

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP DIE ONAFHANKLIKE MEDIAKOMMISSIE

(Soos ingedien)

(MINISTER VAN.....)

[W -93 (AS)]

REPUBLIC OF SOUTH AFRICA

THE INDEPENDENT MEDIA COMMISSION BILL

(As introduced)

(MINISTER OF.....)

[B -93 (GA)]

FOURTH DRAFT

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Arrangement of the Act

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SCHEDULE I: BROADCASTERS' ELECTORAL CODE OF CONDUCT

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C: Fairness Guidelines for all Broadcasting Services

SCHEDULE II: CODE OF CONDUCT FOR STATE INFORMATION SERVICES AND
STATE-FINANCED PUBLICATIONS

BILL

To provide for the establishment of a Commission to promote and create a broadcasting climate favourable to free and fair elections; to provide for fairness by broadcasting services in their election coverage; to provide for equitable treatment of political parties by broadcasting services; to provide for the auditing, monitoring and and review of state information services and state-financed publications;

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows: -

1. Definitions: - In this Act unless the context otherwise indicates -

"Authority" means the Independent Broadcasting Authority established by section.... of the Independent Broadcasting Authority Act.

"Boards" means the Board of the South African Broadcasting Corporation appointed in terms of sections 4 and 5 of the Broadcasting Act No.73 of 1976; the Board of the Bophututswana Broadcasting Corporation appointed in terms of sections....of the.... Act No....of....; the Board of Radio Ciskei appointed in terms of of theAct No...of....; the Board of Radio Thohoyandou appointed in terms of of theAct No..of; (1)

"broadcasting service" means a telecommunication service of transmissions consisting of sounds, images, signs or signals which takes place by means of radio and is intended for reception by the general public; and which shall include the broadcasting services operated by the South African Broadcasting Corporation, the Bophututswana Broadcasting Corporation, the Transkei Broadcasting Corporation, Radio Ciskei, Radio Thohoyandou, the Electronic Media Network, Radio 702 and other broadcasting services licensed by the Authority; (2)

1. Note: This definition is subject to the re-incorporation of the TBVC states or, alternativley, the enactment by the TBVC states of the Commission Bill.
2. Note: This definition is also subject to the re-incorporation of the TBVC states or, alternativley, the enactment by the TBVC states of the Independent Media Commission Bill.

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"**Commission**" means the Independent Media Commission established by section 2;

"**election**" means a national or regional election held in terms of the Electoral Act, No....of.....

"**executive**" means the executive of the Authority mentioned in section....of the Independent Broadcasting Authority Act.

"**Independent Electoral Commission**" means the body established in terms of the.....Act, No....of 1993.

"**Independent Broadcasting Authority Act**" means the Act that provides for the regulation of broadcasting activities in South Africa;

"**licensee**" means a the holder of a licence to operate a broadcasting service;

"**Multi-Party Forum**" means the multi-party constitutional negotiating forum which conducts its work at the World Trade Centre, Kempton Park, Johannesburg;

"**party representative**" means any person who is a spokesperson, official or who appears on a national or regional list of any political party or who has made a substantial showing of bona fide involvement with a political party, including activities normally associated with political campaigning, such as making election speeches, distributing election material, organising marches and rallies, issuing press releases.

"**political party**" means a political party, organisation or movement which is participating in regional or national elections and has registered as a political party in terms of the Electoral Act, No.. of 19..;

"**political broadcast**" means a broadcast programme produced by a political party for broadcasting on a sound broadcasting service;

"**political advertisement**" means an advertisement produced by a political party for broadcasting on a sound broadcasting service;

"**Republic**" means the Republic of Bophututswana, the Republic of Ciskei, the Republic of South Africa, the Republic of Transkei and the Republic of Venda;

"**sound broadcasting service**" means

"**state**" means the Republic of Bophututswana, the Republic of Ciskei, the Republic of South Africa, the Republic of Transkei and the Republic of Venda;

"**state information service**" means an information service that is operated by a state department;

"state-financed publication" means a publication that is partly or wholly financed by the state;

