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7 July 1995

LOCAL GOVERNMENT

ELECTION REGULATIONS

LOCAL GOVERNMENT TRANSITION ACT, 1993 (ACT 209 OF 1993) :  
REGULATIONS RELATING TO VOTERS AND MEMBERS FOR TRANSITIONAL  
LOCAL COUNCILS, TRANSITIONAL METROPOLITAN COUNCILS, AND  
TRANSITIONAL METROPOLITAN SUBSTRUCTURES, AND THE CONDUCT  
OF THE ELECTION.

The Premier has in terms of the Local Government Transition Act, 1993  
(Act 209 of 1993) made the following regulations:

as amended by


- 1) *Western Cape Proclamation 83/1995 dated 12 May 1995*
- 2) *Still to be proclaimed in Western Cape but approved by MINMEC on 16/5/1995*
- 3) *Still to be proclaimed in Western Cape but approved by MINMEC on 20/6/1995*

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*F Clifton White Resource Center  
International Foundation for Election Systems*

KPS ROOME  
7 July 1995

**RETURN TO RESOURCE CENTER**  
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## CHAPTER 1

### DEFINITIONS

- 1 (1) In these regulations, unless the context otherwise indicates :
- (i) "Act" means the Local Government Transition Act, 1993 (Act 209 of 1993);
  - (ii) "address" means a mode of identification of a place which is sufficiently precise to permit a person contemplated in regulation 2 who is ordinarily resident within the area of jurisdiction of a transitional authority, or under law liable for the payment of assessment rates, rent, service charges or levies to the transitional authority concerned, to be enrolled in a voters' roll and to exercise his or her vote at a voting station in a ward or part of a ward in which such place is situated.
  - (iii) "advertise" means publish;
  - (iv) "candidate" means any person in terms of regulation 26(2) or 29(4) whose nomination has been accepted and in respect of whose party or in respect of whom a vote will be held;
  - (v) "chief executive" means the chief executive or acting chief executive of a transitional authority regardless of the designation of the post occupied by that officer;
  - (vi) "council" means the council of a transitional authority;
  - (vii) "Constitution" means the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993);

- (viii) "day" means a period of twenty-four consecutive hours commencing at midnight and including a Saturday, Sunday or public holiday referred to in the Public Holidays Act, 1994 (Act 36 of 1994);<sup>1)</sup>
- (ix) "election" means the election as contemplated in section 9(1) of the Act;
- (x) "election material" means any form, declaration or item referred to in regulation 40;
- (xi) "election officer" means the metropolitan returning officer, the returning officer and any officer referred to in regulation 31;
- (xii) "election period" means the period from nomination day to the close of voting stations;
- (xiii) "identity document" means :<sup>1)</sup>
  - (a) an identity document or a temporary identity certificate issued in terms of the Identification Act, 1986 (Act 72 of 1986) or any other applicable law of the Republic, as the case may be : Provided that an acknowledgement of receipt of an application for an identity document issued by the Director-general of the Department of Home Affairs shall be deemed to be an identity document only for purposes of registration for the election;
  - (b) a reference book issued in terms of the repealed Blacks (Abolition of Passes and co-ordination of Documents) Act, 1952 (Act 67 of 1952);
  - (c) an identity document referred to in section 13 of the Population Registration Act, 1950 (Act 30 of 1950);

- (d) a valid travel document issued in terms of any law of the Republics of Transkei, Bophuthatswana, Venda and Ciskei; or
- (e) a valid book of life issued by the former republic of :
  - (i) Ciskei in terms of Act 15 of 1981; or
  - (ii) Transkei in terms of Act 24 of 1976; or
  - (iii) Bophuthatswana in terms of Act 12 of 1978; or
  - (iv) Venda in terms of Act 6 of 1980;
- (xiv) "identity number" means the official number recorded on an identity document;
- (xv) "metropolitan returning officer" means the person appointed in terms of regulation 30(1) as returning officer for a transitional metropolitan council and includes any election officer lawfully acting in his or her stead;
- (xvi) "local" in relation to a party means a party which operates an office or has an address within the area of jurisdiction of the transitional authority;
- (xvii) "name" in relation to a voters' roll means a surname followed by a name or names ordinarily prefixed thereto;
- (xviii) "nomination day" means the day determined for the nomination of candidates and parties in terms of regulation 23(1)(b);

- (xix) "official language" means any language declared to be an official language in terms of Section 3(5) of the Constitution;
- (xx) "ordinarily resident" in relation to any person, means resident at the home or place where he or she normally lives and to which he or she returns regularly after any period of temporary absence;
- (xxi) "party" means any local organisation, body or voluntary association which has objects and purposes which, among others, have relevance to local government matters and includes a political party which has been registered in terms of Chapter IV of the Electoral Act, 1993 (Act 202 of 1993);
- (xxii) "Premier" means the Premier as contemplated in Section 144(1) of the Constitution and includes the competent authority designated by him or her for the purposes of the administration of the Act;
- (xxiii) "publish" means publish in each official language of the Province in one or more newspapers which substantially use such language or in the absence thereof in one or more newspapers which are of general circulation within the area of the transitional authority.
- (xxiv) "returning officer" means the person appointed in terms of regulation 30(1) and includes any election officer lawfully acting in his or her stead.
- (xxv) "service" in relation to a notice or other communication addressed to a person means :
  - (a) delivery to him or her in person by hand; or

(b) delivery at his last known place of residence, business or occupation to a person apparently of 18 years of age or more who is resident or employed or in business at that place; or

(c) posting to him or her at his last known place of residence, business or occupation by prepaid registered or certified mail;

and "serve" has an equivalent meaning;

(xxvi) "transitional authority" means a transitional local council, transitional metropolitan substructure and transitional metropolitan council;

(xxvii) "transitional metropolitan council" means a transitional metropolitan council as defined in section 1(xviii) of the Act;

(xxviii) "transitional local council" means a transitional local council as defined in section 1(xvii) of the Act;

(xxix) "transitional metropolitan substructure" means a transitional metropolitan substructure as defined in section 1(xix) of the Act;

(xxx) "voters' roll officer" means the person appointed in terms of regulation 3(2) and includes any person lawfully acting in his or her stead;

(xxxi) "voting station" means any place referred to in regulation 41(1)(a);

(2) Any term or expression used in these regulations which is not defined herein shall bear the meaning given to that term or expression by the Act.



## CHAPTER 2

### QUALIFICATION OF VOTERS

#### Franchise

2 (1) Any natural person who is :

- (a) (i) a South African citizen; or
- (ii) not such a citizen but who in terms of an Act of Parliament has been accorded the right to exercise the franchise; and
- (b) of or over the age of 18 years on the day of the first election determined by the Minister in terms of section 9 of the Act; and<sup>1)</sup>
- (c) ordinarily resident within the area of jurisdiction of a transitional authority or under law liable for the payment of assessment rates, rent, service charges or levies to the transitional authority concerned,

shall be entitled to be included in the voters' roll of that transitional authority and shall thereupon be entitled to vote in an election for members of the council of such transitional authority : Provided that any person shall be entitled to exercise only one vote for such transitional authority in terms of these regulations : Provided further that the exercise of a vote as contemplated in this subregulation may entail the marking of two or three ballot papers representing the proportional and ward components of a vote.

- (2) Notwithstanding the provisions of subregulation (1), no person shall be entitled to be included in the voters' roll of a transitional authority or be entitled to vote in an election for members of the council of such transitional authority, if he or she is :

- (a) Subject to an order of court declaring him or her to be of unsound mind or mentally disordered or affected;
  - (b) detained as a mentally ill patient under the Mental Health Act, 1973 (Act 18 of 1973), or any other applicable law of the Republic, as the case may be;
  - (c) detained under the Prevention and Treatment of Drug Dependency Act, 1992 (Act 20 of 1992), or any other applicable law of the Republic, as the case may be; or
  - (d) detained in a prison after being convicted and sentenced without the option of a fine in respect of any of the following offences irrespective of any other sentence in respect of any offence not mentioned hereunder which is served concurrently with the first mentioned sentence :
    - (i) murder, robbery with aggravating circumstances and rape; or
    - (ii) any attempt to commit any offence referred to in subparagraph (i).
- (3) For the purposes of subregulation (1)(c) :
- (a) the word "liable" means liable in respect of an address within the area of jurisdiction of such transitional authority delimited in terms of Section 8(2) of the Act and shall not include any larger area of jurisdiction established in terms of any other law; and
  - (b) the word "jurisdiction" means jurisdiction delimited in terms of Section 8(2) of the Act.
- (4) The onus to be enrolled as a voter shall rest on the voter concerned.

## CHAPTER 3

### VOTERS' ROLL

#### Making the Roll

- 3 (1) Every transitional authority shall make a voters' roll and any natural person who is entitled to be included in such voters' roll may, subject to the provisions of these regulations, claim within the period 27 January 1995 and 5 June 1996 inclusive to be enrolled.<sup>2)</sup>
- (2) Each transitional authority shall designate or appoint :
  - (a) a voters' roll officer within its employment who shall be responsible for preparing a voters' roll on its behalf; and
  - (b) such employees or other person or persons as may be necessary to assist with the preparation thereof at such remuneration as it may determine.
- (3) A person applying to be enrolled as a voter shall make a claim in accordance with form ER1.
- (4) Any person claiming to be enrolled as a voter shall provide the information required in form ER1 and if the voters' roll officer is satisfied on the face of such information that such person is qualified in terms of regulation 2 to be enrolled as a voter such person's name and particulars shall be included in the voters' roll.
- (5) (a) At the expiration of the period referred to in subregulation (1), every transitional authority shall cause a roll to be prepared containing the names of persons qualified to be enrolled as voters for the election and such roll shall :

- (i) contain a serial number unique in respect of each name;
  - (ii) contain the identity number of each person claiming enrolment;
  - (iii) be in alphabetical order according to surnames;
  - (iv) state the address to which the claim relates; and
  - (v) identify the basis of qualification or entitlement.
- (b) Every page of a voters' roll shall be numbered consecutively and shall identify the name of the transitional authority and the year to which it relates; and where such roll has been divided into parts, every page of such part shall also identify the ward and voting station to which it relates.
- (6) (a) A voters' roll as certified and approved for a transitional local council or for a transitional metropolitan substructure shall be divided into parts according to the wards into which the area of jurisdiction of such transitional local council or transitional metropolitan substructure has been divided.
- (b) Every ward shall, unless written authorisation by the Premier to the contrary had been obtained, be divided into parts in accordance with the provisions of regulation 41(3)(c), and the voters' roll for any ward that had been so divided, shall be divided into such parts.
- (c) A voters' roll as certified and approved for a transitional metropolitan council shall be divided into parts according to the area of jurisdiction of each transitional metropolitan substructure within the transitional metropolitan council area, and thereafter further into parts which correspond exactly with the wards and parts of such wards, if any, for each such transitional metropolitan substructure.

- (d) A voters' roll divided into parts shall comply with the requirements of subregulation (5)(a) in respect of each such part.
  - (e) A voter shall vote in a ward or part thereof at the voting station where his or her name appears in the voters' roll for such ward or part thereof.
- (7) When any claimant :
- (a) is under law liable for the payment of assessment rates, rent, service charges or levies in respect of more than one address; or
  - (b) is so liable in respect of an address other than the place at which he or she is ordinarily resident; or
  - (c) is ordinarily resident at more than one place
- within the area of jurisdiction of the same transitional authority, such claimant shall be entitled to be included only once in the voters' roll of such transitional authority and shall, at the time of making a claim for enrolment, identify one such address as the place for inclusion failing which the voters' roll officer shall make such identification.
- (8) (a) The voters' roll officer may include in the voters roll the names and particulars of any person in respect of whom a claim on form ER1 has not been made or received, but whose particulars provide the information required for subregulation (5)(a) and on the face of such particulars satisfy the voters' roll officer that such person is qualified in terms of regulation 2 to be enrolled as a voter.
- (b) A claim in a form substantially in accordance with form ER1 :<sup>2)</sup>
- (i) received before 27 January 1995; or

- (ii) notwithstanding the provisions of regulation 17(1)(a)(i) received between 6 June 1995 and 23 June 1995 and shown to the satisfaction of the voters' roll officer to have been completed by the claimant and entrusted to another person, party or agency not later than 5 June 1995 to deliver to the voters' roll officer;

shall be a lawful claim and shall be taken into account by the voters' roll officer.

- (9) During the period specified in terms of regulation 3(1) the voters' roll officer shall ensure that :

- (a) an adequate supply of forms ER1 and ER2 and one or more prominent places or secure receptacles for the deposit of claims delivered by hand, are clearly identified, available and accessible to the public at all times during normal office hours at every office of the transitional authority concerned; and
- (b) a reasonable quantity of forms ER1 are made available upon request to a party or person who satisfies the voters' roll officer of a *bona fide* intention to canvass or facilitate the submission of claims at no cost to any claimant.

*Party  
Canvasser*

- (10) Nothing herein contained shall be construed as requiring any person to be physically or personally present at any place or office in order to lodge a claim for his or her enrolment as a voter, or as precluding any person from posting by ordinary mail such a claim to the voters' roll officer at the address specified on form ER1 for the applicable transitional authority.
- (11) Where no address exists, the transitional authority shall cause an address to be determined or identified within its jurisdiction for the purposes of claims and the preparation of the voters' roll.

- (12) (a) For the purposes of regulation 3(1) the date announced by the Premier shall be not less than twenty-eight days after the date of promulgation of these regulations.
- (b) Notwithstanding the provisions of paragraph (a) the date announced by the Premier shall be not later than 27 January 1995.
- (13) Where any person applying to be enrolled as a voter makes a claim in accordance with form ER1 and certifies or otherwise signifies as the basis of qualification or entitlement to such claim that he or she pays or is liable for the payment of assessment rates, rent, service charges or levies, such certification or signification of payment or liability for payment shall not found or be used as evidence in respect of any legal action, claim or prosecution by a transitional authority, local government body or any other person or persons whatsoever.<sup>1)</sup>

#### Claims and Objections

- 4 (1) The voters' roll officer shall not later than 16 June 1995 publish a notice :<sup>2)</sup>
- (a) stating that a copy of such roll and any claim received in terms of regulation 3(8)(b)(ii) may be inspected at the office or offices of the transitional authority during normal office hours and at such other place or places as the voters' roll officer may appoint during the hours of 06:00 to 22:00 daily, including Saturday, Sunday and any public holiday, during the period 24 June 1995 to 7 July 1995 inclusive;<sup>2)</sup>
- (b) calling upon every person whose name does not appear in such roll and who believes that he or she is entitled to be enrolled as a voter and every person who has any objection to the enrolment of any person whose name appears in such roll or in respect of whom a claim has been received in terms of regulation 3(8)(b)(ii) :<sup>2)</sup>

- (i) to lodge a written claim or objection, in the prescribed forms ER1 or ER2, which shall be available at such office or place specified in paragraph (a); or
- (ii) in respect of any person who is unable to write, to appear in person at a stated place and time to lodge an oral claim or objection,<sup>1)</sup>

with the voters' roll officer not later than 22:00 on 7 July 1995;<sup>2)</sup>

- (c) stating that a list setting out the name of and particulars relating to every claimant, objector and person in respect of whom an objection has been lodged in terms of paragraph (b) may be inspected at the office of the transitional authority during normal office hours and at such other place or places appointed in paragraph (a) during the hours of 06:00 to 22:00 daily including Saturday, Sunday and any public holiday, during the period 14 July 1995 to 17 July 1995 inclusive;<sup>2)</sup>

- (d) calling upon every person who has an objection to the enrolment of any person whose name appears in the list referred to in paragraph (c) :

- (i) to lodge a written objection, in the prescribed form ER2; or
- (ii) in respect of any person who is unable to write, to appear in person at a stated place and time to lodge an oral objection,

with the voters' roll officer not later than 22:00 on 17 July 1995;<sup>2)</sup>

- (e) fixing one or more days, during the period 20 July 1995 to 29 July 1995 inclusive, and one or more places, for sitting of the revision court to hear such claims and objections : Provided that at least one such day shall be a Saturday or Sunday and at least one such place shall be in an area referred to in regulation 16(1)(b).<sup>2)</sup>

Revision  
Court



(2) The voters' roll officer shall :

- (a) not later than 13 July 1995, prepare a list setting out the name of and particulars relating to every claimant, objector and person in respect of whom an objection has been lodged under subregulation (1)(b); and<sup>2)</sup>
- (b) not later than 22 July 1995 prepare a list setting out the name and particulars relating to every objector and person in respect of whom an objection has been lodged under subregulation (1)(d).<sup>2)</sup>

(3) The voters' roll officer shall lodge with the revision court objections to the enrolment of all claimants whom such officer has reason to believe are not entitled to be enrolled as voters.

(4) The voters' roll officer shall, not less than four days before the day fixed for the sitting of the revision court, serve a notice on :

- (a) every person whose name appears on the roll or a list of claimants contemplated by subregulation (2) and to whose enrolment an objection has been lodged;
- (b) the objector concerned; and
- (c) any claimant for enrolment as a voter whose claim has been objected to or rejected by the voters' roll officer;

setting out the grounds of such objection or rejection, the date on which it will be considered by the revision court, and inviting each such person, claimant and objector to attend; and stating that such objection will not be considered by the revision court unless such objector attends such sitting and every other sitting of the revision court to which consideration of such objection is adjourned :

Provided that where the address of a claimant or objector is not sufficiently precise to permit such service, the voters' roll officer shall in respect of any one or more claimants or objectors publish a notice substantially in accordance with the provisions of this subregulation or where such publication cannot be effected owing to limitations on the availability of a newspaper or newspapers, display such notice at the municipal office closest to the address of the claimant or objector.

