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## GENERAL NOTICES • ALGEMENE KENNISGEWINGS

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### PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

#### NOTICE 3567 OF 2025

#### MS LERATO NGOBENI, MP

### **NOTICE OF INTENTION TO INTRODUCE A PRIVATE MEMBER'S BILL AND INVITATION FOR COMMENT THEREON, NAMELY THE ELECTORAL LAWS AMENDMENT BILL, 2025**

Ms Lerato Ngobeni, MP, acting in accordance with section 73(2) of the Constitution of the Republic of South Africa, 1996, intends to introduce the Electoral Laws Amendment Bill, 2025, in Parliament. 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).

In the lead-up to the 2024 general elections, a controversial poll was released in March 2024 without disclosing the identity of the commissioning party or the entity that conducted it. The data was anonymously attributed to Rapport, City Press, and News24, leading to a complaint by ActionSA to the Press Ombudsman, (“Ombud”). The Ombud found Rapport, the original publisher, guilty of violating section 1.2 of the Press Code and instructed that corrections be published by all media outlets involved. This type of “push polling” is intended to shape public opinion and is not about genuine data collection and sharing.

The integrity of electoral democracy relies heavily on citizens' fair, transparent, and informed participation. Political opinion polling plays a significant role in shaping public perceptions, guiding media coverage, influencing campaign strategies and ultimately shaping voting patterns. However, in the absence of clear and formal regulation to avoid the concealment of any methodological flaws or sponsorships, publication of political opinion polls could result in the dissemination of unverifiable or manipulated polling data becoming tools for misinformation, manipulation, and electoral interference without recourse or sufficient scrutiny.

Currently, the only explicit statutory provision is section 109 of the Electoral Act, 1998 (Act No. 73 of 1998) (“Electoral Act”), which prohibits the publishing of exit poll results during the prescribed voting hours on election day. This narrow restriction does not apply to the broader and more influential category of pre-election political opinion polling.

South Africa lacks any specific legal provisions governing the conduct, publication, and dissemination of political opinion polling during or before election periods.

To address this legal vacuum, the Electoral Laws Amendment Bill, 2025 (“the draft Bill”), proposes amendments to the Electoral Commission Act, 1996, (Act No. 51 of 1996) and to the Electoral Act to govern the conduct, publication, and dissemination of political opinion polling during or before election periods in line with international best practice. The draft Bill seeks to:

- establish the Office of the Polling Ombud through creating a new oversight body within the Electoral Commission to regulate political opinion polling and exit polling;
- provide for the functions and powers of the Polling Ombud and these include registration of polling entities, compliance enforcement, issuing fines, and ensuring transparency in political polling activities;
- regulate political opinion polling and exit polling through mandatory registration and information disclosure by polling entities and setting timeframes when polling results can or cannot be published; and
- prohibit official printing and publication of a political opinion poll conducted in connection with an election, seven days prior to that election.

Members of the public, civil society organisations, and other stakeholders are invited to submit written comments on the proposed content of the draft Bill within 30 days of this notice’s publication. Submissions can be delivered to the Speaker of the National Assembly, New Assembly Building, Parliament Street, Cape Town, 8001; mailed to the Speaker, P O Box 15, Cape Town, 8000 or emailed to [speaker@parliament.gov.za](mailto:speaker@parliament.gov.za) and copied to [parliament@actionsa.org.za](mailto:parliament@actionsa.org.za).

A copy of the Electoral Laws Amendment Bill, 2025, may be accessed at the following website: <https://www.actionsa.org.za/electoral-reform/>.

REPUBLIC OF SOUTH AFRICA

ELECTORAL LAWS AMENDMENT BILL

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill  
and prior notice of its introduction published in Government Gazette No. .... of  
..... 20..)*

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

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**(MS LM NGOBENI, MP)**

**GENERAL EXPLANATORY NOTE:**

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

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

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**BILL**

**To amend the Electoral Commission Act, 1996, so as to establish the Office of the Polling Ombud; to provide for the functions and powers of the Office of the Polling Ombud; to amend the Electoral Act, 1998, so as to regulate political opinion polling and exit polling; and to provide for matters connected therewith.**

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

**Amendment of section 1 of Act 51 of 1996, as amended by section 6 of Act 22 of 2014, section 1 of Act 4 of 2021 and section 33 of Act 14 of 2024**

1. Section 1 of the Electoral Commission Act, 1996, is hereby amended—
  - (a) by the insertion after the definition of “metropolitan municipality” of the following definitions:
 

“Office of the Polling Ombud” means the Office of the Polling Ombud established in terms of section 14A;

**‘Ombud’** means the Polling Ombud appointed in terms of section 14B;” and

(b) by the insertion after the definition of “political office” of the following definition:

**“‘political opinion poll’** means any poll or survey intended to measure public support for a political party, candidate, or an issue related to an election, and **‘political opinion polling’** has a corresponding meaning;”.

