

REPUBLIC OF NAMIBIA

NATIONAL ASSEMBLY

**ELECTORAL
AMENDMENT BILL**

(As read a First Time)

*(Introduced by the Minister of Regional and Local Government,
Housing and Rural Development)*

EXPLANATORY NOTE:

_____ Words underlined with a solid line indicate insertions in existing provisions.

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

BILL

To amend certain definitions and insert new definitions; to provide for the establishment of temporary registration points outside Namibia; to provide for the appointment and remuneration of coordinators and assistant coordinators for registration purposes and for their powers, functions and duties and lines of reporting; to provide that parents and other persons may declare that a person who applies for registration as a voter has reached the age of 18 years; to provide for the publication, prior to registration of a political party, of certain particulars and for the objecting to such particulars and the hearing of appeals; to provide that staff members appointed by the Commission on the recommendation of the Minister of Foreign Affairs may hear appeals in relation to any refusal to register a person as a voter; to provide that the Commission may accredit persons to provide voter education in respect of elections; to provide for registered political parties to conduct voter education to members, supporters and sympathisers; to provide that in the case of an election for the President or for members of the National Assembly the poll at polling stations outside Namibia shall take place 14 days before the day determined upon which the poll shall take place within Namibia; to provide that the Commission may accredit persons to observe elections; to provide for voting by way of voting machines; to allow for the counting of votes at polling stations and for the posting of results at polling stations; to provide for the determination by lot of the result of an election of members of the National Assembly or of members of a local authority; to extend the offences relating to impersonation; to provide for additional offences; and to provide for matters incidental thereto.

BE IT ENACTED by the Parliament of the Republic of Namibia as follows:

Amendment of section 1 of Act No. 24 of 1992, as amended by section 3 of Act No. 3 of 1997, section 1 of Act No. 23 of 1994, section 1 of Act No. 30 of 1998 and section 1 of Act No. 7 of 2003

1. Section 1 of the Electoral Act, 1992 (hereinafter referred to as the “principal Act”) is amended -

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

““assistant coordinator” means an assistant coordinator appointed under section 13B(2);”;

- (b) by the insertion of the following definition immediately after the definition of “authorisation envelope”:

“by-election” means any by-election contemplated in section 49(2);”;

- (c) by the insertion of the following definition immediately after the definition of “continuous registration”:

“coordinator” means a coordinator appointed under section 13B(1);”;

- (d) by the insertion of the following definition immediately after the definition of “election application”:

“general election” means any general election contemplated in section 49(1);”;

- (e) by the insertion of the following definition immediately after the definition of “supervisor of registration”:

“temporary registration point” means a temporary registration point referred to in section 13A;”;

- (f) by the substitution for the definition of “vote” of the following definition:

“vote” means to vote or to record a vote for a political party or a candidate at an election, as the context may require, and voting has a corresponding meaning;”;

- (g) by the substitution for the definition of “voter registration card” of the following definition:

“voter registration card” in so far as a provision in which it is used is applied in relation to any person who -

- (a) is entitled and qualified to vote at any election of the President, members of the National Assembly and any member of a regional council; or
- (b) is entitled and qualified to vote at any election of members of a local authority council,

means the original voter registration card to be used at an election referred to in paragraph (a) or (b), as the case may be, completed in respect of and issued to such person in terms of section 20 and complying with the provisions of subsection (2) of this section;” and

- (h) by the addition of the following definition immediately after the definition of “voter’s register”:

“voting machine means any machine or apparatus, whether operated electronically or otherwise, used for the registering, recording and counting of votes.”

Amendment of section 4 of Act No. 24 of 1992

2. Section 4 of the principal Act is amended by the insertion of the following paragraph immediately after paragraph (d) of subsection (2):

“(dA) supervise, direct, control and promote voter education in respect of elections;”.

Insertion of sections 13A, 13B and 13C in Act No. 24 of 1992

3. The following sections are inserted immediately after section 13 of the principal Act:

“Registration of persons temporarily outside Namibia

13A. In order to enable persons temporarily outside Namibia to be registered as voters in the case of an election of the President or of members of the National Assembly, as contemplated in section 13(1)(a), the Commission may establish temporary registration points outside Namibia at any Namibian diplomatic mission.

Appointment of coordinators and assistant coordinators

13B. (1) The Commission shall appoint in respect of each region a person -

- (a) to act as coordinator in the region concerned; and
- (b) to exercise and perform, subject to the direction and control of the Director, the powers, duties and functions conferred upon or assigned to him or her by or under this Act.

(2) The Commission may appoint such assistant coordinators as it considers necessary to assist a coordinator in the performance of his or her duties and functions.

- (3) (a) Any person appointed under this section -
 - (i) who is not in the full-time employment of the State, is entitled to the remuneration determined by the Commission with the concurrence of the Director;
 - (ii) may, under circumstances so determined, be entitled to the allowance or allowances determined under subparagraph (i).
- (b) Different tariffs for remuneration and allowances may be determined under paragraph (a) in respect of the different offices provided for in that paragraph, or in respect of persons appointed to such offices who are in the full-time service of the State and persons so appointed who are not in the full-time service of the State under different circumstances or in different areas.

(4) The Commission may in writing delegate any power conferred upon it by subsection (1) or subsection (2) to the Director.

(5) Any appointment made under this section may at any time be withdrawn by the authority who made the appointment in question.

(6) The Commission shall as soon as practicable after an appointment has been made under this section give or cause to be given notice in the *Gazette*, and in two local newspapers circulating in the region for which the appointment has been made, of the name and official address of a person so appointed.

(7) Every coordinator or assistant coordinator is, by virtue of his or her appointment under subsection (1) competent to administer an oath or affirmation by any person for purposes of this Act.

Powers, functions and duties of coordinators

13C. A coordinator -

(a) shall be in charge of the region in respect of which he or she has been appointed and shall coordinate -

(i) the registration of voters in respect of, and the voting at, any election in the region concerned,

(ii) the exercising and performance of the powers, duties and functions of supervisors of registration, registration officers, assistants to supervisors of registration and registration officers and returning officers in a region concerned; and

(iii) the provision of voter education in a region concerned; and

(b) shall report to the Director in this regard.”.

