



THE FW DE KLERK FOUNDATION

Upholding South Africa's National Accord

To: Honourable Angela Thokozile Didiza
For attention: Speaker of the National Assembly
Per email: speaker@parliament.gov.za
And to: Honourable Adv Glynnis Breytenbach
legislation@da.org.za
Re: Submission on the Constitution Twenty-Second Amendment Bill
Date: Friday, 29 August 2025 (**Deadline: Saturday, 30 August 2025**)

INTRODUCTION

Dear Honourable Didiza

1. We refer to the [invitation](#) for written submissions on the content of Honourable Adv Glynnis Breytenbach, MP's proposed [Constitution Twenty-Second Amendment Bill](#) (the "Bill") to the Speaker of the National Assembly.
2. The FW de Klerk Foundation ("the Foundation") is a non-profit organisation dedicated to upholding the Constitution of the Republic of South Africa, 1996 ("the Constitution"). Our vision is to make our constitutional democracy a reality for all South Africans.

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CO van der Rheede (Executive Director), E de Klerk (Chairperson), C Teichmann (Deputy Chairperson), D Steward (Chairman Emeritus)

M Bakala (Honorary Board Member), PS Basson, BC Bester, WAM Clewlow, J de Klerk-Luttig, I Farlam, FM Mathebula, LG Mcwabeni

3. To this end, the Foundation seeks to promote the Constitution and its enshrined values, rights and principles; to monitor developments including legislation and policy that may affect the Constitution or those values, rights and principles; to inform people and organisations of their constitutional rights and to assist them in claiming their rights. The Foundation does so in the interest of everyone in South Africa.
4. As such, the Foundation welcomes the opportunity to make this concise written submission on the proposed content of the Bill.

PROPOSED CHANGES

5. The Bill seeks to broaden the categories of citizens who are ineligible for membership of the different legislative bodies in the national, provincial and local spheres of government, namely the National Assembly,¹ provincial legislatures,² or municipal councils³.
6. Specifically, the Bill seeks to amend sections 47, 106 and 158 of the Constitution⁴ to provide that a former judge, or Chapter 9 office-bearer, who was previously removed from office by the President on the grounds of gross misconduct, or misconduct, respectively is ineligible to serve as a member of these legislative bodies.⁵
7. This will limit the affected citizens' right to stand for office,⁶ as well as the right to make political choices of voters who wish to vote for them to be their

¹ Clause 1 of the Bill seeks to expand section 46(1) of the Constitution which stipulates citizens that are ineligible for membership of the National Assembly.

² Clause 2 of the Bill seeks to expand section 106 of the Constitution which stipulates citizens that are ineligible for membership of the provincial legislatures.

³ Clause 3 of the Bill seeks to expand section 158 of the Constitution which stipulates citizens that are ineligible for membership of municipal.

⁴ The Constitution of the Republic of South Africa, 1996.

⁵ Clauses 1 through 3 of the Bill.

⁶ Section 19(3)(b) of the Constitution, which guarantees that: "*Every adult citizen has the right to stand for public office and, if elected, to hold office.*"



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representatives.⁷ For this reason, it is essential that the legislative process be as transparent and consultative as possible to get public buy-in and support.

8. The problem the Bill seeks to resolve is the risk to public confidence that arises when individuals removed from high office for (gross) misconduct assume elected positions,⁸ and in so doing undermine constitutional institutions and erode public trust in said institutions.⁹
9. This follows ongoing public discourse regarding the integrity of high public office, particularly in light of recent controversies surrounding former Western Cape High Court Judge President, [Honourable Dr John Hlophe, MP](#) and former Public Protector, [Honourable Adv Busisiwe Mkhwebane, MP](#): Both were removed from

⁷ Section 19(1) of the Constitution.

⁸ Clauses 1 through 3 of the Bill.

⁹ For example, the judiciary recently had to hand down a [judgment](#) disqualifying Dr Hlophe from serving on the Judicial Service Commission – the body responsible for judicial appointments and disciplinary proceedings - as a Member of Parliament. The Court held that Dr Hlophe's appointment by Parliament to the Commission was unconstitutional and that Parliament had omitted to consider the gravity of the implications his appointment held for the Commission's institutional credibility and its constitutional mandate.

office in terms of the Constitution,¹⁰ yet subsequently sought elected positions and now serve as members of the National Assembly.

10. The Foundation supports the Bill's broadening of the categories of citizens ineligible for membership of the legislature bodies.

PROPOSALS:

11. To achieve the Bill's objectives, as well as get as much public buy-in as possible by making it wider and not seem targeted against certain individuals, the Foundation proposes the clauses simply refer to an office established by the Constitution and being removed in terms of the Constitution.¹¹
12. The Foundation thus proposes the following phrase be used in clauses 1 through 3 of the Bill: ***"anyone who previously held an office established by the Constitution and was removed from that office in terms of the Constitution"***
13. We hope the above are constructive points and we reiterate the Foundation's willingness to engage further in with the Speaker and Honourable Member on this important Bill.

Sincerely,

Daniela Ellerbeck

Constitutional Rights Programme Manager

FW de Klerk Foundation

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END.

¹⁰ Dr Hlophe was removed in terms of section 177 of the Constitution, which states that: "A judge may be removed from office only if the Judicial Service Commission finds that the judge suffers from an **incapacity, is grossly incompetent or is guilty of gross misconduct....**"

Adv Mkhwebane was removed in terms of section 194, which states that: "The Public Protector... may be removed from office only on the ground of **misconduct, incapacity or incompetence...**".

¹¹ Only section 89, 177 and 194 of the Constitution expressly provide for the removal of their respective office-bearers and set out a formal process for removal on specified grounds.