

3.8 Campaign Funding / Expenditure

The present proposal which requires the reporting of all campaign donations in excess of R1,000.00 has received certain adverse comment. Two parties have proposed that this amount should be increased to R10,000.00, and that a lower limit might serve to inhibit individual donations by reason of possible intimidation.

One party has suggested that the provisions of the draft which empower the Commission to regulate disclosure of donations and to define legitimate campaign expenditure be deleted in their entirety.

Concern has also been expressed with regard to the possibility of a debarment by the Commission of the continued use of Government owned vehicles and Airways for political work. It has been suggested that such debarment might unfairly disadvantage certain parties.

3.9 Role of the Appellate Division

One party has expressed concern regarding the suggested role of the Appellate Division as a deadlock-breaking mechanism, in the event of a failure by Parliament to achieve the required majority to call a new election. However, the need for some deadlock-breaking mechanism is self-evident.

3.10 Rural Women Constituency

A representation has been received with reference to the need to take special measures to ensure that women living under indigenous systems of law and authority are effectively enabled to participate freely in the proposed elections.

Prof D Davis
Dr F Ginwala
Adv H R Laubscher
Mr S K Ndlovu
Mr R B Rosenthal

GENERAL EXPLANATORY NOTE

**SECOND DRAFT
OF THE INDEPENDENT ELECTORAL COMMISSION ACT**

**SUBMITTED BY THE TECHNICAL COMMITTEE
TO THE NEGOTIATING COUNCIL
OF THE MULTI-PARTY NEGOTIATING PROCESS**

14 JULY 1993

1. In its initial draft (9 July 1993), the Technical Committee proposed an Act which would establish an Independent Electoral Commission:
 - 1.1 In respect of the First Elections; and
 - 2.1 In respect of Elections for a National Parliament; and
 - 3.1 In terms of the Electoral Act as it presently exists.
2. As a result of submissions subsequently received, and the debate which has taken place in the Negotiating Council, the Technical Committee has now reformulated its original proposal, in order to provide for:
 - 2.1 An Electoral Commission which would also supervise future Elections; and
 - 2.2 Legislation which would make provision for both National and SPR Elections; and
 - 2.3 The complete re-enactment of the existing Electoral Act.
3. It is appreciated that any draft legislation will have to be harmonised in due course with other "Transitional Legislation" under consideration in the Negotiating Council, including in particular:

The Transition to Democracy Act;
Legislation establishing a Transitional Executive Council;
The new Electoral Act;
The Independent Media Commission Act;
The Independent Broadcasting Authority Act; and
Such other legislation as may result from agreements reached in the Negotiating Council.

4. In the circumstances, the Technical Committee's Second draft of the Act has been prepared in such a manner as to permit a number of possible permutations, which will depend upon the outcome of the Negotiation Process. The present draft is susceptible to relatively simple editing to reflect whatever final agreements and decisions may be adopted by the Forum.
5. In view of the extent of the redrafting, it has not seemed appropriate to recapitulate the precise wording of the Technical Committee's First draft within the text of this Second draft. However, to facilitate consideration of this draft, the Technical Committee has provided references to the equivalent clause numbers within the First draft (in dark italics). The Second draft has also been provided with a series of footnotes of an explanatory and informative nature.
6. The Technical Committee now awaits the further instructions of the Negotiating Council with regard to the adequacy of this latest draft. Having given first priority to the preparation of the annexed Act, the Technical Committee will now proceed as expeditiously as possible with the second part of its mandate, namely the review and re-enactment of the Electoral Act.

SECOND DRAFT

**SUBMITTED FOR THE CONSIDERATION OF THE NEGOTIATING
COUNCIL, MULTI-PARTY NEGOTIATING PROCESS**

**BY THE TECHNICAL COMMITTEE ON THE
INDEPENDENT ELECTORAL COMMISSION**

14 July 1993

THE INDEPENDENT ELECTORAL COMMISSION ACT

To provide for the establishment of an Independent Electoral Commission to assume responsibility for the conduct, supervision, monitoring and adjudication of Elections for the National Parliament and/or a Constituent Assembly and/or the other Legislatures to be established in respect of States, Provinces or Regions within the Republic; and to provide for Referenda to be conducted nationally, regionally or otherwise; and to provide generally for the necessary powers, duties and functions of the Commission, for the establishment of the necessary sub-structures, including an Election Administration Directorate, an Election Monitoring Directorate, and an Election Adjudication Directorate, and for an Electoral Code of Conduct to be binding upon political parties, candidates and others; and for certain related matters connected with Elections and Referenda.

CHAPTER 1

INTERPRETATION AND APPLICATION OF THE ACT

1. DEFINITIONS

In this Act, unless the context indicates otherwise :

*₂

- 1.1 "Chief Executive Officer" means a person appointed to such office by the Commission in terms of section 16(2). *(Previous Section 1.2)*

*₃

- 1.2 "The Commission" means the Independent Electoral Commission as constituted in terms of this Act. *(Previous Section 1.5)*

- 1.3 "Elections" means the Elections to be conducted for the National Parliament and SPR Legislatures, and such Referenda as may from time to time be conducted in the Republic in terms of Section 30.

(Previous Section 1.17)

- 1.4 "The Electoral Code of Conduct" means the Code of Conduct set out in the First Schedule, which shall be binding upon political parties, candidates and others, concerned with the Elections, as contemplated by Section 29.

(Previous Section 1.3)

2 The previous definition "Accredited International Organisations" has been deleted.

3 The previous definition "CODESA" has been deleted.

4 This is a new definition which reflects the intention that the Act should be applicable to both National and SPR elections, as well as Referenda in various alternative circumstances.

5 It is envisaged that the proposed Code will apply not merely in respect of Political Parties as heretofore, but also in respect of candidates and others concerned with the Elections.

1.5 **"Eligible Candidates"**₆ means any person entitled to be listed, nominated, or co-opted as a candidate, for the office of member of the National Parliament or member of an SPR Legislature, in accordance with the provisions of the Electoral Act (No. of 1993) and the other Transitional Legislation. *(Previous Section 1.7)*

1.6 **"Eligible Voters"**₇ means any person entitled to vote in the relevant Election, in accordance with the provisions of the Electoral Act (No. of 1993), and the other Transitional Legislation.

(Previous Section 1.8)

*
8

1.7 **"The Forum"**₉ means the body so designated as part of the structure of the Multi-Party Negotiating Process.

(Previous Section 1.10)

1.8 **"The Independent Media Commission"**₁₀ means the Commission established in terms of the Independent Media Commission Act (No. of 1993), to provide for the equitable treatment of political parties by broadcasting services, and for the monitoring of State-financed publications, and matters connected therewith.

(Previous Section 1.9)

1.9 **"International Members"**₁₁ means any person so appointed as a member of the Commission without voting power, who is drawn from the international community as envisaged by Sections 7.1 or 11.2.

