

Monday, 4 December 2023]

No 172—2023] FIFTH SESSION, SIXTH PARLIAMENT

PARLIAMENT
OF THE
REPUBLIC OF SOUTH AFRICA

**ANNOUNCEMENTS,
 TABLINGS AND
 COMMITTEE REPORTS**

MONDAY, 4 DECEMBER 2023

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TABLINGS

National Assembly and National Council of Provinces

1. The Speaker and the Chairperson

- (a) First Report of the Joint Rules Committee on Proposed Amendments to Chapters 1 - 2B of the Joint Rules of Parliament (6th edition), 2023

First Report of the Joint Rules Committee on Proposed Amendments to Chapters 1 - 2B of the Joint Rules of Parliament (6th edition), 2023

The Joint Rules Committee, having considered the proposed amendments to Chapters 1 - 2B of the Joint Rules of Parliament (6th edition) on 1 December 2023, reports as follows:

INTRODUCTION

The Joint Rules Committee (JRC) referred the Joint Rules of Parliament (6th edition) to the Joint Subcommittee on Review of the Joint Rules (the Joint Subcommittee) on 9 July 2019 to review the Joint Rules. The purpose of the review was to update the Joint Rules, given the innovations contained in the Revised Rules of the National Assembly (the Assembly) and National Council of Provinces (the Council). The review provided an opportunity to incorporate Joint Rules that were adopted by the Houses subsequent to the 6th edition (2011) as well as recent jurisprudence that affected the Joint Rules of Parliament.

The JRC received a report from the Joint Subcommittee on proposed amendments to Chapters 1 – 2B dealing with, *inter alia*:

- new definitions;
- sources of authority and application;
- authority of the presiding officers;
- conduct of members;
- grossly disorderly conduct;
- rules on disorder in joint sittings;
- control of microphones;
- opening of Parliament after an election; and
- points of order and questions of privilege.

The JRC adopted the proposed rule amendments, with a proviso that the section on definitions in Chapter 1 would be updated once the rest of the rules (Chapters 3, 4 and 5 and the Schedules) were reviewed.

PROPOSED RULES

The following Joint Rules are submitted for consideration by the National Assembly and National Council of Provinces, respectively:

GENERAL EXPLANATORY NOTE:

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

CHAPTER 1
[INTERPRETATION AND APPLICATION]
DEFINITIONS, SOURCES OF AUTHORITY AND APPLICATION

Part 1: Definitions

1. [Interpretation] Definitions

(1) In the Joint Rules, unless the context indicates otherwise -

“**Act**” means the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004 (Act No 4 of 2004);

“**Assembly**” means the National Assembly;

“**ATC**” means the document entitled “Announcements, Tablings and Committee Reports”;

“**Chairperson**” means the Chairperson of the Council, unless the context indicates otherwise;

“**Chamber**” means the Chamber in which the proceedings of a joint sitting are conducted;

“**classification**” with reference to a Bill, means the classification of a Bill in terms of joint rule 160(6) or the reclassification of a Bill in terms of joint rule 163, and “classify” and “classified” have a corresponding meaning;

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**constitution amendment Bill**” means a Bill to which section 74 of the Constitution applies;

“**Council**” means the National Council of Provinces;

“**document**” means any written instrument, and includes any electronic or other device in or on which information, including visual material, is recorded, stored or kept;

“**Gazette**” means a national Government Gazette;

“Grave disorder” – means incidents of an individual, but more likely collective, misconduct of such a seriously disruptive nature as to place in jeopardy the continuation of a sitting;

“Grossly disorderly conduct” means conduct as referred to in joint rule 40;

“Houses” means the National Assembly and the National Council of Provinces unless the context indicates otherwise;

“Hybrid joint sitting” means a joint sitting in which some members are in the Chamber while others participate by joining an online platform created specifically for that sitting;

“independent candidate” means a South African citizen contesting an election and who is not nominated on a list of a party;

“JTM” means the Joint Tagging Mechanism established by joint rule 151;

“member” with reference to —

- (a) the Assembly, means a member of the Assembly; and
- (b) the Council, means a permanent or special delegate to the Council, and where applicable, a representative of organised local government and “permanent member” and “special member” have a corresponding meaning;

“misconduct” means a breach of the Rules of Parliament by a member, except a breach of the Code of Conduct as contained in the Schedule to the Joint Rules, or conduct amounting to contempt of Parliament as defined in the Act;

["mixed section 75/76 Bill" means a Bill that contains provisions to which section 75 of the Constitution applies and provisions to which section 76 applies;]

“money Bill” means a Bill to which section 77 of the Constitution applies;

“Organised local government” means representatives designated by organised local government referred to in section 67 of the Constitution and the Organised Local Government Act, 1997 (Act 52 of 1997);

“Parliamentary Protection Services” means any employee authorized by Parliament to perform security and protection services within the precincts of Parliament, and includes all

parliamentary staff members employed, appointed, assigned, delegated or contracted by Parliament to perform security and protection functions within the precincts of Parliament;

“party” means a political party to which a member belongs, unless the context indicates otherwise;

“person in charge” with reference to a Bill, means the person in charge of the Bill in terms of the Assembly or Council rules, as the case may be;

“physical joint sitting” means a joint sitting in which members are physically in the Chamber;

“point of order” means a matter related to the procedure or practice of the joint business of the Houses, or a complaint of unparliamentary conduct or behaviour on the part of another member, which a member is entitled to raise during the joint sitting, and that requires guidance and a ruling from the presiding officer;

“precincts of Parliament” means the precincts referred to in section 2 of the Act;

“question of privilege” means any matter which constitutes breach of parliamentary privilege or contempt of Parliament as defined in the Act;

“recess” with reference to -

- (a) a House, means a period determined as a recess by the Programme Committee of the House, or by resolution of the House, during which the business of the House is interrupted; or
- (b) both Houses, means a period determined as a recess by the Joint Programme Committee, or by resolutions adopted in the Houses, during which the business of both Houses is interrupted;

“remitted Bill” means a Bill which the President, on account of reservations about its constitutionality, has in terms of section 79 of the Constitution referred back to the Assembly for reconsideration;

“Secretary” means the Secretary to Parliament;

“section 75 Bill” means a Bill to which the procedure prescribed in section 75 of the Constitution applies [, and includes a money Bill];

“section 76 Bill” means a Bill to which the procedure prescribed in section 76 of the Constitution applies;

“section 76(1) Bill” means a section 76 Bill introduced in the Assembly;

“section 76(2) Bill” means a section 76 Bill introduced in the Council;

“section 77 Bill” also referred to as a money Bill means a Bill to which the procedure prescribed in section 77 of the Constitution applies;

“security services” means security services referred to in section 199 of the Constitution, and contemplated in section 5 of the Security Policy for the Parliament of South Africa;

“Serjeant-at-Arms” means an official of the Assembly delegated to perform the duties of Serjeant-at-Arms in terms of these rules;

“tabling” in relation to any document or paper, means the official presentation of the document or paper in the joint sitting, or, if not presented in the joint sitting, the publication in the ATC of the document or paper after it has been officially submitted to the Speaker and Chairperson;

“Usher of the Black Rod” means an official of the Council delegated to perform the duties conferred on an Usher in terms of these Joint Rules;

“unparliamentary conduct” means any conduct which amounts to defiance of the person presiding over the proceedings;

“virtual joint sitting” means a joint sitting in which members only participate via an online platform created specifically for that joint sitting;

“working day” means any day of the week except —

- (a) Saturday and Sunday; and
- (b) a public holiday in terms of the Public Holidays Act, 1994 (Act 36 of 1994), and, if such a public holidays falls on a Sunday, also the Monday.

- (2) A reference in the Joint Rules to the Speaker or Chairperson **[of the Council]** must be read as a reference also to the Deputy Speaker or the permanent Deputy Chairperson of the Council, as the case may be, if –
- (a) the Speaker or the Chairperson is absent;
 - (b) there is a vacancy in the office of the Speaker or the Chairperson; or
 - (c) the Speaker or the Chairperson is not available to perform a function or exercise a power conferred on the Speaker or Chairperson in terms of the Joint Rules.

Part 2: Sources of Authority and Application

2. Introduction

The sources of authority of the joint business of the Houses include –

- (a) the Constitution;
- (b) the Act and any other applicable legislation;
- (c) the Joint Rules of Parliament;
- (d) the Rules of the National Assembly, if and when applicable;
- (e) the Rules of the National Council of Provinces, if and when applicable;
- (f) directives and guidelines of the Joint Rules Committee;
- (g) rulings by the presiding officers regarding joint business; and
- (h) any conventions or practices that have been established by usage over a period of time.

3 Joint Rules of Parliament

- (1) The Joint Rules must be made with due regard to section 45 of the Constitution and adopted by resolution of the Assembly and the Council;
- (2) The Joint Rules remain in force until amended or repealed by the Houses.
- (3) Members must strictly adhere to the Joint Rules.

[2]4. Unforeseen [matters] eventualities

- (1) The Speaker and the Chairperson **[of the Council]**, acting jointly, may give a ruling or make a rule in respect of any **[matter] eventuality** for which the Joint Rules do not provide.
- (2) A rule made by the Speaker and the Chairperson **[of the Council]**, acting jointly, remains in force until **[a meeting] the Assembly and the Council, based on a recommendation** of the Joint Rules Committee **[has] have** decided **[on it] thereon**.

5. Directives and guidelines of Joint Rules Committee

- (1) The Joint Rules Committee may, in terms of joint rule 56, issue directives and guidelines to assist with the implementation of these Joint Rules.
- (2) Members must comply with any such directives and guidelines.

6. Rulings

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- (1) The presiding officers must perform the functions as provided for in these Joint Rules and may make rulings in applying and interpreting these Joint Rules.
- (2) Members must comply with rulings made by presiding officers.
- (3) A ruling given by a presiding officer is final.

7. Conventions and practices

- (1) Conventions and practices must be consistent with the provisions of the Constitution, these Joint Rules, rulings, directives and guidelines of the Joint Rules Committee.
- (2) Presiding officers may direct members to comply with established conventions and practices.

8. Contempt

A member who wilfully fails or refuses to obey any Joint Rule or order or resolution may be found guilty of contempt of Parliament in terms of the Act.

[3]9. Suspension

- (1) In accordance with applicable rules, [The] the Assembly and the Council, by resolution in each House, may dispose with or suspend a provision of the Joint Rules for a specific period or purpose.
- (2) The suspension of any provision is limited in its operation to the particular purpose for which the suspension has been approved.

[4]10. Non-diminution or non-limitation of Rules

No convention or rule of practice limits or inhibits any provision of the Joint Rules.

[5]11. Application of Joint Rules to non-members

When a Cabinet member who is not a member of the Assembly or the Council, participates in the proceedings of the joint business of the Houses, the Joint Rules, unless clearly inappropriate, apply to that Cabinet member as they apply to a member of the Assembly or the Council.

[6]12. Public participation

- (1) Members of the public may participate in the joint business of the Houses by -
 - [(a) attending joint sittings of the Houses or meetings of joint committees;]**
 - (b) responding to public or specific invitations —
 - (i) to comment in writing on **[Bills or other]** matters before a joint committee; or
 - (ii) to give evidence or to make representations or recommendations before joint committees on such **[Bills or other]** matters before the joint committees, either in person or through a representative.

