

# CHAPTER 6

## PROVINCES

### Provinces

103. (1) The Republic has the following provinces:

- (a) Eastern Cape;
- (b) Free State;
- (c) Gauteng;
- (d) KwaZulu-Natal;
- (e) Limpopo;
- (f) Mpumalanga;
- (g) Northern Cape;
- (h) North West;
- (i) Western Cape.

[Sub-s. (1) substituted by s. 3 of the Constitution Eleventh Amendment Act of 2003 and substituted by s. 1 of the Constitution Twelfth Amendment Act of 2005]

(2) The geographical areas of the respective provinces comprise the sum of the indicated geographical areas reflected in the various maps referred to in the Notice listed in Schedule 1A.

[Sub-s. (2) substituted by s. 1 of the Constitution Twelfth Amendment Act of 2005.]

- (3) (a) Whenever the geographical area of a province is re-determined by an amendment to the Constitution, an Act of Parliament may provide for measures to regulate, within a reasonable time, the legal, practical and any other consequences of the re-determination.
- (b) An Act of Parliament envisaged in paragraph (a) may be enacted and implemented before such amendment to the Constitution takes effect, but any provincial functions, assets, rights, obligations, duties or liabilities may only be transferred in terms of that Act after that amendment to the Constitution takes effect.

[S.103 substituted by s. 1 of the Constitution Twelfth Amendment Act of 2005.]

## 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.

[Sub-s. (1) amended by s. 3 of the Constitution Tenth Amendment Act of 2003 and by s. 3 of the Constitution Fourteenth Amendment Act of 2008.]

- (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—
- ceases to be eligible;
  - is absent from the legislature without permission in circumstances for which the rules and orders of the legislature prescribe loss of membership; or
  - ceases to be a member of the party that nominated that person as a member of the legislature.

[Sub-s. (3) substituted by s. 4 of the Constitution Tenth Amendment Act of 2003 and by s. 4 of the Constitution Fourteenth Amendment Act of 2008.]

- (4) Vacancies in a provincial legislature must be filled in terms of national legislation.

### **Oath or affirmation**

107. Before members of a provincial legislature begin to perform their functions in the legislature, they must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

### **Duration of provincial legislatures**

108. (1) A provincial legislature is elected for a term of five years.
- (2) If a provincial legislature is dissolved in terms of section 109, or when its term expires, the Premier of the province, by proclamation, must call and set dates for an election, which must be held within 90 days of the date the legislature was dissolved or its term expired. A proclamation calling and setting dates for an election may be issued before or after the expiry of the term of a provincial legislature.

[Sub-s. (2) substituted by s. 1 of the Constitution Fourth Amendment Act of 1999.]

- (3) If the result of an election of a provincial legislature is not declared within the period referred to in section 190, or if an election is set aside by a court, the President, by proclamation, must call and set dates for another election, which must be held within 90 days of the expiry of that period or of the date on which the election was set aside.
- (4) A provincial legislature remains competent to function from the time it is dissolved or its term expires, until the day before the first day of polling for the next

legislature.

### **Dissolution of provincial legislatures before expiry of term**

109. (1) The Premier of a province must dissolve the provincial legislature if—
- (a) the legislature has adopted a resolution to dissolve with a supporting vote of a majority of its members; and
  - (b) three years have passed since the legislature was elected.
- (2) An Acting Premier must dissolve the provincial legislature if—
- (a) there is a vacancy in the office of Premier; and
  - (b) the legislature fails to elect a new Premier within 30 days after the vacancy occurred.

### **Sittings and recess periods**

110. (1) After an election, the first sitting of a provincial legislature must take place at a time and on a date determined by a judge designated by the Chief Justice, but not more than 14 days after the election result has been declared. A provincial legislature may determine the time and duration of its other sittings and its recess periods.

[Sub-s. (1) substituted by s. 8 of the Constitution Sixth Amendment Act of 2001.]

- (2) The Premier of a province may summon the provincial legislature to an extraordinary sitting at any time to conduct special business.
- (3) A provincial legislature may determine where it ordinarily will sit.

