

## CHAPTER 29:11

# PROVINCIAL COUNCILS AND ADMINISTRATION ACT

*Acts 12/1985, 8/1988 (s. 164), 18/1989 (s. 36), 11/1991 (s. 26), 20/1998, 22/2001 (s. 4).*

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**AN ACT to provide for the declaration of provinces within Zimbabwe and the appointment of provincial governors for such provinces; to provide for the establishment and functions of provincial councils; and to provide for matters connected with or incidental to the foregoing.**

[Date of commencement: 29th March, 1985.]

## PART I

### PRELIMINARY

#### **1 Short title**

This Act may be cited as the Provincial Councils and Administration Act [*Chapter 29:11*].

#### **2 Interpretation**

In this Act—

“assigned employee” means a member of the Public Service assigned to the service of a provincial council in terms of section *thirty-three*;

“local authority” means a municipal council, town council, local board or rural district council;

“Minister” means the Minister of Local Government, Rural and Urban Development or any other Minister to whom the President may from time to time assign the administration of this Act;

“Ministry” means the Ministry the administration of which has been assigned to the Minister;

“province” means an area declared to be a province in terms of paragraph (a) of section three and, in relation to any provincial governor or provincial council, means the province for which the provincial governor has been appointed or the provincial council established, as the case may be;

“provincial administrator”, in relation to any province, means a member of the Public Service—

(a) who holds the post of provincial administrator in the Ministry for the province concerned; or

(b) if there is no person referred to in paragraph (a), who is designated by the Minister as provincial administrator for the province concerned;

“provincial assembly of chiefs” means a provincial assembly constituted in terms of section 16 of the Chiefs and Headmen Act [*Chapter 29:01*];

“provincial council” means a provincial council established in terms of section *eleven*;

“provincial development committee” means a provincial development committee established in terms of section *twenty-six*;

“provincial governor” means a person appointed as provincial governor in terms of section *four*;

“secretary”, in relation to a provincial council, means—

- (a) the person for the time being performing the functions of secretary of the provincial council; or
- (b) where the provincial council has a secretariat, any person who is a member of or employed in that secretariat.

## PART II

### PROVINCES AND PROVINCIAL GOVERNORS

#### **3 Declaration, alteration and abolition of provinces**

(1) The President may at any time, by statutory instrument—

- (a) declare any area within Zimbabwe to be a province;
- (b) assign a name to any province;
- (c) after consultation with every provincial council concerned, alter the boundaries or name of or abolish any province;
- (d) declare any place or area in any province to be the administrative centre of that province.

[Paragraph inserted by section 2 of Act 20 of 1998]

#### **4 Appointment of provincial governors**

(1) Subject to section *five*, the President may appoint any person to be the provincial governor of any province.

(2) The Minister shall cause notification of any appointment that has been made in terms of subsection (1) to be published in the *Gazette*.

#### **5 Qualifications for appointment as provincial governor**

A person shall be qualified for appointment as a provincial governor if he is qualified for election or appointment as a member of Parliament.

#### **6 Term of office of provincial governors**

(1) Subject to section *eight*, the term of office of a provincial governor shall be such period, not exceeding two years, as the President may fix on his appointment.

(2) A provincial governor shall be eligible for re-appointment on the expiry of his term of office.

#### **7 Oaths of loyalty and of office to be taken by provincial governors**

Before entering upon his office, a provincial governor shall take and subscribe before the President or some person authorized by the President in that behalf the oath of loyalty and the oath of office in the forms set out in Schedule 1 to the Constitution.

#### **8 Vacation of office by provincial governors**

(1) In this section—

“member”, in relation to a statutory body, includes any person who is appointed to a council, board or other authority which is a statutory body or which is responsible for the administration of the affairs of a statutory body;

“public officer” means a person holding or acting in any paid office in the service of the State;

“statutory body” means—

- (a) any Commission established by the Constitution; or
- (b) any body corporate established directly by or under any Act for special purposes specified in that Act, the membership of which consists wholly or mainly of persons appointed by the President, a Vice-President, a Minister or by any other statutory body.

