment **[bill] Bill** introduced by a Cabinet member or a Deputy Minister must contain on its cover page a reference to that Cabinet member or Deputy Minister as the person introducing the **[bill] Bill**.

(3) A constitution amendment **[bill] Bill** introduced by ~~—~~

(a) an Assembly member in an individual capacity; or

(b) by an Assembly committee with the Assembly's permission in terms of Rule **[236(3) or] 238(3)**, must —

[(a)] (i) be accompanied by a statement to that effect; and

[(b)] (ii) contain a reference on its cover page to the name of the member or committee as the member or committee introducing the **[bill] Bill**.

(4) Constitutional amendment **[bills] Bills** initiated by Assembly members or committees may be introduced only when the Assembly is in session, ~~unless certified by the member in charge of the Bill, in consultation with the Speaker, as an urgent matter.~~

Comment [cr94]: This only applies to amendments to Chapter 2. There is no other requirement for publication in this part. It is recommended that it be inserted as per Rule 259A.

Comment [cr95]: (v) This is optional and for the Task Team to consider. Parliament has created capacity to assist members and such a requirement could assist a Member or a Committee on more than one aspect of the Bill (as the Adviser will have to look at the whole Bill to provide this opinion and can thus advise on drafting and legal errors as well)

Comment [cr96]: K Hahndiek: Amend in line with Rule 243 - In respect of bills introduced by the Executive, certification by State law advisers is required regarding consistency with the Constitution and that the bill is "properly drafted in the form and style which conforms to legislative practice".
Query: Consider how such certification is to be obtained for members' bills, and at what stage? (Presumably during committee consideration, if not before).

Comment [cr97]: Ambrosini judgement

Comment [cr98]: Recommended.

261. Referral of constitution amendment bills to committees

(1) If a constitution amendment **[bill] Bill** is in terms of section 74 of the Constitution required to be passed by the Assembly alone, the **[bill] Bill** may in terms of Rule 247(5) or 248(1) only be referred to an Assembly committee.

(2) If a constitution amendment **[bill] Bill** is in terms of section 74 required to be passed by both Houses, the **[bill] Bill** must in terms of Rule 247(5) or 248(1) be referred either —

- (a) to an Assembly committee; or
- (b) if this is required by a decision in terms of Joint Rule 166 to a joint committee on constitutional matters.

262. Consideration of committee’s report and bill

- (1) The Speaker must place the committee’s report and the **[bill] Bill** presented to the Assembly in terms of Rule 251 or Joint Rule 168 on the Order Paper irrespective of whether the time period mentioned in section 74(7) of the Constitution has expired, but the Assembly may not vote on the Second Reading of the **[bill] Bill** unless this time period has expired.
- (2) A constitution amendment **[bill] Bill** is passed by the Assembly if its Second Reading —
 - (a) is put to the vote after the expiry of the time period mentioned in section 74(7) of the Constitution; and
 - (b) receives a supporting vote of at least two thirds of the members of the Assembly or, if it is a **[bill] Bill** referred to in section 74(1), a supporting vote of at least 75 per cent of the members.
- (3) If the **[bill] Bill**, in addition to other constitutional amendments, contains amendments referred to in section 74(1), the Second Reading of the **[bill] Bill** is approved if —
 - (a) the **[bill] Bill** as a whole is passed with a supporting vote of at least 75 per cent of the members; or
 - (b) the **[bill] Bill**, excluding the section 74(1) amendments, is passed with a supporting vote of at least two thirds of the members and the section 74(1) amendments are passed separately with a supporting vote of at least 75 per cent of the members.
- (4) If a **[bill] Bill** mentioned in Subrule (3) is passed with a supporting vote of at least two thirds of the members, but the section 74(1) amendments fail to achieve 75 per cent support and Rule 296 is not applicable —
 - (a) the Speaker, after consulting the member in charge of the **[bill] Bill**, may refer the **[bill] Bill** to an Assembly committee to delete the section 74(1) amendments and to table an amended **[bill] Bill**; or
 - (b) the person in charge of the **[bill] Bill** may withdraw the **[bill] Bill** if the section 74 provisions are not severable.

[Note: Rule 296 provides for a second vote on a **[bill] Bill** which was not passed because of the absence of members.]
- (5) When the committee resubmits the **[bill] Bill** as amended the Assembly votes on the amended **[bill] Bill** without debate.

Comment [cr99]: Section 74(1) consist of two subsections and only (a) applies here. The vote of 75% only required in the NA

263. Consequences of approval or rejection of Second Reading

- (1) Joint Rule 173 applies if the Assembly approves the Second Reading of a constitution amendment **[bill] Bill**.
- (2) A constitution amendment **[bill] Bill** lapses if the Assembly rejects the Second Reading of the **[bill] Bill**.

