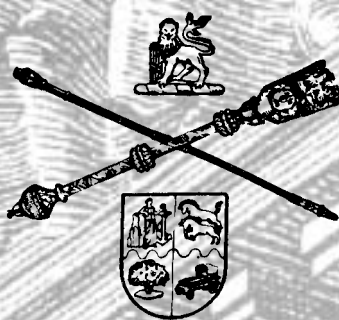


Parliament of the Republic of South Africa



PROCEDURAL DEVELOPMENTS IN THE NATIONAL ASSEMBLY

Fourth Session – Second Parliament
July to December 2002

6



Parliament of
the Republic of
South Africa

PROCEDURAL DEVELOPMENTS IN THE NATIONAL ASSEMBLY

A record of recent events and developments of a procedural nature in the National Assembly of the Parliament of the Republic of South Africa. This sixth issue covers the period from July to November 2002.

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PROCEDURAL & RELATED ISSUES

- **SPEAKING TIME IN DEBATES** see “Question Time in the House”
- **AMENDMENT TO JOINT RULE 122** see “Reduction of size of Joint Committee on Ethics and Members’ Interests – Item 22”

1. INTRODUCTION OF MEMBERS’ STATEMENTS

National Assembly (NA) Rule 105 provides for members to make statements in the House on any matter and for Ministers to respond to such statements. However, this Rule, which was adopted in March 1999, had not been operationalised. Instead, the practice had developed for members to make use of the daily opportunity provided by notices of motion to air their views on topical issues and formulating those views as a draft resolution. They were subsequently printed on the Order Paper (and in Hansard), but there was no real expectation that they would be scheduled for debate and decision.

At a meeting of the NA Rules Committee on 5 February it was agreed in principle to activate the Rule on members’ statements and to use notices of motion only for their specific purpose of enabling members to initiate business for consideration or decision by the House where that was the express intention. The implications for House proceedings of operationalising members’ statements was reported on at the Rules Committee meeting of 14 August. The Rules Committee agreed on 14 August that the order of party rotation for members’ statements would be the same as the order of rotation that was in use for notices of motion. The Committee decided that the Chief Whips’ Forum, on which all parties are represented, should agree the wording of an appropriately amended Rule for subsequent adoption by the House and should produce guidelines and criteria to govern members’ statements and notices of motion. The Programme Committee would then decide on the date on which members’ statements would be introduced.

The Chief Whips’ Forum appointed a Task Team to consider the matter in detail and it reported to the Programme Committee on 14 November. The Chief Whips’ Forum in its report presented guidelines for members’ statements and for notices of motion, and proposed that members’ statements be introduced for a trial period commencing with the first term of 2003.

The process would be monitored by a small committee of the Chief Whips’ Forum and, following a final review at the end of the first term, the Rule would be appropriately adjusted and put to the House for adoption. These proposals were approved by the Programme Committee and the guidelines were to be published in the ATC for members’ information.

The main features of the system as it is to be introduced, are:

- (a) statements will be regularly taken on Tuesdays and Thursdays, and on Fridays when the House sits on a Friday;
- (b) 14 members’ statements will be accommodated on each scheduled day, members to be limited to 1½ minutes per statement;
- (c) ministers will be permitted to respond to statements directed to them or made in respect of their portfolios, a response being limited to 2 minutes, with a total of 5 ministerial responses;
- (d) statements will be slotted in at the beginning of the day’s business after motions without notice. The process on those days will take approximately 30 minutes.

2. NOTICE OF MOTION TO DISSOLVE NATIONAL ASSEMBLY

Section 50(1) of the Constitution provides that the President must dissolve the National Assembly if the Assembly has adopted a resolution to dissolve with a supporting vote of a majority of its members, and three years have passed since the Assembly was elected.

After the floor-crossing legislation, which had been passed by Parliament in June, had been declared by the Constitutional Court to be unconstitutional insofar as it related to the national and provincial spheres of government but had been implemented at local government level, the Leader of the Opposition on 16 October gave notice of a motion for the House to dissolve the NA in terms of section 50(1) of the Constitution on the grounds, *inter alia*, that “the best way to establish the current views of the electorate is to hold an election”.

The notice of motion was published on the Order Paper of 22 October, but was not subsequently considered for programming by the Programme Committee, and it lapsed at the end of the 2002 session.

3. NEW APPROACH TO PUTTING QUESTIONS FOR DECISION

The Constitution and other laws require the Assembly to take decisions on certain matters other than bills. An example would be the ratification of international agreements and protocols. The practice has been for such matters to come before the House by way of a committee report containing relevant recommendations. The House then limited itself to adopting the committee report, and the House decision was recorded in the Minutes as adoption of the committee report.

However, in taking decisions on matters in terms of legal requirements, it is important that the House should have the specific matter before it – and not just the adoption of a committee report. Under the direction of the Speaker, a new approach to putting such

questions for decision by the House was agreed. In terms of this new approach, Order Paper entries now reflect the actual decision required and not just “consideration of committee report”. The actual question is then put to the House by the Presiding Officer and the decision is minuted accordingly. In the event that the committee in its report does not limit itself to recommending approval of a particular decision but makes additional recommendations flowing from its consideration of the particular matter, the committee report will be put on the Order Paper as a separate item for consideration/adoption by the House.

This new approach was communicated to all parties in writing, and was put in practice from the beginning of the third term (August 2002)

4. NEW PROCESS FOR CONSIDERATION OF COMMITTEE REPORTS

In terms of NA Rule 137(3)(b), a committee may request that the chairperson or another member of the committee designated by it introduce or explain its report in the Assembly. Previously, reports were put for adoption by the Chair, usually without debate or any other consideration by the House. The new process requires that the report at least be introduced, any recommendations being highlighted, and also provides that after the introduction a motion is put from the floor requesting the House to either adopt the report, note the report or take whatever other action may be deemed desirable. The House Minutes will also indicate who introduced the report as well as the decision taken by the Assembly.

5. AMENDMENT TO RULES REGARDING QUORUM

Amendment to Rules 25 and 26, deletion of Rule 27

Previously the above rules provided for quorums also for debates. The amendments, however, limited quorums to decision-taking only and in that respect reflect the constitutional requirement.