(New Clause)

6 The Act no longer attempts to describe the substantive criteria determining eligibility, but makes reference to the other relevant legislation, including the new Electoral Act which will determine these matters.

7 This definition has likewise been amended to excise the substantive criteria determining voter eligibility, and to make reference to other legislation which will determine these matters.

8 The previous definition **"The First Elections"** has been eliminated in view of the fact that the Act has now been remodelled to make its provisions applicable generally to both the first and all subsequent Elections, until repealed or amended by Parliament.

9 This definition eliminates the former reference to "CODESA".

10 The new definition makes provision for the relevant legislation presently under consideration by the Multi-Party Negotiating Process.

11 This is a new definition which reflects changes made to the substantive sections, which provide for the appointment as non-voting members of persons drawn from the International Community, although not formally "seconded" or co-opted by any named organisation as previously suggested.

- 1.10 **"National₁₂ Parliament"** means the Parliament/Constituent Assembly to be elected as the sovereign legislature of the Republic in terms of the Transitional Legislation. *(Previous Section 1.11)*

*
13

- 1.11 **"Political Office"₁₄** means any appointment or position involving political activity in the service of a political party whether or not involving remuneration, including any elected or nominated public representative, but excluding any *bona fide* employee of such political party or organisation, who is neither directly nor indirectly engaged in political activity, nor the holder of any such office. *(Previous Section 1.12)*

- 1.12 **"Political Party"₁₅** means any body so registered in terms of the Electoral Act (No. of 1993), and including any political organisation participating as such in the Elections, or publicly supporting or opposing the policies, candidates or cause of any such participating political party or organisation. *(New Definition)*

- 1.13 **"Public Office"** means any appointment or position₁₆ in the service of the State, or of any corporate body or other institution, body or concern, owned and/or controlled, directly or indirectly, by the State. *(Previous Section 1.13)*

- 1.14 **"The Regulations"** means the Regulations promulgated in terms of this Act. *(Previous Section 1.14)*

12 The term **"National"** has been included in the definition to distinguish the National Parliament from any SPR legislature.

13 The definition of **"persons"** as including both men and women as proposed by the Gender Advisory Committee has not been included, although there exists a minority view within the Technical Committee that such definition ought to have been included. The majority view is that a provision of this nature should not be located in particular Statutes, but rather in a Statute of general application, such as the Interpretation Act. A future Bill of Rights also has reference.

14 The Technical Committee has remodelled this definition in order to include public representatives and to exclude bona fide employees.

15 This is a new definition which seeks to make clear that any self-styled political party or other organisation which participates in the Elections either by naming lists or by supporting or opposing candidates or policies are to be covered by the Electoral Code and other relevant provisions of the Act.

16 The previous qualification "remunerated" has been deleted.

- 1.15 **"The Republic"**¹⁷ means the Republic of South Africa, including the TBVC and Self-Governing States. *(Previous Section 1.15)*
- 1.16 **"The Self-Governing States"** means those areas which formerly constituted part of the Republic, and which are presently governed as Self-Governing States in terms of the relevant Constitutional legislation. *(New Definition)*
- 1.17 **"SPR Legislatures"**¹⁸ means the Legislatures to be established with territorial jurisdiction in respect of such States, Provinces and Regions as may be established within the Republic, in terms of the Transitional Legislation. *(New Definition)*
- 1.18 **"The State"**¹⁹ means the Republic, the TBVC and Self-Governing States. *(New Definition)*
- 1.19 **"The TBVC States"** means Transkei, Bophuthatswana, Venda and Ciskei. *(Previous Section 1.16)*
- 1.20 **"The Transitional"**²⁰ **Council** means the Transitional Executive Council to be established in consequence of agreements reached in the Forum and the resultant Transitional Legislation. *(Previous Section 1.6)*
- 1.21 **"The Transitional Legislation"**²¹ means the legislation to be enacted in consequence of the proceedings of the Forum, including the Transition to Democracy Act (No. 1993), the Independent Media Commission Act (No. 1993), the Independent Broadcasting Authority Act (No. 1993), and . . . *(New Definition)*

17 As indicated in its earlier submissions, the Technical Committee is assuming in drafting these proposals that the TBVC and Self-Governing States will have agreed to participate in the proposed elections, and that the necessary legislation will have been enacted in their respective legislatures.

18 This is a new definition which predicates the likelihood of separate legislatures within the future SPR geographical divisions.

19 This is a new definition which is necessary insofar as a distinction needs to be drawn between the Government and the State, and further to clarify that the term includes TBVC and Self-Governing States.

20 The word "Transitional" has been included to distinguish the TEC from the Council constituted as part of the Multi-Party Negotiating Process.

21 This is a new definition which makes provision for the inter-dependent "package" of legislation to be enacted in consequence of the Multi-Party Negotiating Process.

1.22 "This Act" includes the Regulations prescribed thereunder.

(Previous Section 1.18)

2. APPLICATION OF THIS ACT

The provisions of this Act shall apply in respect of the first Elections to be conducted for a National Parliament and for the SPR Legislatures in terms of the Transitional Legislation, and thereafter shall apply, notwithstanding the dissolution in terms of Section 8, of the originally-constituted Commission, in respect of future Elections conducted in respect of the National Parliament and/or SPR Legislatures, and in respect of Referenda conducted from time to time within the Republic in terms of Section 30₂₂.

(Previous Section 2)

3. BINDING ON THE STATE AND STATE PRESIDENT₂₃

3.1 This Act shall be binding upon the State₂₄, including its various departments and organs, and to the extent that its provisions may conflict with the inherent powers of the State, or with the provisions of any other Statute, it shall supersede and override such powers and provisions, insofar as they relate to the conduct and supervision of Elections, Referenda, and such other matters as are dealt with in terms of this Act.

(Previous Section 3)

3.2 This Act shall likewise be binding upon the State President, who shall be obliged to act in accordance with the advice of the Forum, or its Successors in terms of Section 22 from time to time.

(New Clause)

22 This redrafted section makes provision not merely for the first "Transitional Elections" as originally phrased, but also for all future elections in respect of both the National and the SPR legislatures.

23 The heading reflects the addition of the new sub-section 3.2 which, in consequence of concerns expressed in the Negotiating Council, now clarifies the meaning of the term "upon the advice of the Forum". It is intended that the State President shall be bound by such advice as may be received from the Forum (or its Successors in terms of Section 22) and that the State President shall not have an independent discretion in such matters.

24 This term is now defined as including the TBVC and Self-Governing States, and accordingly envisages that appropriate legislation will be enacted in the relevant legislatures to make due provision for the application of this Act, and the Regulations promulgated thereunder, within such States.

