

REPUBLIC OF SOUTH AFRICA

INDEPENDENT ELECTORAL COMMISSION BILL

-----  
(As introduced)  
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(MINISTER OF HOME AFFAIRS)

[B -93 (GA)]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP DIE ONAFHANKLIKE VERKIESINGSKOMMISSIE

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(Soos ingedien)  
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(MINISTER VAN BINNELANDSE SAKE)

[W -93 (AS)]

*This is a certified copy of the original.*  
*[Signature]*

*Head: Administration  
9 September 1993.*

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## B I L L

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 certain referenda by the Independent Electoral Commission; 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 I

*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 19; (iv)
  - (ii) "Appeal Tribunal" means an Electoral Appeal Tribunal established in terms of section 30; (ii)
  - (iii) "candidate" means any person whose name appears on a list of nominations by any registered party to become a member of the National Assembly or any other legislature in terms of the Constitution and the Electoral Act; (xvi)
  - (iv) "Chief Director : Administration" means the person appointed to that office by the Commission in terms of section 20(1); (ix)
  - (v) "Chief Director : Monitoring" means the person appointed to that office by the Commission in terms of section 23(1); (x)
  - (vi) "Chief Executive Officer" means the person appointed to that office by the Commission in terms of section 17(1); (xi)
  - (vii) "Commission" means the Independent Electoral Commission established by section 4(1); (xx)

- (viii) "committee" means any committee of the Commission established under section 13(3)(c); (xix)
- (ix) "Constitution" means the Constitution of the Republic of South Africa Act, 1993; (vii)
- (x) "directorate" means the Administration Directorate or the Monitoring Directorate; (iii)
- (xi) "election" means any election conducted in terms of the Electoral Act for the National Assembly or any other legislature; (xxxvii)
- (xii) "Electoral Act" means the Electoral Act, 1993; (xviii)
- (xiii) "Electoral Code of Conduct" means the Code of Conduct for Political Parties contained in Schedule 1 to the Electoral Act; (xxxviii)
- (xiv) "Electoral Tribunal" means any Electoral Tribunal established in terms of section 28; (xxxix)
- (xv) "International Advisory Committee" means the International Advisory Committee established in terms of section 14; (xiii)
- (xvi) "international member" means any person appointed as a member of the Commission in terms of section 5(2)(a); (xiv)
- (xvii) "international observer" means any person appointed as a representative of the United Nations, the Organization of African Unity, the European Community, the Commonwealth and any other inter-governmental organization or foreign government accredited for that purpose by the Subcouncil on Foreign Affairs of the Transitional



- Council in consultation with the Department of Foreign Affairs, in order to observe and report on the electoral process; (xv)
- (xviii) "judicial office" means any appointment as a judge of the Supreme Court, whether permanent or on an acting basis; (xix)
- (xix) "member" means any member of the Commission appointed in terms of section 5(1); (xxi)
- (xx) "monitor" means any person appointed as such in terms of section 24(1)(a); (xxii)
- (xxi) "Monitoring Directorate" means the Election Monitoring Directorate established by section 22; (v)
- (xxii) "National Assembly" means the National Assembly which together with the Senate shall constitute the Constitutional Assembly as contemplated in the Constitution; (xxiii)
- (xxiii) "observer" means any observer registered with the Monitoring Directorate in terms of section 24(1)(b);
- (xxiv) "other legislature" means any legislature contemplated in the Constitution, excluding the National Assembly and Senate; (i)
- (xxv) "Parliament" means Parliament as contemplated in the Constitution; (xxvi)
- (xxvi) "party" means any registered party, and any party, organization or movement of a political nature which publicly supports or opposes the policies, candidates or cause of any registered party, or

- which propagates non-participation in any election or the non-acceptance of the results certified by the Commission; (xxvii)
- (xxvii) "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; (xxviii)
- (xxviii) "prescribe" means prescribe by regulation; (xl)
- (xxix) "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; (xxv)
- (xxx) "registered party" means any registered party as defined in section 1 of the Electoral Act; (vi)
- (xxxi) "regulations" means the regulations made under section 41; (xxx)
- (xxxii) "Republic" means the Republic of South Africa, including any of the Republics of Transkei, Bophuthatswana, Venda or Ciskei which formally incorporated the provisions of this Act and the Electoral Act as part of its law; (xxxi)

