**VERSION II (November 2019)**

**Part 4: Removal from office of a holder of a public office in a State Institution Supporting Constitutional Democracy**

**Definitions**

For the purposes of Part 4-

**“holder of a public office”** means a person appointed in terms of Chapter 9 of the Constitution;

**“incapacity** includes—

1. a permanent or temporary condition that impairs a holder of a public office’s ability to perform his or her work; and
2. any legal impediment to employment.

**“incompetence”** in relation to a holder of a public office, includes a demonstrated and sustained lack of—

1. knowledge to carry out; and
2. ability or skill to perform,

his or her duties effectively and efficiently.

**“member of a commission”** means a member of a commission established under Chapter 9 of the Constitution;

**“misconduct”** means the intentional or gross negligent failure to meet the standard of behaviour or conduct expected of a holder of a public office.

**“section 194 enquiry”** means an enquiry by the Assembly to remove a holder of a public office in terms of section 194 of the Constitution and these rules.

Define preliminary assessment:

**Initiation of section 194 enquiry**

**129R[[1]](#footnote-1). Initiation of Section 194 enquiry**

1. Any member of the Assembly may, by way of a notice of a substantive motion in terms of Rule 124(6), initiate proceedings for a Section 194(1) enquiry, provided that –
2. the motion must be limited to a clearly formulated and substantiated charge on the grounds specified in Section 194, which must *prima facie* show that the holder of a public office:
3. committed misconduct;
4. is incapacitated; or
5. is incompetent;
6. the charge must relate to an action performed or conduct ascribed to the holder of a public office in person;
7. all evidence relied upon in support of the motion must be attached to the motion; and
8. the motion is consistent with the Constitution, the law and these rules.

(2) For purposes of proceedings in terms of Section 194(1), the term “charge” must be understood as the grounds for averring the removal of the holder of a public office from office.

**129S. Compliance with criteria**

Once a member has given notice of a motion to initiate proceedings in a section 194 enquiry, the Speaker may consult the member to ensure the motion is compliant with the criteria set out in this rule.

**129T. Referral of motion**

(1) When the motion is in order, the Speaker must –

 (a) immediately refer the motion, and any supporting documentation provided by the member, to an independent panel appointed by the Speaker for a preliminary assessment of the matter[[2]](#footnote-2); and

1. inform the Assembly and the President of such referral without delay.

**Independent panel to conduct preliminary assessment into Section 194 enquiry**

**129U. Establishment**

The Speaker must, when required, establish an independent panel to conduct any preliminary inquiry on a motion initiated in a Section 194 enquiry.

**129V Composition and Appointment**

(1) The panel consists of three fit and proper South African citizens, which may/must include a judge, and who collectively possess the necessary legal and other competencies and experience to conduct such an assessment.

1. The Speaker must appoint the panel after giving political parties represented in the Assembly a reasonable opportunity to put forward nominees for consideration for the panel, and after the Speaker has given due consideration to all persons so nominated.

(3) If/when a judge is appointed to the panel, the Speaker must do so in consultation with the Chief Justice.

**129W. Chairperson**

The Speaker/panel must appoint one of the panellists as Chairperson of the panel.

**129X. Functions and powers of the panel**

1. The panel –
2. must be independent and subject only to the Constitution, the law and these rules, which it must apply impartially and without fear, favour or prejudice;
3. must, within 30 days of its appointment, conduct and finalise a preliminary assessment relating to the motion proposing a Section 194 enquiry to determine whether there is *prima facie* evidence to show that the holder of a public office –
4. committed misconduct;

(ii) is incapacitated;

1. is incompetent; and

(c) in considering the matter –

1. may, in its sole discretion, afford any member an opportunity to place relevant written or recorded information before it within a specific timeframe;
2. must without delay provide the holder of a public office with copies of all information available to the panel relating to the assessment;
3. must provide the holder of a public office with a reasonable opportunity to respond, in writing, to all relevant allegations against him or her;
4. must not hold oral hearings and must limit its assessment to the relevant written and recorded information placed before it by members, or by the holder of a public office, in terms of this rule; and
5. must include in its report any recommendations, including the reasons for such recommendations, as well as any minority view of any panellist.