On 12 September, after a division had been demanded, the House agreed to proposed amendments contained in the Second Report of the Rules Committee of the National Assembly for 2002 (ATC 28 August). The amendments would necessitate the presence of a quorum in the House when voting on a bill or deciding any other question.

The amended rules 25 and 26 read as follows:
Quorum

25. (1) The Assembly may proceed with its business irrespective of the number of members present, but may vote on a Bill or decide on any question only if a quorum is present in terms of subrule (2).

(2) Except where the Constitution provides otherwise—

(a) a majority of the members of the National Assembly must be present

before a vote may be taken on a Bill or an amendment to a Bill;

(b) at least one third of the members must be present before a vote may be taken on any other question before the Assembly.

Absence of quorum

26. If the attention of the presiding officer is called to the absence of the prescribed quorum when a question is put for decision and if after an interval of five minutes, during which time the bells must be rung, there is still no quorum, the presiding officer may suspend the proceedings or postpone the decision of the question.

Rule 27, which dealt with adjournment owing to absence of a quorum has been deleted.

6. REVISION OF MOTION ADOPTED WITHOUT NOTICE

Good parliamentary practice requires that draft resolutions must consist of a clear and succinct proposed resolution or order for decision by the House.

On 31 October, a member without notice moved a motion concerning illegal marriages of foreigners to South African citizens. No member objected to the motion and it accordingly became a decision of the House.

On 5 November, the Speaker announced in the House that when the signed text became available to the Chair, it became clear that the motion as adopted was incomplete and did not make sense on its own. There was reference in the resolution to a document which the member had in her hand and which identified a victim of this illegal practice and provided proof of such incidents occurring. But that information was not part of the resolution adopted by the House. Without that information, the resolution became meaningless and the Speaker would be unable to communicate it to the Executive. The Speaker requested parties to urgently look at the decision the House took and to take steps to revise the resolution.

The matter was discussed in the Chief Whips' Forum and subsequently, on 13 November, the member moved a revised motion without notice to correct the previous motion moved in the House on 31 October.

7. SUSPENSION OF PERIOD BETWEEN COMMITTEE REPORT AND HOUSE DEBATE

NA Rule 253 provides that if a bill has been referred to an Assembly committee or joint committee, the debate on the Second Reading of the bill may not be taken before at least three working days have elapsed from the date of the committee's report. From August to November this Rule was suspended by the House in respect of 9 bills, namely:

- Second Reading debate on *Export Credit*

and Foreign Investments Insurance Amendment Bill [B29 - 2002], 14 August.

- Second Reading debate on *Interception and Monitoring Bill [B 50B - 2001]*, 13 September.
- Second Reading debate on *Education Laws Amendment Bill [B 31B - 2002]*, 18 October.
- Second Reading debates on *Medical Schemes Amendment Bill [B 37 - 2002]*, *Occupational Diseases in Mines and Works Amendment Bill [B 39 2002]* and *Medicines and Related Substances Amendment Bill [B40 -2002]*, 17 October.
- Second Reading debates on *Administration of Estates Amendment Bill [B 54B 2002]*, *Judicial Matters Amendment Bill [B 55B - 2002]* and *Local Government Laws Amendment Bill [B 61B 2002]*, 23 October.

As reported in *Issue 5, Item 8*, the Rule had also been suspended in respect of 7 bills during the first half of the year.

8. PROPOSED ALTERATION OF TOPIC FOR DEBATE AS MATTER OF PUBLIC IMPORTANCE

The Democratic Party requested a debate as a matter of public importance on “South Africa’s position on the possible invasion of Iraq” in terms of Rule 103. The Speaker approved the request on 12 September and the debate was scheduled for 25 September.

On 19 September, the DP wrote a letter to the Speaker requesting to change the wording of the debate from “South Africa’s position on the possible invasion of Iraq” to “The deteriorating situation in Iraq in relation to world peace”.

In a letter in response to the request, the Speaker ruled that the proposed change in the wording of the topic represented a substantive shift in focus. Therefore the wording would not be changed as parties had already prepared for the debate. However that did not prevent the DP from approaching the debate from whatever angle they wanted to.

9. REQUEST FOR DEBATE ON MATTER OF PUBLIC IMPORTANCE AGREED TO AND SUBSEQUENTLY WITHDRAWN

On 29 August, the Chief Whip of the New National Party requested the Speaker to approve, as a matter of urgent public importance, a debate on the national policy on storage of high-level nuclear waste and related safety measures at the Koeberg nuclear station.

The Speaker approved the debate, though not as a matter of urgent public importance in terms of Rule 104, but as a matter of public importance in terms of Rule 103. The debate was scheduled for 17 September by the

Programme Committee, subject to the relevant Minister’s availability.

On 10 September, the Chief Whip of the NNP again wrote to the Speaker, indicating that his party was of the opinion that there was no longer a need for the debate. He asked for the debate to be withdrawn from the programme.

The Rules specifically provide for the withdrawal of motions (Rule 102) and bills (Rule 299). They do not specifically provide for the withdrawal of questions, but it is accepted practice for that to be done at the member’s request. No practice, however, has developed with regard to the withdrawal of debates on matters of public importance. In light of the above, and following the principle that even bills can be withdrawn by the member in charge at any time before the Second Reading of the bill is decided, the Deputy Speaker approved the withdrawal of the debate, particularly since sufficient notice was given.

10. INTERNATIONAL AGREEMENTS BEFORE NATIONAL ASSEMBLY- PUBLISHED ON ORDER PAPER

A new monitoring system for international agreements/conventions was agreed to in the Programme Committee meeting held on 31 October. In terms of the decision, all international agreements and conventions tabled in Parliament and requiring ratification in terms of section 231(2) of the Constitution would now appear as an appendix on the Order Paper and remain there until adopted by both Houses.

QUESTION TIME IN THE HOUSE

11. QUESTION TO DEPUTY PRESIDENT ON SPEAKING TIME FOR SMALLER PARTIES

On 13 November, one of the minority parties in Parliament, the ACDP, put the following question to the Deputy President:

Whether, as the Leader of Government Business in Parliament liaising with leaders of all political parties, he has satisfied himself that opposition parties in Parliament are given sufficient time for meaningful debates, especially on subjects of national importance?

