

**EXPLANATORY MEMORANDUM
FOURTH DRAFT
INDEPENDENT ELECTORAL COMMISSION BILL**

25 AUGUST 1993

General Comment

This Memorandum accompanies the Fourth Draft of the Independent Electoral Commission Bill, which has been prepared by the Technical Committee with the assistance of Mr J.H. Bruwer, Deputy Chief State Law Adviser.

This latest draft has been prepared in great haste at the special request of the Planning Committee, and represents a substantial revision of the Technical Committee's earlier submissions, although there are a limited number of changes which involve matters of principle. The primary purpose of the redraft has been to place the document in a form suitable for presentation to Parliament.

As a consequence of discussions held between the Technical Committee and the Special Ad Hoc Political Sub-Committee appointed by the Council to consider certain clauses, and the instructions and advice received from the delegated members of the Planning Committee, a number of clauses in the Third Draft have been substantially amended and others deleted.

A schedule of old and new clause numbers is being prepared for the assistance of members. In the meanwhile a brief commentary follows with regard to a number of provisions which have been altered in order to draw members attention to salient changes, viz:

Clause 1

There has been a general revision of the definitions with the addition of the following newly defined terms, viz:

"Appeal Tribunal"

"candidate"

"committee"

"directorate"

"Media Commission"

"member"

"National Assembly"

"prescribed"

"Secretariat"

"Senate"

"Special Electoral Court"

"Supreme Court"

Clause 2(2)

Provision has been made for the application of the Act to the holding of a referendum. This will in turn necessitate some consequential amendment to the Referendums Act, No. 108 of 1983.

Clause 3(2)

The State President is to be bound not only by the advice of the Forum (as in previous drafts), but also in appropriate circumstances by advice of the (SPR) legislature.

Clause 4(2)

The formulation of the objects has likewise been amended in terms of the discussions and instructions received.

Clause 5(1)

In itemising the appropriate qualifications of members of the Commission, reference is now also made to persons "who do not have a high party political profile". This latter phrase replaces the former clause 7.2.4, which has now been deleted, and which gave rise to a great deal of concern and debate.

Clause 5(3)(a)

After careful consideration, the Technical Committee has retained the provision for the appointment of a single chairperson and vice-chairperson. The proposal with regard to co-chairpersons did not seem practicable, particularly in the light of the need for a casting vote.

Clause 6(1)(iii)

Council may wish to give this clause further consideration. Strong divergent views have been expressed with regard to this provision, and the draft has not been further amended pending clarification by the Council.

Clause 6(2)(f)

Attention is also directed to the prohibition on the acceptance of other remuneration or benefits, except with the authority of the State President acting upon the advice of the Forum

Clause 8(3)(a)

As instructed, the Technical Committee has now reflected the two thirds' majority required in respect of a decision by Parliament to re-appoint members to a new Commission in respect of further elections.

Clause 8(3)(b)

In this particular instance, the role of the Appellate Division has been retained, more particularly in view of the fact that the proposed Special Electoral Court may not have been constituted at the relevant point in time when the issue arises.

Clause 11(1)

The proper forum for determination of an application for the removal of a member of the Commission is now specified as the Special Electoral Court to be constituted in terms of section 31. In earlier drafts the proper forum was reflected as a full bench of the Appellate Division.

Clause 12(3)

As instructed, the required quorum for meetings of the Commission is stated as 75% of the (voting) members; save and except for the final determination and certification of the election results, in respect of which the quorum shall be all members, save for those unable to attend for reasons outside their control.

Clause 12(4)

Subject to the provisions of section 13(4), the required majority for ordinary decisions of the Commission is a simple majority. The final determination and certification of the results as free and fair, requires the decision of at least 75% of the members present constituting the required quorum.

Clause 13

The Commission's powers, duties and functions are set out in detail. Subsection 4 constitutes a new provision which empowers the Commission to hear appeals from decisions of the directorates and to give binding instructions to the directorates and their substructures.

Clause 14

This provision now contains an itemisation of the powers, duties and functions of the Commission.

Clause 15

This clause has been reformulated in order to provide for the mechanism of appropriations by Parliament, and for the agreement of the TEC during its lifetime and thereafter for a special discretion vested in the Special Electoral Court in the event of Parliament refusing to vote the funds which the Commission deems necessary.

Clause 16

This clause has been amended in terms of advice received from the Department of State Expenditure.

Clause 17

This clause reflects inter alia that the Commission's determination, certification and evaluation of the election results, and its further decision in the event of elections not being free and fair, shall be final and not subject to appeal or review.

Clause 20

As instructed, the Act now reflects the powers, duties and functions of the Administration Directorate. The clause provides for appeals from decisions and actions taken by any substructure to the relevant directorate; and further states that the directorate shall operate independently of the Monitoring Directorate and the (Adjudication) Secretariat; that it shall be under the supervision of the Commission, and bound to carry out the Commission's instructions.

Clause 23

Similarly, the powers, duties and functions of the Monitoring Directorate have been set out in detail, and similar provisions providing for appeals by substructures, for the independent operation of the directorate, for supervision by the Commission, and for the Commission's power to issue instructions have been reflected.

Clause 26

Insofar as the Secretariat is concerned, its powers, duties and functions have likewise been defined, and provision is made for its independent operation, for the supervision by the Commission, and for the Commission's right to issue instructions.

Clause 27

Provision is made for the establishment of Special Electoral Tribunals to deal with matters constituting electoral irregularities and infringements of the Code of Conduct.

Clause 29

Provision is made for the establishment of Electoral Appeal Tribunals which shall hear and determine appeals and reviews from the Special Electoral Tribunals.

Clause 31

In terms of instructions received, the Technical Committee has now made provision for the establishment of a Special Electoral Court comprising five persons being:

- (i) a judge of the Appellate Division;
- (ii) two other judges of the Supreme Court;
- (iii) a person with suitable legal experience; and
- (iv) some other suitable person, appointed initially by the Transitional Council.

Clause 32

The powers, duties and functions of the Special Electoral Court are defined. They include the power to review any decision of the Commission, other than a determination and certification in terms of section 17. Provision is also made for such court to deal with matters that may be assigned to it in terms of the Transitional Executive Council Act or other legislation.