(2) The panel may determine its own working arrangements strictly within the parameters of the procedures provided for in this rule.

**129Y Quorum**

The panel may proceed with its business when two panellists are present including the chairperson.

**129Z. Consideration of panel recommendations**

1. Once the panel has made its recommendations the Speaker must schedule the recommendations for noting/consideration by the Assembly, with due urgency, given the programme of the Assembly[[3]](#footnote-3).

(2) Once the Assembly has noted the report, the report must be referred to the committee to consider motions initiated in terms of section 194.

OPTION

1. In the event the Assembly resolves that a section 194 enquiry be proceeded with, the matter must be referred to a committee for a formal enquiry.

(3) The Speaker must inform the President of any action or decision emanating from the recommendations.

**Committee for Section 194 Enquiry**

**129AA. Establishment**

1. There is a Committee to consider motions initiated in terms of section 194 and referred to it.

**129AB. Composition and Appointment**

(1) The Committee consists of the number of Assembly members that the Speaker may determine, subject to the provisions of Rule 154.

1. Notwithstanding Rule 155(2), the members of the committee must be appointed as and when necessary.

129AB OPTION

(1) The Section 194 Committee consists of the number of Assembly members that the Speaker may determine, provided that –

1. half of its members must be members of opposition parties represented in the Assembly;
2. the opposition parties in the Assembly must be represented on the committee in proportion to the number of seats they hold in the Assembly, provided that, where the number of members of the committee does not allow for each party to have its own representative on the committee, one of the members of the committee must be appointed by the parties who are not represented in the committee.

**129AC. Chairperson**

The Committee must elect one of its members as Chairperson.

**129AD. Functions and powers of the committee**

1. The committee must, when the Speaker has referred the recommendations of the independent panel, consider the motion and report of the panel, and if grounds exist to proceed with a Section 194 enquiry, proceed to establish the veracity of the charges and report to the Assembly thereon.

OPTION:

1. The committee must, when the Assembly has approved the recommendations of the independent panel in terms of Rule 129 Z proceed to conduct an enquiry and establish the veracity of the charges and report to the Assembly thereon.
2. The committee must ensure that the enquiry is conducted in a reasonable and procedurally fair manner, within a reasonable timeframe.
3. The committee must afford the holder of a public office the right to be heard in his or her own defence and to be assisted by a legal practitioner or other expert of his or her choice, provided the legal assistant may not participate in the committee.

(5) For the purposes of performing its functions, the committee has all the powers applicable to parliamentary committees as provided for in the Constitution, applicable law and these rules.

**129AE. Decisions**

A question before the committee is decided when a quorum in terms of Rule 162(2) is present and there is agreement among the majority of the members present, provided that, when the Committee reports, all views, including minority views, expressed in the Committee must be included in its report.

**129AF. Report to the National Assembly**

1. The report of the committee must contain findings and recommendations including the reasons for such findings and recommendations.
2. The report must be scheduled for consideration and debate by the Assembly, with due urgency, given the programme of the Assembly.
3. If the report recommends that the holder of a public office be removed from office, the question must be put to the Assembly directly for a vote in terms of the rules, and if the required majority of the members supports the question, the Assembly must convey the decision to the President.
1. The numbering of the rules could follow Rule 129A-Q, which concern the removal of the President in terms of Section 89 of the Constitution. This would nevertheless be a temporary arrangement until the rules were re-printed, at which point both would be separate rules and be re-numbered accordingly. [↑](#footnote-ref-1)
2. At present, Rule 88 provides that the Speaker must determine whether there is *prima facie* evidence before Parliament must proceed to consider a motion. This rule may therefore require amendment in the event new and contrary procedures are adopted. Such an amendment could replace “… [presenting clearly formulated and properly substantiated charges which, if true, would in the opinion of the Speaker prima facie warrant such a decision] with in terms of Rule 129R(1). [↑](#footnote-ref-2)
3. See *Economic Freedom Fighters and Others v Speaker of the National Assembly and Another* [2017] (ZACC 47) para 178-180. [↑](#footnote-ref-3)