

[2/1/97]



CONSTITUTIONAL ASSEMBLY

## MEMORANDUM

**TO:** Members of the Constitutional Committee  
**FROM:** Executive Director  
**DATE:** 15 April 1996  
**RE:** Transitional Arrangements

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We enclose for your information the revised Transitional Arrangements as drafted by the Technical Refinement Team. This draft text must be read with the 5th Edition of the Working Draft.

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**H EBRAHIM  
EXECUTIVE DIRECTOR  
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**You've made your mark**



**Now have your say**

**THE NEW CONSTITUTION**

**DRAFT - 14 APRIL 1996**

**Status:** TRT

**BILL**

To regulate the transition to the new constitutional order established by the Constitution of the Republic of South Africa, 1996, and to provide for incidental matters.

**Definitions**

1. In this Act, unless inconsistent with the context -

"homeland" means a part of the Republic which, before the previous Constitution took effect, was dealt with in South African legislation as an independent or a self-governing territory;

"new Constitution" means the Constitution of the Republic of South Africa, 1996;

"old order legislation" means legislation enacted before the previous Constitution took effect;

"previous Constitution" means the Constitution of the Republic of South Africa, 1993.

**Application**

2. This Act must be regarded and applied as if it form part of the new Constitution.

**Continuation of existing law**

3. (1) All law which was in force immediately before the new Constitution took effect, continues in force subject to -

(a) any repeal or amendment by an authority acting within its power; or

(b) invalidation by a competent court on the ground of inconsistency with the new Constitution or this Act.

(2) Old order legislation which continues in force in terms of subsection (1) -

(a) does not have a wider application, territorially or otherwise, than it had before the previous Constitution took effect unless subsequently amended to have a wider application; and

- (b) continues to be administered by the authorities which administered them immediately before the new Constitution took effect.

**Repeal of laws**

4. The laws mentioned in Schedule 3 are hereby repealed subject to section 20.

**Interpretation of existing legislation**

5. (1) Unless inconsistent with the context or clearly inappropriate, a reference in any legislation which existed when the new Constitution took effect -
- (a) to the Republic of South Africa or a homeland, must be construed as a reference to the Republic of South Africa under the new Constitution;
  - (b) to Parliament, the National Assembly or the Senate, must be construed as a reference to Parliament, the National Assembly or the National Council of Provinces under the new Constitution;
  - (c) to the President, an Executive Deputy President, a Minister, a Deputy Minister or the Cabinet, must be construed as a reference to the President, the Executive Deputy President, a Minister, a Deputy Minister or the Cabinet under the new Constitution, subject to section 10;
  - (d) to a provincial legislature, Premier or Executive Council of a province, must be construed as a reference to a provincial legislature, Premier or Executive Council under the new Constitution, subject to section 12; or
  - (e) to an official language or languages, must be construed as a reference to [any of the official languages under the new Constitution].
- (2) Unless inconsistent with the context or clearly inappropriate, a reference in any remaining old order legislation -
- (a) to a Parliament, a House of a Parliament or a legislative assembly or body of the Republic or a homeland, must be construed as a reference to -

- (i) Parliament under the new Constitution, if the administration of that legislation has been allocated or assigned in terms of the previous Constitution or this Act to the national government; or
  - (ii) the provincial legislature of a province, if the administration of that legislation has been allocated or assigned in terms of the previous Constitution or this Act to a provincial government; or
- (b) to a State President, Chief Minister, Administrator or other chief executive, Cabinet, Ministers' Council or executive council of the Republic or a homeland, must be construed as a reference to -
- (i) the President under the new Constitution, if the administration of that legislation has been allocated or assigned in terms of the previous Constitution or this Act to the national government; or
  - (ii) the Premier of a province under the new Constitution, if the administration of that legislation has been allocated or assigned in terms of the previous Constitution or this Act to a provincial government.