Reconsideration of constitution amendment bills if amended by Council

264. Procedure if Council amends bill

- (1) If the Council has amended a constitution amendment **[bill] Bill** passed by the Assembly, the Speaker must —
- (a) place the amended **[bill] Bill** on the Order Paper for debate and decision if the chairperson of the portfolio committee concerned or other relevant Assembly committee so requests; or
 - (b) refer the amended **[bill] Bill** to the portfolio committee concerned, or to any other appropriate Assembly committee, for a report and recommendations on the Council's amendments.
- (2) If the amended **[bill] Bill** is referred to a committee, the committee —
- (a) may consult with the appropriate Council committee or chairperson of that committee;
 - (b) must confine itself to the amendments effected by the Council;
 - (c) may consult the JTM on whether any of the Council's amendments —
 - (i) changes the JTM's classification of the **[bill] Bill**; or
 - (ii) renders the **[bill] Bill** constitutionally or procedurally out of order within the meaning of Joint Rule 161;
 - (d) may not propose any amendments; and
 - (e) may state reasons if it does not support any of the Council's amendments.
- (3) The committee must table its report and recommendations.
- (4) When the report is tabled the Speaker must place the **[bill] Bill** as amended by the Council on the Order Paper for debate and decision.

Comment [cr100]: Is this relevant here? The Bill's classification cannot be changed.

265. Debate and decision

- (1) The debate in the Assembly on the amended **[bill] Bill** must be confined to —
- (a) the matters dealt with in the committee's report (if there is a report); and
 - (b) the question whether the amended **[bill] Bill** should be passed or not.
- (2) No member may place any amendments to the **[bill] Bill** on the Order Paper.
- (3) If the Assembly passes the amended **[bill] Bill** in accordance with the procedure set out in Rule 262(2)(b), and (3) or (4), the **[bill] Bill** must be submitted to the President for assent.
- (4) If the Assembly rejects the **[bill] Bill** or fails to pass it in accordance with the said procedure, read with Rule 296, the **[bill] Bill** must be referred to the Mediation Committee in terms of Joint Rule 177.

Comment [cr101]: What about amendments moved from the floor (during the sitting)?

266. Process if mediation successful

- (1) The Speaker must table a notice in the Assembly stating that the Assembly's version of the **[bill] Bill** has been agreed on by the Mediation Committee, if the Mediation Committee has agreed on the version of the **[bill] Bill** as originally passed by the Assembly before its rejection or amendment by the Council.
- (2) The Speaker must place a **[bill] Bill** agreed on by the Mediation Committee on the Order Paper for debate and decisions if that **[bill] Bill** is —
- (a) the Council's amended **[bill] Bill** which the Assembly has rejected or has failed to pass as stated in Rule 265(4); or
 - (b) a version that differs from any version of the **[bill] Bill** as passed by either the Assembly or the Council.
- (3) If, after consultation with the chief whips of the parties and the chairperson of the portfolio committee or other Assembly committee concerned, the Speaker is of the view that the Assembly debate on the **[bill] Bill** in terms of Subrule (2) may be facilitated by a report of the portfolio committee concerned or any other appropriate Assembly committee, the Speaker must first refer the **[bill] Bill** to the committee for a report before placing the **[bill] Bill** on the Order Paper.

- (4) If the [bill] Bill is referred to a committee, the committee may —
- (a) consult with the appropriate Council committee or the chairperson of that committee; and
 - (b) not propose any amendments to the [bill] Bill.
- (5) The committee must table in the Assembly —
- (a) the committee's report; and
 - (b) the version of the [bill] Bill as agreed [on] to by the Mediation Committee.
- (6) The debate in the Assembly on the [bill] Bill as agreed [on] to by the Mediation Committee must be confined —
- (a) to the matters dealt with in the committee's report, if the [bill] Bill was referred to a committee, or to the clauses of the [bill] Bill which differ from the clauses of the [bill] Bill as originally passed by the Assembly, if the [bill] Bill was not referred to a committee; and
 - (b) to the question whether the [bill] Bill as agreed on by the Mediation Committee should be passed.
- (7) No amendments may be proposed to the [bill] Bill as agreed on by the Mediation Committee.

267. Consequences of unsuccessful mediation

A constitution amendment [bill] Bill lapses in terms of Joint Rule 180 if mediation is unsuccessful.

