

**SPECIAL REPORT ON THE FIFTH DRAFT  
OF THE INDEPENDENT  
BROADCASTING AUTHORITY BILL**

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

*2 August 1993*

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

**SPECIAL REPORT ON THE FIFTH DRAFT OF THE INDEPENDENT  
BROADCASTING AUTHORITY BILL**

**1. Introduction**

The Technical Committee has considered the suggestions made during the Negotiating Council's first debate on the Independent Broadcasting Authority Bill, held on the 26th of July 1993. In the two weeks preceding that debate, the Technical Committee received more than 55 lengthy submissions on the Fourth Draft of the IBA Bill from members of the broadcasting, print media, telecommunications, film, television and music industries, as well as from groupings within the media community and individual members of the public. A full list of the written submissions that were received by the Committee is attached hereto.

The debate in the Negotiating Council and the submissions on the IBA Bill by the broadcasting community have been extremely helpful to the Technical Committee which has now, in the Fifth Draft, been able to resolve most of the outstanding substantive issues.

There are still a number of areas which require more precise and technically correct legislative drafting. The Technical Committee is attending to these areas, with the able assistance of State Law Adviser, Adv Danie van Zyl.

**2. Amendments**

We set out below the most important amendments. Areas where further drafting is required have been footnoted in the Fifth draft.

### **3. Constitution of the Council**

In the new section four, the members of the Authority are now collectively referred to as the "Council". These members of the Council will be known as "councillors" of the IBA.

The Technical Committee has attempted to take into account most of the submissions on chapter three, particularly comments made on qualifications and disqualifications for the appointment of councillors, as well as their term of office.

The Technical Committee notes that the appointment of the Council, in terms of Schedule 1, was opposed by the South African Government and that this matter has been referred to an **ad hoc** committee of the Negotiating Council.

### **4. Public Inquiries by the Authority into Important Provisions of this Bill**

The Technical Committee has managed to resolve a number of the more important outstanding issues by requiring the Authority, in terms of section 26, to hold a public inquiry into certain critical policy issues as soon as is reasonably possible after the establishment of the Authority. These issues are: the future structure and financing of all public broadcasting services in terms of section 39; limitations to be imposed on cross-media control of private broadcasting services in terms of section 44; and the imposition of minimum percentages conditions relating to local television content and to South African music contemplated in section 48.

This public inquiry mechanism has been extended for a number of reasons. Firstly, nearly all the submissions received from industry and other civil bodies complained that the period allowed for submissions was too short and that either public hearings should be held or oral representations should be permitted. The volume and detail of the submissions clearly indicated a

strong public interest in the formulation of the new dispensation. A public inquiry into critical policy issues will certainly enhance the image of the Authority, and will sensitise the Authority to the issues faced by the broadcasting community.

Secondly, the cross-media control mechanism proposed in the Fourth Draft has been shown to fall short of achieving the important regulatory aim of limiting cross-media ownership and increasing the diversity of broadcasting voices. This mechanism could have been open to abuse and cause undue prejudice. The Technical Committee is of the view that it should not attempt to come up with the perfect cross-media limitations without all the relevant information being placed before the Authority. It is for these reasons that it has been proposed that the Authority enquire into such limitations before they are prescribed.

Furthermore, a thread running through most of the submissions was a concern about the future of public broadcasting services, particularly the SABC, given the impact a new dispensation may have upon the revenue base of such broadcasting services. It was therefore considered important that the future of public broadcasting services, including those of the TBVC states, be the subject of an inquiry by the Authority.

Finally, it was felt that, with regard to the issue of local television content and South African music, it would be inappropriate for the Technical Committee to set minimum percentages at this stage, and that once again, the Authority would be in a far better position to determine this issue after hearing evidence at an inquiry.

It follows from the above that the definition of control, related terms and Schedule 4 have not been included in the Fifth Draft. The Technical Committee, together with the State Law Adviser, is attending to these matters.

**5. Empowerment and Equal Opportunity**

The Technical Committee has resolved this issue by including two new policy provisions in Section 2, namely subsections (6) and (7). The old section 43(2)(h) has therefore been dropped from the Fifth Draft.

**6. Finalisation of certain terms and issues dependent on decisions by the Negotiating Council.**

The following matters cannot be finalised without related matters, beyond the terms of reference of this Technical Committee, being decided upon by the Negotiating Council:

6.1 Definition of "**political party**"

6.2 Definition of "**Republic**"

6.3 Mechanisms providing for Ministerial consultation or concurrence with the TEC.

6.4 Appointment of the Council of the IBA.

**7. Towards a certified draft**

The Technical Committee is of the view that, given the level of detailed drafting and consensus on all of the provisions of this draft (excluding those matters to be finalised by the Negotiating Council) a certified draft could be completed within a reasonably short time.

## **SUBMISSIONS ON THE FOURTH DRAFT OF THE INDEPENDENT BROADCASTING AUTHORITY BILL**

One or more submissions were received from the following:

1. Congress of South African Trade Unions (COSATU)
2. National Community Radio Forum
3. Campaign for Independent Broadcasting (CIB)
4. South African Union of Journalists (SAUJ)
5. Media Workers Association of South Africa (MWASA)
6. National Directorate of Lawyers for Human Rights (LHR)
7. Matla Trust
8. The National Television and Video Association
9. Performing Arts Workers' Equity (PAWE)
10. Film and Allied Workers Organisation (Tvl) (FAWO)
11. Film and Allied Workers Organisation (Western Cape) (FAWO)
12. Film Makers Association
13. South African Film and Television Institute (SAFTI)
14. The Black Sash
15. Local Area TV and Radio Channel 10
16. Centre for Cultural and Media Studies (University of Natal/Durban)
17. South African Broadcasting Corporation (SABC) (Board)
18. Television and Media Studies, University of the Witwatersrand
19. National Education Coordinating Committee (NECC)
20. Nasionale Pers Beperk
21. Capital Radio
22. SENTECH
23. Venture Communications
24. Radio 702
25. National Association of Broadcasters of South and southern Africa (NAB)
26. Norman Kotze
27. Association of the South African Music Industry (ASAMI)
28. Professor Christo Viljoen

29. David Blood and Associates
30. West Coast Radio
31. Association of Broadcast Entrepreneurs (ABE)
32. South African Students Press Union (SASPU)
33. Argus Holdings Limited
34. The Media Directors Circle
35. Trinity Broadcasting Network
36. Pan Africanist Congress of Azania (PAC)
37. Cameron Hanneke International Productions
38. Caxton Limited
39. South African Chamber of Business (SACOB)
40. South African Broadcasting Corporation (SABC) (Management)
41. Professor Ari de Beer
42. Carel van der Merwe
43. Professor A.C. Nkabinde, University of Zululand
44. Gallo (Africa)
45. The Natal Witness
46. Bush Radio
47. Perskor Publikasies
48. Times Media Limited
49. Provincial Press Association
50. Dispatch Media
51. M-Net
52. People's Express
53. Telemedia
54. Videosport Television
55. African National Congress (ANC)
56. Charbern Media

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

**INDEPENDENT BROADCASTING AUTHORITY BILL**

***(WORKING DRAFT 5)***

***Prepared for discussion by the Technical Committee on the Independent Media Commission  
and the Independent Telecommunications Authority, Multi-Party Negotiation Process***

***2 August 1993***



## **INDEPENDENT BROADCASTING AUTHORITY BILL**

***To provide for the regulation of broadcasting activities in the public interest; for that purpose to establish the Independent Broadcasting Authority; to define its powers, functions and duties; and to provide for matters connected therewith.***

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

### **ARRANGEMENT OF ACT**

***Chapters, Subject***

***Sections***

***Schedules,***

***Chapter 1 INTERPRETATION***

***Section 1 Definitions***

***Chapter 2 PRIMARY OBJECTS OF ACT***

***Section 2 Primary objects of Act***

***Chapter 3 INDEPENDENT BROADCASTING AUTHORITY***

***Section 3 Establishment of the Independent Broadcasting Authority***

***Section 4 Constitution of the Council***

- Section 5*     *Persons disqualified from being members of the Council*
- Section 6*     *Terms of office of a councillors*
- Section 7*     *Remuneration, allowances and pensions*
- Section 8*     *Vacancies in the Council*
- Section 9*     *Meetings of the Council*
- Section 10*    *Disclosure of conflicting interests*
- Section 11*    *Proceedings of Council not invalid in certain circumstances*
- Section 12*    *General or ancillary powers of Council*
- Section 13*    *Staff of the Authority*
- Section 14*    *Financing of the Authority*
- Section 15*    *Loans raised by the Authority*
- Section 16*    *Banking account*
- Section 17*    *Investments*
- Section 18*    *Accounting and auditing*
- Section 19*    *Annual report*

**Chapter 4     COMMITTEES, APPOINTMENT OF EXPERTS AND INQUIRIES**

- Section 20*    *Standing Committees of Council*
- Section 21*    *Constitution of Standing Committees*
- Section 22*    *Establishment and constitution of Special Committees*
- Section 23*    *Powers, functions and duties of Committees*
- Section 24*    *Meetings of Committees*
- Section 25*    *Appointment of experts*
- Section 26*    *Inquiries by the Authority*

**Chapter 5     BROADCASTING FREQUENCY SPECTRUM MANAGEMENT**

- Section 27*    *Assignment of broadcasting services frequency bands*
- Section 28*    *Broadcasting Technical Committee*
- Section 29*    *Frequency plan*

**Chapter 6     BROADCASTING SIGNAL DISTRIBUTION LICENCES**

- Section 30*    *Prohibition on the provision of broadcasting signal distribution without a*

*licence*

- Section 31** *Granting broadcasting signal distribution licences*
- Section 32** *Criteria and procedures for granting and renewal of broadcasting signal distribution licences*
- Section 33** *Conditions of broadcasting signal distribution licences*
- Section 34** *Term of broadcasting signal distribution licence*
- Section 35** *General provisions on broadcasting signal distribution licences*
- Section 36** *Adjudication of disputes and tariffs and conditions of access*

**Chapter 7** **BROADCASTING LICENCES**

- Section 37** *Prohibition on the provision of a broadcasting service without a broadcasting licence*
- Section 38** *Granting and renewal of broadcasting licences*
- Section 39** *Public broadcasting licences*
- Section 40** *Private broadcasting licences*
- Section 41** *Community broadcasting licences*
- Section 42** *Limitations on foreign control of private broadcasting services*
- Section 43** *Limitation on the control of private broadcasting services*
- Section 44** *Limitation on cross-media control of private broadcasting services*
- Section 45** *Prohibition on the granting of broadcasting licences to political parties and other organisations*
- Section 46** *Licence conditions*
- Section 47** *Procedure for the amendment of licences*
- Section 48** *Specific broadcasting licence conditions on local television content and South African music*
- Section 49** *Term of broadcasting licence*
- Section 50** *Transfer of licence*
- Section 51** *Register of broadcasting licences*
- Section 52** *Broadcasting accounts and records relevant to change in control of licenses*
- Section 53** *Record of programmes broadcast by broadcasting licensee*

