

REPUBLIC OF SOUTH AFRICA

ELECTORAL LAWS SECOND AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill and
prior notice of its introduction published in Government Gazette No. 43660 of 28 August 2020)
(The English text is the official text of the Bill)*

(MR M G P LEKOTA, MP)

[B 34—2020]

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- “**‘constituency’** means an area determined in terms of section 61A of the Electoral Act, 1998 (Act No. 73 of 1998);”;
- (b) by the insertion after the definition of “Electoral Court” of the following definition:
 “**‘independent candidate’** means an adult citizen standing for public office, and as such intends to contest, or contests, an election as an independent individual;”;
- (c) by the insertion after the definition of “party” of the following definition:
 “**‘party candidate’** means a person whose name appears on a party’s list of candidates as defined in section 1 of the Electoral Act, 1998 (Act No. 73 of 1998);”;
- (d) by the substitution for the definition of “political office” of the following definition:
 “**‘political office’** means any executive appointment or elected office, including any elected or nominated—
 (a) public representative of a party, whether involving remuneration or not, or any other paid office, in the service of a party; and
 (b) independent candidate, whether involving remuneration or not;”;
- (e) by the insertion after the definition of “prescribe” of the following definition:
 “**‘registered independent candidate’** means an independent candidate registered in terms of section 15B;”;
- (f) by the deletion of the Roman numerals which appear before and after each definition.

Amendment of section 5 of Act 51 of 1996, as amended by section 94 of Act 117 of 1998 and section 1 of Act 1 of 2019

2. Section 5 of the Electoral Commission Act, 1996, is hereby amended—
- (a) by the substitution in subsection (1) for paragraphs (f) and (g) of the following paragraphs:
 “(f) compile and maintain a register of parties and a register of independent candidates;
 (g) establish and maintain liaison and co-operation with parties and with independent candidates;”;
- (b) by the insertion after paragraph (h) of the following paragraph:
 “(hA) keep abreast with electoral technological developments to determine which new technologies could be used to improve the quality of elections and the rapid verification and counting of votes at the end of the voting period;”;
- (c) by the addition of the following subsection:
 “(3)(a) The Commission shall, for the purposes of subsection (1)(hA) establish an Electoral Technology Committee, which shall—
 (i) survey the landscape for new electoral technology developments;
 (ii) assess the advantages and risks of using the technology identified as a stand-alone mechanism and when combined with a traditional manual system;
 (iii) conduct a costs and benefits analysis of using the technology or technologies identified;
 (iv) determine whether such technology or technologies could improve the cost-effectiveness, efficiency, security and fairness of elections;
 (v) conduct trials to test and determine whether the technology or technologies identified may be effectively and safely used in the elections;
 (vi) decide on whether such new technology or technologies should be adopted;
 (vii) recommend legislative amendments to allow for such new technology or technologies to be implemented;
 (viii) identify potential and suitable service providers with a proven track record of integrity, capability and reliability; and
 (ix) undertake any other task related to electoral technology developments that the Commission may instruct the Electoral Technology Committee to do.

(b) The Electoral Technology Committee shall comprise of persons who are qualified in information and communication technologies and have specialised knowledge of, or experience in, electronic voting, counting technologies and the security aspects of electronic voting and counting.”

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Amendment of section 6 of Act 51 of 1996

3. Section 6 of the Electoral Commission Act, 1996, is hereby amended by the substitution in subsection (2) for paragraph (d) of the following paragraph:

“(d) has been nominated by a committee of the National Assembly, proportionally composed of members of all parties **[represented in that Assembly]** and independent candidates who are members of the Assembly, from a list of recommended candidates submitted to the committee by the panel referred to in subsection (3).”

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Amendment of section 9 of Act 51 of 1996

4. Section 9 of the Electoral Commission Act, 1996, is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) may, whether directly or indirectly, in any manner give support to, or oppose, any party **[or], party** candidate or independent candidate participating in an election, or any of the issues in contention between parties **[or], party** candidates or independent candidates;”

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Amendment of section 13 of Act 51 of 1996

5. Section 13 of the Electoral Commission Act, 1996, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The records referred to in section 12(2)(b) shall be audited by the Auditor-General in terms of the **[Auditor-General Act, 1995 (Act No. 12 of 1995)]** Public Audit Act, 2004 (Act No. 25 of 2004).”

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Amendment of section 15 of Act 51 of 1996, as amended by section 26 of Act 34 of 2003 and section 2 of Act 1 of 2019

6. Section 15 of the Electoral Commission Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The chief electoral officer shall, upon application by a party in the prescribed manner and form, accompanied by the items mentioned in subsection (3), register such party in respect of all constituencies or such constituencies as selected by the party, in accordance with this Chapter.”

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Insertion of section 15B in Act 51 of 1996

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7. The following section is hereby inserted in the Electoral Commission Act, 1996, after section 15A:

“Registration of independent candidates

15B. (1) The chief electoral officer shall, upon application by an independent candidate in the prescribed manner and form, accompanied by the items mentioned in subsection (3), register such independent candidate in respect of only one particular constituency, in accordance with this Chapter.

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(2) The form shall, *inter alia*, make provision for the following:

- (a) The full name of the independent candidate;
- (b) a recent colour photograph of the independent candidate;
- (c) the distinguishing mark or symbol of the independent candidate, in colour, if any; and
- (d) the abbreviation, if any, of the name of the independent candidate.

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(3) The application shall be accompanied by—

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- (a) a certified copy of the page of the independent candidate's identity document on which the candidate's photo, full name and identity number appear;
 - (b) the prescribed nomination form signed by the prescribed number of registered voters; 5
 - (c) a list, comprising the prescribed details, of verifiable supporters who are registered voters from contiguous wards equalling 0.035% or more of the registered voters from the constituency for which the independent candidate has been nominated, to validate the nomination and to assist in determining as best as possible the location of a successful independent candidate's constituency office upon that candidate being successfully elected; 10
 - (d) the prescribed acceptance of nomination, signed by the independent candidate;
 - (e) the prescribed undertaking, signed by the independent candidate, to be bound by the Code as defined in the Electoral Act, 1998 (Act No. 73 of 1998); 15
 - (f) the prescribed declaration, signed by the independent candidate, that he or she is not disqualified from standing for election in terms of the Constitution of the Republic of South Africa, 1996, or any applicable legislation; 20
 - (g) a personal manifesto setting out how and to what extent the independent candidate is committed to making real and visible the rights enshrined in Chapter 2 of the Constitution of the Republic of South Africa, 1996; and 25
 - (h) the prescribed amount, if any.
- (4) After an independent candidate has been registered, the chief electoral officer shall issue that candidate with a registration certificate in the prescribed form and publish the prescribed particulars of such registration in the *Gazette*. 30
- (5) Every independent candidate not represented in a legislative body shall annually renew his or her registration in the prescribed manner and at the prescribed time.”.

Amendment of section 16 of Act 51 of 1996, as amended by sections 28 and 29 of Act 34 of 2003 35

8. Section 16 of the Electoral Commission Act, 1996, is hereby amended—
- (a) by the substitution for the heading of the following heading:

“Prohibition on registration of party or independent candidate under certain circumstances”;
 - (b) by the substitution for subsections (1) and (2) of the following subsections: 40

“(1) The chief electoral officer may not register a party in terms of section 15 or 15A, and may not register an independent candidate in terms of section 15B, if—

 - (a) fourteen days have not elapsed since the applicant has submitted to the chief electoral officer proof of publication of the prescribed notice of application in the *Gazette* in the case of an application referred to in section 15 or 15B or in a newspaper circulating in the municipal area concerned in the case of an application referred to in section 15A[.]; 45
 - (b) a proposed name, abbreviated name, distinguishing mark or symbol mentioned in the application resembles the name, abbreviated name, distinguishing mark or symbol, as the case may be, of any other registered party or any other registered independent candidate to such an extent that it may deceive or confuse voters; or 50
 - (c) a proposed name, abbreviated name, distinguishing mark or symbol mentioned in the application of the party or the independent candidate or the constitution [of the party] or the deed of foundation of the party mentioned in section 15 or 15A contains anything— 55
 - (i) which portrays the propagation or incitement of violence or hatred or which causes serious offence to any section of the population on the grounds of race, gender, sex, ethnic origin, 60

colour, sexual orientation, age, disability, religion, conscience, belief, culture or language; or

- (ii) which indicates that persons will not be admitted to membership of the party or welcomed as supporters of the party or the independent candidate on the grounds of their race, ethnic origin or colour. 5

(2) Any party or independent candidate [**which is**] aggrieved by a decision of the chief electoral officer to register or not to register a party or independent candidate, may within 30 days after [**the party has been**] being notified of the decision, appeal against the decision to the Commission in the prescribed manner.”; and 10

- (c) by the substitution for subsection (4) of the following subsection:

“(4) In considering such an appeal against the refusal to register a party or an independent candidate in terms of subsection (1)(a) the Commission— 15

(a) shall take into account the fact that the party or the independent candidate [**which is**] associated with the name, abbreviated name, distinguishing mark or symbol, as the case may be, for the longest period, should *prima facie* be entitled thereto; and 20

(b) may, for the purposes of paragraph (a)— 20

- (i) afford the parties or the independent candidate concerned an opportunity to offer such proof, including oral evidence or sworn or affirmed statements by any person which, in the opinion of the Commission, could be of assistance in the expeditious determination of the matter; and 25

- (ii) administer an oath or affirmation to any person appearing to testify orally before it.”.

Amendment of section 16A of Act 51 of 1996, as inserted by section 30 of Act 34 of 2003

9. Section 16A of the Electoral Commission Act, 1996, is hereby amended— 30

- (a) by the substitution for the heading of the following heading:

“**Change of party’s or independent candidate’s name, distinguishing mark or symbol**”;

- (b) by the substitution for subsection (1) of the following subsection: 35

“(1) A party or an independent candidate may submit an application in the prescribed form to the chief electoral officer to change [**its**] their registered name, abbreviated name, distinguishing mark or symbol.”; and

- (c) by the substitution for subsections (3) and (4) of the following subsections: 40

“(3) Section 16, with the changes required by the context, applies to the chief electoral officer’s consideration of the application and decision to change, or not to change, the party’s or the independent candidate’s registered name, abbreviated name, distinguishing mark or symbol in accordance with the application.

(4) If the registered name, abbreviated name, distinguishing mark or symbol is changed as a result of the application, the chief electoral officer shall withdraw the registration certificate issued in terms of section 15 or 15B, and issue the party or the independent candidate with a new registration certificate reflecting the change.”. 45

Amendment of section 17 of Act 51 of 1996, as amended by section 31 of Act 34 of 2003 50

10. Section 17 of the Electoral Commission Act, 1996, is hereby amended—

- (a) by the substitution for the heading of the following heading:

“**Cancellation of registration of party or of independent candidate**”;

- (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 55

“The Commission may cancel the registration of a party or the registration of an independent candidate if—”;

- (c) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
 “(a) after due notice in writing to that party or to the independent candidate and an inquiry into the matter, the Commission is satisfied that the party no longer functions or the party or the independent candidate has no intention to participate in an election;”; and 5
- (d) by the substitution in subsection (1) for paragraph (c) of the following paragraph:
 “(c) that party is not represented in, or the independent candidate is not a member of, the National Assembly, a provincial legislature or a municipal council and [it] that party or the independent candidate has not participated in a national, provincial or municipal general election that took place after the date of [its] that party’s or the independent candidate’s registration or after the date when [it] that party was last so represented or the independent candidate was last a member of any legislative body; or”. 10 15

Amendment of section 23 of Act 51 of 1996

11. Section 23 of the Electoral Commission Act, 1996, is hereby amended by the substitution in subsection (1) for paragraphs (c) and (d) of the following paragraphs: 20
- “(c) the registration of parties and independent candidates in terms of this Act; 20
- (d) the regulation of the conduct of all persons, parties [and], party candidates and independent candidates in so far as such conduct may promote or inhibit the conduct of a free and fair election;”.

