

REPUBLIC OF SOUTH AFRICA

# ELECTORAL BILL

*(As amended by the Portfolio Committee on Home Affairs (National Assembly))*

(MINISTER OF HOME AFFAIRS)

[B 69D—98]

REPUBLIEK VAN SUID-AFRIKA

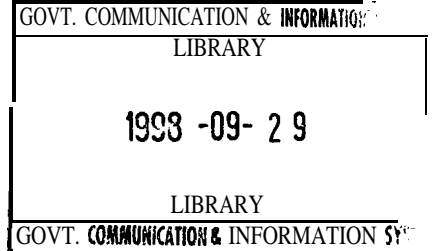
# KIESWETSONTWERP

*(Sins gewysig deur die Portefeuljekomitee oor Binnelandse Sake (Nasionale Vergadering))*

(MINISTER VAN BINNELANDSE SAKE)

[W 69D—98]

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# BILL

To regulate elections of the National Assembly, the provincial legislatures and municipal councils; and to provide for related matters.

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

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#### CHAPTER 1

### INTERPRETATION, APPLICATION AND ADMINISTRATION OF ACT 25

#### Definitions

1. In this Act, unless the context otherwise indicates--
  - (i) "agent" means a person appointed in terms of section 58; (i)
  - (ii) "chief electoral officer" means the person appointed in terms of section 12(I) of the Electoral Commission Act and includes any person designated to act in that capacity in terms of section 12(3) of that Act; (vi) 30
  - (iii) "Code" means a Code issued by the Commission under section 99, and includes the Electoral Code of Conduct; (xi)
  - (iv) "commission" means the Electoral Commission, established by section 3 of the Electoral Commission Act; (xii) 35
  - (v) "counter" means a person appointed in terms of section 78; (xx)
  - (vi) "counting officer" means a person appointed in terms of section 76; (xix)
  - (vii) "election" means—
    - (a) an election of the National Assembly;
    - (b) an election of a provincial legislature; or 40
    - (c) an election of a municipal council or a by-election for a municipal council; (xxii)
  - (viii) "election timetable" means a timetable for an election published by the Commission in terms of section 20; (xxv)
  - (ix) "Electoral Code of Conduct" means the Code contained in Schedule 2; (xxiii) 45
  - (x) "Electoral Commission Act" means the Electoral Commission Act, 1996 (Act No. 51 of 1996); (xxix)
  - (xi) "Electoral Court" means the Court established by section 18 of the Electoral Commission Act; (xxiv)

- (xii) “identity document” means an identity document issued after 1 July 1986, in terms of section 8 of the Identification Act, 1986 (Act No. 72 of 1986), or a temporary identity certificate issued in terms of the Identification Act, 1997 (Act No. 68 of 1997); (vii)
- (xiii) “list of candidates” means the list of candidates referred to in section 27; (viii) 5
- (xiv) “municipal council” means a municipal council referred to in Chapter 7 of the Constitution; (xiii)
- (xv) “officer” means—
  - (a) a presiding officer;
  - (b) a voting officer; 10
  - (c) a counting officer;
  - (d) a counter; or
 any natural person appointed in terms of section 80; (ii)
- (xvi) “party liaison committee” means a committee established in terms of the Regulations on Party Liaison Committees published in terms of the Electoral Commission Act; (xiv) 15
- (xvii) “political office”, in relation to a registered party, means any office in the party to which a representative of the party is elected or nominated, whether involving remuneration or not, or any other paid office in the party to which a person is appointed; (xv) 20
- (xviii) “prescribe” means prescribe by regulation in terms of section 100 and “prescribed” has a corresponding meaning; (xvi)
- (xix) “prescribed manner” includes any prescribed requirement as to time, process or form; (xxvii)
- (xx) “presiding officer” means a person appointed in terms of section 72; (xxviii) 25
- (xxi) “registered party” means a party registered in terms of section 15 of the Electoral Commission Act; (iv)
- (xxii) “security services” means the services as defined in section 199 of the Constitution; (xxi)
- (xxiii) “serve” means to send by registered post, telegram, telex or telefax or to deliver by hand; (iii) 30
- (xxiv) “this Act” includes any regulations made in terms of section 100; (v)
- (xxv) “voter” means a South African citizen—
  - (a) who is 18 years old or older; and
  - (b) whose name appears on the voters’ roll; (ix) 35
- (xxvi) “voters’ roll” means the national common voters’ roll compiled in terms of section 5; (x)
- (xxvii) “voting district” means a voting district established in terms of section 60; (xvii)
- (xxviii) “voting officer” means a person appointed in terms of section 74; (xvi) 40
- (xxix) “voting station” means any voting station established in terms of section 64. (xviii)

### Interpretation of this Act

- 2. Every 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 appropriate Code. 45

### Application of this Act

- 3. This Act applies to every—
  - (a) election of the National Assembly; 50
  - (b) election of a provincial legislature; and
  - (c) election of a municipal council or a by-election for such council.

### Administration of this Act

- 4. The Commission must administer this Act.

## CHAPTER 2

### REGISTRATION OF VOTERS. AND VOTERS' ROLL

#### National common voters' roll

5. The chief electoral officer must compile and maintain a national common voters' roll. 5

#### Persons who may apply for registration as voter

6. (1) Any South African citizen in possession of an identity document may apply for registration as a voter.

(2) For the purposes of the general registration of voters contemplated in section 14, an identity document includes a temporary certificate in a form which corresponds materially with a form prescribed by the Minister of Home Affairs by notice in the *Government Gazette* and issued by the Director-General of Home Affairs to a South African citizen from particulars contained in the population register and who has applied for an identity document. 10

#### Applications for registration as voter 15

7. (1) A person applying for registration as a voter must do so-

(a) in the prescribed manner; and

(b) only for the voting district in which that person is ordinarily resident.

(2) For the purposes of this section the head office in the Republic of a person referred to in section 33(1)(a)(ii) is regarded as the ordinary place of residence of that person or a member of that person's household. 20

#### Registration

8. (1) If satisfied that a person's application for registration complies with this Act, the chief electoral officer must register that person as a voter by making the requisite entries in the voters' roll. 25

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

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

(b) is not a South African citizen;

(c) has been declared by the High Court to be of unsound mind or mentally disordered; 30

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

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

(3) A person's name may not be entered in the voters' roll for more than one voting district. 35

#### Applications to change registration details

9. (1) A registered voter or person who has applied for registration as a voter and whose name or ordinary place of residence has changed, must apply in the prescribed manner to have that change recorded in the voters' roll or in that person's application. 40

(2) No one need to apply when a change of name results from a change in marital status.

(3) If satisfied that a person's application complies with this Act, the chief electoral officer must record the change in the voters' roll or application.

#### Applications for deregistration as voter 45

10. (1) A registered voter may apply for deregistration as a voter in the prescribed manner.



(2) On receipt of an application for reregistration as a voter, the chief electoral officer must remove the applicant's name from the voters' roll

#### **Amendments to voters' roll by chief electoral officer**

11. (1) The chief electoral officer must—
- (a) change the registration details of a voter, if the chief electoral officer is satisfied that the details of that voter as reflected in the voters' roll are incorrect or have changed; or
  - (b) reregister a voter, if the chief electoral officer is satisfied that that voter does not qualify or no longer qualifies for registration.
- (2) The chief electoral officer must record in the voters' roll or a person's application any change in voting district for which a person is registered as a voter or has applied for registration, if that person's place of ordinary residence after a change in the boundaries of that voting district falls in another voting district.

#### **Notification by chief electoral officer**

12. (1) The chief electoral officer must notify, in the prescribed manner, a person—
- (a) whose application in terms of section 7 for registration as a voter has been refused;
  - (b) whose application in terms of section 9 to have a change of name or ordinary place of residence recorded, has been refused;
  - (c) who has been deregistered as a voter in terms of section 11; or
  - (d) whose registration details have been changed in terms of section 11.
- (2) The notification must give reasons for the refusal or step concerned.

#### **Appeal against decisions and steps of chief electoral officer**

13. (1) A person mentioned in section 12(1) who feels aggrieved by a decision or step taken by the chief electoral officer in terms of section 8, 9 or 11, may appeal to the Commission against that decision or step in the prescribed manner.
- (2) The Commission, in the prescribed manner, must consider and decide the appeal and notify the appellant and chief electoral officer of the decision.
- (3) No appeal may be brought against the decision of the Commission, subject to section 20(2)(a) of the Electoral Commission Act.

#### **General registration of voters**

14. (1) The Commission must, for the compilation of the voters' roll contemplated in section 5, conduct a general registration of voters.
- (2) The Commission may prescribe cut-off dates in respect of the general registration of voters and the compilation of the voters' roll, including the date by which—
- (a) any person who wants to be included in the voters' roll must have applied for registration as a voter in terms of section 7 or for the change of registration details in terms of section 9;
  - (b) the chief electoral officer must notify a person in terms of section 12;
  - (c) an appellant must note an appeal in terms of section 13;
  - (d) the Commission must consider and decide the appeal and notify the appellant and the chief electoral officer of the decision;
  - (e) the chief electoral officer must give notice of the periods during which and the venues where a provisionally compiled voters' roll will be available for inspection;
  - (f) any objections in terms of section 15 in respect of a provisionally compiled voters' roll must be made;
  - (g) the Commission must decide an objection made in terms of section 15 and notify the objector and the chief electoral officer and a person other than the objector whose name or registration details are involved; and
  - (h) the chief electoral officer must complete the compilation of the voters' roll and publish it.

