

{English text signed by the Premier}

KWAZULU-NATAL LEGISLATURE WITNESSES ACT, 2007
(ACT NO. 01 OF 2007)

Assented to on 2007-04-19

ACT

To regulate the summoning and examination of witnesses by the Legislature of the Province of KwaZulu-Natal and its committees; and to provide for incidental matters.

BE IT ENACTED by the Legislature of the Province of KwaZulu-Natal, as follows:—

Definitions

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

"committee" means a committee of the Legislature consisting of members;

"Constitution" means the Constitution of the Republic of South Africa, 1996;

"Legislature" means the Provincial Legislature of the province of KwaZulu-Natal;

"member" means—

(a) a member of the Legislature; or

(b) a permanent delegate of the province of KwaZulu-Natal to the National Council of Provinces;

"Powers, Privileges and Immunities Act" means the national Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004 (Act No. 4 of 2004);

"Secretary" means the Secretary to the Legislature;

"sheriff" means a person appointed as sheriff in terms of section 2 of the Sheriffs Act, 1986 (Act No. 90 of 1986), and includes an acting sheriff and a deputy sheriff;

"Speaker" means the Speaker of the Legislature;

"Standing Rules" means the rules and orders made by the Legislature in terms of section 116 of the Constitution.

Summoning of witnesses

2. (1) A summons in terms of section 115(c) of the Constitution to appear before the Legislature or a committee to give evidence or to produce documents must be issued by the Secretary on the instructions of—

(a) the Speaker; or

(b) the chairperson of the committee concerned, acting in accordance with a resolution of the committee and with the concurrence of the Speaker.

(2) The summons must be in the form prescribed by Schedule 1, and must state—

(a) the name of the person summonsed;

(b) the name or designation of the person who must serve the summons;

- (c) the time, place and venue at which the person summonsed is required to appear;
- (d) the subject of the enquiry;
- (e) the purpose for which the evidence of that person is required; and
- (f) a description of the document, if any, which that person is required to produce.

(3) The summons must be served by the sheriff, or by a person designated by the Secretary, by delivering a copy of the summons—

- (a) to the person summonsed; or
- (b) at that person's usual or last known place of residence or of employment or business, to a person apparently over the age of 18 years and apparently residing or employed there.

(4) A person other than the Sheriff delivering a summons in terms of subsection (3) must complete a return of service in the format of Schedule 2.

(5) A return by the person who served the summons that service thereof has been effected in accordance with subsection (3) is *prima facie* proof of the service.

(6) A person summonsed in terms of this section is entitled to be paid in accordance with the tariff of allowances prescribed by the Minister of Justice and Constitutional Development and published in terms of section 42 of the Supreme Court Act, 1959 (Act No. 59 of 1959), by notice in the Gazette.

Examination of witnesses

3. (1) When the Legislature or a committee requires that anything be verified or otherwise ascertained by the oral examination of a witness, the person presiding at the enquiry may call upon and administer an oath to, or accept an affirmation from, any person present at the enquiry, whether or not that person was summonsed in terms of section 2.

(2) The Legislature or the committee, as the case may be, may—

- (a) examine the witness on any matter in connection with the enquiry; and
 - (b) request the witness to produce any document in the possession or custody of the witness or under his or her control which may have a bearing on the subject of the enquiry,
- subject to section 4 and any limitation provided for by or in terms of the Standing Rules with regard to the type of subject matter about which a witness may be questioned or the type of document that a witness may be requested to produce.

(3) The witness must—

- (a) answer all questions put to the witness under subsection (2); and
- (b) produce all documents in the possession or custody of the witness or under his or her control which he or she is requested to produce under subsection (2).

Privilege of witnesses

4. (1) Subject to subsection (2), the law regarding privilege as applicable to a witness before the High Court of South Africa applies to the examination of a person in terms of section 3.

(2) A person who is being examined under oath or affirmation in terms of section 3 may not refuse to answer any question or to produce any document on the ground that the answer or the document would incriminate him or her or would tend to expose him or her to criminal or civil proceedings, or damages.