(2) The office of a provincial governor shall become vacant and he shall vacate his office—

- (a) upon his resigning his office by notice in writing addressed and delivered to the President; or
- (b) if the President removes him from office; or
- (c) upon the assumption of office of a new President; or
- (d) if he accepts office as a member of a statutory body or employment as an employee of any person; or
- (e) if, being a member of a statutory body or an employee of any person at the time he becomes a provincial governor, he fails to terminate such membership or employment within fourteen days of the date he became a provincial governor; or
- (f) if he becomes a public officer other than—
  - (i) a member of any of the Defence Forces whose services in peace-time are not wholly in the employ of the State; or
  - (ii) a member of any reserve force of the Police Force whose services are not wholly in the employ of the State; or

- (iii) the holder of an office for which no remuneration is paid other than payment by way of travelling or subsistence allowances or out-of-pocket expenses; or
- (iv) a chief or a member of a provincial assembly or the Council of Chiefs elected in terms of the Chiefs and Headmen Act [*Chapter 29:01*]; or
- (g) subject to subsection (3), on the date he begins to serve a sentence of imprisonment the term of which is not less than six months, whether or not any portion has been suspended, imposed without the option of a fine; or
- (h) if, in terms of the Insolvency Act [*Chapter 6:04*]—
  - (i) his estate has been sequestrated as insolvent and he has not been rehabilitated; or
  - (ii) he has made an assignment to or arrangement or composition with his creditors which has not been rescinded or set aside.
- (3) For the purposes of paragraph (g) of subsection (2)—
  - (a) two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of such terms;
  - (b) two or more terms of imprisonment that are required to be served concurrently shall be regarded as a single term of imprisonment for the period of the longest of such terms.
- (4) For the avoidance of doubt, it is declared that a provincial governor may become or be a member of Parliament without vacating his office as provincial governor.

## **9 Conditions of service of provincial governors**

(1) Subject to subsection (4) and sections *seven* and *eight*, the conditions of service of a provincial governor, including—

- (a) the salary and allowances payable to him; and
- (b) any pension, gratuity or other benefit payable in respect of his service as provincial governor;

shall be as fixed in writing by the President from time to time:

Provided that a provincial governor who is paid any such salary shall not be paid any other salary or remuneration by the State or by any statutory body.

(2) In fixing the conditions of service of a provincial governor, the President may provide that all or any of the provisions of—

- (a) the Parliamentary Pensions Act [*Chapter 2:02*]; and
- (b) the Parliamentary Salaries, Allowances and Benefits Act [*Chapter 2:03*];

shall apply to or in respect of that provincial governor, subject to such modifications or conditions as the President may specify, and thereupon such provisions shall so apply.

(3) Any amount payable to or in respect of any provincial governor under his conditions of service shall be paid out of moneys appropriated for the purpose by Parliament.

(4) This section shall come into operation on the 5th April, 1985.

## **10 Functions of provincial governors**

The functions of a provincial governor shall be—

- (a) to be the chairman of the provincial council established for his province;
- (b) by a process of consultation, suggestion and advice, to foster and promote the activities of the various Ministries and organs of central government in implementing development plans prepared by the provincial council established for this province;
- (c) to co-ordinate the preparation of development plans for his province and to promote the implementation of such plans by other Ministries, authorities, agencies or persons;
- (d) to perform any other functions within or on behalf of his province that may be conferred upon him by or in terms of this Act or any other enactment.

## **PART III**

### ESTABLISHMENT, NATURE, FUNCTIONS AND MEMBERSHIP OF PROVINCIAL COUNCILS

## **11 Establishment and naming of provincial councils**

Subject to this Act, whenever the President considers it desirable he may, by proclamation in a statutory instrument—

- (a) establish a provincial council for any province with effect from a date to be fixed in the proclamation; and
- (b) assign a name to any provincial council; and
- (c) after consultation with the provincial council concerned, alter the name of any provincial council.

## 12 Provincial councils to be bodies corporate

A provincial council shall be a body corporate with perpetual succession and shall, in its own name, be capable of suing and being sued and generally of doing, suffering and performing all such things as, by this Act and any other law, it may do, suffer and perform.

## 13 Functions of provincial councils

Subject to this Act, the functions of a provincial council shall be—

- (a) to promote the development of the province;
- (b) to formulate policies, both long-term and short-term, for the province;
- (c) to prepare annual development and other plans for the province;
- (d) to review and evaluate the implementation of development plans and policies within the province;
- (e) to exercise any other functions that may be conferred upon it by or in terms of this Act or any other enactment.

## 14 Membership of provincial councils

(1) Subject to this Act, a provincial council shall consist of—

- (a) the provincial governor of the province; and
- (b) the mayor or chairman of and one other councillor appointed by each municipal council, town council and local board the area of which lies wholly within the province; and
- (c) the chairman of and one other councillor appointed by such rural district councils, the areas of which lie wholly or partly within the province, as the Minister may designate by notice in writing to the councils concerned; and
- (d) one chief appointed from amongst its membership by each provincial assembly of chiefs the area of which lies wholly or partly within the province; and
- (e) three persons appointed by the President of whom—
  - (i) one shall be appointed for his skill and experience in political affairs within the province; and
  - (ii) one shall be appointed to represent women in the province; and
  - (iii) one shall be appointed to represent youth in the province.

