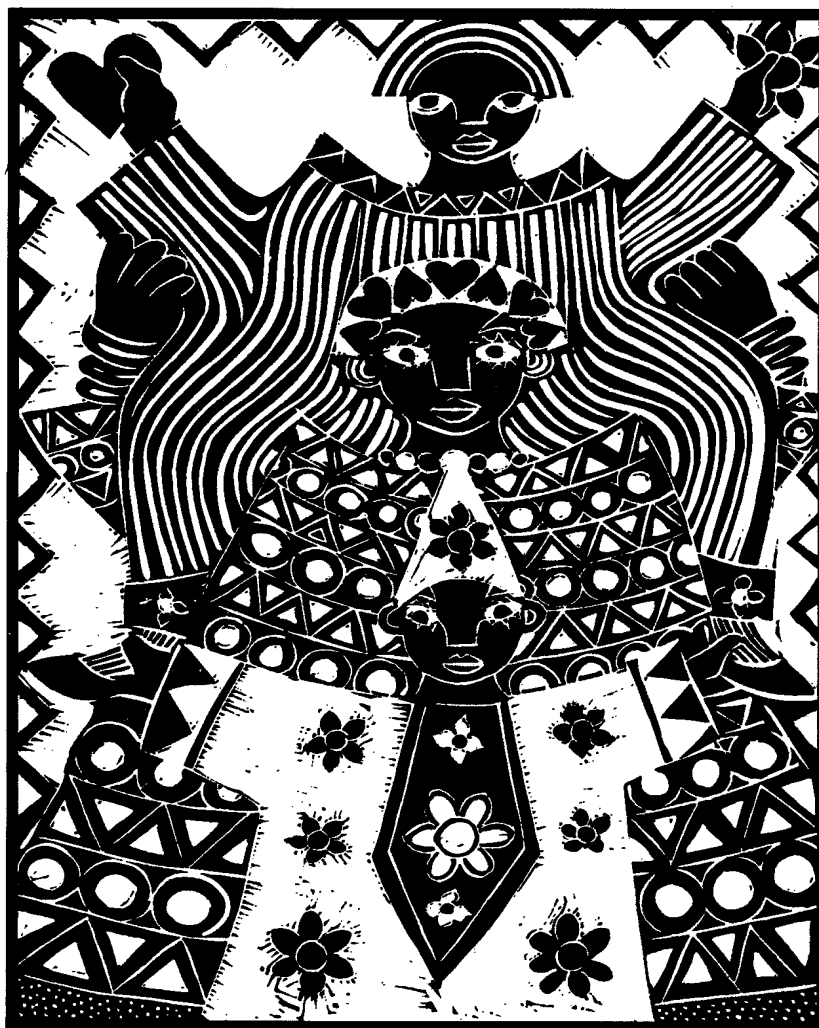


NCOP

PERMANENT DELEGATES

MANUAL



Produced by the NCOP in association with  
The National Democratic Institute for International  
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Agency for International Development (USAID).

July 1999

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# Credits

## *Artwork*

The artwork on the cover of this manual is titled "Taking Care" by Billy Mandini, in association with Hard Ground Printmaker's.

The NCOP has used Billy's work to illustrate this Manual in the interests of promoting South African art and artists.

Billy Mandini was born on 24 February 1967 in Cape Town. He attended the community arts project from 1985 - 1986 and then Michaelis School of Fine Art in 1987. Billy exhibited on the first Africus Biennale in 1995. His work is represented in many public and private collections such as the SA National Gallery, Wits University collection, the University of Stellenbosch and the Unisa collection. Billy Mandini currently works as a full-time artists in Cape Town.

Hard Ground Printmaker's is an organisation founded in 1989 and directed by artist/printmaker Jonathan Cramerford and assisted by artist/printmaker Judy Woodbourne. The workshop was founded to provide a professional environment for the art producing community of the Western Cape. It is a self-funded workshop that generates income from the publishing and selling of artworks. The studio invites artists to collaborate on producing artworks, covering the production and material expenses. The workshop then markets and distributes these works through its publishing network. The studio also extends limited sponsorship to disadvantaged artists in the community in order to encourage and simulate local art and printmaking in particular.

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# MESSAGE FROM THE CHAIRPERSON

Dear Colleagues

Welcome back to the NCOP after a well-deserved recess period. We will now be getting down to the work of the NCOP.

The staff of the NCOP are to be congratulated on the excellent manual they have put together with the assistance of the NDI.

You are faced with an exciting yet challenging period as national representatives who will articulate provincial concerns and provincial successes. Your nomination as permanent delegates places you in a position to play a critical role in the strengthening of South Africa's young democracy.

Use this manual to enhance your working skills and enjoy using it.  
I hope you will enjoy serving as a national representative in our Parliament.

Grace Naledi Mandisa Pandor  
**Chairperson**



# INTRODUCTION.

Congratulations on being elected and welcome to Parliament.

The Mission of the Parliamentary Service is to provide quality service that facilitates the smooth operation of Parliament and enables Members to perform their constitutional functions optimally. Our slogan is "Giving our all, for a Parliament for all."

You will recall the training received in June before and after the First Sitting of the NCOP and the opening of Parliament. This manual is part of the ongoing efforts of the Parliamentary Service to provide Members of Parliament with the information and tools you will need to function as elected representatives of the people. This manual is a compilation of the experience of the NCOP over the last two years since its inception in 1997. It is meant to be an informative and interesting record to assist you in your work in Parliament.

The manual contains information on the various rules and procedures that guide the work of the NCOP and Parliament as a whole. You will also find information on analysing legislation and parliamentary programming.

A special section of the manual contains information on a range of more general topics such as speech writing, time management, public speaking and problem-solving skills.

We have also provided information on members' benefits. The final section of the manual contains the Code of Conduct for Members of Parliament.

For any further assistance or guidance on issues covered in this manual, please contact the following senior staff in the NCOP Division:

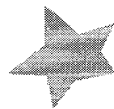
- Marion Sparg, Secretary to NCOP (021 403 2118/2127 or Cellular 083 658 5548)
- Desiree Le Roux, Manager: Office of Procedural Services, NCOP (021 403 2222 or Cellular 083 653 2476)
- Lindikhaya Sipoyo, Manager: Office of Provincial and Municipal Liaison Services, NCOP (021 403 2457 or Cellular 083 320 1125)
- Butcher Matutle, Manager: Office of Chairperson, NCOP (021 403 2119 or Cellular 083 658 5549)

SG Mfenyana  
Secretary to Parliament  
July 1999

*GIVING OUR ALL, FOR A PARLIAMENT FOR ALL*



# How to use this manual



This NCOP Manual has been produced for Permanent Delegates of the NCOP. It has been designed to function as a diary and a manual. The purpose is twofold. It is to provide some of the information you will need to function effectively in the NCOP and Parliament. We also hope that by providing this information with a diary, the Manual will become something you can actually work with over the next five years.

The first section of the Manual contains the diary pages to help you plan your days and hours of work – and rest.

The second section of the Manual contains some of the basic information you will need as a Permanent Delegate in the NCOP. It is not possible to cover all of the topics and circumstances that any member might have questions about. We suggest therefore that you seek out Presiding Officers, Whips, Committee Chairpersons, colleagues and staff of the NCOP who are familiar with the legislative process and the inner workings of the NCOP. You will also need to study many other important documents. These documents include the Constitution, Joint Rules of Parliament and the Rules of the NCOP.

The Manual has been designed to ensure that we can update sections when necessary. This Manual will soon be published on the Parliamentary Web-Site. Any new pages will also be available on the Web-Site. You will be informed when new pages are produced so that you can print this from the Web-Site and file them in your Manual.

We welcome any suggestions for improving the Manual. Like the NCOP, it is work in progress. Please feel to contact the Secretary to the NCOP with your suggestions.



# *The Constitution of the Republic of South Africa*

*1996*

*Act 108 of 1996*

*As Adopted on 8 May 1996 and amended on 11  
October 1996 by the Constitutional Assembly*

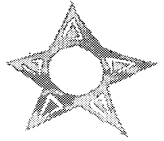
*Extracts*







# PREAMBLE



We, the people of South Africa,

Recognise the injustices of our past;

Honour those who suffered for justice and freedom in our land;

Respect those who have worked to build and develop our country; and

Believe that South Africa belongs to all who live in it, united in our diversity.

We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to -

Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;

Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;

Improve the quality of life of all citizens and free the potential of each person; and

Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.

May God protect our people.

Nkosi Sikelel'iAfrika. Morena boloka setjhaba sa heso.

God seën Suid-Afrika. God bless South Africa.

Mudzimu fhatutshedza Afurika. Hosi katekisa Afrika.



## CHAPTER 1

### FOUNDING PROVISIONS

#### Republic of South Africa

1. The Republic of South Africa is one sovereign, democratic state founded on the following values:
  - (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.
  - (b) Non-racialism and non-sexism.
  - (c) Supremacy of the constitution and the rule of law.
  - (d) Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.

