

REPUBLIC OF SOUTH AFRICA

**POWERS, PRIVILEGES AND
IMMUNITIES OF PARLIAMENT
AND PROVINCIAL LEGISLATURES
BILL**

*(As introduced in the National Assembly as a section 75 Bill; draft of Bill published in
Government Gazette No. 22463 of 11 July 2001)
(The English text is the official text of the Bill)*

(AD HOC COMMITTEE ON POWERS AND PRIVILEGES OF PARLIAMENT)

[B 74—2003]

REPUBLIEK VAN SUID-AFRIKA

**WETSONTWERP OP DIE
BEVOEGDHEDE, VOORREGTE EN
IMMUNITEITE VAN DIE
PARLEMENT EN PROVINSIALE
WETGEWERS**

*(Soos ingedien by die Nasionale Vergadering as 'n artikel 75-wetsontwerp; konsep van
Wetsontwerp in Staatskoerant No. 22463 van 11 Julie 2001 gepubliseer) (Die Afrikaanse
teks is die amptelike vertaling van die Wetsontwerp)*

(AD HOC-KOMITEE OOR BEVOEGDHEDE EN VOORREGTE VAN PARLEMENT)

[W 74—2003]

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BILL

To define and declare certain powers, privileges and immunities of Parliament, provincial legislatures, members of the National Assembly, delegates to the National Council of Provinces and members of provincial legislatures; and to provide for incidental matters.

WHEREAS the Constitution of the Republic of South Africa, 1996, sets out certain powers, privileges and immunities of Parliament and provincial legislatures and their members;

AND WHEREAS sections 58(2), 71(2) and 117(2) of the Constitution provide that other privileges and immunities of the respective legislatures and their members may be prescribed by national legislation;

AND WHEREAS it is considered essential to provide for such further privileges and immunities in order to protect the authority, independence and dignity of the legislatures and their members and to enable them to carry out their constitutional functions;

AND WHEREAS it is expedient to regulate certain other incidental matters relating to the functioning of Parliament and provincial legislatures:

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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CHAPTER 1

DEFINITIONS

Definitions

1. In this Act, unless the context indicates otherwise—
- “**Chairperson**” means the Chairperson of the National Council of Provinces or, when applicable, the office-bearer acting as Chairperson of the Council; 5
- “**committee**” means a committee or subcommittee consisting of members and established in terms of the standing rules or legislation, including a joint committee;
- “**disturbance**” means any act which interferes with or disrupts or which is likely to interfere with or disrupt the proceedings of Parliament or a House or committee; 10
- “**House**” means the National Assembly or the National Council of Provinces, as the case requires;
- “**joint committee**” means a committee consisting of members of both Houses of Parliament; 15
- “**joint rules**” means the rules referred to in section 45 of the Constitution;
- “**journals**” means any recording of the proceedings of Parliament or a House or committee, including minutes, transcripts and tape recordings;
- “**member**”, in relation to—
- (a) the National Assembly, means a member of the Assembly, and includes a Minister or Deputy Minister who is not such a member; 20
- (b) the National Council of Provinces, means—
- (i) a permanent delegate to the Council; or
- (ii) a special delegate to the Council, while acting as a special delegate, and includes the Deputy President, a Minister and a Deputy Minister; 25
- “**Parliament**” means the National Assembly and the National Council of Provinces;
- “**precincts**”, means the precincts of Parliament referred to in section 2;
- “**provincial legislature**” means a provincial legislature referred to in section 104 of the Constitution; 30
- “**Secretary**” means the Secretary to Parliament;
- “**security services**” means the security services referred to in section 199 of the Constitution;
- “**Speaker**” means the Speaker of the National Assembly or, when applicable, the office-bearer acting as Speaker; 35
- “**staff member**” means the Secretary or any other person employed or contracted by Parliament, whether in a permanent or temporary capacity;
- “**standing rules**” means the rules made by the National Assembly or the National Council of Provinces under section 57 or 70 of the Constitution, as well as the joint rules; 40
- “**the Constitution**” means the Constitution of the Republic of South Africa, 1996.