CHAPTER 2

ESTABLISHMENT OF COMMISSION

4. ESTABLISHMENT OF COMMISSION

There shall be established a body to be known as "THE INDEPENDENT ELECTORAL COMMISSION", which shall be a juristic person, and which shall be constituted in the manner and for the term contemplated by Section 8.²⁵

(Previous Section 4)

5. OBJECTS OF THE COMMISSION

The objects of the Commission shall be to administer and conduct free and fair Elections for Parliament and the SPR Legislatures, and such Referenda, as may from time to time be conducted in the Republic or any part thereof, and the Commission shall accordingly have plenary executive powers²⁶ in respect of the conduct, supervision, monitoring and adjudication of such Elections and Referenda, throughout the period of the Elections and including the preceding campaign period; including, but without limitation thereto, responsibility for the creation of conditions conducive to free and fair Elections, and for supervision of the registration of voters (insofar as such registration may be considered necessary), and of candidates and political parties; and for all other matters involving the electoral process; the determination and evaluation of Election results, and the regulation of the conduct of all persons and of political parties, candidates, departments of State, and other organs of National, SPR and Local Government (including the Security and Defence Forces)²⁷, insofar as their acts and decisions may affect such Elections and Referenda. *(Previous Section 5)*

25 This provision has been amended to include a reference to Section 8 which provides for the formal inception and dissolution of the Commission as constituted in respect of particular Elections.

26 The meaning and ambit of the words "plenary powers" gave rise to some debate in the Negotiating Council, and the redrafted provision seeks to clarify that the powers of the Commission are only to relate to matters affecting the Elections and Referenda.

27 It is envisaged that insofar as the Commission may need to exercise powers with reference to the Security and Defence Forces, this shall be undertaken through the appropriate Directorate or Sub-Committee of the TEC to avoid any possibility of a confusion of authority. In due course, the provisions of the Transition to Democracy Act and of this Act will need to be reconciled in this respect.

6. INDEPENDENCE OF THE COMMISSION

- 6.1 The Commission shall function without political or other bias, and shall be independent and separate from political parties, and the Forum, and from the National, TBVC, Self-Governing and SPR Governments, and from the Transitional Council, and any subordinate Ministry, department, authority, sub-council or organ thereof, save as may be herein specifically otherwise stipulated.²⁸
- 6.2 All powers of the National, TBVC, Self-Governing, and SPR Governments and of such other bodies, sub-structures, and organs thereof as are referred to in Section 6.1, shall, insofar as they relate to the organisation, conduct and supervision of the Elections, be deemed to have been derived from, and shall be subordinate to, the Commission, to whom such Governments and such bodies, sub-structures, and organs shall be accountable for such of their acts and decisions as may, in the opinion of the Commission, influence or effect the Elections.²⁹
- 6.3 The Commission shall be obliged to submit periodic written reports concerning its acts and decisions, which reports shall be delivered simultaneously³⁰ to the Forum, the Transitional Council, Parliament and to the State President, and which reports shall be public documents.

(Previous Section 6)

²⁸ This provision has been amplified in various respects to include reference to the Commission's independence from political parties, and also to make reference to the Forum and the TBVC, Self-Governing and SPR Governments, and their respective subordinate structures.

²⁹ It is self-evident that the application of this legislation in the TBVC and SPR States, and in the Self-Governing States, requires enabling legislation to be enacted in their respective legislatures. What is of fundamental importance is that the authority of the Commission be clear and unassailable within its limited sphere of jurisdiction.

³⁰ The provision has been amended to clarify that there is no order of precedence insofar as the duty to submit reports is concerned.

7. COMPOSITION OF THE COMMISSION

7.1 The Commission shall comprise not less than seven (7) and not more than eleven (11) members³¹, who shall be appointed by the State President upon the advice of the Forum, or its Successors in terms of Section 22, and who shall be impartial, respected and suitably qualified persons, who are themselves eligible voters, and who represent a broad cross-section of the population, including women³²; on condition that the composition of the Commission may also include, as additional members, such number of persons drawn from the International Community³³, not exceeding five (5), as may be appointed by the State President upon the advice of the Forum. Such international members shall have the same rights and prerogatives as other members of the Council, including the right to receive notice of, and to attend, speak and participate at all meetings, but they shall have no vote, and shall not constitute part of any required quorum.

7.2 It shall be a fundamental precondition and prerequisite for the appointment and eligibility of each member of the Commission :

7.2.1 That they shall be appointed and shall serve as individuals (notwithstanding any personal opinion, preference or party affiliation) and that their voting and decision-making shall at all times be exercised impartially, in complete good faith, and without fear, favour, bias or prejudice.

31 The Technical Committee has debated at some length the optimal size of the Commission. International experience seems to indicate a preference for a relatively small number of Commissioners, but there is also appreciation for the magnitude of the task, the multiplicity of SPR Regions, and the necessity of ensuring that the Commissioners are sufficiently numerous to cope effectively with their formidable mandate.

32 The Technical Committee has been persuaded that the inclusion of women within the composition of the Commission is a matter of such fundamental importance that it requires special mention. There is, however, a minority view that this imperative should preferably be dealt with in the context of the Interpretation Act and/or the proposed Bill of Rights, rather than to single out this particular group for special mention in the specific context.

33 This provision makes it clear that such international members will not be co-opted or seconded as previously envisaged but will be appointed on the advice of the Forum from the International Community. Such persons will serve as full members save only that they will not vote, and their presence will not be counted as part of any mandatory quorum.

- 7.2.2 That they shall serve in a full-time capacity, to the exclusion of any other employment or occupation, and that they shall not during the term of office, accept appointment or nomination to any Political or Public Office, whether remunerated or otherwise, nor in any other manner, directly or indirectly, support or oppose any of the political parties or candidates participating in the Elections, or any issues which are in contention between such parties or candidates.³⁴
- 7.2.3 That no person who has held Political Office³⁵ during a period of eighteen (18) months³⁶ prior to the date of her/his appointment shall be eligible to serve as a member of the Commission.
- 7.3 No member shall by her/his membership, association, statement, conduct or otherwise, place in jeopardy their independence, or in any other manner damage the credibility, impartiality, independence, and integrity of the Commission.
- 7.4 The following disqualifications shall apply to persons who have served as members of the Commission:
- 7.4.1 No person shall during her/his term of office as a Commissioner be eligible for appointment to Public Office, and such ineligibility shall persist for a period of eighteen (18) months reckoned from the date upon which the appointment of such person as Commissioner shall have terminated.

³⁴ This provision has been redrafted in order to extend its intended ambit.

³⁵ There is a minority view within the Technical Committee that this exclusion should relate not only to Political Office, but also to Public Office (both of which are defined terms).

³⁶ The retrospective and prospective periods of the restraint were formerly reflected as three (3) years respectively. However, upon reflection, the Technical Committee has decided to halve this period to eighteen (18) months as now proposed. However, there remains a significant minority on the Technical Committee who feel that the period of eighteen (18) months may be inadequate to achieve the intended purposes of this provision. (A similar debate has taken place with reference to the periods of ineligibility referred in Section 7.4.1 and 7.4.2).

