

**THIRD REPORT OF THE TECHNICAL COMMITTEE ON  
INDEPENDENT MEDIA COMMISSION AND INDEPENDENT  
TELECOMMUNICATIONS AUTHORITY-1 JUNE 1993**

1. The Committee has received submissions from the following parties in response to the draft Independent Media Commission (IMC) Bill:

- African National Congress
- Conservative Party
- Democratic Party
- Intando Yesizwe Party
- KwaZulu Government and KwaZulu Department of Justice
- PAC
- South African Government
- Venda Government

2. The Committee has considered and discussed these submissions. We have amended the Sixth Draft of the IMC Bill in response to these submissions. The amended Seventh Draft of the IMC Bill is attached.

3. In this report we briefly outline the changes which we have made to the Bill. We also refer to those submissions which we had difficulty in accommodating, and the reasons therefor. The Negotiating Council may well disagree with the manner in which the Committee has dealt with these submissions, in which case we will have to respond to these decisions of the Negotiating Council.

4. In the light of these introductory comments we turn now to the specific sections of the IMC Bill:

4.1. The ANC raised the point that all state media, and not simply state-financed publications, ought to be monitored with a view to ensuring that state media are not used to advance the interests of any political party. The ANC goes on to state that the powers of the IMC should include the capacity to impose penalties upon the state media, culminating in the closure of a publication or of a function/section of a state information service. The Committee has accommodated this point to a certain extent in that it has:

4.1.1. Provided that the object of the IMC shall be, inter alia, to ensure that state information services are not used to advance the interests of any political party;

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- 4.1.2. Amended the functions of the IMC referred to in section 11(2)(b) of the Bill so as to provide that a Committee of the IMC shall monitor not only state-financed publications, but also state information services;
  - 4.1.3. Amended section 21 (which in the Seventh Draft is now section 20) so as to allow the IMC to consider alleged contraventions on the part of state information services of the provisions of this Bill; and
  - 4.1.4. Provided that a ruling of the IMC in relation to an alleged contravention of the statute on the part of not only a state-financed publication, but also of a state information service, shall be conveyed to the Independent Electoral Commission and the TEC/MPF.

The Committee remains of the view that where a ruling is made against a state-financed publication or state information service, it is more appropriate that the political parties should deal with this ruling, and that this be done through the IFC or the TEC/MPF. Furthermore, we reiterate our view as contained in our second report, namely that in order to facilitate the proper monitoring of all state information services, all statements made and press releases issued by state departments and the South African Communication Service, as well as the equivalent bodies in the self-governing territories and in the TBVC states, ought to be issued via a central point, namely the South African Communication Service. This would substantially assist the IMC in monitoring such statements and press releases. The Committee understands that this is practically possible, after having had discussions with Mr David Venter, Chief of SACS. Obviously these amendments have resulted in a number of other changes being made to the IMC Bill, but we do not wish to burden this report with all these amendments, the most important of which we have already mentioned.

- 4.2 With reference to section 4, which deals with the appointment of members of the Commission, and in response to submission made by the ANC and the PAC, Section 4 (2) has been amended so that it now reads:

"The members of the Commission, including the Chairperson and the Vice-chairperson, shall be selected by the TEC/MPF, and formally appointed by the State President".

The DP submits that these appointments should be made following a process of selection in public, whilst the PAC submits that organs of civil society should be invited to put forward nominations of persons to be appointed to the IMC, with a view to preparing a short-list from which the IMC could be appointed. The Committee is of the view that there is nothing in the Bill which precludes the accommodation of these submissions and that it will be up to the TEC/MPF to determine the process in terms of which nominees shall be selected/appointed as members of the IMC. Furthermore, since the proceedings of the Multi-Party Forum, and presumably those of the TEC are

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now open to the media and thereby to the public, there is nothing to preclude the process of selection from being in public.

