

CHAPTER 7

GENERAL PROVISIONS

Part 1: Prohibited conduct

Undue influence

87. (1) No person may— 5
- (a) compel or unlawfully persuade any person—
    - (i) to register or not to register as a voter;
    - (ii) to vote or not to vote;
    - (iii) to vote or not to vote for any registered party or candidate;
    - (iv) to support or not to support any registered party or candidate; or 10
    - (v) to attend and participate in, or not to attend and participate in, any political meeting, march, demonstration or other political event;
  - (b) interfere with the independence or impartiality of the Commission, any member, employee or officer of the Commission, or the chief electoral officer;
  - (c) prejudice any person because of any past, present or anticipated performance of a function in terms of this Act; 15
  - (d) advantage, or promise to advantage, a person in exchange for that person not performing a function in terms of this Act;
  - (e) prevent any of the following persons from gaining reasonable access to voters, whether in a public or private place: 20
    - (i) Any representative of a registered party or of a candidate;
    - (ii) any candidate in an election;
    - (iii) any member, employee or officer of the Commission;
    - (iv) the chief electoral officer;
    - (v) any person appointed by an accredited observer; or 25
    - (vi) any person accredited to provide voter education; or
  - (f) unlawfully prevent the holding of any political meeting, march, demonstration or other political event.
- (2) Subject to this Act, no person may prevent anyone from exercising a right conferred by this Act. 30
- (3) No person, knowing that another person is not entitled to be registered as a voter, may—
- (a) persuade that other person that that other person is entitled to be registered as a voter; or
  - (b) represent to anyone else that that other person is entitled to be registered as a voter. 35
- (4) No person, knowing that another person is not entitled to vote, may—
- (a) assist, compel or persuade that other person to vote; or
  - (b) represent to anyone else that that other person is entitled to vote.

Impersonation

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88. No person—
- (a) may apply to be registered as a voter in the name of any other person, whether living, dead or fictitious;
  - (b) may apply for a ballot paper at a voting station in the name of another person, whether living, dead or fictitious; 45
  - (c) who is not entitled to vote in an election or at a voting station, may vote in that election or at that voting station;
  - (d) may cast more votes than that person is entitled to; or
  - (e) may impersonate—

- (i) a representative of a registered party or of a candidate;
- (ii) a candidate in an election;
- (iii) a member, employee or officer of the Commission;
- (iv) the chief electoral officer;
- (v) a person appointed by an accredited observer; or 5
- (vi) a person accredited to provide voter education.

#### **Intentional false statements**

89. (1) No person, when required in terms of this Act to make a statement, may make the statement—

- (a) knowing that it is false; or 10
  - (b) without believing on reasonable grounds that the statement is true.
- (2) No person may publish any false information with the intention of—
- (a) disrupting or preventing an election;
  - (b) creating hostility or fear in order to influence the conduct or outcome of an election; or 15
  - (c) influencing the conduct or outcome of an election.

#### **Infringement of secrecy**

90. (1) No person may interfere with a voter's right to secrecy while casting a vote.

(2) Except as permitted in terms of this Act, no person may—

- (a) disclose any information about voting or the counting of votes; or 20
- (b) open any ballot box or container sealed in terms of this Act, or break its seal.

#### **Prohibitions concerning voting and election materials**

91. (1) Except as permitted in terms of this Act, no person may—

- (a) print, manufacture or supply any voting or election material;
- (b) remove or conceal any voting or election material; 25
- (c) damage or destroy any voting or election material; or
- (d) use the voters' roll or any voting or election material for a purpose other than an election purpose.

(2) The chief electoral officer may authorise—

- (a) the printing, manufacture or supply of any voting or election material; 30
- (b) the use of the voters' roll or any voting or election material for a purpose other than an election purpose; and
- (c) the removal or destruction of any voting or election material.

