

## IN THE CONSTITUTIONAL COURT

In the matter between:

CASE NO: CCT 245/21

ELECTORAL COMMISSION OF SOUTH AFRICA

Applicant

and

MINISTER OF COOPERATIVE GOVERNANCE  
AND TRADITIONAL AFFAIRS

First Respondent

MEC RESPONSIBLE FOR LOCAL GOVERNMENT  
IN THE PROVINCIAL GOVERNMENT OF  
THE EASTERN CAPE

Second Respondent

MEC RESPONSIBLE FOR LOCAL GOVERNMENT  
IN THE PROVINCIAL GOVERNMENT OF  
THE FREE STATE

Third Respondent

MEC RESPONSIBLE FOR LOCAL GOVERNMENT  
IN THE PROVINCIAL GOVERNMENT OF GAUTENG

Fourth Respondent

MEC RESPONSIBLE FOR LOCAL GOVERNMENT  
IN THE PROVINCIAL GOVERNMENT OF  
KWAZULU-NATAL

Fifth Respondent

MEC RESPONSIBLE FOR LOCAL GOVERNMENT  
IN THE PROVINCIAL GOVERNMENT OF LIMPOPO

Sixth Respondent

MEC RESPONSIBLE FOR LOCAL GOVERNMENT  
IN THE PROVINCIAL GOVERNMENT OF MPUMALANGA

Seventh Respondent

MEC RESPONSIBLE FOR LOCAL GOVERNMENT  
IN THE PROVINCIAL GOVERNMENT OF  
THE NORTHERN CAPE

Eighth Respondent

MEC RESPONSIBLE FOR LOCAL GOVERNMENT  
IN THE PROVINCIAL GOVERNMENT OF  
THE NORTH-WEST

Ninth Respondent

MEC RESPONSIBLE FOR LOCAL GOVERNMENT  
IN THE PROVINCIAL GOVERNMENT OF  
THE WESTERN CAPE

Tenth Respondent

**SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION** Eleventh Respondent

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**FILING SHEET**

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The following document is hereby filed:

1. Condonation Application : Tenth Respondent
2. Tenth Respondents Answering Affidavit : Anton Wilhelm Bredell

**SIGNED AND DATED AT CAPE TOWN ON THE 16th August 2021**

**FOR STATE ATTORNEY**



**Per: L GOLDING**

**Attorney for Third Respondent**

5<sup>th</sup> Floor, 22 Long Street

CAPE TOWN

Tel: (021) 441 9200

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Ref: 1942/21/P10

**C/O STATE ATTORNEY JOHANNESBURG**

10<sup>th</sup> Floor North State Building

95 Albertina Sisulu Street

Johannesburg

Ref: V Dhulam

**To: MOETI KANYANE INCORPORATE**

---

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**C/O RAMS INCORPORATED**

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Tel 011 8832234/6  
Ref: Mr W Moeketsane

**THE REGISTRAR OF THE CONSTITUTIONAL COURT**

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Constitution Hill  
Braamfontein

**And to: THE MINISTER OF COOPERATIVE GOVERNANCE & TRADITIONAL AFFAIRS**

**First respondent**

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**BY ELECTRONIC MAIL**

**And to: THE MEC FOR LOCAL GOVERNMENT FOR THE EASTERN CAPE**

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**And to: MEC FOR LOCAL GOVERNMENT FOR THE FREE STATE**

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**BY ELECTRONIC MAIL**

**And to: THE MEC FOR LOCAL GOVERNMENT FOR GAUTENG**

Fourth Respondent

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**And to: THE MEC FOR LOCAL GOVERNMENT FOR THE NOTHERN CAPE**

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**And to: MEC FOR LOCAL GOVERNMENT FOR NORTH WEST**

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CASE NO: 245/2021

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WESTERN CAPE**

Tenth Respondent

**SOUTH AFRICAN LOCAL GOVERNMENT  
ASSOCIATION**

Eleventh Respondent

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**NOTICE OF MOTION – APPLICATION FOR CONDONATION**

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**KINDLY TAKE NOTICE THAT** application will be made at the hearing of this matter for an order in the following terms:

1. Condoning the late delivery of the Tenth Respondent's notice of intention to oppose the application.
2. Condoning the late delivery of the Tenth Respondent's answering affidavit.

**TAKE NOTICE FURTHER THAT** the accompanying affidavit of **ANTON WILHELM BREDELL** will be used in support of the application for condonation.

**SIGNED AND DATED AT CAPE TOWN ON THE 16th day of August 2021**

**FOR STATE ATTORNEY**



**Per: L GOLDING**

**Attorney for Third Respondent**

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**BY ELECTRONIC MAIL****THE MEC FOR LOCAL GOVERNMENT FOR LIMPOPO****Sixth respondent**

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[Mathyem@coghsta.limpopo.gov.za](mailto:Mathyem@coghsta.limpopo.gov.za)

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[MkhawanaziZF@mpg.gov.za](mailto:MkhawanaziZF@mpg.gov.za)

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**BY ELECTRONIC MAIL**

**And to: THE SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION**

Eleventh respondent  
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175 Corobray Avenue  
Waterkloof Glen  
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Email: [ugopichund@salga.org.za](mailto:ugopichund@salga.org.za)

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**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**

**CASE NO: 245/2021**

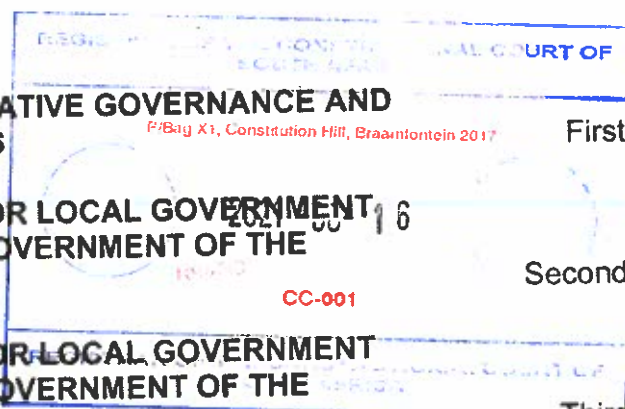
In the matter between:

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Applicant

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**SOUTH AFRICAN LOCAL GOVERNMENT  
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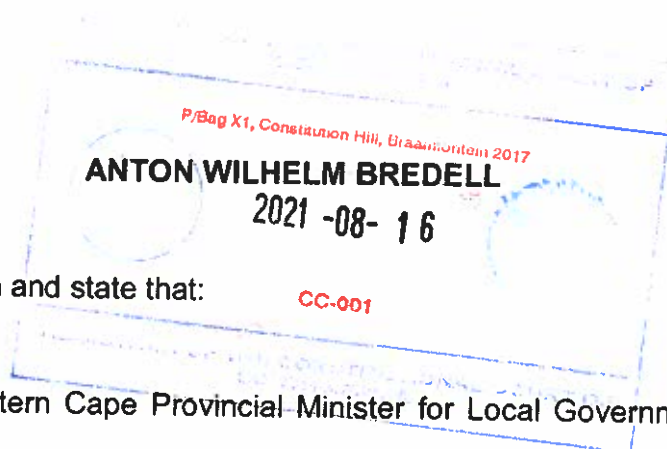
Eleventh Respondent

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**TENTH RESPONDENT'S ANSWERING AFFIDAVIT**

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I, the undersigned,



do hereby make oath and state that:


1. I am the Western Cape Provincial Minister for Local Government, the tenth respondent in this matter, with my offices situate at 9<sup>th</sup> Floor, Utilitas Building, 1 Dorp Street, Cape Town.
2. The facts deposed to in this affidavit are true and correct and, save where the context indicates to the contrary, are within my personal knowledge.
3. Legal submissions are made on the advice of my legal representatives, which advice I believe to be true and correct.

**CONDONATION**

4. I am advised that, in terms of Directions issued by this Court on 6 August 2021, this affidavit ought to have been delivered by Wednesday, 11 August 2021.

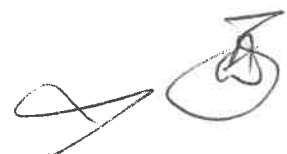
This affidavit is filed three court days out of time, and I respectfully request that condonation be granted for the late delivery of the answering affidavit for the reasons set out below.

5. The attorneys for the applicant ('the EC'), served a Dropbox link to the application papers via email on the offices of Mr Graham Paulse, the Head of Department: Local Government, in the Western Cape Provincial Government (WCPG) at 13h46 on Wednesday, 4 August 2021.
6. The application is voluminous, running to 621 pages with annexures. Furthermore, the far-reaching and serious nature of the relief sought required careful consideration.
7. Consequently, the relevant officials in the Directorate: Municipal Governance in the Department of Local Government ('the Department') considered the application papers during the course of Thursday, 5 August 2021, and Friday, 6 August 2021, and engaged the Director of Litigation in the Department of the Premier in order to brief me on the implications of the relief sought by the EC. A briefing document was prepared for me over the long weekend and was finalised on Monday, 9 August 2021.
8. In the meantime, this Court issued Directions on Friday, 6 August 2021, *inter alia*, setting the matter down for hearing on Friday, 20 August 2021, and requiring any respondent who intends to oppose the application to file an answering affidavit by no later than Wednesday, 11 August 2021. At the time that the Directions were issued, I had not yet had an opportunity to read the papers, and, for the reasons set out below, the Western Cape Provincial



Government had not yet considered the matter, and taken a decision to oppose the application.

9. I was briefed by the relevant officials at approximately 14h30 on Tuesday, 10 August 2021. During the briefing I raised certain concerns and queries and indicated that, due to the far-reaching implications of the possible postponement of the October 2021 local government elections, I was of the view that I needed to consult with the Premier of the Western Cape and the Western Cape Provincial Cabinet for the matter to be discussed and considered at Cabinet level.
10. At approximately 17h00 on Tuesday, 10 August 2021 I engaged with the Premier and requested that the matter be discussed at Cabinet, and I provided the Premier with the briefing document prepared for me by the Department.
11. The Premier agreed that the matter needed to be considered at the next Cabinet meeting, which was scheduled for the morning of Wednesday, 11 August 2021. This was the earliest opportunity that the matter could be considered by Cabinet.
12. Cabinet met on Wednesday, 11 August 2021 and, having considered the implications of the relief sought by the EC, concluded that the application be opposed and that certain key aspects be raised with this Court for consideration.
13. Thereafter the Legal Services Department in the Office of the Premier instructed the Office of the State Attorney to take urgent steps to brief counsel.

Handwritten signature and initials in the bottom right corner of the page.



This required compliance with the procurement processes mandated by the Public Finance Management Act, No. 1 of 1999. Senior counsel was eventually briefed with the papers on Thursday, 12 August 2021, at about 11h45 and a consultation was initially scheduled for 14h00.

