Version 2

**Draft Report of**

**Subcommittee on Review of the National Assembly Rules**

**May 2016**

**Background**

The Rules Committee of the National Assembly met on 18 and 20 November 2015 to consider Draft 8 of the NA Revised Rules as presented to it by the Subcommittee on Review of the NA Rules.

After detailed consideration of the proposed revised Rules, the Rules Committee agreed to them in principle subject to some further adjustments that were decided upon. Some parties recorded their objection to some of the proposals, as will be reflected in the Minutes of the Rules Committee meetings.

Draft 8 was accordingly amended to incorporate the agreed adjustments, resulting in the finalisation of a new Draft 9 dated 20 November 2015.

In the process of the consideration of the Rule proposals, some issues were identified which required further attention at a party level and then further assessment in the Rules Subcommittee prior to final approval by the Rules Committee and submission to the House. The draft Rules also referred to guidelines which needed to be agreed by the Rules Committee in order to be able to operationalise some of the Rules after their adoption by the House.

**Outstanding issues**

The Rules Subcommittee met on a number of occasions between February and April 2016 to give further consideration to the following outstanding issues:

* The nature and functions of the multi-party committee to be established to consider the circumstances when a member had to be physically removed from the House (ref Rule 53A(12)).
* The possibility of the recusal of a presiding officer from the Chair.
* Draft Rules for the removal of the President from office in terms of section 89 of the Constitution.
* Draft guidelines and determinations to be made by the Rules Committee in accordance with the revised Rules.

In the course of its further deliberation a few other matters were identified requiring some incidental adjustments to Draft 9 of the Revised Rules.

**Further recommendations**

**1. Nature and functions of committee in terms of Rule 53A(12)**

A new Subcommittee of the Rules Committee is proposed for this purpose, as per the attached new Rules 174A to 174D. Some consequential amendments would also have to be introduced, as indicated. (*See Appendix A*)

**2. Recusal of presiding officer from Chair**

A possible Rule to provide for the recusal of a presiding officer from the Chair during a sitting of the House was discussed but was not generally supported. It was noted that the new Rule 19A, which covers presiding officers, already provides as follows:

 **19A. Declaration of private interests**

If a member has a personal or private financial 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.

However, it was agreed to present, as an **option,** inclusion of the following additional Rule:

**Recusal of presiding officer:** A presiding officer must recuse himself or herself from presiding at a meeting of the House when there is a reasonable apprehension of bias on grounds of direct personal interest of that presiding officer in the business before the House.

Options with an alternative wording could also be considered.

**3. Removal of President from office in terms of Section 89 of the Constitution**

A separate document including new draft rules 102B to 102K has been separately circulated for consideration by parties.

**4. Draft guidelines and determinations for approval by Rules Committee in accordance with the new Rules**

Proposed guidelines and determinations for approval by the Rules Committee are distributed in a separate document.

**5. Guidelines on dress code**

It was agreed to propose that the guidelines on dress code required in terms of Rule 45(f) be left optional subject to later Rules Committee consideration if required. It is accordingly proposed that Rule 45(f) be further amended as follows:

**45. Conduct of members**

Members must at all times accord the presiding officers of the National Assembly and members due respect and conduct themselves with dignity and in accordance with the decorum of the House and are required:

(a) – (e);

(f) to dress in a manner befitting the dignity and decorum of the House as may further be provided for in guidelines approved by the Rules Committee; provided that no party symbols may be displayed;

**6. Adjustment of reference to weapons**

It was agreed to adjust the Rules to clarify that replicas of weapons (or toy weapons) would also not be allowed in the Chamber. Rule 45(e) is accordingly further adjusted as follows:

**45. Conduct of members**

Members must at all times accord the presiding officers of the National Assembly and members due respect and conduct themselves with dignity and in accordance with the decorum of the House and are required:

(a) – (d);

(e) not to bring weapons of any kind nor dangerous or threatening articles or objects nor replicas of any such articles or objects into the Chamber, excluding cultural objects with the prior approval of the Speaker;

**7. Information required from Executive relating to details of Cabinet members and Deputy Ministers**

Concerning the appointment by the President of Cabinet members and Deputy Ministers, the assignment of particular powers and functions to them and their collective and individual accountability to Parliament in terms of Sections 91-3 of the Constitution, it is considered important that provision be made in the Rules for Parliament to be kept informed at all times of such formal appointments and assignment of powers and functions. It is accordingly proposed to add a new Rule in Chapter 15 under “Part 2: Executive Government”, as follows:

**316A. Communication of appointment of Cabinet members and Deputy Ministers and their assigned powers and functions**

(1) The Leader of Government Business must inform the Speaker in writing without delay of -

(a) the appointment by the President of the Deputy President, the other Cabinet members and the Deputy Ministers in terms of Sections 91 and 93 of the Constitution when such appointments are made or changed, and

(b) the details of the powers and functions formally assigned, or delegated, to each at the time of appointment or subsequently.

(2) Upon receipt of a communication in terms of Subrule (1), the Speaker must table it without delay.