CHAPTER 2

PRECINCTS OF PARLIAMENT

Description of precincts of Parliament

2. (1) The precincts of Parliament is the area of land and every building or part of a building under Parliament’s control, including— 45
- (a) the chambers in which the proceedings of the Houses are conducted and the galleries and lobbies of the chambers;
- (b) every part of the buildings in which the chambers are situated, and every forecourt, yard, garden, enclosure or open space appurtenant thereto; 50
- (c) committee rooms and other meeting places provided or used primarily for Parliament’s purposes; and
- (d) every other building or part of a building provided or used in connection with the proceedings of Parliament, while so used.

(2) In so far as it may be necessary for the achievement of the objects of this Act in a case where a House or committee convenes beyond the seat of Parliament, this Act applies as if the premises where the House or committee is sitting were within the precincts of Parliament.

Control over precincts of Parliament 5

3. The Speaker and the Chairperson, subject to this Act, the standing rules and resolutions of the Houses, exercise joint control and authority over the precincts on behalf of Parliament.

Presence of security services in precincts of Parliament

4. (1) Members of the security services may— 10
 (a) enter upon, or remain in, the precincts for the purpose of performing any policing function; or
 (b) perform any policing function in the precincts,
 only with the permission and under the authority of the Speaker or the Chairperson.

(2) When there is immediate danger to the life or safety of any person or damage to any property, members of the security services may without obtaining such permission enter upon and take action in the precincts in so far as it is necessary to avert that danger. Any such action must as soon as possible be reported to the Speaker and the Chairperson. 15

Execution of process and arrest of persons within precincts of Parliament 20

5. A person may not within the precincts—
 (a) execute or serve or tender for service any summons, subpoena or other process issued by a court; or
 (b) except as authorised by section 4 or 11, arrest another person,
 without the express permission of, or in accordance with the directives of, the Speaker or the Chairperson or a person authorised by the Speaker or the Chairperson. 25

CHAPTER 3

PRIVILEGES, IMMUNITIES, INDEPENDENCE AND PROTECTION OF MEMBERS AND PARLIAMENT

Freedom of speech in joint sittings 30

6. The President and members have the same privileges and immunities in a joint sitting of the National Assembly and the National Council of Provinces as they have before the Assembly or the Council.¹

1. In terms of the Constitution, the following persons have freedom of speech in the respective Houses and committees:

- (a) National Assembly and its committees: Cabinet members, Deputy Ministers and members of the Assembly (section 58(1)).
- (b) National Council of Provinces and its committees: Cabinet members, Deputy Ministers, delegates to the Council, officials in the national executive or a provincial executive referred to in section 66(2) of the Constitution, and the local government representatives referred to in section 67 of the Constitution (section 71(1)).
- (c) Joint committees: Cabinet members, members of the National Assembly and delegates to the National Council of Provinces (section 45(2)).

Sections 58(1) and 71(1) of the Constitution provide that the persons who have freedom of speech in the respective Houses and committees in terms of those sections are not liable to civil or criminal proceedings, arrest, imprisonment or damages for—

- (i) anything that they have said in, produced before or submitted to the relevant House or any of its committees; or
- (ii) anything revealed as a result of anything that they have said in, produced before or submitted to the House or any of its committees.

Prohibited acts in respect of Parliament and members

7. A person may not—
- (a) improperly interfere with or impede the exercise or performance by Parliament or a House or committee of its authority or functions;
 - (b) improperly interfere with the performance by a member of his or her functions as a member; 5
 - (c) threaten or obstruct a member proceeding to or going from a meeting of Parliament or a House or committee;
 - (d) assault or threaten a member, or deprive a member of any benefit, on account of the member's conduct in Parliament or a House or committee; 10
 - (e) while Parliament or a House or committee is meeting, create or take part in any disturbance within the precincts; or
 - (f) fail or refuse to comply with an instruction by a duly authorised staff member regarding—
 - (i) the presence of persons at a particular meeting in the precincts; or 15
 - (ii) the possession of any article, including a firearm, in the precincts or any part thereof.

