

**NORTHERN CAPE PROVINCE**

**PROFENSI YA KAPA-BOKONE**



**NOORD-KAAP PROVINSIE**

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**Provincial Gazette  
Kasete ya Profensi**

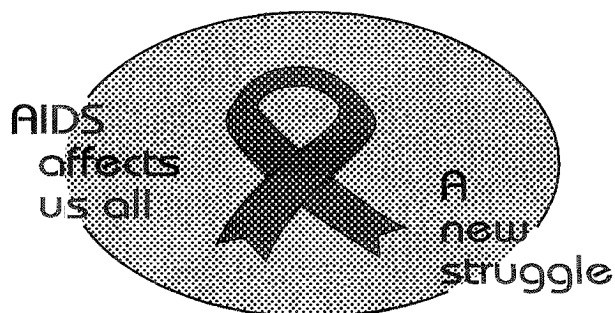
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**No. 1680**

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## GENERAL NOTICES

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### NOTICE 20 OF 2013

#### NORTHERN CAPE PROVINCIAL LEGISLATURE NORTHERN CAPE REPEAL OF LAWS BILL, 2013

The Northern Cape Repeal of Laws Bill, 2013, contained in this Notice, is hereby published for public comment. **Written representation** may be made to the Northern Cape Provincial Legislature and must be directed to:

Adv H Botha

Legal Services Department

Private Bag X 5006

KIMBERLEY

8300

Fax: 053 8398094

Tel: 053 8398020

E-mail: [hbotha@ncpg.ncape.gov.za](mailto:hbotha@ncpg.ncape.gov.za)

**no later than 18 April 2013**

  
**PB MOOPELWA**  
**ACTING SECRETARY**

## **BILL**

**To repeal the Provincial Acts as per the Schedule due to their becoming obsolete.**

**BE IT ENACTED** by the Provincial Legislature of the Northern Cape Province as follows: -

### **Repeal of laws**

1. The provincial acts listed in the Schedule are hereby repealed to the extent mentioned in the Schedule.

### **Short title and commencement**

2. This Act is called the Northern Cape Repeal of Laws Act, 2013 and it comes into operation on date of publication in the *Provincial Gazette*.

**SCHEDULE**

**(ACTS REPEALED)**

<b>ACT</b>	<b>EXTENT OF REPEAL</b>	<b>REPEAL EFFECTIVE AS FROM DATE</b>
Northern Cape Payment of Members of the Provincial Legislature Act 5 of 1994.	Whole	Commencement date of Northern Cape Repeal of Laws Act ___ of 2013.
Disability Plan for Members of the Legislature Act 5 of 1995.	Whole	Commencement date of Northern Cape Repeal of Laws Act ___ of 2013.

**EXPLANATORY MEMORANDUM****TO THE****NORTHERN CAPE REPEAL OF LAWS BILL, 2013****1. BACKGROUND**

The Northern Cape Payment of Members of the Provincial Legislature Act, 5 of 1994 as well as the Northern Cape Disability Plan for Members of the Legislature Act 5 of 1995, had been promulgated shortly after the inception of the Legislatures in 1993/1994 and had now, sixteen years later, become obsolete due to newer legislation such as the Remuneration of Public Office Bearers Act 20 of 1998 which had been passed to regulate the legal position.

**2. OBJECTIVE**

The objective of the Bill is to repeal the acts in question and in the interest of legal certainty, remove them from the Provincial Statute book.

**3. PERSONNEL IMPLICATIONS**

None, since the legislation had been redundant for several years, personnel had automatically been administering the newer national legislation.

**4. FINANCIAL IMPLICATIONS**

None.

**5. CONSULTATION**

The State Law Advisors has furnished extensive comment and is in agreement with the proposed amendment.

No comment had been received from the Snr Manager: Finance and the Snr Manager: Corporate Services.

## **6. CLAUSE – BY – CLAUSE ANALYSIS**

### **Clause 1**

This clause refers to a Schedule which indicates the extent of the Bills as listed.