- (2) Public participation in terms of subrule (1) is subject to, and must be exercised in accordance with, the applicable provisions of the Constitution, these Joint Rules, Public Participation Model and Practice Note.
- (3) Joint sittings are open to the public including the media but reasonable measures may be taken to regulate public access.
- (4) The power to regulate or limit any activity, access or movement of visitors whilst in the precincts of Parliament and attending joint business rests with the Speaker and the Chairperson.
- (5) Unless the Speaker and Chairperson direct otherwise, all visitors to the precincts of Parliament and attending joint business must, in an appropriate manner, be subjected to a security check or screening before entering the precincts or venue used for joint business and, if reasonable cause exists, any visitor may at any time be subjected to such a check or screening.
- (6) Any visitor who refuses in any manner to comply with subrule 3 may be refused access to the precincts of Parliament or any venue used for joint business and may be removed from the precincts or such a venue by the Parliamentary Protection Services who may, in exercising that duty, be assisted by members of the security services acting on instruction of the Speaker or the Chairperson.
- (7) The Speaker and Chairperson may give a non-member access to the floor of a Chamber during a joint sitting in special circumstances.
- (8) Visitors admitted in terms of this rule may not disrupt parliamentary proceedings in any manner and must adhere to the instructions of a presiding officer and members of the Parliamentary Protection Services and the security services.
- (9) The presiding officer at a joint sitting may, whenever he or she thinks it reasonable and justifiable in an open and democratic society, order visitors to withdraw from the sitting and the precincts of Parliament.
- (10) When instructed by a presiding officer, the Serjeant-at-Arms or Usher of the Black Rod must remove, or arrange with the Parliamentary Protection Services and security services for the removal of, any person contravening this rule.

- (11) The Speaker and Chairperson may, after consultation with or at the request of the Leader of Government Business, invite a head of state or government who is on an official visit to the Republic to address a joint sitting.
- (12) The Houses may, by a resolution in each House, invite any person to address a joint sitting.

CHAPTER 2 JOINT SITTINGS OF THE HOUSES

[7]13. Calling of joint sittings

- (1) The President may call a joint sitting of the Houses when it is necessary for —
 - (a) the President to deliver the annual or a special address to Parliament; or
 - (b) a purpose mentioned in sections 42(5) or 203 of the Constitution.
- (2) The Speaker and the Chairperson **[of the Council]**, acting jointly, may call a joint sitting of the Houses when necessary to do so.
- (3) No other business may be considered during a joint sitting other than the specified business for which that joint sitting is called.

14. Opening of a Parliament

- (1) At the commencement of the first session of a Parliament after its election, the President may deliver an Opening Address at a date and time determined by the Speaker and the Chairperson in accordance with joint rule 17.
- (2) The Speaker and the Chairperson must publish the Opening Address in the Minutes of Proceedings and place it on the Order Paper for debate.
- (3) No member may interrupt the President whilst delivering the Opening of Parliament Address.

15 President's State of the Nation Address

- (1) The Speaker and the Chairperson must inform the members of the Assembly and the Council of the date and time for the President's State of the Nation Address in accordance with joint rule 17.
- (2) The Speaker and the Chairperson must publish the President's State of the Nation Address in the Minutes of Proceedings and place it on the Order Paper for debate .

- (3) No member may interrupt the President whilst delivering the State of the Nation Address.

[8]16. Venue

Joint sittings are held **[in the Chamber of the Assembly]** at the precincts of Parliament as provided for in section 42(6) of the Constitution or at a place determined by the Speaker and the Chairperson, acting jointly.

[9]17. Day and time

- (1) The date and time of any joint sitting **[must be made known to the members of the Assembly and the Council]** must be announced by the presiding officers -
- (a) by placing it on the Order Paper[s] of the **[Houses]** joint sitting; or
 - (b) by **[way of an announcement by the officer presiding at a sitting of a House]** publishing it on the ATC; or
 - (c) **[by giving notice to the members in a way determined by the Speaker and Chairperson of the Council for their respective Houses]** in any other manner determined by the Speaker and the Chairperson.

[10]18. Presiding officer

[Either the Speaker or the Chairperson of the Council, by arrangement between them, presides at a joint sitting]. The Speaker or the Chairperson may preside at joint sittings, either jointly, or individually.

[11]19. Relief of presiding officer

[An elected presiding officer] A member of either House must take the Chair whenever requested to do so by the Speaker or the Chairperson **[of the Council]**.

20. General authority and responsibility of presiding officers during joint sittings

- (1) Presiding officers must -

- (a) maintain and preserve the order of and the proper decorum in a joint sitting, and uphold the dignity and good name of Parliament;
- (b) ensure the strict observance of these Joint Rules; and
- (c) apply these Joint Rules fairly and impartially.

[12]21. Discipline

- (1) When the Houses sit jointly -
 - (a) the Assembly Rules on discipline remain applicable to an Assembly member; and
 - (b) the Council Rules on discipline remain applicable to a Council member.

[13]22. Procedure

- [(1) An Assembly or Council member, other than the officer presiding at a joint sitting, may not speak at the sitting –**
 - (a) unless invited to do so by the presiding officer; or**
 - (b) without having obtained the permission of the Speaker and the Chairperson of the Council before the meeting.]**
- (1) At the start of proceedings, the presiding officer must afford members an opportunity for silent prayer or meditation.
- (2) The presiding officer may interrupt, suspend or adjourn the proceedings of the joint sitting.
- [(2)](3) No vote or decision may be taken by or in a joint sitting.**

[14. Public access

- (1) Joint sittings are open to the public, including the media.**
- (2) The Assembly Rules concerning access of the public to the Chamber of the Assembly apply to a joint sitting, except that the Speaker must consult the Chairperson of the Council when exercising the powers assigned to the Speaker in those rules.]**

Chapter 2A

Joint Rules applicable to Virtual or Hybrid Joint Sittings

[Part A] 23. Application of Rule

These Joint Rules apply to hybrid and virtual joint sittings [of the Assembly and Council].

[Part B] 24. Venue

The venue of a virtual or hybrid joint sitting shall be deemed to be at the seat of Parliament as provided for in section 42(6) of the Constitution.

[Part C] 25. Papers

In terms of these Joint Rules, all papers of the hybrid or virtual joint sitting shall be distributed by electronic means to which members have access.

[Part D] 26. Privilege and application of Joint Rules in hybrid or virtual joint sittings

In a virtual or hybrid joint sitting [–

(a) **Delegates to]** the members shall have the same powers, privileges and immunities which they ordinarily enjoy in parliamentary proceedings. [**; and**

(b) **the Joint Rules shall apply].**

[Part E] 27. Presiding officers

In a virtual or hybrid joint sitting, the presiding officers shall have all the powers as provided for in the Constitution, any other law and these Joint Rules.

[Part F] 28. Attendance

(1) For the purposes of a hybrid sitting, attendance shall be constituted by those members who have logged in to a virtual platform created for that particular sitting and those who are physically present in the Chamber.

- (2) For purposes of virtual sittings, those members who have logged in shall be deemed to be present.

[Part G] 29. Control of microphones

- (1) In the event of a member [or Delegate] not complying with an order or ruling or direction of the presiding officer, or acting in a disruptive or grossly disorderly manner during the sitting, the presiding officer may direct that the [Delegate's or] member's microphone be muted or switched off.
- (2) Before proceeding in terms of subrule (a), the presiding officer must inform the member [or Delegate] and the House of the intention to do so.

[Part H] 30. Public Access

Public access to hybrid or virtual joint sittings shall be facilitated in a manner consistent with participatory and representative democracy and, wherever possible, a virtual or hybrid joint sitting may be livestreamed.

[Part I] 31. Member ordered to leave virtual platform

If the presiding officer is of the opinion that a member is deliberately contravening a provision of these Joint Rules, or that a member is disregarding the authority of the Chair, or that a member's conduct is grossly disorderly, he or she may order the member to leave the virtual platform, immediately for the remainder of the day's sitting.

[Part J] 32. Removal of member from virtual platform

- (1) If a member refuses to leave the virtual platform when ordered to do so by the presiding officer in terms of joint rule 31, the presiding officer may order the removal of the member from the virtual platform immediately for the remainder of the day.
- (2) If proceedings are suspended [halted] for the purposes of removing a member or members, all other members must remain on the virtual platform, unless otherwise directed by the presiding officer.

(3) Members who have been removed from the virtual platform will not be allowed to enter the virtual platform [as the Rules of the respective House to which the offending member belongs prescribe].

[(4) Whenever a member is removed from a virtual platform, in terms of this Joint Rule, the circumstances of such removal may be referred by the Speaker or the Chairperson, within 24 hours, for consideration to a subcommittee established by the Joint Rules Committee for that purpose.]

CHAPTER [2A]2B
ORDER IN JOINT SITTINGS AND RULES OF DEBATE

Part 1: Order in joint sittings

33. Freedom of speech in joint sittings

(1) Members -

- (a) have freedom of speech in joint sittings, joint committees and subcommittees, subject to the rules and orders; and
- (b) are not liable to any civil or criminal proceedings, arrest, imprisonment or damages for –
 - (i) anything they have said in, produced before or submitted to a joint sitting or any joint committees or subcommittees; or
 - (ii) anything revealed as a result of anything said in, produced before or submitted to a joint sitting or any joint committee or subcommittee.

[14A] 34. Conduct of members

[(1) Every member, when he or she enters or leaves the Chamber or moves to any other part of the Chamber during a debate, unless the presiding officer directs otherwise, shall bow to the Chair in passing to or from his or her seat.

(2) No member shall pass between the Chair and the member who is speaking nor stand in any of the passages or gangways.]

(1) Members must –

- (a) at all times accord the presiding officers and other members due respect;
- (b) conduct themselves with dignity and in accordance with the decorum of the House;
- (c) enter or leave the Chamber with decorum;
- (d) be seated when the bells stop ringing to mark the start of proceedings;
- (e) rise, if possible, when the presiding officer enters the Chamber at the start of proceedings and to remain standing until invited to be seated;

- (f) during proceedings, not pass between the Chair and the member who is speaking, or between the Chair and the Table, or stand in any of the aisles or cross aisles, or cross the floor of the House in front of the benches, unless permission is granted from presiding officers;
- (g) not bring -
 - (i) weapons of any kind or dangerous or threatening articles or objects or replicas of any such articles or objects into the Chamber,
 - (ii) placards into the Chamber.
- (h) dress in a manner befitting the dignity and decorum of the House, provided that no party symbols may be displayed;
- (i) not take photographs or video footage during proceedings, speak on a cellphone, eat, read newspapers or in any other way conduct themselves in a manner not befitting the dignity and decorum of the House; and
- (j) on adjournment of the joint sitting, rise, if they are able to do so, and remain in their seats until the presiding officer has left the Chair.

[14B] 35. Members not to converse aloud

During debate no member shall converse aloud.

[14C] 36. Member not to be interrupted

- (1) No member **[shall]** may interrupt another member whilst speaking, except -
 - (a) to call attention to a point of order, subject to joint rule 57, or a question of privilege[.], subject to joint rule 58; or
 - (b) at the discretion of the presiding officer and with the consent of a member speaking, put a question to that member.

[14D] 37. Order at adjournment

When a joint sitting rises, members shall rise if possible and remain in their places until the presiding officer has left the Chamber.

[14E] 38. Precedence of presiding officer

Whenever the presiding officer addresses members during a **[debate] joint sitting**, any member then speaking or seeking to speak **[shall] must** resume his or her seat and the presiding officer **[shall] must** be heard without interruption.

[14F] 39. Irrelevance or repetition

The presiding officer [, **after having called attention to the conduct of a member who persists in irrelevance or repetition of arguments, may direct the member to discontinue his or her speech**] may order a member addressing a joint sitting to stop speaking if that member, despite warnings from the Chair, persists in irrelevant or repetitive arguments.

