

- (c) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.

Transfer of functions

137. The Premier by proclamation may transfer to a member of the Executive Council—
- (a) the administration of any legislation entrusted to another member; or
 - (b) any power or function entrusted by legislation to another member.

Temporary assignment of functions

138. The Premier of a province may assign to a member of the Executive Council any power or function of another member who is absent from office or is unable to exercise that power or perform that function.

Provincial intervention in local government

139. (1) When a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including—
- (a) issuing a directive to the Municipal Council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations;
 - (b) assuming responsibility for the relevant obligation in that municipality to the extent necessary to —
 - (i) maintain essential national standards or meet established minimum standards for the rendering of a service;
 - (ii) prevent that Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or to the province as a whole; or
 - (iii) maintain economic unity; or
 - (c) dissolving the Municipal Council and appointing an administrator until a newly elected Municipal Council has been declared elected, if exceptional circumstances warrant such a step.
- (2) If a provincial executive intervenes in a municipality in terms of subsection (1)(b)—
- (a) it must submit a written notice of the intervention to—
 - (i) the Cabinet member responsible for local government affairs; and
 - (ii) the relevant provincial legislature and the National Council of Provinces, within 14 days after the intervention began;

- (b) the intervention must end if—
 - (i) the Cabinet member responsible for local government affairs disapproves the intervention within 28 days after the intervention began or by the end of that period has not approved the intervention; or
 - (ii) the Council disapproves the intervention within 180 days after the intervention began or by the end of that period has not approved the intervention; and
 - (c) the Council must, while the intervention continues, review the intervention regularly and may make any appropriate recommendations to the provincial executive.
- (3) If a Municipal Council is dissolved in terms of subsection (1)(c)—
 - (a) the provincial executive must immediately submit a written notice of the dissolution to—
 - (i) the Cabinet member responsible for local government affairs; and
 - (ii) the relevant provincial legislature and the National Council of Provinces; and
 - (b) the dissolution takes effect 14 days from the date of receipt of the notice by the Council unless set aside by that Cabinet member or the Council before the expiry of those 14 days.
- (4) If a municipality cannot or does not fulfil an obligation in terms of the Constitution or legislation to approve a budget or any revenue-raising measures necessary to give effect to the budget, the relevant provincial executive must intervene by taking any appropriate steps to ensure that the budget or those revenue-raising measures are approved, including dissolving the Municipal Council and—
 - (a) appointing an administrator until a newly elected Municipal Council has been declared elected; and
 - (b) approving a temporary budget or revenue-raising measures to provide for the continued functioning of the municipality.
- (5) If a municipality, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments, the relevant provincial executive must—
 - (a) impose a recovery plan aimed at securing the municipality's ability to meet its obligations to provide basic services or its financial commitments, which—
 - (i) is to be prepared in accordance with national legislation; and

- (ii) binds the municipality in the exercise of its legislative and executive authority, but only to the extent necessary to solve the crisis in its financial affairs; and
 - (b) dissolve the Municipal Council, if the municipality cannot or does not approve legislative measures, including a budget or any revenue-raising measures, necessary to give effect to the recovery plan, and—
 - (i) appoint an administrator until a newly elected Municipal Council has been declared elected; and
 - (ii) approve a temporary budget or revenue-raising measures or any other measures giving effect to the recovery plan to provide for the continued functioning of the municipality; or
 - (c) if the Municipal Council is not dissolved in terms of paragraph (b), assume responsibility for the implementation of the recovery plan to the extent that the municipality cannot or does not otherwise implement the recovery plan.
- (6) If a provincial executive intervenes in a municipality in terms of subsection (4) or (5), it must submit a written notice of the intervention to—
- (a) the Cabinet member responsible for local government affairs; and
 - (b) the relevant provincial legislature and the National Council of Provinces, within seven days after the intervention began.
- (7) If a provincial executive cannot or does not or does not adequately exercise the powers or perform the functions referred to in subsection (4) or (5), the national executive must intervene in terms of subsection (4) or (5) in the stead of the relevant provincial executive.
- (8) National legislation may regulate the implementation of this section, including the processes established by this section.

[S. 139 substituted by s. 4 of the Constitution Eleventh Amendment Act of 2003.]

Executive decisions

140. (1) A decision by the Premier of a province must be in writing if it—
- (a) is taken in terms of legislation; or
 - (b) has legal consequences.
- (2) A written decision by the Premier must be countersigned by another Executive Council member if that decision concerns a function assigned to that other member.