Improper influence of members

8. (1) A person may not by fraud, intimidation, force, insult or threat of any kind, or by the offer or promise of any inducement or benefit of any kind, or by any other improper means— 20
- (a) influence a member in the performance of the member's functions as a member;
 - (b) induce a member to be absent from Parliament or a House or committee; or
 - (c) attempt to compel a member to declare himself or herself in favour of or against anything pending before or proposed or expected to be submitted to Parliament or a House or committee. 25
- (2) A member may not ask for, receive or accept any fee, compensation, gift, reward, favour or benefit, for the member or another person, for or in respect of—
- (a) voting in a particular manner, or not voting, on any matter before a House or committee; 30
 - (b) promoting or opposing anything pending before or proposed or expected to be submitted to a House or committee; or
 - (c) making a representation to a House or committee.

Attendance of members before court 35

9. (1) When a member is required to attend a court as a witness in any civil or criminal proceedings, or as a defendant in any civil proceedings, the Speaker or the Chairperson or a person designated by the Speaker or Chairperson may issue a certificate stating that the member is required to attend to business in Parliament.

(2) Such a certificate is sufficient proof that the member is in attendance on Parliament, and the member shall be absolved from attending the court pending completion of that business. 40

Giving evidence of proceedings

10. (1) No member or staff member may give evidence in any court or place outside Parliament regarding the contents of the journals or the evidence given before, or any document submitted to, Parliament or a House or committee, without first having obtained the leave of the Houses or the House concerned. 45

(2) During a recess or adjournment of a House the Speaker or the Chairperson or a person designated by the Speaker or Chairperson may give such leave.

Persons creating disturbance

11. A person who creates or takes part in any disturbance in the precincts while Parliament or a House or committee is meeting, may be arrested and removed from the precincts, on the order of the Speaker or the Chairperson or a person designated by the Speaker or Chairperson, by a staff member or a member of the security services. 5

CHAPTER 4

DISCIPLINARY ACTION AGAINST MEMBERS FOR CONTEMPT OF PARLIAMENT

Disciplinary action against members for contempt

12. (1) Subject to this Act, a House has all the powers which are necessary for enquiring into and pronouncing upon any act or matter declared by or under section 13 to be contempt of Parliament by a member, and taking the disciplinary action provided therefore. 10

(2) A House must appoint a standing committee to deal with all enquiries referred to in subsection (1). 15

(3) Before a House may take any disciplinary action against a member in terms of subsection (1), the standing committee must—

(a) enquire into the matter in accordance with a procedure that is reasonable and procedurally fair; and

(b) table a report on its findings and recommendations in the House. 20

(4) The fact that the standing committee is enquiring into a matter or that a House has taken disciplinary action against a member does not preclude criminal investigation or proceedings against the member in connection with the matter concerned.

(5) When a House finds a member guilty of contempt, the House may, in addition to any other penalty to which the member may be liable under this Act or any other law, impose any one or more of the following penalties: 25

(a) A formal warning;

(b) a reprimand;

(c) an order to apologise to Parliament or the House or any person, in a manner determined by the House; 30

(d) the withholding, for a specified period, of the member's right to the use or enjoyment of any specified facility provided to members by Parliament;

(e) the removal, or the suspension for a specified period, of the member from any parliamentary position occupied by the member;

(f) a fine not exceeding the equivalent of one month's salary and allowances payable to the member concerned by virtue of the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998); 35

(g) the suspension of the member, with or without remuneration, for a period not exceeding 30 days, whether or not the House or any of its committees is scheduled to meet during that period. 40

(6) When a House finds a member guilty of contempt, the House may, where appropriate, instead of or in addition to the imposition of a penalty under subsection (5), refer the matter to the National Director of Public Prosecutions.

(7) A fine payable under subsection (5)(f) may be recovered—

(a) by deducting instalments from the members' salary, as specified by the House in imposing the fine; or 45

(b) if not so recovered, by means of civil action in a competent court.

(8) All fines under subsection (5)(f) which are paid or recovered must be paid into Parliament's bank account.

(9) A member may not be suspended under subsection (5)(g) unless the House has found that— 50

(a) the member is guilty of a serious or repeated contempt; and

(b) none of the other penalties set out in subsection (5) will be sufficient.