- (xxxiii) "Secretariat" means the Election Adjudication Secretariat established by section 25; (xxxii)
- (xxxiv) "Secretary" means the person appointed to that office by the Commission in terms of section 26(1); (xxxiii)
- (xxxv) "Senate" means the Senate as contemplated in the Constitution; (xxxiv)
- (xxxvi) "Special Electoral Court" means the Special Electoral Court established by section 32; (xxxv)
- (xxxvii) "State" means the Republic; (xxxvi)
- (xxxviii) "Supreme Court" means the Supreme Court of South Africa, and the Supreme Court of the Republic of Transkei, Bophuthatswana, Venda or Ciskei if such Republic formally incorporated the provisions of this Act and the Electoral Act as part of its law; (xii)
- (xxxix) *the Act" includes the regulations;*
- (xl) "Transitional Council" means the Transitional Executive Council established by section 2 of the Transitional Executive Council Act, 1993; (xxiv) and
- (xli) "voter" means any eligible voter as contemplated in the Constitution and the Electoral Act. (xvii)

#### Application of Act

2. (1) The provisions of this Act shall apply in respect of -

- (a) the first elections to be conducted for the National Assembly and all other legislatures in terms of the Constitution and the Electoral Act; and
- (b) any referendum conducted under the supervision of the Commission in terms of subsection (2).

(2) Upon the advice of the Transitional Council the State President shall by proclamation in the *Gazette* declare -

- (a) the holding of a referendum; and
- (b) that the provisions of this Act shall apply in respect of the holding of that referendum.

(3) The State President shall in consultation with the Transitional Council by proclamation in the *Gazette* make regulations for the holding of such a referendum, in which case the provisions of this Act shall, subject to such regulations, 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, as the case may be.

(4) In the event of any of the Republics of Transkei, Bophuthatswana, Venda or Ciskei deciding formally to incorporate the provisions of this Act and the Electoral Act into its law, such agreements as may be required to secure the co-ordinated implementation of the relevant legislation may be concluded and any such agreements shall have the force of law.

### Act binding on State and State President

3. (1) This Act shall bind the State.

(2) This Act shall bind the State President in so far as he or she shall be obliged to act in accordance with the advice of the Transitional <sup>Executive</sup> Council wherever so provided for in this Act.

## CHAPTER II

### *Independent Electoral Commission*

#### Establishment and objects of Commission

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

(2) The objects of the Commission shall be -

- (a) to administer, organize, supervise and conduct, whether directly or indirectly, free and fair elections for the National Assembly and all <sup>other</sup> legislatures in terms of the Constitution;
- (b) to promote conditions conducive to free and fair elections;
- (c) to determine and certify the results of elections and to certify to what extent such elections have been free and fair;
- (d) to conduct voter education; and
- (e) to make and enforce regulations for the achievement of such objects.

### 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 Transitional Council, and who shall be impartial, respected and suitably qualified men and women, who do not have a high party political profile, are themselves voters, and represent a broad cross-section of the population.

(2) (a) The State President shall, upon the advice of the Transitional Council, 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 Transitional Council, designate two members as Chairperson and Vice-Chairperson of the Commission, respectively: Provided that if the Transitional Council so decides, it may advise the State President to designate two members as Co-Chairpersons in lieu of a Chairperson and Vice-Chairperson, and designate which one of them shall preside at the first meeting of the Commission.

(b) In the absence of both such Chairperson and Vice-Chairperson, or both such Co-Chairpersons, as the case may be, 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, Co-Chairperson, Vice-Chairperson or acting Chairperson.

(4) The State President shall from time to time, upon the advice of the Transitional Council and subject to subsection (1), appoint additional members to the Commission subject to the maximum number contemplated in that subsection.

#### Conduct required of members

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

- (a) be appointed in his or her individual capacity, and shall, notwithstanding any personal opinion, preference or party affiliation, serve impartially and independently and perform his or her 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.

