

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

MCH91-30-5-4-1

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

**22 JUNE 1993**

1. The Technical Committee has considered the submissions on the Independent Broadcasting/Telecommunications Authority, referred to in its Fourth Report (11 June 1993).
2. In the light of these submissions, the Committee has prepared a fourth working draft of the Independent Broadcasting Authority Bill and an executive summary of the Bill, which is attached to this report.
3. **The Bill contains a number of sections on which the Committee has requested the assistance of the Negotiating Council.** The Committee has prepared written representations on these sections which can be made available to the Negotiating Council, should it so request. These sections are:
  - 3.1 Section 3;
  - 3.2 Section 41(1);
  - 3.3 Section 43(2)(h);
  - 3.4 Section 45;
  - 3.5 Section 46;
  - 3.6 Section 47;

- 3.7 Section 50;
- 3.8 Section 52;
- 3.9 Section 67(2);
- 3.10 Schedule 1; and
- 3.11 Schedule 4.

4. **The Committee requests, as it did in its fourth report, that in addition to submissions on this Bill from the parties represented at the Negotiating Council, submissions from the broadcasting industry and the broader public would be greatly appreciated. A maximum period of two weeks for these submissions, from the date of the tabling of this Bill, is recommended by the Committee.**

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

**EXECUTIVE SUMMARY OF THE FOURTH  
WORKING DRAFT OF THE INDEPENDENT  
BROADCASTING AUTHORITY BILL.**

**PREPARED BY THE TECHNICAL COMMITTEE ON THE  
INDEPENDENT MEDIA COMMISSION AND THE  
INDEPENDENT TELECOMMUNICATIONS AUTHORITY**

**EXECUTIVE SUMMARY OF THE FOURTH WORKING DRAFT  
OF THE INDEPENDENT BROADCASTING AUTHORITY BILL**

**CHAPTER 1**

**INTERPRETATION**

Section 1 defines the most important terminology that appears in the Bill.

**CHAPTER 2**

**OBJECT AND POLICY**

Section 2 provides that the object of the Bill is for the regulatory structure to promote broadcasting activities throughout the Republic in the public interest.

Section 3 provides for the policy to be applied by the regulatory structure in achieving the object of the Bill.

**CHAPTER 3**

**INDEPENDENT BROADCASTING AUTHORITY**

Section 4 provides for the establishment of a juristic person to be known as the Independent Broadcasting Authority.

Section 5 and Schedule 1 provide for the procedure of constituting and appointing the five members of the Authority.

Section 6 sets out the disqualificatory provisions that apply to the appointment of the five members of the Authority.

Section 7 provides for the term of office of a member of the Authority.

Section 8 sets out the grounds upon which a member of the Authority will be required to vacate his office.

Section 9 deals with the filling of a casual vacancy in the Authority.

Section 10 sets out the powers and functions of the Authority.

Section 11 provides for the meetings of the Authority.

Section 12 provides for the staff of the Authority.

Section 13 provides for the remuneration and allowances of members of the Authority, members of the committees and staff of the Authority.

Section 13(3) and Schedule 2 provides for the pension rights of officers and employees of the Authority.

Section 14 provides for the funds of the Authority and sets out how such funds may be utilised, banked and invested.

Section 15 provides that the chairperson of the Authority shall be the accounting officer and sets out the functions of the accounting officer.

Section 16 provides that an Annual Report shall within three months after the end of each financial year be handed to the Minister; sets out the composition of such an Annual Report; and provides that the Annual Report should be tabled by the Minister in Parliament.

Section 17 sets out the matters upon which the Authority may make rules, including meetings of the Authority and committees and the management of the Authority.

Section 18 limits the liability of a member of the Authority, a member of a committee or a staff member in respect of anything done in good faith in terms of this Act.

Section 19 restricts the use of a name or a description implying a connection with Authority.

Section 20 provides that the Authority shall not be placed in liquidation except by Act of Parliament.

Section 21 sets out the Authority's power to delegate.

#### CHAPTER 4

##### COMMITTEES, APPOINTMENT OF EXPERTS AND INQUIRIES

Section 22 provides for the establishment of two standing committees, namely the Broadcasting Spectrum Management Committee and the Broadcasting Monitoring and Complaints Committee.

Section 23 provides for the constitution of standing committees and in particular, the Broadcasting Monitoring and Complaints Committee.

Section 24 provides for the establishment and constitution of Special Committees.

Section 25 sets out the powers, functions and duties of Committees.

Section 26 provides for the appointment of experts by the Authority.

Section 27 provides for inquiries by the Authority into any matter relevant to the achievement of the object and policies of this Act and the exercising of the Authority's powers and the performing of its functions; and provides for the presentation of oral representations in public.

#### Chapter 5

##### BROADCASTING FREQUENCY SPECTRUM MANAGEMENT

Section 28 provides for the assignment of the broadcasting services frequency bands to the Authority.

Section 29 provides that the Broadcasting Frequency Spectrum Management Committee shall be responsible for the frequency spectrum management and the technical planning functions of the Authority.

Section 30 empowers the Authority to designate national, regional, metropolitan and local licence areas, having regard to population density statistics and comment received from the public.

Section 31 empowers the Authority to prepare a frequency allotment plan, having regard to: the different categories of broadcasting licences; frequencies used by existing broadcasters; priorities between different licence areas and different parts of the broadcasting services frequency bands; social, cultural and economic needs within different licence areas; the demand for broadcasting services within different licence areas; and the population density of different licence areas.

## Chapter 6

### BROADCASTING SIGNAL DISTRIBUTION LICENCES

Section 32 prohibits the provision of broadcasting signal distribution without a licence.

Section 33 provides for broadcasting signal distribution.

Section 34 provides for the granting and renewal of broadcasting signal distribution licences.

Section 35 sets out criteria for broadcasting signal distribution licences.

Section 36 sets out the conditions of a broadcasting signal distribution licences.

Section 37 provides for the amendment of broadcasting signal distribution licences.

Section 38 sets out the term of broadcasting signal distribution licences.

Section 39 sets out general provisions on broadcasting signal distribution licences.

## Chapter 7

### BROADCASTING LICENCES

Section 40 prohibits the provision of a broadcasting service without a broadcasting licence.

Section 41 deals with the granting and renewal of broadcasting licences and sets out and makes provisions for: different categories of broadcasting licenses; notice to be given by the Authority when it intends granting a broadcasting licence; the application procedure for a broadcasting licence; written representations opposing the granting of a licence; a public hearing on the granting of a licence; notice of a successful application for a licence; security

from a broadcasting licensee; the period within which the service has to commence; application procedure for renewal of a broadcasting licence.

Section 42 deals with public broadcasting licences.

Section 43 deals with private broadcasting licences.

Section 44 deals with community broadcasting licences.

Section 45 sets out the limitations on foreign control of private broadcasting services.

Section 46 sets out the limitations on the control of private broadcasting services.

Section 47 sets out the limitations on cross-media control of private broadcasting services.

Section 48 prohibits the granting of broadcasting licences to political parties and other political organisations.

Section 49 empowers the Authority to impose general broadcasting licence conditions.

Section 50 empowers the Authority to impose specific broadcasting licence conditions on local television content and South African contemporary music.

Section 51 empowers the Authority to amendment of broadcasting licence conditions and provides for a public hearing on such amendment.

Section 52 provides for the different terms of broadcasting licences.

Section 53 provides for the transfer of broadcasting licence to be subject to the same provisions as an application for a broadcasting licence.

Section 54 provides for a register of broadcasting licences.

Section 55 requires a broadcasting licensee to inform the Authority in writing of any change in the control of that licensee and provides for directions concerning the accounts and records of a broadcasting licensee.

Section 56 requires a broadcasting licensee to retain a record of programmes broadcast by a licensee.

## Chapter 8

### BROADCASTING PROGRAMMES

Section 57 and Schedule 3 sets out a Code of Conduct for Broadcasting Services and provide that such a code shall not apply to a broadcasting licensee if that licensee is a member of a body that has proved to the satisfaction of the Authority that its members subscribe to a satisfactory code of conduct enforced by that body by means of its own disciplinary mechanisms.

Section 58 provides for the adherence by broadcasting licensees to the Code of Advertising Practice of the Advertising Standards Authority of South Africa.

Section 59 provides for party election broadcasts on public sound broadcasting services during an election period.

Section 60 provides for political advertising on sound broadcasting services during an election period.

Section 61 prohibits party election broadcasts and political advertisements on television broadcasting services.

Section 62 provides for equitable treatment of political parties by all broadcasting services during an election period.

## Chapter 9

### ENFORCEMENT

Section 63 sets out the functions and powers of the Broadcasting Monitoring and Complaints Committee.