- 4.3 With reference to section 5, which deals with persons qualified to be members of the IMC, the ANC was of the view that there was an over-emphasis on the need for legal expertise. This submission has been accommodated by providing that only the chairperson of the IMC is required to be a judge, or former judge, or a practising advocate or attorney who has been practising as such for a period of not less than ten years. The vice-chairperson need not have any legal qualifications, and this is only required of one further member of the IMC. The South African Government objected to the provisions of what was section 5(3) of the Sixth Draft, which allowed for a person from an international organisation to be seconded to the IMC. The Committee has accordingly deleted this section, but has provided, in section 12, which deals with the appointment of experts, that such an expert may include a person seconded from an international organisation.
- 4.4 As regards section 6, which deals with persons disqualified from being members of the IMC, the DP had problems with section 6(c) and the ANC with section 6(d). The Committee has responded by deleting the latter portion of section 6(c) from the word "except" onwards and by deleting the whole of section 6(d).
- 4.5 The DP sought an amendment to section 10(7) so as to provide that the records of the proceedings of the IMC ought to be public documents. This submission has been accommodated.
- 4.6 The DP was of the view that, given the fact that the IMC was to be a temporary body, the provisions of section 13(2) were unnecessary. This section has accordingly been re-worded so that it now reads:
- "The Commission may pay from the funds of the Commission to the persons in its employ, or provide them with, such remuneration, allowances and other employment benefits as the Commission considers as being appropriate."
- 4.7 Section 15 has now been amended so that it refers to "party election broadcasts". Section 15(2) has been amended so as to provide that the Commission shall make a ruling not only on the time to be made available, but also as to the conditions which are to apply, as regards the broadcasting of party election broadcasts.
- 4.8 Section 16(2) has been amended so as to ensure that the opportunities granted to political parties to broadcast a political advertisement are granted on an equal basis. A new sub-section (4) has been included so as to empower the IMC to prescribe the standards with which political adverts shall be required

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to comply. Yet a further sub-section, namely sub-section (5), has been inserted in an attempt to address in part the concerns of the DP. The DP was of the view that there should be no political advertising on broadcasting services during the first democratic election, since large parties with access to unlimited financial resources would put smaller parties at a disadvantage. The DP however supported party election broadcasts as a means of levelling the political playing field. The Committee is of the view that the DP has a valid point, and it is primarily for this reason that the Committee has prohibited political advertisements on television broadcasting services. However, the Committee feels that political adverts ought to be allowed on sound broadcasting services, where the costs of such advertisements would be substantially less than the costs of advertisements on television. Furthermore, the introduction of sub-section (5), which provides that the provisions of the whole of section 16 shall be subject to budgetary limitations which we understand will be placed on political parties in terms of the Independent Electoral Commission Act, will go some way towards addressing the DP's concerns.

- 4.9 With reference to section 17, the KwaZulu government is of the view that party election broadcasts and political advertisements ought to be allowed on both television and radio. Whilst provision is made for such broadcasts and advertisements to be broadcast on radio, the Committee is opposed to these being broadcast on television. The reason why the Committee is opposed to the broadcasting of party election broadcasts on television is that given the substantially large number of political parties which are likely to register for the forthcoming election, the few existing television channels could become overburdened with such broadcasts. The Committee opposes the broadcasting of political advertisements on television for the reasons stated in the paragraph above.
- 4.10 Section 18, which deals with the equitable treatment of political parties by all broadcasting services, has been reworked and sets out in far more detail what is meant by equitable treatment. A further sub-section has also been included so as to allow the IMC to prescribe guidelines with which broadcasters would have to comply in terms of providing equitable treatment to political parties.
- 4.11 Section 19 has been amended to deal with the inclusion of all state media within the jurisdiction of the IMC.
- 4.12 In the light of numerous objections, and particularly those from the DP, section 20 has been repealed in its entirety.
- 4.13 Section 21, which now is section 20 in the Seventh Draft, has been amended so that it is now entitled "Hearings". Sub-section (9) of this section has been re-worded.