Part 5: Specific Rules applicable to section 75 bills

Comment [cr102]: K
 Hahndiek: Note that a section 75 bill lapses if the Assembly rejects the Second Reading (Rule 269)

268. Application of this Part to money bills

The Rules set out in this Part apply to all section 75 [bills] Bills, including money [bills] Bills other than those dealt with in terms of the special procedure set out in Rule 287 (2).

269. Consequences of approval or rejection of Second Reading

A section 75 [bill] Bill —

- (a) must be referred to the Council in terms of Joint Rule 181 if the Assembly approves the Second Reading of the [bill] Bill; or
- (b) lapses if the Assembly rejects the Second Reading of the [bill] Bill.

Reconsideration of section 75 bills if Council rejects or passes subject to amendments

270. Referral of bill to Assembly committee

(1) If the Council rejects a section 75 [bill] Bill referred to it in terms of Joint Rule 181 or passes the [bill] Bill subject to amendments, the Speaker must refer the [bill] Bill and any amendments proposed by the Council to the portfolio committee concerned or to any other appropriate Assembly committee for —

- (a) a report on the Council's rejection of the [bill] Bill or on the amendments proposed by the Council; and
- (b) recommendations on whether the [bill] Bill should be passed again with or without any amendments, or whether it should not be proceeded with.

(2) The committee to which the [bill] Bill is referred —

- (a) may consult with the appropriate Council committee or the chairperson of that committee;
- (b) may not propose any amendment which is not strictly relevant either to the Council's rejection of the [bill] Bill or to the amendments proposed by it;

- (c) may consult the JTM on whether any of the Council's amendment proposals or any amendments proposed in the committee —
- (i) will change the JTM's classification of the [bill] Bill; or
 - (ii) will render the [bill] Bill constitutionally or procedurally out of order within the meaning of Joint Rule 161; and
- (d) may not propose any amendment that would —
- (i) change the classification of the [bill] Bill; or
 - (ii) render the [bill] Bill constitutionally or procedurally out of order within the meaning of Joint Rule 161.

Comment [cr103]: Is this appropriate here? Amendments on return from the NCOP, other than proposed by the NCOP are not allowed.

271. Committee's report

- (1) The committee to which the [bill] Bill is referred must table in the Assembly —
- (a) the committee's report and recommendations;
 - (b) the Council's proposed amendments, if the Council has passed the [bill] Bill subject to amendments; and
 - (c) an amended [bill] Bill, if the committee, in view of the Council's rejection of the [bill] Bill or its amendment proposals, has agreed to amend the [bill] Bill previously passed by the Assembly.
- (2) When the report is tabled the Speaker must place the [bill] Bill on the Order Paper for debate and decision.

272. Debate and decision

- (1) The debate in the Assembly on the committee's report and the [bill] Bill must be confined to —
- (a) the matters dealt with in the report;
 - (b) the question whether the [bill] Bill should be proceeded with; and
 - (c) any amendments proposed either by the Council or the committee.
- (2) No member may place any amendments to the [bill] Bill on the Order Paper.
- (3) The Assembly may recommit the [bill] Bill or any amendment proposal to the committee for reconsideration and a further report and recommendation before it decides on the [bill] Bill.
- (4) The Assembly may either —
- (a) pass the original [bill] Bill again;
 - (b) pass any amended [bill] Bill proposed by the committee;
 - (c) pass the original [bill] Bill incorporating any amendments proposed by the committee or any amendments proposed by the Council which were rejected by the committee; or
 - (d) decide not to proceed with the [bill] Bill.
- (5) If Subrule (4)(c) applies, the Assembly must first decide on each amendment proposal of the Council, then on each amendment proposal of the committee and then on the [bill] Bill as a whole, incorporating any amendment proposals agreed to by the Assembly.
- (6) A [bill] Bill passed by the Assembly in accordance with this Rule and section 53 (1)(a) and (c) of the Constitution, must be submitted to the President for assent.
- (7) If the Assembly decides not to proceed with the [bill] Bill, the [bill] Bill lapses.

Part 6: Specific Rules applicable to section 76(1) bills introduced in the Assembly

273. Consequences of approval or rejection of Second Reading

Comment [cr104]: K Hahndiek: Note that a section 76(1) bill lapses if the Assembly rejects the Second Reading (Rule 273)

A section 76(1) **[bill] Bill** —

- (a) must be referred to the Council in terms of Joint Rule 184(1) if the Assembly approves the Second Reading of the **[bill] Bill**; or
- (b) lapses if the Assembly rejects the Second Reading of the **[bill] Bill**.