**Amendment of section 5 of Act 51 of 1996, as amended by section 94 of Act 117 of 1998, section 1 of Act 1 of 2019 and section 34 of Act 14 of 2024**

2. Section 5 of the Electoral Commission Act, 1996, is hereby amended—

(a) by the insertion in subsection (1) of the following paragraph after paragraph (o):

**“(oA) develop processes related to political opinion polling and exit polling;”**;

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

**“(a) acquire the necessary staff, whether by employment, secondment, appointment on contract or otherwise, to support the Commission in the execution of its functions;”**; and

(c) by the insertion in subsection 2 of the following paragraphs after paragraph (b):

**“(bA) oversee and manage the operations of the Office of the Polling Ombud;**

**(bB) ensure that the Office of the Polling Ombud is sufficiently resourced and enabled to execute its functions independently, effectively and efficiently;”**.

## **Insertion of Chapter 3A in Act 51 of 1996**

3. The following Chapter is hereby inserted after section 14 of the Electoral Commission Act, 1996:

### **“CHAPTER 3A POLLING OMBUD**

#### **Establishment of Office of Polling Ombud**

14A.(1) The Office of the Polling Ombud is hereby established.

(2) The Office of the Polling Ombud falls within the administration of the Commission and must perform its functions in accordance with this Act and under the general oversight of the chief electoral officer.

#### **Object of Office of Polling Ombud**

14B. The Office of the Polling Ombud—

- (a) regulates and provides oversight in respect of political opinion polls and exit polls in order to ensure compliance with this Act;
- (b) preserve the integrity of the electoral process; and
- (c) protect the rights of voters.

#### **Appointment of Ombud**

14C. (1) The chief electoral officer must, in consultation with the Commission, appoint a suitably qualified and experienced person as Ombud.

(2) The Ombud must perform the functions assigned to him or her in terms of this Act.

### **Staff of Office of Polling Ombud**

14D. The chief electoral officer must, in consultation with the Ombud, appoint such support staff as may be necessary to assist the Ombud in the performance of the functions of the Office of the Polling Ombud.

### **Functions and powers of Ombud**

14E. (1) The Ombud is responsible for—

- (a) receiving and considering applications for registration of a person wishing to officially print, publish or distribute the results of any political opinion polling or exit poll;
- (b) auditing compliance with the provisions of this Act in relation to the official printing, publication, or distribution of the results of any political opinion poll or exit poll;
- (c) investigating any complaint or allegation of non-compliance with the provisions of this Act relating to the official printing, publication, or distribution of the results of any political opinion poll or exit poll;
- (d) issuing administrative fines and compliance notices where appropriate;
- (e) establishing and maintaining a public portal on the official website of the Commission, which must include up-to-date records of—
  - (i) any person registered to officially print, publish or distribute the results of a political opinion poll or exit poll; and
  - (ii) officially printed, published or distributed political opinion poll or exit

poll.

(2) The Ombud may issue a compliance notice contemplated in section 14F to a person who has officially printed, published or distributed a political opinion poll or exit poll without complying with the provisions of section 109A of the Electoral Act.

(3) The Ombud may impose an administrative fine contemplated in section 14G on a person who has failed or refused to comply with a compliance notice issued in terms of section 14F.

### **Compliance Notice**

14F. (1) The Commission must prescribe a process to manage the issuing and setting aside of a compliance notice, and to consider a dispute related to a compliance notice.

(2) The Ombud may issue a compliance notice, which must substantially correspond with the prescribed form and follow the prescribed procedure, if any person, before officially printing, publishing, or distributing the results of a political opinion poll or exit poll, has—

(a) failed to register with the Ombud in accordance with section 109A(1) of the Electoral Act; or

(b) failed to submit the required information in accordance with section 109A(4) of the Electoral Act.

(3) A compliance notice issued remains valid until it is set aside by the Commission—

(a) upon receipt of a compliance report from the Ombud that the person whom the compliance notice was issued against, has complied with the compliance notice, to the satisfaction of the Ombud;

(b) upon the resolution of a dispute related to the compliance notice, in favour of the



applicant; or

(c) under the circumstances determined by the Commission in the process contemplated in subsection (1).