**Chapter 8 BROADCASTING PROGRAMMES**

*Section 54 Code of Conduct and exemptions*

*Section 55 Control of advertisements*

*Section 56 Party election broadcasts on public sound broadcasting services during an election period*

*Section 57 Political advertising on sound broadcasting services during an election period*

*Section 58 Prohibition on party election broadcasts and political advertisements except in certain circumstances*

*Section 59 Equitable treatment of political parties by all broadcasting services during an election period*

**Chapter 9 ENFORCEMENT**

*Section 60 Broadcasting Monitoring and Complaints Committee*

*Section 61 Authority may inspect licensee's books and records*

*Section 62 Powers of authorised persons*

*Section 63 Powers in case of a breach of broadcasting licence conditions*

*Section 64 Offences*

*Section 65 Penalties*

**Chapter 10 GENERAL PROVISIONS**

*Section 66 Liquidation*

*Section 67 Delegations*

*Section 68 Restriction on use of name or description implying connection with Authority*

*Section 69 Limitation of liability*

*Section 70 Regulations*

*Section 71 Amendment of laws and savings*

*Section 72 Short title and commencement*

## **SCHEDULES**

***Schedule 1 Procedure for appointing councillors***

***Schedule 2 Pension rights of officers and employees***

***Schedule 3 Code of Conduct for South African broadcasters***

***Schedule 4 Control of private broadcasting licences and  
newspapers and ownership of company interests***

***Schedule 5 Amendment of laws***

## **CHAPTER 1**

### **INTERPRETATION**

#### **1. Definitions**

(1) In this Act, unless the context otherwise indicates -

**"additional councillor"** means a member of the Council referred to in section 4(1)(b);

**"apparatus"** means any apparatus or equipment that is used or intended to be used in connection with broadcasting;

**"appointing body"** means the body charged with the appointment of councillors in terms of section 4;

**"authorised person"** in relation to any power, function or duty to be exercised or performed for or on behalf of the Authority in terms of this Act, means any councillor or member of a committee of the Council or any staff member of the Authority duly authorised in terms of this Act to act on behalf of the Authority;

**"Authority"** means the Independent Broadcasting Authority established by section 3;

**"broadcasting"** means a form of unidirectional telecommunication intended for the public or sections of the public having appropriate receiving facilities, and carried out by means of radio or by cable networks;

**"broadcasting licence"** means a licence granted by the Authority in terms of this Act or deemed by this Act to have been so granted to a person for the

purpose of providing a defined category of broadcasting service;

**"broadcasting licensee"** means the holder of a broadcasting licence;

**"Broadcasting Monitoring and Complaints Committee"** means the standing committee referred to in section 20 (1)(b);

**"broadcasting service"** means a single, defined service which broadcasts television, sound or text material to the public or sections of the public;

**"broadcasting services frequency bands"** means that part of the electromagnetic radio frequency spectrum which is assigned for the use of broadcasting services by the International Telecommunications Union (ITU), as agreed to or adopted by the Republic and any other additional part of the electromagnetic radio frequency spectrum defined nationally for the use of broadcasting services;

**"broadcasting signal distribution"** means the process whereby the output signal of a licensed broadcasting service is taken from the point of origin, being the point where the signal is made available in its final content format, and is conveyed by means of a telecommunications process to a licence area defined in the broadcasting licence;

**"broadcasting signal distribution licence"** means a licence granted by the Authority in terms of this Act or deemed by this Act to have been so granted, to provide for signal distribution;

**"broadcasting signal distribution licensee"** means the holder of a broadcasting signal distribution licence;

**"Broadcasting Technical Committee"** means the standing committee referred to in section 20(1)(a);

**"chairperson"** means the chairperson of the Council, referred to in section 4(1)(a), and includes any councillor acting in the stead of such person in accordance with the provisions of section 9 (2);

**"common carrier"** means..

**"community broadcasting service"** means a broadcasting service which -

- (a) is fully controlled by a non-profit entity; and
- (b) caters for particular community interests; and
- (c) encourages members of the community served by it to participate in the operations of the licensee in providing the service and in the selection and provision of programmes under the broadcasting licence; and
- (d) may be funded by donations, grants, sponsorships, advertising or membership fees, or funded by a combination of these sources;

**"Council"** means the council of the Authority referred to in section 3 (2), as constituted in terms of section 4(1) and, in relation to the exercise or performance of any power, function or duty conferred upon the Council by this Act, includes any committee of the Council or any officer of the Authority acting under a delegation or authorization in terms of section 67;

**"councillor"** means a member of the Council referred to in section 4 (1);

**"election"** means any election held for the purposes of electing the members of any legislative body established by the law of the Constitution;



**"election period"** means the period commencing on the date on which an election is proclaimed up to the last polling date of that election;

**"foreign person"** means:

- (a) a natural person who is not a South African citizen; or
- (b) a company, wherever incorporated, where the natural persons who in effect control the company, whether directly or indirectly, are not South African citizens; or
- (c) a company, wherever incorporated, where -
  - (i) a company referred to in paragraph (b); or
  - (ii) a natural person who is not a South African citizen and a company referred to in paragraph (b),

control the company, whether directly or indirectly;

**"licence area"** means the geographical target area of a broadcasting service as specified in a broadcasting licence;

**"Minister"** means the Minister responsible for the administration of this Act;

**"party election broadcast"** means a direct address by a political party representative which is broadcast free of charge on a 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 broadcasting licensee has received or is to receive, directly or indirectly, any money or

other consideration for the broadcasting of such advertisement;

**"political party"** means...<sup>1</sup>

**"prescribed"** means prescribed by regulation in terms of section 70;

**"private broadcasting service"** means a broadcasting service operated for profit and controlled by a private person;

**"public broadcasting service"** means

- (a) a broadcasting service provided by the South African Broadcasting Corporation in accordance with the Broadcasting Act, 1976 (Act No 73 of 1976); or
- (b) a broadcasting service provided by any other statutory body; or
- (c) a broadcasting service provided by a person that receives revenue, either wholly or partly, from licence fees or from the state,

and shall include a commercially-operated broadcasting service provided by a person referred to in (a) or (b) or (c).

**"radio"** means an electromagnetic wave propagated in space without artificial guide and having by convention a frequency of lower than 3 000 GHz;

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1 This definition will be finalised in conjunction with the Technical Committee on the Independent Electoral Commission.

**"Republic"** means the Republic of South Africa; <sup>2</sup>

**"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 transmissions 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;

**"standing committee"** means any standing committee referred to in section 20;

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

**"television set"** means a device which is capable of receiving, by radio, transmissions broadcast by a broadcasting service, and reproducing them in the form of images or other visible signals, with or without accompanying sounds; and

**"this Act"** includes the Schedules to this Act and the regulations.

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<sup>2</sup> This definition has been referred to an **ad hoc** Committee of the Negotiating Council.

## CHAPTER 2

### PRIMARY OBJECTS OF ACT

#### 2. Primary Objects of Act <sup>3</sup>

The primary object of this Act is to provide for the regulation of broadcasting activities in the Republic, in the public interest, through the Independent Broadcasting Authority established by section 3, and for that purpose to -

- (1) promote the provision of a diverse range of sound and television broadcasting services on a national, regional and local level, which, viewed collectively, cater for all language and cultural groups and provide entertainment, education and information;
- (2) promote the development of public, private and community broadcasting services which are responsive to the needs of the public;
- (3) ensure that broadcasting services, viewed collectively -
  - (a) develop and protect a national identity, culture and character;
  - (b) provide for regular -
    - (i) news services;
    - (ii) actuality programmes on matters of public interest;

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<sup>3</sup> The Technical Committee was unable to incorporate the SA Government's proposal that religion should be expressly catered for in this section. The prevailing view in the Committee is that religion is sufficiently provided for under "culture".

- (iii) programmes on political issues of public interest; and
  - (iv) programmes on matters of international, national, regional and local significance;
- (4) protect the integrity and viability of public broadcasting services;
- (5) ensure that public broadcasting services take into account -
  - (a) the needs of language and cultural groups;
  - (b) the needs of SPRs and local communities; and
  - (c) the need for educational programmes;
- (6) encourage ownership of broadcasting services by persons from historically disadvantaged groups;
- (7) encourage equal opportunity employment practices by all licensees;
- (8) ensure that broadcasting services are not controlled by foreign persons;
- (9) ensure that private and community broadcasting licences, viewed collectively, are controlled by persons or groups of persons from a diverse range of communities in the Republic;
- (10) impose limitations on cross-media control of private broadcasting services;
- (11) promote the most efficient use of the broadcasting frequency spectrum;
- (12) ensure that public and private broadcasting services comply with

internationally-accepted technical standards;

- (13) ensure that broadcasting signal distribution facilities are made available to all licensed broadcasting services in a fair and equitable manner;
- (14) refrain from undue interference in the commercial activity of a broadcasting service, whilst at the same time taking into account the broadcasting needs of the public;
- (15) ensure fair competition between broadcasting licensees;
- (16) promote and conduct research into broadcasting policy and technology;
- (17) encourage investment in the broadcasting industry;
- (18) promote the stability of the broadcasting industry;
- (19) ensure equitable treatment of political parties by all broadcasting services during an election period;
- (20) ensure that broadcasting services adhere to a code of conduct acceptable to the Independent Broadcasting Authority; and
- (21) encourage the provision of appropriate means for addressing complaints about broadcasting services.

## CHAPTER 3

### INDEPENDENT BROADCASTING AUTHORITY

#### 3. Establishment of the Independent Broadcasting Authority

- (1) There is hereby established a juristic person to be known as the Independent Broadcasting Authority which shall exercise and perform the powers, functions and duties conferred and imposed upon it by this Act or by or in terms of any other law.
- (2) The Authority shall be governed and represented by the council referred to in section 4, and all acts of such Council shall be the acts of the Authority.
- (3) The Authority shall function without any political or other bias or interference and shall be wholly independent and separate from any political party, the government and its administration or any other functionary or body directly or indirectly representing the interests of government.

#### 4. Constitution of the Council

- (1) The membership of the Council shall consist of -
  - (a) a chairperson; and
  - (b) six other councillors,appointed in accordance with the provisions of Schedule 1.

- (2) The councillors shall be -
- (a) persons who are citizens of and permanently resident in the Republic;  
and
  - (b) when viewed collectively, persons who are suited to serve on the Council by virtue of their qualifications, expertise and experience in the fields of, **inter alia**, broadcasting policy and technology, media law, frequency planning, business practice and finance, marketing, journalism, entertainment and education; and
  - (c) persons who are committed to fairness, freedom of expression, the right of the public to be informed, and openness and accountability on the part of persons holding public office; and
  - (d) when viewed collectively, represent a broad cross-section of the population of the Republic; and
  - (e) persons who are committed to the objects and principles as enunciated in section 2.