The Deputy President replied as follows:

Hon member, as you are aware, the purpose of Parliamentary questions is for members of the executive to account and give information to Parliament on matters relating to the executive. The issue of speaking time of opposition parties is something that is entirely up to Parliament to resolve and I do not think it appropriate for a member of the executive to comment in this regard.

The Speaker, after entertaining supplementary questions, informed the House that she had



allowed the question while being fully aware that it was a matter in which Parliament had the final say. She further reminded members that the issue of speaking time would be amongst the matters addressed at a workshop on how Parliament conducted itself and what the vision for it was.

12. RULE OF ANTICIPATION APPLIED TO QUESTIONS

The rule of anticipation (Rule 68) determines that “no member shall anticipate the discussion of a matter appearing on the Order Paper”.

In August, a request for a debate on presidential pardons as a matter of public importance was approved by the Speaker and the debate was scheduled for Wednesday, 14 August. However, two questions on the same topic already appeared on the Question Paper for that day. In terms of the Rules, questions for oral reply take precedence on Question Day. The possibility therefore existed that the Minister’s reply and the supplementary questions would address issues which could more appropriately be raised during the debate later that day.

At a meeting of the Rules Committee on the morning of 14 August, the Speaker proposed that the questions pertaining to the presidential pardons either be withdrawn or that no supplementary questions be allowed after the Minister’s reply. The DP indicated that it would withdraw its question, but the IFP, after initially agreeing to withdraw its question, said that it wanted its question answered.

At the commencement of the proceedings that afternoon, the Deputy Speaker ruled that she would allow the Minister of Safety and Security to reply to the IFP’s question. However, in view of the rule of anticipation, she would not entertain any supplementary questions.

PARLIAMENT AND THE EXECUTIVE

– **SPEAKING TIME IN DEBATES** see “Question Time in the House”

13. PROCEDURE FOR COMMUNICATING WITH THE EXECUTIVE ON OUTSTANDING TRANSLATIONS OF BILLS

In terms of a decision of the Joint Rules Committee on 9 October 2001, Parliament will not debate a bill unless the official translation of the bill as introduced has been received. Until September, the Speaker, upon Parliament’s receipt of the certified drafts of bills for introduction without official translations, wrote to the relevant members of the executive, urging them to facilitate the provision of translations so as not to impede the passage of the bills through Parliament.

At a meeting of the NA Programme

Committee on 12 September the Speaker presented a new procedure which would be followed in future. The procedure is divided into three stages, namely:

First stage

When a draft bill is received for introduction without a translation, a letter is written to the director-general of the relevant department by the Secretary to the National Assembly.

This first letter is copied to the –

- Department’s parliamentary liaison officer;
- Office of the Leader of Government Business; and
- Speaker.

Second stage

If the translation is still outstanding when the portfolio committee is likely to finalise its report and the bill is provisionally placed on the programme, a letter is written to the relevant Minister by the Speaker, emphasising that a translation is overdue and until it has been received the bill will not be scheduled for debate.

The second letter is copied to the –

- Leader of Government Business;
- Director-General in The Presidency;
- Director-General of the department; and
- Department’s parliamentary liaison officer.

Third stage

If there is still no result, a letter is written to the Leader of Government Business by the Speaker at the latest five parliamentary working days before the provisionally scheduled debate, saying that –

- (a) the House will not proceed with the consideration of the bill in the absence of an official translation, in accordance with a resolution of the Joint Rules Committee on 9 October 2001, and the bill will only be rescheduled after a translation has been received.

The third letter is copied to the –

- Relevant Minister; and
 - Director-General in The Presidency.
- (b) any request from the Leader of Government Business, with a motivation, for the House to reschedule the bill is placed before the Joint Programme Subcommittee, which will consider the motivation and the programme of the National Assembly to decide whether the bill can be accommodated and, if so, make the necessary recommendation to both Houses.

No letters regarding outstanding translations of bills were written in the remainder of 2002 in terms of the new procedure after its acceptance by the National Assembly Programme Committee in September.

14. CLARIFICATION OF TERM “DEADLINE FOR SUBMISSION OF BILLS TO PARLIAMENT”

The Joint Programme Committee previously agreed to set deadlines by which the Executive must submit bills to Parliament if those bills were to be passed by the end of a given annual term. However, for purposes of meeting a deadline the Executive sometimes submitted bills which had not yet complied with all the Rules’ requirements preceding introduction of a bill. Following discussion at the meeting of the Joint Programme Committee on 29 October, the Speaker informed the Leader of Government Business in writing on 20 November that in order for the Executive to meet the deadline for the submission of bills to Parliament, the following would be necessary:

- (a) the draft bill as agreed to by Cabinet should have been submitted to the Presiding Officers by the relevant Minister as required by Joint Rule 159;
- (b) the draft bill or explanatory memorandum or the explanatory summary of the draft bill should have been published in the *Government Gazette* as determined by National Assembly Rule 241 or Rule 186 of the National Council of Provinces; and
- (c) the bill (including the memorandum on its objects), as certified by the state law advisers, should have been received by Parliament.

MEMBERS

15. INTERIM REPORT OF JOINT COMMITTEE ON ETHICS AND MEMBERS’ INTERESTS NOTED

On 8 March, the House adopted a motion that business that had appeared on the Order Paper on the last sitting day of 2001 and had lapsed in terms of Rule 316 be placed back on the Order Paper. This included the Interim Report of the Joint Committee on Ethics and Members’ Interests (*Complaint against Mr T S Yengeni, MP*) (See Issue 5, Item 5).

In its interim report, the Committee had recommended that Parliament should await the report of the Joint Investigating Team conducting the investigation into the Government’s arms procurement contract before proceeding with its consideration of the complaint against Mr T S Yengeni, MP.

On Wednesday, 13 November, the interim report was put to the House for consideration. On the proposal of the Deputy Chief Whip of the Majority Party, the report was noted.

16. DISCIPLINARY STEPS AGAINST MEMBER FOR BREACH OF CODE OF CONDUCT

After evidence was led in court during 2001

that a member, Mrs N W Madikizela-Mandela, had received donations and had financial interests in the Winnie Mandela Family Museum, the Joint Committee on Ethics and Members’ Interests investigated her failure to disclose these registrable interests in the Register of Members’ Interests.