### **objections to voters' roll**

**15. ( 1 )** In relation to any segment of the voters' roll or a provisionally compiled voters' roll, any person may object to the Commission in the prescribed manner to—

- (a) the exclusion of any person's name from that segment;
- (b) the inclusion of any person's name in that segment; or
- (c) the correctness of any person's registration details in that segment.

(2) A person who objects to the exclusion or inclusion of the name of another person, or to the correctness of that person's registration details, must serve notice of the objection on that person.

(3) The Commission must decide an objection and, except for an objection in relation to a provisionally compiled voters' roll, by not later than 14 days after the objection was made, notify the following persons of the decision:

- (a) The person who made the objection;
- (b) the chief electoral officer; and
- (c) in the case of an objection against the exclusion or inclusion of the name, or the correctness of the registration details, of a person other than the objector, that other person.

(4) The chief electoral officer must give effect to a decision of the Commission in terms of subsection (3) within three days.

(5) No appeal may be brought against the Commission's decision, subject to section 20(2)(a) of the Electoral Commission Act.

### **Publication and copies of voters' roll**

**16. ( 1 )** A copy of the voters' roll as it exists at any time must be available for inspection during office hours at the Commission's head office, and the provincial and municipal segments of the voters' roll must be available for inspection at the times and venues mentioned in a notice published by the chief electoral officer in the *Government Gazette*.

(2) The chief electoral officer must provide a certified copy of, or extract from, a segment of the voters' roll as it exists at that time, to any person who has paid the prescribed fee.

## **CHAPTER 3**

### **PROCLAMATION OF AND PREPARATION FOR ELECTIONS**

#### ***Part 1: Proclamation of elections***

#### **Proclamation of elections of National Assembly**

**17. ( 1 )** Whenever the President or Acting President calls an election of the National Assembly the proclamation concerned must set a single day and date for voting.

(2) The voting day must be determined after consultation with the Commission.

#### **Proclamation of elections of provincial legislatures**

**18. ( 1 )** Whenever the President or the Premier or Acting Premier of a province calls an election of the provincial legislature the proclamation concerned must set a single day and date for voting.

(2) The voting day must be determined after consultation with the Commission.

#### **Proclamation of municipal elections**

**19.** Municipal elections must be called in accordance with Chapter 7 of the Constitution and national or provincial legislation thereunder.

### **Election timetables**

**20. (1)** The Commission must after consultation with the party national liaison committee—

(a) compile an election timetable for each election substantially in accordance with Schedule 1; and 5

(b) publish the election timetable in the *Government Gazette*.

(2) The Commission may amend the election timetable by notice in the *Government Gazette*—

(a) if it considers it necessary for a free and fair election; or

(b) if the voting day is postponed in terms of section 21. 10

### **General postponement of elections**

**21. (1)** The Commission may request the person who called an election to postpone the voting day for that election, provided the Commission is satisfied that—

(a) the postponement is necessary for ensuring a free and fair election; and

(b) the voting day for the election will still fall within the period as required by the Constitution or national or provincial legislation thereunder. 15

(2) If the person to whom the request is made accedes to the request, that person, by proclamation or notice in the *Government Gazette*, must postpone the voting day for the election to a day determined by that person, but that day must fall within the period referred to in subsection (1)(b). 20

### **Postponement of voting at voting station**

**22. (1)** If it is not reasonably possible to conduct a free and fair election at a voting station on the proclaimed voting day, the Commission may at any time before the voting at a voting station has commenced, postpone voting at that voting station.

(2) A postponement in terms of subsection (1) must be— 25

(a) effected in the prescribed manner;

(b) to a day that would still fall within the period referred to in section 21(1)(b); and

(c) publicised in the media considered appropriate so as to ensure wide publicity of the postponement of the voting day at that voting station. 30

### **Revote at voting station**

**23. (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 or the provisional result for that voting station has been determined and announced, the Commission may allow a revote at that voting station. 35

(2) A revote at a voting station must be—

(a) conducted on a date that would still fall within the period referred to in section 21(1)(b);

(b) publicised in the media considered appropriate so as to ensure wide publicity of the date determined for the revote; and 40

(c) conducted in accordance with a procedure prescribed by the Commission which is consistent with the principles provided for in Chapter 4.

## ***Part 2: Voters' roll***

### **Voters' roll for election**

**24. (1)** The voters' roll, or the segments of the voters' roll that must be used for an election, are those as they exist on the day the election is proclaimed.

(2) By not later than the relevant date stated in the election time table, the chief electoral officer must certify the voters' roll or the segments of the voters' roll to be used in that election and publish it by making it available for inspection at the following venues: 50

- (a) At the Commission's head office, the segments for all voting districts in which the election will take place;
- (b) in each province, at the office of the Commission's provincial representative, the segments for all voting districts in the province in which the election will take place; and 5
- (c) at the office of each municipality, the segments for all voting districts in that municipality in which the election will take place.

### **Voters' roll for first elections of National Assembly and provincial legislatures**

**25. (1)** Section 24 does not apply in respect of the first election of the National Assembly and the first election of a provincial legislature referred to in items 6(3)(a) and 11(1)(a) of Schedule 6 to the Constitution, respectively.

(2) The voters' roll that must be used for the elections referred to in subsection (1) is the voters' roll compiled by the chief electoral officer in terms of section 5 and published by that officer by the date referred to in section 14(2)(h).

### **Part 3: Parties contesting election, and lists of candidates 15**

#### **Requirements for parties to contest election**

**26.** A party may contest an election only if that party—

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

#### **Submission of lists of candidates 20**

**27. (1)** A registered party intending to contest an election must nominate candidates and submit a list or lists of those candidates for that election to the chief electoral officer in the prescribed manner by not later than the relevant date stated in the election timetable.

(2) The list or lists must be accompanied by a prescribed— 25

- (a) undertaking, signed by the duly authorised representative of the party, binding the party, persons holding political office in the party, and its representatives and members, to the Code;
- (b) declaration, signed by the duly authorised representative of the party, that each candidate on the list is qualified to stand for election in terms of the 30 Constitution or national or provincial legislation under Chapter 7 of the Constitution;
- (c) acceptance of nomination, signed by each candidate;
- (d) undertaking signed by each candidate, that that candidate will be bound by the Code; and 35
- (e) deposit.

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

(b) The amount to be deposited by a registered party contesting an election of a provincial legislature, must be less than the amount for contesting an election of the 40 National Assembly.

#### **Non-compliance concerning submission of lists of candidates**

**28. (1)** If a registered party that has submitted a list of candidates has not fully complied with section 27, the chief electoral officer must notify that party of its non-compliance. 45

(2) The notification must be given in the prescribed manner by not later than the relevant date stated in the election timetable, and must indicate that the party has an opportunity to comply with section 27 by not later than the relevant date stated in the election timetable.

(3) The opportunity provided for in subsection (2) includes an opportunity to 50 substitute a candidate and to re-order the names on that list as a result of that substitution.

### Inspection of copies of lists of candidates and accompanying documents

29. ( 1 ) By not later than the relevant date stated in the election timetable, the chief electoral officer must give notice that copies of the lists of candidates and accompanying documents submitted by registered parties in terms of section 27, as amended and supplemented in terms of section 28, will be available for inspection. 5
- (2) The notice must be—
- (a) published in the *Government Gazette*; and
  - (b) publicised in the media considered appropriate by the chief electoral officer so as to ensure wide publicity of the lists.
- (3) The notice must state, and the chief electoral officer must ensure, that for the relevant period stated in the election timetable— 10
- (a) copies of the lists for—
    - (i) an election of the National Assembly, will be available for inspection at the Commission's head office, a place in each province designated in the notice and the office of each municipality in the country; and 15
    - (ii) an election of a provincial legislature, will be available for inspection at the Commission's head office, a place in the province designated in the notice and the office of each municipality in that province; and
  - (b) copies of the documents accompanying the lists are available for inspection at the Commission's head office. 20
- (4) Any person may inspect a copy of a list of candidates and accompanying documents referred to in subsection ( 1 ).
- (5) The chief electoral officer must provide a certified copy of, or extract from, a list of candidates or document referred to in subsection ( 1 ), to any person who has paid the prescribed fee. 25

### Objections to lists of candidates

30. ( 1 ) Any person, including the chief electoral officer, may object to the nomination of a candidate on the following grounds:
- (a) The candidate is not qualified to stand in the election;
  - (b) there is no prescribed acceptance of nomination signed by the candidate; or 30
  - (c) there is no prescribed undertaking, signed by the candidate, that the candidate is bound by the Code.
- (2) The objection must be made to the Commission in the prescribed manner by not later than the relevant date stated in the election timetable, and must be served on the registered party that nominated the candidate. 35
- (3) The Commission must decide the objection, and must notify the objector and the registered party that nominated the candidate of the decision in the prescribed manner by not later than the relevant date stated in the election timetable.
- (4) The objector, or the registered party who nominated the candidate, may appeal against the decision of the Commission to the Electoral Court in the prescribed manner and by not later than the relevant date stated in the election timetable. 40
- (5) The Electoral Court must consider and decide the appeal and notify the parties to the appeal and the chief electoral officer of the decision in the prescribed manner and by not later than the relevant date stated in the election timetable.
- (6) If the Commission or the Electoral Court decides that a candidate's nomination 45  
does not comply with section 27, the Commission or the Electoral Court may allow the registered party an opportunity to comply with that section, including an opportunity to substitute a candidate and to re-order the names on the list as a result of that substitution.

