

- (c) persons who are committed to openness and accountability in public life, freedom of expression and a free and unrestricted flow of information;
- (d) persons, who taken together, are broadly representative of and acceptable to a broad cross-section of the population of the Republic.

6. Persons disqualified from being members of the Commission

- (1) A person shall not be appointed or remain as a member of the Commission if such person -
 - (a) holds an office of profit under the State, subject to the provisions of section 5(1);
 - (b) is a member of Parliament or the TEC or of any provincial government or the legislature or government of a TBVC State or any self-governing territory, or is a member of any local authority;
 - (c) is an office-bearer or employee of any political party;
 - (d) directly or indirectly, whether personally or through his or her spouse, partner or associate, has a direct or indirect financial interest in the telecommunications, broadcasting or print media industry;
 - (e) holds an office in or is employed by any company, organisation or other body, whether corporate or incorporate, which has a direct or indirect financial interest of the nature contemplated in paragraph (d);
 - (f) is an unrehabilitated insolvent or has entered into a compromise with his or her creditors;

(g) is subject to an order of a competent court declaring such person to be mentally ill or disordered;

(h) has, after the commencement of this Act, been convicted, whether in the Republic or elsewhere, of any offence for which such person has been sentenced to imprisonment without the option of a fine;

(i) has at any time been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), or any other offence involving dishonesty, and has been sentenced therefor to imprisonment without the option of a fine; or

(j) is convicted of an offence under this Act.

(2) Notwithstanding the provisions of paragraph (a), (b), (c), (d) or (e) of subsection (1), a person shall be eligible for appointment to the Commission if such person resigns from office or divests himself or herself of the relevant financial interest in a manner which satisfies the appointing body.

7. Term of office of commissioners

(1) Subject to the provision of this Act, the members of the Commission shall hold office until the dissolution of the Commission in terms of section 30.

(2) A member of the Commission may at any time, upon at least three months' written notice tendered to the appointing body, resign from office.

8. Vacancies in Commission

(1) There shall be a vacancy in the Commission -

- (a) if a commissioner becomes subject to a disqualification referred to in section 6;
 - (b) when a commissioner's written resignation in terms of section 7(2) takes effect; or
 - (c) if a commissioner is removed from office by the appointing body on account of misconduct or inability to efficiently perform the duties of his or her office.
- (2) A vacancy in the Commission shall be filled by the appointment of another commissioner by the appointing body in terms of this Act as soon as may be reasonably practicable after the occurrence of such vacancy and any commissioner so appointed shall hold office for the unexpired period of his or her predecessor's term of office.

9. Remuneration and allowances ³

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

10. Meetings of the Commission

- (1) The meetings of the Commission shall be held at such times and places as may be determined by resolution of the Commission whenever necessary so as to conduct its business expeditiously: Provided that the first meeting shall be held at such time and place as the chairperson may determine.

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

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

11. Disclosure of conflicting interest

- (1) If at any stage during the course of any proceedings before the Commission it appears that any commissioner has or may have an interest which may cause a conflict of interest to arise on his or her part -
 - (a) such commissioner shall forthwith and fully disclose the nature of his

or her interest and leave the meeting so as to enable the remaining commissioners to discuss the matter and determine whether such commissioner is precluded from participating in such meeting by reason of a conflict of interest; and

(b) such disclosure and the decision taken by the remaining commissioners regarding such determination, shall be recorded in the minutes of the meeting in question.

(2) If any commissioner fails to disclose any interest as required by subsection (1), the proceedings of the Commission shall be null and void and such commissioner shall be guilty of an offence and shall liable on conviction to a maximum fine of R100 000.

12. Proceedings of Commission not invalid in certain circumstances

Subject to the provisions of section 11, a decision taken by the Commission or an act performed under the authority of such a decision shall not be invalid merely by reason of any irregularity in the appointment of a commissioner or a vacancy in the Commission or the fact that any person not entitled to sit as a commissioner sat as such at the time when such decision was taken, provided such decision was taken by a majority of commissioners present at the time and entitled to so sit.

13. Staff of the Commission

(1) The Commission shall appoint such staff as it deems necessary with a view to assisting it with the performance of all such work as may arise from the exercise and performance of its powers, functions and duties in terms of this Act.