## CHAPTER 2

### BILL OF RIGHTS

#### Rights

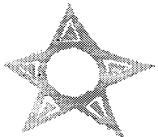
7. (1) This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.
- (2) The state must respect, protect, promote and fulfil the rights in the Bill of Rights.
- (3) The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill.

## CHAPTER 3

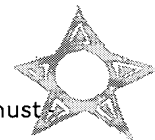
### CO-OPERATIVE GOVERNMENT

#### Government of the Republic

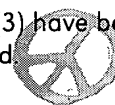
40. (1) In the Republic, government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated.
- (2) All spheres of government must observe and adhere to the principles in this Chapter and must conduct their activities within the parameters that the Chapter provides.



## Principles of co-operative government and intergovernmental relations



41. (1) All spheres of government and all organs of state within each sphere must:
- (a) preserve the peace, national unity and the indivisibility of the Republic;
  - (b) secure the well-being of the people of the Republic;
  - (c) provide effective, transparent, accountable and coherent government for the Republic as a whole;
  - (d) be loyal to the Constitution, the Republic and its people;
  - (e) respect the constitutional status, institutions, powers and functions of government in the other spheres;
  - (f) not assume any power or function except those conferred on them in terms of the Constitution;
  - (g) exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and
  - (h) co-operate with one another in mutual trust and good faith by -
    - (i) fostering friendly relations;
    - (ii) assisting and supporting one another;
    - (iii) informing one another of, and consulting one another on, matters of common interest;
    - (iv) co-ordinating their actions and legislation with one another;
    - (v) adhering to agreed procedures; and
    - (vi) avoiding legal proceedings against one another.
- (2) An Act of Parliament must -
- (a) establish or provide for structures and institutions to promote and facilitate intergovernmental relations; and
  - (b) provide for appropriate mechanisms and procedures to facilitate settlement of intergovernmental disputes.
- (3) An organ of state involved in an intergovernmental dispute must make every reasonable effort to settle the dispute by means of mechanisms and procedures provided for that purpose, and must exhaust all other remedies before it approaches a court to resolve the dispute.
- (4) If a court is not satisfied that the requirements of subsection (3) have been met, it may refer a dispute back to the organs of state involved.



## CHAPTER 4

### PARLIAMENT

#### Composition of Parliament

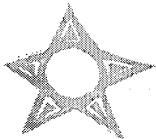
42. (1) Parliament consists of -
- (a) the National Assembly; and
  - (b) the National Council of Provinces.
- (2) The National Assembly and the National Council of Provinces participate in the legislative process in the manner set out in the Constitution.
- (3) The National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinising and overseeing executive action.
- (4) The National Council of Provinces represents the provinces to ensure that provincial interests are taken into account in the national sphere of government. It does this mainly by participating in the national legislative process and by providing a national forum for public consideration of issues affecting the provinces.
- (5) The President may summon Parliament to an extraordinary sitting at any time to conduct special business.
- (6) The seat of Parliament is Cape Town, but an Act of Parliament enacted in accordance with Section 76(1) and (5) may determine that the seat of Parliament is elsewhere.

#### Legislative authority of the Republic

43. In the Republic, the legislative authority -
- (a) of the national sphere of government is vested in Parliament, as set out in section 44;
  - (b) of the provincial sphere of government is vested in the provincial legislatures, as set out in section 104; and
  - (c) of the local sphere of government is vested in the Municipal Councils, as set out in section 156.

#### National legislative authority

44. (1) The national legislative authority as vested in Parliament -
- (a) confers on the National Assembly the power -
    - (i) to amend the Constitution;
    - (ii) to pass legislation with regard to any matter, including a matter within a functional area listed in Schedule 4, but excluding, subject to subsection (2), a matter within a functional area listed in Schedule 5; and
    - (iii) to assign any of its legislative powers, except the power to amend the Constitution; to any legislative body in another sphere of government; and

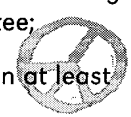




- (b) confers on the National Council of Provinces the power -
  - (i) to participate in amending the Constitution in accordance with section 74;
  - (ii) to pass, in accordance with section 76, legislation with regard to any matter within a functional area listed in Schedule 4 and any other matter required by the Constitution to be passed in accordance with section 76; and
  - (iii) to consider, in accordance with section 75, any other legislation passed by the National Assembly.
- (2) Parliament may intervene, by passing legislation in accordance with section 76(1), with regard to a matter falling within a functional area listed in Schedule 5, when it is necessary -
  - (a) to maintain national security;
  - (b) to maintain economic unity;
  - (c) to maintain essential national standards;
  - (d) to establish minimum standards required for the rendering of services; or
  - (e) to prevent unreasonable action taken by a province which is prejudicial to the interests of another province or to the country as a whole.
- (3) Legislation with regard to a matter that is reasonably necessary for, or incidental to, the effective exercise of a power concerning any matter listed in Schedule 4 is, for all purposes, legislation with regard to a matter listed in Schedule 4.
- (4) When exercising its legislative authority, Parliament is bound only by the Constitution, and must act in accordance with, and within the limits of, the Constitution.

**Joint rules and orders and joint committees**

45. (1) The National Assembly and the National Council of Provinces must establish a joint rules committee to make rules and orders concerning the joint business of the Assembly and Council, including rules and orders -
- (a) to determine procedures to facilitate the legislative process, including setting a time limit for completing any step in the process;
  - (b) to establish joint committees composed of representatives from both the Assembly and the Council to consider and report on Bills envisaged in sections 74 and 75 that are referred to such a committee;
  - (c) to establish a joint committee to review the Constitution at least annually; and
  - (d) to regulate the business of -
    - (i) the joint rules committee;
    - (ii) the Mediation Committee;
    - (iii) the constitutional review committee; and
    - (iv) any joint committees established in terms of paragraph (b).



- (2) Cabinet members, members of the National Assembly and delegates to the National Council of Provinces have the same privileges and immunities before a joint committee of the Assembly and the Council as they have before the Assembly or the Council.

## National Council of Provinces

### Composition of National Council

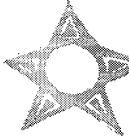
60. (1) The National Council of Provinces is composed of a single delegation from each province consisting of ten delegates.
- (2) The ten delegates are -
  - (a) four special delegates consisting of-
    - (i) the Premier of the province or, if the Premier is not available, any member of the provincial legislature designated by the Premier either generally or for any specific business before the National Council of Provinces; and
    - (ii) three other special delegates; and
  - (b) six permanent delegates appointed in terms of section 61(2).
- (3) The Premier of a province, or if the Premier is not available, a member of the province's delegation designated by the Premier, heads the delegation.


### Allocation of delegates

61. (1) Parties represented in a provincial legislature are entitled to delegates in the province's delegation in accordance with the formula set out in Part B of Schedule 3.
- (2) Within 30 days after the result of an election of a provincial legislature is declared, the legislature must -
  - (a) determine, in accordance with national legislation, how many of each party's delegates are to be permanent delegates and how many are to be special delegates; and
  - (b) appoint the permanent delegates in accordance with the nominations of the parties.
- (3) The national legislation envisaged in subsection (2)(a) must ensure the participation of minority parties in both the permanent and special delegates' components of the delegation in a manner consistent with democracy.
- (4) The legislature, with the concurrence of the Premier and the leaders of the parties entitled to special delegates in the province's delegation, must designate special delegates, as required from time to time, from among the members of the legislature.

### Permanent delegates

62. (1) A person nominated as a permanent delegate must be eligible to be a member of the provincial legislature.
- (2) If a person who is a member of a provincial legislature is appointed as a permanent delegate, that person ceases to be a member of the legislature.




- 
- (3) Permanent delegates are appointed for a term that expires immediately before the first sitting of the provincial legislature after its next election.
  - (4) A person ceases to be a permanent delegate if that person -
    - (a) ceases to be eligible to be a member of the provincial legislature for any reason other than being appointed as a permanent delegate;
    - (b) becomes a member of the Cabinet;
    - (c) has lost the confidence of the provincial legislature and is recalled by the party that nominated that person;
    - (d) ceases to be a member of the party that nominated that person and is recalled by that party; or
    - (e) is absent from the National Council of Provinces without permission in circumstances for which the rules and orders of the Council prescribe loss of office as a permanent delegate.
  - (5) Vacancies among the permanent delegates must be filled in terms of national legislation.
  - (6) Before permanent delegates begin to perform their functions in the National Council of Provinces, they must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

#### **Sittings of National Council**

63. (1) The National Council of Provinces may determine the time and duration of its sittings and its recess periods.
- (2) The President may summon the National Council of Provinces to an extraordinary sitting at any time to conduct special business.
- (3) Sittings of the National Council of Provinces are permitted at places other than the seat of Parliament only on the grounds of public interest, security or convenience, and if provided for in the rules and orders of the Council.