### List of parties entitled to contest election and final lists of candidates

31. (I) By not later than the relevant date stated in the election timetable, the chief electoral officer must— 50

- (a) give effect to a decision of the Commission in terms of section 30(3) and to a decision of the Electoral Court in terms of section 30(5); and
- (b) compile a list of the registered parties entitled to contest the election concerned and have the final list of candidates for each of those parties available.

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

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

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#### ***Part 4: Municipal councils***

##### **Further regulating of elections of municipal councils**

32. Whenever it may be necessary to further regulate elections of or by-elections for municipal councils the Commission may, subject to the provisions of Chapter 7 of the Constitution and of national or provincial legislation under that Chapter, make 15 regulations regarding—

- (a) the calling of municipal elections;
- (b) election time-tables;
- (c) party lists of candidates;
- (d) candidates contesting elections of or by-elections for municipal councils, the 20 payment of deposits by candidates, the return or forfeiture thereof, the inspection of lists of candidates and objections to candidates;
- (e) the postponement of voting at a voting station;
- (f) voting procedures;
- (g) counting of votes and objections material to final results of elections; 25
- (h) the appointment of candidate agents; and
- (i) generally, any other matter which is necessary or expedient to be prescribed in order to achieve the objects of this Act and of Chapter 7 of the Constitution or national or provincial legislature thereunder.

#### ***Part 5: Special votes and declaration votes***

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##### **Special votes**

33. (1) The Commission—

- (a) must allow a person to apply for a special vote if that person cannot vote at a voting station in the voting district in which the person is registered as a voter, due to that person's— 35
  - (i) physical infirmity or disability, or pregnancy;
  - (ii) absence from the Republic on Government service or membership of the household of the person so being absent; or
  - (iii) 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 40 in connection with the election;
- (b) may prescribe other categories of persons who may apply for special votes.

(2) The Commission must prescribe—

- (a) the procedure for applying for special votes; and
- (b) procedures, consistent in principle with Chapter 4, for the casting and 45 counting of special votes.

##### **Declaration votes**

34. The Commission may prescribe—

- (a) circumstances in and conditions on which a person who is unavoidably and

- unforeseeably unable to vote in the voting district in which that person is registered as a voter, may apply to vote elsewhere;
- (b) the procedure for applying for declaration votes; and
  - (c) procedures, consistent in principle with Chapter 4, for the casting and counting of declaration votes.

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## CHAPTER 4

### ELECTIONS

#### *Part 1: Voting*

##### **Officers at voting stations**

35. On voting day each voting station must be staffed by— 10
- (a) the presiding officer appointed for that voting station, who may exercise the powers and must perform the duties assigned to a presiding officer by or under this Act; and
  - (b) the voting officers appointed for that voting station, who may exercise the powers and must perform the duties assigned to a voting officer by or under this Act. 15

##### **Hours of voting**

36. (1) By not later than the relevant date stated in the election timetable, the Commission must prescribe the voting hours for an election.
- (2) If it is necessary for ensuring a free and fair election, the Commission may 20 prescribe different voting hours for different voting stations.
- (3) The chief electoral officer must publish the prescribed voting hours in the media considered appropriate so as to ensure wide publicity of those hours.
- (4) A voting station must—
- (a) open for voting at the prescribed time; and 25
  - (b) subject to subsection (7)(b), remain open for voting until the prescribed time, or such later time as the Commission may determine in terms of subsection (7)(1).
- (5) No person may be admitted to a voting station for the purpose of voting after the voting station has closed for voting. 30
- (6) Voting at a voting station must continue until every voter has voted who—
- (a) is entitled to vote at that voting station; and
  - (b) had reported for voting at that voting station at the time prescribed for that voting station to close for voting.
- (7) To ensure a free and fair election, the Commission— 35
- (a) on the voting day, may extend voting hours at a voting station until as late as midnight on that voting day; or
  - (b) may temporarily close a voting station for part of voting day if it is temporarily impossible to conduct a free and fair election at that voting station. 40

##### **Initial procedures**

37. Immediately before opening a voting station for voting, the presiding officer must—
- (a) show all agents present that each ballot box to be used at that voting station is empty; and 45
  - (b) in the presence of those agents close and secure the ballot boxes in the prescribed manner.

##### **Voting procedure**

38. (1) A voter may only vote once in an election, and may vote only at the voting station in the voting district for which that voter is registered. 50

- (2) A voter is entitled to 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  
 (b) if that voter's name is in the certified segment of the voters' roll for the voting district concerned. 5
- (3) When a voter produces an identity document to a presiding officer or voting officer as required by subsection (2)(a), the presiding officer or voting officer must examine the identity document and determine whether—  
 (a) the voter is the person described in that identity document;  
 (b) the voter's name is in 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.
- (5) If the presiding officer or voting officer is satisfied in respect of all the matters mentioned in subsection (3), that officer must— 15  
 (a) record that the voter is regarded to have voted in the election;  
 (b) mark the hand of the voter in the prescribed manner;  
 (c) mark the back of a ballot paper for that election; and  
 (d) hand the ballot paper to the voter. 20
- (6) Once the voter has received a ballot paper marked in terms of subsection (5)(a), the voter must—  
 (a) enter an empty voting compartment;  
 (b) mark the ballot paper in a way that indicates the registered party or candidate the voter wishes to vote for; 25  
 (c) fold the ballot paper to conceal the voter's vote;  
 (d) take the ballot paper to a ballot box for the election and show it to the presiding officer or a voting officer in a way that that officer can see the mark made in terms of subsection (5)(a);  
 (e) place the ballot paper in the ballot box; and 30  
 (f) without delay leave the voting station.
- (7) The voting compartment must comply with the provisions of section 70.

#### Assistance to certain voters

39. (1) The presiding officer or a voting officer, at the request of a voter who is unable to read, must assist that voter in voting in the present; of— 35  
 (a) a person appointed in terms of section 8.5 by an accredited observer, if available; and  
 (b) two agents from different parties, if available.
- (2) A person may assist a voter in voting if— 40  
 (a) the voter requires assistance due to a physical disability;  
 (b) the voter has requested to be assisted by that person; and  
 (c) the presiding officer is satisfied that that person has attained the age of 18 years.
- (3) The secrecy of voting contemplated in section 38 must be preserved in the application of this section. 45

#### Issue of new ballot papers

40. (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—  
 (a) the voter may return that ballot paper to the presiding officer or a voting officer; 50  
 (b) that officer must deal with the ballot paper in accordance with subsection (2), and must give the voter a new ballot paper in accordance with section 38(5); and  
 (c) the voter may vote in accordance with section 38(6). 55
- (2) Upon receiving a ballot paper from a voter in terms of subsection (1), the presiding officer or a voting officer must mark "canceled" on the back of the ballot paper and file it separately to be dealt with in accordance with section 43.



### objections concerning voting

41. ( I ) At any time before a voter has been handed a ballot paper, an agent may object to that voter being entitled to vote or to vote at the voting station concerned.

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

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

(4) An objection in terms of subsection ( I ), (2) or (3) must be made to the presiding officer in the prescribed manner.

(5) The presiding officer, in the prescribed manner, must decide the objection and 10 notify the objector and any other parties involved in the objection, of the decision.

(6) An appeal against the decision of the presiding officer may be noted with the Commission in the prescribed manner and time.

(7) The presiding officer must keep a written record in the prescribed manner of each objection and decision made in terms of this section. 15

### Sealing of full ballot boxes

42. ( I ) As soon as a ballot box is full, the presiding officer, in the presence of any agents present, must seal the ballot box in the prescribed manner and allow those agents to affix their seals thereto.

(2) Immediately after the last vote has been cast, every remaining used ballot box 20 must be similarly dealt with.

(3) A sealed ballot box must remain—

(a) sealed until opened for the counting of votes in terms of section 46(I); and

(b) in the voting station until the commencement of the counting of the votes there or, if the votes are not to be counted at that voting station, until removed for 25 delivery in terms of section 43(3).

### Completion of form and sealing of voting materials

43. ( I ) As soon as practicable after the close of a voting station for voting, the presiding officer, in the presence of any agents present, must—

(a) complete a form reflecting the number of- 30

(i) ballot boxes entrusted to that presiding officer;

(ii) used ballot boxes;

(iii) unused ballot boxes;

(iv) ballot papers entrusted to that presiding officer;

(v) issued ballot papers: 35

(vi) unissued ballot papers; and

(vii) cancelled ballot papers:

(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 that voting district; 40

(ii) the unused ballot papers entrusted to that presiding officer;

(iii) the cancelled ballot papers; and

(iv) the written record, as required by section 41(7), of any objections concerning voting; and

(d) allow those agents to affix their seals to the items mentioned in paragraphs (b) 45 and (c).

(2) If the votes in an election 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 for that voting station the items mentioned in subsection (1).

(3) If the votes in an election are not to be counted at the voting station at which those votes were cast, the presiding officer must deliver the following to the counting officer of a counting venue determined by the Commission in terms of section 46(1)(b): 5

- (a) The form mentioned in subsection (1)(a);
- (b) the sealed, used ballot boxes;
- (c) the sealed, unused ballot boxes; and
- (d) the sealed containers mentioned in subsection (1)(c).

#### **Mobile voting stations**

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44. (1) If the Commission decides to use mobile voting stations in an election, the Commission must prescribe voting procedures, substantially in accordance with sections 35 to 43, for those voting stations.

(2) Immediately after a mobile voting station is closed for voting, the presiding officer responsible for that voting station must act in accordance with section 43(3). 15

#### **More than one election on same day**

45. If more than one election is held at a voting station on the same day, the Commission must prescribe voting procedures, substantially in accordance with sections 35 to 43, for each of those elections.

