

NO. 193 OF 1993: INDEPENDENT ELECTORAL COMMISSION AMENDMENT ACT, 1993.

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:-

GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

ACT

To amend the Independent Electoral Commission Act, 1993, so as to replace three definitions, delete one and insert one; to make provision for certain consequential amendments on account of the Electoral Act, 1993, and to further regulate the establishment and constitution and powers, duties and functions of Electoral Tribunals and Electoral Appeal Tribunals; and to provide for matters in connection therewith.

(English text signed by the State President.)

(Assented to 22 December 1993.)

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

Amendment of section 1 of Act 150 of 1993

1. Section 1 of the Independent Electoral Commission Act, 1993 (hereinafter referred to as the principal Act), is hereby amended-

(a) by the substitution for the definition of "Electoral Code of Conduct" of the following definition:

" 'Electoral Code of Conduct' means the Electoral Code of Conduct for Political Parties contained in Schedule 1 2 to the Electoral Act;"

(b) by the substitution for the definition of "National Assembly" of the following definition:

" 'National Assembly' means the National Assembly which together with the Senate shall constitute the Constitutional sembly as contemplated in the Constitution;"

(c) by the deletion of the definition of "other legislature"

(d) by the substitution for the definition of "party" of the following definition:

'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 Conunission;" and

(e) by the insertion after the definition of "prescribe" of the following definition:

" 'provincial legislature' means any legislature of a province as contemplated in the Constitution:"

Amendment of section 15 of Act 150 of 1993

2. Section 15 of the principal Act is hereby amended by the substitution for paragraph (d) of the following paragraph:

"(d) take such steps, including legal steps, as are necessary to give effect to this Act and the Electoral Act or any decision taken under this Act the said Acts."

Amendment of section 20 of Act 150 of 1993

3. Section 20 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Administration Directorate shall consist of a Chief Director: Administration, one or more deputy directors and such other officials contemplated in the Electoral Act as the Commission may consider necessary and appoint to enable that Directorate effectively to perform its functions in terms of this Act and the Electoral Act."

Amendment of section 23 of Act 150 of 1993

4. Section 23 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(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 effectively to perform its functions in terms of this Act and t h e E l e c t o r a l A c t . " .

Amendment of section 24 of Act 150 of 1993

5. Section 24 of the principal Act is hereby amended-

(a) by the substitution for paragraph (l) of subsection (1) of the following paragraph:

"(l) have such other powers, duties and functions as may be prescribed by this Act and the Electoral Act."; and

(b) by the substitution for subsection (3) of the following subsection:

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

Substitution of section 28 of Act 150 of 1993

6. The following section is hereby substituted for section 28 of the principal Act:

"Establishment and constitution of Electoral Tribunals

28. (1) The Commission shall, subject to subsection (2), by regulation establish such number of Electoral Tribunals with jurisdiction in respect of prescribed

geographic areas as it may consider an Electoral Tribunal for each of such prescribed geographic areas as may in its discretion be necessary, to adjudicate and decide prescribed on matters concerning alleged prescribed electoral irregularities, and alleged infringements of the Electoral Code of Conduct and contraventions of, or failures to comply with any provision of, the Electoral Act.

(2)(a) An Every Electoral Tribunal shall consist of one be presided over by a 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 capacities and who shall be appointed, generally or in respect of a particular matter or period, to that office by the Commission.

(b) When circumstances may in any prescribed geographic area require more than one simultaneous sitting of the Electoral Tribunal established for such geographical area, two or more persons may, in terms of paragraph (a), be appointed in such area to preside over such Electoral Tribunal at such sittings.

(c) A person may in terms of paragraph (a) be appointed in respect of two or more Electoral Tribunals established in terms of subsection (1).