(2) The Staff of the Commission shall receive such remuneration, allowances, perquisites and other employment benefits, and shall, subject to the provisions

of section 30, for such periods as the Commission may deem fit.

14. Establishment of Committees

- (1) The Commission may establish as many committees as it may deem necessary for the effective exercise and performance of its powers, functions and duties.
- (2) The Commission shall have the following two committees, namely -
 - (a) a broadcasting committee which shall monitor all broadcasting services in the Republic and enforce compliance by the broadcasting services with the guidelines on -
 - (i) party election broadcasts and political advertisements; and
 - (ii) fairness concerning broadcasts relevant to the election;
 - (b) a state-financed publication and state information services committee which shall monitor state publications and state information services in accordance with the provisions of this Act.
- (4)
 - (a) A committee shall be chaired by a commissioner designated by the Commission for that purpose.
 - (b) A committee shall have two or more additional members, as may be determined by the Commission, which members may be appointed from the number of Commissioners and/or any other persons who, in the opinion of the Commission, have the necessary expertise, knowledge and experience, so as to conduce towards attaining the mandate of the committee and to promote the effective exercise and performance of its powers, functions and duties.

- (5) Whenever the office of a member of a committee becomes vacant, the Commission shall appoint a person to fill the vacancy for the unexpired portion of the term of office of his or her predecessor.
- (6) The provisions of sections 5(3), 6, 7, 8, 9, 10, 24 and 28 shall *mutatis mutandis* apply in respect of any committee, and for that purpose any reference to the Commission shall be construed as a reference to the committee in question.
- (7) The Commission may at any time re-constitute or dissolve any committee.
- (8) For the purpose of the exercise and performance of its powers, functions and duties, a committee shall have the same powers as those conferred upon the Commission by or in terms of this Act.

15. Appointment of experts

- (1) The Commission may appoint as many experts, including experts from other countries, as it may deem necessary with a view to assisting it in the exercise and performance of its powers, functions and duties and for the performance of any work arising therefrom.
- (2) The terms, conditions, remuneration and allowances applicable to any appointment in terms of subsection (1) and the work to be performed or service to be rendered by virtue of such appointment shall be in accordance with a written agreement entered into between the Commission and the expert concerned.
- (3) Upon having performed the work or completed the service pursuant to the agreement contemplated in subsection (2), the expert concerned shall submit a report in regard thereto to the Commission for its consideration.

- (4) The Commission, on receipt of the report referred to in sub-section (3), may refer the matter back to the expert -
- (a) for such further attention as may be determined by the Commission;
or
 - (b) to perform such further functions as the Commission may deem necessary or desirable.

16. Powers and Functions of Commission

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

- (1) To monitor all broadcasting services in the Republic so as to ensure fair and equitable treatment of all political parties by these broadcasting services and so as to ensure and enforce compliance by such broadcasting services with the provisions of this Act.
- (2) To monitor state-financed publications and state information services so as to ensure compliance with the provisions of this Act.
- (3) To establish committees in accordance with the provisions of section 14 of this Act.
- (4) To appoint as many experts as it may deem necessary to assist in the exercise and performance of its powers, functions and duties, in accordance with the provisions of section 15 of this Act.
- (5) To employ as many staff as it may deem necessary in accordance with section 13 of this Act.

- (6) To conduct whatever hearings it may deem necessary in accordance with the provisions of section 22 of this Act.
- (7) To inform the Multi-Party Forum/Transitional Executive Council and/or the Independent Electoral Commission should the Commission become aware of any matter within its jurisdiction which, in its opinion, may have an adverse impact upon the creation and achievement of a climate favourable to free political participation and the holding of a free and fair election;
- (8) To enter into contracts which are necessary for the due performance of its functions; and
- (9) To perform such other functions and exercise such other powers as may be assigned to it by or under this Act or any other law.

