

**THEME COMMITTEE 2**  
**NATIONAL PARTY SUBMISSION**  
**PROVINCIAL LEGISLATIVE AND EXECUTIVE STRUCTURES**

**A INTRODUCTION**

**1 The transitional constitution as point of departure**

In principle, the National Party believes that the provincial legislative and executive structures provided in the transitional constitution form a convenient point of departure for the deliberations in this Theme Committee. Those structures could, of course, be amended as may be deemed necessary. The National Party for one has a number of minor suggestions in this regard.

**2 Establishment of the Provinces**

We accept the existence of the nine provinces as established in terms of section 124 of the transitional constitution and, apart from possible consequential amendments for example to the names of the provinces, do not propose any fundamental changes to that provision. However, perhaps the extensive provisions in section 124 dealing with the amendment of provincial boundaries could now be simplified.

**B THE LEGISLATURE**

**1 Composition**

**1.1 Electoral system**

In principle, the electoral system of proportional representation should be retained for the election of members of provincial legislatures (section 127). Elsewhere we propose an adaptation to that system for the purposes of the election of the National Assembly in terms of which (i) elections should be held on the basis of voters' lists, and (ii) elected members should be designated after the election by their respective parties to formally represent particular magisterial districts, and we now propose that it should apply to the provincial legislatures as well.

## **1.2 Members**

(a) If the idea is accepted that the membership of our legislatures must be decreased, the present section 127 which provides for a minimum and maximum number of members for provincial legislatures should also be reconsidered.

(b) The qualifications and disqualifications for membership of provincial legislatures and related matters should remain the same as for Parliament (sections 132 and 133, as well as sections 134 and 136).

## **1.3 Term**

The present provisions with regard to the term and the dissolution of a provincial legislature, including the effect of motions of no-confidence, should be retained unamended (sections 128 and 154). The executive remains accountable to the legislature and dependent upon its support and the present provisions follow logically from that principle.

## **2 Functioning**

The provisions regarding the following matters concerning the functioning of the provincial legislatures should be retained without substantial amendment:

- (a) sittings (section 130);
- (b) the election of a Speaker and Deputy Speaker (section 131);
- (c) the powers, privileges and immunities of legislatures (section 135)
- (d) the adoption of rules and orders (section 137);
- (e) the quorum and requisite majorities for decision-making (sections 138 and 139);
- (f) legislative procedures (sections 140 and 141);
- (g) public access (section 142); and
- (h) the administration of provincial legislatures (section 143), from which, of course, the transitional provision (subsection (1)) may now be deleted.

## **C THE EXECUTIVE**

### **1 Composition**

#### **1.1 The Premier**

- (a) There seems to be no compelling reason why the provisions dealing with the election and term of office of the Premier and Acting Premier should be amended. The present sections 145, 146 and 148 could, therefore, remain unchanged.

(b) The powers of the Premier should be retained (section 147), but it could be considered that, analogous to the position at national level (see section 82(2)), the Premier should be compelled to consult with the leaders of the other parties in the Executive Council before exercising certain of his or her powers.

## **1.2 The Executive Council**

(a) Elsewhere the National Party has argued strongly in favour of the retention of the principle of a government of national unity in terms of which the national executive should be composed on a multi-party basis. We propose that the same principle be adhered to at provincial level and that the provincial executive councils also remain composed proportionally by those parties that qualify. Section 149 should, therefore, be retained unamended.

(b) A reduction in the number of members of the executive councils could be considered, especially in the case of the smaller provinces, provided that it does not detrimentally affect the proportional composition of a council (section 149(1))

(c) Decision-making on the basis of consensus (section 150) must be retained as a corollary to the point made in paragraph (a).

(d) The other provisions pertaining to the executive councils, namely assignment and transfer of powers (sections 151 and 152), accountability (section 153), and votes of no-confidence (section 154), can all be retained unamended.