Amendment of section 14 of Act No. 24 of 1992, as amended by section 4 of Act No. 23 of 1994 and section 4 of Act No. 7 of 2003

4. Section 14 of the principal Act is amended -

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

“(1) The Commission shall appoint, for the purposes of the registration of voters in respect of the elections referred to in section 13(1), in respect of each constituency and any temporary registration point -

(a) a person to act as supervisor of registration for that constituency, the temporary registration point concerned and the local authority area or part thereof (if any) situated within the boundaries of that

constituency, and to exercise and perform, subject to the direction and control of the Director, the powers, duties and functions conferred upon or assigned to him or her by this Act; and

- (b) one or more persons to act as registration officers for that constituency, the temporary registration point concerned and the local authority area or part thereof (if any) situated within the boundaries of that constituency, and to perform, subject to the direction and control of the supervisor of registration concerned, the duties and functions assigned to him or her by this Act,

but where more than one local authority area or part thereof is situated within the boundaries of a constituency, the Commission shall appoint, in respect of that constituency, and for that constituency and each such local authority area or part thereof, the persons referred to in paragraphs (a) and (b), to so act.”; and

- (b) by the addition of the following subsection:

“(9A) A supervisor of registration, registration officer and assistant to a supervisor of registration or a registration officer shall with regard to the exercising and performance of his or her powers, duties and functions report to the coordinator appointed in respect of the region concerned.”.

Amendment of section 16 of Act No. 24 of 1992, as amended by section 5 of Act No. 23 of 1994 and section 5 of Act No. 7 of 2003

5. Section 16 of the principal Act is amended by -
- (a) the substitution for paragraph (a) of subsection (1) of the following paragraph:
- “(a) for the elections referred to in paragraph (a) of section 13(1) only, apply to any registration officer appointed in respect of the constituency in which he or she is resident or, in the case of an election of the President or of members of the National Assembly, a temporary registration point, to be so registered;”;
- and
- (b) by the substitution for item (bb) of subparagraph (i) of paragraph (b) of subsection (4) of the following item:
- “(bb) a statement under oath or affirmation made by -
- (aaa) either of the parents of the applicant; or
- (bbb) a guardian of the applicant or a person under whose care the applicant is,

declaring that the applicant has reached the age of 18 years and stating the grounds on which the parent, guardian or other person concerned declares that the applicant has reached the age of 18 years; or".

Amendment of section 18 of Act No. 24 of 1992, as amended by section 6 of Act No. 23 of 1994 and section 6 of Act No. 7 of 2003

6. Section 18 of the principal Act is amended by the substitution for paragraph (b) of subsection (2) of the following paragraph:

"(b) furnish the applicant concerned with the application form accompanied by the refusal form and inform him or her that he or she may, in accordance with the provisions of subsection 19, appeal against the refusal to the magistrate or, in the case of a temporary registration point, to the staff member referred to in that section."

Substitution of section 19 of Act No. 24 of 1992, as amended by section 7 of Act No. 7 of 2003

7. The following section is substituted for section 19 of the principal Act:

"Appeal against refusal to register

19. (1) Any person whose application for registration has been refused under section 18 and who desires to appeal against such refusal, may, on the day, at the time and place determined in terms of subsection (2) and of which he or she shall be notified in writing, appeal against such refusal -

- (a) to the magistrate designated for that purpose by the Permanent Secretary: Justice by notice in the *Gazette*, in respect of the constituency or local authority area, as the case may be, in respect of which such person has applied for registration; or
- (b) in the case of a person who has applied for registration at a temporary registration point, to a staff member other than the registration officer, appointed by the Commission, on the recommendation of the Minister of Foreign Affairs by notice in the *Gazette*.

in the manner prescribed by subsection (3), but where such refusal relates to that person's application for registration in respect of both a constituency and a local authority area, that person may so appeal against such refusal to the magistrate so designated in respect of both that constituency and local authority area.

- (2) (a) The magistrate or staff member referred to in subsection (1), shall determine the day, which day shall not be later than 15 days after the date of the refusal, and the time and place for the hearing of an appeal referred to in that subsection.

- (b) The provisions of paragraph (a) shall not prohibit the magistrate or staff member from hearing an appeal at any place or time determined by him or her and communicated to the person who wishes to appeal, or at any place where both the magistrate or the staff member and that person are at any time.
- (3) On a day, at a time and place determined in accordance with the provisions of this section, the person who wishes to appeal (hereinafter called the appellant), shall -
- (a) appear in person before the magistrate or staff member concerned;
- (b) submit the forms referred to in section 18(2)(b), to such magistrate or staff member;
- (c) state the grounds on which he or she appeals against the refusal of his or her application; and
- (d) adduce such proof and make such statements he or she may wish to be considered in support of his or her appeal.
- (4) (a) Subject to the provisions of subsection (3), the hearing of the appeal may be conducted by the magistrate or staff member in such manner as in his or her opinion is best calculated to enable him or her to arrive at a just decision in the matter.
- (b) Without derogating from the generality of the provisions of paragraph (a), the magistrate or staff member may -
- (i) call any person who is present to appear before him or her and require or allow such person to give such oral evidence or produce such other proof as in the opinion of the magistrate or staff member may assist him or her in deciding the matter;
- (ii) administer an oath or affirmation to any person appearing before him or her;
- (iii) examine or allow the examination of any person so appearing;
- (iv) postpone the hearing at any stage of the proceedings to a day determined by him or her, but not later than 5 days.
- (5) The magistrate or staff member shall keep a record of the proceedings and such record shall be attached to and form part of the relevant application form.
- (6) Subject to the proviso to Article 12(1)(a) of the Namibian Constitution, the hearing of an appeal shall be open to the public.

(7) A magistrate or staff member may allow an appeal heard by him or her under this section, or may dismiss such appeal, and may also dismiss it if the appellant fails to appear before him or her any day determined for the hearing or further hearing under this section.

(8) The magistrate or staff member shall record his or her decision under subsection (7) on the relevant refusal form.

(9) If the magistrate or staff member dismisses the appeal, he or she shall keep the application and refusal forms in his or her office.

(10) If the magistrate or staff member allows the appeal, he or she shall forthwith refer the appellant to the registration officer concerned, and cause the application and refusal forms to be submitted to that registration officer.