**5. Persons disqualified from being members of the Council**

- (1) A person shall not be appointed or remain as a member of the Council if such person -
- (a) holds an office of profit under the State, subject to the provisions of section 21 (3);
  - (b) is a member of Parliament or any SPR legislature which derives its authority from the law of the Constitution at the relevant time, or any local authority;



- (c) is an office-bearer or employee of any political party;
  - (d) directly or indirectly, whether personally or through his or her spouse, partner, or associate, has a direct or indirect financial interest in the telecommunications, broadcasting or print media industry;
  - (e) holds an office in or, is employed by, any company, organisation or other body, whether corporate or incorporate, which has a direct or indirect financial interest of the nature contemplated in paragraph (d);
  - (f) is an unrehabilitated insolvent or has entered into a compromise with his or her creditors;
  - (g) is subject to an order of a competent court declaring such person to be mentally ill or disordered;
  - (h) has, after the commencement of this Act, been convicted, whether in the Republic or elsewhere, of any offence for which such person has been sentenced to imprisonment without the option of a fine;
  - (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 other offence involving dishonesty, and has been sentenced therefor to imprisonment without the option of a fine; or
  - (j) is or has been convicted of an offence under this Act.
- (2) Notwithstanding the provisions of paragraph (a), (b), (c), (d) or (e) of subsection (1), a person shall be eligible for appointment to the Council if such person resigns from office or divests himself or herself of the relevant financial interest in a manner which satisfies the appointing body.

## 6. Terms of office of Councillors

- (1) The chairperson shall hold office for a period of five years as from the date of his or her appointment.
- (2)
  - (a) Subject to the provisions of paragraph (c) of this subsection, the additional councillors shall hold office for a period of four years as from the date of their appointment.
  - (b) One half of the total number of additional councillors shall vacate their offices every two years.
  - (c) For the purposes of paragraph (b), such three of the six additional councillors appointed in the first Council constituted after the commencement of this Act as shall be designated by the appointing body for that purpose, shall vacate their offices upon expiration of a period of two years as from the date of their appointment, whereas the three remaining councillors shall vacate their offices on a date two years later.
- (3) A councillor may at any time upon at least three months' written notice tendered to the appointing body resign from office.
- (4) A councillor shall upon expiration of his or her term of office be eligible for re-appointment.

## **7. Remuneration, allowances and pensions <sup>4</sup>**

Councillors shall be paid such remuneration and allowances from the funds of the Authority as the Minister, in consultation with the Minister of State Expenditure, may determine.

## **8. Vacancies in Council**

- (1) There shall be a vacancy in the Council -
  - (a) if a councillor becomes subject to a disqualification referred to in section 5;
  - (b) when a councillor's written resignation in terms of section 6(3) takes effect; or
  - (c) if a councillor is removed from office by the appointing body on account of misconduct or inability to efficiently perform the duties of his or her office.
- (2) A vacancy in the Council shall be filled by the appointment of another councillor by the appointing body in terms of this Act as soon as may be reasonably practicable after the occurrence of such vacancy, and any councillor so appointed shall hold office for the unexpired period of his or her predecessor's term of office.

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<sup>4</sup> The Negotiating Council requested that the relationship of the IBA to the transitional structures such as subcouncils of the TEC should be clarified i.e., mechanisms for consultation with such transitional structures should be provided for whenever "the Minister" is mentioned. The Technical Committee is of view that this important point will be more effectively dealt with once the legislation on the TEC has been finalised.

## **9. Meetings of the Council**

- (1) The meetings of the Council shall be held at such times and places as may be determined by resolution of the Council whenever necessary so as to conduct its business expeditiously: Provided that the first meeting shall be held at such time and place as the chairperson may determine.
- (2) In the absence of the chairperson, the remaining councillors shall elect an acting chairperson, who, while he or she so acts, may exercise and perform all the powers, functions and duties of the chairperson.
- (3) The chairperson, may at any time, in his or her discretion convene a special meeting of the Council, which shall be held at such time and place as the chairperson may direct: Provided that the chairperson shall upon having been presented with a requisition for that purpose signed by at least two councillors, call for a special meeting, and if the chairperson fails to convene a special meeting within seven days as from such presentation, such two councillors may, upon the expiry of such seven days, convene the special meeting.
- (4) The quorum for any meeting of the Council shall be a majority of the total number of councillors.
- (5) A decision of the Council shall be taken by resolution agreed to by the majority of councillors at any meeting of the Council, and, in the event of an equality of votes on any matter, the chairperson shall have a casting vote in addition to his or her deliberative vote.

## **10. Disclosure of Conflicting Interest**

- (1) If at any stage during the course of any proceedings before the Council it appears that any councillor has or may have an interest which may cause a

conflict of interest to arise on his or her part -

- (a) such councillor shall forthwith and fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining councillors to discuss the matter and determine whether such councillor is precluded from participating in such meeting by reason of a conflict of interest; and
  - (b) such disclosure and the decision taken by the remaining councillors regarding such determination, shall be recorded in the minutes of the meeting in question.
- (2) If any councillor fails to disclose any interest as required by subsection (1), the proceedings of the Council shall be null and void and such councillor shall be guilty of an offence and shall be liable on conviction to a maximum fine of R100 000.

#### **11. Proceedings of Council not invalid in certain circumstances**

Subject to the provisions of section 10, a decision taken by the Council or an act performed under the authority of such a decision shall not be invalid merely by reason of any irregularity in the appointment of a councillor or a vacancy in the Council or the fact that any person not entitled to sit as a councillor sat as such at the time when such decision was taken, provided such decision was taken by a majority of councillors present at the time and entitled to so sit.

#### **12. General or Ancillary Powers of the Authority <sup>5</sup>**

The Authority, in exercising its powers and performing its functions, shall have the

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<sup>5</sup> This is by no means an exhaustive list of general or ancillary powers. The Technical Committee, together with the State Law Advisor, is still attending to this section. The Bill, in its final form, will be more comprehensive.

capacity to -

- (a) enter into agreements with any person or, with the approval of the Minister, with any government or administration, upon such conditions as the Authority and that person, government or administration may agree;
- (b) hire, purchase, possess or otherwise acquire movable and immovable property and encumber such property;
- (c) let, sell or otherwise dispose of movable or immovable property;
- (d) acquire or alienate rights in incorporeal things or otherwise dispose thereof;
- (e) insure itself against any loss, damage, risk or liability which it may suffer or incur;
- (f) borrow, lend or invest money with the written approval of the Minister, granted with the concurrence of the Minister of State Expenditure; and
- (g) make donations.

### **13. Staff of the Authority**

- (1) (a) The Council shall appoint a suitably qualified and experienced person as chief administrative officer of the Authority for the purposes of assisting the Council, subject to its directions and control, in the performance of all financial, administrative and clerical functions and work arising from the implementation of this Act.

- (b) The chief administrative officer shall be the accounting officer for the Authority.
- (2) The Council shall appoint such other staff for the Authority as it deems necessary with a view to assisting the Authority with all such work as may arise through the exercise and performance of its powers, functions and duties.
- (3) The Authority may pay to the persons in its employ, or provide them with, such remuneration, allowances, bonuses, subsidies, pension and other employment benefits as the Authority may, after having obtained such professional advice as it may deem fit, consider as being competitive in the open market for the manpower concerned.
- (4) The pension rights of officers and employees shall be in accordance with the provisions as set out in Schedule 2 of the Act.

#### **14. Financing of Authority <sup>6</sup>**

- (1) The Authority shall be financed and provided with operational capital from -
  - (a) such moneys as may on the commencement of this Act from public funds be allocated to the Authority by the Minister, in concurrence with the Minister of State Expenditure, which the Minister so acting is hereby empowered to do;
  - (b) such moneys as are from time to time appropriated to the Authority by Parliament;
  - (c) fees and other moneys payable to the Authority in terms of this Act in

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<sup>6</sup> This section will, in its final form, include a subsection on annual estimates of revenue and expenditure.

respect of licences;

- (d) income derived by the Authority from its investment and deposit of surplus moneys in terms of section 17;
- (e) loans raised by the Authority in terms of section 15; and
- (f) fines and penalties payable in terms of this Act on account of the breach of licence conditions or on account of any contraventions of this Act.

- (2) The Authority shall utilise its funds for defraying expenses in connection with the exercise and performance of its powers, functions and duties.

**15. Loans raised by the Authority <sup>7</sup>**

**16. Banking Account**

**17. Investments**

**18. Accounting and auditing**

- (1) The financial year of the Authority shall commence on the first day of April in any year and end on the last day of March first following, both days inclusive.
- (2) The accounting officer shall -

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<sup>7</sup> Sections 15, 16 and 17 will be finalised by the Technical Committee in conjunction with the State Law Adviser.



- (a) keep full and proper records of all money received or expended by, and of all assets, liabilities and financial transactions of the Authority; and
  - (b) as soon as is practicable, but not later than three months after the end of each financial year referred to in subsection (1), prepare annual financial statements reflecting, with suitable particulars, moneys received and expenses incurred by the Authority during, and its assets and liabilities as at the end of, the financial year concerned.
- (3) The records and annual financial statements referred to in subsection (2) shall be audited by the Auditor-General.
- (4) The financial statements referred to in subsection (2), shall -
- (a) be in conformity with generally accepted accounting practices;
  - (b) fairly reflect the state of affairs and functions of the Authority and the results thereof; and
  - (c) refer to any relevant matters not specifically prescribed by this Act which affect or are likely to affect the affairs of the Authority.

## 19. Annual report

- (1) The Council shall within three months after the end of each financial year or such longer period as the Auditor-General may determine, submit to the Minister an annual report on the Authority's affairs and functions in respect of that financial year, which shall, **inter alia**, include -
- (a) an audited balance sheet, including any notes thereon or a document

annexed thereto providing information required by this Act;

- (b) an audited income statement, including any similar financial statement, where such form is appropriate, and including any notes thereon or a document annexed thereto providing the information required by this Act;
  - (c) an audited statement of the source and application of funds;
  - (d) information regarding licences granted, renewed, amended, suspended, revoked or transferred; and
  - (e) such information as may be prescribed by regulation.
- (2) As soon as may be reasonably practicable after a receipt of a report in terms of subsection (1), the Minister shall table it in Parliament.

## CHAPTER 4

### COMMITTEES, APPOINTMENT OF EXPERTS AND INQUIRIES

#### 20. Standing Committees of Council

- (1) The Council shall establish and appoint the following standing committees, namely -
  - (a) the Broadcasting Technical Committee; and
  - (b) the Broadcasting Monitoring and Complaints Committee.
- (2) The Council may establish and appoint such other standing committees for such purposes as it may deem necessary for the effective exercise and performance of its powers, functions and duties, and may at any time extend, limit or dissolve any such committee.

#### 21. Constitution of Standing Committees

- (1) Each standing committee shall consist of -
  - (a) at least one councillor designated by the Council; and
  - (b) two or four additional members as the Council may determine from time to time.
- (2) The additional members shall be persons -
  - (a) who are not subject to any disqualification referred to in section 5; and
  - (b) who, on account of their expertise, experience, fairness and general

acceptability, are suited to serve on a committee.

- (3) In the case of the Broadcasting Monitoring and Complaints Committee, the chairperson shall be a judge or a retired judge of the Supreme Court of South Africa or a practising advocate or attorney of at least ten years standing. In the case of any other standing committee, the chairperson shall be the councillor concerned.