#### **Chairperson and Deputy Chairpersons**

64. (1) The National Council of Provinces must elect a Chairperson and two Deputy Chairpersons from among the delegates.
  - (2) The Chairperson and one of the Deputy Chairpersons are elected from among the permanent delegates for five years unless their terms as delegates expire earlier.
  - (3) The other Deputy Chairperson is elected for a term of one year, and must be succeeded by a delegate from another province, so that every province is represented in turn.
  - (4) The President of the Constitutional Court must preside over the election of the Chairperson, or designate another judge to do so. The Chairperson presides over the election of the Deputy Chairpersons.
  - (5) The procedure set out in Part A of Schedule 3 applies to the election of the Chairperson and the Deputy Chairpersons.
  - (6) The National Council of Provinces may remove the Chairperson or a Deputy Chairperson from office.
- 



## Decisions

65. (1) Except where the Constitution provides otherwise -
- (a) each province has one vote, which is cast on behalf of the province by the head of its delegation; and
  - (b) all questions before the National Council of Provinces are agreed when at least five provinces vote in favour of the question.
- (2) An Act of Parliament, enacted in accordance with the procedure established by either subsection (1) or subsection (2) of section 76, must provide for a uniform procedure in terms of which provincial legislatures confer authority on their delegations to cast votes on their behalf.

## Participation by members of national executive

66. (1) Cabinet members and Deputy Ministers may attend, and may speak in, the National Council of Provinces, but may not vote.
- (2) The National Council of Provinces may require a Cabinet member, a Deputy Minister or an official in the national executive or a provincial executive to attend a meeting of the Council or a committee of the Council.

## Participation by local government representatives

67. Not more than ten part-time representatives designated by organised local government in terms of section 163, to represent the different categories of municipalities, may participate when necessary in the proceedings of the National Council of Provinces, but may not vote.

## Powers of National Council

68. In exercising its legislative power, the National Council of Provinces may -
- (a) consider, pass, amend, propose amendments to or reject any legislation before the Council, in accordance with this Chapter; and
  - (b) initiate or prepare legislation falling within a functional area listed in Schedule 4 or other legislation referred to in section 76(3), but may not initiate or prepare money Bills.

## Evidence or information before National Council

69. The National Council of Provinces or any of its committees may -
- (a) summon any person to appear before it to give evidence on oath or affirmation or to produce documents;
  - (b) require any institution or person to report to it;
  - (c) compel, in terms of national legislation or the rules and orders, any person or institution to comply with a summons or requirement in terms of paragraph (a) or (b); and
  - (d) receive petitions, representations or submissions from any interested persons or institutions.

## Internal arrangements, proceedings and procedures of National Council

70. (1) The National Council of Provinces may -



- (a) determine and control its internal arrangements, proceedings and procedures; and
  - (b) make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement.
- (2) The rules and orders of the National Council of Provinces must provide for -
- (a) the establishment, composition, powers, functions, procedures and duration of its committees;
  - (b) the participation of all the provinces in its proceedings in a manner consistent with democracy; and
  - (c) the participation in the proceedings of the Council and its committees of minority parties represented in the Council, in a manner consistent with democracy, whenever a matter is to be decided in accordance with section 75.

### **Privilege**

71. (1) Delegates to the National Council of Provinces and the persons referred to in sections 66 and 67 -
- (a) have freedom of speech in the Council and in its committees, subject to its rules and orders; and
  - (b) are not liable to civil or criminal proceedings, arrest, imprisonment or damages for -
    - (i) anything that they have said in, produced before or submitted to the Council or any of its committees; or
    - (ii) anything revealed as a result of anything that they have said in, produced before or submitted to the Council or any of its committees.
- (2) Other privileges and immunities of the National Council of Provinces, delegates to the Council and persons referred to in sections 66 and 67 may be prescribed by national legislation.
- (3) Salaries, allowances and benefits payable to permanent members of the National Council of Provinces are a direct charge against the National Revenue Fund.

### **Public access to and involvement in National Council**

72. (1) The National Council of Provinces must -
- (a) facilitate public involvement in the legislative and other processes of the Council and its committees; and
  - (b) conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken -
    - (i) to regulate public access, including access of the media, to the Council and its committees; and
    - (ii) to provide for the searching of any person and, where appropriate, the refusal of entry to, or the removal of, any person.



- (2) The National Council of Provinces may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society.

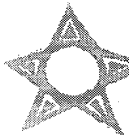
## National Legislative Process

### All Bills

73. (1) Any Bill may be introduced in the National Assembly.
- (2) Only a Cabinet member or a Deputy Minister, or a member or committee of the National Assembly, may introduce a Bill in the Assembly; but only the Cabinet member responsible for national financial matters may introduce a money Bill in the Assembly.
- (3) A Bill referred to in section 76(3), except a money Bill, may be introduced in the National Council of Provinces.
- (4) Only a member or committee of the National Council of Provinces may introduce a Bill in the Council.
- (5) A Bill passed by the National Assembly must be referred to the National Council of Provinces if it must be considered by the Council. A Bill passed by the Council must be referred to the Assembly.

### Bills amending the Constitution

74. (1) Section 1 and this subsection may be amended by a Bill passed by -
- (a) the National Assembly, with a supporting vote of at least 75 per cent of its members; and
- (b) the National Council of Provinces, with a supporting vote of at least six provinces.
- (2) Chapter 2 may be amended by a Bill passed by -
- (a) the National Assembly, with a supporting vote of at least two thirds of its members; and
- (b) the National Council of Provinces, with a supporting vote of at least six provinces.
- (3) Any other provision of the Constitution may be amended by a Bill passed -
- (a) by the National Assembly, with a supporting vote of at least two thirds of its members; and
- (b) also by the National Council of Provinces, with a supporting vote of at least six provinces, if the amendment -
- (i) relates to a matter that affects the Council;
- (ii) alters provincial boundaries, powers, functions or institutions; or
- (iii) amends a provision that deals specifically with a provincial matter.
- (4) A Bill amending the Constitution may not include provisions other than constitutional amendments and matters connected with the amendments.



- (5) At least 30 days before a Bill amending the Constitution is introduced in terms of section 73(2), the person or committee intending to introduce the Bill must -
- (a) publish in the national Government Gazette, and in accordance with the rules and orders of the National Assembly, particulars of the proposed amendment for public comment;
  - (b) submit, in accordance with the rules and orders of the Assembly, those particulars to the provincial legislatures for their views; and
  - (c) submit, in accordance with the rules and orders of the National Council of Provinces, those particulars to the Council for a public debate, if the proposed amendment is not an amendment that is required to be passed by the Council.
- (6) When a Bill amending the Constitution is introduced, the person or committee introducing the Bill must submit any written comments received from the public and the provincial legislatures -
- (a) to the Speaker for tabling in the National Assembly; and
  - (b) in respect of amendments referred to in subsection (1), (2) or (3)(b), to the Chairperson of the National Council of Provinces for tabling in the Council.
- (7) A Bill amending the Constitution may not be put to the vote in the National Assembly within 30 days of -
- (a) its introduction, if the Assembly is sitting when the Bill is introduced; or
  - (b) its tabling in the Assembly, if the Assembly is in recess when the Bill is introduced.
- (8) If a Bill referred to in subsection (3)(b), or any part of the Bill, concerns only a specific province or provinces, the National Council of Provinces may not pass the Bill or the relevant part unless it has been approved by the legislature or legislatures of the province or provinces concerned.
- (9) A Bill amending the Constitution that has been passed by the National Assembly and, where applicable, by the National Council of Provinces, must be referred to the President for assent.

#### **Ordinary Bills not affecting provinces**



75. (1) When the National Assembly passes a Bill other than a Bill to which the procedure set out in section 74 or 76 applies, the Bill must be referred to the National Council of Provinces and dealt with in accordance with the following procedure:
- (a) The Council must -
    - (i) pass the Bill;
    - (ii) pass the Bill subject to amendments proposed by it; or
    - (iii) reject the Bill.
  - (b) If the Council passes the Bill without proposing amendments, the Bill must be submitted to the President for assent.

- (c) If the Council rejects the Bill or passes it subject to amendments, the Assembly must reconsider the Bill, taking into account any amendment proposed by the Council, and may -
    - (i) pass the Bill again, either with or without amendments; or
    - (ii) decide not to proceed with the Bill.
  - (d) A Bill passed by the Assembly in terms of paragraph (c) must be submitted to the President for assent.
- (2) When the National Council of Provinces votes on a question in terms of this section, section 65 does not apply; instead -
- (a) each delegate in a provincial delegation has one vote;
  - (b) at least one third of the delegates must be present before a vote may be taken on the question; and
  - (c) the question is decided by a majority of the votes cast, but if there is an equal number of votes on each side of the question, the delegate presiding must cast a deciding vote.

