

# PROPOSED AMENDMENTS

## ELECTORAL AMENDMENT BILL

[B 1B—2022]

### CLAUSE 3

1. On page 3, in line 24, after “following” to omit “paragraph” and to insert “paragraphs”.
2. On page 3, in line 28, to omit the closed inverted commas and full stop.
3. On page 3, after line 28, to insert the following paragraph:

“(cB) form, in the case of a registered party not represented in the National Assembly or any provincial legislature, confirming that the party has submitted, in the prescribed manner, the names, identity numbers and signatures of voters whose names appear—

- (i) in the case of an election of the National Assembly in respect of regional seats, on the national segment of the voters’ roll and who support the party—
  - (aa) totalling 20 percent of the quota for that region in the preceding election, when nominating candidates for one region; or
  - (bb) totalling 20 percent of the highest of the regional quotas in the preceding election, when nominating candidates for more than one region, provided that where 20 percent of the highest of the quotas is not achieved, that the party may only nominate candidates for the region or regions as determined by the next highest quota; or
- (ii) in the case of an election of a provincial legislature, on the segment of the voters’ roll for the province and who support the party, totalling at least 20 percent of the quota of that province in the preceding election, for which the party intends to nominate candidates;”.

### CLAUSE 6

1. On page 4, to omit lines 21 to 28 and to substitute with the following paragraph (a):

“(a) A completed prescribed form confirming that the independent candidate has submitted, in the prescribed manner, the names, identity numbers and signatures of voters whose names appear—

- (i) in the case of an election of the National Assembly in respect of regional seats, on the national segment of the voters’ roll and who support his or her candidature—
  - (aa) totalling 20 percent of the quota for that region in the preceding election, if intending to contest only one region; or
  - (bb) totalling 20 percent of the highest of the regional quotas in the preceding election, if intending to contest more than one region, provided that where 20 percent of the highest of the quotas is not achieved, that the independent candidate may only contest the region or regions as determined

- by the next highest quota; or
- (ii) in the case of an election of a provincial legislature, on the segment of the voters' roll for the province and who support his or her candidature, totalling at least 20 percent of the quota of that province in the preceding election, which the independent candidate intends to contest,
- provided that an independent candidate who was elected to either the National Assembly or a provincial legislature as an independent candidate in the preceding election shall be exempt from this requirement.”.

#### CLAUSE 21

1. On page 11, in line 43, to omit “most” and substitute with “highest proportion of”.
2. On page 12, in line 24, after “seats” to omit “provisionally”.
3. On page 12, in line 25, to omit “item 5(h)” and substitute with “item 5(i)”.
4. On page 12, from line 48, to omit “most number” and substitute with “highest proportion”.
5. On page 12, to omit the sentence in lines 59 and 60.
6. On page 13, from line 5, to omit “minus the votes cast in such region in favour of independent candidates already allocated one seat,”.
7. On page 13, from line 9, to omit “, minus the seats held by independent candidates in terms of item 5(e)”.
8. On page 15, from line 16, to omit “Independent candidates already allocated a seat must further be disregarded in such recalculation.”.
9. On page 15, from line 22, to omit “minus the votes cast in such province in favour of independent candidates already allocated one seat,”.
10. On page 15, from line 26, to omit “, minus the seats held by independent candidates in terms of item 11(d)”.
11. On page 17, from line 23, to omit “the forfeiture provisions in item 7 or item 12 as indicated by the context” and substitute with “item 23”.
12. On page 17, from line 29, to omit “calculations performed in terms of the forfeiture provisions in item 7 or item 12 as indicated by the context” and substitute with “recalculations performed in terms of item 23”.
13. On page 18, in line 4, to omit “party or”.
14. On page 18, in line 9, to omit “in terms of item 5(i) or item 11(f)”.
15. On page 18, in line 34, to omit “item 7 or item 12” and to substitute with “item 24”.
16. On page 18, from line 36 to line 39, to omit paragraph (g).
17. On page 18, in line 49, to omit “item 7 or item 12” and to substitute with “subitem (3)”.
18. On page 18, after line 49, to insert the following subitem:

“(3) (a) An amended quota of votes per seat must be determined in respect of such region or province by dividing the total number of votes cast in the region or province, minus the number of votes cast in the region or province in favour of the party or independent candidate standing to lose a seat, minus the votes cast in such region or province in favour of independent candidates already allocated one seat, by the number of seats, plus one, determined in terms of item 4 or item 8 in respect of the region or province concerned, minus the seat or seats retained by the party or independent candidate, minus the seats held by the independent candidate.