**National Assembly**

6. (1) No election of the National Assembly may be held before 30 April 1999 unless the Assembly is dissolved in terms of section 49(2) of the new Constitution after a vote of no-confidence in the President.
- (2) Until a new National Assembly is constituted in terms of an election under the new Constitution the Assembly consists of 400 members.
- (3) Anyone who was a member or office-bearer of the National Assembly immediately before the new Constitution took effect, becomes a member or office-bearer of the National Assembly under the new Constitution, and holds office as a member or office-bearer in terms of the new Constitution.
- (4) The National Assembly as constituted in terms of subsection (3) is for all purposes deemed to have been elected under the new Constitution for a term which expires on 30 April 1999.
- (5) The rules and orders of the National Assembly in force immediately before the new Constitution took effect, continue in force subject to any amendment or repeal under the new Constitution.

**Unfinished business before Parliament**

7. (1) Any unfinished business before the National Assembly immediately before the new Constitution takes effect must be proceeded with in terms of the new Constitution.
- (2) Any unfinished business before the Senate immediately before the new Constitution takes effect is regarded as having been approved/rejected by the Senate.

**National Council of Provinces**

8. (1) For the period until immediately before the first sitting of a provincial legislature held after its first election under the new Constitution, the proportion of party representation in the province's delegation to the National Council of Provinces must be the same as the proportion in which the province's 10 senators were nominated in terms of section 48 of the previous Constitution.
- (2) The Premier of a province acting in consultation with the leaders of the parties represented in the provincial legislature must appoint the province's first permanent delegates to the National Council of Provinces -
- (a) from among the persons who were senators immediately before the new Constitution took effect and are willing to serve as permanent delegates; and
- (b) taking into account the proportionality requirement of subsection (1).
- (3) If the permanent delegates component of a delegation cannot be filled in terms of subsection (2), either because of an insufficient number of available former senators or the proportionality required, the Premier, acting as set out in subsection (2), may appoint any eligible persons outside the ranks of former senators as permanent delegates, but only to the extent necessary to supplement the insufficient number or to comply with the proportionality requirement.
- (4) The rules and orders of the Senate in force immediately before the new Constitution took effect, must be applied in respect of the business and proceedings of the National Council to the extent that they can be applied, subject to any amendment or repeal under the new Constitution.

**Former senators**

9. (1) A former senator who is not appointed as a permanent delegate to the National Council of Provinces may choose either -
- (a) to become a member of the provincial legislature from which that person was nominated as a senator in terms of section 48 of the previous Constitution; or
  - (b) to retire on conditions determined by national legislation.
- (2) A former senator who becomes a member of a provincial legislature in terms of subsection (1)(a) may not vote on any question before the legislature.
- (3) The salary, allowances or benefits of a former senator appointed as a permanent delegate or as a member of a provincial legislature may not be reduced by reason only of that appointment.

**National executive**

10. (1) Anyone who was the President, an Executive Deputy President, a Minister or a Deputy Minister of the Republic under the previous Constitution immediately before the new Constitution took effect, continues in and holds that office in terms of the new Constitution but subject to subsection (2).
- (2) Until 30 April 1999 sections 81, 86, 87, 88, 89 and 92 of the new Constitution are deemed to read as set out in Schedule 1 to this Act.

**Provincial legislatures**

11. (1) Until a new provincial legislature is constituted in terms of an election under the new Constitution, the legislature consists of the number of members determined for that legislature under the previous Constitution plus the number of former senators who became members of the legislature in terms of section 9.
- (2) Anyone who was a member or office-bearer of a province's legislature immediately before the new Constitution took effect, becomes a member or office-bearer of the legislature for that province under the new Constitution, and holds office as a member or office-bearer in terms of the new Constitution and any provincial constitution that may be enacted.
- (3) A provincial legislature as constituted in terms of subsection (2) is for all purposes deemed to have been elected under the new Constitution for a term which expires on 30 April 1999.

- (4) The rules and orders of a provincial legislature in force immediately before the new Constitution took effect, continue in force subject to any amendment or repeal under the new Constitution or any provincial constitution that may be enacted.

**Provincial executives**

12. (1) Anyone who was the Premier or a member of the Executive Council of a province immediately before the new Constitution took effect, continues in and holds that office in terms of the new Constitution and any provincial constitution that may be enacted, but subject to subsection (2).
- (2) Until the Premier elected after the first election of a province's legislature under the new Constitution assumes office, or the province enacts its constitution, whichever occurs first, sections 123 and 126 of the new Constitution are deemed to read as set out in Schedule 2 to this Act.