40. Grossly disorderly conduct

- (1) Members may not engage in grossly disorderly conduct in a joint sitting by –
- (a) deliberately creating serious disorder or disruption;
 - (b) in any manner whatsoever physically intervening, preventing, obstructing or hindering the removal of a member from the Chamber who has been ordered to leave the Chamber;
 - (c) repeatedly undermining the authority of the presiding officer or repeatedly refusing to obey rulings of the presiding officer or repeatedly disrespecting and interrupting the presiding officer while the latter is addressing the House;
 - (d) persisting in making serious allegations against a member without following the correct procedure;
 - (e) using or threatening violence against a member or other person; or
 - (f) acting in any other way to the serious detriment of the dignity, decorum or orderly procedure of the House.

[14G] 41. Member ordered to [withdraw] leave Chamber

If the presiding officer is of the opinion that a member is deliberately contravening a provision of these Joint Rules, or that a member is **[in contempt of or is]** disregarding the authority of the Chair, or that a member's conduct is grossly disorderly, **[he or she] the presiding officer**

may order the member to **[withdraw immediately from]** leave the Chamber immediately for the remainder of the sitting.

42. Removal of member from Chamber

- (1) If a member refuses to leave the Chamber when ordered to do so by the presiding officer in terms of joint rule 41, the presiding officer must instruct the Serjeant-at-Arms and/or the Usher to remove the member from the Chamber **[and the precincts of Parliament]** forthwith for the remainder of the day.
- (2) If the Serjeant-at-Arms and/or the Usher of the Black Rod is unable **[in person]** to remove 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 for the remainder of the day]**.
- [(3) **An Assembly 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 Assembly Rule 54, and may not enter the precincts for the duration of the suspension.]**
- [(4) **A Council 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 Council Rule 39, and may not enter the precincts for the duration of the suspension.]**
- [(5)] (3) If a member resists attempts to be removed from the Chamber in terms of subrules (1) or (2), the Serjeant-at-Arms, the Usher of the Black Rod and the Parliamentary Protection Services may use such force as may be reasonably necessary to overcome any resistance.
- (4) 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 Speaker or the Chairperson to assist with the removal of members from the Chamber and the precincts of Parliament immediately in terms of section 4(1) of the Act 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)](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 Joint Rules.

[(7)](6) Any member who contravenes subrule (5) may, on the instruction of the presiding officer, also be summarily removed from the Chamber **[and the precincts of Parliament forthwith].**

[(8)](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.

[(9)](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.

[(10)](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 member's respective House or the precincts of Parliament as the Rules of the respective House to which the offending member belongs prescribe].**

[(11)](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.

[(12)] **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 Speaker or the Chairperson to assist with the removal of members from the Chamber and the precincts of Parliament immediately in terms of Section 4(1) of the Act 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.]**

[(13) Whenever a member is physically removed from the Chamber in terms of this Joint Rule, the circumstances of such removal must be referred by the Speaker or the Chairperson of the Council, within 24 hours, for consideration to a subcommittee established by the Joint Rules Committee for that purpose for consideration].

[(14) The committee must be established by resolution of both Houses]

[(15) The Assembly and Council may, by resolution in each House, approve directives and guidelines, standard operating procedures, recommended by the Joint Rules Committee, for the removal of member from the Chamber, in particular in relation to the use of the Parliamentary Protection Services and members of the security services for this purpose].

[14H] 43. Referral of member's conduct to House

If a presiding officer, other than the Speaker or Chairperson, is of the opinion that a contravention committed by a member of either House is of so serious a nature that an order to **[withdraw from]** leave the Chamber for the remainder of the sitting is inadequate, the presiding officer may refer the matter to the Speaker or the Chairperson **[of the Council]**, whichever is relevant, for appropriate action.

[14I] 44. Expression of regret

(1) A member who has been ordered to **[withdraw from]** leave the Chamber may submit to the Speaker or the Chairperson **[of the Council]** a written expression of regret.

(2) If the Speaker or the Chairperson accepts such expression of regret, the Speaker or the Chairperson must inform the joint sitting or the Houses accordingly by way of announcement in the ATC.

[(2) A written expression of regret approved by the Speaker or the Chairperson of the Council shall be recorded in the Minutes of Proceedings].

[14J] 45. Reflections upon judges [, etc] and certain other holders of public office

No member shall reflect upon the competence or **[honour]** integrity of a judge of a superior court, **[or of]** the holder of **[any other office]** a public office in an institution supporting constitutional democracy referred to in section 194 of the Constitution, or any holder of an office (other than a member of the Government) whose removal from such office is dependent upon a decision of either House.

[14K] 46. Grave disorder

In the event of grave disorder at a sitting, the presiding officer may adjourn the sitting or may suspend the proceedings for a reasonable period to be stated by **[him or her]** the presiding officer.

Part 2: Rules of debate

[14L] 47. Member to address Chair

- (1) At a joint sitting a member may only speak from the podium, except -
- (a) to raise a point of order or a question of privilege;
 - (b) to furnish a personal explanation in terms of joint rule **[14R] 56**;
 - (c) if the member is unable to do so due to a physical disability; or
 - (d) with the prior consent of the presiding officer **[, when he or she may address the Chair from a microphone on the floor of the Chamber]**.

[14M] 48. Calling of members

A member shall be called in a debate by the presiding officer in accordance with a list of scheduled speakers.

49. 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, the presiding officer may disable or switch off or direct that the microphone being used by such member be disabled, switched off or taken away.

- (2) Before proceeding in terms of subrule (1), the presiding officer must inform the member of his or her intention to do so.

[14N] 50. Time limits for speeches

Members shall be restricted, in regard to the length of time they speak, to the times allocated to them in the list contemplated in joint rule 48.

[14O] 51. Reference to member by name

No member shall refer to any other member by his or her first name or names only.

[14P] 52. [Offensive language] Unparliamentary or unacceptable language and gestures

No member shall use unparliamentary, offensive, abusive, insulting, disrespectful, [or] unbecoming language or sounds, or offensive, or threatening gestures.

53. Reflections upon members

- (1) No member may impute improper motives to any other member, or cast aspersions or make personal reflections on a member's integrity or dignity, or verbally abuse a member in any other way.
- (2) A member who wishes to bring any improper or unethical conduct on the part of another member to the attention of Parliament, may do so only by way of the relevant procedure and mechanisms provided for in the applicable House.

54. Reflections upon the Houses of Parliament, its proceedings and decisions

No member may reflect in a disrespectful manner upon the Houses of Parliament or the proceedings and decisions of the Houses or their joint and respective forums and committees.

[14Q] 55. Matters *sub judice*

No member **[shall]** may reflect on the merits of any matter on which a judicial decision is pending.

[14R] 56. Explanations

- (1) An explanation during debate is allowed only when a material part of a member's speech has been misquoted or misunderstood, but such member shall not be permitted to introduce any new matter, and no debate shall be allowed upon such explanation.
- (2) A member may, with the prior consent of the presiding officer, also explain matters of a personal nature, but such matters may not be debated, and the member shall confine himself or herself strictly to the vindication of his or her own conduct and may not speak for longer than three minutes.

[14S] 57. Points of order

- [(1) When a point of order is raised, the member called to order shall resume his or her seat, and after the point of order has been stated to the presiding officer by the member raising it, the presiding officer shall give his or her ruling or decision thereon either forthwith or subsequently.**
- (2) A ruling to be given after the sitting has adjourned shall be given in the National Assembly or in the National Council of Provinces, depending on which House the offending member belongs to.**
- (3) A ruling to be given in accordance with Subrule (2) may, by agreement of the presiding officers, be delivered and enforced by a presiding officer of the House to which the offending member belongs on behalf of a presiding officer from the other House.]**
- (1) A member may raise a point of order at any time during the proceedings of the joint sitting, in terms of the procedure prescribed in subrule (3)(a), by stating that he or she is rising on a point of order.

- (2) A point of order must be confined only to a matter of breach of these Joint Rules or parliamentary procedure or practice, or a matter relating to unparliamentary conduct, as defined, and must be raised immediately when the alleged breach occurs.
- (3)
 - (a) The member raising the point of order must refer to a rule or standing order, or at least the principle or subject matter, upon which the point of order is based.
 - (b) If the member does not refer to a rule as contemplated in subrule (a) above, the presiding officer may summarily disallow the point of order.
- (4) The presiding officer may, at his or her discretion, allow members to address the presiding officer briefly on a point of order that has been raised.
- (5) The presiding officer must give a ruling, and may give his or her ruling or decision on the point of order immediately, or defer the decision to the earliest opportunity thereafter by way of a considered ruling.
- (6) No point of order may be raised in response to a considered ruling in terms of subrule (5)
- (7) No other member may raise another point of order before the presiding officer has ruled on the first point of order.
- (8) No member may raise a point of order again or a similar point of order, if the presiding officer has ruled that it is not a point of order or that the matter is out of order.
- (9) Members may not disrupt proceedings by raising points of order that do not comply with this rule.
- (10) When a point of order is raised during debate, the member called to order must resume his or her seat, and after the point of order has been stated to the presiding officer by the member raising it, the member raising the point of order must likewise immediately resume his or her seat when he or she has concluded his or her submission or if the presiding officer asks him or her to do so.
- (11) The presiding officer's ruling on a point of order is final and binding, and may not be challenged or questioned in the House.

- (12) (a) A member who is aggrieved by a presiding officer's ruling on a point of order may subsequently in writing to the Speaker or the Chairperson request that the principle or subject matter of the ruling be referred to the Joint Rules Committee.
- (b) The Joint Rules Committee may deal with the referral in terms of subrule (a) as it deems fit, provided that it must confine itself to the principle underlying, or subject matter of, the ruling concerned, and may not in any manner consider the specific ruling which is final and binding.

58. Raising a question of privilege

- (1) Subject to joint rule 60, a member who wishes to raise a breach of privilege must report it to the Speaker or the Chairperson without delay.
- (2) If the alleged breach of privilege is, in the opinion of the Speaker or the Chairperson, adequately substantiated and may affect a joint sitting of the Houses on the day or in the immediate future, the Speaker or the Chairperson may, with due regard to the provisions of the Act, rule on the matter and announce it in the joint sitting.
- (3) If the alleged breach of privilege does not directly affect a joint sitting of the Houses in the immediate future, the Speaker or the Chairperson may refer the matter to the relevant committee of the House to which the affected member belongs.

[14T] 59. Acting for absent member

A member may take charge of an order of the day in the absence of the member in charge, provided **[he or she]** the member has been authorized to do so by the absent member, after having timeously notified the presiding officer, where possible.

[14U] 60. Right of members to speak

- (1) A member may speak –
- (a) when called upon to do so by the presiding officer; or
- (b) to a point of order.

[14V] 61. When reply allowed

A reply shall be allowed to the member introducing a subject for discussion (except in the case of the President's [**s**]State[-]of[-]the[-][**n**]Nation [**a**]Address) or to the member in charge of an order of the day.

[14W] 62. Debate closed

A reply to a debate closes the debate.

Report to be considered.

2. The Minister of Water and Sanitation

- (a) Revised Corporate Plan of Umngeni – Uthukela Water (Formerly Mhlathuze Water) for 2023/24 – 2027/28.

National Council of Provinces

1. The Chairperson

- (a) PROGRESS REPORT ON THE STATUS OF INTERVENTIONS ISSUED TO MPOFANA, MSUNDUZI, INKOSI LANGALIBALELE, MTUBATUBA, UMZINYATHI, UTHUKELA AND UMKHANYAKUDE MUNICIPALITIES IN TERMS OF SECTION 139(1)(b) OF THE CONSTITUTION, 1996

Referred to the **Select Committee on Cooperative Governance and Traditional Affairs, Water, Sanitation and Human Settlements** for consideration and report.