- 7.4.2 No person shall during her/his term of office be eligible to serve as a member of the Forum, the Transitional Council, Parliament or any SPR Legislature, and, subject to the provisions of subsection 7.4.3, such ineligibility shall persist for a period of eighteen (18) months reckoned from the date upon which such body shall have been dissolved or superseded as a result of new Elections.³⁷
- 7.4.3 No person who has served as a member of the Commission shall be eligible to serve as a member of the National Parliament or SPR Legislature for which the Commission was responsible to conduct Elections during the term of office of such Commissioner.
- 7.5 The State President, acting on the advice of the Forum, shall designate two (2) members of the Commission as Chairperson and Vice-Chairperson respectively. In the absence of both such designated Chairperson and Vice-Chairperson, the remaining members of the Commission shall by simple majority nominate another of their members as Acting Chairperson, provided the international members shall not be eligible to serve as Chairperson, Vice-Chairperson or Acting Chairperson.³⁸
- 7.6 In the event of any member of the Commission resigning, or for any other reason ceasing to hold office, the State President shall, upon the advice of the Forum, or its Successors in terms of Section 22, either allow such appointment to lapse (provided there remains at least the minimum number of members stipulated in Section 7.1), or upon the advice of the Forum or its Successors as aforesaid, the State President shall make a new substituted appointment of some other suitably qualified person/s.³⁹

³⁷ As indicated, these periods of ineligibility have been the subject of considerable debate in the Technical Committee, whose original proposal had reference to a period of three (3) years. At one stage the Committee considered a period of five (5) years; but ultimately the majority view was that eighteen (18) months would suffice. The scope of the constraint now also includes reference to the Forum, the TEC, and SPR Legislatures. It is common cause that the disqualification of Commissioners should persist at least for the lifetime of the body elected as a result of the relevant proceedings of the Commission.

³⁸ The disqualification of International Members represents a new addition to this Section.

³⁹ This provision has been redrafted in various respects and now makes it clear that all such decisions are to be the subject of "advice of the Forum" binding upon the State President in terms of Section 3.2.

- 7.7 Nothing herein stipulated shall preclude the State President at any time, from effecting additional appointments of members to the Commission, within the numerical limits stated in Section 7.1, on condition that any such further appointments shall likewise be effected only upon the advice of the Forum or its Successors in terms of Section 22.⁴⁰

(Previous Section 7)

8. TERM OF THE COMMISSION

In respect of each Election, the Commission shall come into being⁴¹, upon a date to be fixed by the State President by proclamation in the Gazette, which shall be a date to be determined upon advice of the Forum or its Successors in terms of Section 22, and the Commission's appointment shall thereafter continue until it has completed its mandate, and has been dissolved by the State President by proclamation in the Gazette; provided that such dissolution of the Commission shall not be effected by the State President, save upon the advice of the Forum or its Successors in terms of Section 22; and provided further that, in respect of each Election, the Commission shall not be dissolved until the last-occurring of:

- 8.1 The certification of such Election as having been substantially free and fair, including similar certification in respect of any such further Elections⁴² as may have been ordered by the Commission in terms of Section 20.4.
- 8.2 The final determination of all issues and disputes arising from such Election, as may have been referred to the Commission and/or the appropriate Directorate, for adjudication in terms of this Act.⁴³

(Previous Section 8)

40 This provision has been similarly amended. The range of the Forum's (or its Successors') discretion is no longer qualified.

41 This provision has now been amended in order to clarify that a Commission shall not be appointed merely in respect of the first Elections, as originally proposed, but that a similar Commission shall be constituted in respect of any future elections, whether national or regional.

42 There was some debate in the Negotiating Council as to the relevance of the term "by-elections". It is now clarified that what is referred to are such further elections as may be ordered by the Commission to make good serious deficiencies in the initial ballot. The Technical Committee has researched international precedents within Proportional Representation systems for re-run elections where unsatisfactory conditions prevailed, which do not merit a complete re-run of the whole National Election. This research is continuing and the Technical Committee may make further suggestions in this regard at a later date.

43 The provision contains a number of consequential editorial changes.

9. TERMINATION OF APPOINTMENT

9.1 Notwithstanding the provisions of Sections 7 and 8, the appointment of a member of the Commission may be terminated at any time, but only in the following circumstances, viz :

9.1.1 At any time, at the instance of the member concerned, by resignation in writing delivered to the State President.

*
44

9.1.2 In consequence of an Order to this effect by a full bench⁴⁵ of the Appellate Division, which shall include the Chief Justice or Acting Chief Justice at the relevant time, provided the Court is satisfied as to the existence of good and sufficient reason therefor as contemplated by Section 9.2, pursuant to an Application lodged by or on behalf of :

(Previous Section 9.1.3 et seq)

9.1.2.1 the State President;

9.1.2.2 the Transitional Council;

9.1.2.3 the National Parliament, or any SPR Legislature; or

44 The original provision relating to the removal and replacement of "International Representatives" has been deleted. In terms of the latest proposal, the appointment of such International Members of the Commission shall enjoy the same degree of protection and shall be subject to the same formalities as are applicable to the other members, in the event of the need for termination of an appointment.

45 Following a proposal made by the Negotiating Council, the number of Appeal Court Judges to be appointed is no longer specified, save that it must represent "a full bench", and must include the Chief Justice or Acting Chief Justice.

- 9.1.2.4 any registered Political Party, or at least one hundred (100) eligible Voters; on condition that no such Application by such Party or such Voters, shall be heard save with the prior leave of the Chief Justice, or in her/his absence the Acting Chief Justice, who shall first be required to satisfy him/herself as to the existence of probable cause, and who shall be entitled to impose such conditions⁴⁶ upon the grant of leave, including the imposition of time limits for the institution of any such proceedings, as s/he may consider appropriate.
- 9.2 In considering any such Application, the Appellate Division shall determine that good and sufficient reason exists for the termination of the appointment of a member of the Commission, only in the event of :
- 9.2.1 serious misconduct; or
- 9.2.2 unfitness or incapacity, including continued ill health; or
- 9.2.3 a material breach of the preconditions and prerequisites specified in Sections 7.2, 7.3 or 7.4;
- 9.2.4 any other reason which the Court may consider both material⁴⁷ and inconsistent with such member's continuance in office.
- 9.3 Any vacancy arising in consequence of the termination of appointment of a member in accordance with Section 9 shall be dealt with in terms of the principles and procedures stipulated in Section 7.6.⁴⁸

(Previous Section 9)

⁴⁶ The provision now grants the Chief Justice a discretion to impose conditions relating inter alia to time limits, to ensure that such proceedings do not unduly protract the electoral process or suspend the declaration of results.

⁴⁷ The word "material" has been added.

⁴⁸ The drafting of this provision has been altered.