14. Due to the unavailability of the necessary attendees, including the Premier, who were required to attend a parliamentary sitting, a meeting with senior counsel could only take place at 17h00 on Thursday, 12 August 2021. Pursuant to the advice received, a final decision was taken to oppose the relief sought and this affidavit was prepared as soon as possible thereafter.
15. This affidavit is not lengthy and deals largely with matters of law. To the extent that the EC seeks to deliver a reply thereto, it will have sufficient time to do so, and to deliver written submissions in accordance with the Directions issued by this Court.
16. In that event, the late delivery of the answering affidavit will not require the postponement of the hearing and consequently ought not to prejudice the administration of justice or this Court.
17. As far as I am aware, I am the only respondent that is opposing the relief sought, and I submit that it is manifestly in the interests of justice that the views of at least one of the respondents should be before this Court, for that reason alone.
18. Furthermore, the factual information set out herein is, I respectfully submit, highly relevant to the proper determination of this matter. It is, for that reason too, in the interests of justice that this affidavit be admitted into evidence.



19. I respectfully submit that I have provided a full explanation for the delay in the delivery of the answering affidavit. The Court and the EC will suffer no prejudice as a consequence of the late delivery of the answering affidavit. The grounds of opposition are substantial. The issues to be determined in this matter are weighty and material to the administration of justice and the integrity of our constitutional democracy. Consequently, I submit that it is in the interests of justice that the answering affidavit be admitted in evidence in this matter.
20. Accordingly, I submit that it is in the interests of justice that condonation be granted.

#### **THE EC SEEKS TO IGNORE ITS OBLIGATIONS TO PARLIAMENT**

21. The EC is an independent State institution supporting constitutional democracy under Chapter 9 of the Constitution, established under s 181(1)(f) and ss 190 and 191 of the Constitution, and functioning in terms of the Electoral Act 73 of 1998.
22. Its functions as set out in the Constitution are to manage elections of national, provincial and municipal legislative bodies in accordance with national legislation and to ensure that those elections are free and fair.
23. Moreover, the Constitution determines that the EC is accountable to Parliament, and to Parliament alone, for the discharge of its constitutional obligations.

A handwritten signature in black ink, consisting of a stylized, cursive script that is difficult to decipher but appears to be a personal name.

24. Insofar as local government elections are concerned, s 159 is the operative provision of the Constitution and provides -

*(1) The term of a Municipal Council may be no more than five years, as determined by national legislation.*

*(2) If a Municipal Council is dissolved in terms of national legislation, or when its term expires, an election must be held within 90 days of the date that Council was dissolved or its term expired.*

*(3) A Municipal Council, other than a Council that has been dissolved following an intervention in terms of section 139, remains competent to function from the time it is dissolved or its term expires, until the newly elected Council has been declared elected.*

25. In effect, what the EC seeks is for this Court to amend the provisions of s 159(2) of the Constitution to allow it to hold local government elections during February 2022, instead of during October 2021.

26. Its reasons for asking this Court to allow it to do so are, with respect, legally irrelevant.


27. This Court has no power to grant the relief that the EC seeks. Only Parliament has that power, by passing a bill to amend the Constitution, and, in any event, the EC's reasons for seeking to postpone the local government elections are bad (albeit that its reasons are legally irrelevant).

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28. Not only could the EC have approached Parliament to obtain the relief that it seeks from this Court, but it was incumbent upon it to approach Parliament for the relief that it now seeks from this Court.
29. Section 159(2) of the Constitution is cast in peremptory terms. The EC recognises this, yet what it seeks to do is to approach this Court on the basis of the reasons set out in the report of Justice Moseneke (the Moseneke report), effectively to amend, or more accurately, draw a line through, s 159(2) of the Constitution.
30. In so doing, the EC completely ignores its express constitutional obligations to account to Parliament for the manner in which it is required to discharge, or in this case, fail to discharge, its constitutional obligations.
31. If, as it claims, the reasons in the Moseneke report for delaying the October 2021 local government elections are good reasons (which I dispute) the EC had a constitutionally-mandated mechanism available to it – s 74 of the Constitution.
32. Yet nowhere in the 621 pages that it has placed before the Court does it attempt to explain why it failed to engage the one and only constitutionally compliant mechanism available to it to postpone the elections.
33. It fails entirely to explain to the Court why it did not approach Parliament timeously to seek a constitutional amendment to allow for the postponement of the elections.

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34. It does not assist the EC to say that it would have been too late to approach Parliament because it only received the Moseneke report on 20 July 2021.
35. The EC has been aware of the COVID-19 pandemic since March 2020. It cannot claim not to have been aware of its obligations to make preparations to hold the local government elections during 2021.
36. Consequently, the EC had a constitutional obligation to take all necessary steps to ensure that it was prepared to hold the local government elections by no later than the end of October 2021.
37. Similarly, the EC cannot reasonably claim not to have been aware of the possibility that the local government elections might have to be delayed as a consequence of the COVID-19 pandemic.
38. Consequently, it had a constitutional obligation to conduct the necessary investigations to place it in a position to approach Parliament timeously, if necessary, to seek a constitutional amendment to delay the holding of the local government elections.
39. The EC fails to explain to this Court why it did not take the necessary steps to engage with the Executive and Parliament as the Constitution requires it to do in the event that a constitutional amendment to delay the holding of the local government elections became necessary.
40. The EC cannot rely on its own remissness as a basis to escape its obligations to account to Parliament and indeed as a basis to escape its obligations to



engage the constitutionally-mandated mechanisms through which the Constitutional amendments necessary for a delay in the holding of the elections might be effected.

41. To approach this Court to do so amounts to an egregious breach of the separation of powers and ought not to be countenanced.

### **THE DANGEROUS PRECEDENT IF THIS COURT WERE TO AMEND THE CONSTITUTION**

42. The Constitution expressly provides for a process through which it may be amended. Section 74 of the Constitution sets out detailed procedures for how and when the Constitution may be amended.

43. Importantly, there is no power at all for this Court, or indeed any Court, to amend the Constitution. There are good and proper reasons for this.

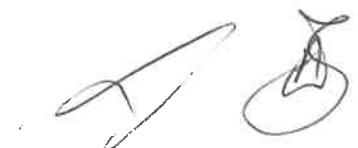
44. The Constitution is the supreme law of the land. The framers of the Constitution took special care to ensure that the provisions of the document which is foundational to our constitutional State are less vulnerable to amendment than ordinary legislation. This is why the Constitution itself provides for more stringent procedures as well as higher majorities when compared with those which are required for the amendment of other legislation.

45. Again, the Constitution itself provides expressly that Parliament, and only Parliament, has the power to pass constitutional amendments – and indeed in respect of certain kinds of constitutional amendments Parliament must invoke



special procedures and special majorities to pass particular constitutional amendments.

46. There simply is no room whatsoever – no matter what the reason - for this Court to amend the Constitution, or to countenance the ignoring or suspension of a provision thereof. It has no power to do so.
47. The reason is quite simple. It is to maintain the integrity of the foundational document of our constitutional democracy. If this Court were to tinker with the integrity of that principle, for even the best of reasons, the precedent that would be set, would be disastrous.
48. If this Court were to entertain an unconstitutional constitutional amendment to postpone an election, in the absence of an express power sourced in the Constitution itself, what would stop this Court in the future from relying on the precedent so set to suspend the right to life or some other fundamental right in the Bill of Rights, because it served a convenient purpose?
49. It is quite clear that none of the parties represented in Parliament sought to introduce a bill seeking to amend s 159(2) of the Constitution. This notwithstanding any support they may have expressed for the postponement of the local government elections. That fact alone should sound alarm bells with this Court as to the dangers of the relief sought by the EC.
50. Either the EC did not believe that a bill seeking a constitutional amendment would receive the requisite support in Parliament so it simply waited until it was too late to seek a constitutional amendment in the hope that the spectre of a

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public health crisis would move this Court to breach the separation of powers in the most egregious manner since the dawn of our democracy, or, (and more likely), the EC simply has no appreciation of its role as a Chapter 9 institution and its constitutional obligations, and has sought to approach this Court to rescue it from its own inaction, with scant regard for the harm that would be done to the Constitution itself by the precedent that would be set should this Court grant the EC the relief that it seeks.

51. Both options are equally offensive in a constitutional democracy.

#### **THE EC's REASONS ARE BAD**

52. The EC approaches this Court on the basis that the Moseneke report supports a conclusion that it is objectively impossible to hold the local government elections safely in October 2021, purportedly because of the risk posed by the COVID-19 pandemic.
53. However, the EC has failed to place certain pertinent facts before the Court which demonstrate that that is simply not the case. It has also, regrettably, misstated certain of the facts that it has placed before the Court.
54. The EC has failed to disclose that it made a presentation to the Western Cape Provincial Legislature ("the WCPL"), at the latter's request, on 21 May 2021 in which it set out its preparations for the 2021 local government elections. I annex a copy of the PowerPoint presentation hereto, marked "**AB1**".

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55. Several key points arise from that presentation. At that stage, being 21 May 2021, the EC was aware that the President had announced that the local government elections would be held on 27 October 2021, although the date had not been formally proclaimed as yet.
56. The EC informed the WCPL that it had already at that stage commenced preparations for the local government elections.
57. The EC presented the following provisional timeline for the local government elections:
- 57.1. October 2020 – March 2021: Alignment of voting districts to new ward boundaries.
  - 57.2. May 2021 to July 2021: General voter registration and education campaign.
  - 57.3. May 2021 to June 2021: Targeted voter registration and communications.
  - 57.4. August 2021: Candidate nominations;
  - 57.5. September 2021 – November 2021:
    - 57.5.1. 1-2 days before elections: Special votes (home visits and at voting stations);
    - 57.5.2. +/- 7 days after elections: Announcement of results;

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57.5.3. +/- 14 days after elections: Election of local municipal representatives to district councils.

58. The EC provided a briefing on certain legislative amendments necessary for the holding of the local government elections.
59. In regard to the issue of communication and voter education, the EC provided specific information in respect of new COVID-19 protocols that it said it had designed to keep voters, election staff, observers, party agents and others safe during the pandemic.
60. In regard to community outreach, the EC provided specific inputs regarding virtual engagements with staff and stakeholders in the context of the COVID-19 pandemic.
61. The EC provided an update on certain key innovations that it said it had put in place in respect of the 2021 local government elections including the procurement of new voter management devices to replace the old “zip-zips”.
62. This new technology would allow for enhanced voter registration and monitoring of voter participation in real time, including the ability to capture an address or place of residence during registration and to verify the address against ward boundaries as well as to support other functions such as a central voters’ roll, electoral staff attendance and ballot paper tracking.