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

Offences

5.(1) A person who—

(a) has been duly summonsed in terms of section 2 and who fails, without sufficient cause—

(i) to attend at the time and place specified in the summons; or

(ii) to remain in attendance until excused from further attendance by the person presiding at the enquiry;

(b) when called upon under section 3(1), refuses to be sworn in or to make an affirmation as a witness; or

(c) fails, without sufficient cause—

(i) to answer fully and satisfactorily all questions lawfully put to him or her under section 3(2); or

(ii) to produce any document in his or her possession or custody or under his or her control which he or she has been required to produce under section 3(2), commits an offence and is liable to imprisonment for a period not exceeding 12 months or to an appropriate fine determined in terms of applicable legislation or to both the imprisonment and the fine.

(2) A person who—

(a) threatens or obstructs another person in respect of evidence to be given before the Legislature or a committee;

(b) induces another person—

(i) to refrain from giving evidence to or producing a document before the Legislature or a committee; or

(ii) to give false evidence before the Legislature or a committee;

(c) assaults or penalises or threatens another person, or deprives that person of any benefit, on account of the giving or proposed giving of evidence before the Legislature or a committee;

(d) with intent to deceive the Legislature or a committee, produces to the Legislature or committee any false, untrue, fabricated or falsified document; or

(e) whether or not during examination under section 3, wilfully furnishes the Legislature or a committee with information, or makes a statement before it, which is false or misleading,

commits an offence and is liable to imprisonment for a period not exceeding two years or to an appropriate fine determined in terms of applicable legislation or to both the imprisonment and the fine.

(3) Subject to subsection (4), subsections (1) and (2) do not apply to a member.

(4) A member who commits an act mentioned in subsection (1) or (2) is guilty of contempt of the Legislature as contemplated in section 13 of the Powers, Privileges and Immunities Act.

Short title

6. This Act is called the KwaZulu-Natal Legislature: Witnesses Act, 2007.

Schedule 1

SUMMONS TO APPEAR BEFORE THE HOUSE OF THE KWAZULU-NATAL PROVINCIAL LEGISLATURE

To:....., of
[insert title and full names of person to be summonsed]

.....
.....
.....
.....
[insert physical address]

You are hereby given notice that, in terms of section 2 of the KwaZulu-Natal Witnesses Act, 2006 (Act No. of 2006) you are summonsed to appear before the House/ Committee of the Kwazulu-Natal Provincial Legislature at

.....on , in
[insert time] *[insert date]*
.....
[insert venue]

to give evidence on oath or affirmation in respect of
.....
[insert subject matter of enquiry]

for the purpose of
.....
[insert the purpose for which the evidence is required]

and/or to produce the documents or records listed below –
.....
.....

.....

.....

[insert a description of the documents or records to be produced]

This summons is to be served by

.....

[insert the name and designation of the person effecting service of the summons]

Signed by the Secretary of the Legislature, at, this

..... day of 200....

.....

[signature of Secretary]

.....

[official date stamp of the Legislature]

Schedule 2

RETURN OF SERVICE IN RESPECT OF A SUMMONS TO APPEAR BEFORE THE HOUSE OR A COMMITTEE OF THE KWAZULU-NATAL LEGISLATURE

I
[insert full names of person effecting delivery]

being , duly authorized in terms of section 2(3) of the
[insert job designation]]

KwaZulu-Natal Witnesses Act, 2006 (Act No.... of 2006), effected delivery of a summons to appear before the * House/ a Committee *[*delete whichever is not applicable]*

of the KwaZulu-Natal Provincial Legislature at on
[insert time]

..... in
[insert date of Sitting or Committee meeting]

.....
[insert venue and location of Sitting or Committee meeting]

to give evidence on oath or affirmation, and/or to produce the documents or records listed in the summons.

I effected delivery of the summons on

.....
[insert title and full names of person accepting summons]

* the person summoned/ a person apparently over the age of 18 years and apparently in charge at the place where the summons was served, *[* delete whichever is not applicable]* at

.....
.....
.....

[insert address]

at on the day of 200.....

[insert time and date]

Signed at on the day of 200...

.....
[Signature of authorized person]

.....
[Official date stamp of the Legislature]

KWAZULU-NATAL WETGEWER**KORREKSIE KENNISGEWING**

Neem kennis dat die korrekte weergawe van die KwaZulu-Natal Wetgewer: Wet op Getuies, 2007 hierby gepubliseer word.