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- 4.14 As already indicated earlier on, section 21 has been amended to deal with the inclusion of state information services within the jurisdiction of the IMC.
- 4.15 Section 26, which is now section 25, and which deals with regulations, has been amended so as to accommodate the concerns of both the ANC and the South African Government.
- 4.16 What is now section 26, dealing with offences and penalties, has been amended, particularly in the light of the fact that the section dealing with inquiries has been deleted.
- 4.17 A new section, section 27, has been inserted so as to empower the Commission to delegate its powers and functions where appropriate.
- 4.18 Section 28, dealing with the dissolution of the IMC, is still under discussion, but the Committee has noted the DP's comments in this regard.
- 4.19 As regards section 29, it has been amended so that the Act shall come into operation on a date to be fixed by the TEC/MPF.
5. A number of political parties, namely the Intando Yesizwe Party, the PAC and the Bophuthatswana Government, put forward submissions to the effect that the IMC should have jurisdiction over the entire spectrum of the media, including the print media and even the South African Press Association. Furthermore, it was submitted that the Media Council ought to be re-assessed and the suggestion seemed to be that consideration ought to be given to restructuring the Media Council. The Committee however remains of the view that the jurisdiction of the IMC should not be extended to the print media, except insofar as state financed publications are concerned, for the reasons stated in our second report.
6. Whilst these submissions from the Conservative Party deal primarily with the Independent Broadcasting/Telecommunications Authority/, it must be noted that at the beginning of its submissions the CP stated that the formulation of media policy for the future of its region can only be done once the form of state is decided. The Committee is of the view that this is a submission which falls to be dealt with by the Negotiating Council when it discusses constitutional issues.
7. Prior to concluding this report, the Committee wishes to refer to an error in its first report, where it stated that the IMC Bill should make provision for the possibility of broadcasters being exempted from the jurisdiction of the IMC if such broadcasters subjected themselves to a recognised self-regulatory body. Whilst this may be the case as regards certain aspects of the Independent Broadcasting Authority Bill, this is certainly not the case as regards the Independent Media Commission Bill, and the Committee apologises for any confusion which this may have created.

8. The Committee is continuing to work on an Independent Broadcasting Authority Bill, and hopes to submit this Bill, together with a further report, by the end of this week.

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D. Dison  
E.J. Mabuza  
C.F. Noffke  
P. Pretorius

SEVENTH DRAFT

INDEPENDENT MEDIA COMMISSION BILL

Prepared by the Technical Committee on the Independent Media  
Commission and the Independent Telecommunications Authority

1 June 1993

**Arrangement of the Act**

<u>Section of the Act</u>	<u>Subject</u>
section 1	Definitions
section 2	Establishment of Commission
section 3	Objects of Commission
section 4	Appointment of members of Commission
section 5	Persons qualified to be members of Commission
section 6	Persons disqualified from being members of Commission
section 7	Terms of office of members of Commission
section 8	Vacation of office of members of Commission and the filling of such vacancy
section 9	Remuneration of members of Commission
section 10	Meetings of Commission
section 11	Establishment of committees
section 12	Appointment of experts
section 13	Staff of Commission
section 14	Powers and functions of Commission
section 15	Party Election Broadcasts on Public Sound Broadcasting Services
section 16	Political Advertising on Sound Broadcasting Services
section 17	Prohibition on Party Election Broadcasts and Political Advertisements on Television Broadcasting Services
section 18	Equitable treatment of political parties by all broadcasting services
section 19	State-financed publications and state information services
section 20	Hearings
section 21	Orders, penalties and recommendations
section 22	Expenditure in connection with functions of Commission
section 23	Reporting Responsibility of Commission
section 24	Limitation of liability in respect of anything done under this Act
section 25	Regulations
section 26	Offences and penalties
section 27	Delegations
section 28	Dissolution of Commission
section 29	Short title and commencement



**BILL**

To provide for the establishment of a Commission; to provide for equitable treatment of political parties by broadcasting services; to provide for the monitoring of state-financed publications and state information services; and provide for matters connected therewith.