(2) If at any time the office of a provincial governor is vacant, or if a provincial governor is for any reason unable to exercise any of his functions in relation to the provincial council for his province, the provincial administrator for the province concerned shall exercise such of those functions as may be designated by the Minister.

(3) If at any time the office of mayor or chairman of any local authority referred to in subsection (1) is vacant, or if the mayor or chairman is for any reason unable to exercise any of his functions as a member of a provincial council, the deputy mayor or, as the case may be, the vice chairman of the local authority concerned shall exercise such functions on his behalf.

(4) When appointing—

- (a) a councillor, other than its mayor or chairman, to be a member of a provincial council, a local authority shall;
- (b) a chief to be a member of a provincial council, a provincial assembly of chiefs shall;
- (c) a person to be a member of a provincial council, the President may;

appoint another suitably-qualified councillor, chief or person, as the case may be, to be an alternate member, and whenever the member to whom he is alternate is for any reason unable to exercise any of his functions as a member, the alternate member shall exercise such functions on his behalf.

## 15 Appointment of first members after establishment of provincial council

(1) As soon as possible after the publication of a proclamation in terms of section *eleven* establishing a provincial establishment of council, and before the date fixed in the proclamation for its establishment, every person or authority that is responsible for doing so shall appoint the members and alternate members he or it, as the case may be, is required to appoint in terms of section *fourteen*.

(2) If the Minister considers that a local authority or provincial assembly of chiefs has delayed unduly in appointing a member or alternate member in terms of subsection (1), he may, by notice in writing to the local authority or provincial assembly of chiefs concerned, require it to appoint a member or alternate member, as the case may be, within thirty days, and if on the expiry of that period the local authority or provincial assembly of chiefs has not done so, the Minister may himself appoint a suitably qualified person to be the member or alternate member, as the case may be, of the provincial council concerned.

(3) A person appointed by the Minister to be a member or alternate member of a provincial council in terms of subsection (2) shall hold office as such until the local authority or provincial assembly of chiefs concerned appoints another person in his place.

## 16 Terms of office of members of provincial councils

(1) Subject to subsection (2), a member of a provincial council who is a member by virtue of being—

- (a) the provincial governor shall remain a member for so long as he holds the office of provincial governor;

- (b) the mayor or chairman of a local authority shall remain a member for so long as he holds the office of mayor or chairman, as the case may be, of the local authority concerned;
- (c) a councillor of a local authority, other than a mayor or chairman, shall remain a member—
  - (i) for so long as he remains a councillor of the local authority concerned; or
  - (ii) until the local authority concerned nominates another councillor to be a member of the provincial council;
 whichever occurs earlier;
- (d) a chief shall remain a member—
  - (i) for so long as he holds the office of chief; or
  - (ii) until the provincial assembly of chiefs concerned nominates another chief to be a member of the provincial council;
 whichever occurs earlier;
- (e) a person nominated by the President shall remain a member until the President nominates another person to replace him as a member of the provincial council.

(2) A member of a provincial council referred to in paragraph (c), (d) or (e) of subsection (1) may at any time resign his office after giving not less than one month's notice of his intention to resign to—

- (a) the person or authority that appointed him; and
- (b) the Minister:

Provided that such person or authority and the Minister may jointly agree to accept a shorter period of notice.

### **17 Filling of vacancies on provincial councils**

(1) Where a member or alternate member of a provincial council who is a member or alternate member by virtue of being—

- (a) a councillor, other than a mayor or chairman, of a local authority; or
- (b) a chief; or
- (c) a person appointed by the President;

dies, resigns or otherwise vacates his office, the person or authority that appointed him shall, if he or it has not already done so, as soon as possible appoint another person to fill the vacancy.

(2) If the Minister considers that a local authority or provincial assembly of chiefs has delayed unduly in appointing a member or alternate member in terms of subsection (1), he may, by notice in writing to the local authority or provincial assembly of chiefs concerned, require it to appoint a member or alternate member, as the case may be, within thirty days, and if on the expiry of that period the local authority or provincial assembly of chiefs has not done so, the Minister may himself appoint a suitably qualified person to be a member or alternate member, as the case may be, of the provincial council concerned.