#### Ordinary Bills affecting provinces

76. (1) When the National Assembly passes a Bill referred to in subsection (3), (4) or (5), the Bill must be referred to the National Council of Provinces and dealt with in accordance with the following procedure:
- (a) The Council must -
    - (i) pass the Bill;
    - (ii) pass an amended Bill; or
    - (iii) reject the Bill.
  - (b) If the Council passes the Bill without amendment, the Bill must be submitted to the President for assent.
  - (c) If the Council passes an amended Bill, the amended Bill must be referred to the Assembly, and if the Assembly passes the amended Bill, it must be submitted to the President for assent.
  - (d) If the Council rejects the Bill, or if the Assembly refuses to pass an amended Bill referred to it in terms of paragraph (c), the Bill and, where applicable, also the amended Bill, must be referred to the Mediation Committee, which may agree on -
    - (i) the Bill as passed by the Assembly;
    - (ii) the amended Bill as passed by the Council; or
    - (iii) another version of the Bill.
  - (e) If the Mediation Committee is unable to agree within 30 days of the Bill's referral to it, the Bill lapses unless the Assembly again passes the Bill, but with a supporting vote of at least two thirds of its members.
  - (f) If the Mediation Committee agrees on the Bill as passed by the Assembly, the Bill must be referred to the Council, and if the Council passes the Bill, the Bill must be submitted to the President for assent.



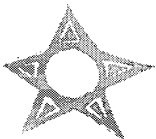
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- (g) If the Mediation Committee agrees on the amended Bill as passed by the Council, the Bill must be referred to the Assembly, and if it is passed by the Assembly, it must be submitted to the President for assent.
- (h) If the Mediation Committee agrees on another version of the Bill, that version of the Bill must be referred to both the Assembly and the Council, and if it is passed by the Assembly and the Council, it must be submitted to the President for assent.
- (i) If a Bill referred to the Council in terms of paragraph (f) or (h) is not passed by the Council, the Bill lapses unless the Assembly passes the Bill with a supporting vote of at least two thirds of its members.
- (j) If a Bill referred to the Assembly in terms of paragraph (g) or (h) is not passed by the Assembly, that Bill lapses, but the Bill as originally passed by the Assembly may again be passed by the Assembly, but with a supporting vote of at least two thirds of its members.
- (k) A Bill passed by the Assembly in terms of paragraph (e), (i) or (j) must be submitted to the President for assent.
- (2) When the National Council of Provinces passes a Bill referred to in subsection (3), the Bill must be referred to the National Assembly and dealt with in accordance with the following procedure:
- (a) The Assembly must -
- (i) pass the Bill;
  - (ii) pass an amended Bill; or
  - (iii) reject the Bill.
- (b) A Bill passed by the Assembly in terms of paragraph (a)(i) must be submitted to the President for assent.
- (c) If the Assembly passes an amended Bill, the amended Bill must be referred to the Council, and if the Council passes the amended Bill, it must be submitted to the President for assent.
- (d) If the Assembly rejects the Bill, or if the Council refuses to pass an amended Bill referred to it in terms of paragraph (c), the Bill and, where applicable, also the amended Bill must be referred to the Mediation Committee, which may agree on -
- (i) the Bill as passed by the Council;
  - (ii) the amended Bill as passed by the Assembly; or
  - (iii) another version of the Bill.
- (e) If the Mediation Committee is unable to agree within 30 days of the Bill's referral to it, the Bill lapses.
- (f) If the Mediation Committee agrees on the Bill as passed by the Council, the Bill must be referred to the Assembly, and if the Assembly passes the Bill, the Bill must be submitted to the President for assent.
- (g) If the Mediation Committee agrees on the amended Bill as passed by the Assembly, the Bill must be referred to the Council, and if it is passed by the Council, it must be submitted to the President for assent.
- 



- (h) If the Mediation Committee agrees on another version of the Bill, that version of the Bill must be referred to both the Council and the Assembly, and if it is passed by the Council and the Assembly, it must be submitted to the President for assent.
  - (i) If a Bill referred to the Assembly in terms of paragraph (f) or (h) is not passed by the Assembly, the Bill lapses.
- (3) A Bill must be dealt with in accordance with the procedure established by either subsection (1) or subsection (2) if it falls within a functional area listed in Schedule 4 or provides for legislation envisaged in any of the following sections:
- (a) Section 65(2);
  - (b) section 163;
  - (c) section 182;
  - (d) section 195(3) and (4);
  - (e) section 196; and
  - (f) section 197.
- (4) A Bill must be dealt with in accordance with the procedure established by subsection (1) if it provides for legislation -
- (a) envisaged in section 44(2) or 220(3); or
  - (b) envisaged in Chapter 13, and which affects the financial interests of the provincial sphere of government.
- (5) A Bill envisaged in section 42(6) must be dealt with in accordance with the procedure established by subsection (1), except that -
- (a) when the National Assembly votes on the Bill, the provisions of section 53(1) do not apply; instead, the Bill may be passed only if a majority of the members of the Assembly vote in favour of it; and
  - (b) if the Bill is referred to the Mediation Committee, the following rules apply:
    - (i) If the National Assembly considers a Bill envisaged in subsection (1) (g) or (h), that Bill may be passed only if a majority of the members of the Assembly vote in favour of it.
    - (ii) If the National Assembly considers or reconsiders a Bill envisaged in subsection (1)(e), (i) or (j), that Bill may be passed only if at least two thirds of the members of the Assembly vote in favour of it.
- (6) This section does not apply to money Bills.

### Money Bills

77. (1) A Bill that appropriates money or imposes taxes, levies or duties is a money Bill. A money Bill may not deal with any other matter except a subordinate matter incidental to the appropriation of money or the imposition of taxes, levies or duties.



- (2) All money Bills must be considered in accordance with the procedure established by section 75. An Act of Parliament must provide for a procedure to amend money Bills before Parliament.



#### **Mediation Committee**

78. (1) The Mediation Committee consists of -
- (a) nine members of the National Assembly elected by the Assembly in accordance with a procedure that is prescribed by the rules and orders of the Assembly and results in the representation of parties in substantially the same proportion that the parties are represented in the Assembly; and
  - (b) one delegate from each provincial delegation in the National Council of Provinces, designated by the delegation.
- (2) The Mediation Committee has agreed on a version of a Bill, or decided a question, when that version, or one side of the question, is supported by -
- (a) at least five of the representatives of the National Assembly; and
  - (b) at least five of the representatives of the National Council of Provinces.

#### **Assent to Bills**

79. (1) The President must either assent to and sign a Bill passed in terms of this Chapter or, if the President has reservations about the constitutionality of the Bill, refer it back to the National Assembly for reconsideration.
- (2) The joint rules and orders must provide for the procedure for the reconsideration of a Bill by the National Assembly and the participation of the National Council of Provinces in the process.
- (3) The National Council of Provinces must participate in the reconsideration of a Bill that the President has referred back to the National Assembly if -
- (a) the President's reservations about the constitutionality of the Bill relate to a procedural matter that involves the Council; or
  - (b) section 74(1), (2) or (3)(b) or 76 was applicable in the passing of the Bill.
- (4) If, after reconsideration, a Bill fully accommodates the President's reservations, the President must assent to and sign the Bill; if not, the President must either -
- (a) assent to and sign the Bill; or
  - (b) refer it to the Constitutional Court for a decision on its constitutionality.
- (5) If the Constitutional Court decides that the Bill is constitutional, the President must assent to and sign it.

#### **Application by members of National Assembly to Constitutional Court**



80. (1) Members of the National Assembly may apply to the Constitutional Court for an order declaring that all or part of an Act of Parliament is unconstitutional.
- (2) An application -
- (a) must be supported by at least one third of the members of the National Assembly; and
  - (b) must be made within 30 days of the date on which the President assented to and signed the Act.





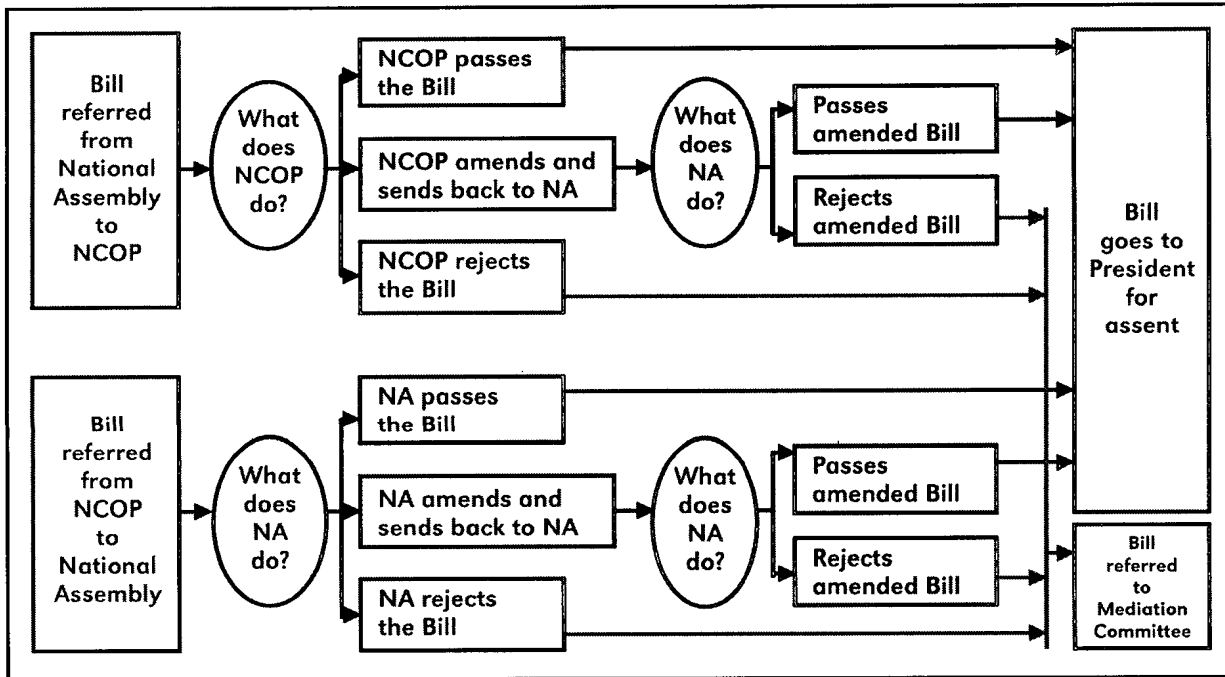
- (3) The Constitutional Court may order that all or part of an Act that is the subject of an application in terms of subsection (1) has no force until the Court has decided the application if -
  - (a) the interests of justice require this; and
  - (b) the application has a reasonable prospect of success.
- (4) If an application is unsuccessful, and did not have a reasonable prospect of success, the Constitutional Court may order the applicants to pay costs.

