

# Facilitating the transition:

**T**he formation of interim forums, commissions or committees is one of the key measures MECs are taking to facilitate the transition to the new dispensation. Such a structure has already been established for the Cape Metropolitan area and transformation forums for new district municipalities in the Western Cape are to be established this month. Similar processes are underway in other provinces as well.

## Section 14(5) measures

Section 14(5) of the Municipal Structures Act authorises an MEC for local government, by notice in a Provincial Gazette, to make provision for transitional measures to facilitate the disestablishment of an existing municipality and the establishment of a new municipality. Before publishing such a notice, the MEC must first consult the existing municipality. This section gives the MEC a wide discretion on the measures to take and the formation of committees, comprising of the members of existing municipalities, certainly falls within its broad ambit. It is important to note that these committees are not executive committees; they do not have any executive powers and do not replace the decision making powers of the existing councils. They are merely advisory bodies for the MEC, the existing municipalities and the new municipalities to be established.

## Unicity commission

The first notice issued in terms of section 14(5) established the Unicity Commission for the Cape Metropolitan area. After consulting

the Cape Metropolitan Council and the six metropolitan local councils falling within the metropolitan area, the provincial minister for local government issued the notice on 25 November 1999. The preamble states that the councils have reached agreement with each other and with the provincial minister regarding the matters set out in the notice.

### Legal status

The Commission is a juristic person with legal personality, capable of entering into contracts in its own name.

### Composition

The Commission consists of 12 members; five appointed by and representing the ANC; one for the DP and five for the NNP. No specific formula was followed in deriving at the composition of the Commission, but it reflects broadly the present political representation in the CMC. Specific persons are named in the notice with each of the two large parties having two named alternatives and the DP one. A political party may replace any appointed member by notifying the provincial minister. Voting members must at all times be members of at least one of the participating councils. There is also an independent non-voting chairperson who is appointed by the Commission.

### Independent chairperson

The chairperson is the chief executive officer of the Commission and presides over its meetings, is the accounting officer in charge of the administration of the Commission and must see to the effective performance of the Commission, its committees and administration.

### Procedure

The first meeting was held at a time and place determined by the provincial minister. Thereafter it will be decided by the Commission. The quorum of a meeting is eight of the eleven voting members. The Commission must endeavour to take all decisions by consensus. Failing consensus, a decision is carried if supported by eight voting members. Unless members break ranks, the two major parties must agree on all decisions. If no agreement can be reached, the chairperson may apply the deadlock-breaking mechanism determined by the Commission, which may include negotiations between the political parties.

The meetings are open unless the Commission decides that it should be closed when it is reasonable to do so having regard to the nature of the business at hand. The chairperson must submit monthly reports to the councils and the provincial minister.

### Internal structures

The Commission may establish committees, technical teams and working groups to assist and advise it.

### Conduct of members

Members must perform their functions in good faith and without fear, favour or prejudice. They must also disclose any personal or business interest that they or any spouse, partner or business associate may have in any matter under consideration. Overall, they may not act in a way that compromises the credibility or integrity of the Commission.

### Functions

The main function of the

**These committees are not executive committees; they do not have any executive powers and do not replace the decision making powers of the existing councils.**

# Section 14(5) Committees

Commission is to advise the provincial minister on any matter relating to the disestablishment of the councils and the establishing and functioning of the Unicity. This include advice on the section 12 notice the provincial minister must issue. To this end, the Commission must develop a proposed service delivery and institutional strategy for the Unicity. It must also

- prepare and propose agreements to be entered into by the Councils relevant to the transition, including -
  - service delivery;
  - integrated development planning;
  - political governance;
  - budgets;
  - financial management;
  - human resources; and
  - information technology;
- make recommendations for consideration by the to be established Unicity in regard to -
  - an integrated development plan and management framework; and
  - a service delivery and institutional strategy.
- make recommendations on any matter that will facilitate the initial orderly functioning of the Unicity, including -
  - rules and procedures
  - interim delegations
  - interim reporting lines
  - standardization of by-laws
  - standardization of interim systems, policies, procedures and decisions;
- represent the councils as employees in consultations and negotiations with council employees and trade unions. (All the councils have consented to the Commission fulfilling this function).

The Commission may be assigned or be delegated any other function by any of the councils or the provincial minister.

In general the Commission has the power to do which is necessary and expedient to carry out its specific

functions and duties. This includes the employment of staff and obtaining of services.