10. CONDITIONS OF APPOINTMENT

Members of the Commission shall receive such remuneration, allowances and privileges as may be determined by the Minister of Finance upon the advice of the Forum or its Successors in terms of Section 22.⁴⁹ *(Previous Section 10)*

49

This clause has been amended to clarify that the Minister of Finance does not have an independent discretion, having received the advice of the Forum or its Successors.

CHAPTER 3

RECONSTITUTION OF THE COMMISSION

11. RECONSTITUTION OF THE COMMISSION

11.1 ⁵⁰The reconstitution of the Commission, as may be necessary from time to time, and the consequent selection and appointment of the members of such reconstituted Commission (including also, if deemed appropriate, International Members⁵¹), shall be effected by the State President, upon the advice of Parliament, acting in terms of a Motion which shall require to be passed by the same majority as may be necessary to effect an amendment to the Constitution⁵². If such Motion is not supported by the required majority in Parliament, in respect of Elections duly called in terms of the Constitution and/or the Transitional Legislation, the reconstitution of the Commission, and the consequent selection and appointment of the members of such reconstituted Commission shall be effected by the State President, acting in accordance with the terms of an order of a full bench of the Appellate Division, including the Chief Justice or Acting Chief Justice at the relevant time.

11.2 In the event of a vacancy arising at any time in such reconstituted Commission, including the event of termination of appointment of a member of the Commission in terms of Section 9, the procedures envisaged by Section 7.6 shall *mutatis mutandis* apply, save and except that any reference therein to the Forum or its Successors, shall be deemed to be a reference to the full bench of the Appellate Division, constituted in the manner as

50 This clause and the succeeding provisions have been amended in order to make provision for the reconstitution of the Commission in respect of all future Elections and Referenda, both National and Regional.

51 In contrast to the first version of this Act, the Technical Committee is now suggesting that provision be made for the inclusion of International Members also in respect of the reconstituted Commission, if deemed appropriate. In other words the provision is permissive, not mandatory.

52 As instructed by the Negotiating Council, the Technical Committee has given further consideration to the necessity of this provision. The Committee remains of the view that some mechanism is necessary in the event that Parliament is unable to muster the required majority to select and re-appoint the Commission. It is felt that a simple majority in Parliament would not be sufficient, as this might merely represent the choice of the majority party. Accordingly, the proposal is that the reconstitution of the Commission would in fact necessitate the same majority required to amend the Constitution, which will reflect a significantly higher degree of consensus. If the required majority is unobtainable, a deadlock-breaking mechanism would be necessary, and for this reason it is proposed that the issue be referred to a full bench of the Appellate Division, suitably constituted, which in such circumstances might make the required order with reference to the selection and appointment of the Commission members. It is appreciated that this provision has important constitutional implications, and there is a need to refer this matter also for consideration by the Technical Committee on Constitutional Matters, in order to ensure that there is agreement between the two Technical Committees, and that the relevant legislation is appropriately harmonised.

CHAPTER 4

PROCEDURE AND ADMINISTRATION

12. PROCEDURAL MATTERS

- 12.1 The Commission may determine its own procedures, and shall hold meetings at such intervals as circumstances may require. Meetings may be convened at any time, at the instance of the Chairperson or Vice-Chairperson, or at the instance of any two (2) other members of the Commission.
- 12.2 A quorum for any meeting of the Commission shall be the greater of five (5)⁵³ or a majority of the members of the Commission at the relevant time, save in respect of the Commission's determination and certification of the results of an Election or Referendum, including the decision as to whether such Election or Referendum has been substantially free and fair, in respect of which the necessary quorum shall be all members of the Commission at the relevant time, provided that the International Members shall form no part of such required quorum.
- 12.3 Subject to the stipulated quorum and majority requirements in respect of the Commission's determination and certification of Election and Referendum results, all decisions of the Commission shall be by simple majority. In the event of an equality of votes, the Chairperson (or in her/his absence, the Vice-Chairperson or Acting Chairperson) shall have a casting vote.
- 12.4 The Commission may appoint such sub-committees, whether as standing or special purpose sub-committees, as it may consider necessary for the effective implementation of its duties and responsibilities, provided that the Commission shall at all times, and notwithstanding such delegation, retain the power to review, rescind, and vary any decisions taken by such sub-committees.

12.5 Such sub-committees may include persons who are not members of the Commission, but the Chairperson of any such sub-committee shall be a member of the Commission. The Commission may also at its discretion, include legal and other experts, and persons who are not citizens of the Republic.⁵⁴

12.6 All members of sub-committees who are not in the full-time employment of the State shall receive such remuneration (and allowances, if any) as the Commission may determine. *(Previous Section 12)*

13. ACCOUNTABILITY AND FINANCE

13.1 The Commission shall determine and submit for approval by the Forum, or its Successors in terms of Section 22, estimates and if necessary, supplementary estimates⁵⁵ of expenditure anticipated in the execution of its duties and functions in terms of this Act, covering such periods as it may deem appropriate.

13.2 Upon approval by the Forum or its Successors as aforesaid, the necessary funds envisaged by such estimates shall be made available by the State.

13.3 ⁵⁶The Chief Executive Officer of the Commission shall be charged with responsibility for accounting for the financial affairs of the Commission, on the basis that :

13.3.1 Such charge shall be deemed *mutatis mutandis* to be a charge by the Treasury upon such Chief Executive Officer as contemplated in terms of Section 15A(1) of the Exchequer Act, No. 66 of 1975, as amended.

⁵⁴ This sentence has been added to the draft as applicable to sub-committees of the Commission, as also sub-structures of the Directorates.

⁵⁵ The reference to "supplementary estimates" has been included in view of the obvious fact that the Commission cannot be limited by its original projections, and must be in a position to call for further funds, if required.

⁵⁶ This clause reflects the application of the Exchequer Act and the Auditor-General Act to the financial affairs of the Commission, in order to bring them within the ambit of the normal reporting and auditing requirements applicable to State expenditure.

- 13.3.2 The Chief Executive Officer shall not be an "Accounting Officer" as defined in Section 1 of the Exchequer Act, but all powers and duties which such "Accounting Officer" may exercise or be required to perform in respect of a portion of a vote, are hereby assigned to the Chief Executive Officer under Section 15A(2) of the said Act.
- 13.3.3 The financial affairs of the Commission shall for purposes of Section 15A(1) of the Exchequer Act not be dealt with as "a trading and related account" but shall be deemed to be "a particular portion of a vote whereof accounts are kept separately".
- 13.3.4 The Auditor-General shall have the same duties and powers set out in the Auditor-General Act, No. 52 of 1989, as amended, in respect of all accounts maintained by the Commission.
- 13.4 The Chief Executive Officer shall ensure that the Commission keeps full and proper records of all its income and expenditures, and of all its assets, liabilities and financial transactions, and that periodic financial statements are prepared in the format required by the Auditor-General, and that appropriate steps are taken to ensure that all reasonable management measures are adopted so that assets, services and resources are obtained, safeguarded and utilised in the most economic, efficient and effective manner, and that the requirements of the Auditor-General are duly satisfied.
- 13.5 The Estimates and Accounts of the Commission shall be subject to audit by the Auditor-General who shall report thereon to the Forum or its Successors in terms of Section 22, and to the National Parliament.

