

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

**ELECTORAL AMENDMENT
BILL**

[B 1—2022]

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

[B 1A—2022]

ISBN 978-1-4850-0817-0

No. of copies printed 150

AMENDMENTS AGREED TO

ELECTORAL AMENDMENT BILL

[B 1—2022]

CLAUSE 1

1. On page 2, from line 8, to substitute the definition of “candidate” with the following definition:

“candidate” means a South African citizen contesting an election, or a South African citizen nominated on a list of a party contesting an election, as the context requires;”.

2. On page 2, from line 17, to substitute the definition of “independent candidate” with the following definition:

“independent candidate” means a South African citizen contesting an election and who is not nominated on a list of a party;”.

3. On page 3, in line 4, to omit “and”.

4. On page 3, after line 4, to insert:

(e) by the deletion of the definition of “party liaison committee”;

(f) by the insertion after the definition of “party liaison committee” of the following definition:

“political liaison committee” means a committee established in terms of the Regulations on Political Liaison Committees published in terms of the Electoral Commission Act;”; and”.

5. On page 3, in line 5, to renumber the existing paragraph (e) as paragraph (g).

NEW CLAUSE

1. On page 3, after line 9, to insert the following new clause after clause 1, and to renumber the existing clause 2 as clause 3, and subsequent clauses accordingly:

“Amendment of section 20 of Act 73 of 1998, as amended by section 9 of Act 1 of 2019

2. Section 20 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The Commission must after consultation with the [party] national political liaison committee—”.

CLAUSE 2

1. On page 3, from line 14 to line 17, to omit paragraph “(cA)” and to substitute with the following:

“(cA) declaration, signed by the duly authorised representative of the party confirming that each candidate appearing on the party’s provincial list of candidates referred to in Schedule

1A is registered to vote within the province in which the election will take place;”.

CLAUSE 3

1. On page 3, in line 18, to omit “amended”, and to substitute with the word “**substituted**”.
2. On page 3, in line 19, after the word “and”, to insert “**amended by**”.

NEW CLAUSE

1. On page 3, after line 28, to insert the following new clause after clause 3, and to renumber the subsequent clauses accordingly:

“Amendment of section 30 of Act 73 of 1998, as amended by section 12 of Act 4 of 2021

5. Section 30 of the principal Act is hereby amended by the deletion of subsection (6).”.

CLAUSE 4

1. On page 3, to omit lines 34 to 39 and to substitute with the following:

“31A. (1) A person may be nominated to contest an election as an independent candidate—

(a) in one or more regions for the National Assembly but may be elected to only one seat in the National Assembly; and

(b) for a provincial legislature in a province in which that person is registered as a voter,

provided that the independent candidate may only be eligible to be a member of either the National Assembly or a provincial legislature.”.

2. On page 3, in line 43, to omit “and qualifications”.
3. On page 4, to omit lines 6 to 9 and to substitute with:

“(a) A completed prescribed form confirming that the independent candidate has submitted, in the prescribed manner, the names, identity numbers and signatures of voters whose names appear on the segment of the voters’ roll for that region or province in which the independent candidate is standing for election and who support his or her candidature, totalling at least 20 percent of the quota for a seat that was required for a seat in the previous comparable election;”.

4. On page 4, in line 10, to omit “if any,”.
5. On page 4, to omit from lines 17 to 20 and to substitute with:

“(e) if contesting an election of a provincial legislature, a prescribed declaration, signed by the candidate confirming that he or she is registered to vote within a province in which he or she intends contesting; and”.

6. On page 4, from lines 21 to 23, to omit paragraph (f).
7. On page 4, in line 24 to renumber paragraph “(g)” as paragraph “(f)”.

8. On page 4, after line 34, to insert:

“(6) The amount to be deposited by an independent candidate contesting an election of a provincial legislature, must be less than the amount for contesting an election of the National Assembly, and such deposits may also be different to the deposits paid by registered parties.”.

9. On page 4, in line 37, to omit “(a),” and “, (g)”.
10. On page 4, in line 43, to omit “(a),” and “, (g)”.
11. On page 5, from line 52 to line 55, to omit subsection (6).

