

**DEPARTMENT OF HOME AFFAIRS RESPONSES TO SUBMISSIONS MADE ON 6 FEBRUARY 2024**

CLAUSE IN THE BILL	SECTION AND THE ACT	STAKE HOLDER NAME AND COMMENT	DEPARTMENT'S RESPONSES
3	Section 1 of the Political Party Funding Act, 2018("PPFA")	<p><u>My Vote Counts</u>  <u>Comment:</u> The definitions of a donation and donation in kind should be amended to include independent candidates and independent representatives.</p>	The Department agrees with this suggestion
		<p>CASAC  <u>Comment:</u> The name of the fund already conveys this purpose (enhance multi-party democracy), so the addition of "Independents" is superfluous in this context.</p>	The Department agrees with the suggestion. The names of the Funds can remain as Multi-Party Democracy Fund and the Represented Political Party Fund
		<p><u>Dr Albertus Schoeman, Prof Dirk Kotzé, People's Legal Centre and Mr Michael Atkins</u>  <u>Comment:</u> the new definition of independent candidates and independent representatives poses a constitutional court judgment in that it uses political party as an exclusion criteria- violating principle of individual accountability</p>	The Department agrees that the words "... <u>who is not a member of...</u> " can be removed from the definition of independent candidates and independent representatives.

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9	Section 7 of the PPFA	<p><u>My Vote Counts</u></p> <p>Comment: Remove the inclusion of "political party" in proposed amendment Section 7(3)(d) and create a separate subsection or equivalent paragraph for litigation against the party. Section 7(2)(d) of the PPFA only refers to legal costs relating to internal political party disputes and makes no mention of litigation against the party.</p>	<p>The Department is of a view that the words "<u>...or to cover any costs related to any litigation against the political party or independent representatives.</u>" Must be deleted from the new section 7(3)(d).</p>
14	Section 10 of the PPFA	<p><u>My Vote Counts</u></p> <p><u>Comments:</u> Clause 14 does not include independent candidates and representatives therefore excluding them from the explicit provision guarding against undue influence.</p>	<p>The Department agrees that independent candidates and representatives must be included in this provision.</p> <p>NB: The Department's initial policy position was to repeal section 10 as it served no purpose. The proposed new section 10 is as a result of the Zondo Commission and is a completely different section from original section 10. The Department request the Committee to thoroughly discuss this matter.</p>

CLAUSE IN THE BILL	SECTION AND THE ACT	STAKE HOLDER NAME AND COMMENT	DEPARTMENT'S RESPONSES
18	Section 12 of the PPFA	<p>My Vote Counts</p> <p>Comment: The insertion of Section 12A should therefore be amended to ensure that the personal account of the independent be separate from the account used for donations to the independent. Furthermore, Section 12A should be amended to include both independent candidates and independent representatives, who as recipients of donations would both need to account for their income.</p>	<p>The Department agrees that both independent candidates and independent representatives must be required to keep a separate account and to account for their income</p>
20	Section 14 of the PPFA	<p><u>My Vote Counts</u></p> <p><u>Comment:</u> Clause 20 should be rewritten to explicitly include independent representatives along with independent candidates and political parties.</p>	<p>The Department agrees that the independent representatives must be included.</p>