(4) If the requirements of a compliance notice issued in terms of subsection (2) have been satisfied, the Ombud must issue a compliance certificate.

(5) If a person to whom a compliance notice has been issued fails to comply with the compliance notice, the Ombud must issue an administrative fine against that person as contemplated in section 14G.

### **Administrative fine**

14G. (1) The Commission must adopt—

(a) a guide to the factors that must be considered when determining an appropriate administrative fine, which factors must include the following:

(i) The nature, duration, gravity and extent of the non-compliance;

(ii) the behavior of the person who is not complying with the provisions of this Act in relation to the official printing, publishing or distribution of a political opinion poll or exit poll;

(iii) whether the person contemplated in sub-paragraph (ii) has previously been found in contravention of this Act or a compliance notice issued by the Ombud;

(iv) any submissions by, or on behalf of the person contemplated in sub-paragraph (ii) including mitigating factors referred to in those submissions;  
and

(v) the effect of the proposed fine on the person in question; and

(b) a process to manage—

(i) the issuing of an administrative fine; and

(ii) receipt of payment of an administrative fine.

(2) The Ombud may, subject to subsection (4), issue an administrative fine to a person, who—

(a) officially printed, published or distributed results of a political opinion poll or exit poll without complying with the provisions of section 109A of the Electoral Act; and

(b) failed to comply with the relevant compliance notice issued in terms of this Act.

(3) When determining an appropriate administrative fine, the Ombud must consider all relevant facts and the guidelines contemplated in subsection (1)(a) and may include an amount to reimburse the Ombud for reasonable costs incurred by the Ombud in connection with the contravention and failure to comply.

(4) The Ombud may not issue an administrative fine to a person who contravened the provisions of this Act in relation to a public opinion poll or exit poll if that person is being prosecuted for an offence arising out of the same set of facts.”.

#### **Amendment of arrangement of sections to Act 51 of 1996, as amended by section 93 of Act 27 of 2000**

4. The arrangement of sections to the Electoral Commission Act, 1996, is hereby amended by the insertion after the reference to the heading to section 14 of the following items:

## **“CHAPTER 3A**

### **POLLING OMBUD**

14A. Establishment of Office of Polling Ombud

14B. Objects of Office of Polling Ombud

14C. Appointment of Ombud

14D. Staff of Office of Polling Ombud

14E. Functions and powers of Ombud

14F. Compliance Notice

14G. Administrative fine”.

### **Substitution of long title of Act 51 of 1996**

5. The following long title is hereby substituted for the long title of the Electoral Commission Act, 1996:

**“To make provision for the establishment and composition of an Electoral Commission to manage elections for national, provincial and local legislative bodies and referenda; and to make provision for the establishment and composition and the powers, duties and functions of an Electoral Court; to establish the Office of the Polling Ombud; to provide for the functions and powers of the Office of the Polling Ombud; and to provide for matters in connection therewith.**

**Amendment of section 1 of the Electoral Act, 1998, as amended by section 1 of Act 18 of 2013, section 7 of Act 4 of 2021, section 1 of Act 1 of 2023 and section 30 of Act 14 of 2024**

6. Section 1 of the Electoral Act, 1998, is hereby amended—

(a) by the insertion after the definition of “officer” of the following definition:

“‘officially’ for purposes of sections 109 and 109A, means the first publication of the results of a political opinion poll or exit poll to the public;” and

(b) by the insertion after the definition of “political office” of the following definition:

“‘political opinion poll’ means a political opinion poll as defined in section 1 of the Electoral Commission Act;” .

**Substitution of section 109 of Act 73 of 1998**

7. The following section is hereby substituted for section 109 of the Electoral Act, 1998:

**“Prohibition on publication of exit polls and political opinion polling**

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

(2) For a period of seven days immediately preceding the date on which an election is held, no person may officially print, publish or distribute the results of any political opinion poll conducted in connection with that election.

(3) Any person who contravenes the provisions of this section is guilty of an offence and on conviction liable to a fine, or imprisonment for a period not exceeding

two years.”.

### Insertion of section 109A in Act 73 of 1998

8. The following section is hereby inserted in the Electoral Act, 1998 after section 109:

**“Registration and notice of political opinion and exit poll**

**109A.** (1) A person who intends to officially print, publish or distribute the results of a political opinion poll, or exit poll must be registered with the Office of the Polling Ombud established in terms of the Electoral Commission Act.