COMMITTEE REPORTS

National Assembly

[The following report replaces the Report of the Portfolio Committee on Police, which was published on page 4 of the Announcements, Tablings and Committee Reports, dated 29 November 2023]

REPORT OF THE PORTFOLIO COMMITTEE ON POLICE ON THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE (IPID) AMENDMENT BILL [B21 – 2023] (NATIONAL ASSEMBLY – SECTION 75), DATED 29 NOVEMBER 2023

The Portfolio Committee on Police (the Committee), having considered the Independent Police Investigative Directorate Amendment Bill, 2023 [B21– 2023], referred to and classified by the Joint Tagging Mechanism (JTM) as a section 75 Bill, reports the Bill with amendments [B21A – 2023]:

1. Introduction

The Independent Police Investigative Directorate (IPID) Amendment Bill, 2023 [B21-2023] (“the Amendment Bill”) was approved by the Cabinet for introduction in Parliament on 24 May 2023. Prior notice of its introduction was published in the Government Gazette No 48756, dated 07 June 2023. The Amendment Bill was subsequently introduced by the Minister of Police and referred to the Portfolio Committee on Police on 20 July 2023 (ATC No 96 – 2023) as a proposed Section 75 Bill (not affecting provinces). The Amendment Bill was officially tagged as a section 75 Bill by the Parliamentary Joint Tagging Mechanism (JTM) in terms of Joint Rule 106(6) on 16 August 2023 (ATC No. 100 - 2023). The Amendment Bill proposes amendments to various sections of the Independent Police Investigative Directorate Act, 2011 (Act No. 01 of 2011) (“the Principal Act”).

In terms of National Assembly Rule 279(2), a Bill introduced by a Minister must be certified by the Chief State Law Adviser to be consistent with the Constitution and properly drafted in the form and style which conforms to standard legislative practice. The Office of the Chief State Law Adviser (OCSLA) did not certify that the Amendment Bill as constitutionally sound and drafted properly in the form and style which conforms to standard legislative practice. It is exceptionally rare for the OCSLA to refuse Constitutional certification, but in this instance, it was unavoidable as clause 4 of the Amendment Bill is in contradiction with the Constitutional Court in the judgement of *McBride v Minister of Police and Another (McBride v Minister of Police and Another* [2016] ZACC 30) (“*McBride* judgement”) relating to the structural and operational independence of the IPID. The clause in question has been amended to include Parliamentary oversight in the appointment process of the IPID Executive Director in compliance with the *McBride* Judgement.

2. Objectives of the Amendment Bill

The objectives of the Amendment Bill are to amend the Independent Police Investigative Directorate Act, 2011, so as to:

- amend and insert certain definitions;
- to provide for the Directorate’s institutional and operational independence;

- to provide that the Directorate must be independent, impartial and must exercise its powers and functions without fear, favour, prejudice, or undue influence in order to give effect to the judgment of the Constitutional Court in the case of *McBride v Minister of Police and Another*;
- to amend the provisions relating to the appointment of the Executive Director of the Directorate;
- to broaden the Executive Director's responsibilities in respect of the referral of recommendations regarding disciplinary matters;
- to provide for pre-employment security screening investigations to be conducted by the Directorate;
- to provide for the conditions of service of investigators to be determined by the Minister;
- to provide for the Directorate to investigate any deaths caused by the actions of a member of the South African Police Service or a member of a municipal police service, whether such member was on or off duty;
- to provide for the Directorate to investigate a rape by a member of the South African Police Service or a member of a municipal police service, whether such member was on or off duty;
- to strengthen the provisions relating to the implementation of disciplinary recommendations;
- to provide for a savings provision regarding the conditions of service of existing investigators and provincial heads;
- to amend other provisions of the Independent Police Investigative Directorate Act, 2011, so as to ensure that the Directorate executes its mandate effectively and efficiently; and
- to provide for matters connected therewith.

3. Meetings of the Committee

The Portfolio Committee on Police had nine scheduled meetings on the IPID Amendment Bill, held on:

- 1) 30 August 2023: Introduction of the Amendment Bill
- 2) 18 October 2023: First day of public hearings
- 3) 25 October 2023: Second day of public hearings
- 4) 01 November 2023: Deliberations
- 5) 08 November 2023: Deliberations
- 6) 10 November 2023: Clause-by-clause deliberations
- 7) 15 November 2023: Further clause-by-clause deliberations
- 8) 22 November 2023: Consideration of the A-list/A-version of the Bill
- 9) 29 November 2023: Adoption of the Committee Report on the Bill and IPID Amendment Bill in its entirety.

4. Amended clauses of the Bill

Clause 1

1. On page 3, after line 9, to insert the following paragraph and to renumber paragraphs (e) to (i) accordingly:
 "(e) by the deletion of the definition of "fixed date".

2. On page 3, in line 20, to omit "definitions, respectively" and to substitute "definition".
3. On page 3, from line 21, to omit "**'Programme Manager'** means a person appointed to head a Unit or Programme of the Directorate;".

Clause 4

1. Clause rejected.
2. That the following be the new clause:
"Appointment, remuneration and conditions of service of Executive Director

6. (1) The Minister must—

(a) appoint a panel to assist the Minister to identify suitably qualified candidates for appointment as the Executive Director, in accordance with a procedure determined by the Minister; and

(b) nominate a suitably qualified person and submit the name of such person to the relevant Parliamentary Committee.

(2) The relevant Parliamentary Committee must, within a period of 30 parliamentary working days from the date of the submission of the name of the suitably qualified person contemplated in subsection (1)(b), confirm or reject such nomination.

(3)(a) In the event of the nomination made in terms of subsection (1)(b) being confirmed by the relevant Parliamentary Committee, the Minister must appoint the nominated person as the Executive Director to head the Directorate in accordance with the responsibilities listed in section 7, for a non-renewable period of seven years.

(b) The person to be appointed as Executive Director must—

(i) be a South African citizen;

(ii) be a fit and proper person;

(iii) possess an appropriate qualification in law, safety and security, or in administration of criminal justice or forensic investigation;

(iv) have knowledge of safety and security, the policing environment and public administration for a cumulative period of between eight to 10 years at senior management level, at least three years of which must be within an organ of state as defined in the Constitution; and

(v) with due regard to his or her experience, demonstrate high levels of conscientiousness, integrity and commitment to human rights.

(4) The remuneration, allowances, benefits and other terms and conditions of service of the Executive Director must be determined by the Minister, with the concurrence of the Minister responsible for Finance.

(5) (a) When the Executive Director is unable to perform the functions of office, or when the Executive Director position is vacant, the Minister may, with the concurrence of the relevant Parliamentary Committee, designate another person to act as Executive Director until the Executive Director returns to perform the functions of office, or until the vacant post is filled; and

(b) In the event of the Executive Director position being vacant, the position must be filled within six months from the date of such vacancy in accordance with the process contemplated in subsections (1) to (4).

(c) If the vacant Executive Director position is not filled within a period of six months, the Minister must provide the relevant Parliamentary Committee and the Minister for Public Service and Administration with reasons for the delay and request an extension of the period which must not exceed a further period of six months."

Clause 5

1. On page 4, in line 41, to omit "complaints" and to substitute "recommendations".
2. On page 4, in line 47, to omit "complaints" and to substitute "recommendations".
3. On page 5, in line 8, to omit "municipal police [services] service" and to substitute "[Municipal Police Services] municipal police service".

Clause 6

1. On page 5, in line 13, to omit "of the heading for" and to substitute "for the heading of".
2. On page 5, in line 16, to omit "of subsections (3), (4), (5), (7) and (8) for" and to substitute "for subsections (3), (4), (5), (7) and (8) of".
3. On page 5, in line 18, to underline "(a)".
4. On page 5, in line 22, to omit "Once" and to substitute "once".
5. On page 5, from line 30, to underline "pre-employment".
6. On page 5, in line 38, to underline "if" after the comma.
7. On page 5, in line 39, to omit "causes **[him or her]**" and to substitute "**[causes him or her]**".
8. On page 5, in line 40, to omit "to believe" and to substitute "**[to believe] believes**".

Clause 8

1. On page 5, in line 55, to omit "[**(9)**]" and to substitute "**[, (9)]**".

Clause 10

1. On page 6, in line 8, to omit "**Amendment**" and to substitute "**Repeal**".

Clause 12

1. On page 6, after line 14, to insert the following paragraph:
 "(a) by the substitution for subsection (1) of the following subsection:
 '(1) The Executive Director, in consultation with the relevant provincial head, must, in the prescribed manner, appoint a fit and proper person as an investigator of the Directorate, subject to subsections (2), (3) and (4).'
 "
2. On page 6, in line 15, to omit paragraph (a).
3. On page 6, after line 15, to insert the following paragraph:
 "(b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

'(a) must have at least a grade 12 or equivalent certificate [or] and a relevant diploma or degree; and' "

4. On page 6, in line 16, to omit "(b)" and to substitute "(c)".
5. On page 6, in line 22, to omit "(c)" and to substitute "(d)".

Clause 14

1. On page 6, in line 42, to omit "of paragraph (a) for" and to substitute "for paragraph (a) of".
2. On page 6, after line 49, to insert the following paragraph:
"(c) by the deletion of subsection (5); and".
3. On page 7, in line 1, to omit "(c)" and to substitute "(d)".
4. On page 7, in line 2, after "must" to insert ", where the person is not cooperative,".
5. On page 7, in line 5, to omit "director" and to substitute "head".
6. On page 7, in line 8, to omit "director" and to substitute "head".
7. On page 7, in line 10, to omit "director" and to substitute "head".
8. On page 7, in line 29, to omit "Programme Manager,".
9. On page 7, in line 29, to omit "director" and to substitute "head".

Clause 16

1. On page 7, in line 45, after "a" to insert "member of a".
2. On page 7, in line 50, to omit "];" and to substitute ";]".
3. On page 8, in line 6, to omit "and" and to substitute "or".
4. On page 8, in line 13, after "service" to insert "₁".
5. On page 8, in line 22, after "firearm" to insert ", or through the use of any weapon or instrument,".
6. On page 8, from line 25, to omit paragraph (h) and to substitute the following paragraph:
"'(h) any other matter referred to it as a result of a decision by the Executive Director, or a provincial head, or if so requested by the Minister, an MEC, National Commissioner, or the appropriate Provincial Commissioner, National Head or the appropriate Provincial Head of the Directorate for Priority Crime Investigation, executive head of the relevant municipal police service, municipal manager, or the Secretary,₂ as the case may be, in the prescribed manner.!'"; and".

Clause 17

1. On page 8, in line 43, to omit "[or municipal police service]" and to substitute "[or **Municipal Police Service**]" and to underline "a".

Clause 18

1. On page 8, in line 59, to omit "(7)], must" and to substitute "[,must]".
2. On page 9, in line 2, to omit "only" and to substitute "may".
3. On page 9, in line 5, to omit paragraph (c).
4. On page 9, after line 5, to insert the following paragraph:
"(c) by the substitution for paragraph (b) of the following paragraph:

'(b)must quarterly submit a written report to the Minister on the progress regarding disciplinary matters made in terms of paragraph (a) and provide a copy thereof to the Executive Director and the Secretary; **[and]** '.

5. On page 9, in line 6, to omit "of paragraph (c) for" and to substitute "for paragraph (c) of".
6. On page 9, in line 7, before "immediately" to insert "must".
7. On page 9, in line 11, to omit "and".
8. On page 9, in line 12, to omit "paragraph" and to substitute "paragraphs".
9. On page 9, in line 17, to omit ":", and to substitute "; and".
10. On page 9, after line 17, to insert the following paragraph:
"(e) where the sanction is considered inappropriate the Directorate may request the National Commissioner, or the appropriate Provincial Commissioner, National Head or the appropriate Provincial Head of the Directorate for Priority Crime Investigation, or the executive head of the relevant municipal police service to review the sanction."

