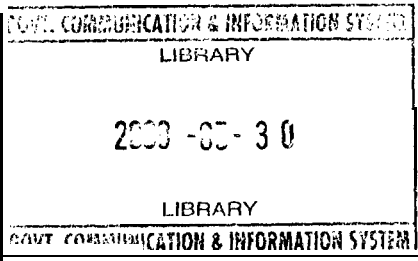


**LOCAL GOVERNMENT:
MUNICIPAL ELECTORAL BILL**

(As introduced in the National Assembly as a section 75 Bill) (the Bill has been fast-tracked—see Announcements Taʼlings and Committee Reports, p 410) (The English text is the official text of the Bi'l and the Afrikaans text is the official translation)

(MINISTER OF HOME AFFAIRS)



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BILL

To regulate municipal elections; to amend certain laws; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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CHAPTER 1

INTERPRETATION, APPLICATION AND ADMINISTRATION OF ACT

Definitions

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1. In this Act, unless the context otherwise indicates—

- “agent”** means a person appointed as an agent in terms of section 39;
“assignment”, in relation to a duty, includes an instruction to perform the duty,
 and **“assign”** has a corresponding meaning;
“ballot”, in relation to— 15
 (a) an election where a voter in terms of item 8(1) or 9(2) of Schedule 1 or item 3(u) of Schedule 2 to the Municipal Structures Act is entitled to cast one vote only, means a ballot conducted at a voting station to enable voters to cast that vote in the election; or
 (b) an election where a voter in terms of item 9(1) of Schedule 1 or item 3(b) of 20
 Schedule 2 to the Municipal Structures Act is entitled to cast more than one vote, means each of the separate ballots conducted at a voting station to enable voters to cast those votes in the election;
“candidate” means a party or ward candidate;
“chief electoral officer” means the chief electoral officer appointed in terms of 25
 section 12(1) of the Electoral Commission Act, and includes any person designated to act in that capacity in terms of section 12(3) of that Act;
“Code” means—
 (a) the Electoral Code of Conduct; and
 (b) any other Code issued by the Commission under section 89; 30
“Commission” means the Electoral Commission, established by section 3 of the Electoral Commission Act;
“Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
“counter” means a person appointed as a counter in terms of section 33; 35
“counting officer” means a person appointed as a counting officer in terms of section 31;
“district management area” means an area as defined in the Municipal Structures Act;
“election” or **“municipal election”** means— 40
 (a) an election of a municipal council; or
 (b) a by-election for a municipal council or in a ward;
“Electoral Act” means the Electoral Act, 1998 (Act No. 73 of 1998);
“Electoral Code of Conduct” means the Code contained in Schedule 1;
“Electoral Commission Act” means the Electoral Commission Act, 1996 (Act 45
 No. 51 of 1996);
“Electoral Court” means the Court established by section 18 of the Electoral Commission Act;
“identity document” means—
 (a) an identity document issued after 1 July 1986, in terms of section 8 of the 50
 repealed Identification Act, 1986 (Act No. 72 of 1986); or
 (b) a temporary identity certificate issued in terms of the Identification Act, 1997 (Act No. 68 of 1997);
“local representative”, in relation to the Commission, means a local representa- 55
 tive of the Commission appointed in terms of section 12;
“MEC” means the member of an Executive Council of a province responsible for local government in the province;

- “Minister”** means the Minister for Provincial and Local Government;
- “municipal council”** or **“council”** means a municipal council referred to in section 18 of the Municipal Structures Act;
- “municipality”**—
- (a) as a corporate entity, means a municipality established in terms of Chapter 2 of the Municipal Structures Act; and
 - (b) as a geographical area, means an area determined in terms 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);
- “officer”** means—
- (a) a local representative of the Commission;
 - (b) a presiding officer;
 - (c) a voting officer;
 - (d) a counting officer;
 - (e) a counter; or
 - (f) any other person appointed in terms of section 35;
- “party”** or **“registered party”** means a party registered in terms of Chapter 4 of the Electoral Commission Act;
- “party candidate”** means a person whose name appears on a party list;
- “party list”** means a list of candidates proposed by a party for the purposes of the election of members of a municipal council to proportionally represent parties in the council either in relation to the municipality or in relation to a district management area;
- “political office”, in relation** to a party, means an office in the party to which a representative of the party is elected or nominated, whether involving remuneration or not, or any other paid office in the party to which a person is appointed;
- “prescribe”** means prescribe by regulation in terms of section 90 and **“prescribed”** has a corresponding meaning;
- “presiding officer”** means a person appointed as a presiding officer in terms of section 27;
- “security services”** means the security services of the Republic referred to in section 199(1) of the Constitution;
- “serve”** means—
- (a) to send by post, telegram, telex, telefax or e-mail; or
 - (b) to deliver by hand;
- “this Act”** includes a Code and any regulations made in terms of section 90;
- “timetable”**, in relation to an election, means a timetable for an election published by the Commission in terms of section 11;
- “voter”** means a person whose name appears on the voters’ roll;
- “voters’ roll”** means the national common voters’ roll compiled and maintained in terms of the Electoral Act;
- “voting day”** means the day on which voting in an election takes or is to take place;
- “voting district”** means a voting district established in terms of section 60 of the Electoral Act;
- “voting officer”** means a person appointed as a voting officer in terms of section 29;
- “*voting station”** means a voting station established in terms of section 19;
- “ward”** means a ward mentioned in item 2 of Schedule 1 to the Municipal Structures Act;
- “ward candidate”** means a candidate nominated in terms of section 16 to contest an election in a ward, either as a candidate representing a party or as an independent candidate.

Interpretation of this Act

2. Any person interpreting or applying this Act must—
 - (a) do so in a manner that gives effect to the constitutional declarations, guarantees and responsibilities contained in the Constitution; and
 - (b) take into account any applicable Code.

This Act to regulate municipal elections

3. (1) This Act applies to all municipal elections held after the date determined in terms of section 93(3) of the Municipal Structures Act.

(2) The Electoral Act and the regulations made in terms of that Act apply to municipal elections only to the extent as stated in this Act.

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Administration of this Act

4. (1) This Act is administered by the Commission.

(2) The Commission must administer this Act in a manner conducive to free and fair elections.

CHAPTER 2

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VOTERS' ROLL AND ELECTION DATE

National common voters' roll to apply to municipal elections

5. (1) The national common voters' roll compiled and maintained in terms of the Electoral Act must be used for municipal elections.

(2) A municipality's segment of the voters' roll consists of the segments of the voters' roll for the voting districts falling within the municipality.

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Segments of voters' roll to be used in election

6. (1) A municipality's segment of the voters' roll existing on the day on which the notice calling an election is published in terms of the Municipal Structures Act, is the segment that must be used in that election.

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(2) By not later than a date stated in the timetable for an election, the chief electoral officer must—

(a) certify the segments of the voters' roll for the voting districts to be used in the election; and

(b) make such segments available for inspection at—

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(i) the Commission's head office;

(ii) the office of the Commission's provincial representative in the province in which the election will take place; and

(iii) the office of the Commission's local representative in the municipality in which the election will take place.

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Who may vote

7. (1) A person may vote in an election only if—

(a) registered as a voter or the certified segment of the voters' roll for a voting district which falls within the municipality; and

(b) not lawfully imprisoned or detained on the voting day.

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(2) A person whose name does not appear on the certified segment of the voters' roll for a voting district and who claims to have applied for registration as a voter in that voting district before or on the date of publication of the notice in terms of which the election was called, may submit to the Commission, at the address of the Commission's local representative, or to the presiding officer of the voting station for that voting district—

(a) a sworn or solemnly affirmed statement on a prescribed form containing the following particulars:

(i) The full name, identity number and date of birth of that person;

(ii) that person's fingerprint;

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(iii) the address where that person ordinarily resides;

(iv) a declaration that the address is situated within the area of that voting district;

(v) a declaration that that person applied for registration as a voter in that voting district before or on the date of publication of the notice; and

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(vi) a request that that person's name should be included in the certified segment of the voters' roll for that voting district; and

- (b) proof that that person applied for registration as a voter in that voting district before or on the date of publication of the notice.
- (3) If the Commission or the presiding officer, as the case may be, has no reason to doubt the correctness of the contents of the statement—
- (a) the Commission or the presiding officer must make an endorsement to that effect on the statement; and
- (b) that person 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 (2)(a)(iv).

Postponement of elections

8. (1) The Commission may request the Minister or, in the case of a by-election, the MEC, to postpone the voting day determined for an election if the Commission is satisfied that it is not reasonably possible to conduct a free and fair election on that day.
- (2) On receipt of such a request, the Minister by notice in the *Government Gazette*, or the MEC by notice in the *Provincial Gazette*, must postpone the voting day for the election to a day determined in the notice, but that day must fall within a period of 90 days of the applicable date mentioned in section 24(2) or 25(3) of the Municipal Structures Act.

Postponement of voting at voting station

- 9.(1) If the Commission is satisfied that it is not reasonably possible to conduct a free and fair election at a voting station on the voting day, the Commission may, before voting commences at the voting station, postpone voting at that voting station to a day determined by the Commission, but that day must fall within a period of 90 days of the applicable date mentioned in section 24(2) or 25(3) of the Municipal Structures Act.
- (2) If the Commission postpones voting at a voting station, it must—
- (a) make its decision known in any appropriate way that will ensure sufficient publicity of the postponement and the date determined for voting at that voting station; and
- (b) if reasonably possible, prominently display a notice at the voting station for the duration of the original voting day stating that voting has been postponed.

Revote at voting station

10. (1) If ballot papers used in an election at a voting station are lost, destroyed or unlawfully removed before the votes cast at the voting station have been counted, the Commission may allow a revote at that voting station on a day determined by the Commission, but that day must fall within a period of 90 days of the applicable date mentioned in section 24(2) or 25(3) of the Municipal Structures Act.
- (2) If the Commission allows a revote at a voting station, it must make its decision known in any appropriate way that will ensure sufficient publicity of the date determined for the revote at that voting station.
- (3) A revote at a voting station must be conducted in accordance with the same procedures that applied on the voting day.

CHAPTER 3

PREPARATIONS FOR ELECTION

Part 1: Election timetable and appointment of local representatives

Election timetable

11. (1) When an election has been called, the Commission must—
- (a) compile a timetable for the election; and
- (b) publish the election timetable in the *Government Gazette*, or, in the case of a by-election, in the *Provincial Gazette* of the province concerned.
- (2) The Commission may, by notice as required in subsection (1)(b), amend the election timetable if—
- (a) it considers it necessary for a free and fair election; or

(b) the voting day is postponed.

Appointment of local representatives

12. (1) When an election has been called, the Commission must appoint, for the area of the municipality in which the election will be held, an employee or other person as its representative for the purpose of the election. 5

(2) A local representative of the Commission—

(a) may exercise the power; and must perform the duties conferred on or assigned to a local representative by or under this Act;

(b) performs those functions of office subject to the directions, control and disciplinary authority of the chief electoral officer; and 10

(c) holds office subject to section 37.