(10) A member who has been suspended under subsection (5)(g) must leave the precincts, and may not, during the period of suspension, without the written permission of the Speaker or the Chairperson—

- (a) enter the precincts for whatever purpose; or
- (b) participate in any activity of Parliament or any committee. 5

(11) Despite the Remuneration of Public Office Bearers Act, 1998, a member who has been suspended without remuneration under subsection (5)(g) is not entitled to any salary or allowances under that Act for the period of suspension.

(12) Except as provided in the Constitution, a House does not have the power to terminate a member's membership of the House. 10

(13) This section does not affect the power of a person presiding at a meeting of a House or a committee, or a joint meeting of the Houses, to maintain order and discipline in the meeting.

Conduct constituting contempt

13. A member is guilty of contempt of Parliament if the member— 15

- (a) contravenes section 7, 8, 10, 19, 21(1) or 26;
- (b) commits an act mentioned in section 17(1)(a), (b) or (c) or (2)(a), (b), (c), (d) or (e);
- (c) wilfully fails or refuses to obey any rule, order or resolution of a House or the Houses; or 20
- (d) commits an act which in terms of the standing rules constitutes—
 - (i) contempt of Parliament; or
 - (ii) a breach or abuse of parliamentary privilege.

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Summoning of witnesses

14. (1) A joint committee may—

- (a) summons any person to appear before it to give evidence on oath or affirmation, or to produce documents; or
- (b) require any person or institution to report to it. 30

(2) A summons in terms of subsection (1), or section 56(a) or 69(a) of the Constitution, to appear before a House or committee to give evidence or to produce documents² must be issued by the Secretary on the instructions of—

- (a) the Speaker or the Chairperson; or
- (b) the chairperson of the committee concerned, acting in accordance with a resolution of the committee and with the concurrence of the Speaker or the Chairperson. 35

(3) The summons must state—

- (a) the name of the person summonsed;
- (b) the name or designation of the person who must serve the summons; 40
- (c) the time, place and venue at which the person summonsed is required to appear;
- (d) the subject of the enquiry;
- (e) the purpose for which the evidence of that person is required; and
- (f) a description of the document, if any, which that person is required to produce. 45

(4) The summons must be served by the sheriff, or by a person designated by the Secretary, by delivering a copy of the summons—

- (a) to the person mentioned in the summons; or
- (b) at that person's usual or last known place of residence or of employment or business, to a person apparently over the age of 18 years and apparently residing or employed there. 50

2. In terms of sections 56(a) and 69(a) of the Constitution, the respective Houses of Parliament or any of their committees may summons any person to appear before them to give evidence on oath or affirmation or to produce documents.

(5) A return by the person who served the summons that service thereof has been effected in accordance with subsection (4) is *prima facie* proof of the service.

(6) A person summonsed in terms of this section or requested by a House or committee to attend a meeting of the House or committee, is entitled to be paid an amount for his or her expenses, as approved by the Speaker or Chairperson in accordance with the standing rules. 5

Examination of witnesses

15. When a House or committee requires that anything be verified or otherwise ascertained by the oral examination of a witness, the person presiding at the enquiry may— 10

- (a) call upon and administer an oath to, or accept an affirmation from, any person present at the enquiry who was or could have been summonsed in terms of section 14; and
- (b) examine that person, or request the person to produce any document in the person's possession or custody or under his or her control which may have a bearing on the subject of the enquiry, subject to any limitation provided for in the standing rules with regard to the type of subject matter about which a witness may be questioned or the type of document that a witness may be requested to produce. 15

Privilege of witnesses 20

16. (1) Subject to subsection (2), the law regarding privilege as applicable to a witness summonsed to give evidence or to produce a document before the High Court of South Africa applies to the examination of a person in terms of section 15.

