

PROVINCE OF WESTERN CAPE

**CONSTITUTION
OF THE
WESTERN CAPE**

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*(Afrikaans text signed by the Premier)
(Assented to 15 January 1998)*

CONSTITUTION OF THE WESTERN CAPE**PREAMBLE**

In humble submission to Almighty God,

We, the people of the Western Cape, through our elected representatives —

Recognising and striving to heal the injustices of the past,

Recognising the need for peace, reconciliation and justice,

Endeavouring to promote the development of the Western Cape and a better quality of life for all its people through just and effective government;

Affirming that the Western Cape, a province of the Republic of South Africa, is founded on —

democratic values,

the recognition of human rights,

the recognition of the family,

responsible and accountable government,

the rule of law,

the principles of mutual trust and co-operation, and

loyalty to the national Constitution;

Do now adopt this Constitution for the Western Cape.

May God protect our people.

God seën Suid-Afrika, Nkosi Sikelel' iAfrika, God bless South Africa.

CHAPTER 1

FOUNDING PROVISIONS

Province of the Western Cape

1. The Western Cape is a Province of the Republic of South Africa as established by the Constitution of the Republic of South Africa.

Boundaries of Province

2. The boundaries of the Western Cape are determined by the national Constitution.

Adoption, status and interpretation of this Constitution

3. (1) This Constitution is adopted for the Western Cape in terms of the national Constitution, the supreme law of the Republic of South Africa.
- (2) The legislative and executive powers and functions of the Western Cape recorded in this Constitution emanate exclusively from the national Constitution.
- (3) The provisions of this Constitution must not be interpreted as conferring any legislative or executive authority on the Western Cape which is inconsistent with the national Constitution.
- (4) In the event of an inconsistency between different texts of this Constitution, the English text prevails.

Application of this Constitution

4. This Constitution applies to the Western Cape. Subject to the national Constitution, it is the highest law in the Western Cape, and the obligations imposed by it must be performed diligently and without delay.

Languages

5. (1) For the purposes of provincial government —
 - (a) the official languages Afrikaans, English and isiXhosa are to be used; and
 - (b) these languages enjoy equal status.
- (2) The Western Cape government must through legislative and other measures, regulate and monitor its use of Afrikaans, English and isiXhosa.
- (3) The Western Cape government must take practical and positive measures to elevate the status and advance the use of those indigenous languages of the people of the Western Cape whose status and use have been historically diminished.

Provincial symbols and honours

6. (1) A provincial Act may provide for —
 - (a) provincial symbols;
 - (b) the conferral of provincial honours.
- (2) A provincial Bill to provide for provincial symbols must be passed by the Provincial Parliament with a supporting vote of at least two thirds of its members.

CHAPTER 2

INTERGOVERNMENTAL RELATIONS

Co-operative government

7. As part of the provincial sphere of government of the Republic of South Africa, the Western Cape government must —
 - (a) act in accordance with the principles of co-operative government and intergovernmental relations set out in the national Constitution in all its dealings with the national government, the other provincial governments and the municipalities in the Western Cape;

- (b) participate in structures and institutions to promote and facilitate intergovernmental relations, established in terms of the national Constitution; and
- (c) make use of mechanisms and procedures for the settlement of intergovernmental disputes, established in terms of the national Constitution.

Participation in National Council of Provinces

8. Delegates to the National Council of Provinces must take an active part in the Council in order to promote the interests of the Western Cape and of the country as a whole in accordance with the principles of co-operative government and intergovernmental relations set out in the national Constitution.

CHAPTER 3

PROVINCIAL PARLIAMENT

Legislative authority

9. (1) The legislative authority of the Western Cape is vested in the Provincial Parliament.
- (2) The Provincial Parliament is bound only by the national Constitution and this Constitution, and must act in accordance with, and within the limits imposed by, these Constitutions.
- (3) The Provincial Parliament may —
- (a) replace, amend or repeal this Constitution;
 - (b) pass legislation for the Western Cape in terms of the national Constitution and in accordance with this Constitution;
 - (c) pass legislation for the Western Cape with regard to any matter assigned to the Western Cape by national legislation; and
 - (d) assign to a Municipal Council any of its legislative powers referred to in paragraph (b) and, where it is permitted to do so, any of its legislative powers referred to in paragraph (c).
- (4) The Provincial Parliament may —
- (a) by a resolution recommend to the National Assembly that it passes legislation concerning any matter outside the Provincial Parliament's authority, or in respect of which an Act of Parliament prevails over provincial legislation;
 - (b) by a resolution recommend to the National Council of Provinces that it passes legislation concerning any other matter; and
 - (c) by a resolution adopted with a supporting vote of at least two thirds of its members request Parliament to change the name of the Province.

Bills to replace, amend or repeal this Constitution

10. (1) A Bill to replace, amend or repeal this Constitution —
- (a) must be passed by the Provincial Parliament with a supporting vote of at least two thirds of its members; and
 - (b) may include only constitutional provisions.
- (2) At least 30 days before a Bill referred to in subsection (1) is introduced in the Provincial Parliament, the member or committee intending to introduce the Bill must —
- (a) publish, in the official gazette of the Province and in at least three newspapers circulating in the Western Cape, particulars of the proposed Bill for public comment; and
 - (b) submit, in accordance with the rules of the Provincial Parliament, those particulars to municipalities within the Western Cape for their views.
- (3) When a Bill referred to in subsection (1) is introduced, the member or committee introducing the Bill must submit to the Speaker any written comments received from the public and from municipalities for tabling in the Provincial Parliament.