**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.

**"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 or a section of the public;

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

**"complainant"** means a political party which has lodged a complaint with the Commission regarding an alleged contravention of the provisions of this Act by a licensee, a state-financed publication or a state information service;

**"election"** means the first national election held after the commencement of this 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"** is a person who has been duly licensed to provide 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;

**"political party"** means any organisation which has registered as a political party in terms of the..... Act, No.. of 1993;

**"party election broadcast"** means a direct address by a political party representative which is broadcast free of charge on a sound broadcasting service and which is produced by or on behalf of a political party;

**"political advertisement"** means an advertisement which is intended to advance the interests of a political party for which the relevant licensee has contracted to receive, directly or indirectly, any money or other consideration for the broadcasting or such advertisement;

**"prescribed"** means prescribed by regulation;

**"public sound broadcasting services"** means a sound broadcasting service that receives revenue, either wholly or partly, from licence fees or from the state;

**"Republic"** means the Republic of Bophuthatswana, the Republic of Ciskei, the Republic of South Africa, the Republic of Transkei and the Republic of Venda; (1)

**"respondent"** means a licensee, a state-financed publication or a state information service in respect of which the Commission is investigating a complaint or which is subject to the procedure referred to in section 20 of this Act;

**"sound broadcasting service"** means a broadcasting service to be received by a sound radio set;

**"sound radio set"** means a device capable of receiving by radio, the transmission broadcast by a broadcasting service and reproducing them in the form of sounds, but not also in the form of images or visible signs or signals;

**"state"** means the governments and administrations of the Republics;

**"state-financed publication"** means any newspaper, book, periodical, pamphlet, poster or other printed matter, or any other object in or on which sound has been recorded for reproduction that is partly or wholly financed by a state for the purposes of the promotion of state policy or the policy of a department of state: provided that for the purposes of this definition "state" shall include the administrations of the self-governing territories.

**"state information service"** means the services provided by the South African Communication Service and/or any other state information service;

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

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1. This definition and all references to the TBVC states are based on the assumption that the TBVC states will be subject to the transitional arrangements in some form or another.

**"television broadcasting service"** means a broadcasting service to be received by a television set;

**"the Act"** includes the regulations.

**2. Establishment of Commission** - There is hereby established a juristic person called the Independent Media Commission and which shall also be known as the IMC;

**3. Objects** - The objects of the Commission shall be :

- (1) to ensure equitable treatment of political parties by broadcasting services; and
- (2) to ensure that state-financed publications and state-information services are not used to advance the interests of any political party;

so as to contribute towards the promotion and creation of a climate favourable to free political participation and a free and fair election.

**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 selected by the Transitional Executive Council/Multi-Party Forum and formally appointed by the State President.

**5. Persons Qualified to be Members of the Commission**

- (1) The chairperson of the Commission shall be:
  - (a) A judge or former judge of the Supreme Court of the Republic; or
  - (b) A practising advocate or practising attorney who has been practising as such for a period of not less than ten years.
- (2) One of the members of the Commission, other than the chairperson, 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) At least two of the members of the Commission shall have experience in the field of broadcasting media and at least one of the members of the Commission shall have experience in the field of the print media.
- (4) 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, freedom of expression, and a free and unrestricted flow of information;
  - (d) **Persons, who taken together, are broadly representative of and acceptable to a broad cross-section of the population of the Republic. (2).**

**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;

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2. This provision arises from the terms of reference but the technical committee feels, given the intended size of the Commission, that it is vague and difficult to comply with in a strict sense.

- (d) 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 (3) functions as a member of the Commission;
- (e) 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;
- (f) Is an un-rehabilitated insolvent;
- (h) Is of unsound mind; or
- (i) has at any time been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), or any offence involving dishonesty, and has been sentenced therefor to 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 from the date of his/her appointment until the completion of the election.
- (2) The Commission established in section 2 of this Act shall dissolve and cease to exist upon the completion of the election.

**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;

3. Pierre Pretorius believes that there is no need for this formulation of gender to be included throughout the Bill and he would prefer either the male gender or the female gender to be inclusive of the other gender.