"TEC" means the Transitional Executive Council established in terms of the Transitional Executive Council Act, No....., of 1993

"television broadcasting service" means

2. **Establishment of Commission** - There is hereby established a juristic person called the Independent Media Commission and which shall also be known as IMC;
3. **Objects** - The objects of the Commission shall be :
 - (1) the promotion of freedom of expression in order to create a levelling playing field as regards broadcasting services, state information services and state-financed publications in the period leading up to and including the elections.
 - (2) the promotion of equitable treatment by broadcasting services of political parties;
 - (3) the monitoring of broadcasting services to ensure compliance with fairness guidelines on the coverage of issues with regard elections and political parties; and issues related thereto;
 - (4) the monitoring of broadcasting services to ensure compliance by broadcasting services and political parties with provisions on political broadcasts and political advertising;
 - (5) the auditing, monitoring and review of all state information services and state-financed publications to ensure their impartiality;
 - (6) to perform such other functions as may be assigned to the Commission by or under this Act or any other law.

4. Appointment of Members of the Commission

- (1) The Commission shall consist of:
 - (a) A chairperson;
 - (b) A deputy chairperson; and
 - (c) Not more than five other members,
- (2) The members of the Commission, including the chairperson and the vice-chairperson, shall be appointed by the State President upon the recommendation of the Transitional Executive Council/Multi-Party Forum.

- (3) The State President shall, at least thirty days prior to the appointment by him of members of the Independent Media Commission in terms of subsection (1), or the filling of a vacancy in terms of section 8(2) of this Act, give notice in the Gazette of his intention to make such appointments or to fill such vacancy.
- (4) At the same time as giving such notice, the State President shall invite all interested persons, bodies and organisations to submit written nominations for appointment as members of the Commission or for the filling of a vacancy, accompanied by representations in support of such nominations, to the Transitional Executive Council/Multi-Party Forum within fifteen days of such notice.
- (5) The Transitional Executive Council/Multi-Party Forum shall consider these nominations, and the representations in support thereof, in the context of the provisions of sections 5 and 6 of this Act, and shall thereafter recommend to the State President the appointment of members of the Commission in terms of subsection (1) or the filling of a vacancy in terms of section 8(2) of this Act, so as to enable the State President to appoint the members of the Commission or to fill such vacancy by notice in the Government Gazette within thirty days of the publication of the notice referred to in subsection (2).

5. Persons Qualified to be Members of the Commission

- (1) The chairperson and vice-chairperson of the Commission shall be:
 - (a) A judge or former judge of the Supreme Court of the Republic; or
 - (b) An advocate or attorney who has been admitted to practice as such for a period of not less than ten years.
- (2) A third member of the Commission shall be a person who in the opinion of the Transitional Executive Council/Multi-Party Forum is fit for appointment on account of such person's tenure of any judicial office, or on account of such person's experience as an advocate or attorney, or as a professor or lecturer in law at a tertiary educational institution in the Republic.
- (3) One of the members of the Commission, other than the chairperson or vice-chairperson, may be a person seconded from an international organisation.
- (4) At least three of the members of the Commission shall have experience in the field of media, whether it be broadcasting and/or the print media.

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- (5) All members of the Commission shall be:
- (a) Subject to the provisions of subsection (3), citizens of and permanently resident in the Republic;
 - (b) Persons who, in the opinion of the Transitional Executive Council/Multi-Party Forum, are of high standing and merit and are fit for appointment on account of the fact that by reason of such persons' experience or any other qualifications which they have, they will promote the effective exercise or performance of the objects, powers and functions of the Commission;
 - (c) Persons who are committed to openness and accountability in public life, the right to equality of opportunity and of access, peace, democracy, freedom of expression, a free and unrestricted flow of information and high ethical and moral standards; and
 - (d) Persons, who taken together, are broadly representative of and acceptable to a broad cross-section of the population of the Republic.