(11) If an appellant who has appealed under subsection (1)(b) to a staff member is not at the temporary registration point concerned when the appeal concerned is to be heard, the staff member concerned shall forward the appeal together with the forms referred to in section 18(2)(b) to the magistrate designated for that purpose by the Permanent Secretary: Justice by notice in the *Gazette* in respect of the constituency in respect of which such person has applied for registration.”.

Amendment of section 20 of Act No. 24 of 1992, as amended by section 7 of Act No. 23 of 1994, section 6 of Act No. 30 of 1998 and section 8 of Act No. 7 of 2003

8. Section 20 of the principal Act is amended -

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

“If the registration officer concerned does not under section 18 refuse to register an applicant, or if the applicant is a person referred to the registration officer concerned by the magistrate or staff member under section 19(10), the registration officer shall register, subject to the other provisions of this Part, the applicant in respect of the election for which he or she has so applied for registration as provided in section 16(1), by –”; and

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

“(2) If the applicant is a person who has been referred to the registration officer concerned by the magistrate or staff member under section 19(10), the registration officer concerned shall comply with the provisions of subsection (1) of this section even if he or she is not the registration officer who has refused the application in the first place.”.

Substitution of section 22 of Act No. 24 of 1992, as amended by section 10 of Act No. 7 of 2003

9. The following section is substituted for section 22 of the principal Act:

“Objections against name of person included in provisional voters’ register

22. (1) Any person whose name appears on the relevant provisional voter’s register referred to in section 21 or any registered political party, may, within the period referred to in paragraph (b) of that section, lodge an objection in writing to the inclusion of the name of any person on that register with the magistrate referred to in section 19(1) designated for the constituency or local authority area, as the case may be, in respect of which the name of such other person is so included, on the grounds that he or she –

- (a) is not entitled or qualified by or under the provisions of section 13 to be registered as a voter; or
- (b) is not complying with the requirements in relation to residence as contemplated in that section.

(2) When an objection is lodged under subsection (1) against any name of a person being included in the relevant provisional voters’ register, the magistrate concerned shall, unless he or she is satisfied that the ground of the objection is not a ground on which the name could be excluded from that register, forthwith serve or cause to be served a notice on the person whose registration is objected to, informing him or her of the objection and the nature thereof, and that he or she may make representations to the magistrate concerned in regard thereto within a period of 15 days after the date of the notice.

(3) When an objection has been lodged under subsection (1), the magistrate shall, upon expiration of the period referred to in subsection (2), if that subsection applies, determine the objection.

(4) The magistrate may-

- (a) allow the objection and direct the Director to exclude the name of the person against whom the objection was made, from the relevant provisional voters’ register; or
- (b) dismiss the objection.

(5) The magistrate shall notify in writing any person or registered political party who under subsection (1) lodged an objection and under subsection (2) made representations in connection with such objection and the Director, of his or her decision regarding the objection.

(6) If an objection has been allowed under subsection (4) and a request for the submission of a statement of the case is not made under subsection (1) of section 23 within three days after the date on which the objection was allowed, or if so made, is refused in terms of paragraph (b) of that subsection, the relevant voter registration card issued to the respondent shall cease to be valid, and whereupon the magistrate concerned shall forthwith inform the Director accordingly and transmit that voter registration card to the Director for cancellation.

(7) In subsection (1) and, in the case of subsection (2), in relation to the service of any notice referred to in that subsection, “magistrate” includes

any member of a magistrate's staff authorized by him or her to act in his or her place.".

Amendment of section 39 of Act No. 24 of 1992, as amended by section 38 of Act No. 7 of 2003

10. Section 39 of the principal Act is amended by –

(a) the insertion immediately after subsection (4) of the following subsection (4A);

“(4A) (a) The Director shall, prior to registration of a political party, publish or cause to be published by notice in the *Gazette* at the cost of the applicant –

(i) the name of the political party applying for registration as a political party in terms of subsection (1), including the abbreviated name of such party referred to in subsection (3)(b);

(ii) the particulars set out in subsections (3)(d) and (e) and (4)(a); and

(iii) the distinctive symbol, referred to in subsection (3)(f) of the political party, which may appear on the ballot paper.

(b) A registered political party may in accordance with the procedures set out in subsection (5A) object to any of the particulars published in terms of paragraph (a), for reason that –

(i) the name of the political party or its abbreviated name is being used by a registered political party or is so similar to the name of a registered political party that it may cause confusion to voters;

(ii) the symbol referred to in subparagraph (a)(iii) is a symbol being used by a registered political party or is so similar to the symbol of a registered political party that it may cause confusion to voters.

(c) A registered political party or any other person may in accordance with the procedures set out in subsection (5A) object to any name published as a member who signed the declaration referred to in subparagraph (a)(ii), for reason that such member's name does not appear on the national voter's register;”;

- (b) the substitution for subsection (5) of the following subsection:

“(5) If a change occurs in relation to the name, abbreviated name, distinctive symbol, the authorized representative or the business or postal address of the office of the authorized representative of any political party, the political party concerned shall notify the Commission in writing of such change within 30 days after the date on which the change has occurred and, in the case of a change of the name or abbreviated name of the political party, transmit the political party’s registration certificate together with such notification, and the Director shall publish or cause to be published by notice in the *Gazette* and at the cost of that registered political party such changed name, abbreviated name and distinctive symbol and call upon registered political parties to make objections, if any, thereto in accordance with the procedures set out in subsection (5A).”.

- (c) the insertion immediately after subsection (5) of the following subsection (5A):

“(5A) (a) A registered political party or, where applicable, any other person may within 30 days from the date of publication of the notice referred to in subsections (4A)(a) or (5) lodge an objection to any particular contained therein to the Commission setting out the reasons for such objection.

(b) When an objection is lodged under paragraph (a) the Commission shall within 14 days of receipt of such objection make a determination thereon and shall, as soon as reasonably possible, serve or cause to be served upon such political party against whom an objection has been lodged as well as the political party or such other person, referred to in paragraph (a) who lodged the objection, notice of such determination.

(c) The Commission may either –

(i) allow for the objection and allow such political party or such registered political party to rectify, within 60 days of receipt of the determination, such particular against which an objection has been lodged; or

(ii) dismiss the objection.

(d) If a political party is not satisfied with the determination made under paragraph (b), such political party may appeal to a court.”.

