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Vol. 1

PRETORIA, 31 MARCH  
MAART 1995

**No. 20**

**PREMIER'S NOTICE**

OFFICE OF THE PREMIER

No. 7

31 March 1995

It is hereby notified that the Premier has assented to the following Act which is hereby published for general information:

**No. 2 of 1995: Powers, Privileges and Immunities of the Provincial Legislature Act**  
(Pretoria-Witwatersrand-Vereeniging)

2  
✓ 28.3.1995

# ACT

**To define and declare the powers, privileges and immunities of the Provincial Legislature, and to provide for matters incidental thereto.**

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*(English text signed by the Premier)  
(Assented to 15 March 1995)*

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**BE IT ENACTED** by the Provincial Legislature of the Province of Pretoria-Witwatersrand-Vereeniging, as follows:—

## **Definitions**

**1.** In this Act, unless the context indicates otherwise—

“committee” means any committee of members established in terms of the standing orders;

“journals” means any recording of the proceedings of the Provincial Legislature or any committee of whatever nature including minutes, transcripts and tape recordings;

“member” means a member of the Provincial Legislature, and includes a Member of the Executive Council;

“officer” means the Secretary, and any other person who may be appointed to the staff of the Provincial Legislature;

“Secretary” means the provisional secretary or the Secretary to the Provincial Legislature appointed in terms of section 143 of the Constitution;

“Speaker” means the Speaker of the Provincial Legislature referred to in section 131 of the Constitution;

“standing orders” means the rules and orders made by the Provincial Legislature in connection with the order and conduct of its business and proceedings under section 137(1) of the Constitution;

“the Constitution” means the Constitution of the Republic of South Africa, 1993 (Act No. 200/1993).

## **CHAPTER 1**

### **FREEDOM OF SPEECH AND DEBATE**

#### **Freedom of speech and debate**

**2.** Without derogating from the provisions of section 135 of the Constitution, the provisions of subsection (2) of that section shall not apply to any person, other than a member, giving evidence before the Provincial Legislature or any committee.

**Liability in respect of publications of Provincial Legislature**

3. No person shall be liable to any civil or criminal proceedings, arrest, imprisonment or damages for or on account or in respect of the publication by him or her, or his or her servant, of any report, paper, minutes of proceedings of the Provincial Legislature or any committee by order or under the authority of the Provincial Legislature or any such committee or the Speaker.

**Protection in respect of extracts and abstracts**

4. If in any legal proceedings instituted for the publication of any extract from or abstract of any report, paper, minutes or minutes of proceedings of the Provincial Legislature, any committee, the court is satisfied that such extract or abstract was published *bona fide* and without malice, judgement shall be given for the defendant or the accused, as the case may be.

**Offence relating to unauthorised printing**

5. Any person who—

- (a) prints or causes to be printed any copy of any law of the Provincial Legislature or any copy of any report, paper, minutes or minutes of proceedings of the Provincial Legislature or any committee which purports to have been printed by the Government Printer or the printer of the Provincial Legislature, or by order or under authority of the Provincial Legislature, any such committee or the Speaker, while it has not been so printed; or
- (b) tenders in evidence any such copy which purports to have been so printed, knowing that it is not so printed,

shall be guilty of an offence and on conviction be liable to imprisonment for a period not exceeding three years.

**CHAPTER II****THE PROVINCIAL LEGISLATURE****Persons creating disturbance**

6. (1) Any person creating or joining in any disturbance in the Provincial Legislature while the Legislature is sitting may, without warrant on the verbal order of the Speaker—

- (a) in the case of a member, be removed from the precincts of the Legislature; and
- (b) in the case of any other person, be arrested and handed over to the police, by such officer as the Speaker may designate.

(2) Every police officer and every other person shall, when called upon by such officer to do so, assist such officer in the removal of a member, or in the arrest and handing over of any other person, by virtue of subsection (1).

(3) Any person who, without sufficient cause, fails to assist an officer as contemplated in subsection (2), shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

### **Powers and privileges of Provincial Legislature in respect of contempt**

7. Subject to the provisions of the Constitution, the Provincial Legislature shall have all such powers and privileges as may be necessary for enquiring into, passing judgement on or pronouncing upon any act, matter or thing declared in this Chapter to be contempt of the Provincial Legislature, and taking the disciplinary action provided therefor in this Chapter.