## **22. Establishment, Appointment and Constitution of Special Committees**

- (1) The Council may establish and appoint such special committees as it may deem necessary for the effective exercise and performance of its powers, functions and duties, and such committees shall sit on an **ad hoc** basis.
- (2) The provisions of section 21 (1) and (2) shall apply **mutatis mutandis** in relation to any committee established under subsection (1) of this section.
- (3) The Council shall from its number designate a chairperson for such committee.

## **23. Powers, functions and duties of committees**

A committee shall, with due regard to the objects and principles as enunciated in section 2, exercise and perform such powers, functions and duties as may -

- (a) be conferred and imposed upon the committee by or under this Act;
- (b) be delegated to the committee by the Council.

## 24. Meetings of committees

- (1) The meetings of a committee (including any special meetings) shall be convened by the chairperson, who shall determine the procedure at any such meeting.
- (2) The provisions of section 9 (2),(4), and (5), shall **mutatis mutandis** apply as regards the meetings of any committee.

## 25. Appointment of experts

- (1) The Council may appoint as many experts as it may deem necessary with a view to assisting it in the exercise and performance of its powers, functions and duties and for the performance of any work arising therefrom.
- (2) The terms, conditions, remuneration and allowances applicable to any appointment in terms of subsection (1) and the work to be performed or service to be rendered by virtue of such appointment shall be in accordance with a written agreement entered into between the Council and the expert concerned.
- (3) Upon having performed the work or completed the service pursuant to the agreement contemplated in subsection (2), the expert concerned shall submit a report in regard thereto to the Council for its consideration.
- (4) The Council, on receipt of the report referred to in sub-section (3), may refer the matter back to the expert -
  - (a) for such further attention as may be determined by the Council; or
  - (b) to perform such further functions as the Council may deem necessary or desirable.

## 26. Inquiries by the Authority<sup>8</sup>

- (1) The Authority may at any stage conduct an inquiry into any matter relevant to -
  - (a) the achievement of the objects and principles as enunciated in section 2;
  - (b) the exercise and performance of its powers, functions and duties in terms of this Act;
  - (c) regulations proposed or made in terms of section 70.
- (2) The Authority shall make known its intention to conduct an inquiry known by the publication in the **Gazette** of a notice to that effect.
- (3) The notice referred to in subsection (2) shall indicate the subject matter of the inquiry and shall invite interested parties to -
  - (a) submit written representations; and
  - (b) indicate whether or not they require an opportunity to make oral representations to the Authority,within a period prescribed in the notice.
- (4) The Authority shall advise parties referred to subsection (3)(b) of the place and time when oral representations may be made.

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<sup>8</sup> The procedures relevant to inquiries have not been finalised in this draft. The Technical Committee is attending to the matter.

- (5) The presentation of oral representations referred to in subsection (3)(b) shall be held in public and all documents submitted by interested parties shall be open for public scrutiny.
- (6) The Authority shall, as soon as may be reasonably practicable after the commencement of this Act and before any new broadcasting licences are granted in terms of section 38, conduct a single inquiry, in terms of this section, into -
- (a) the matters referred in section 39(1);
  - (b) the matters referred to in section 44(2); and
  - (c) the various matters referred to in section 48(5).

## CHAPTER 5

### BROADCASTING FREQUENCY SPECTRUM

#### 27. Assignment of the broadcasting services frequency bands

- (1) The Postmaster General shall assign all his or her powers, functions, duties and responsibilities regarding the broadcasting services frequency bands to the Authority, which shall regulate such frequency bands in accordance with the provisions of this Act.
- (2) In regulating the frequency bands referred to in subsection (1), the Authority shall comply with the applicable standards issued by the International Telecommunications Union in its current Radio Regulations or Broadcasting Plans, as agreed to and adopted by the Republic.

#### 28. Broadcasting Technical Committee

The Broadcasting Technical Committee shall be responsible for the management of the broadcasting services frequency bands, the determination of signal standards to be used in Republic and the technical planning functions of the Authority.

#### 29. Frequency plan

- (1) The Authority shall prepare a frequency plan whereby the maximum number of channels available for broadcasting services are determined and shall cause such plan to be published in the **Gazette**.
- (2) The Authority shall annually review the frequency plan referred to in subsection (1) and cause any amendment to such plan to be published in the **Gazette**.



- (3) In preparing a frequency plan, the Authority shall -
- (a) have due regard to the reports of experts in the field and internationally-accepted methods for preparing such plans;
  - (b) reserve frequencies on all bands for the different categories of broadcasting licences referred to in section 38(1); and
  - (c) take into account the existing frequencies used by broadcasting services,
- and cause its determinations to be published in the **Gazette** for comment.
- (4) The Authority shall keep a record of and make available for public inspection all comments received and all determinations made by the Authority in performing its functions in terms of this section.

## CHAPTER 6

### BROADCASTING SIGNAL DISTRIBUTION LICENCES

#### **30. Prohibition on the provision of broadcasting signal distribution without a licence**

Subject to the provisions of section 31(2), no person shall provide broadcasting signal distribution unless provided under and in accordance with a licence issued to that person by the Authority.

#### **31. Granting of broadcasting signal distribution licence**

- (1) A broadcasting signal distribution licence -
  - (a) may be granted to -
    - (i) a person operating as a common carrier for broadcasting signal distribution;
    - (ii) a broadcasting licensee who chooses to fulfil, wholly or partly, the signal distribution process itself;
  - (b) shall, subject to the objects and principles as enunciated in section 2, and to the provisions of this chapter, be granted to any person who satisfies the requirements of subsection (2) and has applied for such licence in accordance with the provisions of that subsection.
- (2) Notwithstanding the provisions of section 30, any person who, immediately prior to the date of commencement of this Act is engaged in broadcasting signal distribution in a manner not inconsistent with the provisions of this Act, shall, for a period of 12 months as from the said date, be deemed to be the holder of a broadcasting signal distribution licence contemplated in

subparagraph (i) or (ii) of subsection (1)(a), if such person within such period applies to the Authority for a broadcasting signal distribution licence.

- (3) A licence granted to a person under paragraph (b) of subsection (1), shall assume the format of either of the licencees mentioned in subparagraphs (i) and (ii) of paragraph (a) of that subsection and shall, subject to the provisions of this Act, confer no greater rights, privileges or empowerments and impose no stricter duties, conditions, obligations or responsibilities on such person than those with which he or she was vested or to which he or she was subject immediately prior to such date of commencement.

**32. Criteria and procedures for granting and renewal of broadcasting signal distribution licences**

The criteria and procedures in relation to any application for the granting, issuing and renewal of any broadcasting signal distribution licence shall be as prescribed.

**33. Conditions of broadcasting signal distribution licence**

A broadcasting signal distribution licensee shall -

- (a) comply with the provisions of this Act and the Authority's frequency plan;
- (b) not provide broadcasting signal distribution services to broadcasting services not licensed by the Authority;
- (c) take due cognisance of the environmental impact of its activities and comply with the applicable Acts;<sup>9</sup>

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<sup>9</sup> This matter is under further consideration

**34. Term of broadcasting signal distribution licence**

- (1) The term of a licence allocated to a person referred to in section 31(1)(a) shall be a maximum of 15 years.
- (2) The term of a licence allocated to a person referred to in section 31(1)(b) shall be concurrent with the term of such person's broadcasting licence,

whereafter such licence shall, subject to the provisions of this chapter, be renewable for a like period.

**35. General provisions on broadcasting signal distribution licences <sup>10</sup>**

The provisions of sections 47, 50, 51 and 52 shall **mutatis mutandis** apply in relation to broadcasting signal distribution licences.

**36. Obligations of common carrier regarding provision of service and resolution of disputes <sup>11</sup>**

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<sup>10</sup> This matter is under further consideration.

<sup>11</sup> This section is still being finalised by the Technical Committee and will deal with -

- (a) the obligation of a common carrier signal distribution licensee to provide signal distribution services to broadcasting licensees; and
- (b) The resolution of disputes re quality of services, tariffs and any other relevant matters

## CHAPTER 7

### BROADCASTING LICENCES

**37. Prohibition on the provision of a broadcasting service without a broadcasting licence**

A person shall not provide a broadcasting service unless such service is provided under and in accordance with a broadcasting licence issued to that person by the Authority.

**38. Granting and renewal of broadcasting licences**

(1) Subject to the provisions of this Act, the Authority may on such conditions as it may in any case determine, issue an applicant with a broadcasting licence to provide within a specified licence area -

(a) a sound broadcasting service in one or more of the following categories:

(i) A public sound broadcasting service.

(ii) A private sound broadcasting service.

(iii) A community sound broadcasting service.

(iv) Any other category of sound broadcasting service the Authority may wish to identify;

(b) a television broadcasting service in one or more of the following categories of services:

- (i) A public television broadcasting service.
  - (ii) A private television broadcasting service.
  - (iii) A community television broadcasting service.
  - (iv) Any other category of television broadcasting service the Authority may wish to identify.
- (2) (a) When the Authority intends inviting applications for a broadcasting licence, it shall cause a notice to that effect to be published in the **Gazette**.
- (b) Such notice shall state -
- (i) where applicable, the licence category and technical parameters of the proposed broadcasting licence; and
  - (ii) the period within which an application has to be lodged; and
  - (iii) the prescribed application fee payable on application.
- (c) Every application which is made pursuant to such notice shall be made in such form as may be prescribed, and shall be accompanied by -
- (i) the prescribed application fee;
  - (ii) the applicant's proposals in relation to the nature and licence area of the service; and
  - (iii) such other information as the Authority may deem necessary in order to properly consider the application.

- (d) All applications to the Authority which are made other than pursuant to a notice referred to in paragraph (a), shall comply with the requirements referred to in paragraph (c).
  - (e) On receipt of an application for a licence, the chairperson shall give notice of the application in the **Gazette**.
  - (f) Any person shall be entitled, within fourteen days after publication of such notice, to lodge written representations in relation to the application for the relevant broadcasting licence, with the Authority.
- (3) The Authority shall -
- (a) before considering any application for a broadcasting licence, by notice in the **Gazette**, make known the place where and the time at which it will hold a hearing concerning the application;
  - (b) afford all applicants and persons who made submissions in terms of subsection (2)(f) an opportunity to be heard;
  - (c) allow any of the parties referred to in paragraph (b) of this subsection to be assisted and represented by a person appointed by such parties;
  - (d) give reasons for its decision regarding the application.
- (4) The proceedings referred to in subsection (3) shall be recorded in the prescribed manner.
- (5) The proceedings referred to in subsection (3) shall be held in public and the documents pertaining to such proceedings shall be open for public scrutiny.
- (6) Upon having reached a decision on any application, the Authority shall, by

notice in the **Gazette** and by written notice addressed to the applicant, make known the outcome thereof.

