

REPUBLIC OF SOUTH AFRICA

PROMOTION OF ACCESS TO INFORMATION AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); the Bill and explanatory
summary of Bill published in Government Gazette No. 42604 of 31 July 2019)
(The English text is the official text of the Bill)*

(PORTFOLIO COMMITTEE ON JUSTICE AND CORRECTIONAL SERVICES)

[B 20—2019]

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

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

To amend the Promotion of Access to Information Act, 2000, so as to provide for information on the private funding of political parties and independent candidates to be recorded, preserved and made available; and to provide for matters connected therewith.

Amendment of section 1 of Act 2 of 2000, as amended by section 21 of Act 42 of 2001, section 1 of Act 54 of 2002 and section 6 of Act 24 of 2015

(a) the substitution for the definition of “head” of the following definition:

“ ‘head’ of, or in relation to, a private body means—

(a) in the case of a natural person, including a person referred to in paragraph (c) of the definition of “political party”, that natural person or any person duly authorised by that natural person; 10

(b) in the case of a partnership, any partner of the partnership or any person duly authorised by the partnership;

(c) in the case of a juristic person—

(i) the chief executive officer or equivalent officer of the juristic person or any person duly authorised by that officer; or

(ii) the person who is acting as such or any person duly authorised by such acting person; or

(d) in the case of political party, the leader of the political party or any person duly authorised by that leader;”; 20

(b) the insertion after the definition of “personal requester” of the following definition:

“ ‘political party’ means—

(a) any entity that accepts donations principally to support or oppose any registered political party or its candidates, in an election as defined in section 1 of the Electoral Act, 1998 (Act No. 73 of 1998);

(b) any registered political party as defined in the Electoral Act, 1998 (Act No.73 of 1998); or

(c) a natural person who is an independent candidate;” and

- (c) the substitution for the definition of “private body” of the following definition:

“**‘private body’** means—

- (a) a natural person who carries or has carried on any trade, business or profession, but only in such capacity;
 - (b) a partnership which carries or has carried on any trade, business or profession; **[or]**
 - (c) any former or existing juristic person; or
 - (d) a political party,
- but excludes a public body;”.

Insertion of new section 52A in Act 2 of 2000

2. The following section is hereby inserted after section 52 of the principal Act:

“Recording, preservation and disclosure of records on the private funding of political parties

52A. (1) The head of a political party must—

- (a) create and keep records of—
 - (i) any donation exceeding the prescribed threshold that has been made to that political party in any given financial year; and
 - (ii) the identity of the persons or entities who made such donations;
 - (b) make the records available on a quarterly basis, as prescribed; and
 - (c) keep the records for a period of at least five years after the records concerned have been created.
- (2) For the purposes of this section—
- (a) **“donation”** means a donation as defined in section 1;
 - (b) **“financial year”** means a financial year as defined in section 1; and
 - (c) **“prescribed threshold”** means the prescribed threshold contemplated in section 9(1)(a),
- of the Political Party Funding Act, 2018 (Act No. 6 of 2018).”.

Amendment of “contents” of Act 2 of 2000

3. The “contents” of the principal Act is hereby amended by the insertion after item 52 of the following item:

“52A. Recording, preservation and disclosure of records on the private funding of political parties”.

Short title and commencement

4. This Act is called the Promotion of Access to Information Amendment Act, 2019, and commences on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE PROMOTION OF ACCESS TO INFORMATION AMENDMENT BILL, 2019

1. PURPOSE OF BILL

- 1.1 On 21 June 2018, the Constitutional Court, in *My Vote Counts NPC v Minister of Justice and Correctional Services and Another* [2018] ZACC 17, confirmed an order of constitutional invalidity made by the High Court of South Africa, Western Cape Division, Cape Town, which declared the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) (“the principal Act”), invalid to the extent of its inconsistency with the Constitution by failing to provide for the recordal, preservation and reasonable disclosure of information on the private funding of political parties and independent candidates.
- 1.2 The Constitutional Court further ordered Parliament to amend the principal Act and take any other measure it deems appropriate to provide for the recordal, preservation and reasonable accessibility of records of private funding of political parties and independent candidates within a period of 18 months.

2. OBJECTS OF BILL

- 2.1 The Bill will address the Constitutional Court’s judgment by inserting a new section 52A “Recording, preservation and disclosure of records on the private funding of political parties” in the principal Act, to regulate the recordal, preservation and availability of information in respect of private funding to political parties and independent candidates and to provide for matters connected therewith.
- 2.2 Clause 1 of the Bill aims to amend the definitions of “head” and “private body” and inserting a new definition of “political party” in section 1 of the principal Act.
- 2.3 Clause 2 of the Bill obliges the head of a political party (which is defined to include an independent candidate) to create and keep records of any donations that have been made to a political party which exceed the prescribed threshold in a financial year and the identity of the persons or entities who made such donations. The records must be made available on a quarterly basis as prescribed. The records must be kept for a period of at least five years after the records concerned have been created.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Portfolio Committee on Justice and Correctional Services called for and considered written comments on the Bill and consulted with the Department of Justice and Constitutional Development.

4. IMPLICATIONS FOR PROVINCES

None.

5. FINANCIAL IMPLICATIONS FOR STATE

None.

6. PARLIAMENTARY PROCEDURE

- 6.1 The Portfolio Committee on Justice and Correctional Services is of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.