6. Persons Disqualified from being Members of Independent Media Commission

No person shall be appointed as a member of the Commission if that person:

- (a) Is a member of the present parliament or of the Transitional Executive Council/Multi-Party Forum or of a regional government body or a local government body, the latter being defined in section 1 of the Interim Measures for Local Government Act, No. 1991 (Act No. 128 of 1991) or referred to in section 15(a) of that Act;
- (b) Is a person referred to in section 7 of the Public Service Act, 1984 (Act No. 111 of 1984);
- (c) Holds office in any political party, organisation or movement or has a high political profile of a partisan nature, except insofar as such person declares such political office and agrees to remove himself/herself from such office in a manner which satisfies the Transitional Executive Council/Multi-Party Forum;
- (d) Is a political party representative;
- (e) Holds any other office which may give rise to a conflict of interest which is likely to prejudicially affect the discharge by such person of his/her functions as a member of the Commission;

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- (f) Has a financial or any other interest in the media, including the print media and broadcasting, or any telecommunications-related enterprise or matter, which is likely to prejudicially affect the discharge by such person of his/her functions as a member of the Commission, except insofar as such person declares such financial or other interest and agrees to divest himself/herself of such interest in a manner which satisfies the Transitional Executive Council/Multi-Party Forum;
- (g) Is an un-rehabilitated insolvent;
- (h) Is of unsound mind; or
- (i) Has been convicted, whether in the Republic or elsewhere, of an offence and sentenced to a term of imprisonment without the option of a fine.

7. Term of Office of Members of Commission

- (1) Subject to the provisions of section 8 of this Act, a member of the Commission shall hold office until the completion of the elections.
- (2) The Commission established in section 2 of this Act shall dissolve and cease to exist upon the completion of the elections.

8. Vacation of Office of Members of Independent Media Commission and the Filling of such Vacancy

- (1) A member shall vacate his/her office if that member:
 - (a) Resigns in writing to the Transitional Executive Council upon the giving of not less than one month's notice;
 - (b) No longer meets the qualifications referred to in section 5 of this Act;
 - (c) Becomes subject to a disqualification referred to in section 6 of this Act;
 - (d) Has been absent from three consecutive meetings of the Commission without leave of the chairperson, unless the Commission condones his/her absence on good cause shown;
 - (e) Is unable to perform his/her duties as a member due to continued ill-health; or
 - (f) Is removed from office by virtue of a decision of the majority of the members of the Transitional Executive Council/Multi-Party Forum on the basis that he/she is incompetent to fulfil his/her duties or is guilty of misconduct.

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- (2) If a member dies or vacates his/her office in terms of subsection (1), such member shall be replaced for the unexpired term of office of members of the Commission in accordance with the process for the appointment of members of the Commission as contained in section 4 of this Act.

9. Remuneration of Members of Commission

- (a) A member shall be paid from the funds of the Commission remuneration and such travelling expenses and subsistence allowances incurred in connection with the business of the Commission as may be determined by the State President from time to time, after consultation with the Transitional Executive Council/Multi-Party Forum.
- (b) The remuneration and allowances referred to in paragraph (a) may differ according to the office held by a member or the functions performed by such member.

10. Meetings of Commission

- (1) The Commission shall meet at least once a calendar month at such times and places as the Commission may determine: provided that the first meeting shall be held at such time and place as the chairperson may determine.
- (2) A majority of the members of the Commission as constituted at any time shall form a quorum for a meeting of the Commission.
- (3) The chairperson, or in his/her absence the vice-chairperson, shall preside at all meetings of the Commission.
- (4) When both the chairperson and the vice-chairperson are absent from a meeting of the Commission, the members present at the meeting shall elect from among their number an acting chairperson who, while he/she so acts, shall have all the powers and perform all the duties and functions of the chairperson.
- (5) The decision of a majority of the members present at a meeting of the Commission shall constitute the Commission's decision and, in the event of an equality of votes on any matter, the chairperson shall have a casting vote in addition to his/her deliberative vote.
- (6) (a) A member who is in any way directly or indirectly interested in any matter that is considered at a meeting of the Commission shall disclose the nature of his/her interest to the meeting, and where such a disclosure is made, the disclosure shall be recorded in the minutes of the meeting, and the members shall not take part in any deliberation or decision of the Commission with respect to that matter.