NEW CLAUSE

1. On page 6, after line 12, to insert the following new clause after clause 4 and to renumber the existing clause 5 and subsequent clauses accordingly:

“Amendment of section 39 of Act 73 of 1998, as substituted by section 12 of Act 34 of 2003

7. Section 39 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) two agents, either from different parties or representing different independent candidates, if available.”.

CLAUSE 5

1. On page 6, in line 13, to omit “amended” and to substitute “inserted”.

NEW CLAUSES

1. On page 6, after line 21, to insert the following new clauses after clause 5, and to renumber the existing clause 6 and subsequent clauses accordingly:

“Substitution of section 58 of Act 73 of 1998, as amended by section 10 of Act 18 of 2013

9. The following section is hereby substituted for section 58 of the principle Act:

“Appointment of [party] agents

58. (1) Every registered party or independent candidate contesting an election may appoint such number of agents as may be prescribed—

(a) **[two party agents]** for each voting station **[or, if voting or counting at a voting station takes place in more than one room or separately enclosed area, two party agents in respect of each room or area];** and

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

(2) **[A party]** An 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]** an agent must be effected in the prescribed manner.”.

Amendment of section 59 of Act 73 of 1998, as amended by section 16 of Act 34 of 2003

10. Section 59 of the principal Act is hereby amended by the substitution in subsection (3)(a) for subparagraph (ii) of the following subparagraph:

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

Amendment of section 62 of Act 73 of 1998

11. Section 62 of the principal Act is hereby amended—

(a) by the substitution for the heading of the section of the following heading:

“**Consultation with [party] political liaison committee**”; and

(b) by the substitution for paragraphs (a) and (b) of the following paragraphs, respectively:

“(a) the municipal [party] political liaison committee for the municipality within which that voting district will fall; or

(b) if no municipal [party] political liaison committee has been established in a municipality, the provincial [party] political liaison committee for the province within which that voting district will fall.”.

Amendment of section 64 of Act 73 of 1998, as amended by section 18 of Act 34 of 2003

12. Section 64 of the principal Act is hereby amended by the substitution in subsection (3) for paragraphs (a) and (b) of the following paragraphs, respectively:

“(a) the municipal [party] political liaison committee for the municipality within which that voting station will fall; or

(b) if no municipal [party] political liaison committee has been established in the municipality, the provincial [party] political liaison committee for the province within which the voting station will fall.”.

Amendment of section 66 of Act 73 of 1998, as substituted by section 19 of Act 34 of 2003

13. Section 66 of the principal Act is hereby amended—

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

“(1) Before the voting station opens for voting on voting day the presiding officer of a voting station must determine the boundary of the voting station after consultation with [party] agents and members of the security services who are available at that voting station at that stage.”; and

(b) by the substitution for subsection (3) of the following subsection:

“(3) The presiding officer may alter the boundary at any time if it is necessary to do so to ensure proper control and security at the voting station and after consultation with [party] agents and members of the security services who are available at that voting station at that stage.”.

NEW CLAUSE

1. On page 6, after line 27, to insert the following new clause after clause 6 and to renumber the existing clause 7 and subsequent clauses accordingly:

“Amendment of section 96 of Act 73 of 1998

15. Section 96 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) the forfeiture of any deposit paid by that person or party in terms of section 27(2)(e) or paid by an independent candidate in terms of section 31B(3)(b);”.

NEW CLAUSE

1. On page 6, after line 34, to insert the following new clause after clause 7 and to renumber the existing clause 8 and subsequent clauses accordingly:

“Amendment of section 100 of Act 73 of 1998

17. Section 100 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“(2) The Commission may make regulations, after consultation with the [party] national political liaison committee, regarding any matter—”.

CLAUSE 10

1. On page 7, in line 1, after “Schedule 1” to omit “of” and to substitute “to”.
2. On page 7, in line 17, to omit “(c)” and to substitute “(cA)”.
3. On page 7, in line 22, to omit “(a)” and “,(g)”.
4. On page 7, in line 26, to omit “(c)” and to substitute “(cA)”.
5. On page 7, in line 27, to omit “(a)” and “,(g)”.

