

REPUBLIC OF SOUTH AFRICA

ELECTORAL COMMISSION AMENDMENT BILL

(As introduced in the National Assembly (proposed section ...); Explanatory summary of the Bill and prior notice of its introduction published in Government Gazette No. of

(The English text is the official text of the Bill)

(Ms N Mazzone, MP)

[B 2021]

GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the Electoral Commission Act, 1996, so as to broaden its application to include referenda declared by the Premier of a province; to repeal the Referendums Act, 1983; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 51 of 1996 as amended by section 6 of Act 22 of 2014

1. Section 1 of the Electoral Commission Act, 1996 (hereinafter referred to as the “principal Act”), is hereby amended by the substitution for the definition of “election”, of the following definition:

“**“election”** means any election for a national, provincial or local legislative body in terms of any law, and where the context allows, includes a referendum;”.

Amendment of section 2 of Act 51 of 1996

OPTION 1

2. Section 2 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) Notwithstanding anything to the contrary in any other law contained, the President may, after consultation with the Commission, by proclamation in the *Gazette*—

- (a) declare that a national referendum shall be held in order to ascertain the view of voters, or of a category of voters as specified in the proclamation, on a matter specified in the proclamation;
 - (b) determine that the national referendum shall be held in the Republic, or in a part of the Republic specified in the proclamation, on a day or consecutive days and, subject to this Act, during the hours so specified;
 - (c) determine who shall be entitled, **[in accordance]** on compliance with and subject to this Act, to vote at the national referendum; [and]
 - (d) determine what question or questions to ascertain the views of voters, must appear on the ballot paper; and
 - (e) determine that more than one national referendum shall be held at the same time to ascertain the views of different categories of voters, either on the same matter or on different matters.’; and
- (b) by the addition after subsection (2) of the following subsection:

“(3) Notwithstanding anything to the contrary in any other law contained, a Premier may, after consultation with the Commission, by proclamation in the Gazette—

- (a) declare that a provincial referendum shall be held in order to ascertain the view of voters, or of a category of voters as specified in the proclamation, on a matter specified in the proclamation;
- (b) determine that the provincial referendum shall be held in the relevant province, or in a part of that province specified in the proclamation, on a day or consecutive days and, subject to this Act, during the hours so specified;
- (c) determine who shall be entitled, on compliance with and subject to of this Act, to vote at the provincial referendum;
- (d) determine what question or questions to ascertain the views of voters, must appear on the ballot paper; and
- (e) determine that more than one provincial referendum shall be held at the same time to ascertain the views of different categories of voters, either on the same matter or on different matters.’.

OPTION 2

2. Section 2 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Notwithstanding anything to the contrary in any other law contained, the President may in accordance with section 84(1)(g), and a Premier of a province in accordance with section 127(1)(f), of the Constitution of the Republic of South Africa, 1996, after consultation with the Commission, by proclamation in the *Gazette*—

- (a) declare that a referendum shall be held in order to ascertain the view of voters, or of a category of voters as specified in the proclamation, on a matter specified in the proclamation;
- (b) determine that the referendum shall be held in the Republic, the relevant province, or in a part **[of the Republic]** of either as specified in the proclamation, on a day or consecutive days and, subject to this Act, during the hours so specified;
- (c) determine who shall be entitled, in accordance with this Act, to vote at the referendum; **[and]**
- (d) determine what question or questions to ascertain the views of voters, must appear on the ballot paper; and
- (e) determine that more than one referendum shall be held at the same time to ascertain the views of different categories of voters, either on the same matter or on different matters.’’.

Amendment of section 5 of Act 51 of 1996 as amended by section 1 of Act 1 of 2019

3. Section 5 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The functions of the Commission include to—

- (a) manage any election or referendum;
- (b) ensure that any election, or referendum, is free and fair;
- (c) promote conditions conducive to free and fair elections and referenda;
- (d) promote knowledge of sound and democratic electoral and referendum related processes;
- (e) compile and maintain voters' rolls by means of a system of registering of eligible voters by utilising available data and information furnished by voters, as prescribed;
- (f) compile and maintain a register of parties;

- (g) establish and maintain liaison and cooperation with parties;
- (h) undertake and promote research into electoral and referendum related matters;
- (i) develop and promote the development of electoral and referendum expertise and technology in all spheres of government;
- (j) continuously review electoral or referendum related legislation and proposed electoral or referendum related legislation, and to make recommendations in connection therewith;
- (k) promote voter education;
- (l) promote co-operation with and between persons, institutions, governments and administrations for the achievement of its objects;
- (m) ...
- (n) declare the results of elections for national, provincial and municipal legislative bodies, and for referenda, within seven days after such elections or referenda;
- (o) adjudicate disputes which may arise from the organisation, administration or conducting of elections or referenda and which are of an administrative nature; and
- (p) appoint appropriate public administrations in any sphere of government to conduct elections, or referenda, when necessary.’’.

Repeal of law

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

Short title and commencement

5. This Act is called the Electoral Commission Amendment Act, 2021, and comes into operation on a date determined by the President by proclamation in the *Gazette*.