Certification

11. If the Provincial Parliament has replaced or amended this Constitution, the Speaker must submit the text of the new constitution or the constitutional amendment to the Constitutional Court for certification.

Signing, safekeeping, publication and commencement of provincial constitution

12. (1) The Premier must assent to and sign the text of a new constitution or any constitutional amendment that has been certified by the Constitutional Court.
- (2) The text assented to and signed by the Premier must be published in both the national *Government Gazette* and the official gazette of the Province. It takes effect on publication or on a later date determined in terms of the new constitution or the constitutional amendment.
- (3) The signed text of a new constitution or a constitutional amendment is conclusive evidence of its provisions. After publication, it must be entrusted to the Constitutional Court for safekeeping.

Composition

13. The Provincial Parliament consists of 42 elected members.

Election of Provincial Parliament

14. The Provincial Parliament consists of persons elected as members in terms of an electoral system that —
- (a) is prescribed by national legislation;
 - (b) is based on the 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.

Membership

15. (1) Every citizen who is qualified to vote for the National Assembly is eligible to be a member of the Provincial Parliament, 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 Provincial Ministers of the Western Cape; and
 - (ii) other office-bearers whose functions are compatible with the functions of a member of the Provincial Parliament, 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 3 February 1997, has been or 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 the Provincial Parliament in terms of subsection (1) (a) or (b) may be a candidate for the Provincial Parliament, subject to any limits or conditions determined by national legislation.
- (3) A person loses membership of the Provincial Parliament if that person —
- (a) ceases to be eligible;
 - (b) resigns as a member; or
 - (c) is absent from the Provincial Parliament without permission in circumstances for which the rules and orders of the Provincial Parliament prescribe loss of membership.
- (4) Vacancies in the Provincial Parliament must be filled in terms of national legislation.

Oath or affirmation

16. Members of the Provincial Parliament must swear or affirm faithfulness to the Republic and the Western Cape and obedience to the national Constitution and this Constitution, in accordance with Schedule 1, before they begin to perform their functions as members.

Duration

17. (1) The Provincial Parliament is elected for a term of five years.
- (2) When the Provincial Parliament is dissolved in terms of section 18 or when its term expires, the Premier must, by proclamation, call and set dates for an election, which must be held within 90 days of the date when the Provincial Parliament was dissolved or when its term expires.
- (3) If the result of an election of the Provincial Parliament is not declared within the period determined by national legislation, or if an election is set aside by a court, another election must be held in terms of the national Constitution.
- (4) The Provincial Parliament 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 Provincial Parliament.

Dissolution of Provincial Parliament before its term expires

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

Seat of Provincial Parliament, sittings and recess periods

19. (1) The seat of the Provincial Parliament is Cape Town.
- (2) The Provincial Parliament may determine that it or any of its committees may, when necessary, sit elsewhere in the Western Cape.
- (3) After an election, the first sitting of the Provincial Parliament takes place at a time and on a date determined by a Judge designated by the President of the Constitutional Court, but not more than 14 days after the election result has been declared.
- (4) The Provincial Parliament may determine the times and duration of its other sittings and its recess periods.
- (5) The Premier may summon the Provincial Parliament to an extraordinary sitting at any time to conduct special or urgent business.

Speaker

20. (1) The Provincial Parliament must elect a Speaker from amongst its members at the first sitting after its election, or when necessary to fill a vacancy.
- (2) A Judge designated by the President of the Constitutional Court must preside over the election of the Speaker. The procedure set out in Schedule 2 to this Constitution applies to the election of the Speaker.
- (3) The Provincial Parliament may —
- (a) elect a Deputy Speaker from among its members; and
- (b) elect other presiding officers from among its members to assist the Speaker and the Deputy Speaker.
- (4) The Provincial Parliament may remove the Speaker, Deputy Speaker and any other presiding officer by a resolution adopted with a supporting vote of a majority of all its members.

Quorum and decisions

21. (1) Except where this Constitution provides otherwise—
- (a) a majority of the members of the Provincial Parliament 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 Provincial Parliament; and
 - (c) all questions before the Provincial Parliament are decided by a majority of the votes cast.
- (2) The member presiding at a meeting of the Provincial Parliament 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 Provincial Parliament.

Permanent delegates' rights in Provincial Parliament

22. Permanent delegates to the National Council of Provinces may attend, and speak in, the Provincial Parliament and its committees, but may not vote. The Provincial Parliament may require a permanent delegate to attend the Provincial Parliament or its committees.