### **Clause 2**

This Act will be called the Northern Cape Repeal of Laws Act, 2013 and will come into operation on date of publication in the Provincial Gazette.

**NOTICE 21 OF 2013**

**NORTHERN CAPE PROVINCIAL LEGISLATURE**

**NORTHERN CAPE WITNESS BILL, 2013**

The Northern Cape Witness Bill, 2013, contained in this Notice, is hereby published for public comment. **Written representation** may be made to the Northern Cape Provincial Legislature and must be directed to:

Adv H Botha

Legal Services Department

Private Bag X 5006

KIMBERLEY

8300

Fax: 053 8398094

Tel: 053 8398020

E-mail: [hbotha@ncpg.ncape.gov.za](mailto:hbotha@ncpg.ncape.gov.za)

**no later than 18 April 2013**



**PE MOEPLWA**

**ACTING SECRETARY**



## BILL

To regulate the summoning, attendance and examination of a witness before the Legislature or a committee; to compel a witness to comply with the summons; to create offences relating to conduct of a [witness or other] person; and to provide for matters connected therewith.

### Preamble

**WHEREAS** section 115 of the Constitution of the Republic of South Africa, 1996 provides for the Legislature to summon any person to appear before it to give evidence on oath or affirmation;

**BE IT ENACTED** by the Northern Cape Provincial Legislature as follows: -

### Definitions

1. (1) In this Act, unless the context otherwise indicates -

“**committee**” means a committee in terms of the Standing Rules of the Legislature;

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

“**Legislature**” means the Northern Cape Provincial Legislature in terms of section 104 of the Constitution;

“**relevant Chairperson**” means the Chairperson of a Committee that subpoenas a witness for questioning in respect of any matter for investigation before the committee;

“**Standing Rules**” mean the Standing Rules of the Legislature made in terms of section 116 of the Constitution and adopted by the House;

“**this Act**” includes the Annexure to the Act and any regulations made in terms of the Act;

“**witness**” means a person or provincial institution who gives evidence under oath or affirmation to a committee.

**Object**

2. The main object of this Act is to ensure attendance of witnesses before the Legislature or its committees and to create offences relating to witnesses and the act of witnessing.

**Summons to attend**

3. (1) The Legislature or a committee may subject to having complied with the Standing Rules and subsection (2), summons any person to appear before it to give evidence on oath or affirmation or to produce documents on any matter before the committee.
- (2) The relevant Chairperson must satisfy the Speaker that evidence of a witness is material.
- (3) The Secretary must issue a summons to appear before a committee on the written instruction of the Speaker.

**Summons**

4. (1) A summons must be issued on the writ of summons which is attached in the Annexure to this Act and must include at least –
  - (a) the time and place of attendance;
  - (b) an instruction to give evidence produce documents or other articles as specified;
  - (c) the reason for a person's attendance; and
  - (d) the consequences for failure to attend.
- (2) The summons must be served by the sheriff appointed in terms of section 2(1) of the Sheriff's Act, 1986 (Act 90 of 1986).
- (3) The summons must be served –
  - (a) on the person mentioned in the summons; or
  - (b) at the person's usual or last known place of residence or of employment or business to a person who is apparently over the age of 16 years and apparently residing or employed there.
- (4) A return by the Sheriff is *prima facie* proof of service.

### Examination of witness

5. (1) The relevant Chairperson or a person designated by him or her must –
- (a) call upon and administer an oath to or accept an affirmation from the witness;
  - (b) examine the witness;
  - (c) require the witness to produce any book, paper, record, document or object in his or her possession, custody or under his or her control which may have a bearing on the subject of the enquiry; and
  - (d) upon request of the witness avail an interpreter for the proceedings.
- (2) A witness must –
- (a) honestly answer all questions put to him or her; and
  - (b) produce any book, paper, record, document or object in his or her possession or custody or under his or her control.
- (3) A witness may not provide hearsay evidence in respect of a matter that is not within his or her direct and personal knowledge, except for hearsay evidence that is admissible in terms of Law of Evidence.

