

8 November 1995

NATIONAL PARTY

CHAPTER 9

PROVINCIAL AND NATIONAL LEGISLATIVE AND EXECUTIVE COMPETENCIES

LEGISLATIVE AUTHORITY OF THE REPUBLIC

139. The legislative authority of the republic is vested in Parliament, which shall be competent to make laws in terms of this Constitution on any matter including matters falling within the functional areas specified in Schedule 4.

LEGISLATIVE AUTHORITY OF PROVINCES

140. (1) The legislative authority of a province vests in its provincial legislature which shall be competent to make laws in and for its province in terms of this Constitution.
- (2) A provincial legislature shall be competent to legislate on any matter which falls within a functional area specified in Schedule 4.

FRAMEWORK LEGISLATION

141. Option 1

No provision for framework legislation.

Option 2

- (1) Framework legislation comprises Acts of Parliament in terms of which principles or standards are laid down to ensure uniformity across the nation and shall apply equally in all provinces and shall empower provincial legislatures to make laws for the achievement of the objectives set out in the framework legislation.
- (2) Parliament is competent to establish framework legislation only regarding the matters specified in Schedule 5.
- (3) Framework legislation shall be binding upon all legislatures and shall be implemented in a province in accordance with the laws of the provincial legislature.
- (4) Should a provincial legislature fail to implement framework legislation within a reasonable period of time, Parliament shall be competent to implement such legislation until the provincial legislature complies with its duty in this regard.

Option 3

Implemented by way of an override power (see option 3 - of clause 5(1)(f)).

NP Option

- "(1) Subject to subsection (2), a provincial legislature shall be competent to make laws for the province with regard to all matters which fall within the functional areas specified in Schedule 5.
- (2) Parliament shall be competent to enact framework legislation only which sets out justifiable and necessary principles, and which shall be generally applicable in all the provinces, with regard to the matters which fall within the functional areas specified in Schedule 5."

NECESSARY ANCILLARY POWERS

142. The legislative competence referred to in sections 1, 2 and 3 shall include the competence to make laws which are reasonably necessary for or incidental to the effective exercise of such legislative competence.

CONFLICT OF LEGISLATION

143. Option 1

- (1) In the event of a conflict between an Act of Parliament and a law of a provincial legislature with regard to any matter which falls within a functional area specified in Schedule 4, the Act of Parliament shall prevail over the provincial law where the elements of the Act that are in conflict with the provincial law are necessary for -
- (a) the establishment of generally applicable standards regarding -
 - (i) services rendered by the state;
 - (ii) the maintenance of economic unity, or
 - (iii) the determination of national economic policies; or
 - (b) the maintenance of the security of the Republic, or
 - (c) the prevention of prejudice to the Republic or any province thereof caused by the activities of another province.
- (2) A Bill designed to become an Act of Parliament intended in subsection (1) shall be introduced in the second house and shall require the approval of both the second house and the National Assembly.
- (3) The Constitutional Court shall, upon application by at least one fifth of the members of the second house, and prior to the promulgation of a Bill intended in subsection (1), expeditiously determine whether the Bill conforms with the objective criteria prescribed in subsection (1).

- (4) In the event of a conflict between an Act of Parliament and a law of a provincial legislature with regard to any matter which falls within a functional area specified in Schedule 4, which cannot be resolved by a competent court on a construction of this Constitution, precedence shall be given to the Act of Parliament.

Option 2

- (1) in the event of a conflict between an Act of Parliament and a law of a provincial legislature with regard to any matter which falls within a functional area specified in Schedule 4, the Act of Parliament shall prevail over the provincial law only to the extent that such Act applies uniformly in all parts of the country, and is necessary for -
- (a) the establishment of essential national or minimum standards required for a service to be rendered; or
 - (b) the prevention of unreasonable action taken by a province which is materially and unjustifiably prejudicial to economic unity, or the health, environmental or security interests of another province or the country as a whole.
- (2) A Bill designed to become an Act of Parliament intended in subsection (1) shall be introduced in the second house and shall require the approval of both the second house and the National Assembly.
- (3) The Constitutional Court shall, upon application by at least one fifth of the members of the second house, and prior to the promulgation of a Bill intended in subsection (1), expeditiously determine whether the Bill conforms with the requirements of subsection (1).