In its report to the Assembly, dated 21 August (ATC 6 September), the Committee unanimously found her guilty of contraventions of the Code of Conduct for Members by virtue of her non-disclosure of donations received and of her financial interests in respect of the Winnie Mandela Family Museum. The Committee recommended that she be severely reprimanded by the Speaker and that she be penalised with a reduction of the equivalent of a period of 15 days’ salary.

The Committee also recorded the attempts it had made to secure the member’s presence at the Committee hearings. The hearings finally proceeded despite the member’s non-attendance. The Committee noted, however, that the member was entitled to make a statement to the Assembly when it considered the Committee’s Report. The Committee stated in its report that the member’s non-attendance at the hearing may be construed as contempt of Parliament and therefore recommended that Parliament should consider whether any further action might be initiated in this regard.

The Committee further noted that on the basis of a statement made in court by the member, she may have misled the court in her bail application. It therefore recommended that Parliament “find a mechanism to deal with this matter and that, if necessary, it be referred to the relevant authority.”

The Committee Report was scheduled on 12 November for consideration by the House the following day, the second last day of the annual session. The member was informed of this by faxed letter. The member was not present in the House on the day, and the Report was adopted on the motion of the Deputy Chief Whip of the Majority Party without debate except for a brief introduction by the chairperson of the Committee.

In the absence of Mrs Madikizela-Mandela, the Committee’s recommendations, as adopted by the House, could not immediately be implemented.

On 27 November, Mrs Madikizela-Mandela instituted court proceedings to interdict the Speaker from implementing the recommendations. The matter was not concluded during 2002.

LEGISLATION AND COMMITTEES

17. BILL PRESENTED BY PORTFOLIO COMMITTEE ON JUSTICE AND CONSTITUTIONAL DEVELOPMENT

On 25 September, the *Judicial Matters Amendment Bill [B 55- 2002]* was introduced



and referred to the Portfolio Committee on Justice and Constitutional Development for consideration and report.

The Portfolio Committee, taking into consideration the limited time remaining to deal with legislation in the remainder of the 2002 session and in view of the urgency of one particular provision of the bill, decided to deal initially only with that provision. It entailed an amendment to the Promotion of Access to Information Act, Act No 2 of 2000, and corresponded with some of the issues in the *Promotion of Equality and Prevention of Unfair Discrimination Amendment Bill [B41-2002]* and the *Promotion of Administrative Justice Amendment Bill [B46-2002]*, both of which were being finalised by the Committee on an urgent basis.

The Committee therefore presented the *Promotion of Access to Information Amendment Bill [B60-2002]* on 11 October which contained only the relevant provision. The bill was adopted by the National Assembly on 17 October.

The Committee continued to consider the remaining provisions in the Judicial Matters Amendment Bill and reported the bill with amendments on 23 October. The amended bill was adopted by the Assembly on 24 October and by the Council on 8 November.

18. COMMITTEE REPORTS ON JOINT INVESTIGATING TEAM'S REPORT INTO THE STRATEGIC DEFENCE PROCUREMENT PACKAGES

In *Issue 3, Item 19* it was reported that a report of the Auditor-General entitled "Special Review by the Auditor-General of the Selection Process of Strategic Defence Packages for the Acquisition of Armaments at the Department of Defence [RP 161-2000]" was tabled in the House on 20 September 2000 and referred to the Portfolio Committee on Defence, and to the Standing Committee on Public Accounts (SCOPA) for consideration and report. In its report, SCOPA recommended, inter alia, an independent and expert forensic investigation in the light of the concerns about various aspects of the arms procurement process. In *Issue 4, Items 12-18* we provided a chronological overview of developments in regard to Parliament's investigation into the government arms procurement contract.

Since then a series of events took place, which resulted in the tabling of the Joint Investigation Report produced by the investigating agencies. The Report was tabled and referred by the Speaker to eight committees. After the process of interaction with the investigating team the committees reported by the end of 2001.

In its report, the Standing Committee on Public Accounts accepted the findings and recommendations contained in the Report of the Joint Investigating Team, in particular the finding that "No evidence was found of any

improper or unlawful conduct by the government. The irregularities and improprieties referred to in the findings as contained in this report, point to the conduct of certain officials of the government departments involved and cannot, in our view, be ascribed to the President or the Ministers involved in their capacity as members of the Ministers' Committee or Cabinet. There are therefore no grounds to suggest that the Government's contracting position is flawed".

The Committee went on to recommend that –

- (a) the National Assembly accept the report of the Joint Investigating Team;
- (b) the arms acquisition policy should be refined in line with the recommendations contained in the Report;
- (c) the Department of Defence, Armscor, the National Treasury and the Department of Public Service and Administration, in conjunction with the Public Service Commission, should take the necessary steps to address the issues brought about by conflicts of interest.

The Committee also undertook to interact with the relevant departments and parastatals to monitor the implementation of recommendations made in the Report of the Joint Investigating Team. It noted the ongoing criminal investigations that were being conducted and urged that they be concluded speedily.

A single debate on all the committee reports took place on 13 August in the National Assembly. The reports were then adopted. There was a division on six of the reports.

19. FLOOR-CROSSING BILL RULED UNCONSTITUTIONAL

The package of four bills which made provision for public representatives at national, provincial and local government levels to change party allegiance without losing their seats was discussed in the previous Issue (*See Issue 5, Item 19*). After the bills had been assented to by the President on 19 June, their constitutionality was challenged in the Constitutional Court by the UDM and several other parties.

On 4 October, the Constitutional Court handed down a unanimous judgment declaring only the Loss or Retention of Membership of National and Provincial Legislatures Act (No 22 of 2002), to be inconsistent with the Constitution and invalid. It did so essentially on technical grounds: Item 23A of Annexure A to Schedule 6 of the Constitution, which prevented floor-crossing, could be amended by ordinary legislation – and did not require a Constitutional amendment – provided that such legislation was passed "within a reasonable period after the new Constitution took effect", but the Court found that it could not be said that the legislation had been introduced within "a reasonable period" as envisaged. The Court specifically refrained from expressing itself

about the merits or demerits of a defection provision.