#### **Prohibitions concerning placards and billboards during election**

92. From the date on which an election is called to the date the result of the election is determined and declared in terms of section 57, no person may deface or unlawfully remove any billboard, placard or poster published by a registered party or candidate. 35

#### **Obstruction of, or non-compliance with, directions of Commission, chief electoral officer and other officers**

93. (1) No person may refuse or fail to give effect to a lawful direction, instruction or order of the Commission, or a member, employee or officer of the Commission, or the chief electoral officer. 40

(2) A person may not obstruct or hinder the Commission, or a person mentioned in subsection (1), or a person appointed by an accredited observer, in the exercise of their powers or the performance of their duties. 45

**Contravention of Code**

94. No person or registered party bound by the Code may contravene or fail to comply with a provision of that Code.

**Part 2: Enforcement****Institution of and intervention in civil proceedings by chief electoral officer** 5

95. (1) Subject to this Act and any other law, the chief electoral officer may institute civil proceedings before a court, including the Electoral Court, to enforce a provision of this Act or the Code.

(2) The chief electoral officer may intervene in any civil proceedings if the Commission has a legal interest in the outcome of those proceedings. 10

**Jurisdiction and powers of Electoral Court**

96. (1) The Electoral Court has final jurisdiction in respect of all electoral disputes and complaints about infringements of the Code, and no decision or order of the Electoral Court is subject to appeal or review.

(2) If a court having jurisdiction by virtue of section 20(4)(b) of the Electoral Commission Act finds that a person or registered party has contravened a provision of Part 1 of this Chapter it may in the interest of a free and fair election impose any appropriate penalty or sanction on that person or party, including—

- (a) a formal warning;
- (b) a fine not exceeding R200 000; 20
- (c) the forfeiture of any deposit paid by that person or party in terms of section 27(2)(e);
- (d) an order prohibiting that person or party from—
  - (i) using any public media;
  - (ii) holding any public meeting, demonstration, march or other political event; 25
  - (iii) entering any voting district for the purpose of canvassing voters or for any other election purpose;
  - (iv) erecting or publishing billboards, placards or posters at or in any place;
  - (v) publishing or distributing any campaign literature; 30
  - (vi) electoral advertising; or
  - (vii) receiving any funds from the State or from any foreign sources;
- (e) an order imposing limits on the right of that person or party to perform any of the activities mentioned in paragraph (d);
- (f) an order excluding that person or any agents of that person or any candidates or agents of that party from entering a voting station; 35
- (g) an order reducing the number of votes cast in favour of that person or party;
- (h) an order disqualifying the candidature of that person or of any candidate of that party; or
- (i) an order cancelling the registration of that party. 40

(3) Any penalty or sanction provided for in this section will be in addition to any penalty provided for in Part 3 of this Chapter.

**Part 3: Offences and penalties****Offences**

97. Any person who contravenes a provision of Part 1 of this Chapter or a provision of section 107, 108 or 109, is guilty of an offence. 45

**Penalties**

98. Any person convicted of any offence in terms of—

- (a) section 87(1)(b), (c) or (d), 89(2), 90, 91, 93 or 94, is liable to a fine or to imprisonment for a period not exceeding 10 years; 50

- (b) section 87(1)(a), (e) or (f), (2), (3) or (4), 88, 89(1), 92, 107(4), 108 or 109, is liable to a fine or to imprisonment for a period not exceeding five years,

**Part 4: Additional powers and duties of Commission**

**Electoral Code of Conduct and other Codes**

99. (1) The Electoral Code of Conduct must be subscribed to— 5  
 (a) by every registered party before that party is allowed to contest an election; and  
 (b) by every candidate before that candidate may be placed on a list of candidates in terms of section 31.  
 (2) In order to promote free, fair and orderly elections, the Commission may compile 10  
 and issue any other Code.  
 (3) The Commission may change or replace a Code issued in terms of subsection (2).  
 (4) A Code issued in terms of subsection (2), or a change to or replacement of such a Code, must be published in the *Government Gazette*.