CLAUSE 11

1. On page 8, from line 34, to substitute Schedule 1A with the following:

“ Substitution of Schedule 1A to Act 73 of 1998, as inserted by section 25 of Act 34 of 2003 and amended by section 8 of Act 55 of 2008

21. Schedule 1A to the principal Act is hereby substituted for the following schedule:

“SCHEDULE 1A

SYSTEM OF REPRESENTATION IN NATIONAL ASSEMBLY AND PROVINCIAL LEGISLATURES

(Section 57A)

National Assembly

1. The seats in the National Assembly are as determined in terms of section 46 of the Constitution and item 1 of Schedule 3 and are allocated as follows:

- (a) Half the seats are filled by independent candidates and candidates from lists of candidates of parties contesting the nine regions and these shall be referred to as regional seats; and
- (b) half the seats are filled by candidates from lists of candidates of parties and these shall be referred to as compensatory seats.

2. The Commission must prepare a list of independent candidates contesting an election of the National Assembly in each region in accordance with this Act.

3. (1) Registered parties contesting an election of the National Assembly must nominate candidates on a list of candidates prepared in accordance with this Act.

(2) A party's list of candidates must consist of—

- (a) a regional list for each region that the party wishes to contest; and
 - (b) a national list,
- with such number of names on each list as the party may determine subject to subitem (3).

(3) The lists of candidates submitted by a party must together not contain more names than the number of seats in the National Assembly, and each such list must denote the fixed order of preference of the names as the party may determine.

(4) A candidate—

- (a) may be nominated on a party's regional list for one region and the national list of a party but the same candidate's name may not appear on more than one regional list for that party; or
- (b) may be nominated as an independent candidate in more than one region.

Regional seats

4. The Commission must determine a fixed number of seats reserved for each region for every election of the National Assembly, taking into account available scientifically based data in respect of voters and representations by interested parties.

5. The seats referred to in item 1(a) must be allocated to the parties and independent candidates contesting an election, as follows:

- (a) A quota of votes per seat must be determined in respect of each region by dividing the total number of valid votes cast in a region by the number of seats, plus one, reserved for such region under item 4.
- (b) The result plus one, disregarding fractions, is the quota of votes per seat in respect of a particular region.
- (c) The number of seats to be awarded for the purposes of paragraph (e) in respect of such region to a party or independent candidate must, subject to paragraph (d), be determined by dividing the total number of votes cast in favour of such party or independent candidate in a region by the quota of votes per seat indicated by paragraph (b) for that region.
- (d) Where the result of the calculation referred to in paragraph (c) yields seats not absorbed by the number awarded to parties or independent candidates, the surplus of votes accruing to any party, parties or independent candidates in respect of the relevant region, competes for the remaining seats in sequence of the highest surplus of votes.
- (e) The aggregate of a party's or independent candidate's awards in terms of paragraphs (c) and (d) in respect of a particular region indicates that party's or that independent

candidate's provisional allocation of the seats reserved under item 4 for that region.

- (f) Where an independent candidate's award in terms of paragraph (e) exceeds one seat, the candidate is awarded one seat as his or her provisional allocation. The excess seats must be dealt with in terms of item 7.
- (g) If the same independent candidate is provisionally allocated a seat in more than one region, the candidate is awarded the seat in the region where he or she received the most votes, as his or her provisional allocation. The excess seats in other regions must be dealt with in terms of item 7.
- (h) The aggregate of a party's provisional allocations for the various regions in terms of paragraph (e), indicates its provisional allocation of the seats referred to in item 4.
- (i) If no recalculation of provisional allocations is required in terms of item 7, the provisional allocation of such seats in terms of paragraphs (e), (f), (g) and (h) becomes the final allocation of such seats to the various parties and independent candidates, and if a recalculation is required, the provisional allocation of such seats, as adjusted in terms of item 7, becomes the final allocation of such seats to the various parties and independent candidates.
- (j) Parties' seats shall be filled from its regional lists in accordance with its final allocation of seats in respect of each region.
- (k) Where an independent candidate is contesting in more than one region, the votes received across regions for that independent candidate may not be aggregated in order to obtain a seat in the National Assembly.