**Provincial constitutions**

13. A provincial constitution passed before the new Constitution took effect must comply with section 132 of the new Constitution.

**Assignment of old order legislation to provinces**

14. (1) Old order legislation with regard to a matter within a functional area listed in Schedule 5 to the new Constitution and which, when the new Constitution took effect, was administered by an authority within the national executive, may be assigned by the President, by proclamation, to an authority within a provincial executive designated by the Premier of the province.
- (2) If it is necessary for an assignment of legislation under subsection (1) to be effectively carried out, the President, by proclamation, may -
- (a) amend or adapt the legislation to regulate its interpretation or regulation;
  - (b) where the assignment does not apply to any piece of legislation as a whole, repeal and re-enact, with or without any amendments or adaptations referred to in paragraph (a), those of its provisions to which the assignment applies or to the extent that the assignment applies to them;

- (c) regulate any other matter necessary as a result of the assignment, including the transfer or secondment of staff, or the transfer of assets, liabilities, rights and obligations, to or from the national or a provincial government or any department of state, administration, force or other institution.
- (3) When legislation is assigned under subsection (1), any reference in the legislation to an authority administering it, must be construed as a reference to the authority to which it has been assigned.
- (4) Any assignment of legislation under section 235(8) of the previous Constitution including any amendment, adaptation or repeal and re-enactment of any legislation and any other action taken under that section, is deemed to have been done under this section.

**Courts**

15. (1) Every court of law [including courts of traditional leaders] existing immediately before the new Constitution took effect, continues to function and to exercise jurisdiction in terms of the legislation applicable to it, and anyone holding office as a judicial officer continues to hold office in terms of the legislation applicable to that office, subject to -
- (a) any amendment or repeal of that legislation by a competent authority; and
  - (b) consistency with the new Constitution and this Act.
- (2) (a) The Constitutional Court established by the previous Constitution becomes the Constitutional Court under the new Constitution.
- (b) Anyone holding office as the President, the Deputy President or a judge of the Constitutional Court immediately before the new Constitution took effect, becomes the President, the Deputy President or a judge of the Constitutional Court under the new Constitution, and holds office subject to the new Constitution for the unexpired portion of the term for which they were appointed; but, the four youngest judges may continue in office for an additional period of ... years after the expiry of their terms.
- (3) (a) The Appellate Division of the Supreme Court of South Africa becomes the Supreme Court of Appeal under the new Constitution.



- (b) Anyone holding office as the Chief Justice, the Deputy Chief Justice or a judge of the Appellate Division immediately before the new Constitution took effect, becomes the Chief Justice, the Deputy Chief Justice or a judge of the Supreme Court of Appeal under the new Constitution.
- (4) (a) A provincial or local division of the Supreme Court of South Africa or a supreme court of a homeland or a general division of such a court, becomes a High Court under the new Constitution without any alteration in its area of jurisdiction, subject to any rationalisation contemplated in subsection (6).  
  
(b) Anyone holding office or deemed to hold office as the Judge President, the Deputy Judge President or a judge of a court referred to in paragraph (a) immediately before the new Constitution takes effect, becomes the Judge President, the Deputy Judge President or a judge of such a court under the new Constitution, subject to any rationalisation contemplated in subsection (6).
- (5) Unless inconsistent with the context or clearly inappropriate, a reference in any legislation or process to -
  - (a) the Constitutional Court under the previous Constitution, must be construed as a reference to the Constitutional Court under the new Constitution;
  - (b) the Appellate Division of the Supreme Court of South Africa, must be construed as a reference to the Supreme Court of Appeal; and
  - (c) a provincial or local division of the Supreme Court of South Africa or a supreme court of a homeland or general division of that court, must be construed as a reference to a High Court.
- (6) (a) As soon as is practical after the new Constitution takes effect all courts, including their structure, composition, functioning and jurisdiction and all relevant legislation, must be rationalised with a view to establishing a judicial system suited to the requirements of the new Constitution.  
  
(b) The Cabinet member responsible for the administration of justice, acting after consultation with the Judicial Service Commission, must initiate the rationalisation envisaged in paragraph (a).