(b) The result plus one, disregarding fractions, is the amended quota of votes per seat in respect of such region or province for purposes of the said recalculation.

(c) The number of seats to be awarded for the purposes of paragraph (f) in respect of such region or province to a party or independent candidate participating in the recalculation must, subject to paragraph (d), be determined by dividing the total number of votes cast in favour of such party or independent candidate in such region or province by the amended quota of votes per seat indicated by paragraph (b) for such region or province.

(d) Where the result of the calculation referred to in paragraph (c) yields seats not absorbed by the number awarded to parties or independent candidates, the surplus of votes accruing to any party, parties or independent candidates participating in the recalculation, competes for the remaining seats in sequence of the highest surplus of votes.

(e) The aggregate of such a party’s awards in terms of paragraphs (c) and (d) in respect of such region or province, subject to paragraph (f), indicates that party’s or independent candidate’s final allocation of the seats determined under item 4 or item 8 in respect of that region or province.

(f) 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 item 7(1) or item 12(1), the process provided for in this subitem must be repeated with the changes required by the context until all seats have been allocated.”.

#### NEW CLAUSE

1. On page 19, after line 12, to insert the following new clause after clause 22, and to renumber the existing clause 23 as clause 24:

#### **“Electoral Reform Consultation Panel**

**23.** (1) Within four months after the commencement of this section, the Minister must establish the Electoral Reform Consultation Panel.

(2) (a) The functions of the Panel are to independently investigate, consult on, report on and make recommendations in respect of potential reforms of the electoral system for the election of the National Assembly and the election of the provincial legislatures, in respect of the elections to be held after the 2024 elections.

(b) The Panel must perform its functions referred to in paragraph (a) in a manner that enables Parliament to exercise its constitutional powers to determine the electoral system for the elections of the National Assembly and provincial legislatures, in respect of the elections to be held after the 2024 elections.

(3) The Panel must—

- (a) prior to the 2024 elections, engage in research and consider the issues falling within its functions;
- (b) after the 2024 elections, undertake a public participation process regarding the issues falling within its functions; and
- (c) from the date of its establishment, submit a report to the Minister every three months on its progress.

(4) The Panel must, within 12 months of the date of the 2024 elections, submit a report to the Minister on the possible options for electoral reform for the election of the National Assembly and the election of the provincial legislatures which must include—

- (a) reasons, potential advantages and disadvantages;
- (b) legal and constitutional implications; and
- (c) financial implications,

for each proposed electoral system or electoral reform identified by the Panel.

(5) (a) The report contemplated in subsection (4) must reflect the views of the members of the Panel as to the possible options and recommendations for electoral reform.

(b) In the case of disagreement as to the possible options and recommendations for electoral reform, the report may be divided into different sections setting out the different views of the members.

(6) (a) In the event that the Panel is unable to submit the report contemplated in subsection (4), the Panel must no less than three months before the date on which the report is due, make a written request to the Minister to allow the Panel an extension of no longer than 6 months to submit the report.

(b) The Minister may upon receiving the request referred to in paragraph (a), grant the extension on good cause shown, provided that such an extension may only be granted once.

(7) Upon receipt of the report contemplated in subsection (4), the Minister must within 30 days table the report in Parliament for its consideration and publish the report through electronic and any other means.