17. Party election broadcasts on sound broadcasting services during the election ⁴

- (1) Subject to the provisions of this section, a public sound broadcasting service shall permit political parties to make party election broadcasts.
- (2) The Commission shall make a ruling on the time to be made available to the political parties for purposes of subsection (1), including the duration and scheduling of such party election broadcasts, taking into account the financial and programming implications for the broadcasting services in question.
- (3) The Commission shall consult with the relevant public sound broadcasting services and political parties prior to making any ruling in terms of subsection (2).
- (4) In making the ruling in terms of subsection (2), the Commission may impose

⁴ Sections 56 - 59 shall be administered by the Commission until this body is dissolved, whereupon these sections will fall to be administered by the IBA. (See section 56-59 of the IBA Bill).

conditions requiring the public sound broadcasting service to observe such rules with respect to party election broadcasts as the Commission may determine, having due regard to the fundamental underlying principle that all political parties are to be treated equitably by the broadcasting service.

- (5) A party election broadcast shall not contain any material which may reasonably be anticipated to expose the broadcasting licensee to legal liability if such material were to be broadcast.
- (6) A party election broadcast shall comply with a broadcast quality acceptable to the Commission.
- (7) No party election broadcast shall be broadcast later than 48 hours prior to the commencement of the polling period.

18. Political advertising on sound broadcasting services during the election

- (1) A sound broadcasting licensee shall only broadcast a political advertisement which has been submitted by a political party.
- (2) No sound broadcasting service shall be required to broadcast a political advertisement mentioned in subsection (1), but if any sound broadcasting service broadcasts a political advertisement on behalf of a political party, it shall afford all other political parties, should they so request, a like opportunity.
- (3) A political advertisement shall not contain any material which may reasonably expose the sound broadcasting licensee to legal liability if such material were to be broadcast.
- (4) A political advertisement shall comply with a broadcast quality acceptable to the Authority.

- (5) No political advertisement shall be broadcast later than 48 hours prior to the commencement of the polling period.

19. Prohibition of party election broadcasts and the broadcasting of political advertisements except in certain circumstances ⁵

No party election broadcast and no political advertisement shall be broadcast on any broadcasting service except if and to the extent authorised by the provisions of sections 17 and 18.

20. Equitable treatment of political parties by all broadcasting services during an election Period

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

⁵ The Technical Committee was unable to resolve this issue as requested by the NC and understands that this matter has now been referred to an *ad hoc* committee. The Technical Committee reiterates its view that allowing political advertising on television has adverse financial implications for political parties, whereas allowing party election broadcasts on television may have adverse financial implications for the broadcasting services concerned.

period, then the licensee shall ensure that the political party is given a reasonable opportunity to respond in the same programme, or as soon as is reasonably possible thereafter.

21. State-financed publications and state information services

(1) The publisher of a state-financed publication shall be required, within 14 days of the commencement of this Act, to submit to the Commission information concerning such publication in the prescribed form.

(2) Any state-financed publication which is published for the first time after the commencement of this Act shall be required, no less than 14 days prior to such publication, to submit to the Commission information concerning such publication in the prescribed form.

(3) The Commission may require the publisher of a publication referred to in subsection (2) to provide the Commission with a copy of such publication prior to the printing thereof.

(4) A state-financed publication shall be submitted to the Commission free of charge within five days of the completion of the printing thereof.

(5) No state-financed publication shall contain an advertisement in support of any political party.

(6) No state-financed publications shall advance the interests of any political party.

(7) Subsections (5) and (6) shall mutatis mutandis apply to state information services.

22. Hearings

- (1) Any political party which believes that a broadcasting service or a state-financed publication or a state information service has contravened the provisions of this Act and which was unable to have its grievance satisfactorily resolved, may lodge a complaint with the Commission.
- (2) A complaint made in terms of subsection (1) shall be in writing and shall be served on the respondent and lodged with the Commission.
- (3) For the purposes of subsection (2), "written" shall include a complaint delivered by hand or sent by registered post, telefax or telex.
- (4) The Commission shall afford the parties a hearing in response to a complaint made in terms of subsection (1).
- (5) The Commission shall determine the form and procedures of the hearing taking into account the urgency of the complaint.
- (6) The complainant and respondent respectively shall be entitled to legal representation when appearing before the Commission.
- (7) On completion of the hearing, the Commission shall make a determination and shall provide reasons therefor.
- (8) The Commission shall keep a written record of all its determinations, and all such determinations shall be public documents.
- (9) The provisions of this section shall *mutatis mutandis* apply to hearings instituted by the Commission itself.
- (10) For the purposes of this section a state-financed publication and state

information service shall be represented by the state official responsible for the state-financed publication or state information service.