**Regulations** 15

100. (1) The Commission must make regulations regarding any matter that must be prescribed in terms of this Act.  
 (2) The Commission may make regulations, after consultation with the party national liaison committee, regarding any matter—  
 (a) that may be prescribed in terms of this Act; or 20  
 (b) that it considers necessary or expedient in order to achieve the objects of this Act.  
 (3) Regulations made in terms of this section may prescribe a fine or a period of imprisonment not exceeding one year for a contravention of or a failure to comply with a provision of the regulations. 25  
 (4) The Commission must publish any regulations made in terms of this section in the *Government Gazette*.

**Assignment of powers and duties by Commission**

101. (1) The Commission may—  
 (a) delegate any of the Commission's powers in terms of this Act, excluding the 30  
 powers referred to in section 32, 99(2) or 100 or this section, or any other law, to a member, employee or officer of the Commission; or  
 (b) instruct a member, employee or officer of the Commission to perform any of the Commission's duties in terms of this Act or any other law.  
 (2) A delegation or instruction in terms of subsection (1)— 35  
 (a) is subject to any limitations and conditions the Commission may impose; and  
 (b) does not prevent the Commission from exercising or performing the assigned power or duty.

**Assignment of powers and duties by chief electoral officer**

102. (1) The chief electoral officer may— 40  
 (a) delegate any of the chief electoral officer's powers in terms of this Act or any other law, to an employee or officer of the Commission; or  
 (b) instruct an employee or officer of the Commission to perform any of the chief electoral officer's duties in terms of this Act or any other law.  
 (2) Section 101(2), adjusted as may contextually be necessary, applies to a delegation 45  
 or instruction of the chief electoral officer in terms of subsection (1).

**Powers to decide objections and appeals**

103. (1) Whenever the Commission, an officer or the chief electoral officer is required in terms of this Act to decide an objection or an appeal, the Commission or that person may attempt to resolve the issue that is the subject of the objection or appeal, through conciliation. 5

(2) The Commission must prescribe the powers that may be exercised by it, any officer, or the chief electoral officer in deciding an objection or appeal in terms of this Act.

**Access to private places**

104. Members, employees and officers of the Commission have access to private 10 places when that access is necessary for the exercise of a power or the performance of a duty assigned to them by or under this Act.

**Ownership of voting and election materials, and disposal**

105. (1) The Commission is regarded as owning all voting and election materials used or provided by it in an election. 15

(2) Unless the Electoral Court orders otherwise, the Commission may dispose of the voting and election materials used in a particular election after six months after the date on which the final result of the election was declared, in the manner directed by the Commission.

**Return or forfeiture of deposit** 20

106. (1) Subject to section 96(2)(c), the Commission must refund to a registered party any deposit paid by it in terms of section 27(2)(e) if the party is allocated at least one seat in the legislature whose election that party contested.

(2) A deposit that is not refundable in terms of subsection (1) is forfeited to the State.

**Part 5: Other general provisions** 25**Temporary obligations**

107. (1) (a) This section is applicable only from the date on which an election is called to the date the result of the election is determined and declared in terms of section 57.

(b) For the purposes of this section, "printed matter" means any billboard, placard, poster or pamphlet. 30

(2) Any printed matter intending to affect the outcome of an election must state clearly the full name and address of the printer and publisher.

(3) The publisher of any publication must head an article in that publication with the word "advertisement" if that article—

(a) originates from— 35

(i) a registered party, a person who holds political office in that party, or any member or supporter of that party; or

(ii) a candidate contesting an election or supporter of that candidate; and

(b) is inserted in the publication on the promise of payment to the publication.

(4) No person may print, publish or distribute any printed matter or publication that 40 does not comply with this section.

**Prohibition on certain political activities**

108. On voting day no person may—

(a) hold or take part in any political meeting, march, demonstration or other political event; or 45

(b) engage in any political activity, other than casting a vote, in the area within the boundary of a voting station.