(2) A person contemplated in subsection (1) must submit an application for registration in the prescribed form and manner, which application must include—

(a) the name, identity number or registration number, and contact details of the person applying for registration;

(b) where the person is a juristic entity, the contact details of the relevant representative; and

(c) any other prescribed information.

(3) If satisfied that a person’s application for registration complies with this Act, and that the person has submitted the required information, the Ombud must, within a period of seven days, register such person by entering their details in the list referred to in subsection (6), and inform that person of such registration, in the prescribed manner.

(4) Before a person contemplated in subsection (3) may officially print, publish or distribute the result of a political opinion poll or exit poll, they must submit the following information related to that poll to the Office of the Polling Ombud:

(a) The methodology used in conducting the poll, including sampling methods and data collection techniques;

(b) the details of who sponsored the poll;

(c) the details of who commissioned the poll;

(d) the margin of error and sample size;

(e) the demographic and geographic scope;

(f) the date of collection; and

(g) any other prescribed information.

(5) If satisfied that the person has complied with the provisions of subsection (4) and submitted the required information the Ombud must, within a period of 48 hours, approve the request to publish and must inform that person of such approval in the prescribed manner.

(6) When a person contemplated in subsection (1) officially prints, publishes or distributes the results of a political opinion poll, the following information must be clearly displayed with the results:

(a) The identity of the person who conducted the poll;

(b) the sponsor of the poll;

(c) the commissioning party;

(d) the fieldwork dates;

(e) the methodology used;

(f) the margin error and confidence level;

(g) the sample size and sampling method; and

(h) any other prescribed information.

(7) The Office of the Polling Ombud must maintain a public list of each person registered to officially print, publish or distribute the results of a political opinion poll

or exit poll, and each officially printed, published or distributed political opinion poll or exit poll.”.

### **Transitional provisions**

9. (1) The chief electoral officer must appoint the Ombud within six months of the commencement of section 14C of the Electoral Commission Act, 1996 (Act No. 51 of 1996).

(2) Any person who intends to officially print, publish or distribute the results of a political opinion poll or exit poll, before the commencement of section 14A of the Electoral Commission Act, 1996 (Act No. 51 of 1996), may continue to do so: Provided that the person must—

- (a) notify the Commission in writing of that intention, setting out the information contemplated in section 109A (2) and (3) of the Electoral Act, 1998 (Act No. 73 of 1998); and
- (b) submit an application for registration in the prescribed form and manner as contemplated in section 109A(2) of the Electoral Act, 1998 (Act No. 73 of 1998), within three months of the publication of the regulation setting out the form and manner of such application.

(3) Any person who contravenes the provisions of subsection (2) is guilty of an offence and on conviction liable to a fine, or imprisonment for a period not exceeding two years.

### **Short title and commencement**

10. This Act is called the Electoral Laws Amendment Act, 2025, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

## **MEMORANDUM ON THE OBJECTS OF THE ELECTORAL LAWS AMENDMENT BILL, 2025**

### **1. INTRODUCTION AND PURPOSE**

1.1 In the lead-up to the 2024 general elections, a controversial poll was released in March 2024 without disclosing the identity of the commissioning party or the entity that conducted it. The data was anonymously attributed to *Rapport*, *City Press*, and *News24*, leading to a complaint by ActionSA to the Press Ombudsman, (“Ombud”). The Ombud found *Rapport*, the original publisher, guilty of violating section 1.2 of the Press Code and instructed that corrections be published by all media outlets involved. This type of “push polling” is intended to shape public opinion and is not about genuine data collection and sharing.

1.2 In response to the incident, the South African National Editors’ Forum (“SANEF”) urged media houses to apply “meticulous scrutiny” when reporting on political opinion polls. Despite these calls for responsibility, there remains little formal regulation governing pre-election political opinion polling.

1.3 The integrity of electoral democracy relies heavily on citizens' fair, transparent, and informed participation. Political opinion polling plays a significant role in shaping public perceptions, guiding media coverage, influencing campaign strategies and ultimately shaping voting patterns. However, in the absence of clear regulations, political opinion polls risk becoming tools for misinformation, manipulation, and electoral interference.

1.4 Currently, the only explicit statutory provision is section 109 of the Electoral Act, 1998 (Act No. 73 of 1998), (“Electoral Act”), which prohibits the publishing of exit poll results during the prescribed voting hours on election day. This narrow restriction does not apply to the broader and more influential category of pre-election political opinion polling.