- (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 Transitional Executive Council/Multi-Party Forum on the basis that he/she is incompetent to fulfil his/her duties or is guilty of misconduct.
- (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 member shall be paid such 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, on the recommendation of the Transitional Executive Council/Multi-Party Forum.

#### **10. Meetings of Commission**

- (1) The Commission shall meet as often as necessary to perform its functions and 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 and the public shall have access to such record.
- (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 Commission shall have the following two committees:
  - (a) A broadcasting committee which shall monitor all broadcasting services in any of the Republics and enforce compliance by the broadcasting services with the guidelines on:
    - (i) Party election broadcasts and political advertising as contained in this Act; and
    - (ii) Fairness concerning broadcasts related to the election, as contained in this Act.
  - (b) A state-financed publication and state information services committee which shall monitor state publications and state information services in accordance with the provisions 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) Whenever a position of a member of a committee becomes vacant before the expiry 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.
- (6) The provisions of sections 5(5), 6, 7, 8, 9, 10 and 20 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) The Commission may at any time dissolve or re-constitute a committee.
- (8) For the purposes of the performance of its functions a committee shall have the same powers as those conferred upon the Commission in terms of this Act for the performance its functions.

## 12. Appointment of Experts

- (1) (a) The Commission may appoint as many experts as it may deem necessary to assist it in the exercise and performance of its powers, functions and duties.
- (b) An expert shall perform the functions agreed to by it and the Commission.
- (2) An expert, 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 expert
- (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) An expert referred to in sub-section (1) shall receive such remuneration and allowances as the Commission may determine.
- (5) An expert may include a person seconded by an international organisation.



**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.
- (2) The Commission may pay from the funds of the Commission to the persons in its employ, or provide them with, such remuneration, allowances and other employment benefits 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 fair and equitable treatment of all political parties by these broadcasting services and so as to ensure and enforce compliance by these broadcasting services with with the provisions of this Act.
- (2) To monitor state-financed publications and state information services for compliance with the provisions of this Act.
- (3) To establish committees in accordance with the provisions of section 11 of this Act.
- (4) To appoint as many experts 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.
- (5) To employ as many staff as it may deem necessary in accordance with section 13 of this Act.
- (6) To conduct whatever hearings it may deem necessary in accordance with the provisions of section 20 of this Act.

- (7) To inform the Transitional Executive Council/Multi-Party Forum and/or the Independent Electoral Commission should the Commission become aware of any matter within its jurisdiction 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 a free and fair election;
- (8) To enter into contracts which are necessary for the due performance of its functions;
- (9) 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. Party Election Broadcasts on Public Sound Broadcasting Services**

- (1) Subject to the provisions of this section, a public sound broadcasting service shall permit political parties to make party election broadcasts.
- (2) The Commission shall make a ruling on the time to be made available and the conditions that are applicable to the political parties for the purposes of subsection (1), including the duration and scheduling of such party election broadcasts.
- (3) Prior to making a ruling in terms of subsection (2), the Commission shall consult with the relevant public sound broadcasting services and political parties concerning the ruling.
- (4) In making the rulings in terms of subsection (2), the Commission may impose conditions requiring the public sound broadcasting service to observe such rules with respect to party election broadcasts as the Commission may determine, having regard to the fundamental underlying principle that all political parties must be treated equitably by the broadcasting service.
- (5) A party election broadcast shall not contain any material which may reasonably expose the licensee to legal action if such material were to be broadcast.
- (6) The Commission may prescribe the standards to which party election broadcasts shall conform.

**16. Political Advertisements on Sound Broadcasting Services**

- (1) A sound broadcasting service shall only broadcast a political advertisement which has been submitted by a political party.

