

PARLIAMENT OF THE PROVINCE OF THE WESTERN CAPE

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

MONDAY, 21 NOVEMBER 2022

COMMITTEE REPORT

Report of the Ad Hoc Committee: WCPP Seats, as follows:

1. Introduction and background

On Friday 3 June 2022 the Speaker, based on the House resolution that was taken on Thursday 12 May 2022, in the Announcements, Tablings and Committee Reports [No 63 – 2022], announced the establishment of an ad-hoc committee in accordance with Standing Rule 119(1)(b) with the assignment to determine:

- 1.1 The appropriateness of the number of seats allocated to the Western Cape Provincial Parliament more than 20 years ago, given the population growth and the movement of people across provinces; and
- 1.2 Whether the current number of seats is sufficient to represent the people of the Western Cape optimally.

2. Membership and committee activities

- 2.1 The Committee consisted of 15 Members appointed in accordance with Rule 120 of the Standing Rules with the membership allocated as follows:

- Democratic Alliance: Eight (8) Members: Honourable C Murray (from 5 August 2022), Honourable RD Mackenzie, Honourable C Fry (from 5 August 2022), Honourable WF Kaizer-Philander, Honourable D America, Honourable D Plato, Honourable AP van der Westhuizen, Honourable G Bosman. Alternate: Honourable LJ Botha, Honourable DM Baartman and Honourable LM Maseko.
- African National Congress: One (1) Members: Honourable PZ Lekker Alternates: Honourable P Marran, Honourable AP Bans.
- Economic Freedom Fighters: One (1) Member: Honourable N Makamba-Botya.
- GOOD: One (1) Member: Honourable SN August.
- African Christian Democratic Party: One (1) Member: Honourable FC Christians.
- Freedom Front Plus: One (1) Member: Honourable PJ Marais.
- Al Jama-ah: One (1) Member: Honourable K Brinkhuis.

- 2.2 The Committee met with the WCPP Research Unit on 10 August and 7 September 2022 to be briefed and to deliberate on research related to international best practice and the calculation of seats in other legislatures. Research was based on countries such as South Africa, Kenya, Canada, Germany, Australia, New Zealand, Botswana, and Nigeria. The Committee also met with the WCPP Legal Unit on 10 August and 7 September 2022 to be briefed on the legal framework and to deliberate on draft policy options for amending section 13 of the Provincial Constitution. Finally, the Committee was also briefed by and interacted with Mr M Hendrickse, Provincial Electoral Officer: Western Cape, and Mr M Sheburi, Deputy CEO: Electoral Operations from the IEC, on 7 September 2022, regarding the process to determine the number of seats for provincial legislatures.

3. Research findings related to increased seats and the link to accountability

To determine the appropriateness of the number of seats allocated to the Western Cape Provincial Parliament more than 20 years ago and whether the current number of seats is sufficient to represent the people of the Western Cape optimally, it must be determined whether more seats will lead to more accountability.

The research has indicated that there is a conceptual link between increased seats and improved accountability. Legislatures serve, in essence, as an “accountability agency” representing and advancing the interests and well-being of the people. Accountability, for the purpose of this report, is conceived as the effectiveness and efficiency of members to serve as both public and political party representatives and perform all the concomitant and varied duties related to these roles.

It can be reasonably inferred that accountability is enhanced (or compromised), when there are adequate (inadequate) seat numbers, ie public representatives who are serving and advancing the interests and well-being of citizens. Members who must contend with a high workload or who must serve on too many committees will, arguably, be less effective than members who are afforded time to deal with the demands of legislative, constituency and party-political work. This view is shared by commentators advocating for improved accountability mechanisms and measures stating:

“If we are to persist in that choice and are to realise the accountability condition on which it is premised, we must address anew both our institutional arrangements and the practices which enhance or impede accountability. First in this must be Parliament itself. Review is needed of its (legislatures) structuring and operations, its capabilities and” (*Public Trust and Accountability. Australian Institute of Policy and Science*, Vol 65 No 2 pp 50–59.)

Further, “Parliament has considerable powers of oversight over the executive. However, the challenges it faces have less to do with formal powers than with process and substance Capacity issues, lack of experience, and resources are areas of concern, but given the necessary time and support they can be overcome” (Motshekga, M (2013). A Chief Whip’s Perspectives Parliamentary Governance in South Africa in *Protecting the Inheritance: Governance and Public Accountability in Democratic South Africa* ed Daniel Plaatjies.)