The Court's findings did not affect the law pertaining to floor-crossing at local government level - and that therefore came into effect and the floor-crossing window period occurred.

Should the Government wish to proceed with providing for floor-crossing at national and provincial levels, it can now only do so by way of introducing an amendment to the Constitution. The Government has indeed decided to follow that route and has as a first step published a Constitution Amendment Bill for public comment. The bill would come before Parliament early in 2003.

20. REFERRAL OF INTELLIGENCE BILLS TO AN AD HOC COMMITTEE OF THE HOUSE

Intelligence matters do not fall directly under any Assembly portfolio committee. Oversight of the intelligence services is performed by the Joint Standing Committee on Intelligence which also makes recommendations on all proposed legislation relating to intelligence activities. However, the Joint Standing Committee's functions do not include dealing with a bill after its introduction in Parliament.

Accordingly, anticipating the introduction of two bills on intelligence matters, the Assembly on 12 September adopted a resolution appointing an ad hoc committee to consider and report on the bills, following a practice established in 2000 (*See Issue 3, Item 23*). The ad hoc committee was required to confer with the corresponding NCOP Select Committee on Security and Constitutional Affairs as well as the Joint Standing Committee on Intelligence.

When two further intelligence bills were introduced on 7 October during a Parliamentary recess, the Speaker, in accordance with the Rules (Rule 248) also referred them to the ad hoc committee. The Speaker's decision was announced in the ATC of 11 October.

The ad hoc committee reported on the bills in October (ATC 17 October) and after a debate in the Assembly on all four bills together on 31 October, the bills were passed. The NCOP approved the bills with proposed amendments on 7 November. The ad hoc committee reported on these amendments on 12 November and the amended bills were passed by the Assembly on 14 November.

One of these bills, the *Intelligence Services Control Amendment Bill [B50 - 2002]*, affects the functioning of Parliamentary Committees and is discussed separately (*See Item 21 below*).

21. OVERSIGHT FUNCTIONS OF JOINT STANDING COMMITTEE ON INTELLIGENCE ALTERED BY LEGISLATION

The objects of the *Intelligence Services Control Amendment Bill [B50D - 2002]* as passed by the National Assembly on 14 November include re-regulating the oversight functions of the Joint Standing Committee on Intelligence (JSCI).

(a) *Financial oversight by JSCI*

The functions of the JSCI now specifically include oversight of the administration, financial management and expenditure of the Services as defined in the legislation. For that purpose the financial statements and audit reports, including any reports issued by the Auditor-General on the affairs of those Services, are required to be submitted to the JSCI, which must in due course report to Parliament in that regard.

Although the Memorandum to the Bill states that the bill seeks to give the JSCI sole responsibility for the financial oversight of the Intelligence Services, the Assembly Rules (Rule 206) still require that the Speaker must refer the financial statements of all executive organs of state for consideration to the Standing Committee on Public Accounts (SCOPA) when they are submitted to Parliament, "irrespective of whether they are also referred to another committee". An adjustment to the Rules has not been considered.

(b) *Accountability of Inspector-General of Intelligence*

Whereas the principal Act previously provided for the appointment of one or more Inspectors-General who would be responsible to the President, this has been amended to provide that there will only be one Inspector-General, who will be accountable (directly) to the JSCI for the overall functioning of his/her office and who must report to the JSCI at least once a year on his/her activities and performance of functions.

(c) *Security clearance for chairperson of JSCI*

The amended Act now makes it clear that the chairperson of the JSCI, who is appointed separately from the other members, will also require a positive security clearance before appointment.

22. REDUCTION OF SIZE OF JOINT COMMITTEE ON ETHICS AND MEMBERS' INTERESTS

The Chairperson of the Joint Committee on Ethics and Members' Interests wrote to the Presiding Officers in September requesting that a process be put in place to reduce the size of the Joint Committee as it had not been possible for the Committee to obtain a quorum on many occasions to take important decisions. The Joint Committee consisted of 27 Assembly members and 13 Council members.

The matter was brought before the Joint Rules Committee on 29 October. The Speaker said that she had discussed the matter with the National Assembly whips and there was agreement on the reduction of the size of the Committee. The Chairperson of the NCOP said that she would discuss the matter and report back. The Chairperson of the NCOP reported back, by memorandum to the Speaker, that the NCOP had agreed that the size of the

Committee be reduced to a total of 27 members and that the NCOP should have at least 9 members on the Committee.

There was agreement that the rule amendment necessary to give effect to the reduction of the size of the Committee would be by way of resolution in the Houses.

On 14 November both the National Assembly and the National Council of Provinces adopted resolutions to amend Joint Rule 122 (1) so that the Joint Committee consists of 18 Assembly members and 9 Council members.

23. NATIONAL ASSEMBLY ADOPTS WRONG VERSION OF MEDICAL SCHEMES BILL

The *Medical Schemes Bill [B 37-2002]* was introduced in the National Assembly on 16 August and classified as a section 75 bill on 20 August. The bill was referred to the Portfolio Committee on Health for consideration and report. The 3-day rule (*See Item 7 above*) was suspended by House resolution and on 22 October the National Assembly passed the bill and referred it to the National Council of Provinces for concurrence. However, it was discovered on 23 October, a day after the bill had been passed by the NA, that the House had in fact passed the wrong version of the bill in that owing to an administrative error the bill as printed and passed by the House did not contain the amendments as approved by the Portfolio Committee.

In terms of Joint Rule 183, if the National Council of Provinces rejects or proposes amendments to a section 75 bill as passed by the Assembly, the bill together with any amendment proposals must be submitted to the Speaker (who in turn submits it to the House).

On 25 October, a letter was addressed on behalf of the Speaker to the Chairperson of the National Council of Provinces requesting the assistance of that House to ensure that the bill was suitably adjusted so that the intended legislation was finally passed by Parliament.

The National Council of Provinces proposed amendments to the bill which would restore the bill to its intended state. On 14 November, the Assembly passed the bill with the amendments as proposed by the Council.

24. PETITION FROM THE SWAZI ROYAL FAMILIES AND SWAZI CHIEFS/NATION

NA Rule 315(b) provides that after tabling a petition in the Assembly, the Speaker must, if it is a petition of a general nature, refer the petition to the appropriate committee.

