



PROVINCE OF THE EASTERN CAPE
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PROVINCIAL NOTICE

No. 33

16 November 2007

OFFICE OF THE PREMIER OF THE PROVINCE OF THE EASTERN CAPE

It is hereby notified that the Premier of the Province of Eastern Cape has assented to the following Act which is hereby published for general information:-

No. 4 of 2007(EC): Evidence and Information Before the Eastern Cape Provincial Legislature Act 2007

PROVINCE OF THE EASTERN CAPE

**EVIDENCE AND INFORMATION BEFORE
THE EASTERN CAPE PROVINCIAL
LEGISLATURE ACT**

Act No 4 of 2007 (EC)

ACT NO 4 OF 2007 (EC) EVIDENCE AND INFORMATION BEFORE THE EASTERN CAPE
PROVINCIAL LEGISLATURE ACT, 2007 (EASTERN CAPE)

ACT

To provide for mechanisms for the Legislature to obtain evidence, documents and reports, the summoning of witnesses, and mechanisms to compel to comply with summonses and requirements of the Legislature.

WHEREAS section 115(a) of the Constitution of the Republic of South Africa, 1996 provides that a provincial legislature or any of its committees may summon any person to appear before it to give evidence under oath or affirmation, or to produce documents;

AND WHEREAS section 115(a) of the Constitution provides that a provincial legislature may require any person or provincial institution to report to it;

AND WHEREAS section 115(c) of the Constitution provides that a provincial legislature may compel, in terms of provincial legislation any person or institution to comply with the summons or requirement to report;

BE IT THEREFORE BE ENACTED by the Provincial Legislature of the Eastern Cape as follows:-

Definitions

1. In this Act, unless the context indicates otherwise –

“Chairperson” means the Chairperson of a Committee of the Legislature;

“Committee” means a Portfolio Committee, Standing Committee, Sub-Committee or *Ad Hoc* Committee established by the Standing Rules or the House of the legislature”

“House” means the Members of the Legislature in a plenary sitting;

“Legislature” means the Eastern Cape Provincial Legislature as contemplated in section 105 of the Constitution;

“Secretary” means the Secretary of the legislature; and

“Speaker” includes the deputy Speaker referred to in section 111 of the Constitution;

Summoning of witnesses

2.(1) The House or 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 provincial institution to report to it.

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- (2) A summons in terms of subsection (1) or section 115(a) or 115(b) of the Constitution to appear before a House or Committee to give evidence or to produce documents must be issued by the Secretary on the instruction of-
- (a) the Speaker; or
 - (b) the chairperson of the Committee concerned, acting in accordance with a resolution of the Committee and with the concurrence of the Speaker.
- (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;
 - (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.
- (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.
- (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, except a person employed by a National or Provincial Department or an organ of state, summonsed in terms of this section or requested by the 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 in accordance with the standing rules.

Examination of witnesses

3. When the House or Committee requires that anything be verified or otherwise ascertained by the oral examination of a witness –
- (a) the person presiding at the enquiry may call upon and administer an oath to, or accept an affirmation from, any person present at the enquiry whether that person was summonsed in terms of section 2, or attends on his or her own accord; and

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- (b) The House or Committee may appoint a suitably legally qualified official of the Legislature to lead the evidence of and question the person summonsed or reporting in terms of section 2(1)
- (c) The person presiding, or a member of the House or Committee may question 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.

Privilege of witness

4.(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 3.

(2) A person who is being examined under oath or affirmation in terms of section 2 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.

(3) Evidence given under oath or affirmation by a person before the House or Committee may not be used against that person in any court or place outside the Legislature, except in criminal proceedings where the person concerned stands trial on a charge of perjury or a charge contemplated in section 5(1)(c) or (2)(d) or (e).

Offences relating to witnesses

5.(1) A person who –

- (a) has been duly summonsed in terms of section 2 and who fails, without sufficient cause –
 - (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 3(a), refuses to be sworn in or to make an affirmation as a witness, or
- (c) fails, without sufficient cause –
 - (i) to answer fully and satisfactorily all questions lawfully put to him or her under section 3(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 3(b), commits an offence and is liable to a

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- fine or to imprisonment for a period not exceeding 12 months or to both the fine and the imprisonment
- (2) A person who -
- (a) threatens or obstructs another person in respect of evidence to be given before the House or Committee;
 - (b) induces another person –
 - (i) to refrain from giving evidence to or producing a document before the House or Committee; or
 - (ii) to give false evidence before a House or Committee;
 - (c) assaults, penalises or threatens another person, or deprives that person of any benefits, on account of the giving or proposed giving of evidence before a House or Committee;
 - (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 3, willfully furnishes the House or Committee with information, or makes a statement before it, which is false or misleading, 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 the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004, subsections (1) and (2) do not apply to a Member of the Legislature.

Repeal of law

6. The Powers, Privileges and Immunities of Members of the Provincial Legislature Act, 1995 (Act 7 of 1995) Act is repealed.

Short Title

7. This Act is called the Evidence and Information Before the Eastern Cape Provincial Legislature Act.
