

2/4/3/7/2

**CONSTITUTIONAL  
ASSEMBLY**

**THEME COMMITTEE 3**

**DRAFT TEXT**

**NATIONAL & PROVINCIAL  
LEGISLATIVE & EXECUTIVE  
COMPETENCIES**

**BY**

**TECHNICAL ADVISORS**

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# CONSTITUTIONAL ASSEMBLY

## DRAFT TEXT NATIONAL AND PROVINCIAL LEGISLATIVE COMPETENCIES

*The following text is drafted on the basis of areas of agreement between the parties as expressed in Theme Committee 3's report on areas of agreement and contention regarding national and provincial and executive competencies.*

*The purpose of the draft sections is to reduce the summary of submissions on national and provincial legislative competencies to legislative format. Given the range of viewpoints contained therein alternative formulations are offered. The alternatives are NOT arranged in any order of preference. The numbering is done in the usual legislative style and although it is unlikely that provisions of this nature will appear at the beginning of the Constitution, it starts for the sake of convenience with clause 1.*

### **Legislative authority of the Republic**

1. The legislative authority of the Republic vests in Parliament, which shall be competent to make laws on any matter in accordance with the provisions of this Constitution.

#### ***Alternatively:***

1. The legislative authority of the Republic vests in Parliament, which shall be competent to make laws in accordance with the provisions of this Constitution on any matter which falls within a functional area specified in Schedule 1.

### **Legislative authority of provinces**

2. The legislative authority of a province vests in its provincial legislature which shall be competent to make laws in accordance with the provisions of this Constitution on any matter which falls within a functional area specified in Schedule 2.

#### ***Alternatively:***

2. The legislative authority of a province vests in its provincial legislature which shall be competent to make laws in accordance with the provisions of this Constitution on any matter which does not fall within a functional area specified in Schedule 1.

***Alternatively [ie could be additional to clause]:***

- 2 (1) A provincial legislature shall have the right to legislate on any matter contained in Schedule 3 to the extent that Parliament does not exercise its legislative powers.
2. (2) Parliament has the right to legislate on any matter contained in Schedule 3 where
  - (i) the matter cannot be effectively regulated by the legislation of individual provinces; or
  - (ii) regulation by a province might prejudice the interests of other provinces or the country as a whole; or
  - (iii) the maintenance of legal and economic unity or the promotion of uniform national standards necessitates Parliamentary legislation.

**Framework legislation**

3. (1) A provincial legislature may, within the framework of an Act of Parliament, make laws concerning the performance of functions of the national government in the province which have been delegated to the provincial government in terms of such Act.  
  
(2) A provincial legislature may, within the framework of an Act of Parliament, make laws concerning the performance of functions of the national government in the province regarding which the provincial government has by agreement been appointed as agent for the national government.

***Alternatively (or additionally):***

3. (1) An Act of Parliament may establish a framework regarding any matter within its competence within which every provincial legislature shall be competent to pass laws for the achievement of the objectives set out in such Act.  
  
(2) An Act of Parliament contemplated in subsection (1) shall apply uniformly to all provincial legislatures.

***Second alternative:***

3. (1) An Act of Parliament may establish a framework regarding any matter specified in Schedule 4 within which every provincial legislature shall be competent to pass laws for the achievement of the objectives set out in the Act of Parliament.  
  
(2) Such an Act shall apply uniformly to all provincial legislatures.  
  
(3) In the event that such an Act has been passed a provincial legislature shall only be entitled to legislate on any matter contained in such Act if it complies with the principles and objectives contained therein.

## Conflicting laws

4. In the event of a conflict between an Act of Parliament and a provincial law with regard to a matter which falls within a functional area specified in Schedule 2 [*alt: and in Schedule 4*], the Act of Parliament shall prevail over the provincial law if the Act of Parliament -
- (i) sets minimum or uniform norms or standards in all provinces;
  - (ii) provides for equal opportunity;
  - (iii) provides for access to and delivery of the services of the national government;
  - (iv) deals with a matter that affects more than one province;
  - (v) is necessary to enable the Republic to act as a single entity in its international relations, or to fulfil its international obligations;
  - (vi) provides effectively for the maintenance of the unity of the national capital and labour market and for the implementation of national economic policies;
  - (vii) deals with the protection of the environment;
  - (viii) deals with the protection of the national security; or
  - (ix) the provincial law prejudices the economy, health, public safety or security or the interests of another province or of the country as a whole.

### *Alternatively*

4. The Act of Parliament shall prevail over the provincial law if -
- [(a) a majority [*alt: two-thirds*] of the members of the Senate [*2nd alt: the members of the Senate representing the province for which the provincial law was adopted*] consented to the adoption of the Act of Parliament:] and the Act of Parliament -
    - (i) sets minimum or uniform norms or standards in all provinces;
    - (ii) provides for equal opportunity;
    - (iii) provides for access to and delivery of the services of the national government;
    - (iv) deals with a matter that affects more than one province;
    - (v) is necessary to enable the Republic to act as a single entity in its international relations, or fulfil its international obligations;
    - (vi) provides effectively for the maintenance of the unity of the national capital and labour market and for the implementation of national economic policies;
    - (vii) deals with the protection of the environment;
    - (viii) deals with the protection of the national security; and [*alt: or*]  
the provincial law prejudices the economy, health, public safety or security or the interests of another province or of the country as a whole.

***Alternatively:***

4. (1) In the event of a conflict between an Act of Parliament and a provincial law with regard to a matter which falls within a functional area specified in Schedule 2 [*alt: and in Schedule 4*], the provincial law shall prevail over the Act of Parliament, except if -
- (a) the provincial law cannot regulate its subject matter effectively; and (or)
  - (b) the Act of Parliament is necessary -
    - (i) to set uniform standards for the management or administration of the subject matter in all the provinces;
    - (ii) to set minimum standards not provided for by the provincial law for the rendering of services;
    - (iii) for the promotion of inter-provincial commerce;
    - (iv) for the protection of the common market in respect of the mobility of goods, services, capital and labour;
    - (v) for the maintenance of national security; or
    - (vi) for the protection of the environment across provincial boundaries, and [*alt: or*]  
the provincial law prejudices the economy, health, public safety or security or the interests of another province or of the country as a whole.

(2) An Act of Parliament is invalid insofar as it purposes to cause or empower an encroachment upon the geographical, functional or institutional integrity of a province.

***Second alternative:***

4. In the event of a conflict between an Act of Parliament and a provincial law with regard to a matter which falls within a functional area specified in Schedule 2 [*alt: and in Schedule 4*], the provincial law shall prevail over the Act of Parliament, except if -
- (a) the Act of Parliament deals with a matter which is the subject of an international treaty or rule of international law to which the Republic is bound;
  - (b) the provincial law materially and unjustifiably prejudices the economy, health, environmental or security interests of another province or of the country as a whole; or
  - (c) the provincial law materially and unjustifiably causes an obstruction to the free movement of people, goods, money, information or assets between provinces.