Part 2: Parties contesting election and submission of party lists

Parties contesting elections

13. (1) Only registered parties may contest an election, and may contest the election either by— 15

(a) submitting a party list containing the names of candidates to stand as its representatives for the election of members of the council to proportionally represent parties in the council;

(b) nominating a ward candidate to stand as a representative of the party in a ward; or 20

(c) doing both.

(2) A party intending to contest an election in terms of—

(a) subsection (1)(a), must comply with the requirements for the nomination of party candidates as set out in this Part;

(b) subsection (1)(b), must comply with the requirements for the nomination of ward candidates as set out in Part 3; and 25

(c) subsection (1)(c), must comply with the requirements for the nomination of both party and ward candidates as set out in this Part and Part 3.

Requirements for parties contesting election by way of party lists

14. (1) A party may contest an election in terms of section 13(1)(a) or (c) only if the party by not later than a date stated in the timetable for the election has submitted to the office of the Commission's local representative— 30

(a) in the prescribed form —

(i) a notice of its intention to contest the election; and

(ii) a party list; and 35

(b) a deposit equal to a prescribed amount, if any, payable by means of a bank guaranteed cheque in favour of the Commission.

(2) If it is an election in a district municipality which has one or more district management areas, a party intending to contest the election in such an area must submit a separate party list for the election in that area. 40

(3) The following documents must be attached to a party list when the list is submitted to the Commission:

(a) A prescribed acceptance of nomination signed by each party candidate; and

(b) a certified copy of that page of the candidate's identification document on which the candidate's photo, name and identity number appear. 45

(4) If a party omits to attach to its party list all the documents mentioned in subsection (3), the Commission must—

(a) notify the party in writing; and

(b) allow the party to submit the outstanding documents to the office of the Commission's local representative by not later than a date stated in the election timetable. 50

(5) The Commission must remove from a party list the name of a candidate in respect of whom an outstanding document has not been submitted by the date referred to in subsection (4).

List of parties contesting election by way of party lists and certification of party lists

15. (1) By not later than a date stated in the **timetable** for an election the Commission must—

- (a) compile a list of the parties contesting the **election** in terms of section 13(1)(a) 5 or (c);
- (b) certify the party lists for that election; and
- (c) keep those lists available at the office of the Commission's local representative.

(2) At the request of a person and upon **payment** of a prescribed amount, the 10 Commission must furnish that person with a **certified** copy of a list mentioned in subsection (1).

(3) By not later than a date stated in the election **timetable**, the Commission must issue to each person whose name appears on a party list of a party contesting the election, a prescribed certificate, 15

Part 3: Ward candidate :

Nomination of ward candidates

16. (1) A person may be nominated to contest an **election** in a ward by—

- (a) a registered party; or
- (b) a person who is— 20
 - (i) ordinarily resident in the municipality in which that ward falls; and
 - (ii) registered as a voter on that municipality's segment of the voters' roll.

(2) Provided the other provisions of this Act are complied with, a person nominated in terms of—

- (a) subsection (1)(a) stands in the ward as a **ward** candidate representing the 25 nominating party; and
- (b) subsection (1)(b) stands in the ward as an independent ward candidate.

Requirements for ward candidates to contest **election**

17. (1) A person may contest an election as a ward candidate only if that person is nominated on a prescribed form and that form is submitted to the office of the 30 Commission's **local** representative by not later than a date stated in the timetable for the election.

(2) The following must be attached to a nomination when the nomination is submitted to the Commission:

- (a) In the case of an independent ward candidate, a prescribed form with the 35 signatures of at least 50 voters whose names appear on the segment of the voters' roll for any voting district in the ward
- (b) a prescribed acceptance of nomination signed by the ward candidate;
- (c) a certified copy of the page of the **candidate's** identification document on which the candidate's photo, name and identity number **appear**; and 40
- (d) a deposit equal to a prescribed amount, if **any**, payable by means of a bank guaranteed cheque in **favour** of the **Commission**.

(3) The Commission must accept a nomination submitted to it and **allow** the nominated person to stand as a candidate in the ward if **section 16(1)** and subsections (1) 45 and (2) of this section have been complied with.

List of ward candidates to contest ward election

18. (1) By not later than a date stated in the timetable **for** an election, the Commission must—

- (a) compile for each ward to be contested in **the election** a list of the candidates 50 contesting that ward;
- (b) certify those lists for that election;
- (c) keep copies of those lists available at the **office** of the Commission's local representative; and
- (d) issue to each such candidate a prescribed **certificate**.

(2) At the request of a **person** and upon payment of a prescribed amount, the Commission must furnish such **person** with a certified copy of a list mentioned in subsection (1)(a).

Part 4: Voting stations

Establishment of voting stations

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19. (1) Subject to subsection (1), the Commission must establish for an election a voting station, or a **voting** station and a mobile voting station, or only a mobile voting station, in each voting district in **which** the election will be held.

(2) The Commission may **establish** a mobile voting station, or a mobile voting station in addition to a voting station, **only if**—

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- (a) the voting district is a large and sparsely populated area; and
- (b) the Commission considers it necessary to assist voters who would otherwise have to travel long **distances** to reach the voting station.

(3) When determining the location of a voting station, the Commission may take into account—

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- (a) any facts that could **affect** the free, fair and orderly conduct of the election,
- (b) population density, and
- (c) the need to avoid **congestion** at the voting stations.

(4) Before determining the location of a voting station, the Commission may consult with parties and candidates **concerning** the election.

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(5) By not later than a date stated in the timetable for the election, the Commission must give notice that copies of a list of voting stations and their addresses will be available for inspection at the **office** of the Commission's **local** representative in the municipality where the election is to be held,

(6) Upon application of a **person** at 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.

Relocation of voting stations

20. (1) The Commission may relocate a voting station if the Commission considers it necessary to ensure a free and fair election.

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(2) The Commission must make such relocation known in a manner that ensures sufficient publicity among voters in the voting district concerned.

Boundaries of voting stations

21. (1) The presiding officer of a voting station must, before the voting station opens for voting on voting day, and **after** consultation with party agents and members of the security services who are **available** at that voting station at that stage, determine the boundary of the voting station.

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(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 identified by any person present at that voting station.

Mobile voting stations

22. (1) If the Commission **decides to** use a mobile voting station in a voting district in addition to, or instead of, the voting station established for that voting district, it must, by not later than a date stated in **the** election timetable, give notice of the route, including the locations and estimated times of stopping, of the mobile voting station.

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(2) The notice must be made **known** in a manner that ensures sufficient publicity of the information referred to in **subsection (1)** among voters in the voting district concerned.

Part 5: Voting materials

Ballot papers

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23. The Commission must **determine**—

- (a) the design of the ballot paper or ballot papers to be used in an election; and
- (b) the language to be used on a ballot paper, taking into account the election in which that ballot paper is to be used.

Ballot boxes

24. (1) The Commission must determine the design and material of ballot boxes to be used in an election.
- (2) Each ballot box must be designed in such a way that it can be securely closed.
 - (3) The Commission must determine the manner in which ballot boxes are to be—
 - (a) numbered and labelled; and
 - (b) closed, secured, opened, sealed and unsealed.

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Voting compartments

25. (1) The Commission must determine the design and material of voting compartments to be used in an election.
- (2) A voting compartment must be designed in such a way as to adequately screen a voter from observation by other persons while marking a ballot paper.

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Voting materials

26. (1) Before a voting station opens for voting, the Commission must supply the presiding officer responsible for that voting station with all the voting materials necessary for the election at that voting station, including—
- (a) ballot papers;
 - (b) ballot boxes;
 - (c) voting compartments;
 - (d) the certified segment of the voters' roll for the voting district; and
 - (e) a receipt to be signed by the presiding officer detailing the voting materials entrusted to the presiding officer.
- (2) A presiding officer is responsible for the safe-keeping of all the voting materials supplied to that officer.

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Part 6: Officers, additional persons, institutions and agents

Appointment of presiding officers

27. As soon as practicable after an election has been called, the Commission must appoint a presiding officer and a deputy presiding officer for each voting station at which the election is to be conducted.

Powers and duties of presiding officers

28. (1) The presiding officer—
- (a) must manage, co-ordinate and supervise the voting at the voting station concerned;
 - (b) must take all reasonable steps to ensure orderly conduct at that voting station;
 - (c) may order a member of the security service to assist in ensuring orderly conduct at the voting station;
 - (d) may exclude from the area within the boundary of a voting station any person other than—
 - (i) a member, employee or officer of the Commission, or the chief electoral officer;
 - (ii) an agent who is entitled to be present at a voting station;
 - (iii) a ward candidate;
 - (iv) the number of party candidates referred to in subsection (2) as the presiding officer may allow;
 - (v) a person appointed by an accredited observer;
 - (vi) a voter present for the purpose of casting a vote; and
 - (vii) any other person or category of persons authorised by the Commission to be present at the voting station; and

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(e) may exercise the other powers and must perform the other duties conferred on or assigned to a **presiding officer** by or under this Act;

(2) The number of party candidates to be allowed in a voting station is that which the presiding officer can comfortably accommodate within the voting station at any specific time having due regard to the demands of a free and fair election. 5

(3) (a) Despite subsection (1)(d), the presiding officer may order any person mentioned in subsection (1)(d)(ii to (v) to leave the area within the boundary of the voting station if that person's conduct is not conducive to a free and fair election at that voting station.

(b) On request by a person ordered under paragraph (a) to leave the area of a voting station, the presiding officer must give that person the reasons for the order. 10

(4) If a person refuses to comply with an order under subsection (3)(a), the presiding officer may order a member of the security services to forcibly remove that person.

(5) The deputy presiding officer of a voting station must act as presiding officer whenever— 15

(a) the presiding officer is absent from duty, or for any reason is temporarily unable to exercise the powers and perform the duties of the presiding officer; or

(b) the office of presiding officer for that voting station is vacant. 20

Appointment of voting officers

29. As soon as practicable after an election has been called, the Commission must appoint for each voting station as many voting officers as are necessary.

Powers and duties of voting officers

30. A voting officer—

(a) must assist the presiding officer in the exercise of the presiding officer's powers and the performance of the presiding officer's duties; and 25

(b) may exercise the powers and must perform the duties conferred on or assigned to a voting officer by or under this Act.

Appointment of counting officer

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31. (1) As soon as practicable after an election has been called, the Commission must appoint a counting officer and a deputy counting officer for each voting station or venue at which the counting of votes is to be conducted.

(2) The Commission may appoint the presiding officer, deputy presiding officer or a voting officer for a voting station as the counting officer or deputy counting officer for that voting station or other venue. 35

Powers and duties of counting officers

32. (1) The counting officer must manage, co-ordinate and supervise the counting of the votes cast at the voting station concerned.