**8. Technical adjustments**

The Subcommittee's support team have proposed some technical adjustments to the Revised Rules, as attached. (*See Appendix B*)

**9. Adjustment of Rule 53A relating to physical removal of member from Chamber**

 The Subcommittee obtained advice on whether recent court judgements affecting Parliament necessitated a direct revision of any of the proposed Revised Rules. As a result some adjustments are proposed to Rule 53A to further clarify the limited and specific circumstances in which the assistance of the security services may be called in. (*See Appendix C)*

***Appendix A***

**Subcommittee of Rules Committee to consider physical removal of member from Chamber in terms of Rule 53A**

The Rules Subcommittee recommends that the committee to which the circumstances of the physical removal of a member from the Chamber in terms of Rule 53A(12) should be referred should be a subcommittee of the Rules Committee, which could be constituted and could function as provided for in the following additional draft rules:

***(Rules) Subcommittee on physical removal of member from Chamber***

**174A. Composition**

The Subcommittee on Physical Removal of Member from Chamber consists of -

(a) The Deputy Speaker, or if the Deputy Speaker presided in the Chamber at the time when the member was physically removed, a House Chairperson designated by the Speaker;

(b) a senior whip from each party in the Assembly nominated by the party; and

(c) any other member that may be designated by the Speaker.

*[****Option:*** *Use the composition of the Review of Rules Subcommittee, namely that “the Subcommittee consists of the number of members and party representation as determined by the Rules Committee”. In the current Parliament that would result in a Subcommittee consisting of 8 members allocated as follows: ANC 3; DA 2: EFF 1; other parties 2.]*

**174B. Chairperson**

The Deputy Speaker or, as appropriate, the House Chairperson as provided for in Rule 174A(a) is the Chairperson of the Subcommittee.

**174C. Functions and Powers**

(1) The Subcommittee must consider the circumstances of the physical removal of a member from the Chamber as reported to it by the Speaker in terms of Rule 53A(12), taking into account all relevant aspects including -

(a) the conduct of the member concerned,

(b) the ruling by the relevant presiding officer, and

(c) the manner in which the member was removed.

(2) In carrying out its function, the Subcommittee may exercise such powers contained in Rule 138 as it may require.

(3) The Subcommittee's mandate in considering the circumstances referred to it does not extend to disciplinary proceedings against the member nor a formal review of the presiding officer's ruling.

(4) The Subcommittee must report its findings to the Rules Committee within 10 working days, including any recommendations it may make based on those findings.

**174D. Public access**

Meetings of the Subcommittee are held in public but may be closed if the Subcommittee so decides in accordance with Rule 152.

***Consequential rule amendments:***

1. If the above draft rule is accepted, a consequential amendment will be required to Rule 165 which lists the subcommittees of the Rules Committee.

2. Adjust Rule 53A as indicated:

(12) Whenever a member is physically removed from the Chamber in terms of this Rule, the circumstances of such removal must be referred by the Speaker, within 24 hours, **[to a multi-party committee]** for consideration to a Subcommittee of the Rules Committee appointed for that purpose.

***Appendix B***

**Proposed further adjustments to Draft 9 of the NA Revised Rules**

A few further adjustments to Draft 9 of the NA Rules have been identified in the course of a review of the draft rules involving procedural staff at the NA Table. These adjustments are largely of a technical nature or are aimed to eradicate ambiguities, and are submitted for approval as presented below.

The base text is that as proposed in Draft 9 of the Rules.

**1. Amend Subrule 51(2)**, as indicated, bringing it into line with Subrule 51(1):

(2) A member ordered to **[withdraw from]** leave the Chamber must immediately withdraw from the precincts of Parliament**.**

**2. Amend Rule 52(a)** by the indicated insertion. This aims to confirm that suspension is also accompanied by an immediate withdrawal from the Chamber, as in Rule 52(b).

If a presiding officer is of the opinion that a contravention committed in terms of Rule 51 by a member of the House is of so serious a nature that an order to leave the Chamber for the remainder of the day’s sitting is inadequate, the presiding officer may -

(a) if he or she is the Speaker, suspend the member for a period provided for in Rule 54 and order him or her to leave the Chamber immediately; or

**3. Amend Subrule 53A(1)** as indicated, confirming that Rule 53A also applies when a member is suspended or named:

* If a member refuses to leave the Chamber when ordered to do so by the presiding officer in terms of Rule 51 or Rule 52, the presiding officer must instruct the Serjeant-at-Arms to remove the member from the Chamber and the precincts of Parliament forthwith.

**4. Amend Subrule 53A(3)** as indicated, clarifying that a member does not face a double suspension:

(3) Unless already suspended in terms of Rule 52, a member who is removed from the Chamber in terms of subrule (2), is thereby immediately automatically suspended for the period applicable as provided for in Rule 54, and may not enter the precincts for the duration of the suspension.

**5. Amend Subrule 53A(11)** as indicated, to bring the provision into line with the Powers and Privileges Act:

(11) In the event of violence, or a reasonable prospect of violence or serious disruption ensuing in the Chamber as a result of a member(s) resisting removal, the presiding officer may suspend proceedings, and members of the security services may be called upon by the **[presiding officer]** Speaker to assist with the removal of members from the Chamber and the precincts of Parliament forthwith in terms of Section 4(1) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act No 4 of 2004, or may intervene directly anywhere in the precincts in terms of section 4(2) of the Act when there is immediate danger to the life or safety of any person or damage to any property.