63. In addition, the EC provided information on the following key innovations introduced for the 2021 local government elections, specifically aimed at enhancing COVID-19 safety:

63.1. The introduction of e-learning modules for training of election staff;

63.2. The introduction of e-recruitment for internal staff appointments as well as those of electoral staff. In this regard, test scores would be received and incorporated from e-learning where relevant.

63.3. Enhancements to the online candidate nomination system used successfully by parties during the previous two general elections and by-elections.

63.4. The introduction of a new and revamped voter registration system.

63.5. The introduction of an online election observer application system.

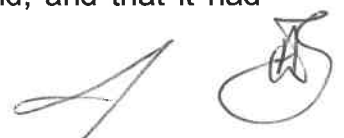
64. Importantly, the EC provided the WCPL with specific information in respect of the COVID-19 protocols that it had put in place for the 2021 local government elections.

65. In particular, the EC advised that, in order to prevent the elections posing a risk to participants, it had introduced a range of special COVID-19 prevention measures for by-elections in 2020 including:

65.1. Strict social distancing practices both outside and inside voting stations;



- 65.2. The mandatory wearing of masks over nose and mouth of all persons within the boundaries of voting stations;
- 65.3. The application of hand sanitisers to all persons entering and exiting voting stations;
- 65.4. The replacement of the traditional indelible ink marker pens with an indelible ink liquid which would be applied from a bottle to the thumb of voters using cotton buds which would be disposed after each use;
- 65.5. The cotton buds would be disposed of as medical waste after each use; and
- 65.6. Protective equipment including masks, gloves and face shields procured for election staff for voting stations and for conducting home visits for those voters who were physically disabled, infirm, or pregnant.
66. In addition, during the briefing the EC advised that, in its experience, turn-out for local government elections tended to be lower than for national and provincial elections.
67. At the end of the presentation by the EC, mention was made of the appointment of Justice Moseneke to investigate the feasibility of the holding of local government elections during October 2021.
68. Accordingly, it is of great concern that the EC has not disclosed to this Court that, by 21 May 2021, it had clearly put in place measures to hold local government elections with the COVID-19 pandemic in mind, and that it had



briefed the WCPL on its readiness to hold the elections with the date of 27 October 2021 having been announced by the President, albeit not formally proclaimed.

69. Further, the EC has, during the course of the COVID-19 pandemic, safely held by-elections to fill vacancies in 24 wards in municipalities across the Western Cape Province.

69.1. On 11 November 2020 the EC held by-elections in:

69.1.1. Wards 14, 51 and 88 in the City of Cape Town;

69.1.2. Ward 3 in the Drakenstein Municipality;

69.1.3. Wards 8, 14, 17 and 27 in the George Municipality;

69.1.4. Wards 9 and 10 in the Knysna Municipality; and

69.1.5. Ward 13 in the Saldanha Bay Municipality.

69.2. On 9 December 2020, the EC held by-elections in:

69.2.1. Ward 115 in the City of Cape Town;

69.2.2. Ward 9 in the Langeberg Municipality;

69.2.3. Ward 12 in the Overstrand Municipality; and

69.2.4. Wards 4, 5 and 10 in the Oudtshoorn Municipality.



69.3. On 21 April 2021, the EC held by-elections in:

69.3.1. Ward 4 in the Beaufort West Municipality;

69.3.2. Ward 11 in the Knysna Municipality; and

69.3.3. Ward 20 in the City of Cape Town.

69.4. On 30 June 2021, the EC held by-elections in:

69.4.1. Ward 2 in the Swartland Municipality;

69.4.2. Ward 1 in the Cederberg Municipality; and

69.4.3. Wards 51 and 63 in the City of Cape Town.

70. Although the EC states in its affidavit that it held by-elections on 11 November 2020 and 9 December 2020, and that it sought and obtained postponements of by-elections when the country was placed on adjusted alert level 4, what it does not disclose to the Court is that, by 11 November 2020 in the Western Cape, the second COVID-19 wave resurgence alerts had already been triggered, as the change in week-on-week test positivity rates had breached the 20% mark.

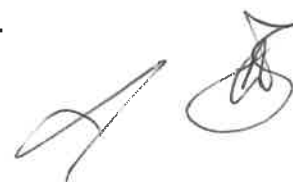
71. In other words, the average test positivity rate for the previous 7 days based on the 7-day moving average of positivity compared to the average test positivity 7 to 14 days prior, showed a 20% week-on-week increase.



72. Consequently, by the time the by-elections were held on 11 November 2020 and 9 December 2020 in the Western Cape, the second wave had already begun in the Western Cape. Yet the EC did not see fit to postpone the by-elections held in the 17 wards in the Western Cape on those dates.
73. Similarly, the third wave was well underway in the Western Cape when the by-elections were held on 30 June 2021.
74. To the extent that the EC seeks to contend that voting cannot be conducted safely at polling stations because of the risk of infection during a potential fourth wave in October 2021, this is simply not the case. It has put in place measures to manage voting safely and it has demonstrated that this can be done safely, as has been done in the past.
75. Insofar as its concerns relate to mass gatherings, the WCPG associates itself with the submissions made by the Democratic Alliance insofar as the powers of the EC are concerned when it comes to managing gatherings and putting in place measures to control large gatherings while ensuring free and fair elections. This is the function of the EC, and it has the necessary powers, and experience, to do so.
76. It cannot refuse to exercise those powers and then ask this Court to breach the Constitution because it does not want to exercise the powers that it has, and has exercised in the past, in order to manage an election during what everyone acknowledges is an extraordinary public health crisis. This only has to be stated to be rejected.


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77. Insofar as voter registration is concerned, the WCPG agrees that it is of vital importance that adequate opportunities must be provided prior to the election for voters to be registered and it associates itself with the relief sought by the Democratic Alliance in this regard.
78. As regards the problems with voter registration, it bears mention that, during the presentation given to the WCPL on 21 May 2021, the EC indicated that the reason why there was only one voter registration weekend scheduled during the 2021 local government election cycle, as opposed to two registration weekends as had been the norm in the past, was due to what the EC referred to as “financial constraints” on its part. This again is emblematic of the EC’s failure to organise its activities in a manner that would allow it to fulfil its constitutional obligations, but more importantly, belies any suggestion that this is as a result of the COVID-19 pandemic.
79. Further, and extremely disturbingly, the EC has cherry-picked the medical evidence that supports the narrative that the COVID-19 pandemic has made it objectively impossible and indeed would render it unsafe to hold local government elections in October 2021. This is simply not so.
80. The medical evidence is not at all as definitive as the EC would have this Court believe.
81. The pre-eminent expert in the country, Professor Salim Abdul Karim, states in terms in his oral presentation that in his view the safest time to hold the election would be October 2021. This is clearly reflected in the Moseneke report, yet this fact does not make its way into the EC’s affidavit while the remainder of Professor Abdul Karim’s presentation is reflected in the affidavit.

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82. Further, Professor Abdul Karim clearly states that vaccinations are not a panacea that will render elections safe, yet this seems to be precisely the approach that the EC has adopted – to delay the election until February 2022 when 67% to 70% of the adult population is estimated to be vaccinated.
83. This of course completely ignores the fact that both Professor Abdul Karim and Dr Aslam Dasoo of the Progressive Health Forum indicate that the community immunity level of 67% to 70% (40-45 million people) is unlikely to be achieved with the current administration of approved vaccines, due to the lower efficacy of these to prevent mild and moderate illness.
84. Further, Professor Abdul Karim indicates that the community immunity level of 67% was decided upon prior to the Delta variant becoming the dominant variant, and that, in his view, community immunity (also popularly referred to as 'herd immunity') will likely only be achieved when 80% of the entire population (including children) is immunised. That is simply not going to be the case in February 2022 with the current vaccination rollout plan.
85. As Dr Dasoo points out, while vaccination will have a hugely positive impact on rates of severe illness, hospitalisation and death, circulating virus will continue to be widely transmitted and may cause mild or moderate illness among those already vaccinated, and potentially severe illness or death among those not yet vaccinated. This will necessitate the prolongation of restrictions, and personal preventative measures will have to be continually applied.
86. Consequently, the point of delaying the elections so that more people can be vaccinated is entirely unclear. Vaccines are simply one tool which will have to

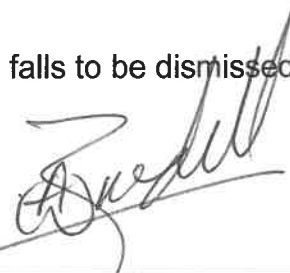


be coupled with non-pharmaceutical interventions, such as masks, ventilation, social distancing and limiting of the size of social gatherings.

87. None of these interventions require the postponement of the local government elections. More importantly, none of these interventions will render the local government elections more, or less safe in February 2022, as opposed to October 2021. Hence Professor Abdul Karim's view that October 2021 is likely to be safer than next year for the holding of the elections.
88. The EC's reasons for seeking the delay of the local government elections are unsustainable, to the extent that its reasons are legally relevant at all.
89. Its role is to manage elections in a public health crisis. It cannot breach the Constitution in order to do so.

## CONCLUSION

For these reasons, I submit that the relief sought by the EC falls to be dismissed.



**ANTON WILHELM BREDELL**

The deponent has acknowledged to me that he knows and understands the contents of this affidavit, which affidavit was signed and sworn to before me at the address below on the day of AUGUST 2012 in accordance with Regulation No R1258 dated 21 July 1972 as amended by Government Notice R1648 dated 19 August 1977, as further amended by Government Notice R1428 dated 11 July 1980 and by Government Notice R774 dated 23 April 1982.