(2) Section 28(1)(b) to (e), (2), (1) and (4), adjusted as contextually may be necessary, applies in respect of a counting officer. 40

(3) The deputy counting officer for a voting station or other venue must act as the counting officer whenever—

(a) the counting officer is absent from duty, or for any reason is temporarily unable to exercise the powers and perform the duties of the counting officer; or 45

(b) the office of counting officer for that voting station or venue is vacant.

Appointment of counters

33. (1) As soon as practicable after an election has been called, the Commission must appoint as many persons as counters as may be necessary for each voting station or venue at which the counting of votes is to be conducted. 50

(2) The Commission may appoint the deputy presiding officer or a voting officer for a voting station as a counter at that voting station or at a venue.

Powers and duties of counters

34. A counter—

- (a) must assist a counting officer in the counting of votes; and
- (b) may exercise the powers and must perform the duties conferred on or assigned to a counter by or under this Act. 5

Appointment of additional persons

35. (1) The Commission may appoint as many **additional** persons as may be necessary to enable the Commission to exercise its powers and **perform** its duties effectively.

(2) A person appointed in terms of subsection (1) may be—

- (a) a natural person; or 10
- (b) an institution, including a juristic person or an organ of State.

Powers and duties of additional persons

36. A person appointed in terms of section 35 may exercise any power and must perform any duty conferred on or assigned to such a **person** by or under this Act.

General provisions concerning appointment of officers 15

37. (1) A person may not be appointed as an officer in an election, or remain in that office, if that **person**—

- (a) is a party or ward candidate contesting the election;
- (b) is an agent in the election; or
- (c) holds political or executive office in a party. 20

(2) (a) An officer exercises the powers and **performs** the duties conferred on or assigned to that officer subject to the directions, control and disciplinary authority of the chief electoral officer.

(b) The chief electoral officer must determine in writing the terms and conditions of appointment of an **officer**, including remuneration **payable** to that officer, if any. 25

(3) The delegation or assignment of a power or duty of an officer does not prevent the Commission or the chief electoral officer from **exercising** that power or performing that duty.

(4) A person may be appointed as an officer only if that person has signed a prescribed declaration of secrecy. 30

(5) Officers must be impartial and exercise their **powers** and perform their duties independently and without fear, favour or prejudice.

(6) An officer may not, whether directly or indirectly, in any manner give support to, or oppose, any party or candidate contesting an **election**, or any of the issues in contention between parties or candidates. 35

(7) An officer may not place in jeopardy that **officer's** independence, or harm the credibility, impartiality, independence or integrity of the Commission, by any membership, association, statement or conduct.

(8) An officer may be removed from office by the chief electoral officer on account of— 40

- (a) misconduct, incompetence or incapacity;
- (b) absence from duty without leave of the chief electoral officer;
- (c) bias;
- (d) a contravention of this section;
- (e) a contravention of the declaration of secrecy: or 45
- (f) any other consideration related to free and fair elections.

(9) An officer may resign from office by giving one calendar month's notice in writing to the chief electoral officer.

(10) The Commission may appoint, in accordance with this Part, a person to **fill** a vacancy caused by the death or the removal or **resignation** from **office** of an officer. 50

General provisions concerning appointment of institutions

38. (1) In this section, unless the context otherwise indicates, "institution" means an institution appointed by the Commission.

(2) (a) An institution and its employees—

- (i) exercise the powers and perform the **duties** delegated or assigned to the institution; and
- (ii) must perform those functions of office subject to the directions, control and disciplinary authority of the chief electoral officer.
- (b) The chief electoral officer must determine in writing the terms and conditions of appointment of an institution, including—
 - (i) the services, facilities and employees to be made available to the Commission by that institution;
 - (ii) the powers and duties delegated or assigned to that institution; and
 - (iii) the remuneration payable to that institution.
- (3) The delegation of a power or assignment of a duty to an institution does not prevent the Commission or the chief electoral officer from exercising that power or performing that duty.
- (4) An institution must ensure that an employee of an institution which exercises a power or performs a duty in terms of this Act is not—
 - (a) a party or ward candidate contesting the election;
 - (b) an agent in the election; or
 - (c) holding a political or executive office in a registered party.
- (5) An institution may not be appointed unless that institution, and each of its employees who will exercise powers and perform duties in terms of this Act, have signed the prescribed undertaking, which must include an undertaking to be bound by a declaration of secrecy.
- (6) Every institution must ensure that it and its employees exercise their powers and perform their duties impartially and independently and without fear, favour or prejudice.
- (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 party or candidate contesting the election, or any of the issues in contention between parties or candidates.
- (8) An institution, and each of its employees who exercises powers and performs duties in terms of this Act, may not place in jeopardy their independence, or harm the credibility, impartiality, independence or integrity of the Commission, by any membership, association, statement or conduct.
- (9) The chief electoral officer may revoke the appointment of an institution on account of that institution's—
 - (a) incapacity or incompetence;
 - (b) bias; or
 - (c) failure to adequately discipline and control its employees exercising a power or performing a duty in terms of this Act.
- (10) An institution must immediately terminate an employee's exercise of any power or performance of any duty in terms of this Act on account of that employee's—
 - (a) misconduct, incompetence or incapacity;
 - (b) absence from duty without leave of the chief electoral officer;
 - (c) bias;
 - (d) contravention of this section;
 - (e) contravention of the declaration of secrecy; or
 - (f) conduct which is in any other way not conducive to free and fair elections.
- (11) An institution may terminate its appointment by giving two calendar months' notice in writing to the chief electoral officer.

Appointment of agents

- 39. (1) A party contesting an election may appoint a number of agents for the election equal to—
 - (a) two agents per voting station; and
 - (b) four agents per venue where the counting procedure is performed at a venue other than the voting station.
- (2) An independent ward candidate may appoint a number of agents for the election equal to—
 - (a) one agent per voting station in the ward; and
 - (b) two agents per venue where the counting procedure is performed at a venue other than the voting station.
- (3) An agent—
 - (a) must be a South African citizen; and

- (b) may not be a party or ward candidate in the election.
- (4) A party or independent ward candidate—
 - (a) appoints a person as an agent by—
 - (i) issuing to that person the prescribed written proof of appointment; and
 - (ii) giving notice of the appointment to the presiding officer or counting officer in the prescribed manner; and
 - (b) revokes the appointment of an agent by—
 - (i) serving on that person the prescribed revocation of appointment; and
 - (ii) giving notice of the revocation of the appointment to the presiding officer or counting officer in the prescribed manner.

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Powers and duties of agents and candidates within a voting station

40. (1) An agent and a party or ward candidate must wear a prescribed identification tag at a voting station or counting venue.

- (2) No party, agent or candidate may within the boundary of a voting station—
 - (a) display or distribute any billboard, poster, placard or pamphlet; 15
 - (b) wear, carry or display any clothing, headwear, footwear or other apparel in such a manner that any writing, picture or sign thereon relating to any party or candidate, other than the prescribed identification tag, is visible;
 - (c) attempt to induce, influence or persuade a person to vote for or not to vote for a particular party or candidate; or 20
 - (d) attempt to induce, influence or persuade a person not to vote.

(3) An agent or candidate may—

- (a) observe proceedings concerning voting, counting and the determination and declaration of results;
- (b) not interfere with the proceedings; 25
- (c) lodge objections with or bring any alleged irregularities to the attention of the presiding officer or counting officer.

(4) The absence of an agent or candidate from a place where any such proceedings are being conducted does not invalidate those proceedings.

(5) Whilst present at any voting station, or other venue where the proceedings referred to in subsection (3) take place, an agent or candidate must comply with any order issued by an officer or a member of the security services acting on the instructions of an officer. 30

CHAPTER 4

OBSERVERS AND VOTER EDUCATION PROVIDERS

Accreditation of observers 35

41. (1) Any organisation may apply to the Commission in accordance with the prescribed procedure to observe an election.

(2) The Commission may require further information in support of an application.

(3) The Commission may accredit an applicant to observe an election after considering the application, any further information provided by the applicant, and whether— 40

- (a) the accreditation of the applicant will promote conditions conducive to a free and fair election; and
- (b) the persons appointed by the applicant will—
 - (i) observe that election impartially and independently of any party or candidate contesting that election; 45
 - (ii) be competent and professional in observing that election; and
 - (iii) subscribe to the Code of Conduct for Accredited Observers governing accredited observers.

(4) The Commission may decide— 50

- (a) to accredit the applicant, in which case, the Commission must—
 - (i) enter the applicant's name in the register of accredited observers;
 - (ii) issue a certificate of accreditation to the applicant stating the period and other conditions of accreditation; and
 - (iii) send the certificate to the applicant; or 55
- (b) not to accredit the applicant, in which case the Commission must advise the unsuccessful applicant in writing of its decision.

(5) If an accredited observer fails to comply to a material extent with the conditions of the accreditation, the Commission may cancel that accreditation.

(6) Any person may inspect the register and copies of the certificates of accredited observers kept at the Commission's head office.

(7) The chief electoral officer must provide a certified copy of, or extract from, that register or a certificate to any person who has paid the prescribed amount.

Powers and duties of accredited observers

42. (1) A person appointed by an accredited observer may, in relation to the election for which that observer is accredited, observe the election and be present at any proceedings concerning voting, the counting of votes, and the determination and declaration of the election results.

(2) Whilst observing an election, a person appointed by an accredited observer must wear a prescribed identification tag.

(3) A person appointed by an accredited observer must comply with any order of an officer or a member of the security services acting on the instructions of an officer. 15

Accreditation of persons providing voter education

43. (1) Any natural or juristic person may apply to the Commission in the prescribed manner to provide voter education

(2) The Commission may require further information in support of an application.

(3) The Commission may accredit an applicant to provide voter education after considering the application, any further information provided by the applicant, and whether— 20

(a) the services provided by the applicant meet the Commission's standards;

(b) the applicant is able to conduct its activities effectively;

(c) the applicant or the persons appointed by the applicant to provide voter education will— 25

(i) do so in a manner that is impartial and independent of any party or candidate that is or may be contesting elections;

(ii) be competent to do so; and

(iii) subscribe to the Code of Conduct for Accredited Voter Education Providers governing persons accredited to provide voter education; and 30

(d) the accreditation of the applicant will promote voter education and conditions conducive to free and fair elections.

(4) Section 38(4), (6) and (7), adjusted as contextually may be necessary, applies to the accreditation of persons providing voter education. 35

CHAPTER 5

VOTING

Officers at voting stations

44. On voting day, each voting station must be staffed by—

(a) the presiding officer and deputy presiding officer appointed for that voting station; and 40

(b) the voting officers appointed for that voting station.

Hours of voting

45. (1) 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 45

(b) remain open for voting until 21:00.