- (7) A broadcasting licensee shall commence with the licensed broadcasting service within a period determined by the Authority, or within any extended period granted by the Authority on good cause shown, failing which such licence shall lapse.
- (8) An application for the renewal of a broadcasting licence may be made to the Authority by the broadcasting licensee not earlier than six months, and not later than thirty days, before the date on which it would otherwise expire.
- (9) The Authority shall not require any applicant for the renewal of a broadcasting licence to file any information which previously had been furnished to the Authority, or which is not directly material to the considerations that affect the granting or denial of such application, but the Authority may require any new or additional facts it deems necessary.
- (10) Pending any final decision on an application for the renewal of a broadcasting licence, such a licence shall continue to be of force and effect.
- (11) The Authority, shall refuse an application for the renewal of a broadcasting licence only if the licensee has failed to materially comply with the licence conditions or the provisions of this Act during the term of the existing licence and if the Authority is satisfied that the applicant would not, if his licence were renewed, so comply.
- (12) Subsections (2), (3), (4), (5) and (6) of section 38 shall **mutatis mutandis** apply to an application for the renewal of a broadcasting licence.
- (13) The Authority may levy such fees as it deems fit in relation to the issuing of any licence under this Act and may, for that purpose, prescribe different fees



in respect of different categories or sub-categories of licences: Provided that such fee shall not constitute payment in consideration for the granting of the licence.

### 39. Public broadcasting licences

- (1) As soon as possible after the commencement of this Act, the Authority shall conduct an inquiry in terms of section 26 into the protection and viability of public broadcasting services in the Republic, with particular reference to the financing, control and accountability of such services, and at the conclusion thereof the Authority shall submit in writing its findings and recommendations to the Minister, who shall table the same in Parliament within 14 days.
- (2) In the event of the Authority proposing the granting of a new public broadcasting licence, it shall, with due regard to the objects and principles as enunciated in section 2, **inter alia** apply the following criteria, namely -
  - (a) the demand for the proposed broadcasting service within the proposed licence area;
  - (b) the need for the proposed broadcasting service within such area, having due regard to broadcasting services already existing therein; and
  - (c) the technical quality of the service having due regard to developments in broadcasting technology.
- (3) Upon the commencement of this Act, all public broadcasting services shall be deemed to have been licensed in terms of this section in respect of the same services as were provided immediately prior to the commencement of this Act, and such licences shall accordingly in all respects be subject to the provisions

of this Act.<sup>12</sup>

#### 40. Private broadcasting licences

- (1) In considering an application for a private broadcasting licence, the Authority shall, with due regard to the objects and principles enunciated in section 2, **inter alia** take into account -
- (a) the demand for the proposed broadcasting service within the proposed licence area;
  - (b) the need for the proposed broadcasting service within such licence area, having due regard to the broadcasting services already existing therein;
  - (c) the expected technical quality of the proposed broadcasting service, having due regard to developments in broadcasting technology;
  - (d) the capability, expertise and experience of the applicant;
  - (e) the financial means and business record of the applicant;
  - (f) the business record of each person who, if a licence were granted to the applicant, is or would be in a position to control the operations of the applicant either in his or her individual capacity or as a member of the board of directors or its top management structure;

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<sup>12</sup> This section is a mere indication of what is proposed in principle. The finalisation of this section and the applicability of this Act to public broadcasting services in the TBVC states, is dependent upon agreement being reached as to the reincorporation of those territories back into South Africa and the time frames relevant thereto. It is envisaged by the Technical Committee that all the relevant public broadcasting services presently operated in South Africa and the TBVC states by public (state) broadcasters, shall be listed in a separate Schedule to this Act and that they be deemed by the Act to have been licensed thereunder.

- (g) the applicant's record and the record of each person referred to in paragraph (f), in situations requiring trust and candour;
  - (h) whether the applicant is precluded by or in terms of section 42, 43, 44 or 45 from holding a broadcasting licence;
  - (i) whether the applicant or a person referred to in paragraph (f) has been convicted of an offence in terms of this Act.
- (2) Upon the commencement of this Act, all private broadcasting services which were licensed immediately prior to the commencement of this Act shall be deemed to have been licensed in terms of this Act and such licences shall accordingly in all respects to subject to the provisions of this Act <sup>13</sup>.

#### 41. Community broadcasting licences

- (1) In considering an application for a community broadcasting licence, the Authority shall, with due regard to the objects and principles as enunciated in section 2, **inter alia** take into account -
- (a) whether the applicant is fully controlled by a non-profit entity;
  - (b) whether the applicant has the support of the relevant community to provide the proposed broadcasting service; <sup>14</sup>
  - (c) whether the applicant proposes to cater for the interests of the relevant

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<sup>13</sup> The remarks under the previous footnote in relation to public broadcasting services in the TBVC states are **mutatis mutandis** applicable in relation to those **private** broadcasters licensed in terms of the laws of the TBVC states.

<sup>14</sup> It was suggested at the Negotiating Council debate that the Technical Committee should consider how the relevant applicant's support would be tested. The Technical Committee is now proposing that a mechanism to ascertain "support" should be prescribed by the Council by regulation in order to ensure the application of a uniform standard/test.

community; and

(d) whether the applicant proposes to encourage members of the relevant community to participate in the operations of the broadcasting service and in providing the service and selecting and providing the programmes thereunder.

(2) Subsections (2) (a), (b), (d), (h) and (i) of section 40 shall **mutatis mutandis** apply to a community broadcasting licence.

**42. Limitations on foreign control of private broadcasting services <sup>15</sup>**

(1) One or more foreign person shall not, whether directly or indirectly -

(a) exercise control over a private broadcasting licensee.

(b) have financial interests in a private broadcasting licensee exceeding 20% in total.

(2) Not more than 20% of the directors of a private broadcasting licensee may be foreign persons.

**43. Limitations on the control over private broadcasting services <sup>16</sup>**

(1) No person shall -

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<sup>15</sup> The provisions of sections 42, 43 and 44 and Schedule 4 of this Act relating to control over private broadcasting services, are to a great extent directed against such control being exercised by companies or conglomerations/groups of companies, necessitating a thorough investigation of modern company structures and phenomena and the various provisions of the Companies Act, 1973 (Act No 61 of 1973), relevant thereto. Due to the complexity of this area, the Technical Committee has not completed its research and its investigations in this regard are continuing.

<sup>16</sup> The Committee has resolved the issue as contained in footnote 11 of the 4th Draft by the insertion of subsection (6). The Committee will return to this section once the definition of control is finalised.

- (a) directly or indirectly exercise control over more than one private television broadcasting licence;
  - (b) be a director of a company which is, or of two or more companies which are, between them, in a position to exercise control over more than one private television broadcasting licence; or
  - (c) be in a position to exercise control over a private television broadcasting licence, and be a director of another company which is in a position to exercise control of another private television broadcasting licence.
- (2) No person shall -
- (a) be in a position to exercise control over more than two private FM sound broadcasting licences;
  - (b) be a director of a company which is, or of two or more companies which are, between them, in a position to exercise control over more than two private FM sound broadcasting licences; or
  - (c) be in a position to exercise control over two private FM sound broadcasting licences, and be a director of another company which is in a position to exercise control over any private FM sound broadcasting licence.
- (3) No person referred to in subsection (2) shall be in a position to control two private FM sound broadcasting licences which have the same or overlapping licence areas.
- (4) No person shall:

- (a) be in a position to exercise control of more than two private AM sound broadcasting licences; or
  - (b) be a director of a company that is, or of two or more companies that are, between them, in a position to exercise control of more than two private AM sound broadcasting licences; or
  - (c) be in a position to exercise control of two private AM sound broadcasting licences, and a director of another company that is in a position to exercise control of other private AM sound broadcasting licences; or
- (5) No person referred to in subsection (4) shall be in a position to control two private AM sound broadcasting licences which have the same or overlapping licence areas.
- (6) The Authority may, whenever deemed necessary in view of developments in broadcasting technology or for the purposes of advancing the objects and principles as enunciated in section 2, make recommendations to the Minister regarding the amendment of any of the preceding subsections, which recommendations shall be tabled in Parliament within 14 days.

#### **44. Limitations on cross-media control of private broadcasting services <sup>17</sup>**

- (1) Cross-media control of broadcasting services shall be subject to such limitations as shall be prescribed from time to time.

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<sup>17</sup> The Technical Committee has resolved the issue as contained in footnote 12 of the 4th draft by providing for a public inquiry into the matter. This section is also still subject to the same considerations as noted under footnote 15. However, the Technical Committee envisages cross-media control, in relation to the control of a broadcasting service, to embrace inter alia, the capacity of the owner or person in control of a newspaper or newspapers to exercise effective control, whether directly or indirectly, over the operations of the broadcasting service concerned.

- (2) When considering or proposing the exercise of its powers in terms of subsection (1), the Authority shall conduct an inquiry, in terms of the provisions of section 26, and shall, in doing so, **inter alia** have regard to -
- (a) the various categories of newspapers according to extent of publication, extent of circulation and circulation figures, and any other category pertaining to existing and future control of the various newspapers in the Republic;
  - (b) the maximum percentage of equity and voting interests which may be held in any private broadcast licensee by a person who controls a newspaper or any number or group of newspapers, and any international precedents in that regard; and
  - (c) any other matter which the Authority considers relevant.

**45. Prohibition on the granting of broadcasting licences to political parties**<sup>18</sup>

- (1) No political party, and no organisation or group of persons which has as its object, or as one of its objects, whether expressed or otherwise, the nomination of candidates for election, shall be granted a broadcasting licence.
- (2) No political party, and no organisation or group of persons which has as its object, or as one of its objects, whether expressed or otherwise, the influencing of public opinion to support or to oppose a political party or organisation or group referred to in subsection (1) shall be granted a broadcasting licence.

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<sup>18</sup> The Technical Committee has taken cognisance of all the submissions on this section. However, this section can only be re-drafted once the definition of "political party" has been finalised by the Technical Committee on the IEC. It is not sufficient for the purposes of this section to only refer to political parties or organisations registered in terms of a new Electoral Act, since the aim of this section is to prohibit the granting of licences to all political parties, whether registered or not.

#### 46. Licence conditions <sup>19</sup>

- (1) Any licence granted or deemed to have been granted in terms of this Act may be amended in the following limited circumstances:
  - (a) In the case of a licence referred to in section 39(3) or 40(2), so as to excise therefrom any condition, obligation or other provision inconsistent with the provisions of this Act, and, in so far as may be necessary, to substitute for the condition, obligation or provision so excised any other condition, obligation or provision.
  - (b) To such extent as may be necessary in the interests of orderly frequency management, provided the amendment will not cause substantial prejudice to the licensee.
  - (c) To the extent necessitated by any international agreement relating to broadcasting, to which the Republic is a party.
- (2) Subject to the provisions of this Act, the Authority may in granting any licence impose such other conditions and obligations, appropriate to such licence, as it deems fit and consistent with the objects and principles as enunciated in section 2.
- (3) Any condition or obligation imposed in terms of subsection (2) shall be specified in the licence to which it pertains, and shall upon the issue of such licence acquire the force of law.

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<sup>19</sup> Due to time constraints, the Technical Committee was unable to include this section, which has general application to licences, under chapter 10 where it rightfully belongs. It proposes to do so in the next draft.