**Cases pending before courts**

16. [All proceedings which immediately before the new Constitution took effect were pending before a court, must be proceeded and dispensed with as if the new Constitution had not been enacted.]

**Other constitutional institutions**

17. (1) In this section "constitutional institution" means -

- (a) the Public Protector;
  - (b) the Human Rights Commission;
  - (c) the Commission on Gender Equality;
  - (d) the Auditor-General;
  - (e) the South African Reserve Bank;
  - (f) the Financial and Fiscal Commission; or
  - (g) the Judicial Service Commission.
- (2) Any constitutional institution established by or under the previous Constitution continues to function in terms of the legislation applicable to it, and anyone holding office as a commission member, a member of the board of the Reserve Bank, the Public Protector or the Auditor-General continues to hold office in terms of the legislation applicable to that office, subject to -
- (a) any amendment or repeal of that legislation by an authority acting within its power; and
  - (b) consistency with the new Constitution and this Act.

**Enactment of legislation required by new Constitution**

18. (1) Where the new Constitution requires the enactment of national or provincial legislation, that legislation must be enacted by the relevant authority within a reasonable time.
- (2) Section 187(3) of the new Constitution may not be enforced before the expiry of three months after the legislation envisaged therein has been enacted.

**Bill of Rights**

19. (1) National legislation envisaged in sections 33(2) and 34(3) of the new Constitution must be enacted within three years of the date on which the new Constitution takes effect.
- (2) Until this legislation is enacted sections 33(1) and 34(1) and (2) must be regarded to read the same as sections 23 and 24 of the previous Constitution, respectively.

**Rationalisation of public administration**

20. (1) Section 237 of the previous Constitution, including all other provisions of the previous Constitution referred to in that section to the extent that they relate to the rationalisation of the public administration -
- (a) continue in force until 30 April 1999 as if the previous Constitution had not been repealed; and
- (b) must be applied with due regard to Chapters 10 and 11 of the new Constitution.
- (2) The repeal of the previous Constitution does not affect any proclamation issued under section 237(3), and any such proclamation continue in force subject to any amendment or repeal by Parliament or invalidation by a competent court on the grounds of inconsistency with the new Constitution or this Act.

**Additional disqualification for legislatures**

21. (1) Anyone who when the new Constitution took effect was serving a sentence in the Republic of more than 12 months' imprisonment without the option of a fine, is not eligible to be a member of the National Assembly or a provincial legislature.
- (2) The disqualification of a person in terms of subsection (1) -
- (a) lapses if the conviction is set aside on appeal, or reduced on appeal to a sentence that does not disqualify that person; or
- (b) ends five years after the sentence has been completed.

**Safekeeping of Acts of Parliament and Provincial Acts**

22. Sections 79 and 116 of the new Constitution do not affect the safekeeping of Acts of Parliament or Provincial Acts passed before the new Constitution took effect.

**Short title and commencement**

23. This Act is called the Constitution Complementary Act, 1996, and takes effect when the new Constitution takes effect.

SCHEDULE 1

GOVERNMENT OF NATIONAL UNITY: NATIONAL SPHERE

1. **Section 81 of the new Constitution is deemed to contain the following additional subsection:**

"(3) The President must consult the Executive Deputy Presidents -

- (a) in the development and execution of the policies of the national government;
- (b) in all matters relating to the management of the Cabinet and the performance of Cabinet business;
- (c) in the assignment of functions to the Executive Deputy Presidents;
- (d) before making any appointment under the Constitution or any legislation, including the appointment of ambassadors or other diplomatic representatives;
- (e) before appointing commissions of enquiry;
- (f) before calling a referendum;
- (g) before signing any international agreements; and
- (h) before pardoning or relieving offenders."

2. **Section 86 of the new Constitution is deemed to contain the following additional subsection:**

"(3) Subsections (1) and (2) apply also to an Executive Deputy President."