### ***Part 2: Counting of votes at voting station***

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#### **Place and time of counting of votes**

46. (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
- (b) in the interest of ensuring a free and fair election, the Commission determines 25 that those votes be counted at another counting venue.

(2) The counting officer must ensure that the procedures set out in this Part commence as soon as practicable after the voting station is closed for voting, and continue uninterrupted until they are completed.

(3) The procedures provided for in this Part may be suspended only with the consent 30 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 counting of votes has been completed.

#### **Counting of votes and determination of provisional results**

47. (1) The counting officer must open all the used ballot boxes that were sealed in 35 terms of section 42(1) or (2).

(2) The counting officer must—

- (a) cause the ballot papers to be sorted on the basis of the ballot papers for each election if more than one election was held at a voting station on the same day;
- (b) cause the ballot papers for each election to be sorted and compare it with the 40 number of ballot papers issued in the prescribed manner;
- (c) cause the votes cast in each election to be counted in the prescribed manner; and
- (d) determine the result of each count at that voting station.

(3) The counting officer must reject a ballot paper— 45

- (a) that indicates the identity of the voter;
- (b) on which a vote is cast for more than one registered party or for more than one candidate;
- (c) that is unmarked;
- (d) that is marked in such a way that it is not reasonably possible to determine the 50 voter's choice;

(e) that does not bear the mark required in terms of section .38(5)(c); or

(f) that is not an official ballot paper.

(4) The counting officer must mark “rejected” on the back of each rejected ballot paper and file the rejected ballot papers separately.

(5) If a counting officer’s acceptance or rejection of a ballot paper is disputed by an agent, the counting officer must— 5

(a) mark “disputed” on the back of that ballot paper;

(b) file separately, but cause to be counted, the accepted ballot papers that are disputed; and

(c) file separately the rejected ballot papers that are disputed. 10

### **objections concerning sorting of ballot papers**

48. (1) An agent may object to any alleged irregularity in the sorting of the ballot papers in terms of section 47(2)(a) or (b).

(2) The objection must be made to the counting officer in the prescribed manner at any stage before the counting officer has completed the form mentioned in section 48. 15

(3) Section 41(5) to (7), adjusted as may contextually be necessary, applies to the objection.

### **Objections concerning counting of votes and determination of provisional results**

49. (1) An agent may object to an alleged inaccuracy in the counting of the votes or the determination of a result in terms of section 47(2), c) or (d). 20

(2) The objection must be made to the counting officer in the prescribed manner at any stage before the counting officer has completed the form mentioned in section 50.

(3) The counting officer must decide the objection in the prescribed manner and whether to order a recount.

(4) The counting officer must notify the objector and any other parties involved in the objection, of the decision made in terms of subsection (3). 25

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

(6) An appeal against the decision of the counting officer may be noted with the Commission in the prescribed manner and time. 30

(7) The counting officer must keep a written record in the prescribed manner of each objection in terms of subsection (1) and each decision in terms of subsection (3).

### **Procedure concerning provisional results and voting materials**

50. (1) After determining the result at a voting station, the counting officer must complete a form reflecting— 35

(a) the number of ballot papers supplied to the voting station;

(b) the result at the voting station;

(c) the number of counted ballot papers that were not disputed;

(d) the number of counted ballot papers that were disputed;

(e) the number of rejected ballot papers that were not disputed; 40

(f) the number of rejected ballot papers that were disputed;

(g) the number of cancelled ballot papers; and

(h) the number of unused ballot papers.

(2) Once the counting officer has complied with subsection (1), the counting officer must announce the result of the count at the voting station to members of the public and agents present at the voting station. 45

(3) Once the counting officer has complied with subsection (2), the counting officer must inform the Commission of the result of the count at the voting station.

(4) Once the counting officer has complied with subsection (3), the counting officer must— 50

(a) seal in separate containers each of the items mentioned in subsection (1) and the written record of any objections in terms of section 48 or 49; and

(b) deliver the form completed in terms of subsection (1) and the sealed containers to an officer designated by the chief electoral officer.

### ***Part 3: Counting of votes at place other than voting station***

#### **Application of Part and procedures**

51. (1) This Part applies to the counting of votes mentioned in section 46(1)(a) or (b).  
 (~) The counting officer must *ensure* that the procedures provided for in this Part commence as soon as practicable after receipt of the items mentioned in section 43(3), and continue uninterrupted until they are completed. 5  
 (3) The procedures provided for in this Part 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 counting of votes has been completed. 10

#### **Verification procedure**

52. (1) After receipt of the items mentioned in section 43(3), the counting officer must examine whether the seals are intact on those items.  
 (2) The counting officer must allow any agents present to examine whether the seals are intact. 15  
 (3) After examining the seals, the counting officer must open all the sealed ballot boxes and containers and must verify the form completed by the presiding officer in terms of section 43(1)(a) by comparing it with—  
     (a) the number of used ballot boxes received;  
     (b) the number of unused ballot boxes received; 20  
     (c) the number of containers received; and  
     (d) the contents of those boxes and containers.  
 (4) The counting officer must deal with any irregularities and discrepancies in the prescribed manner.  
 (5) The counting officer must keep a written record in the prescribed manner of any irregularities and discrepancies and the manner in which those irregularities and discrepancies were dealt with. 25

#### **Objections concerning verification procedure**

53. (1) At any time before the counting of votes commences, an agent may object to any alleged irregularity or inaccuracy in the verification procedure performed by the counting officer. 30  
 (2) The objection must be made to the counting officer in the prescribed manner.  
 (3) Section 41(5) to (7), adjusted as may contextually be necessary, applies to the objection.

#### **Application of certain sections in Part 2**

54. Sections 47 to 50, adjusted as may contextually be necessary, apply to the counting of votes and the determination of the result at a venue other than a voting station, objections and procedures concerning results and voting materials. 35

### ***Part 4: Objections material to final results of election***

#### **Objections material to final results of election**

55. (1) Despite Parts 1 to 3 of this Chapter, any interested party may make an objection concerning any aspect of an election that is material to the final result of the election. 40  
 (2) The objection must be made to the Commission in the prescribed manner not later than 21:00 on the second day after the voting day. 45  
 (3) The Commission, on good cause shown, may condone a late objection.  
 (4) The Commission, in the prescribed manner, must decide the objection, and must notify the objector and any other parties involved in the objection, of the decision.

(5) An objector or other party involved in the objection and who feels aggrieved by the decision of the Commission, may appeal to the Electoral Court in the prescribed manner.

(6) The Electoral Court, in the prescribed manner, must consider and decide the appeal and notify the parties to the appeal of its decision.

(7) The result of an election is not suspended pending the decision of the Electoral Court.

### **Powers of Commission and Electoral Court**

**56.** If the Commission or the Electoral Court decides, whether as a result of an objection or appeal brought under section 55 or otherwise, that a serious irregularity has occurred concerning any aspect of an election, the Commission or the Electoral Court may order—

(a) that the votes cast at a particular voting station do not count in whole or in part; or

(b) that the votes cast in favour of a registered party or candidate at a particular voting station must be deducted in whole or in part from the votes cast in favour of that registered party or candidate in that election.

### ***Part 5: Determination and declaration of final result of election***

#### **Determination and declaration of final result of election**

**57. (1)** The Commission must determine and declare the result of an election by adding together the results received from all voting stations.

(2) The determination and declaration of the result of an election must occur within seven days after the voting day, but not—

(a) sooner than 21:00 of the second day after the voting day; or

(b) before all objections made under section 55 have been dealt with in terms of that section, other than an appeal to the Electoral Court in terms of subsection (5) of that section.

(3) The Commission may determine and declare the result of an election without having received the results of all voting stations, if—

(a) to wait for the receipt of the result from every voting station would unduly and unreasonably delay the determination and declaration of the result of that election; and

(b) the outstanding results are not likely to materially influence the overall result of that election.

(4) If the Commission is unable to determine and declare the result of an election within the seven-day period required by subsection (2)(c), the Commission must apply to the Electoral Court for an extension of that period.

(5) The Electoral Court, on good cause shown, may extend the period within which the Commission must determine and declare the result of an election.

## **CHAPTER 5**

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### **AGENTS**

#### **Appointment of party agents**

**58. (1)** Every registered party contesting an election may appoint—

(a) two party agents for each voting station; and

(b) four party agents for each venue where the proceedings provided for in Part 3 45 or 5 of Chapter 4 take place.

(2) A party agent—

(a) must be a South African citizen; and

(b) may not be a candidate in an election.

(3) The appointment and revocation of appointment of a person as a party agent must be effected in the prescribed manner.

## **Powers and duties of agents**

- 59. (1)** An agent may observe the proceedings provided for in—
- (a) Part 1 of Chapter 4 concerning voting;
  - (h) Parts 2 and 3 of Chapter 4 concerning the counting of votes; and
  - (c) Part 5 of Chapter 4 concerning the determination and declaration of the result of an election.
- (2) The absence of an agent from a place where any electoral proceedings are being conducted does not invalidate those proceedings.
- (3) Whilst present at any voting station, or venue where the proceedings provided for in Part 3 or 5 of Chapter 4 take place, an agent must— 10
- (a) wear the prescribed identification indicating—
    - (i) that the person is an agent; and
    - (ii) the registered party or candidate represented by that agent; and
  - (b) comply with any order issued by— 15
    - (i) an officer; or
    - (ii) a member of the security services acting on the instructions of an officer,

## **CHAPTER 6**

### **ADMINISTRATION**

#### ***Part I: Voting districts***

#### **Establishment of voting districts 20**

- 60. (1)** The Commission must—
- (u) establish voting districts for the whole of the territory of the Republic;
  - (b) determine the boundaries of each voting district in accordance with the factors mentioned in section 61; and
  - (c) keep a map of each voting district. 25
- (2) The voting districts for an election are those voting districts which on the date on which the election is called are within the area in which the election is called.