**47. Procedure for the amendment of licences**

- (1) When proposing to amend a licence, the Council shall cause notice of the proposed amendment to be given in the **Gazette**.
- (2) Within fourteen days after publication of such notice, any person shall be entitled to lodge written representations with the Authority, regarding the proposed amendment of the relevant licence.
- (3) The Authority shall -
  - (a) When considering the amendment of a broadcasting licence, by notice in the **Gazette**, make known the place where and the time at which it will hold a hearing concerning the proposed amendment of the licence;
  - (b) afford all persons having who made submissions in terms of subsection (2) a reasonable opportunity to be heard at such hearing;
  - (c) allow any of the parties referred to in subsection (2) to be assisted and represented by a person appointed by such parties; and
  - (d) give reasons for its decision with regard to the amendment of a licence.
- (4) The Authority shall record the proceedings referred to in subsection (3) in the prescribed manner.
- (5) The proceedings referred to in subsection (3) shall be held in public and the documents pertaining to such proceedings shall be open for public scrutiny.
- (6) Upon having decided to amend a broadcasting licence, the Authority shall

cause such amendment to be published in the **Gazette**.

**48. Specific broadcasting licence conditions on local television content and South African music**

(1) For the purposes of this section -

(a) **"local television content"** means a television programme, excluding transmissions of sports events and compilations thereof, advertisements, teletext and continuity announcements, which has been

(i) produced by a broadcasting licensee; or

(ii) produced by persons who are citizens, and permanent residents of the Republic; or

(iii) produced by a juristic person, the majority of directors, shareholders or members of which are citizens and permanent residents of the Republic; or

(iv) produced in a co-production in which persons referred to in paragraphs (i) or (ii) or (iii) have at least a 50% financial interest in the programme;

and

(v) produced by persons referred to in (i) or (ii) or (iii) or (iv) and in circumstances where a certain number of the key personnel, to be prescribed by the Authority, who are involved in the production of the television programme, are citizens and permanent residents of the Republic;

and

(vi) produced by (i) or (ii) or (iii) or (iv) and where a certain percentage of the production costs, to be prescribed by the Authority, are expended in the Republic.

(b) **"independent television production"** means

(i) a production of local television content by a person who is not directly or indirectly employed by any broadcasting licensee;  
or

(ii) the production of local television content by a person which is not controlled by or does not control, any broadcasting licensee.

(c) a musical selection broadcast by a broadcasting service referred to in subsection (3) shall qualify as **"South African music"** if such composition complies with at least two of the following conditions, namely -

(i) if the lyrics (if any) were written by a South African citizen;

(ii) if the music was written by a South African citizen;

(iii) if the music or lyrics was or were principally performed by musicians who are South African citizens;

(iv) if the musical selection consists of a live performance which is  
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(aa) recorded wholly in the Republic; or

(bb) performed wholly in the Republic and broadcast live in the Republic.

(2) The Authority shall in a television broadcasting licence include and specify such conditions, as prescribed, regarding local television content and independent television production, as it deems fit, which, without derogating from the generality of the foregoing, may include any condition requiring the broadcasting licensee to -

- (a) expend a specified minimum percentage of its gross revenue on programmes which have a local television content;
- (b) allocate a specified minimum percentage of the total amount of broadcast transmission time to television programmes which have a local television content;
- (c) allocate, when the licensee provides a subscription television broadcasting service, a specified minimum percentage of unencoded time to programmes which have a local television content;
- (d) allocate, where the licensee has a regional or a local licence area, a specified minimum percentage to local television programmes which have been produced in the region or locality where applicable; and
- (e) allocate a specified minimum percentage of the percentages referred to in paragraphs (a),(b), (c) and (d) to a prescribed diversity of television programmes which are independent television productions.

(3) The Authority shall, in relation to a broadcasting service which devotes a significant proportion of its broadcasting time to music programmes, prescribe a condition whereby the licensee is required to broadcast a specified minimum percentage of South African music.

- (4) In prescribing the percentages referred to in subsections (2) and (3), the Authority may prescribe the application of such percentages with regard to -
- (a) the category of broadcasting licence referred to in section 38(1);
  - (b) defined viewing and listening times, where applicable;
  - (c) television programme categories, where applicable; and
  - (d) the minimum period within which the broadcasting licensee shall comply with the provisions of this section.
- (5) The Authority shall, as soon as may be reasonably possible after the commencement of this Act, with a view to finalising and prescribing the percentages and matters referred in subsections (2), (3) and (4), conduct an inquiry in terms of section 26.

**49. Term of broadcasting licence**

- (1) Subject to the provisions of this Act, a licence shall be valid and in force only for the period specified in that licence.
- (2) A public and a private television broadcasting licence shall be valid for a maximum period of eight years.
- (3) A public and a private sound broadcasting licence shall be valid for a maximum period of six years.
- (4) A community sound or television broadcasting licence shall be valid for a maximum period of four years.

**50. Transfer of licence** <sup>20</sup>

- (1) A licence issued under this Act shall not be transferred to any other person without the written authorisation of the Authority.
- (2) The requirements and conditions which, in terms of this Act, are applicable in relation to the applicant for a broadcasting licence or broadcasting signal distribution licence (whichever is applicable) and to the granting of any such licence, shall **mutatis mutandis** apply in relation to the applicant for the transfer of such a licence and in relation to the transfer itself.
- (3) A broadcasting licence or a broadcasting signal distribution licence shall not be transferred unless the broadcasting service or (as the case may be) the broadcasting signal distribution service to which the relevant licence relates, is transferred together with such licence to the same transferee.

**51. Register of licences**

- (1) The Authority shall keep a register in which it shall record all licences granted in terms of this Act, as well as any amendments to or transfers of such licences.
- (2) The register shall be open to public inspection during such hours and subject to payment of such fee as may be prescribed by the Authority.
- (3) Any person may, on payment of such fee as may be prescribed by an order so made, require the Authority to supply to him or her a copy of or extract from any part of the register, certified by the Authority to be a true copy or extract.

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<sup>20</sup> Ibid.

**52. Broadcasting accounts and records relevant to change in control of licensees**

- (1) A licensee which is a company shall inform the Authority in writing of any change in the control of that company or corporation.
- (2) A broadcasting signal distribution and a broadcasting licensee shall keep such particulars and statistics relating to its broadcasting signal distribution activities or broadcasting activities, as may be prescribed.

**53. Record of programmes broadcast by broadcasting licensee**

- (1) A broadcasting licensee shall -
  - (a) retain, for a period not less than 30 days, a recording of every programme included in the service concerned;
  - (b) at the request of the Broadcasting Monitoring Complaints Committee, produce to it any such recording for examination or reproduction;
  - (c) at the request of the Broadcasting Monitoring Complaints Committee, provide to it any script or transcript of a programme after the broadcast thereof.
- (2) Nothing in this Act shall be construed as requiring or authorising the Authority or the Broadcasting Monitoring and Complaints Committee in the performance of its functions and duties, to view programmes prior to their being broadcast.

## CHAPTER 8

### BROADCASTING PROGRAMMES

#### 54. Code of Conduct, and Exemptions

- (1) Subject to the provision of subsection (2), all broadcasting services shall adhere to the Code of Conduct for Broadcasting Services as set out in Schedule 3.
- (2) The provisions of subsection (1) shall not apply to any broadcasting licensee if that licensee is a member of a body that has proved to the satisfaction of the Authority that its members subscribe and adhere to an acceptable code of conduct enforced by that body by means of its own disciplinary mechanisms.

#### 55. Control of advertisements

- (1) All broadcasting licensees shall observe the Code of Advertising Practice as from time to time determined and administered by the Advertising Standards Authority of South Africa.
- (2) The Broadcasting Monitoring and Complaints Committee shall adjudicate any complaint arising from the conduct of broadcasting licensees who are not members of the Advertising Standards Authority.
- (3) The Broadcasting Monitoring and Complaints Committee shall deal with a finding referred to in subsection (2) in accordance with the provisions of section 60.



**56. Party election broadcasts on sound broadcasting services during an election Period <sup>21</sup>**

- (1) Subject to the provisions of this section, a public sound broadcasting service shall permit political parties to make party election broadcasts.
- (2) The Authority shall make a ruling on the time to be made available to the political parties for purposes of subsection (1), including the duration and scheduling of such party election broadcasts, taking into account the financial and programming implications for the broadcasting services in question.
- (3) The Authority shall consult with the relevant public sound broadcasting services and political parties prior to making any ruling in terms of subsection (2).
- (4) In making the ruling in terms of subsection (2), the Authority may impose conditions requiring the public sound broadcasting service to observe such rules with respect to party election broadcasts as the Authority may determine, having due regard to the fundamental underlying principle that all political parties are to be treated equitably by the broadcasting service.
- (5) A party election broadcast shall not contain any material which may reasonably be anticipated to expose the broadcasting licensee to legal liability if such material were to be broadcast.
- (6) A party election broadcast shall comply with a broadcast quality acceptable to the Authority.
- (7) No party election broadcast shall be broadcast later than 48 hours prior to the

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<sup>21</sup> Sections 56 - 59 shall be administered by the Independent Media Commission until that body is dissolved, whereupon these sections will fall to be administered by the IBA.

commencement of the polling period.

**57. Political advertising on sound broadcasting services during election period**

- (1) A broadcasting licensee shall only broadcast a political advertisement which has been submitted by a political party.
- (2) No sound broadcasting service shall be 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, a like opportunity.
- (3) A political advertisement shall not contain any material which may reasonably expose the broadcasting licensee to legal liability if such material were to be broadcast.
- (4) A political advertisement shall comply with a broadcast quality acceptable to the Authority.
- (5) No political advertisement shall be broadcast later than 48 hours prior to the commencement of the polling period.

**58. Prohibition of party election broadcasts and the broadcasting of political advertisements except in certain circumstances<sup>22</sup>**

No party election broadcast and no political advertisement shall be broadcast on any broadcasting service except if and to the extent authorised by the provisions of

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<sup>22</sup> The Technical Committee was unable to resolve this issue as requested by the NC and understands that this matter has now been referred to an **ad hoc** committee. The Technical Committee reiterates its view that allowing political advertising on television has adverse financial implications for political parties, whereas allowing party election broadcasts on television may have adverse financial implications for the broadcasting services concerned.

sections 56 and 57.

**59. Equitable treatment of political parties by all broadcasting services during an Election Period**

- (1) If the coverage by any broadcasting service extends to the field of elections, political parties and issues relevant thereto, such broadcasting service shall afford reasonable opportunities for the discussion of conflicting views and shall treat all political parties equitably.
- (2) In the event of any criticism against a political party being levelled in a particular programme by any broadcasting service, without such political party having been afforded an opportunity to respond in such programme or the view of the political party to be reflected thereon, the broadcasting licensee shall be obliged to afford such a political party a reasonable opportunity to respond to the criticism.
- (3) If a broadcasting licensee intends to broadcast a programme wherein a political party is criticised on the polling day of the election or within 48 hours before the commencement of the polling period or during the polling period, 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 reasonably possible thereafter.