In a meeting with Swazi Chiefs, the Speaker received a petition from the Swazi Royal Families and Swazi Chiefs/Nation on 5 August 2001. The petitioners were requesting Parliament to intervene in the matter between the Kingdom of Swaziland and the Republic of South Africa to finalise the historic border between Swaziland and South Africa in favour of incorporating a disputed area into Swaziland. The petitioners were suggesting that Parliament

assists by urging and encouraging the national executive to honour in good faith earlier promises and to give these promises and the present petition urgent attention.

The petition was tabled on 7 August but was not immediately referred to a committee due to lack of background information to the petition. The Speaker wrote to both the Minister of Foreign Affairs and the President requesting necessary background information. On 13 December, the Speaker referred the petition to the Portfolio Committees on Foreign Affairs and Provincial Affairs and Local Government for consideration, the Committees to confer and the Portfolio Committee on Foreign Affairs to report to the Assembly. The matter had not been finalised by the end of the year.

25. NATIONAL CONVENTIONAL ARMS CONTROL COMMITTEE TO REPORT TO A COMMITTEE OF PARLIAMENT

The *National Conventional Arms Control Bill [B50D-2000]* was introduced on 17 August 2000 and passed by the National Assembly on 20 August 2002, and by the National Council of Provinces on 17 October 2002.

The bill provides that the National Conventional Arms Control Committee which functions under the auspices of the Department of Defence must make quarterly reports to a committee of Parliament determined by Parliament on all conventional arms exports concluded during the preceding quarter. The National Conventional Arms Control Committee is thus required to report directly to the identified committee of Parliament and is not obliged to submit these reports to Parliament as such.

26. PARLIAMENTARY APPROVAL FOR EMPLOYMENT OF DEFENCE FORCE

In terms of section 201(3) of the Constitution, when the Defence Force is employed for any specified purpose, the President must inform Parliament promptly and in appropriate detail. Section 201(4) provides that if Parliament does not sit during the first seven days after the Defence Force is so employed, the President must provide the information required to the appropriate oversight committee.

On 21 August, the House adopted the Defence Bill. The object of the bill is to repeal the Defence Act, 1957 (except for the provisions in respect of military discipline, which will be dealt with in separate legislation), and to provide for the defence of the Republic in a way which will take into account and give effect to all the values enshrined in the Constitution in respect of security services. The bill further provides that in addition to the employment of the Defence Force by the President as contemplated in section 201(2) of the Constitution, the President or the Minister may authorise the employment of the Defence Force for service inside the Republic or in international waters, in order to -

- (a) preserve life, health or property in emergency or humanitarian relief operations;
- (b) ensure the provision of essential services;
- (c) support any department of state, including support for purposes of socio-economic upliftment; and
- (d) effect national border control.

Also in terms of the bill, Parliament may by resolution within seven days after receiving the information from the President or the Minister -

- (a) confirm any such authorization of employment;
- (b) order the amendment of such authorization;
- (c) order the substitution for such authorization of any other appropriate authorization; or
- (d) order the termination of the employment of the Defence Force.

The NCOP adopted the bill on 17 October.

27. REQUESTS FOR BILLS TO BE FAST-TRACKED

On 15 October, the Joint Subcommittee of the Joint Programme Committee met and agreed, in terms of Joint Rule 216(2), to a request from the Leader of Government Business for the fast-tracking of the *National Environmental Management Amendment Bill [B 62-2000]*, a section 76 bill. The decision of the Joint Subcommittee was ratified by resolution of the NA the following day and by the NCOP on 17 October. That enabled Parliament to shorten any period in the legislative process to make it possible for the bill to be passed by the adjournment of the session, as agreed. The bill was passed by the NCOP on 31 October and by the NA on 11 November.

Earlier in the year, requests had been received for the fast-tracking of three bills. On 12 June, the House ratified the decision that the Joint Programme Subcommittee took in terms of Joint Rule 216(2), namely to fast-track the following bills to make it possible for them to be passed by 18 June:

- *Constitution of the Republic of South Africa Second Amendment Bill [B 16B-2002]*.
- *Local Government: Municipal Structures Amendment Bill [B 22B-2002]*.
- *Loss or Retention of the Membership of National and Provincial Legislatures Bill [B 25-2002]*.

All three bills were part of the crossing-the-floor package of bills (*See Issue 5, Item 19*).

BUDGETARY MATTERS & MONEY BILLS

28. ESTABLISHMENT OF JOINT BUDGET COMMITTEE

Arising from a decision of the Joint Rules

Committee, a working group to look at the formation of the Joint Budget Committee was set up. It consisted of members of both the National Assembly and the National Council of Provinces. The Speaker chaired meetings of the Working Group.

[The Joint Budget Committee was to be established for the second year. It was first established in the year 2001 (*See Issue 4, Item 42*)]

The Working Group met on 23 and 24 October. Resulting from its deliberations the House adopted a motion on 24 October establishing the Joint Budget Committee. The motion provided that the Committee would consist of 15 Assembly Members of whom nine must be from the majority party and six from the opposition parties; and 8 Council Members of whom five must be from the majority party and three from opposition parties. The opposition Members were subsequently allocated as follows: National Assembly - DP 2, IFP 1, NNP 1, FF 1, PAC 1, UCDP one alternate member; NCOP - DP 1, NNP 1, UDM 1, IFP one alternate Member.

The functions of this Committee are to:

- (a) consider proposed allocations in the Medium Term Expenditure Framework and the Appropriation Bill and whether these allocations are broadly in keeping with the policy directions of the Government;
- (b) make proposals regarding the processes Parliament should follow with regard to its role in the developing of budgets in accordance with constitutional requirements;
- (c) on a regular basis monitor monthly published actual revenue and expenditure per department, and to ascertain whether they are in line with budget projections;
- (d) consider, when tabled, the Medium-Term Budget Policy Statement, with the exception of those sections dealing with the macro-economic situation and revenue;
- (e) conduct hearings on the Medium-Term Expenditure Framework and Budget Policy Review Document, with the exception of those sections dealing with the macro-economic situation and revenue;
- (f) exercise those powers in Joint Rule 32 that may assist in carrying out its functions;
- (g) report on the Medium-Term Budget Policy Statement regarding the matters referred to in paragraph (d); and
- (h) report quarterly regarding the matters referred to in paragraph (c).

