**ELECTORAL AMENDMENT BILL [B1 – 2022] OVERVIEW AND QUESTIONS**

1 November 2022

The Portfolio Committee on Home Affairs (“the Committee”), considered the ***Electoral Amendment Bill [B1 – 2022]*** as classified by the Joint Tagging Mechanism as a section 75 Bill. The Committee report adopted on 20 October 2022 indicated as follows on the Bill referred [B1b – 2022].

**1. Context and background**

On 11 June 2020, in the matter of the New Nation Movement NPC & others v. President of the Republic of South Africa & others [2020] ZACC 11, the Constitutional Court declared the Electoral Act, 1998 (Act No. 73 of 1998) (“the Act”), to be unconstitutional to the extent that it requires that adult citizens may be elected to the National Assembly and provincial legislatures only through their membership of political parties.

This declaration of unconstitutionality was held to be prospective from 11 June 2020, but its operation was suspended for 24 months to allow Parliament to remedy the defect in the Act giving rise to the unconstitutionality. As per the Constitutional Court order, the defect was meant to be corrected by 10 June 2022.

On 10 January 2022, the Minister of Home Affairs introduced into Parliament the Electoral Amendment Bill [B1 – 2022] (“the Bill”), which was referred to the Portfolio Committee on Home Affairs for processing.

The Bill, as introduced, broadly proposes to:

* insert certain definitions consequential to the expansion of the Act to include independent candidates as contesters to elections in the National Assembly and provincial legislatures;
* provide that registered parties must submit a declaration confirming that all their candidates are registered to vote in the region or province where an election will take place;
* provide for the nomination of independent candidates to contest elections in the National Assembly or provincial legislatures;
* provide for the requirements and qualifications, which must be met by persons who wish to be registered as independent candidates;
* provide the procedure to follow for a non-compliant nomination of an independent candidate;
* provide for the inspection of copies of lists of independent candidates and accompanying documents;
* provide for objections to independent candidates;
* provide for the inclusion of a list of independent candidates entitled to contest elections;
* provide that independent candidates are bound by the Electoral Code of Conduct;
* provide for the return of a deposit to independent candidates in certain circumstances;

**2. Parliamentary process**

The Electoral Amendment Bill [B1 - 2022] was introduced into Parliament and referred to the Committee through Announcements, Tablings and Committee Reports (ATC) on 10 January 2022.

On 8 February 2022, the Minister of Home Affairs was invited to brief the Committee on the contents of the Bill. On 21 January 2022, the Bill was published for public comment. The closing date for such comments was 21 February 2022. The Committee received 107 written submissions. On 1 and 2 March 2022, the Committee held virtual public hearings via Zoom. A total of 13 oral submissions were received from the following individuals and organisations:

* Africa School of Governance.
* One South Africa Movement.
* Mr Zolani Zonyani.
* Citizens Parliament.
* Outa.
* COSATU.
* Abatsha Force of Change.
* Independent Candidate Association.
* Inclusive Society Institute.
* 70s Group.
* New Nation Movement.
* Indigenous First Nation of South Africa.
* Council for the Advancement of South African Constitution

The Committee also conducted provincial public hearings in all nine (9) provinces from 7 – 23 March 2022. A total of 3 483 people attended the public hearings and 610 made oral submissions. Of the 610 people who made the oral submissions, 389 supported the Bill and 222 rejected the Bill in its current format.

Due to the extensive public participation process that the Committee undertook as well as the complexity of the Bill, the Committee foresaw that it was not going to meet the Constitutional Court deadline of 10 June 2022 to finalise the processing of the Bill. Parliament thus, prior to the expiry of the deadline, approached the Constitutional Court to request an extension period of six (6) months to finalise the Bill. The Constitutional Court granted an extension until 10 December 2022 to complete the processing of the Bill.

In processing the Bill, the Committee invited the Department of Home Affairs (DHA), the Electoral Commission (IEC) and the Parliamentary Legal Service to comment on the report on public participation. The public participation report formed the basis of the committee deliberation, including comments from the DHA, IEC and the Parliamentary Legal Services. The Committee deliberated on the Bill on several occasions and also held meetings during the constituency period in June, July and October 2022.

Following its deliberations, the Committee proposed amendments to other sections of the Electoral Act, 1998, which were not part of the Bill, and also proposed other material changes to various definitions and clauses in the Bill. The Committee thus requested permission from the Assembly to extend the scope of the Bill in this regard. The request was made in terms of National Assembly Rule 286(4)(*b*) and (4)(*c*) on 30 August 2022. The Assembly granted permission to the Committee on 1 September 2022. On 2 September 2022, the Committee advertised these proposed amendments and called for public submissions by 16 September 2022 (2 weeks). The re-advertisement was to ensure that members of the public would have a chance to comment only on those proposed material amendments to the Bill.

Following this call for comments, a total of 258 submissions were received comprising 254 email submissions and 3 hand delivered submissions. Of the emails, 231 were short emails via the advocacy group Dear SA (excluding 23 duplicates). Of these there were 13 substantive submissions comprising over 100 pages of inputs. One submissions from “Civil Society” which had a total of 1218 signatures and from “Defend our Democracy” which was supported by 56 Organisations.

The Committee decided that it would only consider written submissions and there would not be any oral submissions in this second call for comment. The Committee considered all submissions received and deliberated on these on 20 and 27 September 2022 and 4 October 2022. As a result, there were five significant changes informed by these additional submissions and deliberations incorporated into the revised Bill [1B -2022].

**Questions to the Department of Home Affairs or Electoral Commission**

1. The Ministerial Advisory Committee established in response to the Constitutional Court ruling, made a majority recommendation for a hybrid system of 66 district level constituencies similar to the local government elections. Why was the minority view currently in the bill with 9 provincial level constituencies adopted?
2. Is it true what the former chair of the Ministerial Advisory Committee, Mr Vali Moosa, indicates that the system being proposed to include independent candidates is not a true Multi Member Constituency system, that has not been implemented anywhere else in the world?
3. What is the reason for only including independent candidates in the regional but not the compensatory seats in the National Assembly?
4. Why are independent candidates not being considered for inclusion in the filling of NCOP seats?
5. How realistic would it be in practice to require 20% of the last election result threshold for a seat as support signature (around 8000) for independent applicants to register to stand in an election, compared to 1000 for political parties?
6. How much less of a deposit would an independent candidate likely be required to make given that they only have access to one seat?
7. Why was a system of 3 ballots rather than 2 or 4 decided on?
8. Why is it vacancies for independent candidates are filled through a recalculation rather than by-elections for political parties? Has the IEC done a projected cost analysis been to assess the impact of holding by elections based for all the, likely low number of, independent candidates?
9. What responses are there to the comments in the public submissions to the NA indicating that the Bill ignores the findings of the commissions over the past two decades including the 2003 Frederik van Zyl Slabbert Report, the 2006 Parliament Report of MP Pregs Govender, the 2017 Kgalema Motlanthe High Level Commission and this year’s Zondo Commission Report?
10. What is the likely implementation, training and budgeting schedule for the bill as it stands if it is completed by the 10 December deadline?
11. Given the delays thus far, if the extended deadline is not met, what will be the result?