- (b) Paragraph (a) shall not apply in relation to any meeting of the Commission at which all of the other members present resolve that the member's interest should be disregarded for the purposes of that provision.
- (7) The Commission shall keep a record of the proceedings of its meetings.
- (8) The Commission may make rules in relation to the holding of, and procedures at, meetings of the Commission and the convening of special meetings.

11. Establishment of Committees

- (1) The Commission may establish as many committees as it may deem necessary for the effective exercise and performance of its powers, functions and duties.
- (2) The following initial two committees of the Commission are hereby established:
 - (a) A broadcasting committee which shall monitor all broadcasting services in the Republic and enforce compliance by the broadcasting services with the guidelines on:
 - (i) Political broadcasts and political advertising as contained in Schedule I of this Act; and
 - (ii) Fairness concerning broadcasts related to the elections, as contained in Schedule I of this Act.
 - (b) A state information services and state publications committee which shall audit, monitor and review state information services and state publications in accordance with the provisions of Schedule II of this Act.
- (4) (a) A committee shall be chaired by a member of the Commission who shall be designated as such by the Commission.
 - (b) A committee shall consist of one or more additional members as may be determined and appointed by the Commission and may be members of the Commission and/or such other persons who, in the opinion of the Commission, have the necessary expert knowledge and experience to promote the effective exercise and performance of the powers, functions and duties of the committee.
- (5) Each committee of the Commission shall submit a quarterly written report to the Commission of its activities in the three months preceding such report.

- (6) The provisions of sections 5, 6, 7, 8(1), 9 and 10 of this Act shall mutatis mutandis apply to each committee of the Commission, provided that a reference to the Commission shall be interpreted as a reference to the committee concerned.
- (7) Whenever a position of a member of a committee becomes vacant before the expiration of his/her period of office, the Commission shall appoint a person to fill the vacancy for the unexpired portion of the period of office of the previous member of the committee.
- (8) The Commission may at any time dissolve or re-constitute a committee.
- (9) The Commission shall not be absolved from the performance of any power, function or duty entrusted by the Commission to any committee in terms of this section.

12. Constitution and Employment of Institutes

- (1)
 - (a) The Commission may appoint, either separately or jointly, as many institutes as it may deem necessary to assist it in the exercise and performance of its powers, functions and duties.
 - (b) For the purpose of paragraph (a) an institute shall constitute one or more persons attached thereto and as determined by the Commission.
 - (c) An institute shall perform the functions agreed to by it and the Commission.
- (2) An institute, after the conclusion of its functions and duties, shall submit a report to the Commission for its consideration.
- (3) The Commission, on receipt of the report referred to in sub-section (2), may refer the matter back to the institute
 - (a) For such further inquiry as may be determined by the Commission;
 - (b) To perform such further functions as the Commission may deem necessary or desirable.
- (4) A member of an institute referred to in sub-section (1) shall receive such remuneration and allowances as the Transitional Executive Council/Multi-Party Forum may determine.

13. Staff of Commission

- (1) The Commission shall employ such staff as it deems necessary to assist it and the committees of the Commission in the exercise and performance of its powers, functions and duties under this Act.

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- (2) The Commission may pay from the funds of the Commission to the persons in its employ, or provide them with, such remuneration, allowances, bonuses, subsidies, gratuities, pension and other employment benefits (whether contributory or not) as the Commission considers as being appropriate.
- (3) Every person employed in the exercise and performance of the powers, functions and duties of the Commission, including any person referred to in this section, shall assist in preserving secrecy in regard to any matter or information that may come to his/her knowledge in the performance of his/her duties in connection with the said powers and functions, except insofar as the publication of such matter or information shall be necessary for the purposes of this Act.