(2) A person who is being examined under oath or affirmation in terms of section 15 may be required to answer any question put to him or her in connection with the subject of the enquiry, and to produce any document that he or she is requested to produce under that section, despite the fact that the answer or the document would incriminate him or her or would tend to expose him or her to criminal or civil proceedings, or damages. 25

(3) Evidence given under oath or affirmation by a person before a House or committee may not be used against that person in any court or place outside Parliament, except in criminal proceedings where the person concerned stands trial on a charge of perjury or a charge contemplated in section 17(1)(c) or (2)(d) or (e). 30

Offences relating to witnesses

17. (1) A person who—

- (a) has been duly summonsed in terms of section 14 and who fails, without sufficient cause— 35
 - (i) to attend at the time and place specified in the summons; or
 - (ii) to remain in attendance until excused from further attendance by the person presiding at the enquiry;
- (b) when called upon under section 15(a), refuses to be sworn in or to make an affirmation as a witness; or 40
- (c) fails, without sufficient cause—
 - (i) to answer fully and satisfactorily all questions lawfully put to him or her under section 15(b); or
 - (ii) to produce any document in his or her possession or custody or under his or her control which he or she has been required to produce under section 15(b), 45

commits an offence and is liable to a fine or to imprisonment for a period not exceeding 12 months or to both the fine and the imprisonment.

(2) A person who— 50

- (a) threatens or obstructs another person in respect of evidence to be given before a House or committee;
- (b) induces another person—

- (i) to refrain from giving evidence to or producing a document before a House or committee; or
 - (ii) to give false evidence before a House or committee;
 - (c) assaults or penalises or threatens another person, or deprives that person of any benefit, on account of the giving or proposed giving of evidence before a House or committee; 5
 - (d) with intent to deceive a House or committee, produces to the House or committee any false, untrue, fabricated or falsified document; or
 - (e) whether or not during examination under section 15, wilfully furnishes a House or committee with information, or makes a statement before it, which is false or misleading, 10
- commits an offence and is liable to a fine or to imprisonment for a period not exceeding two years or to both the fine and imprisonment.
- (3) Subject to section 13(b), subsections (1) and (2) do not apply to a member.

CHAPTER 6

15

PUBLICATIONS AND BROADCASTING

Protection in respect of publications

18. (1) No person is liable to civil or criminal proceedings in respect of the publication of any report, paper or minutes of Parliament or a House or committee by order or under the authority of the Houses, or the House or committee concerned. 20
- (2) No member or staff member is liable to civil or criminal proceedings in respect of the publication to a member of a document that has been submitted to or is before Parliament or a House or committee.

Unauthorised publishing

19. No person may wilfully publish— 25
- (a) any document if the publication of that document is prohibited by or in terms of the standing rules or an order or a resolution of a House;
 - (b) any document purporting that it has been published under the authority of Parliament, a House, a committee, the Speaker or the Chairperson, while it has not been published under such authority; or 30
 - (c) any document purporting that it is a verbatim account of proceedings of Parliament or a House or committee, while it is not such an account.

Admissibility of journals as evidence

20. In any proceedings before a court or any other tribunal in which the proceedings of Parliament or a House are relevant, a copy of the journals printed or purporting to have been printed by order of the Houses or the House concerned or the Speaker or Chairperson, is admissible as evidence of the journals without any proof being given that the copy was so printed. 35

Broadcasting of proceedings

21. (1) No person may broadcast or televise or otherwise transmit by electronic means the proceedings of Parliament or of a House or committee, or any part of those proceedings, except by order or under the authority of the Houses or the House concerned, and in accordance with the conditions, if any, determined by the Speaker or Chairperson in terms of the standing rules. 40
- (2) No person is liable to civil or criminal proceedings in respect of the broadcasting, televising or electronic transmission of proceedings of Parliament or a House or committee if it has been authorised under subsection (1) and complies with the conditions, if any, determined under that subsection. 45

CHAPTER 7

GENERAL

Liability for acts done under authority of Parliament

22. No person is liable in damages or otherwise for any act done in good faith in terms of this Act, or under the authority of a House or committee and within the legal powers of the House or committee, or under any order or summons issued by virtue of those powers. 5

Civil proceedings against Parliament

23. (1) In any civil proceedings against Parliament or a House or committee, the State Liability Act, 1957 (Act No. 20 of 1957), applies, with the necessary changes. 10

(2) For the purposes of subsection (1), where appropriate, a reference in the State Liability Act, 1957, to the Minister of a department must, where the proceedings are against—

- (a) Parliament or a House, be construed as a reference to the Speaker or the Chairperson, or to both the Speaker and the Chairperson, as the case requires; 15
- (b) a committee, be construed as a reference to the chairperson of the committee.