- (5) Non-receipt of a notice or defect in the publication of any notice referred to in subregulation (4) shall not invalidate the voters' roll or any proceeding or decision of the revision court.
- (6) The Premier may with due regard to the date of the election, direct a voters' roll officer to increase the number or the locality of places or sittings referred to in subregulations (1)(a) or (1)(b) and the Premier may extend the expiry date in subregulation (1)(e).

*Provincial  
Power*

#### Constitution of Revision Court

- 5 (1) (a) There is hereby established for the purposes of each voters' roll a revision court with the powers, functions and duties set out in these regulations.

- (b) Notwithstanding the provisions of subregulation (1)(a) above, or (2) below, the Premier may authorise and establish more than one revision court in respect of each roll or any part of each roll.

*∴ 1 or More Revision Courts / roll*

- (2) The revision court for each roll or part of such roll shall consist of three persons appointed by the transitional authority concerned, not later than 31 May 1995, at least one of whom shall be an advocate, attorney or other legally qualified person who shall be the presiding officer of the court : Provided that the Premier may, upon written application by the transitional authority concerned and upon being satisfied that there is no suitable legally qualified

person, approve in writing the appointment by the transitional authority of some other suitably qualified person who shall be the presiding officer, and an alternate.<sup>1)&2)</sup>

- (3) The transitional authority shall further appoint alternates to take the place of any member of the revision court who is absent or incapacitated and shall determine the order of precedence of such alternates : Provided that at least one such alternate shall comply with the qualifications prescribed for the presiding officer referred to in subregulation (2).
- (4) The appointment of members and alternates to a revision court in terms of subregulations (2) and (3) shall be decided by a resolution of the council adopted by a majority of at least two-thirds of all its members.
- (5) (a) No person shall be appointed or accept appointment as a member of such court if he or she :
  - (i) is the holder of an office in a party;
  - (ii) is a member or councillor or employee of the transitional authority concerned; or
  - (iii) is not eligible to be enrolled as a voter for a transitional authority in terms of regulation 2.
- (b) A member of such a court shall cease to be a member thereof and shall vacate his or her seat if he or she :
  - (i) becomes disqualified for appointment as a member of such a court;
  - (ii) tenders his or her resignation to the chief executive; or
  - (iii) dies

and any vacancy so arising shall be filled from the appropriate alternate appointment, or in the absence thereof as soon as possible by the transitional authority with a person who has substantially the same qualifications as his or her predecessor.

- (6) The revision court shall determine the manner in which it shall conduct its business.
- (7) Whenever a change in the membership of the revision court takes place any part-heard claim or objection shall, at the request of the applicable claimant or objector, be dealt with *de novo*.
- (8) Administrative work incidental to the performance of the functions of a voters' roll officer and a revision court shall be performed by the chief executive of the transitional authority concerned or by one or more officials of such authority duly appointed in writing and acting under the jurisdiction and control of such chief executive.
- (9) Members of a revision court shall be remunerated on such basis as shall be determined by the Premier not later than the time referred to in sub-regulation (2), or, failing which, by resolution of the transitional authority.

Powers, Functions and Duties of Revision Court

- 6 (1) On the day or days and at the place or places fixed in terms of regulation 4(1)(e) or 4(6) the revision court shall sit to consider and determine claims and objections to the enrolment of persons as voters.
- (2) The revision court shall :
  - (a) add to or insert in the roll the name of every claimant :
    - (i) whom it is satisfied is entitled to be enrolled; or

- (ii) to whose enrolment no objection was lodged; or
- (iii) who notwithstanding any objection is shown to its satisfaction to be entitled to be enrolled as a voter,

or place the names of all such claimants on a supplementary list complying with the provision of regulation 3(5)(a), and add such list to the roll; or

- (b) delete or remove from the roll the name of every claimant :

- (i) in respect of whom an objection was lodged; and
- (ii) who is shown to its satisfaction not to be entitled to be enrolled as a voter; and

- (c) correct any error or supply any omission which may appear to it to have occurred in any entry in the roll with regard to the particulars required in terms of regulation 3(5)(a).

- (3) (a) (i) Where a name is added to or inserted in the roll in terms of subregulation (2)(a), the serial number allocated to such name in terms of regulation 3(5)(a)(i) shall be a number which has not been allocated previously to any other name or claimant; and
- (ii) Where a name is deleted or removed from the roll in terms of subregulation (2)(b), the serial number allocated to such name in terms of regulation 3(5)(a)(i) shall not be allocated to any other name or claimant.
- (b) Where a voters' roll is divided into parts in terms of regulation 3(6), the serial number allocated to a name in the roll in terms of regulation 3(5)(a)(i) shall be retained with such name in any part.

- (4) The revision court shall not consider any claim or objection unless :
- (a) such claim or objection has been lodged in accordance with these regulations; and
  - (b)
    - (i) in the case of any claim or objection referred to in regulation 4(1)(b) such claim or objection was received by the voters' roll officer before the expiry of the period referred to therein.
    - (ii) in the case of any objection contemplated by regulation 4(1)(d) such objection was received by the voters' roll officer before the expiry of the period referred to therein;
    - (iii) failing compliance with subparagraph (i) or (ii), the revision court is satisfied that there are exceptional circumstances relating to the late submission of the document concerned warranting the consideration of the claim or objection; and
  - (c) in the case of any person to whose enrolment an objection has been lodged, the objector attends every sitting of the revision court at which the objection is to be considered to substantiate such objection.
- (5) The voters' roll officer shall be entitled to attend and shall be heard in the presence of a claimant or objector at all sittings of the revision court.
- (6) Any person whose claim or objection may be considered by the revision court and any person opposing any such claim or objection shall be entitled to be heard in person or by a representative authorised thereto in writing and to give and call evidence *viva voce*.
- (7) All evidence given before the revision court shall be given on oath or affirmation administered by the presiding officer.

- (8) Sittings of the revision court shall be open to the public and the press.
- (9) Subject to the provisions of these regulations the revision court may adjourn from time to time as it may deem expedient.
- (10) If no claims or objections in terms of regulations 4(1)(b), 4(1)(d) or 4(3) are lodged within the periods referred to in such provisions the voters' roll officer shall, by notice posted at the offices of the transitional authority, forthwith cancel the sitting of the revision court.

Certification and Signature of Roll

- 7 (1) The roll as amended if any by the revision court in terms of regulation 6 shall be certified and signed by the presiding officer of such court not later than 12:00 on 31 July 1995 and shall, subject to the provisions of regulation 8 and 9, thereupon be the voters' roll for the transitional authority concerned until a new voters' roll has been lawfully made.<sup>2)</sup>
- (2) Any document purporting to be the voters' roll as certified and signed by the presiding officer of the revision court in terms of subregulation (1) or a true copy of such roll certified by the chief executive by the issue of a certificate to that effect shall, unless it is proved that such document is not such voters' roll or such a true copy, as the case may be, be conclusive proof that the persons whose names appear therein are entitled to exercise any right conferred on voters by these regulations.
- (3) The voters' roll so certified shall be deposited at the offices of the transitional authority and shall be open for inspection by members of the public during the normal office hours of the transitional authority or during such extended hours and times as such transitional authority may determine by resolution.
- (4) Any voter or candidate or party may obtain a copy of the voters' roll or part thereof applicable to a ward at such prices as the transitional authority may determine by resolution.

Revision of Voters' Roll

- 8 (1) Every transitional authority shall cause its voters' roll to be updated not less than six months prior to the expiration of the term of office referred to in regulation 80.
- (2) The provisions of regulations 3 to 7 shall apply to every such revision.

Omission

- 9 No omission of the name of a person from the voters' roll shall invalidate such roll or any election held in terms of these regulations.

Expenditure on Voters' Roll

- 10 A transitional authority may incur such expenditure as it may consider necessary in terms of these regulations for the election and in connection with the making, revision or adjustment of any voters' roll by it or any legal proceedings arising therefrom.<sup>1)</sup>

Agency by Local Government Body

- 11 (1) The Premier may after consultation in writing with the authorities or bodies concerned authorise or direct any transitional authority or local government or other body or bodies to prepare a voters' roll or to undertake in whole or in part the conduct and management of the election in terms of these regulations as the agent for or on behalf of a transitional authority which has been proclaimed or is yet to be proclaimed in terms of section 10 of the Act, or for or on behalf of any other local government body or bodies, and to perform in whole or in part the duties imposed on such authority in terms of these regulations.<sup>2)</sup>
- (2) Any directive by the Premier in terms of subregulation (1) above may include such directives and other arrangements as the Premier may deem necessary or desirable to give effect to the preparation of such a voters' roll and shall include directions relating to the apportionment and recovery of costs.



11A(1) Following upon the delimitation of a transitional metropolitan substructure in terms of Section 8 of the Act the Premier may authorise any person, committee or transitional metropolitan substructure to do all things necessary to co-ordinate the election of the members of the transitional council of the transitional metropolitan substructure so delimited.

(2) Without derogating from the generality of sub-regulation (1) such authority shall in respect of the area of jurisdiction of the transitional metropolitan substructure so delimited include the power to :

- (a) amalgamate voters' rolls prepared or being prepared in respect of such area;
- (b) prepare a voters' roll for such area;
- (c) constitute a revision court for such area;
- (d) establish an election committee for such area;
- (e) appoint a returning officer for such area,

and in respect of any transitional metropolitan substructure which may form part of the area now delimited in terms of section 8 of the Act, the power to :

- (a) disestablish any revision court;
- (b) disestablish any election committee;
- (c) terminate the appointment of any returning officer; and
- (d) recover any election co-ordination costs from the transitional metropolitan substructure concerned.<sup>2)</sup>

Offences

12 Any person who :

- (a) furnishes any false information in any claim or objection lodged in terms of regulation 3 or 4 or in regard to any particulars required for the making of a voters' roll;
- (b) refuses or fails to furnish any information in regard to any such particulars;
- (c) gives false evidence before or interrupts or disturbs the proceedings of a revision court; or
- (d) treats a revision court with contempt,

shall be guilty of an offence and liable to the penalty specified in Chapter 17 of these regulations.

CHAPTER 4

SEATS AND WARDS

Introduction

- 13 (1) After due consideration of the written representations of the transitional authority, if any, which is established at that stage and which may be affected, and after due consideration at the advice and written recommendations of the Local Government Demarcation Board established for the province, the Premier shall :

- (a) delimit the area of jurisdiction of such transitional authority;

- (b) determine the number of seats in such transitional authority taking into account the right of any traditional leader of a community observing a system of indigenous law and residing on land within the area of jurisdiction of a transitional authority referred to in paragraph (a) to be *ex officio* a member of such transitional authority;
- (c) determine the area of jurisdiction of such transitional local council or transitional metropolitan substructure into wards; and
- (d) determine the number of seats in each ward : Provided that within the area of jurisdiction of any individual transitional local council or transitional metropolitan substructure all wards shall have an equal number of seats;

TMS  $\cong$  TLC

and incorporate the provisions of such delimitation and determination in the proclamation contemplated in section 10 of the Act.

- (2) Any delimitation or determination contemplated in subregulation (1)(a), (b) or (c) may from time to time, but not later than a date three months prior to the day determined by the Minister as contemplated in section 9(1) of the Act, be reviewed by the Premier in accordance with the provisions of subregulation (1).

#### Number of Seats

- 14 Where the number of seats in a transitional authority to be filled by an election cannot be apportioned in the manner required:<sup>2)</sup>
  - (a) for a transitional local council or a transitional metropolitan substructure in terms of regulations 16 and 22 without resulting in fractions, the apportionment shall be made in accordance with Schedule 1 to these regulations; and

- (b) for a transitional authority in terms of regulation 22 without resulting in fractions, each such fraction shall be converted up or down to the whole number nearest thereto and the apportionment shall be made in terms thereof.

#### Wards

- 15 The number of wards shall be determined in accordance with the provisions of regulations 13(1)(b) and (d), 16, 17 and 22.

#### Allocation of Wards

- 16 (1) Where the area of jurisdiction of any transitional local council or transitional metropolitan substructure includes :
  - (a) the area of jurisdiction of any institution or body contemplated in Section 84(1)(f) of the repealed Provincial Government Act, 1961 (Act 32 of 1961); and
  - (b) any other area not falling within the area of jurisdiction of the institution or body referred to in paragraph (a).

no area referred to in paragraph (a) or (b) shall be allocated less than half the total number of wards of such transitional local council or transitional metropolitan substructure : Provided that for the purposes of determination of wards in terms of regulation 15, no area referred to in paragraph (a) shall include any area of :

- (i) any local authority as defined in section 1(1) of the Black Local Authorities Act, 1982 (Act 102 of 1982);
  - (ii) any local government body established by virtue of the provisions of section 20(2)(a) of the Black Administration Act, 1927 (Act 38 of 1927);
- or

- (iii) any council or committee established under the provisions of the Regulations for the Administration and Control of Certain Urban Areas in Natal, 1982 (Proclamation 86 of 1982) and the Regulations for the Administration and Control of Certain Urban Areas in Natal, 1983 (Proclamation 67 of 1983).
- (2) A transitional authority shall make available to the Local Government Demarcation Board such maps and information as the Board may reasonably or necessarily require within such time as it may specify, in order to fulfil its obligations in terms of regulation 17.

Criteria to Delimit Wards

17 (1) For the purposes of this regulation:<sup>2)</sup>

- (a) "claimant voter" means a person in respect of whom, not later than 5 June 1995 :<sup>2)</sup>
  - (i) a claim to be enrolled as a voter has been made or received in compliance with the provisions of regulation 3(3), 3(4) or 3(8)(b)(i);  
or<sup>2)</sup>
  - (ii) particulars in terms of regulation 3(8)(a) provide the information required for the purposes of regulation 3(5)(a) and on the face of such particulars satisfy the voters' roll officer that such person is qualified in terms of regulation 2 to be enrolled as a voter;<sup>2)</sup>
- (b) "enumerator area" means an area specified as such and containing a number of people determined by or through the authority of the Head;<sup>2)</sup>
- (c) "Head" means the officer designated as Head of the Central Statistical Service or the duly authorised representative thereof in terms of the Statistics Act, No 66 of 1976.<sup>2)</sup>

- (2) The advice and written recommendations of the Local Government Demarcation Board in respect of the delimitation of the area of jurisdiction of a transitional authority into wards shall take into account the following criteria :<sup>2)</sup>
- (a) topographical and physical characteristics of the area including man-made features;<sup>2)</sup>
  - (b) the accessibility and availability of premises which are suitable as one or more voting stations;<sup>2)</sup>
  - (c) the provisions of regulations 13, 14, 16 and 22;<sup>2)</sup>
  - (d) at the sole discretion of such Demarcation Board, as it may after due consideration determine most appropriate, either :<sup>2)</sup>
    - (i) the number of people in each ward; or<sup>2)</sup>
    - (ii) the number of claimant voters in each ward; or<sup>2)</sup>
    - (iii) both such number of people and number of claimant voters.<sup>2)</sup>
- (3) Each ward shall fall within the area of jurisdiction of such transitional authority delimited in terms of regulation 13(1)(a).<sup>2)</sup>
- (4) (a) Where the Demarcation Board determines in accordance with subregulation (2)(d)(i) above that the number of people shall be taken into account, each ward shall contain an approximately equal number of people and subject to the provisions of subregulations (7) and (8) no ward shall contain a number of people which is fifteen percent more or less than the quota.<sup>2)</sup>

# people  $\geq \pm 15\%$  avg

- (b) The number of people in a ward shall be determined by adding together the number of people in every enumerator area or part thereof falling within each such ward.<sup>2)</sup>
- (c)
  - (i) Where only part of an enumerator area falls within any ward, the number of people in that part shall be a fraction of the number of people in that enumerator area, and such fraction shall be established by reasonably estimating the area of that part as a fraction of that enumerator area.<sup>2)</sup>
  - (ii) Where the Demarcation Board is of the opinion that by virtue of special circumstances a more accurate estimate of the number of people in part of an enumerator area can and should be established by means other than that required in subparagraph (i) above, it may, notwithstanding the provisions thereof, authorise and use such means to establish the number of people in such part.<sup>2)</sup>
- (d) For the purposes of subregulation (4)(a) the quota shall be ascertained by dividing the total number of people by the total number of wards in the area of jurisdiction of the transitional authority.<sup>2)</sup>
- (5) (a) Where the Demarcation Board determines in accordance with the provisions of subregulation (2)(d)(ii) above that the number of claimant voters shall be taken into account, each ward shall contain an approximately equal number of claimant voters and subject to the provisions of subregulations (7) and (8) below no ward shall contain a number of claimant voters which is fifteen percent more or less than the quota.<sup>2)</sup>
- (b) For the purpose of subregulation (5)(a) the quota shall be ascertained by dividing the total number of claimant voters by the total number of wards in the area of jurisdiction of the transitional authority.<sup>2)</sup>

whose  
total?

