

External Legal Advisory Services E-Booklet



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Forward

The Constitution of the Republic of South Africa introduces the concept of Organised Local Government and recognises it as the legitimate voice for local government.

To give effect to the provisions of the Constitution, the Organised Local Government Act of 1997 makes provision for the recognition of a national association and provincial associations. The South African Local Government Association, and its provincial branches, are the recognised associations.

We are therefore afforded representation in key national institutions, including the National Council of Provinces (NCOP) and the Financial and Fiscal Commission (FFC). The intergovernmental system has since evolved to specifically include organised local government in the key formal structures of the intergovernmental system as outlined in the Intergovernmental Relations Framework Act of 2005.

In addition to representation in national forums, an obligation to consult with organised local government is placed upon broader national and provincial government departments and institutions about matters affecting the former.

Unfortunately, this has not always been adhered to. This Ebooklet is a step towards remedying this problem. This living document will empower Local Government officials, councillors, and representatives to fully assert their rights in relation to National and Provincial Government.

All

1. Local Government: Municipal Systems Act 32 Of 2000

Section 9 provides that where a Cabinet member or Deputy Minister seeking to initiate the assignment of a function or power by way of an Act of Parliament to municipalities in general, or any category of municipalities, he/ she **must consult the organised local government** representing local government nationally.

Section 14 of the Act provides that the Minister, at the request of organised local government representing local government nationally, or **after consulting** the MECs for local government and **organised local government**, may make standard draft by-laws concerning any matter, including standard draft rules and orders referred to in section 160 (6) of the Constitution, for which municipal councils may make by-laws.

Section 24 provides that an organ of state initiating national or provincial legislation requiring municipalities to comply with planning requirements, **must consult with organised local government** before the legislation is introduced in Parliament or a provincial legislature, or, in the case of subordinate legislation, before that legislation is enacted.

Section 43 authorised the Minister, **after consultation with** the MECs for local government and **organised local government** representing local government nationally, to prescribe general key performance indicators that are appropriate and that can be applied to local government generally and to review and adjust those general key performance indicators.

Section 71 provides that municipalities **must comply with any collective agreements concluded by organised local government** within its mandate on behalf of local government in the bargaining council established for municipalities.

Section 108 authorises the Minister to establish essential national standards and minimum standards for any municipal service or for any matter assigned to municipalities in terms of section 156 (1) of the Constitution, **after consulting organised, local government** representing local government nationally.

Section 120 authorises the Minister, **after consultation with organised local government** representing local government nationally, to make regulations or issue guidelines not concerning matters listed in sections 22, 37, 49, 72, 86A and 104 of the Act and any matter that may be prescribed in terms of this Act.

2. Intergovernmental Relations Framework Act No. 13 Of 2005

Section 6 establishes the Presidents Coordinating Council and prescribes that one member of the Council must be a municipal councillor **designated by the national organisation representing organised local government.**

Section 7 stipulates the role of the Council. It is a consultative forum for the President (a) to raise matters of national interest with provincial governments and **organised local government** and **to hear their views** on those matters; (b) **to consult** provincial governments and **organised local government.**

Section 31 provides that where there is an obligation in terms of the Act or any other legislation to **consult organised local government on any matter**, such consultation may be conducted through an appropriate intergovernmental structure. (2) If organised local government is not represented in the intergovernmental structure in question, it is for purposes of subsection (1) **entitled to participate** through a representative with full speaking rights in such structure when the relevant matter is discussed.

Include further amendment on the Amendment bill that is currently awaiting signing by the President

3. Public Administration Management Act, 2014

Section 12(1) authorizes the minister, in consultation with the Minister responsible for higher education and training, to direct the [National School of Government] to provide qualifications, part qualifications and non-formal education as recognised by the National Qualifications Framework or the South African Qualifications Authority, in consultation with the Minister responsible for local government and **after consultation with organised local government.**

Section 13(1)-(2) allows the Minister, after approval by Cabinet, to direct that the successful completion of specified education, training, examinations, or tests is a prerequisite for specified appointments or transfers or is compulsory in order to meet development needs of any category of employees. **The Minister must consult organised local government** and obtain the concurrence of the Minister responsible for local government before seeking the approval of the Cabinet in respect of a directive to be applicable to municipalities.,

