

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 ¹¹

- (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.

¹¹ 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.

limit
on
no of
ads
1 placement

(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.

ENFORCEMENT

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; ¹⁶
- (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. ¹⁷

¹⁶ This section will only apply when the IMC dissolves.

¹⁷ 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. ¹⁸

- (2) This sections does not limit the Authority's powers under any other provision of this Act.

¹⁸ 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 ¹⁹

- (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;

¹⁹ 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. ²⁰

(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).

²⁰ This provision is still subject to debate.

(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 offence 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.

²¹ 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 ²²

²² The details of this section are still to be worked out.

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. ²³

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

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.

²⁴ 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 Post Office 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

(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 who have been engaged in crime or other notorious misbehaviour in order to obtain information concerning such behaviour, unless compelling societal interests indicate the contrary.

(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,

²⁹ 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.

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

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

2 August 1993

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

INDEPENDENT BROADCASTING AUTHORITY BILL

(WORKING DRAFT 5)

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

2 August 1993

EMBARGOED UNTIL DELIVERY/TABLING IN THE NEGOTIATING COUNCIL

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

1. Introduction

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

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

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

2. Amendments

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

SUBMISSIONS ON THE FOURTH DRAFT OF THE INDEPENDENT BROADCASTING AUTHORITY BILL

One or more submissions were received from the following:

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

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

3. Constitution of the Council

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

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

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

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

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

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

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

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

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

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

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

5. Empowerment and Equal Opportunity

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

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

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

6.1 Definition of "political party"

6.2 Definition of "Republic"

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

6.4 Appointment of the Council of the IBA.

7. Towards a certified draft

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

INDEPENDENT BROADCASTING AUTHORITY BILL

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

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

ARRANGEMENT OF ACT

Chapters, Subject

Sections

Schedules,

Chapter 1 INTERPRETATION

Section 1 Definitions

Chapter 2 PRIMARY OBJECTS OF ACT

Section 2 Primary objects of Act

Chapter 3 INDEPENDENT BROADCASTING AUTHORITY

Section 3 Establishment of the Independent Broadcasting Authority

Section 4 Constitution of the Council

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

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

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

Chapter 5 **BROADCASTING FREQUENCY SPECTRUM MANAGEMENT**

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

Chapter 6 **BROADCASTING SIGNAL DISTRIBUTION LICENCES**

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

licence

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

Chapter 7 **BROADCASTING LICENCES**

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

Chapter 8 BROADCASTING PROGRAMMES

- Section 54** *Code of Conduct and exemptions*
- Section 55** *Control of advertisements*
- Section 56** *Party election broadcasts on public sound broadcasting services during an election period*
- Section 57** *Political advertising on sound broadcasting services during an election period*
- Section 58** *Prohibition on party election broadcasts and political advertisements except in certain circumstances*
- Section 59** *Equitable treatment of political parties by all broadcasting services during an election period*

Chapter 9 ENFORCEMENT

- Section 60** *Broadcasting Monitoring and Complaints Committee*
- Section 61** *Authority may inspect licensee's books and records*
- Section 62** *Powers of authorised persons*
- Section 63** *Powers in case of a breach of broadcasting licence conditions*
- Section 64** *Offences*
- Section 65** *Penalties*

Chapter 10 GENERAL PROVISIONS

- Section 66** *Liquidation*
- Section 67** *Delegations*
- Section 68** *Restriction on use of name or description implying connection with Authority*
- Section 69** *Limitation of liability*
- Section 70** *Regulations*
- Section 71** *Amendment of laws and savings*
- Section 72** *Short title and commencement*

SCHEDULES

Schedule 1 *Procedure for appointing councillors*

Schedule 2 *Pension rights of officers and employees*

Schedule 3 *Code of Conduct for South African broadcasters*

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

Schedule 5 *Amendment of laws*

CHAPTER 1

INTERPRETATION

1. Definitions

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

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

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

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

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

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

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

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

purpose of providing a defined category of broadcasting service;

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

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

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

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

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

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

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

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

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

"common carrier" means..

"community broadcasting service" means a broadcasting service which -

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

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

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

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

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

"foreign person" means:

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

control the company, whether directly or indirectly;

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

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

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

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

other consideration for the broadcasting of such advertisement;

"political party" means... ¹

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

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

"public broadcasting service" means

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

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

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

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

"Republic" means the Republic of South Africa; ²

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

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

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

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

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

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

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

CHAPTER 2

PRIMARY OBJECTS OF ACT

2. Primary Objects of Act ³

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

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

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

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

internationally-accepted technical standards;

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

CHAPTER 3

INDEPENDENT BROADCASTING AUTHORITY

3. Establishment of the Independent Broadcasting Authority

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

4. Constitution of the Council

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