

Amendments to the Structures Act:

Last minute changes

On 21 September 2000 the National Assembly approved important amendments to the Municipal Structures Act. The National Council of Provinces approved the Bill on 3 October. It is expected that the Local Government: Structures Amendment Bill B51B-2000 will become law by middle October. The Bill deals with key areas relating to the transition of local government and includes a new division of powers between district and local municipalities and transitional arrangements for the first two years after the elections.

A new division of powers

Difficulties have arisen with regard to the interpretation of the district functions and powers, listed in section 84(1). This created legal uncertainty about the scope of powers and functions of district municipalities. In order to clarify the meaning of some of the problematic provisions in section 84(1), certain changes have been proposed.

Integrated development planning

The new definition of the responsibility of district municipalities with regard to integrated development reads: "Integrated development planning for the district municipality as a whole, including a framework for integrated development plans of all municipalities in the area of the district municipality."

Water

Section 84(1)(b) allocated powers and functions to district municipalities related to bulk supply of water that "affect a significant proportion of municipalities." This terminology is ambiguous. It includes more than one municipality, but it is unclear how many more. The new definition removes the uncertainty of 'significant proportion' and reads: "Potable water supply systems." The effect of this amendment is that it places the entire water function at district level. It is anticipated that the full

ambit of this function as well as the sewage function, referred to below, will be spelt out by the Department of Water Affairs and Forestry in its legislation.

Electricity

A similar definition which used the phrase 'a significant proportion' existed for bulk supply of electricity in section 84(1)(c). The new definition again removes the reference to that phrase and further substantiates the power: "Bulk supply of electricity, which includes for the purposes of such supply, the transmission, distribution and, where applicable, the generation of electricity."

Similarly, legislation of the Department of Minerals and Energy will further regulate this function.

Sewage

The definition for bulk sewage purification and disposal in section 84(1)(d) will also change. The references to 'bulk' and 'significant proportion' will be removed and the definition will read: "Domestic waste-water and sewage disposal systems." This, again, means that all sewage functions are placed at district level.

"...for the area of the district as a whole"

Further amendments have been made to the current 84(1)(e),(i), (k) and (l). These definitions allocate functions and powers to district municipalities provided that the services must 'serve the area of the district as a whole'. This qualification is problematic. For example, it is unlikely that there will be a single solid waste disposal site that serves the entire district. It is more likely that sites are shared by more than one local municipality. When such a shared site is used by residents or municipalities outside the borders of the local municipality, it may be an onerous burden on one local municipality to maintain that facility. The proposed new definition removes the qualification "serving the area of the district municipality as a whole". Instead, it qualifies the power to the determination of a waste disposal strategy, the regulation of waste disposal and the establishment, operation and control

of waste disposal sites for more than one local municipality in the district.

Cemeteries and crematoria

As with the other shared facilities, it is unlikely that one crematorium or cemetery is used by the residents of an entire district. A more realistic standard would be to require that the crematorium serves a major proportion of residents in the district. The new definition in 84(1)(f) removes the reference to 'district as a whole' and replaces it by the qualification that the facility "must serve the area of a major proportion of municipalities in the district".

Fresh produce markets and abattoirs

The same argument applies to fresh produce markets and abattoirs. It is unlikely that one market or abattoir would be used by the residents of an entire district. The new definition removes the phrase "district as a whole" and replaces it by the qualification that the facility "must serve the area of a major proportion of municipalities in the district".

Health services

The new definition deletes the present qualification that restricts the function to those services that serve the entire area. All aspects related to municipal health, including both health care and environmental health, will in future be located at district municipality level. The full ambit of this function will be spelt out by the Department of Health.

Fire fighting services.

Which fire fighting services would be appropriately provided at district level? Two criteria are relevant. First, district municipalities must play a managerial and co-ordinating role to ensure equitable, efficient and effective delivery of the service. Second, because of the high costs of specialist equipment, the district would be best placed to provide that equipment. Fire fighting services to the community of a district is, by definition, rendered everywhere in the district. Therefore, the new definition in 84(1)(j) retains the phrase 'municipality as a whole' and further meaning is given to fire fighting services at district level. The

definition states that they include 'planning, co-ordination and regulation of fire services, specialised fire fighting services such as mountain, veld and chemical fire services, co-ordination of the standardisation of infrastructure, vehicles, equipment and procedures and the training of fire officers'.