1.5 South Africa lacks any specific legal provisions governing the conducting of, or official printing, publication, and dissemination of political opinion polls during or before election periods. This gaping legal vacuum allows for the following:

- 1.5.1 The dissemination of unverifiable or manipulated polling data;
- 1.5.2 the concealment of methodological flaws;
- 1.5.3 the concealment of sponsorships;
- 1.5.4 misinformation campaigns targeting voters; and
- 1.5.5 the publication of last-minute polls known as “push polling,” that unduly influence electoral outcomes without recourse or sufficient scrutiny.

## **2 OBJECTS OF THE BILL**

2.1 The purpose of the Bill is to—

- 2.1.1 establish the Office of the Polling Ombud through creating a new oversight body within the Electoral Commission to regulate political opinion polling and exit polling;
- 2.1.2 provide for the functions and powers of the Polling Ombud and these include registration of polling entities, compliance enforcement, issuing fines, and ensuring transparency in political polling activities;
- 2.1.3 regulate political opinion polling and exit polling through mandatory registration and information disclosure by polling entities and setting timeframes when polling results can or cannot be published; and
- 2.1.4 prohibit official printing and publication of a political opinion poll conducted in connection with an election, seven days prior to that election.

### **3. CONTENTS OF THE BILL**

3.1 Clause 1 amends section 1 of the Electoral Commission Act, 1996 ("Act No 51 of 1996") ("Electoral Act"), to insert new definitions into that Act.

3.2 Clause 2 seeks to amend section 5 of the Electoral Commission Act, 1996, to expand the functions and powers of the Electoral Commission in relation to the regulation of political opinion polling and exit polling, and to facilitate the effective establishment and functioning of the Office of the Polling Ombud. The clause further provides for the Commission to oversee and manage the operations of the Office of the Polling Ombud and to ensure that the Office is adequately resourced and enabled to perform its functions independently, effectively, and efficiently.

3.3 Clause 3 inserts a new Chapter 3A into the Electoral Commission Act. The clause provides for the establishment of the Office of the Polling Ombud. Amongst other things the clause provides for the following:

- The establishment of the Office of the Ombud under the administration and general oversight of the Electoral Commission;
- the objects of the Office of the Ombud;
- the appointment of the Ombud and the appointment of necessary support staff;
- the functions and powers of the Ombud;
- empowers the Ombud to issue a compliance notice; and
- empowers the Ombud to issue an administrative fine.

3.4 Clause 4 amends the arrangement of sections in the Electoral Commission Act, to reflect the insertion of the new Chapter 3A, titled "Polling Ombud", and the associated new sections (sections 14A to 14G).

3.5 Clause 5 substitutes the long title of the Electoral Commission Act, to reflect the expanded

scope of the Act. The revised long title includes reference to the establishment of the Office of the Polling Ombud, its functions and powers.

3.6 Clause 6 amends section 1 of the Electoral Act by inserting two new definitions.

3.7 Clause 7 substitutes section 109 of the Electoral Act with a new provision that prohibits the publication of political opinion polling results in the period immediately preceding an election. The clause further provides that any person who contravenes this prohibition commits an offence and, on conviction, is liable to a fine or to imprisonment for a period not exceeding two years. The purpose of this clause is to protect the integrity and fairness of the electoral process by limiting the influence of political opinion polls on voters in the final days before an election, and to provide for a clear criminal sanction in the event of non-compliance.

3.8 Clause 8 inserts section 109A into the Electoral Act, which establishes a regulatory framework for the registration and disclosure requirements applicable to persons intending to officially print, publish, or distribute the results of political opinion polls or exit polls. The purpose of this clause is to enhance transparency, accountability, and credibility in the conduct and dissemination of political opinion polls and exit polls. It establishes minimum standards and oversight mechanisms to ensure that such polls are methodologically sound, properly disclosed, and traceable to responsible persons.

3.9 Clause 9 provides for transitional provisions.

3.10. Clause 10 provides for the short title of the Act and its commencement.

#### **4. ORGANISATIONAL AND PERSONNEL IMPLICATIONS**

The coming into operation of the Bill will have additional personnel implications.

## **5. FINANCIAL IMPLICATIONS FOR THE STATE**

The establishment of the Office of the Polling Ombudsman will require the allocation of resources for personnel, administrative systems, and digital infrastructure. These costs are expected to be absorbed within the broader budgetary framework of the Electoral Commission, subject to National Treasury processes.

## **6. PARLIAMENTARY PROCEDURE**

6.1 The member proposes that the Bill be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provisions to which the procedures set out in section 74, 76 or 77 of the Constitution apply.

6.2 The member is of the opinion that it is not necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain provisions pertaining to customary law or customs of traditional communities.