**1. Interim Report of the Portfolio Committee on Home Affairs on the Electoral Amendment Bill [B 1 – 2022] (National Assembly – sec 75), dated 30 August 2022**

The Portfolio Committee on Home Affairs (“the Committee”), having considered the Electoral Amendment Bill [B 1 - 2022], referred to it and classified by the Joint Tagging Mechanism (JTM) as a section 75 Bill, reports in interim as follows:

1. 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.

2. 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 this Constitutional Court order, the defect was meant to be corrected by 10 June 2022.

3. 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.

4. The Bill, as introduced, broadly proposes to:

1. 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;
2. provide that registered parties must submit a declaration confirming that all its candidates are registered to vote in the region or province where an election will take place;
3. provide for the nomination of independent candidates to contest elections in the National Assembly or provincial legislatures;
4. provide for the requirements and qualifications, which must be met by persons who wish to be registered as independent candidates;
5. provide the procedure to follow for a non-compliant nomination of an independent candidate;
6. provide for the inspection of copies of lists of independent candidates and accompanying documents;
7. provide for objections to independent candidates;
8. provide for the inclusion of a list of independent candidates entitled to contest elections;
9. provide that independent candidates are bound by the Electoral Code of Conduct;
10. provide for the return of a deposit to independent candidates in certain circumstances;
11. amend Schedule 1;
12. substitute Schedule 1A; and
13. provide for matters connected therewith.

5. 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 comment was 21 February 2022. The Committee received 107 written submissions and on 1 and 2 March, the Committee held virtual public hearings via Zoom. A total of 13 oral submissions were received from individuals and organisations.

6. 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.

7. Due to the extensive public participation process, which 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 in order to finalise the Bill. The Constitutional Court granted an extension until 10 December 2022 to complete the processing of the Bill.

8. Flowing from the public submissions received and pursuant to its deliberations, the Committee has identified certain other sections of the Electoral Act that require an amendment and subjects that the introduced Bill does not address and, therefore, in terms of National Assembly Rule 286(4)(*b*) and 286(4)(c) seeks the Assembly’s permission to amend these sections of the Act as well as extend the subject of the Bill to include the following:

1. The insertion of the definition “person” to mean “a natural person”.
2. The deletion of the term “party liaison committee” and the insertion of the new term “political liaison committee”, namely “which means a committee established in terms of the Regulations on Political Liaison Committees published in terms of the Electoral Commission Act, 1996 (Act No. 51 of 1996) (“Electoral Commission Act”)”.
3. An amendment to 27(2)(cA) which now provides that a declaration must be signed by the representative of the party confirming that each candidate appearing on the party’s provincial list is registered to vote within the province.
4. The amendment to 31A of the Bill to allow independent candidates to contest more than one region for a seat in the NA.
5. The deletion of section 30(6) of the Electoral Act, 1998 (Act No. 73 of 1998) (“Electoral Act”), which provides for instances where a candidate’s nomination does not comply with section 27 of the Electoral Act, the Commission or the Electoral Court may allow the registered party an opportunity to comply with that section, including an opportunity to substitute a candidate and to re-order the names on the list as a result of that substitution.
6. The deletion of all reference to “political party”, as there is no definition for “political party” in the Electoral Act, the correct term is “party” and in order to be consistent the term “political party” should be amended to “party”.
7. The removal of the term “qualifications” from the Heading at 31B, “*Requirements* ***[and qualifications****] for independent candidates to contest elections*”
8. The amendment to 31B(3)(a). An independent candidate must complete a prescribed form confirming that the candidate has submitted names, identity numbers and signatures of voters and who support the candidate, totalling at least thirty percent of the quota for a seat.
9. The removal of the words “if any” from 31B(3)(b). This materially changes the original Bill, as the original Bill implied that there could be instances where a deposit is not required from an independent candidate, and the Committee agreed this would not be the case.
10. The amendment to 31B(3)(e). It is further no longer a requirement that the independent candidate provides a declaration confirming that they are a resident of the region in which the election will take place, unless that independent candidate is contesting a provincial legislature seat.
11. The deletion of 31B(3)(f). An independent candidate no longer is required to provide a prescribed declaration confirming that he or she has not been a member of any political party for at least three months preceding the date of the nomination.
12. The addition to 31B, with the new 31B(6), which states that the deposit by an independent candidate contesting an election of a provincial legislature must be less than the amount for contesting an election of the NA.
13. The amendments to sections 20, 39(1)(b), 58, 59, 62, 64, 66, 100(2) and in Schedule 2 - item 7(g) of the Electoral Act, which relate to accommodating independent candidates when dealing with “agents” and changing the term “party liaison committee” to “political liaison committees”.
14. The amendment to section 96 (2)(c) of the Electoral Act, which provides for the forfeiture of deposits, and now also accommodates independent candidates.
15. Furthermore, significant changes to Schedule 1A have been made:

i. The Bill now retains the existing voting allocation system as contained in the Electoral Act and expands it to include independent candidates, using the highest remainder.

ii. The Bill now reflects that there will be three ballot papers.

iii. The Bill ensures that vacancies for independent candidates are filled through a recalculation.

iv. The Bill provides that independent candidates contesting in more than one region cannot aggregate their votes.

9. Where draft legislation follows a public participation process and is subsequently changed in a material respect as above, calling for further comments might be advisable – see paragraph 43 of *Truworths v Minister of Trade and Industry 2018 (3) SA 558 (WCC)*.

10. Where a public participation process is followed, and subsequently new concepts (i.e. substantive changes) are added to a draft Bill, further public consultation must ensure prior to the introduction of the Bill - *South African Veterinary Association v Speaker of the National Assembly and Others [2018] ZACC 49*.

11. Whether Parliament has acted reasonably in discharging its duty to facilitate public involvement will depend on a number of factors including:

1. Nature and importance of the legislation;
2. The intensity of the impact on the public;
3. Time and expense (saving money and time does to justify inadequate opportunities for public involvement);
4. The content of the legislation; and
5. The urgency of the legislation. – *see Doctors for Life International v Speaker of the National Assembly [2006] ZACC 11* at paragraph 128.

12. Given the above, if and when the Committee has been granted approval by the National Assembly to extend the scope of the revised Bill, the Bill will be re-advertised for a further two weeks (bearing in mind the Constitutional Court extended deadline) and any submissions received will be considered prior to the Bill being sent to the National Council of Provinces.

Report to be considered.