

MODEL 2

**CONTINUATION, TRANSFER, RATIONALIZATION AND
CONSOLIDATION OF EXISTING ADMINISTRATIVE
RESPONSIBILITY**

119. (1) The National Government and the governments of the provinces shall in co-operation with one another, rationalize and consolidate, subject to this Constitution, the departments, administrations and institutions referred to in subsection (2), and shall in so doing have regard to the advice and recommendations of the Commission on Provincial Government established in terms of section 127.

(2) Until changes are made as a result of the rationalization or consolidation of departments, administrations and institutions as contemplated in subsection (1), or the assignment of laws in terms of section 120(2), every department of State, administration and administrative institution of the Republic or any self-governing territory or of the Republic of Transkei, Bophuthatswana, Venda or Ciskei, as the case may be, which was immediately before the commencement of this Constitution responsible for the performance of functions in an area included in a province and in connection with any area of competence referred to in section 118, shall continue to be responsible for the performance of such functions in the province concerned.

(3) Subject to changes made expressly as a consequence of the implementation of subsection (1) or section 120(2), personnel of all departments, administrations and institutions referred to in this section shall continue in the posts they occupied immediately before the commencement of this Constitution, and shall continue to perform the functions which they previously performed.

(4) (a) The President may, after consultation with the Premier of any province, by proclamation in the Gazette, take such measures, including legislative measures, as the President considers necessary for the better achievement of this section or section 120.

(b) A copy of a proclamation in terms of paragraph (a) shall be tabled in Parliament within 14 days after the issue thereof if Parliament is then in session or, if Parliament is then not in session, within 14 days after the commencement of its next ensuing session.

(c) If Parliament disapproves of any such proclamation or any provision thereof, such proclamation or such provision shall thereafter cease to be of force and effect to the extent to which it is so disapproved, but without prejudice to the validity of anything done in terms of such proclamation up to the date upon which it so ceased to be of force and effect, or to any right, privilege, obligation or liability acquired, accrued or incurred as at the said date under and by virtue of such proclamation.

ADMINISTRATION OF EXISTING LAWS

120. (1) Existing laws applicable in a province (including any law of a self-governing territory and of the Republic of Transkei, Bophuthatswana, Venda or Ciskei) governing the functions of the departments, administrations and institutions referred to in section 119, shall remain in force until they are amended or repealed by a competent legislature.

(2) (a) In order to give effect to the provisions of section 118, and notwithstanding the provisions of any other law, the President shall, when requested to do so by the executive of the province concerned and in so far as he or she is so requested, by proclamation in the *Gazette* assign the administration of any law referred to in subsection (1) or a provision in such law which was in operation within the area of that province before the commencement of this Constitution and which falls within the areas of competence of a province referred to in section 118, to a Minister or other political functionary of the province concerned mentioned in the proclamation -

- (i) either specifically or by way of a general assignment of any law;
and
- (ii) either generally or in so far as such provision, law or laws relate to any matter specified in the assignment.

(b) When the President so assigns the administration of a law or at any time thereafter, and in so far as he or she considers it necessary for the efficient carrying out of the assignment, he or she may -

- (i) amend or adapt such law in order to regulate its application or interpretation;
- (ii) where the assignment does not relate to the whole of such law, repeal and re-enact, whether with or without an amendment or adaptation contemplated in subparagraph (i), those of its provisions to which the assignment relates or in so far as the assignment relates to them;
- (iii) regulate any other matter necessary, in his or her opinion, as a result of the assignment, including the transfer or admission of persons to or in the service of the State or any other person, subject to conditions not less favourable than those under which they serve, and the transfer of assets, liabilities, rights and obligations, including moneys, to or from the State or any other person or body established by law.

(c) Any reference in a law so assigned in terms of paragraph (a) to any government or organ of government shall be deemed to be a reference *mutatis mutandis* to the Government or relevant organ of government of the province concerned.

3. (a) If it is for any reason not possible to assign the administration of any existing law contemplated in subsection (2) to a particular province within a period of 14 days after the appointment of the executive council of that province, all rights, powers, authorities, duties, obligations and functions which are vested in terms of such existing law in a President, Minister, Chief Minister or Administrator, as the case may be, shall, notwithstanding the provisions of section 113, in so far as that law is applied in or in respect of such province, as from the expiry of that period and until such time as such law is so assigned to a Minister or other functionary of that province, be vested in a Minister of the National Government designated by the President for that purpose by proclamation in the Gazette or in any other functionary of the National Government so designated.

(b) Any reference in a law referred to in paragraph (a) to any government or organ of government, shall be deemed to be a reference *mutatis mutandis* to the Government or relevant organ of government of the Republic.

(4) Parliament and the legislatures of the provinces shall undertake the consolidation of the laws referred to in subsection (1) as expeditiously as possible.