(8) The Panel is authorised to do all things necessary or incidental to fulfil its functions, including—

- (a) to call for and receive written submissions from political parties, independent candidates, civil society organisations and any interested person or party in respect of potential reforms of the electoral system; and
- (b) to make the written submissions publicly available and accessible through electronic and any other means.

(9) In order to establish and constitute the Panel, the Minister must—

- (a) call on the public and any interested parties to nominate fit and proper South African citizens who—
  - (i) have the necessary skills, expertise, experience, knowledge or academic qualifications in the administration and running of elections or constitutional law or electoral systems;
  - (ii) are not members of Parliament or of any provincial legislature; and
  - (iii) have not, in the past 12 months, been office-bearers or employees of any political party;
- (b) in consultation with the Commission, appoint nine members to the Panel from such nominated persons who satisfy the criteria specified in paragraph (a); and
- (c) appoint one of the members of the Panel as the Chairperson of the Panel.

(10) A member may resign from the Panel by giving the Minister—

- (a) one month's written notice; or

(b) less than one month's written notice, with the approval of the Minister.

(11) The Minister may, after taking the steps required by subsection (12), remove a member of the Panel, if that member—

- (a) committed an act of misconduct, becomes incapacitated or is incompetent;
- (b) is unable to perform his or her functions for more than 30 consecutive days;
- (c) acted contrary to the fulfilment of the Panel's functions; or
- (d) neglected to perform the functions as required by a resolution of the Panel.

(12) Before removing a member of the Panel in terms of subsection (11), the Minister must afford the member an opportunity to make written representations and must consider those representations.

(13) (a) Should a vacancy arise in the Panel, the Minister in consultation with the Commission must fill the vacancy from the persons already nominated in the process contemplated in subsection (9)(a).

(b) In the event that no suitable person can be appointed, the Minister must undertake a new nomination process as provided for in subsection (9)(a).

(14) A member of the Panel, who is not in the full-time employment of the state, must—

- (a) be appointed on such terms and conditions as the Minister may determine; and
- (b) receive such remuneration and allowances, out of the funds appropriated for the functioning of the Panel, as the Minister may determine in consultation with the Minister of Finance.

(15) The Director General of Home Affairs must, subject to the laws governing the public service—

- (a) appoint, second or designate persons in its employ and
- (b) make available any other necessary resources,

to assist the Panel to enable it to perform and fulfil its functions.

(16) The Minister must dissolve the Panel—

- (a) after the Minister has tabled the report referred to in subsection (4) in Parliament; and
- (b) once the Minister and Parliament no longer require the Panel to perform any of its functions.

(17) In this section:

- (a) “**2024 elections**” means the elections of the National Assembly and the provincial legislatures, due to be held during 2024;
- (b) “**Minister**” means the cabinet member responsible for Home Affairs; and
- (c) “**Panel**” means the Electoral Reform Consultation Panel established in terms of subsection (1).”.

#### LONG TITLE

1. On page 2, to omit the long title and to substitute the following long title:

**“To amend the Electoral Act, 1998, so as to delete a definition and insert certain definitions consequential to the expansion of this Act to include independent candidates as contesters to elections in the National Assembly and provincial legislatures; to provide that registered parties must submit a declaration confirming that all its candidates are registered to vote in the province where an election will take place; to provide that the submission of lists of candidates of a registered party not represented in the National Assembly or any provincial legislature, must be accompanied by a prescribed form with certain**

specified details; to provide for the nomination of independent candidates to contest elections in the National Assembly and provincial legislatures; to provide for the requirements which must be met by persons who wish to be nominated as independent candidates; to provide for the inspection of copies of lists of independent candidates and accompanying documents; to provide for objections to independent candidates; to provide for the inclusion of a list of independent candidates entitled to contest elections; to provide for the appointment of agents by independent candidates; to provide that independent candidates are bound by the Electoral Code of Conduct; to provide for the return of a deposit to independent candidates in certain circumstances; to amend Schedule 1; to substitute Schedule 1A; to provide for the Minister to establish the Electoral Reform Consultation Panel; and to provide for matters connected therewith.”.