**Prohibition on publication of exit polls**

109. During the prescribed hours for an election, no person may print, publish or distribute the result of any exit poll taken in that election.

**Effect of certain irregularities**

110. (1) Any mistake in the certified segment of the voters' roll referred to in section 24 or the final list of candidates referred to in section 31 does not invalidate that voters' roll or that list of candidates. 5

(2) An election may not be set aside because of a mistake in the conduct of that election or a failure to comply with this Act, unless the mistake or failure materially affected the result of the election. 10

**Inspection and copying of documents**

111. Where this Act requires that documents be publicised, or made available for inspection or copying, the Commission must endeavour to also publicise or make available those documents by way of electronic technology.

**Prohibition on certain strikes and lockouts** 15

112. (1) The service provided by the Commission is an essential service for the purpose of the Labour Relations Act, 1995 (Act No. 66 of 1995).

(2) Strikes and lockouts on voting day by employees and employers in the public transport or telecommunication sector are prohibited and are not protected in terms of Chapter IV of the Labour Relations Act, 1995. 20

**Limitation of liability**

113. The Commission, a member, employee and officer of the Commission, the chief electoral officer, an institution appointed in terms of section 80, and a person with whom the Commission has contracted to work for the Commission, is not liable for any loss suffered by any person as a result of any act performed or omitted in good faith in the course of exercising a power or performing a duty assigned by or under this Act. 25

**Composition of National Assembly and provincial legislatures**

114. The formulas referred to in sections 46(2) and 105(2) of the Constitution are set out in Schedule 3.

**Repeal of laws** 30

115. (1) Subject to subsection (2), the laws mentioned in Schedule 4 are hereby repealed.

(2) Anything done in terms of a provision of any law repealed by subsection (1) and which could be done in terms of a provision of this Act, must be regarded to have been done in terms of the last-mentioned provision. 35

**Act binds State**

116. This Act binds the State except in so far as criminal liability is concerned.

**Application of Act when in conflict with other laws**

117. If any conflict arises between a provision of this Act and a provision of any other law, except the Constitution or an Act of Parliament expressly amending this Act, the provision of this Act prevails. 40

**Short title and commencement**

118. (1) This Act is called the Electoral Act, 1998.

- (2) Subject to subsection (3), this Act takes effect on a date determined by the President by proclamation in the *Government Gazette*.
- (3) Section 3(c) must take effect on a later date than the remainder of this Act.

**SCHEDULE 1**  
**ELECTION TIMETABLE**

(Section 20)

The Electoral Commission hereby gives notice that it has in terms of section 17 of the Electoral Act, 1998, determined the election timetable set out below to apply to the ..... (particulars of relevant election) that will be held on ..... (date(s)). (A reference to "section" in this election timetable is a reference to that section of the Electoral Act, 1998.)

**Cut-off time for act to be performed**

1. An act required in terms of this Act to be performed by not later than a date stated in the election timetable must be performed before 17:00 on that date.

**Cut-off date for publication of voters' roll**

2. By ... [day/month/year], the chief electoral officer must publish the voters' roll or the segments of the voters' roll to be used in this election in terms of section 24(2).

**Notice that list of addresses of voting stations is available for inspection**

3. The chief electoral officer must give notice by ... [day/month/year] that from the date of the notice until the voting day copies of a list containing the addresses of all voting stations will be available for inspection.

**Cut-off date for submission of list of candidates**

4. Registered parties that intend to contest this election must nominate and submit a list of their candidates for the election to the chief electoral officer in the prescribed manner by ... [day/month/year].

**Notice of non-compliance**

5. (1) The chief electoral officer must notify a registered party that has submitted a list of candidates in terms of section 27 but has not fully complied with that section, of that non-compliance by ... [day/month/year].

(2) If the notified party takes the opportunity to comply with section 27, that party must do so by ... [day/month/year].