Clause 19

1. On page 9, in line 20, to omit "of paragraph (b) for" and to substitute "for paragraph (b) of".

New Clause

1. On page 9, after line 23, to insert the following new clause:

"Amendment of section 33 of Act 1 of 2011

- 20.** Section 33 of the principal Act is hereby amended—
- (a) by the substitution for subsection (3) of the following subsection:
'(3) Any **[police officer]** member of the South African Police Service or a member of a municipal police service who fails to comply with section 29 is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.'; and
 - (b) by the addition of the following subsection:
'(6) The National Commissioner, or appropriate Provincial Commissioner, national Head or appropriate Provincial Head of the Directorate for Priority Crime Investigation or the Executive Head of the relevant municipal police service who fails to comply with section 30 is guilty of an offence and liable to a fine or to imprisonment for a period not exceeding two years.'

Clause 20

1. On page 9, in line 25, to omit "**20.**" and to substitute "**21.**".
2. On page 9, in line 26, after "deletion" to insert "in subsection (1)".
3. On page 9, from line 26, to omit "of subsection (1)".
4. On page 9, in line 31, after "format" to insert "and time-frames".
5. On page 9, after line 37, to insert the following paragraph:

"(oE) the criteria to be followed in appointing investigators;".

6. On page 9, in line 38, to omit "(oE)" and to substitute "(oF)".

Clause 21

1. On page 9, in line 41, to omit "21." and to substitute "22."

Clause 22

1. On page 9, in line 49, to omit "22." and to substitute "23."

Clause 23

1. On page 10, in line 6, to omit "23." and to substitute "24."

Long Title

1. On page 2, in line 9 of the long title, to omit "complaints" and to substitute "recommendations".

5. Public participation process and public hearings

5.1. Advertisement calling for public comments

The call for public submissions was opened on 12 September 2023 and the advertisement was published in all official languages in national and regional newspapers. The deadline for submissions was set for 02 October 2023 and was extended to 06 October 2023 to allow for late submissions.

The call for public comment was published in the following newspapers:

- Cape Times (English/National)
- Die Burger (Afrikaans)
- Isoleswe (isiZulu)
- Isolezwe (isiXhosa)
- Business Ink (se Tswana)
- Bushbuckridge News (xiTsonga)
- Coal City News (siSwati)
- Ngoho News (tshiVenda)
- Nthavela News (sePedi)
- Thembisile Hani News (isiNdebele)
- Free State Sun (seSotho)

The total cost of advertisements amounted to R132,584.33.

Additional to the publication of the call for submissions, a social media campaign was launched to create public awareness of the Amendment Bill, several media statements were issued by the Committee's Chairperson and the Committee directly invited 17 stakeholders in the policing environment to comment on the Bill.

5.2. Public submissions received by the Committee

The Portfolio Committee on Police received 22 substantive public submissions on the IPID Amendment Bill, 2023 [B21-2023], including the following (listed in alphabetical order):

- 1) Africa Criminal Justice Reform (ACJR) (Dullah Omar Institute at the University of the Western Cape)
- 2) Action Society
- 3) AfriForum
- 4) African Policing Civilian Oversight Forum (APCOF)
- 5) Association for the Prevention of Torture (APT)
- 6) Centre of Criminology (University of Cape Town)
- 7) Southern African Catholic Bishop's Conference Parliamentary Liaison Office (CPLO)
- 8) Daneel Knoetze (View Finder)
- 9) Mr Emmanuel Chauke
- 10) FW de Klerk Foundation
- 11) Freedom of Expression Institute (FXI)
- 12) Gun Free South Africa (GFSA)
- 13) Helen Suzman Foundation
- 14) Independent Policing Union of South Africa (IPUSA)
- 15) Institute for Security Studies (ISS)
- 16) Ms Mary de Haas
- 17) Ndifuna Ukwazi
- 18) Police and Prisons Civil Rights Union (POPCRU)
- 19) South African Human Rights Commission (SAHRC)
- 20) South African Policing Union (SAPU)
- 21) Western Cape Government (WCG)
- 22) Willy Dithlakel (Mr)

The Committee received 37 non-substantive submissions through the organisation Dear South Africa, of which all were not in favour of the Amendment Bill. Based on previous precedents set, non-substantive submissions from Dear South Africa are dealt with as a single submission.

Most submissions highlighted the high crime rate, increase in police criminality and misconduct as well as the effect thereof in eroding public trust, highlighting the importance of an independent police investigative Directorate. Coupled with this is the significant power vested in law enforcement agencies to use deadly force and deprive citizens of liberty. Submissions also raised concern about the fact that the IPID Amendment Act, 2019 (Act No. 27 of 2019), which was assented to by the President, has still not been operationalised by the gazetting of the date into which it comes into operation (insertion of Section 6A). The Committee's attention was further drawn to South Africa's obligations under a number of the treaties and protocols that articulate the international human rights framework to which South Africa is a signatory, notably the Optional Protocol to the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (OPCAT), which was ratified by Parliament in 2019 and is yet to be domesticated in national legislation.

The majority of submissions were based on clause 4 relating to the appointment, term of office and remuneration of the IPID Executive Director, and clause 16 amending section 28 of the

Principal Act related to the categories for IPID investigations. However, submissions were received on all clauses and the diversity of comments and identified areas of concern illustrate the usefulness and value of public participation in Parliament's legislative process.

5.3. Public hearings held by the Committee

The Portfolio Committee on Police hosted two days of public hearings on the Amendment Bill. In an effort to accommodate stakeholders that requested oral presentation, the Committee had one public hearing on a virtual platform on 18 October 2023 and the other during a physical meeting of the Committee held in Room S12A, NCOP Building on 25 October 2023. In total, the Committee heard 17 oral presentations on the Amendment Bill.

5.4. Public participation report

The Committee adopted its public participation report on 08 November 2023 and it was published in the ATC for noting on 09 November 2023.

6. Preventive Custody Monitoring

South Africa ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (OPCAT) in June 2019 and it came into force (for South Africa) on 20 July 2019. Under article 3 of the OPCAT, States Parties must designate, maintain or establish a domestic mechanism to strengthen the protection of persons who are, or may be, deprived of liberty.

In the South African context, the National Preventive Mechanism (NPM) includes the following institutions:

- South African Human Rights Commission (SAHRC or Commission)
- Judicial Inspectorate for Correctional Services (JICS or Judicial Inspectorate)
- The Office of the Military Ombud (OMO)
- The Office of the Health Ombud (OHO)
- The Independent Police Investigative Directorate (IPID).

Although Parliament has ratified the OPCAT in 2019, South Africa does not have legislation governing the NPM and, in lieu thereof, agreements have been concluded with the JICS, IPID and the Military Ombud to provide interim mechanisms for reporting within the framework of the OPCAT.

Various public submissions on the Bill proposed that the obligations under the OPCAT in terms of preventive custody monitoring should be included in the IPID Amendment Bill.

Based on public comments, the Committee requested a legal opinion from the Parliamentary Legal Services on whether preventive custody monitoring must be included in the Bill. According to the legal opinion provided, the inclusion of OPCAT obligations will extend to scope of the Bill to an extent that necessitates permission from the National Assembly (NA) to do so under NA Rule 286(4)(b). Once permission is granted by the NA to extend the scope of the Bill, the Committee must invite comments on subsequent amendments by means of advertisements calling for public comment for the same period as the original version of the Bill was advertised for, thus four weeks.

During the Committee's meeting on 01 November 2023, the Parliamentary Legal Advisor made reference to the Constitutional Court Judgement in the case brought against the Speaker of the NA (and others) by Doctors for Life International (CCT 12/05). Specific reference was made to paragraph 128 of the judgement that dealt with the question of whether a legislature has acted reasonably in discharging its duty to facilitate public involvement. The judgement stated that *"Reasonableness also requires that appropriate account be paid to practicalities such as time and expense, which relate to the efficiency of the law-making process. Yet the saving of money and time in itself does not justify inadequate opportunities for public involvement."*

The Committee resolved not to extend the scope of the Bill to include obligations related to OPCAT:

- 1) Time constraints on Parliament's calendar before it rises in March 2024 was not used as an argument not to include the obligations under the OPCAT. The considerations not to extend the scope of the Bill was based on merits alone.
- 2) IPID's oversight functions are limited to the SAPS and MPS in terms of the Constitution and they cannot investigate other entities under the NPM, such as the Military Ombud, Health Ombud or JICS.
- 3) Inclusion of preventive custody monitoring in the Bill will cause a fragmented approach to the implementation of the OPCAT where it is dealt with in different pieces of legislation.
- 4) There should be one piece of legislation to give effect to the Convention. If not the Prevention and Combating of Torture of Persons Act, 2013, then a new piece of legislation to give effect to the Convention, which may be more appropriate.
- 5) Although IPID does not have the capacity to fully implement preventive custody monitoring, the Directorate is fulfilling this mandate in cooperation with the SAHRC. The Directorate's station monitoring tool has been adapted to adhere to the NPM/OPCAT standards.

The Committee resolved to facilitate a multi-disciplinary Parliamentary approach to consider a way forward to effect the obligations under OPCAT and the NPM, with the relevant Portfolio Committees, including Health, Justice and Correctional Services and Defence.

7. Conclusion

Parliament's Portfolio Committee on Police is satisfied with the positive and detailed discussions that took place during public hearings and deliberations. The Committee expresses its gratitude to the organisations and individuals that made submissions on the IPID Amendment Bill and reiterates the importance of public participation when Parliament deals with legislation.

The Committee thanks the Minister of Police, Deputy Minister of Police, Civilian Secretariat for Police Service, the Independent Police Investigative Directorate, Parliamentary Legal Advisor, and the support staff of the Portfolio Committee on Police, in processing the IPID Amendment Bill.

The Democratic Alliance (DA) reserved their rights on the report and the Amendment Bill. The Inkatha Freedom Party (IFP) did not reserve their rights but indicated that the caucus mandate must still be sought prior to the second reading debate.

8. Minority view

Clause 4 maintains the status quo in terms of the appointment of the IPID Executive Director as per the Principal Act. The minority view is that the clause insufficiently insulates the IPID from political interference as intended by the Constitutional Court in the McBride Judgement.

Report to be considered.

Report of the Standing Committee on Finance on the Public Procurement Bill [B18 - 2023] (National Assembly- section 76), dated 04 December 2023

The Standing Committee on Finance (SCOF), having considered the Public Procurement Bill [B18 - 2023] (National Assembly- section 76) referred to it, reports the Bill, with amendments [B18B – 2023], as follows:

1. INTRODUCTION AND BACKGROUND

- 1.1. The Public Procurement Bill (PPB), introduced in the National Assembly on June 30, 2023, and referred to SCOF for consideration, aims to establish a unified framework for public procurement across all government tiers and entities. The drafting process began in 2014 following Cabinet directives to modernize the public procurement system.
- 1.2. After public consultations and Cabinet approval on May 10, 2023, the PPB seeks to streamline procurement in accordance with constitutional principles, addressing the current fragmented regime.
- 1.3. The current public procurement system in South Africa is fragmented, governed by multiple outdated laws, leading to confusion and inconsistency. To address this, the Bill has been introduced with the following key objectives:
 - 1.3.1. The Bill aims to create a single regulatory framework for public procurement, eliminating the existing fragmentation and ensuring alignment with constitutional principles.
 - 1.3.2. It proposes the establishment of a dedicated office within the National Treasury with clearly defined functions to oversee and regulate procurement activities.