Using the WCPP context as an example, there are currently 42 members, 11 who serve as the executive or provincial cabinet. This leaves 31 members to represent the people of the Western Cape, serve on committees, conduct oversight, engage the public and constituency-based work, rotate as special delegates to the National Council of Provinces (NCOP), as well as undertake party-political work. However, if seats were increased to 71 (as per the Schedule to the Electoral Amendment Act, 2021, that is based on the 1:100 000 ratio) and 11 members served as the executive, it would leave 60 members who would serve the public, rather than only 31 members which is the current situation. Therefore, more members should result in increased representation,

increased public participation and a distributed workload to fulfil the institutions mandate more effectively who in turn are answerable to the public.

4. General research findings with specific reference to the formulaic approach

Although the WCPP is exempt from the formulaic approach due to provisions in the provincial constitution (prescribing 42 members), this approach allows for consistency and transparency.

The adoption and application of the formulaic approach is common practice and allows for consistency and transparency. It uses population size to calculate the number of seats by using a ratio of 1 member for every 100 000 citizens.

When using the 1:100 000 ratio, both Canada and Germany have proportionally more seats compared to legislatures in South Africa.

The formulaic approach works best when population growth is reviewed to respectively adjust the number of seats. An argument exists for including additional variables (besides population size) to not only calculate the number of seats but to assess resource allocation.

This will improve the effectiveness and efficiency of members who must contend with significantly higher population densities.

The formulaic approach is the most common and conventional approach adopted and applied by statutory public bodies across various countries and electoral systems for determining the number of seats in legislatures. It allows for consistency (using the same formula) in terms of approach and transparency (publicly available data) in terms of outcomes. However, distortions and anomalies have arisen since 1999 in terms of the member-to-population ratio in South African provincial legislatures. This is primarily due to the Independent Electoral Commission (IEC) not periodically reviewing significant increases in population size within provinces, and consequently recalculating and adjusting seat numbers. Therefore, the formulaic approach works best when population growth is reviewed periodically by the IEC with the express intent to adjust seat numbers to align it with the 1:100 000 ratio. In addition, the IEC must determine and indicate the size of change in population growth that consequently will result in either an increase or decrease in seat numbers.

The table below illustrates the number of members in relation to provincial population growth for the years 1996 and 2021.

Table 1: Ratio of member to population size¹

Province	Population in 1996	Ratio	Population in 2021	Ratio	Population growth (1996 to 2021)
Western Cape (WC)	3 956 875	1: 94 211	7 113 776	1: 169 376	79,8%
Eastern Cape (EC)	6 147 244	1: 109 772	6 676 590	1: 105 978	8,6%
Northern Cape (NC)	1 011 864	1: 33 729	1 303 047	1: 43 435	28,8%
Kwazulu-Natal (KZN)	8 572 302	1 105 831	11 513 575	1: 143 920	34,3%
Free State (FS)	2 633 504	1: 87 783	2 932 441	1: 97 748	11,4%
North West (NW)	2 727 223	1: 90 908	4 122 854	1: 124 934	51,2%
Limpopo (LP)	4 576 566	1: 114 414	5 926 724	1: 120 954	29,5%
Mpumalanga (MP)	3 123 869	1: 104 129	4 743 584	1: 158 119	51,8%
Gauteng (GP)	7 834 125	1: 91 094	15 810 388	1: 216 581	101,8%

The table illustrates that there has been a steady and, in some cases, a significant increase in population growth for all nine provinces from 1996 to 2021. The Western Cape and Gauteng recorded the highest percentage increase in population, 79,8% and 101,8% respectively. The Free State and Eastern Cape, on the other hand, recorded the lowest increase in population growth, 10,2% and 7,9% respectively. In terms of the seating allocation ratio utilised by the IEC, one seat for every 100 000 of the “regional population”, it is clear that the significant increase in population growth since 1996 has not seen a simultaneous shift in members for legislatures. The deviation from a 1:100 000 ratio is most noticeable in Gauteng (1:216 581), Western Cape (1:169 376), Kwazulu-Natal (1:143 920) and Mpumalanga (1:158 119). It is clear that there are proportionally fewer members serving the South African population in provincial legislatures than had been the case in 1996.

The Electoral Amendment Act of 2021 now compels the IEC to implement a recalculated number of seats before every provincial election. The 1:100 000 ratio remains. The table below illustrates the number of seats in the various provincial legislatures to population size when relying on a formulaic approach as a general guide for determining the number of seats, 1:100 000 ratio. The table applies the approach to all provinces, including the Western Cape.

¹ Sources: Discussion Document- Changing the Number of MPP Seats p.3. and Stats SA. “Mid-year population estimates, 2021.” Retrieved from: <https://www.statssa.gov.za/publications/P0302/P03022021.pdf> and NPE Seat Calculation Graphic. Population growth statistics was calculated.