**COMMISSIONER OF OATHS**

712 8057-0  
 KELVIN TWING  
 WARRANT OFFICER SWS  
 7 WAL STREET  
 CAPE TOWN  
 8006



**Preparations for the  
2021 Local Government  
Elections  
May 2021**



A [Signature]

# Contents

1. Election Planning Date
2. The Road to LGE 2021
3. Provisional Timelines
4. Cessation of By-Elections
5. Status of Legislative Amendments
6. Ward Demarcation
7. Voting District Delimitation
8. Status of Voters' Roll
9. Recruitment & Training
10. Stakeholder Management
11. Communication and Voter Education
12. Recruitment and Training
13. Key Innovations for LGE 2021
14. COVID-19 Measures
15. Key Challenges



# Election Planning Date

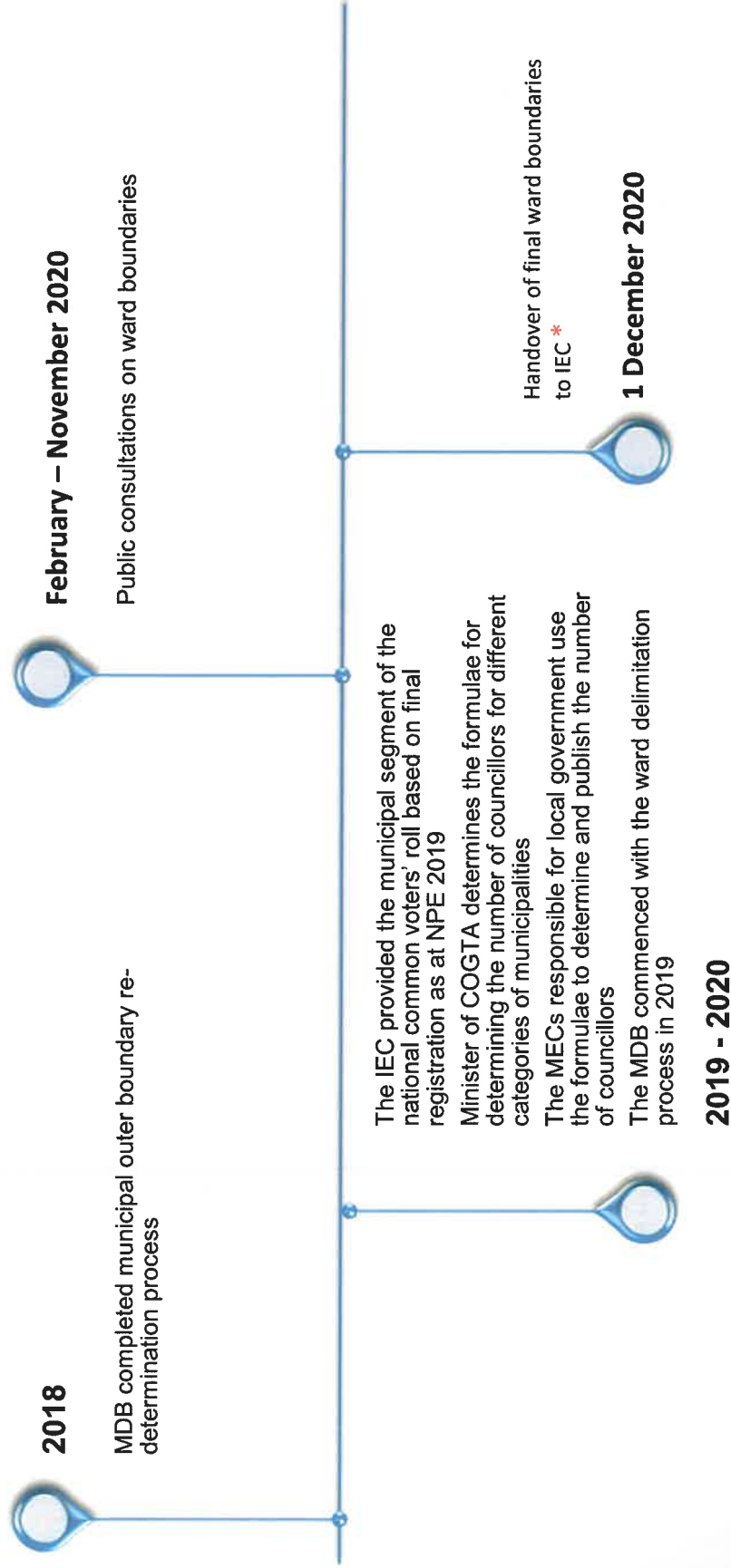
- Section 159 of the Constitution read with section 24(1) of the Local Government: Municipal Structures Act provides that a term of a municipal council is 5 years
- Elections must take place within 90 days of expiry of the term
- For the 2021 Local Government Elections that 90 day window starts on

## **4 August and ends on 1 November 2021**

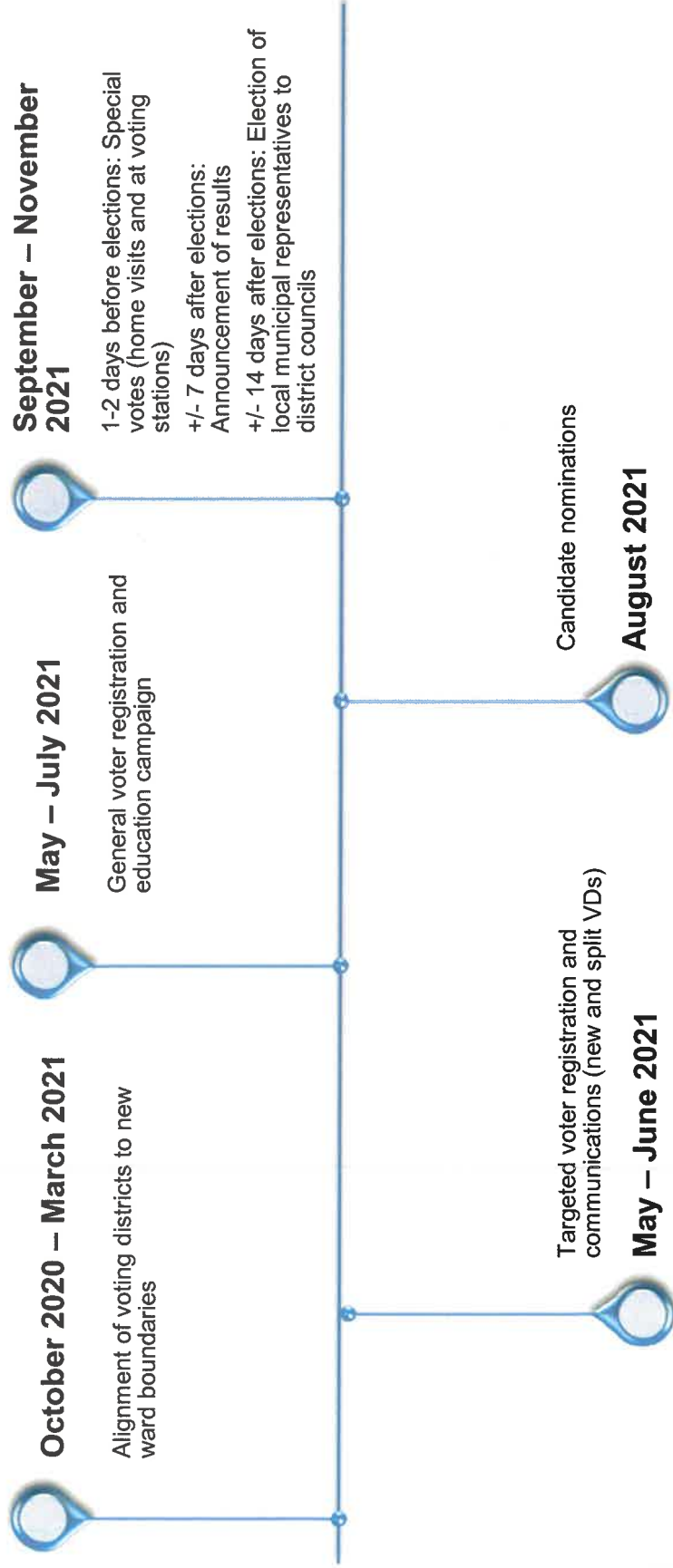
- President has announced the date of 27 October 2021 ( not Proclaimed )
- Minister of COGTA responsible for determination of the date after consultation with the Commission



# The Road to LGE 2021



# Provisional Timelines for LGE 2021





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# Cessation of By-elections

- In terms of the present Structures Act provisions, by-elections may not be held for vacancies arising within 6 months of when general election must be held i.e. vacancies arising from **1 May 2021, and**
- The MEC for Local Government has to determine that the by-election must stand over until the general elections
- However, by-elections may still be held beyond this date if the vacancy arose before 1 May 2021
- By-elections on 19 May 2021 – none in WC
- There are 4 wards in WC for the by-elections on 30 June 2021
  - Wards 51 & 63 CTN Metro; Ward 1 Cederberg; & Ward 2 Swartland





# Status on Legislative Amendments

- The Electoral Laws Amendment Bill has also been passed by both houses of Parliament
  - Registration levels of political parties
  - Providing for a varied voting procedure for voters without addresses
  - Clarifying the effective date of the electoral code of conduct
  - Balancing the right to privacy of personal information and the right of freedom of expression in the publication of the voters' roll
  - Candidate Nomination process



# 2021 Total Seats\*

Name of Municipality	Total Seats	PR Seats	Ward	Proportionally elected Councillors (DC 40%)	Number of Representatives to be appointed by Local Municipality (DC 60%)
CPT - City of Cape Town	231	115	116		
DC1 - West Coast DC	25	25		10	15
WC011 - Matzikama	15	7	8		2
WC012 - Cederberg	11	5	6		2
WC013 - Bergivier	13	6	7		2
WC014 - Saldanha Bay	27	13	14		5
WC015 - Swartland	23	11	12		4
DC2 - Cape Wineands DC	41	41		17	24
WC022 - Witzenberg	23	11	12		3
WC023 - Drakenstein	65	32	33		8
WC024 - Stellenbosch	45	22	23		5
WC025 - Breede Valley	41	20	21		5
WC026 - Langeberg	23	11	12		3
DC3 - Overberg DC	21	21		9	12
WC031 - Theewaterskloof	27	13	14		5
WC032 - Overstrand	27	13	14		4
WC033 - Cape Agulhas	11	5	6		2
WC034 - Swellendam	11	5	6		1
DC4 - Garden Route DC	35	35		14	21
WC041 - Kannaland	7	3	4*		1
WC042 - Hessequa	17	8	9		2
WC043 - Mossel Bay	29	14	15		4
WC044 - George	55	27	28		6
WC045 - Oudtshoorn	25	12	13		3
WC047 - Bitou	13	6	7		2
WC048 - Knysna	21	10	11		3
DC5 - Central Karoo DC	15	16		6	7
WC051 - Laingsburg	7	3	4*		1
WC052 - Prince Albert	7	3	4*		1
WC053 - Beaufort West	13	6	7		5
<b>TOTAL</b>	<b>924</b>	<b>519</b>	<b>406</b>		