- 1.3.3. The Bill seeks to clarify and define the functions of provincial treasuries in the context of public procurement to enhance efficiency and coordination.
- 1.3.4. It outlines the functions of entities responsible for procurement activities, providing clarity on their roles within the new regulatory framework.
- 1.3.5. The Bill includes measures to uphold the integrity of the procurement process, ensuring transparency, fairness, and accountability.
- 1.3.6. The introduction of a framework for preferential treatment in procurement aims to address social and economic imbalances, promoting inclusivity.
- 1.3.7. Specific general requirements applicable to procurement activities will be outlined to ensure consistency and compliance.
- 1.3.8. The Bill authorizes the creation of regulations governing different procurement methods, with specific regulations for various types of procurement.
- 1.3.9. Integration of information and communication technology into the procurement process to enhance efficiency and effectiveness.
- 1.3.10. Establishment of mechanisms for resolving disputes related to procurement, ensuring a fair and efficient resolution process.
- 1.3.11. The Bill addresses the repeal and amendment of existing laws, streamlining the legal framework for public procurement in South Africa.

2. PUBLIC PARTICIPATION

- 2.1 Following a Cabinet directive in December 2014 for NT to expedite the modernization of the public procurement system through a legal framework introducing broader policy changes, NT developed a conceptual framework for a draft PPB for discussions with stakeholders.

- 2.2 NT engaged with stakeholders at the national, provincial, and local levels of government, including professional bodies in auditing and accounting. This engagement aimed to obtain ideas, consider the advantages and disadvantages of policy proposals, and secure consensus on the strategic intent of the Bill.
- 2.3 Subsequently, NT prepared the first draft of the Bill, completed the Socio-Economic Impact Assessment (SEIA), and obtained the preliminary opinion of the Office of the Chief State Law Adviser.
- 2.4 Cabinet approved the Bill in February 2020 for publication for public comment for a three-month period. The closing date for comments was extended from May 31, 2020, to June 30, 2020.
- 2.5 Over 4000 commentators submitted their opinions. NT assessed all submissions and prepared a revised Bill.
- 2.6 The revised Bill underwent engagement at NEDLAC on April 13, 2022. The NEDLAC Public Finance and Monetary Policy Chamber, in collaboration with the Industry Chamber, established a task team comprised of representatives from the Government, Business, and Labour.
- 2.7 The NEDLAC task team held 15 sessions from May 6, 2022, to October 7, 2022. National Treasury briefed the task team on the Bill on May 6, 2022, and deliberations commenced on June 2, 2022. Outside discussions between social partners also occurred to seek consensus on specific key issues.
- 2.8 The NEDLAC task team reviewed the Bill, focusing on thematic areas according to the chapters of the Bill. The final NEDLAC report was signed on October 25, 2022, and submitted to the Minister of Finance.
- 2.9 Subsequently, the revised Bill, incorporating changes agreed upon in NEDLAC, underwent scrutiny by the Office of the Chief State Law Adviser. The Office issued a

preliminary opinion for the Cabinet process. A final Socio-Economic Impact Assessment certificate was issued, subject to consultation with the Forum of South African Directors-General (FOSAD) before submission for Cabinet's consideration. FOSAD engagements took place on May 4 and 8, 2023.

2.10 On May 10, 2023, Cabinet approved the Bill for introduction in Parliament. The Office of the Chief State Law Adviser then certified the Bill.

2.11 On May 23, 2023, SCOF was informally briefed by NT and formally again on the tabled Bill on September 5, 2023. The call for public comment was published in all official languages in print media and on the Parliament website starting August 18, 2023, with a deadline of September 11, 2023. Extensions were granted to those who requested them.

2.12 SCOF held public hearings on the Bill on September 12 and 13, 2023. The Committee received written and oral submissions from various organizations (refer to Annexure A).

2.13 NT responded to submissions received during the public participation process on November 17, 2023, and November 24, 2023. Participants at the meetings on September 12 and 13, 2023, had the opportunity to comment on the responses provided by the NT.

2.14 The Committee deliberated on the PPB on November 28, 29, and December 1, 2023, and adopted this report on 4 December.

3 KEY PROVISIONS OF THE PPB

3.1 The Bill adopted by the Committee on 01 December contains the following:

Chapter 1: Definitions, Objects, Application, and Administration

3.2 The first chapter of the legislation sets the foundation with three key clauses. Clause 1 provides definitions crucial for interpreting the subsequent provisions. Clause 2 outlines the overarching objects of the Bill, while Section 3 addresses the application and administration of the Bill.

Chapter 2: Public Procurement Office, Provincial Treasuries, and Procuring Institutions

3.3 This chapter is organized into three parts, each dealing with specific aspects of the procurement process. Part 1 establishes the Public Procurement Office with Clauses 4 and 5 delineating its establishment and functions. Part 2 focuses on the functions of provincial treasuries, outlined in Clause 6. Part 3 delves into the decision-making processes and duties of procuring institutions, with Clauses 7 and 8 respectively.

Chapter 3: Procurement Integrity, Prohibition of Certain Practices, and Debarment

3.4 Chapter 3 addresses the ethical dimensions of procurement. It outlines codes of conduct in Clause 9, specifies permissible conduct in Clause 10, and introduces measures to prevent abuse and conflicts of interest in Clauses 11 to 13. It also establishes criteria for automatic exclusion and procedures for debarment in Clauses 13 to 15.

Chapter 4: Preferential Procurement

3.5 This chapter, governed by Clause 16, aligns with constitutional mandates by establishing a framework for preferential procurement policies. The Clause details set-asides, pre-qualification criteria, subcontracting conditions, and various measures to promote sustainable development, job creation, and support for small enterprises.

Chapter 5: General Procurement Requirements

3.6 Chapter 5 is subdivided into three parts, each addressing distinct facets of procurement.

Part 1 details the procurement system, methods, and related matters in Clauses 25 to 29. Part 2 focuses on the utilization of technology in procurement, and Part 3 addresses access to procurement processes and information.

Chapter 6: Dispute Resolution

3.7 This chapter establishes a comprehensive dispute resolution framework. Part 1 deals with the reconsideration of decisions to award contracts (Clause 37). Part 2 establishes the Public Procurement Tribunal, specifying its composition, functions, and review processes in Clauses 38 to 54. Part 3 introduces a standstill process to prohibit contract conclusion during reconsideration or review proceedings (Clause 55).

Chapter 7: General Provisions

3.8 The final chapter encompasses various general provisions. It empowers the Public Procurement Office to investigate procurement-related matters (Clause 56) and outlines powers to enter and search premises (Clause 57). The chapter further covers warrants, delegation, limitation of liability, offenses, exemptions, departures, regulations, instructions, transitional measures, and amendments or repeals of legislation (Clauses 58 to 67). It concludes with the short title and commencement provision (Clause 68).

4 KEY ISSUES RAISED IN THE PUBLIC HEARINGS

4.1 During the consultation process, various stakeholders and the Committee identified concerns with numerous provisions in the initial draft of the Bill. In response to these inputs, the National Treasury undertook a comprehensive revision of the Bill. This iterative process resulted in substantial changes, notably the complete redrafting of Chapter 4, specifically addressing preferential procurement aspects.

Chapter 1: Definitions, Objects, Application and Administration of Act

4.2 In this chapter, the Bill lays the foundation by offering explicit definitions, outlining its objectives, and delineating the scope of application and administration. The definitions, vital for interpreting subsequent clauses, came under scrutiny during stakeholder engagements.

4.3 During consultations, stakeholders raised concerns about the precision and adequacy of certain definitions. Criticisms included assertions that some terms lacked clarity or were not appropriately defined. Stakeholders proffered alternative definitions or suggested incorporating new terms within Clause 1. This discourse emphasized the importance of terminological precision in the Bill.

4.4 A noteworthy proposal emerged during discussions, advocating for the expansion of the Bill's application to encompass higher education institutions, particularly universities. This proposal spurred deliberations on the Act's reach and its potential impact on diverse entities, reflecting a broadened perspective on public procurement.

4.5 In response to stakeholder feedback, National Treasury clarified its assessment methodology for defining terms. Three distinct criteria were employed-

4.5.1 Contextual Impact: Assessing whether the usage of a term within the PPB altered its conventional meaning when considering the entire text.

4.5.2 Relevance: If a term was absent in the PPB, the team deemed defining it unnecessary, emphasizing the importance of contextual relevance.

4.5.3 Clarity Enhancement: Evaluating whether a term required definition for improved clarity or if refining the PPB text sufficed.

4.6 This nuanced approach underscored NT's commitment to refining definitions based on contextual necessity, relevance, and the overarching goal of enhancing clarity

throughout the Act. Stakeholder input and subsequent clarifications collectively shaped the foundational elements of the Bill.

4.7 A summary of terms that were refined/ redefined included the following:

- 4.7.1 **Acceptable Bid:** Stakeholder comments on bid evaluation prompted the inclusion of "acceptable bid" in the proposed revision to Chapter 4. "Acceptable bid" is now defined as a bid fully compliant with the specifications and conditions set out in the invitation to bid.
- 4.7.2 **Bid:** Concerns about duplications led to the redefinition of "bid" and the removal of the term "bid document." "Bid" now refers to a written offer capable of acceptance and conversion into a contract, in a form determined by the procuring institution in line with compliance requirements.
- 4.7.3 **Emergency:** Stakeholders suggested expanding the definition of "emergency" to include business disruption and financial loss. "Emergency" now encompasses unexpected and dangerous situations posing immediate risks, including threats to health, life, human rights, property, financial loss, livestock, environment, cybersecurity, or the ability of the procuring institution to maintain critical business functions.
- 4.7.4 **Immediate Family Member:** Stakeholders proposed excluding "previous spouse" due to unclear socio-economic impacts. "Immediate family member" now includes the spouse, civil partner, life partner, children, step-children, parents, and siblings.
- 4.7.5 **Infrastructure:** Stakeholders advocated for the inclusion of "digital infrastructure." "Infrastructure" covers physical facilities or structures and systems, including digital or analogue communication systems, required to provide services directly or indirectly to the public.

- 4.7.6 National Security: Stakeholders suggested adding "cyber-attack" to the definition of "National Security." "National Security" now includes protection against cyber-attacks, specifying various threats to the Republic.
- 4.7.7 Small Enterprise: Stakeholders emphasized granting preference to Small, Medium, and Micro Enterprises (SMMEs). "Small Enterprise" aligns with the National Small Enterprise Act, 1996 (Act No. 102 of 1996).
- 4.7.8 Transformation: Stakeholders sought clarity by defining "Transformation." "Transformation" is defined as the process of change redressing past imbalances, unfair discrimination, and achieving representation of economically active populations, incorporating socio-economic objectives.
- 4.7.9 Transversal Term Contract: Stakeholders urged a broader definition beyond contracts established by the relevant treasury. "Transversal term contract" now covers contracts arranged by the relevant treasury or other legally mandated procuring institutions.
- 4.7.10 Instruction: Suggested expansion to include provincial treasuries. "Instruction" involves instructions issued by the Public Procurement Office and Provincial Treasuries.
- 4.7.11 Publish: Proposed amendment to include an easily accessible central online portal. "Publish" means publication in the Gazette, on a website, or on an easily accessible central online portal publicly available.
- 4.8 There was also proposed removal of some definitions from the PPB as follows:
- 4.8.1 Bid Document: Stakeholders argued that the definition of "Bid document" duplicates the "bid" definition and is not commonly used to refer to a bid response but rather to the invitation document issued by the procuring party.

4.8.2 Decision: Stakeholders found the definition of "decision" unclear and open to different interpretations. After deliberation, it was suggested that the term "decision" could be applied in various contexts, leading to potential ambiguity.

4.8.3 As a result, both these terms were removed.

Stakeholder Concerns and Proposed Amendments to Clauses 2 and 3

4.9 Clause 2(a): Stakeholders proposed the replacing of "value for money" with "efficient, effective and economic use of resources" in Clause 2(a) to align with constitutional language.

4.10 Clause 2(2): Stakeholders proposed the replacement of "the uniform treasury norms and standards" with "the objects referred to in subsection 1" in Section 2(2).