Amendment of section 1 of Act 73 of 1998, as amended by section 1 of Act 18 of 2013

12. Section 1 of the Electoral Act, 1998, is hereby amended— 25
- (a) by the insertion after the definition of “Commission” of the following definitions:
 “ ‘**constituency**’ means an area determined in terms of section 61A;
 ‘**Constitution**’ means the Constitution of the Republic of South Africa, 1996;”; 30
- (b) by the insertion after the definition of “counting officer” of the following definition:
 “ ‘**district council area**’ means the area comprised of a district council, as defined in the Municipal Structures Act, and which has been demarcated as such by the Municipal Demarcation Board as a municipality described in section 155(1)(c) of the Constitution as a category C municipality;”; 35
- (c) by the insertion after the definition of “election” of the following definition:
 “ ‘**election liaison committee**’ means a committee established by the Commission in order to fulfil its functions under section 5(1)(g) of the Electoral Commission Act;”; 40
- (d) by the insertion after the definition of “identity document” of the following definition:
 “ ‘**independent candidate**’ means an adult citizen standing for public office, and as such intends to contest, or contests, an election as an independent individual;”; 45
- (e) by the deletion of the definition of “list of candidates”; 45
- (f) by the insertion after the definition of “list of candidates” of the following definitions:
 “ ‘**list of independent candidates**’ means the list of independent candidates referred to in section 27A; 50
 ‘**metropolitan council area**’ means the area comprised of a municipal council referred to in section 18 of the Municipal Structures Act of a metropolitan municipality, as defined in the Municipal Structures Act and which is described in section 155(1)(a) of the Constitution as a category A municipality; 55
 ‘**municipality**’, as a geographical area, means an area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);”; 55

- (g) by the insertion after the definition of “municipal council” of the following definitions:
 “**‘Municipal Demarcation Board’** means the Municipal Demarcation Board established by section 2 of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);
 “**‘Municipal Structures Act’** means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);”;
- (h) by the insertion after the definition of “officer” of the following definition:
 “**‘party candidate’** means a person whose name appears on a party’s list of candidates;”;
- (i) by the deletion of the definition of “party liaison committee”;
- (j) by the insertion after the definition of “party liaison committee” of the following definition:
 “**‘party’s list of candidates’** means the list of candidates referred to in section 27;”;
- (k) by the substitution for the definition of “political office” of the following definition:
 “**‘political office’** [, in relation to a registered party,] means [any office in the party to which a representative of the party is elected or nominated,] any executive appointment or elected office, including any elected or nominated—
 (a) public representative of a party, whether involving remuneration or not, or any other paid office in the party to which a person is appointed; and
 (b) independent candidate, whether involving remuneration or not;”;
- (l) by the insertion after the definition of “presiding officer” of the following definition:
 “**‘registered independent candidate’** means an independent candidate registered in terms of section 15B of the Electoral Commission Act;”;
- (m) by the insertion after the definition of “voters’ roll” of the following definition:
 “**‘votes’** means valid votes cast in an election;”;
- (n) by the insertion after the definition of “voting station” of the following definition:
 “**‘ward’** means a ward referred to in item 2 of Schedule 1 to the Municipal Structures Act;” and
- (o) by the deletion of the Roman numerals which appear before and after each definition.

Substitution of section 4 of Act 73 of 1998

13. The following section is hereby substituted for section 4 of the Electoral Act, 1998:

“Administration of this Act

4. The Commission must administer this Act, and must do so in a manner conducive to free and fair elections.”.

Amendment of section 8 of Act 73 of 1998, as amended by section 4 of Act 34 of 2003, section 4 of Act 18 of 2013 and section 7 of Act 1 of 2019

14. Section 8 of the Electoral Act, 1998, is hereby amended by the deletion in subsection (2) of paragraphs (c) and (d).

Amendment of section 16 of Act 73 of 1998, as amended by section 5 of Act 34 of 2003

15. Section 16 of the Electoral Act, 1998, is hereby amended by the substitution for subsections (3) and (4) of the following subsections:

“(3) Notwithstanding subsection (2), the chief electoral officer must, on payment of the prescribed fee, provide copies of the voter’s roll, or a segment thereof, which includes the addresses of voters, where such addresses are available, to all

registered **[political]** parties and registered independent candidates contesting the elections.

(4) The voters' roll with addresses referred to in subsection (3) may only be used by **[political]** registered parties and registered independent candidates for election purposes and anyone using such voter's roll for other purposes is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding one year or to both a fine and such imprisonment."

Amendment of section 20 of Act 73 of 1998, as amended by section 9 of Act 1 of 2019

16. Section 20 of the Electoral Act, 1998, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"The Commission must after consultation with the **[party national]** election liaison committee—".

Amendment of Part 3 in Chapter 3 of Act 73 of 1998

17. Part 3 in Chapter 3 of the Electoral Act, 1998, is hereby amended by the substitution for the heading of Part 3 of the following heading:

"Parties and independent candidates contesting election, [and] party's lists of candidates and list of independent candidates".

Substitution of section 26 of Act 73 of 1998

18. The following section is hereby substituted for section 26 of the Electoral Act, 1998:

"Requirements for parties and independent candidates to contest election

26. (1) A party may contest an election only if that party—

(a) is a registered party; and
(b) has submitted a list or lists of candidates in terms of section 27.

(2) An independent candidate may contest an election only if that independent candidate—

(a) has been nominated to stand as an independent candidate in the prescribed manner and form;
(b) is a registered independent candidate; and
(c) has submitted his or her name for inclusion onto the list of independent candidates in terms of section 27A."

Amendment of section 27 of Act 73 of 1998

19. Section 27 of the Electoral Act, 1998, is hereby amended—

(a) by the substitution for the heading of the following heading:

"Submission of party's lists of candidates";

(b) by the deletion in subsection (2) of the word "and" at the end of paragraph (d); and

(c) by the insertion in subsection (2) after paragraph (d) of the following paragraphs:

"(dA) personal manifesto signed by each candidate setting out how and to what extent that candidate is committed to making real and visible the rights enshrined in Chapter 2 of the Constitution;

(dB) list, comprising the prescribed details, of verifiable supporters who are registered voters from contiguous wards equalling 0.035% or more of the registered voters from the constituency for which the candidate has been nominated to validate the nomination and to assist in determining as best as possible the location of a successful candidate's constituency office upon that candidate being successfully elected; and".

Insertion of section 27A in Act 73 of 1998

20. The following section is hereby inserted in the Electoral Act, 1998, after section 27:

“Compilation of list of independent candidates

27A. (1)(a) A registered independent candidate intending to contest an election must, after being nominated in the prescribed manner, submit his or her name for inclusion onto the list of independent candidates for that election to the chief electoral officer by not later than the relevant date stated in the election timetable. 5

(b) The Commission must prescribe the manner in which independent candidates must submit their names for inclusion onto the list of independent candidates. 10

(c) The Commission must compile the list of independent candidates referred to in paragraph (a).

(2) The submission must be accompanied by a prescribed— 15

(a) undertaking, signed by the independent candidate, binding the independent candidate to the Code;

(b) declaration, signed by the independent candidate, that the independent candidate is qualified to stand for election in terms of the Constitution or any applicable legislation; 20

(c) acceptance of nomination, signed by the independent candidate;

(d) personal manifesto signed by the independent candidate setting out how and to what extent he or she is committed to making real and visible the rights enshrined in Chapter 2 of the Constitution; 25

(e) list, comprising the prescribed details, of verifiable supporters who are registered voters from contiguous wards equalling 0.035% or more of the registered voters from the constituency for which the independent candidate has been nominated to validate the nomination and to assist in determining as best as possible the location of a successful candidate’s constituency office upon that candidate being successfully elected; 30

(f) vote transfer list referred to in Schedule 1A indicating how his or her votes will be awarded; and

(g) deposit.

(3) The Commission may prescribe the amount to be deposited in terms of subsection (2)(g). 35

(4) The Commission must, upon receipt of a name contemplated in subsection (1), include that name on the lists of independent candidates intending to contest the election.

(5) The amount to be deposited by an independent candidate contesting an election of a provincial legislature, must be less than the amount for contesting an election of the National Assembly.”. 40

Amendment of section 28 of Act 73 of 1998, as substituted by section 11 of Act 1 of 2019

21. Section 28 of the Electoral Act, 1998, is hereby amended— 45

(a) by the substitution for the heading of the following heading:

“Non-compliance concerning submission of party’s lists of candidates or submission of independent candidate’s name”; and

(b) by the substitution for subsections (1) and (2) of the following subsections:

“(1) If a registered party that has submitted a party’s list of candidates, or if a registered independent candidate that has submitted his or her name for inclusion on the list of independent candidates, has not fully complied with section 27(2)(a), (b), (c), [or] (d), (dA) or (dB), or section 27A(2)(a), (b), (c), (d), (e) or (f) as the case may be, the chief electoral officer must notify that party or that independent candidate of [its] the non-compliance. 50

(2) The notification must be given in the prescribed manner by not later than the relevant date stated in the election timetable, and must 55

indicate that the party, or the independent candidate concerned, has an opportunity to comply with section 27(2)(a), (b), (c), [or] (d), (dA) or (dB), or section 27A(2)(a), (b), (c), (d), (e) or (f), as the case may be, by not later than the relevant date stated in the election timetable.”.

Amendment of section 29 of Act 73 of 1998

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22. Section 29 of the Electoral Act, 1998, is hereby amended—

(a) by the substitution for the heading of the following heading:

“Inspection of copies of party’s lists of candidates, list of independent candidates and accompanying documents”;

(b) by the substitution for subsection (1) of the following subsection: 10

“(1) By not later than the relevant date stated in the election timetable, the chief electoral officer must give notice that copies of the party’s lists of candidates and accompanying documents submitted by registered parties in terms of section 27 and copies of the list of independent candidates compiled by the Commission in terms of section 27A and the accompanying documents submitted by each independent candidate, as amended and supplemented in terms of section 28, will be available for inspection.”; 15

(c) by the substitution in subsection (3)(a) for the words preceding subparagraph (i) of the following words: 20

“copies of the party’s lists and the list of independent candidates for—”;

(d) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) copies of the documents accompanying the party’s lists and copies of the documents submitted by each independent candidate are available for inspection at the Commission’s head office.”; and 25

(e) by the substitution for subsections (4) and (5) of the following subsections:

“(4) Any person may inspect a copy of a party’s list of candidates or the list of independent candidates and the accompanying documents referred to in subsection (1). 30

(5) The chief electoral officer must provide a certified copy of, or extract from, a party’s list of candidates, the list of independent candidates or document referred to in subsection (1), to any person who had paid the prescribed fee.”.

Amendment of section 30 of Act 73 of 1998

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23. Section 30 of the Electoral Act, 1998, is hereby amended—

(a) by the substitution for the heading of the following heading:

“Objections to party’s lists of candidates or to list of independent candidates”;

(b) by the substitution for subsections (1), (2), (3) and (4) of the following subsections: 40

“(1) Any person, including the chief electoral officer, may object to the nomination of a party’s candidate or to the inclusion of an independent candidates’ name on the list of independent candidates on the following grounds: 45

(a) The party’s candidate or the independent candidate is not qualified to stand in the election;

(b) there is no prescribed acceptance of nomination signed by the party’s candidate or the independent candidate; [or]

(c) there is no prescribed undertaking, signed by the party’s candidate or the independent candidate, that the candidate is bound by the Code[.]; 50

(d) there is no prescribed personal manifesto signed by the party’s candidate or the independent candidate setting out how and to what extent that candidate is committed to making real and visible the rights enshrined in Chapter 2 of the Constitution; or 55

(e) there is no prescribed list of verifiable supporters as referred to in sections 27(2)(dB) or 27A(2)(e), as the case may be, validating the

nomination of either the party candidate or the independent candidate.

(2) The objection must be made to the Commission in the prescribed manner by not later than the relevant date stated in the election timetable, and must be served on the registered party that nominated the party candidate, or on the independent candidate concerned, as the case may be.

(3) The Commission must decide the objection, and must notify the objector and the registered party that nominated the party candidate, or the independent candidate concerned, as the case may be, of the decision in the prescribed manner by not later than the relevant date stated in the election timetable.

(4) The objector, the independent candidate concerned or the registered party who nominated the party candidate, may appeal against the decision of the Commission to the Electoral Court in the prescribed manner and by not later than the relevant date stated in the election timetable.”; and

(c) by the substitution for subsection (6) of the following subsection:

“(6) If the Commission or the Electoral Court decides that a party candidate’s nomination does not comply with section 27 or that the independent candidate did not comply with section 27A, the Commission or the Electoral Court may allow the registered party or the independent candidate an opportunity to comply with **[that]** the relevant section, including, in the case of a registered party, an opportunity to substitute a party’s candidate and to re-order the names on the party’s list of candidates as a result of that substitution.”.

