



Northern Cape
Provincial Legislature

Northern Cape Petitions Act, 2009



ACT

To define a petition in respect of amongst others, purpose, scope and requirements; to provide for general principles, process and procedure for a person to petition the Legislature; to provide for powers and functions of the Committee which must consider petitions; to clarify the role and function of the Petitions Office; to provide for the right to appeal the outcome of a petition to an appeal body; and to provide for incidental matters.

PREAMBLE

WHEREAS section 17 of the Constitution amongst others, guarantees a person's right to petition;

AND WHEREAS section 115 of the Constitution states that a provincial Legislature or any of its committees may receive petitions, representations or submissions from any interested person;

AND WHEREAS section 116 of the Constitution does not prescribe a process and procedure for when a petition is received by a Legislature;

AND DULY RECOGNISING the status, role and function of Chapter 9 Institutions or any other investigative body in terms of any legislation;

BE IT THEREFORE ENACTED by the Northern Cape Provincial Legislature as follows: –

ARRANGEMENT OF SECTIONS

Section

1. Definitions
2. Purpose of petition
3. Right to petition
4. Scope of petition
5. Requirements for petition
6. Petitions Office
7. Role and function of Petitions Office in respect of petition
8. Role, function and reporting of Committee

9. Powers of Committee
10. Meeting of Committee
11. Delegation
12. Right of appeal
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Definitions

1. (1) In this Act, unless the context otherwise indicates –
 - “**appeal**” means an appeal contemplated in section 12;
 - “**appeal body**” means an appeal body appointed in terms of section 13;
 - “**Chairperson**” means the chairperson of the Committee;
 - “**Chapter 9 Institution**” means a body established by Chapter 9 of the Constitution, which supports constitutional democracy;
 - “**Committee**” means a Committee of the Legislature in accordance with the Standing Rules, responsible to consider petitions in terms of this Act;
 - “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
 - “**day**” means a working day with the exclusion of a Saturday, Sunday or a public holiday;
 - “**Executive Council**” means the Executive Council of the Province as contemplated in section 132 of the Constitution;
 - “**Gazette**” means the *Provincial Gazette*;
 - “**House**” means the Northern Cape Legislature;

“Legislature” means the Provincial Legislature of the Province contemplated in section 104 of the Constitution;

“member” means a member of the Legislature;

“National Council of Provinces” means the Council as referred to in section 42 of the Constitution;

“petition” means a complaint, request, a representation or a submission by a petitioner to the Speaker in terms of this Act;

“petitioner” means a person who submits a petition in terms of this Act;

“Petitions Office” means employees of the Legislature responsible to effectively administer and implement this Act;

“Province” means the Northern Cape Province referred to in section 103 (1)(g) of the Constitution;

“provincial legislation” includes -
(a) subordinate legislation made in terms of a provincial act; and
(b) legislation that was in force when the Constitution took effect and that is administered by the provincial government;

“provincial organ of state” means -
(a) an organ of state in the provincial sphere of government; or
(b) a functionary or institution which exercises a public power or performs a public function in terms of provincial legislation;

“public holiday” means the days as contemplated in Schedule I of the Public Holidays Act, 1994 (Act 36 of 1994);

“Public Protector” means the Public Protector as referred to in the Public Protector Act, 1994 (Act 23 of 1994);

“Secretary” means the most senior official in the Legislature who is appointed in terms of relevant legislation;

“Speaker” means the Speaker of the Legislature who is elected in terms of section 111 of the Constitution;

“Standing Rules” means the rules and orders which are made for the conduct of the business of the Legislature in terms of section 116 of the Constitution;

“this Act” includes regulations made in terms thereof; and

“working language” means an official language used by the Committee for meetings or administrative purpose.

Purpose of petition

2. The purpose of a petition is to seek relief from the Legislature where all other appropriate or lawful avenues for relief have been exhausted by a petitioner.

Right to petition

3. (1) A person may, subject to sections 4 and 5, submit a petition in terms of this Act.
- (2) A petition may be submitted by a person who acts –
 - (a) in his or her own interest;
 - (b) in the interest of another person who is for whatever reason not in a position to submit a petition in his, her or its own name;
 - (c) as a member of or in the interest of a group or class of persons; or
 - (d) in the public interest.
- (3) A member who submits a petition must recuse him or herself when it is considered in committee.
- (4) The Petitions Office must render reasonable, but not financial assistance, to a person who wishes to lodge a petition and must ensure that the petition complies with this Act.
- (5) The Petitions Office must in writing, direct a person with a petition which has a scope that falls outside the subject matter referred to in section 4(1), to the correct institution, authority or organ of state to assist that person.