Compensatory seats

6. The seats referred to in item 1(b) must be allocated to the parties contesting an election, as follows:

- (a) A quota of votes per seat must be determined by dividing the total number of valid votes cast for parties on both the regional and compensatory ballots by the total number of seats in the National Assembly, plus one, minus seats won by independent candidates, and the result plus one, disregarding fractions, is the quota of votes per seat.
- (b) The number of seats to be awarded to a party for the purposes of paragraph (d) must, subject to paragraph (c), be determined by dividing the total number of votes cast on both the regional and compensatory ballots in favour of such party by the quota of votes per seat determined in terms of paragraph (a).
- (c) Where the result of the calculation referred to in paragraph (b) yields seats not absorbed by the number awarded to parties, the surplus of votes accruing to any party or parties competes for the remaining seats in sequence of the highest surplus of votes, up to a maximum of five seats so awarded: Provided that the subsequent award of seats still remaining must be made in sequence of the party or parties with the highest average number of votes per seat already awarded in terms of paragraph (b) and this paragraph.
- (d) The aggregate of a party's awards in terms of paragraphs (b) and (c) must be reduced by the number of seats provisionally allocated to it in terms of item 5(h) and the result indicates that party's provisional allocation of the seats referred to in item 1(b).
- (e) If no recalculation of provisional allocations is required in terms of item 7 in respect of the seats referred to in paragraph (d), the provisional allocation of such seats in

terms of paragraph (d) becomes the final allocation of such seats to the various parties, and if such a recalculation is required, the provisional allocation of such seats, as adjusted in terms of item 7, becomes the final allocation of seats to the various parties.

- (f) In terms of paragraph (e), the seats finally allocated to a party, must be filled from its national list.

Insufficient names on party lists and independent candidates provisionally allocated more than one seat

7. (1) If a party has submitted a national or a regional list containing fewer names than the number of its provisional allocation of seats which would have been filled from such list in terms of item 5 or item 6 had such provisional allocation been the final allocation, it forfeits a number of seats equal to the deficit.

(2)(a) If, following the provisional allocation in item 5, an independent candidate stands to be allocated more than one seat in a region, he or she is only allocated one seat and forfeits any additional seats.

(b) If, following the provisional allocation in item 5, an independent candidate stands to be allocated a seat in more than one region, he or she is only allocated a seat in the region where he or she received the most number of votes and shall forfeit any additional seats.

(3) In the event of any forfeiture of seats in terms of subitem (1) and subitem (2) affecting the provisional allocation of seats in respect of any particular region in terms of item 5(e), such allocation must be recalculated as follows:

- (a) The party or independent candidate forfeiting seats must be disregarded in such recalculation, and its provisional allocation of seats in terms of item 5(e) for the region in question, minus the number of seats forfeited by it, becomes its final allocation in respect of the seats reserved for such region in terms of item 4. Independent candidates already allocated a seat must further be disregarded in such recalculation.
- (b) An amended quota of votes per seat must be determined in respect of such region by dividing the total number of votes cast in the region, minus the number of votes cast in such region in favour of the party or independent candidate referred to in paragraph (a), minus the votes cast in such region in favour of independent candidates already allocated one seat, by the number of seats, plus one, reserved for such region under item 4, minus the number of seats finally allocated to the said party or independent candidate, in terms of paragraph (a), minus the seats held by independent candidates in terms of item 5(e).
- (c) The results plus one, disregarding fractions, is the amended quota of votes per seat in respect of such region for purposes of the said recalculation.
- (d) The number of seats to be awarded for the purposes of paragraph (f) in respect of such region to a party or independent candidate participating in the recalculation, must, subject to paragraph (e), be determined by dividing the total number of votes cast in favour of such party or independent candidate in such region by the amended quota of votes per seat indicated by paragraph (c) for such region.
- (e) Where the result of the calculation referred to in paragraph (d) yields seats not absorbed by the number awarded to parties or independent candidates, the surplus of votes accruing to any party, parties or independent candidates in

respect of the relevant region, competes for the remaining seats in sequence of the highest surplus of votes.

