

REPUBLIC OF SOUTH AFRICA

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# **ELECTORAL LAWS AMENDMENT BILL**

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*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill  
published in Government Gazette No. 25420 of 1 September 2003)  
(The English text is the official text of the Bill)*

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(MINISTER OF HOME AFFAIRS)

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**GENERAL EXPLANATORY NOTE:**

[                    ]     Words in bold type in square brackets indicate omissions from existing enactments.

                         Words underlined with a solid line indicate insertions in existing enactments.

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## **BILL**

To amend the Electoral Act, 1998, so as to limit the application of the Act with regard to municipal councils; to make new provision regarding applications for registration as a voter; to repeal obsolete provisions; to make new provision regarding voters' rolls, prisoners' voting, special votes, voting hours, assistance to handicapped voters, objections, review of voting districts, voting stations and conciliation in disputes; to change the Schedule; and to insert a new Schedule prescribing the system of representation in the National Assembly and provincial legislatures; and to amend the Electoral Commission Act, 1996, so as to make new provision regarding the registration of parties; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

### **Substitution of section 3 of Act 73 of 1998**

1. The following section is hereby substituted for section 3 of the Electoral Act, 1998:

“**Application of Act** 5

3. (1) This Act applies to every [(a)] election of the National Assembly [(b) **election**] and of a provincial legislature. [ **and (c)**]

(2) This Act applies to an election of a municipal council or a by-election for such council only to the extent stated in the Local Government: Municipal Electoral Act, 2000 (Act No. 27 of 2000).” 10

### **Amendment of section 6 of Act 73 of 1998**

2. Section 6 of the Electoral Act, 1998, is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) A person of 16 years or older may apply for registration but, if the application is successful, the applicant's name may only be placed on the voters' roll once the applicant reaches the age of 18 years.” 15

**Amendment of section 7 of Act 73 of 1998, as amended by section 93 of Act 27 of 2000**

3. Section 7 of the Electoral Act, 1998 is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A person applying for registration as a voter must do so [(a)] in the prescribed manner [; and (b) only for the voting district in which that person is ordinarily resident].”.

**Substitution of section 8 of Act 73 of 1998**

4. The following section is hereby substituted for section 8 of the Electoral Act, 1998:

**“Registration** 10

8. (1) If satisfied that a person’s application for registration complies with this Act, and that the person is a South African citizen and is at least 18 years of age, the chief electoral officer must register that person as a voter by making the requisite entries in the voters’ roll.

(2) The chief electoral officer may not register a person as a voter if that person—

(a) has applied for registration fraudulently or otherwise than in the prescribed manner;

[(b) is not a South African citizen;]

(c) has been declared by the High Court to be of unsound mind or mentally disordered;

(d) is detained under the Mental Health Act, 1973 (Act No. 18 of 1973); or

[(e) is not ordinarily resident in the voting district for which that person has applied for registration.]

(f) is serving a sentence of imprisonment without the option of a fine. 25

(3) A person’s name [may not] must be entered in the voters’ roll only for [more than one voting district] the voting district in which that person is ordinarily resident and for no other voting district.”.

**Amendment of section 16 of Act 73 of 1998**

5. Section 16 of the Electoral Act, 1998, is hereby amended by the addition of the following subsections: 30

“(3) Notwithstanding subsection (2), the chief electoral officer must, on payment of the prescribed fee, provide copies of the voters’ roll, or a segment thereof, which includes the addresses of voters, where such addresses are available, to all registered political parties contesting the elections. 35

(4) The voters’ roll with addresses referred to in subsection (3) may only be used by political parties for election purposes and anyone using such voters’ 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.”. 40

**Repeal of section 19 of Act 73 of 1995**

6. Section 19 of the Electoral Act, 1998, is hereby repealed.

**Insertion of sections 24A and 24B in Act 73 of 1998**

7. The following sections are hereby inserted in the Electoral Act, 1998, after section 24: 45

**“Omissions from voters’ roll**

**24A.** (1) A person whose name does not appear on the certified segment of the voters’ roll for a voting district and who applied for registration as a voter for that voting district within a period of two years before the date the election was proclaimed may submit to the presiding officer of the voting station for that voting district— 50

- (a) his or her identity document;
  - (b) a sworn or solemnly affirmed statement in the prescribed form containing—
    - (i) his or her full name, identity number and date of birth;
    - (ii) his or her finger print;
    - (iii) the address where he or she ordinarily resides;
    - (iv) a declaration that the address is situated within the area of that voting district;
    - (v) a declaration that he or she applied for registration as a voter in that voting district within a period of two years before the date of publication of the proclamation proclaiming the election;
    - (vi) a declaration that he or she had not since that application, applied for registration in any other voting district;
    - (vii) a request that his or her name should be included in the certified segment of the voters' roll for that voting district; and
    - (viii) a declaration that he or she is a South African citizen, is 18 years of age or older and is not disqualified from voting in the election in question; and
  - (c) proof that he or she applied for registration as a voter in that voting district within a period of two years before the date of publication of the proclamation referred to paragraph (b)(v).
- (2) If the presiding officer is satisfied that the contents of the statement are correct—
- (a) the presiding officer must make an endorsement to that effect on the statement; and
  - (b) the person making the request contemplated in subsection (1)(b)(vii) must be regarded as having been registered as a voter on the certified segment of the voters' roll for the voting district referred to in subsection (1)(b)(iv).