Fuurther amendment to the act see communication from Lexis Nexis

4. Local Government: Municipal Structures Act 117 Of 199

Section 4 determines that the Demarcation Board may determine that an area must have a category A municipality only **after consultation with** the Minister, the MEC for local government in the province concerned and **SALGA.**

Section 12 provides that the MEC for local government in a province must establish a municipality in each municipal area which the Demarcation Board demarcates in the province. The MEC for local government must at the commencement of the process to establish a municipality, **give written notice of the proposed establishment to organised local government** in the province and any existing municipalities that may be affected by the establishment of the municipality and before publishing the section 12 notice, **consult organised local government in the province.** Likewise, the MEC for local government must at the commencement of the process to amend a section 12 notice, **give written notice of the proposed amendment to organised local government in the province** and any existing municipalities that may be affected by the amendment and before publishing the section 16 notice, **consult organised local government in the province.**

5. Local Government: Municipal Demarcation Act 27 Of 1998

Section 8 provides that whenever it is necessary to appoint a person as a member of the Board, the Minister must through advertisements in the media circulating nationally and in each of the provinces, invite persons to apply for appointment as a member and establish a selection panel consisting of inter alia two persons with specific knowledge of boundary demarcation of whom one must be designated by the Minister in consultation with the MECs for local government and **the other person by SALGA**. The selection panel must consider all applications and from amongst the applicants compile a list of nominees and submit it to the Minister. The President must make the required number of appointments from the list.

6. Local Government: Municipal Systems Amendment Act, No. 3 Of 2022

Section 71 provides that **organised local government** must, before embarking on any negotiations with parties in the bargaining council established for municipalities, consult the Financial and Fiscal Commission, the Minister and any other parties as may be prescribed.

7. Local Government: Municipal Finance Management Act 56 Of 2003

Section 42 provides that if a national or provincial organ of state which supplies water, electricity or any other bulk resource as may be prescribed, to a municipality or municipal entity for the provision of a municipal service, intends to increase the price of such resource for the municipality or municipal entity, it must first submit the proposed amendment to its pricing structure to any regulatory agency for approval, if national legislation requires such approval. Such an organ of state must, at least 40 days before making a submission to the agency, request the National Treasury and **organised local government to provide written comments** on the proposed amendment.

Local Government: Municipal Property Rates Act 6 Of 2004

Section 3 of the Act provides that the rates policy of a municipality must determine the criteria to be applied by the municipality if it levies different rates for different categories of properties, exempts a specific category of owners of properties, or the owners of a specific category of properties, from payment of a rate on their properties and grants to a specific category of owners of properties, or to the owners of a specific category of properties, a rebate on or a reduction in the rate payable in respect of their properties. It must also determine or provide criteria for the determination of categories of properties for the purpose of levying different rates as contemplated in paragraph and the categories of owners of properties, or categories of properties, for the purpose of granting exemptions, rebates, and reductions.

Any exemptions, rebates or reductions and provided for in a rates policy adopted by a municipality must comply and be implemented in accordance with a national framework that may be prescribed **after consultation with organised local government.**

Section 16 provides that if a rate on a specific category of properties, or a rate on a specific category of properties above a specific amount in the Rand, is materially and unreasonably prejudicing such a category, the Minister, after notifying the Minister of Finance, must, by notice in the Gazette, give notice to the relevant municipality or municipalities that the rate must be limited to an amount in the Rand specified in the notice. Any sector of the economy, **after consulting the relevant municipality or municipalities and organised local government,** may, through its organised structures, request the Minister to evaluate evidence to the effect that a rate on any specific category of properties, or a rate on any specific category of properties above a specific amount in the Rand, is materially and unreasonably such a sector.