### **Speakers and Deputy Speakers**

111. (1) At the first sitting after its election, or when necessary to fill a vacancy, a provincial legislature must elect a Speaker and a Deputy Speaker from among its members.
- (2) A judge designated by the Chief Justice must preside over the election of a Speaker. The Speaker presides over the election of a Deputy Speaker.

[Sub-s. (2) substituted by s. 9 of the Constitution Sixth Amendment Act of 2001.]

- (3) The procedure set out in Part A of Schedule 3 applies to the election of Speakers and Deputy Speakers.
- (4) A provincial legislature may remove its Speaker or Deputy Speaker from office by resolution. A majority of the members of the legislature must be present when the

resolution is adopted.

- (5) In terms of its rules and orders, a provincial legislature may elect from among its members other presiding officers to assist the Speaker and the Deputy Speaker.

## Decisions

112. (1) Except where the Constitution provides otherwise—
- (a) a majority of the members of a provincial legislature must be present before a vote may be taken on a Bill or an amendment to a Bill;
  - (b) at least one third of the members must be present before a vote may be taken on any other question before the legislature; and
  - (c) all questions before a provincial legislature are decided by a majority of the votes cast.
- (2) The member presiding at a meeting of a provincial legislature has no deliberative vote, but—
- (a) must cast a deciding vote when there is an equal number of votes on each side of a question; and
  - (b) may cast a deliberative vote when a question must be decided with a supporting vote of at least two thirds of the members of the legislature.

## 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.

## Powers of provincial legislatures

114. (1) In exercising its legislative power, a provincial legislature may—
- (a) consider, pass, amend or reject any Bill before the legislature; and
  - (b) initiate or prepare legislation, except money Bills.
- (2) A provincial legislature must provide for mechanisms—
- (a) to ensure that all provincial executive organs of state in the province are accountable to it; and
  - (b) to maintain oversight of—
    - (i) the exercise of provincial executive authority in the province, including

- the implementation of legislation; and
- (ii) any provincial organ of state.

### **Evidence or information before provincial legislatures**

115. A provincial legislature 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 person or provincial institution to report to it;
  - (c) compel, in terms of provincial 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 provincial legislatures**

116. (1) A provincial legislature 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 a provincial legislature must provide for—
- (a) the establishment, composition, powers, functions, procedures and duration of its committees;
  - (b) the participation in the proceedings of the legislature and its committees of minority parties represented in the legislature, in a manner consistent with democracy;
  - (c) financial and administrative assistance to each party represented in the legislature, in proportion to its representation, to enable the party and its leader to perform their functions in the legislature effectively; and
  - (d) the recognition of the leader of the largest opposition party in the legislature, as the Leader of the Opposition.

## 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.

## Introduction of Bills

119. Only members of the Executive Council of a province or a committee or member of a provincial legislature may introduce a Bill in the legislature; but only the member of the



Executive Council who is responsible for financial matters in the province may introduce a money Bill in the legislature.

### Money Bills

120. (1) A Bill is a money Bill if it—
- (a) appropriates money;
  - (b) imposes provincial taxes, levies, duties or surcharges;
  - (c) abolishes or reduces, or grants exemptions from, any provincial taxes, levies, duties or surcharges; or
  - (d) authorises direct charges against a Provincial Revenue Fund.
- (2) A money Bill may not deal with any other matter except—
- (a) a subordinate matter incidental to the appropriation of money;
  - (b) the imposition, abolition or reduction of provincial taxes, levies, duties or surcharges;
  - (c) the granting of exemption from provincial taxes, levies, duties or surcharges; or
  - (d) the authorisation of direct charges against a Provincial Revenue Fund.
- (3) A provincial Act must provide for a procedure by which the province's legislature may amend a money Bill.

[S. 120 substituted by s. 3 of the Constitution Seventh Amendment Act of 2001.]

### Assent to Bills

121. (1) The Premier of a province must either assent to and sign a Bill passed by the provincial legislature in terms of this Chapter or, if the Premier has reservations about the constitutionality of the Bill, refer it back to the legislature for reconsideration.
- (2) If, after reconsideration, a Bill fully accommodates the Premier's reservations, the Premier must assent to and sign the Bill; if not, the Premier must either—
- (a) assent to and sign the Bill; or
  - (b) refer it to the Constitutional Court for a decision on its constitutionality.
- (3) If the Constitutional Court decides that the Bill is constitutional, the Premier must assent to and sign it.