N. NAIDOO

Sekretaris: KwaZulu-Natal Wetgewer

{Engelse teks deur die Premier geteken}

KWAZULU-NATAL WETGEWER: WET OP GETUIES, 2007
(No. 01 van 2007)

Goedgekeur op 2007-04-19

WET

Om die dagvaardiging en ondervraging van getuies deur die Wetgewer van die Provinsie KwaZulu-Natal en sy komitees te reël; en om vir aangeleenthede in verband daarmee voorsiening te maak

DAAR WORD soos volg deur die Wetgewer van die Provinsie KwaZulu-Natal bepaal:-

Omskrywings

1. In hierdie Wet, tensy die samehang anders aandui, beteken –
“**balju**” ‘n persoon wat behoudens artikel 2 van die Wet op Balju’s, 1986 (Wet No 90 van 1986) aangestel is, insluitende ‘n waarnemende balju en ‘n adjunkbalju;

“**Grondwet**” die Grondwet van die Republiek van Suid-Afrika, 1996;

“**komitee**” ‘n komitee van die Wetgewer wat uit lede bestaan;

“**lid**” –

(a) ‘n lid van die Wetgewer; of

(b) ‘n permanente afgevaardigde van die Provinsie KwaZulu-Natal tot die Nasionale Raad van Provinsies;

“**Reglement van Orde**” die reëls en verordeninge wat die Wetgewer kragtens artikel 116 van die Grondwet gemaak het;

“**Sekretaris**” die Sekretaris van die Wetgewer;

“**Speaker**” die Speaker van die Wetgewer;

“**Wetgewer**” die Provinsiale Wetgewer van die provinsie KwaZulu-Natal;

“**Wet op Bevoegdhe, Voorregte en Immuniteite**” die Wet op die Bevoegdhe, Voorregte en Immuniteite van die Parlement en Provinsiale Wetgewers, 2004 (Wet No 4 van 2004), van die Nasionale Wetgewer.

Dagvaardiging van getuies

2.(1) ‘n Dagvaardiging om voor die Wetgewer of ‘n komitee te verskyn om getuienis af te lê of om dokumentasie voor te lê moet behoudens artikel 115(c) van die Grondwet deur die Sekretaris uitgereik word op las van -

(a) die Speaker; of

(b) die voorsitter van die betrokke komitee wat ooreenkomstig ‘n resoluie van die komitee en met die Speaker se instemming optree.

(2) Die dagvaardiging moet in die formaat wees wat in Bylae 1 omskryf word, en moet melding maak van -

(a) die naam van die persoon wat gedagvaar word;

(b) die naam of betiteling van die persoon wat die dagvaardiging moet beteken;

(c) die tyd, plek en lokaal waar die persoon wat gedagvaar word, moet verskyn;

(d) die onderwerp van die ondersoek;

(e) die doel waarvoor sodanige persoon se getuienis vereis word; en

(f) ‘n beskrywing van die dokument, indien enige, wat sodanige persoon moet voorlê.

(3) Die dagvaardiging moet deur die balju of ‘n persoon wat die Sekretaris aanwys, beteken word, waarop ‘n afskrif van die dagvaardiging afgelewer moet word

(a) by die persoon wat gedagvaar word; of

(b) by sodanige persoon se gewone of laaste plek van verblyf of werk of besigheid, aan ‘n persoon wat ‘n uiterlike voorkoms van ouer as 18 jaar het en vermoedelik daar woon of werk.

(4) Enige ander persoon as die balju wat ‘n dagvaardiging kragtens subartikel (3) beteken, moet ‘n diensbevestiging in die formaat van Bylae 2 voltooi.

(5) Die persoon wat die dagvaardiging beteken het se bevestiging dat die bediening daarvan in ooreenstemming met subartikel (2) uitgevoer is, is *prima facie*-getuienis van sodanige bediening.

(6) 'n Persoon wat behoudens hierdie artikel gedagvaar is, is geregtig op betaling ingevolge die tarief op toelae wat deur die Minister van Justisie en Grondwetlike Ontwikkeling voorgeskryf word, en wat kragtens artikel 42 van die Hooggeregshofwet, 1959 (Wet 59 van 1959) in die Koerant gepubliseer word.