- (6) Where the Demarcation Board determines in accordance with the provisions of subregulation (2)(d)(iii) above that both the number of people and the number of claimant voters shall be taken into account, the provisions of subregulation (4) and (5) shall be applied in respect of every ward in the jurisdiction of the transitional authority : Provided that nothing herein contained shall be construed as precluding the Demarcation Board, in conducting any determination made in terms of subregulation (2)(d)(i) or (2)(d)(ii), from taking into consideration respectively the number of claimant voters or population statistics, including enumerator areas.<sup>2)</sup>
- (7) Where, in the opinion of the Demarcation Board, it is not reasonably possible in the case of any ward to achieve the percentage requirement of subregulation (4)(a) or (5)(a) the Board shall make specific recommendations in respect of any such ward or wards to the Premier who may notwithstanding the provisions of this regulation make such determination as he or she deems necessary or appropriate, including further increases in general or specific terms to the percentage applicable to any quota.<sup>2)</sup>
- (8) Where the requirement of subregulation (4)(a) and (5)(a) are impossible to achieve because of the difference in the total number of voters within the area specified in regulation 16(1)(a) and the total number of voters within the area specified in regulation 16(1)(b);<sup>2)</sup>
  - (a) the provisions of subregulations (4), (5), (6) and (7) as the case may be, shall be applied separately in respect of each such area; and<sup>2)</sup>
  - (b) the applicable quota shall be ascertained for each such area by dividing the total number of people and the total number of claimant voters in each such area by the total number of wards in each such area.<sup>2)</sup>
- (9) Any document purporting to be issued by or on behalf of the Head and purporting to specify one or more enumerator areas containing a number of



people determined by the Head shall, unless it is proved that such document is not issued by or on behalf of the Head or does not specify such enumerator area or areas containing a number of people determined by the Head, be conclusive proof of the enumerator area or areas and the number of people contained therein.

## CHAPTER 5

### QUALIFICATIONS : VOTING AND NOMINATIONS

#### Voting According to Wards

- 18 Every voter whose name appears in the voters' roll for a ward shall be entitled to cast a vote for each vacancy for a councillor which exists in such ward.

#### Voting According to Proportional Representation

- 19 In addition to voting in terms of regulation 18, every voter whose name appears in the applicable voters' roll for a transitional local council or transitional metropolitan substructure or the applicable voters' roll for a transitional metropolitan council for an election of councillors according to proportional representation shall be entitled to cast a vote for a party whose name appears on the applicable ballot paper for such transitional authority.

#### Ballot Papers

- 20 There shall be one ballot paper in accordance with form ER3(A) for the purpose of voting in the manner provided for in regulation 18; and one ballot paper in accordance with Form ER3(B) for each transitional authority for the purpose of voting in the manner provided for in regulation 19.

Qualifications for Nomination and Election

21 (1) Any person who is enrolled in the appropriate voters' roll as contemplated in regulation 2, shall be entitled to be nominated and elected as a member of the council of a transitional authority unless :

(a) he or she is a member of the National Assembly, the Senate or a provincial legislature;

(b) he or she is disqualified to be elected as a member of the National Assembly in terms of section 42(1) the Constitution, namely if he or she :

(i) at the time of the election is serving a sentence of imprisonment of more than 12 months without the option of a fine;

(ii) at any time after 9 March 1994 was convicted of an offence in the Republic, or outside the Republic if the conduct constituting such offence would have constituted an offence in the Republic, and for which he or she has been sentenced to imprisonment of more than 12 months without the option of a fine, unless he or she has received a pardon : Provided that no person shall be deemed as having been convicted of an offence until any appeal against the conviction or sentence has been determined, or, if no appeal against the conviction or sentence has been noted, the time for noting such an appeal has expired.

(iii) is an unrehabilitated insolvent; 111

(iv) is of unsound mind and has been so declared by a competent court or;

(v) holds any office of profit under the Republic : Provided that the following persons shall be deemed not to hold an office of profit under the Republic for the purpose of this paragraph, namely :

- (aa) an Executive Deputy President, a Minister or a Deputy Minister;
  - (bb) a person in receipt of a pension paid from public funds or from a pension fund aided by public funds;
  - (cc) a justice of the peace or appraiser; or
  - (dd) a member of any council, board, committee, commission or similar body established by or under law or a committee of the National Assembly who received remuneration not in excess of an amount equal to his or her salary as a member of the National Assembly.
- (c) he or she is disqualified to be elected by any competent court;
- (d) at 15:00 on the day immediately preceding nomination day, he or she is indebted to the transitional authority concerned in respect of any assessment rates, rent, service charges or any other monies for a period longer than three months; or
- (e) he or she is an employee of the transitional authority concerned or any other transitional authority : Provided that the Executive Council contemplated in section 149 of the Constitution may exempt any such person if satisfied that such exemption is in the public interest and proof of such exemption accompanies the nomination.<sup>1)</sup>
- (2) (a) No person nominated as a candidate for a ward shall be nominated as a candidate for any other ward, and no person nominated as a candidate on a party list shall be nominated as a candidate for any other party list, for the same transitional authority at the same election.

- (b) (i) Save as provided in subparagraph (ii), no person nominated for election as a member of a transitional authority shall be nominated for election as a member of any other transitional authority.
- (ii) Notwithstanding the provisions of subparagraph (i), a person may be nominated for election as a member of a transitional metropolitan substructure and as a member of its corresponding transitional metropolitan council.

## CHAPTER 6

### REGISTRATION AND NOMINATION

#### Election by Proportional Representation and by Wards

- 22 (1) (a) Forty percent of the members of a transitional authority shall be elected according to the system of proportional representation as set out in these regulations; and
- (b) Sixty percent of the members of a transitional local council or a transitional metropolitan substructure shall be elected on the basis that each member shall represent a ward of such transitional local council or transitional metropolitan substructure.

#### Notice Regarding Nominations and Registration

- 23 (1) Upon the determination of the day of the first election by the Minister in terms of section 9 of the Act, the returning officer shall, by notice published not later than 14 August 1995 :<sup>2)</sup>

- (a) give notice of the election day and the hours of voting as prescribed by regulation 45(1);
  - (b) specify that nomination day contemplated by regulation 26(2) and 29(4) shall be 22 September 1995;<sup>2)</sup>
  - (c) specify that not later than 12:00 on 4 September 1995 nominations of candidates for ward elections shall be delivered to the returning officer in compliance with regulation 29, invite such nominations and indicate the number of vacancies to be filled;<sup>2)</sup>
  - (d) specify that not later than 12:00 on 4 September 1995 applications for registration of parties shall be delivered to the returning officer in compliance with regulation 24 and invite such applications;<sup>2)</sup>
  - (e) designate the place at which nominations and applications referred to in paragraph (c) and (d) above will be received by the returning officer.
- (2) (a) In respect of elections to be held for transitional metropolitan substructures and a transitional metropolitan council, the metropolitan returning officer shall consult with such substructures and not later than 4 July 1995 shall by mutual agreement determine common times and dates for the purposes of regulations 23(1)(b), (c), (d) and (e), which agreement shall be binding on such bodies.<sup>2)</sup>
- (b) Failing an agreement in terms of regulation 23(2)(a), the metropolitan election officer shall forthwith advise the Premier who shall determine such times and dates at his or her sole discretion.

Registration of Parties : Proportional Representation Elections

- 24 (1) Every party which intends to participate in an election according to proportional representation shall :

- (a) not later than 12:00 on 4 September 1995 deliver an application in writing to the returning officer concerned for registration as a party; and<sup>2)</sup>
- (b) include the following in the application referred to in paragraph (a) :
  - (i) the name and distinguishing mark or symbol of the party which in terms of regulation 36(5)(b) is required to appear on the ballot paper;
  - (ii) the distinguishing mark or symbol used by such party, on a separate page and clearly identifiable for and capable of printing or reproduction in black and white;
  - (iii) the address of the party within the area of jurisdiction of the transitional authority to which the application relates;
  - (iv) its constitution in the case of a party which has not been registered in terms of the Electoral Act, 1993 (Act 202 of 1993),
  - (v) the names, identity numbers and addresses of the local office-bearers of the party who are ordinarily resident within the area of jurisdiction of the transitional authority to which the application relates;
  - (vi) a list of party candidates for the election, together with the full names, identity number and address of each such candidate and an acceptance from each candidate in terms of form ER4;<sup>1)</sup>
  - (vii) in the form of cash or a bank guaranteed cheque, a deposit determined not later than 18 August 1995 by the returning officer as representing an accurate estimate of one percent of the

number of voters on the voters' roll expressed in rands and disregarding any cents : Provided that<sup>2)</sup>

(aa) in the case of a transitional authority with one thousand voters or less the deposit shall be one hundred rand; and<sup>2)</sup>

(bb) in the case of a transitional authority with more than one thousand voters the minimum deposit shall be two hundred and fifty rand and the maximum deposit shall be one thousand five hundred rand,<sup>2)</sup>

R250 →  
R1500

which deposit may be refundable in terms of subregulation (3) below; and

(viii) the name and address of a duly authorised party representative.

- (2) Not later than 12:00 on 5 September 1995 the returning officer shall post outside the place of nomination referred to in regulation 23(1)(e) a list showing the name and address of each party in respect of whom an application has been received, together with its list of party candidates, and keep such list so posted until 12:00 on 22 September 1995.<sup>2)</sup>
- (3) Upon receipt of an application for registration referred to in regulation 24(1), the returning officer shall establish whether :
  - (a) the party has an address within the area of jurisdiction of the transitional authority to which the application relates;
  - (b) the constitution of the party substantially complies with the definition of a party in regulation 1; or
  - (c) the party has been registered in terms of the Electoral Act, 1993 (Act 202 of 1993); and

- (d) the candidates on the list are included in the voters' roll of the transitional authority to which the application relates and are not disqualified in terms of regulation 21.
- (4) (a) The returning officer shall not later than seven days after election day, refund a deposit made in terms of subregulation (1)(b)(vii) to a party which has received in such election not less than 25 per cent of the quota of votes for a seat as determined in terms of regulation 74(2) or 78(2) as the case may be, or which in such election has obtained sufficient votes to entitle it to representation on a vacant seat. # votes > 25
- (b) A party which is not entitled to a refund in terms of subregulation (3)(a) shall forfeit its deposit to the transitional authority concerned.

#### Rejection of Applications

- 25 The returning officer shall, not later than 12 September 1995, by notice in writing to the applicant reject any application made in terms of regulation 24 if :<sup>2)</sup>
- (a) such application does not substantially contain the information or does not include the deposit required in terms of regulation 24(1)(b); or
  - (b) the party does not substantially comply with the definition of a party in regulation 1; or
  - (c) the party does not have an address within the area of jurisdiction of the transitional authority to which the application relates; or
  - (d) one or more persons on the list of party candidates is or are disqualified in terms of regulation 21 or not included in the relevant voters' roll; or<sup>1)</sup>
  - (e) the name of one or more persons appears on the list of candidates of more than one party with an acceptance in terms of form ER4 for the transitional authority concerned; or



- (f) the distinguishing mark or symbol is rejected for reasons set out in regulation 29(5)(f), (g) or (h) :

Provided that where the rejection is in terms of paragraphs (a), (c), (d), (e), or (f), the returning officer shall in writing grant the party the opportunity to rectify the defect by not later than 16:00 on 19 September 1995, by supplying to such officer the rectified information or address or deposit or substituting another name or names or qualified persons or making other rectifications, as the case may be, and upon due compliance therewith, the returning officer shall approve the application and register the party : Provided further that where a party fails to rectify a defect in terms of subparagraph (d), (e), or (f) only, the returning officer shall reject the person or persons or, subject to the provisions of regulation 90(1)(e)(iii), the distinguishing mark or symbol concerned, and shall otherwise approve the application and register the party.<sup>2)</sup>

- 26 (1) The returning officer shall approve all applications and register all parties which comply with the requirements of regulation 24.
- (2) At noon on nomination day the returning officer shall, at the place of nomination referred to in regulation 23(1)(e), publicly declare :
  - (a) the names of the parties whose nominations have been rejected in terms of regulation 25;
  - (b) the names of the parties whose nominations have been accepted and in respect of which a vote will be held;
  - (c) the names of the accepted candidates on the party list of each party in paragraph (b); and
  - (d) display the distinguishing mark or symbol of each party, if any, accepted by the returning officer or adjudicated by the election committee in terms of regulation 90(1)(e)(iii).

- (3) The nomination of a party whose nomination has been declared in terms of subregulation (2) may not be withdrawn in respect of any such party.

Publication of Lists

- 27 (1) The returning officer shall, not later than 9 October 1995 and after applications for registration in terms of regulation 24(1) have been dealt with in terms of regulation 24, 25 and 26 publish :<sup>2)</sup>

- (a) the full name and address of the registered parties;
- (b) the distinguishing mark or symbol, if any, of the registered parties; and
- (c) the list of party candidates,

and post a copy of such notice outside the place of nomination referred to in regulation 23(1)(e).

- (2) The application of each registered party shall be open for public inspection for a period of seven days following the date of publication in subregulation (1), from 08:00 to 17:00 at the place of nomination referred to in regulation 23(1)(e).

- (3) If the returning officer is not the chief executive, the returning officer shall forthwith deliver a copy of such notice to the chief executive.<sup>2)</sup>

- 28 The metropolitan returning officer shall, for the purposes of an election for a transitional metropolitan council, exercise the functions and duties of the returning officer in terms of regulations 23 to 27 inclusive and any reference to the returning officer shall be construed as a reference to such metropolitan returning officer.

Nomination for Ward Elections

- 29 (1) No person may become a candidate at any ward election for a council unless a nomination paper in the prescribed form ER5 duly completed and signed by :

- (a) the proposed candidate or his agent duly authorised thereto in writing, which authority shall accompany the nomination paper, confirming such candidate's acceptance of the nomination; and
- (b) at least the number of voters determined in terms of subregulation (9) whose names are included in the voters' roll for that ward other than such proposed candidate or agent;

> 2%  
voters

is delivered to the returning officer not later than 12:00 on 4 September 1995, accompanied, on a separate page clearly identifiable for and capable of printing or reproduction in black and white, by the distinguishing mark or symbol of the candidate which in terms of regulation 36(2) is required to appear on the ballot paper.<sup>2)</sup>

- (2) No nomination paper or any particulars contained therein shall, after the delivery of such nomination paper to the returning officer in terms of subregulation (1), be disclosed by the returning officer to any person other than an election officer prior to the hour referred to in subregulation (1).
- (3) Not later than 12:00 on 5 September 1995 the returning officer shall post outside the place of nomination referred to in regulation 23(1)(e) a list showing the name and address of each person in respect of whom a nomination has been received and keep such list so posted until 12:00 on 22 September 1995.<sup>2)</sup>
- (4) At noon on nomination day the returning officer shall, at the place of nomination referred to in regulation 23(1)(e) publicly declare :
  - (a) the names of the proposed candidates whose nominations have been rejected by him or her in terms of subregulation (5);
  - (b) the names of the candidates whose nominations have been accepted and who are, in terms of subregulation (6), deemed to have been duly elected;

- (c) the names of the candidates whose nominations have been accepted and in respect of whom a vote will be held in terms of subregulation (7);
  - (d) the name of the traditional leader of a community observing a system of indigenous law and residing on land within the area of jurisdiction of the transitional authority who is ex officio a member of the council; and
  - (e) display the distinguishing mark or symbol of each candidate, if any, accepted by the returning officer or adjudicated by the election committee in terms of regulation 90(1)(e)(iii).
- (5) The returning officer shall reject :
- (a) the nomination of any person proved to his satisfaction not to be eligible as a candidate in terms of regulation 21;
  - (b) any nomination in respect of which the requirements of subregulation (1) have not been complied with;
  - (c) the nomination of any person in respect of whom the returning officer has, before the declaration is made in terms of subregulation (4), received a communication in writing, signed by such person and witnessed by at least two other persons, that he or she has withdrawn his or her candidature;
  - (d) the nomination of a person nominated for more than one ward in the same transitional authority if more than one of such nominations complies with the requirements of subregulation (1);
  - (e) the nomination of a person who, to the knowledge of the returning officer, died after delivery of his nomination paper in terms of

subregulation (1) but before the declaration is made in terms of subregulation (4);

- (f) a distinguishing mark or symbol which is or purports to be the distinguishing mark or symbol of a party, in the absence of an accompanying written and signed authorisation by the duly authorised representative of such party;
- (g) distinguishing marks or symbols which are identical or which are not clearly and easily distinguishable; and
- (h) a distinguishing mark or symbol which is indecent, abusive, misleading, sacrilegious or otherwise likely to cause offence or which is materially similar to a cross or tick :

Provided that no nomination shall be rejected on the grounds of any defect contemplated by paragraph (b), (d), (f), (g) or (h) unless :

- (i) the returning officer has, not later than 12 September 1995, served on the person concerned a written notice informing him or her of such defect; and<sup>2)</sup>
- (ii) such person has failed :
  - (aa) to remedy such defect; and
  - (bb) if such defect has been remedied, to furnish proof to the satisfaction of the returning officer that such defect has been remedied,

by not later than 16:00 on 19 September 1995 : Provided further that where such person fails to rectify a defect in terms of paragraph (f), (g)

or (h) the returning officer shall, subject to the provisions of regulation 90(1)(e)(iii), reject the distinguishing mark or symbol concerned and shall otherwise accept the nomination.<sup>2)</sup>

- (6) (a) If the number of candidates for a ward whose nominations have been accepted is equal to or less than the number of vacancies in that ward, such candidates shall be deemed to have been elected and a by-election shall be held within 90 days from the date of the election substantially in the manner provided by these regulations for the holding of elections, to fill any remaining vacancies.
- (b) If insufficient nominations to fill the remaining vacancies referred to in paragraph (a) are accepted for the by-election referred to in the said subregulation, the returning officer shall, within seven days of the declaration made in terms of subregulation (4) in respect of such by-election, notify the Premier in writing thereof and the Premier may thereupon either direct that a further by-election shall be held to fill the balance of the remaining vacancies or may appoint persons as councillors to fill such balance and any person so appointed shall for all purposes be deemed to be a councillor.
- (7) If the number of candidates whose nominations have been accepted exceeds the number of vacancies the returning officer shall immediately by notice posted outside the place of nomination referred to in regulation 23(1)(e) and shall not later than 9 October 1995 publish the full names of each candidate together with his or her distinguishing mark or symbol, if any, in respect of whom a vote will be held on election day.<sup>2)</sup>
- (8) The returning officer shall, on being satisfied that a candidate in terms of subregulation (4)(c), has died before the day of the election, terminate all proceedings and by notice published in the press withdraw all notices issued under this chapter in respect of the ward concerned, whereupon a by-election

shall be held within 90 days from the date of the election for the ward concerned substantially in the manner provided in these regulations for the holding of elections : Provided that such termination and notice shall in no way be construed as terminating or suspending any other concurrent election proceedings, including the nomination of members from a transitional metropolitan substructure to a transitional metropolitan council.