### Witness privilege

6. (1) The law relating to privilege, as applicable to a witness before a court of law, applies.
- (2) A witness who answered all questions put to him or her fully and satisfactorily may, except for a charge of perjury or an offence that involves a fraudulent element, not be liable to any civil or criminal proceedings, arrest, imprisonment or damages by reason of anything –
- (a) said by him or her in the cause if giving evidence; or
  - (b) said by him or her before and now revealed by his or her evidence.

### Witness protection

7. The relevant Chairperson may assess the need to protect a witness and may direct that evidence be given in camera.

**Attendance of witness detained in prison or other state institution**

8. The relevant Chairperson may subject to section 2, order the person in charge of a prison or other state institution to bring a witness who is in his or her custody, for examination in terms of this Act.

**Compensation for witness expense**

9. The Speaker may subject to financial directives and availability of funds, pay to a witness who is not in government service, an amount for reasonable expenses incurred as a result of being summonsed by the Legislature.

**Offences and penalties**

10. (1) A person who –
- (a) has been summoned in terms of section 2 and who without sufficient cause fails to –
    - (i) attend at the time and place specified in the summons; or
    - (ii) remain in attendance until excused from further attendance by the relevant Chairperson;
  - (b) refuses to be sworn in or to make an affirmation as a witness; or
  - (c) fails, without sufficient cause to –
    - (i) answer fully and satisfactory a question lawfully put to him or her; or
    - (ii) produce a paper, book, record, document or object in his or her possession or custody or under his or her control when so required in terms of section 5(2),
- commits an offence and is on conviction liable to a fine or imprisonment for a period not exceeding 12 months or to both such fine and imprisonment.
- (2) A person who -
- (a) threatens, obstructs or in any way unduly influences a witness required to give evidence or to produce any paper, book, record or document before the Legislature or a committee;
  - (b) with intent to deceive the Legislature or a committee, produce false, untrue, fabricated or falsifies paper, book, record or document;
  - (c) willfully furnishes the Legislature or a committee with information or make a statement before it, which is false or misleading;

- (d) willfully interrupts a meeting where a person is a witness in terms of this Act; or
- (e) defames the committee or a member thereof, commits an offence and is on conviction liable to a fine or to imprisonment for a period that does not exceed two years or to both such fine and imprisonment.

### **Regulations**

11. The Speaker may make regulations which are not inconsistent with this Act or other law regarding generally any matter which he or she deems necessary or expedient to prescribe for the better administration of this Act.

### **Repeal of laws**

12. The Northern Cape Powers and Privileges of the Provincial Legislature Act, 1994 (Act 6 of 1994) is hereby repealed.

### **Short title and commencement**

13. This Act is called the Northern Cape Legislature Witness Act, 2013 and it comes into operation on date fixed by the Premier by Proclamation in the *Provincial Gazette*.

**ANNEXURE**

**Northern Cape Legislature**

**Writ of Summons**

**Issued in terms of:**

- (i) Section 115 of the Constitution of the Republic of South Africa, 1996; and
- (ii) Sec 4 of the Northern Cape Legislature Witness Act \_\_ of \_\_\_\_\_.

**To:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**BY ORDER OF THE HONOURABLE SPEAKER OF THE NORTHERN CAPE PROVINCIAL LEGISLATURE**, you are hereby in terms of the above legislation commanded to appear before

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

to give evidence on oath or affirmation regarding

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

and to produce any paper, book, record or document regarding the above and/or the following specified documentation:

\_\_\_\_\_

\_\_\_\_\_

---

**TAKE NOTE THAT**

---

\_\_\_\_\_ will commence its meeting/sitting at  
\_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_ or as  
soon

thereafter as the Honourable Chairperson of the Committee may determine.