Powers of Provincial Parliament

23. (1) In exercising its legislative authority, the Provincial Parliament may —
- (a) consider, pass, amend or reject any Bill before it; and
 - (b) initiate or prepare legislation, except money Bills.
- (2) Subject to subsection (4), the Provincial Parliament must provide for mechanisms —
- (a) to ensure that all provincial organs of state are accountable to it; and
 - (b) to oversee —
 - (i) the exercise of provincial executive authority, including the implementation of legislation; and
 - (ii) any provincial organ of state.
- (3) The Provincial Parliament may —
- (a) determine and control its own 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 participation.
- (4) The Provincial Parliament must in its rules and orders provide for —
- (a) the establishment, composition, powers, functions, procedures and duration of its committees;
 - (b) the participation in the proceedings of the Provincial Parliament and its committees of minority parties represented in the Provincial Parliament in a manner consistent with democracy;
 - (c) the conferral on its committees of such powers as are necessary for them to —
 - (i) oversee the activities of the provincial organs of state;
 - (ii) hold the provincial executive accountable; and
 - (iii) promote transparency, accountability and the effective management of the provincial economy, provincial budget, provincial debt and the provincial public sector;
 - (d) a standing committee of the Provincial Parliament to monitor the socio-economic conditions of the residents of the Western Cape, and to make recommendations to the Provincial Parliament concerning the improvement of these conditions;
 - (e) co-ordination between the Provincial Parliament and its committees, and the National Council of Provinces;
 - (f) the receipt of petitions, representations or submissions from any interested person or institution;
 - (g) the participation of representatives of the different categories of local government in the Western Cape in the deliberations of standing committees on Bills that affect the interests of municipalities in the Western Cape; and
 - (h) financial and administrative assistance to each party represented in the Provincial Parliament, in proportion to its representation, to enable the party and its leader to perform their functions in the Provincial Parliament effectively.

Leader of the Opposition

24. The rules and orders of the Provincial Parliament must provide for the recognition of the Leader of the Opposition in the Provincial Parliament.

Evidence or information before Provincial Parliament

25. The Provincial Parliament 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 natural or juristic person or provincial organ of state to report to it;
 - (c) compel, in terms of provincial legislation or the rules and orders of the Provincial Parliament, any person or provincial organ of state to comply with a summons or requirement in terms of paragraph (a) or (b); and
 - (d) receive petitions, representations or submissions from any interested person or institution.

Privilege

26. Members of the Provincial Parliament and the permanent delegates of the Western Cape to the National Council of Provinces —
- (a) have freedom of speech in the Provincial Parliament 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 Provincial Parliament 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 Provincial Parliament or any of its committees.

Code of Conduct

27. Provincial legislation must provide for a code of conduct for the members of the Provincial Parliament.

Public access

28. (1) The proceedings of the Provincial Parliament and its committees take place in public, but reasonable steps may be taken —
- (a) to regulate public access, including access of the media, to the Provincial Parliament and its committees; and
 - (b) to provide for the searching of any person and, where appropriate, the refusal of entry to, or the removal of any person.
- (2) The public, including the media, may not be excluded from a sitting of a committee of the Provincial Parliament unless it is reasonable and justifiable to do so in an open and democratic society.
- (3) The Provincial Parliament must facilitate public participation in its activities and those of its committees.

Introduction of Bills

29. Only a Provincial Minister, a committee or member of the Provincial Parliament may introduce a Bill in the Provincial Parliament. If the Bill is a money Bill, only the Provincial Minister responsible for financial matters may introduce it in the Provincial Parliament.

Money Bills

30. (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) A provincial Act must provide for a procedure by which the Provincial Parliament may amend a money Bill.

Assent to Bills

31. (1) The Premier of the Western Cape must within 45 days after a Bill has been passed by the Provincial Parliament —

- (a) assent to and sign the Bill; or
 - (b) if the Premier has reservations about the constitutionality of the Bill, refer it back to the Provincial Parliament for reconsideration.
- (2) If, after reconsideration, the Bill fully accommodates the Premier's reservations, the Premier must, within 45 days of the date of that reconsideration, assent to and sign the Bill; if not, the Premier must, within 45 days of the date of that reconsideration —
- (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 within 14 days.

Application by members to Constitutional Court

32. (1) Members of the Provincial Parliament 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 Provincial Parliament; and
 - (b) must be made within 30 days of the date on which the Premier assented to and signed the Act.

Publication and commencement of provincial Acts

33. (1) A Bill assented to and signed by the Premier becomes an Act of the Western Cape. It must be published promptly in the official gazette of the Province and takes effect when it is published or on a date determined in terms of the Act.
- (2) Provincial legislation must provide for the dissemination and further publication of particulars of provincial Acts.

Safekeeping of provincial Acts

34. The signed copy of an Act is conclusive evidence of its provisions. After publication, the Act must be entrusted to the Constitutional Court for safekeeping.

CHAPTER 4

EXECUTIVE

Executive authority

35. (1) The executive authority of Western Cape is vested in the Premier.
- (2) The Premier exercises the executive authority, together with the other Provincial Ministers, by —
- (a) implementing provincial legislation;
 - (b) implementing, to the extent that the Western Cape has the administrative capacity to assume effective responsibility, all national legislation within the functional areas listed in Schedule 4 or 5 of the national Constitution except where the national Constitution or an Act of Parliament provides otherwise;
 - (c) implementing national legislation outside the functional areas listed in Schedules 4 and 5 of the national Constitution, the administration of which has been assigned to the Provincial Cabinet 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 Cabinet in terms of the national Constitution or an Act of Parliament.
- (3) The provincial executive must act in accordance with the national Constitution and this Constitution.

