

# Presentation on the New Electoral Amendment Act

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Institute of Election Management  
Services in Africa (IEMSA)

**IEMSA**  
Institute of Election  
Management Services in Africa





# Agenda



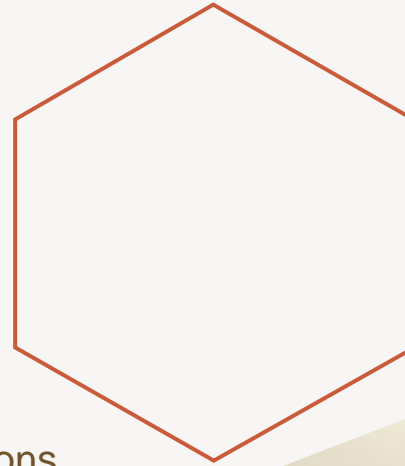
# About IEMSA

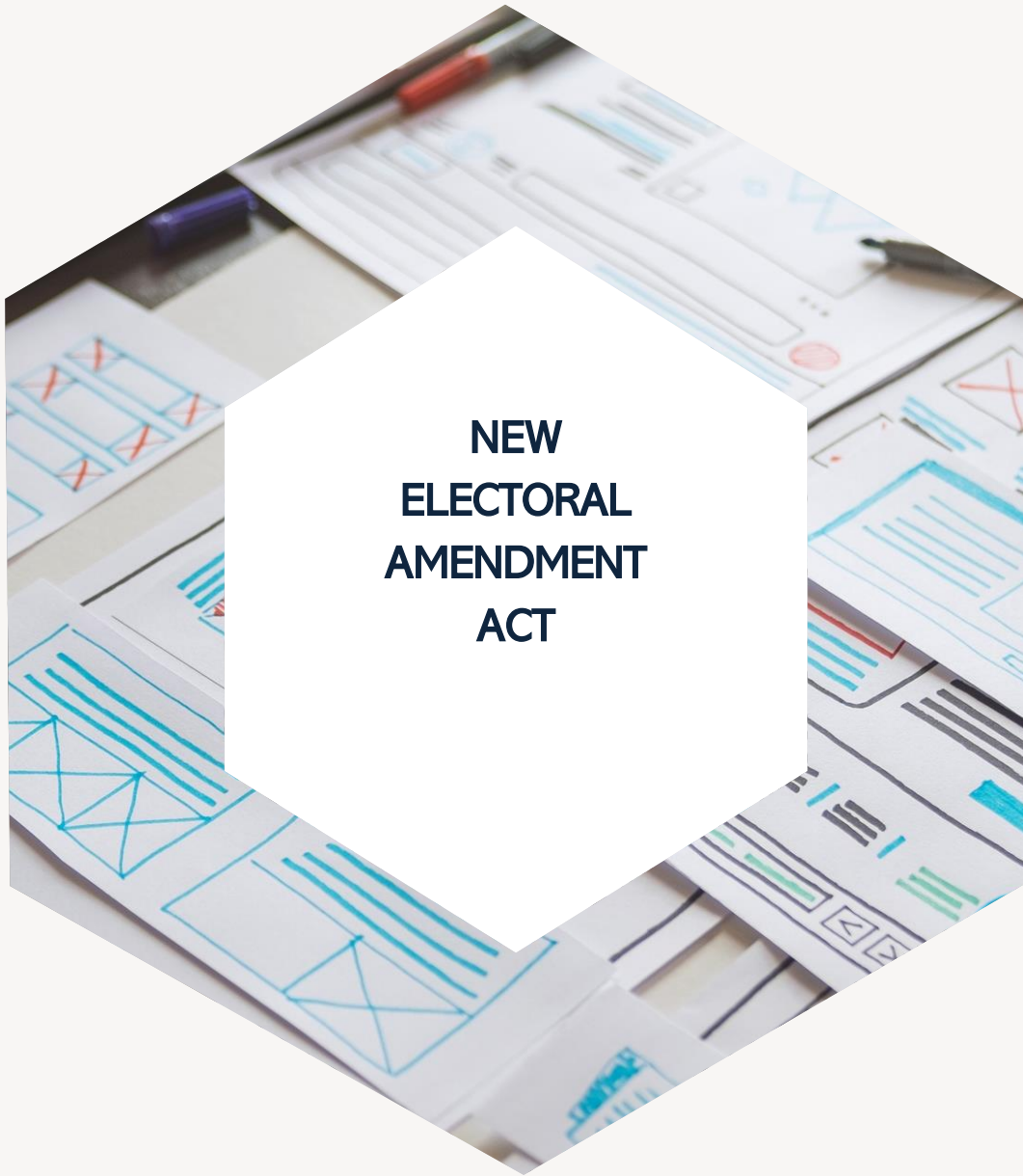
The Institute of Election Management Services in Africa (IEMSA) is a one-stop-shop rendering election management services and providing capacity to individuals and institutions that are in the election space. IEMSA was established in 2018 by Mr. Terry Tselane who has extensive experience and a proven track record in election management.