Clause 34(2)

The power of the Commission to delegate is restricted in respect of certain matters, and in particular, with reference to the making of regulations, the determination and certification of election results and certain other stated matters.

Clause 35

This clause provides for an appeal from substructures to their Directorates; from directorates to the Commission; and it provides for reviews from the Commission to the Special Electoral Court. Further provision is made for appeals from the Electoral Tribunals to the relevant Appeal Tribunal. Decisions of the Appeal Tribunals and Special Electoral Court are final and not subject to either appeal or review.

Clause 41

The Commission's power to make regulations has been expanded. The Council may wish to give further consideration to the proposed obligation to disclose as a matter of public record the receipt and source of any contribution to electoral expenses in excess of R10 000.00.

(Schedule of comparative clause numbers to follow at a later stage)

EMBARGOED UNTIL TABLING IN THE NEGOTIATING COUNCIL

FOURTH DRAFT INDEPENDENT ELECTORAL COMMISSION ACT

25 AUGUST 1993

BILL

To make provision for the conduct of free and fair elections for the National Assembly and any other legislature contemplated in the Constitution of the Republic of South Africa Act, 1993; to make provision for the conduct of free and fair referenda; and to provide for matters in connection therewith.

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:-

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CHAPTER 1

Interpretation and Application of Act

Definitions

1. In this Act, unless the context otherwise indicates -

- (i) **"Administration Directorate"** means the Election Administration Directorate established by section 18;
- (ii) **"Appeal Tribunal"** means an Electoral Appeal Tribunal established in terms of section 29;
- (iii) **"candidate"** means any person whose name appears on a list of nominations by any registered party as defined in section 1 of the Electoral Act to be a member of the National Assembly or any other legislature in terms of the Constitution and the Electoral Act;
- (iv) **"Chief Executive Officer"** means the person appointed to that office by the Commission in terms of section 14(1);
- (v) **"Commission"** means the Independent Electoral Commission established and constituted from time to time by or in terms of this Act;
- (vi) **"committee"** means a committee of the Commission established under section 9;
- (vii) **"Constitution"** means the Constitution of the Republic of South Africa Act, 1993;
- (viii) **"directorate"** means a directorate established by this Act;
- (ix) **"election"** means any election conducted in terms of the Electoral Act for the National Assembly or any other legislature, and includes any referendum conducted in terms of section 2(2);
- (x) **"Electoral Act"** means the Electoral Act, 1993;
- (xi) **"Electoral Code of Conduct"** means the Code of Conduct for Political Parties contained in Schedule 1 to the Electoral Act;
- (xii) **"Electoral Tribunal"** means a Special Electoral Tribunal established in terms of section 27;
- (xiii) **"Forum"** means the body so designated as part of the structure of the Multi-Party Negotiating Process, and includes its successors referred to in section 33;
- (xiv) **"international member"** means any person appointed as a member of the Commission under section 5(2)(a);
- (xv) **"international observer"** means any person appointed as a representative of the United Nations, the Organisation of African Unity, the European Community, the Commonwealth and any other inter-governmental organisation or foreign government accredited for that purpose by the Subcouncil on Foreign Affairs of the Transitional Council during its term of office, and thereafter by the Department of Foreign Affairs, in order to observe and report on the electoral process;
- (xvi) **"judicial office"** means any appointment as a judge of the Supreme Court, whether permanent or on an acting basis;

- (xvii) **"legislature"** means any legislature contemplated in the Constitution, excluding the National Assembly and Senate;
- (xviii) **"Media Commission"** means the Independent Media Commission established by section 2 of the Independent Media Commission Act, 1993;
- (xix) **"member"** means a member of the Commission appointed under section 5(1);
- (xx) **"monitor"** means any person appointed as such in terms of section 23(1)(a);
- (xxi) **"Monitoring Directorate"** means the Election Monitoring Directorate established by section 21;
- (xxii) **"National Assembly"** means the National Assembly as contemplated in the Constitution;
- (xxiii) **"observer"** means any observer registered with the Monitoring Directorate in terms of section 23(1)(b);
- (xxiv) **"Parliament"** means Parliament as contemplated in the Constitution;
- (xxv) **"party"** means any registered party as defined in section I of the Electoral Act, and includes any party, organisation or movement of a political nature which publicly supports or opposes the policies, candidates or cause of any first-mentioned party, or which propagates non-participation in any election or the non-acceptance of its results certified by the Commission;
- (xxvi) **"political office"** means any executive appointment or elected office, including any elected or nominated public representative of a party, whether involving remuneration or not, or any other paid office, in the service of a party;
- (xxvii) **"prescribed"** means prescribed by regulation;
- (xxviii) **"public office"** means any appointment or position in the service of the State, or any corporate or other body, institution or concern, owned or controlled, whether directly or indirectly, by the State, and includes any such appointment or position in the legislative, executive or judicial organs of the State at any level of government, but excludes any appointment to judicial office and any academic appointment at any university or tertiary educational institution;
- (xxix) **"referendum"** means any referendum conducted under the supervision of the Commission in accordance with the provisions of section 2(2);
- (xxx) **"regulations"** means any regulations made under section 41;
- (xxxi) **"Republic"** means the Republic of South Africa, including any of the Republics of Transkei, Bophuthatswana, Venda or Ciskei which formally adopted the provisions of this Act and the Electoral Act as part of its municipal law;
- (xxxii) **"Secretariat"** means the Election Adjudication Secretariat established by section 24;
- (xxxiii) **"self-governing territory"** means a self-governing territory as defined in section 38(1) of the Self-Governing Territories Act, 1971 (Act No. 21 of 1971);
- (xxxiv) **"Senate"** means the Senate as contemplated in the Constitution;
- (xxxv) **"State"** means the Republic;
- (xxxvi) **"Supreme Court"** means the Supreme Court of South Africa, including the Supreme Court of the Republic of Transkei, Bophuthatswana, Venda or Ciskei if such Republic formally adopted the provisions of this Act and the Electoral Act as part of its municipal law;
- (xxxvii) **"Special Electoral Court"** means the Special Electoral Court established by section 31;

- (xxxviii) **"Transitional Council"** means the Transitional Executive Council established by section 2 of the Transitional Executive Council Act, 1993;
- (xxxix) **"transitional legislation"** means the legislation to be enacted in consequence of the Multi-Party Negotiating Process, including the Constitution, the Electoral Act, the Independent Media Commission Act, 1993, the Independent Broadcasting Authority Act, 1993, and the Transitional Executive Council Act, 1993; and
- (xl) **"this Act"** includes the regulations.