Reconsideration of section 76(1) bills if amended by Council

274. Bill to be placed on Order Paper or referred to portfolio committee

- (1) If the Council amends a **[bill] Bill** referred to it in terms of Joint Rule 184(1), the Speaker must —
 - (a) place the **[bill] Bill** on the Order Paper for debate and decision if the chairperson of the portfolio committee concerned or other relevant Assembly committee so requests; or
 - (b) submit the amended **[bill] Bill** to the portfolio committee concerned or any other appropriate Assembly committee for a report and recommendations on the Council's amendments.
- (2) The committee to which the Council's amended **[bill] Bill** is referred —
 - (a) may consult the appropriate Council committee or the chairperson of that committee;
 - (b) may not propose any further amendments to the **[bill] Bill**; and
 - (c) may consult the JTM on whether any of the Council's amendments —
 - (i) changes the JTM's classification of the **[bill] Bill**; or
 - (ii) renders the **[bill] Bill** constitutionally or procedurally out of order within the meaning of Joint Rule 161.

275. Committee's report

- (1) The committee to which the Council's amended **[bill] Bill** is referred must table in the Assembly —
 - (a) its report and recommendations; and
 - (b) the Council's amended **[bill] Bill**.
- (2) When the report is tabled the Speaker must place the report and the Council's amended **[bill] Bill** on the Order Paper for debate and decision.

276. Debate and decision

- (1) The debate on the report and the Council's amended **[bill] Bill** must be confined to —
 - (a) the matters dealt with in the report; and
 - (b) the question whether the amended **[bill] Bill** should be passed or not.
- (2) No amendments may be proposed to the Council's amended **[bill] Bill**.
- (3) If the Assembly passes the Council's amended **[bill] Bill** in accordance with section 53(1)(a) and (c) of the Constitution, the **[Secretary] Speaker** must without delay submit the **[bill] Bill** to the President for assent.
- (4) If the Assembly refuses to pass the Council's amended **[bill] Bill**, the **[bill] Bill** must be referred to the Mediation Committee in terms of Joint Rule 186.

277. Process if mediation successful

- (1) The Speaker must table a notice in the Assembly stating that the Assembly's version of the **[bill] Bill** has been agreed on by the Mediation Committee, if the Mediation Committee has agreed on the version of the **[bill] Bill** as originally passed by the Assembly before its rejection or amendment by the Council.

- (2) The Speaker must place a **[bill] Bill** agreed on by the Mediation Committee on the Order Paper for debate and decision if that **[bill] Bill** is —
- (a) the Council's amended **[bill] Bill** which the Assembly has refused to pass as stated in Rule 276(3); or
- (b) a version that differs from any version of the **[bill] Bill** as passed by either the Assembly or the Council.
- (3) If, after consultation with the chief whips of the parties and the chairperson of the portfolio committee or other Assembly committee concerned, the Speaker is of the view that the Assembly debate on the **[bill] Bill** in terms of Subrule (2) may be facilitated by a report of the portfolio committee concerned or any other appropriate Assembly committee, the Speaker must first refer the **[bill] Bill** to the committee for a report before placing the **[bill] Bill** on the Order Paper.
- (4) If the **[bill] Bill** is referred to a committee, the committee may —
- (a) consult with the appropriate Council committee or the chairperson of that committee; and
- (b) may not propose any amendments to the **[bill] Bill**.
- (5) The committee must table in the Assembly —
- (a) the committee's report; and
- (b) the version of the **[bill] Bill** as agreed on by the Mediation Committee.
- (6) The debate in the Assembly on the **[bill] Bill** as agreed on by the Mediation Committee must be confined —
- (a) to the matters dealt with in the committee's report, if the **[bill] Bill** was referred to a committee, or to the clauses of the **[bill] Bill** which differ from the clauses of the **[bill] Bill** as originally passed by the Assembly, if the **[bill] Bill** was not referred to a committee; and
- (b) to the question whether the **[bill] Bill** as agreed on by the Mediation Committee should be passed.
- (7) No amendments may be proposed to the **[bill] Bill** as agreed on by the Mediation Committee.