# SERVICES:

- Organization, Management and delivery of elections for private, nongovernmental and public institutions.
- Facilitating Forums and platforms for political dialogue and conflict resolution.
- Capacity building to empower Election Management Bodies ( EMBs ) and election practitioners to manage and deliver elections.
- Providing ongoing support and solutions for challenges facing Commissioners especially those that are new in the game.
- Creating platforms where Commissioners can interact to share experiences and problem solve.
- Providing election support to enhance the delivery of elections.





**NEW  
ELECTORAL  
AMENDMENT  
ACT**

**BACKGROUND**

# New Nation Movement NPC and others vs President of the Republic of South Africa

On 11 June 2020 the Constitutional Court declared that:

- The Electoral Act 1998 (Act No. 73 of 1998) is unconstitutional to the extent that it requires that adult citizens may be elected to the National Assembly and Provincial Legislatures only through their membership of political parties.

Parliament was given 24 months (from June 2020 to June 2022) to rectify this.

It could NOT reach consensus as the public consultation process itself did NOT point to any emerging consensus.

It therefore settled for two (2) options.

# Options for Including Independent Candidates

## Option 1 (minimalist option)

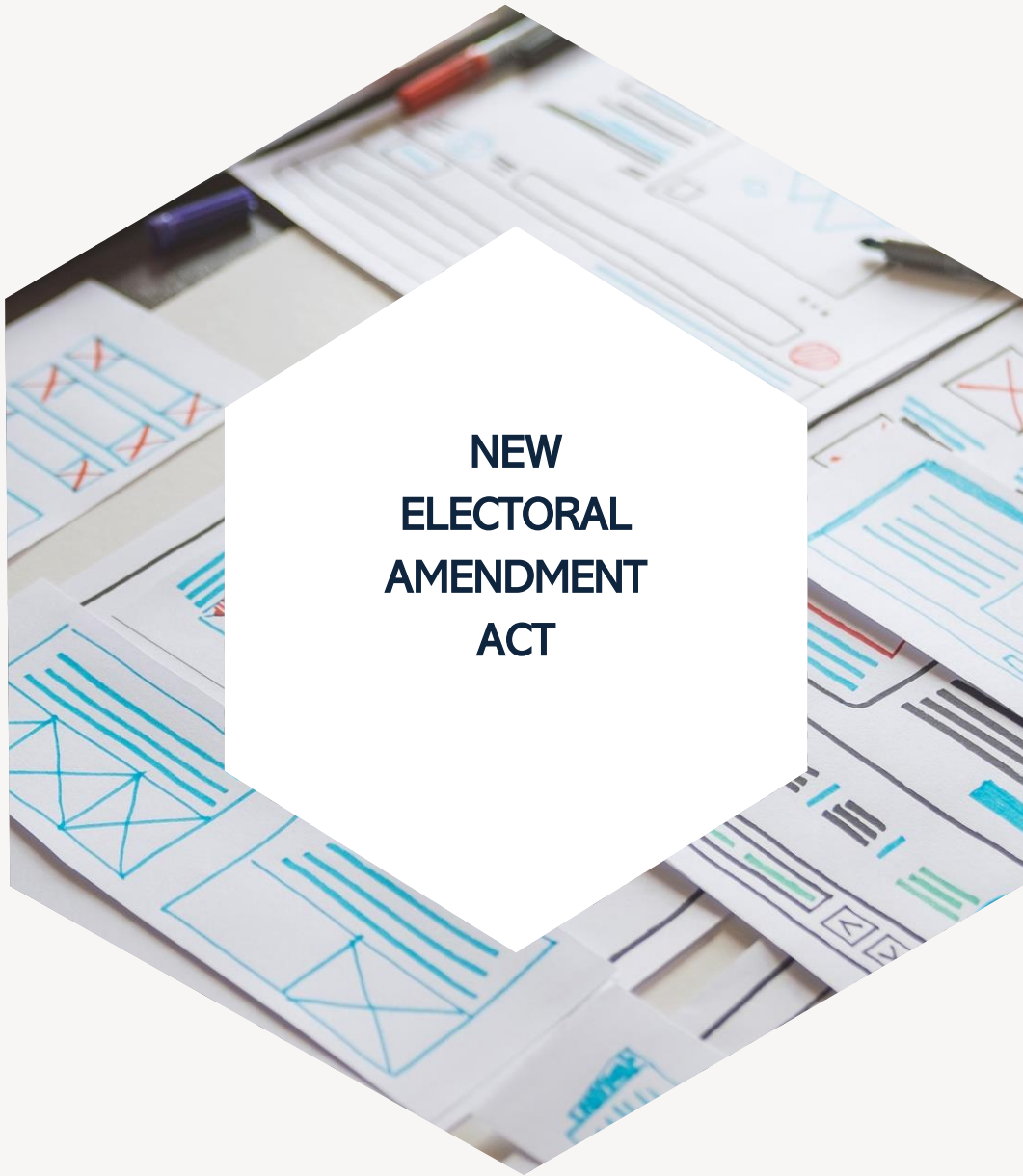
This option entails modifying the existing multi-member electoral system to accommodate independent candidates in the National and Provincial elections without many changes to legislation.