(2) If the Commission determines other voting hours for an election in general or for a particular voting station, it must make the voting hours known in a way that ensures sufficient publicity of those hours.

(3) No person may be admitted to a voting station for the purpose of voting after the voting station has closed for voting. 50

(4) 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 reported for voting at that voting station before the closing time.
- (5) To ensure a free and fair election, the Commission may, on the voting day—
 - (a) temporarily close a voting station for part of the day if it is temporarily impossible to conduct a free and fair election at that voting station; or
 - (b) extend voting hours at a voting station until as late as midnight on that day. 5

Initial procedures

- 46. (1) Immediately before opening a voting station for voting, the presiding officer must show all agents and candidates present that each ballot box to be used at that voting station is empty.
- (2) Immediately after all agents and candidates present at the voting station have assured themselves that a ballot box is empty, the presiding officer must seal that box by means of a seal designed and supplied to the presiding officer for that purpose. 10
- (3) The closing and securing of a ballot box must be done by closing all openings, except for the opening through which the ballot papers must be deposited into the ballot box, and securing the openings tightly enough by means of a seal supplied to the presiding officer for that purpose, so that ballot papers cannot be inserted into or removed from the ballot box through those openings. 15

Voting procedure

- 47. (1) A voter may, subject to section 55(6)(b), vote—
 - (a) in an election only at the voting station in the voting district in which that voter is registered; and 20
 - (b) only once in the election, but, when voting, may cast a vote in each ballot conducted at that voting station.
- (2) A voter may vote at a voting station—
 - (a) on production of that voter's identity document to the presiding officer or a voting officer at the voting station; and 25
 - (b) if that voter's name is on the certified segment of the voters' roll for the voting district for which that voting station is established.
- (3) When a voter produces an identity document to a presiding officer or voting officer, that officer must examine the identity document and determine whether— 30
 - (a) the voter is the person described in that identity document;
 - (b) the voter's name appears on the certified segment of the voters' roll for the voting district concerned; and
 - (c) that voter has not already voted in the election.
- (4) For the purposes of subsection (3)(a), the presiding officer or voting officer may require that the voter's fingerprints be taken. 35
- (5) If the presiding officer or voting officer is satisfied in respect of all the matters mentioned in subsection (3), that officer must—
 - (a) record that the voter is regarded to have voted in the election;
 - (b) mark the hand of the voter if so required in terms of section 50; 40
 - (c) mark the back of the ballot paper or papers to which the voter is entitled with the official stamp for the election; and
 - (d) hand the ballot paper or papers to the voter.
- (6) Once the voter has received a ballot paper or papers marked in terms of subsection (5)(c), the voter must— 45
 - (a) enter an empty voting compartment;
 - (b) mark the ballot paper or papers in secrecy in a way that indicates the party or candidate the voter wishes to vote for;
 - (c) fold the ballot paper or papers to conceal the voter's vote;
 - (d) take the ballot paper or papers to a ballot box and show it to the presiding officer or a voting officer in a way that that officer can see the official stamp affixed in terms of subsection (5)(c); 50
 - (e) place the ballot paper or papers in the ballot box; and
 - (f) without delay leave the voting station.

Assistance to certain voters

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- 48. (1) A person, other than the presiding officer or a voting officer, may assist a voter in voting, but only if—

- (a) the voter requires assistance due to physical disability;
- (b) the voter has requested to be assisted by that person; and
- (c) the presiding officer is satisfied that the person rendering assistance is—
 - (i) at least 18 years old; and
 - (ii) not an agent or a candidate.

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(2) The presiding officer or a voting officer, at the request of a voter who is unable to read, must assist that voter to cast a vote and provide such assistance in the presence of—

- (a) a person appointed by an accredited observer, if available; and
- (b) two agents appointed by different parties or candidates, if available.

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(3) In applying this section, the secrecy of voting contemplated in section 47(6)(b) must be preserved as far as possible.

Issue of new ballot papers

49. (1) If a voter accidentally marks a ballot paper in a way that does not indicate for whom the voter wishes to vote and the ballot paper has not yet been placed in the ballot box, the voter may return that ballot paper to the presiding officer or a voting officer.

(2) Upon receiving the ballot paper from a voter, the presiding officer or voting officer must mark “cancelled” on the back of the ballot paper and file it separately.

(3) The presiding officer or voting officer must then hand the voter a new ballot paper.

Marking of hand

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50. (1) The Commission may decide that in an election the hand of a voter must be marked.

(2) If the Commission decides that the hand of a voter must be marked, it must be done by drawing a short line on the voter’s left thumb and left thumb nail with visible indelible ink.

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(3) If the voter does not have a left thumb or thumb nail or if it is impractical due to injury, disease or any other cause to mark the left thumb and left thumb nail, any one of the left hand fingers and nails must be so marked and, if for similar reasons a left hand finger and nail cannot be marked, a finger and nail of the right hand must be so marked.

(4) If for any of the reasons referred to in subsection (3), no finger and nail of a voter can be marked, the presiding officer must record the voter’s name, address, identity number and the reasons why the voter’s hand could not be marked, on a list kept for that purpose.

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Objections concerning voting

51. (1) At any time before a voter has been handed a ballot paper, an agent or ward candidate may object to that voter being allowed to vote or to vote at the voting station concerned.

(2) An agent or ward candidate, or the voter concerned, may object if the voter is refused a ballot paper.

(3) An agent or ward candidate, or a voter, may object to any conduct, other than that mentioned in subsection (1) or (2), of an officer, an agent, or any other person present at a voting station.

(4) An objection in terms of subsection (1), (2) or (3) must be made in writing on a prescribed form and handed to the presiding officer concerned.

(5) The presiding officer must summarily investigate the factual circumstances underlying the objection, and may for that purpose also direct verbal enquiries to anyone that may be able to assist.

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(6) After having investigated the objection, the presiding officer must—

- (a) decide the objection;
- (b) record the decision on the written objection; and
- (c) verbally inform the objector and any other parties involved in the objection of the decision.

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(7) The presiding officer must keep a written record of each objection and decision taken in terms of this section.

Sealing of full ballot boxes

- 52. (1)** The presiding officer, in the presence of any agents and candidates present, must—
- (a) as soon as a ballot box is full, seal the ballot box by closing the opening of the ballot box through which the ballot papers were put into the ballot box with a seal supplied by the Commission to the presiding officer for that purpose; 5
 - (b) after the last vote has been cast, similarly seal the last ballot box and any unused ballot boxes; and
 - (c) allow the agents present, if they so wish, to affix their seals thereto. 10
- (2) A sealed ballot box must remain— 10
- (a) sealed until opened for the counting of votes; and
 - (b) in the voting station, within sight of anyone present, until the counting of the votes commences or, if the votes are not to be counted at that voting station, until transported to the counting officer,

Completion of ballot paper statement and sealing of voting materials 15

- 53.** As soon as practicable after a voting station has been closed for voting, the presiding officer, in the presence of any agents and candidates present, must—
- (a) complete a ballot paper statement on a prescribed form reflecting the number of—
 - (i) ballot boxes entrusted to that presiding officer; 20
 - (ii) used ballot boxes;
 - (iii) unused ballot boxes;
 - (iv) ballot papers for each ballot entrusted to that presiding officer;
 - (v) issued ballot papers for each ballot;
 - (vi) unissued ballot papers for each ballot; and 25
 - (vii) cancelled ballot papers in each ballot;
 - (b) seal each unused ballot box entrusted to that presiding officer;
 - (c) seal in separate containers—
 - (i) the certified segment of the voters' roll for the voting district;
 - (ii) the unused ballot papers entrusted to that presiding officer; 30
 - (iii) the cancelled ballot papers; and
 - (iv) the written record, as required by section 51(7), of any objections concerning voting; and
 - (d) allow the agents present, if they so wish, to affix their seals to the items mentioned in paragraphs (b) and (c). 35

Voting procedure for mobile voting stations

- 54. (1)** If the Commission decides to use only a mobile voting station for the election in any voting district, the voting procedures set out in this Chapter, adjusted as may contextually be necessary, must be applied.
- (2) Voting at a mobile voting station at a particular location must continue at that location until every voter has voted who— 40
- (a) is entitled to vote in the voting district; and
 - (b) had reported for voting at that location of the mobile voting station before the stopping time at that location expired,
- (3) If a voting station and a mobile voting station are used in a voting district, the voting and counting procedures set out in this Chapter and Chapter 6 must be applied, adjusted as follows: 45
- (a) The mobile voting station must be managed as if it is an integral part of the voting station;
 - (b) the voting material necessary for the election at the mobile voting station, including a certified voters' roll for the voting district concerned, must be supplied to the presiding officer of the voting station as an integral part of that voting station's material and that presiding officer, in turn, must supply the presiding officer of the mobile voting station with the necessary voting material and obtain a receipt from that officer; 50 55
 - (c) the presiding officer of the mobile voting station must deliver to the counting officer of the voting station the items mentioned in section 53;

- (d) the counting officer of the voting station must open **all** the ballot boxes used in the voting station and in the mobile voting station, mix the ballot papers from **all** the boxes and then proceed with the sorting of **ballot** papers, the counting of the votes and the determination of results of the count for the voting station.

Special votes

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55. (1) The Commission must allow a voter to apply for a special vote at a voting station in the voting district for which that person is registered as a voter, but only if that person cannot vote at that voting station on voting day due to that **person's**—

- (a) physical infirmity or disability; or
- (b) absence from that voting district while serving as an officer in the election concerned, or while on duty as a member of the security services.

(2) A person referred to in—

- (a) subsection (1)(a), may **apply** for a special vote by delivering or causing to be delivered an **application** on a prescribed form to the office of the Commission's local **representative** by not later than a date stated in the timetable for the election; or
- (b) subsection (1)(b), may **apply** for a special vote by submitting in person an application on a **prescribed** form to the presiding officer for that voting district at the office of that officer during the relevant hours and on a date or dates stated in the election **timetable**.

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(3) An application received by the Commission in terms of subsection (2) must be delivered to the presiding officer of the relevant voting station by not later than the date stated in the election timetable.

(4) The presiding officer, or a **voting** officer designated by the presiding officer, must consider every application received **and**—

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- (a) approve the application if satisfied that the **applicant**—
 - (i) is registered as a voter on the certified segment of the voters' roll for the voting district mentioned in the application; and
 - (ii) cannot vote at a voting station for that voting district on voting day due to physical **infirmity** or disability or due to absence from the voting district while **serving** as an officer in the election or on duty as a member of the security services; or
- (b) reject the application if **not** so satisfied.

(5) If the application is rejected the applicant must be notified of the rejection on a prescribed form which must be handed to the applicant or, if the voter is not present in person, sent to the applicant's address within the voting district as specified in the application, by not later than two days before the voting day.