Section 17 provides that a municipality may not levy a rate on the first 30% of the market value of public service infrastructure. The Minister may, by notice in the Gazette, lower the percentage, **but only after consultation with organised local government.**

Section 84 provides that before regulations in terms of section 83 of the Act are promulgated, the Minister **must consult organised local government on the substance of those regulations.**

1. Municipal Fiscal Powers And Functions Act 12 Of 2007

Section 4 provides that the Minister may of his or her own accord or on application in terms of section 5 by a municipality, group of municipalities or organised local government authorises a municipal tax. Prior to authorising a municipal tax in terms of subsection (1) the Minister **must consult** the Minister responsible for local government, affected municipalities and organised local government.

Section 5 provides that a municipality, group of municipalities or **organised local government** must submit an application which application must provide inter alia the reasons for the imposition of the proposed municipal tax and the purposes for which revenue derived from the collection of the municipal tax will be utilised. When the application is not brought by organised local government, **it must give particulars of any consultations conducted, including consultations with, organised local government** and municipalities, and the outcomes of such consultations.

If the Minister intends authorising the municipal tax in respect of which an application was submitted, the Minister **must notify** the municipality, group of municipalities or **organised local government** and the Minister responsible for local government in writing within six months of submission of the application of his or her intention and by not later than six months after that notification or such longer period as may be necessitated, prescribe the regulations contemplated in section 6.

In the event that the Minister does not approve the municipal tax in respect of which an application was submitted, the Minister must, within six months of submission of the application, **notify** the municipality, group of municipalities **or organised local government** and the Minister responsible for local government in writing of his or her decision and the reasons therefor.

Section 10 provides that the Minister may, by notice in the Gazette, make regulations regarding any matter that must or may be prescribed in terms of this Act. Before any regulations are made under this section, the Minister **must consult organised local government**.

2. Intergovernmental Fiscal Relations Act 97 Of 1997

Section 5 of the Act determines that the Local Government Budget Forum consisting of inter alia **five representatives nominated by the national organisation** recognised in terms of the Organised Local Government Act, 1997; and **one representative nominated by each provincial organisation** recognised in terms of that Act.

Section 10 of the Act provides that each year when the Annual Budget is introduced, the Minister must introduce in the National Assembly a Division of Revenue Bill for the financial year to which that Budget relates. Before the Division of Revenue Bill is introduced in the National Assembly, **the Minister must consult organised local government**, either in the Budget Forum or in another way.

3. Financial And Fiscal Commission Act 99 Of 1997

Section 5 of the Act provides the Commission consists of inter alia two persons selected, **after consulting organised local government**, from a list compiled in accordance with the process set out in section 5 of the Organised Local Government Act, 1997 (Act 52 of 1997

Section 11 determines that the President may remove a member of the Commission from office, but only on the ground of misconduct, incapacity, or incompetence. The President **must consult organised local government** before removing from office a member nominated by organised local government.

Section 26 requires the Commission to annually submit to both Houses of Parliament, to each provincial legislature and to the **national organisation representing organised local government** recognised in terms of the Organised Local Government Act, 1997, a report on the activities of the Commission during a financial year.

**National
Agriculture, Land Reform and Rural Development
Basic Education
Communications and Digital Technologies
Cooperative Governance and Traditional Affairs**

1. Disaster Management Act 57 Of 2002

Section 5 of the act requires the Minister to establish a National Disaster Management Advisory Forum consisting of inter alia **municipal officials selected by the South African Local Government Association.**

Section 37 provides for a Provincial disaster management advisory forum, which consist inter alia of **representatives of organised local government in the province.**

1. Commission For The Promotion And Protection Of The Rights Of Cultural, Religious And Linguistic Communities Act 19 Of 2002

Section 26 of the Act provides that a national consultative conference may comprise such persons as the Commission may invite but **must include delegates designated by organised local government.**

Correctional Services
Defense
Employment and Labour
Forestry, Fisheries, and the Environment

National Environmental Management Act 107 Of 1998

Section 8 stipulates that the Committee comprises inter alia a **representative of the national organisation** recognised in terms of section 2 of the Organised Local Government Act, 1997 (Act No. 52 of 1997), appointed by the Minister with the **concurrence of that organisation.**

**Government Communication and Information System
Government Pensions Administration Agency
Health**

2. National Health Act 61 Of 2003

Section 22 provides that the National Health Council consists of inter alia **one municipal councilor, representing organised local government and appointed by the national organisation contemplated in section 163 (a) of the Constitution.**

**Higher Education and Training
Home Affairs
Human Settlements**

3. Housing Act 107 Of 1997

Section 4 The Minister must publish a code called the National Housing Code. The Code must contain national housing policy, and may, after consultation with every MEC and **the national organisation representing municipalities**, include administrative or procedural guidelines in respect of- (i) the effective implementation and application of national housing policy; (ii) any other matter that is reasonably incidental to national housing policy.