**Inspection of lists of candidates and accompanying documents**

6. The chief electoral officer must give notice by ... [day/month/year], that from the date of the notice until ... [day/month/year], copies of the following documents will be available for inspection: The lists of candidates and accompanying documents submitted by registered parties in terms of section 27, as amended and supplemented in terms of section 28.

**Cut-off date for objections**

7. Any person, including the chief electoral officer, may object to a candidate to the Commission in the prescribed manner by ... [day/month/year].

**Decision of objections**

8. The Commission must decide an objection under section 30, and must notify the objector and the registered party that nominated the candidate of the decision in the prescribed manner by ... [day/month/year].

**Cut-off date for appeals against decisions**

9. The objector or the registered party who nominated the candidate may appeal against a decision of the Commission in terms of section 30(3) to the Electoral Court in the prescribed manner by ... [day/month/year].

**Deciding appeals**

10. The Electoral Court must consider and decide an appeal brought under section 30(4) and notify the parties to the appeal, and the chief electoral officer, of the decision in the prescribed manner by ... [day/month/year].

**List of parties and candidates entitled to contest election and final list of candidates**

11. By ... [day/month/year], the chief electoral officer—
- (a) must give effect to a decision of the Commission in terms of section 30(3) or a decision of the Electoral Court in terms of section 30(5); and
  - (b) must compile a list of the registered parties entitled to contest the election and the final list of candidates for each of those parties.

**Issue of certificate to candidates**

12. By ... [day/month/year], the chief electoral officer must issue in the prescribed manner to each candidate on a final list of candidates a certificate stating that the person is a candidate in this election.

**Determination of boundaries of voting stations**

13. By ... [day/month/year], the chief electoral officer must determine the boundary of every voting station.

**Prescribing of voting hours**

14. By ... [day/month/year], the Commission must prescribe the voting hours for this election.

**Notice of route of mobile voting stations**

15. If the Commission decides to use mobile voting stations in the election, the chief electoral officer must give notice by ... [day/month/year] of the route, including the locations and estimated times of stopping of each mobile voting station.

## SCHEDULE 2

## ELECTORAL CODE OF CONDUCT

(Section 99)

**Purpose of Code**

1. The purpose of this Code is to promote conditions that are conducive to free and fair elections, including—

- (a) tolerance of democratic political activity; and
- (b) free political campaigning and open public debate.

**Promotion of Code**

2. Every registered party and every candidate bound by this Code must—

- (a) promote the purpose of the Code when conducting an election;
- (b) publicise the Code widely in any election campaigns; and
- (c) promote and support efforts in terms of this Act to educate voters.

**Compliance with Code and electoral laws**

3. Every registered party and every candidate must—

- (a) comply with this Code;
- (b) instruct—
  - (i) in the case of a party, its candidates, persons who hold political office in the party, and its representatives, members and supporters, to comply with this Code and any applicable electoral laws; or
  - (ii) in the case of a candidate, the representatives and supporters of the candidate to comply with this Code and any applicable electoral laws;
- (c) take all reasonable steps to ensure—
  - (i) in the case of a party, that its candidates, persons who hold political office in the party, and its representatives, members and supporters, comply with this Code and any applicable electoral laws; or
  - (ii) in the case of a candidate, that the representatives and supporters of the candidate comply with this Code and any applicable electoral laws.

**Public commitment**

4. (1) Every registered party and every candidate must—

- (a) publicly state that everyone has the right—
  - (i) to freely express their political beliefs and opinions;
  - (ii) to challenge and debate the political beliefs and opinions of others;
  - (iii) to publish and distribute election and campaign materials, including notices and advertisements;
  - (iv) to lawfully erect banners, billboards, placards and posters;
  - (v) to canvass support for a party or candidate;
  - (vi) to recruit members for a party;
  - (vii) to hold public meetings; and
  - (viii) to travel to and attend public meetings; and
- (b) publicly condemn any action that may undermine the free and fair conduct of elections.