**6. Amend Rule 59A(1)** as indicated, providing that, as currently, the presiding officer may do so in person.

**59A. Control of microphones in the Chamber**

(1) In the event of a member not showing due respect to the authority of or not obeying an order or ruling or direction of the presiding officer, or acting in a disruptive or grossly disorderly manner in the House, the presiding officer may **[order that the microphone being used by such member be disabled or switched off]** disable or switch off the microphone being used by such member or order that that be done.

**7. Amend Rule 97 by the insertion of a new paragraph (dA) after Subrule (2)(d)** as indicated. The new provision provides for the event that two or more motions without notice of the same substance are proposed on the same day.

(dA) If a proposed motion is preceded by another motion of the same substance that has already been approved or rejected on the same day, the proposed motion falls away and may not be read out and moved;

**8. Amend Subrule 110(4A)** as indicated, to confirm the maximum time limit:

(4A) The total time allowed for replies to questions and associated supplementary questions under this Rule is limited to a maximum of three hours.

**9. Amend Subrule 111(5A)** as indicated, in line with the proposed amendment to Subrule 110(4A):

 (5A) The total time allowed for replies to questions and associated supplementary questions under this Rule is limited to a maximum of three hours.

***Appendix C***

**Proposed further adjustments to Ruler 53A**

It is proposed that, following further discussions in the Rules Subcommittee as well as legal advice obtained from the State Law Advisers dated 6 May 2016, the existing draft Rule 53A as contained in Draft 9 of the NA Revised Rules be further adjusted as follows:

**53A. Removal of member from Chamber and precincts**

 (1) If a member refuses to leave the Chamber when ordered to do so by the presiding officer in terms of Rule 51 or Rule 52, the presiding officer must instruct the Serjeant-at- Arms to remove the member from the Chamber and the precincts of Parliament forthwith. *[Technical adjustment]*

 (2) If the Serjeant-at-Arms is unable in person to effect the removal of the member, the presiding officer may call upon the Parliamentary Protection Services to assist in removing the member from the Chamber and the precincts of Parliament.

(3) Unless already suspended in terms of Rule 52, a member who is removed from the Chamber in terms of subrule (2), is thereby immediately automatically suspended for the period applicable as provided for in Rule 54, and may not enter the precincts for the duration of the suspension. *[Technical adjustment]*

(4) If a member resists attempts to be removed from the Chamber in terms of subrules (1) or (2), the Serjeant-at-Arms and the Parliamentary Protection Services may use such force as may be reasonably necessary to overcome any resistance.

 (5) No member may, in any manner whatsoever, physically intervene in, prevent, obstruct or hinder the removal of a member from the Chamber in terms of these Rules.

 (6) Any member or members who contravene subrule (5) may, on the instruction of the presiding officer, also be summarily removed from the Chamber and the precincts of Parliament forthwith.

(7) If proceedings are suspended for the purposes of removing a member or members, all other members must remain seated or resume their seats, unless otherwise directed by the presiding officer.

 (8) When entering the Chamber on the instruction of the presiding officer –

 (a) Members of the Parliamentary Protection Services may not be armed; and

 (b) Members of the security services may not be armed, except in extraordinary circumstances in terms of security policy.

(9) Members who have been removed from the Chamber will be escorted off the precincts by Parliamentary Protection Services personnel and will not be allowed to enter the House or precincts of Parliament as the Rules prescribe.

**[(10) If a member(s) offers resistance to being removed from the precincts, members of the security services may be called upon to assist with such removal.]**

[***Note:*** *Deleted as recommended by the State Law Advisers in their legal opinion dated 6 May 2016 on the basis of relevant recent court judgements]*

1. **[In the event of violence, or a reasonable prospect of violence or serious disruption ensuing in the Chamber as a result of a member(s) resisting removal, the presiding officer may suspend proceedings, and members of the security services may be called upon by the [presiding officer] Speaker to assist with the removal of members from the Chamber and the precincts of Parliament forthwith in terms of Section 4(1) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act No 4 of 2004, or may intervene directly anywhere in the precincts in terms of section 4(2) of the Act when there is immediate danger to the life or safety of any person or damage to any property.]**

When there is immediate danger to life or safety of any person or damage to any property, the Speaker may -

(a) suspend proceedings; and

(b) authorise members of the security services to act in accordance with Section 4 of the Powers and Privileges Act.

[***Note:*** *New Subrule (11) as recommended by the State Law Advisers in their legal opinion dated 6 May 2016 on the basis of relevant recent court judgements]*

(12) Whenever a member is physically removed from the Chamber in terms of this Rule, the circumstances of such removal must be referred by the Speaker, within 24 hours, to a multi-party committee for consideration.

1. The House may approve Standard Operating Procedures (*See Appendix C*), recommended by the Rules Committee, for the exercise of this function, in particular in relation to the use of the Parliamentary Protection Services and members of the security services for this purpose.