Scope of petition

4. (1) A petition must –
 - (a) fall within the legislative authority of the Province;
 - (b) fall within the executive authority of the Province;
 - (c) relate to a matter assigned to a member of the Executive Council;
 - (d) relate to provincial supervision of local government; or
 - (e) relate to a provincial organ of state.
- (2) A petition may be –
 - (a) a single petition, which is an individual submission from a single petitioner, concerning a particular matter;
 - (b) an association petition, which is a submission from an association or single petitioner mandated by an association to submit that petition, concerning a particular matter;

- (c) a collective petition, which is a collection of signatures from a number of petitioners, concerning a particular matter; or
 - (d) a mass or group petition, which comprise of individual or group submissions from a number of petitioners, concerning the same or a substantially similar matter.
- (3) A petition must comply with the requirements as set out in section 5.
 - (4) A petition must be directed to the Speaker and lodged with the Secretary.
 - (5) The Secretary must without delay –
 - (a) forward a petition which he or she received, to the Petitions Office; and
 - (b) table every petition which according to the Petitions Office complies with the requirements of this section and section 5 in the House for its referral to the Committee.

Requirements for petition

- 5. (1) A petition must –
 - (a) fall within the scope of matters contemplated in section 4(1);
 - (b) not concern a matter pending in a court of law, other tribunal or forum or investigative institution contemplated in the Constitution or any other law;
 - (c) not be in connection with the conviction and sentencing of a person by a criminal court or a judgement made by a civil court of law;
 - (d) comply with all requirements set out in this Act; and
 - (e) if submitted by a member, not deal with a matter which is already before a Committee of the Legislature.
- (2) A petition must furthermore -
 - (a) be legible;
 - (b) not contain a defamatory statement or improper language;
 - (c) contain a carefully worded request that the Legislature takes or refrains from taking certain action in response to the petition;
 - (d) be signed by the petitioner, or in the case of a petitioner who is for any reason unable to write, he or she must make a mark in the presence of two witnesses who must also sign as such;
 - (e) not have been considered by the Committee previously, except if that petition, in the opinion of the Chairperson, contains new information that may materially impact on the outcome of a re-consideration of the matter; and

- (f) not be in respect of a matter that the petitioner has not yet brought to the attention of a relevant body, or if the petitioner has brought it to the attention of the relevant body, the relevant body has not been afforded reasonable time to consider the matter.
- (3) The Committee may, subject to section 3(4), refuse to consider a petition which do not comply with subsections (1) and (2), and in writing inform the petitioner of that fact as well as give reasons for its decision.

Petitions Office

6. (1) A Petitions Office in the Legislature must ensure the effective administration and implementation of this Act.
- (2) The Petitions Office must, subject to section 15, determine its own administrative procedure in respect of receipt, investigation and conclusion of the petition process.

Role and function of Petitions Office in respect of petition

7. (1) The Petitions Office must subject to section 3(4) take all reasonable steps to enable the Committee to consider a petition.
- (2) The Petitions Office must in writing, inform the Chairperson within 7 days of the receipt of a petition from the Secretary.
- (3) The Petitions Office must inform a petitioner timeously –
- (a) if the petitioner has been invited by the Committee to make an oral submission or call a witness;
 - (b) of the date, time and venue when the petition is to be considered and whether the petitioner may attend that meeting of the Committee;
 - (c) of a referral of the petition to another person or body contemplated in this Act;
 - (d) of progress made in respect of the consideration of a petition;
 - (e) of remedies available to the petitioner;
 - (f) that he or she has subject to relevant legislation, access to the specific petition file at all reasonable times; and
 - (g) of a Committee decision in respect of a petition and if the petitioner so require, the reasons for that decision.

Role, function and reporting of Committee

8. The Committee must –
- (a) consider and decide on every petition which the House has referred to it;

- (b) record the oral submission of a petitioner or evidence of a witness in terms of section 9(a);
- (c) **quarterly report** to the **Legislature** on the petitions submitted to it during that period, and all its activities in respect thereof, including:
 - (i) The responsiveness, efficiency and timeousness within which petitions were dealt with; and
 - (ii) the efficiency of the petitions process and procedures.

Powers of Committee

9. (1) The Committee may subject to relevant legislation -
 - (a) invite a petitioner to -
 - (i) supplement a petition with additional oral or written submissions;
 - (ii) call a witness to present oral or written evidence to the Committee;
 - (b) require the attendance of a person before the Committee to produce any paper, book, record or document under his, her or its control;
 - (c) recommend to an appropriate person or body to settle the petition in order to do justice to the petitioner;
 - (d) recommend to an appropriate person or body the general approach to be followed in future in settling a similar request or complaint;
 - (e) if requested by the petitioner, resolve a dispute or complaint, reverse an action or rectify an omission, regarding a matter which is not regulated by legislation, by way of mediation or negotiation;
 - (f) conclude its consideration of a petition if it resolves that no steps, or no further steps, as the case may be, can be taken to settle that matter to the satisfaction of the petitioner;
 - (g) delegate any of its functions or powers in terms of section 11; or
 - (h) close the petition file if the petition has been settled to the satisfaction of the petitioner.
- (2) The Committee may refer a petition or any part thereof with a specific directive or recommendation to a member of the Executive Council, a municipal council, a provincial organ of state, a Chapter 9 Institution, the National Prosecuting Authority or an investigative body or investigative authority which exists in terms of relevant legislation, for its response within a reasonable period.
- (3) The Committee must -
 - (a) report a failure to respond or a dissatisfactory response to the House; and

- (b) take any other appropriate step which the Committee lawfully may.
- (4) The House must notify the NCOP of a dissatisfaction as referred to in subsection (3)(a).