- (2) No sound broadcasting service is required to broadcast a political advertisement mentioned in subsection (1), but if any sound broadcasting service broadcasts a political advertisement on behalf of a political party, it shall afford all other political parties, should they so request, the opportunity to broadcast a political advertisement.
- (3) In making advertising time available for political parties, no sound broadcasting service shall discriminate against any political party or make or give any preference to any political party or subject such political party to any prejudice; nor shall any sound broadcasting service make any contract or other agreement which shall have the effect of permitting any political party to advertise to the exclusion of other political parties.
- (4) A political advertisement shall not contain any material which may reasonably expose the licensee to legal action if such material were to be broadcast.
- (5) The Commission may prescribe the standards to which such political advertisements shall conform.
- (6) This section shall be subject to the provisions of any law on political party expenditure during the election.

**17. Prohibition on Party Election Broadcasts and Political Advertisements on Television Broadcasting Services**

No television broadcasting service shall broadcast party election broadcasts or political advertisements.

**18. Equitable Treatment of Political Parties by all Broadcasting Services**

- (1) If the coverage by any broadcasting service extends to the field of elections, political parties and issues related thereto, such broadcasting service shall afford reasonable opportunity for the discussion of conflicting views and shall treat all political parties equitably.
- (2) If a political party or a party representative or the policy of a political party is criticised in a particular programme broadcast by any broadcasting service, and the political party is not given an opportunity to respond in such programme or the view of the the political party is not reflected in such programme, then the licensee shall give the political party a reasonable opportunity to respond to the criticism.
- (3) If a licensee intends to broadcast a programme whererin a political party is criticised on the polling day of the election or within 72 hours before the polling day of the election, then the licensee shall ensure that the political party is given a reasonable opportunity to respond in the same programme, or as soon as is is reasonably possible thereafter.

- (4) The Commission may prescribe the standards to which broadcasting services shall be required to conform.

#### **19. State-financed publications and state information services**

- (1) The publisher of a state-financed publication shall be required, within 14 days of the commencement of this Act, to submit to the Commission information concerning such publication in the prescribed form.
- (2) Any state-financed publication which is published for the first time after the commencement of this Act shall be required, no less than 14 days prior to such publication, to submit to the Commission information concerning such publication in the prescribed form.
- (3) The Commission may require the publisher of a publication referred to in subsection (2) to provide the Commission with a copy of such publication prior to the printing thereof.
- (4) A state-financed publication shall be submitted free of charge within five days of the completion of the printing thereof.
- (5) No state-financed publication shall contain an advertisement in support of any political party.
- (6) No state-financed publications shall advance the interests of any political party.
- (7) Subsections (5) and (6) shall mutatis mutandis apply to state information services.

#### **20. Hearings**

- (1) Any political party which believes that a broadcasting service or a state-financed publication or a state information service has contravened the provisions of this Act and which was unable to have its grievance satisfactorily resolved, may lodge a complaint with the Commission.
- (2) A complaint made in terms of subsection (1) shall be in writing and shall be served on the respondent and lodged with the Commission.
- (3) For the purposes of subsection (2), "written" shall include a complaint delivered by hand or sent by registered post, telefax or telex.
- (4) The Commission shall afford the parties a hearing in response to a complaint made in terms of subsection (1).
- (5) The Commission shall determine the form and procedures of the hearing taking into account the urgency of the complaint.

- (6) The complainant and respondent respectively shall be entitled to legal representation when appearing before the Commission.
- (7) On completion of the hearing, the Commission shall make a determination and shall provide reasons therefor.
- (8) The Commission shall keep a written a written record of all its determinations and all such determinations shall be public documents.
- (9) The provisions of this section shall mutatis mutandis apply to hearings instituted by the Commission itself.
- (10) For the purposes of this section a state-financed publication and state information service shall be represented by the state official responsible for the state-financed publication or state information service.
- (11) The Commission may publish its determinations in any manner it deems fit.
- (12) The hearings held in terms of this section shall be held in public and the documents pertaining to such proceedings shall be open for public scrutiny.
- (13) The powers of the Commission shall, with regard to summoning and examination of witnesses, the administering of the oath or an affirmation and the production of books, documents and objects, be as prescribed.

