

NO. 1 OF 1994: ELECTORAL AMENDMENT ACT, 1994.

GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

ACT

To amend the Electoral Act, 1993, so as to make provision for the late registration or amendment of the registration of participating parties in the elections for the National Assembly and provincial legislatures; to further regulate the qualifications of a candidate; to make provision for two separate ballot papers in respect of the said elections; to further regulate the payment of grants to participating parties in the elections; to effect consequential amendments; and to amend the text; to make provision for the application of the said Act as amended by this Act to the said elections; to empower the State President to amend certain Acts by proclamation in the Gazette; and to make provision for matters in connection therewith.

(Afrikaans text signed by the State President.)

(Assented to 2 March 1994.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:-

Amendment of section 5 of Act 202 of 1993

1. Section 5 of the Electoral Act, 1993 (hereinafter referred to as the principal Act), is hereby amended-

(a) by the substitution for the words preceding paragraph (a) of subsection (3) of the following words:

"Upon the publication of the *first* notice contemplated in section 20 the Commission shall-"; and

(b) by the addition of the following subsection:

"(6) *Every party-*

(a) *which was registered late; or*

(b) *the registration of which was amended as contemplated in the proviso to section 19(1) shall likewise be represented on the applicable party liaison committees contemplated in this section."*

Amendment of section 13 of Act 202 of 1993

2. Section 13 of the principal Act is hereby amended-

(a) by the substitution in the Afrikaans text in paragraph (b) of subsection (1) for the expression "provinsiale party-verkiesingsagent" of the expression "party provinsiale verkiesingsagent"; and

- (b) by the substitution in subsection (2) for the expression "party provincial election agent" of the expression "party election provincial agent".

Amendment of section 19 of Act 202 of 1993

3. Section 19 of the principal Act is hereby amended-

- (a) by the addition to subsection (1) of the following proviso:

"Provided that in respect of the first election for the National Assembly and provincial legislatures to be held after the commencement of this Act, an application for late registration or amendment of registration may be so submitted not later than 30 days after such proclamation.";

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

"(5) The Commission shall-

- (a) within three days after the 10 day period referred to in subsection (1) has expired; and

- (b) within one day after the 30 day period referred to in the proviso to subsection (1) has expired, cause to be published in the Gazette a notice containing a complete list of applications received in terms of that subsection or proviso, as the case may be, and inviting objections thereto by interested parties, together with the address at which copies of the original applications and supporting documents shall be available for public inspection.";

- (c) by the substitution for subsection (9) of the following subsection:

"(9) Any objection against the registration of a party as a participant in the election, together with the reasons therefor, shall be lodged in writing with the Chief Director-

- (a) within 10 days after the date of the publishing of the list referred to in subsection (5)(a); or

- (b) within two days after the date of the publishing of the list referred to in subsection (5)(b).";

- (d) by the substitution for paragraph (b) of subsection (10) of the following paragraph:

"(b) does not comply with the provisions of this Act, it shall afford the party an opportunity to rectify such application, but shall make its final determination not later than 28 days after the date of the proclamation of the election in terms of section 21(1) or, in respect of a late registration or amendment of registration contemplated in the proviso to subsection (1), not later than 34 days after such date."; and

- (e) by the addition of the following subsection:

"(12) Any amendment of registration contemplated in the proviso to subsection (1) shall only be allowed in relation to the National Assembly or the provincial legislature or legislatures in respect

of which the election is being contested."

Amendment of section 20 of Act 202 of 1993

4. Section 20 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words-

"The Chief Director shall within three days after the expiry of the 28 or 34 day period referred to in section 19(10)(b), *as the case may be*, cause to be published in the Gazette a notice containing-

Amendment of section 22 of Act 202 of 1993

5. Section 22 of the principal Act is hereby amended-

- (a) by the substitution for subsection (2) of the following subsection:

"(2) A registered party shall submit in the prescribed form to the Chief Director the lists of candidates in respect of the National Assembly and each of the provincial legislatures in which such party wishes to be represented as contemplated in Schedule 2 to the Constitution, within **30 35** days after the date of the proclamation of the election in terms of section 21(1).";