Amendment of section 31 of Act 73 of 1998

24. Section 31 of the Electoral Act, 1998, is hereby amended—

(a) by the substitution for the heading of the following heading:

“List of parties and independent candidates entitled to contest election and final party’s lists of candidates”;

(b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) compile a list of the registered parties and a list of the registered independent candidates entitled to contest the election concerned and have the final party’s list of candidates for each of those parties, and the final list of independent candidates, available.”; and

(c) by the substitution for subsections (2) and (3) of the following subsections:

“(2) The chief electoral officer must provide a certified copy of, or extract from, **[a list]** the lists mentioned in subsection 1(b) to any person who has paid the prescribed fee.

(3) By not later than the relevant date stated in the election timetable, the chief electoral officer must issue, to each candidate on a final party’s list of candidates for an election, and to each candidate on the final list of independent candidates, a certificate stating that the person is a candidate in that election.”.

Amendment of section 38 of Act 73 of 1998, as amended by section 11 of Act 34 of 2003 and section 12 of Act 1 of 2019

25. Section 38 of the Electoral Act, 1998, is hereby amended by the substitution in subsection (6) for paragraph (b) of the following paragraph:

“(b) mark the ballot **[paper]** card in a way that indicates the **[registered]** party **[or]** candidate or independent candidate the voter wishes to vote for;”.

Amendment of section 39 of Act 73 of 1998, as substituted by section 12 of Act 34 of 2003

26. Section 39 of the Electoral Act, 1998, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

- “(b) two agents from different registered parties and one independent candidate agent, if available.”; and
- (b) by the substitution in subsection (2) for paragraph (c) of the following paragraph:
- “(c) the presiding officer is satisfied that the person rendering assistance has attained the age of 18 years and is not an agent, [or] a party candidate or an independent candidate.”.

Amendment of section 47 of Act 73 of 1998

27. Section 47 of the Electoral Act, 1998, is hereby amended by the substitution in subsection (3) for paragraph (b) of the following paragraph: 10

- “(b) on which a vote is cast for more than one **[registered party or for more than one]** candidate, whether in respect of a party candidate or an independent candidate, or both;”.

Amendment of section 56 of Act 73 of 1998, as amended by section 14 of Act 34 of 2003 15

28. Section 56 of the Electoral Act, 1998, is hereby amended by the substitution for paragraph (b) of the following paragraph:

- “(b) that the votes cast in favour of a **[registered]** party candidate or a registered independent candidate at a particular voting station must be deducted in whole or in part from the votes cast in favour of that **[registered]** party candidate or that independent candidate in that election.”. 20

Amendment of section 57A of Act 73 of 1998, as inserted by section 15 of Act 34 of 2003

29. Section 57A of the Electoral Act, 1998, is hereby amended—

- (a) by the substitution for paragraph (a) of the following paragraph: 25
- “(a) party’s lists of candidates and list of independent candidates;”; and
- (b) by the substitution for paragraph (c) of the following paragraph:
- “(c) the designation of all successful party candidates [from lists as representatives in those seats] and independent candidates to occupy their seats in the respective legislatures; and”.

Amendment of section 58 of Act 73 of 1998, as amended by section 10 of Act 18 of 2013

30. Section 58 of the Electoral Act, 1998, is hereby amended—

- (a) by the substitution for the heading of the following heading: 35
- “**Appointment of party agents and independent candidate agents**”;
- (b) by the insertion after subsection (1) of the following subsection:
- “(1A) Every registered independent candidate contesting an election may appoint—
- (a) one independent candidate agent for each voting station or, if voting or counting at a voting station takes place in more than one room or separately enclosed area, one independent candidate agent in respect of each room or area; and
- (b) two independent candidate agents for each venue where the proceedings provided for in Part 3 or 5 of Chapter 4 take place.”; 40
- (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
- “A party agent and an independent candidate agent—”; and
- (d) by the substitution for subsection (3) of the following subsection: 45
- “(3) The appointment and revocation of appointment of a person as a party agent or an independent candidate agent must be effected in the prescribed manner.”. 50

Amendment of section 59 of Act 73 of 1998, as amended by section 16 of Act 34 of 2003

31. Section 59 of the Electoral Act, 1998, is hereby amended by the substitution in subsection (3) for subparagraph (ii) of paragraph (a) of the following subparagraph:

“(ii) the registered party or the registered independent candidate represented by that agent; and”.

Insertion of section 60A in Act 73 of 1998

32. The following section is hereby inserted in the Electoral Act, 1998, after section 60:

“Establishment of constituencies 10

60A. (1) The Commission must—

- (a) establish 52, or more, constituencies in the Republic;
- (b) determine the boundaries of each constituency in accordance with the factors and criteria mentioned in section 61A; and
- (c) keep a map of each constituency. 15

(2) The constituencies for an election are those constituencies which, on the date on which the election is called, have been established by the Commission in terms of subsection (1).”.

Insertion of section 61A in Act 73 of 1998

33. The following section is hereby inserted in the Electoral Act, 1998, after section 61:

“Factors and criteria for determining constituency boundaries

61A. (1) The Commission must determine the boundaries of constituencies for the election of the National Assembly by taking into account any factor within the proposed constituencies that could affect free, fair and orderly conduct of elections including having regard to the following criteria: 25

- (a) No provincial boundary may be transcended in the demarcation of constituencies;
- (b) the area of each district council will be a constituency for the purpose of the election; and
- (c) notwithstanding paragraph (a), a district council area that crosses provincial boundaries must be conjoined with the province into which it abuts. 30

(2) When a metropolitan council area is divided into divisible constituency contact areas, ward boundaries must form the basis on which the division occurs, taking the following factors into account— 35

- (a) the number of registered voters in each ward;
- (b) topographical, environmental and physical characteristics of the area;
- (c) density of the population; and
- (d) the need to avoid as far as possible the fragmentation of communities. 40

(3) After constituencies have been demarcated in terms of this section, a number of contiguous ward areas must be grouped together for the purposes of locating constituency offices in order to allocate one office for each duly elected party candidate or independent candidate from which to operate and hold surgeries. 45

(4) If the boundaries of a district are changed or re-demarcated before an election, the boundary of a constituency affected by that change will also be considered to have changed and a redetermination must be made of the number of seats reserved for each constituency. 50

(5) The following arrangements must apply in respect of constituencies for the election of provincial legislatures:

- (a) The same number of constituencies within a particular province as for the election of the National Assembly as determined in terms of subsections (1) and (2); and
- (b) the same constituency boundaries within a particular province as determined in terms of subsections (1) and (2).”.

Substitution of section 62 of Act 73 of 1998

34. The following section is hereby substituted for section 62 of the Electoral Act, 1998:

“Consultation with [party] election liaison committee regarding voting districts

“62. Before determining the boundaries of a voting district, the Commission may consult on the proposed boundaries of that voting district with—

- (a) the municipal **[party]** election liaison committee for the municipality within which that voting district will fall; or
- (b) if no municipal **[party]** election liaison committee has been established in a municipality, the provincial **[party]** election liaison committee for the province within which that voting district will fall.”.

Insertion of section 62A in Act 73 of 1998

35. The following section is hereby inserted in the Electoral Act, 1998, after section 62:

“Consultation with election liaison committee regarding constituencies

62A. (1) Before determining the boundaries of a constituency, the Commission may consult on the proposed boundaries of that constituency with—

- (a) the provincial election liaison committee for the province within which that constituency will fall; and
- (b) the national election liaison committee in respect of all constituencies.”.

Amendment of section 63 of Act 73 of 1998

36. Section 63 of the Electoral Act, 1998, is hereby amended—

- (a) by the substitution for the heading of the following heading:

“Inspection and copies of maps of voting districts and constituencies”;
- (b) by the substitution for subsection (1) of the following subsection:

“(1) As soon as practicable after the provisions of section 60(1) and section 60A(1) **[has]** have been complied with, the chief electoral officer must give notice that copies of the map of each voting district and constituency will be available for inspection.”;
- (c) by the substitution for subsection (3) of the following subsection:

“(3) The notice must state, and the chief electoral officer must ensure, that copies of—

 - (a) those maps are available for inspection at the Commission’s head office; **[and]**
 - (b) the maps of the voting districts within a municipality are available for inspection at the office of the municipality; and
 - (c) the maps of the constituencies within a province are available for inspection at the Commission’s provincial office.”; and

- (d) by the substitution for subsection (5) of the following subsection:
 “(5) The chief electoral officer must provide a certified copy of a map of a voting district or of a constituency to any person who has paid the prescribed fee.”.

Amendment of section 63A of Act 73 of 1998, as inserted by section 17 of Act 34 of 2003 5

37. Section 63A of the Electoral Act, 1998, is hereby amended—
- (a) by the substitution for the heading of the following heading:
 “**Review of voting districts and constituencies**”; and
- (b) by the substitution for subsection (1) of the following subsection: 10
 “(1) The Commission must regularly review the established voting districts and constituencies, and their respective boundaries, taking into account the factors mentioned in section 61 and section 61A, and whenever necessary—
- (a) disestablish an existing voting district or constituency; 15
 (b) establish a new voting district or constituency and determine the boundaries for that voting district or constituency; or
 (c) re-determine the boundaries of an existing voting district or constituency.”.

Amendment of section 64 of Act 73 of 1998, as amended by section 18 of Act 34 of 2003 20

38. Section 64 of the Electoral Act, 1998, is hereby amended by the substitution in subsection (3) for paragraphs (a) and (b) of the following paragraphs:
- “(a) the municipal [**party**] election liaison committee for the municipality within which that voting station will fall; or 25
 (b) if no municipal [**party**] election liaison committee has been established in the municipality, the provincial [**party**] election liaison committee for the province within which the voting station will fall.”.

Amendment of section 66 of Act 73 of 1998, as substituted by section 19 of Act 34 of 2003 30

39. Section 66 of the Electoral Act, 1998, is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
 “(1) Before the voting station opens for voting on voting day the presiding officer of a voting station must determine the boundary of the voting station after consultation with party agents, independent candi- 35
date agents and members of the security services who are available at that voting station at that stage.”; and
- (b) by the substitution for subsection (3) of the following subsection:
 “(3) The presiding officer may alter the boundary at any time if it is necessary to do so to ensure proper control and security at the voting station and after consultation with party agents, independent candidate 40
agents and members of the security services who are available at that voting station at that stage.”.

Amendment of section 73 of Act 73 of 1998

40. Section 73 of the Electoral Act, 1998, is hereby amended by the substitution in subsection (3) for paragraph (c) of the following paragraph: 45
 “(c) the prescribed number of party candidates and independent candidates as the presiding officer may allow;”.

Amendment of section 82 of Act 73 of 1998

41. Section 82 of the Electoral Act, 1998, is hereby amended— 50
 (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) is a party candidate or an independent candidate contesting that election;” and

(b) by the substitution for subsection (6) of the following subsection:

“(6) An officer may not, whether directly or indirectly, in any manner give support to, or oppose, any registered party, **[or]** party candidate or independent candidate contesting an election, or any of the issues in contention between parties, **[or]** party candidates or independent candidates.”. 5

Amendment of section 83 of Act 73 of 1998

42. Section 83 of the Electoral Act, 1998, is hereby amended— 10

(a) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) a party candidate or an independent candidate contesting that election;” and

(b) by the substitution for subsection (7) of the following subsection: 15

“(7) An institution, and each of its employees who exercises powers and performs duties in terms of this Act, may not, whether directly or indirectly, in any manner give support to, or oppose, any registered party, **[or]** party candidate or independent candidate contesting an election, or any of the issues in contention between parties, **[or]** party candidates or independent candidates.”. 20

Amendment of section 84 of Act 73 of 1998

43. Section 84 of the Electoral Act, 1998, is hereby amended by the substitution in subsection (3) for subparagraph (i) of paragraph (b) of the following subparagraph:

“(i) observe that election impartially and independently of any registered party, **[or]** party candidate or registered independent candidate contesting that election;”.

