

Terms of reference for political structures and political office bearers

Every municipal council has the right to determine its internal procedures. This right is protected by section 160 of the Constitution, which allows a municipality to decide how to structure its internal operations and what kind of mandate/area of responsibility it assigns to political structures, office-bearers and the municipal manager.

This right is coupled with an obligation in section 53 of the Municipal Systems Act, as set out below.

Section 53: Terms of reference

This section instructs each municipality to define the roles and areas of responsibility of political office-bearers and political structures. Terms of reference must be prepared for:

- the municipal council;
- the executive committee;

- the mayor (see *LGL Bulletin 2001 4:9*);
- each section 79 committee (committee appointed by council);
- each section 80 committee (committee appointed by the Executive Committee);
- the deputy-mayor;
- the speaker (see *LGL Bulletin 2001 3:11*); and
- the municipal manager (see *LGL Bulletin 2001 2:1*).

All the above terms of reference must:

- be in writing;
- be in precise terms; and
- give effect to council's internal documents, such as rules, procedures, delegations, standing orders, etc. This simply means that standing orders, delegations, rules etc must not contradict the terms of reference, but implement them.

Delegations

The terms of reference may include delegations. Delegations can also be determined separately. Delegations included in the terms of reference must comply with the system of delegations provided for in section 59 of the Systems Act.

Requirements and principles for terms of reference

The Systems Act contains two types of requirements. The first type are requirements and principles that apply to terms of reference in general, while the second type are elements that each terms of reference must include – its core components.

General requirements

Minimise cross-referrals

This requirement aims to ensure that the roles and responsibilities make efficient and timeous governance possible.

If an issue reaches a political structure or office-bearer, it must not be referred on endlessly. A decision must be taken somewhere and without too many steps in between.

key points

- Each municipality must define the roles and areas of responsibility of political office-bearers and political structures.
- Terms of reference must be in writing, in precise terms, and give effect to council's internal rules and procedures.

Minimise overlap of responsibilities

The terms of reference should not allocate an area of responsibility that is already covered by another office-bearer or political structure. This is to prevent conflict.

Dispute resolution

The municipality must have a mechanism for resolving disputes involving political structures, office-bearers or the municipal manager.

Interaction between councillors and staff members

The Systems Act requires procedures for interaction between councillors and staff members. Importantly, the Code of Conduct for councillors prohibits individual councillors from interfering with the administration and from giving instructions without a mandate from the council.

Core components of terms of reference

Terms of reference must at least include:

Definition of areas of responsibility

They must describe 'in precise terms' what the areas of responsibility are of a particular political office-bearer or structure. Importantly, this is not a delegation of responsibilities, but a description of areas of responsibility. It will, however, give rise to the need for particular delegations.

Lines of accountability and reporting

To whom does a structure or office-bearer report? This needs to be clearly spelled out. Note that individual delegations also create a reporting duty on decisions taken in terms of the delegated power.

Relationship with other structures and office-bearers

The terms of reference must say how the relevant political structure or office-bearer interacts with other political structures or office-bearers. It must explain how interaction will take place, for example through monthly reports, regular meetings etc.

Interaction with the municipal manager

The terms of reference must determine how the political structure or office-bearer will interact with the municipal manager.

Interaction with officials other than the municipal manager

The terms of reference must determine how the political structure or office-bearer will interact with officials other than the municipal manager. For example, the terms of reference for the Finance Portfolio Committee could include a section on the interaction between the Chief Financial Officer and the Committee.

It is important to bear in mind that the Systems Act instructs the municipality to structure its administration in such a manner that it can hold the Municipal Manager accountable for the overall performance of the administration. This principle is important in determining interaction between political structures and officials other than the municipal manager.