#### **Prisoners**

- 24B.** (1) In an election for the National Assembly or a provincial legislature, a person who on election day is awaiting trial and is imprisoned or detained for that purpose and whose name appears on the voters' roll for another voting district, is deemed for that election day to have been registered by his or her name having been entered on the voters' roll for the voting district in which he or she is so imprisoned or detained.
- (2) Only prisoners who are awaiting trial may vote."

#### **Repeal of section 32 of Act 73 of 1998**

- 8.** Section 32 of the Electoral Act, 1998, is hereby repealed.

#### **Amendment of section 33 of Act 73 of 1998**

- 9.** Section 33 of the Electoral Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection:
- “(1) The Commission [(a)] must allow a person to apply for a special vote if that person cannot vote at a voting station in the voting district in which the person is registered as a voter, due to that person's—
- [(i)] (a) physical infirmity or disability, or pregnancy;
  - [(ii)] (b) absence from the Republic on Government service or membership of the household of the person so being absent; [or]
  - [(iii)] (c) absence from that voting district while serving as an officer in the election concerned[,] or
  - (d) [while] being on duty as a member of the security services in connection with the election.
- [(b) may prescribe other categories of persons who may apply for special votes.]”

### Substitution of section 36 of Act 73 of 1998

10. The following section is hereby substituted for section 36 of the Electoral Act, 1998:

#### “Hours of voting

36. (1) **[By not later than the relevant date stated in the election timetable, the Commission must prescribe the voting hours for an election.]** Unless the Commission determines other voting hours for an election in general or for a particular voting station, a voting station must—
- (a) open for voting at 07:00; and
  - (b) remain open for voting until 21:00, at which time it must close for voting.
- (2) **[If it is necessary for ensuring a free and fair election, the Commission may prescribe different voting hours for different voting stations].** If the Commission determines other voting hours for an election in general or for a particular voting station, the chief electoral officer must widely publicise the determined voting hours.
- (3) **[The chief electoral officer must publish the prescribed voting hours in the media considered appropriate so as to ensure wide publicity of those hours.]** No person may be admitted to a voting station for the purpose of voting, before the voting station has opened for voting or after the voting station has closed for voting.
- [(4) A voting station must —**
- (a) open for voting at the prescribed time; and
  - (b) subject to subsection (7)(b), remain open for voting until the prescribed time, or such later time as the Commission may determine in terms of subsection (7)(a).
- (5) **No person may be admitted to a voting station for the purpose of voting after the voting station has closed for voting.]**
- (6) Voting at a voting station must continue until every voter has voted who—
- (a) is entitled to vote at that voting station; and
  - (b) **[had] has** reported for voting at that voting station **[at the time prescribed for that voting station to close for voting] before the closing time.**
- (7) To ensure **[a] free and fair [election] elections,** the Commission may, on the voting day —
- (a) **[on the voting day, may]** extend voting hours at a voting station until as late as midnight on that voting day; or
  - (b) **[may]** temporarily close a voting station for part of a voting day if it is temporarily impossible to conduct a free and fair election at that voting station.”.

### Substitution of section 39 of Act 73 of 1998

11. The following section is hereby substituted for section 39 of the Electoral Act, 1998:

#### “Assistance to certain voters

39. (1) The presiding officer or a voting officer, at the request of a voter who is unable to read, must assist that voter in voting in the presence of —
- (a) a person appointed in terms of section 85 by an accredited observer, if available; and
  - (b) two agents from different parties, if available.
- (2) A person may assist a voter in voting if—
- (a) the voter requires assistance due to a physical disability, including visual impairment;
  - (b) the voter has requested to be assisted by that person; and

(c) the presiding officer is satisfied that **[that]** the person rendering assistance has attained the age of 18 years and is not an agent or a candidate.