### **Application by members to Constitutional Court**

122. (1) Members of a provincial legislature may apply to the Constitutional Court for an order declaring that all or part of a provincial Act is unconstitutional.
- (2) An application—
- (a) must be supported by at least 20 per cent of the members of the legislature; and
  - (b) must be made within 30 days of the date on which the Premier 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 provincial Acts**

123. A Bill assented to and signed by the Premier of a province becomes a provincial Act, must be published promptly and takes effect when published or on a date determined in terms of the Act.

### **Safekeeping of provincial Acts**

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

## **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.

### Assignment of functions

126. A member of the Executive Council of a province may assign any power or function that is to be exercised or performed in terms of an Act of Parliament or a provincial Act, to a Municipal Council. An assignment—
- (a) must be in terms of an agreement between the relevant Executive Council member and the Municipal Council;
  - (b) must be consistent with the Act in terms of which the relevant power or

- function is exercised or performed; and  
(c) takes effect upon proclamation by the Premier.

### **Powers and functions of Premiers**

127. (1) The Premier of a province has the powers and functions entrusted to that office by the Constitution and any legislation.
- (2) The Premier of a province is responsible for—
- (a) assenting to and signing Bills;
  - (b) referring a Bill back to the provincial legislature 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 legislature to an extraordinary sitting to conduct special business;
  - (e) appointing commissions of inquiry; and
  - (f) calling a referendum in the province in accordance with national legislation.

### **Election of Premiers**

128. (1) At its first sitting after its election, and whenever necessary to fill a vacancy, a provincial legislature must elect a woman or a man from among its members to be the Premier of the province.
- (2) A judge designated by the Chief Justice must preside over the election of the Premier. The procedure set out in Part A of Schedule 3 applies to the election of the Premier.

[Sub-s. (2) substituted by s. 10 of the Constitution Sixth Amendment Act of 2001.]

- (3) An election to fill a vacancy in the office of Premier must be held at a time and on a date determined by the Chief Justice, but not later than 30 days after the vacancy occurs.

[Sub-s. (3) substituted by s. 10 of the Constitution Sixth Amendment Act of 2001.]

### **Assumption of office by Premiers**

129. A Premier-elect must assume office within five days of being elected, by swearing or

affirming faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

### **Term of office and removal of Premiers**

130. (1) A Premier's term of office begins when the Premier assumes office and ends upon a vacancy occurring or when the person next elected Premier assumes office.
- (2) No person may hold office as Premier for more than two terms, but when a person is elected to fill a vacancy in the office of Premier, the period between that election and the next election of a Premier is not regarded as a term.
- (3) The legislature of a province, by a resolution adopted with a supporting vote of at least two thirds of its members, may remove the Premier from office only on the grounds of—
- (a) a serious violation of the Constitution or the law;
  - (b) serious misconduct; or
  - (c) inability to perform the functions of office.
- (4) Anyone who has been removed from the office of Premier in terms of subsection (3) (a) or (b) may not receive any benefits of that office, and may not serve in any public office.

### **Acting Premiers**

131. (1) When the Premier is absent or otherwise unable to fulfil the duties of the office of Premier, or during a vacancy in the office of Premier, an office-bearer in the order below acts as the Premier:
- (a) A member of the Executive Council designated by the Premier.
  - (b) A member of the Executive Council designated by the other members of the Council.
  - (c) The Speaker, until the legislature designates one of its other members.
- (2) An Acting Premier has the responsibilities, powers and functions of the Premier.
- (3) Before assuming the responsibilities, powers and functions of the Premier, the Acting Premier must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

### **Executive Councils**

132. (1) The Executive Council of a province consists of the Premier, as head of the Council, and no fewer than five and no more than ten members appointed by the Premier from among the members of the provincial legislature.
- (2) The Premier of a province appoints the members of the Executive Council, assigns their powers and functions, and may dismiss them.

### **Accountability and responsibilities**

133. (1) The members of the Executive Council of a province are responsible for the functions of the executive assigned to them by the Premier.
- (2) Members of the Executive Council of a province are accountable collectively and individually to the legislature for the exercise of their powers and the performance of their functions.
- (3) Members of the Executive Council of a province must—
- (a) act in accordance with the Constitution and, if a provincial constitution has been passed for the province, also that constitution; and
  - (b) provide the legislature with full and regular reports concerning matters under their control.