14. Powers and Functions of Commission

The Commission, in order to achieve its objects as contained in section 3 of this Act, shall have the following powers and functions:

- (1) To monitor all broadcasting services in the Republic so as to ensure and enforce compliance by these broadcasting services with the guidelines on political broadcasts and political advertising as contained in Schedule I of this Act.
- (2) To monitor all broadcasting services in the Republic so as to ensure fair and equitable treatment by all political parties to these broadcasting services and so as to ensure and enforce compliance by these broadcasting services with the guidelines on fairness concerning broadcasts in relation to the elections, as contained in Schedule I of this Act.
- (3) To audit, monitor and review all state information services and state publications so as to ensure and enforce compliance with the provisions as contained in Schedule II of this Act.
- (4) To establish committees in accordance with the provisions of section 11 of this Act.
- (5) To appoint as many institutes as it may deem necessary to assist in the exercise and performance of its powers, functions and duties, in accordance with the provisions of section 12 of this Act.
- (6) To conduct whatever inquiries it may deem necessary in accordance with the provisions of section 16 of this Act.
- (7) To mediate and/or adjudicate disputes referred to it in accordance with the provisions of section 17 of this Act.

- (8) In performing the functions referred to in subsections (1), (2) and (7), be empowered to:
- (a) Require a broadcasting service to broadcast a political broadcast and/or political advertisement;
 - (b) Require a broadcasting service to broadcast a counter-version of a particular programme or facts and/or opinions expressed within a particular programme;
 - (c) Impose financial penalties on broadcasting services for non-compliance with the provisions of this Act;
 - (d) Recommend to the Authority the suspension or revocation of a broadcast licence should the licence holder consistently fail to comply with the provisions of this Act.
- (9) In the performance of its functions as set out in subsections (3) and (7), be empowered to:
- (a) Publish a counter-version of a particular statement or article or facts and/or opinions expressed within a particular statement or article;
 - (b) To suspend a state information service and/or state publication should the state information service or state publication consistently fail to comply with the provisions of this Act.
- (10) In performing the functions referred to in subsections (1), (2), (3), (6), (7), (8) and (9), be empowered to require all broadcasting services and/or state information services and/or state publications to broadcast the findings of the Commission;
- (11) To inform the Transitional Executive Council/Multi-Party Forum and/or the Independent Electoral Commission should the Commission become aware of any matter which, in its opinion, may have an adverse impact upon the creation and achievement of a climate favourable to free political participation and the holding of free and fair elections;
- (12) To perform such other functions and exercise such other powers as may be assigned to it by or under this Act or any other law.

15. Status of Commission

- (1) The Commission shall operate as an independent body.
- (2) The Commission shall liaise with the Transitional Executive Council/Multi-Party Forum and the Independent Electoral Commission on any matters related to the objects, powers, functions and duties of these bodies.

16. Powers of Commission for Purposes of Inquiry

- (1) In the performance of its functions and duties as contained in section 14(1), (2) and (3), the Commission may conduct any inquiry which it deems necessary and shall determine the nature and extent of such inquiry.
- (2) In conducting such inquiry, the Commission may:
 - (a) Through the chairperson, or any member or staff member of the Commission authorised thereto in writing by the chairperson, request from any person such particulars and information as it may deem necessary in connection with an inquiry;
 - (b) By notice in writing under the hand of the chairperson or a member or staff member of the Commission authorised thereto in writing by the chairperson, addressed and delivered by such member or a sheriff to any person, require such person, in relation to an inquiry, to appear before it at a time and place specified in such notice and produce to it all documents or things in the possession or under the control of any such person and which the Commission may deem necessary in connection with that inquiry;
 - (c) Through the chairperson, or a member of staff member of the Commission authorise thereto in writing by the chairperson, administer an oath to or take an affirmation from any person referred to in paragraph (b), or any person present at the place referred to in (b), irrespective of whether or not such person has been required under the said paragraph (b) to appear before it, and question such person under oath or affirmation in connection with any matter which it may deem necessary in connection with that inquiry.
- (3) Any person appearing before the Commission in terms of subsection (1)(b) who is not in the public service, shall be entitled to receive as witness fees an amount equal to the amount which such person would have received as witness fees had he/she been summoned to attend criminal proceedings in the Supreme Court held at the place mentioned in the written notice in question, and the payment of such fees shall be made from the funds of the Commission.