(3) A person appointed by the Minister to be a member or alternate member of a provincial council in terms of subsection (2) shall hold office as such until the local authority or provincial assembly of chiefs concerned appoints another person in his place.

### **18 Notification to provincial governor of appointment of members of provincial councils**

Any person or authority that has appointed a person to be a member or alternate member of a provincial council shall, as soon as possible thereafter, notify the provincial governor of the province concerned, in writing, of the name of the person so appointed:

Provided that failure so to notify the provincial governor shall not disqualify the member or alternate member concerned from membership or alternate membership, as the case may be, of the provincial council.

## **PART IV**

### **MEETINGS AND PROCEEDINGS OF PROVINCIAL COUNCILS**

### **19 Presiding officer at meetings of provincial councils**

(1) Subject to this Part, the provincial governor shall preside at all meetings of a provincial council at which he is present and, in his absence, the provincial administrator for the province concerned shall preside.

(2) If neither the provincial governor nor the provincial administrator concerned is present at a meeting of a provincial council, the members present shall elect one of their number to be the chairman to preside at that meeting.

### **20 Meetings and special meetings of provincial councils**

(1) Subject to this Part, a provincial council may meet together for the dispatch of business, adjourn and otherwise regulate its meetings and proceedings as it thinks fit:

Provided that every provincial council shall meet at least once in every three months, at such time and place as it may determine.

(2) Subject to subsection (3) of section *thirty*, at least fourteen days before any ordinary meeting of a provincial council the secretary of the provincial council shall send a notice stating the date, time and place of the meet-

ing and the business to be transacted thereat to each member of the provincial council and shall display the notice at the places at which and in the manner in which the notices of the provincial council are normally displayed or in such other place and manner as may be prescribed.

(3) Every member present at a meeting of a provincial council shall be entitled to one vote on every question before the meeting:

Provided that the person presiding at any such meeting shall not have a vote.

(4) Save as otherwise provided in this Act, any question before a meeting of a provincial council shall be decided by resolution passed by a majority of the members present at the meeting and, in the event of an equality of votes, the motion shall be deemed to have been lost.

(5) The provincial governor may at any time and shall, at the request in writing of no fewer than one-third of the members of the provincial council, call a special meeting of a provincial council.

(6) Written notice of any special meeting called in terms or subsection (5) shall be sent by the secretary of the provincial council to each member of the provincial council not later than seven days before the meeting and such notice shall specify the subject to be discussed at the meeting.

(7) No subject, other than a subject specified in a notice sent in terms of subsection (6), shall be discussed at any special meeting called in terms of subsection (5).

## **21 Quorum at meetings of provincial councils**

Unless the provisions of this or any other enactment require a different number of members to be present at any duly convened meeting of a provincial council, all functions vested in a provincial council may be exercised at any duly convened meeting thereof at which no fewer than one-third of the whole number of the members entitled to sit on the provincial council are present.

## **22 Attendance at meetings of provincial councils**

(1) Notwithstanding the provisions of any other enactment but subject to this section, a member of a provincial council, other than the provincial governor, who is absent without the permission of the provincial council from three consecutive meetings thereof, including special meetings, shall, one week after the next meeting of the provincial council—

(a) cease to be a member of the provincial council; and

(b) in the case of a member who is a mayor, chairman or councillor of a local authority, cease to be a councillor of that local authority;

unless the provincial council, at that next meeting, resolves to condone his absence.

(2) A member of a provincial council who is aggrieved by the refusal of the provincial council to condone his absence in terms of subsection (1) may, no later than one week after such refusal, appeal to the Minister in writing, and the lodging of such an appeal with the Minister shall suspend the application of paragraphs (a) and (b) of that subsection to the appellant pending the outcome of the appeal.

(3) On any appeal in terms of subsection (2) the Minister, after due inquiry into the matter, may—

(a) allow the appeal, in which event the provisions of paragraphs (a) and (b) of subsection (1) shall not apply to the appellant; or

(b) dismiss the appeal, in which event the provisions of paragraphs (a) and (b) of subsection (1) shall thereupon apply to the appellant.

## **23 Meetings of provincial councils to be open to public**

(1) Subject to subsection (2), every meeting of a provincial council shall be open to the public.

(2) If a provincial council considers that any matter can be more conveniently and advantageously dealt with in private, it may at any meeting resolve itself into committee and exclude the public, and any resolution adopted in committee shall have full force and effect as a resolution of the provincial council.

