

Embargoed until 30/10/93

28 October 1993
In bilateral discussions between the SA Government and the African National Congress the following draft Section 118 was formulated for submission to the Technical Committee on Constitutional Issues. This is a preliminary draft and both parties may propose modifications in due course.

A193

[193]

SECTION 118

- (1) (a) A Provincial legislature shall, subject to the provisions of subparagraphs (c) and (d), have concurrent competence with Parliament to make laws for the Province with regard to all matters which fall within the functional areas specified in Schedule 9.
- (b) The legislative competence referred to in paragraph (a) shall include the competence to make laws with regard to all such other matters as are reasonably necessary for or incidental to the effective exercise of such legislative competence.
- (c) An Act of Parliament which deals with a matter referred to in paragraphs (a) and (b) shall prevail over a Provincial law inconsistent therewith only to the extent that -
- (i) the Act of Parliament deals with a matter that cannot be regulated effectively by provincial legislation; or
 - (ii) the Act of Parliament deals with a matter that requires to be regulated or co-ordinated by uniform norms or standards that apply generally throughout the Republic; or
 - (iii) the provincial law materially prejudices the economic, health or security interests of another province or the country as a whole; or
 - (iv) it is necessary to set minimum standards across the nation for the rendering of public services; or
 - (v) the provisions of the Act of Parliament is necessary for the determination of national economic policies, the maintenance of economic unity, 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.

- (d) An Act of Parliament shall prevail over a Provincial law, as provided for in paragraph (c), only if it applies uniformly in all parts of the Republic.
 - (e) An Act of Parliament and a Provincial law shall be construed as being consistent with each other, unless and only to the extent that inconsistency is established expressly or by necessary implication.
- (2) Executive power and responsibility relating to all matters within the legislative competence of a province in terms of subsection (1) and which have been allocated to the provincial administration in terms of section 119, shall rest in the provincial executive.
 - (3) The competences of a provincial legislature and the powers and responsibilities of a provincial executive in terms of this section shall not be changed without the consent of the provincial legislature.

[An appropriate addition to clause 61 is to be made.]

SCHEDULE 9

Agriculture

Casinos, racing, gambling and wagering

Cultural Affairs

Education at primary and secondary level (the matter of tertiary education stands over)

Health services

Housing

Language policy and language/s as languages of record for use in provincial administrations

Local government subject to the provision of Chapter 10

Nature conservation, excluding national parks and national botanical gardens and marine resources

Police subject to the provisions of the appropriate chapter

Provincial public media

Public transport

Regional planning and development

Road traffic regulation

Roads

Tourism

Trade and industrial promotion

Traditional authorities

Urban and rural development

Welfare services