Application of Act

2. (1) The provisions of this Act shall apply in respect of the first elections to be conducted for the National Assembly and all other legislatures in terms of the Constitution and the Electoral Act, and thereafter in respect of all subsequent elections for the National Assembly and all other legislatures, or any of them, and in respect of any referendum conducted under the supervision of the Commission in terms of subsection (2).
- (2) Upon the advice of the Forum or any legislature the State President shall by proclamation in the Gazette declare that the provisions of this Act shall apply in respect of the holding of any referendum, and in such case such provisions shall apply mutatis mutandis in respect of the holding of such referendum, whether nationally or within any particular geographical region, or in respect of any specified issue.

Act binding on State and State President

3. (1) This Act shall be binding upon the State, including its various legislative, executive and judicial organs at all levels of government, and to the extent that its provisions may conflict with the inherent powers of the State, or with the provisions of any other law, it shall have precedence over such powers and provisions, save for that of the transitional legislation, in so far as such powers and provisions relate to the conduct and supervision of elections and the other matters dealt with in this Act.
- (2) This Act shall be binding upon the State President who shall be obliged to act in accordance with the advice of the Forum or any legislature.

CHAPTER II

Independent Electoral Commission

Establishment and objects of Commission

4. (1) There is hereby established a juristic person to be known as the Independent Electoral Commission.

- (2) The objects of the Commission shall be -
- (a) to administer, organise, supervise and conduct, whether directly or indirectly, free and fair elections for the National Assembly and all legislatures;
 - (b) to regulate the conduct of all persons, parties, candidates, departments and other organs of State, including local governments, in so far as their acts and decisions may affect such elections;
 - (c) to promote conditions conducive to free and fair elections; and
 - (d) to determine and certify the results of elections and to declare to what extent such elections have been free and fair, and to take the necessary actions in consequence of its declaration.

Constitution of Commission

5. (1) The Commission shall, subject to subsection (2), consist of no fewer than seven and not more than 11 members who shall be appointed by the State President upon the advice of the Forum, and who shall be impartial, respected and suitably qualified men and women, who do not have a high party political profile, are themselves eligible voters, and represent a broad cross-section of the population.
- (2) (a) The State President may, upon the advice of the Forum, appoint not more than five persons (not being citizens of the Republic) from the international community as members of the Commission in a non-representative capacity.
- (b) Such international members shall have the same rights and powers as other members, excluding the power to vote, and shall not constitute part of any quorum in terms of this Act.
- (3) (a) The State President shall, upon the advice of the Forum, designate two members as Chairperson and Vice-Chairperson of the Commission, respectively.
- (b) In the absence of both such Chairperson and Vice-Chairperson, the remaining members shall by simple majority nominate another member as acting Chairperson of the Commission.
- (c) The international members shall not be eligible to serve as Chairperson, Vice-Chairperson or acting Chairperson.
- (4) The State President shall, upon advice of the Forum and subject to subsection (1), appoint additional members to the Commission.

Conduct required of members

6. (1) Every member of the Commission shall -

- (a) be appointed in her or his individual capacity, and shall, notwithstanding any personal opinion, preference or party affiliation, serve impartially and independently and perform her or his functions in good faith and without fear, favour, bias or prejudice;
 - (b) serve in a full-time capacity to the exclusion of any other duty or obligation arising out of any other employment, occupation or the holding of any other office;
 - (c) within 30 days of her or his appointment to the Commission, submit to the Forum a written statement setting out -
 - (i) all assets owned, whether directly or indirectly, by such member, including all benefits of a pecuniary nature, whether actual or contingent;
 - (ii)
 - (aa) the aggregate of all income received by or accrued to; and
 - (bb) all offices and appointments held by, such member during the 12 months period immediately preceding her or his appointment to the Commission.
- (2) No member of the Commission shall -
- (a) during her or his term of office be eligible for appointment or nomination to any political or public office, whether involving remuneration or not, and such ineligibility shall, in respect of such public office, continue for a period of 18 months reckoned from the date upon which such term of office shall have terminated;
 - (b) whether directly or indirectly, in any manner give support to, or oppose, any of the parties or candidates participating in the elections, or any of the issues in contention between such parties or candidates;
 - (c) by her or his membership, association, statement, conduct or in any other manner, place in jeopardy her or his perceived independence, or in any other manner damage the credibility, impartiality, independence or integrity of the Commission;
 - (d) make private use or profit from any confidential information gained as a result of her or his appointment and functions as such member;
 - (e) divulge any such information to any third party save in the course and scope of her or his official functions and with the concurrence of the Commission;
 - (f) accept any remuneration, emolument or benefit, of whatsoever nature, arising from any other employment, occupation or the holding of any other

office, unless specifically authorised thereto by the State President, acting upon the advice of the Forum;

- (g) be interested or concerned, whether directly or indirectly, in any company, close corporation, business, concern or organisation which has a direct or indirect beneficial interest in transactions entered into by the Commission, unless specifically authorised thereto by the State President, acting upon the advice of the Forum;
- (h) during her or his term of office be eligible to serve as a member of the Forum, the Transitional Council, Parliament or any other legislature, and such ineligibility shall continue for a period of 18 months reckoned from the date upon which such member shall have ceased to be such member;
- (i) after having served as such member, be eligible to serve as a member of the Parliament or other legislature for which that Commission was responsible to conduct elections, during the term of such Parliament or legislature.

Independence of Commission

- 7. (1) The Commission shall function without political or other bias or interference and shall, save as may in this Act be expressly otherwise provided, be independent and separate from the Forum, the Transitional Council, any party, any government and its administration or any other functionary or body, whether directly or indirectly representing the interests of government.
- (2) Any power of any of the entities referred to in subsection (1), in so far as it relates to the administration, organisation, conduct and supervision of any election shall be subject to the powers of the Commission, to which such entities shall be accountable for such of their acts and decisions as may, in the opinion of the Commission, influence or affect any election.