Substitution of section 41 of Act No. 24 of 1992

- 11.** The following section is substituted for section 41 of the principal Act:

“Cancellation of registration as political party

41. The Commission shall direct the Director to cancel the registration of a political party as a political party -

- (a) if it is notified in a letter signed by any authorised representative referred to in subsection (3)(c) of section 39, of the party in question of a resolution taken by **[that party in congress]** an organ of the party having the power to do so, that that party has been dissolved or is going to be dissolved on a date which shall be specified in such letter; or
- (b) if, after the authorised representative referred to in subsection (3)(c) of section 39 has been afforded an opportunity to be heard, [it is proved to the satisfaction] in the opinion of the Commission [that] any political party -
 - (i) has at any time after its registration failed to comply with any provision of subsection (1)(a) of **[that]** section 39 or section 43 or the guidelines issued **[thereunder]** under section 43;
 - (ii) no longer intends to be registered as a political party.”.

Insertion of PART IVA in Act No. 24 of 1992

12. The following Part is inserted immediately after Part IV:

**“PART IVA
VOTER EDUCATION**

Accreditation of persons providing voter education

47A. (1) Any natural or juristic person, other than a registered political party, may apply to the Commission in the prescribed manner for accreditation to provide voter education for or in respect of any election.

(2) The Commission may require further information in support of an application referred to in subsection (1).

(3) After considering -

- (a) an application referred to in subsection (1);
- (b) any further information provided by the applicant; and
- (c) whether -
 - (i) the services provided by the applicant meet the Commission’s standards;

- (ii) the applicant is able to conduct its activities effectively;
- (iii) the applicant or the persons appointed by the applicant to provide voter education -
 - (aa) can do so in a manner that is impartial and independent of any registered party or candidate contesting the election;
 - (bb) is or are competent to do so; and
 - (cc) subscribes or subscribe to a Code issued by the Commission under section 47B governing persons accredited to provide voter education for or in respect of any election; and
- (iv) the accreditation of the applicant promotes voter education and conditions conducive to free and fair elections,

the Commission may direct the Director to accredit an applicant to provide voter education for or in respect of the election.

(4) If the Commission decides not to accredit the applicant, the Commission shall advise the applicant in writing of its decision.

(5) If the Commission decides to accredit the applicant, the Commission shall -

- (a) enter the name of the applicant in the register of persons accredited to provide voter education for elections;
- (b) issue a certificate of accreditation in the name of the applicant stating the period and other conditions of accreditation;
- (c) keep two copies of the certificate; and
- (d) send the certificate to the applicant.

(6) Any person may inspect the register and copies of the certificates of persons accredited to provide voter education for or in respect of any election.

(7) The Director shall provide a certified copy of, or extract from, the register or a certificate referred to in subsection (6) to any person who has paid the prescribed fee.

Code governing persons accredited to provide voter education

47B. In order to control voter education, the Commission may, by notice in the *Gazette* issue a Code governing persons accredited to provide voter education for or in respect of elections.

Contravention of or failure to comply with conditions of accreditation or Code governing persons accredited to provide voter education

47C. If a person accredited to provide voter education for or in respect of an election contravenes or fails to comply with the conditions of the accreditation or the Code referred to in section 47B, the Commission may cancel, after having given that person an opportunity to be heard, the accreditation concerned or suspend the accreditation until the conditions are met.

Voter education by political parties

47D. A registered political party may provide voter education to its members, supporters and sympathisers in respect of any election, but is not subject to any conditions or Code relating to accreditation.”.

Amendment of section 50 of Act No. 24 of 1992, as amended by section 17 of Act No. 23 of 1994 and section 19 of Act No. 7 of 2003

- 13.** Section 50 of the principal Act is amended -
- (a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:
- “(b) subject to the provisions of **[subsection]** subsections (1A) and (5), any day determined by him or her upon which a poll shall be taken at such election; and”; and
- (b) by the insertion of the following subsection immediately after subsection (1):
- “(1A) Despite anything to the contrary in this Act, an election for the President or for members of the National Assembly taking place at polling stations outside Namibia shall be held 14 days before the polling day determined therefore in terms of subsection (1)(b) upon which a poll shall be taken in respect of such election at polling stations inside Namibia.”.

Amendment of section 51 of Act No. 24 of 1992, as amended by section 18 of Act No. 23 of 1994, section 2 of Act No. 19 of 1999 and section 20 of Act No. 7 of 2003

- 14.** Section 51 of the principal Act is amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:
- “(b) as counting officers such number of persons as it may deem necessary for the purpose of assisting any person who in terms of this Act is charged with the **[determination of the result of the poll in any such election]** counting of votes at a polling station;”.

Insertion of sections 52A, 52B and 52C in Act No. 24 of 1992

- 15.** The following sections are inserted after section 52 of the principal Act:

“Accreditation of observers

52A. (1) Any juristic person may apply in the prescribed manner to the Commission for accreditation to observe an election.

(2) The Commission may require further information in support of an application referred to in subsection (1).

(3) After considering an application referred to in subsection (1) and any further information provided by the applicant and whether -

- (a) the accreditation of the applicant promotes conditions conducive to free and fair elections; and
- (b) the persons appointed by the applicant -
 - (i) can observe that election impartially and independently of any registered party or candidate contesting that election;
 - (ii) are competent and professional in observing the election; and
 - (iii) subscribe to a Code issued by the Commission by notice in the *Gazette* governing observers,

the Commission may direct the Director to accredit an applicant to observe an election.

(4) The Commission may decide -

- (a) to accredit the applicant, in which case the Commission shall -
 - (i) enter the applicant’s name in the register of persons accredited as observers;
 - (ii) issue a certificate of accreditation in the applicant’s name, stating the period and other conditions of accreditation; and
 - (iii) send the certificate to the applicant; or
- (b) not to accredit the applicant, in which case the Commission shall advise the applicant in writing of its decision.

(5) The Commission shall keep copies of the register referred to in subsection (4)(a)(i) and of the certificates referred to in subsection (4)(a)(ii) at its head office.

(6) Any person may inspect the register and copies of the certificates of persons accredited as observers.

(7) The Director shall provide a certified copy of, or extract from, the register or a certificate to any person who has paid the prescribed fee.