Process after mediation

278. Process if mediation unsuccessful

- (1) The Speaker, at the request of the person in charge of the **[bill] Bill**, must place the version of the **[bill] Bill** as originally passed by the Assembly before its rejection or amendment by the Council, on the Order Paper for debate and decision in terms of section 76(1)(e), (i) or (j) of the Constitution if —
- (a) the Mediation Committee is unable to agree within 30 days of the **[bill's] Bill's** referral to it;
- (b) the Assembly refuses to pass the version of the **[bill] Bill** agreed on by the Mediation Committee and considered by the Assembly in terms of Rule 277; or
- (c) the Mediation Committee has agreed on the version of the **[bill] Bill** as originally passed by the Assembly, and the Council refuses to pass this version.
- (2) If the Assembly passes a version of the **[bill] Bill** as described in Rule 277(2)(b) and the Council refuses to pass this version of the **[bill] Bill**, the Speaker, at the request of the person in charge of the **[bill] Bill**, must place this version on the Order Paper for debate and decision in terms of section 76(1)(i) of the Constitution.
- (3) Unless the Assembly decides not to proceed with a **[bill] Bill** placed on the Order Paper in terms of Subrule (1) or (2), the **[bill] Bill** must be put to the vote and, if passed with a supporting vote of at least two thirds of the members, be submitted to the President for assent.

Comment [cr105]: Section 76(1)(e) provides that the Bill automatically lapses. This appears to be contradicting that.

Part 7: Specific Rules applicable to section 76(2) bills introduced in the Council

279. Powers of committee to which bill is referred

If a section 76(2) **[bill] Bill** as passed by the Council is referred to an Assembly committee in terms of Rule 247 or 248, the committee may —

- (a) consult with the appropriate Council committee or the chairperson of that committee on the contents of the **[bill] Bill** and any amendments to the **[bill] Bill** that are being considered by the Assembly committee; and
- (b) recommend that any time limit for the Assembly's consideration of the **[bill] Bill** be extended.

280. Consequences of approval or rejection of Second Reading

A section 76(2) **[bill] Bill** must be referred to —

- (a) the President in terms of Joint Rule 185(2)(a) if the Assembly approves the Second Reading of the **[bill] Bill** as passed by the Council;
- (b) the Council in terms of Joint Rule 185(2)(b) if the Assembly amends the **[bill] Bill** as passed by the Council; or
- (c) the Mediation Committee in terms of Joint Rule 186(2)(a) if the Assembly rejects the Second Reading of the **[bill] Bill** as passed by the Council.

Process after mediation

281. Process if mediation successful

- (1) The Speaker must table a notice in the Assembly stating that the Assembly's version has been agreed on by the Mediation Committee if the Mediation Committee has agreed on the **[bill] Bill** as amended by the Assembly and as referred to the Council in terms of Rule 280(b).
- (2) The Speaker must place a **[bill] Bill** agreed on by the Mediation Committee on the Order Paper for debate and decision if that **[bill] Bill** is —
 - (a) the version as passed by the Council and which the Assembly has either amended or rejected as stated in Rules 280(b) or (c); or
 - (b) a version that differs from any version of the **[bill] Bill** as passed by either the Assembly or the Council.
- (3) If, after consultation with the chief whips of the parties and the chairperson of the portfolio committee or other Assembly committee concerned, the Speaker is of the view that the Assembly debate on the **[bill] Bill** in terms of Subrule (2) may be facilitated by a report of the portfolio committee concerned or any other appropriate Assembly committee, the Speaker must first refer the **[bill] Bill** to the committee for a report before placing the **[bill] Bill** on the Order Paper.
- (4) If the **[bill] Bill** is referred to a committee, the committee may —
 - (a) consult with the appropriate Council committee or the chairperson of that committee; and
 - (b) not propose any amendments to the **[bill] Bill**.
- (5) The committee must table in the Assembly —
 - (a) the committee's report; and
 - (b) the version of the **[bill] Bill** as agreed on by the Mediation Committee.
- (6) The debate in the Assembly on the **[bill] Bill** agreed on by the Mediation Committee must be confined —

- (a) to the matters dealt with in the committee's report, if the **[bill] Bill** was referred to a committee; and
- (b) to the question whether the **[bill] Bill** as agreed on by the Mediation Committee should be passed.

282. Consequences of unsuccessful mediation

A section 76(2) **[bill] Bill** lapses in terms of Joint Rule 190 if mediation is unsuccessful.

[Note: If mediation between the Houses on a section 76(1) **[bill] Bill** fails, the **[bill] Bill** can still be passed if the Assembly can muster a two thirds majority. This deadlock-braking mechanism is not available when the **[bill] Bill** is a section 76(2) **[bill] Bill**, ie where the **[bill] Bill** is introduced in the Council. In terms of the Constitution a section 76(2) **[bill] Bill** lapses if mediation fails.]

[Part 8: Specific Rules applicable to mixed section 75/76 bills

Comment [cr106]: Due to the Tongoane case there is no need for mixed Bills

283. Consequences of approval or rejection of Second Reading

A mixed section 75/76 bill —

- (a) must be referred to the Council in terms of Joint Rule 195 if the Assembly approves the Second Reading of the bill; or
- (b) lapses if the Assembly rejects the Second Reading of the bill.]