**Independent Police Investigative Directorate
International Relations and Cooperation
Justice and Constitutional Development
Military Veterans
Mineral Resources and Energy
National School of Government
National Treasury**

Local Government: Municipal Finance Management Act 56 Of 2003

Section 125 of the Act requires that the notes to the financial statements of a municipality **must include the total amount of contributions to organised local government** for the financial year, and the amount of any contributions outstanding as at the end of the financial year.

Section 135 of the Act provides that if a municipality encounters a serious financial problem or anticipates problems in meeting its financial commitments, **it must immediately notify organised local government.**

Section 141 requires that when preparing a financial recovery plan, the person requested to do so by the provincial executive or the Municipal Financial Recovery Service must at least 14 days before finalising the plan, **submit the plan for comment to organised local government in the province.**

Section 143 provides that once adopted, the MEC for local government in the province **submit it to organised local government in the province.**

Section 147 provides that the MEC for local government or the MEC for finance in a province **must at least every three months submit progress reports and a final report on the intervention to organised local government in the province.**

Section 148 provides that when a provincial intervention ends, the MEC for local government or the MEC for finance in the province **must notify organised local government in the province.**

Section 152 provides that when a municipality is unable to meet its financial commitments, it may apply to the High Court for an order to stay, for a period not exceeding 90 days, all legal proceedings, including the execution of legal process, by persons claiming money from the municipality or a municipal entity under the sole control of the municipality. **Notice of an application must be given to organised local government.**

Section 169 provides for a **consultative process with organised local government before promulgation of regulations** in terms of the MFMA.

Section 177 contains a provision that in order to facilitate the restructuring of the electricity industry as authorised by the Cabinet member responsible for such restructuring, the Minister, acting with the concurrence of the Cabinet member responsible for local government and **after consultation with organised local government,** may, by notice in the Gazette, exempt any municipality or municipal entity from any specific provision of this Act for a period of not more than four years and on conditions determined in the notice, provided that such exemption may not be understood as obligating any municipality to transfer any staff, assets or liabilities.

Planning, Monitoring and Evaluation

Presidency

Public Enterprises

Local Government: Municipal Finance Management Act 56 Of 2003

Section 42 provides that if a national or provincial organ of state which supplies water, electricity or any other bulk resource as may be prescribed, to a municipality or municipal entity for the provision of a municipal service, intends to increase the price of such resource for the municipality or municipal entity, it must first submit the proposed amendment to its pricing structure to any regulatory agency for approval, if national legislation requires such approval. Such an organ of state must, at least 40 days before making a submission to the agency, request the National Treasury and **organised local government to provide written comments** on the proposed amendment.

Public Service and Administration

Public Works and Infrastructure

Science and Innovation

Small Business Development

Social Development

South African Police Service (SAPS)

South African Revenue Service (SARS)

Sport, Arts and Culture

State Security

Statistics South Africa

Tourism

Trade, Industry and Competition

Traditional Affairs

Transport

Road Traffic Management Corporation Act 20 Of 1999

Section 6 of the Act provides for the establishment and composition of Shareholders Committee, **which must consist of inter alia two representatives nominated by the national organisation recognised** in terms of section 2 (a) of the Organised Local Government Act, 1997 (Act 52 of 1997).

Section 32 provides that for the purpose of executing the road traffic law enforcement function, the chief executive officer, **in consultation** with the National Commissioner and **the national organisation recognised** in terms of section 2 (a) of the Organised Local Government Act, 1997 (Act 52 of 1997), must develop a national road traffic law enforcement code.

