

**WESTERN CAPE LAW ON THE POWERS AND  
PRIVILEGES OF THE PROVINCIAL  
LEGISLATURE AMENDMENT ACT  
3 OF 1998**

Assented to:  
9 March 1998

Date of commencement:  
1 April 1988

*(Afrikaans text signed by the Premier)*

**ACT**

To amend the Western Cape Law on the Powers and Privileges of the Provincial Legislature, 1995, (Law 3 of 1995) so as to provide for the financial arrangements of the Provincial Legislature, and to make provision for the appointment of, and the fixing of the salaries, wages, allowances and other terms or conditions of service of a Secretary and such other officers as may be necessary for the discharge of the work of the Provincial Legislature, and to provide for matters incidental thereto.

**1**

Amends section 1 of the Western Cape Law on the Powers and Privileges of the Provincial Legislature 3 of 1995 by substituting the definition of "officer".

**2**

Inserts Chapter 3A (sections 16A to 16C inclusive) in the Western Cape Law on the Powers and Privileges of the Provincial Legislature 3 of 1995.

**3 Short title**

This Act shall be called the Western Cape Law on the Powers and Privileges of the Provincial Legislature Amendment Act, 1998.

# WESTERN CAPE LAW ON THE POWERS AND PRIVILEGES OF THE PROVINCIAL LEGISLATURE 3 OF 1995

Assented to:  
31 May 1995

Date of commencement:  
1 June 1995

*(English text signed by the Premier)*

as amended by

Western Cape Law on the Powers and Privileges of the Provincial Legislature Amendment  
Act 3 of 1998

## LAW

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

### 1 Definitions

In this Law, unless the context otherwise indicates—

‘committee’ means any committee consisting of members;

‘immediate precincts’ means, for the purposes of section 10, the building housing the Provincial Legislature;

‘journals’ means the minutes of the proceedings of the Provincial Legislature;

‘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 by the Speaker in terms of section 16B;

[Definition of ‘officer’ substituted by sec 1 of Act 3 of 1998 w e f 1 April 1998.]

‘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; and

‘the Constitution’ means the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993).

### Chapter 1

#### FREEDOM OF SPEECH AND DEBATE

### 2 Freedom of speech and debate

(1) Subject to the standing orders, there shall be freedom of speech and debate in or before the Provincial Legislature and any committee, and such freedom shall not be impeached or questioned in any court or place outside the Provincial Legislature.



(2) For the purposes of subsection (1), a member shall not be liable to any civil or criminal proceedings, arrest, imprisonment or damages by reason of anything—

- (a) which he or she may have said or produced in or before or to the Provincial Legislature or any committee; or
- (b) which may have been revealed as a result of anything which he or she may have said or produced in or before or to the Provincial Legislature or any committee.

(3) The provisions of subsection (1) shall not apply to any person, other than a member, giving evidence before the Provincial Legislature or any committee.

### 3 Protection in respect of publications of Provincial Legislature

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 or minutes of proceedings of the Provincial Legislature or any committee by order or under the authority of the Provincial Legislature, any such committee or the Speaker.

### 4 Protection in respect of extracts and abstracts

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

### 5 Offences relating to unauthorised printing

(1) Any person who—

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

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

## Chapter 2

### THE PROVINCIAL LEGISLATURE

### 6 Arrest of persons creating disturbance

(1) Any person creating or joining in any disturbance in the Provincial Legislature while the Provincial Legislature is sitting may be arrested without warrant on the verbal order

of the Speaker and may be detained by such officer as the Speaker may designate until he or she is brought before the Provincial Legislature or taken to a police station.

(2) Every police officer and every other person shall, when called upon by any officer to do so, assist such officer in the arrest and detention of any person arrested by virtue of a verbal order referred to in 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.

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

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 judgment 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 by this Chapter.

## **8 Contempt of Provincial Legislature**

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

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

## **9 Disciplinary action against members**

(1) Any member adjudged guilty of contempt of the Provincial Legislature may, in addition to any other penalty to which he or she is liable under this Law or any other law—

- (a) be cautioned or reprimanded—
- (b) be fined an amount not exceeding R5 000, which fine may be recovered by deducting specified instalments from his or her remuneration; or
- (c) be suspended for a period not exceeding two years.

(2) All fines payable under subsection (1) may be recovered by means of civil action in a competent court by the Member of the Executive Council responsible for Finance, if authorised by the Provincial Legislature to institute legal proceedings for the recovery thereof.



(3) Any fine imposed under subsection (1) which is recovered shall be paid into the Provincial Legislature Fund.

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

Any person who—

- (a) while the Provincial Legislature is sitting, creates or joins in any disturbance within the Council Chamber of such Legislature or within the immediate precincts 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 be liable to a fine or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

## **Chapter 3**

### **MEMBERS AND OFFICERS**

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

(1) Notwithstanding anything to the contrary contained in any other 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 or any committee 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.

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

Whenever in any criminal proceedings any member has been sentenced to imprisonment 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.