Term of Commission

- 8. (1) In respect of every election the Commission shall, subject to subsection (3), be constituted upon a date to be fixed by the State President by proclamation in the Gazette, which date shall be determined upon the advice of the Forum, and thereafter the Commission shall, subject to subsection (2), continue until it has completed its mandate and has been dissolved by the State President by proclamation in the Gazette.
- (2) In respect of every election the Commission shall not be dissolved -
 - (a) save upon the advice of the Forum; and

- (b) until the last-occurring of -
 - (i) the certification of such election as having been substantially free and fair, including similar certification in respect of any further election as may have been ordered by the Commission under section 17(3); or
 - (ii) the final determination of all issues and disputes arising from such election, as may have been referred for determination in terms of this Act.
- (3) (a) If further elections are called in terms of the Constitution, the Commission shall be constituted and the consequent selection and appointment of the members, including, if deemed appropriate, international members, shall be effected by the State President by proclamation in the Gazette upon the advice of Parliament acting in terms of a motion which shall be passed by a two-thirds, majority.
- (b) If such motion is not supported by the required majority in Parliament, the constitution and the consequent selection and appointment of the members of that Commission shall be effected by the State President by proclamation in the Gazette in accordance with an order of a full bench of the Appellate Division of the Supreme Court which shall include the Chief Justice or acting Chief Justice at the relevant time. (c) In the case of a vacancy arising or the removal from office of a member of the Commission referred to in paragraph (b), the provisions of section 11(3) shall apply mutatis mutandis, and in such application any reference in that section to the advice of the Forum shall be construed as a reference to the order of the full bench of the Appellate Division of the Supreme Court constituted as contemplated in that paragraph.
- (4) All assets, moneys and liabilities of the Commission shall on its dissolution in terms of subsection (1) devolve upon the State.

Establishment of committees

- 9. (1) The Commission may establish such number of committees, whether as standing or special purpose committees, as it may consider necessary for the effective exercise and performance of its powers, duties and functions.
- (2) (a) A committee shall consist of such number of persons as may be determined by the Commission.
- (b) A committee may include persons who are not citizens of the Republic.

- (c) In appointing members of a committee, the Commission shall endeavour to involve broad cross-section of the population, including women.
- (3) The Commission shall designate a member of the Commission as the chairperson of a committee.
- (4) The majority of the members of a committee shall form a quorum for a meeting of the committee.
- (5) A committee shall, when required, submit a report to the Commission for consideration.
- (6) The Commission may on receipt of a report referred to in subsection (5) -
 - (a) refer the matter back to the committee for such further inquiry as may be determined by the Commission;
 - (b) make such further inquiry as it may deem necessary or desirable; or
 - (c) confirm, vary or set aside any decision taken by the committee.
- (7) For the purposes of the performance of its functions a committee shall have the same powers as those conferred upon the Commission in terms of this Act for the performance of its functions.
- (8) Any member of a committee who is not in the full-time employment of the State shall receive such remuneration and allowances, if any, as the Commission may determine after consultation with the Minister of State Expenditure and with the Subcouncil on Finance of the Transitional Council during its term of office.

Conditions of service, remuneration and allowances of members of the Commission

- 10. The conditions of service, remuneration, allowances and other benefits of members of the Commission shall be determined by the Forum after consultation with the Minister of State Expenditure.

Vacation of office, removal from office and Filling of vacancies in Commission

- 11. (1) A member of the Commission may be removed from office by order of the Special Electoral Court on an application lodged by or on behalf of -
 - (a) the State President;
 - (b) the Transitional Council;

- (c) Parliament or any other legislature; or
- (d) any party as defined in section 1 of the Electoral Act and eligible to participate in the relevant election, or at least 1 000 eligible voters: Provided that no such application by such party or such voters shall be heard save with the prior leave of the Chairperson of the Special Electoral Court, who shall first satisfy herself or himself as to the existence of probable cause, and who may impose such conditions upon the grant of leave, including the imposition of time limits for the institution of any such proceedings, as she or he may deem appropriate,

if the Special Electoral Court is satisfied as to the existence of good and sufficient reason therefor as contemplated in subsection (2).

- (2) In considering any such application the Special Electoral Court shall determine that good and sufficient reason exists for the removal from office of a member of the Commission, in the case of -
 - (a) serious misconduct;
 - (b) unfitness or incapacity, including continued ill health;
 - (c) a material contravention or failure to comply with the provisions of section 6(1)(a), (b) or (c) or (2)(a), (b), (c), (d), (e), (f) or (g); or
 - (d) any other reason which the Special Electoral Court may consider material and inconsistent with such member's continuance in office.
- (3) If a member of the Commission dies, tenders her or his resignation in writing to the State President or is removed from office in terms of this section, the State President shall, upon the advice of the Forum, either -
 - (a) allow such appointment to lapse, provided there remains at least the minimum number of members provided for in section 5(1); or
 - (b) appoint some other suitably qualified person as a member for the unexpired portion of the term of the Commission.

Meetings of Commission

- 12. (1) The Commission may meet at any place in the Republic determined by the Chairperson for the purpose of performing its functions.

- (2) Meetings may be convened at any time at the instance of the Chairperson or Vice-Chairperson, or at the instance of any two other members, and shall be convened at such intervals as circumstances may require.
- (3) (a) Subject to paragraph (b), a quorum for a meeting of the Commission shall be 75% of the members.
(b) In respect of the determination and certification of the results of an election as having been substantially free and fair, or otherwise, in terms of section 17, the quorum for the meetings of the Commission shall be all the members, excluding such members as may be unable to attend by reason of serious illness, disability, incapacity or other compelling circumstance.
- (4) (a) Subject to paragraph (b), and section 13(4) the decision of the majority of the members present at a meeting of the Commission shall be the decision of the Commission. (b) In respect of the determination and certification of the results of an election as having been substantially free and fair, or otherwise, in terms of section 17 the decision of the Commission shall not be of force and effect unless at least 75% of the members present at the meeting of the Commission shall have concurred in such decision.
- (5) The Commission may determine its own procedures to be followed at its meetings.