### **Continuation of Executive Councils after elections**

134. When an election of a provincial legislature is held, the Executive Council and its members remain competent to function until the person elected Premier by the next legislature assumes office.

### **Oath or affirmation**

135. Before members of the Executive Council of a province begin to perform their functions, they must swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

### **Conduct of members of Executive Councils**

136. (1) Members of the Executive Council of a province must act in accordance with a code of ethics prescribed by national legislation.

- (2) Members of the Executive Council of a province may not—
  - (a) undertake any other paid work;
  - (b) act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or
  - (c) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.

### **Transfer of functions**

137. The Premier by proclamation may transfer to a member of the Executive Council—
  - (a) the administration of any legislation entrusted to another member; or
  - (b) any power or function entrusted by legislation to another member.

### **Temporary assignment of functions**

138. The Premier of a province may assign to a member of the Executive Council any power or function of another member who is absent from office or is unable to exercise that power or perform that function.

### **Provincial intervention in local government**

139. (1) When a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or 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;
  - (b) assuming responsibility for the relevant obligation in that municipality to the extent necessary to —
    - (i) maintain essential national standards or meet established minimum standards for the rendering of a service;
    - (ii) 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) maintain economic unity; or
  - (c) dissolving the Municipal Council and appointing an administrator until a

- newly elected Municipal Council has been declared elected, if exceptional circumstances warrant such a step.
- (2) If a provincial executive intervenes in a municipality in terms of subsection (1)(b)—
    - (a) it must submit a written notice of the intervention to—
      - (i) the Cabinet member responsible for local government affairs; and
      - (ii) the relevant provincial legislature and the National Council of Provinces, within 14 days after the intervention began;
    - (b) the intervention must end if—
      - (i) the Cabinet member responsible for local government affairs disapproves the intervention within 28 days after the intervention began or by the end of that period has not approved the intervention; or
      - (ii) the Council disapproves the intervention within 180 days after the intervention began or by the end of that period has not approved the intervention; and
    - (c) the Council must, while the intervention continues, review the intervention regularly and may make any appropriate recommendations to the provincial executive.
  - (3) If a Municipal Council is dissolved in terms of subsection (1)(c)—
    - (a) the provincial executive must immediately submit a written notice of the dissolution to—
      - (i) the Cabinet member responsible for local government affairs; and
      - (ii) the relevant provincial legislature and the National Council of Provinces; and
    - (b) the dissolution takes effect 14 days from the date of receipt of the notice by the Council unless set aside by that Cabinet member or the Council before the expiry of those 14 days.
  - (4) If a municipality cannot or does not fulfil an obligation in terms of the Constitution or legislation to approve a budget or any revenue-raising measures necessary to give effect to the budget, the relevant provincial executive must intervene by taking any appropriate steps to ensure that the budget or those revenue-raising measures are approved, including dissolving the Municipal Council and—
    - (a) appointing an administrator until a newly elected Municipal Council has been declared elected; and
    - (b) approving a temporary budget or revenue-raising measures to provide for the



- continued functioning of the municipality.
- (5) If a municipality, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments, the relevant provincial executive must—
    - (a) impose a recovery plan aimed at securing the municipality's ability to meet its obligations to provide basic services or its financial commitments, which—
      - (i) is to be prepared in accordance with national legislation; and
      - (ii) binds the municipality in the exercise of its legislative and executive authority, but only to the extent necessary to solve the crisis in its financial affairs; and
    - (b) dissolve the Municipal Council, if the municipality cannot or does not approve legislative measures, including a budget or any revenue-raising measures, necessary to give effect to the recovery plan, and—
      - (i) appoint an administrator until a newly elected Municipal Council has been declared elected; and
      - (ii) approve a temporary budget or revenue-raising measures or any other measures giving effect to the recovery plan to provide for the continued functioning of the municipality; or
    - (c) if the Municipal Council is not dissolved in terms of paragraph (b), assume responsibility for the implementation of the recovery plan to the extent that the municipality cannot or does not otherwise implement the recovery plan.
  - (6) If a provincial executive intervenes in a municipality in terms of subsection (4) or (5), it must submit a written notice of the intervention to—
    - (a) the Cabinet member responsible for local government affairs; and
    - (b) the relevant provincial legislature and the National Council of Provinces, within seven days after the intervention began.
  - (7) If a provincial executive cannot or does not or does not adequately exercise the powers or perform the functions referred to in subsection (4) or (5), the national executive must intervene in terms of subsection (4) or (5) in the stead of the relevant provincial executive.
  - (8) National legislation may regulate the implementation of this section, including the processes established by this section.