CLAUSE IN THE BILL	SECTION AND THE ACT	STAKE HOLDER NAME AND COMMENT	DEPARTMENT'S RESPONSES
26 and 29(g) (determination of upper limit), 29(h) (determination of disclosure limit)	Section 24 of the PPFA AND Schedule 2 to the PPFA	<p><u>My Vote Counts ALSO Dr Albertus Schoeman, Prof Dirk Kotzé, People's Legal Centre, Mr Michael Atkins; Inclusive Society Institute and CASAC</u></p> <p><u>Comment:</u> Generally, the Bill does very little to remedy the fundamental concerns raised in MVC's founding papers in relation to (i) the prescribed threshold for disclosure; (ii) the prescribed amount of the upper limit on donations; and (iii) the President's power to stipulate those amounts.</p> <p>The President should not be allowed to have extensive and/or significant powers to change the core provisions of the PPFA in the absence of rigorous independent oversight.</p> <p>There is a conflict of interest in that the President as a member of a political party would be like an employee determining own salary-given a blank cheque</p> <p>This provision is a regressive step for executive accountability and should be rejected. Parliament should retain its power to determine when the regulations should be amended, and the different thresholds</p>	<p>In order to address concerns raised regarding the powers of the President to make regulations in Clause 26(a), we suggest going back to the original formulation which reads as follows:</p> <p>"(1) <u>(a)</u> The President, <b>acting on a resolution of the National Assembly</b>, may by proclamation in the <i>Gazette</i> make regulations in respect of matters contemplated in sections 6(2), 7(2)(e), <u>7(3)(d)</u> 8(2), 8(5) and 9(1)(a).".</p> <p>This formulation together with the safeguards, viz "<u>(i) the amount of money previously appropriated by Acts of Parliament for the Political Representatives Fund within the previous five financial years;</u> <u>(ii) the effects of inflation on the value of money over time; and</u> <u>(iii) the costs associated with participating as a political party, independent representative or independent candidate in elections and the democratic process in South Africa,</u> in our view addresses the issues raised.</p>

CLAUSE IN THE BILL	SECTION AND THE ACT	STAKE HOLDER NAME AND COMMENT	DEPARTMENT'S RESPONSES
29(b)	Schedule 2 to the PPFA	<p><u>My Vote Counts</u>  Comment: The reconfiguration of the allocation formula is not a consequential amendment and therefore should not be included in the Bill. Proposed formula will decrease the funding of independent candidates, independent representative and smaller political parties</p>	<p>The Department is of a view that this amendment is consequential. The Department is of a considered view that section 236 of the Constitution should be a guiding principle when matters of political party funding are being deliberated upon. To this end section 236 of the Constitution stipulates as follows:  <b><i>“Funding for political parties</i></b>  <i>236. To enhance multi-party democracy, national legislation must provide for the funding of political parties participating in national and provincial legislatures on an <u>equitable and proportional basis.</u>”</i></p> <p>The rationale for Clause 29 emanates from section 236 of the Constitution, hence the usage of the proportional and equitable principles.</p> <p>Firstly, the formula was suitable for political parties only. With the inclusion of the independents, the formula had to be amended. The rationale for the new formula is that with the addition of independents, the usage of the two thirds and one third split will not amount to the allocation being proportional and equitable. We are of a view that the 90/10 split will ensure proportional and equitable allocation of funds. This split is in line with section 236 of the Constitution</p>

	<p><u>ANC</u> Proposes that every independent and party who wins a seat in Parliament gets 0.25% of funds per seat they occupy (1/400). Current formula of 67:33 developed when few small parties in parliament. The possibility now is many more small parties and independents. ANC used 10 parties and 28 independents of 400 MPs in their submission</p> <p><b>IF USING: 67:33 SPLIT -</b> Each independent MP gets R100 for every <u>R17</u> for an MP of a party with 40% vote. A party with 25%, gets R18 to R100 to an independent. A party with 25%, gets R17.60 to R100 to an independent. A Party with 12% gets R18.50 for every R100 to an independent.</p> <p><b>This is obviously neither proportional nor equitable.</b> SPREADSHEET EXAMPLE WITH ALL CALCULATIONS ON APPLIED FORMULAE ATTACHED</p>	<p>The Department is of a view that this suggestion is better one in that it does not result in the negative unintended consequences of the two thirds one third split and it takes care of the concerns raised regarding the 90/10 split.</p> <p>If the Committee feels strongly that “equitable” needs specific increases in benefits for small parties and independents, we propose using 90:10 as it gets close to proportionality with some additional support for small parties and independents. Independents and one person parties in the example would get double the allocation per MP of larger parties.</p> <p>We reiterate again that original formula was enacted under a different dispensation with political parties in mind (big or small). The current dispensation is totally different and deserves a new formula.</p>
	<p><u>COSATU</u> Comment: Amend Clause 29 (2) (a) to replace 90% of funding with 100%. Delete Clause 29 (2) (b) in its entirety from the Act itself.</p>	<p>The Department is of view that the proposed 100% is similar in effect to the 0.25% per seat and achieves the principle of proportionality</p>
	<p><u>Mr Michael Atkins and Prof Dirk Kotzé</u> Comment: Allocation of Funds where the proportionality component is increased from</p>	<p>As stated above, the Department is of a view that the two thirds and one third split will not amount to the allocation being proportional and equitable.</p>