Powers, duties and functions of Commission

- 13. (1) The Commission may exercise the powers and shall perform the duties and functions conferred upon or assigned to it by this Act or any other law.
- (2) The Commission shall -
 - (a) assume sole responsibility for the administration, organisation and conduct, whether directly or indirectly, and the supervision of the administration, organisation and conduct of any election called from time to time in terms of the Constitution and the Electoral Act;
 - (b) take such measures as it may consider necessary for the prevention of intimidation of voters, candidates and parties as defined in section I of the Electoral Act;
 - (c) be responsible for the education of voters concerning -
 - (i) democratic principles and values;
 - (ii) the electoral process and mechanisms;
 - (iii) the right to free political canvassing and campaigning;
 - (iv) secrecy of voting; and

(v) any other relevant matter,

by means of -

(aa) literature and the use of other media, including distribution and publication of suitable literature, advertisements and dissemination through radio, television and the public print media, having due regard to the variety of languages spoken and varying levels of education throughout the Republic; and

(bb) workshops, seminars and meetings, as it may consider appropriate.

(d) register and regulate the activities of observers;

(e) facilitate and assist the role of international observers; and

(f) submit monthly written reports concerning its functions, which reports shall be delivered simultaneously to the Forum and the State President, and such reports shall be public documents.

(3) The Commission shall have such executive and regulatory powers as may be necessary for the achievement of its objects, including but without limitation thereto -

(a) all powers necessary for the promotion of conditions conducive to the conduct of free and fair elections, which, in respect of the first elections referred to in section 2(1), shall be exercised in conjunction with the Transitional Council; and

(b) all powers necessary for the enforcement, whether directly or indirectly, of the Electoral Code of Conduct and the regulation of the conduct of all persons, candidates, departments of State and all organs of any government, including the security and defence forces, in so far as such conduct may promote or inhibit the conduct of free and fair elections.

(4) The Commission shall have power -

(a) to hear and determine appeals from decisions or actions of the directorates in respect of prescribed matters, which decisions or actions may on appeal be confirmed, varied or set aside : Provided that they may only be varied or set aside by a two thirds' majority; and

(b) to give binding instructions to the directorates and their sub-structures in respect of matters concerning their functions, which power may be exercised either upon request from the directorates or of its own accord: Provided that such instructions may only be given by a two thirds' majority.

Administration and staff of Commission

14. (1) The Commission shall appoint a Chief Executive Officer who shall perform the functions assigned to him by this Act and the Commission.
- (2) The Commission may, for the effective exercise and performance of its powers, duties and functions -
- (a) establish and co-ordinate the necessary functional structures and regulate their powers, duties and functions as it may deem appropriate;
 - (b) make provision for the co-option, employment or assistance in such structures, the directorates and the Secretariat of legal experts and other suitably qualified or experienced persons, including persons who are not citizens of the Republic;
 - (c) appoint and dismiss staff in respect of its own structures, the directorates and the Secretariat, and generally specify terms of employment as it may consider reasonable and appropriate: Provided that it shall endeavour to appoint men and women representing a broad cross-section of the population;
 - (d) fix remuneration and determine emoluments and other benefits after consultation with the Minister of State Expenditure and the Subcouncil on Finance of the Transitional Council during its term of office;
 - (e) purchase, hire or otherwise acquire movable or immovable property;
 - (f) enter into agreements with any person, including the State, for the performance on its behalf of any specified act or function or the rendering of any service;
 - (g) insure itself and its members, staff, visitors and the public generally against loss, damage, risk or liability which may be suffered or incurred;
 - (h) open and operate bank accounts with the South African Reserve Bank or any other registered financial institution approved for that purpose by the said Reserve Bank; and
 - (i) in general, perform such acts and do such things as may be necessary or expedient for the achievement of its objects.

Expenditure of Commission and guarantee by State

15. (1) The expenditure in connection with the exercise of the Commission's powers and the performance of its duties and functions shall be paid out of money appropriated by Parliament then existing for such purpose.
- (2) Subject to section 16(1), Parliament then existing shall, in respect of the first elections referred to in section 2(1) on request by the Commission vote the necessary funds to enable the Commission to exercise its powers and perform its duties and functions effectively.
- (3) Subject to section 16(1), Parliament shall, in respect of any further elections called in terms of the Constitution, on request by the Commission vote the necessary funds to enable the Commission to exercise its powers and perform its duties and functions effectively: Provided that if the Commission is of the opinion that the funds so voted by Parliament is insufficient for that purposes it may submit the matter for final determination to the Special Electoral Court.
- (4) The State shall guarantee, where required, all commitments and liabilities of the Commission incurred in the exercise of its powers or the performance of its duties and functions.

Accountability and finance

16. (1) The Commission shall determine and submit for approval by the Forum estimates and, if necessary, additional estimates, of expenditure anticipated in the exercise of its powers or the performance of its duties and functions covering such periods as coincide as far as possible with the financial year as defined in section 1 of the Exchequer Act, 1975 (Act No. 66 of 1975).
- (2) The financial affairs of the Commission shall be dealt with as a particular portion of a vote whereof accounts are kept separately, as contemplated in section 15A(1) of the Exchequer Act, 1975, by one or more employees of the Commission designated for that purpose by the Chief Executive Officer.
- (3) The Chief Executive Officer shall -
 - (a) be charged with the responsibility of accounting for the financial affairs of the Commission and for all State moneys received and payments made by it;
 - (b) be deemed to have been assigned by the Treasury as defined in section I of the Exchequer Act, 1975, all of the powers and duties referred to in section 15(2) of that Act under section 15A(2) of that Act;
 - (c) ensure that accounts of the financial affairs of the Commission are kept in accordance with Treasury Instructions issued in terms of the Exchequer Act, 1975;
 - (d) ensure that the Commission keeps full and proper records of all its income and expenditure, and all of its assets, liabilities and financial transactions,

- and that monthly financial statements are prepared in the format required by the Auditor-General; and
- (e) ensure that all reasonable management measures are adopted so that assets, services and resources are obtained, safeguarded and utilised in the most economic, efficient and effective manner, and that the requirements of the Auditor-General are duly satisfied.
- (4)
 - (a) The Auditor-General shall have the same powers, duties and functions contemplated in the Auditor-General Act, 1989 (Act No. 52 of 1989), in respect of all accounts maintained by the Commission.
 - (b) The estimates and accounts of the Commission shall be subject to audit by the Auditor-General who shall report thereon to the Forum and to Parliament then existing.