[S. 139 substituted by s. 4 of the Constitution Eleventh Amendment Act of 2003.]

### **Executive decisions**

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

### **Motions of no confidence**

141. (1) If a provincial legislature, by a vote supported by a majority of its members, passes a motion of no confidence in the province's Executive Council excluding the Premier, the Premier must reconstitute the Council.
- (2) If a provincial legislature, by a vote supported by a majority of its members, passes a motion of no confidence in the Premier, the Premier and the other members of the Executive Council must resign.

## **Provincial Constitutions**

### **Adoption of provincial constitutions**

142. A provincial legislature may pass a constitution for the province or, where applicable, amend its constitution, if at least two thirds of its members vote in favour of the Bill.

### **Contents of provincial constitutions**

143. (1) A provincial constitution, or constitutional amendment, must not be inconsistent with this Constitution, but may provide for—

- (a) provincial legislative or executive structures and procedures that differ from those provided for in this Chapter; or
  - (b) the institution, role, authority and status of a traditional monarch, where applicable.
- (2) Provisions included in a provincial constitution or constitutional amendment in terms of paragraphs (a) or (b) of subsection (1)—
- (a) must comply with the values in section 1 and with Chapter 3; and
  - (b) may not confer on the province any power or function that falls—
    - (i) outside the area of provincial competence in terms of Schedules 4 and 5; or
    - (ii) outside the powers and functions conferred on the province by other sections of the Constitution.

### **Certification of provincial constitutions**

144. (1) If a provincial legislature has passed or amended a constitution, the Speaker of the legislature must submit the text of the constitution or constitutional amendment to the Constitutional Court for certification.
- (2) No text of a provincial constitution or constitutional amendment becomes law until the Constitutional Court has certified—
- (a) that the text has been passed in accordance with section 142; and
  - (b) that the whole text complies with section 143.

### **Signing, publication and safekeeping of provincial constitutions**

145. (1) The Premier of a province must assent to and sign the text of a provincial constitution or constitutional amendment that has been certified by the Constitutional Court.
- (2) The text assented to and signed by the Premier must be published in the national Government Gazette and takes effect on publication or on a later date determined in terms of that constitution or amendment.
- (3) The signed text of a provincial constitution or constitutional amendment is conclusive evidence of its provisions and, after publication, must be entrusted to the Constitutional Court for safekeeping.

## 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.

### **Other conflicts**

147. (1) If there is a conflict between national legislation and a provision of a provincial constitution with regard to—
- (a) a matter concerning which this Constitution specifically requires or envisages the enactment of national legislation, the national legislation prevails over the affected provision of the provincial constitution;
  - (b) national legislative intervention in terms of section 44 (2), the national legislation prevails over the provision of the provincial constitution; or
  - (c) a matter within a functional area listed in Schedule 4, section 146 applies as if the affected provision of the provincial constitution were provincial legislation referred to in that section.
- (2) National legislation referred to in section 44(2) prevails over provincial legislation in respect of matters within the functional areas listed in Schedule 5.

### **Conflicts that cannot be resolved**

148. If a dispute concerning a conflict cannot be resolved by a court, the national legislation prevails over the provincial legislation or provincial constitution.

### **Status of legislation that does not prevail**

149. A decision by a court that legislation prevails over other legislation does not invalidate that other legislation, but that other legislation becomes inoperative for as long as the conflict

remains.

### **Interpretation of conflicts**

150. When considering an apparent conflict between national and provincial legislation, or between national legislation and a provincial constitution, every court must prefer any reasonable interpretation of the legislation or constitution that avoids a conflict, over any alternative interpretation that results in a conflict.