(Previous Section 13)

14. GUARANTEE BY STATE

The State guarantees, where required, all commitments and liabilities of the Commission incurred in the execution of its responsibilities in terms of this Act.⁵⁷

(Previous Section 14)

⁵⁷ The Negotiating Council requested the Technical Committee to give further consideration to this provision. The Technical Committee is concerned that the Commission be in a position, as a matter of urgency if necessary, to incur additional expenditure not envisaged in its original Estimates. Accordingly the formulation of this provision has been amplified to make clear that the commitments guaranteed are only such as may be required in the execution of the Commission's responsibilities. The Technical Committee remains of the opinion that this provision is necessary, and has identified a number of precedents for provisions of this nature, as for example Section 9 of the Audit Arrangements Act, No 122 of 1922, which provides in virtually identical terms in respect of the office of the Auditor-General.

15. ADMINISTRATION

The Commission shall have power to do all such things as may be necessary in order to fulfil its mandate, and without limitation thereto, may :

- 15.1 Appoint and dismiss staff, fix remuneration, determine emoluments and benefits, and generally specify terms of employment as it may deem reasonable and appropriate.
- 15.2 Purchase, hire or otherwise acquire movable or immovable property as it may deem necessary for the performance of its functions and duties.
- 15.3 Enter into agreements with any person, including the State, for the performance on its behalf of any specified act or function or the rendering of any service.
- 15.4 Insure itself and its members, staff, visitors and the public generally against loss, damage, risk or liability which may be suffered or incurred.
- 15.5 Open and operate bank accounts with the Reserve Bank or other registered financial institution.
- 15.6 In general, perform such acts and do such things as may be necessary or expedient for the achievement of its objects.

(Previous Section 15)

16. POWERS, DUTIES AND FUNCTIONS OF THE COMMISSION

- 16.1 The Commission is hereby charged with sole⁵⁸ responsibility for the organisation, conduct and supervision of Elections called from time to time in terms of the Constitution and the Transitional Legislation, and it is accordingly vested with all such powers, discretions and authorities as it may require in order to effectively undertake such mandate.

58

The word "sole" has been added in order to emphasise the unqualified responsibility of the Commission with reference to matters affecting the organisation, conduct and supervision of Elections. The clause has also been amended to include reference to all relevant Elections.

- 16.2 In order to carry out its various functions, the Commission shall be empowered to appoint a Chief Executive Officer and to establish the necessary functional sub-structures and to regulate their powers, duties and responsibilities, as it may deem appropriate to ensure a free and fair election.

Such functional sub-structures shall include :

- 16.2.1 **An Election Administration Directorate**, which shall consist of⁵⁹ a Chief Director : Administration, and such other officials as the Commission may deem fit, and which shall have the responsibilities referred to in Section 17.
- 16.2.2 **An Election Monitoring Directorate**, which shall consist of a Chief Director : Monitoring, and such other officials as the Commission may deem fit, and which shall have the responsibilities referred to in Section 18.
- 16.2.3 **An Election Adjudication Directorate**, which shall consist of a Chief Director : Adjudication, and such other officials as the Commission may deem fit, and which shall have the responsibilities referred to in Section 19.
- 16.3 In establishing such functional sub-structures, the Commission shall be entitled to make provision for the co-option, employment or assistance of legal experts and other suitably qualified or experienced persons, including persons who are not citizens of the Republic.
- 16.4 Each⁶⁰ such Directorate shall operate independently of the others, but they shall all be accountable and subject to the overriding management and control of the Commission, which notwithstanding such delegation, shall retain the power to issue final directives and to review, rescind, and vary any decision taken by such Directorates or their functional sub-structures.

(Previous Section 16)

⁵⁹ References are now made to the appointment of appropriate Chief Directors and other officials to each of the Directorates.

⁶⁰ As requested by the Negotiating Council, the Technical Committee has given further consideration to this clause, but does not have further proposals to make in this regard at the present time.

CHAPTER 5

THE ELECTION ADMINISTRATION DIRECTORATE

17. RESPONSIBILITIES OF THE ELECTION ADMINISTRATION DIRECTORATE

The Election Administration Directorate constituted in terms of 16.2.1 shall have the following functional responsibilities, viz :

- 17.1 The education of the voter public concerning democratic principles and values; the electoral process and mechanisms; the right to free political canvassing and campaigning; secrecy of voting; and other relevant matters; by means of literature and the use of other media as it may deem appropriate, 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 throughout the Republic.
- 17.2 Procedures for determining the eligibility and identification of voters.⁶¹
- 17.3 The determination of whether or not voter lists shall be prepared in respect of particular Elections; and if so, the supervision of the preparation of such lists; and the determination of polling regions and other geographic divisions for the purposes of organising electoral activities, as the Commission may deem necessary.
- 17.4 The registration of political parties, and candidates eligible to be listed, in the Elections, and the preconditions and formalities applicable to such registration.
- 17.5 Regulation and registration of proposed names of Political Parties and their respective logos, symbols and campaign colours.

17.6 ⁶²The enforcement and imposition of appropriate penalties and sanctions for infringements of the Electoral Code of Conduct constituting the First Schedule to this Act; either *mero motu* or in conjunction with the Adjudication Directorate, and any such other Tribunal or court as may be established with jurisdiction in respect thereof. (Such penalties and sanctions to include, in appropriate circumstances, at the discretion of the Commission, the suspension or forfeiture of rights to election privileges, such as access to television and radio, and rights to undertake media advertising, and to receive such financial assistance, if any, as may be available to registered political parties and candidates.)

17.7 Measures for preventing the intimidation of voters, candidates and political parties, and for facilitating the conduct of free and fair elections.

(Previous Section 18.4)

17.8 ⁶³The stipulation and enforcement of Regulations covering the obligation to disclose, as a matter of public record, the receipt and source of any contribution (whether in cash, specie, credit, right of use or otherwise) representing a value in excess of R10 000,00, which is promised or received by any Political Party or other body, for the purpose of funding election expenses and/or the promotion of any candidacy, or propogating any of the political objectives or issues which are in contention in the Elections.

(Previous Section 17.15)

17.9 The promulgation of appropriate Regulations 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 and/or the Independent Telecommunications Authority.⁶⁴

(Previous Section 17.16)

⁶² This clause has been reformulated and is also dealt with in terms of the new provision constituting Section 29.

⁶³ This provision has been reformulated, firstly to increase the amount of disclosable contributions from R1 000.00 to R10 000.00, and secondly to elaborate the variable nature of contributions.