**Publication of Acts**

81. A Bill assented to and signed by the President becomes an Act of Parliament, must be published promptly, and takes effect when published or on a date determined in terms of the Act.

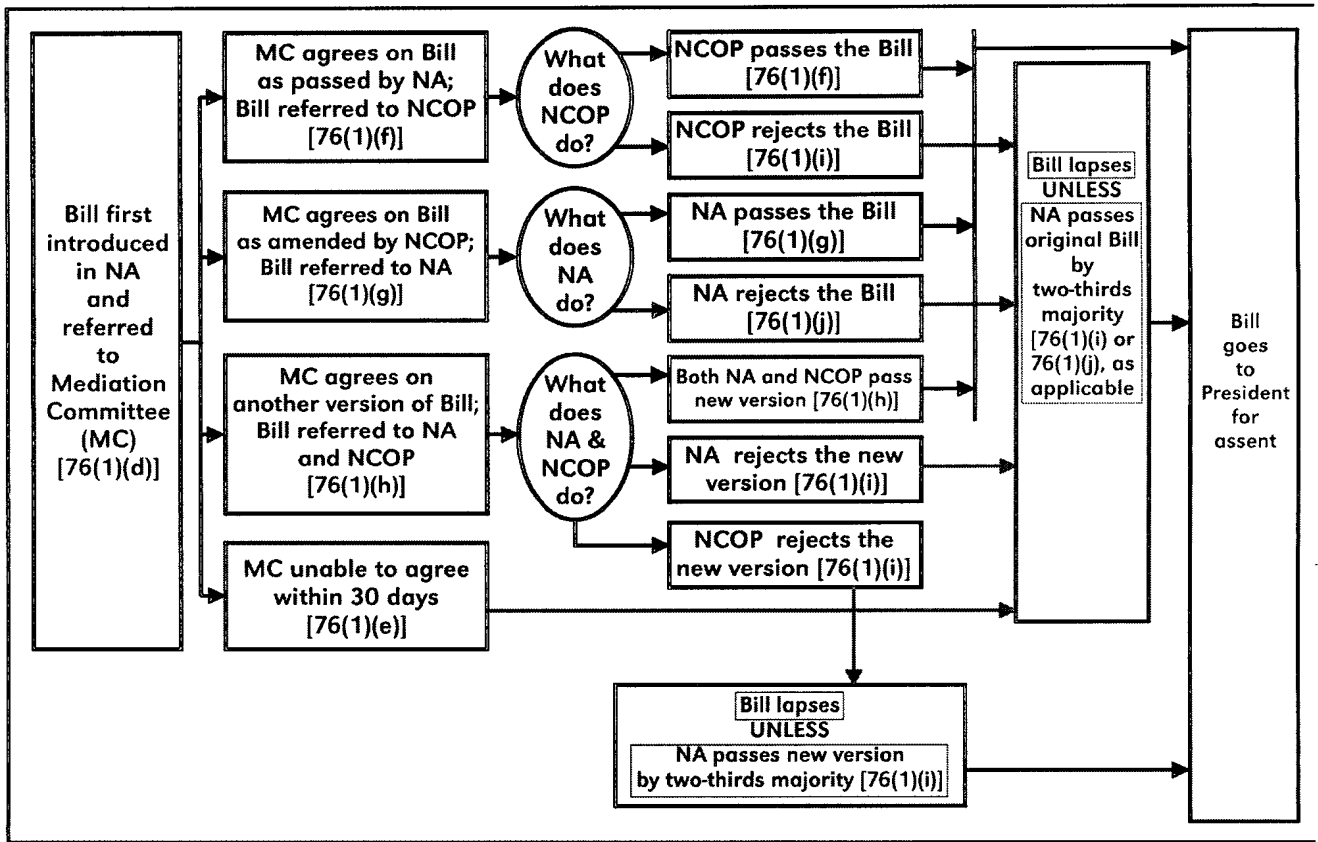
**Safekeeping of Acts of Parliament**

82. The signed copy of an Act of Parliament is conclusive evidence of the provisions of that Act and, after publication, must be entrusted to the Constitutional Court for safekeeping.

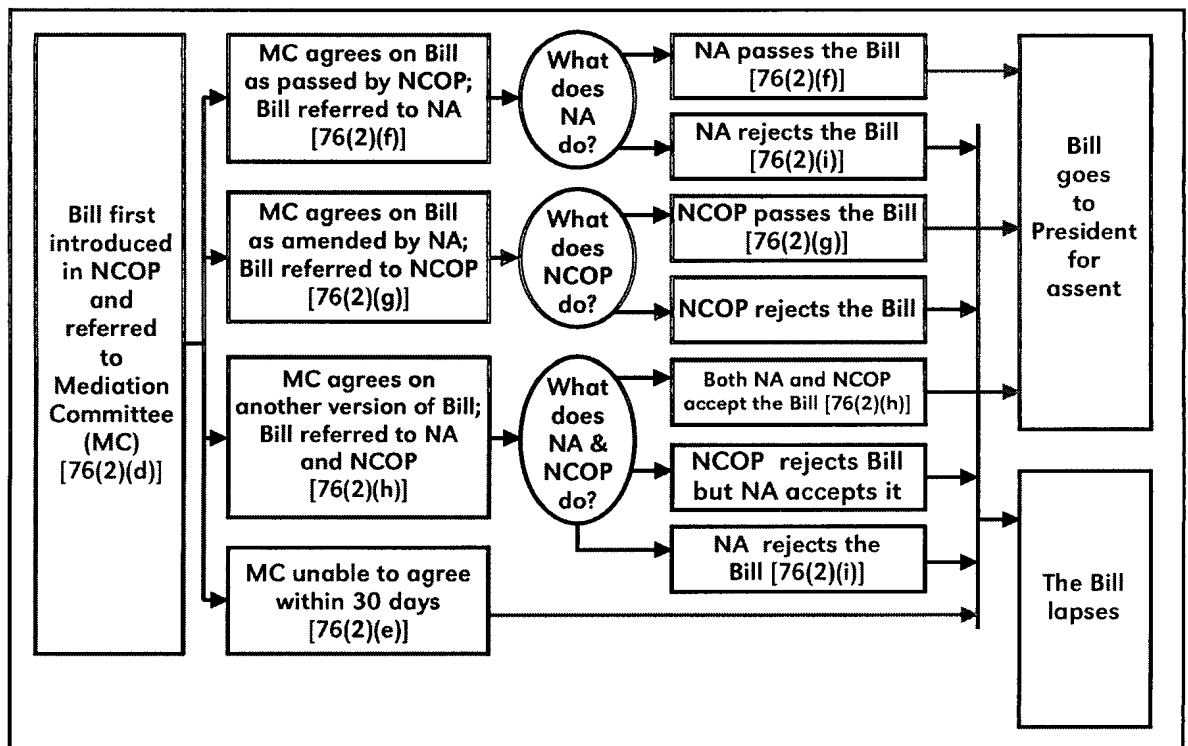


**National legislative process: s76 Bills**





Mediation Committee process: Bills referred to in s76(3), (4) and (5), and first introduced in National Assembly



Mediation Committee process: Bills referred to in s76(3) and first introduced in National Council of Provinces

## CHAPTER 5

### THE PRESIDENT AND NATIONAL EXECUTIVE

#### The President

83. The President -

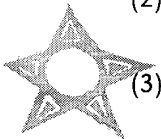
- (a) is the Head of State and head of the national executive;
- (b) must uphold, defend and respect the Constitution as the supreme law of the Republic; and
- (c) promotes the unity of the nation and that which will advance the Republic.