# Voting District Delimitation

Voting District Information					
Province	MunicCode	Municipality	Number of VD's	Number of Split VD's	
Western Cape	CPT	CPT - City of Cape Town	801		156
Western Cape	WC011	WC011 - Matzikama	35		0
Western Cape	WC012	WC012 - Cederberg	25		2
Western Cape	WC013	WC013 - Bergrivier	19		0
Western Cape	WC014	WC014 - Saldanha Bay	28		12
Western Cape	WC015	WC015 - Swartland	40		8
Western Cape	WC022	WC022 - Witzenberg	43		2
Western Cape	WC023	WC023 - Drakenstein	74		38
Western Cape	WC024	WC024 - Stellenbosch	48		29
Western Cape	WC025	WC025 - Breede Valley	58		10
Western Cape	WC026	WC026 - Langeberg	37		4
Western Cape	WC031	WC031 - Theewaterskloof	45		4
Western Cape	WC032	WC032 - Overstrand	30		14
Western Cape	WC033	WC033 - Cape Agulhas	17		4
Western Cape	WC034	WC034 - Swellendam	17		4
Western Cape	WC042	WC042 - Hessequa	25		12
Western Cape	WC043	WC043 - Mossel Bay	33		19
Western Cape	WC044	WC044 - George	59		15
Western Cape	WC047	WC047 - Bitou	18		4
Western Cape	WC048	WC048 - Knysna	30		4
Western Cape	WC041	WC041 - Kannaland	14		0
Western Cape	WC045	WC045 - Oudtshoorn	38		8
Western Cape	WC051	WC051 - Laingsburg	8		3
Western Cape	WC052	WC052 - Prince Albert	9		2
Western Cape	WC053	WC053 - Beaufort West	25		2
			1576		356

# Voters' Roll by Municipality

## 4 May 2021

Municipality	Total 2011	Total 2016	Total 4 May 2021
CPT - City of Cape Town	1 745 853	1 977 690	1 946 807
WC011 - Matzikama	26 630	30 193	30 325
WC012 - Cederberg	21 058	24 931	25 345
WC013 - Bergrivier	23 213	26 310	25 872
WC014 - Saldanha Bay	47 173	56 767	58 189
WC015 - Swartland	42 249	49 185	48 293
WC022 - Witzenberg	42 208	46 980	45 589
WC023 - Drakenstein	115 089	129 265	128 235
WC024 - Stellenbosch	79 551	91 881	93 125
WC025 - Breede Valley	71 849	77 483	75 223
WC026 - Langeberg	38 275	43 290	42 087
WC031 - Theewaterskloof	48 092	56 687	57 093
WC032 - Overstrand	45 298	53 384	56 133
WC033 - Cape Agulhas	17 632	19 650	20 038
WC034 - Swellendam	15 909	18 881	19 390
WC041 - Kannaland	13 088	14 735	14 162
WC042 - Hessequa	27 251	30 950	31 175
WC043 - Mossel Bay	52 146	59 270	60 525
WC044 - George	90 601	100 886	101 266
WC045 - Oudtshoorn	47 736	52 443	51 080
WC047 - Bitou	24 975	27 867	28 007
WC048 - Knysna	36 332	40 014	39 999
WC051 - Laingsburg	4 150	4 494	4 390
WC052 - Prince Albert	6 566	7 386	7 563
WC053 - Beaufort West	23 812	26 027	25 478
<b>Total</b>	<b>2 706 736</b>	<b>3 066 649</b>	<b>3 035 389</b>




# Voters' Roll by Gender and Age

4 May 2021

Province	Female	Male	Total
Western Cape	1 672 587	1 362 802	3 035 389

Province	Age Band						Total		
	18-19	20-29	30-39	40-49	50-59	60-69		70-79	80+
Western Cape	3 490	405 342	717 049	709 164	579 425	365 223	179 908	75 788	3 035 389



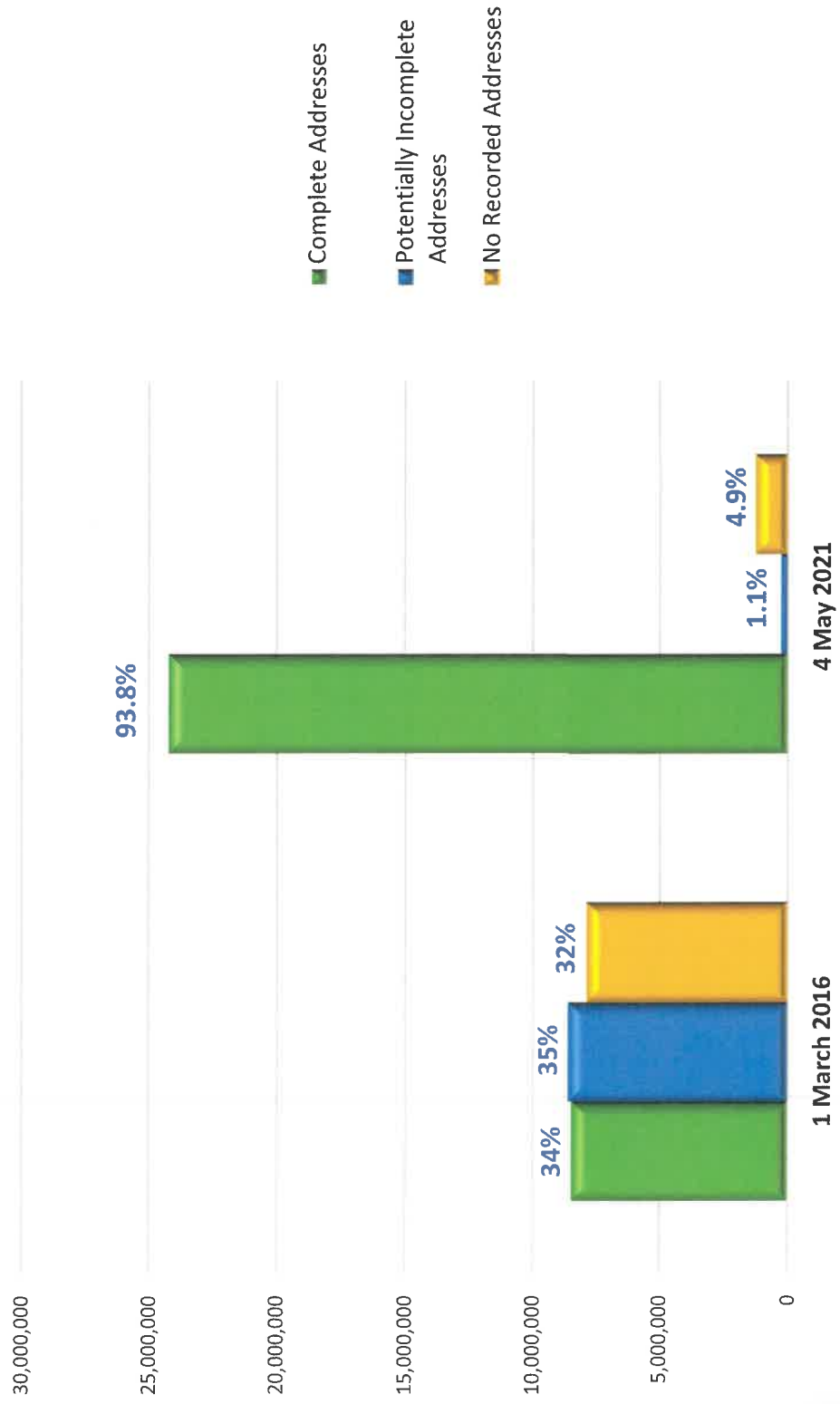
# Status of Voters' Roll Addresses

Address Category	1 March 2016	%	4 May 2021	%
Complete Addresses	8 468 119	34%	24 210 484	93.8%
Potentially Incomplete Addresses	8 601 195	35%	272 180	1.1%
No Recorded Addresses	7 857 156	32%	1 253 130	4.9%
"REC AS" Addresses	-	-	66 568	0.3%
<b>Total Registered Voters</b>	<b>24 926 470</b>	<b>100%</b>	<b>25 802 362</b>	<b>100%</b>

[ 12 ]