		<p>67% to 90% while the equity component is reduced from 33% to 10% creates a grossly unfair change in the allocation of funds that favours the largest party and harms all of the smallest parties.</p>	<p>The 67:33 distorts proportionality and reduces all five of the biggest parties share below what could be accepted as proportional. It pays out many times the amount per representative to independents than to larger parties. The top 6 parties get between 17% and 25% of the allocation to independents, per MP. It cannot be that being an independent comes with huge financial gain at the expense of being a political party.</p>
		<p><u>CASAC</u></p> <p>Comment: The amendment (90/10 split) is not a consequential one and there's no need for it at this stage. It also disadvantages smaller parties.</p> <p>CASAC submits that the existing division of funding allocations should be retained and that the proposed amendment should be rejected.</p>	<p>We do not agree that this is substantive. See our comments above</p>

CLAUSE IN THE BILL	SECTION AND ACT	STAKEHOLDER AND COMMENT	DHA RESPONSES
38-40	Section 57, Section 58 and Section 59 of the Electronic Communications Act, 2005	<u>My Vote Counts</u> Comment: Section 57(1), (2), (3), and (4); Section 58(1), (2), and (3); Section 58(7); Section 59(1), (2)(a), and (2)(b), and (3) all do not include the term “independent representative”.	The Department agrees with the suggestion to include independent representative
NOT COVERED IN THE BILL	Section 27(2) (cB) of the Electoral Act, 1998	<u>My Vote Counts</u> Comment: recommend that section 27(2) (cB) must be amended prior to the 2024 elections in order to ensure that there is parity amongst the different categories so that elections that are constitutionally sound, are held.	The Department, Parliament and the IEC have filed explanatory affidavits to assist the Constitutional Court in arriving at a fair decision. We therefore advice Parliament to process the Bill and allow the Court process to take its course.
NOT COVERED IN THE BILL	Section 23 of the PPFA	<u>My Vote Counts</u> Comment: Section 23 of the PPFA prohibits Parliament or any provincial legislature from funding a represented political party other than through stipulated legislation. Section 23(2) stipulates the responsibilities of the accounting officers to report annually. Neither of these makes mention of independent representatives.	The Department agrees with the inclusion of independent representatives



RESPONSE TO PARLIAMENTARY LEGAL SERVICES

COMMENT BY CLSO	DHA RESPONSES
<p><b><u>LEGAL RESPONSE</u></b></p> <ul style="list-style-type: none"> <li>▪ <b>In the definition of “donation” and “donation in kind” – AGREE</b> The definitions use the term “political party” in the describing what constitutes a “donation” or a “donation in kind”. It therefore should include “independent candidate” and “independent representative”. <b>The DHA should provide clarity if the policy intention is that a donation in kind or a donation will apply to all “independent candidates” regardless of whether they receive a seat in the NA, as a donation or donation in kind applies to all political parties regardless of their representation in the NA.</b></li> </ul>	<p>The Department agrees with CLSO, it must apply to everyone.</p>
<ul style="list-style-type: none"> <li>▪ <b>section 10 – AGREE</b> This provision provides that no person may make a donation to a political party or a member of a political party with the expectation that the party or member concerned will influence the awarding of a tender. It does not include independent candidates or independent candidates with a seat in the NA or provincial legislatures (i.e. independent representatives). There is no legal justification for this exclusion, <b>unless the DHA has a policy intention to not include independent candidates in this provision. If so, it must provide reasons for the exclusion. Furthermore, the DHA should provide a policy understanding as to why the section was amended as currently section 10 prevents any person or entity from delivery a donation to a member of a political party other than for political party purposes. It now</b></li> </ul>	<p>The Department agrees with CLSO, the amendment should include the independent representative, should the amendment stand considering that the Department has requested a further a thorough discussion on the desirability of this amendment.</p>