Section 64 requires a licensee to produce a licence for inspection on demand by a person who is duly authorised by the Authority to make such demand.

Section 65 empowers the Authority to inspect a licensee's books and records.

Section 66 sets out the powers of authorised persons.

Section 67 sets out the Authority's powers in the case of a breach of licence conditions.

Section 68 sets out the offences in terms of this Act.

Section 69 sets out the penalties in terms of this Act.

## Chapter 10

### REGULATIONS, AMENDMENT AND REPEAL OF LAWS, SHORT TITLE AND COMMENCEMENT

Section 70 empowers the Minister to make regulations, on the recommendation of the Authority, on a number of defined matters.

Section 71 provides for amendment of laws and savings.

Section 72 provides for the short title of the Act and its commencement.

## SCHEDULES

Schedule 1 Procedure for appointing the members of the Authority.

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.

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

## **INDEPENDENT BROADCASTING AUTHORITY BILL**

**(WORKING DRAFT 4)**

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

**22 June 1993**

# INDEPENDENT BROADCASTING AUTHORITY BILL

To provide for the regulation and promotion of broadcasting and to provide for matters connected therewith.

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

## ARRANGEMENT OF ACT

### Chapters, Subject Schedules, Sections

#### Chapter 1 INTERPRETATION

Section 1 Definitions

#### Chapter 2 OBJECT AND POLICY

Section 2 Object of Act

Section 3 Policy

#### Chapter 3 INDEPENDENT BROADCASTING AUTHORITY

Section 4 Establishment of the Independent Broadcasting Authority

Section 5 Constitution of the Authority

Section 6 Persons disqualified from being members of the Authority

Section 7 Term of office of a member of the Authority

Section 8 Vacating of office by member of the Authority

Section 9 Filling of casual vacancy in the Authority

Section 10 Powers and functions of the Authority

Section 11 Meetings of the Authority

Section 12 Staff of the Authority

Section 13 Remuneration, Allowances, and Pensions

Section 14 Funds of the Authority

Section 15 Accounting and Auditing

Section 16 Annual Report

Section 17 Rules by the Authority

Section 18 Limitation of liability

Section 19 Restriction of use of name of or description implying connection with the Authority

Section 20 Liquidation

Section 21 Delegations

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

Section 22 Establishing of Standing Committees

Section 23 Constitution of Standing Committees

Section 24 Establishment and Constitution of Special Committees

Section 25 Powers, functions and duties of Committees

Section 26 Appointment of experts

Section 27 Inquiries by the Authority

**Chapter 5 BROADCASTING FREQUENCY SPECTRUM MANAGEMENT**

- Section 28 Assignment of Broadcasting Services Frequency Bands
- Section 29 Broadcasting Frequency Spectrum Management Committee
- Section 30 Designation of Licence Areas
- Section 31 Frequency Allotment Plan

**Chapter 6 BROADCASTING SIGNAL DISTRIBUTION LICENCES**

- Section 32 Prohibition on the provision of broadcasting signal distribution without a licence
- Section 33 Provision of Broadcasting Signal Distribution
- Section 34 Granting and Renewal of Broadcasting Signal Distribution Licences
- Section 35 Criteria for Broadcasting Signal Distribution Licences
- Section 36 Conditions of Broadcasting Signal Distribution Licences
- Section 37 Amendment of Broadcasting Signal Distribution Licences
- Section 38 Term of Broadcasting Signal Distribution Licence
- Section 39 General Provisions on Broadcasting Signal Distribution Licences

**Chapter 7 BROADCASTING LICENCES**

- Section 40 Prohibition on the provision of a broadcasting service without a broadcasting licence
- Section 41 Granting and renewal of broadcasting licences
- Section 42 Public broadcasting licences
- Section 43 Private broadcasting licences
- Section 44 Community broadcasting licences
- Section 45 Limitations on foreign control of private broadcasting services

- Section 46 Limitation on the control of private broadcasting services
- Section 47 Limitation on cross-media control of private broadcasting services
- Section 48 Prohibition on the granting of broadcasting licences to political parties and other organisations
- Section 49 General broadcasting licence conditions
- Section 50 Specific broadcasting licence conditions on local television content and South African contemporary music
- Section 51 Amendment of broadcasting licence conditions
- Section 52 Term of broadcasting licence
- Section 53 Transfer of broadcasting licence
- Section 54 Register of broadcasting licences
- Section 55 Control, Accounts and Records
- Section 56 Record of programmes broadcast by licensee

**Chapter 8 BROADCASTING PROGRAMMES**

- Section 57 Code of Conduct and Exemptions
- Section 58 Control of advertisements
- Section 59 Party election broadcasts on public sound broadcasting services during an election period
- Section 60 Political advertising on sound broadcasting services during an election period
- Section 61 Prohibition on party election broadcasts and political advertisements on television broadcasting services
- Section 62 Equitable treatment of political parties by all broadcasting services during an election period



## Chapter 9 ENFORCEMENT

- Section 63 Broadcasting Monitoring and Complaints Committee  
Section 64 Production of licences for inspection  
Section 65 Authority may inspect licensee's books and records  
Section 66 Powers of authorised persons  
Section 67 Powers in case of a breach of licence conditions  
Section 68 Offences  
Section 69 Penalties

## Chapter 10 REGULATIONS, AMENDMENT AND REPEAL OF LAWS, SHORT TITLE AND COMMENCEMENT

- Section 70 Regulations  
Section 71 Amendment of laws and savings  
Section 72 Short title and commencement

### SCHEDULES

- Schedule 1 Procedure for appointing the members of the Authority  
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 -

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

"associate", in relation to a person in relation to control of a private broadcasting licence, a newspaper, or of a company, means:

- (a) the person's spouse (including a de facto spouse) or a parent, child, brother or sister of the person; or  
(b) a partner of the person or, if a partner of the person is a natural person, a spouse or a child of a partner of the person; or  
(c) if the person receives benefits or is capable of benefitting under a trust, the trustee of the trust;  
or  
(d) a person (whether a company or not) who:  
(i) acts, or is accustomed to act; or  
(ii) under a contract or an arrangement or understanding (whether formal or informal) is intended or expected to act;  
in accordance with the directions, instructions or wishes of, or in concert with, the first-mentioned person; or  
(e) if the person is a company, another company if the person is in a position to exercise control of the other company;  
but persons are not associates if the Authority is satisfied that they do

not, in any relevant dealings relating to that broadcasting licensee, newspaper or company, act together, and neither of them is in a position to exert influence over the business dealings of the other in relation to that broadcasting licensee, newspaper or company;

"Authority" means the Independent Broadcasting Authority referred to in section 4.

"broadcasting" a form of unidirectional telecommunication intended for a large number of users having appropriate receiving facilities, and carried out by means of radio or by cable networks.

"broadcasting licence" means a licence granted by the Authority to provide a defined category of broadcasting service in terms of this Act

"broadcasting licensee" means a person who has been duly licensed to provide a defined category of broadcasting service in terms of this Act;

"Broadcasting Monitoring and Complaints Committee" means the Standing Committee referred to in section 22;

"broadcasting service" means a service that broadcasts television programmes or sound programmes to the public;

"broadcasting services frequency bands" means that part of 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 ;<sup>1</sup>

"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;<sup>2</sup>

<sup>1</sup> This definition and its relationship with the provisions on the Chapter on Broadcasting Frequency Spectrum Management is still being finalised in the light of ongoing technical advice.

<sup>2</sup> This definition and its relationship with the provisions on the chapter on Broadcasting Signal Distribution Licences is still being finalised in the light of ongoing technical advice.

"broadcasting signal distribution licence" means a licence granted by the Authority to provide for signal distribution in terms of this Act;

"broadcasting signal distribution licensee" means a person who has been duly licensed to operate as a broadcasting signal distributor in terms of this Act;

"Broadcasting Spectrum Management Committee" means the Standing Committee referred to in section 22;

"chairperson" means the chairperson of the Authority;

"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 that it serves 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;

"company interest" in relation to a person who has a shareholding interest, a voting interest, dividend interest or a winding-up interest in a company, means the percentage of that interest, or if the person has two or more of those interests, whichever of those interests is the greater or greatest percentage;

"control" includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights;

"election" means an election to any legislative body established by any law;

"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 are not South African citizens hold company interests in the company the amount of which exceeds 50% of the total of the company interests in the company; or
- (c) a company, wherever incorporated, where:
  - (i) a company referred to in paragraph (b); or
  - (ii) natural person who are not South African citizens and a company or companies referred to in paragraph (b);hold company interests in the company the amount of which exceeds 50% of the total company interests in the company.