- (11) The Commission may publish its determinations in any manner it deems fit.
- (12) The hearings held in terms of this section shall be held in public and the documents pertaining to such proceedings shall be open for public scrutiny.
- (13) The powers of the Commission shall, with regard to summoning and examination of witnesses, the administering of the oath or an affirmation and the production of books, documents and objects, be as prescribed

23. Orders, Penalties and Recommendations

- (1) The Commission, when making a determination referred to in section 22, may issue an order or recommendation in any one or more of the following terms:
 - (a) requiring a public sound broadcasting service to broadcast a party election broadcast;
 - (b) requiring a sound broadcasting service to broadcast a political advertisement;
 - (c) requiring a broadcasting service to broadcast a counter-version of a particular programme or of facts and/or opinions expressed within a particular programme;
 - (d) imposing financial penalties on broadcasting services for non-compliance with the provisions of this Act;
 - (e) recommending to the Authority the suspension or revocation of a

broadcast licence should the licence holder consistently fail to comply with the provisions of this Act.

- (f) conveying the ruling to the Multi-Party Forum/Transitional Executive Council, in circumstances where the state-financed publication or a state information service is the respondent;

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

- (2) The Commission may publish its orders and recommendations in any manner it deems fit.

24. Expenditure in connection with functions of the Commission

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

25. Reporting Responsibility of Commission

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

26. Offences and Penalties

A person who -

- (a) wilfully hinders or obstructs the Commission or a member of its staff in the exercise of its or his or her powers or the performance of its or his/her duties or functions;
- (b) wilfully interrupts the proceedings at a hearing of the Commission or in any other manner misbehaves himself or herself at the place where such hearing is held;
- (c) a person who fails to comply with any order or recommendation made by the Commission in terms of this Act,

shall be guilty of an offence and liable on conviction to a fine not exceeding R100000 or to imprisonment for a period not exceeding one year or both such fine and such imprisonment.

27. Delegations

- (1) Subject to the provisions of subsection (4), the Commission may in writing
 - (a) delegate to a committee any power, function or duty conferred or imposed upon the Commission by or in terms of this Act.
 - (b) authorise a committee to exercise or perform any power, function or duty assigned to the Commission by or under this Act.
- (2) Any delegation or authorisation under subsection (1) may be made subject to such conditions and restrictions as may be determined by the Commission and

may at any time be revoked by the Commission

- (3) The Commission shall not be divested of any power nor be relieved of any duty which it may have delegated under this section, and may amend or rescind any decision made in terms of a delegation under this section.
- (4) The Commission shall not delegate power, functions or duties as contained in sections 14, 15, 22, 23 and 29.

28. Limitation of liability

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

29. Regulations

The Commission may make regulations regarding any matter which in terms of this Act is required or permitted to be prescribed

30. Dissolution of Commission ⁶

⁶ This matter is being held in abeyance by the Technical Committee until such time as the Negotiating Council has made a final decision regarding the conclusion of the electoral process.

31. Short Title and Commencement

This Act shall be called the Independent Media Commission Act, 1993 and shall come into operation on a date to be fixed by the Multi-Party Forum/Transitional Executive Council, by proclamation in the **Gazette** by the State President.

**SPECIAL REPORT ON THE NINTH
DRAFT OF THE INDEPENDENT MEDIA
COMMISSION BILL**

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

2 August 1993

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

**SPECIAL REPORT ON THE NINTH DRAFT OF THE INDEPENDENT MEDIA
COMMISSION BILL**

1. The Technical Committee has incorporated the suggestions made during the Negotiating Council debate, on the Independent Media Commission Bill, held on 26th July 1993.