Assignment of functions

36. A Provincial Minister 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 Provincial Minister 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 in the official gazette of the Province.

Powers and functions of Premier

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

Election of Premier

38. (1) The Provincial Parliament must elect a Premier from among its members at its first sitting after its election, or when necessary to fill a vacancy.
- (2) A Judge designated by the President of the Constitutional Court must preside over the election of the Premier. The procedure set out in Schedule 2 of this Constitution applies to the election of the Premier.
- (3) An election to fill a vacancy in the office of the Premier must be held at a time and on a date determined by the President of the Constitutional Court, but not later than 30 days after the vacancy occurs.

Assumption of office by Premier

39. The Premier-elect must assume office within five days of being elected, by swearing or affirming faithfulness to the Republic and the Western Cape and obedience to the national Constitution and this Constitution, in accordance with Schedule 1.

Term of office and removal of Premier

40. (1) The Premier's term of office begins when the Premier assumes office and ends when a vacancy occurs 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 Provincial Parliament, 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 national Constitution, this 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 Premier

41. (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 Provincial Minister designated by the Premier;
 - (b) a Provincial Minister designated by the other Provincial Ministers; or
 - (c) the Speaker, until the Provincial Parliament 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 the Western Cape and obedience to the national Constitution and this Constitution, in accordance with Schedule 1.

Provincial Cabinet

42. (1) The Provincial Cabinet consists of the Premier, as head of the Provincial Cabinet, and no fewer than five and no more than ten Provincial Ministers appointed by the Premier from among the members of the Provincial Parliament.
- (2) The Premier appoints the Provincial Ministers, assigns their powers and functions, and may dismiss them.

Accountability and responsibilities

43. (1) The Provincial Ministers are responsible for the functions of the executive assigned to them by the Premier.
- (2) Provincial Ministers are accountable collectively and individually to the Provincial Parliament for how they exercise their powers and carry out their functions.
- (3) Provincial Ministers must —
- (a) act in accordance with the national Constitution and this Constitution; and
 - (b) provide the Provincial Parliament with full and regular reports concerning matters under their control.

Continuation of Provincial Cabinet after elections

44. When an election of the Provincial Parliament is held, the Provincial Cabinet and its members remain competent to function until the person elected Premier by the next Provincial Parliament assumes office.

Oath or affirmation

45. Before Provincial Ministers begin to perform their functions, they must swear or affirm faithfulness to the Republic and the Western Cape and obedience to the national Constitution and this Constitution, in accordance with Schedule 1.

Conduct of members of the Provincial Cabinet

46. (1) Members of the Provincial Cabinet must act in accordance with the code of ethics prescribed by national legislation.
- (2) Members of the Provincial Cabinet 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

47. The Premier by proclamation in the official gazette of the Province may transfer to a member of the Provincial Cabinet —
- (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

48. The Premier may temporarily assign to a member of the Provincial Cabinet any power or function of another member who is absent from office or is unable to exercise that power or perform that function.

Supervision of local government

49. (1) When a municipality in the Western Cape cannot or does not fulfil an executive obligation in terms of legislation, the Provincial Cabinet 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 Western Cape as a whole; or
 - (iii) to maintain economic unity.
- (2) If the Provincial Cabinet intervenes in a municipality under subsection (1)(b) —
- (a) the intervention must end unless it is approved by the national Cabinet member responsible for local government affairs within 14 days of the intervention;
 - (b) notice of the intervention must be tabled in the Provincial Parliament and in the National Council of Provinces within 14 days of their respective first sittings after the intervention began; and
 - (c) the intervention must end unless it is approved by the National Council of Provinces within 30 days of its first sitting after the intervention began.

Executive decisions

50. (1) A decision by the Premier 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 member of the Provincial Cabinet if that decision concerns a function assigned to that member.
- (3) Proclamations, regulations and other subordinate legislation of the Western Cape must be published in the official gazette of the Province and the Western Cape government must take reasonable steps to make them 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 tabled in and approved by the Provincial Parliament.

Motions of no confidence

51. (1) If the Provincial Parliament, by a vote supported by a majority of all its members, passes a motion of no confidence in the Provincial Cabinet excluding the Premier, the Premier must reconstitute the Provincial Cabinet.
- (2) If the Provincial Parliament, by a vote supported by a majority of all its members, passes a motion of no confidence in the Premier, the Premier and the other Provincial Ministers must resign.

CHAPTER 5

LOCAL GOVERNMENT

Local Government in Western Cape

52. (1) The local sphere of government in the Western Cape consists of municipalities established in terms of the national Constitution. The ability or right of a municipality to exercise its powers or perform its functions may not be compromised or impeded.
- (2) The Western Cape government, 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.
- (3) The Western Cape government must assign to a municipality, by agreement and subject to any conditions, the administration of a matter listed in Part A of Schedule 4 or Part A of Schedule 5 of the national Constitution which necessarily relates to local government, if —
- (a) that matter would most effectively be administered locally; and
- (b) the municipality has the capacity to administer it.
- (4) Provincial legislation must provide for the publication and dissemination of draft provincial legislation that affects the status, institutions, powers or functions of local government, before it is introduced in the Provincial Parliament, in a manner that allows organised local government, municipalities and other interested persons an opportunity to make representations with regard to the draft legislation.
- (5) The Western Cape government must publish a municipal by-law in the official gazette of the Province upon request by the municipality.