**FURTHER TAKE NOTE** that your failure without sufficient cause –

- (i) to attend at the time and place specified in the summons;
- (ii) to remain in attendance until excused from further attendance by the person  
presiding at the enquiry;
- (iii) to be sworn in or to make an affirmation as a witness;
- (iv) to answer fully and satisfactorily any question lawfully put to you; or
- (v) to produce any paper, book, record or document in your possession or  
custody or under your control which you are required to produce,

**SHALL RENDER YOU GUILTY** of an offence in terms of **section \_\_\_ of the Northern Cape Legislature Witness Act \_\_\_ of \_\_\_\_\_** and you will on conviction be liable to a fine or to imprisonment as stated in the Act.

**THIS WRIT** was issued under my hand \_\_\_\_\_

**SIGNED** \_\_\_\_\_  
**SECRETARY TO THE NORTHERN CAPE  
PROVINCIAL LEGISLATURE**

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ at \_\_\_\_\_

**ENDORSEMENT AS TO SERVICE**

**THIS WRIT** was served by me \_\_\_\_\_ at \_\_\_\_\_  
(where)

on \_\_\_\_\_  
(whom)

on this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_

**SIGNED** \_\_\_\_\_

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_ at \_\_\_\_\_

**OR**

**SUBSTITUTED SERVICE**

**THIS WRIT** was left by me \_\_\_\_\_ with \_\_\_\_\_ (whom) an  
adult person at the usual or last known place or residence of the person(s)  
summoned on this day \_\_\_\_\_ of \_\_\_\_\_ 20 \_\_

**SIGNED** \_\_\_\_\_

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_ at \_\_\_\_\_



## EXPLANATORY MEMORANDUM

### TO THE

### NORTHERN CAPE WITNESS BILL, 2013

#### 1. BACKGROUND

The Northern Cape Powers and Privileges of the Provincial Legislature Act 6 of 1994 had to a great extent become obsolete when the national Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 was passed.

The provincial Act 6 of 1994 contains in Chapter 4 thereof certain sections dealing with witnesses and creates certain offences. The Chapter is though, after 17 years, in need of review and because this will be the only area to be retained in the greatly obsolete Act, repeal of Act 6 of 1994 and enactment of new legislation which only deals with witnessing, is a practical solution.

The national Act, contains in Chapter 5 thereof provisions for summoning, examination and privilege of witnesses, as well as for offences relating to witnesses, but Chapter 5 of Act 4 of 2004 has not been made applicable to legislatures, implying that provinces need to enact their own legislation in this regard.

The Standing Rules of the Legislature (as adopted on 22 November 2001) touches in rules 260 – 262 only on a few minor aspects of witnesses before the House or a committee, but this should ideally be included in the envisaged legislation.

#### 2. OBJECTIVE

The Legislature needs to, with due regard to the above legal position, enact one piece of legislation to ensure the attendance of witnesses before the Legislature to deal with related issues and to create offences relating to witnesses and the act of witnessing.

#### 3. PERSONNEL IMPLICATIONS

None, since existing employees of the NCPL will administrate the legislation.

#### 4. FINANCIAL IMPLICATIONS

None

#### 5. CLAUSE-BY-CLAUSE ANALYSIS

##### Clause 1

This clause contains the definitions and other interpretation provisions.

**Clause 2**

Clause 2 sets out the object of the Act.

**Clause 3**

The Legislature may subject to complying with the Standing Rules summons a person to appear before it.

**Clause 4**

A summons must be issued on a writ of summons.

**Clause 5**

This clause provides for how a witness must be examined.

**Clause 6**

The law relating to privilege applies to a witness.

**Clause 7**

This clause provides that a witness may be protected.

**Clause 8**

Clause 8 provides for attendance of a witness detained in prison or another state institution.

**Clause 9**

A witness may be compensated for certain witness expenses.

**Clause 10**

This clause provides for certain offences and penalties.

**Clause 11**

The Speaker may make regulations to the Act.

**Clause 12**

Clause 12 repeals the Northern Cape Powers and Privileges of the Provincial Legislature Act 6 of 1994.

**Clause 13**

This clause contains the short title of the Act and provides for its commencement.

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