Part 9: Specific Rules applicable to money bills

284. Contents of money bills

(1) In terms of section 77(1) of the Constitution a money **[bill] Bill** may not deal with any other matter except a subordinate matter incidental to the appropriation of money or the imposition of taxes, levies or duties.

[(2) A money bill that is inconsistent with section 77(1) may not be introduced in the Assembly.]

Comment [cr107]: Such a Bill cannot be classified as a money Bill. This rule is contradicting itself.

285. Person in charge of money bills

For the purposes of these Rules the Minister of Finance is the person in charge of all money **[bills] Bills**, except —

- (a) Bills appropriating money for postal and telecommunication services, where the Minister of Posts and Telecommunications must be in charge; and
- (b) any Bills in respect of which the Minister of Finance designates another Minister to be in charge.

286. Introduction of money bills

(1) Only the Minister of Finance may introduce a money **[bill] Bill**.

(2) The Minister must introduce a money **[bill] Bill** by following either the ordinary procedure set out in Rule 243 or the special procedure set out in Rule 287(2), but if it is a **[bill] Bill** appropriating money for the ordinary annual services of the government or imposing taxes, levies or duties for this purpose, the special procedure must be followed. The Minister must consult the Speaker when exercising a choice in terms of this Rule.

Comment [cr108]: Is this a condition to introduction? We must be careful of conditions to introduction

[Note:

(1) The constitutional definition of “money [bill] Bill” covers financial measures beyond the budget. A law imposing a levy for some odd reason, say to finance the activities of an agricultural control body, would fall within the definition of “money [bill] Bill”. It would seem that Rule 287(2) should be applied to budgetary measures as is customarily the case, but that the Minister should have a discretion to apply either Rule 287(2) or the ordinary procedure prescribed in Rule 243 for other “money [bills] Bills”.

(2) It must also be noted that only the Minister of Finance may introduce a money [bill] Bill. (See sec. 73(2) of the Constitution.) The odd levy in say an agricultural [bill] Bill introduced by the Minister of Agriculture may for this reason jeopardise the constitutionality of such a [bill] Bill and also the levy. In such instances the provisions dealing with the levy should be included in a separate [bill] Bill which would require introduction by the Minister of Finance.]

287. Procedure applicable to money bills

(1) If the ordinary procedure is followed, the [bill] Bill in all respects must be dealt with in the Assembly as if it were an ordinary section 75 [bill] Bill, subject to any legislation envisaged in section 77(2) of the Constitution.

[**Note: A money bill can be amended but the Constitution requires that a procedure be prescribed by an Act of Parliament. Proposed legislation in this regard is presently being attended to by the NA Portfolio Committee on Public Finance.**]

Comment [cr109]: This has been done

(2) If the special procedure is followed, Parts 2, 3 and 4 of this Chapter do not apply and the [bill] Bill must be dealt with in the Assembly in accordance with the following specific Rules.

[Note: The special introductory procedure comes from the existing Rules. These Rules may need to be replaced in view of procedures presently being attended to by the Portfolio Committee on Public Finance.]

288. Special introductory procedure

(1) The Minister in charge of the [bill] Bill must deliver an introductory speech in the Assembly on the appointed day.

(2) After having delivered the introductory speech, the Minister must introduce the [bill] Bill by tabling it and any accompanying schedule and papers in the Assembly: Provided that if the introductory speech was delivered by a Minister other than the Minister of Finance, that other Minister must introduce and table the [bill] Bill on behalf of the Minister of Finance.

Comment [cr110]: Is this possible? Does it happen? It seems contradictory iro money Bills' requirements

[Notes: This is necessary in view of the constitutional provision that only the Minister of Finance may introduce money [bills] Bills.]

289. Bill placed on Order Paper for First Reading

(1) After introduction of the [bill] Bill in terms of Rule 288 the Speaker must place the [bill] Bill on the Order Paper for First Reading.

(2) The First Reading of the [bill] Bill may be considered only after the report of the committee to which it was referred in terms of Rule 290 has been presented to the Assembly.

(3) If the Assembly rejects the First Reading of the [bill] Bill, it rejects the [bill] Bill.

290. Referral of bill to Assembly committee

(1) On the day on which the **[bill] Bill** is introduced, the Speaker must refer the **[bill] Bill**, and any accompanying schedule and papers and the Minister's introductory speech to the portfolio committee on public finance for consideration and report.

(2) The committee may confer with the corresponding committee of the National Council of Provinces.