3. **Paragraph (a) of section 87(1) of the new Constitution is deemed to read as follows:**

"(a) an Executive Deputy President designated by the President;"

4. Section 88 of the new Constitution is deemed to read as follows:

"Cabinet

88. (1) The Cabinet consists of the President, the Executive Deputy Presidents and -
- (a) not more than 27 Ministers who are members of the National Assembly and appointed in terms of subsections (8) to (12); and
  - (b) not more than one Minister who is not a member of the National Assembly and appointed in terms of subsection (13), provided the President, acting in consultation with the Executive Deputy Presidents and the leaders of the participating parties, deems the appointment of such a Minister expedient.
- (2) Each party holding at least 80 seats in the National Assembly is entitled to designate an Executive Deputy President from among the members of the Assembly.
- (3) If no party or only one party holds 80 or more seats in the Assembly, the party holding the largest number of seats and the party holding the second largest number of seats are each entitled to designate one Executive Deputy President from among the members of the Assembly.
- (4) On being designated an Executive Deputy President may elect to remain or to cease to be a member of the Assembly.
- (5) An Executive Deputy President may exercise the powers and must perform the functions vested in the office of Executive Deputy President by the Constitution or assigned to that office by the President.
- (6) An Executive Deputy President holds office -
- (a) until 30 April 1999 unless replaced or recalled by the party entitled to make the designation in terms of subsections (2) and (3); or
  - (b) until the person elected President after any election of the National Assembly held before 30 April 1999, assumes office.

- (7) A vacancy in the office of an Executive Deputy President may be filled by the party which designated that Deputy President.
- (8) A party holding at least 20 seats in the National Assembly and which has decided to participate in the government of national unity, is entitled to be allocated one or more of the Cabinet portfolios in respect of which Ministers referred to in subsection (1)(a) are to be appointed, in proportion to the number of seats held by it in the National Assembly relative to the number of seats held by the other participating parties.
- (9) Cabinet portfolios must be allocated to the respective participating parties in accordance with the following formula:
  - (a) A quota of seats per portfolio must be determined by dividing the total number of seats in the National Assembly held jointly by the participating parties by the number of portfolios in respect of which Ministers referred to in subsection (1)(a) are to be appointed, plus one.
  - (b) The result, disregarding third and subsequent decimals, if any, is the quota of seats per portfolio.
  - (c) The number of portfolios to be allocated to a participating party is determined by dividing the total number of seats held by that party in the National Assembly by the quota referred to in paragraph (b).
  - (d) The result, subject to paragraph (e), indicates the number of portfolios to be allocated to that party.
  - (e) Where the application of the above formula yields a surplus not absorbed by the number of portfolios allocated to a party, the surplus competes with other similar surpluses accruing to another party or parties, and any portfolio or portfolios which remain unallocated must be allocated to the party or parties concerned in sequence of the highest surplus.
- (10) The President after consultation with the Executive Deputy Presidents and the leaders of the participating parties must -

- (a) determine the specific portfolios to be allocated to the respective participating parties in accordance with the number of portfolios allocated to them in terms of subsection (9);
  - (b) appoint in respect of each such portfolio a member of the National Assembly who is a member of the party to which that portfolio was allocated under paragraph (a), as the Minister responsible for that portfolio;
  - (c) if it becomes necessary for the purposes of the Constitution or in the interest of good government, vary any determination under paragraph (a) subject to subsection (9);
  - (d) terminate any appointment under paragraph (b) -
    - (i) if the President is requested to do so by the leader of the party of which the Minister in question is a member; or
    - (ii) if it becomes necessary for the purposes of the Constitution or in the interest of good government; or
  - (e) fill, when necessary, subject to paragraph (b), a vacancy in the office of Minister.
- (11) Subsection (10) must be implemented in the spirit embodied in the concept of a government of national unity, and the President and the other functionaries concerned must in the implementation of that subsection seek to achieve consensus at all times: Provided that if consensus cannot be achieved on -
- (a) the exercise of a power referred to in paragraph (a), (c) or (d)(ii) of that subsection, the President's decision prevails;
  - (b) the exercise of a power referred to in paragraph (b), (d)(i) or (e) of that subsection affecting a person who is not a member of the President's party, the decision of the leader of the party of which that person is a member prevails; and