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

"(6) No documents contemplated in subsections (2) and (5) shall be received after 16:30 on the last day of the **30 35** day period referred to in subsection (2)."; and

- (c) by the substitution for subsection (10) of the following subsection:

"(10) For the purposes of this Act, and notwithstanding anything to the contrary in any law contained-

- (a) any person employed or serving in-

(i) any civil service, excluding a member of any police force, defence force or prison service or any judicial officer, public prosecutor in any superior or lower court, state attorney, family advocate or any other officer whose services are essential for the functioning of the courts; or

- (ii) any pre-primary, primary, secondary or tertiary educational institution; or

(iii) any hospital or other medical or health institution, shall not be disqualified from being nominated by a registered party on a list of candidates **or from being designated as a representative in the National Assembly or any provincial legislature** if that person has taken leave of absence (whether paid or unpaid) from the date on which he or she has been so nominated until and including the date of the publication of the lists of names of representatives in all legislatures in terms of item 16(3) of Schedule 2 to the Constitution; *or (b) any other person who holds an office of profit under the Republic, shall not be disqualified from being nominated By a registered party on a list of candidates."*

Amendment of section 23 of Act 202 of 1993

6. Section 23 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

"The Chief Director shall within five days after the 3035 day period referred to in section 22(2) cause to be published in the Gazette a notice in respect of the National Assembly and each of the provincial legislatures setting out-

Amendment of section 27 of Act 202 of 1993

7. Section 27 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

"(2) Separate ballot boxes shall be provided in respect of the elections for the National Assembly and provincial legislatures."

Amendment of section 29 of Act 202 of 1993

8. Section 29 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) (a) *Subject to section 32, every ballot paper shall be substantially in the form prescribed by Schedule 1, save that the Commission may determine whether the printing thereon shall be in a vertical or horizontal form*

(b) *There shall be printed on every ballot paper in the prescribed manner determined by the Commission the names of all the registered parties participating in the election concerned, the distinguishing mark or symbol in colour, the abbreviated name and a photograph of the leader of each such party or such other candidate as the party may determine, which, in the discretion of the Commission, may be in colour.*

(c) *The ballot paper papers shall be in the languages determined by the Commission and shall make provision for the official mark to be placed on the back of the ballot paper as provided in section 35(6)(a)§I(i)\$0 and the cross or mark referred to in section 35(7)(b) 35(6)(b)(ii) or writing referred to in section 44(4) to appear on the front of the ballot paper."*

Substitution of section 32 of Act 202 of 1993

9. The following section is hereby substituted for section 32 of the principal Act:

"Number of ballot papers"

32. A voter shall for the purposes of the first election for the National Assembly and provincial legislatures to be held after the commencement of this Act be issued with one ballot paper only in respect of the National Assembly and one ballot paper in respect of the provincial legislature concerned:

Provided that a voter shall not be issued with two ballot papers simultaneously.

Amendment of section 35 of Act 202 of 1993

10. Section 35 of the principal Act is hereby amended by the Substitution for

subsections (6) and (7) of the following subsections:

"(6) (a) When the provisions of subsection (4) have been complied with, the presiding officer or a voting officer shall-

(a) (i) tear out a ballot paper from the ballot paper book *in respect of the election for the National Assembly* and another voting officer shall mark that ballot paper on the back with the official mark; and

(b) (ii) hand that ballot paper to the voter.

(7)(b) When the voter has received the ballot paper, he or she shall-

(a)(i) take it to the voting compartment;

(b)(ii) indicate the registered party for which he or she wishes to vote by placing a cross or any other mark which denotes a clear choice for a particular registered party with the instrument provided in the space provided on the ballot paper; (c) (iii) display the ballot paper at the ballot box *concerned* in such a manner that the presiding officer or a voting officer designated by him or her may recognize the official mark; and (d) (iv) place the ballot paper in the ballot box *concerned*.

(7) *When the provisions of subsection (6) have been complied with, the issuing and the marking of the ballot paper in respect of the election for the provincial legislature concerned shall be done in the prescribed manner.*".