Duty of criminal courts in respect of members

24. When a member of the National Assembly or a permanent delegate to the National Council of Provinces has been convicted of an offence and sentenced to more than 12 months' imprisonment without the option of a fine— 20

- (a) the registrar or clerk of the court sentencing that person must in writing inform the Speaker or the Chairperson, as the case requires, of the nature of the offence and the sentence imposed; and
- (b) if an appeal is noted against the conviction or sentence, the registrar or clerk of the court hearing the appeal must in writing inform the Speaker or the Chairperson, as the case requires, of the noting of the appeal and of the outcome thereof. 25

Protection of members of public

25. (1) A person, other than a member, who feels aggrieved by a statement or remark made by a member or a witness in or before a House or committee about that person, may submit a written request to the Secretary to have a response recorded. 30

(2) The committee referred to in section 12(2) must, subject to the standing rules, consider the request and, if approved, publish the response of the person in the appropriate parliamentary paper.

Hindering or obstructing staff members 35

26. A person may not hinder or obstruct a staff member in the execution of the staff member's duties or while the staff member is proceeding to or going from Parliament or a House or committee in the course of or in connection with his or her duties.

Offences

27. (1) A person, including a member, who contravenes section 7 or 8(1) commits an offence and is liable to a fine or to imprisonment for a period not exceeding three years or to both the fine and the imprisonment. 40

(2) A person, including a member, who contravenes section 19, 21(1) or 26 commits an offence and is liable to a fine or to imprisonment for a period not exceeding 12 months or to both the fine and the imprisonment. 45

(3) A member who contravenes section 8(2) commits an offence and is liable to a fine or to imprisonment for a period not exceeding 15 years or to both the fine and the imprisonment.

CHAPTER 8

PROVINCIAL LEGISLATURES

Application of Act to provincial legislatures

- 28.** (1) Sections 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 18, 19, 20, 21, 22, 25, 26, and 27 apply, with the necessary changes, to provincial legislatures as well. 5
- (2) In such application, a reference in those sections to—
- (a) Parliament or a House, must be construed as a reference to the provincial legislature concerned;
 - (b) a committee, must be construed as a reference to a committee of the provincial legislature; 10
 - (c) the Speaker or the Chairperson, must be construed as a reference to the Speaker of the provincial legislature;
 - (d) a member, must be construed—
 - (i) as a reference to a member of the provincial legislature; and
 - (ii) except in sections 12 and 13, as including a permanent delegate of the province to the National Council of Provinces; 15
 - (e) the Secretary, must be construed as a reference to the Secretary of the provincial legislature;
 - (f) standing rules, must be construed as a reference to the rules made by the provincial legislature in terms of section 116 of the Constitution. 20

Civil proceedings against provincial legislatures

- 29.** (1) In any civil proceedings against a provincial legislature or any of its committees, the State Liability Act, 1957 (Act No. 20 of 1957), applies, with the necessary changes.
- (2) For the purposes of subsection (1), where appropriate, a reference in the State Liability Act, 1957, to the Minister of a department must, where the proceedings are against— 25
- (a) a provincial legislature, be construed as a reference to the Speaker of the legislature;
 - (b) a committee of a provincial legislature, be construed as a reference to the chairperson of the committee. 30

Duty of criminal courts in respect of members of provincial legislatures

- 30.** When a member of a provincial legislature has been convicted of an offence and sentenced to more than 12 months' imprisonment without the option of a fine—
- (a) the registrar or clerk of the court sentencing that person must in writing inform the Speaker of the provincial legislature of the nature of the offence and the sentence imposed; and 35
 - (b) if an appeal is noted against the conviction or sentence, the registrar or clerk of the court hearing the appeal must in writing inform the Speaker concerned of the noting of the appeal and of the outcome thereof. 40

CHAPTER 9

REPEAL OF LEGISLATION AND SHORT TITLE

Repeal of laws

- 31.** The laws mentioned in the Schedule are repealed to the extent specified in the third column. 45

Short title

- 32.** This Act is called the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2003.