(2) No member or international member of the Commission shall -

- (a) during his or her 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 as a member shall have

- terminated, save in respect of the resumption of the previously held public office at the same level;
- (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 his or her membership, association, statement, conduct or in any other manner, place in jeopardy his or her perceived independence, or in any other manner harm the credibility, impartiality, independence or integrity of the Commission;
  - (d) make private use of or profit from any confidential information gained as a result of his or her appointment and functions as such member;
  - (e) divulge any such information to any third party save in the course and scope of his or her official functions and with the prior approval 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 authorized thereto by the State President, acting upon the advice of the Transitional Council;
  - (g) during his or her term of office be eligible to serve as a member of 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 term of office shall have terminated; and
  - (h) 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.

#### Disclosure of conflicting interests

7. (1) Subject to subsection (2), a member or international member shall not at any meeting of the Commission -

- (a) be present;
- (b) exercise a vote;
- (c) in any other manner participate in the proceedings thereof,

during the discussion of any matter before such meeting in respect of which he or she has any financial or other interest which might preclude him or her from performing his or her functions in a fair, unbiased and proper manner.

(2) If at any stage during the course of any proceedings before the Commission it appears that any member or international member has or may have an interest which may cause such a conflict of interests to arise on his or her part -

- (a) such member shall forthwith and fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining members to discuss the matter and determine whether such member is precluded from participating in such meeting by reason of a conflict of interests; and
- (b) such disclosure and the decision taken by the remaining members regarding such determination, shall be recorded in the minutes of the relevant meeting.

(3) If any member or international member fails to disclose any interest as required by subsection (2) or, subject to that subsection, is present at a meeting of the Commission or in any manner whatsoever participates in the proceedings of the Commission in relation to such matter, such proceedings may be reviewed, varied or set aside by the Commission.

#### **Independence of Commission**

8. (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 Transitional Council, any party, any government and its administration or any other functionary or body, whether directly or indirectly representing the interests of any such entity.

(2) Any power of any of the entities referred to in subsection (1), in so far as it relates to the administration, organization, 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 influence or affect any election.

#### **Dissolution of Commission**

9. The Commission shall be dissolved upon the completion of its mandate on a date fixed by the State President by proclamation in the Gazette.

Conditions of service, remuneration and allowances of members of Commission and International Advisory Committee

10. The conditions of service, remuneration, allowances and other benefits of members of the Commission and the International Advisory Committee shall be determined by the Transitional Council after consultation with the State President.

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
- (d) any registered party eligible to participate in the election, or at least 1 000 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 himself or herself 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 he or she may consider 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 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) or (b) or (2)(a), (b), (c), (d), (e) or (f) or 7(1) or (2); 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 his or her 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 Transitional Council, 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 or a Co-Chairperson, as the case may be, for the purpose of performing its functions.

(2) Meetings may be convened at any time at the instance of the Chairperson or a Co-Chairperson or the Vice-Chairperson, as the case may be, or at the instance of any two other members, and shall be convened at such intervals as circumstances may require.

(3) A quorum for a meeting of the Commission shall be 75% of the members.

(4) (a) Subject to paragraph (b), and section 5(3)(b), the decision of two-thirds of the members present at a meeting of the Commission shall be the decision of the Commission.

(b) The Commission shall in terms of section 18(b) certify that an election was substantially free and fair, only if <sup>at least</sup> at least 75% of the members present at the meeting of the Commission concur.

(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 responsibility for the administration, organization and conduct, whether directly or indirectly, and the supervision of the administration, organization and conduct of any election;
- (b) take such measures as it may consider necessary for the prevention of intimidation of voters, candidates and parties;
- (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; and
- (d) submit monthly reports in writing concerning its functions, which reports shall be delivered at the same time to the Transitional Council and the State President, and such reports shall be public documents.