Amendment of section 36 of Act 202 of 1993

11. Section 36 of the principal Act is hereby amended by the substitution in subsection (1) for the expression "party voting agents" of the expression "monitors".

Amendment of section 38 of Act 202 of 1993

12. Section 38 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of subsection (2) of the following words:

"The packets shall, *in respect of both the elections for the National Assembly and the provincial legislature concerned*, be accompanied by a statement in the form prescribed **by the Chief Director** in which the presiding officer accounts for-".

Amendment of section 40 of Act 202 of 1993

13. Section 40 of the principal Act is hereby amended by the substitution for subsections (3), (4) and (5) of the following subsections:

"(3)(a) When the presiding officer has satisfied himself or herself that the voter is entitled to vote and that he or she has not voted in the election previously, he or she shall tear from the ballot paper book \$Iin respect of the election for the National Assembly\$0 a ballot paper, mark it on the back with the official mark and hand the ballot paper to the special voter concerned, together with a ballot paper envelope and covering envelope.

(4)(b) When the special voter who wishes to vote has received the ballot paper, he or she shall (a) (i) mark it in secret in accordance with his or her choice; (b) (ii) fold the ballot paper so that the official **stamp** mark is visible and the manner in which he or she has marked his or her ballot paper is not visible;

(c) (iii) place the marked ballot paper in the ballot paper envelope, close the ballot paper envelope and thereafter place it in the covering envelope; and

(d) (iv) hand the covering envelope to the presiding officer.

(4) When the provisions of subsection (3) have been complied with, the issuing and the marking of the ballot paper in respect of the election for the provincial legislature concerned shall be done in the prescribed manner. (5) The presiding officer shall take the covering **envelope** envelopes into his or her custody, place **it** them in **a** separate sealed ballot **box** boxes as soon as possible and, if he or she is not the district electoral officer, transmit the sealed ballot **box** boxes in the prescribed manner to the district electoral officer for the electoral district concerned after the closing hour for special votes."

Amendment of section 43 of Act 202 of 1993

14. Section 43 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The counting officer shall separately verify each presiding officer's ballot paper statement ~~in~~ in respect of both the elections for the National Assembly and the provincial legislature concerned\$0 referred to in section 38(2) by comparing it with the contents of the packets received from a voting station concerned, and shall for that purpose open all the ballot boxes from that voting station and cause the ballot papers contained therein to be counted."

Amendment of section 44 of Act 202 of 1993

15. Section 44 of the principal Act is hereby amended-

(a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

"After the provisions of sections 38 and 43 have been complied with, the counting officer shall *in respect of both the elections for the National Assembly and the provincial legislature concerned*, forthwith cause-";

(b) by the substitution for subsection (2) of the following subsection:

"(2) The counting officer shall, as soon as practicable, after all the votes at such counting station have been counted and the number of votes in favour of each registered party has been determined, inform the Chief Director in the prescribed manner of the number of votes so determined to have been cast in favour of each registered party *in respect of both the elections for the National Assembly and the provincial legislature concerned.*"; and (c) by the substitution for the words preceding paragraph (a) of subsection (7) of the following words:

"When the counting officer has complied with the provisions of this

section and section 45 he or she shall, *in respect of both the elections for the National Assembly and the provincial legislature concerned*, as soon as practicable, enclose in separate packets-".

Repeal of section 48 of Act 202 of 1993

16. Section 48 of the principal Act is hereby repealed.

Amendment of section 49 of Act 202 of 1993

17. Section 49 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) After 48 hours of the closing of the voting and after all alleged irregularities, challenges or objections, if any, have been dealt with in accordance with sections 45, 46 and 47, the Commission shall **cause the tallies received from all counting stations to be combined in the following manner:**

- (a) add the tallies of votes cast in each province in favour of the respective registered parties contesting the election for the National Assembly;
- (b) attribute votes cast in a province in favour of a registered party not contesting the election for the National Assembly and which has made a declaration of support in accordance with item 15(1) of Schedule 2 to the Constitution, as contemplated in that item; and
- (c) discard votes cast in favour of any registered party not contesting the election for the National Assembly and which has not made a declaration of support in accordance with item 15(1) of Schedule 2 to the Constitution." .

