

GENERAL NOTICES • ALGEMENE KENNISGEWINGS

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA NOTICE 796 OF 2018

MR MOSIUOA GERARD PATRICK LEKOTA, MP

NOTICE OF INTENTION TO INTRODUCE A PRIVATE MEMBER'S BILL AND INVITATION FOR COMMENT ON THE DRAFT ELECTORAL LAWS AMENDMENT BILL, 2019

Mr Mosiuoa Gerard Patrick Lekota, MP, acting in accordance with section 73(2) of the Constitution of the Republic of South Africa, 1996 ("the Constitution"), intends to introduce the Electoral Laws Amendment Bill, 2019, in Parliament during the first quarter of 2019. An explanatory summary of the Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly (9th Edition).

The current electoral system for the National Assembly and Provincial Legislatures that operates in South Africa is one where political parties (and not individuals) contest elections. Each party is allocated a number of seats in the National Assembly and Provincial Legislatures calculated according to a formula contained in Schedule 1A of the Electoral Act, 1998 (Act No. 73 of 1998), reflecting as closely as possible the proportion of votes that party obtained in the general elections. Each party determines which of its members fill the seats so allocated. While there are some advantages of such a system, there are also some weaknesses such as: a lack of accountability of members of the relevant legislatures to its voters; alienation of voters from the political system; and no provision is made for the voting public to vote for individual members – there is merely a link between the public and political parties.

This is despite the fact that section 19(3)(b) of the Constitution provides that: "Every adult citizen has the right to stand for public office and, if elected, to hold office." The Electoral Act, 1998 (Act No. 73 of 1998), does not provide for candidates to contest provincial or national elections independent of a political party. The current electoral system only provides for individual representation in the National Assembly and Provincial Legislatures through party political lists, which are drawn up from political party members.

In a recent constitutional court judgment,¹ the Constitutional Court made the following comment in relation to section 19(3)(b) of the Constitution:

"Finally, the section addresses the fundamental right every adult citizen has 'to stand for public office and, if elected, to hold office.' Our Constitution does not itself limit the

¹ At para 29 in *My Vote Counts NPC v Minister of Justice and Correctional Services and Another* [2018] ZACC 17.

enjoyment of this right to local government elections. The right to stand for public office is tied up to the right to ‘vote in elections for any legislative body’ that is constitutionally established. Meaning, every adult citizen may in terms of the Constitution stand as an independent candidate to be elected to municipalities, Provincial Legislatures or the National Assembly. The enjoyment of this right is not and has not been proscribed by the Constitution. It is just not facilitated by legislation. But that does not mean that the right is not available to be enjoyed by whoever might have lost confidence in political parties. It does, in my view, remain open to be exercised whenever so desired, regardless of whatever logistical constraints might exist.”

Hence the Electoral Laws Amendment Bill, 2019 (“the draft Bill”) will seek to amend relevant electoral legislation in order to make provision for independent candidates to stand for public office in provincial and national elections, without requiring such candidate to be a member of a particular political party.

The draft Bill will, *inter alia*, seek to amend:

- the Electoral Commission Act, 1996 (Act No. 51 of 1996), so as to provide for, and to regulate, independent candidacy;
- the Electoral Act, 1998 (Act No. 73 of 1998), so as to, *inter alia*, give full effect to section 19(3)(b) of the Constitution, which provides that every South African citizen has the fundamental right to stand for public office and, if elected, to hold office; to ensure that individuals can stand for office as independent candidates without having to stand for office by virtue of his or her membership of a political party; and to promote democratic governance and electoral accountability; and
- any other relevant legislation so as to provide for independent candidates to participate in election broadcasts and political advertisements on an equitable basis with political parties; to provide for independent candidates to receive financial and administrative assistance to enable them to perform their functions effectively; and to provide for related and other consequential matters.

Interested parties and institutions are invited to submit written representations on the proposed content of the draft Bill to the Speaker of the National Assembly by **21 January 2019**. Representations can be delivered to the Speaker, New Assembly Building, Parliament Street, Cape Town; mailed to Speaker, PO Box 15, Cape Town, 8000, or emailed to speaker@parliament.gov.za and copied to mlekota@parliament.gov.za

Copies of the Electoral Laws Amendment Bill, 2019, may, after introduction, be obtained from:
The Congress of the People (COPE)
PO Box 15, Cape Town, 8000
Telephone: 021 403 8915
E-mail: mlekota@parliament.gov.za