### **Contempt of Provincial Legislature**

8. Any member shall be guilty of contempt of the Provincial Legislature if he or she—

- (a) wilfully fails or refuses to obey any ruling, order or resolution of the Provincial Legislature;
- (b) commits an offence under this Act; or
- (c) is guilty of an act or omission which in terms of the standing orders constitutes contempt of the Provincial Legislature.

### **Disciplinary action against members**

9. (1) Any member adjudged guilty of contempt of the Provincial Legislature by the Provincial Legislature, may—

- (a) be cautioned or reprimanded;
- (b) be fined a sum not exceeding R5 000; or
- (c) be suspended for a period not exceeding 30 sitting days.

(2) Any fine payable under subsection (1)(b) may be recovered by the Secretary by deducting it from the remuneration of the member concerned as determined by the Provincial Legislature.

(3) Any amount recovered in respect of a fine shall be paid into the Provincial Revenue Fund.

### **Offences relating to Provincial Legislature**

10. Any person who—

- (a) while the Provincial Legislature is sitting, creates or joins in any disturbance therein or in the vicinity thereof, whereby the proceedings of the Provincial Legislature are or are likely to be interrupted; or
- (b) commits any act which is calculated to hold the Provincial Legislature or its proceedings in contempt,

shall be guilty of an offence and on conviction by a competent court of law be liable to a fine or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

## CHAPTER III

### MEMBERS AND OFFICERS

#### **Arrest and summons of members within precincts of Provincial Legislature**

11. (1) Notwithstanding anything to the contrary contained in any law but subject to the provisions of section 6(1), no person shall arrest any member within the precincts of the Provincial Legislature, or serve any summons or subpoena upon him or her thereat, while the Provincial Legislature is sitting.

(2) Any person who contravenes a provision of subsection (1) shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

#### **Duty of criminal court in respect of members**

12. Whenever in any criminal proceedings any member has been sentenced to a period of imprisonment of more than 12 months without the option of a fine, the court so sentencing that member shall in writing inform the Speaker of the nature of the offence and the sentence imposed.

#### **Giving evidence of proceedings**

13. (1) No member or officer and no reporter employed to take minutes of evidence given before the Provincial Legislature or any committee, shall give evidence elsewhere regarding the contents of any evidence given or of any manuscript or document produced before the Provincial Legislature or any committee, or regarding any proceedings or examination at the Bar of the Provincial Legislature or before any committee, without first having obtained the special leave of the Provincial Legislature.

(2) During any recess or adjournment of the Provincial Legislature the said leave may be given by the Speaker.

#### **Attendance of members before Parliament or other provincial legislature**

14. No member shall attend before Parliament, any other provincial legislature or any committee of Parliament or such provincial legislature unless he or she has given reasons therefor to the Speaker.

#### **Matters in which members have direct pecuniary interest**

15. (1) Subject to the provisions of subsection (3), a member shall not in or before the Provincial Legislature or any committee vote upon or take part in the discussion of any matter in which he or she has a direct pecuniary interest.

(2) Any member who contravenes a provision of subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding R5 000.

(3) The provisions of subsection (1) shall not apply to any vote or discussion in connection with the remuneration or allowances to be received by members in their capacity as such members, or to any interest which a member may have in any matter in common with the public generally, or with any class or section of the public.

#### **Offences relating to members and officers**

**16.** Any person who—

- (a) threatens, obstructs or insults any member proceeding to or leaving any sitting of the Provincial Legislature or on account of his or her conduct therein, or endeavours by force, insult or menace to compel any member to declare himself or herself in favour of or against any proposition or matter pending or expected to be brought before the Provincial Legislature; or
- (b) hinders or obstructs any officer in the execution of his or her duty or from proceeding to or from leaving the Provincial Legislature in the course of or in connection with his or her official duties,

shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

### **CHAPTER IV**

#### **WITNESSES AND DOCUMENTS**

##### **Order to attend before Provincial Legislature or committee**

**17.** The Provincial Legislature or any committee authorised to require the attendance of persons or the production of documents may order any person to attend before the provincial legislature or any such committee, as the case may be, and to produce any paper, book, record, or document in his or her possession or custody or under his or her control.

##### **Summons of witnesses**

**18.** (1) An order to attend or to produce any document before the Provincial Legislature or any committee shall be notified to the person required to attend or to produce the paper, book, record or document—

- (a) in the case where such person is a member of the National Assembly, the Senate or any other provincial legislature, by means of a request in writing addressed by the Speaker to the House concerned;
- (b) in the case where such person is being detained in any prison, by means of a warrant issued by the Speaker under his or her hand; or
- (c) in any other case, by means of a summons issued by order of the Speaker under the hand of the Secretary.