A

# Voters' Roll Address Progress 2016 - 2021



*[Handwritten signature]*

# Voters' Roll Addresses by Municipality

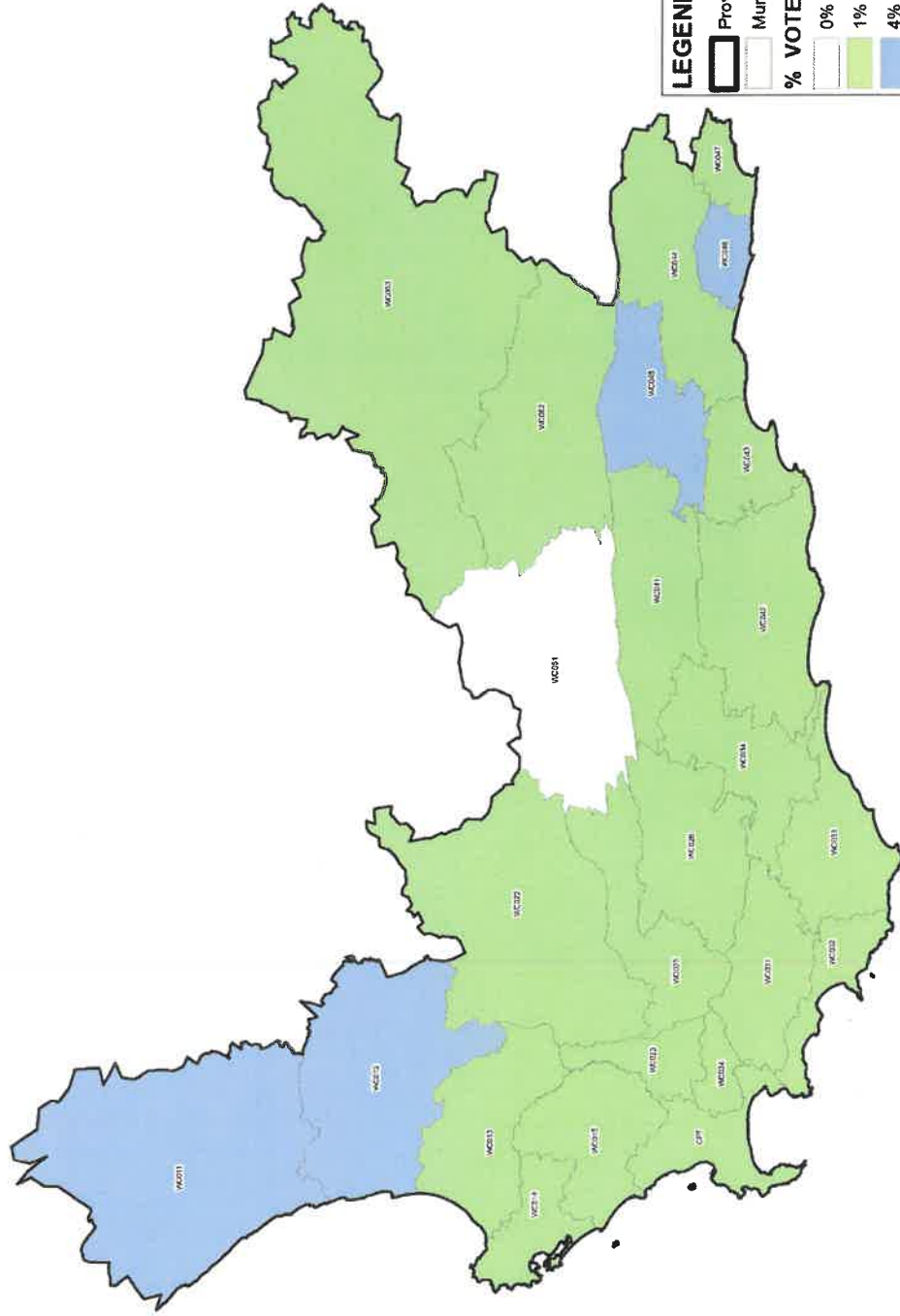
## 4 May 2021

Municipality	Complete Addresses	Potentially Incomplete Addresses	"REC-AS" Addresses	No Recorded Addresses	Total
CPT - City of Cape Town	1 896 427	19 348	1 875	29 157	1 946 807
WC011 - Matzikama	27 818	812	15	1 680	30 325
WC012 - Cederberg	23 970	465	2	908	25 345
WC013 - Bergrivier	24 941	256	0	675	25 872
WC014 - Saldanha Bay	56 525	1 279	37	348	58 189
WC015 - Swartland	47 274	676	0	343	48 293
WC022 - Witzenberg	42 519	2 428	10	632	45 589
WC023 - Drakenstein	123 817	1 462	60	2 896	128 235
WC024 - Stellenbosch	88 532	2 271	27	2 295	93 125
WC025 - Breede Valley	71 076	2 741	43	1 363	75 223
WC026 - Langeberg	40 049	1 556	3	479	42 087
WC031 - Theewaterskloof	53 428	981	1 291	1 393	57 093
WC032 - Overstrand	54 435	835	5	858	56 133
WC033 - Cape Agulhas	19 768	74	0	196	20 038
WC034 - Swellendam	18 874	327	2	187	19 390
WC041 - Kannaland	13 895	126	15	126	14 162
WC042 - Hessequa	29 868	1 220	9	78	31 175
WC043 - Mossel Bay	57 873	1 025	127	1 500	60 525
WC044 - George	97 625	2 530	15	1 096	101 266
WC045 - Oudtshoorn	47 316	710	14	3 040	51 080
WC047 - Bitou	27 433	110	18	446	28 007
WC048 - Knysna	38 179	234	53	1 533	39 999
WC051 - Laingsburg	4 389	1	0	0	4 390
WC052 - Prince Albert	7 444	20	0	99	7 563
WC053 - Beaufort West	24 856	186	0	436	25 478
<b>Total</b>	<b>2 863 463</b>	<b>41 232</b>	<b>3 568</b>	<b>49 696</b>	<b>3 035 389</b>
Percentage	94.3%	1.4%	0.1%	1.6%	100%



# No Recorded Addresses

by Municipality 4 May 2021



**LEGEND**

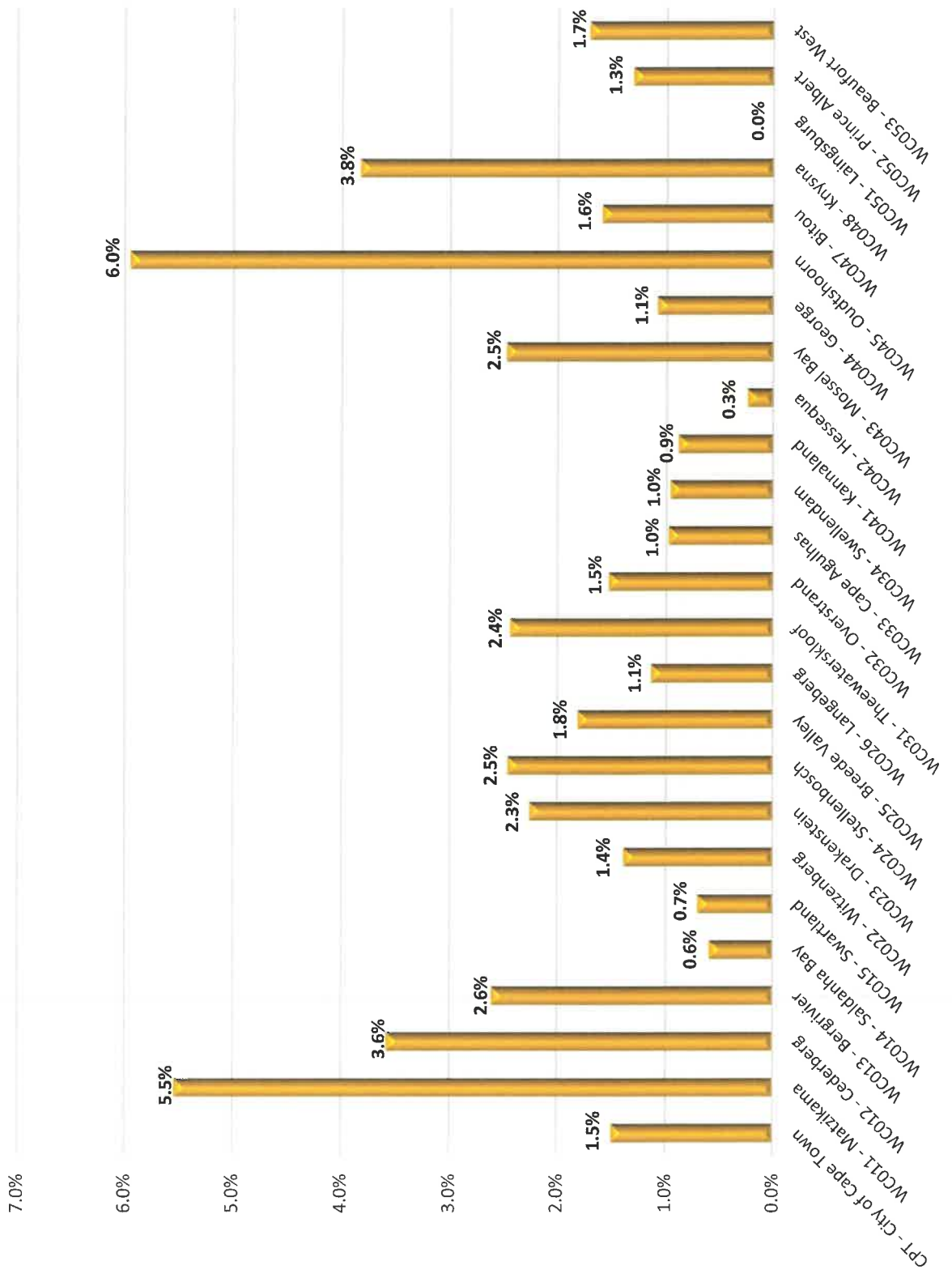
- Provincial boundary
- Municipal boundary

**% VOTERS WITHOUT ADDRESSES**

- 0%
- 1% - 3%
- 4% - 6%
- 7% - 9%
- 10% - 12%
- 13% - 15%
- 16% - 18%
- 19% - 20%
- >20%

A

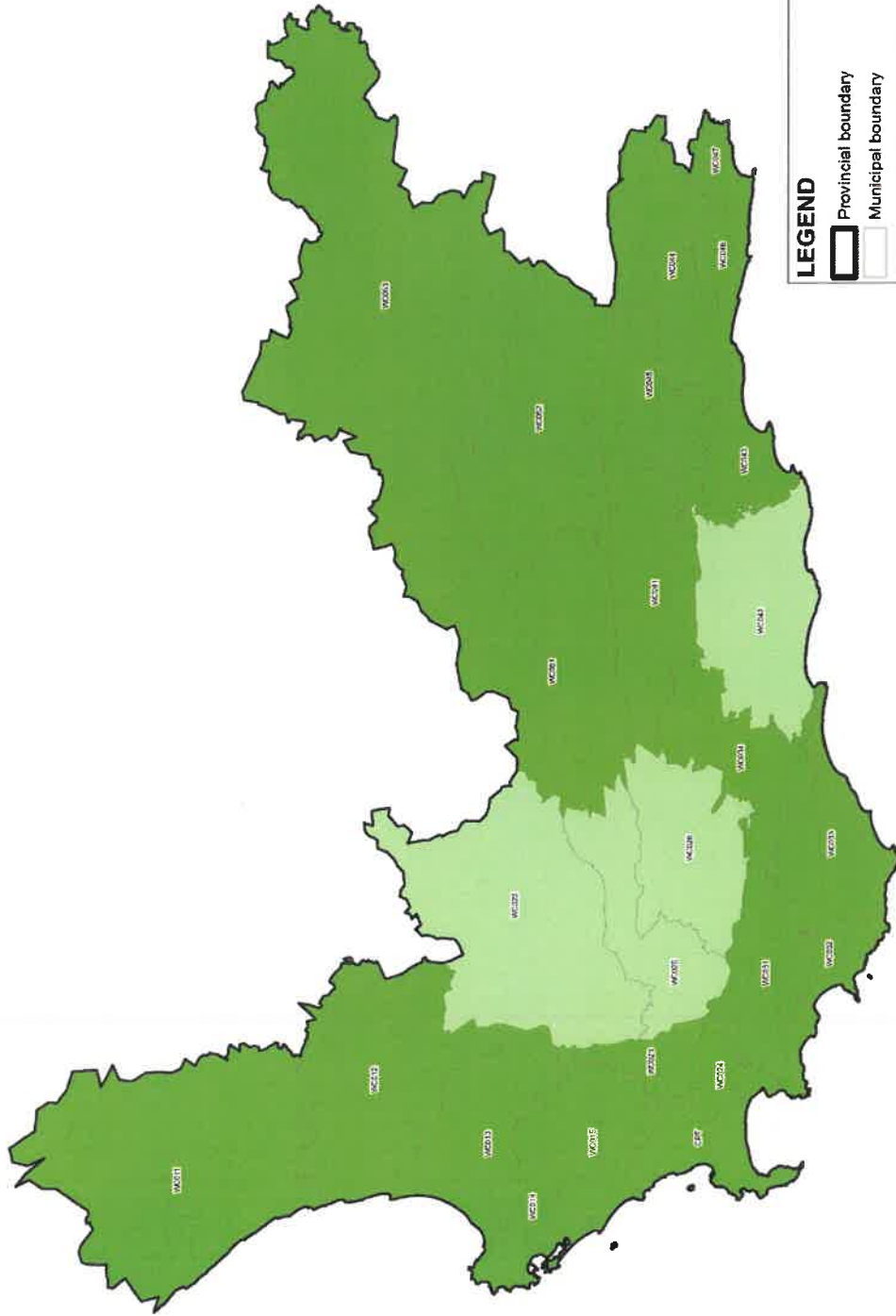
# No Recorded Addresses by Municipality 4 May 2021