**"licence area"** means a geographical area designated by the Authority under section 30

**"member"** means a member of the Authority appointed to serve on the Authority in terms of section 5 of this Act;

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

**"newspaper"** means a newspaper that is published at least once a week;

**"overlap area"** in relation to a licence area a part of which is within another licence area, means the area of overlap between the two licence areas

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

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

**"political party"** means any party which is registered as a political party in terms of....., 1993;

**"prescribed"** means prescribed by regulations;

**"private broadcasting service"** means a commercial broadcasting service -

- (a) operated for profit; and
- (b) whose predominant source of revenue is generated by the sale of advertising time; or
- (c) whose predominant source of revenue is generated by the collection of subscription fees; or
- (d) whose predominant source of revenue is generated by a combination of both (b) and (c);

**"public broadcasting service"** means

- (a) a broadcasting service provided by the South African Broadcasting Corporation in accordance with the Broadcasting Act, 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;

**"Republic"** means the Republic of South Africa;<sup>3</sup>

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

<sup>3</sup> This definition will have to be altered to deal with the TBVC States.

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

"standing committee" means any Standing Committee referred to in section 22;

"television broadcasting service" means a broadcasting service to be received by a television set and includes a subscription television broadcasting service;

"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 regulations.

- (2) Schedule 4 sets out the bases upon which to decide whether or not a person is in a position to exercise control of a private broadcasting licence, a newspaper or a company for the purposes of this Act.

## CHAPTER 2

### OBJECT AND POLICY

#### 2. Object of Act

The object of this Act is to provide for a regulatory structure to promote broadcasting activities throughout the Republic, in the public interest.

#### 3. Policy

In achieving this object, the regulatory structure shall - <sup>4</sup>

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

<sup>4</sup> One view in the Technical Committee was that the word "shall" should be qualified with "as far as is possible endeavour to", because it will in certain cases be important for the Authority to balance conflicting objectives/interests and to determine priorities with regard to conflicting objectives/interests. The Technical Committee requests the assistance of the Negotiating Council in this regard. The Committee has prepared written arguments on this point which can be made available to the Negotiating Council should they so request.

- (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 each language and cultural group to preserve and develop its language and culture;
  - (b) the needs of each regional and local community to develop a regional and local identity, culture and character;
  - (c) the need for educational programming;
- (6) ensure that South Africans have effective control of broadcasting services;
- (7) ensure that private and community broadcasting licences are controlled by persons or groups of persons from a diverse range of communities in the Republic;
- (8) prevent the over-concentration of media ownership and control;
- (9) promote the most efficient use of the broadcasting frequency spectrum;
- (10) ensure that broadcasting signal distribution facilities are made available to all licensed broadcasting services in a non-discriminatory manner;
- (11) strive to limit interference in the commercial activity of a broadcasting service to a minimum, whilst at the same time taking into account the broadcasting needs of the public;
- (12) promote fair competition between broadcasting licensees;
- (13) promote research into broadcasting policy and technology;

- (14) encourage investment in and the development of a broadcasting industry in South Africa that is efficient, competitive and responsive to consumer needs, and to enable South Africa to compete internationally;
- (15) ensure that providers of broadcasting services shall respect prevailing community attitudes with regard to taste and decency;
- (16) ensure equitable treatment of political parties by all broadcasting services
- (17) encourage the provision of appropriate means for addressing complaints about broadcasting services;
- (18) promote the stability of the broadcasting industry.

## CHAPTER 3

### INDEPENDENT BROADCASTING AUTHORITY

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

There is hereby established a juristic person to be known as the Independent Broadcasting Authority.

#### 5. Constitution of the Authority

(1) The Authority shall consist of -

- (a) a chairperson; and
- (b) four other members,

appointed on a full-time basis in the manner provided for in Schedule 1.

(2) The members of the Authority shall be -

- (a) citizens of and permanently resident in the Republic;
- (b) person who by virtue of their qualifications, expertise and experience, are suited to serve on the Authority;
- (c) persons who are impartial and who are committed to openness and accountability in public life, freedom of expression and a free and unrestricted flow of information; and
- (d) persons who are committed to and understand the provisions of this Act.

(3) If the chairperson is for one or other reason not available to perform his duties, a member of the Authority will serve as acting chairman at every meeting on a rotational basis in alphabetical order according to their surnames.

#### 6. Persons disqualified from being members of the Authority

No person shall be appointed as a member of the Authority -

- (a) if he is an officer or employee in the Public Service;
- (b) if he is a member of Parliament or any other legislative authority, including any regional or local government body;
- (c) if he is holding an office in any political party;
- (d) if he has a financial or other material interest in an industry which is related to telecommunications or broadcasting;
- (e) if he holds an office in, or is in the employment of a body or organisation having a financial interest in an industry referred to in paragraph (d);
- (f) if he is an unrehabilitated insolvent;
- (g) if he is of unsound mind;
- (h) if he has at any time been convicted, whether in the Republic or elsewhere, of any offence for which he has been sentenced to imprisonment without the option of a fine.

#### 7. Term of office of a member of the Authority

- (1) Subject to the provisions of subsection (2) a member of the Authority shall hold office for a maximum period of 3 years, from the date of his appointment but shall be eligible for re-appointment.
- (2) In order to ensure continuity in the composition of the members of the Authority, the term of the office of not more than two members shall expire simultaneously.<sup>5</sup>

<sup>5</sup> This provision needs to be re-worked.

## 8. Vacating of office by member of Authority

A member of the Authority shall vacate his office -

- (a) if he becomes subject to a disqualification referred to in section 6;
- (b) if he tenders his resignation in writing to the a body referred to in schedule 1; or
- (c) if Parliament declares that he be removed from office on the ground of misconduct or inability to perform efficiently the duties of his office.

## 9. Filling of casual vacancy in the Authority

A casual vacancy in the membership of the Authority shall be filled by the appointment of a member for the unexpired period of the term of office of the member in whose stead he is appointed, in the manner provided for in Schedule 1, on the recommendation of the Authority.

## 10. Powers and Functions of the Authority

- (1) The Authority shall ensure that the policy, as set out in section 3 of this Act be complied with, and may for that purpose, and with the means at its disposal -
  - (a) exploit and regulate the electromagnetic radio frequency spectrum assigned to broadcasting services by the International Telecommunication Union, as applicable to South Africa;
  - (b) licence broadcasting signal distributors and broadcasting services;
  - (c) monitor and enforce compliance by all licensees of their licence conditions in accordance with the provisions of this Act;
  - (d) conduct research into broadcasting policy, technology and related matters;

- (2) The Authority, in exercising its powers and performing its functions, shall have the 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;
  - (g) make donations;
- (3) The Authority may exercise or perform any other power, function or duty conferred upon, assigned to or imposed upon the Authority by or under this Act or any other law; or in general do anything which is not inconsistent with the provisions of this Act and which is necessary or expedient to perform its functions and duties.

## 11. Meetings of the Authority

- (1) The meetings of the Authority shall be held at such times and places as the Authority may determine: Provided that the first meeting shall be held at such time and place as the chairperson may determine.
- (2) The chairperson, or in his absence the acting chairperson, may at any time in his discretion convene a special meeting of the Authority, which shall be held at such time and place as the chairperson or the acting chairperson, as the case may be, may direct.

- (3) The quorum for a meeting of the Authority shall be the majority of its members.
- (4) A decision of the Authority shall be taken by resolution of the majority of the members present at any meeting of the Authority, and, in the event of an equality of votes on any matter, the person presiding at that meeting shall have a casting vote in addition to his deliberative vote as a member of the Authority.
- (5) No decision taken by the Authority or act performed under the authority of the Authority shall be invalid merely by reason of a casual vacancy on the Authority or of the fact that any person not entitled to sit as a member of the Authority sat as such a member at the time when the decision was taken or the act was authorised, if that decision was taken, or that act was authorised by the majority of the members of the Authority who were present at the time and entitled to sit as members.

## 12. Staff of the Authority

The Authority shall in the performance of its functions be assisted by such staff as it deems necessary to appoint to assist the Authority in the performance of its functions.

## 13. Remuneration, allowances and pensions

- (1) A member of the Authority and a member of any committee of the Authority shall be paid such remuneration and allowances out of the funds of the Authority as the Minister, after consultation with the Minister of State Expenditure, may determine.
- (2) The Authority may, with the concurrence of the Minister, 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.
- (3) The pension rights of officers and employees shall be in accordance with the provisions as set out in Schedule 2 of the Act.