(3)(a) Any person appointed in terms of subsection (2) in respect of an Electoral Tribunal shall, before commencing with his or her functions for the first time, take an oath or make an affirmation subscribed by him or her in the form set out below:

I, AB, do hereby swear/solemnly and sincerely affirm that whenever I am called upon to perform the functions of presiding officer in an Electoral Tribunal, I will administer justice to all persons alike, without fear, favour or prejudice and, as circumstances of a particular matter may require, in accordance with the law and customs of the Republic of South Africa applying to the matter concerned:

(In the case of an oath)
So help me God.

(b) Any oath or affirmation referred to in paragraph (a) shall be taken by or made before any Commissioner of Oaths or Justice of the Peace referred to in the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963), designated for that purpose by the Secretary."

Substitution of section 29 of Act 150 of 1993

7. The following section is hereby substituted for section 29 of the principal Act:
"Powers, duties and functions of Electoral Tribunals

29.(1) An Electoral Tribunal hearing-

(a) adjudicating any matter failing within its jurisdiction referred to in section 28(1), shall enquire into the matter in the prescribed manner, consider it and make such finding or decision (or give such order as in its opinion is fair and just; (b) finding that any party or person is committing, has committed or is likely to commit or to continue to commit any prescribed electoral irregularity or infringement of the Electoral Code of Conduct or is contravening, has contravened or is failing to comply, has failed to comply or is likely to fail to comply, or to continue to comply, with any provisions of the Electoral Act, may make such order or impose any such penalty or sanction as may be prescribed by or under this Act, or, in relation to any infringement of the Electoral Code of Conduct, by the Electoral Act, as it may consider appropriate in the circumstances.

(2) An Electoral Tribunal finding any person or party guilty of ontravening 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 by this Act and the Electoral Act.".

Substitution of section 30 of Act 150 of 1993

8. The following section is hereby substituted for section 30 of the principal Act:
"Establishment and constitution of Electoral Appeal Tribunals

30. (1) The Commission shall, subject to subsection (2), by regulation establish such number of Electoral Appeal Tribunals as it may consider an Electoral Appeal Tribunal for each of such prescribed geographic areas as may in its discretion be necessary-

(a) to hear and determine appeals and to review decisions of the Electoral Tribunals;

(b) to adjudicate and decide on any matter concerning any infringement of the Electoral Code of Conduct.

(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 capacities,

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

(3) A judge or person may in terms of subsection (2) be appointed in respect of two or more Electoral Appeal Tribunals established in terms of subsection (1).

(4) (a) Any person other than a judge appointed in terms of subsection (2) in respect of an Electoral Appeal Tribunal shall, before commencing with his or her functions for the first time, take an oath or make an affirmation subscribed by him or her in the form set out below:

I, AB, do hereby swear/solemnly and sincerely affirm and declare that whenever I am called upon to perform the functions of a member of an Electoral Appeal Tribunal, I will administer justice to all persons alike without fear, favour or prejudice and, as circumstances of a particular matter may require, in accordance with the law and customs of the Republic of South Africa applying to the matter concerned:

(In the case of an oath)
So help me God.

(b) Any oath or affirmation referred to in paragraph (a,) shall be taken by or made before the judge appointed in terms of paragraph (a) of subsection (2).

(5) An appeal to any Electoral Appeal Tribunal or to the Special Electoral Court against any order made or penalty or sanction imposed by an Electoral Tribunal or Electoral Appeal Tribunal, as the case may be, shall not have the effect of suspending any such order, penalty or sanction, unless the Electoral Appeal Tribunal or the Special Electoral Court, as the case may be, determines otherwise upon an application after notice in writing to all other parties to the proceedings made to it at any time before such appeal is heard or a final judgment has been given thereon."

Amendment of section 31 of Act 150 of 1993

9. Section 31 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) An Electoral Appeal Tribunal shall have such other powers, duties and functions as may be prescribed by this Act and the Electoral Act."

Substitution of certain expressions in Act 150 of 1993

10. The principal Act is hereby amended by the substitution for the expressions "other legislature" and "other legislatures" wherever they occur of the expressions "provincial legislature" and "provincial legislatures", respectively.

Short title

11. This Act shall be called the Independent Electoral Commission Amendment Act, 1993.