The expectation is that these amendments will go a long way to meet the difficulties in spelling out the role of district municipalities.

Adjusting the division of powers

The Bill acknowledges that there could be a mismatch between the functions and powers of a district and a local municipality and its ability to perform those functions and exercise those powers. This mismatch may vary from one municipality to the next within the same district. The amendment now provides for three ways in which the division of powers can be adjusted to ensure a fit between functions and powers and capacity. One of the ways applies only for the first two years, and is discussed under the transitional arrangements below.

Authorisations

Four areas have been identified where specific national legislation should effect the division of functions and powers - the provision of water, electricity, waste-water and sewage, and health services. These functions have for now been allocated to district municipalities. A local municipality may, however, be authorised by the Minister of Provincial and Local Government to perform these functions. It is important to note that a district does not lose the function or power; the authorisation merely allows the local municipality also to perform that function or power in its area.

The following process must be followed: the Minister must first consult with the national cabinet minister responsible for the functional area in question (for example, the Minister of Water Affairs) and the MEC for local government in the province. Second, the authorisation must comply with national legislation which governs the functional area. Where an authorisation is issued, the Minister must also regulate its legal and practical consequences, which may include the transfer of staff and the

transfer of assets and liabilities. The authorisation is effected by notice in the *Government Gazette*.

Like a section 12 notice establishing a new municipality, authorisations should be issued before the election to ensure that there is a smooth transition and that services are not disrupted.

Adjustments of division

Section 85 provided that the MEC may adjust the division between district and local municipalities, as determined in section 84, on the following condition: where either the district or the local municipality does not have the capacity to perform a specific function, the other municipality may be allocated that function. The MEC can only make such an adjustment on the recommendation of the Municipal Demarcation Board.

The amendment has now effected two changes. First, the MEC cannot adjust functions relating to water, electricity, waste-water and sewage, and health; only the national minister may deal with those functions. Second, section 85 kicks in only *after* the first elections. This means that an assessment of the capacity of a municipality can only be done after the elections.

Transitional arrangements

The Amendment Bill adds a separate chapter on transitional arrangements for the smooth establishment of the new municipalities. These arrangements end two years from the date of the first elections, unless the Minister determines a shorter period. The transitional arrangements cover a number of issues.

Moratorium

In order to prevent asset stripping and staff loading before the elections (see *LGL Bulletin 2000 (2)* at pg. 6/7), the MEC may impose a moratorium on certain activities of existing municipalities. The MEC is now authorised to take measures, restricting or regulating -

- the alterations to the staff establishment;
- the appointment of staff or the filling of vacancies;
- the upgrading of posts and promotions;
- the increases in salaries or wages;
- the disposal or acquisition of assets;
- the conclusion of contracts with a duration longer than one year or the renewal of such contracts; or

- the use of reserve capital.

The MEC may take such measures, by notice in the *Provincial Gazette*, only after consulting the existing municipalities concerned.

Notice requirements

During the two years transitional period, the publication of a section 12 notice establishing a new municipality (or the amendment of the notice) requires the MEC to consult only with organised local government in the province and publish particulars of the proposed notice for public comment for at least 14 days.

Temporary authorisations

If a district or a local municipality is not able to fulfil a specific function allocated to it in terms of section 84 (other than those relating to water, electricity, sewage and health services), the MEC may temporarily authorise either the district or the local municipality, as the case may be, to perform that function which has not been allocated to it. The MEC may issue such an authorisation if the following requirements are met:

- the district or local municipality cannot or does not perform a function, or if, for any other reason, it is necessary to ensure the continued performance of the function in that area; and
- the Demarcation Board has recommended the authorisation.

If the MEC does not agree with the Board's recommendation, the Minister of Provincial and Local Government may override the decision of the MEC.

The effect of authorisations is not that the district or local municipality loses the function; the authorisation merely allows the other municipality also to perform that function. Where an authorisation is issued, the MEC must regulate its legal and practical consequences, which may include the transfer of staff and the transfer of assets and liabilities. The authorisation is effected by notice in the *Provincial Gazette*.

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