- (f) The aggregate of a party's or independent candidate's awards in terms of paragraphs (d) and (e) in respect of such region, subject to subitem (5) and subitem (6), indicates that party's or independent candidate's final allocation of seats reserved under item 4 for that region.

(4) In the event of any forfeiture of seats in terms of subitem (1) affecting the provisional allocation of seats in terms of item 6(d), such allocation must be recalculated as follows:

- (a) The party forfeiting seats must be disregarded in such recalculation, and its provisional allocation of seats in terms of item 6(d), minus the number of such seats forfeited by it, becomes its final allocation of the seats referred to in item 1(b).

- (b) An amended quota of votes per seat must be determined by dividing the total number of votes cast nationally on both the regional and compensatory ballots, minus the number of votes cast nationally on both the regional and compensatory ballots in favour of the party referred to in paragraph (a), by the number of seats in the National Assembly, plus one, minus the number of seats finally allocated to the said party in terms of paragraph (a), minus the aggregate of seats won by independent candidates.

- (c) The result plus one, disregarding fractions, is the amended quota of votes per seat for the purposes of the said recalculation.

- (d) The number of seats to be awarded for the purpose of paragraph (f) to a party participating in the recalculation must, subject to paragraph (e), be determined by dividing the total number of votes cast nationally in favour of such party by the amended quota of votes per seat indicated by paragraph (c).

- (e) Where the result of the calculation referred to in paragraph (d) yields seats not absorbed by the number awarded to parties, the surplus of votes accruing to any party or parties competes for the remaining seats in sequence of the highest surplus of votes, up to a maximum of five seats so awarded: Provided that the subsequent award of seats still remaining must be made in sequence of the party or parties with the highest average number of votes per seat already awarded in terms of paragraph (d) and this paragraph.

- (f) The aggregate of such a party's awards in terms of paragraphs (d) and (e) must be reduced by the number of seats finally allocated to it in terms of item 5(i), and the results, subject to subitem (5) indicates that party's final allocation of the seats referred to in item 1(b).

(5) In the event of a party being allocated an additional number of seats in terms of this item, and if its list in question then does not contain the names of a sufficient number of candidates as set out in subitem (1), the procedure provided for in this item must be repeated with the changes required by the context until all seats have been allocated.

(6) In the event that an independent candidate stands to be allocated more than one seat in terms of subitem (3)(f), the procedure provided for in subitem (3), must be repeated with the changes required by the context until all seats have been allocated.

Provincial legislatures

8. The number of seats in each provincial legislature are as determined in terms of section 105 of the Constitution and item 3(1) of Schedule 3.

9. (1) Registered parties contesting an election of a provincial legislature must nominate candidates for election to such provincial legislature on a provincial list of candidates prepared in accordance with this Act, with such number of candidates on each list as the party may determine subject to subitem (2).

(2) The list of candidates submitted by a party must not contain more names than the number of seats in the provincial legislature concerned, and must denote the fixed order of preference of the names as the party may determine.

10. The Commission must prepare a list of independent candidates contesting an election of a provincial legislature in accordance with this Act.

11. The seats determined for a provincial legislature must be allocated to parties and independent candidates contesting an election, as follows—