- (9) The returning officer shall for the purposes of subregulation (1)(b) above not later than 18 August 1995 determine in respect of each ward and make available a number representing an accurate estimate of two percent of the voters on the voters' roll for each such ward.<sup>2)</sup>

## CHAPTER 7

### APPOINTMENT, POWERS AND DUTIES OF ELECTION OFFICERS

#### Appointment and Responsibilities

- 30 (1) (a) The chief executive shall *ex officio* be the returning officer of the transitional authority concerned unless such authority by resolution of the council adopted by a majority of at least two thirds of all its members appoints another person as returning officer not later than 4 May 1995.<sup>2)</sup>
- (b) The transitional authority shall confirm the *ex officio* or other appointment of the returning officer in writing not later than seven days after such appointment.

- (2) The returning officer for a transitional local council shall be responsible for the administration, organisation, supervision and conduct of the election for such transitional local council.
- (3) The returning officer appointed for a transitional metropolitan substructure shall be responsible for :
  - (a) the administration, organisation, supervision and conduct of the election both for such transitional metropolitan substructure and for the transitional metropolitan council according to proportional representation conducted within such transitional metropolitan substructure;
  - (b) ensuring that the election for the transitional metropolitan council shall be conducted within the same voting stations as the election for the transitional metropolitan substructure; and
  - (c) such other duties and responsibilities as may be imposed in terms of these regulations.
- (4) The returning officer appointed for a transitional metropolitan council shall be responsible for :
  - (a) inviting, receiving and adjudicating applications for the registration of parties and for registering parties in respect of a transitional metropolitan council election in accordance with the provisions of regulation 23 to 27 inclusive;
  - (b) printing and transmitting ballot papers in respect of such election to the applicable returning officer- for each transitional metropolitan substructure in accordance with the provisions of regulation 36(4) to (6) inclusive, and 40(3);



- (c) receiving from the returning officer for each transitional metropolitan substructure in terms of regulation 77, or the responsible deputy returning officer in terms of regulation 81, a transmission on the total number of votes cast and the total number of votes cast in favour of each party;
  - (d) the determination of the result of the election for the transitional metropolitan council according to proportional representation in terms of regulation 78;
  - (e) the determination in terms of these regulations of the number of nominees required from transitional metropolitan substructures to the transitional metropolitan council and the result of such nomination in terms of regulation 84 to 88 inclusive; and
  - (f) such other duties and responsibilities as may be imposed in terms of these regulations.
- (5) (a) The transitional authority shall, subject to the maintenance of essential services, permit the returning officer to recruit and appoint or second such of its employees for such period or periods and in such capacity or capacities as he or she may reasonably require as being necessary for the proper preparation and conduct of the election.
- (b) Such employees shall be granted for this purpose by the transitional authority concerned permission to be absent from their normal place of work on full pay without prejudice to any other condition of employment plus for a period of not more than two days any fees as may be determined by such transitional authority in terms of regulation 93.
- (c) The returning officer may recruit and appoint from outside the employment of the transitional authority such additional persons as he

or she may deem essential at not more than the fees determined for any other election officer in regulation 93 : Provided that any such recruitment shall be within the limits of any general or specific financial provision which shall have been made in advance by the transitional authority.<sup>3)</sup>

- (d) Nothing herein contained shall be construed as prohibiting the transitional authority from making such additional provisions or arrangements as it may deem necessary in respect of employment or staffing for the proper preparation and conduct at the election.
- (e) Where the chief executive is *ex officio* the returning officer he or she shall, in addition to his or her normal remuneration and conditions of employment, be granted for a period of not more than two days any fee as may be determined by such transitional authority in terms of regulation 93.<sup>1)</sup>
- (f) Where the transitional authority appoints in terms of subregulation (1) another person as returning officer it shall at the same time as such appointment determine by a majority of at least two thirds of all its members his or her remuneration and conditions of employment which may include for a period of not more than two days any fee as may be determined by such transitional authority in terms of regulation 93.

#### Election Officers

- 31 (1) (a) The returning officer shall appoint such election officers as he or she may deem necessary for the effective and proper conduct of the election and may in his or her discretion withdraw any appointment so made.<sup>3)</sup>
- (b) The Code of Conduct for Election Officers set out in Schedule 2 to these regulations shall be deemed to be a term and condition of appointment for every election officer, including the returning officer.<sup>3)</sup>

- (2) No person shall be appointed or accept appointment as an election officer who :
  - (a) is a candidate at the election;
  - (b) is a nominated member of or is on the supplementary list for appointment to the transitional authority;
  - (c) has been directly or indirectly engaged with or without remuneration by any party or candidate in connection with the election; or
  - (d) is the holder of an office in a party;
  - (e) fails to make a declaration in terms of form 9A.<sup>3)</sup>
- (3)
  - (a) The returning officer shall where appropriate designate one election officer or more as a deputy returning officer, presiding officer, voting officer, translation officer or voter's assistant contemplated in subregulation (4), counting officer, and/or other election officer : provided that any election officer may be given more than one designation.
  - (b) The returning officer for any transitional metropolitan substructure shall designate one or more deputy presiding officers in respect of a voting station.
- (4) The returning officer shall ensure :
  - (a) that sufficient election officers fluent in the official language are readily available at all times during voting at every voting station;<sup>3)</sup>
  - (b) that sufficient election officers are specifically appointed, and allocated to assist illiterate, blind or disabled voters in terms of regulation 53, 58 and 59;<sup>3)</sup>

- (c) that every election officer is given adequate training and instructions for the effective and efficient performance of his or her duties and responsibilities in terms of these regulations; and<sup>3)</sup>
  - (d) that every election officer is given full and adequate opportunity to read, or where such officer cannot read, to have read to him or her, the Code of Conduct for Election Officers in Schedule 2.<sup>3)</sup>
- (5) In the appointment and designation of election officers the returning officer shall make positive and affirmative endeavours to ensure racial and gender representativity.
- (6) The provisions of this regulation shall apply *mutatis mutandis* to the metropolitan returning officer.
- (7) Election officers appointed in terms of this regulation shall be under the control and carry out the instructions of the returning officer.<sup>3)</sup>
- (8) The returning officer or the presiding officer may in respect of any polling station falling under his or her jurisdiction, management or control :<sup>3)</sup>
- (a) at any time instruct any election officer to stop work or to leave any voting station or place for the counting of votes for such period or periods as such returning officer or presiding officer may specify; and<sup>3)</sup>
  - (b) any such instruction may include a directive to such election officer to report directly or not later than a specified time to another identified voting station or place for the counting of votes or office or official of the transitional authority.<sup>3)</sup>
- 32 (1) The returning officer shall issue to each election officer a certificate of appointment in accordance with applicable form ER6 and such letter of appointment shall :<sup>3)</sup>

- (a) in the case of a presiding officer, be enclosed at the close of voting in envelope ER7 in accordance with regulation 62(3);
  - (b) in the case of a voting officer or other election officer designated to a voting station, be handed for signature to the responsible presiding officer not later than the time at which such voting or other election officer first enters the voting station, and thereafter retained by such voting officer or other election officer until such time as it is required by the presiding officer for enclosure in envelope ER7 in accordance with regulation 62(3);
  - (c) in the case of a counting officer, be handed for signature to the returning officer not later than the time at which such counting officer first enters the place for the counting of votes, and thereafter retained by such counting officer until such time as it is required for enclosure in applicable envelope ER29 in accordance with regulation 72(2)(b); and
  - (d) in the case of any other election officer, be handed for signature to the returning officer at a time and place specified by such returning officer, and thereafter retained by such election officer until such time as it is required by the returning officer or for enclosure in applicable envelope ER29 in accordance with regulation 72(2)(b).
- (2) Every election officer shall, subject to any direction issued by the returning officer, exercise such powers and perform such duties and functions as are conferred and imposed on him or her by these regulations or as may be assigned to him or her by the returning officer.
- (3) (a) Whenever the returning officer is absent or incapacitated or fails or refuses to act the deputy returning officer shall exercise the powers and perform the duties and functions conferred and imposed by law on the returning officer.

- (b) Where two or more deputy returning officers have been designated the returning officer shall at the time of such designation rank them in order of seniority.

Election Officers to be Impartial

- 33 All election officers shall maintain strict impartiality in the exercise of their powers and the performance of their duties and functions and shall by nothing in their actions, demeanour, manner or speech give cause for imputing the contrary.

Agents and Messengers

- 34 (1) Every candidate for a ward in an election and whose name appears on the ballot paper for that voting station may appoint :
  - (a) one general agent to represent or accompany him or her at any such voting station and at the place for the counting of votes;
  - (b) not more than two special agents for each such voting station;
  - (c) one special agent and one messenger to be present at the place for the counting of votes; and
  - (d) one messenger for each such voting station :

Provided that only one agent and one messenger of any candidate shall at the same time be allowed in the voting station and provided further that agents and messengers shall be included on the voters' roll of a transitional authority.

- (2) The provisions of regulation 34(1) shall apply *mutatis mutandis* to every party registered for an election and whose name appears on the ballot paper for that voting station : Provided that any reference to a general agent shall be construed as a reference to a party representative.

- (3) (a) Every candidate and every party in an election shall, at least fourteen working days before election day, advise the returning officer in writing in accordance with applicable form ER8 of the names, if any, of agents and messengers appointed in terms of regulation 34(1).
- (b) The name of any duly appointed agent may be withdrawn or replaced by similar notice to the returning officer not later than noon on the second day before election day.
- (4) Where the same voting station is used for an election in respect of a transitional metropolitan council and a transitional metropolitan substructure, the provisions of this regulation shall be applied separately in respect of each such election.

Declarations<sup>3)</sup>

- 35 (1) Every election officer shall make a declaration in accordance with form ER9A, in the case of :<sup>3)</sup>
  - (a) the returning officer or a deputy returning officer, before a commissioner of oaths;
  - (b) a presiding officer, before the returning officer, a deputy returning officer or a commissioner of oaths; and
  - (c) any other election officer, before the returning officer, a deputy returning officer, a presiding officer or a commissioner of oaths.<sup>3)</sup>
- (2) The declaration contemplated by subregulation (1) shall :
  - (a) in the case of the returning officer, be enclosed in applicable envelope ER29 in accordance with regulation 72(2)(b);

- (b) in the case of a presiding officer, be handed to the returning officer when such presiding officer is supplied with his election material in terms of regulation 40, for enclosure in applicable envelope ER29 in accordance with regulation 72(2)(b);
- (c) in the case of any other election officer and in the case of any person contemplated in subregulation (3), be handed to the returning officer at a time and place specified by such returning officer, for enclosure in applicable envelope ER29 in accordance with regulation 72(2)(b) or, if no time and place is so specified, be handed to :<sup>3)</sup>
  - (i) the presiding officer when such person first enters a voting station, for enclosure in envelope ER7 in accordance with regulation 72(2)(b); or
  - (ii) the returning officer when such person first enters the place for the counting of votes, for enclosure in applicable envelope ER29 in accordance with regulation 72(2)(b).
- (3) Every other person who is entitled to be present in a voting station or the place for the counting of votes otherwise than as a voter or as a police officer on duty, shall make a declaration in accordance with form ER9 before the returning officer, a deputy returning officer, a presiding officer or a commissioner of oaths, which form shall be dealt with in accordance with subregulation (2)(c) above.<sup>3)</sup>



## CHAPTER 8

### PREPARATIONS FOR ELECTION

#### Printing Ballot Papers for Wards

- 36 (1) Immediately after the declaration in terms of regulation 29(4) by the returning officer of the names of candidates whose nomination for election in a ward has been accepted and in respect of whom a vote will be held on election day the returning officer shall cause to be printed in accordance with form ER3(A) for use in an election according to wards, a sufficient number of ballot papers on white paper.
- (2) Each ballot paper printed in terms of regulation 36(1) shall :
- (a) contain the name of each candidate in alphabetical order of the surnames as stated on the nomination forms and, if there are two or more candidates with the same surname, in alphabetical order of their other names; and
  - (b) contain adjacent to the name of each such candidate the distinguishing mark or symbol, if any, of that candidate as displayed in accordance with regulation 29(4)(e); and
  - (c) have the counterfoil numbered with the consecutive number of such counterfoil on the face of the counterfoil.
- (3) A separate series of ballot papers with consecutive numbers on each counterfoil shall be printed for each ward.

#### Printing Ballot Papers for Proportional Representation

- (4) Immediately after the declaration in terms of regulation 26(2) by the returning officer of the names of the parties whose nominations have been accepted and in respect of which a vote will be held on election day :

- (a) the returning officer shall cause to be printed in accordance with form ER3(B) for use in an election according to proportional representation in a transitional local council or transitional metropolitan substructure, as the case may be, a sufficient number of ballot papers on yellow paper; and
  - (b) the metropolitan returning officer shall cause to be printed in accordance with form ER3(B) for use in an election according to proportional representation in a transitional metropolitan council, a sufficient number of ballot papers on green paper.
- (5) Each ballot paper printed in terms of regulation 36(4)(a) and 36(4)(b) shall :
- (a) contain in alphabetical order the names of the parties concerned as stated on the nomination forms and, if there are two or more parties with the same first name, in alphabetical order of their other names and, if there are two or more parties with the same first letter of the alphabet, then in alphabetic order of the second, and if necessary, subsequent letters;
  - (b) contain adjacent to each such name the distinguishing mark or symbol, if any, of that party as displayed in accordance with regulation 26(2)(d); and
  - (c) have a counterfoil numbered from one with the consecutive number of the counterfoil on the face of the counterfoil.
- (6) A separate series of ballot papers with consecutive numbers on each counterfoil shall be printed for each transitional authority.
- (7) For the purposes of regulation 36(5)(a) the starting letter of the alphabet in the alphabetical order shall be determined by the name of the party drawn first

by lot conducted in accordance with regulation 73(1)(b)(i) to (iii) inclusive by the returning officer in the presence of the authorised representatives of not less than half the number of registered parties, or should such number fail to be present after written invitation, in the presence of such representatives who are present plus not less than five independent witnesses invited, if necessary, by the returning officer.

Ballot Boxes

- 37 (1) The returning officer shall before election day provide or cause to be provided a sufficient number of ballot boxes.
- (2) Every ballot box shall :
- (a) have a lid attached thereto with hinges;
  - (b) have an aperture large enough to permit the insertion therein of ballot papers;
  - (c) be so constructed and be made of such material that ballot papers cannot be removed therefrom without opening the lid thereof;
  - (d) be provided with a lock or other device for locking it when closed;
  - (e) be clearly marked on the outside with a number or symbol which is unique to that box and which cannot be readily removed or obliterated; and
  - (f) be clearly and securely marked on the outside in such a manner as to permit independent identification :
    - (i) of the name of the particular transitional authority to which it relates; and

- (ii) of the ward to which it relates; and
- (iii) as a combined ballot box for an election according to wards and according to proportional representation; or
- (iv) as a ballot box exclusive for an election according to proportional representation for a metropolitan transitional council.

Official Mark and Instruments

- 38 (1) The returning officer shall before election day :
- (a) decide on the official mark or marks to be placed on ballot papers;
  - (b) provide a sufficient number of instruments for placing such official mark or marks on ballot papers; and
  - (c) place each instrument in a separate applicable envelope ER10 and seal every such envelope with his official seal before handing it to a presiding officer in terms of regulation 40.
- (2) The returning officer shall not communicate to any person whatsoever any particulars of the official mark or marks decided upon by him.

Fixing of Time and Place of Counting and of Place for Delivery of Election Material

- 39 The returning officer shall before election day :
- (a) determine the place or places, date and time for the counting of votes, which shall commence not later than 09:00 on the day immediately following the election, and give written notice thereof to every candidate, party and general agent;
  - (b) notify each presiding officer on form ER11 of the place or places where ballot boxes and other election material are to be delivered to such returning officer after the closing of voting stations; and

- (c) (i) appoint in writing a deputy returning officer to act on his or her behalf in any case where such returning officer has decided that a place or places for the counting of votes will not be under his or her direct supervision and control; and
- (ii) notify in writing each such deputy returning officer of the place to which the result of the count in accordance with regulation 81 and election material is to be delivered to such returning officer after the completion of counting.

