

DEMOCRATIC PARTY (DP)

NATIONAL AND PROVINCIAL LEGISLATIVE AND EXECUTIVE COMPETENCIES

Note: This submission is drawn up in the context of the CA document, "Third Draft - 6 September 1995", and where necessary is amplified by earlier submissions made by the Democratic Party.

Legislative authority of the Republic

1. (1) The legislative authority of the Republic vests in Parliament, which shall be competent to make laws in terms of this Constitution.
- (2) Parliament will be competent to make laws on matters which fall within the functional area of Schedule 1 to the extent that such laws apply uniformly in all parts of the country, and are necessary for:
 - the establishment of essential national or minimum standards required for a service to be rendered; or
 - 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.

Legislative authority of Provinces

2. (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 1.

Framework legislation

Unnecessary in view of proposed construction of the Constitution.

Necessary ancillary powers

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

Conflict of laws

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 1, the Act of Parliament shall prevail over the provincial law only to the extent such Act was made in terms of section 1(2).

Legislative procedures

5. (1) A Bill designed to become an Act of Parliament intended in section 1(2) shall be introduced in the Senate and shall require the approval of both the Senate and the National Assembly.
 - (2) The Constitutional Court shall, upon application by at least one fifth of the members of the Senate, and prior to the promulgation of a Bill intended in section 1(2), expeditiously determine whether the Bill conforms with the requirements of section 1(2).

Integrity of provinces

6. (1) An Act of Parliament shall not empower an organ of state to encroach upon the geographical, functional or institutional integrity of a province.
 - (2) The National Government shall not exercise its powers so as to encroach on the geographical, functional or institutional integrity of a province.

Executive Authority of the Republic

7. The Executive Authority of the Republic with regard to all matters falling within the legislative competence of Parliament shall vest in the President and the Cabinet who shall perform his or her powers and functions subject to and in accordance with this Constitution.

Executive Authority of Provinces

8. (1) The Executive Authority of a Province shall vest in the Premier of the Province who shall execute and perform his or her powers and functions subject to and in accordance with this Constitution.

- (2) A province shall have executive authority over all functional areas in respect of which it has legislative competence, matters assigned to it under section (x) or any law, and matters delegated to it by or under any law.

Transitional period

9. (1) A provincial government may assume its executive and legislative powers in each of the functional areas assigned to it in Schedule 1 when it has the capacity to exercise the powers effectively.
 - (2) In the event of the national government disputing the capacity of a province to exercise one or more powers effectively, the Commission on Provincial and Local Government will adjudicate on the dispute.
 - (3) Ten years after the adoption of this Constitution, all the powers in the functional areas listed in Schedule 1 will automatically be assumed by all the provinces except in the case of a province which has made an alternative arrangement with the national government.