#### **Factors for determining voting district boundaries**

- 61.** The Commission must determine the boundaries of a voting district by taking into account any factor within the proposed voting district that could affect the free, fair and orderly conduct of elections, including— 30
- (a) the availability of a suitable venue for a voting station;
  - (b) the number and distribution of eligible voters;
  - (c) the accessibility of a voting station to voters given— 35
    - (i) the radius of the proposed voting district;
    - (ii) the availability of transport;
    - (iii) telecommunications facilities; and
    - (iv) any geographical or physical feature that may impede access to the voting station;
  - (d) municipal and provincial boundaries; and 40
  - (e) tribal, traditional, historical and customary boundaries.

#### **Consultation with party liaison committee**

- 62.** Before determining the boundaries of a voting district, the Commission may consult on the proposed boundaries of that voting district with—
- (a) the municipal party liaison committee for the municipality within which that voting district will fall; or 45
  - (b) if no municipal party liaison committee has been established in a municipality, the provincial party liaison committee for the province within which that voting district will fall.

### Inspection and copies of maps of voting districts

63. (1) As soon as practicable after section 60(1) has been complied with, the chief electoral officer must give notice that copies of the map of each voting district will be available for inspection.
- (2) The notice must be— 5
- (a) published in the *Government Gazette*; and
  - (b) publicised in the media considered appropriate by the chief electoral officer so as to ensure wide publicity of those maps.
- (3) The notice must state, and the chief electoral officer must ensure, that copies of— 10
- (a) those maps are available for inspection at the (commission's head office; and
  - (b) the maps of the voting districts within a municipality are available for inspection at the office of the municipality.
- (4) Any person may inspect a copy of a map mentioned in subsection(1).
- (5) The chief electoral officer must provide a certified copy of a map of a voting district to any person who has paid the prescribed fee. 15

### Part 2: Voting stations

#### Establishment of voting stations

64. (1) The Commission must establish for an election one voting station, or one voting station and a mobile voting station, or only a mobile voting station, in each voting district. 20
- (2) When determining the location of a voting station, the Commission may take into account any factor that could affect the free, fair and orderly conduct of elections, including—
- (a) the number and distribution of eligible voters in that voting district;
  - (b) the availability of suitable venues for a voting station; 25
  - (c) the distance to be travelled to reach those venues;
  - (d) access routes to those venues;
  - (e) the availability of transport to those venues;
  - (f) traffic density at or near those venues;
  - (g) parking facilities at or near those venues; 30
  - (h) telecommunications facilities at those venues;
  - (i) general facilities at those venues;
  - (j) the safety and convenience of voters;
  - (k) any geographical or physical feature that may impede access to or at those venues; and 35
  - (l) the ease with which those venues could be secured.
- (3) Before determining the location of a voting station, the Commission may consult on the proposed location of that voting station with—
- (a) the municipal party liaison committee for the municipality within which that voting station will fall; or 40
  - (b) if no municipal party liaison committee has been established in the municipality, the provincial party liaison committee for the province within which the voting station will fall.
- (4) By not later than the relevant date stated in the election timetable, the chief electoral officer must give notice that copies of a list containing the address of each voting station will be available for inspection. 45
- (5) Section 63(2) to (5), adjusted as may contextually be necessary, applies to the inspection and copies of that list.

#### Relocation of voting stations in emergencies

65. (1) Despite section 64, the Commission may relocate a voting station if it is of the view that it is necessary to do so for the conduct of a free and fair election. 50
- (2) The chief electoral officer must take all reasonable steps to publicise the relocation of a voting station among voters in the voting district concerned.

### Organisation of voting stations

66.(1) By not later than the relevant date stated in the election timetable, the chief electoral officer must determine the boundary of every voting station.

(2) The presiding officer of a voting station may alter the boundary of that voting station on voting day if the presiding officer considers it necessary to do so to ensure proper control and security at the voting station, and must demarcate that boundary in the prescribed manner.

### Mobile voting stations

67. (1) In order to ensure a free and fair election, the Commission may decide to use mobile voting stations. 10

(2) If the Commission decides to use mobile voting stations in an election, the chief electoral officer, by not later than the relevant date stated in the election timetable, must give notice of the route, including the locations and estimated times of stopping, of each mobile voting station.

(3) The notice must be publicised by the chief electoral officer in the media considered appropriate so as to ensure wide publicity of the information referred to in subsection (2), 15

## Part 3: Voting materials

### Ballot papers

68. The Commission must determine— 20

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

### Ballot boxes 25

69. (1) The Commission must determine the design and material of ballot boxes to be used in an election.

(2) Each ballot box must be capable of being securely closed.

(3) The Commission must determine the manner in which ballot boxes are to be— 30

- (a) numbered and labelled; and
- (b) closed, secured, opened, sealed and 'unsealed'.

### Voting compartments

70. (1) The Commission must determine the design and material of voting compartments to be used in an election.

(2) A voting compartment must screen a voter from observation by other persons while marking a ballot paper. 35

### Voting materials

71. (1) Before voting opens at a voting station, the chief electoral officer must supply the presiding officer responsible for that voting station with all the voting materials necessary for the election at that voting station, including— 40

- (a) ballot papers;
- (b) ballot boxes;
- (c) voting compartments;
- (d) a certified voters' roll for the voting district concerned; and
- (e) a receipt to be signed by the presiding officer detailing the voting materials entrusted to that presiding officer. 45



(2) A presiding officer is responsible for the safe-keeping of all the voting materials supplied to that officer.

***Part 4: Appointment of officers, additional persons and institutions, and their powers and duties***

**Appointment of presiding officers**

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72. As soon as practicable after the proclamation of an election, the chief electoral officer, in consultation with the Commission, must appoint a presiding officer and a deputy presiding officer for each voting station at which that election is to be conducted.

**Powers and duties of presiding officers**

73. (1) The presiding officer of a voting station must co-ordinate and supervise the 10 voting at that voting station so as to ensure that the election at the voting station is free and fair.

(2) The presiding officer—

(a) may exercise the powers and must perform the duties assigned to a presiding officer by or under this Act; 15

(b) must take all reasonable steps to ensure orderly conduct at that voting station; and

(c) may order a member of the security services to assist in ensuring orderly conduct at that voting station, and that member must comply with that order.

(3) The presiding officer may exclude from the area within the boundary of a voting station any person other than— 20

(a) a “member, employee or officer of the Commission, or the chief electoral officer;

(b) an agent who is entitled in terms of section 59 to be present at a voting station;

(c) the prescribed number of candidates as the presiding officer may allow; 25

(d) a person appointed by an accredited observer;

(e) a voter present for the purpose of casting a vote; and

(f) any other person or category of persons authorised by the chief electoral officer to be present at the voting station.

(4) (a) Despite subsection (3), the presiding officer may order any person mentioned 30 in subsection (3)(b) to (f) 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) The presiding officer must give that person reasons for an order in terms of paragraph (a).

(5) If a person refuses to comply with an order in terms of subsection (4), the 35 presiding officer may order a member of the security services to forcibly remove that person, and that member must comply with that order.

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

(a) the presiding officer is absent from duty, or for any reason is temporarily 40 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.

**Appointment of voting officers**

74. As soon as practicable after the proclamation of an election, the chief electoral 45 officer, in consultation with the Commission, must appoint for each voting station as many voting officers as may be necessary.

**Powers and duties of voting officers**

75. 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
- (b) may exercise the powers and must perform the duties assigned to a voting officer by or under this Act.

#### **Appointment of counting officers**

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76. (1) As soon as practicable after the proclamation of an election, the chief electoral officer, in consultation with 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 chief electoral officer may appoint the presiding officer, the deputy presiding officer or a voting officer for a voting station as the counting officer or deputy counting officer for that voting station or at a venue.

#### **Powers and duties of counting officers**

77. (1) The counting officer for a voting station or venue for the counting of votes must co-ordinate and supervise the counting of votes and the determination of the result of the election at the voting station or venue so as to ensure that the election at that voting station or venue is free and fair.

(2) Section 73(2) to (5), adjusted as may contextually be necessary, applies to the powers and duties of a counting officer.

(3) The deputy counting officer for a voting station or 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
- (b) the office of counting officer for that voting station or venue is vacant.

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#### **Appointment of counters**

78. (1) As soon as practicable after the proclamation of an election, the chief electoral officer, in consultation with the Commission, must appoint as many counters as may be necessary for each voting station or venue at which the counting of votes is to be conducted.

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(2) The chief electoral officer may appoint the presiding officer, 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**

79. A counter—

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

#### **Appointment of additional persons**

80. (1) The chief electoral officer, in consultation with 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 by the chief electoral officer in terms of subsection (1) may be—

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

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#### **Powers and duties of additional persons**

81. A person appointed by the chief electoral officer in terms of section 80 may exercise any power and must perform any duty assigned to such a person by or under this Act.