2. As noted in the Special Report on the Fifth Draft of the Independent Broadcasting Authority, there are a number of issues which cannot be finalised without related matters, beyond the terms of reference of this Technical Committee, being decided upon by other Technical Committees:
 - 2.1 Definition of "political party"

 - 2.2 Definition of "Republic"

 - 2.3 Mechanisms providing for Ministerial consultation or concurrence with the TEC

3. The Technical Committee has also requested the Negotiating Council to decide on whether party election broadcasts and political advertising should be permitted on television (see section 19 of IMC Bill and section 58 of IBA Bill)

4. The Technical Committee is continuing, with the State Law Adviser, to work on the outstanding technical issues of the Bill with the view to preparing it in a certified form.

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

INDEPENDENT MEDIA COMMISSION BILL

(WORKING DRAFT 9)

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

2 August 1993

INDEPENDENT MEDIA COMMISSION BILL

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

<i>Sections</i>	<i>Subject</i>
<i>Section 1</i>	<i>Definitions</i>
<i>Section 2</i>	<i>Establishment of Commission</i>
<i>Section 3</i>	<i>Primary objects</i>
<i>Section 4</i>	<i>Appointment of members of the Commission</i>
<i>Section 5</i>	<i>Persons qualified to be members of the Commission</i>
<i>Section 6</i>	<i>Persons disqualified from being members of the Commission</i>
<i>Section 7</i>	<i>Term of office of members of Commission</i>
<i>Section 8</i>	<i>Vacancies in Commission</i>
<i>Section 9</i>	<i>Remuneration and allowances</i>
<i>Section 10</i>	<i>Meetings of Commission</i>
<i>Section 11</i>	<i>Disclosure of conflicting interest</i>
<i>Section 12</i>	<i>Proceedings of Commission not invalid in certain circumstances</i>
<i>Section 13</i>	<i>Staff of the Commission</i>
<i>Section 14</i>	<i>Establishment of committees</i>
<i>Section 15</i>	<i>Appointment of experts</i>

<i>Section 16</i>	<i>Powers and functions of Commission</i>
<i>Section 17</i>	<i>Party election broadcasts on sound broadcasting services during the election</i>
<i>Section 18</i>	<i>Political advertising on sound broadcasting services during the election</i>
<i>Section 19</i>	<i>Prohibition of party election broadcasts and the broadcasting of political advertisements except in certain circumstances</i>
<i>Section 20</i>	<i>Equitable treatment of political parties by all broadcasting services during the election</i>
<i>Section 21</i>	<i>State-financed publications and state information services</i>
<i>Section 22</i>	<i>Hearings</i>
<i>Section 23</i>	<i>Orders, penalties and recommendations</i>
<i>Section 24</i>	<i>Expenditure in connection with functions of the commission</i>
<i>Section 25</i>	<i>Reporting responsibility of Commission</i>
<i>Section 26</i>	<i>Offences and penalties</i>
<i>Section 27</i>	<i>Delegations</i>
<i>Section 28</i>	<i>Limitations of liability</i>
<i>Section 29</i>	<i>Regulations</i>
<i>Section 30</i>	<i>Dissolution of Commission</i>
<i>Section 31</i>	<i>Short Title and Commencement</i>

INTERPRETATION

1. Definitions

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

"**appointing body**" means the Multi-Party Forum/Transitional Executive Council;

"**Authority**" means the Independent Broadcasting Authority established by section 3 of the Independent Broadcasting Act, 1993;

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

"**broadcasting licence**" means a licence granted by the Authority in terms of this Act or deemed by this Act to have been so granted to a person for the purpose of providing a defined category of broadcasting service;

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

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

"**chairperson**" means the chairperson of the Commission, referred to in section 4 (1)(a), and includes any commissioner acting in the stead of such person in accordance with the provisions of section 10 (2);

"**Commission**" means the Independent Media Commission established by section 2 and, in relation to the exercise or performance of any power, function or duty conferred upon the Commission by this Act, includes any committee of the Commission or any officer of the Commission acting under a delegation or authorization in terms of section 7;

"**commissioner**" means a member of the Commission;

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

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

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

"**election**" means the first national and SPR elections held after the commencement of this Act;

"**Independent Electoral Commission**" means the body established in terms of the _____ Act, 1993;

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

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

"political party" means... ¹

"prescribed" means prescribed by regulation in terms of section ???;

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

"public broadcasting service" means

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

and shall include a commercially-operated broadcasting service provided by

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

a person referred to in (a) or (b) or (c).