Determination and certification of election results, and declaration

- 17.
 - (1) Upon completion of the ballot, the Commission shall as expeditiously as possible, but in any event within a period of 10 days of the close of the poll, determine and certify the results of the election, and declare whether, and if so, to what extent, it considers that such election has been conducted in a manner which was substantially free and fair.
 - (2) In effecting such determination, the Commission may accept and reject the results of the poll as a whole, or it may accept or reject such results in respect of any particular legislature or geographic district or region for the purposes of voting.
 - (3) In the event of the results of the poll as a whole, or any part thereof, being rejected by the Commission, the Commission shall determine and cause to be implemented such steps, including the organisation, conduct, administration and supervision of a new election, as it may consider appropriate in the circumstances, in order to achieve a substantially free and fair election result, having due regard to the provisions of the Constitution.
 - (4) Notwithstanding the provisions of subsections (2) and (3), the results of the poll as a whole, or any part thereof, shall not be rejected merely by reason of some untoward occurrence, mistake or non-compliance with the provisions of this Act, the Electoral Code of Conduct or the Electoral Act, if it appears to the Commission that the election was conducted substantially in accordance with the legal requirements, and that such occurrence, mistake or non-compliance was unlikely to have materially affected the result.
 - (5) The Commission's determination, certification and evaluation of election results, and its further decisions in terms of subsection (3), shall be final and not subject to appeal to or review by any court or the Special Electoral Court.

CHAPTER III

Election Administration Directorate

Establishment of Election Administration Directorate

18. There shall be established on the date on which the Commission is constituted, a directorate to be known as the Election Administration Directorate, which shall continue until the date on which the Commission is dissolved, on which date that Directorate shall be dissolved.

Constitution of Election Administration Directorate

19. (1) The Administration Directorate shall consist of a Chief Director : Administration and such other officials as the Commission may consider necessary and appoint to enable that Directorate to effectively perform its functions in terms of this Act and the Electoral Act. (2) In effecting the appointment of the Chief Director referred to in subsection (1), the Commission shall invite and consider, but shall not be bound by, the advice of the Forum.

Powers, duties and functions

20. (1) The Administration Directorate shall have the powers, duties and functions conferred upon or assigned to it by or in terms of this Act and the Electoral Act.
- (2) Any decision or action taken by any sub-structure of the Administration Directorate in a geographic district or region may be appealed against to that Directorate, which may confirm, vary or set aside such decision or action.
- (3) The Administration Directorate shall -
- (a) operate independently of the Monitoring Directorate and the Secretariat;
 - (b) be under the supervision of the Commission; and
 - (c) carry out the instructions of the Commission, to which it shall be accountable.

CHAPTER IV

Election Monitoring Directorate

Establishment of Election Monitoring Directorate

21. There shall be established on the date on which the Commission is constituted, a directorate to be known as the Election Monitoring Directorate, which shall continue until the date on which the Commission is dissolved, on which date that Directorate shall be dissolved.

Constitution of Election Monitoring Directorate

22. (1) The Monitoring Directorate shall consist of a Chief Director : Monitoring and such other officials as the Commission may consider necessary and appoint to enable that Directorate to effectively perform its functions in terms of this Act.
- (2) In effecting the appointment of the Chief Director referred to in subsection (1), the Commission shall invite and consider, but shall not be bound by, the advice of the Forum.

Powers, duties and functions

23. (1) The Monitoring Directorate shall -
- (a) appoint and co-ordinate monitors to observe and report to it upon the electoral process, including political meetings, canvassing, advertising and other campaigns;
 - (b) register and regulate observers, and publish guidelines and, if it considers it necessary, a Code of Conduct binding upon all such observers;
 - (c) facilitate the role of international observers and provide them with information and assistance as may be required to enable them to perform their duties;
 - (d) investigate alleged infringements of the Electoral Code of Conduct, other electoral offences and any other matters justiciable in terms of this Act and the Electoral Act and report to the Commission thereon;
 - (e) issue and execute prescribed search warrants and subpoenas and seize items required in connection with the investigation of alleged infringements of the Electoral Code of Conduct, other electoral offences and any other matters justiciable in terms of this Act and the Electoral Act, with the assistance of the Peacekeeping Force contemplated in the Transitional Executive Council Act, 1993, the police or defence forces, as may be requested by the Commission; co-ordinate meetings between the various parties participating in the election with a view to mediating and, if possible, resolving issues and disputes arising in the course of the election and preceding campaign, by negotiation and mutual agreement;
 - (g) issue preliminary warnings and notices of infringement concerning alleged or threatened infringements of the Electoral Code of Conduct;
 - (h) report to the Commission upon the electoral process as required by it;
 - (i) operate independently of the Administration Directorate and the Secretariat; be under the supervision of the Commission; and
 - (k) carry out the instructions of the Commission to which it shall be accountable.

- (2) Any decision or action taken by any sub-structure of the Monitoring Directorate in a geographic district or region may be appealed against to that Directorate, which may confirm, vary or set aside such decision or action.

CHAPTER V

Election Adjudication Secretariat

Establishment of Election Adjudication Secretariat

24. There shall be established on the date on which the Commission is constituted a secretariat to be known as the Election Adjudication Secretariat, which shall continue until the date on which the Commission is dissolved, on which date the Secretariat shall be dissolved.

Constitution of Election Adjudication Secretariat

25. (1) The Secretariat shall consist of a Secretary and such other officials as the Commission may consider necessary and appoint to enable the Secretariat to effectively perform its functions in terms of this Act.
- (2) In effecting the appointment of the chief director referred to subsection (1), the Commission shall invite and consider, but shall not be bound by, the advice of the Forum.

