

RULES OF PARLIAMENT

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Sections 57 and 70 of Constitution

- Determine and control its internal arrangements, proceedings and procedures;
- Make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement.

Oriani-Ambrosini v Sisulu 2012

- ◎ The words 'arrangements, proceedings and procedures' indicate that the Assembly's power to make rules is limited to the regulation of process and form, as opposed to content and substance. ...
- ◎ Genuine platform to be created to give practical expression to the aspirations of their constituencies.

Speaker v De Lille 1999

- Procedures may be scrutinised by the courts in order to determine whether they are in fact consistent with the Constitution.
- Decisions of the NA may be scrutinised in order to determine whether they have complied with their own internal procedures.
- NA could only suspend a member from its proceedings as a punishment for making an objectionable and unjustified speech if such a power had been conferred upon it either by an Act of Parliament or by the Standing Rules of the National Assembly itself.

Executive Council WC v Minister for Provincial Affairs

- ◎ The power to determine its own internal arrangements and proceedings is a narrow one in that it does not relate to the power to regulate the main structural components of the legislature.

Comments on Review of Rules of NA

Definitions

- **“private member”** means any member other than a Minister, a Deputy Minister and the Speaker;
- definition does not include the Deputy Speaker in the list of excluded members.
- not clear why the Deputy Speaker has been left out.

Rule 6A

- ◎ **"6A. Directives and guidelines of Rules Committee**
- ◎ (1) The Rules Committee may, in terms of Rule 161, issue directives and lay down guidelines to assist with the implementation or observance of these Rules and orders of the House.
- ◎ (2) Members must comply with any such directives and observe any guidelines."

- ◎ The Rule provides that the Rules Committee may, in terms of Rule 161, issue directives and lay down guidelines to assist with the implementation or observance of these Rules and orders of the House.

- ◎ However, Rule 161 empowers the Rules Committee to—
 - (a) develop, formulate and adopt policy concerning the exclusive business of the Assembly in respect of the proceedings, procedures, Rules, orders and practices concerning the business of the Assembly;
 - (b) monitor and oversee the implementation of policy on all matters referred to in paragraph (a),
 - (c) lay down guidelines and issue directives regarding any aspect of policy referred to in the Rules.

Rule 6A

- ◎ As may be seen, Rule 6A provides for the Rules Committee to issue directives and lay down guidelines to assist the implementation or observance of the Rules and orders of the House, whereas Rule 161 provides for the Rules Committee to develop, formulate and adopt policy concerning Rules, orders and practices concerning the business of the Assembly.
- ◎ We propose that consideration be given to aligning the wording of the new Rule 6A with that of Rule 161, to refer to the implementation of policy in respect of Rules and orders of the House.

Rule 6E

- ◎ **“6E. Contempt**

A member who wilfully fails or refuses to obey any Rule, order or resolution of the House may be found guilty of contempt of Parliament in terms of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004 (Act No 4 of 2004).”

- ◎ We propose that the new Rule 6E should include after “any” the words “ruling,”.

Rule 19A

"19A. Declaration of private interests

If a member has a personal or private interest or business interest in any matter before a forum of the Assembly of which he or she is a member, he or she must at the commencement of engagement on the matter by the forum immediately declare that interest in accordance with Part 2 of the Code of Conduct for members and comply with the other provisions of the Code."

- ◎ The Rule provides for the declaration of private interests and for a member to declare his or her interest in accordance with Part 2 of the Code of Conduct for members and comply with the other provisions of the Code.

- ◎ In Rule 1 there is a new proposal for the definition of committee to mean 'any committee, forum or other structure of the Assembly formally established by the Assembly'.

- ◎ We suggest that the proposed rule 19A be clarified as to whether this rule will apply to which forums of Parliament, and not to committees or other structures of Parliament, seeing the proposed definition of committee includes forums.