Provision of Election Material

- 40 (1) The returning officer shall not later than 17h00 on the day before election day supply to each presiding officer the following election material for use at his or her voting station :
- (a) a list of the candidates for the ward allocated to such presiding officer;
  - (b) a list of the parties for the election;
  - (c) a list of candidate and party agents and messengers whose names appear in respect of his or her voting station on the applicable form ER8 handed in terms of regulation 34 and in respect of whom a form ER9 has been handed in terms of regulation 35.
  - (d) one copy of the voters' roll or applicable part thereof containing the names of voters entitled to vote at his or her voting station;
  - (e) a copy of these regulations;
  - (f) three copies of each poster referred to in regulation 46;
  - (g) a sufficient number of ballot boxes as required, identified and marked in terms of regulation 37;

- (h) a sufficient supply of ballot papers;
  - (i) a sufficient supply of instruments for placing the official mark on ballot papers each in a separate envelope ER10;
  - (j) one official seal;
  - (k) a sufficient supply of forms, envelopes and labels ER7 and ER12 up to and including applicable form ER25;
  - (l) a sufficient number of pens or pencils for marking ballot papers;
  - (m) a sufficient supply of pencils, pencil sharpeners, rulers, cutting instruments, ink and ink pads, envelopes, sealing wax or other sealing materials, matches, tapers, brown paper, cardboard boxes or containers, bags, sealing tape, string, paste, drawing pins, candles, rope or tape and other materials necessary for maintaining the identity of the inner perimeter of the voting area, and where considered appropriate by the returning officer, one or more functioning, battery operated torch; and
- (2) Each presiding officer shall immediately in the presence of the returning officer enter on the applicable form ER20 the counterfoil numbers of ballot papers received by such presiding officer and shall give a receipt to the returning officer for the election material supplied to him or her in terms of subregulation (1), including thereon the sequence of serial numbers on the counterfoils of the ballot papers received and the numbers or symbols in terms of regulation 37(2)(e) of ballot boxes supplied to him or her and shall retain a duplicate of such receipt signed by the returning officer.
- (3) (a) The metropolitan returning officer shall supply to the returning officer of each transitional metropolitan substructure not later than noon on the day before election day a required number of ballot papers in

accordance with regulations 36(4)(b), (5) and (6), which number shall be specified in writing by such returning officer to the metropolitan returning officer not later than the time of approval and registration of parties in terms of regulation 26.

- (b) Each returning officer shall give to the metropolitan returning officer a receipt including thereon the sequence of serial numbers on the counterfoils of the ballot papers supplied to him or her in terms of subregulation (3)(a) and shall retain a duplicate of such receipt signed by the metropolitan returning officer.

## CHAPTER 9

### CONTROL, PREPARATION AND OPENING OF VOTING STATION

#### Voting Areas

41 (1) A voting area shall comprise :

- (a) a voting station being a place designated by the returning officer within which a voter shall be allowed to cast his or her vote;
- (b) an inner perimeter around the voting station bounded by a circumference with a radius of 500 metres, or such shape or lesser radius or area as practical circumstances may necessitate, so designated and with boundaries clearly demarcated by the returning officer :
  - (i) within which persons shall be allowed for the purposes of voting;

- (ii) within which all political activity other than voting shall be prohibited;
  - (iii) from which persons other than those provided for in regulation 42(1), (2) and (3) shall be excluded; and
- (c) a controlled area around the voting station bounded by a circumference with a radius of 1 000 metres, or such shape or lesser radius or area as practical circumstances may necessitate, so designated by the returning officer in respect of which a presiding officer may prohibit all political activity other than voting.
- (2) For the purposes of subregulation (1)(b)(ii), political activity includes :
- (a) the wearing or display of any armlet or rosette designed or intended to identify a particular person with a particular party or symbol;
  - (b) the display or distribution of any poster, placard, banner, pamphlet, circular or letter intended or calculated to influence a voter to vote for a specific candidate or party;
  - (c) the making of any announcement, delivery of any speech or reading aloud any speech, article or letter intended or calculated to influence a voter to vote for a specific candidate or party; and
  - (d) canvassing of support for any candidate or party;
- (3) (a) The returning officer shall subject to the provisions of these regulations determine the number and location of voting stations within each ward having due regard to the number of voters, accessibility, security, availability of suitable premises and other relevant factors influencing the successful and proper conduct of the election.



- (b) Not less than one voting station shall be determined for each ward or for each part of a ward.
- (c) In the absence of specific or general written authorisation to the contrary by the Premier :
  - (i) no voting station in a ward delimited in terms of regulation 16(1)(b) shall be allocated part of the voters' roll comprising more than 2 500 enrolled voters; and
  - (ii) no voting station in a ward delimited in terms of regulation 16(1)(a) shall be allocated part of the voters' roll comprising more than 4 000 enrolled voters.
- (4) The returning officer for a transitional metropolitan substructure shall ensure that every voting station is designated and used for the purposes of an election for a transitional metropolitan substructure and a transitional metropolitan council.
- (5) The returning officer shall ensure compliance with the provisions of regulation 3(6).
- (6) Not later than 12 September 1995 each returning officer shall publish a list of voting stations and their addresses and shall maintain a copy of such list at a place or places determined by him or her or by the election committee contemplated in regulation 90 for public information until the day after election day : Provided that after consultation at his or her request with such election committee such list may be added to by the returning officer and published and maintained in like manner not later than 22 September 1995.<sup>2)</sup>
- (7) The Premier may not later than 22 September 1995 direct the returning officer to increase the number or the locality of voting stations referred to in subregulation (3).<sup>2)</sup>

Certain Powers in Respect of Voting Area

- (8) The presiding officer appointed to a voting station shall have the power to :
- (a) take such steps and give such directions as may be necessary for the orderly conduct of voting and the effectual conduct of the election and compliance with these regulations, including control of the number of voters to be admitted at a time to the voting station and the inner perimeter; and
  - (b) exclude or evict from the voting station and the inner perimeter all persons except those permitted in terms of regulation 42.
- (9) Subject to regulation 42, no person shall enter or remain in a voting station or inner perimeter without the permission of the presiding officer.
- (10) The presiding officer shall take all reasonable steps for the protection of persons and property and for preventing any violence or disturbance in the voting area.
- (11) The powers conferred by subregulation (8), (9) and (10) shall not be so exercised as to prevent any person who is entitled to vote from having an opportunity to cast his or her vote.
- (12) The provisions of this regulation shall not be construed as limiting any powers, duties and functions conferred or imposed on the presiding officer by any other regulation.

Persons Who May Enter Voting Stations

- 42 (1) Only the following persons may enter a voting station or inner perimeter designated in terms of regulations 41(1)(a) and (b) :
- (a) the returning officer;
  - (b) duly appointed election officers;

- (c) police officers on duty;
  - (d) the candidates;
  - (e) any person whose name appears in respect of such voting station in the list referred to in regulation 40(1)(c); and
  - (f) voters for the purpose of voting at such voting station; or
  - (g) a person permitted to do so for the purposes of regulation 58(1).
- (2) Only persons referred to in subregulation 1(a) to (e) inclusive may enter a voting station before the time at which voting is due to commence or remain therein after the close of voting.
- (3) Notwithstanding the provisions of this regulation the returning officer may in writing authorise other named or specific persons with specific responsibilities to enter a voting station or an inner perimeter of such station on such terms as such officer may deem necessary or appropriate.
- (4) All persons entitled or authorised to enter a voting station or inner perimeter including police officers on duty, candidates and agents, shall be subject to the authority, control and directives of the presiding officer.

Equipment and Furniture for Voting Stations

- 43 (1) The returning officer shall ensure that the following equipment and furniture is provided within each voting station before the time at which voting is due to start :
- (a) sufficient number of tables and chairs for election officers and in the opinion of the returning officer a reasonable number of tables and chairs for common use by agents of the candidates and parties; and<sup>1)</sup>

- (b) sufficient number of voting compartments each with a writing surface;  
and
  - (c) ballot boxes in terms of regulation 40(1)(g).
- (2) The returning officer shall not provide equipment or furniture outside the voting station to any candidate, party or agent.

Arrangement Within a Voting Station

- 44 (1) Each voting station shall be arranged in such a manner that :
- (a) at the entrance to the voting station and/or inner perimeter there shall be one or more election officers to check that each person wishing to enter the voting station and/or inner perimeter is in possession of an identity document; and
  - (b) thereafter, upon admission to the voting station, the voter shall first be directed to an adjacent place where ballot papers can be issued for the election of councillors in wards and for the election of councillors according to proportional representation for a transitional local council or transitional metropolitan substructure, as the case may be, and where the vote for such election shall be cast and deposited by the voter; and
  - (c) thereafter, subject to the provisions of regulation 44(3), the voter shall be directed to an adjacent exit separated from the entrance; and
  - (d) there shall be one or more election officers or police officers on duty at such exit to ensure that no person shall enter through such exit.
- (2) Where a person referred to in subregulation 44(1)(a) does not produce the identity document required in terms thereof, such person shall not be permitted to enter the voting station or, if entry has been made, shall be escorted

directly out of the voting station from the exit by an election officer or police officer on duty.

(3) Where the election for a transitional metropolitan council is conducted within the same voting station as the election for a transitional metropolitan substructure :

(a) a voter who has cast a vote in terms of regulation 44(1)(b) shall thereafter be referred directly to the place in regulation 44(3)(b);

(b) the place where a ballot paper shall be issued and the vote shall be cast and deposited by the voter for such transitional metropolitan council election, shall be clearly separated from and subsequent to the place referred to in regulation 44(1)(b), but situated in a position before the exit referred to in regulation 44(1)(c); and

(c) all election material referred to in regulation 40 and issued in respect of such transitional metropolitan council, shall at all times be kept and maintained separate by the presiding officer from any other election material in such voting station until taken into custody by the relevant authorised returning officer;

#### Voting Hours and Arrival at Voting Station

45 (1) The hours of voting shall be from 07:00 to 22:00 on election day;

(2) The presiding officer, voting officers and any other election officer who is specifically directed thereto by the returning officer, shall be in the voting station at least sixty minutes before the time at which voting is due to start.

#### Poster Outside Voting Station

46 The presiding officer shall, before voting is due to commence, place in a conspicuous position outside the voting station :

- (1) poster ER14(A) stating that it is a voting station for the election, the hours of voting, the name of the transitional authority, the ward and voting station for which voting according to wards will take place; and
- (2) where applicable, poster ER14(B) stating that it is a voting station for the election, the hours of voting, and the name of the transitional metropolitan council, ward and voting station for which voting according to proportional representation will take place; and
- (3) poster ER13 stating that smoking or the lighting of matches or lighters is prohibited in the voting station.

#### Preparation of Voting Compartments

47 The presiding officer shall, before voting is due to commence :

- (a) arrange each voting compartment so that no person can :
  - (i) enter or leave it without being seen by the presiding officer or other election officer deputed thereto by him; or
  - (ii) observe how any person casts a vote;
- (b) affix form ER12(A) and (B) inside each voting compartment in a position facing a voter who may enter such compartment; and
- (c) attach a pen or properly sharpened pencil by means of string to the writing surface in each compartment.

#### Sealing of Ballot Boxes

- 48 (1) The presiding officer shall, before voting is due to start but not more than thirty minutes before such time :

- (a) ensure and confirm that all the ballot boxes have been provided in terms of regulation 43(1)(c) and are marked in accordance with regulation 37(2)(e) and (f);
  - (b) show persons present inside the voting station that each ballot box is empty;
  - (c) close and lock each ballot box;
  - (d) secure the lid of each ballot box firmly and with sealing wax impressed with his or her seal, seal each ballot box and seal the key, if any, to the side of the box in such a manner that such lid cannot be opened nor such key removed without the seal being broken or damaged; and
  - (e) permit the candidates or the agents present to affix their seals to all or any ballot boxes if they so desire.
- (2) In the event of additional ballot boxes being delivered thereafter to the voting station and being accepted by the presiding officer, the procedure set out in regulation 48(1)(a) to (e) inclusive shall be followed immediately upon such delivery and the presiding officer shall temporarily close the voting station for such limited period as may be reasonably required to comply therewith.
- (3) After the ballot boxes have been sealed they shall not :
- (a) be opened except as provided for in regulation 69; or
  - (b) be removed from the voting station except as provided for in regulation 63(1).
- (4) The presiding officer shall place each ballot box in a conspicuous position where it can at all times be seen by him or her or by any other election officer deputed thereto by him.

Opening of Voting Station and Official Mark Envelopes

- 49 (1) The presiding officer shall ensure that the voting station is opened at the time at which voting is due to start.
- (2) The presiding officer shall, at the time when voting is due to start, open only as many envelopes containing instruments for placing the official mark on ballot papers as may be necessary for the vote.

CHAPTER 10

CONDUCT OF VOTE

Periodic Inspection of Voting Station and Voting Compartments

- 50 (1) The presiding officer shall periodically during the course of the election cause the voting station to be inspected to ensure that the provisions of these regulations are being complied with and that :
- (a) the posters referred to in regulation 46 are still in position and have not been damaged or defaced;
  - (b) the voting compartments are still arranged as required by regulation 47(a); and
  - (c) the ballot boxes are still in the position required by regulation 48(4).
- (2) The presiding officer shall periodically during the course of the election cause each voting compartment to be inspected when it is not occupied to ensure that :



- (a) the form ER12(A) and (B) is still in position and has not been damaged or defaced;
  - (b) a pen or properly sharpened pencil is still attached to the writing surface; and
  - (c) no other notice, paper sign, writing or symbol is in such voting compartment.
- (3) The presiding officer shall periodically during the course of the election cause the inner perimeter to be inspected to ensure that the provisions of these regulations are being complied with and that the boundaries of such inner perimeter are correctly and clearly demarcated.

#### Admission to Voting Compartments

- 51 Subject to the provisions of regulations 50(2) and 58, no person other than a voter wishing to vote shall enter a voting compartment and not more than one voter shall be in a voting compartment at any one time.

#### Interference with Voters

- 52 No person shall, except as provided in these regulations, approach, interfere with, speak to or assist a voter from the time such voter has been issued with a ballot paper or papers to the time such voter has inserted such ballot paper or papers into the appropriate ballot box or boxes.

#### Questions to Voters

- 53 (1) The presiding officer may, and if so requested by any candidate or agent, shall put to a person applying for a ballot paper the questions set out in form ER15 in the presence of not less than two candidates or agents, and where the presiding officer deems it appropriate may explain the import and content of form ER15.

- (2) The presiding officer may at his discretion record on form ER15 the answers of the person concerned and require such person to make and sign or mark the declaration.
- (3) No person contemplated by subregulation (1) shall be permitted to vote unless he or she answers the first question distinctly and absolutely in the affirmative and the second and third questions distinctly and absolutely in the negative and, when so required by the presiding officer, makes and signs or marks the declaration with his or her mark.
- (4) No enquiry other than that contemplated by subregulation (1) shall be made at any casting of a vote as to the right of any person to vote.<sup>1)</sup>
- (5) Where a person referred to in regulation 53(1) refuses or fails to answer a question or make and sign or mark a declaration as required in regulation 53(3) such person may be directed by the presiding officer to leave the voting station and shall thereupon be escorted directly out of the voting station from the exit by an election officer or police officer on duty.
- (6) When a person applies to an election officer for a ballot paper in the name of a particular voter and a line has already been drawn through the name and number of the voter concerned in the voters' roll or such election officer has reason to believe that a ballot paper has already been issued in such name, the presiding officer shall put to the person applying for the ballot paper the questions set out in form ER15, record on form ER15 the number of the counterfoil of any ballot paper issued and the answers of the person concerned, and require such person to make and sign the declaration, and the provisions of subregulations (3) to (5) inclusive shall apply *mutatis mutandis*.<sup>1)</sup>

#### Issue of Ballot Papers

- 54 (1) An election officer to whom a person applies for a ballot paper, shall request the person to display his identity document and to state his name and address, and shall satisfy himself that :

- (a) in the case of a ballot paper for the election of councillors in wards, such person's name appears in the voters' roll for that voting station;
  - (b) in the case of a ballot paper for the election of councillors according to the system of proportional representation, such person's name appears in the voters' roll for that voting station for the applicable transitional authority; and
  - (c) a ballot paper of the kind for which application is being made, has not already been issued at that voting station in the name of the voter concerned.
- (2) If an election officer is satisfied in terms of regulation 54(1), or if the presiding officer so directs, the election officer shall in the case of each ballot paper :
- (a) call out the serial number and name of the voter concerned as stated in the voters' roll;
  - (b) enter such number on the counterfoil of the ballot paper;
  - (c) draw a line through the name and number of the voter concerned in the voters' roll to indicate :
    - (i) that a ballot paper has been issued in such name; or
    - (ii) where a single voters' roll is used for the issue of a ballot paper for the election of councillors in wards and for the issue of a ballot paper for the election of councillors according to a system of proportional representation for a transitional local council or transitional metropolitan substructure, that two ballot papers have been issued in such name;

- (d) tear out each such ballot paper and mark it with the official mark in the space provided on the back thereof;
- (e) fold each such ballot paper once lengthwise and then once crosswise so that the official mark is on the outside; and
- (f) unfold each such ballot paper and hand it to the appropriate voter.

Assistance to Voters by Election Officers

55 An election officer may :

- (a) direct a voter to a voting compartment or to a subsequent ballot table;
- (b) inform a voter that directions for guidance are posted inside the voting compartment;
- (c) in any case deemed appropriate by him or her inform a voter that such voter may request assistance by an election officer referred to in regulation 31(4) or assistance in terms of regulation 58 and direct such voter to such officer;
- (d) instruct a voter where to deposit ballot papers after such voter has exercised his vote; or
- (e) direct a voter to the exit of the voting station after such voter has completed the voting process.

Marking and Disposal of Ballot Papers

56 (1) A voter to whom a ballot paper or papers has been issued shall :

- (a) immediately proceed to an unoccupied voting compartment;
- (b) when inside such compartment without delay secretly place a cross or clear mark of intention by means of mark or writing other than a cross

on the ballot paper in the square opposite the name and symbol of the candidate for whom he or she wishes to vote in a ward election, and on the ballot paper in the square opposite the name and symbol of the party for which he or she wishes to vote in the election according to proportional representation;

- (c) fold the ballot papers so that the official mark is on the outside;
  - (d) show the official mark on the ballot paper or papers to the presiding officer or to any other election officer deputed thereto by such presiding officer and put such ballot paper or papers in the appropriate ballot box; and
  - (e) immediately leave the voting station through the exit.
- (2) No ballot paper shall be removed from the voting station except as provided in regulation 63(1).