(3) The period for the consideration of a **[bill] Bill** and any schedule and papers so referred is limited, in the case of a main appropriation **[bill] Bill**, to a maximum of *seven consecutive Assembly working days and, in the case of any other **[bill] Bill**, to a period determined in each case by the Speaker after consultation with the Leader of Government Business in the Assembly.

[* Note: Political decision required whether seven days is enough.]

(4) No amendment to a **[bill] Bill** or any accompanying schedule or papers may be moved while the committee is considering the **[bill] Bill**, schedule and papers.

(5) The report of the committee must be presented to the Assembly on or before the first sitting day following the expiration of the period allowed for the consideration of the **[bill] Bill**, schedule and papers.

291. Consideration of schedule to appropriation bill

When the First Reading of an appropriation **[bill] Bill** which has a schedule has been approved, the votes in the schedule must be discussed.

292. Supplementary estimates in main appropriation bill

When the debate on the schedule to a main appropriation **[bill] Bill** has been concluded, those votes in respect of which supplementary amounts are to be requested, must be placed on the Order Paper for discussion.

293. Approval of votes and schedule

The Assembly must first decide on the separate votes in the schedule to an appropriation **[bill] Bill** (in the case of a main appropriation **[bill] Bill**, when the debate on supplementary amounts has been concluded) and thereafter on the schedule.

294. Second Reading of money [bill] Bill

(1) When the schedule to an appropriation **[bill] Bill** has been approved, the **[bill] Bill** must be placed on the Order Paper for Second Reading.

(2) When the First Reading of a money **[bill] Bill** which has no schedule has been approved, the **[bill] Bill** must be placed on the Order Paper for Second Reading.

295. Money [bill] Bill rejected or passed subject to amendments by Council

(1) If a money **[bill] Bill** that has been rejected, or passed subject to amendments, by the Council, is referred back to the Assembly for reconsideration in terms of section 75(1)(c) of the Constitution, the **[bill] Bill** may be given precedence over other orders of the day on the day on which it is received from the Council, and a motion to that effect may be moved without prior notice by the Minister in charge of the **[bill] Bill**.

(2) The Assembly must consider any amendments proposed by the Council. No further amendments may be considered unless moved by the Minister in charge of the [bill] Bill, who may do so without prior notice.

[[Note: Sec. 77(2) of the Constitution requires an Act of Parliament to prescribe amendment procedures.]]

Comment [cr111]: This has been done

(3) The debate on the reconsideration of the [bill] Bill, including the consideration of any amendment, may not continue for more than one hour, excluding the reply of the Minister in charge of the [bill] Bill, during which time a member may be restricted to one speech not exceeding five minutes in duration, except the Minister, who may be allowed more than one such speech.

Part 10: General

296. Second vote on bills rejected through absence of members

(1) Should a [bill] Bill that requires a special majority in the Assembly fail to obtain the required majority when the [bill] Bill is put to the vote, the Speaker may, within seven working days after the vote was taken, put the [bill] Bill to the vote again, but only if the Chief Whip and the most senior whip of one or more parties which together with the majority party command at least the required majority in the Assembly —

(a) request such a second vote; and

(b) persuade the Speaker that the [bill] Bill failed to obtain the required majority because of the absence of party members.

(2) The [bill] Bill is considered as having been rejected if it again fails to obtain the required majority.

297. Same [bill] Bill may not be introduced more than once

(1) When a [bill] Bill has been passed or has been rejected during a session in any year, no [bill] Bill of the same substance may be introduced in the Assembly in that year except by leave of the Assembly or where otherwise provided in these Rules.

(2) A Bill dealing with substantially the same subject matter may not be introduced more than once in the same annual session: Provided that —

(a) this rule does not apply to Bills that were found to be constitutionally or procedurally out of order within the meaning of Joint Rule 161; and

(b) the Assembly may grant leave for the Bill to be introduced despite it dealing with substantially the same subject matter.

Comment [cr112]: To accommodate IR (b)

Comment [cr113]: The proviso is proposed as the rule is quite strict and may result in unintended consequences.

Comment [cr114]: Advice is required from the NA Table whether leave should be granted "by resolution"

298. Lapsing of bills on last sitting day of annual session or term of Assembly or when Assembly is dissolved

(1) All [bills] Bills introduced in the Assembly and which on the last sitting day of an annual session of the Assembly, appear on the Order Paper for First or Second Reading, lapse at the end of that day unless the Assembly decides otherwise.

(2) All [bills] Bills before the Assembly or any Assembly committee on the last sitting day of a term of the Assembly or when the Assembly is dissolved, lapse at the end of that day.