## 14. Funds of Authority

- (1) The funds of the Authority which shall consist of -
  - (a) moneys levied in respect of services rendered by the Authority in the performance of its functions under this or any other Act, or levies or fees imposed by the Authority under a power conferred upon it by this or any other Act;
  - (b) money borrowed by the Authority in terms of section 10(2)(f); and
  - (c) money received from the state or any other source.
- (2) The Authority shall utilise its funds for defraying expenses in connection with the performance of its functions and the exercise of its powers.
- (3) The Authority shall open an account with a bank registered under the Bank Act, 1990 (Act No. 94 of 1990), and shall deposit in that account all money referred to in subsection (1).
- (4) The Authority may invest money deposited in terms of subsection (3) which is not required for immediate use, in any manner it deems fit.

## 15. Accounting and auditing

- (1) The chairperson shall be the accounting officer of the Authority charged with accounting for all money received and payments made by the Authority.
- (2) The financial year of the Authority shall end on 31 March in each year.
- (3) The accounting officer shall -
  - (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 (2), prepare annual financial statements reflecting, with suitable particulars, money received and expenses incurred by the Authority during, and its assets



and liabilities at the end of, the financial year concerned.

- (4) The records and annual financial statements referred to in subsection (3) shall be audited by the Auditor-General.

#### 16. Annual report

- (1) The Authority shall within three months after the end of each financial year hand 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) The financial statements referred to in subsection (1)(a), (b) and (c) 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 is likely to affect the affairs of the Authority.
- (3) As soon as practicable after a report has been handed to the Minister in terms of subsection (1), he shall Table it in Parliament.

#### 17. Rules by Authority

- (1) The Authority may make rules which are not inconsistent with the provisions of this Act, regarding -
- (a) the manner in which the meetings of the Authority shall be convened;
  - (b) the manner in which the meetings of any committee of the Authority shall be convened, the procedure at, the functions of and the quorums for such meetings and the manner in which minutes of such meetings shall be kept;
  - (c) the good management of the affairs of the Authority and the effective performance of its functions;
  - (d) in general, any matter which the Authority may deem necessary or expedient to prescribe or to regulate in respect of the performance of its functions and duties.
- (2) The Authority may make any such rules known in such manner as it may deem fit.

#### 18. Limitation of liability

The Authority, a member of the Authority or any committee or any officer or employee in the employment of the Authority shall not be liable in respect of anything done in good faith in terms of this Act in the exercise of his or its powers or the performance of his or its functions.

#### 19. Restriction on use of name or description implying connection with Authority

- (1) No person shall apply to any company, body, firm, business or undertaking a name or description signifying or implying some connection between such company, body, firm, business or undertaking 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.

## CHAPTER 4

### 20. Liquidation

- (1) The Authority shall not be placed in liquidation except by Act of Parliament.
- (2) In the event of the liquidation of the Authority, the surplus assets of the Authority (if any) shall accrue to the State.

### 21. Delegations

- (1) The Authority may, subject to subsection (4) -
  - (a) in writing delegate to a standing committee or a special committee any power conferred upon the Authority by or under this Act;
  - (b) in writing authorise a standing committee or a special committee to perform any duty assigned to the Authority by or under this Act
- (2) Any delegation under subsection (1) may be made subject to such conditions and restrictions as may be determined by the Authority and may at any time, be withdrawn by the Authority
- (3) The Authority shall not be divested of any power delegated under this Act and may alter or repeal any decision made in terms of such delegated power.
- (4) The Authority shall not delegate to any person, including a standing or special committee, the power to grant, renew, amend, suspend, revoke or transfer a licence.

## COMMITTEES, APPOINTMENT OF EXPERTS AND INQUIRIES

### 22. Establishing of Standing Committees

- (1) The following standing committees of the Authority are hereby established -
  - (a) the Broadcasting Spectrum Management Committee;
  - (b) the Broadcasting Monitoring and Complaints Committee.
- (2) The Authority may establish as many additional standing committees as it may deem necessary for the effective exercise of and performance of its powers and functions.

### 23. Constitution of Standing Committees

- (1) Subject to the provisions of subsection (3), each standing committee shall consist of -
  - (a) a chairperson who is a member of the Authority; and
  - (b) such number of members not exceeding 4 but at least 2 as the Authority may determine from time to time  
appointed by the Authority.
- (2) The members of the standing committees shall be persons who are not subject to any disqualification referred to in section 6 and who, on account of their expertise, experience, impartiality and general acceptability, are suited to serve on a committee.

- (3) The Broadcasting Monitoring and Complaints Committee shall consist of -
- (a) a chairperson who shall be a judge or a retired judge or a person who has been a practising advocate or attorney for at least ten years;
  - (b) a member who is a member of the Authority; and
  - (c) such number of members, not exceeding three but at least one, as the Authority may determine from time to time,
- appointed by the Authority.

#### 24. Establishment and Constitution of Special Committees

- (1) The Authority may establish one or more special committees as it may deem necessary for the effective exercise of its powers and functions.
- (2) The provisions subsections (1) and (2) of section 23 shall apply mutatis mutandis.

#### 25. Powers, functions and duties of Committees

- (1) A committee shall, with due regard to the policy directives as set out in section 3 of this Act, exercise and perform such powers, functions and duties as may be -
  - (a) conferred upon, assigned to or imposed upon the committee by or under this Act;
  - (b) delegated to the committee by the Authority.

#### 26. Appointment of Experts

- (1) The Authority may appoint as many experts as it may deem necessary to assist it in the exercise and performance of its powers, functions and duties.

- (2) An expert shall perform the functions agreed to by the expert and the Authority.
- (3) An expert, after the conclusion of his functions and duties, shall submit a report to the Authority for its consideration.
- (4) The Authority, on receipt of the report referred to in sub-section (3), may refer the matter back to the expert -
  - (a) For such further inquiry as may be determined by the Authority;
  - (b) To perform such further functions as the Authority may deem necessary or desirable.
- (5) An expert referred to in sub-section (1) shall receive such remuneration and allowances as the Authority may determine.

#### 27. Inquiries by the Authority

- (1) The Authority may conduct an inquiry into any matter relevant to -
  - (a) the achievement of the object and policies of this Act;
  - (b) the exercising of its powers and performing of its functions in term of this Act
- (2) The Authority shall make known its intention to conduct an inquiry by way of the publication of a notice in the Gazette.
- (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;
  - (b) indicate whether or not they would 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 can be made.
- (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.

## CHAPTER 5

### BROADCASTING FREQUENCY SPECTRUM MANAGEMENT <sup>6</sup>

#### 28. Assignment of the Broadcasting Services Frequency Bands

- (1) The Postmaster General shall assign 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 these 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 of South Africa.

#### 29. Broadcasting Frequency Spectrum Management Committee

The standing committee on Broadcasting Frequency Spectrum Management shall be responsible for the frequency spectrum management and the technical planning functions of the Authority.

#### 30. Designation of licence areas

- (1) The Authority may, by notice in the Gazette, designate an area in the Republic as a national, regional, metropolitan or local licence area.
- (2) The Authority may, by notice in the Gazette, determine the population density of a licence area.
- (3) In making the determination in subsection (2), the Authority is to have regard to the most recent census count and population estimates.

<sup>6</sup> The finalisation of this chapter is still subject to further technical advice.

- (4) The Authority shall keep a record of and make available for public inspection all comment received and all assumptions made by the Authority in performing its functions in terms of this section.

### 31. Frequency allotment plan

- (1) The Authority shall prepare a frequency allotment plan that determines the number of channels that are available to provide broadcasting services in particular licence areas and shall publish such plan in the Gazette.
- (2) In preparing the frequency allotment plan referred to in subsection (1), the Authority shall have due regard to the way in which such plans are prepared world wide and the views of experts in the field;
- (3) The Authority shall review the frequency allotment plan referred to in subsection (1) annually and the Authority shall publish any amendment to such plan in the Gazette.
- (4) In preparing a frequency allotment plan, the Authority may -
- (a) reserve frequencies on all bands for the different categories of broadcasting licences referred to in subsections (1)(a) and (b) of section 41: Provided that the Authority shall take into account the existing frequencies used by broadcasting services; and
  - (b) determine priorities as between particular licence areas and as between different parts of the broadcasting services frequency bands; and
  - (c) take into account -
    - (i) the social, cultural and economic needs within different licence areas; and
    - (ii) the demand for broadcasting services within different licence areas; and
    - (iii) the population density of different licence areas; and
    - (iv) such other matters which the Authority considers relevant;
- and shall publish such determinations in the Gazette for comment.
- (5) The Authority shall keep a record of and make available for public inspection all comment received and all assumptions made by the Authority in performing its functions in terms of this section.