<p>includes the proviso “in expectation that it will influence an award of a tender, license or approval etc.”</p>	
<p>COMMENT BY CLSO</p>	<p>DHA RESPONSES</p>
<ul style="list-style-type: none"> <li>▪ <b>Section 14 - DISAGREE</b> - (only independent candidates and political parties are included in section) – Section 14 relates to the Commission's duty to monitor compliance by political parties with the Act. The amendment therefore now includes <u>ALL</u> independent candidates, regardless of whether they receive a seat in the NA or provincial legislatures. Therefore, there is no need to include independent representatives. However, this section could be interpreted widely to mean that once an independent candidate gains a seat, the provision does not apply to them. <b>The DHA to advise the policy intention.</b></li> </ul>	<p>The Policy intention is for the Commission to monitor compliance of political parties, independent candidates and independent representatives. For completeness, we propose that independent representatives be expressly included.</p>
<ul style="list-style-type: none"> <li>▪ section 19 (3) and (4) – <b>AGREE</b> Section 19 stipules offences and penalties. The amendment then introduces a subsection (3) which provides that any person who makes a donation to influence a tender or license commits an offence and stipules a fine. It then introduces a subsection (4) which creates an offence for any person who makes a donation to a member of a political party as opposed to the political party itself, in order to circumvent provisions of chapter 3 (direct donations to political parties, independent representative and independent candidates). There is no legal justification to exclude independent representatives or independent candidates in subsection (4), as the reference to Chapter 3 includes them. <b>The DHA must provide policy as to why they have been excluded, unless this was an omission.</b></li> </ul>	<p>The Department agrees that independent representatives and independent candidates must be included in subsection (4),</p>

COMMENT BY CLSO	DHA RESPONSES
<p><b><u>LEGAL RESPONSE</u></b></p> <ul style="list-style-type: none"> <li>• This is a <u>substantive amendment</u> as this amendment amends the formula used to allocate funds and is not a simple consequential amendment as a result of the amendment to the Electoral Amendment Act.</li> <li>• The regulations to the now repealed Public Funding of Represented Political Parties Act provided that the allocations would be calculated through a 90 % (proportional allocation) / 10 % (equitable calculation).</li> <li>• The previous Parliament had its reasons for changing this provision to the two thirds and one third split. These reasons were steeped in Policy.</li> <li>• The Amendment Bill now reverts to the original formula and this is based on a policy derived from the Executive.</li> <li>• It is the prerogative of the Executive to develop policy and it is up to Parliament to then interrogate the policy when it is presented in legislation.</li> <li>• <b>Therefore, the justification behind this amendment is best left to the DHA to provide an understanding and reasoning behind the amendment.</b></li> <li>• However, CLSO would like to caution the Committee that this is a substantive change to the PPFA</li> <li>• Independent Representatives will always have an unequal footing due to the political nature of the institution (independent representatives only having one seat and political parties having more than one).</li> <li>• BUT, should the change in formula result in unfairly discriminating independent representatives or smaller parties, the Committee must be mindful of the principles set out in <i>Harksen v Lane</i> - does the provision differentiate between people or categories of people? If so, does the</li> </ul>	<p>We have responded fully to this matter above.</p>