Establishment of municipalities

53. (1) Provincial legislation must determine the different types of municipality to be established in the Western Cape, as defined by national legislation.
- (2) The Western Cape government must establish municipalities in the Western Cape in a manner consistent with national legislation.

Monitoring of local government

54. (1) The Western Cape government must, by legislative or other measures —
- (a) provide for the monitoring and support of local government in the Western Cape; and
- (b) promote the development of local government capacity to enable municipalities to perform their functions and manage their own affairs.
- (2) The Western Cape government has the legislative and executive authority in terms of the national Constitution to see to the effective performance by municipalities of their functions in respect of matters listed in Schedules 4 and 5 of the national Constitution, by regulating the exercise by municipalities of their executive authority.

CHAPTER 6

PROVINCIAL ADMINISTRATION

Provincial public servants

55. The Western Cape government is responsible for the recruitment, appointment, promotion, transfer and dismissal of members of the public service in the administration of the Western Cape within the framework of uniform norms and standards applying to the public service.

Basic values and principles governing public administration in the Western Cape

56. Public administration in the Western Cape must be governed by the democratic values and principles enshrined in the national Constitution.

CHAPTER 7**FINANCE****Sources of provincial funding**

57. The sources of provincial funding are: —
- (a) the equitable share of revenue raised nationally and allocated to the Western Cape in terms of the national Constitution;
 - (b) other allocations from national government revenue;
 - (c) additional revenue raised by the Western Cape government; and
 - (d) other money, resources and assets received by the Western Cape government.

Provincial Revenue Fund

58. (1) All money received by the Western Cape government must be paid into the Provincial Revenue Fund except such money excluded by an Act of Parliament.
- (2) Money may be withdrawn from the Provincial Revenue Fund only —
- (a) in terms of an appropriation by a provincial Act; or
 - (b) as a direct charge against the Provincial Revenue Fund, when it is provided for in the national Constitution or a provincial Act.

Taxes

59. (1) The Provincial Parliament may impose —
- (a) taxes, levies and duties other than income tax, value-added tax, general sales tax, rates on property or customs duties; and
 - (b) flat-rate surcharges on the tax bases of any tax, levy or duty that is imposed by national legislation, other than the tax bases of corporate income tax, value-added tax, rates on property or customs duties.
- (2) Provincial legislation may provide for user charges.
- (3) The power of the Provincial Parliament to impose taxes, levies, duties and surcharges, as regulated by an Act of Parliament, may not be exercised in a way that materially and unreasonably prejudices national economic policies, economic activities across provincial boundaries, or the national mobility of goods, services, capital or labour.

Provincial budget

60. (1) The provincial budget and budgetary process must promote transparency, accountability and the effective financial management of the provincial economy, debt and the public sector.
- (2) The provincial budget must comply with national legislation as envisaged by the national Constitution with respect to its form, when it must be tabled, the identification of the sources of revenue and proposed expenditure.
- (3) The Provincial Minister responsible for financial matters must in respect of every financial year lay before the Provincial Parliament a budget, containing —
- (a) estimates of revenue and expenditure, differentiating between capital and current expenditure;
 - (b) proposals for financing any anticipated deficit for the period to which they apply; and
 - (c) an indication of intentions regarding borrowing and other forms of public liability that will increase public debt during the ensuing year.
- (4) In prioritising the allocation of funds in the provincial budget, the need to address imbalances, inequities and the development needs of the people of the Western Cape must be taken into consideration.

Provincial Treasury

61. (1) Provincial legislation must establish a provincial treasury and may prescribe in accordance with national legislation measures to ensure transparency, accountability and expenditure control, by introducing —
- (a) generally recognised accounting practice;
 - (b) expenditure classifications; and
 - (c) treasury norms and standards.
- (2) The provincial treasury, with the concurrence of the Provincial Minister responsible for financial matters, may stop the transfer of funds to a provincial organ of state only for serious or persistent material breach of the measures prescribed in terms of subsection (1).

Procurement

62. (1) When the Western Cape government contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.
- (2) Subsection (1) does not prevent the Western Cape government, within a framework of national legislation, from implementing a procurement policy providing for —
- (a) categories of preference in the allocation of contracts; and
 - (b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.

Loans

63. The Western Cape government may raise loans for capital or current expenditure, in accordance with conditions determined by national legislation, but loans for current expenditure —
- (a) may be raised only when necessary for bridging purposes during a fiscal year; and
 - (b) must be repaid within 12 months.

Guarantees

64. (1) The Western Cape government may guarantee a loan in accordance with conditions determined in national legislation only.
- (2) The Western Cape government must publish a report annually on the guarantees it has granted.

Asset register

65. Provincial legislation must provide for —
- (a) a register of provincial assets; and
 - (b) the registration of assets in that register.

CHAPTER 8**POLICE****Policing functions of Western Cape government**

66. (1) The Western Cape government is entitled —
- (a) to monitor police conduct;
 - (b) to assess the effectiveness of visible policing;
 - (c) to oversee the effectiveness and efficiency of the police service, including receiving reports on the police service;
 - (d) to promote good relations between the police and the community; and
 - (e) to liaise with the national Cabinet member responsible for policing with respect to crime and policing in the Western Cape.