### BROADCASTING SIGNAL DISTRIBUTION LICENSES <sup>7</sup>

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

No person shall provide broadcasting signal distribution unless such broadcasting signal distribution is provided under and in accordance with a licence issued to that person by the Authority.

#### 33. Provision of Broadcasting Signal Distribution

- (1) The Authority may grant a broadcasting signal distribution licence to -
- (a) a person operating as a common carrier for broadcasting signal distribution; and
  - (b) a broadcasting licensee licensed by the Authority, who chooses to fulfill the signal distribution process itself; and
- (2) Sentech, the signal distribution company of the South African Broadcasting Corporation, shall be deemed to have been licensed under this Act as a common carrier for broadcasting signal distribution.

#### 34. Granting and Renewal of Broadcasting Signal Distribution Licences

The provisions of subsections (2)(a), (2)(c), (2)(d), (2)(e), (2)(f), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14) and (15) of section 41 shall mutatis mutandis apply to the application for and renewal of a broadcasting signal distributor licence.

<sup>7</sup> The finalisation of this chapter is still subject to further technical advice. Amendments to the Post Office Act will be necessary to exempt licenced distributors from the provisions of this Act.

35. Criteria for Broadcasting Signal Distribution Licences (to be submitted)

36. Conditions of Broadcasting Signal Distribution Licence (to be submitted)

37. Amendment of Broadcasting Signal Distribution Licence Conditions (to be submitted)

38. Term of Broadcasting Signal Distribution Licence

- (1) The term of a licence allocated to a person referred to in subsection (1) (a) or subsection (2) of section 33 shall be seven years;
- (2) The term of a licence allocated to a person referred to in subsection (1) (b) of section 33 shall be concurrent with the term of such person's broadcasting licence;

39. General Provisions on Broadcasting Signal Distribution Licences

The provisions of sections 53, 54 and 55 shall mutatis mutandis apply to broadcasting signal distribution licences.

## CHAPTER 7

### BROADCASTING LICENCES

40. Prohibition on the provision of a broadcasting service without a broadcasting licence

No person shall provide a sound or television broadcasting service unless such service is provided under and in accordance with a broadcasting licence issued to that person by the Authority.

41. Granting and renewal of broadcasting licences<sup>1</sup>

- (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 of services:
    - (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;

<sup>1</sup> One view in the Technical Committee was that this section is inadequate and that the IBA should be advised by the relevant regional/federal/confederal legislative bodies about the allocation of regional, local and community broadcasting services within a particular region.

Another view was that such advice would compromise the independence of the Independent Broadcasting Authority.

The Technical Committee requests the assistance of the Negotiating Council in this regard. Written representations on this point can be made available to the Negotiating Council should it so request.

- (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 granting a sound or television broadcasting licence, it shall give notice of this intention in the Gazette.
- (b) Such notice shall state -
- (i) where applicable, the nature and frequency of the proposed service to be provided, as well as the licence area of the proposed broadcasting service;
  - (ii) the period within which an application has to be lodged;
  - (iii) the application fee payable on application;
  - (iv) the security, if any, required.
- (c) Every application which is made pursuant to such notice shall be made in the form prescribed by regulation, and shall be accompanied by -
- (i) the amount payable on application as aforesaid;
  - (ii) the applicant's proposals in relation to the nature of the service;
  - (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), and the Authority shall determine the amount of the payments and the security which are payable in each particular case.
- (e) On receipt of an application for a licence, the chairperson of the Authority shall give notice of the application in the Government Gazette.

- (f) Any person shall be entitled within fourteen days after publication of such notice to lodge written representations with the Authority, opposing the granting of the relevant broadcasting licence to an applicant.
- (3) The Authority shall -
- (a) before it determines whether or not to grant an 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 granting of the licence;
  - (b) give all applicants and persons who made submissions in terms of subsection (2)(f) an opportunity to be heard at such hearing;
  - (c) allow any of the parties referred to in paragraph (b) to be assisted and represented by a person appointed by such parties;
  - (d) give reasons for its decision with regard to any matter referred to in paragraph (a).
- (4) The Authority shall record the proceedings referred to in subsection (3)(a) in the prescribed manner.
- (5) The proceedings referred to in subsection (3)(a) shall be held in public and the documents pertaining to such proceedings shall be open for public scrutiny.
- (6) As soon as the Authority has decided to grant a sound broadcasting licence or a television broadcasting service, it shall give notice thereof -
- (a) in the Gazette;
  - (b) to the successful applicant;
  - (c) to the persons who made representations pursuant to paragraph (f) of subsection (2); and
  - (d) to the other applicants, if any.
- (7) The Authority may in granting a sound or television broadcasting licence claim security from the broadcasting licensee which is sufficient to guarantee the performance of the service for the term of the broadcasting licence.

- (8) Where a broadcasting licensee fails to provide the required security within thirty days after the granting of a broadcasting licence, such licence shall automatically lapse.
- (9) A broadcasting licensee shall commence with the licensed broadcasting service within a period determined by the Authority.
- (10) An application for the renewal of a sound or television 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.
- (11) For the purpose of a renewal of a sound or television broadcasting licence the Authority shall not require any such applicant to file any information which previously has 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 to make its findings.
- (12) Pending any final decision on such application, the relevant broadcasting licence shall continue to be of force and effect.
- (13) Where an application for the renewal of a sound or television broadcasting licence has been duly made to the Authority, the Authority shall only refuse the application if the licensee failed to materially comply with the licence conditions during the term of the existing licence and if the Authority is not satisfied that the applicant would, if his licence were renewed, comply materially with the duties imposed upon it by such licence or the provisions of this Act.
- (14) Subsections (2), (3), (4), (5) and (6) of section 41 shall mutatis mutandis apply to an application for renewal of a broadcasting licence.
- (15) The Authority may levy such fees for a broadcasting licence as it deems fit.

#### 42. Public Broadcasting Licences

- (1) Upon the commencement of this Act, all public broadcasting services, as defined in section 1, shall be deemed to have been licenced in terms of this Act to provide 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.
- (2) The Authority shall endeavour, as soon as possible after the commencement of this Act, to ensure that each public broadcasting service has a separate licence in terms of this Act.
- (3) No public broadcasting service may be disposed of in any manner without the permission of the Authority and the Multi-Party Forum or Transitional Executive Council or interim legislative body or Parliament, whichever of the latter is applicable at the time.
- (4) Should an application for the disposal of a public broadcasting service be made to the Authority and should permission be granted in terms of subsection (3), then subsections (2), (3), (4), (5) and (6) of section 41 shall apply to such application.
- (5) In the event that the Authority intends granting a new public broadcasting licence, it shall have due regard to its objectives and policy and inter alia apply the following criteria -
  - (a) the demand for the relevant broadcasting service within the licence area;
  - (b) the need for the service concerned within the licence area having due regard to the existing services within the licence area;

#### 43. Private Broadcasting Licences

- (1) Upon the commencement of this Act, all private broadcasting services, as defined in section 1, which were licensed immediately prior to the commencement of this Act shall be deemed to have been licenced in terms of this Act and such licences shall accordingly in all respects be subject to the provisions of this Act.



(2) In considering an application for a private broadcasting licence the Authority shall have due regard to its objectives and policy and inter alia apply the following criteria:

- (a) the demand for the relevant broadcasting service within the licence area;
- (b) the need for the service concerned within the licence area having due regard to the existing services within the licence area;
- (c) the expected technical quality of the 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 is, or would be, if a licence were allocated to the applicant, in a position to control the conduct of the applicant either in his individual capacity or as a member of the board of directors or its top management structure;
- (g) the applicant's record and the record of each person referred to in (f) in situations requiring trust and candour;
- (h) whether the applicant contains or proposes to contain a significant percentage of historically disadvantaged persons on the board of directors, in the top management structure and in the total equity of the applicant;
- (i) whether the applicant is disqualified from holding a broadcasting licence in terms of sections 45, 46, 47 and 48;
- (j) whether the applicant, or a person referred to in paragraph (f) has been convicted of an offence provided for in this Act.

<sup>9</sup> One view in the Technical Committee was that section 3 (7) is sufficient to address this issue and that subsection 43 (2) (h) should not be included in the Bill. Another view was that the Independent Broadcasting Authority must take a proactive role in levelling the "media ownership playing field".

The Technical Committee requests the assistance of the Negotiating Council in this regard. Written representations have been prepared on this point and can be made available should the Negotiating Council so request.