Option 3

- (1) In the event of a conflict between an Act of Parliament and a law of a provincial legislature with regard to any matter which falls within a functional area specified in Schedule 4, the Act of Parliament shall prevail over the provincial law where the elements of the Act in conflict with the provincial law are necessary for -
- (a) a function in respect of which uniformity across the nation is desirable;
 - (b) South Africa to speak with one voice or to act as a single entity, in particular in relation to other states;
 - (c) the maintenance of essential national standards required for the rendering of services, the maintenance of economic unity, the maintenance of national security or the prevention of unreasonable

action taken by one province which is prejudicial to the interests of another province or the country as a whole;

- (d) the implementation of national economic policies or the promotion of equal living conditions, the power to promote interprovincial commerce and to protect the common market in respect of the mobility of goods, services, capital and labour;
 - (e) the provision of equality and opportunity or access to a government service, or
 - (f) the establishment of a national framework for the provision of public services or the management of institutions relating thereto.
- (2) Where a provincial law deals specifically with matters other than those referred to in subparagraph (1) such law shall prevail over national legislation.
- (3) In the event of a dispute concerning the legislative competencies on any matter which fall within the functional areas specified in Schedule 1 -
- (a) Such legislation shall be deemed to be necessary or desirable in terms of the requirements set out in subparagraph (1) if such legislation has been consented to by the Council of Provinces, or by mediation or where Parliament, consisting of the National Assembly adopts the Bill with a majority of two thirds of those members present and voting.
 - (b) Subject to paragraph (a) the Constitutional Court, or other courts where applicable, shall have jurisdiction on the constitutionality of legislation in such disputes to decide whether the Acts of Parliament meets the requirements as set out in subparagraph (1),
 - (c) If such a dispute cannot be resolved by a court on a construction of the Constitution, precedence shall be given to national legislation.

NP Option

"(1) A law passed by a provincial legislature in terms of this Constitution shall prevail over an Act of Parliament which deals with a matter allocated to the provinces, except insofar as -

- (a) the Act of Parliament deals with a matter that cannot be regulated effectively by provincial legislation;
- (b) the Act of Parliament deals with a matter that, to be performed effectively, requires to be regulated or co-ordinated by uniform norms or standards for the management or administration of that matter that apply generally throughout the Republic;
- (c) the Act of Parliament is necessary to set minimum standards not provided by provincial legislation for the rendering of public services;

- (d) the Act of Parliament is necessary for the maintenance of national economic unity or policies, the protection of the environment across provincial boundaries, the promotion of inter-provincial commerce, the protection of the common market in respect of the mobility of goods, services, capital or labour, or the maintenance of national security; or
- (e) the provincial law materially prejudices the economic, health or security interests of another province or the Republic.

- (2) An Act of Parliament shall prevail over a provincial law as provided for in subsection (1) only if it applies uniformly in all parts of the Republic.
- (3) An Act of Parliament and a provincial law shall be construed as being consistent with each other, unless, and only to the extent that, they are, expressly or by necessary implication, inconsistent with each other.
- (4) An Act of Parliament shall prevail over a provincial law only if a dispute in this regard cannot be resolved by the Constitutional Court on a construction of the Constitution.
- (5) In exercising its powers in terms of this or any other section of the Constitution, Parliament shall not encroach or cause, enable or allow any encroachment on the geographical, functional or institutional integrity of any province.
- (6) This section shall be construed in terms of the principle that a power shall be allocated to the level of government at which it can be exercised most effectively."

INTEGRITY OF PROVINCES

- 144 An Act of Parliament shall not empower an organ of state to encroach upon the geographical, functional or institutional integrity of a province.

EXECUTIVE AUTHORITY OF THE REPUBLIC

- 145 (1) The executive authority of the Republic with regard to all matters falling within the legislative competence of Parliament vests in the national government consisting of the President and other members of the Cabinet, which shall exercise and perform its powers and functions subject to and in accordance with this Constitution.
- (2) The national government may, with the concurrence of the provincial government or of a local government, appoint such provincial government or local government as its agent to perform a specified function within its competence in terms of subsection (1).
 - (3) The national government may, with the concurrence of a provincial government or of a local government, delegate to such provincial government or local government the performance of a specified function within its competence in terms of subsection(1).

EXECUTIVE AUTHORITY OF PROVINCES

146. (1) A province shall have executive authority over -
- (a) all matters in respect of which the provincial legislature has passed laws, and
 - (b) matters entrusted to the provincial government in accordance with this Constitution.
- (2) The executive authority of the province vests in the provincial government consisting of the Premier and the other members of the Executive Council.
- (3) The provincial government may, with the concurrence of the national government or of a local government within the province, appoint the national government or such local government as its agent to perform any specified function within its competence in terms of this section.
- (4) The provincial government may, with the concurrence of the national government or of a local government within the province, delegate to the national government or to such local government the performance of a specified function within its competence in terms of this section.