## **24 Minutes of proceedings of provincial councils**

(1) A provincial council shall cause minutes to be made in the English language of all proceedings of the provincial council and shall cause to be recorded therein the names of all members attending any meeting and the names of the members voting respectively for or against any matter for the decision of which a division is called.

(2) The minutes made in terms of subsection (1) shall be recorded in a book kept for the purpose, or on loose sheets of paper which shall subsequently be bound into a book.

(3) The minutes of a meeting of a provincial council shall, if in order, be confirmed at the same or next succeeding ordinary meeting of the provincial council and shall, if so approved, be signed by the person presiding the meeting at which such confirmation occurs:

Provided that, if the minutes are written upon loose sheets of paper, each such loose sheet shall be consecutively numbered and initialled by the person presiding at the meeting.

(4) A document purporting to be—

(a) the minutes of a meeting of a provincial council and signed as provided in subsection (3); or

(b) a copy or extract from such minutes certified by the secretary of the provincial council as correct;

shall on its mere production in a court of law by any person be *prima facie* proof of the facts set out therein, and all matters relating to the meeting of which the said minutes purport to be the record shall be presumed to have been done and executed with the due formalities until the contrary is proved.

(5) All minute books referred to in this section shall be kept by the secretary of the provincial council.

(6) The minutes of proceedings of a provincial council shall at all reasonable times be open to the inspection of any member of the public who may obtain a copy thereof or an extract therefrom on payment of such fee, not exceeding such amount as may be prescribed, as may be fixed by resolution of the provincial council:

Provided that—

- (i) minutes of proceedings conducted in committee in terms of subsection (2) of section *twenty-three* shall not be open to inspection;
- (ii) minutes of proceedings of committees relating to any legal proceedings or negotiations to which the provincial council is or may become a party and the disclosure of which is considered by the committee to be prejudicial to the general interests of the provincial council shall not be open to inspection; and
- (iii) where any minute contains a reference to a document, such document shall not be open to inspection.

(7) At any meeting of a provincial council, upon request by a member, the secretary of the provincial council shall record the dissent of such member to any resolution passed by the meeting.

## **25 Validity of proceedings of provincial councils**

No decision, act or proceedings of a provincial council shall be invalid by reason only of the fact that—

- (a) there was a vacancy in the number of members of the provincial council; or
- (b) a person who was not a member of the provincial council acted as a member;

when the decision was taken or the act was done or authorized or the proceedings took place, as the case may be.

## **PART V**

### **COMMITTEES OF PROVINCIAL COUNCILS**

## **26 Establishment and membership of provincial development committees**

(1) Every provincial council shall establish a provincial development committee.

(2) A provincial development committee shall consist of the following members—

- (a) the provincial administrator for the province; and
- (b) the town clerk, principal officer, secretary or senior council officer of every municipal council, town council, local board, rural council or district council whose mayors or chairmen, as the case may be, are members of the provincial council; and
- (c) the senior officer in the province of—
  - (i) the Police Force; and
  - (ii) the organization known as the Central Intelligence Organization; and
  - (iii) the Zimbabwe National Army;
- (d) the provincial head of each Ministry and department of a Ministry within the province that the Minister may designate by notice in writing to the provincial governor; and
- (e) such further members representing other organizations and interests as the Minister, on the recommendation of the provincial governor, may appoint.

(3) If there is no officer who is the provincial head of any Ministry or department referred to in paragraph (d) of subsection (2), or if there is doubt as to which officer is the provincial head of any such Ministry or department, the Secretary of such Ministry or the head of such department, as the case may be, shall, at the request of the provincial governor concerned, designate an officer in his Ministry or department to be the provincial head of the Ministry or department, as the case may be, in the province concerned.

(4) Persons appointed as members of a provincial development committee in terms of paragraph (e) of subsection (2) shall hold office at the pleasure of the Minister.

## **27 Chairmen of provincial development committees**

The provincial administrator shall preside at all meetings of a provincial development committee at which he is present and, in his absence, the members present shall elect a provincial head of a Ministry or department referred to in paragraph (d) of subsection (2) of section *twenty-six* to preside at the meeting.

## **28 Functions of provincial development committees**

The functions of a provincial development committee shall be—

- (a) to make recommendations to the provincial council as to matters to be included in the annual development and other long-term plans for the province; and
- (b) to assist the provincial council in preparing the annual development and other long-term plans for the province; and
- (c) when instructed to do so by the provincial council, to investigate the implementation of the annual development and other long-term plans for the province; and

- (d) to exercise such other functions in relation to the annual development and other long-term plans for the province as may be assigned to it from time to time by the provincial council.