Meeting of the Committee

- 10.**
- (1) The Committee may in order to hear evidence and to consider a petition, meet at a date, time and at a place in the Province as the Chairperson determines.
 - (2) The Chairperson may give public notice of a meeting in accordance with the Standing Rules.
 - (3) The Petitions Office must timeously -
 - (a) ensure that an invitation, instruction or summons to appear before the Committee has been properly issued and served;
 - (b) inform the petitioner in writing of a matter that the petitioner is entitled to be informed of in terms of this Act or any other law;
 - (c) if necessary, ensure that the contents of a petition file is translated into a working language of the Committee; and
 - (d) perform any other duty, to enable the Committee to consider a petition and exercise its functions in terms of this Act.
 - (4) Evidence which is presented before the Committee must be heard in public unless it is -
 - (a) in the interest of justice; or
 - (b) in the interest of the safety of the petitioner or a witness that the evidence be heard behind closed doors.
 - (5) The Petitions Office must at every meeting of the Committee provide the Chairperson with a list of submitted petitions, which have not yet been finalised by the Committee.

Delegation

- 11.**
- (1) The Committee may delegate any responsibility in respect of a particular petition to a member.
 - (2) The Chairperson must provide that member with a written and signed authorization to consider a particular petition.
 - (3) The Chairperson in consultation with the Committee may, at any time before or whilst the member has already commenced with the consideration of a particular petition, withdraw such authorization.

- (4) The member must after he or she has concluded the consideration of a petition, in writing report the outcome thereof to the Committee.
- (5) Nothing contained in this section prevents the Committee to exercise a power or perform a duty delegated in terms of this section.
- (6) A member who is appointed in terms of this section has all the powers by implication necessary to enable him or her to fulfil the delegated function.

Right of appeal

12. (1) A petitioner may within 21 days after he or she has been informed of the outcome of a petition, in writing, appeal to the Speaker against –
 - (a) a refusal by the Committee to consider a petition;
 - (b) a determination by the Chairperson to consider the petition behind closed doors; or
 - (c) a recommendation, referral to another person or other decision of the Committee after consideration of the petition.
- (2) An appeal must set out -
 - (a) the reason for the appeal;
 - (b) the matter in respect of which the Committee or the Chairperson erred; and
 - (c) the decision, recommendation or conclusion the Committee should, in the opinion of the petitioner, have made or arrived at.

Appeal body

13. (1) The Speaker must within 21 days from the receipt of an appeal, from amongst members other than those of the Committee, or any other person with required expertise, from time to time, in writing appoint an appeal body, to consider an appeal in terms of section 12.
- (2) The appeal body must comprise of three persons of whom two persons must subject to subsection (1), be members who represent different political parties.
- (3) The appeal body must determine its own operations and procedure.
- (4) The appeal body must consider the procedure followed and the merit of the Committee decision.

- (5) The appeal body must within 21 days of receipt of the appeal either -
 - (a) dismiss the appeal;
 - (b) uphold the appeal;
 - (c) refer it back to the Committee for re-consideration; or
 - (d) make any other determination which it is competent in law to make.
- (6) The appeal body must submit its finding and reasons therefore in writing to the Speaker, who must without delay, inform the petitioner.

Accountability of Committee

14. (1) The Committee must subject to section 4(5), quarterly report to the Legislature as contemplated in section 8(c).
- (2) A debate on an issue raised in a report of the Committee must take place if more than four members of the Committee so demand.
- (3) The Legislature may refer a matter contained in a report back to the Committee for reconsideration.
- (4) A member of the Legislature has subject to section 3(3) access to a petition file at any reasonable time.
- (5) The Legislature may whilst the Committee is considering a petition, only conduct an interpellation in respect of the merits thereof.
- (6) A member of the Legislature may, whilst the Committee is considering a petition, only put a question in respect of that petition relating to the process of considering the petition and not on the merit thereof.

Regulations

15. The Speaker may, in consultation with the Committee, make regulations to better achieve the purpose and to better administrate this Act.

Short title and commencement

16. This Act is called the Northern Cape Petitions Act, 2009, and it comes into operation on a date determined by the Premier by proclamation in the *Gazette*.