(3) The secrecy of voting contemplated in section 38 must be preserved as far as possible in the application of this section.”. 5

#### **Amendment of section 55 of Act 73 of 1998**

12. Section 55 of the Electoral Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) **[Despite Parts 1 to 3 of this Chapter, any interested party may make an objection concerning any aspect of an election that is material to the final result of the election.]** Any interested party may lodge with the Commission an objection that is material to the determination of the final result of the election, in respect of proceedings provided for in— 10

(a) Part 1 of Chapter 4 concerning voting; and

(b) Parts 2 and 3 of Chapter 4 concerning the counting of votes.”. 15

#### **Amendment of section 56 of Act 73 of 1998**

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

#### **Insertion of Part 6 in Chapter 4 of Act 73 of 1998**

14. The following part is hereby inserted in Chapter 4 of the Electoral Act, 1998, after Part 5: 25

##### ***“Part 6: electoral system***

##### **System of representation in National Assembly and provincial legislatures**

**57A.** Schedule 1A applies in general to elections for the National Assembly and provincial legislatures held under this Act, but without detracting from the generality of its application, in particular to— 30

(a) lists of candidates;

(b) the allocation of seats;

(c) the designation of candidates from lists as representatives in those seats; and 35

(d) the filling of vacancies.”.

#### **Amendment of section 59 of Act 73 of 1998**

15. 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: 40

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

#### **Insertion of section 63A in Act 73 of 1998**

16. The following section is hereby inserted in the Electoral Act, 1998, after section 63:

##### **“Review of voting districts**

**63A.** (1) The Commission must regularly review the established voting districts and their boundaries, taking into account the factors mentioned in section 61, and whenever necessary— 45

(a) disestablish an existing voting district;

- (b) establish a new voting district and determine the boundaries for that voting district; or
- (c) redetermine the boundaries of an existing voting district.
- (2) The chief electoral officer must ensure that, as soon as possible after the Commission has acted in terms of subsection (1), affected copies of maps available for inspection in terms of section 63(3) are replaced by amended ones.”. 5

#### **Amendment of section 64 of Act 73 of 1998**

17. Section 64 of the Electoral Act, 1998, is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection: 10
- “(1) The Commission must establish for an election one voting station, or one voting station and a mobile voting station, or only a mobile voting station, in each voting district in which the election will be held.”;
- (b) by the insertion after subsection (1) of the following subsection: 15
- “(1A) The Commission may establish a mobile voting station only if—
- (a) the voting district is a large and sparsely populated area and it is necessary to assist voters who would otherwise have to travel long distances to reach the voting station; or
- (b) the mobile voting station is necessary for use at a prison.”; 20
- (c) by the deletion of subsection (5); and
- (d) by the addition of the following subsection: 25
- “(6) Upon application by a person to the office of the Commission’s local representative and upon payment of the prescribed amount, the Commission must furnish such a person with a certified copy of the list.”.

#### **Substitution of section 66 of Act 73 of 1998**

18. The following section is hereby substituted for section 66 of the Electoral Act, 1998:

##### **“Boundaries of voting stations**

- 66.** (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 and members of the security services who are available at that voting station at that stage. 30
- (2) The presiding officer must demarcate the boundary of the voting station by displaying visible signs, markers or tape along the whole line of the boundary, or at sufficient points along that line, to ensure that the boundary is clearly identifiable by any person present at that voting station. 35
- (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 and members of the security services who are available at that voting station at that stage.”. 40

#### **Amendment of section 67 of Act 73 of 1998**

19. Section 67 of the Electoral Act, 1998, is hereby amended by the addition of the following subsections:

- “(4) The Commission may change the route, including the location and estimated time of stopping, of a mobile voting station if it is necessary to do so for the conduct of a free and fair election. 45
- (5) The chief electoral officer must take all reasonable steps to publicise the new route among voters in the voting district in question.”.

**Amendment of section 86 of Act 73 of 1998**

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

“(iii) subscribe to a Code issued by the Commission under section [98] 99 governing persons accredited to provide voter education; and”.

**Insertion of section 103A in Act 73 of 1998**

21. The following section is hereby inserted in the Electoral Act, 1998, after section 103:

**“Conciliation in disputes and complaints**

**103A.** The Commission may attempt to resolve through conciliation any electoral dispute or complaint about an infringement of the Code brought to its notice by anyone involved in the dispute or complaint.”.

**Substitution of section 104 of Act 73 of 1998**

22. The following section is hereby substituted for section 104 of the Electoral Act, 1998:

**“Access to private places**

**104 (1)** Members, employees and officers of the Commission have access to private places when that access is necessary for the exercise of a power or the performance of a duty assigned to them by or under this Act.

**(2)** A person mentioned in subsection (1) must ensure that reasonable attempts to notify the occupier of any such private place have been made.”.

**Amendment of Schedule 1 to Act 73 of 1998**

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

(a) the substitution for the introductory paragraph of the following paragraph:

“The Electoral Commission hereby gives notice that it has in terms of section [17] 20 of the Electoral Act, 1998, [determined] compiled the election timetable set out below to apply to the ..... (particulars of relevant election) that will be held on .....(date(s)). (A reference to “section” in this election timetable is a reference to that section of the Electoral Act, 1998.)”;

(b) the deletion of items 13 and 14.