On 29 October, the Medium-Term Budget Policy Statement (MTBPS) and the Adjustments Appropriation Bill were tabled. The MTBPS sets out the macroeconomic context and fiscal policy considerations against which next year's budget will be framed. It outlines developments in tax policy and the main spending priorities

for the next three year Medium Term Expenditure Framework period, including allocations to provincial and local government levels. The MTBPS was referred to the Joint Budget Committee and the Portfolio Committee on Finance. The bill, together with the related papers were referred to the Portfolio Committee on Finance.

The report of the Joint Budget Committee was subsequently published on 11 November, and the debate on the MTBPS took place on 14 November.

29. GAS REGULATOR LEVIES BILL

NA Rule 290 provides that money bills must be referred to the Portfolio Committee on Finance. Previously, money bills have on occasion been referred by resolution to committees other than the Portfolio Committee on Finance (*See Issue 4, Item 44 and Issue 5, Item 30*).

The *Gas Regulator Levies Bill [B47-2002]*, a money bill, was introduced on 13 September and referred to the Portfolio Committee on Finance for consideration and report. The Committee was also instructed to consult the Portfolio Committee on Minerals and Energy.

The Minister of Minerals and Energy subsequently wrote to the Speaker requesting that the bill be dealt with by the Portfolio Committee on Minerals and Energy. She stated as the reason for her request the fact that the Portfolio Committee on Finance would not be able to deal with the bill quickly owing to its heavy workload and, moreover, that the bill addressed a number of technical matters that may be more appropriately considered by the Portfolio Committee on Minerals and Energy.

The Rules Committee of the National Assembly agreed on 23 October to a proposal by the Speaker that money bills would in future always be referred to the Portfolio Committee on Finance and, where appropriate, also to the relevant portfolio committee in order to accommodate consideration of sector-specific aspects, but the Portfolio Committee on Finance would be the one to report on those bills.

The Portfolio Committee on Minerals and Energy accordingly considered the Gas Regulator Levies Bill and made recommendations to the Portfolio Committee on Finance which reported on the bill to the House.

RELATIONS WITH OTHER BODIES

30. ADDRESSES BY HEADS OF STATE

In terms of NA Rule 43, the Speaker, acting after consultation with the Leader of the House [Leader of Government Business], may invite any Head of State who is on a State visit to the Republic, to address the House. In 2002, three

Heads of State were invited.

The President of the Republic of Italy, His Excellency Mr C A Ciampi, addressed a joint sitting of Parliament on 14 March. His speech was preceded by a welcome address by the Deputy Chairperson of the NCOP, while Ms F Hajaig from the National Assembly proposed a vote of thanks.

His Highness Sheikh Hamad Bin Khalifa Al-Thani, the Emir of Qatar addressed a joint sitting of Parliament on 15 May. His speech was preceded by a welcome address by Mr E I Ebrahim from the National Assembly, while Ms J L Kgoali from the National Council of Provinces proposed a vote of thanks.

The President of the Hellenic Republic, His Excellency Mr C Stephanopoulos, addressed a joint sitting of Parliament on 30 October. His speech was preceded by a welcome address by Mr A Lucas from the National Council of Provinces, while Mrs S A Seaton from the National Assembly proposed a vote of thanks.

STATUTORY FUNCTIONS OF THE NATIONAL ASSEMBLY

31. PARLIAMENTARY APPROVAL: DEPROCLAMATION OF PART OF KALAHARI GEMSBOK NATIONAL PARK

In terms of section 2(3) of the National Parks Act, 1976 (Act No. 57 of 1976) as amended, no land included in a national park shall be alienated, excluded or detached from the park, except under the authority of a resolution of Parliament.

The Minister of Environmental Affairs and Tourism on 29 July submitted a request to exclude two portions of land from the Kalahari Gemsbok National Park for Parliamentary approval. On 20 August, the Portfolio Committee on Environmental Affairs and Tourism published a report recommending approval of the Minister's request for the exclusion of the two portions of land from the Kalahari Gemsbok National Park (ATC 20 August), which would subsequently be transferred to the +Khomani San and Mier communities, as specified in the Ae! Kalahari Heritage Park Agreement. The Minister's request was approved by the NA and the NCOP on 21 August.

32. GENDER COMMISSION APPOINTMENT

In terms of Section 193(4) of the Constitution, the President on the recommendation of the National Assembly must appoint the members of the Commission on Gender Equality. The Assembly must recommend persons nominated by an Assembly committee in terms of Section 193(5) of the Constitution. These constitutional

provisions, read with sections 3 and 4 of the Commission on Gender Equality Act, 1996 (Act 39 of 1996) prescribe the process to be followed by the NA in filling a vacancy on the Commission.

On 20 March, the Deputy Chief Whip of the Majority Party moved without notice: That the House, in accordance with section 193 (5) of the Constitution, appoint an ad hoc committee to nominate persons to fill the existing vacancy on the Commission for Gender Equality, the committee —

- (a) to consist of 27 members in the following proportions: ANC 14, DP 2, all other parties 1;
- (b) to exercise those powers in Rule 138 that may assist it in carrying out its task;
- (c) to take into consideration the list of candidates proposed by interested parties which will be referred to the committee; and
- (d) to complete its task by 24 May 2002.

When the Ad Hoc Committee could not complete its task by the stipulated date, the House on 24 May adopted a resolution extending the date by which the Committee had to complete its task to 24 June. On 26 June, the House adopted another resolution further extending the date for reporting to 21 August.

On 21 August, the NA after a division approved that Ms Joyce Seroke, as nominated by the Committee, be recommended for appointment.

33. APPOINTMENT OF MEMBERS OF THE BOARD OF THE MEDIA DEVELOPMENT AND DIVERSITY AGENCY

The Media Development and Diversity Agency Act, 2002 (Act 14 of 2002), provides for the establishment of the Media Development and Diversity Agency. The objective of the Agency is to help create an enabling environment for media development and diversity that is conducive to public discourse and which reflects the needs and aspirations of all South Africans.