- (2) In order to perform the functions set out in subsection(1), the Western Cape government —
 - (a) may investigate, or appoint a commission of inquiry into, any complaints of police inefficiency or a breakdown in relations between the police and any community; and
 - (b) must make recommendations to the national Cabinet member responsible for policing.

Powers of Provincial Parliament

67. (1) The Provincial Parliament may pass legislation necessary to carry out the functions listed in section 66(1).
- (2) The Provincial Parliament may require the provincial commissioner of police for the Western Cape to appear before it or any of its committees to answer questions.
- (3) The Provincial Parliament must receive an annual report from the provincial commissioner on policing in the Western Cape.

Executive responsibility

68. (1) The Provincial Cabinet is responsible for policing functions —
 - (a) vested in it by this Constitution or provincial legislation;
 - (b) assigned to it in terms of national legislation; and
 - (c) allocated to it in the national policing policy.
- (2) The Provincial Cabinet —
 - (a) must determine, and convey to the member of the national Cabinet responsible for policing, the policing needs and priorities of the Western Cape;
 - (b) may lodge a complaint about any misconduct of, or any offence committed by, a member of the police service in the Western Cape, with the national independent police complaints body established by national legislation; and
 - (c) must participate in the committee composed of the national Cabinet member and the Provincial Ministers responsible for policing established by the national Constitution to ensure effective co-ordination of the police service and effective co-operation between the national and provincial spheres of government.

Provincial commissioner of the police service

69. (1) Before the Provincial Cabinet concurs in the appointment of a provincial commissioner of police, as required by the national Constitution, it may require any candidates or nominees for the appointment to appear before it or a committee of its members.
- (2) If the provincial commissioner has lost the confidence of the Provincial Cabinet, it may institute appropriate proceedings for the removal or transfer of, or disciplinary action against, that commissioner, in accordance with national legislation: Provided that, save in exceptional circumstances, the Provincial Cabinet must require the provincial commissioner to appear before it or a committee of its members before instituting those proceedings.

CHAPTER 9

OTHER CONSTITUTIONAL INSTITUTIONS

Cultural Councils

70. Provincial legislation must provide for the establishment and reasonable funding, within the Province's available resources, of a cultural council or councils for a community or communities in the Western Cape, sharing a common cultural and language heritage.

Establishment of and principles governing Commissioner for Environment

71. (1) There is a provincial Commissioner for the Environment.
- (2) In the exercise of his or her powers and functions the Commissioner must ensure the conservation of the environment in the Western Cape, and must give attention to the need to balance the goals of environmental conservation and sustainable development.
- (3) The Commissioner is independent and subject only to the national Constitution, this Constitution and the law, and must be impartial and must exercise the powers and perform the functions of the office of Commissioner without fear, favour or prejudice.

- (4) Other provincial organs of state must assist and protect the Commissioner to ensure the independence, impartiality, dignity and effectiveness of the office of Commissioner.
- (5) No person or provincial organ of state may interfere with the functioning of the Commissioner.

Powers and functions

72. (1) The Commissioner must —
- (a) monitor urban and rural development which may impact on the environment;
 - (b) investigate complaints in respect of environmental administration;
 - (c) recommend a course of conduct to any provincial organ of state or municipality whose activities have been investigated; and
 - (d) act in accordance with the principles of co-operative government and intergovernmental relations referred to in Chapter 2.
- (2) The Commissioner has the additional powers and functions as may be provided for in provincial legislation.

Obligations of provincial organs of state

73. (1) Where the Commissioner has made recommendations to a provincial organ of state, that organ must report to the Commissioner on its actions in response to those recommendations within a reasonable time.
- (2) Any provincial organ of state which refuses or fails to implement the Commissioner's recommendations must upon request furnish the Commissioner with written reasons for that refusal or failure.

Reports by the Commissioner

74. The Commissioner —
- (a) must report to the Provincial Parliament annually on his or her activities and on environmental matters in the Western Cape;
 - (b) must submit any recommendations made by him or her to the Provincial Parliament; and
 - (c) may report to the Provincial Parliament at any other time.

Appointment

75. (1) The Commissioner must be a South African citizen who —
- (a) is ordinarily resident in the Western Cape;
 - (b) is a fit and proper person with specialised knowledge of, or experience in, environmental matters; and
 - (c) complies with the requirements imposed by provincial legislation.
- (2) The Premier must appoint as the Commissioner a person —
- (a) nominated by a committee composed of all parties represented in the Provincial Parliament and which decide to participate; and
 - (b) approved by the Provincial Parliament by a resolution adopted with a supporting vote of at least 60 per cent of the members of the Provincial Parliament.
- (3) The rules and orders of the Provincial Parliament must provide for the involvement of civil society in the nomination process.