**Insertion of Schedule 1A in Act 73 of 1998**

24. The following Schedule is hereby inserted in the Electoral Act, 1998, after Schedule 1:

**“SCHEDULE 1A**

**SYSTEM OF REPRESENTATION IN NATIONAL ASSEMBLY AND PROVINCIAL LEGISLATURES**

**(Section 57A)**

**National Assembly**

**1.** Registered parties contesting an election of the National Assembly must nominate candidates for such election on lists of candidates prepared in accordance with this Act.

**2.** The seats in the National Assembly must be filled as follows:

(a) One half of the seats from regional lists, submitted by the respective parties, with a fixed number of seats reserved for each region, as determined by the Commission, for every election of the Assembly,

- taking into account available scientifically based data in respect of voters and representations by interested parties.
- (b) The other half of the seats from national lists submitted by the respective parties, or from regional lists where national lists were not submitted. 5
- 3.** The lists of candidates submitted by a party must not contain more names than the number of seats in the National Assembly, and each such list must denote the fixed order of preference, of the names as the party may determine.
- 4.** A party's lists of candidates must consist of— 10
- (a) both a national list and a list for each region; or
- (b) a list for each region,
- with such number of names on each list as the party may determine, subject to item 3.
- 5.** The seats referred to in item 2(a) must be allocated per region to the parties contesting an election, as follows: 15
- (a) A quota of votes per seat must be determined in respect of each region by dividing the total number of votes cast in a region by the number of seats, plus one, reserved for such region under item 2(a).
- (b) The result plus one, disregarding fractions, is the quota of votes per seat in respect of a particular region. 20
- (c) The number of seats to be awarded for the purposes of paragraph (e) in respect of such region to a party, must, subject to paragraph (d), be determined by dividing the total number of votes cast in favour of such party in a region by the quota of votes per seat indicated by paragraph (b) for that region. 25
- (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, such surplus competes with other similar surpluses accruing to any other party or parties in respect of the relevant region, and any seat or seats in respect of that region not awarded in terms of paragraph (c), must be awarded to the party or parties concerned in sequence of the highest surplus. 30
- (e) The aggregate of a party's awards in terms of paragraphs (c) and (d) in respect of a particular region indicates that party's provisional allocation of the seats reserved under item 2 (a) for that region. 35
- (f) The aggregate of a party's provisional allocations for the various regions in terms of paragraph (e), indicates its provisional allocation of the seats referred to in item 2(a).
- (g) If no recalculation of provisional allocations is required in terms of item 7 in respect of the seats referred to in item 2 (a), the provisional allocation of such seats in terms of paragraphs (e) and (f) becomes the final allocation of such seats to the various parties, and if such a recalculation is required the provisional allocation of such seats, as adjusted in terms of item 7, becomes the final allocation of such seats to the various parties. 40 45
- 6.** The seats referred to in item 2(b) must be allocated to the parties contesting an election, as follows:
- (a) A quota of votes per seat must be determined by dividing the total number of votes cast nationally by the number of seats in the National Assembly, plus one, and the result plus one, disregarding fractions, is the quota of votes per seat. 50
- (b) The number of seats to be awarded to a party for the purposes of paragraph (d) must, subject to paragraph (c), be determined by dividing the total number of votes cast nationally in favour of such party by the quota of votes per seat determined in terms of paragraph (a). 55

- (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, such surplus competes with other similar surpluses accruing to any other party or parties, and any seat or seats not awarded in terms of paragraph (b), must be awarded to the party or parties concerned in sequence of the highest surplus, up to a maximum of five seats: Provided that subsequent awards of seats still remaining unawarded must be made in sequence to those parties having the highest average number of votes per seat already awarded in terms of paragraph (b) and this paragraph. 5
- (d) The aggregate of a party's awards in terms of paragraphs (b) and (c) must be reduced by the number of seats provisionally allocated to it in terms of item 5(f) and the result indicates that party's provisional allocation of the seats referred to in item 2(b). 10
- (e) If no recalculation of provisional allocations is required in terms of item 7 in respect of the seats referred to in item 2 (b), the provisional allocation of such seats in terms of paragraph (d) becomes the final allocation of such seats to the various parties, and if such a recalculation is required, the provisional allocation of such seats, as adjusted in terms of item 7, becomes the final allocation of such seats to the various parties. 15 20

7. (1) If a party has submitted a national or a regional list containing fewer names than the number of its provisional allocation of seats which would have been filled from such list in terms of item 8 or 9 had such provisional allocation been the final allocation, it forfeits a number of seats equal to the deficit. 25