(2) Every registered party and every candidate must accept the result of an election or challenge the result in a court.

**Duty to co-operate**

5. Every registered party and every candidate must liaise with other parties contesting an election and endeavour to ensure that they do not call a public meeting, march, demonstration, rally or any other public political event at the same time and place as that called by another party contesting the election.

**Role of women**

6. Every registered party and every candidate must—
- (a) respect the right of women to communicate freely with parties and candidates;
  - (b) facilitate the full and equal participation of women in political activities;
  - (c) ensure the free access of women to all public political meetings, marches, demonstrations, rallies and other public political events; and
  - (d) take all reasonable steps to ensure that women are free to engage in any political activities.

**Role of Commission**

7. Every registered party and every candidate must—
- (a) recognise the authority of the Commission in the conduct of an election;
  - (b) assure voters of the Commission's impartiality;
  - (c) give effect to any lawful direction, instruction or order of the Commission, or a member, employee or officer of the Commission, or the chief electoral officer;
  - (d) establish and maintain effective lines of communication with—
    - (i) the Commission; and
    - (ii) other registered parties contesting the election;
  - (e) facilitate the access of members, employees and officers of the Commission, and the chief electoral officer, to public meetings, marches, demonstrations, rallies and other public political events of that party or candidate;
  - (f) co-operate in any investigation of the Commission;
  - (g) take all reasonable steps to ensure—
    - (i) the safety of members, employees and officers of the Commission, and the chief electoral officer, in the exercise of any power or the performance of any duty assigned by or under this Act;
    - (ii) that persons referred to in subparagraph (i) are not subjected to insult, hazard or threat by any representatives or supporters of that party or candidate; and
    - (iii) that representatives of that party or candidate attend meetings of any party liaison committee or other forum convened by the Commission.

**Role of media**

8. Every registered party and every candidate—
- (a) must respect the role of the media before, during and after an election conducted in terms of this Act;
  - (b) may not prevent access by members of the media to public political meetings, marches, demonstrations and rallies; and
  - (c) must take all reasonable steps to ensure that journalists are not subjected to harassment, intimidation, hazard, threat or physical assault by any of their representatives or supporters.

**Prohibited conduct**

9. (1) No registered party or candidate may—
- (a) use language or act in a way that may provoke—

- (i) violence during an election; or
  - (ii) the intimidation of candidates, members of parties, representatives or supporters of parties or candidates, or voters;
  - (b) publish false or defamatory allegations in connection with an election in respect of—
    - (i) a party, its candidates, representatives or members; or
    - (ii) a candidate or that candidate's representatives;
  - (c) plagiarise the symbols, colours or acronyms of other registered parties; or
  - (d) discriminate on the grounds of race, ethnicity, sex, gender, class or religion in connection with an election or political activity.
- (2) No person may—
- (a) offer any inducement or reward to another person—
    - (i) to join or not to join a party;
    - (ii) to attend or not to attend a public meeting, march, demonstration, rally or other public political event;
    - (iii) to vote or not to vote, or to vote or not to vote in any particular way; or
    - (iv) to refuse a nomination as a candidate or to withdraw as a candidate; or
  - (b) carry or display arms or weapons—
    - (i) at a political meeting; or
    - (ii) in any march, demonstration, rally or other public political event;
  - (c) unreasonably prevent any other person access to voters for the purpose of voter education, collecting signatures, recruiting members, raising funds or canvassing support for a party or candidate;
  - (d) deface or unlawfully remove or destroy the billboards, placards, posters or any other election materials of a party or candidate; or
  - (e) abuse a position of power, privilege or influence, including parental, patriarchal, traditional or employment authority to influence the conduct or outcome of an election.

#### **Additions to Code**

10. The Commission may by regulations made in terms of section 100 add provisions to this Code.