### **29 Meetings and quorum of provincial development committees**

(1) Subject to section *thirty*, the provincial administrator for the province shall fix the times and places of all meetings of a provincial development committee, and subsection (2) of section *twenty* shall apply, *mutatis mutandis*, to the convening of such meetings.

(2) A majority of the members referred to in section *twenty-six* shall form a quorum at any meeting of a provincial development committee.

### **30 Joint meetings of provincial councils and provincial development committees**

(1) At any time a provincial governor may direct that a joint meeting be held between the provincial council for the province concerned and its provincial development committee.

(2) A joint meeting referred to in subsection (1) shall be held at such place and time as the provincial governor may direct, and the provincial governor shall be the chairman of any such joint meeting.

(3) At least twenty-one days before a joint meeting referred to in subsection (1), the secretary of the provincial council shall send a notice stating the date, time and place of the joint meeting and the business to be transacted thereat to each member of the provincial council and the provincial development committee concerned, and shall display the notice at the places at which and in the manner in which notices of the provincial council are normally displayed or in such other place and manner as may be prescribed.

(4) At any joint meeting referred to in subsection (1), every member of the provincial council and the provincial development committee who is present shall be entitled to one vote on every question before the meeting:

Provided that—

- (i) the person presiding at any such meeting shall not have a vote;
- (ii) only members of a provincial council may vote on the final approval of an annual development plan for the province.

### **31 Other committees of provincial councils**

(1) In addition to its provincial development committee, a provincial council may at any time appoint one or more committees for such general or specific purposes as the provincial council thinks desirable and may at any time dissolve any such committee.

(2) A provincial council may appoint to any committee in terms of subsection (1) persons who are not members of the provincial council:

Provided that a provincial council shall appoint at least one of its members to each committee and one such member shall be the chairman of the committee.

(3) A provincial council that has appointed a committee in terms of subsection (1) may, with the approval of the Minister and subject to such conditions as it may impose, delegate to that committee any powers conferred upon the provincial council by or under this Act or any other enactment, other than the power to approve an annual development plan for the province, and may at any time amend or revoke any such delegation:

Provided that any amendment or revocation of such a delegation shall not invalidate anything done in pursuance of a decision lawfully taken by the committee before such amendment or revocation.

(4) If at any meeting of a committee appointed in terms of subsection (1) the chairman is absent for any reason, the members present shall elect one of their number to preside at that meeting.

(5) A member of a committee appointed in terms of subsection (1) shall cease to be a member of the committee—

- (a) if the provincial council for any reason resolves that he should cease to be a member of the committee; or
- (b) if, having been a member of the provincial council when he was appointed to the committee, he ceases to be a member of the provincial council.

(6) No person shall be present at any meeting of a committee appointed in terms of subsection (1) except—

- (a) the members and secretary thereof; and
- (b) the provincial governor; and
- (c) the secretary of the provincial council; and
- (d) any person whom the chairman of the committee has invited to attend the meeting.

(7) A majority of the members of a committee appointed in terms of subsection (1) shall form a quorum at any meeting thereof.

### **32 Application of other provisions of Act to committees of provincial councils**

In respect of any matter that is not expressly provided for in this Part, sections *twenty*, *twenty-four* and *twenty-five* shall apply, *mutatis mutandis*, to the meetings and procedure of committees established by a provincial council in terms of this Part.

## PART VI

### STAFF OF PROVINCIAL COUNCILS

#### 33 Assignment of staff to provincial councils

(1) With the consent of the Public Service Commission, the Minister may from time to time assign persons employed in his Ministry to the service of any provincial council.

(2) A person who has been assigned to the service of a provincial council in terms of subsection (1)—

(a) shall, subject to any regulations made in terms of section *forty-five* and any general instructions given to him by the Minister, perform such duties in relation to the provincial council as the Minister may direct; and

(b) shall remain a member of the Public Service.

#### 34 Delegation of powers to assigned employees

(1) A provincial council may, either absolutely or conditionally, delegate to any assigned employee such of the powers vested in it by or under this Act or any other enactment as it considers to be necessary or desirable, and may at any time amend or withdraw any such delegation:

Provided that—

(i) a provincial council shall not delegate to any assigned employee—

(a) the powers conferred upon it by any other enactment unless the proposed delegation has been approved by the Minister responsible for the administration of the enactment concerned and any conditions fixed by that Minister are complied with; or

(b) the powers conferred by subsection (2);

(ii) the amendment or withdrawal of any such delegation shall not invalidate anything done in pursuance of a decision lawfully taken by the assigned employee concerned before such amendment or withdrawal.

