

REPUBLIC OF SOUTH AFRICA

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# ELECTORAL COMMISSION AMENDMENT BILL

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*(As introduced in the National Assembly (proposed section 75); Explanatory summary of  
Bill and prior notice of its introduction published in Government Gazette No. 48017 of 10  
February 2023, read with Government Gazette No. 48429 of 14 April 2023)  
(The English text is the official text of the Bill)*

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(DR A LOTRIET, MP)

[B 15—2023]

ISBN 978-1-4850-0875-0

No. of copies printed .....150

**GENERAL EXPLANATORY NOTE:**

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

       Words underlined with a solid line indicate insertions in existing enactments.

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# BILL

**To amend the Electoral Commission Act, 1996, to clarify that the President may declare a national referendum; to provide for the Premier of a province to call a provincial referendum in the relevant province; to repeal the Referendums Act, 1983; and to provide for matters connected therewith.**

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

**Amendment of section 1 of Act 51 of 1996, as amended by section 6 of Act 22 of 2014 and section 1 of Act 4 of 2021**

1. Section 1 of the Electoral Commission Act, 1996 (hereinafter referred to as the “principal Act”), is hereby amended— 5

- (a) by the deletion of the Roman Numerals “(i)”, “(ii)”, “(iii)”, “(iv)”, “(v)”, “(vA)”, “(vi)”, “(vii)”, “(viii)”, “(ix)”, “(x)”, and “(xi)” wherever they appear in subsection (1);
- (b) by the deletion of the word “and” at the end of the definition of “regulation”; 10
- (c) by the the deletion of the full stop at the end of the definition of “this Act” and by the substitution of a semicolon;
- (d) by the addition after the definition of “this Act” of the following definitions:
  - “**voter**” means a voter as defined in the Electoral Act, 1998 (Act No. 73 15  
of 1998); and
  - “**voting district**” means a voting district as defined in the Electoral Act, 1998 (Act No. 73 of 1998).”; and
- (e) by the substitution for subsection (2) of the following subsection:
  - “(2) For the purposes of this Act, unless clearly inconsistent with the 20  
context, any reference therein to an election, shall be construed as to include a national referendum declared by the President under section 2(2), and a provincial referendum declared by the Premier of a province under section 2(3).”.

**Amendment of section 2 of Act 51 of 1996**

2. Section 2 of the principal Act is hereby substituted for the following section: 25

“**2.** (1) This Act applies in respect of any election for national, provincial and local legislative bodies, and any national referendum referred to in subsection (2), as well as any provincial referendum referred to in subsection (3).”

(2) Notwithstanding anything to the contrary in any other law contained, the President may, in accordance with section 84(2)(g) of the Constitution of the Republic of South Africa, 1996, and after consultation with the Commission, by proclamation in the *Gazette*—

- (a) declare that a national referendum shall be held **[in order]** to ascertain the views of voters in all voting districts in the Republic, on a matter specified in the proclamation; 5
- (b) determine that the national referendum shall be held **[in the Republic, or in a part of the Republic specified in the proclamation,]** on a day or consecutive days and, subject to this Act, during the hours so specified; 10
- (c) **[determine who]** declare that all voters in all voting districts in the Republic shall be entitled, in accordance with this Act, to vote at the national referendum; **[and]**
- (d) determine what question or questions to ascertain the views of voters, must appear on the ballot paper; and 15
- (e) determine that more than one national referendum shall be held simultaneously, to ascertain the views of voters in all voting districts in the Republic, on different matters. 20

(3) Notwithstanding anything to the contrary in any other law contained, the Premier of a province may, in accordance with section 127(2)(f) of the Constitution, 1996, and after consultation with the Commission, by proclamation in the *Gazette* and in the *Official Gazette* of the province concerned—

- (a) declare that a provincial referendum shall be held to ascertain the views of voters in all voting districts in that province on a matter specified in the proclamation; 25
- (b) determine that the provincial referendum shall be held on a day or consecutive days and, subject to this Act, during the hours so specified;
- (c) declare that all voters in all voting districts in the relevant province shall be entitled, in accordance with this Act, to vote at the provincial referendum; 30
- (d) determine what question or questions to ascertain the views of voters in that province, must appear on the ballot paper; and
- (e) determine that more than one provincial referendum for the relevant province shall be held simultaneously to ascertain the views of voters in all voting districts in that province, on different matters.” 35

### **Amendment of section 23 of Act 51 of 1996 as amended by section 6 of Act 4 of 2021**

3. Section 23 of the principal Act is hereby amended— 40

- (a) by the insertion in subsection (1) at the end of paragraph (e) of the word “and”;
- (b) by the deletion in subsection (1) of paragraph (f); and
- (c) by the insertion after subsection (1) of the following subsection: 45

“(1A) The Commission must— 45

- (a) make regulations regarding the processes and requirements applicable when holding a referendum in general, including—
  - (i) relevant forms, processes and requirements when holding a referendum;
  - (ii) the amendment of a proclamation declaring a referendum; 50
  - (iii) obligations on staff and contractors assisting at polling stations to maintain a high level of confidentiality and consequences of breaching this obligation;
  - (iv) offences related to a referendum; 55
  - (v) actions that are prohibited in respect of a referendum;
  - (vi) commencement of a referendum; and
  - (vii) evidence of a referendum; and

(b) make regulations regarding the holding of a specific national referendum declared under section 2(2), or a specific provincial referendum declared under section 2(3) within 30 days of such declaration.”.