Ondervraging van getuies

3.(1) Wanneer die Wetgewer of 'n komitee versoek dat enigiets bewys of andersyds bevestig moet word wat uit die mondelinge ondervraging van 'n getuie voortspruit, mag die voorsitter by sodanige ondersoek enige persoon wat by die ondersoek teenwoordig is, versoek om 'n eed of verklaring af te lê, ongeag daarvan of sodanige persoon behoudens artikel 2 gedagvaar is al dan nie.

(2) Die Wetgewer of die komitee, soos die geval mag wees, kan –

(a) die getuie ondervra oor enige aangeleentheid wat op die ondersoek betrekking het; en

(b) die getuie versoek om enige dokument voor te lê wat in sy of haar besit of bewaring is, of waaroor die getuie beheer het en wat met die onderwerp van die ondersoek verband hou

onderhewig aan artikel 4 en enige beperking waarvoor voorsiening gemaak is volgens of ooreenkomstig die Reglement van Orde met betrekking tot die onderwerp waaroor 'n getuie ondervra mag word, of die tipe dokument wat 'n getuie op versoek moet voorlê.

(3) Die getuie moet –

(a) alle vrae beantwoord wat ooreenkomstig subartikel (2) gestel word; en

(b) alle dokumentasie voorlê wat in die besit of bewaring van die getuie is, of onder sy of haar beheer is en wat die getuie ooreenkomstig subartikel (2) versoek word om voor te lê.

Voorregte van getuies

4. (1) Kragtens subartikel (2) is die wet wat voorregte van 'n getuie voor die Hoë Hof van Suid-Afrika omskryf, van toepassing op die ondervraging van 'n persoon ooreenkomstig artikel 3.

(2) 'n Persoon wat na die aflegging van 'n eed of verklaring ondervra word, mag ooreenkomstig artikel 3 nie weier om enige vraag te beantwoord of om enige dokument voor te lê op grond daarvan dat sodanige antwoord of dokument hom of haar kan inkrimineer nie, of dat die aard daarvan hom of haar aan kriminele of siviele vervolging of skade kan blootstel nie.

(3) Geen getuienis wat 'n persoon onder eed of verklaring voor die Wetgewer of komitee lewer, mag in enige hof of plek buite die Wetgewer teen sodanige persoon gebruik word nie, behalwe in kriminele sake waar die betrokke persoon vervolgd word op aanklag van myneed of enige aanklag waarna in artikel 5(1)(c) of (2)(d) of (e) verwys word.

Misdrywe

5. (1) Enige persoon wat –

(a) na behore artikel 2 gedagvaar is en wat sonder enige voldoende rede versuim om –

- (i) op te daag op die tyd en plek wat in die dagvaardiging vermeld word; of
- (ii) die verrigtinge by te woon tot hy of sy deur die voorsitter by die ondersoek van verdere bywoning verskoon word;

(b) ooreenkomstig artikel 3(1) gedagvaar word, weier om ingesweer te word of om 'n verklaring as getuie af te lê; of

(c) sonder voldoende rede versuim –

- (i) om volledig en bevredigend te antwoord op alle vrae wat ooreenkomstig artikel 3(2) aan hom of haar gestel word; of
- (ii) om enige dokument wat in sy of haar besit of bewaring is, of waaroor sy of hy beheer het en wat hy of sy ooreenkomstig artikel 3(2) versoek word om voor te lê,

begaan 'n misdryf en mag op grond van toepaslike wetgewing gevangenisstraf vir 'n tydperk van nie langer nie as 12 maande, of 'n toepaslike boete, of beide gevangenisstraf en die boete opgelê word.