- (3) The Commission shall have power -
- (a) to hear and determine appeals against decisions or actions of the Chief Directors: Administration and Monitoring in respect of prescribed matters, which decisions or actions may be confirmed, varied or set aside;
  - (b) to give instructions to the Chief Directors: Administration and Monitoring in respect of matters concerning their functions, which power may be exercised either upon request from the said Chief Directors or at its own initiative; and
  - (c) to establish such committees as it may consider necessary for the effective exercise and performance of its powers, duties and functions, and determine the composition, quorum for a meeting and a decision, procedure and functions thereof.

#### **International Advisory Committee**

14. (1) The State President shall, upon the advice of the Transitional Council, establish a committee to be known as the International Advisory Committee to advise the Commission on any matter regarding the performance of its functions as may be requested by it.

(2) The International Advisory Committee may consist of persons (not being citizens of the Republic) from the international community appointed in a non-representative capacity by the State President upon the advice of the Transitional Council.

(3) The International Advisory Committee may determine its own procedures to be followed at its meetings.

#### Administration and staff of Commission

15. The Commission shall, in addition to the other powers conferred upon it by this Act or any other law, for the purpose of achieving its objects, have the power to -

- (a) appoint staff to assist it or a Chief Director of a directorate or the Secretary in the performance of its or his or her functions, and after consultation with the Minister of State Expenditure, determine their conditions of service, remuneration, allowances and other benefits, including those of -
  - (i) members of committees who are not members of the Commission;
  - (ii) the Chief Directors: Administration and Monitoring and the Secretary; and
  - (iii) other officials;
- (b) request the secondment to it of skilled personnel from any public service, subject to any law applicable to such personnel in that regard, to assist the Commission, the Chief Directors of the directorates or the Secretary in the performance of its, his or her functions;
- (c) open and maintain its own financial accounts; and
- (d) take such steps, including legal steps as are necessary to give effect to this Act or any decision taken under this Act.



### Expenditure of Commission and budget

16. (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 for such purpose.

(2) The Commission shall budget for and be allocated the necessary resources or additional resources to enable it to exercise its powers and perform its duties and functions effectively.

### Accountability and finance

17. (1) The Commission shall at its first meeting or as soon thereafter as possible appoint a person to the office of Chief Executive Officer who -

- (a) shall be responsible for the management of and administrative control over the staff appointed or seconded in terms of section 15(a) or (b), respectively, in respect of the Commission;
- (b) shall, subject to the Exchequer Act, 1975 (Act No. 66 of 1975) -
  - (i) be charged with the responsibility of accounting for State money received or paid out for or on account of the Commission, the directorates and the Secretariat; and
  - (ii) cause the necessary accounting and other related records to be kept;

(c) may exercise the powers and shall perform the duties and functions which the Commission may from time to time confer upon or assign to him or her in order to achieve the objects of this Act and shall, for the purposes thereof be accountable to the Commission.

(2) The records referred to in subsection (1)(b) shall be audited by the Auditor-General.

(3) The Chief Executive Officer, and the persons referred to in section 15(a) or (b) shall exercise their powers and perform their duties and functions in an impartial manner and shall, in so doing, be subject to such provisions of the laws governing the public service of the Republic as may be indicated by the Commission and to the extent so indicated by the Commission as well as the Exchequer Act, 1975, and the Auditor-General Act, 1989 (Act No. 52 of 1989).

#### **Determination and certification of election results, or declaration**

18. Upon completion of the ballot, the Commission shall as expeditiously as possible, but not sooner than two days and not later than 10 days after the close of the poll -

- (a) determine and certify the results of the election; and
- (b) either certify in respect of the National Assembly and each other legislature that the election was substantially free and fair; or

(c) declare that it was unable to certify it as such.

### CHAPTER III

#### *Election Administration Directorate*

#### **Establishment of Election Administration Directorate**

19. There shall be established on the date on which the Commission is constituted, a directorate to be known as the Election Administration Directorate.

#### **Constitution of Election Administration Directorate**

20. (1) The Administration Directorate shall consist of a Chief Director: Administration, one or more deputy directors 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: Administration and any deputy director, the Commission shall invite and where given, consider, but shall not be bound by, the advice of the Transitional Council

#### **Powers, duties and functions of Chief Director: Administration**

21. (1) The Chief Director: Administration shall have the powers, duties and functions conferred upon or assigned to him or her by or under this Act and the Electoral Act.