*(Handwritten signatures)*

# Potentially Incomplete Addresses

by Municipality 4 May 2021



**LEGEND**

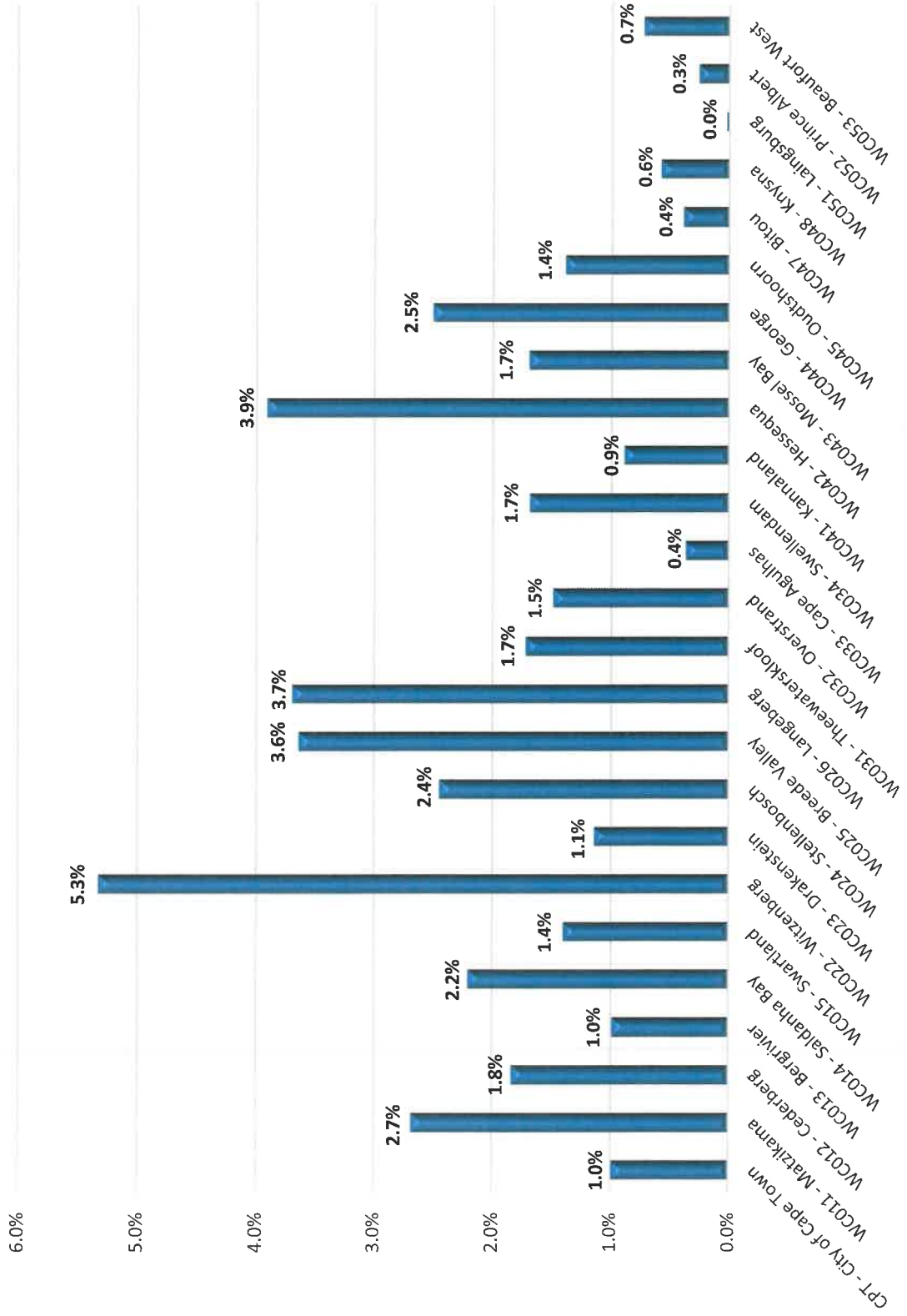
- Provincial boundary
- Municipal boundary

**% POTENTIALLY INCOMPLETE ADDRESSES**

- 0% - 3%
- 4% - 7%
- 8% - 15%
- 16% - 25%
- 26% - 36%
- 37% - 56%
- >57%

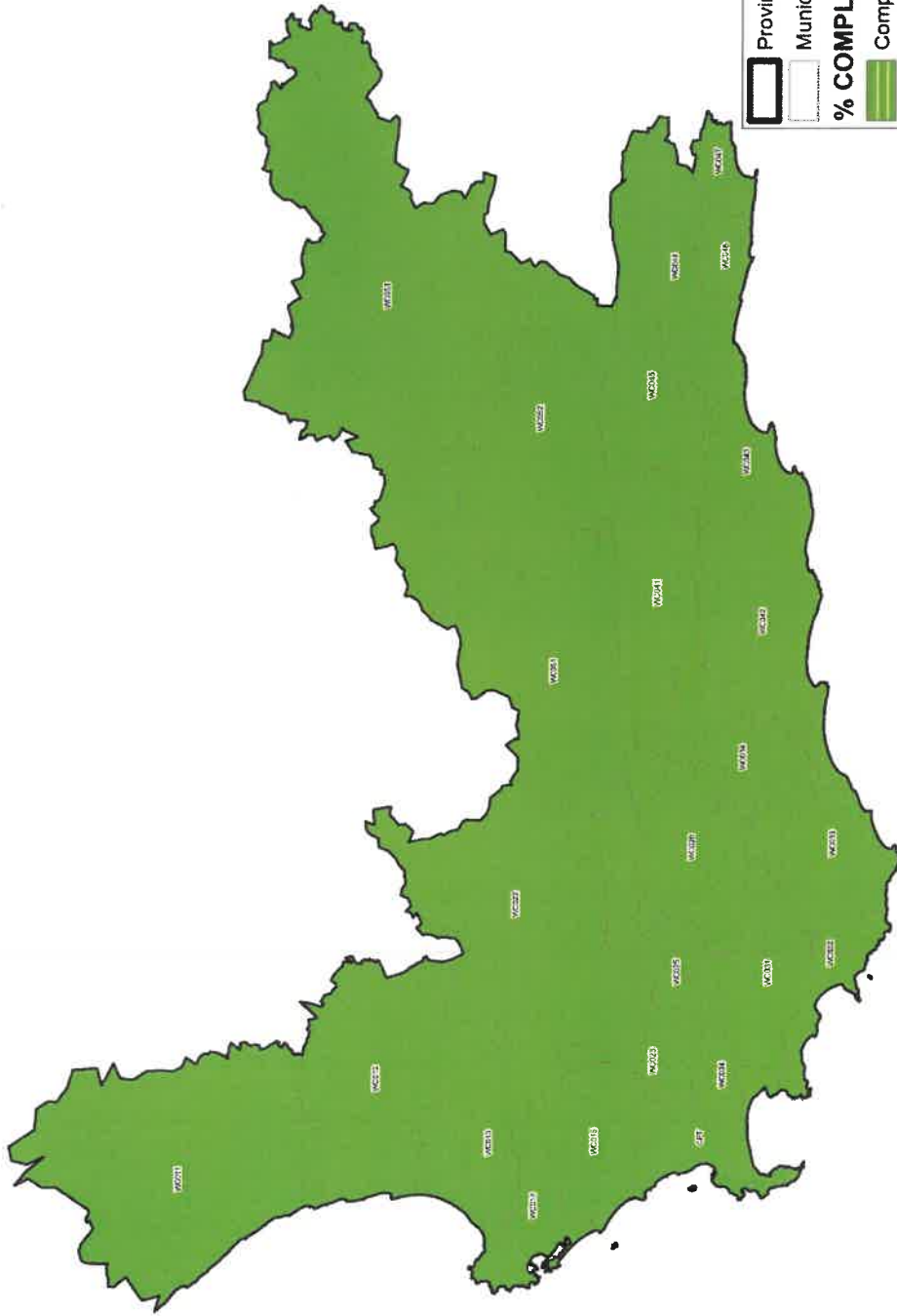
# Potentially Incomplete Addresses

by Municipality 4 May 2021



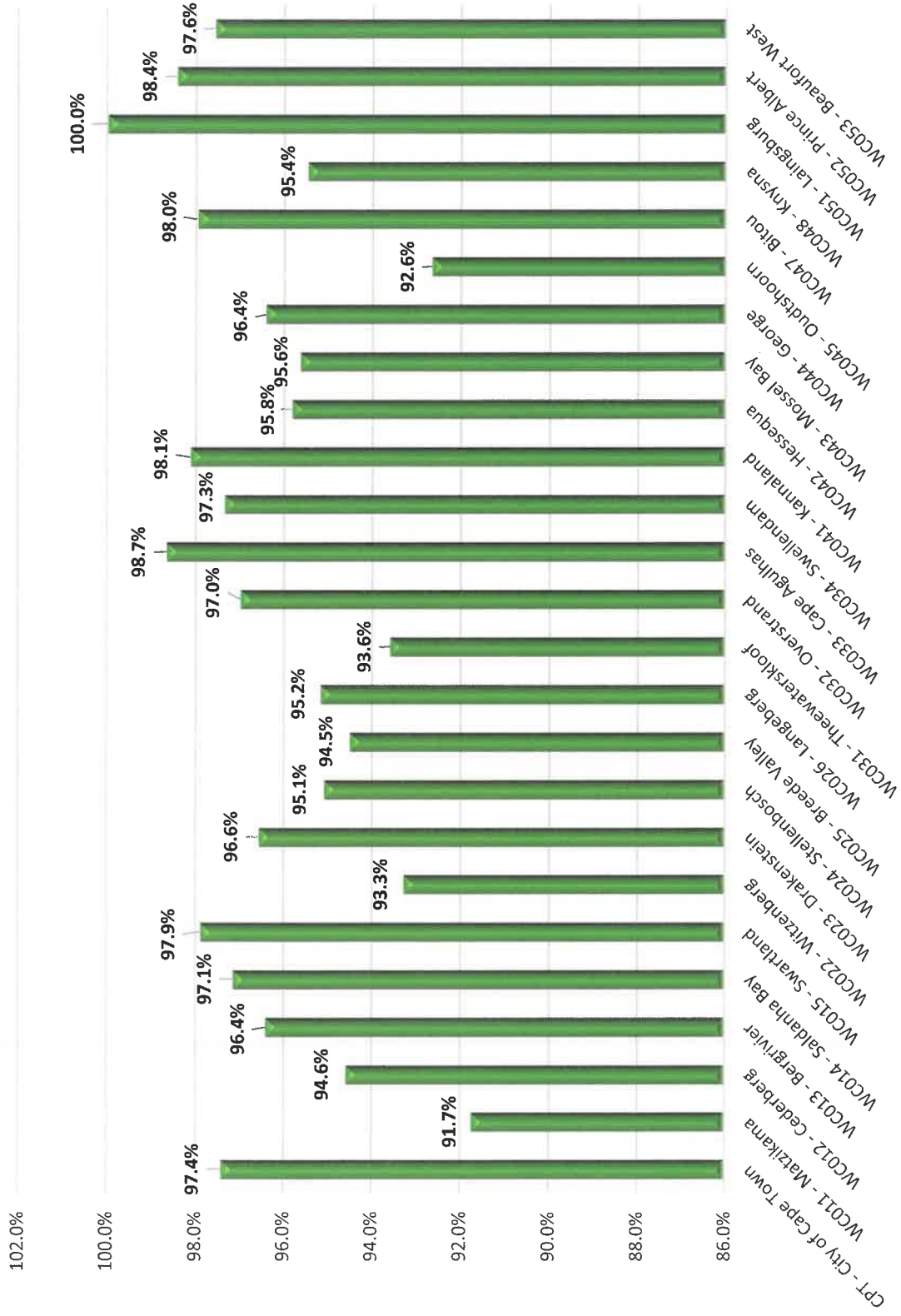
# Complete Addresses

by Municipality 4 May 2021



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# Complete Addresses by Municipality 4 May 2021