Inspection of Ballot papers and Ballot Papers without Official Mark

- 57 (1) If an election officer has any doubt whether a ballot paper in the possession of any person is a ballot paper duly issued to such person, such election officer may require such person to show him or her the back of such ballot paper in order that the official mark thereon may be seen.
- (2) The presiding officer shall cause the official mark to be placed on any ballot paper from which it has been omitted if he or she is satisfied that such ballot paper was otherwise properly issued and has not yet been inserted in the ballot box.

Illiterate, Blind or Disabled Voters

- 58 (1) Upon request to the presiding officer by a voter :

- (a) who is unable to obtain a ballot paper in the manner contemplated by regulation 54 or is unable to vote in the manner contemplated by regulation 56 by reason of such voter being illiterate, blind, infirm or otherwise physically disabled; and
- (b) who is accompanied or assisted by another person who has attained or who in the opinion of the presiding officer, appears to have attained the age of eighteen years,

the presiding officer shall, if he or she is satisfied that such voter so desires, grant permission to such voter to obtain a ballot paper or papers and vote with the aid and in the presence of such other person only, and, in such event, everything done by such other person at the request or with the express or implied consent of the voter in connection with the exercising of the vote of the voter concerned, shall be deemed to have been done by such voter.

- (2) If any voter is unable to obtain a ballot paper in the manner contemplated by regulation 54 or is unable to vote in the manner contemplated by regulation 56 by reason of such voter being illiterate, blind, infirm or otherwise physically disabled, and, if an application has not been made in terms of regulation 58(1), the presiding officer or his duly authorised representative shall, at the request of such voter and in the presence only of not less than two agents as may be present :

- (a) obtain a ballot paper or papers in terms of regulation 54 for such voter;
- (b) mark the vote of such voter on the ballot paper or papers in the manner directed by such voter;
- (c) fold such ballot paper or papers as required by these regulations; and
- (d) put such ballot paper or papers in the appropriate ballot box.

- (3) Everything done by an officer in terms of subregulation (2) at the request or with the express or implied consent of the voter in connection with the exercising of the vote of the voter concerned shall be deemed to have been done by such voter.

Objection to Voter

- 59 (1) Any candidate, candidate's agent or voter may, by declaration on oath or affirmation made in accordance with form ER16 before the presiding officer, object to a person in the voting station exercising any vote on the grounds that such person is not the voter in whose name such person has applied for or been issued with ballot papers.
- (2) The presiding officer shall forthwith :
  - (a) read the declaration contemplated by subregulation (1) to the person exercising or attempting to exercise the vote; and
  - (b) request such person to make a declaration on oath in accordance with the form ER17 before the presiding officer; and
  - (c) where the presiding officer deems it appropriate may explain the import and content of form ER16 and ER17.
- (3) If the person exercising or attempting to exercise the vote makes the declaration contemplated by subregulation (2)(b) immediately after being requested to do so in terms of the said subregulation, the presiding officer shall permit such person to exercise his vote in accordance with these regulations.
- (4) If the person exercising or attempting to exercise the vote refuses to make the declaration contemplated by subregulation (2)(b) immediately after being requested to do so in terms of the said subregulation, the presiding officer shall

prohibit the issue of any ballot paper to such person or, if a ballot paper or papers have already been issued to such person but have not yet been disposed of as provided in regulation 56(1)(d), impound and cancel such ballot papers or papers and endorse thereon and on the counterfoils thereof the reason for such cancellation.

- (5) The presiding officer shall set aside all declarations contemplated by subregulations (1) and (3) and all ballot papers impounded and cancelled in terms of subregulation (4), in the applicable envelope ER18.
- (6) The presiding officer shall administer any oath contemplated by this regulation.

Spoilt Ballot Papers

60 (1) If any voter spoils a ballot paper he or she may return it to the presiding officer who shall, if he or she is satisfied that such ballot paper was inadvertently spoilt, issue to such voter a fresh ballot paper.

(2) The presiding officer shall, if he or she issues a fresh ballot paper :

(a) cancel the spoilt ballot paper and :

(i) endorse on the applicable voters' roll next to the name of the voter that such ballot paper has been cancelled and that a fresh ballot paper has been issued; and

(ii) endorse on the spoilt ballot paper the number of the fresh ballot paper counterfoil in the following manner :

"See fresh counterfoil No....."

and

(b) set aside the spoilt ballot paper in the applicable envelope ER18.



## CHAPTER 11

### CLOSE OF VOTING AND MAKING UP AND DELIVERY OF ELECTION MATERIAL

#### Close of Voting

- 61 (1) The presiding officer shall ensure that :
- (a) the doors of the voting station are closed at the time at which voting is due to close, save and except to such persons who are at the time of closing within the inner perimeter of the voting area as described in regulation 41(1)(b); and
  - (b) no person is admitted into the voting station after the time at which voting closes, save and except such persons who are at the time of closing within the inner perimeter of the voting area as described in regulation 41(1)(b).
- (2) The presiding officer shall permit every person who is inside such inner perimeter at the time when voting closes and who is entitled to vote, to exercise his rights to vote.

#### Making up of Election Material

- 62 (1) The presiding officer shall, in the presence of the persons present in the voting station and immediately after every person contemplated by regulation 61(2) has exercised his or her vote :
- (a) close the aperture in every ballot box;
  - (b) seal every such closed aperture with his official seal;
  - (c) seal any locking device, or tie and seal any key to the box, in such a manner that it cannot be used to open the box without breaking such seal;

- (d) permit candidates or agents each to affix a seal to any such aperture if so desired;
  - (e) complete and sign applicable form ER20;
  - (f) separate the counterfoils of the used ballot papers from unused ballot papers and their counterfoils and for this purpose divide any partly used ballot paper book into two.
- (2) The presiding officer shall then, in the presence of the persons present in the voting station, enclose the material specified in the first column of the following Table in the applicable envelopes specified in the second column of the said Table and paste or tie or otherwise deal with each envelope so that it is securely closed :

TABLE		
MATERIAL		ENVELOPE
(a)	Forms ER6 and ER9	ER7
(b)	Forms ER15, ER16 and ER17 plus impounded, spoilt and cancelled ballot papers	ER18
(c)	Unused ballot papers and counterfoils	ER19
(d)	Counterfoils of used ballot papers	
(e)	Marked copies of the voter's roll	
(f)	Form ER20	ER21
(g)	Instruments for marking ballot papers with official mark	ER25

- (3) The presiding officer shall thereupon, in the presence of the persons present in the voting station :
- (a) seal envelope ER7, applicable envelopes ER18, ER19, ER21, and ER25 with his official seal and permit the candidates or agents each to affix a seal thereto if so desired;

- (b) retain applicable envelopes ER21 and ER25 separately;
  - (c) enclose envelope ER7, applicable envelopes ER18 and ER19 in the single bag or container supplied for this purpose, affix applicable label ER23 thereto and seal such single bag or container with his official seal and permit the candidates or candidates' agents each to affix a seal thereto if so desires; and<sup>1)</sup>
  - (d) thereafter enclose his official seal in applicable envelope ER24 paste down the flap of such envelope so that it is securely closed and sign such envelope.
- (4) The presiding officer shall securely enclose all remaining unused stationery, forms, cutting instruments, sealing wax and similar election material in the single box or container supplied for this purpose and affix applicable label ER22 thereto.
- (5) In the election for a transitional metropolitan council and a transitional metropolitan substructure, the provision of regulation 62(1), (2), (3) and (4) shall be applied by the presiding officer separately, and, if appropriate, consecutively, in respect of such council and such substructure.<sup>1)</sup>

Delivery of Election Material to Returning Officer

- 63 (1) The presiding officer shall, immediately after complying with the provisions of regulation 62 remove from the voting station and deliver and accompany all ballot boxes and materials included with applicable form ER21, ER22, ER23, ER24 and ER25 into the hands of the returning officer or deputy returning officer at the place fixed in terms of regulations 39(a) and 39(b).<sup>1)</sup>
- (2) The presiding officer shall, without prejudice to his or her obligations in terms of subregulation (1), permit such candidates and agents who are immediately available and ready, to follow him or her to the place fixed in terms of regulations 39(a) and 39(b).<sup>1)</sup>

- (3) The returning officer or deputy returning officer shall be present at the place fixed in terms of regulations 39(a) and 39(b) from the time at which voting stations are due to close and shall issue a receipt to the presiding officer for the election material contemplated by subregulation (1), including a statement of the numbers or symbols of ballot boxes in terms of regulation 37(2)(e), which shall be compared by both such officers with the receipt issued under regulation 40(2) and in respect of which any discrepancy shall be noted and signed by both such officers.<sup>1)</sup>

## CHAPTER 12

### COUNTING OF VOTES AND DECLARATION OF RESULT

#### Control of Place for the Counting of Votes

- 64 (1) (a) The returning officer shall be in charge of the place for the counting of votes and shall take such steps and give such directions to persons present therein as may be necessary for the proper conduct of the count.
- (b) The returning officer shall have the power to exclude or evict from the place for the counting of votes all persons except those permitted in terms of subregulation (2).
- (c) Subject to subregulation (2) no person shall enter or remain in a place for the counting of votes without the permission of the returning officer.
- (d) The provisions of this subregulation shall not be construed as limiting any powers, duties and functions conferred or imposed on the returning officer by any other provision of these regulations.

- (2) Only the following persons may be present in the place for the counting of votes :
- (a) the returning officer;
  - (b) the presiding officer or officers;
  - (c) election officers duly appointed for the counting of votes;
  - (d) police officers on duty;
  - (e) every candidate for a ward;
  - (f) any person whose name appears as an agent to be present at the counting of votes in terms of regulation 34(1)(a) and (c) on a form ER8 duly surrendered in terms of regulation 35(2)(c) and in respect of whom a form ER9 has been duly surrendered in terms of regulation 35(2)(c);  
and
  - (g) persons delivering ballot boxes and other election material in terms of regulation 63.
- (3) Notwithstanding the provisions of this regulation the returning officer may in writing authorise other named or specific persons with specific responsibilities to enter a place for the counting of votes on such terms as such officer may deem necessary or appropriate.
- (4) Without derogating from the generality of the foregoing all persons entitled or authorised to enter a place for the counting of votes including police officers on duty, candidates and agents shall be subject to the authority, control and directives of the returning officer.

Requisites for the Counting of Votes

- 65 The returning officer shall take into the place for the counting of votes :
- (a) a copy of the Act; the Constitution; the Electoral Act, 1993 (Act 202 of 1993); and these regulations;
  - (b) his or her official seal;<sup>1)</sup>
  - (c) sufficient copies of applicable forms ER26 to ER31 inclusive; and
  - (d) the applicable receipt or receipts issued in terms of regulation 40(2); and
  - (e) sealing wax or other sealing materials, matches, tapers, candles, pencils, pencil sharpeners, paper, brown paper, bags, cardboard boxes, string, paste and cutting instruments.

Counting

- 66 (1) In the conduct of counting for an election for a transitional local council or transitional metropolitan substructure, the provisions of regulations 68 to 72 inclusive shall be complied with separately :
- (a) in respect of ballot papers from each ward and from each voting station within each ward; and
  - (b) in respect of ballot papers for the election of councillors by wards and ballot papers for the election according to proportional representation from each such ward voting station referred to in paragraph (a).
- (2) In the conduct of counting for an election for a transitional metropolitan council the provisions of regulations 68 to 72 inclusive shall be complied with separately in respect of each metropolitan voting station and each metropolitan voting sub-station if any.

- (3) The returning officer shall not commence the counting of votes for any ward or voting station until the ballot boxes and all other election material from all voting stations, if any, from such ward have been delivered to him or her.<sup>1)</sup>

Duties and Functions of Counting Officers

- 67 The returning officer may direct any election officer to perform under his or her control one or more duties and functions imposed by these regulations.<sup>1)</sup>

Checking of Election Material

- 68 The returning officer shall deal separately with the election material received from each ward as follows :

- (a) Open applicable envelope ER24 containing the official seal used by the presiding officer.
- (b) With such candidates or agents as may desire to do so, examine the ballot boxes, applicable envelopes ER21 and ER25 referred to in regulation 62(3)(a), and the parcel under applicable label ER23 in order to ascertain whether the seals and fastenings are intact.
- (c) Make a record of any seals or fastenings which are not intact.
- (d)
  - (i) Open applicable envelope ER21 containing the applicable form ER20;
  - (ii) Compare the counterfoil numbers of ballot papers entered on such form ER20 with the statement on the receipt of counterfoil numbers made in terms of regulation 40(2);
  - (iii) Note and endorse the result of such comparison with his or her signature on such form ER20 and display the result to such agents or candidates who may be present; and
  - (iv) Proceed forthwith to comply with the next provisions of these regulations.

Procedure for Counting Votes

69 After compliance with the provisions of regulation 68, the returning officer shall open and empty each ballot box and :

- (1) in the case of an election for a transitional metropolitan substructure or a transitional local council, first separate the ballot papers into those for the election according to wards and those for the election according to proportional representation; and thereafter
- (2) (a) set apart any material therefrom which is not a ballot paper, and including any ballot paper which on the face of it, should have been inserted in another ballot box to be dealt with in terms of regulation 71;
- (b) unfold the ballot papers and place them with their backs upwards;
- (c) set apart all such ballot papers as do not bear the official mark to be dealt with in terms of regulation 71;
- (d) count with their backs upwards the number of all such ballot papers, compare the total so counted with the total as reflected on the applicable form ER20;
- (e) note and endorse with his or her signature on the applicable form ER20 the comparison of totals in terms of subparagraph (d); and display the result to such agents or candidates who may be present; and
- (f) proceed forthwith to comply with the next provisions of these regulations.

Counting of Votes

- 70 (1) The returning officer shall, after the provisions of regulations 69 have been complied with, deal as follows with the ballot papers for the ward concerned, which have not been set apart in terms of regulation 69(2)(a) and (c) :



- (a) Turn all such ballot papers face upwards;
  - (b) Set apart to be dealt with in terms of regulation 71 all such ballot papers which :
    - (i) give votes for more candidates than the number of vacancies, or for more than one party;
    - (ii) are unmarked; or
    - (iii) are ambiguous or doubtful as regards the vote or votes marked thereon; or
    - (iv) are otherwise subject to rejection in terms of regulation 71(1).
  - (c) In respect of ballot papers not set apart in terms of paragraph (b) count the votes given for :
    - (i) each candidate in the case of the election for councillors for wards; and
    - (ii) each party in the case of the election for proportional representation.
- (2) After the ballot papers have been turned face upwards in terms of subregulation (1)(a) they shall be kept face upwards.

Returning Officer to Decide on Ballot Papers Set Apart

- 71 (1) The returning officer shall, with such candidates or agents as may desire to do so, scrutinise every ballot paper set apart in terms of regulations 69(2)(a) and (c), or 70(1)(b) and shall, after considering the submissions made by any such candidate or agent, reject and not count any ballot paper which :

- (a) does not bear the official mark;
  - (b) gives votes for more candidates than the number of vacancies, or for more than one party;
  - (c) is unmarked;
  - (d) contains a vote which is void because it is so marked that the returning officer cannot determine for which candidate or candidates or party the vote or votes was cast;
  - (e) is a ballot paper for another election; or
  - (f) on a balance of probability was not issued in the voting station concerned.
- (2) The returning officer shall not reject any ballot paper merely because there is thereon a mark other than a cross, or writing, or a signature.
- (3) The returning officer shall endorse :
- (a) the word "rejected" on every ballot paper rejected by him or her in terms of subregulation (1); and
  - (b) the words "rejection objected to" or "acceptance objected to", as the case may be, on every ballot paper in respect of which a candidate or agent objects to his decision.
- (4) The returning officer shall ensure that the votes counted in terms of regulation 70(1)(c) are adjusted by the addition of any vote which has been accepted by the returning officer in terms of this regulation, whether or not the acceptance of the ballot paper concerned has been objected to.

## CHAPTER 13

### DETERMINATION OF RESULT

#### VOTING ACCORDING TO WARDS

##### Declaration of Result : Wards

73 (1) The returning officer shall, immediately after the provisions of regulation 72 (1) to (3) inclusive have been complied with :<sup>2)</sup>

(a) ascertain which candidate or candidates has or have been elected by a majority of votes;

(b) in the event of the number of votes for two or more candidates being equal, determine by lot which of such candidates shall be elected in the following manner :

(i) record the names of the candidates, for whom there was an equality of votes, on separate pieces of paper of the same size, shape and appearance, fold them so that they look identical and place them in an empty ballot box in the presence of the candidates or their agents;

(ii) close the ballot box and shake it and without looking therein draw one of the pieces of paper from the ballot box and, in the presence of the candidates or their agents, show such piece of paper to the candidates or their agents and sign such piece of paper;

(iii) announce the name of the candidate whose name appears on such piece of paper.

- (c) complete applicable form ER26;
  - (d) declare the result of the election outside the place where the votes were counted or some other place as he or she may by notice in the press have designated by announcing the ward, the number of votes for each candidate in that ward, and the candidate or candidates duly elected; and
  - (e) in any instance where the returning officer is not the chief executive, deliver a certified copy of completed applicable form ER26 to the chief executive.
- (2) The returning officer shall post a copy of the completed applicable form ER26 at the office or offices of the relevant transitional authority not later than two days after the declaration of the result and shall serve a copy thereof on the Premier not later than seven days after the declaration of the result.
  - (3) The returning officer shall not later than seven days after the declaration referred to in subregulation (1)(d) publish or cause to be published the name and applicable ward of every candidate elected.