Rules 31 to 34

- ◎ Rules 31 to 34 are contained in Part 3 and deal with extended public committees.
- ◎ It is noted that the proposed part 3 has not been decided by the parties yet. The meaning of these provisions still needs to be clarified also in respect of other Rules where they are referred to.
- ◎ We propose that the forums indicated in this part must be clearly defined. The circumstances of their establishment must be clearly outlined, including their functions and how they will operate. The role of the Speaker must also be clarified.

Rule 52

- ◎ Rule 52 provides for the censure and suspension of a member and subrule (2) thereof provides as follows:
- ◎ “(2)
(1)(b) subsequently so requests in writing to the Speaker, the Speaker must refer the request to the Powers and Privileges Committee for review of the decision to suspend, taking into account all the circumstances that led to the suspension.”
- ◎ The proposed amendment to Rule 52 provides that in the event of a contravention committed by a member, the Speaker may suspend the member and order such member to leave the Chamber immediately and not participate in any parliamentary activities. The proposed amendment includes a comment as to whether a presiding officer should be able to punish and censure a member without due process by way of a committee.

Rule 52 continued...

- ◎ In terms of the replaced version of amendment to Rule 52(2) "If a member suspended in terms of Subrules (1)(a)(iii) or (1)(b) subsequently so requests in writing to the Speaker, the Speaker must refer the request to the Powers and Privileges Committee for review of the decision to suspend, taking into account all the circumstances that led to the suspension."
- ◎ The aforesaid Rule 52(2) afford a suspended member an opportunity to make representations to the Powers and Privileges Committee regarding the validity of the suspension. We believe this proposal ameliorated the lack of due process in the decision of the Speaker. Consideration should be given to reverting to this version.
- ◎ In the interests of allowing the proceedings of the House to continue, it is understandable that the Speaker should have the power to suspend and order a member who is disruptive to leave the Chamber.

Rule 59

⑤ "59. Member to speak

- (1) Subject to rule 58, a member may speak only when recognised by the presiding officer.
- (2) Subject to subrule (1), a member may draw the attention of the presiding officer to a point of order or a question of privilege at any time during proceedings.
- (3) In a debate the presiding officer must recognise a member in accordance with a list of members who are to speak in the debate and the times allocated for speeches by members of different parties."

⑥ Rule 59 provides for affording members an opportunity to speak during proceedings in the House.

⑦ We propose that the heading of the rule be altered to "Recognition of members to speak". This clarifies that the rule deals with the recognition of members by the Speaker before they address the House.

⑧ We propose that Rule 59(1) and (2) must be improved to read as follows:

- "(1) A member may speak only when recognised by the presiding officer during proceedings of the House.
- (2) Subject to subrule (1), a member may draw the attention of the presiding officer to a point of order or a question of privilege."

Rule 70

We suggest as an option that Rule 70, whose deletion is proposed, be re-formulated as follows:

"70. Points of order

- (1) A point of order must be confined to matters of parliamentary procedure and practice and must be raised immediately when the alleged breach of order occurs.
- (2) When a point of order is raised during debate, the member called to order must resume his or her seat.
- (3) After the point of order has been stated the presiding officer —
 - (a) may, at his or her discretion, allow members to address him or her briefly on the point of order; and
 - (b) must give his or her ruling or decision thereon immediately, or at the earliest opportunity thereafter by way of a considered ruling.
- (4) The presiding officer's ruling on a point of order is final and may not be challenged or questioned.
- (5) A member who is aggrieved by a presiding officer's ruling may subsequently in writing to the Speaker request that the subject of the ruling be referred to the Rules Committee for consideration and report."

General comment

Consideration should be given to defining certain references used within the Rules. In particular, the reference to "point of order" in Rule 47, "grave disorder" in Rule 57, and "sub judge" in Rule 67. These references have on recent occasion come under scrutiny, notably in respect of "point of order" in relation to the application of Rule 52.

DA v Speaker of NA

Court had to decide whether reference to “a person” in section 11 of Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004, is reasonably capable of including a member, and if so, whether such meaning is congruent with sections 58(1) and 71(1) of Constitution.

Court answered first question in the affirmative and held that section 11 is overbroad and constitutionally flawed as it violates sections 58 and 71 of the Constitution.

THANK YOU