#### Powers and functions of President

84. (1) The President has the powers entrusted by the Constitution and legislation, including those necessary to perform the functions of Head of State and head of the national executive.
- (2) The President is responsible for -
- (a) assenting to and signing Bills;
  - (b) referring a Bill back to the National Assembly for reconsideration of the Bill's constitutionality;
  - (c) referring a Bill to the Constitutional Court for a decision on the Bill's constitutionality;
  - (d) summoning the National Assembly, the National Council of Provinces or Parliament to an extraordinary sitting to conduct special business;
  - (e) making any appointments that the Constitution or legislation requires the President to make, other than as head of the national executive;
  - (f) appointing commissions of inquiry;
  - (g) calling a national referendum in terms of an Act of Parliament;
  - (h) receiving and recognising foreign diplomatic and consular representatives;
  - (i) appointing ambassadors, plenipotentiaries, and diplomatic and consular representatives;
  - (j) pardoning or relieving offenders and remitting any fines, penalties or forfeitures; and
  - (k) conferring honours.

#### Cabinet

91. (1) The Cabinet consists of the President, as head of the Cabinet, a Deputy President and Ministers.
- (2) The President appoints the Deputy President and Ministers, assigns their powers and functions, and may dismiss them.
- (3) The President -
- (a) must select the Deputy President from among the members of the National Assembly;





- (b) may select any number of Ministers from among the Members of the Assembly; and
- (c) may select no more than two Ministers from outside the Assembly.
- (4) The President must appoint a member of the Cabinet to be the leader of government business in the National Assembly.
- (5) The Deputy President must assist the President in the execution of the functions of government.

#### **Accountability and responsibilities**

92. (1) The Deputy President and Ministers are responsible for the powers and functions of the executive assigned to them by the President.
- (2) Members of the Cabinet are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions.
- (3) Members of the Cabinet must -
- (a) act in accordance with the Constitution; and
  - (b) provide Parliament with full and regular reports concerning matters under their control.

#### **National supervision of provincial administration**

100. (1) When a province cannot or does not fulfil an executive obligation in terms of legislation or the Constitution, the national executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including -
- (a) issuing a directive to the provincial executive, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations; and
  - (b) assuming responsibility for the relevant obligation in that province to the extent necessary to -
    - (i) maintain essential national standards or meet established minimum standards for the rendering of a service;
    - (ii) maintain economic unity;
    - (iii) maintain national security; or
    - (iv) prevent that province from taking unreasonable action that is prejudicial to the interests of another province or to the country as a whole.
- (2) If the national executive intervenes in a province in terms of subsection (1)(b) -
- (a) notice of the intervention must be tabled in the National Council of Provinces within 14 days of its first sitting after the intervention began;
  - (b) the intervention must end unless it is approved by the Council within 30 days of its first sitting after the intervention began; and
  - (c) the Council must review the intervention regularly and make any appropriate recommendations to the national executive.
- (3) National legislation may regulate the process established by this section.



## Executive decisions

101. (1) A decision by the President must be in writing if it -
- (a) is taken in terms of legislation; or
  - (b) has legal consequences.
- (2) A written decision by the President must be countersigned by another Cabinet member if that decision concerns a function assigned to that other Cabinet member.
- (3) Proclamations, regulations and other instruments of subordinate legislation must be accessible to the public.
- (4) National legislation may specify the manner in which, and the extent to which, instruments mentioned in subsection (3) must be -
- (a) tabled in Parliament; and
  - (b) approved by Parliament.

## Motions of no confidence

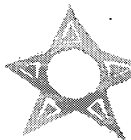
102. (1) If the National Assembly, by a vote supported by a majority of its members, passes a motion of no confidence in the Cabinet excluding the President, the President must reconstitute the Cabinet.
- (2) If the National Assembly, by a vote supported by a majority of its members, passes a motion of no confidence in the President, the President and the other members of the Cabinet and any Deputy Ministers must resign.

## CHAPTER 6

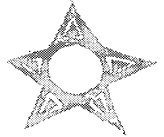
### PROVINCES

#### Provinces

103. (1) The Republic has the following provinces:
- (a) Eastern Cape
  - (b) Free State
  - (c) Gauteng
  - (d) KwaZulu-Natal
  - (e) Mpumalanga
  - (f) Northern Cape
  - (g) Northern Province
  - (h) North West
  - (i) Western Cape.
- (2) The boundaries of the provinces are those that existed when the Constitution took effect.



## Provincial Legislatures



### Legislative authority of provinces

104. (1) The legislative authority of a province is vested in its provincial legislature, and confers on the provincial legislature the power -
- (a) to pass a constitution for its province or to amend any constitution passed by it in terms of sections 142 and 143;
  - (b) to pass legislation for its province with regard to -
    - (i) any matter within a functional area listed in Schedule 4;
    - (ii) any matter within a functional area listed in Schedule 5;
    - (iii) any matter outside those functional areas, and that is expressly assigned to the province by national legislation; and
    - (iv) any matter for which a provision of the Constitution envisages the enactment of provincial legislation; and
  - (c) to assign any of its legislative powers to a Municipal Council in that province.
- (2) The legislature of a province, by a resolution adopted with a supporting vote of at least two thirds of its members, may request Parliament to change the name of that province.
- (3) A provincial legislature is bound only by the Constitution and, if it has passed a constitution for its province, also by that constitution, and must act in accordance with, and within the limits of, the Constitution and that provincial constitution.
- (4) Provincial legislation with regard to a matter that is reasonably necessary for, or incidental to, the effective exercise of a power concerning any matter listed in Schedule 4, is for all purposes legislation with regard to a matter listed in Schedule 4.
- (5) A provincial legislature may recommend to the National Assembly legislation concerning any matter outside the authority of that legislature, or in respect of which an Act of Parliament prevails over a provincial law.

### Composition and election of provincial legislatures

105. (1) A provincial legislature consists of women and men elected as members in terms of an electoral system that -
- (a) is prescribed by national legislation;
  - (b) is based on that province's segment of the national common voters roll;
  - (c) provides for a minimum voting age of 18 years; and
  - (d) results, in general, in proportional representation.
- (2) A provincial legislature consists of between 30 and 80 members. The number of members, which may differ among the provinces, must be determined in terms of a formula prescribed by national legislation.



## Membership

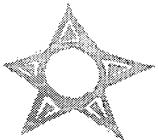
106. (1) Every citizen who is qualified to vote for the National Assembly is eligible to be a member of a provincial legislature, except -
- (a) anyone who is appointed by, or is in the service of, the state and receives remuneration for that appointment or service, other than -
    - (i) the Premier and other members of the Executive Council of a province; and
    - (ii) other office-bearers whose functions are compatible with the functions of a member of a provincial legislature, and have been declared compatible with those functions by national legislation;
  - (b) members of the National Assembly, permanent delegates to the National Council of Provinces or members of a Municipal Council;
  - (c) unrehabilitated insolvents;
  - (d) anyone declared to be of unsound mind by a court of the Republic; or
  - (e) anyone who, after this section took effect, is convicted of an offence and sentenced to more than 12 months' imprisonment without the option of a fine, either in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic, but no one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined, or until the time for an appeal has expired. A disqualification under this paragraph ends five years after the sentence has been completed.
- (2) A person who is not eligible to be a member of a provincial legislature in terms of subsection (1) (a) or (b) may be a candidate for the legislature, subject to any limits or conditions established by national legislation.
- (3) A person loses membership of a provincial legislature if that person -
- (a) ceases to be eligible; or
  - (b) is absent from the legislature without permission in circumstances for which the rules and orders of the legislature prescribe loss of membership.
- (4) Vacancies in a provincial legislature must be filled in terms of national legislation.

## Permanent delegates' rights in provincial legislatures

113. A province's permanent delegates to the National Council of Provinces may attend, and may speak in, their provincial legislature and its committees, but may not vote. The legislature may require a permanent delegate to attend the legislature or its committees.

## Privilege

117. (1) Members of a provincial legislature and the province's permanent delegates to the National Council of Provinces -
- (a) have freedom of speech in the legislature and in its committees, subject to its rules and orders; and
  - (b) are not liable to civil or criminal proceedings, arrest, imprisonment or damages for -





- (i) anything that they have said in, produced before or submitted to the legislature or any of its committees; or
  - (ii) anything revealed as a result of anything that they have said in, produced before or submitted to the legislature or any of its committees.
- (2) Other privileges and immunities of a provincial legislature and its members may be prescribed by national legislation.
  - (3) Salaries, allowances and benefits payable to members of a provincial legislature are a direct charge against the Provincial Revenue Fund.

**Public access to and involvement in provincial legislatures**

- 118. (1) A provincial legislature must -
  - (a) facilitate public involvement in the legislative and other processes of the legislature and its committees; and
  - (b) conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken -
    - (i) to regulate public access, including access of the media, to the legislature and its committees; and
    - (ii) to provide for the searching of any person and, where appropriate, the refusal of entry to, or the removal of, any person.
- (2) A provincial legislature may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society.