4.11 Addition of Clause 3(3)(c): Stakeholders proposed the adding of Clause 3(3)(c) to include "all procurement carried out by any person on behalf of an organ of state."

4.12 Clause 3(4) was expanded by inserting "on matters related to public procurement" after "other legislation."

4.13 Other amendments included clauses 2(2)(g), 2(2)(d) and the insertion of a new clause, Clause 2(2)(e).

Chapter 2: Public Procurement Office, Provincial Treasuries and Procuring Institutions

4.14 In this chapter, which encompasses Clauses 4 to 8, the establishment, functions, and potential conflicts of the PPO, Provincial Treasuries, and Procuring Institutions take center stage. Stakeholder input has been instrumental in shaping concerns around the PPO's independence, potential conflicts of interest, and the relationship between the PPO and provincial treasuries.

4.15 Stakeholders voiced significant apprehension regarding the perceived independence of the PPO, primarily due to its proposed placement within NT. Concerns centered on the potential for conflicts of interest, raising questions about whether the

PPO, if situated in NT, could maintain the expected level of impartiality. Moreover, stakeholders sought clarification on the relationship between the PPO established by the Bill and the existing Office of the CPO within NT.

4.16 Another focal point of discussion revolved around potential conflicts arising from the PPO's 'binding instructions' to all procuring institutions across various spheres, as outlined in Clauses 5 and 6. Stakeholders expressed concerns about potential contradictions between the PPO's directives and those issued by provincial treasuries at the regional level.

4.17 NT addressed concerns by emphasizing transparency and compliance. They proposed a mechanism wherein any proposed binding instructions from the PPO would be published in the Government Gazette for public comment before implementation. This approach aligns with the transparency principles and legal requirements specified in Clause 16 of the Interpretation Act, 1957.

4.18 NT clarified that provincial treasuries possess the authority to issue binding provincial instructions within their respective provinces. However, these instructions must align with the overall framework set by the PPO, ensuring consistency without compromising the effectiveness of the Act.

4.19 This nuanced dialogue between stakeholders and NT not only underscores the complexity of establishing a robust procurement framework but also highlights the commitment to transparency, compliance, and effective collaboration among the various entities involved in the procurement process.

4.20 The amendments in the Bill were as follows:

4.20.1 Stakeholders raised concerns about the independence of the PPO and potential conflicts of interest. The proposed amendment suggests inserting the following addition to Clause 5(2)(a): "the PPO should publish any proposed binding

instruction in the Government Gazette and on the PPO website for public comment prior to implementation thereof."

- 4.20.2 Addressing concerns about potential conflicts between instructions from the PPO and provincial treasuries, the proposed amendment suggests inserting the following addition to Clause 6(2)(a): "the provincial treasury should publish any proposed binding instruction in the Provincial Gazette and on their website for public comment prior to implementation thereof."
- 4.20.3 To enhance clarity, the proposed amendment suggests rewording Clause 5(3) to read: "The Public Procurement Office should publish different instructions in terms of subsection (2) for—"
- 4.20.4 Similarly, the proposed amendment suggests rewording Clause 6(3) to read: "A provincial treasury should publish different instructions in terms of subsection (2)(a) for—"
- 4.20.5 Acknowledging concerns that the term "guidelines" might convey a sense of binding authority, the proposed amendment recommends removing the word "guidelines" from Clauses 5(2)(b) and 6(2)(b) and 28(b), as the nature of these guidelines would be non-binding.
- 4.20.6 Considering implementation challenges for different procuring institutions and categories of procurement, the proposed amendment suggests removing Clauses 5(2)(c) and (d), and Clause 6(2)(d) and (4), as procuring institutions are expected to develop and review their policies within the prescribed framework.
- 4.20.7 Aligning with the overall structure of the Bill, the proposed amendment suggests deleting the term "develop" from Clause 8(1)(b) to ensure consistency with Clause 18 of the Bill.

4.20.8 To streamline the legislation and avoid redundancy, the proposed amendment suggests deleting Clause 8(1)(d) from the Bill, as details regarding needs analysis and clear business cases would be provided in the regulations.

4.20.9 Considering operational details, the proposed amendment suggests deleting Clauses 8(1)(e) and 8(1)(f) from the Bill, as these specifics would be appropriately addressed in the regulations, keeping primary legislation focused on broader principles.

4.20.10 With a focus on empowering procuring institutions, the proposed amendment suggests deleting Clause 8(2)(b) from the Bill, trusting in the reconsideration processes outlined in Clause 8(2)(a) and Clause 31.

Chapter 3: Procurement Integrity, Prohibition of Certain Practices and Debarment

4.21 In this chapter, stakeholders voiced predominant concerns centering on the imperative need for robust mechanisms to deter corruption and secure safeguards for whistleblowers within the context of public procurement. Stakeholders collectively asserted that the Bill should adopt a more explicit stance on corruption within public procurement processes, emphasizing the necessity for provisions dedicated to the protection of whistleblowers.

4.22 Stakeholders contended that the inclusion of whistleblower protection measures would not only empower individuals to report corruption but would also serve as a deterrent to corrupt practices.

4.23 One notable focus of stakeholder discussions was the scrutiny of Clause 13 within the Bill. A considerable portion of concerns revolved around the perceived encroachment on constitutional rights, particularly the freedom of trade, occupation, and profession. Stakeholders expressed reservations about whether certain provisions in Clause 13, particularly those related to automatic exclusion from procurement, might

unjustifiably impede individuals' opportunities to engage in business with the state. This debate underscores the delicate balance between enforcing anti-corruption measures and ensuring the protection of constitutional rights.

4.24 NT, in response to these concerns, advocated for collaborative efforts with law enforcement agencies and relevant departments within the justice cluster to address issues related to corruption and the role of anti-corruption agencies. Moreover, the proposal suggested amending the Protected Disclosures Act to enhance provisions specifically related to the protection of whistleblowers. This strategic approach aims to strengthen the legal framework surrounding whistleblower protection and foster a more effective collaborative environment with law enforcement entities.

Chapter 4: Preferential Procurement

4.25 Stakeholders emphasized concerns regarding section 217(3) of the Constitution, which stipulates that national legislation must establish the framework for implementing the policy outlined in section 217(2). Stakeholders asserted that Chapter 4 of the PPB should serve as this framework, rather than leaving it to the Minister to prescribe. The stakeholders argued that the drafting of Chapter 4 in the tabled Bill did not align with the constitutional requirement, creating ambiguity.

4.26 Additionally, stakeholders found Chapter 4 unclear, vague, and challenging to implement. They contended that procuring institutions were burdened with the task of developing policies for preference measures without the necessary guidance outlined in section 217(3). Some stakeholders felt that Chapter 4 did not adequately address the redress of historically disadvantaged black individuals, while others believed there was insufficient emphasis on achieving value for money. Despite diverse opinions, the consensus was that Chapter 4 required revision to provide clarity, considering the constitutional provisions and the objectives of the PPB.

- 4.27 Some stakeholders expressed the view that preferential procurement should be discretionary, allowing procuring institutions to decide whether to implement such policies. They argued that the PPB lacked the authority to compel procuring institutions to adopt preferential procurement.
- 4.28 Furthermore, stakeholders suggested revisiting the designations from the 2017 Preferential Procurement Regulations, indicating a need for clarity on this aspect in the PPB.
- 4.29 Another significant viewpoint highlighted the concern that price should not be used as an evaluation criterion for tenders. Stakeholders argued that this could be deemed unconstitutional, citing section 217(1) of the Constitution, which emphasizes cost-effectiveness and competition as principles of public procurement.
- 4.30 NT contested the notion that preferential procurement is discretionary, emphasizing that section 217(1) of the Constitution already incorporates the concept of "equitable" as a fundamental principle in procurement. "Equitable" encompasses both distribution and redistribution, addressing the fair sharing of wealth, opportunities, and resources in the country. It maintained that resuscitating elements from repealed legislation would be imprudent.
- 4.31 The debate over the use of price as an evaluation criterion persisted, with NT asserting that section 217(1) of the Constitution allows for cost-effectiveness and competition in public procurement, challenging the argument against considering price in tender evaluations. However, eventually price was replaced with "complementary goals", as an evaluation criterion.
- 4.32 Chapter 4 was completely redrafted following public comments and deliberations in the Committee.

Chapter 5: General Procurement Requirements

- 4.33 Stakeholders expressed notable concerns and viewpoints pertaining to Chapter 5, specifically addressing potential conflicts and contradictions between regulations issued by the Minister and instructions issued by the Public Procurement Office (PPO) and Provincial Treasuries (PTs). A prevailing theme of confusion among stakeholders centered around the delineation of roles among key entities, including the Minister, the PPO, the PTs, and procuring institutions.
- 4.34 The concerns extended to understanding the hierarchy of legislative implementation, where the Minister of Finance issues regulations, the PPO and PTs issue instructions, and procuring institutions carry out the regulations and any issued instructions.
- 4.35 Stakeholders emphasized the need for clarity on the distinct roles and responsibilities of each player in the procurement landscape. The overarching sentiment is that when regulations are established by the Minister, instructions from the PPO and PTs should align with, not contradict, the legal provisions set forth by the Minister. Establishing a clear understanding of the hierarchy and complementary roles was seen as crucial for effective implementation of legislation without conflicts.
- 4.36 Concerns and viewpoints were also raised regarding clauses related to access and disclosure of procurement information within Chapter 5. A prominent perspective suggests that there should be no threshold based on the value of procurement contracts when making information available to the public.
- 4.37 Stakeholders advocate for complete transparency in the procurement system, asserting that all public procurement contracts, irrespective of their value, should be open to public scrutiny. The primary objective behind this proposal is to enhance transparency, mitigate corruption risks, and ensure accountability in the procurement process. It is noted that any measures related to access and disclosure of information

should align with existing legislation, including the Protection of Personal Information Act (POPIA) and the Promotion of Access to Information Act (PAIA). Stakeholders stress the importance of harmonizing transparency efforts with relevant legal frameworks governing data protection and information access.

Chapter 6: Dispute Resolution

4.38 The prevailing sentiments expressed by stakeholders regarding this chapter, underscore the current obligation for bidders to exhaust internal processes within the Procuring Institution before seeking recourse in the courts. Stakeholders argued for the allowance of direct access to the courts, especially in situations where bidders lack confidence in the Procuring Institution's ability to impartially address their grievances.

4.39 The proponents of this view advocated for a balanced approach, contending that while internal dispute resolution mechanisms should be explored first to curtail legal costs and unnecessary litigation, there should also be flexibility for bidders to approach the courts directly, particularly when the integrity of the internal processes is in doubt. The overarching goal is to expedite dispute resolution, preventing potential disruptions to service delivery.

4.40 Concerns were raised regarding the perceived independence and powers of the Tribunal as outlined in the Bill. Questions linger about the Tribunal's equivalence to the courts, pondering whether it will function as specialized courts or introduce additional bureaucratic processes. Stakeholders suggested the inclusion of an industry representative in the Tribunal, echoing the framework laid out in Chapter 6 of the Bill. This addition is seen as a means to infuse contextual insight and expertise into the Tribunal's proceedings.

4.41 Stakeholders have identified a potential contradiction between the Tribunal processes in Chapter 6 and the stipulations of section 62 of the Municipal Systems Act

(MSA). The MSA explicitly states that its provisions should not diminish the applicability of other relevant appeal procedures as per existing laws. This has prompted commenters to seek clarification and alignment with established legal frameworks to ensure cohesiveness and consistency in dispute resolution processes.

Chapter 7: General Provisions

4.42 The prevailing concern echoed by stakeholders in this chapter centers on Clause 51, specifically addressing the authority vested in the Public Procurement Office (PPO) to enter and search premises. Stakeholders underscore a shared perspective that this power should be confined to ensuring compliance and should not extend to the investigation of criminal conduct.