## Option 2 (Mixed-member option)

This option entails combining the First-Past-The-Post (FPTP) and proportional representation, making it a mixed-member proportional (MMP) system resembling the current Local Government Electoral System, albeit with some improvements. This option involves electing MPs from 200 single-member-constituencies and the remainder from a single national multi-member constituency

Minister and Cabinet settled for Option 1.

- 400 seats in the National Assembly be divided into two (2)
- 200 seats to be elected from nine (9) Regions (corresponding with present 9 provinces). Hence 200 Regional seats (same as the present “Province to National lists)
- Other 200 seats will be “200 compensatory seats”, compiled by political parties (same as present National to National lists)



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**AMENDMENTS**

# Issues that Parliament had to address

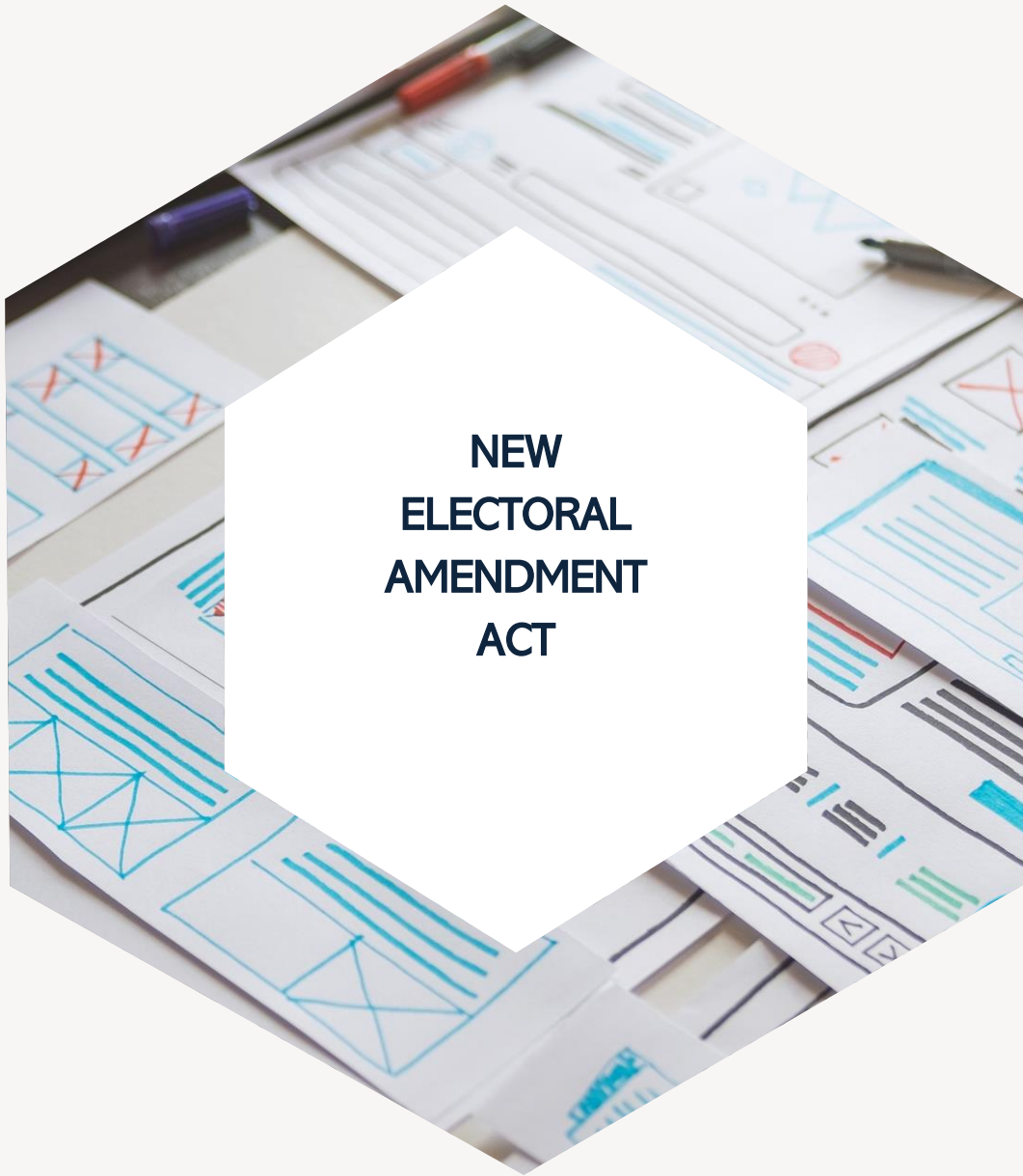
1. Allocation of seats (how many rounds)
2. Number of ballot papers in future elections
3. Method of allocating seats (Drop or Have More)
4. Replacement of independents who leave their seats in Parliament (National attrition or for any other reason)
5. Qualification of Independents (through signatures to demonstrate support or through monetary deposits to the IEC)
6. Whether Independents can contest in more than one region
7. Representation of Independents in the party liaison committees
8. Representation of Independents by party working agents