Legal Succession To The South African Transport Services Act 9 Of 1989

Section 24 of the Act provides that the affairs of the South African Rail Commuter Corporation Limited shall be managed by a Board of Control of not more than eleven members including the chairperson, who shall be appointed and dismissed by the Minister.

At least one of the members of the Board of Control shall be nominated by the South African Local Government Association recognised in terms of section 2 (1) (a) of the Organised Local Government Act, 1997 (Act 52 of 1997).

Water and Sanitation

Local Government: Municipal Finance Management Act 56 Of 2003

Section 42 provides that if a national or provincial organ of state which supplies water, electricity or any other bulk resource as may be prescribed, to a municipality or municipal entity for the provision of a municipal service, intends to increase the price of such resource for the municipality or municipal entity, it must first submit the proposed amendment to its pricing structure to any regulatory agency for approval, if national legislation requires such approval. Such an organ of state must, at least 40 days before making a submission to the agency, request the National Treasury and organised local government to provide written comments on the proposed amendment.

Water Services Act 108 of 1997

Section 35: Governance of Water Boards - The extent to which relevant water services authorities should be represented on a water board must be determined by the Minister after consultation with every relevant organisation representing municipalities having authority in the service area.

Add current amendment to the Water Services act with proposed amendments.

Women, Youth and Persons with Disabilities



Provincial Legislation

Eastern Cape

Eastern Cape Provincial Health Act 10 Of 1999

Section 5 of the Act requires the province to uphold section 27 of the Constitution and national and provincial health policy to provide optimal, effective, and cost-efficient health service delivery for health service users within the Province. The MEC must consult with municipalities and **organised local government in the Province** in accordance with standards of co-operative governance in terms of section 41 of the Constitution.

Section 28 provides that each health district shall, in terms of regulations promulgated in terms of this Act, establish its district health council, which shall include an equal number of elected representatives from **organised local government** and community representatives from each municipality represented within the health district.

Free State

Free State Provincial Health Act 3 Of 2009

Section 23 provides for the establishment and composition of Provincial Health Council which **shall consist of inter alia the chairperson of South African Local Government Association** in the Province or his/her nominee.

Gauteng

Gauteng Tourism Act 18 Of 1998

Section 5 provides for the establishment of the Gauteng Tourism Authority. The Authority must be constituted to **include a representative of organised local government.**

Traditional Leadership And Governance Act, No. 4 Of 2010, Gauteng

Section 53: Guiding principles for allocation of functions to senior traditional leaders and traditional councils by organs of state. This section stipulates that whenever an organ of state within either the national or the provincial sphere of government considers allocating functions to senior traditional leaders and traditional councils, that organ of state must consult with SALGA Gauteng.

KwaZulu-Natal

Kwazulu-Natal Trade And Investment Agency Act 5 Of 2010

The Act provides for the appointment of a Board. In appointing members to the Board, the responsible Member of the Executive Council **must ensure that local government is represented on the Board**

Kwazulu-Natal Health Act 4 Of 2000

Section 5 of the Act provides that the Minister must develop and implement the integrated provincial health care network **in consultation with municipalities and organised local government** in the Province in accordance with standards of co-operative governance in terms of section 41 of the Constitution.

Section 7 required the Minister must determine provincial health policy, norms, frameworks, and standards in accordance with the provisions of the Constitution, national health policy and this Act. The Minister must determine all provincial standards and requirements for the coordination and implementation of provincial health care policy to achieve the progressive realisation of access to health services, within available resources and national and provincial expenditure frameworks, including but not limited to the establishment, management, governance and phased implementation of the integrated provincial health care network within the Province, including the demarcation of health district boundaries and determination of district health authority responsibilities, **in consultation with organised local government.**

Section 9 requires that the Provincial Health Authority **must consist of at least one local government health official nominated by organised local government in the Province.**

Section 44 requires the Minister to, **after consultation with** the Provincial Health Authority and **organised local government**, demarcate boundaries of and establish health districts and sub-districts within the Province in accordance with decisions made by the Demarcation Board in terms of the Demarcation Act.

Section 45 provides that the Minister must, **after consultation with** the Provincial Health Authority and **organised local government** in the Province, establish district health authorities for each health district.

Section 51 provides that the Minister must, **after consultation with organised local government**, establish district health advisory committees for each health district.