⁶⁴ The preparation of appropriate regulations by these bodies requires to be harmonised with the regulations to be promulgated by the Commission. These are also matters which the Technical Committee proposes to discuss with the Technical Committee dealing with Media Affairs.

- 17.10 ⁶⁵The suspension or application, with or without variation, insofar as the Elections are concerned, of any of the provisions of the Electoral Act, including (but without limitation thereto), those provisions dealing *inter alia* with :

(Previous Sections 17.7-17.14)

- 17.10.1 The selection, appointment and registration of returning officers, polling and counting officers and other necessary electoral personnel, who shall not be persons who hold or have held Political Office during a period of eighteen (18) months preceding their date of appointment.
- 17.10.2 The identification of voting stations⁶⁶ and the determination of times and places for voting, including the stipulation of places where particular voters shall be permitted or required to cast their votes.
- 17.10.3 Conditions and formalities under which blind and disabled persons shall be permitted to vote.
- 17.10.4 The admissibility or non-admissibility of Special and Postal Votes.
- 17.10.5 The form and content of ballot papers, and the acceptable manner of recording a vote.
- 17.10.6 Arrangements for ensuring the secrecy and security of the ballot and the protection of ballot papers and of voters.
- 17.10.7 Circumstances in which ballot papers may be rejected and regarded as spoilt.
- 17.10.8 The determination of legitimate electioneering expenses and the regulation of permitted sources of Election funds.

(Previous Section 17)

⁶⁵ It is appreciated that at least in respect of the first Elections, a number of provisions and procedures which are usually considered appropriate in Electoral legislation, may not be feasible in this instance - for example, the preparation of voter lists. There are also conditions affecting the identification of voters, and special citizenship provisions, which may take time to regularise. In the circumstances it is considered necessary to give the Commission power to suspend the application of certain provisions of the proposed new Electoral Act, in circumstances where this is regarded as necessary.

⁶⁶ The Commission has been advised that the term "voting stations" may be preferable to "polling stations", as the latter term apparently is capable of confusion with "police stations"!

CHAPTER 6

ELECTION MONITORING DIRECTORATE

18. RESPONSIBILITIES OF THE ELECTION MONITORING DIRECTORATE

The Election Monitoring Directorate constituted in terms of Section 16.2.2 shall have the following functional responsibilities, viz :

- 18.1 The appointment and co-ordination of monitors⁶⁷ to observe and report upon the electoral process, including political meetings, canvassing, advertising and other campaigns. *(Previous Section 18.1)*
- 18.2 The registration and regulation of observers, both local and international, and the publication of guidelines and, if deemed necessary, a Code of Conduct⁶⁸ binding upon all such observers. *(New Clause)*
- 18.3 The establishment of investigative facilities and review procedures, which shall include the power, with the authority of the Commission, and in liaison with the Police and/or Defence Forces, to issue and execute search warrants, subpoenas, and to seize items required in connection with the investigation of alleged infringements of the Electoral Code of Conduct, or other electoral offenses.⁶⁹ *(Previous Section 18.2)*
- 18.4 The establishment of the necessary personnel and facilities throughout the Republic to observe, monitor and verify the process of the Elections, before, during and after the date/s of polling. *(Previous Section 18.3)*

⁶⁷ It is proposed to apply the term "monitors" to persons who are so appointed by the Commission, to distinguish them from "observers" who although possibly registered in terms of Section 18.2, will not represent the Commission.

⁶⁸ The Commission may consider it desirable to register and in some measure regulate the presence and conduct of observers both local and foreign, in order to ensure that their presence does not in any way place the process in jeopardy.

⁶⁹ This provision has been amended to clarify the relationship of the Commission to the Police and Defence Forces in matters affecting the issuance and execution of warrants and subpoenas. The manner of liaison will await discussion with the appropriate sub-council of the TEC dealing with Police and Defence Force matters.

- 18.5 The investigation and institution of proceedings before the Adjudication Directorate, the Courts, and any such Special Electoral Tribunals⁷⁰ as may be established, in order to deal with alleged infringements of the Electoral Code of Conduct or of the Electoral Act. *(Previous Section 18.5)*
- 18.6 The issuance of Preliminary Warnings and Notices of Infringement concerning alleged or threatened breaches of the Electoral Code of Conduct. *(Previous Section 18.6)*

70

This provision now makes reference to the possible existence of Special Electoral Tribunals, with particular jurisdiction in respect of Electoral Code infringements.

CHAPTER 7

THE ELECTION ADJUDICATION DIRECTORATE

19. RESPONSIBILITIES OF THE ELECTION ADJUDICATION DIRECTORATE

The Election Adjudication Directorate constituted in terms of Section 16.2.3 shall have the following functional responsibilities, viz :

- 19.1 To serve as the final arbiter of claims, issues and disputes (subject to a right of final appeal to the Commission) as may be submitted for adjudication in the prescribed manner by other Directorates of the Commission or by any Eligible Voter, candidate, Political Party or other interested party, concerning matters affecting the campaign, conduct and results of the Elections; provided that the Adjudication Directorate may decline to consider any such claims or disputes as may not have been formally notified to the Commission in the prescribed manner, within a period of fourteen (14) days⁷¹ reckoned from the date upon which the relevant facts became known to the Complainant; and provided further⁷² that in the event of such claim, issue or dispute involving acts or decisions of another Directorate, the matter shall be referred for final determination direct to the Commission and not to the Adjudication Directorate. *(Previous Section 19.1)*
- 19.2 To impose administrative and other penalties and sanctions, in conjunction with the Administration Directorate, upon political parties, candidates and others, in respect of infringements of the Electoral Code of Conduct or of the Electoral Act. *(New Clause)*
- 19.3 To establish and determine the powers and procedures of special Electoral Tribunals for the speedy investigation and adjudication of complaints concerning alleged electoral irregularities, including any attempt to impede access to venues, voters, media, meetings, or any undesirable or corrupt practices, including intimidation or breaches of the Electoral Code of Conduct; provided that an appeal shall lie to the Commission in respect of all decisions made by such special Electoral Tribunals. *(Previous Section 19.2)*

⁷¹ This period has been adjusted in relation to the original suggestion of 21 days.

⁷² This additional proviso is added to clarify the need for the Commission, if necessary, to make determinations with reference to acts or decisions of a Directorate.

CHAPTER 8

ADJUDICATION OF ELECTION RESULTS

20. ADJUDICATION OF ELECTION RESULTS

- 20.1 Upon completion of the ballot, the Commission shall be required as expeditiously as possible, but in any event within a period of ten (10) days⁷³ of the close of the Poll, to determine and certify the results of the Elections, and to declare whether, and, if so, then to what extent, such elections have been conducted in a manner which is substantially free and fair.
- 20.2 In effecting such determination, the Commission may accept or reject the result of the poll as a whole, or it may accept such results in part and reject such results in part, or in respect of a particular SPR Legislature, or geographic district for the purposes of voting.⁷⁴
- 20.3 The acceptance and certification of the results of the Elections, or any portion thereof, as substantially free and fair, shall not be of force and effect unless a majority representing at least seventy-five percent (75%)⁷⁵ of the voting members of the Commission shall have concurred in such finding.
- 20.4 In the event of such results, or any part thereof, being not accepted and certified as aforesaid, the Commission shall determine and cause to be implemented such steps (including the organisation, conduct and supervision of new elections) as it may deem appropriate in the circumstances, in order to achieve a substantially free and fair election result.