(2) Enige persoon wat –

(a) 'n ander persoon dreig of verhinder om getuienis voor die Wetgewer of 'n komitee te lewer;

(b) 'n ander persoon oortuig –

- (i) om te versuim om getuienis af te lê of om dokumentasie aan die Wetgewer of komitee voor te lê; of

(ii) om vals getuienis voor die Wetgewer of komitee af te lê;

(c) 'n ander persoon aanrand of benadeel of dreig, of wat enige voordeel van sodanige persoon weerhou op grond daarvan dat hy of sy getuienis voor die Wetgewer of 'n komitee gelewer het of nog beoog om dit te doen;

(d) met die doel om die Wetgewer of 'n komitee te mislei, enige vals, onwaar, opgemaakte of vervalste dokumente voor te lê, of

(e) tydens enige ondervraging ooreenkomstig artikel 3 of nie, willens en wetens die Wetgewer of 'n komitee van inligting voorsien of 'n stelling maak wat vals of misleidend is,

begaan 'n misdryf en mag op grond van toepaslike wetgewing gevangenisstraf vir 'n tydperk van nie langer nie as twee jaar, of 'n toepaslike boete, of beide gevangenisstraf en die boete opgelê word.

(3) Onderworpe aan subartikel (4) het subartikels (1) en (2) nie op enige lid betrekking nie.

(4) Enige lid wat 'n daad pleeg wat in subartikel (1) of (2) vervat is, is skuldig aan minagting van die Wetgewer, soos omskryf word in artikel 13 van die Wet op Bevoegdhede, Voorregte en Immuniteite.

Kort titel

6. Hierdie wet heet die KwaZulu-Natal Wetgewer: Wet op Getuies, 2007.

Bylae 1

DAGVAARDIGING OM VOOR DIE RAAD KOMITEE VAN DIE KWAZULU-NATAL PROVINSIALE WETGEWER TE VERSKYN

Aan: , van
[titel en volle name van persoon wat gedagvaar word]

.....
.....
.....
.....
[fisiese adres]

Geliewe kennis te neem dat u kragtens artikel 2 van die KwaZulu-Natal Wetgewer: Wet op Getuies (Wet No. van 2006) gedagvaar word om voor die Raad/Komitee oor van die KwaZulu-Natal Provinsiale Wetgewer te verskyn om

..... op in
[tyd] *[datum]*

.....
[plek]

onder eed of bevestiging getuienis af te lê ten opsigte van

.....
.....
[vermeld onderwerp van ondersoek]

met die doel om
.....
[vermeld doel van die getuienis]

en/of om dokumentasie of rekords soos hieronder vermeld, voor te lê –

.....
.....
.....

.....
[omskrywing van die dokumentasie of rekords wat voorgelê moet word]

Hierdie dagvaardiging word beteken deur

.....
[Naam of titel van persoon wat dagvaardiging beteken]

Geteken deur die Sekretaris van die Wetgewer, in , op
hierdie dag van 200... .

.....
[Sekretaris se handtekening]

.....
[amptelike datumstempel van die Wetgewer]

Bylae 2

**BEVESTIGING VAN BETEKENING VAN DAGVAARDIGING OM VOOR DIE
RAAD OF 'N KOMITEE VAN DIE KWAZULU-NATAL PROVINSIALE
WETGEWER TE VERSKYN**

Ek
[volle name van persoon wat dagvaardiging beteken]

in my hoedanigheid as , behoorlik gemagtig ingevolge
[meld beroep]

klousule 2(3) van die KwaZulu-Natal Wetgewer: Wet op Getuies (Wet No. van
2006), het 'n dagvaardiging beteken om voor die "Raad/'n Komitee [**skrap wat nie
van toepassing is nie*] van die KwaZulu-Natal Provinsiale Wetgewer te verskyn om
teen op
[meld tyd] [datum van sitting of komiteevergadering]

in
.....
[meld plek en lokaal van sitting of komiteevergadering]

om getuienis onder eed of verklaring af te lê, en/of om dokumentasie of rekords
wat in die dagvaardiging vermeld word, voor te lê.

Ek het die dagvaardiging beteken op

.....
[titel en volle name van persoon wat die dagvaardiging aanvaar het]

die persoon wat gedagvaar is/'n persoon wat blyk om ouer as **18** jaar te wees en
skynbaar in beheer is van die plek waar die dagvaardiging beteken is, [**skrap wat
nie van toepassing is nie*] by

.....
.....
.....
[meld adres]

om op die dag van 200.....
[tyd en datum]

Geteken in op diedag van 200...

.....
[Handtekening van gemagtigde persoon]

.....
[Amptelike datumstempel van Wetgewer]