#### VOTING ACCORDING TO PROPORTIONAL REPRESENTATION

##### TRANSITIONAL LOCAL COUNCIL OR TRANSITIONAL METROPOLITAN SUBSTRUCTURE

##### Determining the Quota

- 74 (1) The returning officer shall, for the purpose of determining the result according to proportional representation, take into account the results of proportional

representation voting in respect of the transitional local council or transitional metropolitan substructure as the case may be.

- (2) The quota of votes per seat shall be determined by dividing the total number of votes cast by the number of seats to be filled by proportional representation, plus one, and the result, plus one, disregarding fractions, shall be the quota of votes per seat.

Allocating Seats

- 75 (1) The total number of votes cast in favour of a party shall be divided by the quota of votes per seat and the result shall, subject to subregulation (2), determine the number of seats allocated to that party.
- (2) Where the calculation in subregulation (1) yields a surplus, such surplus shall compete with similar surpluses accruing to any other party or parties and any undistributed seat or seats shall be awarded to the party or parties concerned in sequence of the highest surplus.
- (3) The representatives of a party shall, according to the number of seats determined for such party in terms of subregulations (1) and (2) be taken from the list of the aforesaid party in the order in which they are stated on such list.
- (4) In the case of a list containing fewer candidates than a party is entitled to, that party :
  - (a) shall be allocated the number of representatives on its list; and
  - (b) shall forfeit its entitlement to any further representation in excess of the representation so allocated.
- (5) In the event of a party forfeiting its entitlement to representation in terms of subregulation (4) :

- (a) a new quota shall be determined on the following basis :
    - (i) the total number of votes cast, minus those votes cast for all parties referred to in subsection (4), shall be divided by the remaining number of seats, plus one, still to be allocated to the other parties; and
    - (ii) the result, plus one, disregarding fractions, shall be the new quota.
  - (b) a new determination of the allocation of representatives in respect of such other parties shall then *mutatis mutandis* be made as provided for in subregulations (1), (2) and (3) respectively
- (6) In the event of a party being entitled to an additional number of representatives in terms of the provisions of subregulation (5), and its list of candidates not containing a sufficient number of candidates, the process provided in subregulations (4) and (5) shall be repeated until all representatives have been allocated to a vacant seat.
- (7) (a) Any candidate elected to represent a ward of a transitional local council or a transitional metropolitan substructure shall be disqualified with effect from 22:00 on election day from being designated as a party representative in terms of regulation 82(a) or from being elected according to the system of proportional representation for the same transitional local council or transitional metropolitan substructure.<sup>1)</sup>
- (b) The returning officer shall for the purposes of subregulations (1) to (6) inclusive and regulation 76, deal with any such disqualified candidate as if his or her name were not on the list of party candidates.
- 76 (1) The returning officer shall, immediately after the provisions of regulation 75 have been complied with :<sup>2)</sup>

- (a) ascertain which person or persons has or have been elected in accordance with the system of proportional representation;
  - (b) complete applicable forms ER26;
  - (c) declare the result of the election outside the place where the votes were counted or some other place as he or she may by notice in the press have designated by announcing the number of votes for each party and the persons from the party lists who have been duly elected in terms of these regulations; and
  - (d) in any instance where the returning officer is not the chief executive, deliver a certified copy of completed applicable forms ER26 to the chief executive.
- (2) The returning officer shall post a copy of the completed applicable form ER26 at the office or offices of the relevant transitional authority not later than two days after the declaration of the result and shall serve a copy thereof on the Premier not later than seven days after the declaration of the result.
- (3) The returning officer shall not later than seven days after the declaration referred to in subregulation (1)(c) publish or cause to be published the name and applicable party of every candidate elected.

#### TRANSITIONAL METROPOLITAN COUNCIL

#### DETERMINING VOTING AND THE QUOTA

##### Transmittal and Receipt of Counting Totals

- 77 (1) In the case of an election in respect of proportional representation for a transitional metropolitan council, the returning officer shall, after the

provisions of regulation 72 or 81 have been complied with, announce the result of such count outside the place specified in terms of regulation 39 by announcing the total number of votes for each party in his area of jurisdiction.

- (2) The returning officer shall, after compliance with the provisions of regulation 77(1), immediately deliver or cause to be delivered on form ER34 to the appropriate metropolitan returning officer the total number of votes for each party in the area of jurisdiction of such returning officer, together with a copy of the appropriate form ER30.
- (3) The place to which such form ER30 and ER34 shall be delivered within the area of the metropolitan transitional council shall be determined by the metropolitan returning officer who shall advise each applicable returning officer thereof in writing on form ER35 not later than noon on the day prior to election day.
- (4) The metropolitan returning officer shall be present at the place fixed in terms of regulation 77(3) from a time not later than eight hours after the time at which voting stations are due to close and shall issue a receipt to the returning officer for the election material contemplated in regulation 77(2).

#### Determining the Quota

- 78 (1) Upon receipt of the transmission form ER30 and ER34 referred to in regulation 77 from each returning officer within the area of jurisdiction of the transitional metropolitan council, the metropolitan returning officer shall complete form ER30 in respect of the metropolitan area and shall for the purpose of determining the result according to proportional representation, take into account the result of proportional representation voting in respect of the transitional metropolitan council.
- (2) The quota of votes per seat shall be determined by dividing the total number of votes cast by the number of seats to be filled by proportional



representation, plus one, and the result, plus one, disregarding fractions, shall be the quota.

- (3) The provisions of regulations 75 to 76 inclusive shall apply *mutatis mutandis* to the metropolitan returning officer and any reference to the returning officer shall be a reference to such metropolitan returning officer.

#### SUPPLEMENTATION OF LIST AND VACANCIES

- 79 After the determination of the number of seats for each party and the identification of the representatives of such party, that party may, in order to fill any vacancy that may arise between the election and the next election, supplement the list referred to in regulation 24(1)(b)(vi) in accordance with the requirements of these regulations : Provided that the name of any person holding office as a councillor for the transitional authority to which that list relates shall not be included in such list.

#### ASSUMPTION AND TERM OF OFFICE

- 80 Any persons elected as a councillor in terms of these regulations shall upon announcement in terms of regulation 73(1)(d) and 76(1)(c) respectively, and where applicable, forthwith assume office as a councillor for the council concerned for a period of three years commencing from the date of the election or until the next election of the council concerned takes place.

DEPUTY RETURNING OFFICER

Functions and Transmittal of Results and Totals

- 81 (1) Where the returning officer has decided that a place for the counting of votes will not be under his or her direct supervision and control, and has appointed a deputy returning officer in terms of regulation 39(c) to act on his or her behalf, any reference to the returning officer in regulations 63 to 72(3) inclusive shall be construed as a reference to the applicable deputy returning officer.
- (2) The deputy returning officer shall, after compliance with the provisions of regulations 63 to 72(3) inclusive, announce the result of such count outside the place where the votes were counted by announcing :
- (a) in the case of an election in respect of councillors by wards, the name of each candidate and the number of votes cast in respect of each such candidate; and
  - (b) in the case of an election in respect of proportional representation for a transitional authority, the number of votes for each party in each applicable transitional authority.
- (3) The deputy returning officer shall immediately thereafter deliver or cause to be delivered to the returning officer at the place specified in terms of regulation 39(c) :
- (a) the result of the count in accordance with subregulation (2)(a) and (b) on each applicable form ER32 together with each applicable form ER30; and
  - (b) all election material and documents into the custody of the returning officer.

- (4) The returning officer shall upon receipt of all relevant forms ER32 and ER30 :
- (a) complete the count of the election result for his entire jurisdiction by adding the respective and corresponding totals contained therein;
  - (b) comply with the provisions of regulation 73(1)(a); and<sup>1)</sup>
  - (c) proceed with the provisions of regulation 73 to 77 inclusive.

## CHAPTER 14

### FILLING OF ELECTED OR NOMINATED SEATS

- 82 (a) A councillor elected according to a party list shall cease to hold office when he or she dies, resigns office in writing, ceases to hold the qualifications required for nomination or election or is disqualified or removed from office in terms of any law or by order of court, or ceases to be a member of the party for which he or she was listed as a party candidate, and the chief executive of the council concerned shall forthwith designate the person whose name is on top of the list referred to in regulation 27 or a supplemented list referred to in regulation 79, as the person that has become a representative for the party concerned in that council.
- (b) Where a vacancy contemplated by paragraph (a) occurs and there is no list as provided for in regulation 27 or a supplemented list, or if such lists have become exhausted, or if the party concerned has ceased to exist, such vacancy shall remain unfilled.
- 83 A councillor representing a ward or a transitional metropolitan substructure shall cease to hold office when he or she dies, resigns office in writing or ceases to hold the qualifications required for nomination or election or is disqualified or removed from office in terms of any law or by order of court, and in the event of such vacancy a by-election shall be held *mutatis mutandis* in terms of these regulations.

## CHAPTER 15

### TRANSITIONAL METROPOLITAN COUNCIL NOMINATIONS FROM SUBSTRUCTURES

#### Percentage and Quotas

- 84 Sixty per cent of the members of a transitional metropolitan council shall be nominated by the transitional metropolitan substructures from among their members on a *pro rata* basis according to the number of registered voters in the area of jurisdiction of such transitional metropolitan substructures : Provided that each such transitional metropolitan substructure shall be entitled to at least one representative.
- 85 (a) Within 7 days of the last announcement of the results of the election in terms of regulations 73(1)(d) and 76(1)(c) in respect of the election of the members of transitional metropolitan substructures, the metropolitan returning officer shall direct the chief executive of each such substructure to convene a meeting of each substructure within 14 days of such last announcement in order to nominate by resolution of the council of such substructure a member or members of such substructure to represent it on the aforesaid metropolitan council according to the following formula :<sup>1)</sup>
- (i) A quota of votes per seat shall be determined by dividing the total number of voters on the voters' rolls for all transitional metropolitan substructures by the number of seats for nomination, plus one, for the transitional metropolitan council and the result plus one, disregarding fractions, shall be the quota of votes per seat for such transitional metropolitan council.
  - (ii) The number of seats to be awarded to a transitional metropolitan substructure for the purposes of subparagraph (iv) shall, subject to subparagraph (iii), be determined by dividing the total number of voters

on the voters' roll for such transitional metropolitan substructure by the quota of votes per seat determined in terms of subparagraph (i).

(iii) Where the result of the calculation in terms of subparagraph (ii) yields for any substructure a figure which is a fraction of the figure 1, such substructure shall be awarded one seat and shall not thereafter participate in any calculation or award in terms of subparagraph (iv).<sup>1)</sup>

(iv) Where the result of the calculation in terms of subparagraph (ii) plus any award in terms of subparagraph (iii) yields a surplus not absorbed by the number of seats awarded to a transitional metropolitan substructure concerned, such surplus shall compete with other similar surpluses accruing to any other transitional metropolitan substructure or substructures in respect of the transitional metropolitan council concerned, and any seat or seats not awarded in terms of subparagraph (ii), shall be awarded to the transitional metropolitan substructure or substructures concerned in sequence of the highest surplus.

(v) The aggregate of a transitional metropolitan substructure's awards in terms of subparagraph (ii) and (iii), shall indicate that transitional metropolitan substructure's allocation of seats in the transitional metropolitan council in question.

(vi) If there are further surpluses, after any second calculation referred to in subparagraph (iv), such surpluses shall be disregarded and thereafter the calculations for nominations for the metropolitan council shall be closed.<sup>1)</sup>

(b) No person shall be nominated who holds office as a councillor in the transitional metropolitan council.

86 The metropolitan returning officer for the transitional metropolitan council concerned shall in the directive referred to in regulation 85, advise each

substructure of the correct number of members to which it is entitled in terms of regulation 85:

- 87 Where a transitional metropolitan substructure does not submit a name or names as contemplated in regulation 85 within 30 days from the date of the last announcement of the election results referred to in regulation 85(a), the metropolitan returning officer shall forthwith advise the Premier who may apply the provisions of regulation 95.
- 88 Not later than 35 days after the date of the last announcement of the election results referred to in regulation 85(a) the metropolitan returning officer for the transitional metropolitan council shall in respect of nomination received :
- (a) advise each nominee of his successful nomination;
  - (b) publish a list of the names of all nominated councillors and the substructures they represent; and
  - (c) notify the Premier thereof in writing

## CHAPTER 16

### GENERAL

#### Opening or Inspection of Election Material

- 89 (1) If the returning officer at any time prior to sealing the election material in the bag or box referred to in regulation 72(2)(c) has reason to suspect any irregularity in connection with any matter relating to the election or any failure to comply with these regulations he or she shall, in writing advise each candidate, general agent and party thereof, invite such persons to be present

at a stated time and place, and in the presence of such candidates or agents as are present :

- (a) open the parcel or envelope concerned;
  - (b) make a record in duplicate of any such irregularity or non-compliance;
  - (c) retain one copy of such record and place the other copy in the parcel or envelope concerned;
  - (d) re-make such parcel or re-close such envelope;
  - (e) seal such parcel or envelope with his or her official seal; and<sup>1)</sup>
  - (f) permit the candidates or agents to affix their seals thereto if they so desire.
- (2) No sealed bag or box referred to in regulation 72(2)(c) or any parcel or envelope therein shall be opened and no person shall be allowed to inspect any election document except under the order of a superior court on its being satisfied by evidence on oath that the inspection or production thereof is required for the purpose of instituting or maintaining a prosecution for an offence or for the purpose of proceedings questioning the validity of an election or election result and any such order may be made subject to such conditions as such court may deem expedient, necessary or desirable.
- (3) Where an order has been made for the production by the returning officer of any document, parcel, envelope, bag or box in his or her custody relating to any specific election :<sup>1)</sup>
- (a) the production by such returning officer of any such document, parcel, envelope, bag or box in the manner directed by such order or in

accordance with a rule of court shall be conclusive evidence that such document, parcel, envelope, bag or box relates to such election; and

- (b) any endorsement appearing on any document, parcel, envelope, bag or box produced by him or her shall be evidence of the contents of such document, parcel, envelope, bag or box being what they are stated to be by such endorsement.

#### Election Committee

- 90 (1) (a) A transitional authority shall establish an election committee not later than 31 May 1994 which will function for such period as the transitional authority or Premier may determine but in any event not later than 23:59 on the day immediately preceding the date contemplated by section 9(1) of the Act.<sup>2)</sup>
- (b) Such committee shall consist of three persons at least one of whom shall be a legally qualified person who shall be the presiding officer, and three alternates appointed by resolution of the council adopted by a majority of not less than two thirds of all its members : Provided that the Premier may, upon written application by the transitional authority concerned and upon being satisfied that there is no suitable legally qualified person, approve in writing the appointment by the transitional authority of some other suitably qualified person who shall be the presiding officer, and an alternate.
  - (c) No person shall be appointed as a member of such committee if he or she :
    - (i) is the holder of an office in a party;
    - (ii) is a member or councillor or employee of the transitional authority concerned;



- (iii) is not eligible to be enrolled as a voter for a transitional authority in terms of regulation 2;
  - (iv) is a candidate or is on a party list for the election; or
  - (v) is a member of a revision court referred to in regulation 5.
- (d) A member of such a committee shall cease to be a member thereof and shall vacate his seat if he or she :
- (i) becomes disqualified for appointment as a member of such a committee;
  - (ii) tenders his resignation to the chief executive; or
  - (iii) dies

and any vacancy so arising shall be filled from the appropriate alternate appointment, or in the absence thereof as soon as possible by the transitional authority with a person who has substantially the same qualifications as his or her predecessor.

- (e) Such committee shall :
- (i) attempt to resolve any dispute or complaint resulting from a decision taken by a voters' roll officer or a returning officer that has been brought to its attention by such officer or by an aggrieved person or party;
  - (ii) consider and advise in respect of any matter submitted to it by the voters' roll officer or the returning officer;

- (iii) adjudicate and decide not later than noon on nomination day any conflict or complaints regarding the distinguishing mark or symbol of a party or person in terms of regulation 24(1)(b)(i) and (ii); 25(1)(f); 29(1); or 29(5)(f), (g) or (h); and<sup>1)</sup>
- (iv) consider and advise the returning officer not later than 22 September 1995 of the manner in which voters in any ward or wards should be informed of their appropriate voting stations .<sup>2)</sup>

Provided that the committee shall not receive or consider any matter falling within the powers, functions and duties of a revision court; and provided further that nothing herein contained shall be construed as limiting or interfering with the fulfilment of the responsibilities of a voters' roll officer or returning officer in terms of these regulations.

- (f) Members of such committee shall be remunerated on such basis as may be determined by the Premier not later than the date of its appointment in terms of paragraph (b) or, failing which, by resolution of the transitional authority.

#### Bills and Placards

91 During the election period :

- (a) every bill, placard, poster, pamphlet, circular or other printed matter having reference to the election shall bear upon the face thereof the name and address of the printer and publisher thereof;
- (b) no person shall print, publish or post or cause to be printed, published or posted or in any other manner disseminate any such printed matter which fails to bear upon the face thereof the name and address of the printer and publisher;
- (c) the proprietor and publisher of every newspaper or magazine shall cause the word "advertisement" to be printed as a headline to each article or paragraph

in his or her newspaper or magazine which originated from a candidate, party or its agents or supporters, the insertion of which is, or is to be, paid for, or for which any reward or compensation, or promise of reward or compensation, is or is to be made;

- (d) the articles or paragraphs referred to in paragraph (c) shall include all such text as may *prima facie* appear to be intended or calculated to affect the result of the election, and shall include any paid advertisement or report of the speech of a candidate, if the insertion thereof is, or is to be, paid for;
- (e) every report, letter, article, bill, placard, poster, pamphlet, circular, cartoon or other printed matter (hereinafter in this regulation referred to as an "election article") which, *prima facie*, is intended or calculated to affect the result of the election, is inserted in any newspaper or otherwise produced and is published in the Republic, shall bear at the foot thereof the full name and address of the person or persons by whom such election article was written or produced : Provided that :
  - (i) any such election article which is inserted in any newspaper as aforesaid and which has been altered materially by the editor of such newspaper, shall also bear the full name of the editor;
  - (ii) in the case of any such election article which is written jointly by two or more persons, it shall be sufficient for the purposes of this regulation if the report as a whole bears the full names and addresses of the persons by whom it was written; and
  - (iii) in the case of headlines to any election article which is inserted in any newspaper as aforesaid, and of bills, placards or posters having reference thereto and which are issued in the ordinary practice of a newspaper or magazine, it shall be sufficient for the purposes of this regulation if the full names and addresses of the persons by whom such headlines, bills,

placards and posters were written, are published in the issue of the newspaper in which such election article is inserted; and<sup>1)</sup>

- (f) subject to the provisions of the proviso to paragraph (e)(iii), no person shall print or publish any newspaper or other printed matter in which is inserted or produced any election article which fails to comply with the provision of paragraph (e).