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#### **General provisions concerning appointment of officers**

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

- (a) is a candidate contesting that election;  
 (b) is an agent in that election; or  
 (c) holds political office in a registered party.
- (2) (a) An officer exercises the powers and perform; the duties assigned to that officer subject to the directions, control and discipline of the chief electoral officer. 5  
 (b) The chief electoral officer must determine in writing the terms and conditions of appointment of an officer, including—  
 (i) the powers and duties assigned to that officer; and  
 (ii) any remuneration payable to that officer.
- (3) The assignment of a power or duty to an officer does not prevent the chief electoral officer from exercising that power or performing that duty. 10
- (4) A person may not be appointed as an officer unless that person has signed the prescribed undertaking, which must include an undertaking to be bound by—  
 (a) the Code; and  
 (b) a declaration of secrecy. 15
- (5) All 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 registered party or candidate contesting an election, or any of the issues in contention between parties or candidates. 20
- (7) An officer may not place in jeopardy that officer's perceived independence, or harm the credibility, impartiality, independence or integrity of the Commission, by any membership, association, statement or conduct.
- (8) An officer is not liable for any loss suffered by a person as a result of an act performed or omitted in good faith in the exercise of a power or the performance of a duty in terms of this Act. 25
- (9) An officer may be removed from office by the chief electoral officer on account of—  
 (a) misconduct, incompetence or incapacity;  
 (b) absence from duty without leave of the chief electoral officer; 30  
 (c) bias;  
 (d) a material contravention of this section;  
 (e) a material contravention of the declaration of secrecy; or  
 (f) any other consideration related to free and fair elections.
- (10) No appeal may be brought against a decision by the chief electoral officer to appoint a person as an officer, or to remove an officer from office. 35
- (11) An officer may resign from office by giving one calendar month's notice in writing to the chief electoral officer.
- (12) The chief electoral officer 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. 40

### **General provisions concerning appointment of institutions**

83. (1) In this section, "institution" means an institution appointed by the chief electoral officer in terms of section 80.
- (2) (a) An institution and its employees exercise the powers and perform the duties assigned to the institution subject to the directions, control and discipline of the chief electoral officer. 45  
 (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; 50  
 (ii) the powers and duties assigned to that institution; and  
 (iii) any remuneration payable to that institution.
- (3) The assignment of a power or duty to an institution does not prevent the chief electoral officer from exercising that power or performing that duty.

(4) An institution must ensure that an employee of that institution who exercises a power or performs a duty in terms of this Act is not—

- (a) a candidate contesting that election;
- (b) an agent in that election; or
- (c) holds political office in a registered party.

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(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 registered party or candidate contesting an election, or any of the issues in contention between parties or candidates.

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(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 perceived independence, or harm the credibility, impartiality, independence or integrity of the Commission, by any membership, association, statement or conduct.

(9) An institution and its employees are not liable for any loss suffered by any person as a result of any act performed or omitted in good faith in the exercise of any power or the performance of a duty in terms of this Act.

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(10) 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 any powers or performing any duties in terms of this Act.

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(11) 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—

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- (a) misconduct, incompetence or incapacity;
- (b) absence from duty without leave of the chief electoral officer;
- (c) bias;
- (d) material contravention of this section;
- (e) material contravention of the declaration of secrecy; or
- (f) conduct which is not conducive to free and fair elections.

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(12) No appeal may be brought against a decision by the chief electoral officer to appoint an institution, or to revoke the appointment of an institution.

(13) An institution may terminate its appointment by giving two calendar months' notice in writing to the chief electoral officer.

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(14) The chief electoral officer may appoint, in accordance with this Part, another institution in the place of an institution whose appointment has been revoked or terminated.

### ***Part 5: Accreditation of observers and persons providing voter education***

#### **Accreditation of observers**

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84. (1) Any juristic person may apply to the Commission in the prescribed manner for accreditation 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—

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- (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 registered party or candidate contesting that election;
  - (ii) be competent and professional in observing that election; and
  - (iii) subscribe to a Code governing observers issued by the Commission in terms of section 99.

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- (4) The Commission may decide—
- (a) to accredit the applicant, in which case, the Commission must—
    - (i) enter the applicant's name in the register of persons accredited as observers;
    - (ii) issue a certificate of accreditation in the applicant's name stating the period and other conditions of accreditation; and
    - (iii) send the certificate to the applicant; or
  - (b) not to accredit the applicant, in which case the Commission must advise the unsuccessful applicant in writing of its decision.
- (5) If a person accredited as an observer fails to comply to a material extent with the conditions of the accreditation, the Commission may cancel that accreditation after having given reasonable notice of the cancellation to that person.
- (6) Any person may inspect the register and copies of the certificates of persons accredited as observers. The register and copies of the certificates must be kept at the Commission's head office. 15
- (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 fee.

#### **Powers and duties of accredited observers**

85. (1) A person appointed by an accredited observer may, in relation to the election for which that observer is accredited, observe the proceedings provided for in— 20
- (a) Part 1 of Chapter 4 concerning voting;
  - (b) Parts 2 and 3 of Chapter 4 concerning the counting of votes; and
  - (c) Part 5 of Chapter 4 concerning the determination and declaration of the election results.
- (2) Whilst observing an election, a person appointed by an accredited observer must wear the prescribed identification indicating that the person is representing an accredited observer. 25
- (3) A person appointed by an accredited observer must comply with any order issued by—
- (a) an officer; or
  - (b) a member of the security services acting on the instructions of an officer. 30

#### **Accreditation of persons providing voter education**

86. (1) Any natural or juristic person may apply to the Commission in the prescribed manner for accreditation to provide voter education for an election. 35
- (2) The Commission may require further information in support of an application.
- (3) The Commission may accredit an applicant to provide voter education for an election after considering the application, any further information provided by the applicant, and whether—
- (a) the services provided by the applicant meet the Commission's standards;
  - (b) the applicant is able to conduct its activities effectively; 40
  - (c) the applicant or the persons appointed by the applicant to provide voter education will—
    - (i) do so in a manner that is impartial and independent of any registered party or candidate contesting that election;
    - (ii) be competent to do so; and 45
    - (iii) subscribe to a Code issued by the Commission under section 98 governing persons accredited to provide voter education; and
  - (d) the accreditation of the applicant will promote voter education and conditions conducive to free and fair elections.
- (4) Section 84(4) to (7), adjusted as may contextually be necessary, applies to the accreditation of persons providing voter education. 50

## CHAPTER 7

## GENERAL PROVISIONS

*Part 1: Prohibited conduct***Undue influence**

87. (1) No person may— 5
- (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 registered party or candidate;
    - (iv) to support or not to support any registered party or candidate; or 10
    - (v) to attend and participate in, or not to attend and participate in, any political meeting, march, 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 15 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: 20
    - (i) Any representative of a registered 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 25
    - (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. 30
- (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 35 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.

**Impersonation**

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88. No person—
- (a) may apply to be registered as a voter in the name of any other person, whether living, dead or fictitious;
  - (b) may apply for a ballot paper at a voting station in the name of another person, whether living, dead or fictitious; 45
  - (c) who is not entitled to vote in an election or at a voting station, may vote in that election or at that voting station;
  - (d) may cast more votes than that person is entitled to; or
  - (e) may impersonate—

- (i) a representative of a registered party or of a candidate;
- (ii) a candidate in an election;
- (iii) a member, employee or officer of the Commission;
- (iv) the chief electoral officer;
- (v) a person appointed by an accredited observer; or
- (vi) a person accredited to provide voter education.

#### **Intentional false statements**

89. (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—
- (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**

90. (1) No person may interfere with a voter's right to secrecy while 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**

91. (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 an election purpose.
- (2) The chief electoral officer may authorise—
- (a) the printing, manufacture or supply of any voting or election material;
  - (b) the use of the voters' roll or any voting or election material for a purpose other than an election purpose; and
  - (c) the removal or destruction of any voting or election material.

#### **Prohibitions concerning placards and billboards during election**

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

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

93. (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.
- (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.

## Contravention of Code

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

## Part 2: Enforcement

### Institution of and intervention in civil proceedings by chief electoral officer 5

95. (1) Subject to this Act and any other law, the chief electoral officer 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. 10

### Jurisdiction and powers of Electoral Court

96. (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 registered 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— 15

- (a) a formal warning;
- (b) a fine not exceeding R200 000; 20
- (c) the forfeiture of any deposit paid by that person or party in terms of section 27(2)(e);
- (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; 25
  - (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; 30
  - (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; 35
- (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. 40

(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

97. Any person who contravenes a provision of Part I of this Chapter or a provision of section 107, 108 or 109, is guilty of an offence. 45

### Penalties

98. Any person convicted of any offence in terms of—

- (a) section 87(1)(b),(c) or (d), 89(2), 90, 91, 93 or 94, is liable to a fine or to imprisonment for a period not exceeding 10 years; 50



(b) section 87(1)(a), (e) or (f), (2), (3) or (4), 88, 89(1), 92, 107(4), 108 or 109, is liable to a fine or to imprisonment for a period not exceeding five years,

#### ***Part 4: Additional powers and duties of Commission***

##### **Electoral Code of Conduct and other Codes**

**99. (1)** The Electoral Code of Conduct must be subscribed to— 5

(a) by every registered party before that party is allowed to contest an election: and

(b) by every candidate before that candidate may be placed on a list of candidates in terms of section 31.

(2) In order to promote free, fair and orderly elections, the Commission may compile 10 and issue any other Code.

(3) The Commission may change or replace a Code issued in terms of subsection (2).

(4) A Code issued in terms of subsection (2), or a change to or replacement of such a Code, must be published in the *Government Gazette*.