(2) (a) In every summons referred to in subsection (1) there shall be stated the time and place at which the person summoned is required to attend, and the particular paper, book, record or document, if any, which he or she is required to produce.

(b) Such summons shall be served on the person mentioned therein either by delivering to him or her personally a copy thereof or by leaving such copy with an adult person at the first-mentioned person's usual or last known place of residence.

(3) A person summoned in terms of subsection (2) may be paid such an amount for his or her expenses as may be approved by the Speaker in accordance with the standing orders.

#### **Examination of witnesses**

19. Whenever the Provincial Legislature or committee requires that any fact, matter or thing relating to the subject of the enquiry before the Provincial Legislature or any such committee be verified or otherwise ascertained by the oral examination by any witness, the Speaker, the Chairperson of any committee or any person specially designated by the Speaker for that purpose may—

- (a) call upon and administer an oath to, or accept an affirmation from, any person present at the enquiry irrespective of whether he or she was or could have been summoned in terms of section 18 or not; and
- (b) examine or require any person who was called upon under paragraph (a) to produce any paper, book, record or document in his or her possession or custody or under his or her control which may have a bearing on the subject of the enquiry.

#### **Privilege of witnesses**

20. In connection with the examination of any person by, or the production of any paper, book, record or document before, the Provincial Legislature or any committee in terms of section 19, the law relating to privilege, as applicable to a witness summoned to give evidence or to produce any paper, book, record or document before a court of law, shall apply.

#### **Offences relating to conduct of witnesses**

21. Any person who—

- (a) has been duly summoned in terms of section 18 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) has been called upon under section 19(a) and who refuses to be sworn or to make an affirmation as a witness; or

- (c) fails, without sufficient cause—
- (i) to answer fully and satisfactorily any question lawfully put to him or her under section 19(b); or
  - (ii) to produce any paper, book, record or 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 19(b),

shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

**Stay of proceedings for anything said by witness or anything done by witness and disclosed by his or her evidence**

22. (1) If a witness before the Legislature or any committee, in the opinion of the presiding officer, answers fully and faithfully all questions put to him or her by that Legislature or committee and his or her replies are relevant to such questions, he or she shall be entitled on application to receive a certificate under the hand of the presiding officer stating that such witness was upon his or her examination so required to and did so answer all such questions: Provided that in the case of a witness before a committee, such certificate may be signed by the Speaker.

(2) (a) On production of such certificate in any court of law, such court shall stay any civil or criminal proceedings, except a charge of perjury or an offence under section 23(b) or (c), against such witness for anything said by him or her in the course of giving his or her evidence before a House or any committee or for any act or thing done by him or her before that time and revealed by his or her evidence, and may in its discretion award to such witness the expenses to which he or she may have been put in consequence of such civil or criminal proceedings.

(b) Proceedings which have been so stayed shall thereupon be deemed to be finally determined.

**Miscellaneous offences**

23. Any person who—

- (a) threatens, obstructs or in any way unduly influences any witness required to give evidence or to produce any paper, book, record or document before the Provincial Legislature or any committee;
- (b) with the intent to deceive the Provincial Legislature or any committee, produces to the Provincial Legislature or any such committee any false, untrue, fabricated or falsified paper, book, record or document; or
- (c) wilfully furnishes the Provincial Legislature or any committee with information, or make a statement before it, which is false or misleading,

shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.



## CHAPTER V

### GENERAL

#### **Admissibility of journals as evidence**

24. At any enquiry relating to or affecting the powers, privileges and immunities of the Provincial Legislature or of any member, any copy of the journals printed or purporting to have been printed by order of the Provincial Legislature or the Speaker shall be admitted as evidence of such journals in all courts and places in the Republic without any proof being given that such copy was so printed.

#### **Speaker or committee may act on behalf of Provincial Legislature**

25. Subject to the standing orders, the Provincial Legislature may authorise the Speaker or any committee to perform any act which may be performed by the Provincial Legislature under this Act.

(2) For the purposes of the performance of any act referred to in subsection (1), the Speaker or committee shall have the powers with which the Provincial Legislature is vested in terms of this Act.

#### **Application of Act in case of committee meeting beyond seat or during recess or adjournment**

26. In so far as it may be necessary for the achievement of the objects of this Act in the case of any committee which in terms of any authority conferred upon it performs its functions beyond the seat of the Provincial Legislature or while the Provincial Legislature is in recess or adjournment, the provisions of the Act shall apply as if the premises where the committee meets for the performance of its functions were within the precincts of the Provincial Legislature, or as if the Provincial Legislature were in sitting, as the case may be.