#### Indemnity

- 92 No act or omission by a chief executive, voters' roll officer, election officer, presiding officer or returning officer shall render such person personally liable for loss or damage of any kind suffered by any person as a result of such act or omission provided that such act or omission is not wilful or malicious and any costs reasonably or necessarily incurred by any such officer in opposing any claim, demand, action or other legal proceedings relating to such loss or damage shall be borne by the transitional authority concerned.

#### Fees Payable to Election Officers

- 93 (1) Every council shall, at its first ordinary meeting after notice of the day of election has been given in terms of section 9(1) of the Act determine by resolution the fees to be paid to election officers : Provided that such fees shall not be decreased before any final payment has been made in terms of such resolution.
- (2) The fees contemplated by subregulation (1) shall not exceed the following amounts per day :
- (a) In the case of a transitional local council :

Returning Officer :	1 - 10 000 registered voters :	R400,00
	10 001 - 50 000 registered voters :	R600,00
	50 001 - 100 000 registered voters :	R800,00

100 001 - 250 000 registered voters :	R1 000,00
250 001 upwards registered voters :	R1 250,00
Deputy Returning Officer : 70% of the above	
Presiding Officer :	R240,00
Any other Election Officer :	R160,00
Counting Officer :	R120,00
(b) In the case of a transitional metropolitan substructure :	
Returning Officer :	R1 500,00
Deputy Returning Officer :	R1 000,00
Presiding Officer :	R320,00
Deputy Presiding Officer :	240,00
Any other Election Officer :	R160,00
Counting Officer :	R120,00
(c) In the case of a transitional metropolitan council :	
Metropolitan Returning Officer :	R1 500,00
Deputy Metropolitan Returning Officer :	R1 000,00

Forms, Labels and Envelopes

- 94 (1) The forms, labels and envelopes referred to in these regulations shall be substantially in accordance with the specimens set out hereto, and the word "envelope" shall include any bag or box serving such purpose.
- (2) Where a space is left on any specimen for filling in any information which will be the same throughout the area of jurisdiction of the transitional authority or any ward, as the case may be, such information may be included when printing the form, label or envelope concerned.
- (3) Any portion of a specimen which is intended to be used only in the case of the area of jurisdiction of a transitional authority which is divided into wards may

be omitted when printing the form, label or envelope concerned for use in a transitional authority area which is not divided into wards.

- (4) Provision may be made when printing a form, label or envelope for giving or requiring information not shown on the specimen concerned if this is considered necessary or desirable for the conduct of the election.
- (5) Information required on any label or envelope may, at the discretion of the returning officer, be typed or clearly and legibly handwritten.

Power to Act in Default and Recovery of Expenditure

- 95 (1) (a) If a transitional authority, local government body, revision court or any person fails within a period and in accordance with conditions, if any, specified by the Premier to commence, enforce or carry out any provision of these regulations, or to take any decision or resolution required in terms thereof, or to comply with any direction of the Premier contemplated by these regulations, the Premier may commence, enforce or carry out such provisions or directions and for such purpose and failure, may in writing authorise any authority, body or person to take all steps and measures necessary in connection therewith.
- (b) Any expenditure incurred in respect of a transitional authority or local government body by the Premier under paragraph (a) above shall be recoverable from such authority or body and the certificate of the provincial accountant or person acting in such capacity shall be *prima facie* proof of the correctness thereof.
- (c) In order to ensure that the election is or will be conducted in accordance with these regulations, the Premier may, without prejudice to any other right or power which he or she may have, in writing appoint any authority, body or person who shall have the right to require any transitional authority, local government body or revision court to

provide a written report from time to time as the Premier or such authority, body or person, as the case may be, deems necessary or expedient in his or her sole discretion in respect of the election or any part thereof.<sup>1)</sup>

- (d) The Premier, authority, body or person contemplated in paragraph (c) shall have the right to conduct inspections at or in the offices of any transitional authority, local government body or revision court to ascertain the state of affairs in respect of the election or any part thereof and to peruse and make extracts from files, books, registers and records which may have a bearing on the election.<sup>1)</sup>
  - (e) Any authority, body or person appointed in terms of paragraph (c) shall submit a written report to the Premier when required by the Premier, setting out the state of affairs in respect of the election or any part thereof in one or more transitional authority, local government body or revision court and shall make recommendations in respect thereof.<sup>1)</sup>
- (2) If a transitional authority, local government body, revision court or any person fails or appears likely to fail to carry out or complete within the period specified in these regulations any provision or requirement which is a necessary preliminary or prerequisite to conducting the election, the Premier may conditionally or otherwise extend or review such period : Provided that no such extension or renewal shall be granted which would prevent or prejudice or be detrimental to the holding of the election on the day determined by the Minister in terms of section 9 of the Act.
- (3) Expenditure necessarily incurred by a transitional metropolitan substructure in the conduct of an election for a transitional metropolitan authority shall be recoverable from such metropolitan authority and the certificate of the chief financial officer of such metropolitan substructure or person acting in such capacity shall be *prima facie* proof of the correctness thereof.

Powers of Court

- 96 In any proceedings questioning the validity of an election or election result the court may, unless it declares the election void or orders a fresh election to be held :
- (a) deduct from the total number of votes declared by the returning officer to have been given for a candidate or a party, that number of votes which, in the opinion of the court, were recorded for such candidate or party as a result of any corrupt practice or in contravention of these regulations or any other law;
  - (b) correct any errors made by the returning officer in the counting or allocation of votes or in the acceptance or rejection of ballot papers and take into account or deduct the votes which should, in consequence of the correction of such errors, have been taken into account or deducted in terms of these regulations; and
  - (c) take such other action and make such other order as to it may appear just and equitable.

Validation

- 97 No election shall be invalid or set aside by a court by reason of a mistake or non-compliance with these regulations or of any determination in terms of these regulations if it appears that the election was conducted substantially in accordance with the principles contained therein and that such mistake or non-compliance did not affect the result of the election.

Voter not to be Required to Disclose how he or she Votes

- 98 No person shall in any proceedings relating to an election be required to disclose the name of the candidate or party for whom he or she voted.

Secrecy

- 99 Every election officer, police officer, candidate, candidate's agent or party agent and messenger who is present at a voting station or at the counting of votes shall maintain the secrecy of the voting.



Prohibition on Certain Political Activities During Certain Period Prior to and During Voting Period

- 100 (a) No person shall during the period 48 hours prior to 23:59 on the day of the election hold or take part in any public demonstration, march, public meeting or rally of a political nature.<sup>1)</sup>
- (b) The holding of or participation in any activity referred to in paragraph (a) shall be an offence.

CHAPTER 17

OFFENCES AND PENALTIES

Interference with Election Proceedings

101 Any person who :

- (a) refuses or fails to give effect to any direction, instructions or order lawfully issued by or on behalf of the voters' roll officer, the returning officer or any election officer;
- (b) refuses or fails to leave a voting station or inner perimeter or place for the counting of votes when so ordered in terms of regulation 41 or 64;
- (c) enters or remains in a voting station or inner perimeter or place for the counting of votes in contravention of regulation 42 or 64;
- (d) obstructs or hinders any election officer or party agent or candidate's agent in the execution of his or her lawful duties,

shall be guilty of an offence.

Infringement of Secrecy

102 Any person who :

- (a) contravenes regulation 52 or 99;
- (b) unlawfully attempts to ascertain or directly or indirectly aids any other person to ascertain for which candidate any person intends to vote or has voted;
- (c) directly or indirectly induces or attempts to induce any person to whom a ballot paper has been issued to display his or her ballot paper after he or she has marked it, in such a manner as to disclose the name or names of the candidate or candidates for whom he or she has voted;
- (d) places upon any ballot paper, other than the ballot paper issued to him or her, any mark or writing whereby the person who records his vote thereon may be identified;<sup>1)</sup>
- (e) except in reply to a question lawfully put to him or her in the course of proceedings in a competent court, discloses or communicates any information he or she may have obtained as to the candidate or candidates for whom a vote has been given on any ballot paper; or
- (f) unlawfully breaks the seal or fastening on or in any other manner opens or removes any of the contents of a ballot box, parcel or envelope referred to in regulations 56(2), 62, 72 or 73,

shall be guilty of an offence.

Undue Influence

- 103 (1) Any person who, directly or indirectly, uses or procures the use of, or threatens to use or procure the use of, any force, violence or sexual harassment, or inflicts or threatens to inflict any injury, damage, loss or disadvantage to or upon any other person or property :

- (a) with intent thereby to compel, induce or influence any person :
  - (i) to vote or refrain from voting, either at all, or for any party or any candidate, or in any other manner; or
  - (ii) to attend or participate in, or to refrain from attending or participating in, any political meeting, march, demonstration, or other event of a political nature, or in some other manner lending support to or for any party or any candidate; or
- (b) on account of any person having :
  - (i) voted, attempted to vote or having refrained from voting, either at all, or for any party or any candidate, or in any other manner; or
  - (ii) attended or participated in, or having refrained from attending or participating in, any such political meeting, march, demonstration, or other event of a political nature, or from lending support as aforesaid,

shall be guilty of an offence.

- (2) Any person who induces, influences or procures any other person to vote in the election, in the knowledge that such other person is not entitled to vote in the election concerned, shall be guilty of an offence.
- (3) Any person who, directly or indirectly, by duress or intimidation :
  - (a) impedes or prevents or threatens to impede or prevent the free exercise of the franchise by any voter; or
  - (b) in any manner influences the result of any election,

shall be guilty of an offence.

(4) Any person who, directly or indirectly, by duress, intimidation or otherwise, compels or induces any voter who has already voted at the election :

- (a) to inform such or any other person of the name of the party or the candidate for which the voter has voted; or
- (b) to display the ballot paper on which such voter has marked his or her vote, in such a manner as to make known to such or any other person the name of the party or the candidate for which the voter has voted,

shall be guilty of an offence.

Bribery

104 (1) Any person who, directly or indirectly :

- (a) accepts or contracts for any valuable consideration, for himself or herself or for any other person, in order that he or she or such other person votes or agrees to vote, or refrains or agrees to refrain from voting, either at all or for any party or any candidate or in any other manner; or
- (b) after the election, accepts any valuable consideration, for himself or herself, or for any other person, on account of having induced or influenced any person to vote or refrain from voting as aforesaid;
- (c) gives, lends or procures, or agrees, offers or promises to give, lend or procure, any valuable consideration to or for any voter, or to or for any other person, in order to induce or influence any person :
  - (i) to vote or refrain from voting, either at all or for any party or any candidate or in any other manner; or

(ii) to attend or participate in, or refrain from attending or participating in, any political meeting, march, demonstration, or other event of a political nature, or in some other manner lending support to or for any party or candidate; or

(d) on account of any person having voted or refrained from voting, either at all or for any party or any candidate or in any other manner, gives, lends or procures, or agrees, offers or promises to give, lend or procure, any valuable consideration to or for any other voter, or to or for any other person,

shall be guilty of any offence.

(2) Any person, who, in consequence of his or her acceptance of any valuable consideration, votes or refrains from voting, either at all or for any party or any candidate or in any other manner, shall be guilty of an offence.

#### Personation

105 Any person who, at any voting area referred to in regulation 41(1) during the election :/)

(a) applies for a ballot paper in the name of any other person, whether living, dead or fictitious;

(b) save as provided in regulation 58, casts a vote in the name of any other person;

(d) having voted in the manner provided in these regulations, again votes or applies for a ballot paper in the same election; or

(e) votes in the knowledge that he or she is not entitled to vote in the election concerned,

shall be guilty of an offence.

Prohibition on Interference with Voter Registration and Election Material

- 106 (1) Any person who removes, destroys, conceals or mutilates or assists the removal, destruction, concealment or mutilation of any voter registration material or election material, save under the provisions of these regulations, shall be guilty of an offence.
- (2) Any person who receives or accepts from any other person a claim on form ER1 or a claim in a form substantially in accordance with form ER1 shall ensure that such claim is delivered timeously to the voters' roll officer at the address specified or required on form ER1 for the applicable transitional authority and any person who wilfully or negligently fails to do so shall be guilty of an offence.

Prohibition on Unauthorised Printing, Manufacture and Supply of Election Material

- 107 Any person who, directly or indirectly, prints, manufactures or supplies or procures the printing, manufacture or supply of any election material in connection with the election, save on the authority of a transitional authority, shall be guilty of an offence.

Prohibition in Interference with Free Political Canvassing and Campaigning

- 108 Any person who :

- (a) directly or indirectly, by the use or threat of force, violence, sexual harassment or otherwise, prevents the conduct of any political meeting, march, demonstration or other event of a political nature, or any other person from attending or participating therein;
- (b) creates a material disruption with the intention of preventing a party or a candidate from holding a public political meeting;<sup>1)</sup>
- (c) impedes or prevents or threatens to impede or prevent the right of any candidate or any representative of any party or any candidate to gain access,

in the manner and during the hours prescribed, to voters in any particular area, whether public or private, for the purposes of conducting political canvassing and campaigning, and of soliciting membership and support; or<sup>1)</sup>

- (d) impedes or prevents or threatens to impede or prevent any member or representative of the transitional authority to gain access, in the manner and during time or period prescribed, to voters in any particular area, whether public or private, for the purposes of conducting voter registration,<sup>1)</sup>

shall be guilty of an offence.

Prohibition on Making Intentional False Statements or Publishing False Information

109 Any person who :

- (a) makes a false statement or furnishes false particulars in any statement which is required in terms of these regulations in the knowledge of such statement or particulars being false or without reasonable grounds for believing the same to be true; or
- (b) publishes, repeats or disseminates in any manner whatsoever false information with the intention of :
  - (i) disrupting or preventing the election;
  - (ii) creating hostility or fear in order to influence the process or outcome of the election; or
  - (iii) otherwise influencing the process or outcome of the election,

shall be guilty of an offence.

Other Offences

110 (1) Any person who :

- (a) forges or counterfeits or unlawfully destroys or alters any ballot paper or the official mark thereon;
- (b) without due authority supplies any ballot paper to any person;
- (c) puts into a ballot box any forged or counterfeit ballot paper or any ballot paper other than the ballot paper which he or she is authorised by law to put into such ballot box;
- (d) unlawfully takes out of the voting station any ballot paper or other election material; or
- (e) unlawfully destroys, takes, opens or otherwise interferes with any ballot box or ballot paper then in use for the purposes of an election; or
- (f) smokes, or save as permitted in order to exercise a duty or right in terms of these regulations, lights a match or lighter or any inflammable substance in a voting station; or
- (g) contravenes or fails to comply with the provisions of regulations 12, 91 or 100(a); or<sup>1)</sup>
- (h) commits any contravention of these regulations,

shall be guilty of an offence.

- (2) Any person who makes a false statement in reply to a question asked in terms of or in a declaration referred to in regulations 53, or 59 shall be guilty of an offence unless he or she proves that he or she did not know that such statement was false.

#### Penalties

- 111 (1) Any person convicted of any of the offences referred to in this Chapter shall, if convicted of a contravention of any provision of :



- (a) regulation 103(1), (3) or (4) or 105, 107, 108(a) or 109(b), be liable to a fine not exceeding R100 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment;
  - (b) regulation 104, be liable to a fine not exceeding R80 000 or to imprisonment for a period not exceeding four years, or to both such fine and such imprisonment;
  - (c) regulation 103(2), 102, 106 or 108(b), (c) or (d), be liable to a fine not exceeding R60 000 or to imprisonment for a period not exceeding three years, or to both such fine and such imprisonment;
  - (d) regulation 101(d) or 109(a), be liable to a fine not exceeding R40 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment; or
  - (e) regulation 101(a), (b) or (c), be liable to a fine not exceeding R20 000 or to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment.
- (2) Any person convicted of an offence under these regulations, shall, unless another penalty is specifically prescribed, be liable to a fine not exceeding R40 000 or imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

Contraventions to be Reported to Public Prosecutor

- 112 The returning officer shall after every election report to the public prosecutor any apparent or alleged contraventions of these regulations.

## CHAPTER 18

### APPLICATION OF REGULATIONS

#### Co-Ordinating Committee and Exempted Bodies

- 113 The provisions of these regulations shall, in so far as they apply to a transitional local council, apply to a local government co-ordinating committee established in terms of Section 7 of the Act and to a local government body exempted in terms of Section 5 of the Act.

#### Annexure

- 114 The annexures to these regulations shall be read as one with these regulations.

#### Pre-Interim and Interim Phases

- 115 These regulation shall apply during the pre-interim phase and the interim phase defined in section 1(1)(iv) of the Act.

#### Short Title

- 116 These regulations shall be called the Local Government Transition Election Regulations, 1994.