##### **Regulations 15**

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

(2) The Commission may make regulations, after consultation with the party national liaison committee, regarding any matter—

(a) that may be prescribed in terms of this Act; or 20

(b) that it considers necessary or expedient in order to achieve the objects of this Act.

(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. 25

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

##### **Assignment of powers and duties by Commission**

**101. (1)** The Commission may—

(a) delegate any of the Commission's powers in terms of this Act, excluding the 30 powers referred to in section 32, 99(2) or 100 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 instruction in terms of subsection (1)— 35

(a) is subject to any limitations and conditions the Commission may impose; and

(b) does not prevent the Commission from exercising or performing the assigned power or duty.

##### **Assignment of powers and duties by chief electoral officer**

**102. (1)** The chief electoral officer may— 40

(a) delegate any of the chief electoral officer's powers in terms of this Act or any other law, to an employee or officer of the Commission; or

(b) instruct an employee or officer of the Commission to perform any of the chief electoral officer's duties in terms of this Act or any other law.

(2) Section 101(2), adjusted as may contextually be necessary, applies to a delegation 45 or instruction of the chief electoral officer in terms of subsection (1).

### **Powers to decide objections and appeals**

103. (1) Whenever the Commission, an officer or the chief electoral 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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(2) The Commission must prescribe the powers that may be exercised by it, any officer, or the chief electoral officer in deciding an objection or appeal in terms of this Act.

### **Access to private places**

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

### **Ownership of voting and election materials, and disposal**

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

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(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**

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106. (1) Subject to section 96(2)(c), the Commission must refund to a registered party any deposit paid by it in terms of section 27(2)(c) if the party is allocated at least one seat in the legislature whose election that party contested.

(2) A deposit that is not refundable in terms of subsection (1) is forfeited to the State.

### **Part 5: Other general provisions**

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#### **Temporary obligations**

107. (1) (a) This section is applicable only from the date on which an election is called to the date the result of the election is determined and declared in terms of section 57.

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

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(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.

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

(a) originates from—

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

(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.

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#### **Prohibition on certain political activities**

108. On voting day no person may—

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

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

### **Prohibition on publication of exit polls**

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

### **Effect of certain irregularities**

**110.** (1) Any mistake in the certified segment of the voters' roll referred to in section 524 or the final list of candidates referred to in section 31 does not invalidate that voters' roll or that list of candidates.

(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. 10

### **Inspection and copying of documents**

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

### **Prohibition on certain strikes and lockouts** 15

**112.** (1) The service provided by the Commission is an essential 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. 20

### **Limitation of liability**

**113.** The Commission, a member, employee and officer of the Commission, the chief electoral officer, an institution appointed in terms of section 80, and a person with whom the Commission has contracted to work for the Commission, is not liable for any loss suffered by any person as a result of any act performed or omitted in good faith in the course of exercising a power or performing a duty assigned by or under this Act. 25

### **Composition of National Assembly and provincial legislatures**

**114.** The formulas referred to in sections 46(2) and 1(15)(2) of the Constitution are set out in Schedule 3.

### **Repeal of laws** 30

**115.** (1) Subject to subsection (2), the laws mentioned in Schedule 4 are hereby repealed.

(2) Anything done in terms of a provision of any law repealed by subsection (1) and which could be done in terms of a provision of this Act, must be regarded to have been done in terms of the last-mentioned provision. 35

### **Act binds State**

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

### **Application of Act when in conflict with other laws**

**117.** If any conflict arises between a provision of this Act and a provision of any other law, except the Constitution or an Act of Parliament expressly amending this Act, the provision of this Act prevails. 40

### **Short title and commencement**

**118.** (1) This Act is called the Electoral Act, 1998.

(2) Subject to subsection (3), this Act takes effect on a date determined by the President by proclamation in the *Government Gazette*.

(3) Section 3(c) must take effect on a later date than the remainder of this Act.

## SCHEDULE 1

### ELECTION TIMETABLE

#### (Section 20)

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

#### **Cut-off time for act to be performed**

1. An act required in terms of this Act to be performed by not later than a date stated in the election timetable must be performed before 17:00 on that date.

#### **Cut-off date for publication of voters’ roll**

2. By ... [day/month/year], the chief electoral officer must publish the voters’ roll or the segments of the voters’ roll to be used in this election in terms of section 24(2).

#### **Notice that list of addresses of voting stations is available for inspection**

3. The chief electoral officer must give notice by ... [day/month/year] that from the date of the notice until the voting day copies of a list containing the addresses of all voting stations will be available for inspection.

#### **Cut-off date for submission of list of candidates**

4. Registered parties that intend to contest this election must nominate and submit a list of their candidates for the election to the chief electoral officer in the prescribed manner by ... [day/month/year].

#### **Notice of non-compliance**

5.(1) The chief electoral officer must notify a registered party that has submitted a list of candidates in terms of section 27 but has not fully complied with that section, of that non-compliance by ... [day/month/year].

(2) If the notified party takes the opportunity to comply with section 27, that party must do so by ... [day/month/year].

#### **Inspection of lists of candidates and accompanying documents**

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

#### **Cut-off date for objections**

7. Any person, including the chief electoral officer, may object to a candidate to the Commission in the prescribed manner by ... [day/month/year].

#### **Decision of objections**

8. The Commission must decide an objection under section 30, and must notify the objector and the registered party that nominated the candidate of the decision in the prescribed manner by ... [day/month/year].

### **Cut-off date for appeals against decisions**

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

### **Deciding appeals**

10. The Electoral Court must consider and decide an appeal brought under section 30(4) and notify the parties to the appeal, and the chief electoral officer, of the decision in the prescribed manner by [day/month/year].

### **List of parties and candidates entitled to contest election and final list of candidates**

11. By . . . [day/month/year], the chief electoral officer —
- (a) must give effect to a decision of the Commission in terms of section 30(3) or a decision of the Electoral Court in terms of section 30(5); and
  - (b) must compile a list of the registered parties entitled to contest the election and the final list of candidates for each of those parties.

### **Issue of certificate to candidates**

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

### **Determination of boundaries of voting stations**

13. By [day/month/year], the chief electoral officer must determine the boundary of every voting station.

### **Prescribing of voting hours**

14. By . . . [day/month/year], the Commission must prescribe the voting hours for this election.

### **Notice of route of mobile voting stations**

15. If the Commission decides to use mobile voting stations in the election, the chief electoral officer must give notice by . . . [day/month/year] of the route, including the locations and estimated times of stopping of each mobile voting station.

## SCHEDULE 2

## ELECTORAL CODE OF CONDUCT

## (Section 99)

**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 registered party and every candidate bound by this Code must—
- (a) 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 registered 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 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 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 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 candidate, that the representatives and supporters of the candidate comply with this Code and any applicable electoral laws.

**Public commitment**

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

### **Duty to co-operate**

5. Every registered 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 registered 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 **w**omen in political activities;
  - (c) ensure the free access of women to all pub'ic 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 registered 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 registered parties contesting the **election**;
  - (e) facilitate the access of members, employees **and** officers of the Commission, and the chief electoral officer, to public **mee:ings**, 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 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 registered 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 registered 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 candidate or that candidate's representatives;
- (c) plagiarise the symbols, colours or acronyms of other registered 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 100 add provisions to this Code.

### SCHEDULE 3

## COMPOSITION OF NATIONAL ASSEMBLY AND PROVINCIAL LEGISLATURES

(Section 114)

### Formula for determining number of members of National Assembly

1.(1) By taking into account available scientifically based data and representations by interested parties, the number of seats of the National Assembly must be determined by awarding one seat for every 100000 of the population with a minimum of 350 and a maximum of 400 seats.

(2) If the total number of seats for all provincial legislatures determined in terms of item 2 exceeds 400, the number of seats for the National Assembly may not be less than 400.

### Formula for determining number of members of provincial legislatures

2. By taking into account available scientifically based data and representations by interested parties, the number of seats of a provincial legislature must be determined by awarding one seat for every 100000 of the population whose ordinary place of residence is within that province, with a minimum of 30 and a maximum of 80 seats.

### Commission responsible for determination of seats

3.(1) The determination of seats contemplated in items 1 and 2 must be completed by the Commission not later than 31 March 1999.

(2) The Commission must give notice in the *Government Gazette* of the time and date on which, and the venue where, the determination is to take place, and must afford interested parties an opportunity to make representations before the determination is made.

### Determination to be published in *Government Gazette*

4. A determination made in terms of this Schedule must be published in the *Government Gazette* within 14 days of the determination, and takes effect on the date it is published.

**SCHEDULE 4****REPEAL OF LAWS****(Section 115)**

<b>No. and year of law</b>	<b>Title</b>
Act No. 202 of 1993	Electoral Act, 1993
Act No.1 of 1994	Electoral Amendment Act, 1994
Proclamation No. 65 of 1994	
Proclamation No. 69 of 1994	
Proclamation No. 73 of 1994	
Proclamation No. 85 of 1994	
Proclamation No. 91 of 1994	
Act No. 20 of 1997	Electoral Amendment Act, 1997

## MEMORANDUM ON THE OBJECTS OF THE ELECTORAL BILL, 1998

### PART 1

1. The Constitution of the Republic of South Africa 1996, charges the Electoral Commission ("EC") with the management of all elections in all spheres of government. The Electoral Commission Act, 1996 (Act No. 51 of 1996), obliges the EC continuously to review and make recommendations regarding electoral legislation.