(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 region in terms of item 5(e), such allocation must be recalculated as follows:

- (a) The party forfeiting seats must be disregarded in such recalculation, and its provisional allocation of seats in terms of item 5(e) for the region in question, minus the number of seats forfeited by it in respect of its list for such region, becomes its final allocation in respect of the seats reserved for such region in terms of item 2 (a). 30
- (b) An amended quota of votes per seat must be determined in respect of such region by dividing the total number of votes cast in the region, minus the number of votes cast in such region in favour of the party referred to in paragraph (a), by the number of seats, plus one, reserved for such region under item 2 (a), minus the number of seats finally allocated to the said party in terms of paragraph (a). 35 40
- (c) The result plus one, disregarding fractions, is the amended quota of votes per seat in respect of such region for purposes of the said recalculation.
- (d) The number of seats to be awarded for the purposes of paragraph (f) in respect of such region to a party participating in the recalculation, must, subject to paragraph (e), be determined by dividing the total number of votes cast in favour of such party in such region by the amended quota of votes per seat indicated by paragraph (c) for such region. 45
- (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 competes with other similar surpluses accruing to any other party or parties participating in the recalculation in respect of the said region, and any seat or seats in respect of such region not awarded in terms of paragraph (d), must be awarded to the party or parties concerned in sequence of the highest surplus. 50 55
- (f) The aggregate of a party's awards in terms of paragraphs (d) and (e) in respect of such region, subject to subitem (4), indicates that party's final allocation of the seats reserved under item 2 (a) for that region. 60

(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 must be recalculated as follows:

- (a) The party forfeiting seats must 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, becomes its final allocation of the seats referred to in item 2 (b). 5
- (b) An amended quota of votes per seat must be determined by dividing the total number of votes cast nationally, minus the number of votes cast nationally in favour of the party referred to in paragraph (a), by the number of seats in the Assembly, plus one, minus the number of seats finally allocated to the said party in terms of paragraph (a). 10
- (c) The result plus one, disregarding fractions, is 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 participating in the recalculation must, subject to paragraph (e), be determined by dividing the total number of votes cast nationally in favour of such party by the amended quota of votes per seat indicated by paragraph (c). 15
- (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 competes 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), must be awarded to the party or parties concerned in sequence of the highest surplus, up to a maximum of five seats so awarded: Provided that subsequent awards of seats still remaining unawarded must be made in sequence to those parties having the highest average number of votes per seat already awarded in terms of paragraph (d) and this paragraph. 20 25 30
- (f) The aggregate of such a party's awards in terms of paragraphs (d) and (e) must be reduced by the number of seats finally allocated to it in terms of item 5 (g), and the result, subject to subitem (4), indicates that party's final allocation of the seats referred to in item 2 (b). 35

(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 must be repeated with the charges required by the context until all seats have been allocated. 40

**8.** (1) Where a party submitted both national and regional lists, the seats finally allocated to it—

- (a) in terms of item 5(g) must be filled from its regional lists in accordance with its final allocation of seats in respect of the various regions; and in terms of item 6(e), must be filled from its national list in accordance with its final allocation of seats in terms of that item. 45
- (b) A seat finally allocated to a party in respect of a region, must, for the purposes of subitem (1)(a), be filled only from such party's list for that particular region. 50

**9.** (1) Where a party submitted regional lists only, the seats finally allocated to it—

- (a) in terms of item 5 (g), must be filled from such lists in accordance with its final allocation of seats in respect of the various regions; and
- (b) in terms of item 6(e), must be filled from the said lists in the same proportions as the proportions in which the seats referred to in paragraph (a) are to be filled in respect of the various regions for which the party was finally allocated seats in terms of item 5(g) : Provided that if a party was not allocated any seats in terms of item 5(g), the seats allocated to it in terms of item 6(e) must be filled from its regional lists in proportion to the number of votes received by that party in each of the regions : Provided further that surplus 55 60

fractions must be disregarded, save that any remaining seats must be awarded to regions in sequence of the highest surplus fractions.

(2) A seat finally allocated to a party in respect of a region, must, for the purposes of subitem 1(a), be filled only from such party's list for that particular region.

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### Provincial legislatures

**10.** The number of seats in each provincial legislature are as determined in terms of section 105 of the Constitution.

**11.** Registered parties contesting an election of a provincial legislature, must nominate candidates for election to such provincial legislature on provincial lists prepared in accordance with this Act.

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**12.** Each party is entitled to submit only one list per province, which must contain the names of not more than the number of seats determined under item 10 for the relevant provincial legislature and in such fixed order of preference as the party may determine.