- (a) A quota of votes per seat must be determined by dividing the total number of valid votes cast in the province concerned by the number of seats, plus one, determined for such province and the result plus one, disregarding fractions, is the quota of votes per seat for such province.
- (b) The number of seats to be awarded to a party or independent candidate for the purposes of paragraph (d) must, subject to paragraph (c), be determined by dividing the total number of votes cast in the province in favour of such party or independent candidate by the quota of votes per seat determined in terms of paragraph (a).
- (c) Where the result of the calculation referred to in paragraph (b) yields seats not absorbed by the number awarded to parties or independent candidates, the surplus of votes accruing to any party, parties or independent candidates in respect of the relevant province, competes for the remaining seats in sequence of the highest surplus of votes.
- (d) The aggregate of a party's or independent candidate's awards in terms of paragraphs (b) and (c), indicates that party's or independent candidate's provisional allocation of seats in the provincial legislature in question.
- (e) Where an independent candidate's award in terms of paragraph (d) exceeds one seat, the candidate is awarded one seat as his or her provisional allocation. The surplus of seats yielded must be dealt with in terms of item 12.
- (f) If no recalculation of provisional allocations for a province concerned is required in terms of item 12, the provisional allocation of seats in respect of that province in terms of paragraph (d), becomes the final allocation of such seats to the various parties and independent candidates, and if such a recalculation is required the provisional allocation of such seats as adjusted in terms of item 12 becomes the final allocation of such seats to the various parties and independent candidates.
- (g) In terms of paragraph (f) the seats finally allocated to a party, must be filled from its respective provincial lists.

12. (1) If a party has submitted a provincial list containing fewer names than the number of seats provisionally allocated to it in terms of item 11(d), it must forfeit a number of seats equal to the deficit.

(2) If, following the provisional allocation in item 11(*d*), an independent candidate stands to be allocated more than one seat in a region, he or she is only allocated one seat and forfeits any additional seats.

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

- (a) The party or independent candidate forfeiting seats must be disregarded in such recalculation, and its provisional allocation of seats in terms of item 11(*d*), minus the number of seats forfeited by it, becomes its final allocation of seats in the provincial legislature concerned. Independent candidates already allocated a seat must further be disregarded in such recalculation.
- (b) An amended quota of votes per seat must be determined in respect of such province by dividing the total number of votes cast in the province, minus the number of votes cast in the province in favour of the party or independent candidate referred to in paragraph (*a*), minus the votes cast in such province in favour of independent candidates already allocated one seat, by the number of seats, plus one, determined in terms of item 8 in respect of the province concerned, minus the number of seats finally allocated to the said party in terms of paragraph (*a*), minus the seats held by independent candidates in terms of item 11(*d*).
- (c) The result plus one, disregarding fractions, is the amended quota of votes per seat in respect of such province for purposes of the said recalculation.
- (d) The number of seats to be awarded for the purposes of paragraph (*f*) in respect of such province to a party or independent candidate participating in the recalculation must, subject to paragraph (*e*), be determined by dividing the total number of votes cast in favour of such party or independent candidate in such province by the amended quota of votes per seat indicated by paragraph (*c*) for such province.
- (e) Where the result of the calculation referred to in paragraph (*d*) yields seats not absorbed by the number awarded to parties or independent candidates, the surplus of votes accruing to any party, parties or independent candidates in respect of the relevant province, competes for the remaining seats in sequence of the highest surplus of votes.
- (f) The aggregate of such a party's or independent candidate's awards in terms of paragraphs (*d*) and (*e*) in respect of such province, subject to subitems (4) and (5), indicates that party's or independent candidate's final allocation of the seats determined under item 8 in respect of that province.

(4) In the event of a party being allocated an additional number of seats in terms of subitem (3)(*f*) and if its list in question then does not contain the names of a sufficient number of candidates as set out in subitem (1), the process provided for in this item must be repeated with the changes required by the context until all seats have been allocated.

(5) In the event that an independent candidate stands to be allocated more than one seat in terms of subitem (3)(*f*), the procedure provided for in subitem (3), must be repeated with the changes required by the context until all seats have been allocated.

Ballot papers

13. (1) The Commission must produce separate ballot papers for each regional election of members to the National Assembly,

the compensatory seats of members to the National Assembly and of members to each provincial legislature.

(2) The ballot paper to be used in each region for the election of members of the National Assembly shall include only parties and independent candidates standing in that region for election to the National Assembly.

(3) The ballot for a provincial legislature shall include the names of parties and independent candidates standing for elections in that province.

Designation of representatives of parties

14. (1) After the counting of votes has been concluded, the number of representatives of each party has been determined and the election result has been declared in terms of section 190(1)(c) of the Constitution, the Commission must, within two days after such declaration, designate from each list of candidates, the representatives of each party in the National Assembly and provincial legislature.