Table 2: Number and ratio of members to current population size

Province	Population in 2021	Current seats	Appropriate number of seats	Difference ²	Ratio
Western Cape	7 113 776	42	71	+29	1:100 194
Eastern Cape	6 676 590	63	67	+3	1:99 651
Northern Cape	1 303 047	30	30	0	1:43 435
Kwazulu-Natal	11 513 575	80	80	0	1:143 920
Free State	2 932 441	30	30	0	1:97 748
North West	4 122 854	33	41	+8	1:100 557
Limpopo	5 926 724	49	59	+10	1:100 452
Mpumalanga	4 743 584	30	47	+17	1:100 927
Gauteng	15 810 388	73	80	+7	1:197 630

When applying the 1:100 000 ratio, the Northern Cape and the Free State have more members than expected (NC and FS would have less than 30). Kwazulu-Natal and Gauteng have fewer members than expected (KZN and GP would exceed 80). This is due to the Constitution of South Africa's requirement in section 105(2) that states that a provincial legislature may not have fewer than 30, and no more than 80 members. In addition, the Western Cape and Mpumalanga have significantly fewer members based on the 1:100 000 ratio.

5. Overview of discussions with the IEC

Section 105 of the Constitution of the Republic provides the normative standard for the election and composition of provincial legislatures:

- 5.1 Electoral System prescribed by national legislation: The electoral system is currently subject of parliamentary process following the *New Nation Movement Matter* (Schedule 1A to the Electoral Act).
- 5.2 A provincial legislature consists of between 30 and 80 members determined in terms of a formula prescribed by national legislation: Schedule 3 to the Electoral Act.
- 5.3 Awarding a seat for every 100 000 of the population.
- 5.4 Determination to be made by the Commission before every election following a consultative process.
- 5.5 Last determination of number of seats made in 1999.
- 5.6 In the intervening period there has been significant shifts in population composition.
- 5.7 The representatives from the IEC felt strongly that votes for legislatures around the country should carry similar "weights" in terms of the number of seats in the various legislatures. This notion is obviously already influenced by the national constitutional requirement for provinces without provincial constitutions to have a minimum of 30 and a maximum of 80 seats in their legislatures.

² The term "difference", used in the table, refers to the suggested negative or positive change in the number of seats.

The scheme in section 105(2) of the Constitution of the Republic is the default **except**:

Where a legislature has, in terms of section 143(1) of the Constitution of the Republic, made different legislative structures and procedures for the province. In instances in which a province has, through its provincial constitution, determined the number of seats, section 105(2) has no application. Consequently, the prescripts of national legislation (Schedule 3) have no application. The matter was settled in 1999 by the Constitutional Court in the matter between the *Premier of the Province of the Western Cape, the Speaker of the Provincial Parliament of Western Cape versus the Electoral Commission and the Chief Electoral Officer*.

At the heart of the case was that the Commission had determined 39 seats for the provincial legislature in terms of section 105(2) of the Constitution of the Republic, read with Schedule 3 to the Electoral Act, while the Province had determined 42 seats by way of the provincial constitution.

- The apex court held that the determination by the Commission was invalid because the province had already regulated the number of seats in the provincial legislature through section 13 of the provincial constitution.

In the circumstances, for as long as the provincial constitution regulates the number of seats in the provincial legislature, section 105(2) **does not** find application and the process is outside the remit of the Commission. It falls to the Provincial Parliament to determine the seats in the legislature. Legislative processes implicating the Electoral System are still indeterminate. For this reason, no determination has been made by the Commission. The IEC mentioned that the determination would be guided by section 105 of the Constitution of the Republic and Schedule 3 to the Electoral Act considering scientific data, representation by experts and interested parties, the limits imposed on seats to be determined in the Constitution, consultation with legislatures, provincial executives, the Treasury, NPLC and a process of public comments before a determination will be made.

6. Recommendations to be considered by the House

The Committee RECOMMENDS:

- 6.1 That, based on the research findings, the number of seats allocated to the Western Cape Provincial Parliament more than 20 years ago, is no longer adequate. The current number of seats is not sufficient to represent the people of the Western Cape optimally as accountability is compromised as outlined under section 3 above; and
- 6.2 That, should this report be adopted by the House, the responsibility to consider and amend the Constitution of the Western Cape in line with the guidelines contained in this report, be referred to the Standing Committee on the Premier and Constitutional Affairs.

7. Aspects for possible consideration by the Standing Committee on the Premier and Constitutional Matters

- 7.1 That the Constitution of the Western Cape be amended to provide for periodic reviews of the number of seats in the legislature in line with changes in the population size of the province.
- 7.2 That, in considering the variables of the formula, the variable used in section 3 of the Electoral Act, 1998 (Act 73 of 1998, as amended) be considered as a guideline.
- 7.3 That copies of the input and presentations to the Ad-hoc Committee on the number of seats be made available to the Standing Committee on the Premier and Constitutional Matters for consideration.

Report to be considered.