Powers, duties and functions

26. The Secretariat shall -
- (a) co-ordinate the functions of the Special Electoral Tribunals, the Election Appeal Tribunals and the Special Electoral Court;
 - (b) perform the administrative work connected to the functions of those Tribunals;
 - (c) operate independently of the directorates;
 - (d) be under the supervision of the Commission;
 - (e) carry out the instructions of the Commission, to which it shall be accountable.

CHAPTER VI

Special Electoral Tribunals

Establishment and constitution of Special Electoral Tribunals

27. (1) The Commission shall, subject to subsection (2), establish such number of Special Electoral Tribunals with jurisdiction in respect of defined geographical areas as it may consider necessary to adjudicate and determine prescribed matters concerning alleged electoral irregularities and infringements of the Electoral Code of Conduct.
- (2) A Special Electoral Tribunal shall consist of one person appointed to that office by the Commission who shall be either an attorney, advocate, magistrate or academic lawyer at a university with not less than 10 years' experience in one or more such capacity.
- (3) In effecting the appointment of Electoral Tribunals the Commission shall invite and consider, but shall not be bound by, the advice of the Forum.

Powers, duties and functions

28. (1) An Electoral Tribunal hearing any matter falling within its jurisdiction, shall enquire into and consider the matter in the prescribed manner and shall make such finding or give such order as in its opinion is fair and just.
- (2) An Electoral Tribunal finding any person or party guilty of contravening or failing to comply with any prescribed matter or any provision of the Electoral Code of Conduct, may impose any such prescribed penalty or sanction as it may deem appropriate in the circumstances.
- (3) An Electoral Tribunal shall have such other powers, duties and functions as may be prescribed.

CHAPTER VII

Electoral Appeal Tribunals

Establishment and constitution of Electoral Appeal Tribunals

29. (1) The Commission shall, subject to subsection (2), establish such number of Electoral Appeal Tribunals as it may consider necessary to hear and determine appeals and reviews decisions from the Special Electoral Tribunals, noted in the prescribed manner.
- (2) An Electoral Appeal Tribunal shall consist of three persons appointed by the Commission, of whom -
- (a) the Chairperson shall be a judge of the Supreme Court;
 - (b) one shall be a retired judge of the Supreme Court or an attorney, advocate or magistrate or academic lawyer at a university with not less than 10 years experience in one or more such capacity;

- (c) one shall be a suitable person who may or may not be legally qualified or experienced.

Powers, duties and functions

- 30. (1) An Electoral Appeal Tribunal hearing any appeal or reviewing any decision shall enquire into and consider the matter in the prescribed manner and shall confirm, vary or set aside the decision, order, penalty or sanction of the Electoral Tribunal, or make such other decision or give such other order or impose such other penalty or sanction as in its opinion the Electoral Tribunal ought to have made, given or imposed.
- (2) An Electoral Appeal Tribunal shall have such other powers, duties and functions as may be prescribed.

CHAPTER VIII

Special Electoral Court

Establishment and constitution of Special Electoral Court

- 31. (1) There is hereby established a tribunal to be known as the Special Electoral Court with the powers, duties and functions referred to in section 32.
- (2) Subject to subsection (3) the Special Electoral Court shall consist of -
 - (a) a Chairperson who shall be a judge of the Appellate Division of the Supreme Court; and
 - (b) four other members of whom-
 - (i) two shall be judges of the Supreme Court;
 - (ii) one shall be a person suitable to be a member through experience as an attorney, advocate, magistrate or academic lawyer at a university with not less than 10 years experience in one or more such capacity; and
 - (iii) one shall be a suitable person who may or may not be legally qualified or experienced;

appointed by the Transitional Council.
- (3) The Chief Justice shall submit a list of judges to the Transitional Council from which the Chairperson and two judges referred to in subsection (2)(a) and (b)(i) shall be selected.

Powers, duties and functions

32. (1) (a) Subject to section 17(5), the Special Electoral Court shall have power to review any decision of the Commission.
- (b) Any such review shall be conducted on an urgent basis, and shall be disposed of as expeditiously as possible.
- (2) The Special Electoral Court shall have power to remove any member of the Commission from office under section 11.
- (3) The Special Electoral Court shall have such other powers, duties and functions as may be conferred upon or assigned to it by the Electoral Act, the Transitional Executive Council Act, 1993, and any other law.

CHAPTER IX

General Provisions

Successors to Forum

33. (1) Any power, duty or function conferred upon or assigned to the Forum by this Act shall be assumed by the Transitional Council or the appropriate subcouncil thereof, as the case may be, as from the date of its constitution in terms of the Transitional Executive Council Act, 1993.
- (2) Upon dissolution of the Transitional Council, any power, duty or function referred to in subsection (1) shall devolve upon the National Assembly or the relevant legislature, in respect of elections to be conducted for the National Assembly or the relevant legislature, as the case may be.

Delegation of powers and assignation of duties by Commission

34. (1) Subject to subsection (2), the Commission may delegate any power and assign any duty conferred upon or assigned to it by this Act, to any person or body, or authorise such person or body, including the State, to perform any duty assigned to it by this Act.
- (2) The power of the Commission to make regulations, and its duties -
- (a) to determine and certify the election results as substantially free and fair, or otherwise, in terms of section 17;
- (b) to constitute the directorates, the Secretariat, the Electoral Tribunals and the Appeal Tribunals; and
- (c) to supervise the directorates, the Secretariat and the electoral process, shall not be delegated or assigned.

- (3) Any power or duty referred to in subsection (1) shall not be further delegated or assigned without the prior consent of the Commission, which shall not be divested of any such power as it may delegate under that subsection.

Appeal and review

35. (1) Any person, party or candidate who or which considers herself, himself or itself aggrieved by any decision or action taken by any sub-structure of a directorate, may, within the period and in the manner prescribed, appeal to the directorate concerned against the decision or action in question.
- (2) Any person, party or candidate who or which considers herself, himself or itself aggrieved by any decision or action taken by any directorate, in respect of a prescribed matter other than decisions or actions as provided for in subsection (1) may within the period and in the manner prescribed, appeal to the Commission against the decision or action in question.
- (3) There shall be no appeal from any decision of the Commission, but subject to section 17(5), any interested person, party or candidate may bring any proceedings of the Commission under review before the Special Electoral Court within the period and in the manner prescribed.
- (4) Any person, party or candidate who or which considers himself or itself aggrieved by any finding, order, penalty or sanction made, given or imposed by any Electoral Tribunal, may, within the period and in the manner prescribed, appeal to the relevant Appeal Tribunal against the finding, order, penalty or sanction.
- (5) Any interested person, party or candidate may bring any proceedings of any Electoral Tribunal under review before the relevant Appeal Tribunal within the period and in the manner prescribed.
- (6) The decisions of -
 - (a) any Appeal Tribunal; and
 - (b) the Special Electoral Court,shall be final and not subject to appeal or review.