- (4) Any person questioned under subsection (2) shall, notwithstanding the provisions of any law or the common law to the contrary, but subject to the provisions of subsection (5) -
- (a) Be competent and compelled to answer all questions put to him/her regarding any fact or matter connected with the inquiry of the commission notwithstanding that the answer may incriminate him/her;
 - (b) Be compelled to produce to the Commission any document or thing in his/her possession or under his/her control which the Commission may deem necessary in connection with that inquiry.
- (5) The provisions of sub-section (4) shall not be interpreted as meaning that an incriminating answer referred to in subsection (4)(a) shall be admissible as evidence against the person in any proceedings in a court of law before any body or institution established by or under any law.
- (6) The chairperson or any member or staff member of the Commission may, for the purposes of an inquiry, at all reasonable times enter upon and inspect any premises and demand and seize any document on or kept on such premises.
- (7) (a) No person shall, without the written permission of the chairperson, disseminate any document submitted to the Commission by any person in connection with an inquiry or publish the contents or any portion of the contents of such document.
- (b) No person may without the written permission of the chairperson peruse any document, including any statement, which is destined to be submitted to the chairperson or intercepted while it is being taken or forwarded to the chairperson.
- (8) No person shall, except insofar as it shall be necessary in the performance of the functions of the Commission, publish or furnish to any other person any report of the Commission or a copy or part thereof or information regarding the consideration of evidence by the Commission, unless and until the Commission has released the report for publication.

17. Referral of Disputes to Commission and the Adjudication of such Disputes

- (1) Before exercising its powers in terms of subsections (8), (9) and (10) of section 14, the Commission or a committee of the Commission shall affording a broadcasting service an opportunity to make representations to the Commission following a complaint by a political party on a matter relating to the provisions of Schedule I of this Act.

- (2) Representations in terms of subsection (1) shall be made within twenty four (24) hours of a notification received by a broadcasting service.
- (3) Representations shall be made to the Commission either in person, by telephone or in writing. "Writing" shall include cable, telegram, telex and telefax.
- (4) The Commission shall determine a date, time and venue for the adjudication of a complaint from a political party and shall be entitled to convene the hearing as a matter of urgency leaving sufficient time to for a representatives of the broadcasting service and the political party to travel by air to the hearing.
- (5) The broadcasting service and the political party shall be entitled to legal representation when appearing before the Commission.
- (6) The proceedings shall take the form of a round-table discussion and not a trial.
- (7) On completion of the discussion the parties shall leave and the Commission shall make its adjudication.
- (8) If the Commission finds against a broadcasting service who is present, the broadcasting service shall be given an opportunity to address the Commission in mitigation action that may be taken by the Commission in terms of subsections (8), (9) and (10) of section 14.
- (9) The chairperson of the Commission, may, if satisfied that no injustice will result, and upon conditions as he/she may impose:
 - (a) Extend any time period contemplated in these rules;
 - (b) At any stage require any allegation of fact that has been filed to be verified on oath;
 - (c) Call upon the broadcasting service to furnish such further information as the chairperson may consider necessary;
 - (d) Dispense with the usual forms and procedures and give such directions as he/she deems fit for the adjudication of the matter under this section.
- (10) The chairperson shall cause any findings, reasons for a finding and/or requirements of the Commission to be sent to the broadcasting service who shall carry out the Commission's directions and put into effect any decision which the Commission may have taken in terms of this section.
- (11) The Chairperson shall keep on record all findings and reasons for findings by the Commission: Provided that, except where the chairperson has otherwise directed, the records shall be public documents.

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18. Expenditure in connection with functions of the Commission

- (1) The expenditure in connection with the exercise and performance of the Commission's powers, duties and functions shall be paid out of money appropriated by the Transitional Executive Council/Multi-Party Forum for such purpose.
- (2) The Commission shall report to the Transitional Executive Council/Multi-Party Forum in writing on a quarterly basis concerning the expenditure of such monies.

19. Reporting Responsibility of Commission

Without in any way derogating from its independence, the Commission, on a quarterly basis, shall report in writing to the Transitional Executive Council/Multi-Party Forum and the Independent Electoral Commission on its activities.