**Provincial Executives**

**Executive authority of provinces**

- 125. (1) The executive authority of a province is vested in the Premier of that province.
- (2) The Premier exercises the executive authority, together with the other members of the Executive Council, by -
  - (a) implementing provincial legislation in the province;
  - (b) implementing all national legislation within the functional areas listed in Schedule 4 or 5 except where the Constitution or an Act of Parliament provides otherwise;
  - (c) administering in the province, national legislation outside the functional areas listed in Schedules 4 and 5, the administration of which has been assigned to the provincial executive in terms of an Act of Parliament;
  - (d) developing and implementing provincial policy;
  - (e) co-ordinating the functions of the provincial administration and its departments;
  - (f) preparing and initiating provincial legislation; and
  - (g) performing any other function assigned to the provincial executive in terms of the Constitution or an Act of Parliament.





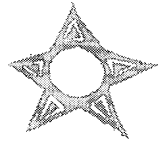
- (3) A province has executive authority in terms of subsection (2) (b) only to the extent that the province has the administrative capacity to assume effective responsibility. The national government, by legislative and other measures, must assist provinces to develop the administrative capacity required for the effective exercise of their powers and performance of their functions referred to in subsection (2).
- (4) Any dispute concerning the administrative capacity of a province in regard to any function must be referred to the National Council of Provinces for resolution within 30 days of the date of the referral to the Council.
- (5) Subject to section 100, the implementation of provincial legislation in a province is an exclusive provincial executive power.
- (6) The provincial executive must act in accordance with -
  - (a) the Constitution; and
  - (b) the provincial constitution, if a constitution has been passed for the province.

**Provincial supervision of local government**

- 139. (1) When a municipality cannot or does not fulfil an executive obligation in terms of legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including -
  - (a) issuing a directive to the Municipal Council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations; and
  - (b) assuming responsibility for the relevant obligation in that municipality to the extent necessary -
    - (i) to maintain essential national standards or meet established minimum standards for the rendering of a service;
    - (ii) to prevent that Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or to the province as a whole; or
    - (iii) to maintain economic unity.
- (2) If a provincial executive intervenes in a municipality in terms of subsection (1)(b) -
  - (a) the intervention must end unless it is approved by the Cabinet member responsible for local government affairs within 14 days of the intervention;
  - (b) notice of the intervention must be tabled in the provincial legislature and in the National Council of Provinces within 14 days of their respective first sittings after the intervention began;
  - (c) the intervention must end unless it is approved by the Council within 30 days of its first sitting after the intervention began; and
  - (d) the Council must review the intervention regularly and make any appropriate recommendations to the provincial executive.
- (3) National legislation may regulate the process established by this section.



## Conflicting Laws



### Conflicts between national and provincial legislation

146. (1) This section applies to a conflict between national legislation and provincial legislation falling within a functional area listed in Schedule 4.
- (2) National legislation that applies uniformly with regard to the country as a whole prevails over provincial legislation if any of the following conditions is met:
- (a) The national legislation deals with a matter that cannot be regulated effectively by legislation enacted by the respective provinces individually.
  - (b) The national legislation deals with a matter that, to be dealt with effectively, requires uniformity across the nation, and the national legislation provides that uniformity by establishing -
    - (i) norms and standards;
    - (ii) frameworks; or
    - (iii) national policies.
  - (c) The national legislation is necessary for -
    - (i) the maintenance of national security;
    - (ii) the maintenance of economic unity;
    - (iii) the protection of the common market in respect of the mobility of goods, services, capital and labour;
    - (iv) the promotion of economic activities across provincial boundaries;
    - (v) the promotion of equal opportunity or equal access to government services; or
    - (vi) the protection of the environment.
- (3) National legislation prevails over provincial legislation if the national legislation is aimed at preventing unreasonable action by a province that -
- (a) is prejudicial to the economic, health or security interests of another province or the country as a whole; or
  - (b) impedes the implementation of national economic policy.
- (4) When there is a dispute concerning whether national legislation is necessary for a purpose set out in subsection (2)(c) and that dispute comes before a court for resolution, the court must have due regard to the approval or the rejection of the legislation by the National Council of Provinces.
- (5) Provincial legislation prevails over national legislation if subsection (2) or (3) does not apply.
- (6) A law made in terms of an Act of Parliament or a provincial Act can prevail only if that law has been approved by the National Council of Provinces.
- (7) If the National Council of Provinces does not reach a decision within 30 days of its first sitting after a law was referred to it, that law must be considered for all purposes to have been approved by the Council.



- (8) If the National Council of Provinces does not approve a law referred to in subsection (6), it must, within 30 days of its decision, forward reasons for not approving the law to the authority that referred the law to it.

## CHAPTER 7

### LOCAL GOVERNMENT

#### Status of municipalities

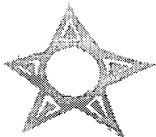
151. (1) The local sphere of government consists of municipalities, which must be established for the whole of the territory of the Republic.
- (2) The executive and legislative authority of a municipality is vested in its Municipal Council.
- (3) A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution.
- (4) The national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.

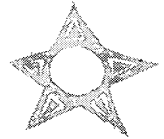
#### Municipalities in co-operative government

154. (1) The national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.
- (2) Draft national or provincial legislation that affects the status, institutions, powers or functions of local government must be published for public comment before it is introduced in Parliament or a provincial legislature, in a manner that allows organised local government, municipalities and other interested persons an opportunity to make representations with regard to the draft legislation.

#### Organised local government

163. An Act of Parliament enacted in accordance with the procedure established by section 76 must -
- (a) provide for the recognition of national and provincial organisations representing municipalities; and
- (b) determine procedures by which local government may -
- (i) consult with the national or a provincial government;
- (ii) designate representatives to participate in the National Council of Provinces; and
- (iii) nominate persons to the Financial and Fiscal Commission.





**FINANCE**

**General Financial Matters**

**National Revenue Fund**

213. (1) There is a National Revenue Fund into which all money received by the national government must be paid, except money reasonably excluded by an Act of Parliament.
- (2) Money may be withdrawn from the National Revenue Fund only -
- (a) in terms of an appropriation by an Act of Parliament; or
  - (b) as a direct charge against the National Revenue Fund, when it is provided for in the Constitution or an Act of Parliament.
- (3) A province's equitable share of revenue raised nationally is a direct charge against the National Revenue Fund.

**Equitable shares and allocations of revenue**

214. (1) An Act of Parliament must provide for -
- (a) the equitable division of revenue raised nationally among the national, provincial and local spheres of government;
  - (b) the determination of each province's equitable share of the provincial share of that revenue; and
  - (c) any other allocations to provinces, local government or municipalities from the national government's share of that revenue, and any conditions on which those allocations may be made.
- (2) The Act referred to in subsection (1) may be enacted only after the provincial governments, organised local government and the Financial and Fiscal Commission have been consulted, and any recommendations of the Commission have been considered, and must take into account -
- (a) the national interest;
  - (b) any provision that must be made in respect of the national debt and other national obligations;
  - (c) the needs and interests of the national government, determined by objective criteria;
  - (d) the need to ensure that the provinces and municipalities are able to provide basic services and perform the functions allocated to them;
  - (e) the fiscal capacity and efficiency of the provinces and municipalities;
  - (f) developmental and other needs of provinces, local government and municipalities;
  - (g) economic disparities within and among the provinces;
  - (h) obligations of the provinces and municipalities in terms of national legislation;



- (i) the desirability of stable and predictable allocations of revenue shares; and
- (j) the need for flexibility in responding to emergencies or other temporary needs, and other factors based on similar objective criteria.

## **Financial and Fiscal Commission**

### **Establishment and functions**

220. (1) There is a Financial and Fiscal Commission for the Republic which makes recommendations envisaged in this Chapter, or in national legislation, to Parliament, provincial legislatures and any other authorities determined by national legislation.
- (2) The Commission is independent and subject only to the Constitution and the law, and must be impartial.
- (3) The Commission must function in terms of an Act of Parliament and, in performing its functions, must consider all relevant factors, including those listed in section 214(2).

### **Appointment and tenure of members**

221. (1) The Commission consists of the following women and men appointed by the President, as head of the national executive -
- (a) a chairperson and a deputy chairperson who are full-time members;
  - (b) nine persons, each of whom is nominated by the Executive Council of a province, with each province nominating only one person;
  - (c) two persons nominated by organised local government in terms of section 163; and
  - (d) nine other persons.
- (2) Members of the Commission must have appropriate expertise.
- (3) Members serve for a term established in terms of national legislation. The President may remove a member from office on the ground of misconduct, incapacity or incompetence.

### **Reports**

222. The Commission must report regularly both to Parliament and to the provincial legislatures


## **CHAPTER 14**

## **GENERAL PROVISIONS**

### **International Law**

#### **International agreements**

231. (1) The negotiating and signing of all international agreements is the responsibility of the national executive.

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- (2) An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement referred to in subsection (3).
  - (3) An international agreement of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time.
  - (4) Any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.
  - (5) The Republic is bound by international agreements which were binding on the Republic when this Constitution took effect.