Amendment of section 86 of Act 73 of 1998, as amended by section 21 of Act 34 of 2003 and section 15 of Act 1 of 2019

44. Section 86 of the Electoral Act, 1998, is hereby amended by the substitution in subsection (3) for subparagraph (i) of paragraph (c) of the following subparagraph: 30

“(i) do so in a manner that is impartial and independent of any registered party, **[or]** party candidate or registered independent candidate contesting that election;”.

Amendment of section 87 of Act 73 of 1998, as amended by section 16 of Act 1 of 2019 35

45. Section 87 of the Electoral Act, 1998, is hereby amended—

(a) by the substitution in subsection (1) for subparagraphs (iii) and (iv) of paragraph (a) of the following subparagraphs:

“(iii) to vote or not to vote for any registered party, **[or]** party candidate or registered independent candidate;

(iv) to support or not to support any registered party, **[or]** party candidate or registered independent candidate; or”;

(b) by the substitution in subsection (1) for subparagraphs (i) and (ii) of paragraph (e) of the following subparagraphs: 45

“(i) Any representative of a registered party, **[or]** of a party candidate or of a registered independent candidate;

(ii) any party candidate in an election;” and

(c) by the insertion in subsection (1) after subparagraph (ii) of paragraph (e) of the following subparagraph: 50

“(iiA) any registered independent candidate in an election;”.

Amendment of section 88 of Act 73 of 1998

46. Section 88 of the Electoral Act, 1998, is hereby amended—

(a) by the substitution in paragraph (e) for subparagraphs (i) and (ii) of the following subparagraphs: 55

- “(i) a representative of a registered party, [or] of a party candidate or of a registered independent candidate;
(ii) a party candidate in an election;”; and
(b) by the insertion in paragraph (e) after subparagraph (ii) of the following subparagraph: 5
“(iiA) a registered independent candidate in an election;”.

Substitution of section 92 of Act 73 of 1998

47. The following section is hereby substituted for section 92 of the Electoral Act, 1998:

“Prohibitions concerning placards and billboards during election 10

92. From the date on which an election is called to the date the result of the election is determined and declared in terms of section 57, no person may deface or unlawfully remove any billboard, placard or poster published by a registered party, [or] party candidate or registered independent candidate.” 15

Amendment of section 96 of Act 73 of 1998

48. Section 96 of the Electoral Act, 1998, is hereby amended—
(a) by the substitution in subsection (2) for paragraph (c) of the following paragraph:
“(c) the forfeiture of any deposit paid by that person or party in terms of section 27(2)(e) or 27A(2)(g), as the case may be;”; and 20
(b) by the substitution in subsection (2) for paragraph (i) of the following paragraph:
“(i) an order cancelling the registration of that party or the registration of the independent candidate.”. 25

Amendment of section 99 of Act 73 of 1998

49. Section 99 of the Electoral Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The Electoral Code of Conduct must be subscribed to—
(a) by every registered party and every registered independent candidate before that party or independent candidate is allowed to contest an election; and 30
(b) by every party candidate before that candidate may be placed on a party’s list of candidates in terms of section 31.”.

Amendment of section 100 of Act 73 of 1998

50. Section 100 of the Electoral Act, 1998, is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 35

“The Commission may make regulations, after consultation with the [party] national election liaison committee, regarding any matter—”.

Amendment of section 106 of Act 73 of 1998

51. Section 106 of the Electoral Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection: 40

“(1) Subject to section 96(2)(c), the Commission must refund to a registered party or to a registered independent candidate, as the case may be, any deposit paid by [it] the party or independent candidate in terms of section 27(2)(e) or 27A(2)(g) if the party or independent candidate is allocated at least one seat in the legislature whose election that party or independent candidate contested.”. 45

Amendment of section 107 of Act 73 of 1998

52. Section 107 of the Electoral Act, 1998, is hereby amended—

- (a) by the deletion in subsection (3) at the end of subparagraph (i) of paragraph (a) of the word “or”;
- (b) by the substitution in subsection (3) for subparagraph (ii) of paragraph (a) of the following subparagraph: 5
 “(ii) a party candidate contesting an election or supporter of that candidate; **[and] or**”; and
- (c) by the addition in subsection (3) after subparagraph (ii) of paragraph (a) of the following subparagraph: 10
 “(iii) a registered independent candidate contesting an election or supporter of that candidate; and”.

Amendment of section 110 of Act 73 of 1998

53. Section 110 of the Electoral Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection: 15

“(1) Any mistake in the certified segment of the voter’s roll referred to in section 24 or the final **[list]** lists of party candidates or independent candidates referred to in section 31 does not invalidate that voter’s roll or **[that]** those [list] lists of candidates.”.

Amendment of Schedule 1 to Act 73 of 1998, as amended by section 24 of Act 34 of 2003 and section 17 of Act 1 of 2019 20

54. Schedule 1 to the Electoral Act, 1998, is hereby amended—

- (a) by the substitution for item 4 of the following item: 25
 “**Cut-off date for submission of party’s list of candidates and for submission of names of independent candidates**”

4. (1) Registered parties that intend to contest this election must nominate and submit **[a list]** lists, as referred to in Schedule 1A, of their candidates for the election, and submit the accompanying documents referred to in section 27, to the chief electoral officer in the prescribed manner by [day/month/year]. 30

(2) Registered independent candidates that intend to contest this election must submit their names for inclusion onto the list of independent candidates and submit the accompanying documents, referred to in section 27A, for the election to the chief electoral officer in the prescribed manner by [day/month/year].” 35

- (b) by the substitution for item 5 of the following item:

Notice of non-compliance

5. (1) The chief electoral officer must notify a registered party that has submitted **[a list]** party’s lists of candidates in terms of section 27, or a registered independent candidate that has submitted his or her name for inclusion on the list of independent candidates in terms of section 27A, but has not fully complied with **[that section]** those sections, as the case may be, of that non-compliance by [day/month/year]. 40

(2) If the notified registered party or the notified registered independent candidate takes the opportunity to comply with section 27 or 27A, as the case may be, that party or that independent candidate must do so by [day/month/year].” 45

- (c) by the substitution for item 6 of the following item:

Inspection of party’s lists of candidates, list of independent candidates and accompanying documents 50

6. The chief electoral officer must give notice by [day/month/year], that from the date of the notice until [day/month/year], copies of the following documents will be available for inspection: The party's lists of candidates and accompanying documents submitted by registered parties in terms of section 27, and the list of independent candidates compiled in terms of section 27A together with the accompanying documents, as amended and supplemented in terms of section 28.”;

(d) by the substitution for item 7 of the following item:

“Cut-off date for objections

7. Any person, including the chief electoral officer, may object to the Commission, in the prescribed manner, regarding a party candidate [to the Commission in the prescribed manner] or regarding a registered independent candidate by [day/month/year].”;

(e) by the substitution for item 8 of the following item:

“Decision of objections 15

8. The Commission must decide an objection under section 30, and must notify the objector and the registered party that nominated the party candidate, or the registered independent candidate concerned, as the case may be, of the decision in the prescribed manner by [day/month/year].”;

(f) by the substitution for item 9 of the following item:

“Cut-off date for appeals against decisions

9. The objector, [or] the registered party who nominated the party candidate, or the registered independent candidate concerned may appeal against a decision of the Commission in terms of section 30(3) to the Electoral Court in the prescribed manner by [day/month/year].”;

(g) by the substitution in item 11 for the heading of the following heading:

“List of parties, [and] party lists of candidates and list of independent candidates entitled to contest election and final [list of candidates] lists”; 30

(h) by the substitution in item 11 for paragraph (b) of the following paragraph:

“(b) must compile a list of the registered parties, party lists of candidates and the registered independent candidates entitled to contest the election and compile the final list [of candidates for] of each [of those parties].”; and 35

(i) by the substitution for item 12 of the following item:

“Issue of certificate to party candidates and to independent candidates

12. By [day/month/year], the chief electoral officer must issue in the prescribed manner to each party candidate on a final party's list of candidates and to each candidate on the final list of independent candidates, a certificate stating that the person is a candidate in this election.”. 40

Substitution of Schedule 1A to Act 73 of 1998, as inserted by section 25 of Act 34 of 2003 and as amended by section 8 of Act 55 of 2008 45

55. The following is hereby substituted for Schedule 1A of the Electoral Act:

“SCHEDULE 1A

SYSTEM OF REPRESENTATION IN NATIONAL ASSEMBLY
AND PROVINCIAL LEGISLATURES

(Section 57A)

National Assembly	5
<u>1. (1) Registered parties contesting an election of the National Assembly must nominate party candidates for such election on lists of candidates prepared in accordance with this Act.</u>	
(2) Registered independent candidates contesting an election of the National Assembly must submit their names to the chief electoral officer for inclusion on the lists of independent candidates prepared by the Commission in accordance with this Act.	10
<u>2. The seats in the National Assembly shall be filled as follows:</u>	
(a) Six sevenths of the seats, disregarding any further fractions, from—	15
(i) constituency lists submitted by the respective parties containing the names of their respective party candidates; and	
(ii) constituency lists submitted by the Commission containing the names of independent candidates,	
with a fixed number of seats reserved for each constituency as determined by the Commission for every election of the Assembly, taking into account available scientifically based data in respect of registered voters; and	20
(b) the remaining one seventh of seats from national lists submitted by the respective parties and as submitted by the Commission in respect of independent candidates.	25
<u>3. (1) The lists of candidates submitted by a party shall—</u>	
(a) in the case of a constituency list, not contain names exceeding the number of candidates to be elected in each constituency, plus two additional candidates; and	
(b) in the case of a national list, not contain names exceeding one seventh of the number of seats determined for the National Assembly.	30
(2) Each list must denote such names in order of preference as the party may determine, but which order of preference is liable to change as a result of how voters express their choice on the ballot card in respect of party candidates in the open list in the polling booth.	35
<u>4. (1) A party's lists of candidates must consist of both a national list and a list for each constituency, with such number of names on each list as referred to in item 3(1).</u>	
(2) The lists of independent candidates compiled and submitted by the Commission must consist of both a national list, reflecting the names of independent candidates intending to contest the elections nationally, and a list for each constituency.	40
<u>5. The seats referred to in item 2(a) shall be allocated per constituency to the party's candidates and the independent candidates contesting an election, as follows:</u>	45
(a) A quota of votes per seat shall be determined in respect of each constituency by dividing the total number of votes cast on the ballot cards for the constituency by the number of seats, plus one, reserved for such constituency under item 2(a);	
(b) the result plus one, disregarding fractions, shall be the quota of votes per seat in respect of a particular constituency;	50
(c) the awarding of each seat for the purposes of paragraph (e) in respect of such constituency to a party candidate or an independent candidate shall, subject to paragraph (d), be determined by dividing the total number of votes cast in favour of such party candidate or independent	55

- candidate on the constituency ballot card for that constituency by the quota of votes per seat referred to in paragraph (b);
- (d) where the result of the calculation referred to in paragraph (c) yields a surplus of seats not absorbed by the number of seats awarded to a party concerned, or yields a surplus above one seat in respect of an independent candidate who has not indicated to whom that surplus should accrue in ranked order, such surplus shall compete with other similar surpluses accruing to any other party or parties in respect of the relevant constituency, and any seat or seats in respect of that constituency not awarded in terms of paragraph (c) shall be awarded to the party or parties concerned in sequence of the highest surplus, and in the case of independent candidates who made no special provisions, such surplus will go into the common pool;
- (e) the aggregate of a party's or independent candidate's awards in terms of paragraphs (c) and (d) in respect of particular constituency shall indicate which seat or seats has or have been provisionally allocated under item 2(a) for that constituency;
- (f) the aggregate of a party's provisional allocations or an independent candidate's provisional allocation for the various constituencies in terms of paragraph (e) shall indicate its provisional allocation of the seats referred to in item 2(a); and
- (g) if no recalculation of provisional allocations is required in terms of item 8 in respect of the seats referred to in item 2(a), the provisional allocation of such seats in terms of paragraphs (e) and (f) shall become the final allocation of such seats to the various parties or independent candidates, and if such a recalculation is required the provisional allocation of such seats, as adjusted in terms of item 8, shall become the final allocation of such seats to the various parties or independent candidates.