<p>differentiation bear a rational connection to a legitimate government purpose.</p> <ul style="list-style-type: none"> <li>• The rationale behind the legitimate government purpose will be left to the DHA to advise on.</li> </ul>	
<p><b><u>LEGAL RESPONSE</u></b></p> <ul style="list-style-type: none"> <li>• Section 7 of the PPFA provides the purposes for which money from the Funds may be used.</li> <li>• The amendment to section 7 provides for a new subsection (3) that stipulates that the money paid by the Commission to each independent representative may not be used by an independent representative: <ul style="list-style-type: none"> <li>(a) for the purposes of paying remuneration to a person who is appointed by the State,</li> <li>(b) finance or contribute any event or occasion in contravention of any code of ethics,</li> <li>(c) directly establish any business or</li> <li><b><u>(d) for the purposes of covering any costs relating to litigation against the political party or independent representative.</u></b> <ul style="list-style-type: none"> <li>• The drafting creates confusion.</li> <li>• It would appear that (d) ALSO applies to political parties, “any litigation against <b><u>the political party</u></b> or ..”</li> <li>• Does (d) refer to litigation against political parties or litigation against independent candidates?</li> <li>• If (d) only relates to independent representatives, then it should be amended to reflect same.</li> </ul> </li> </ul> </li> </ul> <p>The DHA must provide a policy position herein and the intention of this provision.</p>	<p>It is the Department’s policy intention behind the new insertion ((3)(d)) to prohibit political parties, independent candidates and independent representatives from using money received from the Fund for personal use.</p> <p>We agree that the last part “or to cover any costs related to any litigation against such political party, independent candidates, independent representative.” requires discussion by the Portfolio Committee and possibly redrafted.</p>

COMMENT BY CLSO	DHA RESPONSES
<p data-bbox="203 237 1108 268"><b>PPFA] CLAUSE 26 – unfettered discretion of the President</b></p> <ul data-bbox="253 312 1108 1366" style="list-style-type: none"> <li data-bbox="253 312 1108 379">• Prior to the proposed amendment, the President only acted on resolution of the National Assembly.</li> <li data-bbox="253 384 1108 600">• The reasoning is that the formulation of regulations contemplated in section 6(2) etc affect the rights of political parties and now independent candidates, and that such decisions should be left to a multi-party forum, as opposed to the President of a ruling party - a resolution process would ensure this.</li> <li data-bbox="253 604 1108 895">• Furthermore, the current draft provides that the drafting of regulations will take place by the President “<u>after consultation</u>”– which is problematic, as there may be no agreement needed between the parties involved prior to the making of regulations. The Committee is therefore cautioned that the President could possibly consult with the Portfolio Committee and not take the advice or recommendations from the Portfolio Committee.</li> <li data-bbox="253 900 1108 1117">• It is further not recommended that a member of the executive does something “in consultation” with the legislature, as you could reach a stalemate and there is no “ultimate” power that can make a final decision one way or the other. So, it would equally not be recommended that this be done “in consultation”.</li> <li data-bbox="253 1121 1108 1339">• Funding of political parties is fundamental to the promotion of a multi-party democracy. It could be argued that to place this power in the hands of the President, who carries many hats, may affect the principles of democracy enshrined by the Constitution, hence rendering that provision unconstitutional.</li> <li data-bbox="253 1343 271 1366">•</li> </ul>	<p data-bbox="1184 237 1827 268">We have responded to this issue (see above)</p>

COMMENT BY CLSO	DHA RESPONSES
<p><b>[ELECTORAL COMMISSION ACT]</b>  <b><u>SUBMISSION:</u></b></p> <ul style="list-style-type: none"> <li>Sections 57(1),(2),(3) and (4 ), 58(1),(2), (3) and (7) and 59(1), (2)(a), (2)(b) and (3) have not been amended to insert “independent representative” – perhaps a drafting oversight?</li> </ul> <p><b><u>Legal Response:</u></b></p> <ul style="list-style-type: none"> <li>There have been a number of sections contained in the Electoral Commission Act that refer to political parties only.</li> <li><b>The DHA should provide clarity as to why these sections were not amended.</b></li> <li>Further sections that require amendments include section (6)(2)(b) and (d), section 9, section 20 and section 23 of the Electoral Commission Act.</li> </ul>	<p>The Department agrees with the suggestion to include independent representative in the specified sections of the Electoral Commission Act</p>

**NB:** On technical issues, we suggest:

- (a) the words “Parliamentary resolution” in Clauses 29(g) and 29(h) be replaced by “resolution of the National Assembly; and
  - (b) the words “not exceeding R 200 000.00” in Clause 24(b) must be deleted. There must be flexibility in determining the amounts.
- It is not desirable to include the amounts in the Act.

**THANK YOU**