Kwazulu-Natal Health Act 1 Of 2009

Section 10 of the Act provides for the composition of KwaZulu-Natal Provincial Health Research and Ethics Committee. It **must include a representative from organised local government in the Province.**

Kwazulu-Natal Sharks Board Act 5 Of 2008

Section 7 of the Act provides that the membership of the Board **must include at least one person representing organised local government.**

Kwazulu-Natal Pound Act 3 Of 2006

Section 28 of the Act provides that the responsible Member of the Executive Council may, by notice in the Gazette and **after consultation with organised local government** make regulations concerning any matter referred to in the Act which, in the opinion of the responsible Member of the Executive Council, is or may be necessary or expedient for the effective carrying out or furtherance of the provisions and objects of the Act.

Section 29 provides that Schedules 1, 2 and 3 to this Act form part of the Act for all purposes. The responsible Member of the Executive Council may, by notice in the Gazette and **after consultation with organised local government,** amend Schedules 1, 2 and 3 to this Act.

Kwazulu-Natal Film Commission Act 3 Of 2010

Section 5 deals with the Composition of the Board. In appointing members to the Board, the responsible Member of the Executive Council must ensure that historic imbalances are addressed and that a balance of interest between **persons representing inter alia organised local government.**

Limpopo

Limpopo Health Services Regulations

Regulation 2 deals with the demarcation of new health district boundaries. **The Organised Local Government association in the Province must be consulted prior to promulgation of the boundaries.**

Regulation 3 requires that the **Organised Local Government association in the Province must be consulted prior to the variation of health districts.**

**Mpumalanga
Northern Cape
Northwest**

North West Provincial Council On Aids Act 5 Of 2001

Section 4 deals with the composition of the Council. The Council has ex-officio members, **including a representative from organized local government.**

Western Cape

Constitution of The Western Cape 1 Of 1998

Section 52 of the Constitution of the Western Cape constitution provides that provincial legislation must provide for the publication and dissemination of draft provincial legislation that affects the status, institutions, powers or functions of local government, before it is introduced in the Provincial Parliament, in a manner that **allows organised local government,** municipalities and other interested persons an opportunity to make representations with regard to the draft legislation.

Western Cape Planning and Development Act 7 Of 1999

Section 49 of the Act provides that the planning review board shall consist of the chairperson referred to in section 48(3) and at least four persons appointed by the chairperson from the panel of planning review board members for the purpose of hearing a particular appeal; provided that the members so appointed shall include one member nominated by the department head and one member nominated by organised local government.

Western Cape Tourism Act 1 Of 2004

Section 4 deals with the appointment and composition of Board of the Destination Marketing Organisation, and requires the Minister, **after consultation** with the Standing Committee of the Provincial Parliament responsible for tourism and **with organised local government,** to appoint the members of the Board.

The Board consists of no more than fifteen members, **of which two members are nominated by organised local government,** one representing category B municipalities and one representing category C municipalities. The Minister, **after consultation with organised local government,** must designate a chairperson and a vice-chairperson for the Board from among the members of the Board.

Section 5 provides that if for any reason the office of a member of the Board becomes vacant, the Minister, **after consultation with organised local government**, may appoint a person from the category of persons from which such member was originally appointed or nominated as a member of the Board for the unexpired portion of the term of office.

Section 6 provides that the Minister, **after consultation with organised local government**, may remove a member of the Board on the ground of misconduct, incapacity, or incompetence with consideration to the provisions of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000).

Section 24 provides that the Minister, **after consulting organised local government**, may make regulations relating to any matter which may be dealt with by the Minister in terms of this Act, and any matter deemed necessary by the Minister for the achievement of the objects of the DMO and this Act: Provided that regulations with financial implications must be made in consultation with the Minister responsible for Finance.

Western Cape Liquor Act 4 Of 2008

Section 16 deals with the composition of Liquor Licensing Tribunal, and nomination and appointment of Liquor Licensing Tribunal members. The Liquor Licensing Tribunal **consists of inter alia one member representing organised local government**, appointed by the Board after consultation with the Minister responsible for local government in the Province.