(2) Following the designation in terms of subitem (1), if a candidate's name appears on more than one list for the National Assembly or on lists for both the National Assembly and a provincial legislature (if an election of the National Assembly and a provincial legislature is held at the same time), and such candidate is due for designation as a representative in more than one case, the party which submitted such lists must, within two days after the said declaration, indicate to the Commission from which list such candidate will be designated or in which legislature the candidate will serve, as the case may be, in which event the candidate's name must be deleted from the other lists.

(3) If a party fails to indicate to the Commission from which list a candidate will be designated or in which legislature a candidate will serve, such candidate's name must be deleted from all the lists.

(4) The Commission must forthwith publish the list of names of representatives in the National Assembly or provincial legislatures.

Supplementation of lists of candidates of parties

15. A party may not supplement a list of candidates for any legislature prior to the designation of representatives in terms of item 14.

16. After the designation of representatives in terms of item 14 has been concluded, parties may supplement their lists of candidates by the addition of an equal number of names at the end of the applicable list, if—

- (a) a representative is elected as the President or to any other executive office as a result of which he or she resigns as a representative of a legislature;
- (b) a representative is appointed as a permanent delegate to the National Council of Provinces;
- (c) a name is deleted from a list in terms of item 14(2) or (3);
or
- (d) a vacancy has occurred and the appropriate list of candidates of the party concerned is depleted.

17. A party may supplement a list of candidates referred to in item 14(1) on one occasion only at any time during the first 12 months following the date on which the designation of representatives in terms of item 14 has been concluded, in order to fill casual vacancies: Provided that any such supplementation must be made at the end of the list.

18. The number of names on lists of candidates as supplemented in terms of item 16 may not exceed the difference between the number of seats in the National Assembly or a provincial legislature, as the case may be, and the number of representatives of a party in any such legislature.

Review of lists of candidates by party

19. A party may review its undepleted lists as supplemented in terms of items 16, 17 and 18, within seven days after the expiry of the period referred to in item 17, and annually thereafter, until the date on which a party has to submit lists of candidates for an ensuing election, in the following manner:

- (a) All vacancies may be supplemented;
- (b) no more than 25 per cent of candidates may be replaced; and
- (c) the fixed order of lists may be changed.

Publication of supplemented and reviewed lists of candidates

20. The Secretary to Parliament and the Secretaries of the provincial legislatures must publish lists of candidates supplemented in terms of items 16 and 17 or reviewed in terms of item 19 within 10 days after the receipt of such lists from the parties concerned.

Designation of seats of independent candidates

21. (1) If an independent candidate is finally allocated a seat in accordance with item 11(f) as well as in accordance with item 5(i), such independent candidate must within two days after the said final allocation, indicate to the Commission the seat he or she elects to retain or in which legislature the independent candidate will serve, as the case may be, in which event the independent candidate's name must be deleted from the relevant other list and the recalculation performed in terms of the forfeiture provisions in item 7 or item 12 as indicated by the context.

(2) If an independent candidate fails to indicate to the Commission from which list such independent candidate will be designated or in which legislature an independent candidate will serve, such independent candidate's name must be deleted from all the lists and both the regional and provincial calculations performed in terms of the forfeiture provisions in item 7 or item 12 as indicated by the context.

Vacancies

22. (1) In the event of a vacancy in a legislature of a seat allocated to a party, the party which the vacating member represented must fill the vacancy by nominating a person—

- (a) whose name appears on the list of candidates from which that party's members were originally nominated; and
- (b) who is the next qualified and available person on the list.

(2) A nomination to fill a vacancy must be submitted to the Speaker of the legislature in writing.

(3) If a party represented in a legislature dissolves or ceases to exist and the members in question vacate their seats in consequence of section 47(3)(c) or section 106(3)(c) of the Constitution, the seats in question must be allocated to the remaining parties with the changes required by the context as if such seats were vacated seats in terms of item 23 and item 24, as the case may be.