- 6.** The seats referred to in item 2(b) shall be allocated to the party's candidates or independent candidates contesting an election as follows:
- (a) A quota of votes per seat shall be determined by dividing the total number of votes cast nationally on national ballot cards by the total number of seats in the National Assembly, plus one, and the result plus one, disregarding fractions, shall be the quota of votes per seat;
- (b) the awarding of a seat to a party candidate or an independent candidate for the purposes of paragraph (d) shall, subject to paragraph (c), be determined by dividing the total number of votes cast nationally on national ballot cards in favour of such party candidate or independent candidate by the quota of votes per seat determined in paragraph (a);
- (c) where the result of the calculation in terms of paragraph (b) yields a surplus not absorbed by the number of seats awarded to a party concerned, or yields a surplus above one seat in respect of an independent candidate where no awardee is specified in ranked order, such surplus shall compete with other similar surpluses accruing to any other party or parties, and any seat or seats not awarded in terms of paragraph (b), shall be awarded to the party or parties concerned in sequence of the highest surplus;
- (d) the aggregate of a party's awards in terms of paragraphs (b) and (c) shall be reduced by the number of seats provisionally allocated to it in terms of item 5(f) and the results shall indicate that party's or independent candidate's provisional allocation of the seats referred to in item 2(b); and
- (e) if no recalculation of provisional allocations is required in terms of item 8 in respect of the seats referred to in item 2(b), the provisional allocation of such seats in terms of paragraph (d) shall become the final allocation of such seats to the various parties and independent candidates, and if such recalculation is required, the provisional allocation of such seats, as adjusted in terms of items 8, shall become the final allocation of such seats to the various parties and independent candidates.

7. (1) If an independent candidate or a party candidate gained no allocation of a seat in terms of items 6(b) and (c) in respect of the seats referred to in item 2(b), but the party candidate or independent candidate gained a provisional seat in respect of the seats referred to in item 2(a), then the provisional allocation of a seat or seats in respect of the seat or seats referred to in item 2(a) will become the final allocation of a seat or seats for such independent candidate or party candidate, and if a recalculation is required in terms of item 8, the adjusted allocation will become the final allocation. 5

(2) If a seat is allocated to a party candidate or independent candidate in terms of subitem (1), then the determination of seats in terms of item 2(b) will be recalculated as follows: 10

(a) An amended quota of votes per seat shall be determined by dividing the total number of votes cast nationally on national ballot cards, minus the votes cast for a party candidate or independent candidate referred to in subitem (1), by the total number of seats in the National Assembly minus the seats awarded in terms of subitem (1), and the result plus one, disregarding fractions, shall be the quota of votes per seat; 15

(b) a seat to be awarded to a party candidate or a seat to be awarded to an independent candidate for the purposes of paragraph (d) must, subject to paragraph (c), be determined by dividing the total number of votes cast nationally on national ballot cards in favour of each party candidate or independent candidate, excluding those awarded seats in terms of subitem (1), by the quota of votes per seat determined in terms of paragraph (a); 20

(c) where the result of the recalculation in terms of paragraph (b) yields a surplus not absorbed by the number of seats awarded to a party concerned, or yields a surplus above one seat in respect of an independent candidate where the candidate has not specified any awardee in ranked order, such surplus shall compete with other similar surpluses accruing to any other party or parties participating in the recalculation, and any seat or seats not awarded in terms of paragraph (b) shall be awarded to the party or parties concerned in sequence of the highest surplus; and 25

(d) the aggregate of a participating party's awards in terms of paragraphs (b) and (c) shall be reduced by the number of seats provisionally allocated to it in terms of item 5(f) and the results shall indicate that party's provisional allocation of the seats in terms of item 2(b). 30

(3) If no recalculation of provisional allocations is required in terms of item 8 in respect of the seats referred to in item 2(b), the provisional allocation of such seats in terms of paragraph (d) shall become the final allocation of such seat to an independent candidate or seats to the various parties, and if such a recalculation is required, the provisional allocation of such seat or seats, as adjusted in terms of item 8, shall become the final allocation of such seats to the various parties. 35

(4) If a party forfeits a seat in terms of item 8(1) which was allocated to it in terms of subitem (1), then the seats provisionally allocated to other parties in terms of item 2(b) must be recalculated in terms of items 8(2) and (3), taking such forfeiture into account. 40

8. (1) If a party has submitted a national or a constituency list containing fewer names than the number of its provisional allocation of seats, which would have been filled from such list had such provisional allocation been the final allocation, it shall forfeit a number of seats equal to the deficit. 45

(2) In the event of any forfeiture of seats in terms of subitem (1) affecting the provisional allocation of seats in respect of any particular constituency in terms of item 5(e), such allocation shall be recalculated as follows: 50

(a) The party forfeiting seats shall be disregarded in such recalculation, and its provisional allocation of seats in terms of item 5(e) for the constituency in question, minus the number of seats forfeited by it in respect of its list for such constituency, shall become its final 55

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- allocation in respect of the seats reserved for such constituency in terms of item 2(a);
- (b) an amended quota of votes per seat shall be determined in respect of such constituency by dividing the total number of votes cast in the constituency, minus the number of votes cast in such constituency in favour of a party referred to in paragraph (a), by the number of seats reserved for such constituency under item 2(a), minus the number of seats finally allocated to the said party in terms of paragraph (a);
 - (c) the result plus one, disregarding fractions, shall be the amended quota of votes per seat in respect of such constituency for the purposes of said calculation;
 - (d) the number of seats to be awarded for the purposes of paragraph (f) in respect of such constituency to a party participating in the recalculation shall, subject to paragraph (e), be determined by dividing the total number of votes cast in favour of such party or independent candidate in such constituency by the amended quota of votes per seat indicated by paragraph (c) for such constituency;
 - (e) where the result of the recalculation in terms of paragraph (d) yields a surplus not absorbed by the number of seats awarded to a party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties participating in the recalculation in respect of the said constituency, and any seat or seats in respect of such constituency not awarded in terms of paragraph (d) shall be awarded to the party or parties concerned in sequence of the highest surplus; and
 - (f) the aggregate of a party's awards in terms of paragraphs (d) and (e) in respect of such constituency shall, subject to subitem (4), indicate that party's final allocation of the seats reserved under item 2(a) for that constituency.
- (3) In the event of any forfeiture of seats in terms of subitem (1) affecting the provisional allocation of seats in terms of item 6(d), such allocation shall be recalculated as follows:
- (a) The party forfeiting seats shall be disregarded in such recalculation, and its provisional allocation of seats in terms of item 6(d), minus the number of such seats forfeited by it, shall become its final allocation of the seats referred to in item 2(b);
 - (b) an amended quota of votes per seat shall be determined by dividing the total number of votes cast nationally, minus the number of votes cast nationally in favour of the party or independent candidate referred to in paragraph (a), by the number of seats in the National Assembly, minus the number of seats finally allocated to the said party or independent candidate in terms of paragraph (a);
 - (c) the result plus one, disregarding fractions, shall be the amended quota of votes per seat for the purposes of the said recalculation;
 - (d) the number of seats to be awarded for the purposes of paragraph (f) to a party or independent candidate participating in the recalculation shall, subject to paragraph (e), be determined by dividing the total number of votes cast nationally in favour of such party or independent candidate by the amended quota of votes per seat indicated by paragraph (c);
 - (e) where the result of the recalculation in terms of paragraph (d) yields a surplus not absorbed by the number of seats awarded to a party concerned, or yields a surplus above one seat in respect of an independent candidate, such surplus shall compete with other similar surpluses accruing to any other party or parties participating in the recalculation, and any seat or seats not awarded in terms of paragraph (d), shall be awarded to the party or parties concerned in sequence of the highest surplus; and
 - (f) the aggregate of such a party's awards in terms of paragraphs (d) and (e) shall be reduced by the number of seats finally allocated to it in terms of item 5(g), and the result shall, subject to subitem (4), indicate that party's final allocation of the seats referred to in item 2(b).

(4) In the event of a party being allocated an additional number of seats in terms of this item, and if its list in question then does not contain the names of a sufficient number of candidates as set out in subitem (1), the procedure provided for in this item shall be repeated, with the changes required by the context, until all seats have been allocated. 5

Provincial legislatures

9. The number of seats in each provincial legislature are as determined in terms of section 105 of the Constitution and Schedule 3 to this Act.

10. (1) Registered parties contesting an election of a provincial legislature shall nominate candidates for election to such provincial legislature by submitting lists for each constituency prepared in accordance with this Act. 10

(2) Independent candidates contesting an election of a provincial legislature must submit their names to the chief electoral officer for inclusion on the list of independent candidates prepared by the Commission in accordance with this Act. 15

11. (1) Each party is entitled to submit one list per constituency, which list must contain the names of not more than the number of candidates to be elected in each constituency, plus two candidates.

(2) The Commission is entitled to submit one list per constituency containing any number of names of independent candidates. 20

12. The quota to determine the number of seats in each constituency within a province for purposes of an election of that provincial legislature must be determined by dividing the total number of registered voters in the province concerned with the number of seats referred to in item 9, and the result plus one, disregarding fractions, determines the quota. 25

13. (1) Where the result of the calculation in item 12 yields a surplus not absorbed by the number of seats reserved for constituencies, such surplus shall compete with other similar surpluses accruing to any other constituency, and any seat or seats not awarded in terms of item 12 shall be awarded to the constituencies concerned in sequence of the highest surplus, and such allocation will be the final allocation of seats to constituencies. 30

(2) If the surplus referred to in subitem (1) for two or more constituencies is equal, the seat must be awarded to the constituency that has the most registered voters. 35

14. If the calculation in item 13 results in a constituency receiving fewer than three seats or more than seven seats, that result must be the number of seats allocated to that constituency.

Vote transfer list

15. (1) Each independent candidate must compile and submit a vote transfer list to the Commission. 40

(2) The vote transfer list submitted by an independent candidate—
(a) may contain any number of awardees listed in a ranked order of preference; or
(b) may not list any awardees. 45

(3)(a) An independent candidate's surplus votes, or unusable votes, as the case may be, will be awarded according to the ranked order of preference as per the list referred to in subitem (2)(a) provided that the awardee—

- (i) does not have sufficient votes to be elected; and
- (ii) the awardee has at least 25% of the total votes required to be elected. 50

(b) Once an awardee has received the required amount of votes to be elected, the awarder's remaining surplus votes or unusable votes, as the case may be, will be awarded to the next awardee on that independent candidate's vote transfer list, and so forth, until the awarder has no more surplus votes or unusable votes.

(4)(a) An awardee may receive surplus votes or unusable votes from more than one awarder.

(b) An awardee receiving surplus votes or unusable votes from more than one awarder will receive such votes in equal measure from each awarder until he or she has enough votes to be elected.

(5) If an awardee in the first-ranked position on an independent candidate's vote transfer list does not receive enough votes from an awarder or various awarders to be elected, the awarder's surplus votes or unusable votes will revert to the awarder and will be transferred to the next awardee on the awarder's vote transfer list.

(6)(a) The vote transfer list referred to in subitem (1) must be made publicly accessible to the public, and may be amended as prescribed.

(b) Any amendments made by an independent candidate to their vote transfer list must—

- (i) be made publicly available to the public, upon written request; and
- (ii) be brought to the attention of the electorate by such amendments being advertised in a newspaper circulated in the constituency concerned.

(7) Where a an independent candidate's vote transfer list does not contain any list of awardees as envisaged in subitem (2)(b), any surplus votes or unusable votes cast for that independent candidate will fall into the pool of votes.

Ballot cards

16. (1) There shall be separate ballot cards for the election of members—

- (a) of each constituency for the election of the National Assembly;
- (b) of each constituency for the election of a provincial legislature; and
- (c) for the overall composition of the National Assembly and this must be referred to as the national ballot card.

(2) (a) The Commission must allocate a number to every candidate contesting the elections.

(b) The number allocated must contain a prefix to distinguish whether the candidate is contesting the election for a seat in the National Assembly or for a seat in a provincial legislature.

(c) The allocated number of every candidate, together with such candidate's full name and photograph must appear on three separate posters, which shall be pasted on three separate panels in each polling booth on the day of the elections.

(3) Each voter exercises his or her vote by voting for the candidate of his or her choice, per each ballot card, by placing such candidates' allocated number on each of the ballot cards in respect of each of the three segments of the election.

