

LEGISLATIVE UPDATES



Local Government Transition Act, 209 of 1993



1. Long title of the Act

Act to provide for revised interim measures with a view to promoting the restructuring of local government, and for that purpose to provide for the establishment of Provincial Committees for Local Government in respect of the various provinces; to provide for the recognition and establishment of forums for negotiating such restructuring of local government; for the exemption of certain local government bodies from certain provisions of the Act; for the establishment of appointed transitional councils in the pre-interim phase; for the delimitation of areas of jurisdiction and the election of transitional councils in the interim phase; for the establishment of transitional rural local government structures; for the issuing of proclamations by the MECs of the various provinces; for the establishment of Local Government Demarcation Boards in respect of the various provinces; and for the repeal of certain laws; and to provide for matters connected therewith.

This Act was last amended by Local Government Transition Act Second Amendment Act 97 of 1996.

2. Content of the Act

Part I. Application of Act

This deals with definitions, and with the application of the Act throughout the Republic

Part II. Provincial Committee for Local Government

This committee was established as a subcommittee appointed by the Transitional Executive Council (TEC), to represent stakeholders in local government in each province. The MEC (for Local Government) was required to act in concurrence with this committee with regard to the TLGA. This committee was disestablished the day after the first municipal elections took place in each province.

Part III. Exemption from certain provisions

The MEC could exempt certain non-racial, inclusive and effective local government bodies from being transformed in the period preceding the first municipal elections.

Part IV. Pre-interim phase: Negotiating forums

The Act provides for Negotiating forums to be established for each economically and historically bound area (Section 6 and Schedule 1). They were to be inclusive and representative. Their mandate was to explore and to make proposals to the MEC with regard to the short, medium and long term solutions to the problems of local government in the area (schedule 1, section 4, (2)).

They negotiated on:

- the area covered by the forum
- the establishment in the pre-interim phase of transitional councils
- the powers and duties of these local government structures in the pre-interim phase (including service delivery)

Part V. Interim Phase: Transitional Councils

Transitional councils for which elections were held were classified as (section 8 (1)):

- transitional local councils for non-metropolitan areas
- transitional metropolitan councils, with transitional metropolitan substructures, for metropolitan areas

The MEC was responsible for (section 8 (2)):

- the delimitation of areas of jurisdiction of transitional councils
- the determination of the powers and duties of transitional councils
- the determination of the number of seats of transitional councils

Elections were to be held between 1 November 1995 and 31 August 1996 (section 9).

Part VI. Transitional measures for both the pre-interim and the interim phases

The MEC was empowered (section 10 (1)) to make enactments by proclamation in the Provincial Gazette with a view to the transitional regulation of local government, and in so doing, to:

- amend or repeal any laws relating to local government in force in the province
- provide that existing laws relating to local government be adjusted to apply to transitional structures

These powers lapsed on the day prior to the commencement of the LGTA Second Amendment Act of 1996 (section 10N).

Part VA. Rural Local Government, and part VIA. - Interim Phase

The whole area of each province shall be divided into areas of jurisdiction of transitional metropolitan councils and areas of district councils (section 9D).

A *district council* is a service council, sub-regional council, regional council or district council (section 10B). Its members are elected on a proportional basis according to the number of members of each of the transitional local councils, transitional representative councils and transitional rural councils which are within the district's area. In the case where there is a remaining area, additional members are elected or elected and nominated according to a population-based ratio. It can claim the regional services levy and the regional establishment levy referred to in the Regional Services Act of 1985 (section 10 (3) (i)). With the approval of its member councils, district councils formulate and implement an integrated development plan for their area of jurisdiction and provide support to member councils within their area.

Transitional rural councils (TRCs) are transitional councils for a rural area of local government which does not fall within the jurisdiction of a transitional metropolitan council or a transitional local council. Its members are elected according to a system of proportional representation (section 10 (3)(iA)).

Transitional local councils (TLCs) are transitional councils for non-metropolitan areas of local government (section 8(1((a))). They are divided into wards. (NB: This category has been used for most urban areas excluding metropolitan areas).