(2) Any person who is aggrieved by the decision of an assigned employee acting under powers delegated to him in terms of subsection (1) shall have the right to bring the matter to the provincial administrator in the first instance and, failing satisfaction, to the provincial council for re-examination.

(3) The delegation of any powers by a provincial council in terms of subsection (1) shall not preclude the provincial council from itself exercising the powers so delegated, and a provincial council may amend or rescind any decision of an assigned employee in the exercise of any powers so delegated to him.

## PART VII

### POWERS OF PROVINCIAL COUNCILS

#### 35 Conferring of powers on provincial councils

(1) To the extent that the Minister, by notice in the *Gazette*, authorizes it to do so, a provincial council may undertake, carry out or carry on any act or thing whatsoever which is incidental or conducive to the exercise of the functions of the provincial council in terms of this Act or any other enactment.

(2) When authorizing a provincial council to undertake, carry out or carry on any act or thing in terms of subsection (1), the Minister may impose such terms and conditions upon his authority as he may specify therein, and the provincial council shall comply with any such term or condition.

(3) The Minister may at any time, by notice in the *Gazette*, amend or revoke any authority given in terms of subsection (1) or any term or condition of such authority.

## PART VIII

### ABOLITION AND ALTERATION OF AREAS OF PROVINCIAL COUNCILS

#### 36 Abolition of provincial councils

Subject to this Part, whenever the President considers it desirable he may, by proclamation in a statutory instrument and after consulting the provincial council concerned, abolish a provincial council.

#### 37 Effect of abolition or alteration of areas of provincial councils

Where—

(a) a provincial council has been abolished; or

(b) as a result of an alteration of the boundaries of any province, any area that was formerly part of the area of a provincial council has been included in the area of another provincial council; or

(c) after the creation of a new province, a new provincial council has been established for an area that formed part of the area of another provincial council;

the President may—

(i) by notice in a statutory instrument, give such directions as to—

A. the application, non-application, suspension or modification wholly or partly of any provision of this Act or any other enactment; or

B. any other matter or thing whatsoever; and  
(ii) do such other things;  
as the President considers necessary or desirable to ensure the proper dissolution of the provincial council concerned or to do justice between the provincial councils concerned or for the proper administration of the areas concerned.

## PART IX

### GENERAL

#### **38 Exemption of members, assigned employees and other persons from liability**

No matter or thing done or omitted to be done or contract entered into by a provincial council or any committee thereof shall subject any—

- (a) member of the provincial council or committee; or
- (b) assigned employee or other person acting under the general or specific directions of the provincial council or committee;

in his personal capacity to any action, liability, claim or demand whatsoever, and any expenses incurred by such member, assigned employee or other person as a result of any such action, claim or demand shall be paid by the provincial council:

Provided that this section shall not indemnify any such member, assigned employee or other person against any action, liability, claim or demand arising out of anything done or omitted to be done by him in bad faith, recklessly or in deliberate contravention of any provision of this Act.

#### **39 Copy of Act and regulations to be available for inspection**

A provincial council shall ensure that a copy of—

- (a) this Act; and
- (b) any regulations which have been made in terms of this Act and which are applicable within the province;

are available for inspection by any person at the office of the provincial council during office hours.

#### **40 Minister to be furnished with reports and information**

The Minister may from time to time require—

- (a) a provincial governor to submit to him such reports, statistics and information;
- (b) a provincial council to submit to him certified copies of records of its proceedings, statistics, and other documents and such other information;

as the Minister considers necessary for the effective discharge of his duties and responsibilities in terms of this Act, and the provincial governor or provincial council, as the case may be, shall comply with any such requirement.

#### **41 Inquiries by Minister and appointment of investigators**

(1) The Minister may, if he considers it necessary or desirable in the public interest, appoint one or more members of the Public Service as investigators, together with such assistants and advisers as he may consider necessary, to inquire into any matter which—

- (a) relates to the good government of a province; or
- (b) relates to the failure of a provincial council to undertake any function for which it has the necessary power in terms of this Act, which power it has failed to exercise; or
- (c) relates to or arises out of the affairs of a provincial council;

and to report to him thereon.

(2) A provincial council into whose affairs an inquiry is being conducted in terms of subsection (1) and every member or assigned employee of such a provincial council shall, when requested to do so, submit to an investigator all information in its or his possession and produce to him and give him access to all books, documents, records, and other sources of information of the provincial council.