Tenure

76. The Commissioner is appointed for a term of three years, renewable once.

Removal and suspension

77. (1) The Commissioner may be removed from office only on —
- (a) the ground of misconduct, incapacity or incompetence;
 - (b) a finding to that effect by a committee composed of all parties represented in the Provincial Parliament and which decide to participate; and

- (c) the adoption by the Provincial Parliament of a resolution calling for that person's removal from office with a supporting vote of at least two thirds of the members of the Provincial Parliament.
- (2) The Premier —
 - (a) may suspend the Commissioner from office at any time after the start of the proceedings of a committee of the Provincial Parliament for the removal of that person; and
 - (b) must remove a person from office upon adoption by the Provincial Parliament of the resolution calling for that person's removal.

Establishment of and principles governing Commissioner for Children

- 78. (1) There is a provincial Commissioner for Children.
- (2) The Commissioner must assist the Western Cape government in protecting and promoting the interests of children in the Western Cape, in particular as regards —
 - (a) health services;
 - (b) education;
 - (c) welfare services;
 - (d) recreation and amenities; and
 - (e) sport.

Powers and duties

- 79. (1) The Commissioner has the power as regulated in provincial legislation to monitor, investigate, research, educate, lobby, advise and report on, matters pertaining to children.
- (2) The Commissioner —
 - (a) must report annually to the Provincial Parliament on the measures taken by the Western Cape government to protect and promote the interests of children in the Western Cape; and
 - (b) may report to the Provincial Parliament at any other time.

Appointment and removal

- 80. The Commissioner is appointed and removed by the Premier on the recommendation by the Provincial Parliament.

CHAPTER 10

DIRECTIVE PRINCIPLES OF PROVINCIAL POLICY

- 81. The Western Cape government must adopt and implement policies to actively promote and maintain the welfare of the people of the Western Cape, including policies aimed at achieving the following —
 - (a) safety and security;
 - (b) the promotion of non-racialism in the Western Cape;
 - (c) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination;
 - (d) the promotion of respect for the rights of cultural, religious and linguistic communities in the Western Cape;
 - (e) the creation of job opportunities;
 - (f) the promotion of a work ethic;
 - (g) the promotion of a market-oriented economy;
 - (h) realising the right of access to —
 - (i) adequate housing;
 - (ii) health care services;

- (iii) sufficient food and water; and
- (iv) social security, including appropriate social assistance for people who are unable to support themselves and their dependants;
- (i) an environment in which all children —
 - (i) are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity;
 - (ii) are protected against exploitation, neglect, abuse and abandonment; and
 - (iii) receive basic education under a system of their parents' choice;
- (j) the development of rural communities and the promotion of the welfare of rural workers;
- (k) a system of taxation which is fair, transparent and accommodates the capacity of people to pay;
- (l) an environment in which all frail and elderly persons —
 - (i) have access to family care or appropriate alternative care when removed from the family environment;
 - (ii) are given basic nutrition, shelter, basic health care services, and social services; and
 - (iii) are protected from maltreatment, neglect, abuse, degradation or involuntary seclusion;
- (m) the protection of the environment in the Western Cape, including its unique fauna and flora, for the benefit of present and future generations; and
- (n) the protection and conservation of the natural historical, cultural historical, archaeological and architectural heritage of the Western Cape for the benefit of the present and future generations;
- (o) the promotional development and enhancement of the youth.

Status of directive principles of provincial policy

82. The directive principles of provincial policy contained in this Chapter are not legally enforceable, but guide the Western Cape government in making and applying laws.

CHAPTER 11

GENERAL PROVISIONS

Transitional arrangements

83. Schedule 3 applies to the transition to the new constitutional order in the Western Cape established by this Constitution, and to matters incidental to that transition.

Short title and commencement

84. (1) This Act is called the Constitution of the Western Cape, 1997, and comes into effect as soon as possible on a date set by the Premier by proclamation in the official gazette of the Province, which may not be later than 1 July 1998.
- (2) The Premier may set different dates before the date mentioned in subsection (1) in respect of different provisions of this Constitution, provided that sections 57, 58, 59(1), 60, 61, 63 and 64 come into effect on 1 January 1998.
- (3) Unless the context otherwise indicates, a reference in a provision of this Constitution to a time when this Constitution took effect must be construed as a reference to the time when the provision took effect.

SCHEDULE 1

OATHS AND SOLEMN AFFIRMATIONS

1. Oath or solemn affirmation of members of Provincial Parliament

- (1) Members of the Provincial Parliament, 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 the Province of the Western Cape and will obey, respect and uphold the National Constitution, the provincial Constitution and all other law of the Republic, and I solemnly promise to perform my function as a member of the Provincial Parliament to the best of my ability.

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

- (2) Persons filling a vacancy in the Provincial Parliament may swear or affirm in terms of subitem (1) before the presiding officer of the Provincial Parliament.

2. Oath or solemn affirmation of Premier, Acting Premier and Provincial Ministers

The Premier or Acting Premier of the Province and each Provincial Minister, 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 faithful to the Republic of South Africa and the Province of the Western Cape and will obey, respect and uphold the national Constitution, the provincial Constitution and all other law of the Republic, and I undertake to hold my office as Premier/Acting Premier/Provincial Minister of the Western Cape with honour and dignity, to be a true and faithful counsellor; not to divulge directly or indirectly any secret matter entrusted to me; and to perform the function of my office conscientiously and to the best of my ability.