## **13 Giving evidence of proceedings**

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

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

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

(1) No member shall without the consent, or an order of the Provincial Legislature or during any recess or adjournment, without the consent of the Speaker attend before Parliament, any other provincial legislature or any committee of Parliament or such other provincial legislature.

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

(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 members, or to any interest in any matter which a member may have in common with the public generally, or with any class or section of the public.

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

Any person who—

(a) threatens, obstructs or insults any member—

- (i) proceeding to or going from any sitting of the Provincial Legislature; or
- (ii) on account of the member's conduct in the Provincial Legislature;

(b) attempts 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

(c) hinders or obstructs any officer in the execution of his or her duty or while proceeding to or going from 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 3A**

##### **FINANCIAL ARRANGEMENTS AND STAFF (secs 16A-16C)**

[Chapter 3A (secs 16A-16C) inserted by sec 2 of Act 3 of 1998 w e f 1 April 1998.]

#### **16A Appropriation of moneys and control of expenditure**

(1) The control of the expenditure and the appropriation of moneys for the services of the Provincial Legislature shall be vested in the Speaker, and his or her authorization for such



expenditure and appropriation of moneys, as well as receipts issued by the accounting officer referred to in subsection (2) on his or her behalf, with reference to all matters affecting those services shall, notwithstanding anything to the contrary contained in any law but subject to the provisions of this section, be *prima facie* taken to be in all respects good, valid and effectual.

(2) Subject to the provisions of this Law, and unless otherwise directed by the Speaker, the Secretary shall be the accounting officer charged with the collection, receipt, custody and payment of moneys for the services of the Provincial Legislature, as well as the receipt, custody and control of property acquired for the administration of the Provincial Legislature, and the Secretary shall keep proper accounts of all moneys received and paid out by him or her and of all his or her financial transactions.

(3) The Secretary shall requisition the moneys voted for the services of the Provincial Legislature from the Provincial Treasury.

(4) The Secretary shall maintain at a bank registered as such under the Banks Act, 1990 (Act 94 of 1990), and approved by the Speaker, an account into which must be deposited all moneys received by him or her and from which all payments shall be made by him or her, and the Secretary may authorize an officer to sign the necessary cheques for the said payments.

(5) Notwithstanding anything to the contrary contained in any law, the Secretary may approve that a saving under a main division of the vote of the Provincial Legislature in an appropriation Law may be applied towards the defrayment of excess expenditure under another main division or of the expenditure under a new main division of that vote; provided that amounts appearing in "Column 2" of a schedule to such an appropriation Law in respect of the said vote, subject to the provisions of section 7(1)(b)(ii) of the Western Cape Exchequer Law, 1994 (4 of 1994), shall not be exceeded, and the savings thereon, with the approval of the Speaker, may be applied for the defraying of other expenses for which insufficient allocation was made under the vote.

(6) At the end of each financial year the Secretary shall cause statements of account to be prepared showing in detail the moneys received by him or her, and the expenditure incurred by him or her during the financial year in question and these statements shall be submitted to the standing committee of the Provincial Legislature responsible for the internal arrangements of the Legislature.

(7) At the end of a financial year the Secretary shall surrender to the Provincial Treasury for redepositing in the Provincial Exchequer Account, any unexpended balance of moneys received from the Treasury.

(8) The provisions of sections 7, 15, 20 and 21 of the Western Cape Exchequer Law, 1994 (Law 4 of 1994), shall *mutatis mutandis* apply in respect of the services, vote, accounts, moneys and property of the Provincial Legislature, and in such application—

- (a) any reference in sections 15, 20 and 21 to an accounting officer shall be deemed to be a reference to the Secretary;
- (b) any reference in section 20(1)(c) to the Provincial Treasury shall be deemed to be a reference to the Speaker;
- (c) any reference in section 21 to the responsible Member and the Provincial Treasury shall be deemed to be a reference to the standing committee referred to in subsection (6) and to the Speaker respectively; and

(d) any reference in section 21 to a person who is or was in the employ of the Province, shall be deemed to be a reference to an officer who is or was in the employ of the Provincial Legislature.

(9) The accounts of the Provincial Legislature will be audited by the Auditor-General.

(10) For the purposes of this section the expressions—

- (a) 'Auditor-General' in subsection (9);
- (b) 'Provincial Exchequer Account' in subsection (7);
- (c) 'financial year' in subsections (6) and (7);
- (d) 'Provincial Treasury' in subsections (3) and (7), and
- (e) 'vote' and "Appropriation Law' in subsection (5),

shall bear the respective meanings assigned thereto in section 1(1) of the Western Cape Exchequer Law, 1994 (Law 4 of 1994).

[Sec 16A inserted by sec 2 of Act 3 of 1998 w e f 1 April 1998.]

### **16B Appointment of staff and fixing of remuneration**

(1) The Speaker shall appoint a Secretary and such other officers as may be necessary for the discharge of the work of the Provincial Legislature.