(6) If the application is approved, the applicant **must**—

- (a) **be** allowed to vote at the voting station for the voting district mentioned in the application on a date or **dates** stated in the election timetable; or
- (b) if subsection (1)(a) applies and the applicant so requires, be visited on a date or dates stated in the **election timetable** by at least two voting officers, at the applicant's address within the voting district specified in the application, in order to allow the applicant to vote at that address.

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(7) On production of an **identity** document and provided the voting officer or voting officers are satisfied that the **applicant** is the person described in that identity document, the applicant must be handed a ballot paper, marked on the back with the official stamp, for each ballot in which the **applicant** is entitled to vote in that election.

(8) The applicant's hand **must be marked** if so required in terms of section 50.

(9) The applicant must be **allowed** to mark the ballot paper in secret and to place and seal it in an unmarked envelope which in turn is placed and sealed in another envelope which must be marked on the outside with the applicant's name and identity number.

(10) If an applicant is visited at an address within the voting district, the voting officers must take the marked envelope to the **office** of the presiding officer.

(11) The presiding officer must insure that—

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- (a) the applicant's name on the voters' roll is marked with the letters "SV" to indicate that the **applicant** has cast a special vote; and
- (b) the envelope is placed **and** securely kept in a sealed ballot box for special votes.

(12) The presiding officer must keep a written record of all applications for special votes on a prescribed form.

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(13) On voting day, the **ballot box** for special votes must be opened and each marked envelope be checked and compared with the market voters' roll, the applications for special votes and the records of applications for special votes.

(14) If **no** irregularity is found that renders the special vote unacceptable, the marked envelope must be opened, the unmarked envelope inside be removed and placed 5 unopened in the ordinary ballot box then in use in the voting station.

General

56. **Subject to section 55, the Commission may not make any special arrangements whereby a person is allowed to vote on any day other than voting day or at any place other than the voting station** or a mobile voting station established for the voting district 10 in which that person is registered as a voter.

CHAPTER 6

COUNTING

Commencement of counting procedures

57. (1) The counting officer must ensure that the procedures provided for in this Chapter commence as soon as practicable after the voting station is closed for voting and continue uninterrupted until they are completed.

(2) The procedures provided for in this Chapter may be suspended only with the consent of the Commission and, if they are suspended, the counting officer must ensure the safe-keeping of all the voting materials entrusted to the counting officer until the 20 counting of votes has been completed.

Place and time of counting of votes

58. (1) Votes must be counted at the voting station at which those votes were cast, except when—

- (a) the voting station is a mobile voting station; or 25
- (b) in the interest of ensuring a free and fair election, the Commission determines that those votes be counted at another counting venue.

(2) If the votes are to be counted at the voting station at which those votes were cast and if the counting officer for that voting station is a person other than the presiding officer for that voting station, the presiding officer must deliver to the counting officer the 30 items mentioned in section 53.

(3) If the votes are not to be counted at the voting station at which those votes were cast, the presiding officer must deliver the following items mentioned in section 53 to the counting officer of a counting venue determined by the Commission:

- (a) The ballot paper statement; 35
- (b) the sealed, used ballot boxes;
- (c) the sealed, unused ballot boxes; and
- (d) the sealed containers.

Verification procedure

59. (1) After receipt of the items mentioned in section 58(3), the counting officer 40 must—

- (a) examine whether the seals are intact on these items; and
- (b) allow any agents or ward candidates present to examine whether the seals are intact.

(2) After examining the seals, the counting officer must open all the sealed ballot 45 boxes and containers and verify the information on the form completed by the presiding officer in terms of section 53(a) by comparing it with —

- (a) the number of used ballot boxes received;
- (b) the number of unused ballot boxes received
- (c) the number of containers received; and 50
- (d) the contents of those boxes and containers.

(3) The counting officer must deal with any irregularities and discrepancies found when complying with subsection (2) in the following manner:

- (a) The counting officer must immediately call for an explanation by the presiding officer who delivered the material;
- (h) the counting officer and the presiding officer must together attempt to resolve the irregularities and discrepancies;
- (c) the agents and ward candidates present in the counting station must— 5
 - (i) be informed immediately about the irregularities and discrepancies;
 - (ii) as far as possible be present at all discussions between the counting officer and the presiding officer; and
 - (iii) be invited to contribute to the discussion and the search for solutions;
- (d) if any of the material appears to have been unlawfully tampered with or is I () missing, the counting officer must call in the assistance of a member of the security forces to investigate the matter and to assist in the search for any missing material.
- (4) The counting officer must—
 - (a) keep a written record of— 15
 - (i) the nature of each **irregularity and discrepancy**;
 - (ii) **the manner in** which those irregularities and discrepancies were dealt with; and
 - (iii) the explanations offered by the presiding officer and any of the agents or ward candidates; and 20
 - (b) submit a full report on the matters referred to in paragraph (a) to the chief electoral officer as soon as possible.

Objections and appeals concerning verification

60. (1) At any time before the counting of votes commences, an agent or ward candidate may object to any alleged irregularity or inaccuracy in the verification 25 procedure performed by the counting officer.

(2) The objection must be lodged with the counting officer in writing.

(3) Section 5 1(5) to (7), adjusted as may contextually be necessary, applies to the objection.

Counting of votes 30

61. (1) The counting officer must open all the used sealed ballot boxes.

(2) The counting of votes must be conducted in accordance with a prescribed procedure.

Rejection of ballot papers

62. (1) The counting officer must reject a ballot paper— 35

- (a) that indicates the identity of the voter;
- (b) on which a vote is cast for more than one party or for more than one ward candidate;
- (c) that is unmarked;
- (d) that is marked in such a way that it is not reasonably possible to determine the 40 voter's choice;
- (e) that does not bear the official mark on the back of the ballot paper; or
- (f) that is not an official ballot paper.

(2)-The counting officer must—

- (a) mark "rejected" on the back of each rejected ballot paper; and 45
- (b) file the rejected ballot papers in each ballot separately.

(3) If a counting officer's acceptance or rejection of a ballot paper is disputed by an agent or ward candidate, the counting officer **must**—

- (a) mark "disputed" on the back of that ballot paper;
- (b) cause to be counted, the accepted ballot papers that are disputed; and 50
- (c) file the rejected ballot papers that are disputed separately.

Objections concerning sorting of ballot papers and counting of votes

63. (1) An agent or ward candidate may object to an alleged irregularity in the sorting of ballot papers or inaccuracy in the counting of the votes.

(2) The objection must be made to the counting officer in writing at any stage before the counting officer has completed the form mentioned in section 64(1).

(3) The counting officer must summarily investigate the factual circumstances relating to the objection, and may for that purpose also direct verbal enquiries to any person that may be able to assist.

(4) The counting officer **must**—

(a) decide the objection and the question whether to order a recount;

(b) record the decision on the written objection; and

(c) verbally inform the objector and any other parties involved of the decision.

(5) If the counting officer orders a recount, the counting officer must determine and record the result of the count afresh.

(6) The counting officer must keep a written record in the prescribed manner of each objection and each decision in terms of this section.

Procedure concerning results and voting materials

64. (1) The counting officer must complete a prescribed form reflecting the result of the count in respect of each ballot conducted at the voting station.

(2) Once the counting officer has complied with subsection (1), the counting officer **must**—

(a) forward the result in respect of each ballot conducted at the voting station, to the Commission at the office of the Commission's local representative for the municipality concerned;

(b) seal in separate containers the ballot paper statement referred to in section 53(a) and each of the items mentioned in section 53(c) and the written record of any objections in terms of section 63(6); and

(c) deliver the sealed containers to the Commission at the office of the Commission's local representative.

Determination and declaration of result of election

65. On receipt of all the results of the count in respect of all ballots conducted at the voting stations within the municipality, the Commission **must**—

(a) determine the result of the election in the municipality;

(b) record the result on a prescribed form; and

(c) declare the result in public.

Objections material to declared results of election

66. (1) An interested party may lodge an objection concerning any aspect of an election that is material to the declared result of the election with the Commission by serving, by not later than 17:00 on the second day after voting day, at its office in Pretoria a written notice **containing**—

(a) a reference to the election concerned;

(b) the full name and address of the objector;

(c) the postal address and telephone number where the objector can be contacted;

(d) the interest of the objector in the matter;

(e) details of the objection and the aspect of the election concerned;

(f) **detailed reasons** for the objection;

(g) the relief sought;

(h) a list of any supporting documents accompanying the notice of objection; and

(i) proof of service of copies of the notice and **annexures** on other parties involved in the objection.

(2) The Commission, on good cause shown, may condone a late objection.

(3) In considering and deciding the objection, the Commission **may**—

(a) investigate the **factual** basis of the objection;

(b) afford interested parties an opportunity to make written or verbal submissions;

(c) call for written or verbal submissions from other persons or parties;

(d) **call upon the objecting party to submit further information or arguments in writing or verbally; and**

(e) **conduct a hearing on the objection.**

(4) The Commission **must**—

- (a) **consider the objection and decide it within three days after it was served on the Commission, and either—**
 - (i) reject the objection;
 - (ii) amend the declared result of the election; or
 - (iii) rescind the declared result of the election; and
- (b) immediately notify the objector and any other parties involved in the objection, of the decision.

(5) An objector or other party involved in the objection who feels aggrieved by the decision of the Commission may, within three days of the Commission's decision, appeal to the Electoral Court in terms of section 20 of the Electoral Commission Act and 10 the Rules of the Electoral Court.

(6) The Electoral Court must—

- (a) consider the appeal and either—
 - (i) reject the appeal;
 - (ii) amend the decision of the Commission; or
 - (iii) make another appropriate order; and
- (b) notify the parties to the appeal of its decision.

(7) The declared result of an election is not suspended by an appeal to the Electoral court.

CHAPTER 7

20

GENERAL PROVISIONS

Part 1: Prohibited conduct

Contravention of Code

67. No person or party bound by the Code may contravene or fail to comply with a provision of the Code.

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Undue influence

68. (1) No person may—

- (a) compel or unlawfully persuade any person—
 - (i) to register or not to register as a voter;
 - (ii) to vote or not to vote;
 - (iii) to vote or not to vote for any party or candidate;
 - (iv) to support or not to support any party or candidate; or
 - (v) to attend and participate in, or not to attend and participate in, any political meeting, match, demonstration or other political event;
- (b) interfere with the independence or impartiality of the Commission, any member, employee or officer of the Commission, or the chief electoral officer;
- (c) prejudice any person because of any past, present or anticipated performance of a function in terms of this Act;
- (d) advantage, or promise to advantage, a person in exchange for that person not performing a function in terms of this Act;
- (e) prevent any of the following persons from gaining reasonable access to voters, whether in a public or private place:
 - (i) any representative of a party or of a candidate;
 - (ii) any candidate in an election;
 - (iii) any member, employee or officer of the Commission;
 - (iv) the chief electoral officer;
 - (v) any person appointed by an accredited observer; or
 - (vi) any person accredited to provide voter education; or
- (f) unlawfully prevent the holding of any political meeting, march, demonstration or other political event.