(3) For the purposes of an inquiry in terms of subsection (1), it shall be lawful for the investigator, if the Minister so directs—

- (a) to hear and receive evidence upon oath, which oath he is hereby empowered to administer; and
- (b) by summons under his hand, to require such persons as he may think fit to appear personally before him at a time and place to be stated in such summons and to produce all such books and papers as may be necessary for the inquiry.

(4) If it is intended that an investigator shall take evidence from members of the public, notice of the time and place at which evidence will be heard shall be given at the office of the provincial council concerned and in two issues of a newspaper.

(5) A statement given by any person to an investigator under the provisions of this section shall not be admissible in evidence in any court of law, except with the consent of all persons affected thereby or for the purposes of a prosecution under subsection (7), (8) or (9).

(6) If a person appointed by the Minister in terms of subsection (1) requires any facilities which the provincial council concerned fails or refuses to provide, the Minister may direct the provincial council to provide such facilities and, if the provincial council fails to comply with such direction within such time as the Minister may require, the Minister may, on behalf of the provincial council, provide the facilities.

(7) Any member or assigned employee of a provincial council who—

- (a) refuses or fails to answer to the best of his ability any lawful question put to him by, or wilfully makes any false statement to, an investigator in the exercise of his functions in terms of this section; or
- (b) refuses or fails to comply to the best of his ability with any lawful requirement made by an investigator in the exercise of his functions in terms of this section;

shall be guilty of an offence and liable to a fine not exceeding level five or imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(8) Any person who—

- (a) threatens, resists, hinders or obstructs or uses abusive, insulting or obscene language towards, or at, an investigator or any person referred to in subsection (1) while that investigator or other person is exercising his functions in terms of this section; or
- (b) falsely holds himself out to be an investigator or other person appointed in terms of subsection (1); or
- (c) without lawful excuse, having been summoned in terms of subsection (3)—
  - (i) refuses or fails to attend in obedience to such summons; or
  - (ii) having so attended, refuses to be examined upon oath or to take the oath; or
  - (iii) having taken the oath, refuses to answer such questions as are lawfully put to him; or
  - (iv) refuses or fails to produce any books or papers he has been required to produce;

shall be guilty of an offence and liable to a fine not exceeding level five or imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(9) Any person, who, having taken an oath under subsection (3), makes any false statement knowing it to be false or not reasonably believing it to be true, shall be guilty of an offence and liable to a fine not exceeding level seven or imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(10) A conviction for an offence in terms of this section shall not exempt the person convicted from liability to do or perform the act, matter or thing required to be done or performed by him.

[Subsection amended by section 4 of Act 22 of 2001]

## **42 Minister's power to direct certain actions**

Where, in the opinion of the Minister, a provincial council has failed to carry out any duty imposed upon it by this Act or any other enactment, he may, after having given the provincial council an opportunity to submit any representations it may wish to make in connection therewith, direct the provincial council to take such action as he considers necessary within a time specified by him.

## **43 Minister may rectify omitted acts**

If any act or thing required to be done in terms of this Act is omitted to be done, or is not done in the manner or within the time so required, the Minister may order all such steps to be taken as in his opinion are necessary or desirable to rectify such act or thing, and such act or thing when done in terms of the said order shall be of the same force and effect as if originally done in accordance with the appropriate provision of this Act:

Provided that no person shall be deprived in terms of this section of any right which may have vested in him before the Minister makes an order in terms of this section.

## **44 Execution and authentication of documents**

Every order, written contract or other document requiring execution or authentication by a provincial council shall be sufficiently executed or authenticated if signed by the provincial governor or the secretary of the provincial council in the presence of such witnesses, if any, as may be required in terms of any law.

## **45 Regulations**

(1) Subject to this Act, the Minister may make regulations prescribing anything which in terms of this Act is required or permitted to be prescribed or which, in his opinion, is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations made in terms of subsection (1) may provide for—

- (a) the manner in which local authorities shall appoint members to provincial councils;
- (b) the functions of assigned employees.

## **46 Obstruction and impersonation**

Any person who—

- (a) at a meeting of a provincial council, creates a disturbance or uses insulting, abusive or obscene language; or
  - (b) threatens, resists, hinders or obstructs a provincial council or any member thereof or any assigned employee or contractor employed by a provincial council in the performance of anything which it or he, as the case may be, is empowered or required by or in terms of this Act to do; or
  - (c) uses abusive, insulting or obscene language towards any person referred to in paragraph (b); or
  - (d) falsely holds himself out to be a member or an employee or contractor of a provincial council;
- shall be guilty of an offence and liable to a fine not exceeding level five or imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]