⁷³ The relevant period has been reduced from 21 days.

⁷⁴ As indicated previously, the Technical Committee is continuing its research with reference to international precedents in dealing with problems involving election aberrations in a limited area under a system of Proportional Representation.

⁷⁵ The required majority has been redefined, as suggested by the Negotiating Council.

- 20.5 Notwithstanding the foregoing, the result of an Election shall not be rejected by reason of any untoward occurrence, mistake, or non-compliance with the provisions of this Act, or of the Electoral Code of Conduct, if it appears to the Commission that the Elections were conducted substantially in accordance with the prescribed requirements, and that such mistake or non-compliance was unlikely to have materially affected the outcome.

(Previous Section 20)

CHAPTER 9

MISCELLANEOUS PROVISIONS

21. JURISDICTION

There shall be no appeal from any decision by the Commission, but its proceedings shall be subject to review before any Provincial Division of the Supreme Court or, with the leave of the Chief Justice, direct to the Appellate Division. Any such review shall be conducted on an urgent basis, and shall be disposed of by the Courts as expeditiously as possible.⁷⁶

(Previous Section 21)

22. SUCCESSORS TO THE FORUM

In this Act, where rights and prerogatives are conferred upon the Forum, such rights and prerogatives shall be assumed by the Transitional Council, or appropriate Sub-Council thereof, as from the date of its establishment in terms of the Transitional Legislation. Upon dissolution of the Transitional Council, such rights and prerogatives shall thereafter be assumed by the National Parliament.⁷⁷

(Previous Section 22)

23. DELEGATION

Save in respect of its duty to adjudicate the Election results in terms of Section 20, the Commission may delegate⁷⁸ any power or duty conferred upon it hereunder, to any person or other body, or authorise such person or other body, including the State, to perform any duties assigned to it hereunder.

(Previous Section 23)

⁷⁶ The Technical Committee has noted certain representations that the review procedure should be of a political rather than a judicial nature. With respect, the Technical Committee is not in agreement with this proposal, and feels that the proper forum should be the Supreme Court, and if necessary Appellate Division. The addition of the last sentence represents a reflection of the imperative that issues of this nature be resolved as a matter of utmost urgency. The Technical Committee remains of the view that Appeals should be excluded.

⁷⁷ This provision in particular, and a number of other provisions within the draft Act will have to be reviewed in the light of the final form of the Transitional Legislation.

⁷⁸ The Technical Committee has considered the necessity for a Power of Delegation, and having regard to the wide ambit of the Commission's task, and the relatively small number of Commissioners, it considers that a Power of Delegation would be a practical necessity.

24. OBSTRUCTING PROCEEDINGS AND OFFICERS

Any person who wilfully obstructs the Commission, including any of its Directorates, or their respective agents and officers, in the execution of their duties, or who prevents or impedes any acts or procedures taken in terms of this Act, or who wilfully obstructs or interferes with any person appointed by the Commission in the exercise of their duties, shall be guilty of an offence and liable on conviction to a fine not exceeding One Hundred Thousand Rand (R100 000,00)⁷⁹, or to imprisonment for a period not exceeding five (5) years, or to both such fine and such imprisonment.

(Previous Section 27)

25. INFRINGEMENT OF SECURITY

25.1 ⁸⁰Every member of the Commission and all its officers, employees and agents, shall maintain, and aid in maintaining, due secrecy concerning all matters affecting their official duties and responsibilities hereunder, and shall not communicate except for some legitimate purpose authorised by law, any information likely to cause advantage or prejudice to any Political Party, or candidate, or which is likely to place in jeopardy the impartiality of the Commission, or of its acts and decisions.

25.2 Any person who, in the exercise of powers or the performance of duties in terms of this Act, has obtained knowledge as to the affairs of any Political Party, candidate or voter, shall not disclose such knowledge to any person, other than as required in the course and scope of her/his duties or in response to a question lawfully put in the course of proceedings in any Court.

25.3 Any person who contravenes, or fails to comply with, any provision of this Section, shall be guilty of an offence and liable on conviction to a fine not exceeding One Hundred Thousand Rand (R100 000,00) or to imprisonment for a period not exceeding five (5) years, or to both such fine and such imprisonment.

(Previous Section 28)

⁷⁹ The Technical Committee has debated the quantum of the penal limits and is of the view that a substantial penalty should be applicable in appropriate circumstances.

A number of other offenses which were contained in the First Draft of the Act have been excised, as they are more appropriately located in the proposed new Electoral Act.

⁸⁰ These clauses have been redrafted but to similar effect. A substantial increase of the applicable penalty limits (from R10 000.00 or three (3) years to R11 000.00 or five (5) years) has been included.

26. PROHIBITION OF THE PUBLICATION OF OPINION POLLS DURING ELECTIONS

- 26.1 ⁸¹Without derogating from the constraints stipulated in any other law, no person shall, during a period of six (6) weeks prior to the date of commencement of actual voting in Elections, publish the results of any opinion poll purporting to reflect the level of support enjoyed by political parties, candidates, or the policies they advocate, until after the Election Results shall have been certified by the Commission.
- 26.2 The provisions of the preceding sub-section shall not prohibit the obtaining of opinions in the course of canvassing for votes on behalf of Political Parties, or candidates, or the publishing of the results of opinions so obtained, after the Election Results have been certified by the Commission.
- 26.3 Any person who contravenes any provision of Section 26.1 shall be guilty of an offence, and liable on conviction to a fine not exceeding One Hundred Thousand Rand (R100 000,00)⁸² or to imprisonment for a period not exceeding five (5) years, or to both such fine and such imprisonment.

(Previous Section 29)

27. EXEMPTION FROM DUTIES, TAXES AND FEES

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

(Previous Section 31)

⁸¹ After much debate, the Technical Committee has amended its original proposal in order to focus the prohibition only upon publication of opinion polls during the six (6) week period prior to the commencement of actual voting. It must be pointed out that the earlier proposal, which reflected the existing provisions of the Electoral Act (Section 143) also forbade the conduct of polls during the relevant period, apart from their publication. Although the Technical Committee is not unanimous, the majority view is that the conduct of polls by Political Parties in the course of their canvassing, cannot easily be distinguished from the conduct of opinion polls by professional pollsters.

⁸² As previously, the Technical Committee has substantially increased the permissible limits of the penal sanctions.