Amendment of section 50 of Act 202 of 1993

18. Section 50 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) After the provisions of section 49 have been complied with, the Commission shall cause the tallies received from the counting stations concerned to be combined in the following manner:

- (a) **add the tallies of votes cast in respect of each province in favour of the respective registered parties contesting the election for the provincial legislature concerned;**
- (b) attribute votes cast in a province in favour of a registered party not contesting the election for the provincial legislature concerned and which has made a declaration of support in accordance with item 15(2) and (3) of Schedule 2 to the Constitution, as contemplated in that item; and (c) discard votes cast in favour of any registered party not contesting the election for the provincial legislature concerned and which has not made a declaration of support in accordance with item 15(2) or (3) of Schedule 2 to the Constitution."

Amendment of section 74 of Act 202 of 1993

19. Section 74 of the principal Act is hereby amended-

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

"(a) The initial grant referred to in subsection (3) (a) shall only be payable to a registered party if an independent opinion poll recognized and accepted by the Commission for that purpose shows that such a party has in respect of an application for financial assistance to contest the election

(i) for the National Assembly or the National Assembly and an provincial legislature or legislatures, the potential support of at least two per cent of the voters for that legislature the National Assembly; or

(ii) in respect of an application for financial assistance to contest the election for any provincial legislature or legislatures, the potential support of at least two per cent of the voters for the legislature or legislatures concerned.";

(b) by the substitution for paragraph (f) of subsection (4) of the following paragraph:

"(f) (i) The initial grant referred to in subsection (3)(a) shall be payable from the money referred to in subsection (1)(a)(i) (1)(a):

Provided that only 50 per cent of that money shall be utilized for that purpose.

(ii) A registered party which is contesting the election for any provincial legislature or legislatures may, notwithstanding the provisions of subparagraph (i), receive one quarter of the amount of the grant payable to a registered party contesting the election for the National Assembly in respect of each provincial legislature being contested, which grant shall be in addition to any grant which may be payable to such party for contesting the election for the National Assembly."; and

(c) by the substitution for paragraph (h) of subsection (4) of the following

"(h) No party shall be allowed to apply for assistance under this subsection unless it has submitted the list or lists of candidates referred to in section 22, and no registered party shall be eligible for a grant if its qualifying application has not been received by the Commission before the expiry of the period of 3035 days referred to in section 22(2)."

Amendment of section 76 of Act 202 of 1993

20. Section 76 of the principal Act is hereby amended by the substitution for subparagraph (i) of paragraph (a) of subsection (1) of the following subparagraph:

"(i) a voting an election or counting centre;"

Application of Act

21. The election proclaimed by Proclamation No. 17 of 1994, published in Government Gazette No. 15490 of 2 February 1994, shall be conducted in terms of the Electoral Act, 1993 (Act No. 202 of 1993), as amended by this

Act

Amendment of certain Acts by State President

22. (1) The State President may by proclamation in the Gazette in consultation with the Transitional Executive Council established by section 2 of the Transitional Executive Council Act, 1993 (Act No. 151 of 1993)-
- (a) amend the Independent Media Commission Act, 1993 (Act No. 148 of 1993);
 - (b) and in consultation with the Independent Electoral Commission established by section 4 of the Independent Electoral Commission Act, 1993 (Act No. 150 of 1993), amend-
 - (i) the said Independent Electoral Commission Act, 1993, and (ii) the Electoral Act, 1993 (Act No. 202 of 1993);
 - (c) amend the Independent Broadcasting Authority Act, 1993 (Act No. 153 of 1993), in respect of-
 - (i) the granting, the issuing and the regulation of temporary community broadcasting licences; and
 - (ii) temporary broadcasting licences issued by the Postmaster-General in terms of section 7 of the Radio Act, 1952 (Act No. 3 of 1952)
- (2) The provisions of subsection (1) shall lapse at the commencement of the first session of the National Assembly in terms of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993).

Short title and commencement

23. This Act shall be called the Electoral Amendment Act, 1994, and shall, save for sections 21 and 22, be deemed to have commenced on 14 January 1994.