Powers and duties of accredited observers

52B. (1) A person appointed by an accredited observer may, in relation to the election for which that observer is accredited, observe the proceedings provided for in sections 79 to 95 concerning -

- (a) voting;
- (b) the counting of votes; and
- (c) the determination of the result of a poll and the announcement of the results of an election.

(2) Whilst observing an election, a person appointed by an accredited observer shall wear the prescribed identification indicating that the person is representing an accredited observer.

(3) A person appointed by an accredited observer shall comply with any order issued by -

- (a) a returning officer, presiding officer, polling officer or counting officer; or
- (b) a member of the security services acting on the instructions of a returning officer, presiding officer, polling officer or counting officer.

Contravention of or failure to comply with conditions of accreditation or Code governing observers

52C. If a person accredited as an observer contravenes or fails to comply with the conditions of the accreditation or the Code governing observers the Commission may cancel, after having given that person an opportunity to be heard, or suspend the accreditation until the conditions are met.”.

Amendment of section 53 of Act No. 24 of 1992, as amended by section 20 of Act No. 23 of 1994

16. Section 53 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) Every returning officer, presiding officer, polling officer, counting officer, coordinator, assistant coordinator, staff member appointed to the Directorate of Elections, [and] every agent appointed under section 52 and a person appointed by an accredited observer, shall before assuming his or her duties or performing any function or attending at any polling station or the place where the result of an election is determined as hereinafter provided, make, in a form determined by the Director, a declaration of secrecy under oath or affirmation.”.

Substitution of section 58 of Act No. 24 of 1992

17. The following section is substituted for section 58 of the principal Act:

“Lack of nomination or any death of candidate after nomination

58. (1) If no candidate is declared duly nominated in terms of section 57, the Commission shall immediately terminate the election, and all proceedings relating to the nomination of candidates for the said election shall be commenced afresh in the same manner as if a vacancy had occurred in the office of President.

(2) If a duly nominated candidate for the election of President dies before the poll for that election has commenced or while the poll for that election is taking place, the Commission shall immediately terminate the election, and all proceedings relating to the nomination of candidates for the said election shall be commenced afresh in the same manner as if a vacancy had occurred in the office of President: Provided that no fresh nomination shall be necessary in the case of a candidate who was duly nominated at the time when the election was so terminated.”.

Amendment of section 65 of Act No. 24 of 1992

18. Section 65 of the principal Act is amended by the substitution for subsection (3) of the following subsection:

“(3) When an election in a constituency has been terminated as contemplated in subsections (1) and (2), all proceedings relating to the nomination of candidates for the said election shall be commenced afresh in precisely the same manner as if a vacancy had occurred in respect of that constituency at the time of such termination: Provided that no fresh nomination shall be necessary in the case of a candidate who was duly nominated at the time when the election was so terminated.”.

Amendment of section 78 of Act No. 24 of 1992, as amended by section 33 of Act No. 23 of 1994

19. Section 78 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) The presiding officer and other officers at a polling station shall keep order thereat, shall regulate the number of voters to be admitted at a time, and shall exclude all other persons except -

- (a) a member of the Commission or the Director;
- (b) the returning officer concerned;
- (c) any counting officer concerned;
- (d) any election agent entitled to attend at the polling station;

- (dA) any person appointed by an accredited observer;
- (e) the polling officers or any police officer on duty; and
- (f) any other person authorised in writing by the Director.”.

Insertion of sections 79A and 79B in Act No. 24 of 1992

20. The following sections are inserted in the principal Act after section 79:

“Enabling of voters to vote at election

79A. Any -

- (a) person who employs, or accommodates on any land, any voter; or
- (b) person in charge of any voter,

shall afford such voter the opportunity to vote at any election in respect of which the voter is registered.

Voting machines at elections

79B. Despite anything to the contrary contained in this Act, the Commission may, adopt voting by way of voting machines in such manner and for such elections as may be prescribed, including -

- (a) the manner of registering and recording of votes by way of voting machines and the procedure relating to voting to be followed at polling stations where such machines are used;
- (b) the procedure as to counting of votes recorded by way of voting machines; and
- (c) the safe custody of voting machines,

in respect of any constituency, region or local authority area as the Commission, having regard to the circumstances of each case, may specify by notice in the *Gazette*.”.

Amendment of section 80 of Act No. 24 of 1992, as amended by section 34 of Act No. 23 of 1994 and section 29 of Act No. 7 of 2003

21. Section 80 of the principal Act is amended by the substitution for subsection (3) of the following subsection:

“(3) Where, at an election for the President or members of the National Assembly, any voter is by reason of absence unable to attend on any polling day at a polling station at which he or she is in accordance with subsection (1) required to record his or vote, the presiding officer of any other

polling station, whether in or outside Namibia, shall, at the request of such voter, permit such voter to record his or her vote by way of a tendered vote at that polling station during the polling hours applicable to that polling station by virtue of the provisions of section 77: Provided that, subject to section 50(1A), where at such an election the poll is been determined in terms of section 50(1)(b) in respect of an election for the President or for members of the National Assembly to take place over more than one day, a voter shall, at a polling station outside Namibia, be entitled to so record his or her vote only on the first day of the polling days so determined.”.

Amendment of section 81 of Act No. 24 of 1992, as amended by section 35 of Act No. 23 of 1994

22. Section 81 of the principal Act is amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“(2) Every ballot paper, including a ballot paper used in respect of a voting machine, shall be in the form as prescribed and shall contain –”.