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**13.** The seats determined for a provincial legislature must be allocated to parties contesting an election, as follows—

(a) A quota of votes per seat must be determined by dividing the total number of votes cast in the province concerned by the number of seats, plus one, determined under item 10 for such province and the result plus one, disregarding fractions, is the quota of votes per seat for such province.

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(b) The number of seats to be awarded to a party for the purposes of paragraph (d) must, subject to paragraph (c), be determined by dividing the total number of votes cast in the province in favour of such party by the quota of votes per seat determined in terms of paragraph (a).

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(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, such surplus competes with other similar surpluses accruing to any other party or parties in respect of the province concerned, and any seat or seats not awarded in terms of paragraph (b), must be awarded to the party or parties concerned in sequence of the highest surplus.

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(d) The aggregate of a party's awards in terms of paragraphs (b) and (c), indicates that party's provisional allocation of seats in the provincial legislature in question.

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(e) If no recalculation of provisional allocations for a province concerned is required in terms of item 14, the provisional allocation of seats in respect of that province in terms of paragraph (d), becomes the final allocation of such seats to the various parties, and if such a recalculation is required the provisional allocation of such seats as adjusted in terms of item 14 becomes the final allocation of such seats to the various parties.

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**14.** (1) If a party has submitted a provincial list containing fewer names than the number of seats provisionally allocated to it in terms of item 13 (d), it must forfeit a number of seats equal to the deficit.

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(2) In the event of any forfeiture of seats in terms of subitem (1), the allocation of seats in respect of the province concerned must be recalculated as follows:

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(a) The party forfeiting seats must be disregarded in such recalculation, and its provisional allocation of seats in terms of item 13 (d), minus the number of seats forfeited by it in respect of its list for such province, becomes its final allocation of seats in the provincial legislature concerned.

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- (b) An amended quota of votes per seat must be determined in respect of such province by dividing the total number of votes cast in the province, minus the number of votes cast in the province in favour of the party referred to in paragraph (a), by the number of seats, plus one, determined in terms of item 10 in respect of the province concerned, minus the number of seats finally allocated to the said party in terms of paragraph (a). 5
- (c) The result plus one, disregarding fractions, is the amended quota of votes per seat in respect of such province for purposes of the said recalculation. 10
- (d) The number of seats to be awarded for the purposes of paragraph (f) in respect of such province to a party participating in the recalculation, must, subject to paragraph (e), be determined by dividing the total number of votes cast in favour of such party in such province by the amended quota of votes per seat indicated by paragraph (c) for such province. 15
- (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 competes with other similar surpluses accruing to any other party or parties participating in the recalculation, and any seat or seats in respect of such province not awarded in terms of paragraph (d), must be awarded to the party or parties concerned in sequence of the highest surplus. 20
- (f) The aggregate of such a party's awards in terms of paragraphs (d) and (e) in respect of such province, subject to subitem (3), indicates that party's final allocation of the seats determined under item 10 in respect of that province. 25
- (3) 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 process provided for in this item must be repeated with the changes required by the context until all seats have been allocated. 30

### **Ballot papers**

15. There must be separate ballot papers for the election of members of the National Assembly and of members of the provincial legislatures. 35

### **Designation of representatives**

16. (1) After the counting of votes has been concluded, the number of representatives of each party has been determined and the election result has been declared in terms of section 190 of the Constitution, the Commission must, within two days after such declaration, designate from each list of candidates, the representatives of each party in the legislature. 40
- (2) Following the designation in terms of subitem (1), if a candidate's name appears on more than one list for the National Assembly or on lists for both the National Assembly and a provincial legislature (if an election of the Assembly and a provincial legislature is held at the same time), and such candidate is due for designation as a representative in more than one case, the party which submitted such lists must, within two days after the said declaration, indicate to the Commission from which list such candidate will be designated or in which legislature the candidate will serve, as the case may be, in which event the candidate's name must be deleted from the other lists. 45
- (3) If a party fails to indicate to the Commission from which list a candidate will be designated or in which legislature a candidate will serve, such candidate's name must be deleted from all the lists. 50
- (4) The Commission must forthwith publish the list of names of representatives in the legislature or legislatures. 55

### Supplementation of lists of candidates

17. No lists of candidates of a party for any legislature may be supplemented prior to the designation of representatives in terms of item 16.

18. Lists of candidates may, after the designation of representatives in terms of item 16 has been concluded, be supplemented by the addition of an equal number of names at the end of the applicable list, 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 of a legislature;
- (b) a representative is appointed as a permanent delegate to the National Council of Provinces;
- (c) a name is deleted from a list in terms of item 16(2); or
- (d) a vacancy has occurred and the appropriate list of candidates of the party concerned is depleted.

19. Lists of candidates of a party referred to in item 16 (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 16 has been concluded, in order to fill casual vacancies: Provided that any such supplementation must be made at the end of the list.