(2) Any decision or action taken by any functionary of any sub-structure of the Administration Directorate in any geographic district or region in respect of any prescribed matter may be appealed against to the Chief Director: Administration, who may confirm, vary or set aside any such decision or action.

(3) The Chief Director: Administration shall -

- (a) operate independently of the Chief Director: Monitoring and the Secretary;
- (b) be under the supervision of the Commission; and
- (c) carry out the instructions of the Commission, to which he or she shall be accountable.

(4) The Chief Director: Administration may delegate the power to hear and determine appeals in terms of subsection (2) to any deputy director appointed in terms of section 20(1), and may delegate any other power conferred upon him or her by or under this Act and the Electoral Act to any official of his or her directorate as he or she may consider necessary.

#### CHAPTER IV

##### *Election Monitoring Directorate*

##### **Establishment of Election Monitoring Directorate**

22. There shall be established on the date on which the Commission is constituted, a directorate to be known as the Election Monitoring Directorate.

### Constitution of Election Monitoring Directorate

23. (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: Monitoring, the Commission shall invite and where given, consider, but shall not be bound by, the advice of the Transitional Council.

### Powers, duties and functions of Chief Director: Monitoring

24. (1) The Chief Director: Monitoring shall -
- (a) appoint monitors and co-ordinate their functions to observe and report to him or her upon the electoral process, including political meetings, canvassing, advertising and other campaigns;
  - (b) register observers and regulate their activities, and publish guidelines and, if he or she 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 alleged 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 alleged electoral offences and any other matters justiciable in terms of this Act and the Electoral Act, with the assistance of the National Peacekeeping Force as defined in section 1 of the Transitional Executive Council Act, 1993, the police or defence forces, as may be requested by the Commission;
  - (f) initiate or co-ordinate meetings between the various registered parties participating in the election with a view to mediating and, if possible, resolving issues and disputes arising in the course of the election, by negotiation and mutual agreement;
  - (g) issue prescribed warnings 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 Chief Director: Administration and the Secretary;
  - (j) be under the supervision of the Commission;
  - (k) carry out the instructions of the Commission to which he or she shall be accountable; and
  - (l) have such other powers, duties and functions as may be prescribed.

(2) Any decision or action taken by any functionary of any sub-structure of the Monitoring Directorate in any

geographic district or region in respect of any prescribed matter may be appealed against to the Chief Director: Monitoring, who may confirm, vary or set aside any such decision or action.

(3) The Chief Director: Monitoring may delegate any power conferred upon him or her by or under this Act to any official of his or her directorate as he or she may consider necessary.

## CHAPTER V

### *Election Adjudication Secretariat*

#### **Establishment of Election Adjudication Secretariat**

25. There shall be established on the date on which the Commission is constituted a secretariat to be known as the Election Adjudication Secretariat.

#### **Constitution of Election Adjudication Secretariat**

26. (1) The Secretariat shall consist of a Secretary and such other officials as the Commission may consider necessary and appoint to enable the Secretariat effectively to perform its functions in terms of this Act.

(2) In effecting the appointment of the Secretary, the Commission shall invite and where given, consider, but shall not be bound by, the advice of the Transitional Council.

## Powers, duties and functions of Secretary

27. (1) The Secretary shall -
- (a) co-ordinate the functions of the Special Electoral Tribunals, the Electoral Appeal Tribunals and the Special Electoral Court;
  - (b) perform the administrative work connected with the performance of the functions of those Tribunals and that Court;
  - (c) operate independently of the Chief Directors: Administration and Monitoring;
  - (d) be under the supervision of the Commission; and
  - (e) carry out the instructions of the Commission, to which he or she shall be accountable.

(2) The Secretary shall have such other powers, duties and functions as may be prescribed.

## CHAPTER VI

### *Electoral Tribunals*

#### Establishment and constitution of Electoral Tribunals

28. (1) The Commission shall, subject to subsection (2), establish such number of Electoral Tribunals with jurisdiction in respect of prescribed geographical areas as it may consider necessary to adjudicate and decide prescribed matters concerning alleged electoral irregularities and alleged infringements of the Electoral Code of Conduct.