#### **Liability for acts under authority of Provincial Legislature**

27. No person shall be liable in damage or otherwise for any act done under the authority of the Provincial Legislature and within its legal powers, or under any warrant issued by virtue of those powers.

#### **Declaration of precincts**

28. The Speaker shall, after consultation with the relevant standing committee, at the commencement of each session and at such times as may be necessary, declare by way of notice in the *Provincial Gazette*, the boundaries and extent of the precincts of the Provincial Legislature.

#### **Short title**

29. This Act shall be called the Powers, Privileges and Immunities of the Provincial Legislature Act, 1995.

## MEMORANDUM ON THE POWERS AND PRIVILEGES OF THE PROVINCIAL LEGISLATURE BILL, 1995

### Reasons for the Bill

Section 135(1) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), confers on the Provincial Legislatures full powers to control, regulate and dispose of their internal businesses. The section further makes it competent for a Legislature to pass a law and/or laws conferring on itself and its members all such power, privileges and immunities as are necessary for the carrying out of its legislative function.

The Constitution further guarantees the right to freedom of speech and debate in or before the Legislature or any of its committees. The right to freedom of speech and debate is not only peculiar to those parliaments that follow the Westminster parliamentary system but has also been the hallmark of African traditional systems of imbizos and kgotlas. In terms of the Constitution this freedom can neither be impeached nor questioned in any court.

The essence of these powers and privileges is that—

- (a) law-makers will be able to discuss and debate fully any matter in the Legislature or in any committee without fear of becoming liable to criminal or civil arrest, imprisonment or damages by virtue of what they might have said or produced in or before the Legislature or any of its committees; or that which might have been revealed as a result of what they might have said or produced;
- (b) the integrity of the Legislature will be guaranteed;
- (c) the Legislature shall have the power to summon any person to appear before the Legislature or any committee and produce any paper, book, record or document in his or her possession or under his or her control;
- (d) the Legislature shall have the power to grant immunity against criminal and civil liability or arrest and imprisonment for anything said in the course of giving evidence in the Legislature or any committee. The immunity will be in the form of a certificate issued by the person presiding at the relevant enquiry;
- (e) to ensure that there is no abuse of the privileges conferred on members and other persons, the Act creates offences which when committed will result in the person or persons committing them being liable to disciplinary action or criminal proceedings;
- (f) to avoid violating the provisions of the Constitution insofar as they relate to a person's right to receive a fair trial, offences committed by any person other than a member can only be tried by a competent court of law.

### **Social Impact of the Bill**

The social impact of the Act is that the ability of the Legislature to discuss and debate any issue fully without fear of favour will enhance its capacity to fulfil its obligation towards the voters by informing them fully on issues that affect them directly and what measures will be taken to address their concerns. This will certainly be consistent with the policy of transparency and accountability. In addition there will of necessity be value added to the principle of the new democracy being nurtured in the country.

### **Environmental impact**

None.

### **Financial implications**

(1) By virtue of sections 9(3) and 22 some revenue in the form of fines will be raised and paid into the Provincial Revenue Funds.

(2) the Legislature is likely to pay a person summoned in terms of this section 18 in respect of the expenses incurred by him or her.

### **Comments**

Comments were received after introduction of the Bill from the Society of Advocates, Centre for Applied Legal Studies, the State Law Advisor and the Speaker. These were deliberated upon by the Rules Committee and on the basis thereof amendments effected to the Bill as published.

### **Clause-by-clause explanation**

In Clause 1 certain words are defined. Thereafter the Bill is divided into five Chapters, the first of which deals with freedom of speech and debate in the Provincial Legislature and a committee thereof. In this regard the provisions of section 135(2) and (3) of the Constitution are not repeated in the Bill in view of opinion No. 194/94 of the Chief State Law Adviser. Clause 2 only provides that the said section 135(2) shall not apply to other persons than members of the Provincial Legislature. In terms of clause 3 nobody shall be liable for publishing anything on the authority of the Provincial Legislature, any committee or the Speaker. The publication of extracts and abstracts from certain documents are protected by clause 4, if they were published *bona fide* and without malice. In clause 5 certain offences are created relating to unauthorised printing.

Chapter 2 deals with the Provincial Legislature, and provides in clause 6 for the arrest of persons creating a disturbance in the Legislature. Clause 7 empowers the Provincial Legislature to deal with contempt of the legislature, set out in clause 8, as prescribed in clause 9. In clause 10 certain offences relating to disturbance and contempt of the Provincial Legislature are created.