23. (1) In the event of a vacancy in a region or provincial legislature with respect to a seat allocated to an independent candidate, the chief electoral officer must in writing allocate the seat by recalculating the result as follows:

- (a) disregarding the votes allocated to the independent candidate causing the vacancy;
- (b) disregarding the votes and seats allocated to the independent candidates already in office; and
- (c) recalculating the result for the region or provincial legislature in terms of the provisions in subitem (3).

(2) The vacant seat is awarded to an eligible independent candidate or party that contested the preceding election in terms of subitem (1)(c).

(3) (a) An amended quota of votes per seat must be determined in respect of such region or province by dividing the total number of votes cast in the region or province, minus the number of votes cast in the region or province in favour of the party or independent candidate causing the vacancy, minus the votes cast in such region or province in favour of independent candidates already allocated one seat, by the number of seats, plus one, determined in terms of item 4 or item 8 in respect of the region or province concerned, minus the seats held by independent candidates in terms of item 5(i) or item 11(f).

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

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

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

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

(f) In the event of a party being allocated an additional number of seats in terms of this item and if its list in question then does not contain the names of a sufficient number of candidates as set out in item 7(1) or item 12(1), the process provided for in item 7 or item 12 must be repeated with the changes required by the context until all seats have been allocated.

(g) In the event that an independent candidate stands to be allocated more than one seat in terms of this item, the procedure provided for in item 7 and item 12, must be repeated with the changes required by the context until all seats have been allocated.

24. (1) Should any party or independent candidate stand to lose a seat during the recalculation contemplated in item 23, the party or independent candidate will retain the seat.

(2) A recalculation must be done as follows:

- (a) disregarding the votes and seat allocated to the party or independent candidate contemplated in subitem (1);

- (b) disregarding the votes and seats allocated to independent candidates already in office; and
- (c) recalculating the result for the region or provincial legislature in terms of the provisions in item 7 or item 12.

Definitions

25. In this Schedule—

‘**national list**’ means a list of candidates prepared by a party for an election of the National Assembly to reflect that party’s order of preference of candidates in respect of the allocation of compensatory seats;

‘**provincial list**’ means a list of candidates prepared by a party for an election of a provincial legislature;

‘**regional list**’ means a list of candidates in respect of a region prepared by a party for an election of the National Assembly to reflect that party’s order of preference of candidates in respect of the allocation of regional seats in respect of each region; and

‘**votes**’ means—

- (a) where it occurs in items 5, 6 and 7, votes cast in the election for the National Assembly;
- (b) where it occurs in items 11 and 12, votes cast in the election for the provincial legislature of a province concerned; and
- (c) where it occurs in item 14, votes cast in the election for the National Assembly and the provincial legislatures.”.

NEW CLAUSE

1. On page 15, after line 45, to insert the following new clause after clause 11 and to renumber the existing clause 12 accordingly:

“Amendment of Schedule 2 to Act 73 of 1998

22. Schedule 2 to the principal Act is hereby amended by the substitution in item 7(g) for subparagraph (iii) of the following subparagraph:

“(iii) that representatives of that party or candidate attend meetings of any [party] political liaison committee or other forum convened by the Commission.”.

LONG TITLE

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

“To amend the Electoral Act, 1998, so as to delete a definition and insert certain definitions consequential to the expansion of this Act to include independent candidates as contesters to elections in the National Assembly and provincial legislatures; to provide that registered parties must submit a declaration confirming that all its candidates are registered to vote in the province where an election will take place; to provide for the nomination of independent candidates to contest elections in the National Assembly or provincial legislatures; to provide for the requirements which must be met by persons who wish to be nominated as independent candidates; to provide for the inspection of copies of lists of independent candidates and accompanying documents; to provide for objections to independent candidates; to provide for the inclusion of a list of independent candidates entitled to contest elections; to provide for the appointment of agents by independent candidates; to provide that independent candidates are bound by the Electoral

Code of Conduct; to provide for the return of a deposit to independent candidates in certain circumstances; to amend Schedule 1; to substitute Schedule 1A; and to provide for matters connected therewith.”.

Printed by Creda Communications

ISBN 978-1-4850-0817-0