20. Limitation of Liability in Respect of Anything Done Under this Act

The Commission or any staff member or an institute or a person referred to in section 12(1)(b) shall not be liable in respect of anything done in good faith under any provision of this Act.

21. Regulations

- (1) The State President, only acting on the recommendation of the Commission, may make regulations as to:
 - (a) Any matter required or committed to be prescribed in terms of this Act; and
 - (b) Generally, all matters which in his opinion are necessary or expedient to be prescribed to achieve the objects of this Act.
- (2) Regulations under sub-section (1) affecting State expenditure shall be made only with the concurrence of the Transitional Executive Council/Multi-Party Forum.

22. Offences and Penalties

A person who -

- (a) Refuses or fails to comply with a notice under section 16(2)(b) or refuses to take the oath or to make an affirmation at the request of the Commission in terms of section 16(2)(c) or refuses to answer any question put to him/her under that section, or gives to such question an answer which to his/her knowledge is false, or refuses or fails to furnish particulars or information required from him/her under that section;

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- (b) Insults, disparages or belittles the Commission, or anticipates the proceedings at an inquiry or the findings of the in a manner calculated to influence such proceedings or findings;
- (c) Wilfully hinders or obstructs the Commission or a member of its staff in the exercise of its or his/her powers or the performance of its or his/her duties or functions;
- (d) Wilfully interrupts the proceedings at an inquiry of the Commission or misbehaves himself/herself in any other manner in the place where such inquiry is held;
- (e) In connection with any inquiry of the Commission does anything which, if such inquiry were proceedings in a court of law, would have constituted contempt of court;
- (f) Does anything calculated improperly to influence the Commission in respect of any matter being or to be considered by the Commission in connection with an inquiry;
- (g) Contravenes or fails to comply with any provision of this Act,

shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or to imprisonment for a period not exceeding one year to both such fine and such imprisonment.

23. Short Title and Commencement

This Act shall be called the Independent Media Commission Act, 1993 and shall come into operation on a date to be fixed by the State President by proclamation in the Gazette.

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SCHEDULE I: BROADCASTERS' ELECTORAL CODE OF CONDUCT

Compliance with guidelines on political broadcasts and political advertising on sound broadcasting services and the fairness guidelines by all broadcasting services will be monitored and enforced by the Commission's broadcasting committee.

A. Political Broadcasts on Sound Broadcasting Services

1. Subject to the provisions of this section, a sound broadcasting service, shall in each election period with regard to an election in respect of which its audience have the right to vote, permit political parties participating in the election, to make political broadcasts free of charge: Provided that no political broadcasts shall be made on television broadcasting services.
2. The Commission shall determine the time to be made available to the political parties for purposes of section 1.
3. The time made available in terms of section 2 shall be divided equally between the political parties participating in the election.
4. In making time available for political parties, no sound broadcasting service shall discriminate in practices, facilities or services for or in connection with the service rendered pursuant to this section, or make or give any preference to any political party or subject such political party to any prejudice or disadvantage; nor shall any sound broadcasting service make any contract or other agreement which shall have the effect of permitting any political party to broadcast to the exclusion of other political parties.
5. The Commission shall prior to making a determination in terms of paragraph 2 of this Schedule consult with the relevant sound broadcasting service and political parties concerning the determination.
6. The Commission may impose conditions requiring the sound broadcasting service to observe such rules with respect to political broadcasts as the Commission may determine in a programme standard, having regard to the fundamental underlying principle that all political parties must be treated fairly and impartially by the license holder.
7. The Commission shall determine the length and frequency of the broadcasts referred to in paragraph 1 of this Schedule unless the political parties prior to such determination come to terms with the broadcasters themselves.

8. Any sound broadcasting service who fails to grant access to a political party, shall be liable to a financial penalty as may be prescribed by the Commission.

9. The Commission may recommend the revocation of a broadcasting licence should the holder of that licence wilfully and repeatedly fail to allow reasonable access to a political party.