Designation of representatives

17. (1) After the counting of votes has been concluded, the number of representatives of each party and the number of independent candidates meeting the requisite quota has been determined, and the election results have been declared in terms of section 190 of the Constitution, the Commission shall, within two days after such declaration, designate the representatives of each party elected in the legislatures and the independent candidates in the legislatures, from each list of candidates published in terms of the Electoral Act.

(2) The listing of the candidates will be in accordance with the votes they respectively received, in descending order.

(3) The Commission shall forthwith publish the list of names of representatives that have been duly elected.

Supplementation of lists of candidates

18. No list of candidates of a party for any legislature shall be supplemented prior to the designation of representatives in terms of item 17. 5

19. Lists of candidates may, after the designation of representatives in terms of item 17 has been concluded, be supplemented by the addition of an equal number of names at the end of the applicable lists, if—

- (a) a representative is elected as the President or to any other executive office as a result of which he or she resigns as a representative in a legislature; 10
- (b) a representative is appointed as a permanent delegate to the National Council of Provinces; or
- (c) a vacancy has occurred and the appropriate list of candidates of the party concerned is depleted. 15

20. Lists of candidates of a party referred to in item 17(1) may be supplemented on one occasion only at any time during the first 12 months following the date on which the designation of representatives in terms of item 17 has been concluded, in order to fill casual vacancies: Provided that any such supplementation shall be made at the end of the list. 20

21. The number of names on the lists of candidates as supplemented in terms of item 19 shall not exceed the difference between the number of seats in the National Assembly or a provincial legislature, as the case may be, and the number of representatives of a party in any such legislature. 25

Review of lists of candidates by a party

22. A party may review its undepleted lists, as supplemented in terms of items 19, 20 and 21, within seven days after the expiry of the period referred to in item 20, and quarterly thereafter, until the date on which a party has to submit lists of candidates for an ensuing election, in the following manner:

- (a) all vacancies may be supplemented;
- (b) no more than 25 per cent of candidates may be replaced; and
- (c) the fixed order of lists has to be retained to reflect the number of votes received in the elections. 35

Publication of supplemented and reviewed lists of candidates

23. Candidate's lists supplemented in terms of items 19 and 20 or reviewed in terms of item 22 shall be published by the Secretary to Parliament and the Secretaries of the provincial legislatures within 10 days after the receipt of such lists from the parties concerned. 40

Vacancies

24. (1) In the event of a vacancy in a legislature to which this Schedule applies, the party which nominated the vacating member shall fill the vacancy by nominating the party candidate who is next qualified to occupy the seat as per the highest number of votes received by such party candidate during the election. 45

(2) A nomination to fill a vacancy shall be submitted to the Speaker in writing.

(3) If a party represented in a legislature dissolves or ceases to exist and the members in question vacate their seats in consequence of section 47(3)(c) or 106(3)(c) of the Constitution, the seats in question shall be allocated to the remaining parties or independent candidates who are next 50

qualified to occupy seats as per the highest number of votes received with the changes required by the context as if such seats were forfeited seats in terms of item 8.

(4) A vacancy of an independent candidate will remain unfilled until the next election.

Gender representation

25. Each party must seek to ensure that at least thirty-three per cent of the party candidates nominated are women—

- (a) on the combined constituency lists for the election of the National Assembly;
- (b) on the combined constituency lists for each provincial legislature; and
- (c) on the national list.

Definitions

26. In this Schedule—

‘awardee’ means a party candidate or an independent candidate who receives surplus votes or unusable votes from an independent candidate in terms of an independent candidate’s vote transfer list;

‘awarder’ means an independent candidate who awards surplus votes or unusable votes to a party candidate or an independent candidate in terms of an independent candidate’s vote transfer list;

‘constituency ballot card’ means a ballot card for the purpose of the election of members for a constituency in an election of the National Assembly or a provincial legislature, as the case may be;

‘constituency list’ in relation to—

- (a) a party, means a list submitted by a party in respect of the election of members for a constituency in an election of the National Assembly or a provincial legislature, as the case may; and
- (b) registered independent candidates, means a list of independent candidate compiled by the Commission in respect of the election of members for a constituency in an election of the National Assembly or a provincial legislature, as the case may;

‘national ballot card’ means a ballot card for purposes of the election of members of the National Assembly from national lists for the overall composition of the National Assembly;

‘national list’ in relation to—

- (a) a party, means an open list of candidates submitted by a party for purposes of the election of members of the National Assembly in respect of allocation of seats on a national basis; and
- (b) registered independent candidates, means the list of independent candidates compiled by the Commission for purposes of the election of members of the National Assembly in respect of allocation of seats on a national basis;

‘surplus votes’ means any votes in excess of the votes required by an independent candidate to be elected;

‘unusable votes’ means any votes less than the quota of votes required by an independent candidate to be elected;

‘vote transfer list’ means the list that must be submitted by an independent candidate in terms of which an independent candidate makes provision for how his or her surplus votes or unusable votes will be awarded to an awardee in a ranked order of preferent candidates.”.

Amendment of Schedule 2 to Act 73 of 1998

56. Schedule 2 to the Electoral Act, 1998, is hereby amended—

- (a) by the substitution in item 2 for the words preceding paragraph (a) of the following words:

“Every registered party, **[and]** every party candidate and every registered independent candidate bound by this Code must—”;

- (b) by the substitution in item 3 for the words preceding paragraph (a) of the following words:
 “Every registered party, **[and]** every party candidate and every registered independent candidate must—”;
- (c) by the deletion in item 3 at the end of subparagraph (i) of paragraph (b) of the word “or”; 5
- (d) by the substitution in item 3 for subparagraph (ii) of paragraph (b) of the following subparagraph:
 “(ii) in the case of a party candidate, the representatives and supporters of **[the]** that candidate to comply with this Code and any applicable electoral laws; or”; 10
- (e) by the addition in item 3 after subparagraph (ii) of paragraph (b) of the following subparagraph:
 “(iii) in the case of a registered independent candidate, the representatives and supporters of that candidate to comply with this Code and any applicable electoral laws;”; 15
- (f) by the deletion in item 3 at the end of subparagraph (i) of paragraph (c) of the word “or”;
- (g) by the substitution in item 3 for subparagraph (ii) of paragraph (c) of the following subparagraph: 20
 “(ii) in the case of a party candidate, that the representatives and supporters of **[the]** that candidate comply with this Code and any applicable electoral laws[.]; or”;
- (h) by the addition in item 3 after subparagraph (ii) of paragraph (c) of the following subparagraph: 25
 “(iii) in the case of a registered independent candidate, that the representatives and supporters of that candidate comply with this Code and any applicable electoral laws.”;
- (i) by the substitution in item 4(1) for the words preceding paragraph (a) of the following words: 30
 “Every registered party, **[and]** every party candidate and every registered independent candidate must—”;
- (j) by the substitution in item 4(1) for subparagraph (v) of paragraph (a) of the following subparagraph:
 “(v) to canvass support for a party, **[or]** a party candidate or an independent candidate;”; 35
- (k) by the substitution for item 4(2) of the following item:
 “(2) Every registered party, **[and]** every party candidate and every registered independent candidate must accept the result of an election or challenge the result in a court.”; 40
- (l) by the substitution for item 5 of the following item:

“Duty to co-operate

Every registered party, **[and]** every party candidate and every registered independent candidate must liaise with other parties and independent candidates contesting an election and endeavour to ensure that they do not call a public meeting, march, demonstration, rally or any other public political event at the same time and place as that called by another party or independent candidate contesting the election.”; 45

- (m) by the substitution in item 6 for the words preceding paragraph (a) of the following words: 50
 “Every registered party, **[and]** every party candidate and every registered independent candidate must—”;
- (n) by the substitution in item 6 for paragraph (a) of the following paragraph:
 “(a) respect the right of women to communicate freely with parties, **[and]** party candidates and registered independent candidates;”; 55
- (o) by the substitution in item 7 for the words preceding paragraph (a) of the following words:
 “Every registered party, **[and]** every party candidate and every registered independent candidate must—”;

- (p) by the substitution in item 7 for subparagraph (ii) of paragraph (d) of the following subparagraph:
 “(ii) other registered parties and other registered independent candidates contesting the election;”;
- (q) by the substitution in item 7 for paragraph (e) of the following paragraph: 5
 “(e) facilitate the access of members, employees and officers of the Commission, and the chief electoral officer, to public meetings, marches, demonstrations, rallies and other political events of that party, **[or]** that party candidate or that independent candidate;”;
- (r) by the substitution in item 7 for subparagraphs (ii) and (iii) of paragraph (g) of the following subparagraphs: 10
 “(ii) that persons referred to in subparagraph (i) are not subjected to insult, hazard or threat by any representatives or supporters of that party, **[or]** party candidate or independent candidate; and
 (iii) that representatives of that party, **[or]** party candidate or independent candidate attend meetings of any **[party]** election liaison committee or other forum convened by the Commission.”; 15
- (s) by the substitution in item 8 for the words preceding paragraph (a) of the following words: 20
 “Every registered party, **[and]** every party candidate and every registered independent candidate—”;
- (t) by the substitution in item 9(1) for the words preceding paragraph (a) of the following words: 25
 “No registered party, **[or]** party candidate or registered independent candidate may—”;
- (u) by the substitution in item 9(1) for subparagraph (ii) of paragraph (a) of the following subparagraph: 30
 “(ii) the intimidation of party candidates, independent candidates, members of parties, representatives or supporters of parties, **[or]** party candidates or independent candidates, or voters;”;
- (v) by the substitution in item 9(1) for subparagraphs (i) and (ii) of paragraph (b) of the following subparagraphs: 35
 “(i) a party, its candidates, representatives or members; **[or]**
 (ii) a party candidate or that candidate’s representatives; or”;
- (w) by the addition in item 9(1) after subparagraph (ii) of paragraph (b) of the following subparagraph: 40
 “(iii) a registered independent candidate or that candidate’s representatives;”;
- (x) by the substitution in item 9(1) for paragraph (c) of the following paragraph: 45
 “(c) plagiarise the symbols, colours or acronyms of other registered parties or other registered independent candidates; or”;
- (y) by the substitution in item 9(2) for subparagraph (iv) of paragraph (a) of the following subparagraph: 50
 “(iv) to refuse a nomination as a party candidate or as an independent candidate or to withdraw as a party candidate or an independent candidate; or”; and
- (z) by the substitution in item 9(2) for paragraphs (c) and (d) of the following paragraphs: 55
 “(c) unreasonably prevent any other person access to voters for the purpose of voter education, collecting signatures, recruiting members, raising funds or canvassing support for a party, **[or]** party candidate or independent candidate;
 (d) deface or unlawfully remove or destroy the billboards, placards, posters or any other election materials of a party, **[or]** party candidate or independent candidate; or”.

Amendment to Schedule 3 to Act 73 of 1998

57. Schedule 3 to the Electoral Act, 1998, is hereby amended by the substitution for items 1 and 2 of the following items:

“Formula for determining number of members of National Assembly

1. (1) [By taking into account available scientifically based data and representations by interested parties, the number of seats of the National Assembly must be determined by awarding one seat for every 100 000 of the population with a minimum of 350 and a maximum of 400 seats] Where the national government debt to the Gross Domestic Product (GDP) ratio is lower than 40%, the number of seats of the National Assembly can total between a minimum of 350 seats and a maximum of 400 seats. 5

(2) [If the total number of seats for all provincial legislatures determined in terms of item 2 exceeds 400, the number of seats for the National Assembly may not be less than 400] Where the national government debt to the Gross Domestic Product (GDP) ratio is higher than 40%, the number of seats of the National Assembly may not be more than 350 seats. 10 15

Formula for determining number of members of provincial legislatures

2. (1) [By taking into account available scientifically based data and representations by interested parties, the number of seats of a provincial legislature must be determined by awarding one seat for every 100 000 of the population whose ordinary place of residence is within that province, with a minimum of 30 and a maximum of 80 seats] In determining the number of seats per provincial legislature, the total number of registered voters per province, at the time of the closure of the voters roll, must be converted to a percentage of the total number of registered voters in the Republic of South Africa. 20 25

(2) Once the percentage referred to in subitem (1) is determined per province, the following ratio must be applied, in a fair and logical manner, to determine the number of seats per legislature:

- (a) provinces with less than 10.5% of the total registered voters in the Republic will have a provincial legislature comprising 30 seats; 30
- (b) provinces with 10.5% but less than 20.5% of the total registered voters in the Republic will have a provincial legislature comprising 35 seats; and
- (c) provinces with 20.5% or more of the total registered voters in the Republic will have a provincial legislature comprising 40 seats.”. 35

Substitution of words

58. The Electoral Commission Act, 1996, and the Electoral Act, 1998, are hereby amended by the substitution for the words “ballot paper”, wherever they occur, of the words “ballot card”. 40

Short title and commencement

59. This Act is called the Electoral Laws Second Amendment Act, 2020, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE ELECTORAL LAWS SECOND AMENDMENT BILL, 2020

1. BACKGROUND

To date, the electoral system for both the National Assembly and Provincial Legislatures in South Africa is one where registered political parties (and not individuals) contest elections. After each general election, each qualifying party is allocated a number of seats in the National Assembly and Provincial Legislatures, calculated according to a formula contained in Schedule 1A of the Electoral Act, 1998 (Act No. 73 of 1998) (“Electoral Act”), reflecting as closely as possible the proportion of votes that qualifying parties obtained in the general elections. Each party, thereupon, determines which of its members will fill the seats so allocated.