Amendment of section 82 of Act No. 24 of 1992, as amended by section 36 of Act No. 23 of 1994 and section 30 of Act No. 7 of 2003

23. Section 82 of the principal Act is amended by -

(a) the substitution for subsection (2) of the following subsection:

“(2) The presiding officer or a polling officer designated by him or her for that purpose, shall on polling day in the polling station stamp on the back of every ballot paper in a ballot paper book, except in the case of a voting machine, the official mark before such ballot paper book is handed to a polling officer for the issue of ballot papers to voters at the election in question.”;

(b) the substitution for paragraph (b) of subsection (8) of the following paragraph:

“(b) If a voter refuses that the prescribed identification mark be applied to his or her finger or fingers, he or she shall not be issued with a ballot paper and shall not be permitted to vote, either by way of a ballot paper or by way of a voting machine.”;

(c) the substitution for paragraph (a) of subsection (9) of the following paragraph:

“(9) When the voter has complied with the provisions of subsection (8), the presiding officer or a polling officer shall -

(a) (i) in the case of voting by way of a ballot paper, enter the voter registration number of the voter in the ballot paper book on the counterfoil of a ballot paper which bears on the back thereof the official mark; and

(ii) in the case of voting by way of a voting machine, enter the voter registration number of the voter in a voting machine book, as determined by the Commission;”; and

(d) the substitution for subsection (10) of the following subsection:

“(10) Upon receiving the ballot paper, or if the voter is voting by way of a voting machine, the voter shall -

(a) enter a polling booth provided at the polling station;

(b) secretly record -

(i) in the case of voting by way of a ballot paper, his or her vote on the ballot paper by marking -

[(i)] (aa) in the case of an election on party lists, the ballot paper with a cross in the space opposite the name of the political party for which he or she desires to vote; or

[(ii)] (bb) in the case of an election otherwise than on party lists, the ballot paper with a cross in the space opposite the name of the candidate for whom he or she desires to vote;

(ii) in the case of voting by way of a voting machine, his or her vote on the voting machine by pressing -

(aa) in the case of an election on party lists, in the space opposite the name of the political party for which he or she desires to vote; or

(bb) in the case of an election otherwise than on party lists, in the space opposite the name of the candidate for whom he or she desires to vote;

(c) while still in the polling booth, fold the ballot paper in such a way that the official mark is visible and the names of the political parties or candidates, as the case may be, and the mark signifying his or her vote are not visible;

(d) leave the polling booth and display the ballot paper to the presiding officer or a polling officer in such a way that the official mark can be seen and, in the case of a

voter voting by way of a tendered vote, in the presence of the presiding officer or a polling officer, place the ballot paper in the tendered vote envelope and seal it; and

- (e) in the presence of the presiding officer or a polling officer, drop, as the case may be -
 - (i) the ballot paper in the ballot box for ordinary [votes] ballot papers;
 - (ii) the tendered vote envelope in the ballot box for tendered vote envelopes.”.

Amendment of section 84 of Act No. 24 of 1992, as amended by section 38 of Act No. 23 of 1994

24. Section 84 of the principal Act is amended by the substitution for subsections (2) and (3) of the following subsections:

“(2) The presiding officer, on the request in person of any voter who is incapacitated by blindness or other physical cause from voting in the manner prescribed by the other provisions of this Part, who has not requested to have his or her vote recorded by the presiding officer in terms of subsection (1) and who is accompanied by any other person, shall, if he or she is satisfied that such person is any family relative or friend of such voter and has reached the age of 18 years, permit such voter to vote with the assistance of the person accompanying him or her, and upon such permission being granted anything which is by the provisions of this Part required to be done to or by the said voter in connection with the recording of his or her vote may be done to or with the assistance of the person so accompanying him or her.

(3) Except as provided in this section, no person shall converse or in any other manner interfere with a voter at any time after he or she has been handed a ballot paper or entered a polling booth in order to vote by voting machine or until he or she leaves the polling booth.”.

Substitution of section 85 of Act No. 24 of 1992, as amended by section 39 of Act No. 23 of 1994

25. The following section is substituted for section 85 of the principal Act:

“Closing of poll at polling stations in or outside Namibia, counting of votes, sealing of ballot boxes and packets and ballot paper accounts

85. (1) Every presiding officer at a polling station in or outside Namibia shall immediately after the close of the poll and in the presence of the persons entitled in terms of section 78(1) to attend at the polling station, as may be in attendance -

- (a) take charge of all the ballot boxes and any voting machines at the polling station;

- (b) open all the ballot boxes for ordinary ballot papers and remove there from the ordinary ballot papers;
- (c) open all the ballot boxes for tendered vote envelopes, open such tendered vote envelopes and remove there from the tendered vote ballot papers;
- (d) open all the authorisation envelopes contemplated in section 80(2)(d) and remove there from the ballot papers concerned;
- (e) obtain all the results of the poll concerned from any voting machine,

and after ascertaining that, in the case of ballot papers, each ballot paper bears the official mark on the back thereof, count, assisted by the counting officers concerned, the votes recorded on such ballot papers and, in the case of voting by a voting machine, the result of the poll -

- (i) in the case of an election on party lists, for each political party; or
 - (ii) in the case of an election otherwise than on party lists, for each candidate.
- (2) The presiding officer shall reject and not count any ballot paper -
- (a) which records votes to more than one political party or candidate, as the case may be;
 - (b) which does not bear the official stamp referred to in subsection (2) of section 82 and in respect of which he or she has reasonable grounds to believe that it has not been officially issued to a voter in terms of subsection (9) of that section; or
 - (c) which is unmarked or on which it is impossible to determine with certainty for which political party or candidate, as the case may be, the ballot is recorded.

(3) The presiding officer shall not reject but shall count any ballot paper on which there is any writing or mark, by way of which a voter has clearly indicated his or her choice otherwise than by a cross on the ballot paper in question, and whether or not such writing or mark is recorded in the space provided for the marking of such ballot paper.

(4) The presiding officer shall in the presence of any of the persons referred to in subsection (1) endorse the word "rejected" on any ballot paper rejected in terms of any provision of subsection (2).

(5) An election agent may request a presiding officer to re-count the ballot papers and votes counted at a polling station until such time as he or she is satisfied of its accuracy: Provided that a presiding officer may refuse to do so if he or she is of the opinion that such request is at any time unreasonable.

(6) The presiding officer shall, when the counting of votes have been completed, announce in the prescribed manner the result of such count and inform the returning officer thereof and post a copy of the results at the polling station concerned, but in the case of a mobile polling station the results of all the polling stations for that mobile polling station shall be posted at the polling station used at the closing of the poll where the votes are counted.