20. The number of names on lists of candidates as supplemented in terms of item 18 may 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.

### Review of lists of candidates by party

21. A party may review its undepleted lists as supplemented in terms of items 18, 19 and 20, within seven days after the expiry of the period referred to in item 19, and annually 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 may be changed.

### Publication of supplemented and reviewed lists of candidates

22. Candidates' lists supplemented in terms of items 18 and 19 or reviewed in terms of item 21 must 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.

### Vacancies

23. (1) In the event of a vacancy in a legislature to which this Schedule applies, the party which the vacating member represented must fill the vacancy by nominating a person—

- (a) whose name appears on the list of candidates—
  - (i) from which that party's members were originally nominated; or
  - (ii) where applicable, submitted by a party in terms of item 5(2) of Schedule 6A to the Constitution; and
- (b) who is the next qualified and available person on the list.

(2) A nomination to fill a vacancy must 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 must be allocated to the remaining parties with the changes required by the context as if such seats were forfeited seats in terms of item 7 or 14, as the case may be.

## Definitions

### 24. In this Schedule—

- ‘Constitution’ means the Constitution of the Republic of South Africa, 1996, (Act No. 108 of 1996);
- ‘national list’ means a list of candidates prepared by a party for an election of the National Assembly to reflect that party’s order of preference of candidates in respect of the allocation of seats on a national basis; 5
- ‘provincial list’ means a list of candidates prepared by a party for an election of a provincial legislature; 10
- ‘region’ means the territorial area of a province;
- ‘regional list’ means a list of candidates in respect of a region prepared by a party for an election of the National Assembly to reflect that party’s order of preference of candidates in respect of the allocation of seats in respect of such region; 15
- ‘votes’ means—
- (a) where it occurs in items 5, 6, 7 and 9, votes cast in an election for the National Assembly;
  - (b) where it occurs in items 13 and 14, votes cast in the election for the provincial legislature of a province concerned; and 20
  - (c) where it occurs in item 16, votes cast in the election for the National Assembly and the provincial legislatures.”.

### Amendment of section 15 of Act 51 of 1996

25. Section 15 of the Electoral Commission Act, 1996, is hereby amended by the substitution for subsections (1), (2) and (3) of the following subsections, respectively: 25

“(1) The chief electoral officer shall, upon application by a party in the prescribed form, accompanied by the items mentioned in subsection (3), register such party in accordance with this Chapter.

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

- (a) the name of the party; 30
- (b) the distinguishing mark or symbol of the party in colour; and
- (c) the abbreviation, if any, of the name of the party consisting of not more than eight letters [**; and**
- (d) **the constitution of the party].**

(3) **[No party not represented in Parliament, a provincial legislature or a local government body may be so registered unless the]** The application [is] shall be accompanied by— 35

- (a) that party’s deed of foundation which has been adopted at a meeting of, and has been signed by the prescribed number of persons who are qualified voters; 40
- (b) the prescribed amount, if any; and
- [(c) proof of publication in the *Gazette* of the prescribed notice of the application.]**
- (d) that party’s constitution.”.

### Amendment of section 15A of Act 51 of 1996 45

26. Section 15A of the Electoral Commission Act, 1996, is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) The chief electoral officer shall, upon application by a party in the prescribed form, and if the application is accompanied by the items mentioned in subsection (2), register such party in respect of a particular municipality. 50

(2) **[No party not represented in a municipal council in that municipal area or areas may be so registered unless the]** The application [is] shall be accompanied by—

- (a) that party's deed of foundation which has been adopted at a meeting of, and has been signed by, the prescribed number of persons who are qualified voters;
- (b) the prescribed amount, if any; and
- [(c) **proof of publication in a newspaper circulating in that municipal area of the prescribed notice of application.**] 5
- (d) that party's constitution.".

#### **Amendment of section 16 of Act 51 of 1996**

27. Section 16 of the Electoral Commission Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection: 10

- “(1) The chief electoral officer may not register a party in terms of section 15 or 15A, 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 in a newspaper circulating in the municipal area concerned in the case of an application referred to in section 15A. 15
  - (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 to such an extent that it may deceive or confuse voters; or 20
  - (c) a proposed name, abbreviated name, distinguishing mark or symbol mentioned in the application or the constitution of the party or the deed of foundation mentioned in section 15 or 15A contains anything— 25
    - (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, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language; or 30
    - (ii) which indicates that persons will not be admitted to membership of the party or welcomed as supporters of the party on the grounds of their race, ethnic origin or colour.”. 35

#### **Amendment of section 16 of Act 51 of 1996**

28. Section 16 of the Electoral Commission Act, 1996, is hereby amended by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“In considering such an appeal against the refusal to register a party in terms of subsection (1)(a)[(i)] the Commission—” 40

#### **Insertion of section 16A in Act 51 of 1996**

29. The following section is hereby inserted in the Electoral Commission Act, 1996, after section 16:

#### **“Change of party's name” 45**

**16A.** (1) A party may submit an application in the prescribed form to the chief electoral officer to change its registered name, abbreviated name, distinguishing mark or symbol.