(2) The salaries, wages or allowances and other terms or conditions of service of the Secretary and officers referred to in subsection (1) shall be fixed by the Speaker with due regard to salaries, wages or allowances and other terms or conditions of service applicable to officers appointed in terms of the Public Service Act, 1994.

(3) Before fixing the salaries, wages or allowances referred to in subsection (2), the Speaker shall consult the Member of the Executive Council responsible for Finance on the financial implications thereof.

[Sec 16B inserted by sec 2 of Act 3 of 1998 w e f 1 April 1998.]

### **16C Transitional arrangements**

(1) The Speaker shall, subject to subsections (2) and (3) and any other applicable laws, appoint as an officer any person who immediately before the commencement of the Western Cape Law on the Powers and Privileges of the Provincial Legislature Amendment Act, 1998 was an officer in the Public Service, and was engaged in the discharge of the work of the Provincial Legislature; provided that the foregoing provision shall not apply to any person who will receive a voluntary severance package from the Public Service.

(2) For the purpose of an appointment referred to in subsection (1) the Speaker shall enter into a written agreement with the person concerned which provides at least for the following—

- (a) that the person concerned undertakes to resign from the Public Service with effect from an agreed date;
- (b) that the Speaker undertakes to appoint the person to the staff of the Provincial Legislature with effect from the date immediately following the date of resignation;
- (c) the full protection of the rights, interest and rank of the person;



- (d) that the Speaker undertakes to apply to the Government Employees Pension Fund for registration as an employer for purposes of that fund; and
  - (e) that the Provincial Legislature undertakes that for so long as any such person remains in the employ of that legislature, it will remain so registered as an employer and undertakes to pay the employer contributions to such pension fund as from time to time determined.
- (3) The salaries, wages or allowances and other terms or conditions of service of any persons appointed in terms of subsection (1) shall not be less favourable at the time of the appointment that they were immediately before such appointment.

[Sec 16C inserted by sec 2 of Act 3 of 1998 w e f 1 April 1998.]

Chapter 4  
WITNESSES AND DOCUMENTS

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

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 Pro-

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vincial Legislature or 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.

### **18 Summoning of witnesses**

(1) Notice of an order to attend, or to produce any document before, the Provincial Legislature or any committee shall be given to the person required to attend or to produce any 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 presiding officer of 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 the place at which the person summonsed 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 some adult person at the first-mentioned person's usual or last known place of residence.

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

### **19 Examination of witnesses**

Whenever the Provincial Legislature or any committee requires that any fact, matter or thing relating to the subject of the enquiry before the Provincial Legislature or such committee be verified or otherwise ascertained by the oral examination of any witness, the Speaker, the chairman of such committee or a person especially 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 who was or could have been summonsed in terms of section 18; or
- (b) examine any person referred to in paragraph (a) or require such person 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.

### **20 Privilege of witnesses**

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 summonsed to give evidence or to produce any paper, book, record or document before a court of law, shall apply.

## **21 Offences relating to conduct of witness**

Any person who—

- (a) has been duly summonsed 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 in 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.

## **22 Witnesses not liable to legal proceedings**

(1) Except in the case of perjury or any offence under section 23(b) or (c), no witness who is in possession of a certificate referred to in subsection (2) shall be liable to any civil or criminal proceedings, arrest, imprisonment or damages by reason of anything said by him or her in the course of giving his or her evidence before the Provincial Legislature or such committee.

(2) If a witness has answered fully and satisfactorily all questions put to him or her by the Provincial Legislature or any committee, he or she shall, at his or her request, be entitled to receive a certificate under the hand of the person presiding at the enquiry, stating that the particular witness did so answer all questions upon his or her examination; provided that such certificate may, in the case of a witness before any such committee, be signed by the Speaker.

## **23 Miscellaneous offences**

Any person who—

- (a) threatens, obstructs or in any way unduly influences any witness required to give evidence to, or to produce any paper, book, record or document before, the Provincial Legislature or any committee;

- (b) with intent to deceive the Provincial Legislature or any committee, produces to the Provincial Legislature or 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 makes 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 5

### GENERAL

#### **24 Receiving of compensation by certain persons prohibited**

(1) No attorney, law agent or parliamentary agent who in the practice of his or her profession is a partner of or in the service of a member shall accept or receive, either directly or indirectly, any fee, compensation, gift or reward for or in respect of the promotion or opposition to any bill, resolution, matter, rule or thing submitted or proposed to be submitted to the Provincial Legislature or any committee for its consideration.

(2) Any person 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 and, in addition, to repayment of the amount or the value of the fee, compensation, gift or reward accepted or received by him or her.

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

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.

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

(1) 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 Law.

(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 invested in terms of this Law for the performance of such act.



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

In so far as it may be necessary for the achievement of the objects of this Law 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 adjourned, the provisions of this Law 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.

**28 Liability for acts done under authority of Provincial Legislature**

No person shall be liable in damages 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 these powers.

**29 Short title**

This Law shall be called the Western Cape Law on the Powers and Privileges of the Provincial Legislature, 1995.