(2) Subject to this Act, no person may prevent anyone from exercising a right conferred by this Act.

(3) No person, knowing that another person is not entitled to be registered as a voter, may—

- (a) persuade that other person that that other person is entitled to be registered as a voter; or

(b) **represent to anyone else that that** other person is entitled to be registered as a voter.

(4) No **person**, knowing that another person is not entitled to vote, **may—**

(a) assist, compel or persuade that other person to vote; or

(b) represent to anyone else that that other person is entitled to vote. 5

Impersonation

69. No person—

(a) **may** apply for a ballot paper at a voting station in the name of another person, whether living, dead or fictitious;

(b) who is not entitled to vote in an election or at a voting station, may vote in that election or at that voting station;

(c) may cast more votes than that person is entitled to; or

(d) **may impersonate—**

(i) any representative of a party or of a candidate;

(ii) any candidate; 15

(iii) any member, employee or officer of the Commission;

(iv) the chief electoral officer;

(v) any person appointed by an accredited observer; or

(vi) any person accredited to provide voter education.

Intentional false statements 20

70. (1) No person, when required in terms of this Act to make a statement, may make the statement—

(a) knowing that it is false; or

(b) without believing on reasonable grounds that the statement is true.

(2) No person may publish any false information with the intention of— 25

(a) disrupting or preventing an election;

(b) creating hostility or fear in order to influence the conduct or outcome of an election; or

(c) influencing the conduct or outcome of an election.

Infringement of secrecy 30

71. (1) No **person may interfere with a voter's right to secrecy** when casting a vote.

(2) Except as permitted in terms of this Act, no person may—

(a) disclose any information about voting or the counting of votes; or

(b) open any **ballot box** or container sealed in terms of this Act, or break its seal.

Prohibitions concerning voting and election materials 35

72. (1) Except as permitted in terms of this Act, no person **may—**

(a) print, manufacture or supply any voting or election material;

(b) remove or conceal any voting or election material;

(c) damage or destroy any voting or election material; or

(d) use the voters' roll or any voting or election material for a purpose other than 40 an election purpose.

(2) The chief electoral officer may **authorise—**

(a) the printing, manufacture or supply of any voting or election material; or

(b) the removal or destruction of any voting or election material.

Prohibitions concerning placards and billboards during election 45

73. (1) No person may deface or unlawfully remove any billboard, placard or poster published by a party or candidate for the purpose of an election.

(2) On the voting day, no party or candidate or supporter of a party or candidate may within the boundaries of a voting station put up, display or distribute any billboard, placard, pamphlet or poster or any other item intended to affect the outcome of the 50 election.

Obstruction of, or non-compliance with, directions of Commission, chief electoral officer and other officers

74. (1) *No person may refuse or fail to give effect to a lawful direction, instruction or order of the Commission, or a member, employee or officer of the Commission. or the chief electoral officer.* 5

(2) A person may not obstruct or hinder the Commission, or a person mentioned in subsection (1), or a person appointed by an accredited observer, in the exercise of their powers or the performance of their duties.

Temporary obligations

75. (1) (a) This section is applicable only from the date on which the notice calling an election is published to the date the result of the election is declared. 10

(b) For the purposes of this section, “printed matter” means any billboard, placard, poster or pamphlet.

(2) Any printed matter intending to affect the outcome of an election must state clearly the full name and address of the printer and publisher. 15

(3) The publisher of any publication must head an article in that publication with the word “advertisement” if that article—

(a) originates from—

(i) a party, a person who holds political or executive office in that party, or any member or supporter of that party; or 20

(ii) a candidate contesting an election or supporter of that candidate; and

(b) is inserted in the publication on the promise of payment to the publication.

(4) No person may print, publish or distribute any printed matter or publication that does not comply with this section.

Prohibition on certain political activities 25

76. On voting day no person may—

(a) hold or take part in any political meeting, march, demonstration or other political event; or

(b) engage in any political activity, other than casting a vote, in the area within the boundary of a voting station. 30

Prohibition on publication of exit polls

77. During the prescribed voting hours for an election, no person may print, publish or distribute the result of any exit poll taken in that election.

Part 2: Enforcement

Institution of and intervention in civil proceedings by chief electoral officer 35

78. (1) Subject to this Act and any other law, the chief electoral officer, acting on behalf of the Commission, may institute civil proceedings before a court, including the Electoral Court, to enforce a provision of this Act or the Code.

(2) The chief electoral officer may intervene in any civil proceedings if the Commission has a legal interest in the outcome of those proceedings. 40

Jurisdiction and powers of Electoral Court

79. (1) The Electoral Court has final jurisdiction in respect of all electoral disputes and complaints about infringements of the Code, and no decision or order of the Electoral Court is subject to appeal or review.

(2) If a court having jurisdiction by virtue of section 20(4)(b) of the Electoral Commission Act finds that a person or party has contravened a provision of Part I of this Chapter, it may in the interest of a free and fair election impose any appropriate penalty or sanction on that person or party, including— 45

(a) a formal warning;

(b) a fine not exceeding R200 000: 50

- (c) the **forfeiture of any deposit paid by that person** or party in terms of section 14(1)(b) or 17(2)(d);
 - (d) an order prohibiting that person or party from—
 - (i) using any public media;
 - (ii) holding any public meeting, demonstration, march or other political event;
 - (iii) entering any voting district for the purpose of canvassing voters or for any other election purpose;
 - (iv) erecting or publishing billboards, placards or posters at or in any place;
 - (v) **publishing or distributing any campaign literature;**
 - (vi) **electoral advertising; or**
 - (vii) receiving any funds from the State or from any foreign sources;
 - (e) an order imposing limits on the right of that person or party to perform any of the activities mentioned in paragraph (d);
 - (f) an order excluding that person or any agents of that person or any candidates or agents of that party from entering a voting station;
 - (g) an order reducing the number of votes cast in **favour** of that person or party;
 - (h) an order disqualifying the candidature of that person or of any candidate of that party; or
 - (i) an order canceling the registration of that party.
- (3) Any penalty or sanction provided for in this section will be in addition to any penalty provided for in Part 3 of this Chapter,

Part 3: Offences and penalties

Offences

80. Any person who contravenes a provision of Part I of this Chapter is guilty of an offence.

Penalties

- 81.** Any person convicted of any offence in terms of—
- (a) section 67, 68(1)(b), (c) or (d), 70(2), 71, 72 or 74, is liable to a fine or to imprisonment for a period not exceeding 10 years;
 - (b) section 68(1)(u), (e) or (f), (2), (3) or (4), 69, 70(1), 73, 75(4), 76 or 77, is liable to a fine or to imprisonment for a period not exceeding five years.

Part 4: Other general provisions

Access to private places

82. (1) Members, employees and officers of the Commission have access to private places if that access is necessary for the exercise of a power or the performance of a duty conferred or 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 **such private** place have been made and the proposed entry onto such place may only take place during the time of the election.

Ownership of voting and election materials, and disposal

83. (1) The Commission is regarded as owning all voting and election materials used or provided by it in an election.

(2) Unless the Electoral Court orders otherwise, the Commission may dispose of the voting and election materials **used** in a particular election after six months after the date on which the final result of the election was declared, in the manner directed by the Commission.

Return or forfeiture of deposit

84. (1) Subject to section 79(2)(c), the Commission must refund to a party or a ward candidate any deposit paid by it in terms of sections 14(1)(b) or 17(2)(d) if—

- (a) the party is allocated at least one seat in the municipal council the election of which that party contested; or
- (b) the ward candidate received at least 10 per cent of the total number of votes cast in the ward election.

(2) A deposit that is not refundable in terms of subsection (1) is forfeited (o the 5
National **Revenue Fund**.

Effect of certain irregularities

85. (1) A mistake in the certified segment of the voters' roll referred to in section 6 or a party list submitted by a party in terms of section 14 does **not invalidate that segment of the voters' roil or that party list.** 10

(2) An election may not be set aside because of a mistake in the conduct of that election or a failure to comply with this Act, unless the mistake or failure materially affected the result of the election.

Inspection and copying of documents

86. Where this Act requires that documents be made known, or made available for 15
inspection or copying, the Commission must endeavour to also make known or make available those documents by way of electronic technology.

Prohibition on certain strikes and lockouts

87. (1) The service provided by the Commission from the date the notice calling an election is published to the date the result of the election is declared, is an essential 20
service for the purpose of the Labour Relations Act, 1995 (Act No. 66 of 1995).

(2) Strikes and lockouts on voting day by employees and employers in the public transport or telecommunication sector are prohibited and are not protected in terms of Chapter IV of the Labour Relations Act, 1995.

Part 5: Codes of conduct and regulations 25

Electoral Code of Conduct

88. The Electoral Code of Conduct binds every party contesting an election and every party and ward candidate.

Other Codes

89. The Commission may by notice in the *Government Gazette*— 30
- (a) compile and issue any other Code in order to promote free, fair and orderly elections; and
 - (b) amend or replace any Code issued under paragraph (a),

Regulations

90. (1) The Commission must make regulations regarding any matter that must be 35
prescribed in terms of this Act.

- (2) The Commission may make regulations regarding any matter—
- (a) that may be prescribed under this Act; or
 - (b) that it considers necessary or expedient in order to achieve the objects of this Act. 40

(3) Regulations made in terms of this section may prescribe a fine or a period of imprisonment not exceeding one year for a contravention of or a failure to comply with a provision of the regulations.

(4) The Commission must publish any regulations made in terms of this section in the *Government Gazette*. 45

Part 6: Delegation of powers and assignment of duties by Commission and chief electoral officer

Delegation of powers and assignment of duties by Commission

91. (1) The Commission may—

- (a) delegate any of the Commission's powers in terms of this Act (excluding the powers contained in sections 89 or 90 or this section) or any other law, to a member, employee or officer of the Commission; or
- (b) instruct a member, employee or officer of the Commission to perform any of the Commission's duties in terms of this Act or any other law.

(2) A delegation or assignment in terms of subsection (1)—

- (a) is subject to any limitations and conditions the Commission may impose; and
- (b) does not prevent the Commission from exercising or performing the delegated power or assigned duty.

(3) A delegation or assignment in terms of subsection (1) to the chief electoral officer may authorise that officer to sub-delegate the delegated power or reassign the assigned duty to any other employee or officer of the Commission.

(4) The Commission may vary, confirm or revoke any decision taken in consequence of a delegation or subdelegation under this section, provided that no variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

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Delegation of powers and assignment of duties by chief electoral officer

92. (1) The chief electoral officer may—

- (a) delegate any of the powers conferred on the chief electoral officer by this Act or any other law, to another employee or officer of the Commission; or
- (b) instruct an employee or officer of the Commission to perform any of the duties assigned to the chief electoral officer by this Act or any other law.