The Agency acts through the Board of the Media Development and Diversity Agency. The Board consists of nine members who are appointed by the President. Six of the members are appointed on the recommendation of the National Assembly. The President appoints one of the members as chairperson of the Board.

The Minister in the Presidency, Minister E Pahad, wrote to the Speaker requesting Parliament to initiate the process to recommend persons for appointment to the Board. The request was referred to the Portfolio Committee on Communications, which invited the public to nominate persons for consideration. After interviewing 33 candidates the Committee recommended 6 candidates to the House. The nominations were approved by the House on 12 September, with the Democratic Party and the Federal Alliance dissenting.

34. APPOINTMENT OF PUBLIC PROTECTOR

The previous Public Protector was to vacate his office on 30 September (*See Issue 5, Item 38*). On 7 May, the House appointed an Ad Hoc Committee to make proposals to enable the House to recommend to the President, in terms of section 193(4) of the Constitution, a person for appointment as Public Protector, the Committee to complete its task by 21 June.

On 24 June, the House adopted a resolution extending the date of reporting by the Committee from 21 June to 8 August because the Committee was unable to complete its task. On 8 August, the House adopted another resolution further extending the date by which the Committee had to complete its task from 8 August to 30 August.

On 28 August, the Committee tabled its report in which it reported that it had been unable to identify a suitable candidate and, given the significance of the position, recommended readvertising the post given the limited number of nominations received, in view of the fact that so many nominees had withdrawn. The Committee further recommended that, in readvertising the position, a range of professional publications should be considered in order to elicit a greater response from suitably qualified persons, including women.

On 12 September, the House adopted a resolution instructing the Committee to continue with its task and to report by no later than 15 October. On 25 September, the Committee tabled its report in which it nominated Mr M L Mushwana as Public Protector.

On 26 September, the NA after a division approved that Mr Mushwana, as nominated by the Committee, be recommended for appointment as Public Protector. Mr Mushwana was duly appointed on 15 October and his appointment was announced in the House on 31 October. On 1 November, he assumed his new Office as Public Protector.

35. CONDITIONS OF SERVICE OF PUBLIC PROTECTOR

Section 2(2) of the Public Protector Act, 1994 (Act 23 of 1994) provides for the National Assembly to determine the remuneration and other terms and conditions of employment of the Public Protector. The NA does this on the advice of a committee appointed for this purpose.

On 25 September, the Portfolio Committee on Justice and Constitutional Development, acting in terms of the Act, recommended an amendment to the remuneration and other terms of conditions of employment of the Public Protector as previously determined on 13 September 1995 and amended on 18 October 1996. The Committee's proposed amendment was in respect of the gratuity payable to the Public Protector on vacation of



office. The NA adopted the recommendation of the Committee on 26 September.

36. EMPLOYMENT CONDITIONS OF PUBLIC PROTECTOR STAFF

The Public Protector Act, 1994 (Act 23 of 1994) provides that the document setting out the remuneration, allowances and other conditions of employment of the staff of the Public Protector must be tabled in the NA within 14 days after such determination is made. If the NA disapproves of any determination, the determination shall cease to be of force to the extent that it is disapproved.

On 5 August, a document setting out the remuneration, allowances and other conditions of employment determined by the Public Protector for staff in his office was received and referred to the Portfolio Committee on Justice and Constitutional Development.

On 25 September, the Portfolio Committee, after considering the document dated 24 July 2002, recommended that the House take no further action. This meant that determination was not disapproved and therefore would continue to apply.

The NA approved the recommendation on 26 September.

37. EMPLOYMENT BENEFITS – TRC STAFF

Section 9 of the Promotion of National Unity and Reconciliation Act, 1995 (Act 34 of 1995) provides for the document setting out the remuneration, allowances and other conditions of employment of the staff of the Truth and Reconciliation Commission (TRC) to be tabled in Parliament within 14 days after each such determination is made.

If Parliament disapproves of any determination, the determination shall cease to be of force to the extent that it is disapproved.

On 25 September, the Portfolio Committee on Justice and Constitutional Development, after considering documents regarding the remuneration, allowances and other employment benefits of the staff of the TRC,

tabled on 19 March, recommended that the House take no further action. This meant that determination was not disapproved and therefore would continue to apply. The NA approved the recommendation on 26 September.

The NCOP approved a similar recommendation from the Select Committee on Security and Constitutional Affairs on 14 November.

CHAMBER

38. VOTING IN NATIONAL ASSEMBLY WITHOUT ELECTRONIC SYSTEM

Towards the end of September, the electronic voting system in the NA became dysfunctional. On 25 September, at its regular weekly meeting the Chief Whips' Forum agreed to a proposal to use a manual voting procedure. In terms of the procedure, party whips would be given an opportunity to do a head count of the number of members present in the House, then announce the number of members present per party and how each party voted. A member who wanted to abstain or vote against the party vote would indicate so by informing the Table staff.

The manual voting procedure was used on 8 occasions whenever the Assembly wanted to take a decision between 26 September and adjournment of the NA on 14 November.

39. FAILURE OF SOUND SYSTEM IN NATIONAL ASSEMBLY – BUSINESS INTERRUPTED

On 25 September, the Deputy Speaker adjourned the House owing to the failure of the sound system.

On 26 September, the Speaker announced in the House that a temporary sound system was in use in the Chamber. The temporary system remained in use till the end of the year.

ABBREVIATIONS USED

ATC	Announcements, Tablings and Committee Reports (daily parliamentary paper which is effectively an appendix to the Minutes of Proceedings)
Minutes	Minutes of the National Assembly
NA	National Assembly
NCOP	National Council of Provinces
PC	Portfolio Committee
SCOPA	Standing Committee on Public Accounts

Parties:

ANC	African National Congress
DP	Democratic Party
IFP	Inkatha Freedom Party
NNP	New National Party
UDM	United Democratic Movement
ACDP	African Christian Democratic Party
FF	Freedom Front
UCDP	United Christian Democratic Party
PAC	Pan Africanist Congress of Azania
FA	Federal Alliance
AEB	Afrikaner-Eenheidsbeweging
MF	Minority Front
AZAPO	Azanian People's Organisation