District councils, TLCs, and TRCs receive their powers and duties (section 10D(1)) in the proclamation which establishes such council as conferred or imposed upon or delegated or assigned to the council by or under any law

Transitional representative councils (TRepCs)(section 9C) are rural local government structures. Their members are elected according to a system of proportional representation. In addition, up to 20% of their membership

can be nominated by interest groups if the MEC considers it desirable. A TRepC has the following powers and duties (section 9C(3)):

- to elect from among its members person(s) to sit on the district council
- to secure from the district council the best services possible for its area
- to serve as a representative body for the area additional powers and duties as identified by the MEC, or as conferred, imposed, delegated or assigned, under any law (section 10D (2))

Remaining areas are areas situated within that part of a district council which is not under the jurisdiction of a TLC, a TRepC or a TRC (section 9A).

Transitional metropolitan councils (TMCs) with transitional metropolitan substructures are transitional councils for a metropolitan area of local government. A metropolitan area is an area:

- comprising the areas of jurisdiction of multiple local governments
- which is densely populated and has an intense movement of people, goods and services within the area
- which is extensively developed or urbanised
- which, economically, forms a functional unit comprising several smaller interdependent units

TMCs shall ensure that existing imbalances are redressed by promoting integrated economic development, the equitable redistribution of municipal resources and the equitable delivery of services (section 10C (1)). Their powers and duties are listed in schedule 2 and include:

- to formulate and implement a metropolitan integrated development plan, and to co-ordinate and monitor local integrated development plans
- subject to any other law, the planning, evaluation, monitoring and co-ordination of municipal health services (item 16), and
- water, sewerage, cemeteries, crematoria, abattoirs, electricity, roads, transport, airports, markets, waste disposal, tourism, sport, fire-fighting services and disasters, libraries, museums, environmental management, municipal law enforcement agency

Transitional metropolitan local councils (TMLCs) are primary local authorities for a metropolitan area of local government (section 1(1)). They have the powers and duties listed in schedule 2A, including the formulation and implementation of a local integrated development plan, in accordance with the metropolitan integrated development plan; the

provision of municipal health services (item 16); and others that may be delegated.

TMCs and TMLCs can enter into agreement with each other or with any other person, body, or institution, in terms of which one party undertakes on behalf of the other to exercise a power or perform a duty (section 10C (7)).

The definition of "*municipality*" includes transitional local councils, transitional metropolitan councils, transitional metropolitan local councils, transitional representative councils, transitional rural councils and district councils (section 10B).

Organised Local Government (section 10F): The Minister (of Provincial Affairs and Constitutional Development) may, in consultation with the MEC, recognise one organization in each province to represent the majority of municipalities in that province.

Financial matters (section 10G): this section provides guidelines:

- for municipalities and their chief executive officers to conduct their financial affairs for budgeting and expenditure
- for awarding contracts for goods and services
- for the valuation and measurement of property
- for the levying and recovery of property rates by TLCs, TMLCs, and TRCs; and by District councils within remaining areas and within the area of jurisdiction of TRepCs
- for raising loans, for investment, for the establishment of dedicated funds, provisions and reserves and for the management of assets

Establishment of Demarcation Boards (section 10J):

Demarcation boards are to be established in each province, to be known as Municipal Demarcation Boards. They shall consist of six members: two designated by the Minister, two by the MEC, two by organised local government. They are to make recommendations to the MEC on the delimitation of municipalities and the determination of the number of seats in municipalities, taking into account criteria listed in schedule 6.

A National Demarcation Board consisting of nine members appointed by the Minister was established. If the MEC does not act in accordance with the recommendation of a municipal demarcation board, the matter is referred to the National Board for a decision.

Co-operative Government (section 10M):

The MEC shall promote and support the development of local government in order to enable municipalities to exercise their powers and perform their duties in the management of their affairs.

Part VIII. General

Subject to the provisions of this Act and any proclamations issued thereunder, the provisions of the laws applying to local authorities in the province concerned shall apply *mutatis mutandis* to any transitional council or transitional metropolitan substructure (section 16(2)). Any reference in any law to a local authority shall, unless clearly inappropriate, be deemed also to be a reference to transitional council or transitional metropolitan substructures (section 16 (3)).

Any Bill of a competent legislature which affects the status, powers, duties or structure of any transitional council or transitional metropolitan substructure shall only be introduced after consultation with organised local government and the council or substructure concerned (section 16 (4)).

3. Legal Status

Under section 26 of schedule 6 of the Constitution (transitional arrangements): the provisions of the Local Government Transition Act, 1993, as may be amended from time to time by national legislation consistent with the new Constitution, remain in force until 30 April 1999, or until repealed, whichever is sooner.