## **Other matters**

### **Funding for political parties**

236. To enhance multi-party democracy, national legislation must provide for the funding of political parties participating in national and provincial legislatures on an equitable and proportional basis.

### **Diligent performance of obligations**

237. All constitutional obligations must be performed diligently and without delay.

### **Definitions**

239. In the Constitution, unless the context indicates otherwise -  
"national legislation" includes -

- (a) subordinate legislation made in terms of an Act of Parliament; and
- (b) legislation that was in force when the Constitution took effect and that is administered by the national government;

"organ of state" means -

- (a) any department of state or administration in the national, provincial or local sphere of government; or
- (b) any other functionary or institution -
  - (i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or
  - (ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer;

"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 a provincial government.

## SCHEDULE 2

### OATHS AND SOLEMN AFFIRMATIONS

Oath or solemn affirmation of members of the National Assembly, permanent delegates to the National Council of Provinces and members of the provincial legislatures

4. (1) Members of the National Assembly, permanent delegates to the National Council of Provinces and members of provincial legislatures, before the President of the Constitutional Court or a judge designated by the President of the Constitutional Court, must swear or affirm as follows:

I, A.B., swear/solemnly affirm that I will be faithful to the Republic of South Africa and will obey, respect and uphold the Constitution and all other law of the Republic, and I solemnly promise to perform my functions as a member of the National Assembly/ permanent delegate to the National Council of Provinces/member of the legislature of the province of C.D. to the best of my ability.

(In the case of an oath: So help me God.)

- (2) Persons filling a vacancy in the National Assembly, a permanent delegation to the National Council of Provinces or a provincial legislature may swear or affirm in terms of subitem (1) before the presiding officer of the Assembly, Council or legislature, as the case may be.

## SCHEDULE 3

### ELECTION PROCEDURES

#### Part A - Election Procedures for Constitutional Office-Bearers

##### Application

1. The procedure set out in this Schedule applies whenever -
- (a) the National Assembly meets to elect the President, or the Speaker or Deputy Speaker of the Assembly;
  - (b) the National Council of Provinces meets to elect its Chairperson or a Deputy Chairperson; or
  - (c) a provincial legislature meets to elect the Premier of the province or the Speaker or Deputy Speaker of the legislature.

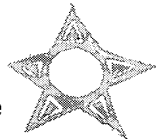
##### Nominations

2. The person presiding at a meeting to which this Schedule applies must call for the nomination of candidates at the meeting.

##### Formal requirements

3. (1) A nomination must be made on the form prescribed by the rules mentioned in item 9.



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- (2) The form on which a nomination is made must be signed -
- (a) by two members of the National Assembly, if the President or the Speaker or Deputy Speaker of the Assembly is to be elected;
  - (b) on behalf of two provincial delegations, if the Chairperson or a Deputy Chairperson of the National Council of Provinces is to be elected; or
  - (c) by two members of the relevant provincial legislature, if the Premier of the province or the Speaker or Deputy Speaker of the legislature is to be elected.
- (3) A person who is nominated must indicate acceptance of the nomination by signing either the nomination form or any other form of written confirmation.

#### **Announcement of names of candidates**

4. At a meeting to which this Schedule applies, the person presiding must announce the names of the persons who have been nominated as candidates, but may not permit any debate.

#### **Single candidate**

5. If only one candidate is nominated, the person presiding must declare that candidate elected.

#### **Election procedure**

6. If more than one candidate is nominated -
- (a) a vote must be taken at the meeting by secret ballot;
  - (b) each member present, or if it is a meeting of the National Council of Provinces, each province represented, at the meeting may cast one vote; and
  - (c) the person presiding must declare elected the candidate who receives a majority of the votes.

#### **Elimination procedure**

7. (1) If no candidate receives a majority of the votes, the candidate who receives the lowest number of votes must be eliminated and a further vote taken on the remaining candidates in accordance with item 6. This procedure must be repeated until a candidate receives a majority of the votes.
- (2) When applying subitem (1), if two or more candidates each have the lowest number of votes, a separate vote must be taken on those candidates, and repeated as often as may be necessary to determine which candidate is to be eliminated.

#### **Further meetings**



8. (1) If only two candidates are nominated, or if only two candidates remain after an elimination procedure has been applied, and those two candidates receive the same number of votes, a further meeting must be held within seven days, at a time determined by the person presiding.
- (2) If a further meeting is held in terms of subitem (1), the procedure prescribed in this Schedule must be applied at that meeting as if it were the first meeting for the election in question.



## Rules

9. (1) The President of the Constitutional Court must make rules prescribing -
  - (a) the procedure for meetings to which this Schedule applies;
  - (b) the duties of any person presiding at a meeting, and of any person assisting the person presiding;
  - (c) the form on which nominations must be submitted; and
  - (d) the manner in which voting is to be conducted.
- (2) These rules must be made known in the way that the President of the Constitutional Court determines.

## Part B - Formula to Determine Party Participation in Provincial Delegations to the National Council of Provinces

1. The number of delegates in a provincial delegation to the National Council of Provinces to which a party is entitled, must be determined by multiplying the number of seats the party holds in the provincial legislature by ten and dividing the result by the number of seats in the legislature plus one.
2. If a calculation in terms of item 1 yields a surplus not absorbed by the delegates allocated to a party in terms of that item, the surplus must compete with similar surpluses accruing to any other party or parties, and any undistributed delegates in the delegation must be allocated to the party or parties in the sequence of the highest surplus.
3. If the competing surpluses envisaged in item 2 are equal, the undistributed delegates in the delegation must be allocated to the party or parties with the same surplus in sequence of votes recorded, starting with the party which recorded the highest number of votes during the last election for the provincial legislature concerned.

## SCHEDULE 4

### FUNCTIONAL AREAS OF CONCURRENT NATIONAL AND PROVINCIAL LEGISLATIVE COMPETENCE

#### Part A

Administration of indigenous forests  
Agriculture  
Airports other than international and national airports  
Animal control and diseases  
Casinos, racing, gambling and wagering, excluding lotteries and sports pools  
Consumer protection  
Cultural matters  
Disaster management  
Education at all levels, excluding tertiary education  
Environment  
Health services  
Housing  
Indigenous law and customary law, subject to Chapter 12 of the Constitution



Industrial promotion

Language policy and the regulation of official languages to the extent that the provisions of section 6 of the Constitution expressly confer upon the provincial legislatures legislative competence

Media services directly controlled or provided by the provincial government, subject to section 192

Nature conservation, excluding national parks, national botanical gardens and marine resources

Police to the extent that the provisions of Chapter 11 of the Constitution confer upon the provincial legislatures legislative competence

Pollution control

Population development

Property transfer fees

Provincial public enterprises in respect of the functional areas in this Schedule and Schedule 5

Public transport

Public works only in respect of the needs of provincial government departments in the discharge of their responsibilities to administer functions specifically assigned to them in terms of the Constitution or any other law

Regional planning and development

Road traffic regulation

Soil conservation

Tourism

Trade

Traditional leadership, subject to Chapter 12 of the Constitution

Urban and rural development

Vehicle licensing

Welfare services

#### **Part B**

The following local government matters to the extent set out in section 155(6) (a) and (7):

Air pollution

Building regulations

Child care facilities

Electricity and gas reticulation

Firefighting services

Local tourism

Municipal airports

Municipal planning

Municipal health services

Municipal public transport

Municipal public works only in respect of the needs of municipalities in the discharge of their responsibilities to administer functions specifically assigned to them under this Constitution or any other law

Pontoons, ferries, jetties, piers and harbours, excluding the regulation of international and national shipping and matters related thereto

Storm water management systems in built-up areas

Trading regulations

Water and sanitation services limited to potable water supply systems and domestic wastewater and sewage disposal systems



## SCHEDULE 5

### FUNCTIONAL AREAS OF EXCLUSIVE PROVINCIAL LEGISLATIVE COMPETENCE

#### Part A

Abattoirs  
Ambulance services  
Archives other than national archives  
Libraries other than national libraries  
Liquor licences  
Museums other than national museums  
Provincial planning  
Provincial cultural matters  
Provincial recreation and amenities  
Provincial sport  
Provincial roads and traffic  
Veterinary services, excluding regulation of the profession



#### Part B

The following local government matters to the extent set out for provinces in section 155(6)(a) and (7):

Beaches and amusement facilities  
Billboards and the display of advertisements in public places  
Cemeteries, funeral parlours and crematoria  
Cleansing  
Control of public nuisances  
Control of undertakings that sell liquor to the public  
Facilities for the accommodation, care and burial of animals  
Fencing and fences  
Licensing of dogs  
Licensing and control of undertakings that sell food to the public  
Local amenities  
Local sport facilities  
Markets  
Municipal abattoirs  
Municipal parks and recreation  
Municipal roads  
Noise pollution  
Pounds  
Public places  
Refuse removal, refuse dumps and solid waste disposal  
Street trading  
Street lighting  
Traffic and parking