(2) A delegation or assignment in terms of subsection (1)—

- (a) is subject to any limitations and conditions the chief electoral officer may impose; and
- (b) does not prevent the chief electoral officer from exercising or performing the delegated power or assigned duty.

(3) The chief electoral officer may vary, confirm or revoke any decision taken in consequence of a delegation or subdelegation under this section, provided that no variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

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Decision of objections and appeals

93. Whenever the Commission, the chief electoral officer or an officer is required in terms of this Act to decide an objection or an appeal, the Commission or that person may attempt to resolve the issue that is the subject of the objection or appeal, through conciliation.

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Part 7: Miscellaneous

Amendment of laws

94. The laws specified in Schedule 2 are hereby amended to the extent set out in the third column of the Schedule,

Application of Local Government Transition Act, 1993

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95. The Local Government Transition Act, 1993 (Act No. 209 of 1993), does not apply to a municipal election held after the expiry of the term of municipal councils referred to in section 93(3) of the Municipal Structures Act.

Act binds State

96. This Act binds the State except in so far as criminal liability is concerned.

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Short title

97. This Act is called the Local Government: Municipal Electoral Act, 2000.

Schedule 1
(Sections 1 and 88)

ELECTORAL CODE OF CONDUCT

Purpose of Code

1. The purpose of this Code is to promote conditions that are conducive to free and fair elections, including—

- (a) tolerance of democratic political activity; and
- (b) free political campaigning and open public debate.

Promotion of Code

2. Every party and every candidate must—

- (u) promote the purpose of the Code when conducting an election;
- (b) publicise the Code widely in any election campaigns; and
- (c) promote and support efforts in terms of this Act to educate voters.

Compliance with Code and electoral laws

3. Every party and every candidate must—

- (a) comply with this Code;
- (b) instruct—
 - (i) in the case of a party, its candidates, persons who hold political or executive office in the party, and its representatives, members and supporters, to comply with this Code and any applicable electoral laws;
 - or
 - (ii) in the case of a ward candidate, the representatives and supporters of the candidate to comply with this Code and any applicable electoral laws;
- (c) take all reasonable steps to ensure—
 - (i) in the case of a party, that its candidates, persons who hold political or executive office in the party, and its representatives, members and supporters, comply with this Code and any applicable electoral laws; or
 - (ii) in the case of a ward candidate, that the representatives and supporters of the candidate comply with this Code and any applicable electoral laws.

Public commitment

4. (1) Every party and every candidate must—

- (a) publicly state that everyone has the right—
 - (i) to freely express their political beliefs and opinions;
 - (ii) to challenge and debate the political beliefs and opinions of others;
 - (iii) to publish and distribute election and campaign materials, including notices and advertisements;
 - (iv) to lawfully erect banners, billboards, placards and posters;
 - (v) to canvass support for a party or candidate;
 - (vi) to recruit members for a party;
 - (vii) to hold public meetings; and
 - (viii) to travel to and attend public meetings; and
- (b) publicly condemn any action that may undermine the free and fair conduct of elections.

(2) Every party and every candidate must accept the result of an election or alternatively challenge the result in a court.

Duty to co-operate

5. Every party and every candidate must liaise with other parties 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 contesting the election.

Role of women

6. Every party and every candidate must—

- (a) respect the right of women to communicate freely with parties and candidates;
- (b) facilitate the full and equal participation of women in political activities;
- (c) ensure the free access of women to all public political meetings, marches, demonstrations, rallies and other public political events; and
- (d) take all reasonable steps to ensure that women are free to engage in any political activities.

Role of Commission

7. Every party and every candidate must—

- (a) recognise the authority of the Commission in the conduct of an election;
- (b) assure voters of the Commission's impartiality;
- (c) give effect to any lawful direction, instruction or order of the Commission, or a member, employee or officer of the Commission, or the chief electoral officer;
- (d) establish and maintain effective lines of communication with—
 - (i) the Commission; and
 - (ii) other parties contesting the election;
- (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 public political events of that party or candidate;
- (f) co-operate in any investigation of the Commission;
- (g) take all reasonable steps to ensure—
 - (i) the safety of members, employees and officers of the Commission, and the chief electoral officer, in the exercise of any power or the performance of any duty conferred or assigned by or under this Act;
 - (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 candidate; and
 - (iii) that representatives of that party or candidate attend meetings of any party liaison committee or other forum convened by the Commission.

Role of media

8. Every party and every candidate—

- (a) must respect the role of the media before, during and after an election conducted in terms of this Act;
- (b) may not prevent access by members of the media to public political meetings, marches, demonstrations and rallies; and
- (c) must take all reasonable steps to ensure that journalists are not subjected to harassment, intimidation, hazard, threat or physical assault by any of their representatives or supporters,

Prohibited conduct

9. (1) No party or candidate may—

- (a) use language or act in a way that may provoke—
 - (i) violence during an election; or
 - (ii) the intimidation of candidates, members of parties, representatives or supporters of parties or candidates, or voters;
- (b) publish false or defamatory allegations in connection with an election in respect of—
 - (i) a party, its candidates, representatives or members; or
 - (ii) a ward candidate or that candidate's representatives;
- (c) plagiarise the symbols, colours or acronyms of other parties; or
- (d) discriminate on the grounds of race, ethnicity, sex, gender, class or religion in connection with an election or political activity.

(2) No person may—

- (a) offer any inducement or reward to another person—
 - (i) to join or not to join a party;

- (ii) to attend or not to attend a public meeting, march, demonstration, rally or other public political event;
- (iii) to vote or not to vote, or to vote or not to vote in any particular way; or
- (iv) to refuse a nomination as a candidate or to withdraw as a candidate; or
- (b) carry or **display** arms or **weapons**—
 - (i) at a political meeting; or
 - (ii) in any march, demonstration, rally or other public political event;
- (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 candidate;
- (d) deface or unlawfully remove or destroy the billboards, placards, posters or any other election materials of a party or candidate; or
- (e) abuse a position of power, privilege or influence, including parental, patriarchal, traditional or **employment authority** to influence **the conduct** or outcome of an election.

Additions to Code

10. The Commission may by regulations made in terms of section 90 add provisions to this Code.

Schedule 2
(Section 94)

AMENDMENT OF LAWS

No. and year of aw	Short title	Extent of amendment
4ct51 of 1996	Electoral Commission Act, 1996	<p>Amendment of the Electoral Commission Act, 1996—</p> <p>(a) by the insertion under the “ARRANGEMENT OF SECTIONS” after section 15 of the following expression:</p> <p style="padding-left: 40px;">“15A. Registration of parties for municipal elections”; and</p> <p>(b) by the insertion after section 15 of the following section:</p> <p style="padding-left: 40px;">“Registration of parties for municipal elections</p> <p style="padding-left: 40px;">15A. (1) The Chief Electoral Officer shall, upon application by a party in the prescribed form, register such party in respect of a particular municipality.</p> <p style="padding-left: 40px;">(2) No party not represented in a municipal council in that municipal area or areas may be so registered unless the application is accompanied by—</p> <p style="padding-left: 40px;">(a) that party’s deed of foundation;</p> <p style="padding-left: 40px;">(b) the prescribed amount, if any; and</p> <p style="padding-left: 40px;">(c) proof of publication in a newspaper circulating in that municipal area of the prescribed notice of application.</p> <p style="padding-left: 40px;">(3) A party registered for a particular municipality or municipalities, may under such registration only participate in elections for councils for those municipalities.</p> <p style="padding-left: 40px;">(4) Subsections (1), (2), (3) and (4) of section 15 do not apply to a registration under this section.”.</p>
Act 73 of 1998	Electoral Act, 1998	<p>Amendment of the Electoral Act, 1998, by the addition to section 7 of the following subsection:</p> <p style="padding-left: 40px;">“(3)(a) A person is regarded to be ordinarily resident at the home or place where that person normally lives and to which that person regularly returns after any period of temporary absence.</p>

No. and year of law	Short title	Extent of amendment
		<p>(b) For the purpose of registration on the voters' roll a person is not regarded to be ordinarily resident at a place where that person is lawfully imprisoned or detained, but at the last home or place where that person normally lived when not imprisoned or detained."</p>
Act 117 of 1998	Local Government: Municipal Structures Act, [1998]	<p>Amendment of the Municipal Structures Act, 1998—</p> <p>(a) by the substitution in section 1 for the definition of 'party' of the following definition:</p> <p>" 'party' means a party registered in terms of the Electoral Commission Act, 1996 (Act No. 51 of 1996);";</p> <p>(b) by the insertion in section 12 after paragraph (e) of subsection (3) of the following paragraph:</p> <p>"(eA) in the case of a district municipality, the number of council lors, determined in terms of section 23, to—</p> <p>(i) proportionally represent parties;</p> <p>(ii) be appointed by each of the local councils within the district municipality to directly represent each local municipality; and</p> <p>(iii) proportionally represent parties from each district management area within that district municipality;";</p> <p>(c) by the deletion in section 24 of the words "or dates" wherever they occur;</p> <p>(d) by the substitution in paragraph (a) of subsection (1) of section 25 for the expression "Electoral Act" of the expression "Electoral Commission Act, 1996, (Act No. 51 of 1996)";</p> <p>(e) by the substitution in paragraph (b) of subsection (1) of section 25 for the word "development" of the word "management";</p>

No. and year o law	Short title	Extent of amendment
		<p><i>f)</i> by the deletion in section 25 in the words preceding paragraph <i>(a)</i> of subsection (3) of the words “or dates”;</p> <p><i>g)</i> by the deletion in paragraph <i>(a)</i> of subsection (3) of section 2501 the words “or last voting day”;</p> <p><i>h)</i> by the deletion in subsection (4) of section 25 of the words “or dates” wherever they occur;</p> <p><i>i)</i> by the substitution in paragraph <i>(f)</i> of section 27 for subpara- graphs (i) and (ii) of the follow- ing subparagraphs:</p> <p>“(i) was nominated by a party as a candidate in the ward elec- tion and ceases to be a member of that party; or</p> <p>(ii) was not nominated by a party as a candidate in the ward election and becomes a member of a party.”;</p> <p><i>j)</i> by the substitution in item I of Schedule I for the definition of “independent ward councillor” of the following definition:</p> <p>“ ‘independent ward councillor’ means a councillor who was not nominated by a party as a candi- date in a ward election.”;</p> <p><i>k)</i> by the substitution in item I of Schedule I for the definition of “ward candidate representing a party” of the following defini- tion:</p> <p>“ ‘ward candidate representing a party’ means a ward candidate who was nominated by a party as a candidate in a ward election.”;</p> <p><i>l)</i> by the substitution for item 10 of Schedule 1 of the following item:</p> <p>“Submission of lists of candi- dates</p> <p>10. A list of candidates may be submitted only by a party.”;</p> <p><i>m)</i> by the substitution for subitems (1) and (2) of item 15 of Sched- ule I of the following subitem, the existing subitem (3) becom- ing subitem (2):</p>

No. and year of law	Short title	Extent of amendment
		<p>“(1) If no party submitted a list, a by-election must be held within 90 days of nomination day and the MEC for local government must, after consultation with the Commission, determine the date of the election.”;</p> <p>n) by the substitution for item 4 of Schedule 2 of the following item:</p> <p>“Submission of lists of candidates</p> <p>4. A list of candidates may be submitted only by a party.”;</p> <p>and</p> <p>o) by the substitution for subitems (1) and (2) of item 9 of Schedule 2 of the following subitem, the existing subitem (3) becoming subitem (2):</p> <p>“(1) If no party submitted a list, a by-election must be held within 90 days of nomination day and the MEC for local government must, after consultation with the Commission, determine the date of the election.”</p>

MEMORANDUM ON THE OBJECTS OF THE LOCAL GOVERNMENT: MUNICIPAL ELECTORAL BILL, 2000

PART 1

BACKGROUND

The Electoral Act, 1998 (Act No. 73 of 1998), which regulates the elections of both the National Assembly and provincial legislatures, contains virtually no specific provisions for municipal elections. The reason is probably that at the time it was passed, the structure and representation of municipal councils were still in the conception process. What that Act provides for in section 32 is authorisation for the Electoral Commission to further regulate municipal elections by making regulations regarding virtually every aspect of an election, including *inter alia* the calling of elections, party lists, candidates, deposits, objections to candidates, voting procedures, etc.