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

SCHEDULE 2

ELECTION PROCEDURES

Application

1. The procedures set out in this Schedule apply whenever the Provincial Parliament meets to elect the Premier of the Western Cape or the Speaker (or Deputy Speaker) of the Provincial Parliament.

Nomination

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.
 (2) The form on which a nomination is made must be signed by two members of the Provincial Parliament, if the Premier of the Province or the Speaker (or Deputy Speaker) of the Provincial Parliament is to be elected.
 (3) A person who is nominated must indicate acceptance of the nomination by signing 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 the 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 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 received 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 candidates are to be eliminated.

Further meetings

- 8. (1) If only two candidates are nominated, or if only two candidates remain after an elimination 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. The rules applicable to the above election procedures are the rules made by the President of the Constitutional Court in terms of the national Constitution.

SCHEDULE 3

TRANSITIONAL ARRANGEMENTS

Interpretation of existing legislation

- 1. Unless inconsistent with the context or clearly inappropriate, a reference in any legislation that existed when this Constitution took effect, to the Provincial Legislature, Premier, Executive Council or member of the Executive Council, must be construed as a reference to the Provincial Parliament, Premier, Provincial Cabinet, or Provincial Minister under this Constitution.

Languages

- 2. (1) Section 5(1) of the Constitution is subject to the following:
The Western Cape government must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the equal status of Afrikaans, English and isiXhosa.
- (2) Provincial legislation envisaged in sub-item (1) must be enacted within 12 months of the date when this Constitution took effect.

Provincial Parliament

- 3. (1) Anyone who is a member or office-bearer of the Provincial Legislature when this Constitution takes effect, becomes and holds office as a member or office-bearer of the Provincial Parliament in terms of this Constitution.
- (2) The Provincial Parliament as constituted in terms of subitem (1) must be regarded as having been elected under this Constitution for a term that expires on 30 April 1999.
- (3) For the duration of its term that expires on 30 April 1999, but subject to section 17(4) of this Constitution, the Provincial Parliament consists of 42 members plus the former senators who became members of the Provincial Parliament in terms of the national Constitution.
- (4) The rules and orders of the Provincial Legislature in force when this Constitution takes effect, continue in force, subject to any amendment or repeal.

Elections of the Provincial Parliament

- 4. (1) Schedule 2 to the Constitution of the Republic of South Africa Act, 1993 (Act 200 of 1993), as amended by Annexure A to Schedule 6 to the national Constitution, applies —
 - (a) to the first election of the Provincial Parliament under this Constitution;
 - (b) to the loss of membership of the Provincial Parliament in circumstances other than those provided for in section 15(3) of this Constitution, until the second election of the Provincial Parliament under this Constitution; and
 - (c) to the filling of vacancies in the Provincial Parliament, and the supplementation, review and use of party lists for the filling of vacancies, until the second election of the Provincial Parliament under this Constitution.

- (2) No election of the Provincial Parliament may be held before 30 April 1999 unless the Provincial Parliament is dissolved in terms of section 18(2) following a motion of no confidence in the Premier in terms of section 51(2).

Oaths and affirmations

5. A person who continues in office in terms of this Schedule and who has taken the oath of office or has made a solemn affirmation under the national Constitution or under the Republic of South Africa Constitution Act, 1993 (Act 200 of 1993), is not obliged to repeat the oath of office or solemn affirmation under this Constitution.

Dissolution of Provincial Parliament before expiry of its term

6. Section 18(1) of this Constitution is suspended until 30 April 1999.

Delegates to National Council of Provinces

7. The Provincial Parliament may, until an Act of Parliament is enacted in terms of section 65(2) of the national Constitution, provide in its rules and orders for the conferral of authority on its delegation to the National Council of Provinces to deliberate, act and cast votes on its behalf in the Council.

Provincial Cabinet

8. (1) Anyone who is the Premier when this Constitution takes effect, continues in and holds office in terms of this Constitution as the Premier.
- (2) Subject to section 44 of this Constitution, until the second election of the Provincial Parliament under this Constitution sections 42 and 43 are deemed to read as set out in Annexure A to this Schedule.

Enactment of legislation required by this Constitution

9. (1) Where this Constitution requires the enactment of legislation or rules and orders of the Provincial Parliament, that legislation and those rules and orders must be enacted or adopted, as the case may be, by the relevant authority within a reasonable time after the date when this Constitution took effect.
- (2) Provincial legislation envisaged in sections 65 and 70 of this Constitution must be enacted within 12 months of the date when this Constitution took effect.

ANNEXURE A

1. Section 42 of this Constitution is deemed to read as follows:

Provincial Cabinet

42. (1) The Provincial Cabinet consists of the Premier, as head of the Provincial Cabinet, and:
- (a) no fewer than five and no more than ten Provincial Ministers who are members of the Provincial Parliament; and
 - (b) a maximum of two Provincial Ministers who are eligible to be but are not members of the Provincial Parliament, provided the Premier deems the appointment of such Provincial Ministers expedient.
- (2) The Premier appoints the Provincial Ministers, assigns their powers and functions, and may dismiss them.
2. Section 43 of this Constitution is deemed to contain the following additional subsection:
- (4) A Provincial Minister referred to in section 42(1)(b) may attend, and may speak in, the Provincial Parliament, but may not vote, and is entitled to the privilege set out in section 26 of this Constitution.