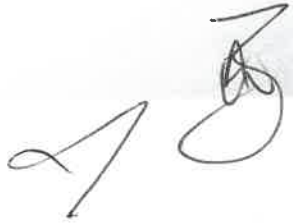


# Voting Stations

Municipality	Voting Stations	Voting Centres	Average # Substations	Temp VS
CPT - City of Cape Town	801	323	761	20
DC1 - West Coast				
WC011 - Matzikama	35	7	16	
WC012 - Cederberg	25	3	7	
WC013 - Bergvliet	19	6	12	
WC014 - Saldanha Bay	28	7	17	1
WC015 - Swartland	40	4	10	1
DC2 - Cape Winelands				
WC022 - Witzenberg	43	5	10	
WC023 - Drakenstein	74	13	32	2
WC024 - Stellenbosch	48	14	33	4
WC025 - Breede Valley	58	3	7	
WC026 - Langeberg	37	7	14	1
DC3 - Overberg				
WC031 - Theewaterskloof	45	9	18	
WC032 - Overstrand	30	12	28	
WC033 - Cape Agulhas	17	4	8	
WC034 - Swellendam	17	1	2	1
DC4 - Eden				
WC042 - Hessequa	25	8	18	
WC043 - Mossel Bay	33	10	22	
WC044 - George	59	17	37	
WC047 - Bitou	18	4	8	
WC048 - Knysna	30	6	15	1
DC5 - Central Karoo				
WC041 - Kamakand	14	1	3	
WC045 - Oudtshoorn	38	4	8	
WC051 - Leingsburg	8			
WC052 - Prince Albert	9	1	2	
WC053 - Beaufort West	25	5	10	
<b>WC Totals</b>	<b>1 676</b>	<b>474</b>	<b>1 098</b>	<b>31*</b>

# Staff and Training

- **Permanent Staff -**
- **Filling of contract staff positions included the following:**
- 40 x MOCs, 51 x APCs and 4 x PSEs were allocated to the Province
- National Registration Training Bootcamp – 10-12 May
- Provincial Registration Training Bootcamp – 26-28 May
- e'Recruitment for Registration Officials





# Recruitment and Training

- The criteria for the recruitment of electoral staff developed in consultation with the NPLC
- Key consideration being to exclude persons that may be partisan (no-one who has held office in a political party may serve as an election official)
- Names of proposed presiding officers and deputies are presented to MPLCs for objection before they are confirmed.
- Approximately 4600 staff are recruited and trained for the registration event and +/- 18 000 for voting day



# Stakeholder Engagement

- Free, fair and credible elections require the cooperation of and participation by a wide range of stakeholders including:
  - State departments and structures (Health; DLG; WCED COGTA, Inter-ministerial Committee on Elections, ProvJoints, SAPS etc)
  - Other agencies (Municipal Demarcation Board, ICASA)
  - Municipalities
  - Political parties (primarily via NPLC, PPLC and MPLC)
  - Media
  - Civil society (including NGOs, faith-based organisations)
  - Business and labour
  - Observers
- The Electoral Commission began with an extensive stakeholder engagement programme in the third quarter of 2020 to provide information regarding election preparations and areas of mutual cooperation
- This engagement will continue throughout 2021



# Security; Logistics & Warehousing

- Provincial JOINTS activation
- Election Priority Committee
- Warehousing - Provincial, Local and Metro areas
- Bulk Material
- Security Items
- Ballot papers

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# Communication and Voter Education

- The Electoral Commission embarks on heightened communication and voter education programmes ahead of elections to ensure the electorate is empowered with information relating to participation in elections including:
  - The importance of participation by each citizen
  - How to register and update voter registration information
  - Where and how to vote
- Other key areas of communications in the upcoming LGE 2021 will include:
  - COVID-19: Explaining the new COVID-19 protocols and how these will keep voters, election staff, observers, party agents and others safe
  - Disinformation: The rise of social media has also seen a rise in disinformation which has the potential to undermine the freeness and fairness of elections. Educating voters on the dangers of disinformation and how to spot it/report it.



# OUTREACH AND COMMUNICATION

- **Civic and Democracy Education**
- Municipal Outreach Coordinators appointed for Democracy Education, Voter Education and Balloting Education.
- **Stakeholder Events**
  - Persons with Disabilities
  - Workers Unions
  - Schools Democracy Programme
  - Youth Democracy Programme
  - Community Education
  - Virtual engagements with staff and stakeholders

- **COMMUNICATION**

- Civic and Democracy Education on Community Radio
  - Media Buyer appointed
  - Social media engagements



# Key Innovations for LGE 2021

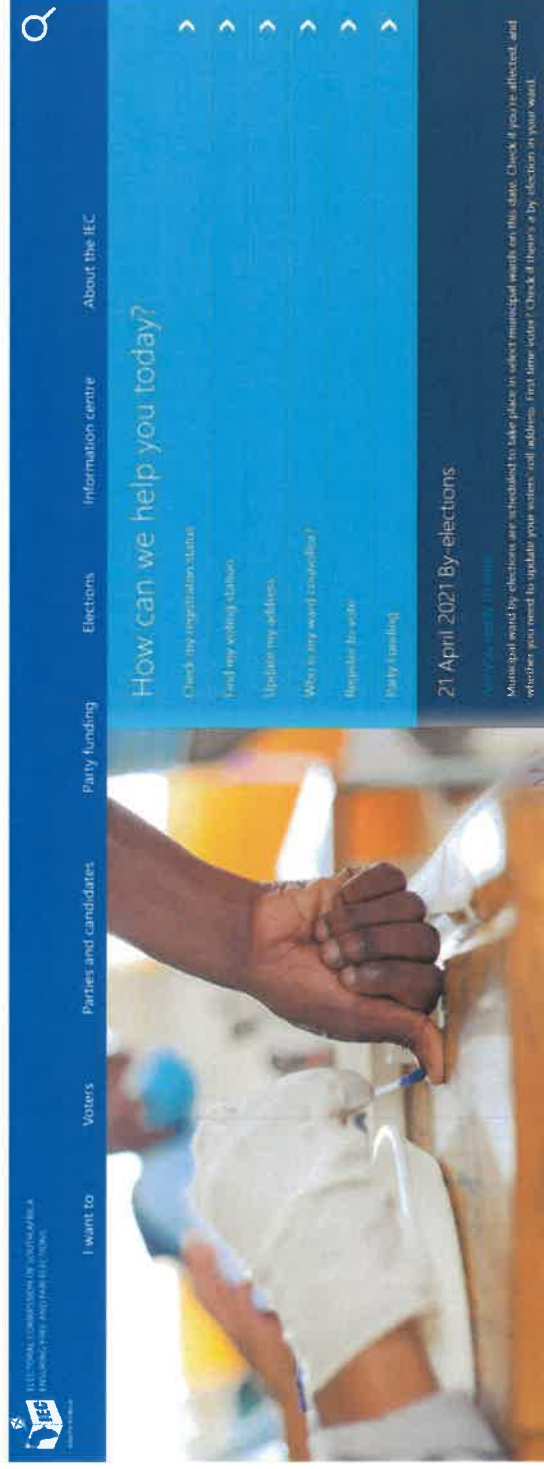
1. New **Voter Management Devices** are being procured ahead of LGE 2021 to replace “zip-zips”
  - New generation technology will allow for enhanced voter registration and monitoring of voter participation in real time. This includes:
    - The ability to capture an address or place of residence during **registration** and to verify the address against ward boundaries
    - To support other functions such as a **central voters’ roll (voter participation), electoral staff attendance and ballot paper tracking.**



A handwritten signature in black ink, consisting of a stylized 'S' followed by a flourish.

# Key Innovations for LGE 2021

2. A revamped **public website** for improved navigation and communications



3. A public reporting app for **disinformation** on social media in association with Media Monitoring Africa towards end of May which will form part of a larger Electoral Justice system

# Key Innovations for LGE 2021

4. Introduction of **e-Learning** modules for training of election staff
5. Introduction of **e-Recruitment** for internal staff appointments as well as those of electoral staff. Test scores will be received and incorporated from eLearning where relevant.
6. Enhancements to the **Online Candidate Nomination** system used successfully by parties during the previous two general elections and by-elections.
7. Introduction of a new and revamped **Voter Registration System**.
8. Introduction of an **Online Observer Application** system.





# COVID-19 Protocols for Elections

- In order to prevent the elections posing a risk to all participants, the Electoral Commission introduced a range of special COVID-19 prevention measures for by-elections in 2020
- These included:
  - Strict social distancing practices both outside and inside voting stations
  - The mandatory wearing of masks over nose and mouth of all persons within the boundaries of the voting station
  - The application of hand sanitisers to all persons entering and exiting the voting station
  - The replacement of the traditional indelible ink marker pens with an indelible ink liquid which will be applied from a bottle to the thumb of voters using cotton buds which will be disposed after each use
- Protective equipment including masks, gloves and face shields was procured for election staff for voting stations and for conducting home visits for those voters who are physically disabled, infirm or pregnant





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# Key Challenges for LGE 2021

Being agile to COVID pandemic levels

Voter Turnout

Resource constraints

Heightened political contestation

Impact of service delivery protests the smooth conduct of elections

Potential Outstanding Demarcation in 3 Municipalities (Local Govt: Municipal Structures Amendment Bill)



*Thank you*

*[Handwritten signature]*