# Consequential Amendments

- Political Party Funding Act
- Demarcation Act
- Structures Act
- Systems Act





# CALCULATIONS

# High level overview of seat calculation

## STEP 1 - Tier 1 200 seats

Calculate the result for each **multi-member region for parties and independents** (using Droop quota)

$$\text{Quota} = \frac{\text{Total Valid Votes (Region)} + 1}{\text{Total Seats} + 1}$$

Calculations done for each party and independent candidate



$$\text{Regional Seats Parties/Ind} = \frac{\text{Party/Indep Valid Votes (R)}}{\text{Quota}}$$

**Example:** Party A gets **3** regional seats



## STEP 2 - Tier 2 400 Seats

Calculate total overall seats **for parties only** (using Droop quota)

$$\text{Quota} = \frac{\text{Total Valid Votes (Regions + PR)} + 1}{\text{Total Seats} + 1 - \text{Independents}}$$

Calculations done for each party



$$\text{Overall Party Seats} = \frac{\text{Party Valid Votes (R + PR)}}{\text{Quota}}$$

**Example:** Party A gets **5** overall seats



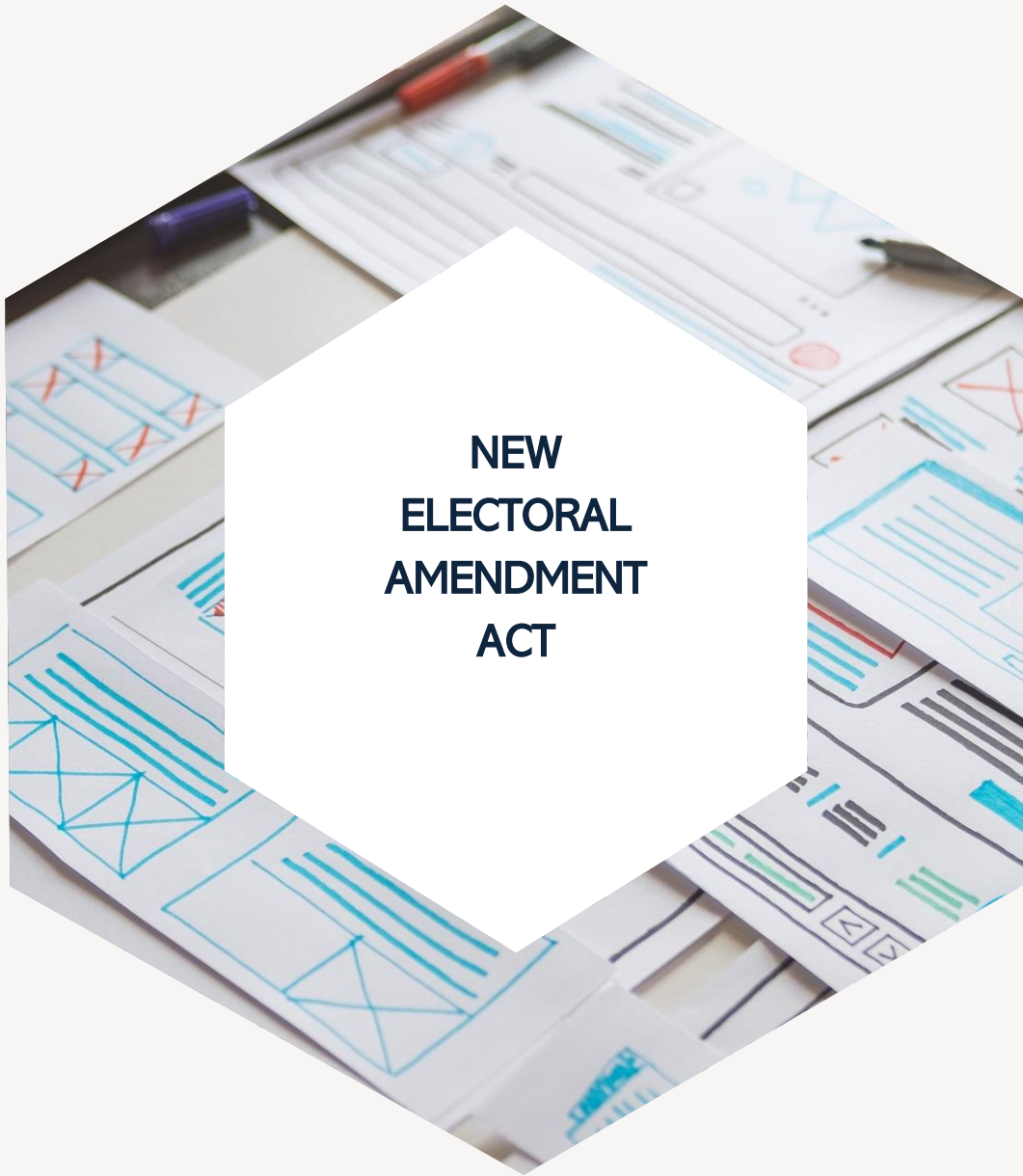
## STEP 3 - Calculation 200 Seats

Calculate **compensatory PR seats for parties only**

$$\text{Total PR Seats} = \text{Total overall seats} - \text{Aggregate regional seats}$$

**Example:** Party A then gets  $5 - 3 = 2$  PR seats





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**INDEPENDENT  
CANDIDATES**

# Independent Candidates Participation

The Act determines the participation of independent candidates on the following basis:

1. An independent candidate may be nominated to contest in one or more regions but may only be elected to one seat in the National Assembly.
2. An independent candidate may only be nominated to stand in a provincial legislature in a province in which they are registered.
3. An independent candidate may only be a member of either the National Assembly or a provincial legislature.



# Independent Candidates Participation (Continued)

4. A prescribed declaration confirming that the candidate has submitted names, identity numbers and signatures of voters who support his or her candidature:

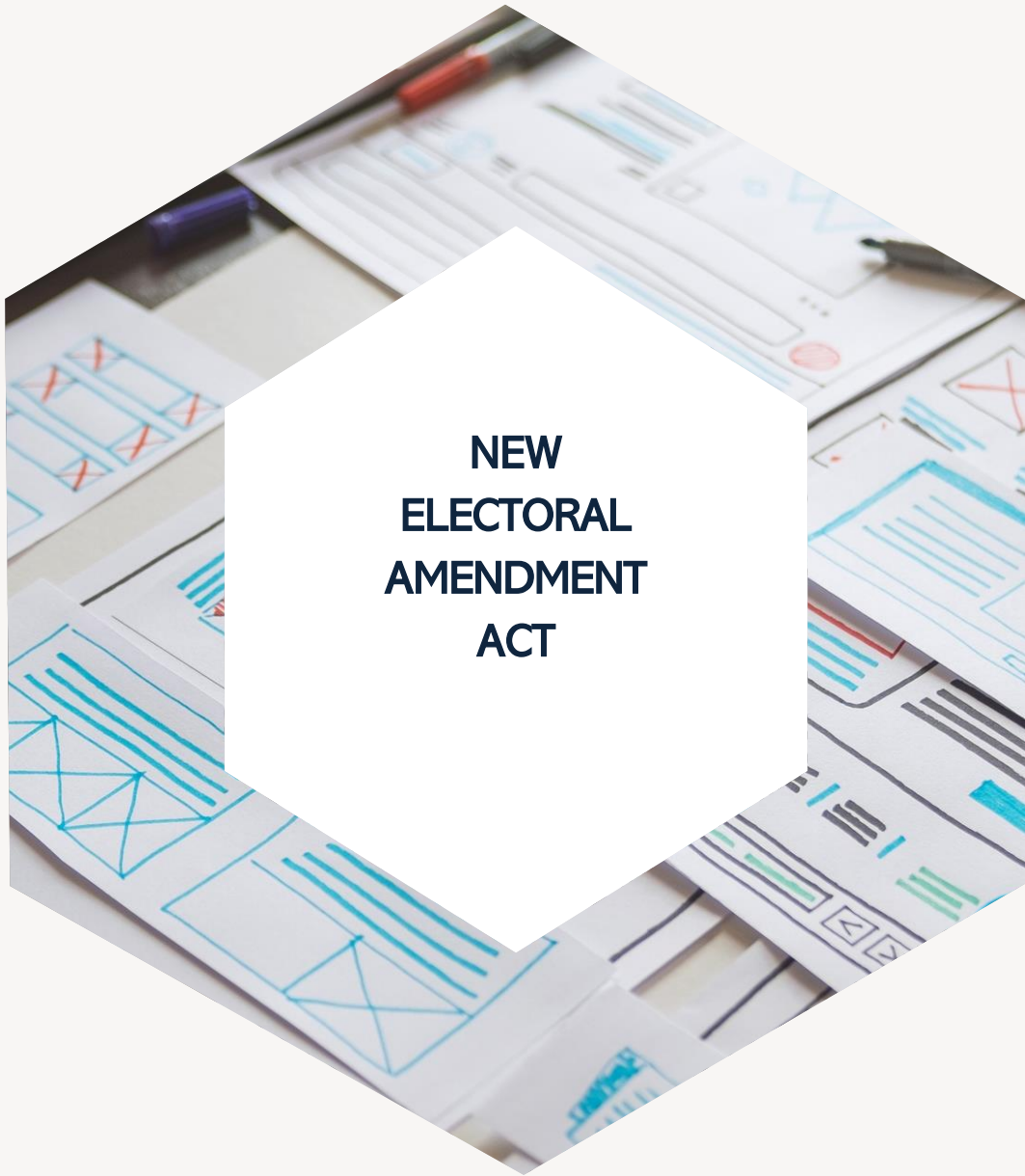
- In relation to the election of the National Assembly, the names must equal 15 per cent of the number of votes required to obtain a seat for that region in the preceding election if contesting only one region
- 15 per cent of the highest of the quotas in the preceding election, if intending to contest in more than one region. Where the 15 per cent of the highest of quotas is not achieved, that independent candidate may only contest in the region or regions as determined by the next highest quota met.
- In relation to a provincial legislature, 15 per cent of the votes required to obtain a seat in the preceding election, in respect of that province.

# Independent Candidates Participation *(continued)*

Further requirements include:

5. Candidates must pay a prescribed deposit. Deposits paid by independent candidates may be different from those paid by political parties.
6. Candidates must undertake to be bound by the Electoral Code of Conduct.
7. Candidates must sign a declaration that they are not disqualified in terms of the Constitution.
8. In respect of provincial elections, candidates must sign a declaration that they are registered in that province.

Registered political parties that do not have seats in any legislature or the National Assembly will have to meet the same 15 percent quota requirement and also pay a deposit.



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**QUOTA**

The quota for the various regions and provincial legislatures is illustrated in the tables below:

## SIGNATURE REQUIREMENT: REGIONS

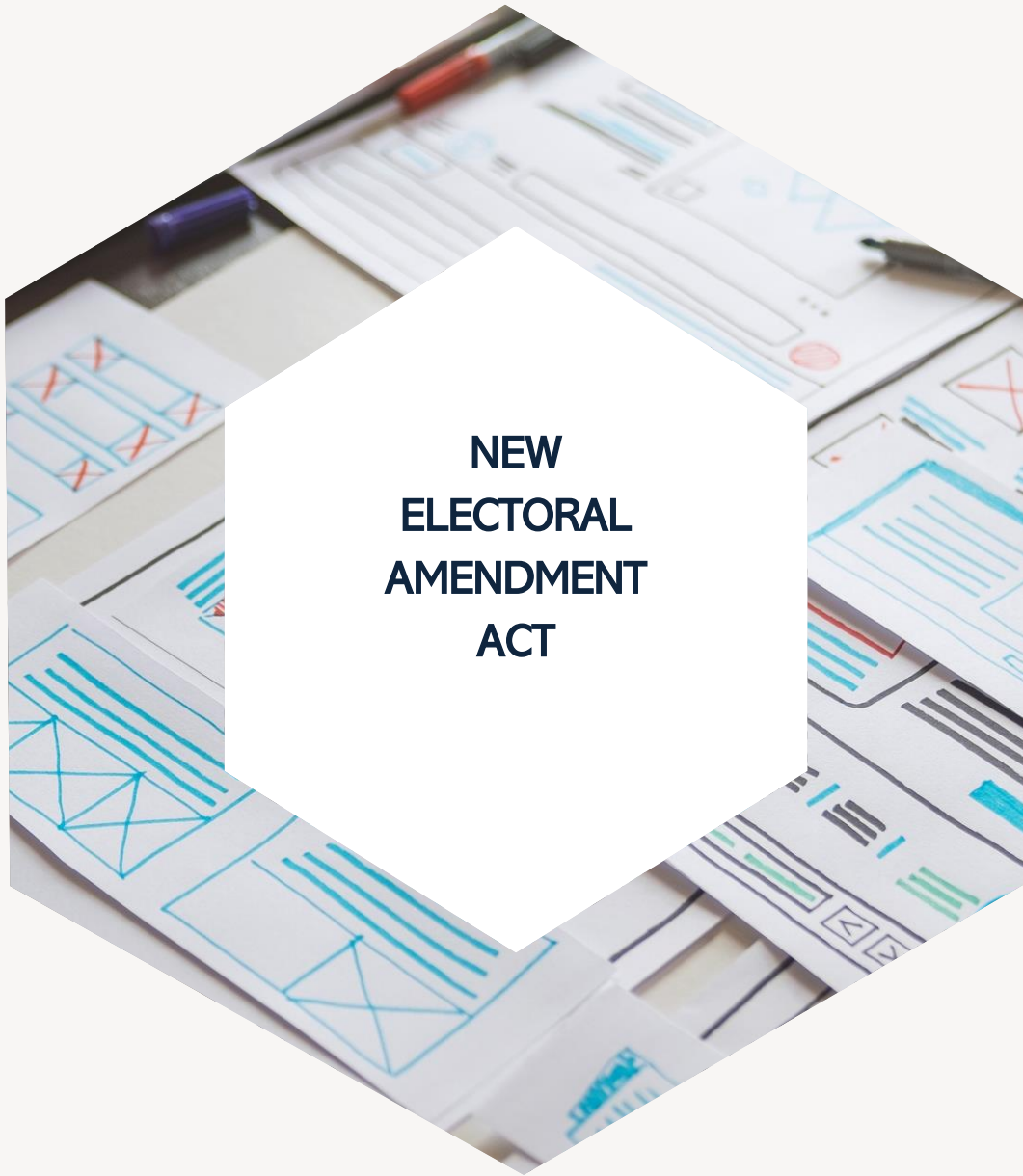
Region	Quota	15%
Eastern Cape	77 713	11 656
Free State	75 602	11 340
Gauteng	92 601	13 890
KwaZulu-Natal	86 967	13 045
Limpopo	75 529	11 329
Mpumalanga	79 499	11 924
North West	71 016	10 652
Northern Cape	68 474	10 271
Western Cape	88 008	13 201

The quota for the various regions and provincial legislatures is illustrated in the tables below:

## SIGNATURE REQUIREMENT: PROVINCES

Province	Quota	15%
Eastern Cape	30 847	4 627
Free State	28 571	4 285
Gauteng	58 378	8 756
KwaZulu-Natal	44 424	6 663
Limpopo	29 044	4 356
Mpumalanga	39 243	5 886
North West	28 084	4 212
Northern Cape	12 797	1 919
Western Cape	47 843	7 176
<b>Total all provinces</b>		<b>47 880</b>