"Republic" means the Republic of South Africa; ²

"respondent" means a broadcasting licensee, a state-financed publication or a state information service in respect of which the Commission is investigating a complaint or which is subject to the procedure referred to in section 22 of this Act;

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

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

"state" means the governments and administrations of the Republic;

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

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

"television broadcasting service" means a broadcasting service to be received

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

by a television set;

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

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

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

2. Establishment of Commission - There is hereby established a juristic person to be known as the Independent Media Commission.

3. Primary objects

The objects of the Commission shall be:

- (a) to ensure equitable treatment of political parties by broadcasting services; and
- (b) to ensure that state-financed publications and state-financed information services, are not directly or indirectly used to advance the interests of any political party, whether directly or indirectly;

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

4. Constitution and appointment of Commission

- (1) The Commission shall consist of:

- (a) A chairperson; and
 - (b) Not more than six other members.
- (2) Each member of the Commission, including the chairperson and the vice-chairperson, shall be selected and appointed by the appointing body and such appointments shall take effect from the date of publication of a notice in the **Gazette**.

5. Persons Qualified to be Members of the Commission

- (1) The chairperson of the Commission shall be:
- (a) a judge or retired judge of the Supreme Court of South Africa, or
 - (b) A practising advocate or practising attorney of at least ten years' standing.
- (2) At least two of the members of the Commission shall have experience in the field of the broadcasting media and at least one in the field of the print media.
- (3) The members of the Commission shall be -
- (a) Subject to the provisions of subsections (1) and (2), citizens of and permanently resident in the Republic;
 - (b) Persons who, in the opinion of the Multi-Party Forum/Transitional Executive Council, are of high standing and merit and are fit for appointment on account of the fact that by reason of such persons' experience or any other qualifications which they have, they will promote the effective exercise or performance of the objects, powers and functions of the Commission;

- (c) persons who are committed to openness and accountability in public life, freedom of expression and a free and unrestricted flow of information;
- (d) persons, who taken together, are broadly representative of and acceptable to a broad cross-section of the population of the Republic.

6. Persons disqualified from being members of the Commission

- (1) A person shall not be appointed or remain as a member of the Commission if such person -
 - (a) holds an office of profit under the State, subject to the provisions of section 5(1);
 - (b) is a member of Parliament or the TEC or of any provincial government or the legislature or government of a TBVC State or any self-governing territory, or is a member of any local authority;
 - (c) is an office-bearer or employee of any political party;
 - (d) directly or indirectly, whether personally or through his or her spouse, partner or associate, has a direct or indirect financial interest in the telecommunications, broadcasting or print media industry;
 - (e) holds an office in or is employed by any company, organisation or other body, whether corporate or incorporate, which has a direct or indirect financial interest of the nature contemplated in paragraph (d);
 - (f) is an unrehabilitated insolvent or has entered into a compromise with his or her creditors;

- (g) is subject to an order of a competent court declaring such person to be mentally ill or disordered;
 - (h) has, after the commencement of this Act, been convicted, whether in the Republic or elsewhere, of any offence for which such person has been sentenced to imprisonment without the option of a fine;
 - (i) has at any time been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), or any other offence involving dishonesty, and has been sentenced therefor to imprisonment without the option of a fine; or
 - (j) is convicted of an offence under this Act.
- (2) Notwithstanding the provisions of paragraph (a), (b), (c), (d) or (e) of subsection (1), a person shall be eligible for appointment to the Commission if such person resigns from office or divests himself or herself of the relevant financial interest in a manner which satisfies the appointing body.

7. Term of office of commissioners

- (1) Subject to the provision of this Act, the members of the Commission shall hold office until the dissolution of the Commission in terms of section 30.
- (2) A member of the Commission may at any time, upon at least three months' written notice tendered to the appointing body, resign from office.

8. Vacancies in Commission

- (1) There shall be a vacancy in the Commission -

- (a) if a commissioner becomes subject to a disqualification referred to in section 6;
 - (b) when a commissioner's written resignation in terms of section 7(2) takes effect; or
 - (c) if a commissioner is removed from office by the appointing body on account of misconduct or inability to efficiently perform the duties of his or her office.
- (2) A vacancy in the Commission shall be filled by the appointment of another commissioner by the appointing body in terms of this Act as soon as may be reasonably practicable after the occurrence of such vacancy, and any commissioner so appointed shall hold office for the unexpired period of his or her predecessor's term of office.