- (c) the exercise of a power referred to in paragraph (b) or (e) of that subsection affecting a person who is a member of the President's party, the President's decision prevails.
- (12) If any determination of portfolio allocations is varied under subsection (10)(c), the affected Ministers must vacate their portfolios but is eligible, where applicable, for re-appointment to other portfolios allocated to their respective parties in terms of the varied determination.
- (13) The President -
- (a) in consultation with the Executive Deputy Presidents and the leaders of the participating parties, must -
    - (i) determine a specific portfolio for a Minister referred to in subsection (1)(b) should it become necessary pursuant to a decision of the President under that subsection;
    - (ii) appoint in respect of that portfolio a person who is not a member of the National Assembly, as the Minister responsible for that portfolio;
    - (iii) fill, if necessary, a vacancy in respect of that portfolio; or
  - (b) after consultation with the Executive Deputy Presidents and the leaders of the participating parties, must terminate any appointment under paragraph (a) if it becomes necessary for the purposes of the Constitution or in the interest of good government.
- (14) Meetings of the Cabinet must be presided over by the President, or, if the President so instructs, by an Executive Deputy President: Provided that the Executive Deputy Presidents preside over meetings of the Cabinet in turn unless the exigencies of government and the spirit embodied in the concept of a government of national unity otherwise demand.
- (15) The Cabinet must function in a manner which gives consideration to the consensus-seeking spirit embodied in the concept of a government of national unity as well as the need for effective government."

**5. Section 89 of the new Constitution is deemed to read as follows:**

**"Appointment of Deputy Ministers**

- 89.** (1) The President may, after consultation with the Executive Deputy Presidents and the leaders of the parties participating in the Cabinet, establish deputy ministerial posts.
- (2) A party is entitled to be allocated one or more of the deputy ministerial posts in the same proportion and according to the same formula that portfolios in the Cabinet are allocated.
- (3) The provisions of section 88 (10) to (12) apply with the necessary changes in respect of Deputy Ministers, and in such application a reference in that section to a Minister or a portfolio must be read as a reference to a Deputy Minister or a deputy ministerial post, respectively.
- (4) If a person is appointed as the Deputy Minister of any portfolio entrusted to a Minister -
- (a) that Deputy Minister must exercise and perform on behalf of the relevant Minister any of the powers and functions assigned to that Minister in terms of any legislation or otherwise which may, subject to the directions of the President, be assigned to that Deputy Minister by that Minister; and
- (b) any reference in any legislation to that Minister must be construed as including a reference to the Deputy Minister acting in terms of an assignment under paragraph (a) by the Minister for whom that Deputy Minister acts.
- (5) Whenever a Deputy Minister is absent or for any reason unable to exercise or perform any of the powers or functions of office, the President may appoint any other Deputy Minister or any other person to act in the said Deputy Minister's stead, either generally or in the exercise or performance of any specific power or function."

**6. Section 92 of the new Constitution is deemed to contain the following additional subsections:**

- "(3) Ministers are accountable individually to the President and to the National Assembly for the administration of their portfolios, and all members of the Cabinet are correspondingly accountable collectively for the performance of the functions of the national government and for its policies.
- (4) Ministers must administer their portfolios in accordance with the policy determined by the Cabinet.
- (5) If a Minister fails to administer the portfolio in accordance with the policy of the Cabinet, the President may require the Minister concerned to bring the administration of the portfolio into conformity with that policy.
- (6) If the Minister concerned fails to comply with a requirement of the President under subsections (5), the President may remove the Minister from office -
- (a) if it is a Minister referred to in section 88(1)(a), after consultation with the Minister and, if the Minister is not a member of the President's party or is not the leader of a participating party, also after consultation with the leader of that Minister's party; or
  - (b) if it is a Minister referred to in section 88(1)(b), after consultation with the Executive Deputy Presidents and the leaders of the participating parties."