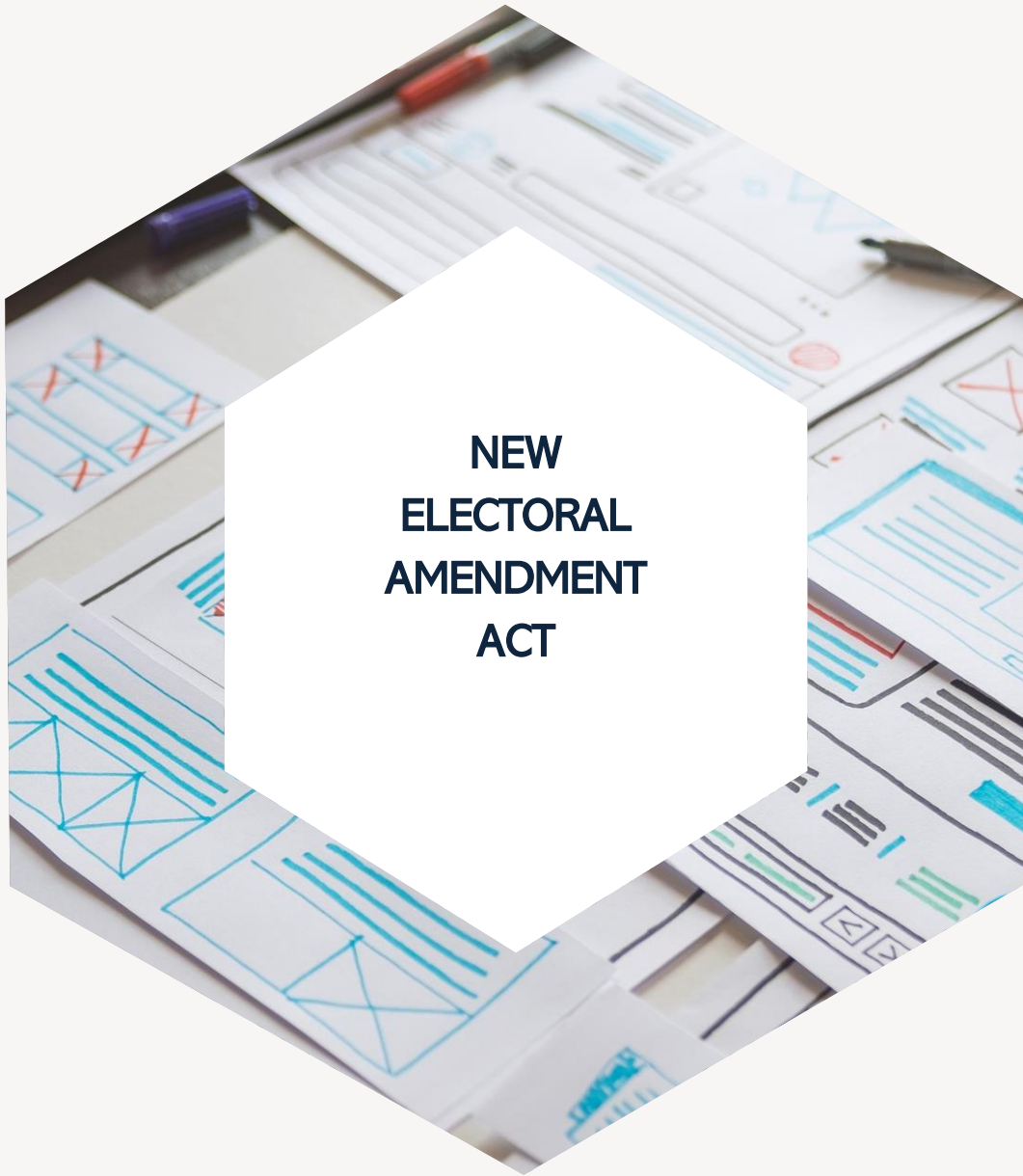
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# BALLOT PAPERS

**The participation of independent candidates in elections of the National Assembly as a consequence of the signed law, has the following noteworthy implications:**

1. The amended Act provides for an additional ballot paper in the election of the National Assembly thereby offering voters a non-binary choice of either a party or independent. The effect of this is that the regional and compensatory ballots are separate (two ballots instead of a single ballot as was previously the case). The regional ballot for the National Assembly includes parties and independents. The other (national) ballot contains only parties in order to restore proportionality. The ballots for the regional seats in the National Assembly will be region-specific in a manner similar to provincial legislature ballots.
2. The introduction of the second ballot for the election of the National Assembly, results in an increased number of ballot papers to be printed without the corresponding increase in time lines. Thus the ballot printing window remains an immutable 28 days.
3. The number of ballot papers for provincial legislature elections remains unchanged at one ballot per province. These will contain the names of parties and independent candidates.



# CHALLENGES

# Challenges with the new Electoral Amendment Act

- Province-sized constituencies would be too large to permit the special type of relationship required between the elected representatives and their communities that true responsiveness and accountability require.
- The newly accommodated independent candidates who, by their very nature, generally emerge from specific communities, would find it difficult to compete effectively in single province-scale constituencies and would be at a disadvantage vis-à-vis much better resourced political parties.



# Challenges with the new Electoral Amendment Act

- The Act would also give an unfair advantage to candidates backed by political parties by requiring independent candidates to garner more than 8 000 voter signatures to be eligible to register for elections, while political parties would require just 1 000 signatures.
- Should successful independent candidates vacate their seats, the Act would require a recalculation of representation that could result in their seats being filled by members of political parties instead. This problem could have been easily resolved by making provision for vacancies to be filled through by-elections, a point that was raised in multiple submissions to parliament.



# Challenges with the new Electoral Amendment Act

- Furthermore the Act negates the cornerstone of any democratic and free society: one person, one vote.
- Candidates would be elected if they receive a previously calculated quota of votes. But votes for independent candidates that exceed this quota would simply be lost and all votes cast for candidates who are members of political parties would accrue to their parties for the purposes of proportional representation.
- This would result in a constitutionally unacceptable situation in which votes cast for independent candidates would have less value than votes cast for members of political parties.



# Thank you

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