2. The current Electoral Act, 1993 (Act No. 202 of 1993), was designed for the unique purpose of governing the first democratic elections for the national and provincial legislatures. Even as amended last year, it does not cater adequately for the country's next national, provincial and municipal elections. For instance, it does not make suitable provision for a general registration of voters and the preparation of a common voters' roll, as required by the Constitution.

3. The EC has prepared a draft Electoral Bill in terms of which elections in all spheres of government can be conducted. That draft Bill was accepted by the Minister of Home Affairs with minor adaptations and is being introduced as the Bill.

4. The individual chapters of the Bill are summarised in Part 2 below and only a few issues of principle proposed in the Bill are highlighted:

#### 4.1 Registration

Possession of an identity document issued after 1 July 1986, in terms of the Identification Act, 1986 (Act No. 72 of 1986), or a temporary identity certificate issued in terms of the Identification Act, 1997 (Act No. 68 of 1997), will, if approved, henceforth be a prerequisite for registration as a voter. In terms of the Bill, a national voters' roll must be prepared and permanently maintained. In order to avoid last minute registrations and consequent amendments to the national voters' roll, everybody in possession of an identity document, including sixteen year olds, will be allowed to apply for registration. The names of only those persons who will have turned 18 on election day will appear on that roll. In all future elections, voters whose names are not on the national voters' roll will be unable to vote. A voter's name will appear on the national roll only once and voters will be registered in the voting district where they are ordinarily resident, a flexible concept making allowance for migrant workers, students and holiday home owners. A voter's name will only appear in one voting district segment of the national voters' roll and as such will be allowed to vote only in that voting district.

#### 4.2 Voting/counting

The whole procedure is to be simplified. It is proposed that there will be one voting station per voting district; a voter's name will appear on one segment of the national roll only; each voter's identity document (or temporary certificate issued under the appropriate Identification Act) is checked; a ballot paper is then stamped and handed to the voter for marking in the voting compartment while the voter's name is marked off on the roll. There will ordinarily be only one day for voting and counting will ordinarily take place at the same station as the voting. Many complexities and loopholes, perceived and real, of the 1994 procedure will be eliminated and expenditure can be significantly reduced.

#### 4.3 Code of Conduct

The Bill envisages all participating parties committing themselves, their officers, members and supporters to a Code and states the Electoral Court has exclusive jurisdiction in respect of complaints thereunder. Unlike the 1993 Act, the Bill does not establish a special hierarchy of electoral tribunals. This is largely for financial reasons

but the Minister of Justice and the chairperson of the Electoral Court should be consulted about possible back-up support of the Court.

## PART 2

The Bill consists of seven chapters and four schedules

### Chapter 1

This Chapter seeks to provide for the application of the Act to elections for national, provincial and municipal legislatures and charges the EC with the administration of the Act.

### Chapter 2

A major difference between the 1994 national and provincial elections and those to be held in 1999, is that the Constitution now requires the establishment and use of a national voters' roll.

The existing municipal voters' rolls, used for the 1995/96 municipal elections were consolidated and evaluated to ascertain whether they could be used as a basis for the national voters' roll. It was found that the inaccuracy percentage of the rolls in general made them unsuitable and their consolidation presented major technical problems. It would also not have been possible to rearrange the voters on those rolls into the newly demarcated voting districts. A new general registration of voters is therefore unavoidable. This holds the advantage that voters will register at the designated voting stations where they will eventually cast their votes. In effect, the registration process will serve as trial run for the elections, giving the electorate, the political parties and the EC invaluable experience.

Chapter 2 seeks to provide for the registration of voters and for the continuous updating of the new voters' roll when a voter's place of ordinary residence changes.

A voter will be registered in the voting district where that voter is ordinarily resident. "Ordinarily resident" is only defined in respect of voters who are in Government service abroad, and members of their households. A voter who lives in one district and works and lives in another for long continuous periods will probably have a choice of registration in either of those districts.

The Chief Electoral Officer is to be authorised in clause 11, in certain circumstances, to move a person's name from one voting district to another or to reregister a person as a voter.

Clause 8 seeks to provide, *inter alia*, for the disqualification of voters who are of unsound mind.

### Chapter 3

Part 1 of this Chapter seeks to provide that the President or a Premier must, when proclaiming an election, give at least 60 days' notice of the voting day. In certain circumstances the voting day can be postponed, either in general or in respect of a particular voting station. A single voting day is proposed because it is much cheaper and susceptible to less manipulation, perceived or real.

Clause 20 contains an innovation. Previously time periods, calculated back from voting day, were prescribed to determine cut-off dates for various actions to be taken, for example submission of lists of candidates or objections. In clause 20 it is now proposed that the Commission must determine and publish an election timetable in respect of each election, mentioning the exact cut-off dates. This is much simpler for electoral role-players.

Part 2 of Chapter 3 seeks to provide for the finalisation and certification of the voters' roll to be used for a particular election.

In Part 3 of Chapter 3 it is proposed that only registered parties may contest elections. The submission of lists of candidates and the finalisation of those lists are also regulated.

Part 4 of Chapter 3 deals with additional arrangements for municipal elections. National and provincial legislation on municipal structures and representation in municipal councils, are still to come, and when in place, it will probably be necessary to further regulate specifically for municipal elections.

Part 5 of Chapter 3 seeks to provide for special votes for specific categories of persons and to empower the Commission to allow by regulation other categories of persons as special voters or to allow persons to vote by declaration vote under certain circumstances.

## Chapter 4

Chapter 4 deals with voting, the counting of votes and the announcement of the result of an election. Notable features of the proposals include the following:

1. The EC must prescribe the voting hours and may prescribe different voting hours for different voting stations. It may, on voting day, extend voting hours at a particular voting station until midnight and may temporarily close a voting station for part of a day. [Clause 36]
2. Voters must produce their identity documents and may only vote at the voting station of the voting district where they are registered. [Clause 38]
3. The voter must mark the ballot paper in a way that indicates the party or candidate that that voter wishes to vote for; a cross is not required. [Clause 38]
4. The EC may decide to use mobile voting stations to cater for isolated pockets of voters in rural areas and, possibly, for concentration of physically handicapped voters, e.g. in hospitals. [Clause 44]
5. Votes are counted at the voting station immediately after the close of voting unless the EC determines otherwise in respect of a particular voting station. [Clause 46] The result of the count is publicly announced at the voting station. [Clause 50] Those arrangements will eliminate many problems associated with the transport of ballot boxes over long distances at night and their storage in large assembly points for counting.
6. The EC will announce the final results of an election after having entertained material objections. An appeal against the EC'S decision on an objection lies to the Electoral Court. [Clause 55 ]
7. The EC must declare the results of an election within seven days but may apply to the Electoral Court for a limited extension of that period. [Clause 57]

## Chapter 5

As proposed in this Chapter every party may have two agents at each voting station and four where the votes are counted and where the EC is determining the final results of the election. The powers and duties of agents are described in clause 59.

## Chapter 6

In Part I of this Chapter the EC is to be charged with dividing the country into voting districts and the factors it must take into account in doing so are laid down. Each voting district should have between about one thousand (rural ) and three thousand (urban) voters.

According to Part 2 of Chapter 6 there must be one voting station for each voting district. In emergencies voting stations can be relocated and mobile voting stations may be used where necessary.

Part 3 of Chapter 6 seeks to require the EC to determine the design of the ballot paper to be used in an election and the language to be used thereon. The EC must also determine the design and material of ballot boxes and voting compartments. Cheaper and lighter material for ballot boxes and voting compartments are under consideration as well as collapsible models that are easy to convey and store.

Part 4 of Chapter 6 deals with the appointment, powers and duties of electoral officers like presiding officers and voting officers. The appointment of institutions for the performance of certain functions, the exercise of certain powers and carrying out of duties on behalf of the EC are also proposed.

Part 5 of Chapter 6 seeks to regulate the accreditation of observers and persons providing voter education. It may become possible to obtain outside funding for the performance of some of those functions.

## **Chapter 7**

Part 1 of this Chapter describes conduct which is generally prohibited. Most of those prohibited acts amount to election fraud. Part 2 seeks to deal with civil enforcement of provisions of the Act and of the Electoral Code of Conduct, giving the Electoral Court exclusive jurisdiction over contravention of the Code and prescribing the penalties it may impose. Those range from a mere warning to disqualification of a political party.

Part 3 of Chapter 7 deals with penalties for offences in terms of Part 1, i.e. general electoral crimes.

In Part 4 of Chapter 7 the EC is given additional powers relating to the Electoral Code of Conduct, the preparation of other Codes, the making of regulations, the delegation of powers and assignment of duties, the determination of objections and appeals and the return or forfeiting of deposits.

Part 5 of Chapter 7 contains general provisions touching on, amongst others, printed matter during election time, the limitation of political activities on voting days, the publication of exit polls, the prohibition of strikes and lockouts on voting days and limitation of liability on the part of the EC and its officials for their acts or omissions in good faith.

Clause 118(3) seeks to provide that clause 3(c) (which makes the Bill applicable to municipal elections) must take effect from a later date than the remainder of the Bill. It is still unclear until when municipal elections will be governed by the Local Government Transition Act, 1993 (Act No. 209 of 1993).

## **Schedule 1**

This Schedule prescribes the form of the election timetable provided for in clause 20.

## **Schedule 2**

Schedule 2 contains the Electoral Code of Conduct binding parties and candidates participating in an election. The Code is essentially the same as the one used in the 1994 election.

## **Schedule 3**

Schedule 3 contains the formulas for determining the number of members of the National Assembly and provincial legislatures.

## **Schedule 4**

Schedule 4 contains the laws to be repealed by 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 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.