299. Withdrawal of [bill] Bill

The person in charge of a [bill] Bill introduced in the Assembly may withdraw the [bill] Bill at any time before the Second Reading of the [bill] Bill is decided.

300. Discrepancies in versions of [bill] Bill

(1) If any discrepancy in meaning is found between the versions of any [bill] Bill in the different official languages after such [bill] Bill has been passed by the Assembly, but before it is presented to the President for assent, the Speaker must report such discrepancy to the Assembly.

(2) If the Assembly agrees to an amendment referred to in Subrule (1), the Assembly must be regarded as having agreed to the Second Reading of the [bill] Bill as amended.

[Note:

(1) This Rule will be deleted if the proposal in the Joint Rules is accepted that all [bills] Bills should have an official text in one of the official languages and one or more official translations in one or more of the other official languages.

(2) Is it necessary to provide for discrepancies in the official text of a [bill] Bill should the draft Joint Rule on official texts and official translations be accepted?]

K Hahndiek Comments iro Applicable Joint Rules:

JOINT RULES

Joint Rule 216 – (Fast-tracking)

Note that this Rule provides for the member in charge, including an ordinary member, to request that the bill be fast-tracked. Such a request is decided on by the Joint Programme Committee or its subcommittee.

Joint Rule 218 – (distribution of bills)

Note that copies of all bills must be supplied to each Assembly member, each permanent member of the NCOP and the Speaker of each provincial legislature.

Joint Rule 220 – (language requirements)

Note: All bills require an official text and an official translation into at least one other language. The official translation must be received by Parliament at least 3 days before the formal consideration of the bill in the House in which it was introduced.

Consider cost and capacity to produce an official translation.

Option: The Joint Rules could be amended to provide that in the case of members' bills, the translated version is only required after the passing of the bill in the House in which it was introduced.

Page 3: [1] Comment [cr19] cvandermerwe 10/30/2013 12:35:00 PM

Criteria in 235A: Although the criteria contained in here could be considered by a Committee on the motion of desirability (for Executive and Private Member's Bills), it is not necessary to spell this out. (a), (b) and (e) will be relevant whether captured or not; (c) and (d) will be brought to the attention of the relevant Committee during due deliberation on the Bill and then the Committee must decide whether to accept one, or the other or both (and do a redraft); (f) is vague and we would have in any event have proposed its deletion. If this rule is to be retained, it is recommended that this be included in a rule that deals with motions of desirability on ALL Bills. Propose deletion in full.

Page 4: [2] Comment [cr28] cvandermerwe 9/30/2013 4:41:00 PM

(2) – Proviso: Proposal to avoid abuse of the rule. Ambrosini case par 88-89 allows this. Publication is currently done via this Office. Further, requiring consultation beforehand should limit the need to republish. The proposal in Subrule (1A) will also assist in the need for republication being limited.

Page 6: [3] Comment [cr37] cvandermerwe 10/13/2013 12:51:00 PM

It is accepted that this requirement is to prevent a version of the Bill being published that is very different from that being introduced. However, this also prevents the person in charge from taking public comments into account. Furthermore, as it is not a requirement to publish the Bill it is unclear why this should be a requirement at all.

Page 6: [4] Comment [cr39] cvandermerwe 10/30/2013 4:05:00 PM

K Hahndiek: [Note that in terms of subrule (5) the member in charge of the bill, as an individual member, may also apply to have the bill certified as an urgent matter. This is confirmed in Joint Rule 216, which allows a private member in charge of a bill to request that the bill be fast-tracked, providing proper motivation].

Page 6: [5] Comment [cr43] cvandermerwe 10/13/2013 12:55:00 PM

Ambrosini case, par 82: "Rule 243(3) further reinforces the permission requirement with regard to the introduction of a Bill... The offending words in this Rule are unconstitutional only insofar as they apply to individual members." Proposals are made to amend this Rule in line with the court decision

Page 6: [6] Comment [cr44] cvandermerwe 10/13/2013 12:51:00 PM

It is accepted that this requirement is to prevent a version of the Bill being published that is very different from that being introduced. However, this also prevents the person in charge from taking public comments into account. Furthermore, as it is not a requirement to publish the Bill it is unclear why this should be a requirement at all.

Page 7: [7] Comment [cr50] cvandermerwe 10/13/2013 1:03:00 PM

This is optional and for the Task Team to consider. Parliament has created capacity to assist members and Committees and such a requirement could assist Parliament. Introduction will not be refused if the Bill is not certified, but the Member or Committee will do well to reconsider a Bill that is unconstitutional or poorly drafted. The member or Committee may well obtain a legal opinion to the contrary, but at least the member or Committee is forewarned to obtain such.