(7) The presiding officer shall immediately after the announcement of the result as contemplated in subsection (6), make up into separate packets, so sealed -

- (a) all ballot boxes containing the counted ordinary ballot papers in respect of every political party or candidate, as the case may be;
- (b) all counted results of the poll in the case of voting machines in respect of every political party or candidate, as the case may be;
- (c) all ballot boxes containing the counted tendered vote ballot papers in respect of every political party or candidate, as the case may be;
- (d) all authorisation envelopes containing the ballot papers which were removed there from;
- (e) all unused ballot papers;
- (f) all spoiled ballot papers;
- (g) the counterfoils of used and spoiled ballot papers;
- (h) all voter registration cards seized in terms of section 82(6);
- (i) the stamp for the official mark used at the polling station;
- (j) any such other equipment or documents as may be prescribed, and
- (k) the result of the count of the ballot papers and the result of the poll in the case of voting machines,

and shall deliver or caused to be delivered to the returning officer concerned such sealed packets, as well as the empty ballot boxes and voting machines concerned.

(8) If the geographical location of the polling station or any other circumstance occasions that the presiding officer cannot deliver or cause to be delivered such packets, ballot boxes and voting machines, he or she shall place such packets, ballot boxes and voting machines in safe custody until he or she can deliver it or cause it to be delivered to the returning officer concerned.

(9) The sealed packets, ballot boxes and voting machines referred to in subsection (7) shall be accompanied by a return in which the presiding officer accounts for the number of ballot papers and voting machines entrusted to him or her under the heads of -

- (a) ballot papers counted as contemplated in subsection 7(a), (c) and (d);
- (b) unused ballot papers;
- (c) spoilt ballot papers; and
- (d) results of the poll counted as contemplated in subsection (7)(b).

(10) If, in the case of an election of members of the National Assembly or of members of a local authority council two or more political parties have received -

- (a) after the counting of votes as contemplated in subsection (1)(e)(i) and (ii); or
- (b) after a re-counting of votes as contemplated in subsection (5),

an equal number of surplus votes and the result of the election cannot by virtue thereof be determined, -

- (i) the Chairperson of the Commission, in the case of an election of members of the National Assembly, shall determine by lot the result of the election;
- (ii) the returning officer, in the case of an election of members of a local authority council, shall determine by lot the result of the election.”.

Substitution of section 87 of Act No. 24 of 1992, as amended by section 40 of Act No. 23 of 1994 and section 3 of Act No. 19 of 1999

26. The following section is substituted for section 87 of the principal Act:

“Verification of ballot paper accounts by returning officer

87. (1) Upon receipt by him or her of the sealed ballot boxes, sealed voting machines and sealed packets referred to in section 85, from a presiding officer, the returning officer shall take charge of them and when all the ballot boxes, voting machines and packets have been received by him or her, he or she shall examine whether the seals of the ballot boxes, voting machines and packets are in order and afford any counting agents and, in the case of an election other than an election on party lists in terms of this Act, any candidates who are present an opportunity to do the same, and shall thereafter open all the packets.

(2) The returning officer **[other than the returning officer for polling stations outside of Namibia,]** shall -

(a) open all the ballot boxes and sealed packets relating to a particular polling station received from the presiding officer in terms of section 85 and remove there from the counted, unused and spoilt ordinary ballot papers, the counted results of the poll in the case of voting machines and the counted tendered vote ballot papers and counted ballot papers in the authorisation envelopes and verify the correctness of the return furnished by the presiding officer concerned in terms of subsection **[(3)]** (9) of that section;

(b) after such verification -

(i) prepare a report on the results thereof;

(ii) allow any counting agent or candidate to make copy of the report; and

(iii) cause the report to be delivered or transmitted to the Director.

[(c) open the packet referred to in section 80(2)(d), remove from the authorisation envelopes the ballot papers and mix them, still folded, with the other ordinary ballot papers;

(d) after ascertaining that each ordinary ballot paper bears the official mark on the back thereof the official mark referred to in section 82(2), count the votes recorded on such ballot papers -

(i) in the case of an election on party lists, for each political party; or

(ii) in the case of an election otherwise than on party lists, for each candidate; and

(e) once the counting of the ordinary ballot papers in terms of paragraph (d) has been completed -

(i) sort all the tendered vote envelopes according to the constituencies indicated thereon; and

(ii) remove the ballot papers from such envelopes and, in respect of each constituency, count the votes recorded on those ballot papers in the manner contemplated in paragraph (d).

(3) (a) The returning officer shall reject and not count any ballot paper -

- (i) which records votes to more than one political party or candidate, as the case may be;
 - (ii) which does not bear the official stamp referred to in subsection (2) of section 82 and in respect of which he or she has reasonable grounds to believe that it has not been officially issued to a voter in terms of subsection (9) of that section;
 - (iii) which is unmarked or on which it is impossible to determine with certainty for which political party or candidate, as the case may be, the ballot is recorded;
 - (iv) which contains any writing or mark revealing the identity of the voter.
- (b) The returning officer shall not reject but shall count any ballot paper on which there is any writing or mark, by means of which a voter has clearly indicated his or her choice otherwise than by a cross on the ballot paper in question, and whether or not such writing or mark is recorded in the space provided for the marking of such ballot paper.

(4) The returning officer shall in the presence of any counting agent or candidate referred to in subsection (1), and is in attendance, endorse the word “rejected” on any ballot paper rejected in terms of any provision of subsection (3).

(5) A counting agent or candidate referred to in subsection (1), may request a returning officer to re-count the ballot papers and votes counted at a polling station until such time as he or she is satisfied of its accuracy: Provided that a returning officer may refuse to do so if he or she is of the opinion that such request is at any time unreasonable.]”.

Deletion of section 87A of Act No. 24 of 1992, as inserted by section 41 of Act No. 23 of 1994 and substituted by section 4 of Act No. 19 of 1999

27. Section 87A of the principal Act is deleted.

Amendment of section 88 of Act No. 24 of 1992, as amended by section 42 of Act No. 23 of 1994 and section 5 of Act No. 19 of 1999

28. Section 88 of the principal Act is amended -

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

“(1) At an election for the President a returning officer shall, when the counting of votes in accordance with section 85 [~~87 or 87A~~] has been completed, and whether or not the return referred to in section ~~85~~[(3)](9) was found to be correct, announce in the prescribed manner

the result of such count and inform the Chairperson of the Commission thereof.”; and

- (b) by the substitution for subsection (5) of the following subsection:

“(5) If no candidate is declared duly elected as President in terms of the provisions of paragraph (b)(ii) of subsection (3) of this section, the provisions of this section shall apply *mutatis mutandis* in relation to the conducting of ballots until a result in the election is reached as contemplated in the said Article 28(2)(b) of the Namibian Constitution: Provided that the conducting of ballots shall in each case only apply in respect of the two candidates who have received the most votes.”.