## CHAPTER 9

### ENFORCEMENT

#### 60. Broadcasting Monitoring and Complaints Committee

- (1) Subject to the provisions of sections 54(2) and 55(2), the Broadcasting Monitoring and Complaints Committee shall -
  - (a) monitor compliance by broadcasting licensees with the conditions of their broadcasting license and the provisions of this Act;
  - (b) monitor compliance by broadcasting licensees with the Code of Conduct for Broadcasting Services as specified in Schedule 3;
  - (c) during an election period, monitor the compliance of broadcasting licensees with the provisions of sections 56, 57, 58 and 59;<sup>23</sup>
  - (d) monitor compliance by broadcasting signal distribution licensees with the conditions of broadcasting signal distribution licences and the provisions of this Act.
- (2) In a procedure to be prescribed by the Authority, the Broadcasting Monitoring and Complaints Committee may inquire into and adjudicate any non-compliance referred to in subsection (1).
- (3) In a procedure to be prescribed by the Authority, the Broadcasting Monitoring and Complaints Committee shall inquire into and adjudicate any complaint made to the Authority regarding any non-compliance contemplated in

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<sup>23</sup> This section will only apply when the IMC dissolves.

subsection (1) if such complaint is made within 30 days from the date of the broadcast complained of.

- (4) In a procedure to be prescribed by the Authority, the Broadcasting Monitoring and Complaints Committee shall adjudicate on any finding referred to it by the Advertising Standards Authority of South Africa, in terms of section 55(2).
- (5) Insofar as the Broadcasting Monitoring and Complaints Committee makes a recommendation in adjudicating a matter referred to in subsection (2), (3) or (4), such recommendation shall be referred to the Council for such action as it may deem fit.
- (6) For the purposes of this section the Broadcasting Monitoring and Complaints Committee may make use of recordings of programmes referred to in section 53.

**61. Authority may inspect licensees books and records**

The Authority may by notice in writing direct a licensee to produce or furnish to the Authority, at a time and place specified in the notice, such documents, accounts, estimates, returns or information as may be specified in such notice and relating to any matter in respect of which a duty or obligation is imposed on the licensee by or in terms of this Act or the regulations or by the relevant licence.

**62. Powers of authorised persons**

An authorised person may at any reasonable time and without prior notice enter into or onto any premises and -

- (a) inspect and make copies of or extracts from specified books of account or other records of the licensee in order to determine whether the licensee is complying with the conditions and obligations of the licence and with the

provisions of this Act, or for any other purpose connected with the achievement of the objects of this Act;

- (b) where a broadcasting service is conducted on such premises, demand the production of the necessary broadcasting licence;
- (c) inspect any licence issued to any person under this Act;
- (d) inspect the plant and apparatus used by any person to broadcast;
- (e) inspect any plant and apparatus which are, or are suspected to be, in the possession of or used by any person in contravention of this Act.

**63. Powers in case of a breach of broadcasting licence conditions**

- (1) The Authority may, when it makes a finding that the broadcasting licensee or broadcasting signal distribution licensee has materially breached a licence condition or a provision of this Act -
  - (a) issue the licensee an appropriate warning;
  - (b) order the licensee to comply with such conditions or duty;
  - (c) order the licensee to effect a change within a reasonable period;
  - (d) order the licensee to disclose free of charge and in such manner as the Authority may stipulate, the finding of the Authority;
  - (e) order the licensee to pay a fine;<sup>24</sup>

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<sup>24</sup> The Committee envisages the imposition of penalties on an escalating basis in cases of successive breaches or contraventions.

- (f) suspend the licence for a period not exceeding 30 days;
  - (g) revoke the licence; or
  - (h) take such action as is prescribed by regulation.
- (2) If a licence is suspended or revoked in terms of subsection (1) the Authority may -
- (a) seize and detain any apparatus until possession thereof is authorised in terms of this Act, or the apparatus is disposed of in accordance with a court order;
  - (b) in its discretion, seal any apparatus or any part thereof in order to prevent the use of that apparatus for the purpose of transmission or reception.
- (3) A licence may only be suspended or revoked under subsection (1) -
- (a) if the licensee intentionally made a false statement in his application for such licence;
  - (b) if the licensee is found to have successively contravened the provisions of this Act or successively breached its licence conditions, whether intentionally or due to gross negligence on the licensee's part.
- (4) Failure by a broadcasting licensee to comply with an order given by the Authority in terms of subsection (1), shall be deemed to constitute a breach of a licence condition or duty imposed under this Act, entitling the Authority to take further action in terms of subsection (1).

#### 64. Offences <sup>25</sup>

- (1) Any person who contravenes the provisions of section 30 or 37 shall be guilty of an offence.
- (2) Any person who fails to comply with the provisions of sections 52 shall be guilty of an offence.
- (3) Any person who fails to produce a licence issued to him or her under this Act on demand by any authorised person, or who hinders any authorised person in the exercise or performance of his or her powers, functions and duties in terms of this Act, shall be guilty of an offence.
- (4) Any person who fails to comply with an order made in terms of section 63(1) shall be guilty of an offence.
- (5) Any person who, without the prior written permission of the Authority, breaks the seal of any apparatus sealed under section 63(2)(b) shall be guilty of an offence and on conviction any competent court may impose, in its discretion, a fine or imprisonment, or a fine and imprisonment, or any other suitable punishment within its jurisdiction, and the court convicting such a persons may in addition to any penalty which it may impose, order -
  - (a) the forfeiture to the Authority of any apparatus in connection with or by means of which the offenses was or were committed: Provided that no such forfeiture shall be so ordered upon the proof to the satisfaction to the courts that the apparatus in question do or does not belong to the person so convicted and that the owner of such apparatus was unable to prevent the unlawful use thereof by the person so convicted;

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<sup>25</sup> This section seems to be extremely wide in terms of the creation of offenses. Further attention is being given to this matter.



- (b) the revocation of any licence held under this Act by the person so convicted, and prohibit such person from holding for a specified period any licence under this Act;
  - (c) the payment of all arrear licence fees owing by the person so convicted.
- (6) Any order made under subsection (5)(c), shall have the same effect as and may be executed as if it were a civil judgment in favour of the Authority.

**65. Penalties** <sup>26</sup>

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<sup>26</sup> The details of this section are still being attended to

## CHAPTER 10

### GENERAL PROVISIONS

#### 66. Liquidation

The Authority shall not be placed in liquidation except under the authority of and in accordance with an Act of Parliament specially adopted for that purpose.

#### 67. Delegations

- (1) Subject to the provisions of subsection (4), the Council may in writing -
  - (a) delegate to a standing committee or a special committee or to the chief administrative officer any power, function or duty conferred or imposed upon the Authority by or in terms of this Act: Provided that a power, function or duty so delegated to the chief administrative officer may be exercised or performed by any officer of the Authority specially authorised thereto, except where the terms of such delegation precludes him or her from doing so; and
  - (b) authorise a standing committee or a special committee to exercise or perform any power, function or duty assigned to the Authority by or under this Act.
- (2) Any delegation or authorisation under subsection (1) may be made subject to such conditions and restrictions as may be determined by the Council and may at any time be revoked by the Council
- (3) The Council shall not be divested of any power nor be relieved of any duty which it may have delegated under this section, and may amend or rescind any

decision made in terms of a delegation under this section.

- (4) The power to grant, renew, amend, suspend, revoke or transfer a licence shall not be delegated under this section.

**68. Restriction on use of name or description implying connection with Authority**<sup>27</sup>

- (1) No person shall apply to any venture, undertaking, business, company or other association or body (whether corporate or incorporate) a name or description signifying or implying some connection between such venture, undertaking, business, company or other association or body and the Authority.
- (2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and on conviction be liable to a fine, or to imprisonment for a period not exceeding one year.

**69. Limitation of liability**

Neither the chairperson or any councillor or member of a committee of the Authority, nor any expert appointed in terms of this Act or any officer or employee of the Authority, shall be personally liable for any damage or loss suffered by any person in consequence of any act or thing which in good faith was performed or done or omitted in the course of the exercise or performance or supposed performance or exercise or performance of any power, duty or function in terms of this Act.

**70. Regulations**

- (1) The Council may make regulations regarding -

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<sup>27</sup> This section is not yet in its final form and requires further elaboration.

- (a) any matter which in terms of this Act is required or permitted to be prescribed;
  - (b) the procedure applicable at proceedings in terms of section 60;
  - (c) the powers of the Authority with regard to the summoning and examination of recalcitrant witnesses, the administering of the oath or an affirmation and the production of books, documents and objects;
  - (d) the inquiry into and resolution and adjudication of complaints and disputes concerning alleged violations of this Act and licence conditions;
  - (e) consultation between the Authority and the broadcasting industry, as well as accreditation of associations representing the industry;
  - (f) the application fees and any other fees payable in respect of licences;
  - (g) conferring any additional powers on authorised persons referred to in section 62 and the procedures to be followed by such persons;
  - (h) any technical matter necessary or expedient for the regulation of broadcasting activities and the possession and use of apparatus, including any prohibition relevant thereto; and
  - (i) any other procedural matter which may be necessary or desirable in order to achieve or promote the objects of this Act.
- (2) A regulation may declare any contravention thereof or failure to comply therewith to be an offence and may in respect thereof prescribe a maximum fine of which shall not exceed a fine of\_\_\_\_\_.

- (3) Different conditions or fees may be prescribed under subsection (1)(f) in respect of different licence categories.

**71. Amendment of laws and savings**

The laws mentioned in Schedule 5 are hereby amended to the extent indicated therein.

**72. Short title and commencement**

- (1) This Act shall be called the Independent Broadcasting Authority Act, 1993, and the provisions thereof shall come into operation on a date fixed by the State President by proclamation in the **Gazette**.
- (2) Different dates may be fixed under subsection (1) in respect of different provisions of the Act. <sup>28</sup>

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<sup>28</sup> This section will have to specify that sections 59 - 62 will only come into being when the IMC dissolves.

## SCHEDULE 1 <sup>29</sup>

### (Section 5)

#### Procedure for appointing councillors

1. Councillors shall be appointed by a committee which shall be established by:
  - (1) the Multi-Party Forum/Transitional Executive Council, in the period prior to the first national election held after the commencement of this Act;
  - (2) the interim legislative body, in the period between the first national election held after the commencement of this Act and the first session of a Parliament elected in terms of a new constitution;
  - (3) Parliament, in the period subsequent to the first session of Parliament elected in terms of a new constitution.
  
2. (1) Whenever one or more members are required to be appointed to the Council, the committee referred to in paragraph 1(1), (2) or (3), whichever is applicable at that time, shall cause to be published in the **Gazette** a notice:
  - (a) calling for the submission of written nominations from the public of persons for appointment as a member of the Council;
  - (b) indicate that these nominations are to be submitted to the committee

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<sup>29</sup>

One view in the Technical Committee is a preference for the appointment procedure to be determined by the appointing body referred to in paragraph one. Another view in the Committee is that the procedure outlined in this Schedule is sufficient. The Technical Committee notes that the appointment of the Council according to the provisions of Schedule 1 is opposed by the South African Government and that this matter has now been referred to an **ad-hoc** committee.

within a period specified in the said notice.