## **Budget and funding**

The Commission is to be funded by the existing councils in an amount and on a basis to be agreed by the councils. It may receive any financial assistance, but may not raise loans without the consent of the councils. Each voting member receives a monthly allowance.

## **Report back**

In the interest of fostering accountability and transparency, the Commission must hold at intervals report-back and consultative meetings to which all stakeholders are invited.

## **Termination**

The work of the Commission terminates one month after the municipal election or on a date determined by the provincial minister.

## **Western Cape District Transformation Forums**

Structures similar to the Unicity Commission will be created for the five district municipality areas in the Western Cape. The main aim of these Forums is to act as a consultative and advisory forum for the provincial minister concerning the disestablishment of existing municipalities within each area and the establishment of new ones.

## **Composition**

The composition follows the same

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formula as the Unicity: one ANC nominee for each local municipality and one for the district municipality within the area of each forum; exactly the same number for the NNP; and in respect of all other political parties represented on the councils of existing municipalities, one nominee per ten percent of all the councillors on all the councils within the area of the forum, as reflected in the outcome of the 1995/1996 local government

elections. Every member and alternative member of the forums must be and remain a member of an existing council and they may be reimbursed by that council for out-of-pocket expenses.

The provincial minister appoints a non-voting chairperson for each forum.

## **Decision-making**

The forums must try to take all decisions on the basis of consensus. If that is not possible within a time determined by the chairperson, then the various positions adopted by the members should be minuted. The chairperson must give monthly written reports to each of the existing councils within the area of the forum and to the provincial minister.

## **Internal structures**

A forum may establish committees to assist and advise it, but must establish a committee for each new local municipality within the forum's area. The members of this committee must be made up of the all the councillors on the existing local councils and representative councils within the area of the new category B municipality. This committee must be co-chaired by ANC and NNP nominees. A technical working group comprising of the CEOs of all the existing municipalities

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in the district must also be established. A similar working group must also be set-up for every local municipality in the district area.

For all the other committees, the members must either be a councillor or an employee of an existing municipality.

## Employment

A forum may not employ anyone but may, by agreement, obtain the services of an employee of an existing municipality with the consent of that municipality. Such a person remains in the employment of and remunerated by that municipality. The existing district councils must provide any administrative and secretarial assistance required by a forum.

## Functions and duties

The functions and duties are very similar to those of the Unicity Commission. They have, however, the following specific duties, including:

- to determine a common approach (and to encourage the existing municipalities to adopt such common approach) in regard to -
  - communication with staff and communities regarding local government transformation;
  - a common valuation and rating system;
  - a common tariff structure
  - a common budget framework to facilitate budgetary integration from the commencement of the 2001/2002 financial year;
  - service levels and the quality thereof;
  - the writing off of bad debts;
  - a common grading system;
  - common conditions of employment;
  - the implementation of the Employment Equity Act of 1998; and
  - any other matter which may impact on the integrity and financial viability of the new municipalities;
- to monitor the existing municipali-

ties in regard to

- provision for the maintenance of assets'
- provision for working capital
- provision for bad debts
- billing and recovery ratios
- growth in arrears
- bulk service charges
- capital expenditure
- staff appointments
- use of reserves
- their estimates of budgeted income, the intention being that their budgets should be based on realistic estimates of income.

This latter duty is important in light of the fears that there may be the stripping of assets and undue promotion by existing municipalities to the detriment of the new municipalities to be formed.

## Obligations of existing municipalities

To deal with this concern and to protect the integrity and ensuring the financial viability of the new municipalities, the notice requests existing councils to act in accordance with the following principles:

- no appointment of staff between post levels 0 - 3, the moratorium to apply to the filling of new posts, the filling of vacancies and the up scaling of posts;
- no requests for the re-evaluation of posts to be submitted and no permanent functions may be allocated to personnel and additional functions may only be assigned on a temporary basis;
- a restriction on the increase in salaries and wages to those agreed in terms of the annual wage settlement;
- limiting any increase in the operating budgets of the existing municipalities to the maximum expenditure limit as determined by the Minister of Finance in terms of the LGTA;
- capping the proportion of interest and redemption payment in operating budgets to 17%, the intention

being to restrict the procurement of new loan finance;

- moratoria on -
  - sale and purchase of immovable assets in terms of agreements concluded after the establishment of the Forum;
  - the conclusion of new contracts (including leases) and the renewal of contracts of a duration longer than one year;
  - the acquisition of major information technology systems, including hardware and software;
  - the use of reserves to balance operating budgets.