## **21. Orders, Penalties and Recommendations**

- (1) The Commission, when making a determination referred to in section 20, may issue an order in any one or more of the following terms:
  - (a) Requiring a public sound broadcasting service to broadcast a party election broadcast;
  - (b) Requiring a sound broadcasting service to broadcast a political advertisement;
  - (c) Requiring a broadcasting service to broadcast a counter-version of a particular programme or of facts and/or opinions expressed within a particular programme;
  - (d) Imposing financial penalties on broadcasting services for non-compliance with the provisions of this Act;
  - (e) Recommending 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.
  - (f) Conveying the ruling to the IEC/TEC, in circumstances where the state-financed publication or a state information service is the respondent;

and/or any other order which the Commission deems appropriate to remedy the matter.

- (2) The Commission may publish its orders and recommendations in any manner it deems fit.
22. 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 funds allocated to it by the State Revenue Fund
- (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.
23. Reporting Responsibility of Commission

Without in any 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.

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

The Commission or any staff member or an expert 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.

25. Regulations

The State President shall, on the request of the Commission, make regulations as are prescribed in terms of this Act.

26. Offences and Penalties

A person who -

- (a) Insults, disparages or belittles the Commission, or anticipates the proceedings at a hearing or the findings of the in a manner calculated to influence such proceedings or findings;
- (b) 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;
- (c) Wilfully interrupts the proceedings at a hearing of the Commission or misbehaves himself/herself in any other manner in the place where such hearing is held;

- (d) In connection with any hearing of the Commission does anything which, if such hearing were proceedings in a court of law, would have constituted contempt of court;
- (e) Does anything calculated improperly to influence the Commission in respect of any matter being or to be considered by the Commission in connection with a hearing;
- (f) a person who fails to comply with any order given by the Commission in terms 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 or both such fine and such imprisonment.

#### 27. Delegation

- (1) The Commission may delegate any of its powers as it may deem fit.
- (2) The Commission shall not be divested of any power delegated under subsection (1) and may alter or repeal any decision made in terms of any delegated power.

#### 28. Dissolution of Commission (still to be inserted)

#### 29. 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, on the recommendation of the Transitional Executive Council, by proclamation in the Gazette.

**EMBARGOED UNTIL DELIVERY/TABLING IN THE  
NEGOTIATING COUNCIL**

**FOURTH REPORT OF THE TECHNICAL COMMITTEE  
ON INDEPENDENT MEDIA COMMISSION AND  
INDEPENDENT TELECOMMUNICATIONS AUTHORITY**

**11 JUNE 1993**

1. The Technical Committee has received submissions concerning the Independent Broadcasting/Telecommunications Authority from the following parties:

Bophuthatswana Government

Conservative Party

Democratic Party

Inkatha Freedom Party

Kwa-Zulu Government

Pan African Congress

South African Government

Venda Government

The Committee is in the process of giving its urgent attention to these submissions.

2. Although the Committee has made substantial progress on a Draft Independent Broadcasting Authority Bill, certain critical issues, some of which are of an extremely complex nature, still have to be resolved. Furthermore, additional input is required from a range of experts on certain of these issues.

In these circumstances the Committee is of the view that it would be premature to introduce the Draft, as it presently stands, for debate by the Negotiating Council.

3. The contents of this Bill and the Independent Media Commission Bill are of



## EMBARGOED UNTIL DELIVERY/TABLING IN THE NEGOTIATING COUNCIL

importance not only to the political parties, but also to existing broadcasters, possible new entrants to broadcasting, the media industry and the public at large.

Therefore the Committee strongly recommends that when the Bill is presented by this Committee to the Negotiating Council, both it and the Independent Media Commission Bill should at the same time be published for comment.

This is an additional reason why the Committee feels that it is inappropriate to publish the Draft Independent Broadcasting Authority Bill at this point, since it could cause unnecessary controversy.

4. Notwithstanding the foregoing, the Committee is of the view that the Independent Media Commission Bill should be debated by the Negotiating Council as a matter of urgency, in order that this piece of legislation can be finalised.

A. Armstrong  
C.F. Noffke  
D. Dison  
E.J. Mabuza  
P. Pretorius