(2) An Electoral Tribunal shall consist of one person who shall be an attorney, advocate, magistrate or academic lawyer at a university with not less than five years' experience in one or more such capacity appointed to that office by the Commission.

#### **Powers, duties and functions of Electoral Tribunals**

29. (1) An Electoral Tribunal hearing any matter falling within its jurisdiction, shall enquire into the matter in the prescribed manner, consider it and make such decision 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 penalty or sanction as may be prescribed in terms of this Act and the Electoral Act as it may consider 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**

30. (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 review decisions from the Electoral Tribunals.

(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 an attorney, advocate or magistrate or academic lawyer at a university with not less than five 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 of Electoral Appeal Tribunals**

31. (1) An Electoral Appeal Tribunal hearing any appeal or reviewing any decision shall enquire into the matter in the prescribed manner, consider it 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**

32. (1) There is hereby established a court to be known as the Special Electoral Court with the powers, duties and functions referred to in section 33.

(2) The Special Electoral Court shall consist of -

(a) a Chairperson who shall be a judge of the Appellate Division of the Supreme Court and two judges of the Supreme Court designated by the Chief Justice; and

(b) two other members of whom -

(i) one shall be an attorney, advocate, magistrate or academic lawyer at a university with not less than five years' experience in one or more such capacity;

and

(ii) one shall be a suitable person who may or may not be legally qualified or experienced,

appointed by the Transitional Council.

**Powers, duties and functions of Special Electoral Court**

33. (1) (a) Subject to section 36(6)(a), 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) (a) Subject to section 36(6)(a), the Special Electoral Court shall have the power to hear and determine an appeal against any decision of the Commission only in so far as such decision relates to the interpretation of any law or any other matter for which an appeal is provided in the Electoral Act.

(b) No such appeal shall be heard save with the prior leave of the Chairperson of the Special Electoral Court granted on application within the period and in the manner determined by that Court.

(c) Such an appeal shall be heard, considered and summarily determined upon written submissions submitted within three days after leave to appeal has been granted in terms of paragraph (b).

(3) The Special Electoral Court shall have power to remove any member of the Commission from office under section 11.

(4) Subject to section 36(7), the Special Electoral Court shall have power to hear appeals from and review decisions of any Appeal Tribunal.

(5) The Special Electoral Court shall determine its own practice and procedures and make its own rules.

(6) 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***Application of Act in event of conflict with other laws**

34. In the event of a conflict between the provisions of this Act and those of any other law, the provisions of this Act shall prevail in so far as such provisions relate to the conduct and supervision of elections.

**Dissolution of directorates, Secretariat and tribunals**

35. (1) The directorates and the Secretariat shall be dissolved on the date upon which the Commission is dissolved.

(2) The Electoral Tribunals and the Electoral Appeal Tribunals shall be dissolved on final determination of the issues placed before them.

**Appeal and review**

36. (1) Any interested person, party or candidate who or which feels aggrieved by any decision or action taken by any functionary of a directorate in respect of any prescribed matter, may, within the period and in the manner prescribed, appeal to the Chief Director of the relevant directorate against the decision or action in issue.

(2) Any interested person, party or candidate who or which feels aggrieved by any decision or action taken by the Chief

Director: Administration or Monitoring in respect of any prescribed matter other than a decision or action on appeal referred to in subsection (1), may within the period and in the manner prescribed, appeal to the Commission against the decision or action in issue.

(3) (a) Subject to section 33(2), there shall be no appeal from any decision of the Commission.

(b) Subject to section 33(1), any interested person, party or candidate may bring any decision of the Commission under review before the Special Electoral Court within the period and in the manner determined by that Court.

(4) Any interested person, party or candidate who or which feels aggrieved by any decision, 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 decision, order, penalty or sanction in issue.

(5) Any interested person, party or candidate may bring any decision of any Electoral Tribunal under review before the relevant Appeal Tribunal within the period and in the manner prescribed.

(6) Any -

(a) decision of the Commission in terms of section 18; and

(b) determination or order of the Special Electoral Court, shall be final and not subject to appeal or review.