While the requirement of proportionality is met in such a system, voters have been increasingly estranged from the process because a direct relationship with a member of Parliament is absent and a lack of accountability of members of the relevant legislatures to their voters prevails, much to their chagrin. The increasing and continuing alienation of voters from the political and electoral system is detrimental to democracy and the well-being of society at large.

From the time the Freedom Charter was agreed to, the clear intention was to allow citizens to be close to their representatives to allow for them to, in effect, be seen to be governing with them. However, the kind of partnership that was envisaged in the Freedom Charter never materialised after the demise of Apartheid. Furthermore, it quickly became clear that the continued provisional arrangement to use the “closed list” proportional representation system was going to impede the transformation of South Africa, and be detrimental to the interests of the majority who had long suffered political oppression under both colonial and Apartheid rule and would, therefore, continue to be excluded from mainstream economic life of South Africa.

As the years wore on and every attempt to reform the electoral system was stymied in Parliament for one reason or the other, voter disenchantment grew correspondingly. To exacerbate the situation, voters are unable in terms of the current Electoral Act, to choose an independent candidate to represent them in Parliament more effectively.

This situation has prevailed despite the fact that section 19(3)(b) of the Constitution provides that:

“Every adult citizen has the right to stand for public office and, if elected, to hold office.”

The content and accessibility of this right entrenched in section 19(3)(b) was finally determined in the recent Constitutional Court judgment in the *New Nation Movement NPC and others v the President of the Republic of South Africa and others* matter (“*New Nation Movement* judgment”)¹. In this matter, the Constitutional Court considered whether the Electoral Act unjustifiably limits the right in section 19(3)(b) and also in section 18 (freedom of association) of the Constitution by making the accessing of political office possible only through membership of political parties. After considering and examining the content of these rights, including other sections of the Constitution, the Constitutional Court declared the Electoral Act to be unconstitutional to the extent that it requires that adult citizens may be elected to the National Assembly and Provincial Legislatures only through their membership of political parties—thus paving the way for independent candidates to stand for elections.

While voters who vote for an independent candidate will enjoy the benefits thereof, all voters, without exception, should equally enjoy a very direct link between

1. CCT 110/19 [2020] ZACC 11.

themselves and their genuine representatives for reasons that are abundantly obvious. This is absolutely necessary in fast tracking the ever so long delay in tackling the upliftment of the majority of South Africans who have not benefitted to the extent that they should have with the coming of democracy.

Hence, the argument for combining proportionality with constituency representation is overwhelming. Only persons have the capability of representing voters in a granular manner, not political parties. To achieve this personal association with a public representative, each of South Africa's current fifty two districts could, as per their population size, serve as a larger or smaller multi-member constituency which could be contested by individuals as well as political parties through an "open list" proportional representation system.

At present, most districts in South Africa are failing dismally and serially to provide quality services, responsive and ethical governance, and economic growth on account of local government being in a perpetual, deepening and lamentable crisis. With a district becoming a constituency, a scaffolding of political representation becomes immediately possible in each district. Each district, therefore, will have councillors as well as dedicated representatives serving in either the National Assembly and Provincial Legislatures as well. The constitutional requirement for inter-governmental cooperation will consequently be meaningfully enhanced in this way at once.

2. PURPOSE OF BILL

Hence the Electoral Laws Second Amendment Bill, 2020 ("the draft Bill") seeks to address the *New Nation Movement* judgment by amending relevant electoral legislation in order to make provision for independent candidates to stand for public office in provincial and national elections, without requiring such candidate to be a member of a particular political party. It will provide for a legislative mechanism to allow independent candidates to stand for election and allowing elections to happen in constituencies that align with districts using the "open list" proportional representation, which will best serve the interests of every South African and most particularly those who have remained marginalised, neglected and increasingly alienated from the politics of the day.

The draft Bill will therefore, *inter alia*, seek to amend:

- the Electoral Commission Act, 1996 (Act No. 51 of 1996) (Electoral Commission Act), so as to provide for, and to regulate, the registration of independent candidates; and
- the Electoral Act, 1998 (Act No. 73 of 1998) (Electoral Act), so as to, *inter alia*, give full effect to section 19(3)(b) of the Constitution, which provides that every South African citizen has the fundamental right to stand for public office and, if elected, to hold office; to ensure that individuals can stand for office as independent candidates without having to stand for office by virtue of his or her membership of a political party; to provide for the creation of constituencies along current district boundary lines and the replacement of the "closed list" proportional representation system with the "open list" proportional representation system with greater requirements for all candidates to uphold the Constitution and to give impetus to the realisation of the Bill of Rights; and to promote democratic governance and electoral accountability.

3. CONTENTS OF BILL

ELECTORAL COMMISSION ACT, 1996

- 3.1 Clause 1 of the Bill amends section 1 of the Electoral Commission Act, so as to insert new definitions and amend certain definitions.
- 3.2 Clause 2 of the Bill amends section 5 of the Electoral Commission Act, to provide that the Commission must compile and maintain a register of

independent candidates; must establish and maintain liaison and co-operation with independent candidates; and must keep abreast with electoral technological development to determine which new technologies could be used to improve the quality of elections. This clause also adds a new subsection (3) to provide that the Commission must establish an Electoral Technology Committee which must, amongst others, survey the landscape for new electoral technology developments; assess the advantages and risks of such technologies identified; decide on which new technologies should be adopted; and to recommend legislative amendments to allow for such new technologies to be implemented.

- 3.3 Clause 3 of the Bill amends section 6 of the Electoral Commission Act, to provide that independent candidates also form part of the committee of the National Assembly that nominates persons to be appointed as a member of the Commission.
- 3.4 Clause 4 of the Bill amends section 9 of the Electoral Commission Act, to also provide that no member of the Commission may give support to, or oppose, any independent candidate participating in an election.
- 3.5 Clause 5 of the Bill amends section 13 of the Electoral Commission Act, to provide that the accounting records of the Commission will be audited in terms of the Public Audit Act, 2004 (Act No. 25 of 2004) and not the Auditor-General Act, 1995 which has been repealed.
- 3.6 Clause 6 of the Bill amends section 15 of the Electoral Commission Act, to provide that parties must be registered in respect of all constituencies or only in respect of such constituencies as are selected by the party.
- 3.7 Clause 7 of the Bill inserts section 15B into the Electoral Commission Act, to provide for the registration of independent candidates and also lists what the registration form should entail as well as the documents that must accompany the registration application.
- 3.8 Clause 8 of the Bill amends section 16 of the Electoral Commission Act, to provide that the chief electoral officer may also not register an independent candidate if certain requirements are not met. It also amends section 16 to allow for an independent candidate to lodge an appeal should he or she be aggrieved by a decision of the chief electoral officer.
- 3.9 Clause 9 of the Bill amends section 16A of the Electoral Commission Act, to provide that an independent candidate may also submit an application to the chief electoral officer to change his or her name, abbreviated name, distinguishing mark or symbol.
- 3.10 Clause 10 of the Bill amends section 17 of the Electoral Commission Act, to provide that the Commission may also cancel the registration of an independent candidate under certain circumstances.
- 3.11 Clause 11 of the Bill amends section 23 of the Electoral Commission Act, to provide that the Commission may make regulations regarding the registration of independent candidates and the conduct of independent candidates in so far as such conduct may promote or inhibit the conduct of a free and fair election.

ELECTORAL ACT, 1998

- 3.12 Clause 12 of the Bill amends section 1 of the Electoral Act, so as to insert new definitions, amend certain definitions and delete certain definitions.
- 3.13 Clause 13 of the Bill substitutes section 4 of the Electoral Act, so as provide that the Commission must administer the Act in a manner conducive to free and fair elections.

- 3.14 Clause 14 of the Bill amends section 8 of the Electoral Act, by deleting subsections (2)(c) and (d), which refer to persons declared by the High Court to be of unsound mind or mentally disordered, and persons detained under the Mental Health Care Act, 2002 (Act No. 17 of 2002), respectively. The effect of the deletion will allow for these categories of persons to register as voters.
- 3.15 Clause 15 of the Bill amends section 16 of the Electoral Act, so as to provide that the chief electoral officer must also, on the payment of the prescribed fee, provide copies of the voter's roll to registered independent candidates as well.
- 3.16 Clause 16 of the Bill amends section 20 of the Electoral Act, so as to provide that the Commission must consult the election liaison committee, and not the party national liaison committee, regarding the election timetable.
- 3.17 Clause 17 of the Bill amends the heading of Part 3 in Chapter 3 of the Electoral Act, so as to refer to independent candidates contesting elections and also to the list of independent candidates.
- 3.18 Clause 18 of the Bill substitutes section 26 of the Electoral Act, so as to provide that an independent candidate may contest an election only if that independent candidate has been nominated to stand for election in the prescribed manner and form; is a registered independent candidate; and has submitted his or her name to the Commission for inclusion onto the list of independent candidates.
- 3.19 Clause 19 of the Bill amends section 27 of the Electoral Act, so as to provide that the lists of candidates submitted by a registered party intending to contest an election must also be accompanied by a manifesto signed by each candidate setting out how, and to what extent, he or she is committed to making real the rights enshrined in Chapter 2 of the Constitution; and a list of verifiable supporters from the constituency for which the candidate is nominated to validate the nomination and to assist in determining as best as possible the location of a successful candidate's constituency office.
- 3.20 Clause 20 of the Bill inserts a new section 27A into the Electoral Act, to provide that a registered independent candidate, intending contest an election, must submit his or her name for inclusion onto the list of independent candidates. The Commission must prescribe the manner in which an independent candidate must submit his or her name and the Commission must compile the list after receiving such submissions of names. This new section 27A further lists the various documents that must accompany an independent candidate's submission. These include: a prescribed undertaking signed by the independent candidate, binding the independent candidate to the Code; a declaration, signed by the independent candidate, that the independent candidate is qualified to stand for election in terms of the Constitution or any applicable legislation; an acceptance of nomination, signed by the independent candidate; a personal manifesto signed by the independent candidate setting out how and to what extent he or she is committed to making real and visible the rights enshrined in Chapter 2 of the Constitution; a list, comprising the prescribed details, of verifiable supporters from the constituency for which the independent candidate has been nominated to validate the nomination and to assist in determining as best as possible the location of a successful candidate's constituency office upon that candidate being successfully elected; a vote transfer list referred to in Schedule 1A indicating how his or her votes will be awarded; and the prescribed deposit.
- 3.21 Clause 21 of the Bill amends section 28 of the Electoral Act, to provide that the chief electoral officer must also notify an independent candidate of any non-compliance when submitting his or her name for inclusion onto the list of independent candidates. The notice must be given in the prescribed manner and must indicate the date by when the independent candidate must comply.