4.43 The consensus emphasizes a need for clarity and precision in delineating the purposes for which this power is intended, with a focal point on fostering adherence to regulatory requirements rather than delving into potential criminal activities.

4.44 Stakeholders have consistently raised apprehensions concerning the clause related to the limitation of liability. The crux of these concerns was that the Bill should go beyond mere limitation of liability and explicitly indemnify officials against any criminal liability.

4.45 Stakeholders contend that it should provide robust indemnification measures to shield officials from criminal consequences arising in the course of executing their duties. This collective sentiment emphasizes the necessity for comprehensive protection and clarity within the legal framework.

4.46 In summary, stakeholders advocate for a compliance-centric interpretation of the PPO's powers, reserving them for ensuring adherence rather than delving into criminal investigations. Simultaneously, there is a resounding call for augmenting the

protection afforded to officials by explicitly including provisions that indemnify them against criminal liabilities.

5 COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

Public Consultation and Participation

- 5.1 The Committee notes the comprehensive and multi-stage process undertaken by NT for the development of the Public Procurement Bill. Initiated following a Cabinet directive in December 2014, the process involved extensive engagement with stakeholders at national, provincial, and local levels, including professional bodies. The timeline, from the conceptualization in 2014 to Cabinet approval in May 2023, showcases a thorough and inclusive approach to legislative development.
- 5.2 The Committee acknowledges the robust stakeholder engagement, including interactions with government, business, and labour representatives through the NEDLAC task team. Public participation, evidenced by over 4000 commentators during the public comment period, reflects a commitment to inclusivity and responsiveness to diverse perspectives.
- 5.3 The Committee notes the involvement of the NEDLAC task team in the review and deliberation of the Bill, focusing on thematic areas. The final NEDLAC report, signed on October 25, 2022, demonstrates a collaborative effort involving key social partners and contributes to the Bill's refinement.
- 5.4 The Committee recognizes the meticulous scrutiny of the revised Bill by the Office of the Chief State Law Adviser, issuance of a preliminary opinion, and the final Socio-Economic Impact Assessment certificate. Cabinet approval in May 2023, following engagements with the Forum of South African Directors-General (FOSAD), reflects due diligence and compliance with legal and procedural requirements.

- 5.5 The Committee acknowledges the formal introduction of the Bill to Parliament on May 10, 2023, subsequent briefings to SCOF in May and September 2023, and the call for public comments. Public hearings held on September 12 and 13, 2023, allowed for diverse inputs from various organizations, contributing to the democratic and participatory nature of the legislative process.
- 5.6 The Committee deliberated on the Public Procurement Bill on November 28, 29, where some changes were effected in the Bill which was adopted with a motion of desirability by the Committee on December 1, 2023. The adoption of this report signifies the conclusion of the Committee's considerations and its readiness to present the Bill for adoption in the National Assembly.
- 5.7 The Committee believes that sufficient time for consultation was allocated for the processing of this Bill. While recognizing the importance of thorough engagement, the Committee acknowledges the necessity to balance the duration of public consultation, considering practical constraints and the need for legislative progress.
- 5.8 The Committee acknowledges that despite the allocated time for consultation, there might be a desire for more engagement from certain stakeholders. The Committee emphasizes the pragmatic understanding that public consultation and participation cannot be endless. There is a need for a balance between inclusivity and the imperative of advancing the legislative process within reasonable timeframes.
- 5.9 The Committee acknowledges and appreciates the valuable contributions made by stakeholders, including the NEDLAC task team, during the development and refinement of the Bill.

Unified Procurement Framework and Constitutional Alignment

- 5.10 The Bill aims to establish a unified framework for public procurement in alignment with the constitutional principles of fairness, transparency, and competitiveness.
- 5.11 The Bill demonstrates a concerted effort to reform and modernize the existing legal framework governing public procurement in South Africa. Through a meticulous schedule of amendments and repeals, the Bill aims to address shortcomings, introduce progressive changes, and align procurement practices with contemporary standards. The comprehensive nature of the proposed amendments, covering Acts from various sectors, reflects a holistic approach to enhance transparency, fairness, and efficiency in procurement processes. The focus on preferential procurement, ethical standards, and compliance underscores a commitment to promoting inclusivity and accountability in the procurement landscape.
- 5.12 To ensure a unified procurement system, the Bill completely repeals the State Tender Board Act, 1968 (Act No. 86 of 1968), National Supplies Procurement Act, 1970 (No. 89 of 1970), and Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).
- 5.13 To ensure alignment, it also amends the Housing Act, 1997 (Act No. 107 of 1997), National Water Act, 1998 (Act No. 36 of 1998), State Information Technology Agency Act, 1998 (Act No. 88 of 1998), Correctional Services Act, 1998 (Act No. 111 of 1998), Public Finance Management Act, 1999 (Act No. 1 of 1999), Road Traffic Management Corporation Act, 1999 (Act No. 20 of 1999), Construction Industry Development Board Act, 2000 (Act No. 38 of 2000), Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003), Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), Local Government: Municipal Systems

Act, 2000 (Act No. 32 of 2000), Electricity Regulations Act, 2006 (Act No. 4 of 2006), and Infrastructure Development Act, 2014 (Act No. 23 of 2014).

Preferential Procurement Framework

5.14 The inclusion of a preferential procurement framework aligns with constitutional provisions found in section 217 and aims to address the persistent historical economic disparities. The chapter on preferential procurement triggered substantial feedback, resulting in comprehensive revisions. It also necessitated the refinement of certain definitions such as “transformation” in Clause 1 of the Bill and the introduction of new terms, including "economically active population" and "BBBEE status level contributor," among others.

5.15 The Preferential Procurement framework in this Bill shifts away from assessing bids solely on price, incorporating additional complementary objectives for procurement. This progressive step aims to empower individuals and entities historically disadvantaged, countering the perverse outcomes associated with the PPPFA framework.

Technology Integration

5.16 The Bill emphasizes the use of technology for efficiency in procurement processes. The Committee encourages the continuous exploration and incorporation of innovative technologies to enhance the efficiency, transparency, and effectiveness of procurement systems.

Transparency and Anti-Corruption Measures

5.17 The Bill includes measures to combat corruption through access to procurement information and transparency initiatives. The Committee supports these anti-corruption

measures and recommends continuous monitoring and evaluation to ensure their effectiveness in practice.

Dispute Resolution Mechanisms

5.18 The Bill establishes dispute resolution mechanisms, including reconsideration processes and the Public Procurement Tribunal. The Committee recommends robust training programs for relevant stakeholders to ensure a smooth and effective implementation of dispute resolution mechanisms.

Prevention of Abuse of Procurement System

5.19 The Bill includes measures to prevent the abuse of the procurement system. The Committee recommends periodic reviews of the effectiveness of measures to prevent abuse, with adjustments made as needed to strengthen the system.

Capacity Building for Procuring Institutions

5.20 Given the importance of the capacity of procuring institutions, the Committee recommends the development of comprehensive capacity-building programs to enhance the skills and knowledge of officials involved in procurement.

Review of Debarment Criteria

5.21 The Committee recommends a periodic review of the debarment criteria to ensure that they remain relevant and effective in promoting ethical conduct and deterring potential transgressors.

6 CONCLUSION

6.1 The Committee agrees with amendments proposed in the A list of the Bill as presented to the Committee on 01 December 2023.

6.2 The Committee reports the Bill with amendments [B18B-2023].

Report to be considered.

The Democratic Alliance and the Economic Freedom Fighters reserve their position.

National Council of Provinces

[The following report replaces the Report of the Select Committee on Transport, Public Service and Administration, Public Works and Infrastructure, which was published on page 33 of the Announcements, Tablings and Committee Reports, dated 29 November 2023]

1. Report of the Select Committee on Transport, Public Service and Administration, Public Works and Infrastructure on the National Road Traffic Amendment Bill [B7B – 2020] (National Assembly – Sec 76), dated 29 November 2023.

1. Introduction

- 1.1. The National Road Traffic Amendment Bill [B7B – 2020] (National Assembly – Sec 76) (“the Bill”) was passed by the National Assembly, transmitted to the NCOP for concurrence and referred to the Select Committee on Transport, Public Service and Administration, Public Works and Infrastructure (“the Select Committee”) on 29 September 2023.
- 1.2. The objects of the Bill are to amend the National Road Traffic Act, 1996, so as to, amongst other, insert new definitions and to amend others; to provide for the suspension and cancellation of the registration of an examiner for driving licenses or an examiner of vehicles, if such person has been convicted of an offence listed in Schedule 1 or 2 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or has a direct or indirect conflict of interest; to provide for the registration and grading of training centres; to further provide for the registration of manufacturers, builders, body builders, importers and manufacturers of number plates, including manufacturers of reflective sheeting for number plates, suppliers of blank number plates, suppliers of reflective sheeting for number plates, embossers of number plates, weighbridge facilities, manufacturers of microdots, suppliers of microdots and microdot fitment centres. The Bill further seeks to require a provincial Department responsible for transport or local authority to register a driving license testing centre before operating as a driving license testing centre.

2. Select Committee process followed in respect of the Bill

- 2.1. On 26 March 2023 an advert was placed in National Media calling for written submissions on the Bill with a deadline of 24 April 2023. The Select Committee heard oral submissions on the Bill on 31 May 2023 and on 20 September 2023 the Department addressed the Select Committee on its response to oral and written submissions on the Bill. On

15 November 2023 and 22 November 2023, the Select Committee considered the Negotiating Mandates ~~68~~ the Bill as received from Provinces and on 15 November 2023 adopted the C – List of agreed amendments to the Bill.

2.2. Eight provinces submitted Final Mandates on the Bill which were considered on 29 November 2023. The Final Mandates were submitted as follows:

PROVINCE	MANDATE VOTE
Eastern Cape	The Provincial Legislature votes in favour of the Bill and mandates the Eastern Cape Permanent Delegate to the NCOP to vote in favour of this Bill.
Free State	The Free State Legislature votes in favour of the Bill.
Gauteng	The Gauteng Provincial Legislature supports the principle and detail of the bill and therefore votes in favour of the National Road Traffic Amendment Bill.
KwaZulu – Natal	The KwaZulu-Natal Legislature met today, Tuesday, the 28 th of November 2023, & agreed to mandate the KwaZulu-Natal delegation to the National Council of Provinces to support the National Road Traffic Amendment Bill [B7D - 2020].
Limpopo	The Province votes in favour of the Bill.
Mpumalanga	The delegation representing the province of Mpumalanga in the National Council of Provinces is hereby conferred with a mandate to vote in favour of the Bill.
Northern Cape	The Committee Supports the National Road Traffic Amendment Bill [B7D – 2020]
North West	The North West Provincial Legislature vote in favour of the National Road Traffic Amendment Bill [B7B – 2020].
Western Cape	The Province did not submit a Final Mandate.

2.1. The Select Committee agreed to make provision for an addendum to the Report to be added should further Final Mandates be submitted by Provinces on the Bill before the Report is scheduled for adoption in the House.

2.2. The Select Committee agreed to note the Final Mandate submitted by the North West Province and agreed that the Province will be allowed opportunity to correct the reference to the incorrect version of the Bill in its Negotiating Mandate.

3. Outcome of Select Committee’s Consideration of the Bill

The Select Committee on Transport, Public Service and Administration, Public Works and Infrastructure having deliberated on and considered the subject of the **National Road Traffic Amendment Bill [B7B – 2020] (National Assembly – Sec 76)**, referred to it and classified by the JTM as a section 76 Bill, reports that it has agreed to an amended Bill [B7D – 2020].

Report to be considered.