10. Should a dispute arise between a political party and a sound broadcasting service in respect of the provisions of Part A of this Schedule, then section 17 of the Act shall apply.

B. Political Advertising on Sound Broadcasting Services

1. A broadcasting service shall comply with the following requirements in respect of political advertisements:

- (a) a licensed television broadcasting service shall not include -
 - (i) any advertisement which is inserted by or on behalf of any body whose objects are wholly or mainly of a political nature
 - (ii) any advertisement which is directed towards a political end, or
 - (iii) any advertisement which has any relation to any industrial dispute (other than an advertisement of a public service nature inserted by, or on behalf of a government department);
- (b) a licensed sound broadcasting service shall not include -
 - (i) any advertisement which has any relation to any industrial dispute (other than an advertisement of a public service nature inserted by, or on behalf of a government department);
- (c) a licensed sound broadcasting service may include -
 - (i) any advertisement which is inserted by or on behalf of any body whose objects are wholly or mainly of a political nature
 - (ii) any advertisement which is directed towards a political end, or

Provided that a licensed sound broadcasting service shall have no power of censorship over such advertisements.

(d) No licensed sound broadcasting service is required to permit the use of its facilities for advertisements mentioned in paragraph (c)(i) and (ii), but if any licensed sound broadcasting service shall permit any political party to use its facilities for such advertisements, it shall afford other political parties the opportunity to use its facilities for advertisements contemplated in paragraph (c)(i) and (ii)

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2. Should a dispute arise between a political party and a broadcasting service with respect to the provisions of Part B of this Schedule, section 17 of the Act shall apply.

C. Fairness Guidelines for all Broadcasting Services

Compliance with the Fairness Guidelines shall be monitored and enforced by the Commission's broadcasting Committee. The aim of the Fairness Guidelines is to ensure fairness by broadcasting services in their coverage of the national and regional elections and political parties and issues related thereto.

1. All broadcasting services shall afford reasonable opportunity for the discussion of conflicting views in their coverage of the national elections and political parties.

2. A broadcasting service shall be obliged to broadcast a counter-version presented by any political party affected by an assertion of fact in a programme transmitted in the event that such assertion is false.

3. A broadcasting service shall not be obliged to transmit a counter-version referred to in paragraph 1 if -

(a) the political party has no direct interest in the transmission of the counter-version; or

(b) the counter-version is not of reasonable length, and in particular, if it is substantially longer than the part of the broadcast which dealt with the false assertion of fact.

4. The counter-version contemplated in paragraph 1 shall -

(a) be limited to a factual account;

(b) not contain any material which may reasonably be anticipated to expose the broadcasting service to legal action if such material were to be broadcast;

(c) be made in writing;

(d) specify the programme and the assertions to which objection is raised; and

(e) be signed by the general secretary of a political party.

5. The political party affected shall not be entitled to insist on the transmission of a counter-version as contemplated in paragraph 1 if the counter-version is presented to the broadcasting service after the expiry of a period of thirty days from the date of broadcast of the false assertion of fact.

6. The broadcasting service shall, subject to the provisions of paragraph 3(a) and (b) and 5 -

(a) at the first opportunity, but not later than five days from receipt of a counter-version referred to in paragraph 1, broadcast the counter-version within the same programme or programme section as the one in which the false asertion was made and at the same time of day or, should that not be possible, at a time equal in value to that of the programme objected to;

(b) broadcast the counter-version without any omissions and interruptions; and

(c) broadcast the counter-version free of charge except in the event that the counter-version concerns assertions made in a commercial broadcast.

7. A broadcasting service shall immediately upon receipt of a counter-version referred to in paragraph 1, inform the Commission thereof, and shall keep and store the programme objected to and the counter-version until notice to the contrary by the Commission.

8. Should the broadcasting service and political party not reach agreement on the counter-version, the complainant shall inform the Commission which shall apply the adjudication procedcure as set out in section 17 of this Act.

SCHEDULE II: CODE OF CONDUCT FOR STATE INFORMATION SERVICES AND STATE-FINANCED PUBLICATIONS

TO BE COMPLETED.