The aforementioned position is unsatisfactory as it empowers the Commission to exclusively legislate on municipal elections over and above the management thereof.

In view of the large-scale adjustments to the said Electoral Act that **will** be necessary in order to provide for municipal elections, the Bill proposes an entirely separate piece of legislation to deal extensively with such elections, as the Electoral Act, 1998, applies to elections for the National Assembly and provincial legislatures,

PART 2

CLAUSE BY CLAUSE ANALYSIS

CHAPTER 1

This Chapter deals with the interpretation, application and administration of the Bill. Clause 1 of this Chapter deals with definitions. Of importance is the definition of “ballot”, which for the **purposes** of the **Bill** should be understood to be referring to a “vote”.

CLAUSES 2 TO 4

These clauses propose to provide for the interpretation which gives effect to constitutional declarations, guarantees and responsibilities in the Constitution.

CHAPTER 2

This Chapter deals with the voters’ roll and the determination of election dates.

CLAUSE 5

This clause provides for the utilisation of the national common voters’ roll compiled and maintained in terms of the Electoral Act, 1998, in the municipal elections.

CLAUSES 6 AND 7

These clauses propose to provide for the certification of segments of the voters’ roll by the Chief Electoral **Officer** and proposals which seek to regulate a situation where a voter’s particulars do not appear on the certified segment of the voters’ roll, and who may vote.

CLAUSES 8 TO 10

These clauses contain proposals regarding the postponement of elections.

CHAPTER 3

This Chapter deals with the preparation for elections.

CLAUSE 11

This clause proposes to provide for the compilation and publication in the *Government Gazette or the Provincial Gazette* of the **province concerned, of an election timetable when an election is called.**

CLAUSE 12

This clause proposes to provide for the maximum decentralisation of the management of municipal elections and the appointment of representatives of the Electoral Commission for each municipality in which an election is to take place.

CLAUSE 13

Due to the possibility of a large number of parties which may participate in the municipal elections, it is necessary to decentralise **pre-election** registration of parties intending to participate in the elections. Therefore this clause proposes that only registered parties be allowed to participate in the municipal elections.

CLAUSE 14

Clause 14 seeks to regulate the submission of party lists by parties, the acceptance of nominations by candidates whose names appear on such lists and the payment of deposits.

CLAUSE 15

This clause seeks to regulate the manner in which party lists must be dealt with after the submission thereof to the Commission,

CLAUSE 16

In terms of the proposal contained in this clause a registered **party** or a registered voter who is ordinarily resident in the municipality concerned, and who is registered as a voter on that municipality's segment of the voters' roll, may nominate a candidate to contest an election in a ward.

CLAUSES 17 AND 18

These clauses deal with nomination requirements, acceptance of nominations and the compilation of a list of ward candidates by the Commission.

CLAUSES 19 TO 22

These clauses deal with the establishment of voting stations, the relocation of voting stations, the boundaries of voting stations, and mobile voting stations. These clauses are modelled on similar provisions contained in the Electoral Act, 1998. Noteworthy is the proposed criteria for the establishment of mobile voting stations contained in clause 19(2).

CLAUSES 23 TO 26

These clauses deal with voting materials and seek to charge the Commission with the **design of ballot** papers, ballot boxes, and voting compartments. Clause 26 particularly seeks to charge the Commission with the supplying of all voting materials to the presiding officers before voting stations could be opened for voting. These clauses are also model led on provisions contained in the Electoral Act, 1998.

CLAUSES 27 TO 38

These clauses seek to provide for the appointment of **all** the various officers that will be responsible for managing the voting and counting processes as well as their powers and duties.

CLAUSES 39 AND 40

These clauses seek to provide for the appointment of agents for parties and independent ward candidates and their powers and duties within a voting station.

CHAPTER 4**CLAUSES 41 TO 43**

This Chapter, model led on the provisions in the Electoral Act, 1998, proposes to provide for the accreditation of observers and persons providing voter education.

CHAPTER 5

This Chapter deals with voting procedure, assistance to voters, objections against voting, steps to be taken after the closing of the voting and special votes.

CLAUSES 44 TO 46

These clauses deal with the managing of voting stations, hours of voting and the initial procedures to be followed before opening a voting station.

CLAUSE 47

The only notable deviation from the voting procedure prescribed by the Electoral Act, 1998, is the proposal contained in this clause, read with clause 50, in terms of which a discretionary power to mark the hand of a voter is granted to the Electoral Commission.

CLAUSES 48 AND 49

These clauses propose to provide for the assistance that can be offered to certain voters when voting and the re-issue of new ballot papers in case of accidental marking of a ballot paper by a voter.

CLAUSE 50

This clause seeks to empower the Commission to mark the hand of a voter during election if necessary.

CLAUSE 51

This clause proposes to govern the procedures regarding objections concerning voting at the voting station.

CLAUSES 52 AND 53

These clauses seek to regulate the sealing of full ballot boxes, completion of ballot paper statement and sealing of voting materials.

CLAUSE 54

This clause seeks to regulate voting at a mobile voting station.

CLAUSE 55

This clause proposes to provide for the procedures regulating the casting of a special vote by people who, due to physical infirmity or disability or due to absence from the voting station while serving as an officer in the election or on duty as a member of the security services, are not able to vote at a voting station for that voting district,

CLAUSE 56

It is proposed in this clause that the Electoral Commission may not deviate from the

provisions of the Bill by making any special arrangements in so far as they relate to the date and place of voting.

CHAPTER 6

This Chapter deals with the counting procedures, the verification procedure, the objection procedures concerning verification, the sorting of ballot papers and the counting of votes, the results of the count, the determination and declaration of the results of the election as well as objections material to the declared results. Notable features include the following:

CLAUSE 57

It is proposed that the counting of votes must commence as soon as practicable after the close of voting and must continue uninterrupted until the count is completed.

CLAUSE 58

It is proposed that votes are to be counted at the voting station unless the Electoral Commission determines otherwise. The presiding officer must deliver to the counting officer the items mentioned in clause 53 if the counting officer is a person other than the presiding officer.

CLAUSE 59

The verification procedure is being dealt with in Clause 59 and it also contains provisions as to how the counting officer should deal with irregularities and discrepancies.

CLAUSE 60

It is proposed that objections concerning the verification procedure must be lodged in writing with the counting officer, who must decide the objection.

CLAUSES 61 AND 62

These clauses deal with the procedures regarding counting of votes as well as rejection of ballot papers.

CLAUSE 63

It is proposed that objections concerning the sorting of ballot papers and counting of votes must be lodged with the counting officer, who must also decide the objection.

CLAUSES 64 AND 65

The procedure concerning results and the subsequent determination and declaration of the results of the election are dealt with in clauses 64 and 65.

CLAUSE 66

It is proposed that objections material to the declared results must be lodged with the Electoral Commission and that Commission must consider and decide the objection within three days after it has been served.

CHAPTER 7

This Chapter deals with prohibited conduct, enforcement of the Electoral Code of Conduct, powers to enter private places under certain circumstances as well as the amendment of laws and the short title.

CLAUSES 67 TO 77 propose to describe conduct, which is generally prohibited. Most of these prohibited acts amount to election fraud.

CLAUSES 78 AND 79 seek to deal with civil enforcement of provisions of the Act and of the Electoral Code of Conduct, giving the Electoral Court exclusive final jurisdiction over contravention of the said Code and prescribing the penalties it may impose. Those range from a mere warning to disqualification of a party.

CLAUSES 80 AND 81 deal with penalties for offences in terms of Part 1, i.e. general electoral crimes.

CLAUSES 82 TO 87 propose to empower the Electoral Commission relating to access to private places, ownership of voting and election material and the disposal thereof, return or forfeiture of deposits and prohibition on certain strikes and lockouts.

CLAUSES 88 TO 90 seek to provide for the application of the Electoral Code of Conduct, the preparation of other Codes and the power of the Commission to make regulations.

CLAUSES 91 TO 93 deal with the delegation of powers by the Commission and the chief electoral officer and the power to decide objections and appeals.

CLAUSES 94 TO 97 deal with miscellaneous matters such as the amendment of laws, the application of the Local Government Transition Act, 1993, and the short title.

SCHEDULE 1

This Schedule contains the Electoral Code of Conduct, based on the Electoral Code of Conduct contained in the Electoral Act, 1998.

SCHEDULE 2

Schedule 2 contains the proposed amendment of laws, which include proposed amendments to the Electoral Commission Act, 1996, the Electoral Act, 1998, and the Local Government: Municipal Structures Act, 1998.

The proposed amendment to the Electoral Commission Act, 1996, seeks to provide for an elementary form of registration for political parties wishing to participate in the municipal elections. See in this regard clause 13 and the explanation thereof in this Memorandum.

The amendment proposed to the Electoral Act, 1998, seeks to bring legal clarity to the expression “ordinary resident” with regard to persons lawfully imprisoned or detained.

The amendment proposed to the Local Government: Municipal Structures Act, 1998, are of a consequential nature in order to bring the provisions contained in that Act in line with the proposals contained in the Bill.

PART 3

OTHER DEPARTMENTS AND BODIES CONSULTED

Department of Provincial and Local Government
Electoral Commission

FINANCIAL IMPLICATIONS FOR THE STATE

The Electoral Commission budgeted for the implementation of the Bill.

PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Home Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure established by 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.