#### 44. Community Broadcasting Licences

In considering an application for a community broadcasting licence the Authority shall have due regard to its objectives and policy and inter alia apply the following criteria:

- (a) whether the applicant is fully controlled by a non-profit entity;
- (b) whether the applicant has the support of the community to provide the relevant community broadcasting service;
- (c) whether the applicant proposes to cater for and represent the relevant community interests; and
- (d) whether the applicant proposes to encourage members of the community that it intends to serve to participate in the operations of the broadcasting service in the provision of the service and in the selection and provision of programmes under the broadcasting licence; and
- (e) Subsections (2) (a), (b), (c), (d), (i) and (j) of section 43 shall mutatis mutandis apply to this section.

#### 45. Limitations on Foreign Control of Private Broadcasting Services

- (1) A foreign person shall not be in a position to exercise control of a broadcasting licence.
- (2) A foreign person shall not have company interests in a private broadcasting licensee that exceed 20%.
- (3) Two or more foreign persons shall not have company interests in a private broadcasting licensee that exceed 20%.
- (4) Not more than 20% of the directors of a private broadcasting licensee may be foreign persons. <sup>10</sup>

<sup>10</sup> 20 % is a widely accepted limit on foreign ownership. However, there were different views in the Committee on this percentage. The essence of the debate on this percentage revolves around how to encourage foreign investment and at the same time promote local, South African ownership of the broadcasting services.

The Technical Committee requests the assistance of the Negotiating Council in this regard.

46. **Limitations on the Control of Private Broadcasting Services**<sup>11</sup>

- (1) No person shall be:
  - (a) In a position to exercise control of more than one private television broadcasting licence; or
  - (b) 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 one private television broadcasting licence; or
  - (c) In a position to exercise control of a private television broadcasting licence, and a director of another company that is in a position to exercise control of another private television broadcasting licence.
  
- (2) No person shall be:
  - (a) In a position to exercise control of more than two private FM sound broadcasting licences; or
  - (b) 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 FM sound broadcasting licences; or
  - (c) In a position to exercise control of two private FM sound broadcasting licences, and a director of another company that is in a position to exercise control of any other private FM sound broadcasting licences.
  
- (3) No person referred to in subsection (2) shall be in a position to control two private FM sound broadcasting licences in the same licence area.

<sup>11</sup> This section is still subject to debate. One view in the Technical Committee was that the limitations contained in section 46 should not be included so specifically in the Bill and that this should be left to the discretion of the IBA. Further to this view, it was felt that the Policy provisions in section 3 are sufficient.

Another view in the Committee was that these limitations should be specifically determined in the Bill.

A third view was that this section could remain in the Bill, but the IBA should be given the power to review and change such limitations should it be necessitated by developments in the field of broadcasting technology.

Further representations have been prepared on this point and can be made available to the Negotiating Council should it so request.

The Technical Committee requires the assistance of the Negotiating Council in this regard.

- (4) No person shall be:
  - (a) In a position to exercise control of more than two private AM sound broadcasting licences; or
  - (b) 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) 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.
  - (d) in a position to control two private AM sound broadcasting licences in the same licence area.
  
- (5) No person referred to in subsection (4) shall be in a position to control two private AM sound broadcasting licences in the same licence area.

47. **Limitations on cross-media control of private broadcasting services**<sup>12</sup>

- (1) The authority is to maintain an Associated Newspaper Register.
  
- (2) For the purposes of this section, a newspaper is associated with the licence area of a licence if the name of the newspaper is entered in the Register as being associated with the licence area of the licence.
  
- (3) If the Authority is satisfied that at least 50% of the circulation of a newspaper is within the licence area of a private broadcasting licence, the Authority shall enter the name of the newspaper in the Register in relation to that licence area.
  
- (4) No person shall be in a position to exercise control of a private broadcasting licence and be in a position to exercise control of the only newspaper or newspapers that is or that are associated with the licence area of the licence.

<sup>12</sup> *ibid.*

The Technical Committee requests the assistance of the Negotiating Council in this regard.

- (5) No person shall 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 a private broadcasting licence and be in a position to exercise control of the only newspaper or newspapers that is or that are associated with the licence area of the licence.
- (6) No person in the Republic shall be a director of a company that is in a position to exercise control of a private broadcasting licence and a director of another company that is in a position to exercise control of the only newspaper or newspapers that is or that are associated with the licence area of the licence.
- (7) No person shall be in a position to exercise control of a newspaper or newspapers whose average or combined average circulation exceeds 300 000 and have company interests in more than one private broadcasting licence.
- (8) No person shall be a director of a company which is, or of two or more companies that are between them, in a position to exercise control of a newspaper or newspapers whose average or combined average circulation exceeds 300 000 and have company interests in more than one private broadcasting service.
- (9) No person shall be a director of a company which is in a position to exercise control of a newspaper or newspapers whose average or combined average circulation exceeds 300 000 and the director of another company which has company interests in more than one private broadcasting service.
- (10) No person shall be in a position to have company interests exceeding 35% in a private broadcasting licence and be in a position to exercise control of a newspaper or newspapers whose average or combined average circulation exceeds 300 000.
- (11) No person shall be in a position to be director of a company that has, or of two or more companies that have between them, company interests exceeding 35% in a private broadcasting licence and be in a position to exercise control of a newspaper or newspapers whose average or combined average circulation exceeds 300 000.
- (12) No person shall be in a position to be director of a company that has company interests exceeding 35% in a private broadcasting licence and be director of another company which is in a position to exercise control of a newspaper or newspapers whose average or combined average circulation exceeds 300 000.

#### 48. Prohibition on the granting of broadcasting licences to political parties.

- (1) No political party, or 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, or 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.

#### 49. General broadcasting licence conditions

Notwithstanding any specific conditions which the Authority may prescribe under the Act, the Authority may include in a licence any other condition not inconsistent with the provisions of this Act, which it considers to be appropriate in order to ensure that the licensee renders a service within the scope of the licence and in accordance with prescribed norms and standards.

#### 50. Specific broadcasting licence conditions on local television content and South African contemporary music<sup>13</sup>

- (1) For the purposes of this section -
  - (a) "local television content" means a television programme, excluding sports programmes, advertisements, game shows, teletext and continuity announcements, which has been -
    - (i) produced by a broadcasting licensee; or

<sup>13</sup> This section is still subject to debate by the Technical Committee.

One view was that this provision is superfluous in the light of the Policy obligation in section 3 (14).

Another view was that this section should be included in the Bill in order to guide the IBA in how to regulate local television content and local, contemporary music.

Written representations have been prepared on this point.

The Technical Committee requests the assistance of the Negotiating Council in this regard.

- (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 certain number of the key personnel, to be prescribed by the Authority, 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.

- (2) The Authority shall, in a television broadcasting licence, include conditions to be prescribed, requiring the broadcasting licensee to -
- (a) expend a minimum percentage of its gross revenue, on programmes which have a local television content; and
  - (b) allocate a minimum percentage of the total amount of broadcast transmission time to television programmes which have a local television content; and
  - (c) allocate, when the licensee provides a subscription television broadcasting service, a minimum percentage of unencoded time to

programmes which have a local television content; and

- (d) allocate, where the licensee has a regional or a local licence area, a minimum percentage to local television programmes which have been produced in the region or locality where applicable; and
- (e) allocate a 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 a broadcasting licence wherein the broadcasting licensee broadcasts a significant proportion of contemporary music, impose a condition on the licensee requiring the licensee to broadcast a prescribed percentage of South African contemporary music.

- (4) In prescribing the percentages referred to in subsections (2) and (3), the Authority may also prescribe the application of such percentages with regard to -

- (a) the category of broadcasting licensee referred to in subsections (1)(a) and (b) of section 41;
- (b) defined viewing and listening times, where applicable;
- (c) television programme categories, where applicable;
- (d) the minimum period within which the broadcasting licensee shall comply with the provisions of this section.

51. Amendment of broadcasting licence conditions

- (1) The Authority may amend any broadcasting licence conditions, if
- (a) it is in the interests of orderly frequency management and such amendment will not cause substantial prejudice to the licensee;
  - (b) any international treaty to which the State is a party, and which relates to broadcasting, necessitates such change;
  - (c) the licensee has requested such change;
  - (d) the licence is inconsistent with the provisions of this Act;

- (2) When it intends to amend the conditions of a broadcasting licence conditions, the chairperson of the Authority shall give notice of the amendment in the Government Gazette.
- (3) Any person shall be entitled within fourteen days after publication of such notice to lodge written representations with the Authority, opposing or supporting the amendment of the relevant broadcasting licence.
- (4) The Authority shall -
  - (a) before it determines whether or not to amend 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 amendment of the licence;
  - (b) give all persons who made submissions in terms of subsection (3) an opportunity to be heard at such hearing;
  - (c) allow any of the parties referred to in subsection (3) to be assisted and represented by a person appointed by such parties;
  - (d) give reasons for its decision with regard to the amendment of a licence.
- (5) The Authority shall record the proceedings referred to in subsection (4) in the prescribed manner.
- (6) The proceedings referred to in subsection (4) shall be held in public and the documents pertaining to such proceedings shall be open for public scrutiny.
- (7) As soon as the Authority has decided to amend a sound broadcasting licence or a television broadcasting service, it shall publish such amendment in the Gazette.