- 3.22 Clause 22 of the Bill amends section 29 of the Electoral Act, to provide that the chief electoral officer must also give notice that copies of the list of independent candidates compiled by the Commission and the accompanying documents submitted by each independent candidate will also be available for inspection, and that any person may inspect such documents.
- 3.23 Clause 23 of the Bill amends section 30 of the Electoral Act, to provide that any person, including the chief electoral officer may object to the inclusion of an independent candidate's name on the list of independent candidates on the listed grounds. The amendment to section 30 also includes additional grounds upon which an objection may be raised against a party candidate or an independent candidate. These are: that there is no prescribed personal manifesto signed by the party candidate or the independent candidate setting out how and to what extent that candidate is committed to making real and visible the rights enshrined in Chapter 2 of the Constitution; or there is no prescribed list, comprising the prescribed details, of verifiable supporters from the constituency for which the independent candidate or party candidate has been nominated to validate the nomination and to assist in determining as best as possible the location of a successful candidate's constituency office upon that candidate being successfully elected.
- 3.24 Clause 24 of the Bill amends section 31 of the Electoral Act, to provide that the chief electoral officer must also compile a list of registered independent candidates entitled to contest the election by not later than the relevant date stated in the election timetable, and must have the final list of independent candidates available. The amendment further provides that the chief electoral officer must issue, to each candidate on the final list of independent candidates, a certificate stating that the person is a candidate in that election.
- 3.25 Clause 25 of the Bill amends section 38 of the Electoral Act, to provide that once the voter has received a ballot card, the voter must mark the ballot card in a way that indicates the party candidate or independent candidate the voter wishes to vote for.
- 3.26 Clause 26 of the Bill amends section 39 of the Electoral Act, to provide that the presiding officer, at the request of a voter who is unable to read, must assist that voter in voting in the presence of two agents from different registered parties and one independent candidate agent. The amendment also provides that a person may assist a voter in voting if the presiding officer is satisfied that the person rendering assistance has attained the age of 18 years and is also not an independent candidate.
- 3.27 Clause 27 of the Bill amends section 47 of the Electoral Act, to provide that the counting officer must reject a ballot card on which a vote is cast for more than one candidate, whether in respect of a party candidate or an independent candidate, or both.
- 3.28 Clause 28 of the Bill amends section 56 of the Electoral Act, to provide that where the Commission or the Electoral Court decides that a serious irregularity has occurred concerning any aspect of an election, the Commission or the Electoral Court may order that the votes cast in favour of a party candidate or a registered independent candidate at a particular voting station must be deducted in whole or in part from the votes cast in favour of that party candidate or that independent candidate in that election.
- 3.29 Clause 29 of the Bill amends section 57A of the Electoral Act, to provide that Schedule 1A applies to, among others, party's list of candidates and the list of independent candidates; and also to the designation of all successful party candidates and independent candidates to occupy their seats in the respective legislatures.
- 3.30 Clause 30 of the Bill amends section 58 of the Electoral Act, by inserting a new subsection (1A) to provide that every registered independent candidate

contesting an election may appoint one independent candidate agent for each voting station, or if voting or counting at a voting station takes place in more than one room or separately enclosed area, one independent candidate agent in respect of each room or area. The new subsection also provides that two independent candidate agents may be appointed for each venue where other processes such as the determination and declaration of the results and verification procedures take place.

- 3.31 Clause 31 of the Bill amends section 59 of the Electoral Act, to provide that an agent must wear the prescribed identification indicating the registered party or the registered independent candidate represented by that agent.
- 3.32 Clause 32 of the Bill inserts section 60A into the Electoral Act, to provide that the Commission must establish 52 or more constituencies in the Republic; must determine the boundaries of such constituencies in accordance with the listed factors and criteria; and also keep a map of each constituency.
- 3.33 Clause 33 of the Bill inserts section 61A into the Electoral Act, to provide the criteria and factors that must be taken into account when the Commission determines the boundaries of the constituencies. This new section, *inter alia*, provides that the area of each district council will be a constituency for the purposes of the election; provides how a metropolitan council area should be divided into constituencies; and how constituency offices should be located.
- 3.34 Clause 34 of the Bill substitutes section 62 of the Electoral Act, to provide that the Commission, before determining the boundaries of a voting district, may consult on the proposed boundaries of that voting district with the municipal election liaison committee for the municipality within which that voting district will fall; or if no municipal election liaison committee has been established in a municipality, with the provincial election liaison committee for the province within which that voting district will fall.
- 3.35 Clause 35 of the Bill inserts section 62A into the Electoral Act, to provide that the Commission, before determining the boundaries of a constituency, may consult with the provincial election liaison committee for the province within which that constituency will fall; and the national election liaison committee in respect of all constituencies.
- 3.36 Clause 36 of the Bill amends section 63 of the Electoral Act, to provide that, once the Commission has established the constituencies, the chief electoral officer must give notice that copies of maps of each constituency will be available for inspection. The notice must state, and the chief electoral officer must ensure, that copies of the maps of constituencies within a province are available for inspection at the Commission's provincial office. The amendment also provides that the chief electoral officer must provide a certified copy of a map of a constituency to any person who has paid the prescribed fee.
- 3.37 Clause 37 of the Bill amends section 63A of the Electoral Act, to provide that the Commission must also regularly review the established constituencies and their boundaries, and whenever necessary, disestablish an existing constituency; establish a new constituency; or re-determine the boundaries of an existing constituency.
- 3.38 Clause 38 of the Bill amends section 64 of the Electoral Act, so as to substitute the term "party liaison committee" with the term "election liaison committee".
- 3.39 Clause 39 of the Bill amends section 66 of the Electoral Act, to provide that the presiding officer of a voting station must, before the voting station opens for voting on voting day, determine the boundary of the voting station after consultation with independent candidate agents as well. This clause also provides that the presiding officer of a voting station may alter the boundary

at any time after consulting party agents and also independent candidate agents.

- 3.40 Clause 40 of the Bill amends section 73 of the Electoral Act, to provide that the presiding officer may not exclude the prescribed number of party candidates and independent candidates from the area within the boundary of a voting station.
- 3.41 Clause 41 of the Bill amends section 82 of the Electoral Act, to provide that a person may not be appointed as an officer in an election if that person is a party candidate or an independent candidate contesting that election. This clause also provides that an officer may not give support to or oppose any party candidate or independent candidate contesting an election.
- 3.42 Clause 42 of the Bill amends section 83 of the Electoral Act, to provide that an institution must ensure that an employee of that institution who exercises a power or performs a duty in terms of the Act is not a party candidate or an independent candidate contesting that election. This clause also provides that an institution and each of its employees who exercises powers and performs duties in terms of the Act may not give support to or oppose any party candidate or independent candidate contesting an election.
- 3.43 Clause 43 of the Bill amends section 84 of the Electoral Act, to provide that the Commission may accredit an applicant to observe an election after considering, among other things, whether the persons appointed by the applicant will observe that election impartially and independently of any registered party, party candidate or also any registered independent candidate contesting that election.
- 3.44 Clause 44 of the Bill amends section 86 of the Electoral Act, to provide that the Commission may accredit an applicant to provide voter education for an election after considering, among other things, whether the applicant or the persons appointed by the applicant to provide voter education will do so in a manner that is impartial and independent of any registered party, party candidate or also any registered independent candidate contesting that election.
- 3.45 Clause 45 of the Bill amends section 87 of the Electoral Act, to provide that no person may compel or unlawfully persuade any person to vote or not to vote for, or to support or not to support, any party candidate or registered independent candidate. This clause also provides that no person may prevent any party candidate, any registered independent candidate or their respective representatives from gaining reasonable access to voters, whether in a public or private place.
- 3.46 Clause 46 of the Bill amends section 88 of the Electoral Act, to provide that no person may impersonate a party candidate, a registered independent candidate or their respective representatives.
- 3.47 Clause 47 of the Bill substitutes section 92 of the Electoral Act, to provide that from the date on which an election is called to the date the result of the election is determined, no person may deface or unlawfully remove any billboard, placard or poster published by a party candidate or a registered independent candidate.
- 3.48 Clause 48 of the Bill amends section 96 of the Electoral Act, to provide that the imposition of an appropriate penalty or sanction by the Electoral Court may also include the forfeiture of any deposit paid by an independent candidate and cancelling that candidate's registration.
- 3.49 Clause 49 of the Bill amends section 99 of the Electoral Act, to provide that the Electoral Code must be subscribed to by every registered independent

candidate before he or she is allowed to contest an election, and by every party candidate before that candidate may be placed on a party's list of candidates.

- 3.50 Clause 50 of the Bill amends section 100 of the Electoral Act, so as to substitute the term "party national liaison committee" with the term "national election liaison committee".
- 3.51 Clause 51 of the Bill amends section 106 of the Electoral Act, to provide that the Commission must also refund to a registered independent candidate any deposit paid by him or her if that independent candidate is allocated a seat in the legislature whose election that independent candidate contested.
- 3.52 Clause 52 of the Bill amends section 107 of the Electoral Act, to provide that the publisher of any publication must head an article in that publication with the word "advertisement" if that article originates from a party candidate or an independent candidate or their respective supporters.
- 3.53 Clause 53 of the Bill amends section 110 of the Electoral Act, to provide that any mistake in the final lists of party candidates or independent candidates does not invalidate those lists of candidates.
- 3.54 Clause 54 of the Bill amends schedule 1 to the Electoral Act, so as to, *inter alia*, make provision for independent candidates and all aspects relevant to independent candidates within the election timetable; provide for the list of independent candidates and their accompanying documents to be inspected by a certain date; provide for the cut-off date for objections and appeals; dates by which certificates should be issued to party candidates and independent candidates stating that the person is a candidate in the election; and so forth.
- 3.55 Clause 55 of the Bill substitutes schedule 1A to the Electoral Act. Schedule 1A deals with the system of representation in the National Assembly and the provincial legislatures and accommodates both party candidates and independent candidates within this system. It sets out that six sevenths of the seats in the National Assembly must be filled from constituency lists and that one seventh of the seats from national lists, which are submitted by registered parties and the Commission. The Schedule, *inter alia*, provides for how seats will be allocated; how recalculations will happen; forfeiture of seats; the types of ballot cards that will be required; gender representation; how vacancies will be filled; and so forth. The Schedule also provides that independent candidates must submit a vote transfer list in terms of which an independent candidate makes provision for how his or her surplus votes or unusable votes will be awarded to another candidate in a ranked order of preferred candidates.
- 3.56 Clause 56 of the Bill amends schedule 2 to the Electoral Act, so as to make the Electoral Code of Conduct contained in Schedule 2 applicable to independent candidates as well.
- 3.57 Clause 57 of the Bill amends schedule 3 of the Electoral Act, so as to provide new formulas for determining the number of members for the National Assembly and the provincial legislatures respectively.
- 3.58 Clause 58 of the Bill substitutes the words "ballot paper", wherever they appear in the Electoral Commission Act and in the Electoral Act, with the words "ballot card".
- 3.59 Clause 59 of the Bill provides for the short title and commencement.

4. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

The Bill provides for a new electoral system and as such the Electoral Commission may require more resources at the outset to entrench the system in practice.

5. FINANCIAL IMPLICATIONS FOR THE STATE

Most of the amendments proposed by this Bill relate to new but normal operations related to elections, and hence, the financial implications will approximately be equal to or less than what is normally budgeted for.

6. DEPARTMENTS, BODIES OR PERSONS CONSULTED

An explanatory summary of the proposed content of the Bill was published for comment on 28 August 2020 in *Government Gazette No. 43660*. In addition, *Dear SA* hosted a public participation project through an online and mobile platform to facilitate, educate and encourage public comment on the Bill. Approximately 5 565 comments were received by 30 September 2020.

6.1 The following sources provided the bedrock on which this Bill was conceptualised and structured:

- (a) The Report of the Electoral Task Team under the chairmanship of Dr F van Zyl Slabbert (2003);
- (b) the Report of the Independent Panel Assessment of Parliament chaired by former MP Pregs Govender (2007); and
- (c) the Report of The High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change chaired by former President Kgalema Motlanthe (2017).

6.2 The following experts and stakeholders were consulted in the development of the Bill:

- (a) Norton Rose Fulbright;
- (b) Dr Michael Louis;
- (c) Prof Pierre Du Toit, University of Stellenbosch;
- (d) Adv Michael Laws; and
- (e) Adv Chiara Louis.

Extensive desk-top research was also undertaken during the development of the Bill.

7. PARLIAMENTARY PROCEDURE

7.1 It is proposed that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provisions to which the procedures set out in section 74 or 76 of the Constitution apply.

7.2 It is also not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.