



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA



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**The Mandating Procedures of
Provincial Legislatures Act
2008 and its implications for
the legislative process**



Mandates

- Regulated by Mandating Procedures of Provincial Legislatures Act (the Act)
- The Act is authorised by section 65(2) of the Constitution
- Intended to provide uniform procedure for conferral of Negotiating and Final Mandates



Definition of a Mandate

- Authority to negotiate or vote on a matter before a committee or the House
- Conferred by a committee or provincial legislature on its provincial delegation

(See section 1 of the Act)



Types of Mandates

- Negotiating – negotiating position of a province conferred by a committee of the provincial legislature
- Final – final position of a province conferred by the provincial legislature (the House)
- Voting – voting position of a province conferred by the provincial legislature (the House)



When is it required

- section 64 – the election of the Chairperson and Deputy Chairpersons
- section 74 – bills amending the Constitution
- section 76 – bills affecting provinces
- section 78 – Mediation



Determining the Programme

- Select Committees to take into account programmes of provinces when developing programme for legislation



Conferral of Mandates

- Briefing of a committee on the bill (department/Legal Services)
- Arrangement of the programme (in consultation with the provincial legislature)
- Briefing of the provincial legislature on the bill
- Public involvement



Effective public involvement

- “The purpose of permitting public participation in the law-making process is to afford the public the opportunity to influence the decision of the law-makers. This requires the law-makers to consider the representations made and thereafter make an informed decision”

Constitutional Court in Doctors for Life International v Speaker of the National Assembly and Others

Matatiele Municipality and Others v President of the RSA and Others

Merafong



Co-ordination with provincial legislatures

- Provincial Legislatures are not appendages of the NCOP
- They do not exist to be at the beck and call of the NCOP
- . . . they perform their task as an important cog in the NCOP public participation process
- . . . they do not lose their separate identity
- . . . nothing precludes them from telling the NCOP as much



Public involvement

Factors to determine reasonable public involvement

- The Rules of the NCOP
- The nature and importance of the legislation
- The self-imposed timeline;
- Mandates of Provincial Legislatures at the NCOP;
- Public participation at Provincial Legislatures
- Potential expenses
- Time constraints

Land Access Movement of South Africa and Others v Chairperson of the National Council of Provinces and Others at paras 60 - 61



Its implications in the Legislative Process

- The Lamosa practice note addresses the challenges identified in the court judgements



Voting (Committee stage)

- Consideration of Negotiating Mandates
- Presentation of public hearing reports by provinces
- At least five provinces must vote in favour
- Vote to be on behalf of the province by delegate
- Vote in accordance with the mandate

See sec 65(1)(b)



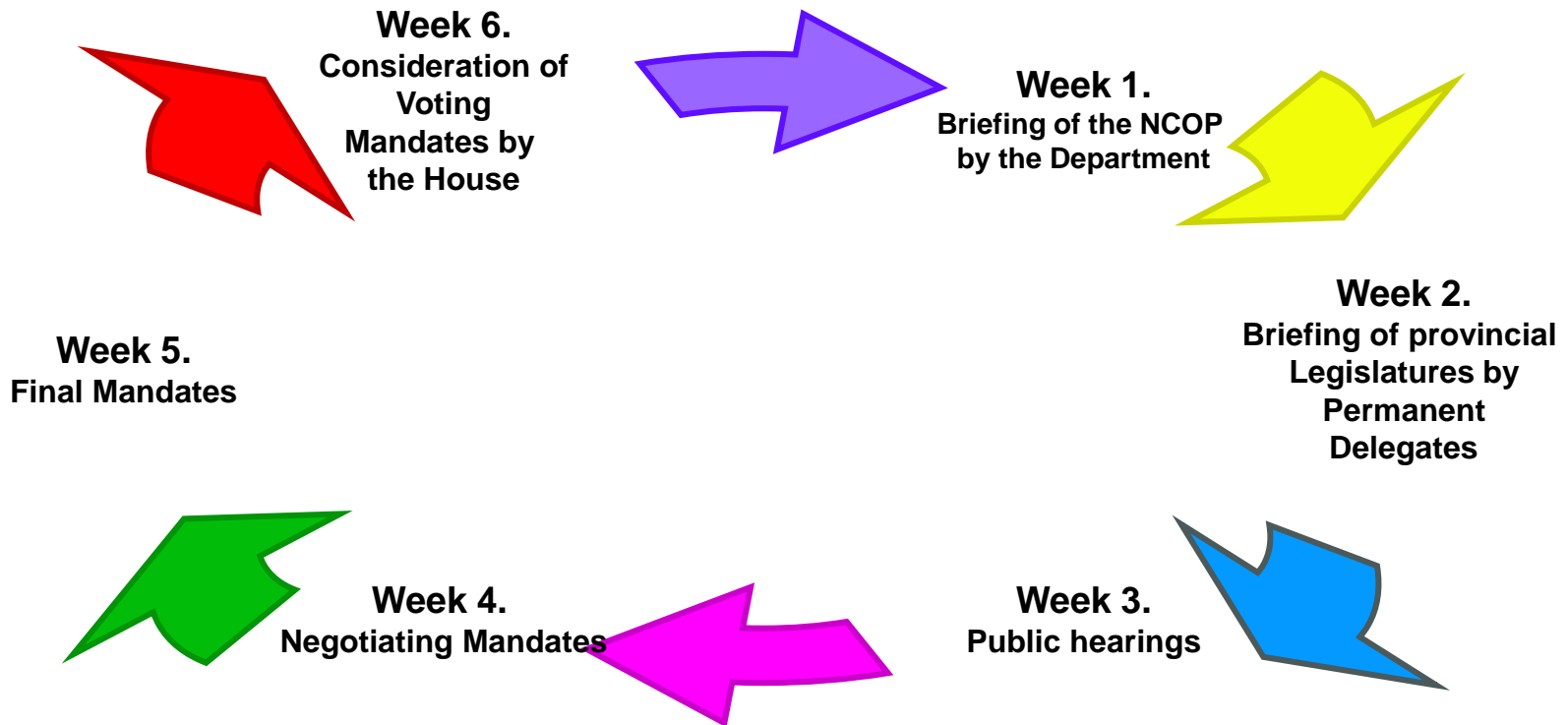
Voting (House Stage)

- Consideration of Final Mandate
- Copy of Final Mandate (written)
- At least five provinces must vote in favour
- Vote to be on behalf of the province by delegate
- Vote in accordance with the mandate

See sec 65(1)(b)



Diagram on legislative cycle





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Thank you