(2) Such an application shall be accompanied by proof of publication in the *Gazette* of the prescribed notice of application. 50

(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 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 and issue the party with a new registration certificate reflecting the change.”.

**Substitution of section 17 of Act 51 of 1996**

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**30.** The following section is hereby substituted for section 17 of the Electoral Commission Act, 1996:

**“Cancellation of registration of party**

**17. (1)** The Commission may [**direct the chief electoral officer to**] cancel the registration of a party if— 10

(a) [**the Commission**] after due notice in writing to that party and an inquiry into the matter, the Commission is satisfied that the party no longer functions or has no intention to participate in an election;

(b) it is notified by that party in the prescribed manner that the party has dissolved or is intending to dissolve on a specified date; or 15

(c) that party is not represented in the National Assembly, a provincial legislature or a municipal council and it has not participated in a national, provincial or municipal general election that took place after the date of its registration or after the date when it was last so represented; 20

(d) that party has changed its deed of foundation or constitution and the Commission is satisfied that change has resulted in that deed of foundation or constitution containing anything—

(i) which portrays the propagation or incitement of violence or hatred or which causes serious offence to any section of the population on grounds of race, gender, sex, ethnic origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language; or 25

(ii) which indicates that persons will not be admitted to membership of the party or welcomed as supporters of the party on the grounds of their race, ethnic origin or colour. 30

(2) The Commission may not cancel the registration of a party on the grounds set out in subsection (1)(d) unless it has served a notice on the party giving it an opportunity to withdraw or change the offending amendment or part of the amendment and the party has not done so to the Commission’s satisfaction within three months. 35

(3) A registered party shall within two months after having changed its deed of foundation or constitution submit a copy of the changed deed of foundation or constitution to the chief electoral officer.”.

**Short title**

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**31.** This Act is called the Electoral Laws Amendment Act, 2003, and comes into operation on a date set by the President by proclamation in the *Gazette*.

## **MEMORANDUM ON THE OBJECTS OF THE ELECTORAL LAWS AMENDMENT BILL, 2003**

### **1. GENERAL**

The Bill is designed to effect various amendments to the Electoral Act, 1998, and the Electoral Commission Act, 1996.

### **2. PRINCIPAL OBJECTS OF BILL**

The principal objects of the Bill are to—

- amend the Electoral Act, 1998, to limit the application of the Act in respect of municipal elections;
- revise the voter registration, voters roll, voting districts, voting stations and voting hours, provisions;
- repeal obsolete provisions;
- make provision for prisoners who are awaiting trial only to vote;
- provide for assistance to disabled persons and conciliation in disputes;
- change the existing Schedule and to add a new Schedule which details the system of representation in the National Assembly and provincial legislatures; and
- amend the Electoral Commission Act, 1996, to regulate the registration of political parties.

### **3. ORGANISATIONAL AND PERSONNEL IMPLICATIONS**

There are no additional personnel implications for the Department as a result of the introduction of the Bill.

### **4. FINANCIAL IMPLICATIONS FOR STATE**

There are no financial implications for the Department as a result of the introduction of the Bill.

### **5. COMMUNICATION IMPLICATIONS**

There are no communication implications envisaged as a result of the introduction of the Bill.

### **6. CONSTITUTIONAL IMPLICATIONS**

The proposed Electoral Laws Amendment Bill will give effect to sections 46(2), 47(4) and 61(1)(a) of the Constitution.

### **7. OTHER DEPARTMENTS AND BODIES CONSULTED**

- The African National Congress;
- The African Christian Democratic Party;
- The Afrikaner Eenheidsbewing;
- The Azanian People's Organisation;
- The Democratic Party;
- The Freedom Front;
- The Federal Alliance;
- The Inkatha Freedom Party;
- The New National Party;
- The Pan Africanist Congress;
- The United Christian Democratic Party;
- The United Democratic Movement;
- The Human Sciences Research Council;
- University of Cape Town;
- Centre for Policy Studies;
- The Helen Suzman Foundation;
- The Institute for Democracy in South Africa;
- The Steve Biko Foundation;
- The Gender Advocacy Programme;

- University of the Witwatersrand;
- The Department of Justice and Constitutional Development; and
- The Independent Electoral Commission.

## **8. PARLIAMENTARY PROCEDURE**

The Department of Home Affairs and the State Law Advisers are of the opinion that this Bill should be dealt with in terms of the provisions of section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

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