9. Remuneration and allowances ³

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

10. Meetings of the Commission

- (1) The meetings of the Commission shall be held at such times and places as may be determined by resolution of the Commission whenever necessary so as to conduct its business expeditiously: Provided that the first meeting shall be held at such time and place as the chairperson may determine.

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

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

11. Disclosure of conflicting interest

- (1) If at any stage during the course of any proceedings before the Commission it appears that any commissioner has or may have an interest which may cause a conflict of interest to arise on his or her part -
 - (a) such commissioner shall forthwith and fully disclose the nature of his

or her interest and leave the meeting so as to enable the remaining commissioners to discuss the matter and determine whether such commissioner is precluded from participating in such meeting by reason of a conflict of interest; and

- (b) such disclosure and the decision taken by the remaining commissioners regarding such determination, shall be recorded in the minutes of the meeting in question.
- (2) If any commissioner fails to disclose any interest as required by subsection (1), the proceedings of the Commission shall be null and void and such commissioner shall be guilty of an offence and shall liable on conviction to a maximum fine of R100 000.

12. Proceedings of Commission not invalid in certain circumstances

Subject to the provisions of section 11, a decision taken by the Commission or an act performed under the authority of such a decision shall not be invalid merely by reason of any irregularity in the appointment of a commissioner or a vacancy in the Commission or the fact that any person not entitled to sit as a commissioner sat as such at the time when such decision was taken, provided such decision was taken by a majority of commissioners present at the time and entitled to so sit.

13. Staff of the Commission

- (1) The Commission shall appoint such staff as it deems necessary with a view to assisting it with the performance of all such work as may arise from the exercise and performance of its powers, functions and duties in terms of this Act.
- (2) The Staff of the Commission shall receive such remuneration, allowances, perquisites and other employment benefits, and shall, subject to the provisions

of section 30, for such periods as the Commission may deem fit.

14. Establishment of Committees

- (1) The Commission may establish as many committees as it may deem necessary for the effective exercise and performance of its powers, functions and duties.
- (2) The Commission shall have the following two committees, namely -
 - (a) a broadcasting committee which shall monitor all broadcasting services in the Republic and enforce compliance by the broadcasting services with the guidelines on -
 - (i) party election broadcasts and political advertisements; and
 - (ii) fairness concerning broadcasts relevant to the election;
 - (b) a state-financed publication and state information services committee which shall monitor state publications and state information services in accordance with the provisions of this Act.
- (4)
 - (a) A committee shall be chaired by a commissioner designated by the Commission for that purpose.
 - (b) A committee shall have two or more additional members, as may be determined by the Commission, which members may be appointed from the number of Commissioners and/or any other persons who, in the opinion of the Commission, have the necessary expertise, knowledge and experience, so as to conduce towards attaining the mandate of the committee and to promote the effective exercise and performance of its powers, functions and duties.

- (5) Whenever the office of a member of a committee becomes vacant, the Commission shall appoint a person to fill the vacancy for the unexpired portion of the term of office of his or her predecessor.
- (6) The provisions of sections 5(3), 6, 7, 8, 9, 10, 24 and 28 shall *mutatis mutandis* apply in respect of any committee, and for that purpose any reference to the Commission shall be construed as a reference to the committee in question.
- (7) The Commission may at any time re-constitute or dissolve any committee.
- (8) For the purpose of the exercise and performance of its powers, functions and duties, a committee shall have the same powers as those conferred upon the Commission by or in terms of this Act.

15. Appointment of experts

- (1) The Commission may appoint as many experts, including experts from other countries, as it may deem necessary with a view to assisting it in the exercise and performance of its powers, functions and duties and for the performance of any work arising therefrom.
- (2) The terms, conditions, remuneration and allowances applicable to any appointment in terms of subsection (1) and the work to be performed or service to be rendered by virtue of such appointment shall be in accordance with a written agreement entered into between the Commission and the expert concerned.
- (3) Upon having performed the work or completed the service pursuant to the agreement contemplated in subsection (2), the expert concerned shall submit a report in regard thereto to the Commission for its consideration.