Remuneration and allowances of members of Tribunals

36. (1) Subject to subsection (3), the Transitional Council may, after consultation with the Minister of State Expenditure, determine remuneration and allowances payable to members of the Special Tribunal.
- (2) Subject to subsection (3) the Commission may, after consultation with the Minister of State Expenditure, determine remuneration and allowances payable to members of the Electoral and Appeal Tribunals.

- (3) Different or no remuneration or allowances may be determined under subsections (1) and (2) in respect of different members of those Tribunals.

Secrecy

37. (1) Every member of the Commission and every person employed in the performance of the functions of the Commission, the directorates and the Secretariat shall aid in preserving secrecy in regard to any matter or information that may come to her or his knowledge in the performance of her or his duties in connection with the said functions, except in so far as the publication of such matter or information is authorised by law.
- (2) Any person who, in the exercise of powers or the performance of duties in terms of this Act, has obtained knowledge regarding the affairs of any registered party as defined in section 1 of the Electoral Act, candidate or eligible voter, shall not disclose such knowledge to any person other than is required in the course and scope of her or his duties or in response to a question lawfully put in the course of proceedings in any court of law or Tribunal contemplated in this Act.

Exemption from duties, taxes and fees

38. Notwithstanding anything to the contrary contained in any law, no duty, tax or fees shall be payable by the Commission to the State in respect of anything done or any transaction entered into under this Act, or in respect of any document required in connection therewith.

Offences and penalties

39. Any person who-
 - (a) wilfully hinders or obstructs the Commission, a directorate or the Secretariat or a member of its staff in the exercise of its or her or his powers or in the performance of its or her or his duties or functions;
 - (b) wilfully interrupts the proceedings at a meeting of the Commission or a hearing of an Electoral or Appeal Tribunal or misbehaves himself in any other manner in the place where such meeting or hearing is held;
 - (c) in connection with any meeting of the Commission or hearing of such Tribunal does anything which, if such meeting or hearing were proceedings in a court of law, would have constituted contempt of court;
 - (d) does anything calculated improperly to influence the Commission or any such Tribunal in respect of any matter being or to be considered by the Commission or such Tribunal in connection with any decision;
 - (e) contravenes or fails to comply with any provision of this Act,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

Limitation of liability in respect of anything done under this Act

40. The Commission, any directorate, the Secretariat or any member of its staff or any Tribunal contemplated in this Act shall not be liable in respect of anything done in good faith under any provision of this Act.

Regulations

41. (1) The Commission may make regulations regarding -
- (a) the obligation to disclose, as a matter of public record the receipt and the source of any contribution (whether in cash, specie, credit, right of use or otherwise) representing a value in excess of R10 000,00, which is promised or received by any party for the purpose of funding its' election expenses or for the promotion of any candidacy, or propagating any of its' policies or political objectives;
 - (b) governing the permissible nature and content of political advertising, which shall be determined and enforced by the Commission in conjunction with the Media Commission or the Independent Broadcasting Authority established by section 3 of the Independent Broadcasting Authority Act, 1993;
 - (c) the issue, contents, form, and the practice and procedure in connection with the execution of search warrants, subpoenas and the seizure of items required in connection with the investigation of alleged infringements of the Electoral Code of Conduct, other electoral offences and matters justiciable in terms of this Act;
 - (d) the manner in which and the nature of proceedings which may be instituted in the Electoral and Appeal Tribunals;
 - (e) the time limits within and manner in which appeals may be noted or proceedings may be brought under review in terms of this Act;
 - (f) the electoral irregularities and other matters in respect of which contraventions or failures to comply shall constitute cause for proceedings to be instituted in the Electoral Tribunals;
 - (g) the issue, contents, form and use of process, and the practice and procedure in connection with the service and execution thereof;

- (h) the manner of recording or noting evidence or proceedings;
- (i) the appointment and admission of sworn translators;
- (j) orders, penalties and sanctions which may be given or imposed by an Electoral or Appeal Tribunal, and the execution thereof;
- (k) the manner in which a person, party or candidate may be summoned to appear in an Electoral Tribunal to face charges of contravening or failing to comply with a regulation contemplated in paragraph (f), and the manner in which one or more persons may be selected to represent such party in such Tribunal;
- (l) the procedures for investigating alleged infringements of the Electoral Code of Conduct, other electoral offences or matters justiciable in terms of this Act in order to bring it to an expeditious conclusion;
- (m) the practice and procedure to be followed by directorates in hearing appeals from their sub-structures having due regard to the principles of justice;
- (n) the practice and procedure to be followed by the Secretariat in the performance of its functions;
- (o) fees and costs and the recovery thereof in respect of legal proceedings in terms of this Act;
- (p) representation or absence thereof in respect of legal proceedings in terms of this Act;
- (q) the practice and procedure to be followed by the Electoral and Appeal Tribunals in the conduct of their proceedings in order to bring such proceedings to an expeditious conclusion, having due regard to fairness and justice;
- (r) the criterion of proof to be applied by the Electoral and Appeal Tribunals in order to come to a decision;
- (s) any matter required or permitted to be prescribed in terms of this Act; and
- (t) generally, all matters which in its opinion are necessary or expedient to be prescribed to achieve the objects of this Act.

- (2) A regulation under subsection (1) may prescribe penalties for any contravention of the provisions thereof or any failure to comply therewith of a fine or imprisonment of a period not exceeding two years.
- (3) Regulations under subsection (1) affecting State expenditure shall be made only after consultation with the Minister of State Expenditure.

Short title

- 42. This Act shall be called the Independent Election Commission Act, 1993.