- (2) The notice referred to in subparagraph (1), shall also prescribe the form of the nominations and shall include provision for:
  - (a) signed and written acceptance by the nominees of their nomination;
  - (b) motivations in support of these nominations which shall accompany such nominations;
  - (c) nominations, when appropriate, to include nominations for the chairperson of the Council;
  - (d) details of the nominee's qualifications, experience and expertise;
  - (e) details concerning the disqualificatory provisions referred to in section 5 of this Act; and
  - (f) the maximum number of nominations any person may submit;
  - (g) other matters which the committee may deem necessary.
3. The committee shall cause to be published in the **Gazette** a notice containing the full list of nominations which were submitted to it and which complied with the prescribed form.
4. The committee shall consider these nominations in the context of the provisions of this Act, and shall:
  - (1) decide upon a shortlist of nominees;

- (2) advise such nominees in writing that they have been shortlisted for appointment to the Council;
  - (3) cause to be published in the **Gazette** a notice containing the said shortlist; and
  - (4) at the same time as gazetting such shortlist, invite the public to submit written comment concerning any one or more of the nominees so shortlisted, which comment is to be submitted within a period specified in such notice;
5. Subsequent to the closing date for receipt of such comment, the committee shall conduct public hearings concerning the selection of members to be appointed to the Council.
6. A public hearing shall be open to the public and representatives of the media.
7. A hearing shall be conducted by the committee, who shall determine the precise form and conduct of such hearing, provided that:
- (1) each nominee who has been shortlisted and who has accepted his/her nomination shall appear before the committee at such a hearing;
  - (2) each such nominee, at the commencement of such hearing, shall take an oath or affirm that he or she shall tell the truth; and
  - (3) only members of the committee may question a nominee, and such questioning shall only relate to whether or not the nominee:
    - (a) meets the positive and disqualificatory provisions referred to in sections 4 and 5 of this Act and in the prescribed form; and
    - (b) is committed to and understands the provisions of this Act.



- (4) a nominee may be assisted by a legal representative during the hearing.
8. The committee, in relation to each nominee, shall consider any written nominations and comment, as well as any oral evidence, which it has received, in the context of the provisions of this Act. On the basis of these considerations, the committee shall select the one or more persons to be appointed to the Council, including, when appropriate, the person to be appointed as the chairperson.
9. The committee shall submit to the Multi-Party Forum or the Transitional Executive Council, or its successors, a list of the one or more persons to be appointed to the Council, including, when appropriate, the person to be appointed as the chairperson of the Council.
10. Immediately thereafter, the Multi-Party Forum or the Transitional Executive Council, or its successors, shall cause the list referred to in paragraph 9 to be published in a notice in the **Gazette** and such appointment(s) shall take effect from the date of publication of this notice.

## **SCHEDULE 2**

### **(Section 13(3))**

#### **Pension Rights of Officers and Employees**

1. An officer or employee who is a member of the Government Service Pension Fund, the Temporary Employees Pension Fund or any other pension fund or scheme administered by the Department of National Health and Population Development or the pension funds established by section 9 of the PostOffice Act, 1958 (Act No. 44 of 1958), and who is employed by the Authority may -
  - (a) choose to remain member of such fund, and from the date of exercising such a choice, such an officer or employee shall, notwithstanding the provisions of any other law, be deemed to be dormant member of the fund concerned as contemplated in section 15(1)(a) of the General Pensions Act, 1979 (Act No. 29 of 1979); or
  - (b) request to become a member of the Associated Institutions Pension Fund established under the Associated Institutions Pension Fund Act, 1963 (Act No. 41 of 1963), if the Authority has under section 4 of the said Act been declared to be an associated institution; or
  - (c) request to become a member of any other pension fund registered under the Pension Funds Act, 1956 (Act No. 24 of 1956).
  
2. In the case where such an officer or employee becomes a member of a fund in accordance with a request in terms of subparagraph (b) or (c) of paragraph (1) -

- (a) the fund of which he was a member shall transfer to the fund of which he becomes a member an amount equal to the funding level of the first-mentioned fund multiplied by the actuarial liability of the fund in respect of that officer or employee as on the date of the commencement of the employment of the officer or employee by the Authority, increased by the amount of interest thereon calculated at the prime rate from the date of the said commencement up to the date of transfer of the amount;
  - (b) his membership of the fund of which he was a member shall lapse as from the date of the commencement of his employment by the Authority and he shall thereafter, except as is provided by subparagraph (a), not have any further claim against the said fund; and
  - (c) the fund of which he was a member shall transfer any claim it may have against such officer or employee to the fund of which he so becomes a member.
3. In the case where such an officer or employee becomes a member of a fund in accordance with a request in terms of subparagraph (c) of paragraph (1) the State shall pay to such fund an amount equal to the difference between the actuarial liability of the fund of which he was a member, in respect of such an officer or employee as on the date of the commencement of his employment by the Authority, and the amount transferred in terms of subparagraph (c) of paragraph (2) to the first-mentioned fund, increased by the amount of interest thereon calculated at the prime rate from the date of the said commencement up to the date of the transfer of the amount.
4. The provisions of paragraphs (2) and (3), shall mutatis mutandis apply in respect of an officer or employee who has by virtue of a choice in terms of subparagraph (a) of paragraph (1) become a dormant member and thereafter requests that his accrued pension benefits be transferred in terms of the provisions of section 15A(1) of the General Pensions Act, 1979, to a pension fund referred to in the said Act or a

pension fund registered in terms of the Pension Funds Act, 1956.

5. Where, in the case of any officer or employee referred to in paragraph (1) who has in consequence of a request in terms of subparagraph (c) of that subsection become a member of any other pension fund, any lump sum benefit has become payable by such pension fund in consequence of the death of such officer or employee or on his retirement, withdrawal or resignation from such pension fund or on the winding up of such pension fund, such pension fund shall for the purposes of paragraph (e) of the definition of "gross income" in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), be deemed in relation to such officer or employee to be a fund referred to in paragraph (a) of the definition of "pension fund" in the said section 1.

6. For the purpose of this schedule -

**"actuarial liability"** of a pension fund in respect of a particular member or a group of members of such fund means such actuarial liability as determined by an actuary nominated for that purpose by the Minister;

**"funding percentage of a pension fund"** means the market value of the assets of the fund expressed as a percentage of the total actuarial liability of the fund, after such assets and liabilities have been reduced by the amount of the liabilities of the fund in respect of all its pensioners, as determined at the time of the most recent actuarial valuation of the fund or any review thereof carried out under direction of the Minister of National Health and Population Development; and

**"prime rate"** means the average amount prime rate of the three largest banks in the Republic.

## **SCHEDULE 3**

### **(Section 57)**

#### **CODE OF CONDUCT FOR BROADCASTING SERVICES**

##### **1. Preamble**

The fundamental principle to be upheld is that the freedom of all broadcasting services is indivisible from, and subject to the same restraints as that of the individual and rests on the individual's fundamental right to be informed and freely to receive and to disseminate opinions.

##### **2. General**

Broadcasting services shall-

- (1) not present material which is indecent or obscene or offensive to public morals, which is offensive to the religious convictions or feelings of a section of the population, which is likely to harm relations between sections of the population or is likely to prejudice the safety of the state or public order;
- (2) not, without due care and sensitivity, present material which contains brutality, violence, atrocities, drug abuse and obscenity;
- (3) exercise due care and responsibility in the presentation of programmes where a large number of children are likely to be part of the audience.

### 3. News

- (1) Broadcasting services shall be obliged to report news truthfully, accurately and objectively.
- (2) News shall be presented in the correct context and in a balanced manner, without an intentional or negligent departure from the facts whether by:
  - (a) distortion, exaggeration or misrepresentation;
  - (b) material omissions; or
  - (c) summarisation.
- (3) Only that which may reasonably be true, having due regard to the source of the news, may be presented as facts, and such facts shall be broadcast fairly with due regard to context and importance. Where a report is not based on facts or is founded on opinion, allegation, rumour and supposition, it shall be presented in such manner as to indicate this clearly.
- (4) Where there is reason to doubt the correctness of a report and it is practicable to verify the correctness thereof, it shall be verified. Where such verification is not practicable, that fact shall be mentioned in such a report.
- (5) Where it subsequently appears that a broadcast report was incorrect in a material respect, it shall be rectified spontaneously and without reservation or delay. The correction shall be presented with a degree of prominence and timing which is adequate and fair so as readily to attract attention.
- (6) Reports, photographs or video material relating to matters involving indecency or obscenity shall be presented with due sensitivity towards the prevailing moral climate. In particular, broadcasting services shall avoid the broadcasting

of obscene and lascivious matter.

- (7) The identity of rape victims and other victims of sexual violence shall not be broadcast without the consent of the victim.

#### **4. Comment**

- (1) Broadcasting services shall be entitled to comment upon or criticise any actions or events of public importance.
- (2) Comment shall be presented in such manner that it appears clearly that it is comment, and shall be made on facts truly stated or fairly indicated and referred to.
- (3) Comment shall be an honest expression of opinion, without malice or dishonest motives, and shall take fair account of all available facts which are material to the matter commented upon.<sup>28</sup>

#### **5. Controversial issues of public importance**

- (1) In presenting a programme in which controversial issues of public importance are discussed, a broadcaster shall make reasonable efforts to fairly present significant points of view either in the same programme or in a subsequent programme forming part of the same series of programmes presented within a reasonable period of time and at substantially the same time slot.
- (2) A person whose views have been criticised in a broadcasting programme on a controversial issue of public importance, shall be given a reasonable opportunity by the broadcasting service to reply to such criticism, should that

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<sup>28</sup> It was suggested at the Negotiating Council debate that this sentence should end after the word "opinion".

person so request.

**6. Elections**

During an election period, the provisions of sections 56, 57, 58 and 59 of this Act shall apply and all broadcasting services shall, in terms of these sections, be subject to the jurisdiction of the Authority.

**7. Privacy**

In so far as both news and comment are concerned, broadcasting services shall exercise exceptional care and consideration in matters involving the private lives and concerns of individuals, bearing in mind that the right to privacy may be overridden by a legitimate public interest.

**8. Payment for information from a criminal**

No payment shall be made to persons involved in crime or other notorious misbehaviour, or to persons have been engaged in crime or other notorious misbehaviour in order to obtain information concerning such behaviour, unless compelling societal interests indicate the contrary.



**SCHEDULE 4 <sup>29</sup>**

**(Sections 42, 43 and 44)**

**CONTROL OF A PRIVATE BROADCASTING LICENCE,  
A NEWSPAPER OR A COMPANY**

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<sup>29</sup> See Footnotes to sections 42, 43 and 44.

## **SCHEDULE 5**

**(Section 72)**

### **AMENDMENT OF LAWS**

[To be submitted in due course. The laws to be amended are likely to include the following:

1. Radio Act, 1952 (Act No 3 of 1952)
2. Post Office Act, 1958 (Act No 44 of 1958)
3. Broadcasting Act, 1976 (Act No.73 of 1976)]