## 52. Term of broadcasting licence <sup>14</sup>

- (1) Subject to the provisions of this Act, a licence shall only be valid and in force for the period specified in that licence.
- (2) A public and private television broadcasting licence shall be valid for a maximum period of ten/seven years;
- (3) A public and private sound broadcasting licence shall be valid for a maximum period of seven/five years;
- (4) A community broadcasting licence shall be valid for a maximum period of three years.

## 53. Transfer of broadcasting licence

- (1) No broadcasting licence issued under this Act shall be transferred to any other person without the authorization of the Authority.
- (2) The provisions of section 41 shall mutatis mutandis apply to an application for the transfer of a broadcasting licence from the broadcasting licensee to another person.

## 54. Register of licences

- (1) The Authority shall keep a register of all broadcasting licences and amendments to such licences granted in terms of this Act at the premises of the Authority and in such form as it may determine.

<sup>14</sup> The Technical Committee is still considering this section.

One view expressed a preference for either a longer licence term or for the term to be left to the discretion of the IBA.

The Technical Committee requests assistance from the Negotiating Council in this regard.

(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 a copy of or extract from any part of the register, certified by the Authority to be a true copy or extract.

discharging of its duties, to view programmes in advance of their being included in a service.

#### 55. Control, accounts and records

(1) A broadcasting licensee shall be required to inform the Authority in writing of any change in control of that licensee.

(2) The Authority shall prescribe that a broadcasting licensee keeps such accounts and records of its business as it may reasonably deem fit.

(3) The Authority may in such directive prescribe the form in which the accounts or records must be kept.

(4) The Authority may from time to time review such determination referred to in (2) and (3)

#### 56. Record of programmes broadcast by broadcasting licensee

(1) A broadcasting licensee shall -

(a) retain, for a period not less than 45 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 it has been broadcast.

(2) Nothing in this Act shall be construed as requiring or authorising the Authority or the Broadcasting Monitoring and Complaints Committee, in the

## CHAPTER 8

### BROADCASTING PROGRAMMES

#### 57. Code of Conduct and Exemptions

- (1) Subject to the provision of subsection (2), all broadcasting services shall comply with 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 to a code of conduct enforced by that body by means of its own disciplinary mechanisms.

#### 58. Control of advertisements

- (1) The Authority shall include in the broadcasting licence of a licensee who is not a member of the Advertising Standards Authority of South Africa, the requirement that such licensee shall adhere to the Code of Advertising Practice as administered by that Authority.
- (2) Advertising complaints and disputes shall be subject to adjudication by that Authority in terms of the Code of Advertising Practice and that Authority shall refer any finding it might make with regard to a licensee who is not a member or is no longer a member, to the Broadcasting Monitoring and Complaints Committee.
- (3) The Broadcasting Monitoring and Complaints Committee shall deal with the finding referred to in subsection (2) in accordance with the provisions of section 63.
- (4) Should the Authority referred to in subsection (1) dissolve, the broadcasting licensee shall comply with a code to be prescribed and enforced by this Authority.

#### 59. Party Election Broadcasts on Public Sound Broadcasting Services During an Election Period<sup>15</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.
- (3) Prior to making a ruling in terms of subsection (2), the Authority shall consult with the relevant public sound broadcasting services and political parties concerning the ruling.
- (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, having regard to the fundamental underlying principle that all political parties must be treated equitably by the broadcasting service.
- (5) A party election broadcast shall not contain any material which may reasonably be anticipated to expose the broadcasting licensee to legal action if such material were to be broadcast.

#### 60. Political Advertising on Sound Broadcasting Services During an 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 is required to broadcast a political advertisement mentioned in subsection (1), but if any sound broadcasting service broadcasts a political advertisement on behalf of a political party, it shall afford all other political parties, should they so request, the opportunity to broadcast a political advertisement.

<sup>15</sup> Sections 59 - 62 shall be administered by the Independent Media Commission until that body is dissolved, whereupon these sections will fall to be administered by the IBA.

## CHAPTER 9

### ENFORCEMENT

- (3) A political advertisement shall not contain any material which may reasonably expose the broadcasting licensee to legal action if such material were to be broadcast.

#### 61. Prohibition on Party Election Broadcasts and Political Advertisements on Television Broadcasting Services

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

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

#### 63. Broadcasting Monitoring and Complaints Committee

- (1) Subject to the provisions of subsection (2) of section 56, 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 in Schedule 3;
- (c) during an election period, monitor the compliance of broadcasting licensees with the provisions of sections 59, 60, 61 and 62;<sup>16</sup>
- (2) In a procedure to be prescribed by the Authority, the Broadcasting Monitoring and Complaints Committee shall adjudicate any non-compliance with the provisions of subsection (1).
- (3) In a procedure to be prescribed by the Authority, the Broadcasting Monitoring and Complaints Committee shall adjudicate any complaint made to the Authority regarding non-compliance with the provisions of subsection (1).
- (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 58(2).
- (5) Insofar as the Broadcasting Monitoring and Complaints Committee, in adjudicating a matter referred to in subsections (2), (3) and (4), recommends that a broadcasting license be amended, suspended or revoked, such recommendations shall be referred to the Authority for such action as it may deem fit.<sup>17</sup>

<sup>16</sup> This section will only apply when the IMC dissolves.

<sup>17</sup> A provision dealing with complaints against broadcasting signal distributors must still be inserted.



- (6) For the purposes of this section the Broadcasting Monitoring and Complaints Committee may make use of recordings of programmes referred to in section 56.

#### 64. Production of licences for inspection

Every person who is required to possess broadcasting licence under this Act, shall produce his licence for inspection on demand by any other person who is duly authorised by the Authority to make such demand.

#### 65. Authority may inspect licensees' books and records

- (1) The Authority may, by notice in writing require a licensee -
- (a) to produce or furnish (as the case may be) at a time and place specified in the notice to the Authority -
    - (i) any documents which are specified or described in the notice and are in the licensee's custody or under his control; and
    - (ii) such estimates, returns or other information as may be described in the notice, including the manner and the form in which any such estimates, returns or information are to be furnished;
  - (b) to allow the Authority to inspect, and to make copies of, or take extracts from, specified books of account or other records of the licensee to determine whether the public network operator is complying with its licence obligations and the provisions of this Act and any other purpose connected with achieving the objects of this Act.<sup>18</sup>
- (2) This sections does not limit the Authority's powers under any other provision of this Act.

<sup>18</sup> The reference to the public network operator still has to be clarified in relation to the chapter on Broadcasting Signal Distribution Licences.

- (3) The provision of subsection (1) and (2) shall mutatis mutandis apply to a standing committee established under this Act, provided that a reference to the Authority shall be interpreted as a reference to the standing committee concerned.

#### 66. Powers of authorised persons

A person duly authorised thereto by the Authority may at all reasonable times -

- (a) inspect the records of a licensee and make such extracts therefrom as he may deem necessary;
- (b) inspect the plant and apparatus used by any licensee to broadcast; ;
- (c) inspect any licence issued to any person under this Act;
- (d) inspect any plant and apparatus which are, or are suspected to be, in the possession of or used by any person in contravention to this Act; and
- (e) enter any premises for the purposes of subparagraphs (a) to (d).

#### 67. Powers in case of a breach of broadcasting licence conditions<sup>19</sup>

- (1) The Authority may, when it makes a finding that the broadcasting 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 programme 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) subject to the provisions of subsection (2), suspend the licence for a period not exceeding 30 days;

<sup>19</sup> A section dealing with the breach of a broadcasting signal distribution licence conditions needs to be inserted.

- (f) subject to the provisions of subsection (2), revoke the licence; or
  - (g) take such action as is prescribed by regulation.
- (2) A public broadcasting licence may not be suspended or revoked by the Authority without the consent of Parliament. <sup>20</sup>
- (3) 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.
- (4) 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 repeatedly and intentionally or in a grossly negligent manner has failed to adhere to the same provision of the Act or the same licence condition: provided that if he has been found guilty of having failed to adhere to any provision of the Act or any condition of the licence and that his failure was intentional for the third time during the current term of the licence, the Authority may, if the failure is regarded as gross, revoke the licence.
- (5) A 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).

<sup>20</sup> This provision is still subject to debate.

