

- b. Both the term of a commissioner and the provision for renewal of term is set out in section 196(10) of the Constitution of the Republic of South Africa, 1996. However, the term of 5 years is not set out in the principal Act. The Amendment Bill now seeks to introduce provisions regulating the renewal of the term of a commissioner and uses terminology like "first term" and "additional term". We propose that the amendment Bill use the opportunity to mention the term of a commissioner as 5 years and then go on to deal with the procedure for the renewal of such term.
- c. We also propose aligning the terminology used in the Amendment Bill to terminology used in section 196 of the Constitution to ensure consistency e.g. Constitution uses "term" and not "term of office" and also its alignment with the language used in the principal Act.

**Our proposed re-formulation of subsection (5) is as follows:**

"(5) The President may, **[as contemplated in section 196(10) of the Constitution and]** within 90 days before the expiry of the **[first] five year** term **[of office]** of a commissioner, renew the term of that commissioner for one additional term only, as contemplated in section 196(10) of the Constitution, on the recommendation of —

- (a) the National Assembly, in the case of a commissioner who **[had] has<sup>1</sup>** been approved by the National Assembly, **[on the recommendation of the National Assembly];** and

---

<sup>1</sup> To align with section 4(1) of the principal Act that uses the phrase "who has been approved".

(b) the provincial legislature concerned, in the case of a commissioner who [was] has been<sup>2</sup> nominated by the Premier of a province[, on the recommendation of the provincial legislature concerned]."

**1.2. Clause 1 of Bill: New subsection (6)**

Insert the missing word as underlined and delete the words as bracketed:

"Subsection (4) does not apply to the renewal of the term [of office] of a commissioner in accordance with subsection (5)."

**1.3. Clause 3 of Bill: New subsection (7)**

- a. We are of the opinion that this subsection must be reformulated. As it is currently formulated, the Amendment Bill allows for the President to renew the term of a commissioner within 90 days before the end of the first term, on either the recommendation of the National Assembly or the Provincial Legislature, as the case may be. In order for subsection (7) to read properly in conjunction with the proposed subsection (5), the renewal must not be based on criteria approved by the National Assembly or the Provincial Legislature but be tied in with their recommendations that they are required to provide as per subsection (5) for the renewal of term.
- b. We also propose that objective criteria be set out in the Amendment Bill that will guide the National Assembly or the Provincial Legislature in their recommendations for the renewal of a commissioner's term.

---

<sup>2</sup> To align with section 4(2) of the principal Act that uses the phrase "who has been nominated".

- c. A possible reformulation of subsection (7) is therefore as follows:

"(7) In providing their recommendations for the renewal of a commissioner's term as contemplated in subsection (5), the National Assembly or the Provincial Legislature, as the case may be, must take into account the performance of the commissioner during the current term."

- d. In the alternative, if there are specific criteria that need to be considered by the National Assembly or Provincial Legislature, these may be set out as follows-

"(7) In providing their recommendations for the renewal of a commissioner's term as contemplated in subsection (5), the National Assembly or the Provincial Legislature, as the case may be, must take into account the following factors—

- (a) the performance of the commissioner during the current term;
- (b) .....[add any other specific criteria]; and
- (c) any other factor that may be relevant to the renewal of a commissioner's term."

**1.4. Clause 2 of Bill: New subsection (3):**

- a. We propose that the following words as underlined must be added to the clause to indicate where the new subsection must be inserted in the principal Act:

"Section 5 of the principal Act is hereby amended by the addition of the following subsection after subsection (2):"

- b. It will be preferable if the time frame for acting as chairperson is also included ( e.g. *for a period of not more than 6 months*) to prevent a situation where the

acting appointment is left open-ended without the designation of another chairperson or deputy chairperson in terms of the Act.



**HON. CHEPAPE TG  
CHAIRPERSON  
PORTFOLIO COMMITTEE ON PUBLIC ADMINISTRATION  
LIMPOPO LEGISLATURE**

05/06/2018  
DATE