SCHEDULE
LAWS REPEALED

(section 31)

No. and year of law	Short title	Extent of repeal	
Act No. 91 of 1963	Powers and Privileges of Parliament Act, 1963	The whole, except sections 31 and 39	5
Act No. 62 of 1967	Powers and Privileges of Parliament Amendment Act, 1967	The whole	10
Act No. 33 of 1974	Parliamentary Service Act, 1974	Sections 13,14,15,16,17 and 18	
Act No. 95 of 1984	Powers and Privileges of Parliament Amendment Act, 1984	The whole	15
Act No. 99 of 1985	Powers and Privileges of Parliament and the Constitution Amendment Act, 1985	The whole	20
Act No. 98 of 1992	Powers and Privileges of Parliament Amendment Act, 1992	The whole	

**MEMORANDUM ON THE OBJECTS OF THE POWERS,
PRIVILEGES AND IMMUNITIES OF PARLIAMENT AND
PROVINCIAL LEGISLATURES BILL, 2003**

1. The Constitution of the Republic of South Africa, 1996, sets out the most significant powers, privileges and immunities of Parliament and provincial legislatures and their members that are necessary to enable them to carry out their constitutional functions. Some of these powers, privileges and immunities are traditional in parliamentary systems of government, namely:

- * The power of a Legislature to determine and control its own proceedings;
- * Freedom of speech of members of Legislatures; and
- * Members' immunity from civil and criminal proceedings for anything said in a Legislature or a committee of the Legislature.

2. The Constitution provides that "other privileges and immunities" may be prescribed by national legislation (sections 58(2), 71(2) and 117(2)). The applicable legislation in respect of Parliament, namely the Powers and Privileges of Parliament Act, 1963 (Act 91 of 1963), is dated and in some respects inconsistent with the Constitution. Most of the provincial legislatures have their own legislation on this matter, adopted under the interim (1993) Constitution. But the validity of that legislation is in doubt, since it is not national legislation.

3. The Bill is the product of a parliamentary process that started in 1997 with the appointment of the Joint Subcommittee on Powers and Privileges of Parliament (a subcommittee of the Joint Rules Committee), whose main function was to make recommendations to transform the existing law and practice on parliamentary powers and privileges. The Subcommittee prepared a draft Bill, which was referred by each of the Houses of Parliament to an ad hoc committee. A copy of the draft Bill was published for comment in the *Government Gazette* of 11 July 2001. The Ad Hoc Committee on Powers and Privileges of Parliament (National Assembly) prepared an amended draft of the Bill for introduction in the National Assembly.

4. The main object of the Bill is to enact legislation envisaged in sections 58(2), 71(2) and 117(2) of the Constitution. In addition the Bill seeks to regulate certain incidental matters relating to the functioning of Parliament and the provincial legislatures.

5. In summary the Bill provides as follows:

Chapter 1 contains definitions.

Chapter 2 describes the precincts of Parliament and regulates the control of the precincts.

Chapter 3 provides for freedom of speech in joint sittings of the National Assembly and the National Council of Provinces, and proposes various measures to ensure the independence and protection of Parliament and its members. The Bill does not deal with freedom of speech in the respective legislatures and their committees since that is provided for in the Constitution.

Chapter 4 makes provision for Parliament to take disciplinary action against a member who is in contempt of Parliament. Contempt is defined in clause 13.

Chapter 5 deals with witnesses before a House or committee of Parliament.

Chapter 6 contains provisions relating to the publication and broadcasting of the proceedings of Parliament.

Chapter 7 proposes some general provisions, including the creation of certain offences. Provision is being made, amongst others, that members of the public who feel aggrieved by what was said about them in Parliament may request to have a response recorded.

Chapter 8 provides for the application of some provisions of the legislation to provincial legislatures and their members.

Chapter 9 provides for the repeal of laws. The existing Powers and Privileges of Parliament Act, 1963, is being repealed in its entirety, except for section 31, which prescribes certain financial arrangements in respect of Parliament. It is envisaged that the financial arrangements of Parliament and provincial legislatures will be dealt with in a separate Bill.

6. The Bill is being introduced by the Ad Hoc Committee on Powers and Privileges as a section 75 Bill. In the Committee's view the Bill contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.