- (4) The Commission, on receipt of the report referred to in sub-section (3), may refer the matter back to the expert -
 - (a) for such further attention as may be determined by the Commission;
or
 - (b) to perform such further functions as the Commission may deem necessary or desirable.

16. Powers and Functions of Commission

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

- (1) To monitor all broadcasting services in the Republic so as to ensure fair and equitable treatment of all political parties by these broadcasting services and so as to ensure and enforce compliance by such broadcasting services with the provisions of this Act.
- (2) To monitor state-financed publications and state information services so as to ensure compliance with the provisions of this Act.
- (3) To establish committees in accordance with the provisions of section 14 of this Act.
- (4) To appoint as many experts as it may deem necessary to assist in the exercise and performance of its powers, functions and duties, in accordance with the provisions of section 15 of this Act.
- (5) To employ as many staff as it may deem necessary in accordance with section 13 of this Act.

- (6) To conduct whatever hearings it may deem necessary in accordance with the provisions of section 22 of this Act.
- (7) To inform the Multi-Party Forum/Transitional Executive Council and/or the Independent Electoral Commission should the Commission become aware of any matter within its jurisdiction which, in its opinion, may have an adverse impact upon the creation and achievement of a climate favourable to free political participation and the holding of a free and fair election;
- (8) To enter into contracts which are necessary for the due performance of its functions; and
- (9) To perform such other functions and exercise such other powers as may be assigned to it by or under this Act or any other law.

17. Party election broadcasts on sound broadcasting services during the election ⁴

- (1) Subject to the provisions of this section, a public sound broadcasting service shall permit political parties to make party election broadcasts.
- (2) The Commission shall make a ruling on the time to be made available to the political parties for purposes of subsection (1), including the duration and scheduling of such party election broadcasts, taking into account the financial and programming implications for the broadcasting services in question.
- (3) The Commission shall consult with the relevant public sound broadcasting services and political parties prior to making any ruling in terms of subsection (2).
- (4) In making the ruling in terms of subsection (2), the Commission may impose

⁴ Sections 56 - 59 shall be administered by the Commission until this body is dissolved, whereupon these sections will fall to be administered by the IBA. (See section 56-59 of the IBA Bill).

conditions requiring the public sound broadcasting service to observe such rules with respect to party election broadcasts as the Commission may determine, having due regard to the fundamental underlying principle that all political parties are to be treated equitably by the broadcasting service.

- (5) A party election broadcast shall not contain any material which may reasonably be anticipated to expose the broadcasting licensee to legal liability if such material were to be broadcast.
- (6) A party election broadcast shall comply with a broadcast quality acceptable to the Commission.
- (7) No party election broadcast shall be broadcast later than 48 hours prior to the commencement of the polling period.

18. Political advertising on sound broadcasting services during the election

- (1) A sound broadcasting licensee shall only broadcast a political advertisement which has been submitted by a political party.
- (2) No sound broadcasting service shall be required to broadcast a political advertisement mentioned in subsection (1), but if any sound broadcasting service broadcasts a political advertisement on behalf of a political party, it shall afford all other political parties, should they so request, a like opportunity.
- (3) A political advertisement shall not contain any material which may reasonably expose the sound broadcasting licensee to legal liability if such material were to be broadcast.
- (4) A political advertisement shall comply with a broadcast quality acceptable to the Authority.

- (5) No political advertisement shall be broadcast later than 48 hours prior to the commencement of the polling period.

19. Prohibition of party election broadcasts and the broadcasting of political advertisements except in certain circumstances ⁵

No party election broadcast and no political advertisement shall be broadcast on any broadcasting service except if and to the extent authorised by the provisions of sections 17 and 18.

20. Equitable treatment of political parties by all broadcasting services during an election Period

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

⁵ The Technical Committee was unable to resolve this issue as requested by the NC and understands that this matter has now been referred to an *ad hoc* committee. The Technical Committee reiterates its view that allowing political advertising on television has adverse financial implications for political parties, whereas allowing party election broadcasts on television may have adverse financial implications for the broadcasting services concerned.