(7) No appeal from or review of a decision of an Appeal Tribunal shall be heard save with the prior leave of the Chairperson of the Special Electoral Court granted on application within the period and in the manner determined by that Court.

**Remuneration and allowances of members of tribunals and Special Electoral Court**

37. (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 Electoral Court.

(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 and that Court.

**Secrecy**

38. (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 his or her knowledge in the performance of his or her duties in connection with the said functions, except in so far as the publication of such matter or information is authorized 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, candidate or voter, shall, subject to section 6(2)(e), not disclose such

knowledge to any person other than is required in the course and scope of his or her duties or in response to a question lawfully put under order of any court of law or tribunal contemplated in this Act or the Special Electoral Court.

#### 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 his or her powers or in the performance of its or his or her duties or functions;
- (b) wilfully interrupts the proceedings at a meeting of the Commission or a hearing of an Electoral or Appeal Tribunal or the Special Electoral Court or misbehaves 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 or Court 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 or Court in respect of any matter being or to be considered by the Commission or such Tribunal or Court in connection with any decision or determination;
- (e) wilfully contravenes or fails to comply with any provision of section 38,



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

#### Legal proceedings against Commission

40. (1) The State Liability Act, 1957 (Act No. 20 of 1957), shall apply *mutatis mutandis* in respect of the Commission.

(2) In such application a reference to a Minister of a department shall be construed as a reference to the Chairperson or Co-Chairperson of the Commission, as the case may be.

#### Regulations

41. (1) The Commission may make regulations regarding -
- (a) governing the permissible nature and content of political advertising, which shall be determined and enforced by the Commission in conjunction with the Independent Media Commission established by section 2 of the Independent Media Commission Act, 1993, and the Independent Broadcasting Authority established by section 3 of the Independent Broadcasting Authority Act, 1993;
  - (b) 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, alleged electoral offences and matters justiciable in terms of this Act;

- (c) the manner in which and the nature of proceedings which may be instituted in the Electoral and Appeal Tribunals;
- (d) the time limits within and manner in which appeals may be noted or decisions may be brought under review in terms of this Act;
- (e) 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;
- (f) the issue, contents, form and use of process, and the practice and procedure in connection with the service and execution thereof;
- (g) the manner of recording or noting evidence or proceedings and the disposal thereof;
- (h) the appointment and functions of sworn interpreters;
- (i) orders, penalties and sanctions which may be given or imposed by an Electoral or Appeal Tribunal, and the execution thereof;
- (j) 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 (e), and the manner in which one or more persons may be selected to represent such party in such Tribunal;
- (k) the procedures for investigating alleged infringements of the Electoral Code of Conduct, electoral offences or matters justiciable in terms of this Act in order to bring it to an expeditious conclusion;

- (l) the practice and procedure to be followed by the Chief Directors: Administration and Monitoring in hearing appeals against decisions or actions of functionaries of the directorates, having due regard to the principles of natural justice;
- (m) the practice and procedure to be followed by the Secretary in the performance of his or her functions;
- (n) fees and costs and the recovery thereof in respect of legal proceedings in terms of this Act;
- (o) representation or absence thereof in respect of legal proceedings in terms of this Act;
- (p) 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;
- (q) the regulation of the conduct of all persons, parties and candidates in so far as such conduct may promote or inhibit the conduct of free and fair elections;
- (r) any matter required or permitted to be prescribed in terms of this Act; and
- (s) 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 for 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 and commencement**

42. This Act shall be called the Independent Electoral Commission Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE INDEPENDENT ELECTORAL COMMISSION BILL, 1993**

The Negotiating Council sitting at the World Trade Centre near Kempton Park as part of the Multi-Party Negotiating Process has agreed to the contents of the above-mentioned Bill for the establishment of an Independent Electoral Commission to conduct, administer, organize and supervise the first elections for a democratically elected National Assembly and all other legislatures contemplated in the so called Interim Constitution Bill (which is being negotiated).

This Bill corresponds with a new Electoral Bill which is being negotiated and the said Interim Constitution Bill.