Where an existing municipality wants to act contrary to these principles, they are requested to first seek the support of the transformation forum and the provincial minister. In order to monitor compliance with these principles, existing councils must report on a regular basis to the relevant forum regarding all matters that may have a bearing on the principles.

## Termination of forums

Each forum terminates on the commencement date of the election or on an earlier date determined by the provincial minister.

## Municipal Demarcation Board Model

The Boards model is more limited in scope and allows an MEC a number of options of establishing a structure at district level. The object of the structure, called a Facilitation Committee, is to act as a consultative and advisory forum for the MEC during the transition period.

## Size and composition

The size of the committee must be between ten and 20 members appointed by the MEC. A member

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must either be competent to stand for election as a member of a municipal council or be a serving member in one of the councils in the new municipal area. The MEC appoints the committee from council nominees or political party nominees in such a way that political parties and interests represented in the councils of existing municipalities are represented as the proportion in which they were supported in the previous local government elections.

## Chairperson

Either the MEC appoints a chairperson from one of the members of the Committee or the committee does so.

## Decision-making

All decisions are made with the supporting of at least the majority of the members present and at least a third of the members must be present before a vote is taken.

## Organisation

A committee may create a number of subcommittees and must appoint a technical support team consisting of the chief executive officers of the existing municipalities. This team must provide technical assistance to the Committee and implement its decisions. At the request of the Committee, the existing municipalities must provide administrative and secretarial assistance to the Committee.

## Functions

The functions of the Committee are -

- to advise the MEC on the issuing of the section 12 notice establishing new municipalities, including on -
  - the proposed name of the new municipalities in its area;
  - the proposed type of municipalities;
  - the designation of full-time councillors;

- the division of functions and powers between the new district and local municipalities
- to advise the MEC on the legal, practical and other consequences of the disestablishment of existing municipalities, including
  - the transfer of staff
  - the transfer of assets, liabilities and administrative and other records;
  - the continued application of any by-laws, regulations and resolution of existing municipalities;
- to provide the MEC and the Demarcation Board with all relevant detail necessary for the preparation of a section 12 notice;
- to facilitate the transition in any other manner as determined by the MEC; and
- at the request of the Independent Electoral Commission, assist it in preparing for the elections of the new councils.

**A structure has neither the legal authority nor political legitimacy to bind a new municipality in any way.**

## Reporting

The Committee may also call a meeting of stakeholders that have a material interest in the transition to report on the performance of its functions.

## Termination

The committee continues until the first meeting of the new council, or until it is disestablished by the MEC at an earlier date.

## Comment

In conclusion the following points need to be made.

First, the principal function of a section 14(5) structure is to assist the MEC with the drafting of the section 12 notice disestablishing existing municipalities and establishing a new municipality. In the transformation process the MEC's main task is the issuing of the section 12 notice. The functions of the structure can thus

not go beyond the powers of the MEC creating this structure.

Second, a structure can further assist the MEC by endeavouring to ensure that existing municipalities do not take actions which may prejudice the new municipalities.

Third, the functions of a structure are circumscribed by the MEC in the notice establishing the Committee. As the functions of the structures are to advise and assist the MEC, they can have no executive powers.

Fourth, a structure has neither the legal authority nor political legitimacy to bind a new municipality in any way. It cannot take decisions that legally bind new municipalities. In as much as an MEC cannot make decisions that binds a new municipality how it conducts its business in terms of its section 12 notice, he or she cannot through a section 14(5) notice confer such a power on a section 14(5) structure.

A Facilitation Committee has no political legitimacy to bind a new municipality politically. A structure may reflect the status of political parties as it was in 1995/1996 in terms of the compromise electoral system. The first true democratic local election cannot be undermined through political deals cut by outgoing politicians. Even where the same councillors are elected in the new council, they cannot be bound by any agreement concluded before the election. In the election they receive a new mandate from the electorate which they must give effect to.

Sixth, where the primary purpose of a facilitation structure of assisting an MEC by providing advice and the required information has been discharged, a structure may endeavour to deal with questions of integration. However, any proposals developed by a committee can only remain recommendations which the new municipality may either reject or accept.