**Repeal of Act 108 of 1983**

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4. The Referendums Act, 1983 (Act No. 108 of 1983), is hereby repealed.

**Short title**

5. This Act is called the Electoral Commission Amendment Act, 2023.

## **MEMORANDUM ON THE OBJECTS OF THE ELECTORAL COMMISSION AMENDMENT BILL, 2023**

### **1. INTRODUCTION**

- 1.1 Section 84(2)(g) of the Constitution of the Republic of South Africa, 1996 (“Constitution”), provides that the President of the Republic of South Africa is responsible to call a national referendum in terms of an Act of Parliament. Similarly, section 127(2)(f) of the Constitution provides that the Premier of a Province is responsible to call a referendum in that province in accordance with national legislation.
- 1.2 The current legislative framework under the Electoral Commission Act, 1996 (Act No. 51 of 1996) (“the Principal Act”), and the Referendums Act, 1983 (Act No. 108 of 1983) (“the 1983 Act”), do provide for the holding of referendums to ascertain the views of voters, but both Acts only provide for mechanisms available to the President to call a national referendum. Neither the 1983 Act, nor the Principal Act provide for a Premier to call a referendum in a province. Accordingly, the Premier of a province is currently unable to call a referendum in that province as no provision is made for such a process in national legislation — this is despite such national legislation being required by section 127(2)(f) of the Constitution. It is also not clear why the 1983 Act has not yet been repealed, as the two Acts read very similar — except that the Principal Act provides for a permanent support structure in respect of referendums and for operational matters to be dealt with by way of regulations.

### **2. OBJECTS OF THE BILL**

- 2.1 The objects of the Bill are to extend the application of the Electoral Commission Act, 1996 (Act No. 51 of 1996) (hereinafter referred to as the “Principal Act”), to clarify that the President calls a national referendum and to include mechanisms for a Premier of a province to call a provincial referendum in the relevant province; to repeal the Referendums Act, 1983 (Act No. 108 of 1983); and to provide for matters connected therewith.

### **3. CONTENTS OF THE BILL**

- 3.1 Clause 1 amends section 1 of the Principal Act by deleting Roman numbers wherever they appear, and by adding the definitions of a “voter” and “voting district”. Clause 1 further expressly differentiates between a national and provincial referendum and determines that both are inferred wherever the Act refers to an election.
- 3.3 Clause 2 amends section 2 of the Principal Act to expressly differentiate between a national and provincial referendum. Clause 2 further limits the nature of a national referendum to all nine provinces and of a provincial referendum to all voting districts in the relevant province. Specific provision is made for a Premier of a province to declare a provincial referendum, similar to the powers of the President to declare a national referendum. The clause lastly provides for simultaneous referenda on different matters.
- 3.4 Clause 3 amends section 23, dealing with regulations, to provide for the operational matters currently provided for in the Referendums Act, 1983 (Act No. 108 of 1983).
- 3.5 Clause 4 repeals the Referendums Act, 1983 (Act No. 108 of 1983).
- 3.7 Clause 5 provides for the short title.

**4. ORGANISATIONAL AND PERSONNEL IMPLICATIONS**

- 4.1. No additional personnel would be required. The Electoral Commission is sufficiently staffed to implement this Bill.

**5. FINANCIAL IMPLICATIONS FOR THE STATE**

- 5.1 The Bill in itself does not have any financial implications for the state — it simply gives effect to the requirement of section 127 of the Constitution of the Republic of South Africa, 1996. Any costs associated with a referendum called as a result of this Bill will have to be considered on its own facts and circumstances.

**6. DEPARTMENTS, BODIES OR PERSONS CONSULTED**

- 6.1 Members of the public were consulted as per *Government Gazette* No. 48017 of 10 February 2023, read with *Government Gazette* No. 48429 of 14 April 2023.

**7. PARLIAMENTARY PROCEDURE**

- 7.1 The Member proposes that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provisions to which the procedures set out in section 74 or 76 of the Constitution apply.
- 7.2 The Member is of the opinion that it is not necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain provisions pertaining to customary law or customs of traditional communities, nor does it contain any provisions pertaining to any matter referred to in section 154(2) of the Constitution.