## 68. Offences <sup>21</sup>

- (1) Any person who contravenes the provisions of section 32 or section 40 shall be guilty of an offence.
- (2) Any person who fails to comply with the provisions of sections 55.
- (3) Any person who fails to produce a licence issued to him under this Act on demand by any person authorised by the Authority, or hinders any authorised person in the exercise of his powers shall be guilty of an offence.
- (4) Any person who fails to comply with an order made in terms of section 67 shall be guilty of an offence.
- (5) Any person who, without authority breaks the seal of a transmitter sealed under subsection (3) (b) of section 7, 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 him may in addition to any penalty that it may impose, order -
  - (a) the confiscation to the State of any apparatus in connection with or by means of which the offences was committed; provided that no such order of confiscation shall be made if it is proved that the apparatus in question does not belong to the person so convicted and that its owner was unable to prevent its unlawful use by the person so convicted;
  - (b) the revoking of any licence held under this Act by the person so convicted, and prohibit him 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 member of the Authority who becomes subject to a disqualification in section 6 and fails to disclose such disqualification shall be guilty of an offence.

<sup>21</sup> This section seems to be extremely wide in terms of the creation of offences. Secondly, there appears to be no provision for fines, specific penalties and imprisonment. Further work should be done here.

- (7) Any order made under subsection (2)(c), shall have the same effect as and may be executed as if it were a civil judgment in favour of the Authority.
- (8) A person shall not be prosecuted for an offence under this Act, except with the written authorisation by the Attorney-General.

69. Penalties <sup>22</sup>

<sup>22</sup> The details of this section are still to be worked out.

CHAPTER 10

REGULATIONS, AMENDMENT AND  
REPEAL OF LAWS, SHORT TITLE AND COMMENCEMENT

70. Regulations

- (1) The Minister may, on the recommendation of the Authority, make regulations regarding -
- (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 63;
  - (c) the powers of the Authority with regard to the summoning and examination of witnesses, the administering of the oath or an affirmation and the production of books, documents and objects;
  - (d) the resolution and adjudication of complaints and disputes concerning alleged violations of this Act and licence conditions;
  - (f) consultation between the Authority and the broadcasting industry, as well as accreditation of associations representing the industry;
  - (g) the fees that shall be payable in respect of a broadcasting licence;
  - (k) any additional powers of an authorised person referred to in section 66 and the procedures to be followed by such a person;
  - (l) in general, the technical control of broadcasting activities and the possession and use of apparatus; and
  - (m) 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 for any contravention thereof or failure to comply therewith, prescribe a penalty which shall not exceed a fine or imprisonment of ..... or both such fine and such imprisonment.

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

**71. Amendment of laws and savings**

The laws mentioned in the Schedule 5 are hereby amended to the extent indicated in Parts I, II and III thereof.

**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 Government Gazette.
- (2) Different dates may be fixed under subsection (1) in respect of different provisions of the Act. <sup>23</sup>

**SCHEDULE 1**

**(Section 5)**

**Procedure for appointing the members of the Authority**

1. Members of the Authority 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 Authority, 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 Authority;
  - (b) indicate that these nominations are to be submitted to the committee within a period specified in the said notice.

<sup>23</sup> This section will have to specify that sections 59 - 62 will only come into being when the IMC dissolves.

<sup>24</sup> One view in the Technical Committee is a preference for the appointment procedure to be determined by the eminent bodies referred to in paragraph 1.

**The Technical Committee requests the assistance of the Negotiating Council in this regard.**

- (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 Authority;
  - (d) details of the nominee's qualifications, experience and expertise;
  - (e) details concerning the disqualificatory provisions referred to in section 6 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 Authority;
  - (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 Authority.
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/she shall tell the truth; and
  - (3) only members of the committee may question a nominee, and such questioning shall only relate to whether the or not the nominee:
    - (a) meets the positive and disqualificatory requirements referred to in sections 5 and 6 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 Authority, 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 Authority, including, when appropriate, the person to be appointed as the chairperson of the Authority
10. Immediately thereafter, the 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 became 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 what may reasonably be true having 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 it has not been practicable to verify the correctness of a report, this shall be mentioned in such 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 provided such comments or criticisms are fairly and honestly made.
- (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.

#### 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 person so request.

#### 6. Elections

During an election period, the provisions of sections 59, 60, 61 and 62 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>25</sup>

(Sections 46 and 47)

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

1. When a person is in a position to exercise control of a private broadcasting licence
- (1) For the purposes of this Schedule, a person is in a position to exercise control of a private broadcasting licence if:
- (a) the person, either alone or with an associate of the person, is in a position to exercise control of the broadcasting licensee; or
  - (b) the person, either alone or together with an associate of the person, is in a position to exercise (whether directly or indirectly) control of the selection or provision of a significant proportion of the programmes broadcast by the broadcasting licensee; or
  - (c) the person, either alone or together with an associate of the person, is in a position to exercise (whether directly or indirectly) control of a significant proportion of the operations of the broadcasting licensee in providing broadcasting services under the broadcasting licence; or
  - (d) the person, either alone or together with an associate of the person, is in a position to:
    - (i) veto any action taken by the board of directors of the broadcasting licensee; or
    - (ii) appoint or secure the appointment of, or veto the appointment of, at least half of the board of directors of the broadcasting licensee; or
    - (iii) exercise, in any other manner, whether directly or indirectly,

<sup>25</sup> See footnotes on section 46 and 47.

The Technical Committee requests the assistance of the Negotiating Council in this regard.

Written representations have been prepared on this point and can be made available to the Negotiating Council should it so request.

direction or restraint over any substantial issue affecting the management or affairs of the broadcasting licensee; or

- (e) the broadcasting licensee or more than 50% of its directors:
- (i) act, or are accustomed to act; or
  - (ii) under a contract or an arrangement or understanding (whether formal or informal) are intended or expected to act;
- in accordance with the directions, instructions, or wishes of, or in concert with, the person or of the person and an associate of the person acting together or, if the person is a company, of the directors of the person.

- (2) Sub-paragraph (1)(b) does not apply to the provision of programmes by a person to a broadcasting licensee under an agreement for the supply of programmes to a broadcasting licensee if the conditions of the agreement relate only to the programmes so supplied or their promotion.
- (3) An employee of a broadcasting licensee is not, except through an association with another person, to be regarded as being in a position to exercise control of broadcasting licence under sub-paragraph (1) purely because of being an employee.
- (4) More than one person may be in a position to exercise control of a licence.

2. **When a person is in a position to exercise control of a newspaper**

- (1) For the purposes of this Schedule, a person is in a position to exercise control of a newspaper if:
- (a) the person is the publisher of the newspaper; or
  - (b) the person is in a position, either alone or together with an associate of the person and whether directly or indirectly:
    - (i) to exercise control of a significant proportion of the operations of the publisher in publishing the newspaper; or
    - (ii) to exercise control of the selection or provision of a significant proportion of the material to be published in the newspaper; or

- (c) if the newspaper is published by a company:
- (i) the person is in a position, either alone or together with an associate of the person, to exercise control of the company; or
  - (ii) the person, either alone or together with an associate of the person, is in a position to veto any action taken by the board of directors of the company; or
  - (iii) the person, either alone or together with an associate of the person, is in a position to appoint or secure the appointment of, or veto the appointment of, at least half of the board of directors of the company; or
  - (iv) the person, either alone or together with an associate of the person, is in a position to exercise, in any other manner, whether directly or indirectly, discretion or restraint over any substantial issue affecting the management or affairs of the company; or
  - (v) the company or more than 50% of its directors:
    - (A) act, or are accustomed to act; or
    - (B) under a contract or an arrangement (whether formal or informal) are intended or expected to act;

in accordance with the directions, instructions or wishes of, or in concert with, the person or of the person and an associate of the person acting together or, if the person is a company, of the directors of the person.

- (2) Sub-section (1)(b)(ii) does not apply to the provision of material by a person to a newspaper under an agreement for the supply of material of that kind if the conditions of the agreement relate only to the material so supplied.
- (3) An employee of the publisher of a newspaper is not, except through an association with another person, to be regarded as being in a position to control the newspaper under sub-section (1) purely because of being an employee.

### 3. Deemed control

- (1) If a person has company interests in a company exceeding 15%, the person is, in the absence of proof to the contrary, to be regarded as being in a

position to exercise control of the company.

- (2) If another person who is not an associate has company interests in the company exceeding 50%, the person referred to in sub-section (1) is not to be regarded as being in a position to exercise control of the company only by the operation of this rule.

## SCHEDULE 5

(Section 72)

### AMENDMENT OF LAWS

To be submitted in due course.