

# WESTERN CAPE PROVINCIAL PARLIAMENT



## Monitoring of Local Government by Provincial Parliament

10 May 2022



# Background

- Until the fourth parliamentary term (2009 – 2014), the legislature had a *Committee on Local Government Oversight*
- For the fifth parliamentary term (2014 – 2019), on legal advice, the legislature did not establish a Committee on Local Government Oversight
- During the fifth parliamentary term, in the Standing Rules, the legislature's *Standing Committee on Local Government* retained a mandate that included 'local government oversight'
- During a review of the Standing Rules during the fifth term it was decided to remove:–
  - i. the *Committee on Local Government Oversight* from the Standing Rules; and
  - ii. the mandate of 'local government oversight' from the mandate of the *Standing Committee on Local Government*
- At present, rule 71(1)(d) of the Standing Rules provides for 'standing committees on provincial executive matters', in accordance with which the Standing Committee on Local Government was established in 2019

# Why was oversight of local government removed from the rules?

1 – 2

- The legislature has *oversight* of the exercise of *provincial executive authority* in the Province, including the implementation of legislation, and of provincial organs of state in the Province. The provincial executive authority and provincial organs of state, in turn, are *accountable* to the legislature

See section 114(2) together with section 133 of the Constitution

- Oversight and accountability presupposes a relationship in which a person (or body) is *answerable* to another or, in other words, where that person is *responsible* to another for performance of that person's functions and powers

See *Building Representative Democracy: South Africa's Legislatures and the Constitution* by Christina Murray and Lia Nijzink (Parliamentary Support Programme, Cape Town: 2002), Chapter 7 – Oversight

- Hence, voters confer authority on a provincial legislature, and the provincial legislature, in turn accounts to the voters; the provincial legislature confers authority on the Premier and the Executive Council, and the Premier and the Executive Council, in turn, accounts to the provincial legislature; departments and heads of departments are established and appointed by the Premier and the Executive Council, and departments and heads of departments, in turn, account to the Premier and the Executive Council

# Why was oversight of local government removed from the rules?

2 – 2

- It follows that the legislature appointed the Standing Committee on Local Government to have *oversight of the Department of Local Government*, and the Department of Local Government, in turn, accounts to the Standing Committee on Local Government
- Neither the legislature nor the provincial government has *oversight* of local government. A municipal council *accounts* to the voters that conferred authority on the municipal council
- However, provincial government (through the Department of Local Government) has a distinct relationship with local government
- The legislatures has oversight of how the provincial executive performs in respect of its obligations pertaining to local government

## What is the relationship between provincial government and local government?

- The provincial government must, by legislative and other measures, *support* and *strengthen* the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions. In order to meet this obligation, the provincial government must *monitor* local government in the Province

See sections 154(1) and 155(6) of the Constitution

- Whether the *provincial executive* is meeting these obligations (monitoring, supporting and strengthening local government) is a matter in respect of which Provincial Parliament has oversight of the provincial executive

# Oversight of the Department of Local Government

## 1 - 2

- For the legislature to have oversight of the provincial executive in respect of the provincial executive's obligations to monitor, support and strengthen local government, the legislature may compel the disclosure of any information necessary to fulfil its oversight mandate. Provincial Parliament can compel the disclosure of information by any person, including any municipality

See section 115 of the Constitution

- There are also specific statutes that seek to ensure that the legislature has access to the information it needs to fulfil its oversight mandate
- In respect of the legislature's oversight mandate pertaining to the provincial executive's obligations in respect of local government, the Local Government: Municipal Finance Management Act, 2003 requires:
  - i. In section 71(7), the provision of consolidated statements on the state of municipalities' budgets to provincial legislatures by the relevant MEC for finance;
  - ii. In section 126(4), the provision of a report outlining reasons for any delay in completing an audit of a municipality to a provincial legislature by the Auditor-General; and
  - iii. In section 132, the provision of the annual reports and oversight reports of municipalities to provincial legislatures by municipalities

# Oversight of the Department of Local Government

2 - 2

- These statutory disclosures to provincial legislatures serve the same purpose – to ensure that the provincial legislatures have the information they need to have oversight of their respective provincial executives
- The oversight function fulfilled by the Standing Committee on Local Government appears like the oversight function of any other standing committee dealing with its own distinct portfolio
- The Standing Committee on Local Government has oversight of those powers and functions that the Department of Local Government is responsible for, including its monitoring, support and strengthening of local government in the Province
- The Western Cape Monitoring and Support of Municipalities Act, 2014 serves as an example of legislation that must be implemented by the Department of Local Government, over which implementation the Standing Committee on Local Government has oversight

# Conclusion

1. The legislature does not have oversight of municipalities, and municipalities do not account to the legislature
2. The legislature has oversight of the Department of Local Government's performance of its powers and functions in respect of monitoring, support and strengthening of municipalities
3. To this end, the legislature can compel the disclosure of information by any person (including a municipality) if the legislature needs that information to have oversight of the Department of Local Government
4. To this end, the Local Government: Municipal Finance Management Act, 2003 ensures that certain types of information are made available to Provincial Parliament as a matter of course





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