Amendment of section 89 of Act No. 24 of 1992, as amended by section 43 of Act No. 23 of 1994, section 6 of Act No. 19 of 1999 and section 32 of Act No. 7 of 2003

29. Section 89 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) At an election for members of the National Assembly a returning officer shall, when the counting of votes in accordance with section 85 [87 or 87A] has been completed, and whether or not the return referred to in section 85[(3)](9) was found to be correct, announce in the prescribed manner the result of such count and inform the Director thereof.”.

Amendment of section 92 of Act No. 24 of 1992

30. Section 92 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) The Commission shall cause a notice of any announcement made and transmitted to it in terms of section 85(6), 88(4), 89(5), 90(3) or 91(3), as the case may be, and the particulars contained in that announcement, to be published in the *Gazette*, as soon as is practicable after having received it.”.

Amendment of section 93 of Act No. 24 of 1992, as amended by section 44 of Act No. 23 of 1994 and section 14 of Act No. 30 of 1998

31. Section 93 of the principal Act is amended by the substitution in subsection (1) for the words following paragraph (c) of the following words:

“and shall seal such packets and cause them together with the packets referred to in section 85[(1)](7), to be delivered to the Director.”.

Amendment of section 96 of Act No. 24 of 1992, as amended by section 34 of Act No. 7 of 2003

32. Section 96 of the principal Act is amended -

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

-
- “(d) not being an officer, **[or]** a magistrate, a staff member or other person acting within the course of his or her duties under or for the purposes of this Act, issues or purports to issue a voter registration card or destroys, mutilates or defaces any voter registration card or, except in accordance with the provisions of this Act, places any writing or mark on any voter registration card; or”;
- (b) by the substitution for paragraph (g) of subsection (1) of the following paragraph:
- “(g) obstructs, hinders or interferes with the Director, a coordinator, an assistant-coordinator, any registration officer, supervisor of registration, magistrate, staff member or other person in the performance of his or her duties or functions or the exercise of his or her powers under this Act; or”;
- (c) by the substitution for paragraph (j) of subsection (1) of the following paragraph:
- “(j) in or for the purpose of any application made to a registration officer in terms of section 16 or 25 or any proceedings before a magistrate under section 19 or 22 or before a staff member under section 19 makes a false statement knowing it to be false or not believing it to be true; or”;
- (d) by the substitution for paragraph (k) of subsection (1) of the following paragraph:
- “(k) when appearing before a magistrate under section 19 or under section 22 or before a staff member under section 19, fails to answer fully and truthfully any question put to him or her or to produce any thing that he or she has with him or her: Provided that such person shall not be compelled to answer any question or produce anything that he or she would not be compelled to answer or produce in any civil proceedings before a magistrate’s court; or”.

Amendment of section 100 of Act No. 24 of 1992

33. Section 100 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) Every officer or agent or person accredited by an observer, [to the extent determined by this Act,] present at a polling station shall, to the extent determined by this Act, maintain, and aid in maintaining, the secrecy of the voting at that polling station, and shall not communicate, except for any purpose authorised by law, to any person any information likely to defeat the secrecy of the voting.”.

Amendment of section 102 of Act No. 24 of 1992, as amended by section 45 of Act No. 23 of 1994

34. Section 102 of the principal Act is amended -
- (a) by the substitution for paragraphs (a) and (b) of the following paragraphs:
- “(a) for the purpose to have a ballot paper issued to him or her or to enable him or her to vote by way of a voting machine, knowingly produces to any presiding officer or polling officer a voter registration card issued to or in the name of some other person, living or dead, or a fictitious person, or a voter registration card which has been altered with intent to deceive, or any document purporting to be but not being a voter registration card; or
- (b) having previously voted at the election in question, produces to any presiding officer or polling officer, for the purpose to have a ballot paper issued to him or her or to enable him or her to vote by way of a voting machine, a voter registration card, whether issued to him or her or in the name of some other person, or any document purporting to be but not being a voter registration card; or”;
- (b) by the substitution for paragraphs (f) and (g) of the following paragraphs:
- “(f) fraudulently or without due authority takes out of any polling station any ballot paper or authorisation ballot paper envelope or any voting machine; or
- (g) without due authority destroys, takes, opens, uses or otherwise interferes with any ballot box, polling booth, instrument, form, document, voting machine or other equipment used or intended for use at any polling station; or”; and
- (c) by the addition of the following paragraph after paragraph (i):
- “(j) contravenes or fails to comply with section 79A,”.

Amendment of section 106 of Act No. 24 of 1992

35. Section 106 of the principal Act is amended -
- (a) by the substitution for paragraph (b) of the following paragraph:
- “(b) having voted once in an election in question, in such election votes again or applies again for a ballot paper or attempts again to vote by way of a voting machine; or”; and
- (b) by the addition of the following paragraph after paragraph (c):

“(d) impersonates -

- (i) a representative of a political party;
- (ii) a candidate in an election;
- (iii) a member of the Commission;
- (iv) any staff member or other person appointed by the Commission;
- (v) the Director;
- (vi) a person accredited to provide voter education; or
- (vii) a person accredited by an observer,”.

Substitution of section 126 of Act No. 24 of 1992, as amended by section 48 of Act No. 23 of 1994

36. The following section is substituted for section 126 of the principal Act:

“Saturdays Sundays and public holidays

126. Whenever under this Act anything is required to be commenced, concluded or done on a particular date, and that date happens to fall upon a Saturday, Sunday or a public holiday referred to in, or declared under, section 1 of the Public Holidays Act, 1990 [1991] (Act No. 26 of 1990 [1991]), such thing shall be commenced, concluded or done on the first day following such Saturday, Sunday or public holiday, which is not a Saturday, Sunday or public holiday, as the case may be: Provided that the provisions of this section shall not apply to any polling day which falls on a Saturday, Sunday or such a public holiday.”.

Short title and commencement

37. (1) This Act is called the Electoral Amendment Act, 2009 and comes into operation on the date of publication.

(2) Despite subsection (1), section 79B comes into operation on a date determined by the Minister by notice in the *Gazette*.