Chapter 3 deals with members and officers of the Provincial Legislature, and provides in clause 11 that it shall be an offence to arrest a member within the precincts of the Legislature or to serve a summons or subpoena on him or her while the Legislature is sitting. In terms of clause 12 a criminal court should inform the Speaker in writing of certain sentences imposed on a member. Clause 13 provides that no member, officer or reporter shall give evidence elsewhere regarding certain proceedings before the Legislature or a committee, unless special leave has been obtained from the Legislature or, during a recess or adjournment, from the Speaker. In terms of clause 14 no member shall without consent attend before Parliament or any other provincial legislature, or a committee thereof. Clause 15 declares it an offence for a member to vote upon, or take part in the discussion of, any matter in which he or she has a direct pecuniary interest, except in certain cases. In clause 16 certain offences are created relating to the obstruction of members and officers.

Chapter 4 deals with witnesses and documents. In terms of section 17 the Provincial Legislature or a committee authorised thereto may order any person to attend before the Legislature or the committee and to produce any document. Clause 18 prescribes how such order shall be notified to the witness, the contents of a summons and how it shall be served, as well as the amount that may be paid to witnesses. Clause 19 provides the examination of witnesses and clause 20 for the privilege of witnesses. In clause 21 certain offences are created in relation to the conduct of witnesses. According to clause 22 no witness shall be liable to any legal proceedings by reason of anything said or revealed in his or her evidence, if he or she is in possession of a certificate stating that he or she has answered fully and satisfactorily all questions put to him or her by the Provincial Legislature or a committee thereof. In clause 23 certain further offences in relation to witnesses are created.

Chapter 5 contains some general provisions. Clause 24 provides that a copy of journals printed by order of the Legislature or the Speaker shall *without proof be admissible as evidence at any enquiry in the Republic*. Under clause 25 the Speaker or a committee may be authorised to perform any act of the Provincial Legislature in terms of the Bill. In terms of clause 26 the Bill also applies to a committee meeting beyond the seat of the Legislature or while the Legislature is in recess or adjourned. Clause 27 provides that no person shall be liable for anything done under the authority of the Legislature and within its powers, or under any warrant issued by virtue of those powers. Clause 28 provides for declaration of the boundaries and the extent of the precincts of the Provincial Legislature by the Speaker in consultation with the relevant committee.

Clause 29 contains the short title of the Bill.

**Other information deemed necessary by the member in charge of the Bill**

No instructions have been received in this regard.

## PREMIER'S NOTICE

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### OFFICE OF THE PREMIER

No. 8

31 March 1995

It is hereby notified that the Premier has assented to the following Act which is hereby published for general information:

**No. 3 of 1995: Provincial Adjustments Appropriation Act  
(Pretoria-Witwatersrand-Vereeniging)**

## ACT

**To appropriate an adjusted amount of money for the requirements of  
the Province in respect of the financial year ending 31 March 1995**

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*(English text signed by the Premier)  
(Assented to 15 March 1995)*

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**BE IT ENACTED** by the Provincial Legislature of the Province of Pretoria-Witwatersrand-Vereeniging, as follows:—

1. Subject to the provisions of the Provincial Exchequer Act, 1994 (Act No. 1 of 1994), there are hereby appropriated out of the Provincial Revenue Fund for the requirements of the Province in respect of the financial year ending 31 March 1995, as a charge to the Provincial Revenue Account, the adjusted amounts of money shown in column 1 of the Schedule.

**Short title**

2. This Act shall be called the Provincial Adjustments Appropriation Act, 1995.

**SCHEDULE**

(as a charge to the Provincial Revenue Account)

| Vote |   | Column 1           |
|------|---|--------------------|
| No.  | Title   | Amount             |
|      |   | R                  |
| 1.   | General Provincial Services .....                                 | 123 556 000        |
| 2    | Health Services.....  | 67 549 000         |
| 3    | Road Network Provision and Traffic Administration .....           | 18 943 000         |
| 4    | Community Development.....  | 4 316 000          |
| 5    | Improvement of Conditions of Service.....                         | 28 291 000         |
| 6    | Premier .....   | 5 200 000          |
| 7    | Members of the Executive Council .....                            | 14 000 000         |
| 8    | Legislature .....   | 35 496 000         |
| 9    | Promoting the Reconstruction and Development Programme (RDP)..... | 240 497 000        |
|      | <b>TOTAL.....</b>   | <b>537 848 000</b> |



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