**SCHEDULE 2**

**GOVERNMENT OF NATIONAL UNITY: PROVINCIAL SPHERE**

**1. Section 123 of the new Constitution is deemed to read as follows:**

**"Executive Councils**

- 123. (1)** The Executive Council of a province consists of the Premier and not more than 10 members appointed by the Premier in accordance with this section.
- (2) A party holding at least 10 per cent of the seats in a provincial legislature and which has decided to participate in the government of national unity, is entitled to be allocated one or more of the Executive Council portfolios in proportion to the number of seats held by it in the legislature relative to the number of seats held by the other participating parties.
- (3) Executive Council portfolios must be allocated to the respective participating parties according to the same formula set out in section 88 (9), and in applying that formula a reference in that section to -
- (a) the Cabinet, must be read as a reference to an Executive Council;
  - (b) a Minister, must be read as a reference to a member of an Executive Council; and
  - (c) the National Assembly, must be read as a reference to the provincial legislature.
- (4) The Premier of a province after consultation with the leaders of the participating parties must -
- (a) determine the specific portfolios to be allocated to the respective participating parties in accordance with the number of portfolios allocated to them in terms of subsection (3);
  - (b) appoint in respect of each such portfolio a member of the provincial legislature who is a member of the party to which that portfolio was allocated under paragraph (a), as the member of the Executive Council responsible for that portfolio;

- (c) if it becomes necessary for the purposes of the Constitution or in the interest of good government, vary any determination under paragraph (a), subject to subsection (3);
  - (d) terminate any appointment under paragraph (b) -
    - (i) if the Premier is requested to do so by the leader of the party of which the Executive Council member in question is a member; or
    - (ii) if it becomes necessary for the purposes of the Constitution or in the interest of good government; or
  - (e) fill, when necessary, subject to paragraph (b), a vacancy in the office of a member of the Executive Council.
- (5) Subsection (4) must be implemented in the spirit embodied in the concept of a government of national unity, and the Premier and the other functionaries concerned must in the implementation of that subsection seek to achieve consensus at all times: Provided that if consensus cannot be achieved on -
- (a) the exercise of a power referred to in paragraph (a), (c) or (d)(ii) of that subsection, the Premier's decision prevails;
  - (b) the exercise of a power referred to in paragraph (b), (d)(i) or (e) of that subsection affecting a person who is not a member of the Premier's party, the decision of the leader of the party of which such person is a member prevails, and
  - (c) the exercise of a power referred to in paragraph (b) or (e) of that subsection affecting a person who is a member of the Premier's party, the Premier's decision prevails.
- (6) If any determination of portfolio allocations is varied under subsection (4)(c), the affected members must vacate their portfolios but is eligible, where applicable, for re-appointment to other portfolios allocated to their respective parties in terms of the varied determination.

- (7) Meetings of an Executive Council must be presided over by the Premier of the province.
- (8) An Executive Council must function in a manner which gives consideration to the consensus-seeking spirit embodied in the concept of a government of national unity, as well as the need for effective government."

**2. Section 126 of the new Constitution is deemed to contain the following additional subsections:**

- "(3) Members of Executive Councils are accountable individually to the Premier and to the provincial legislature for the administration of their portfolios, and all members of the Executive Council are correspondingly accountable collectively for the performance of the functions of the provincial government and for its policies.
- (4) Members of Executive Councils must administer their portfolios in accordance with the policy determined by the Council.
- (5) If a member of an Executive Council fails to administer the portfolio in accordance with the policy of the Council, the Premier may require the member concerned to bring the administration of the portfolio into conformity with that policy.
- (6) If the member concerned fails to comply with a requirement of the Premier under subsection (5), the Premier may remove the member from office after consultation with the member, and if the member is not a member of the Premier's party or is not the leader of a participating party, also after consultation with the leader of that member's party."

**SCHEDULE 3**

**LAWS REPEALED**

Number and year of law	Title
Act 200 of 1993	Constitution of the Republic of South Africa, 1993
Act 2 of 1994	Constitution of the Republic of South Africa Amendment Act, 1993
Act 3 of 1994	Constitution of the Republic of South Africa Second Amendment Act, 1993
Act 13 of 1994	Constitution of the Republic of South Africa Third Amendment Act, 1993
Act 14 of 1994	Constitution of the Republic of South Africa Fourth Amendment Act, 1993
Act 24 of 1994	Constitution of the Republic of South Africa Sixth Amendment Act, 1994
Act 29 of 1994	Constitution of the Republic of South Africa Fifth Amendment Act, 1994

