

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

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

(1) For the purposes of this section -

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

(i) produced by a broadcasting licensee; or

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

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

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

and

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

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

- (a) the category of broadcasting licence referred to in section 38(1);
- (b) defined viewing and listening times, where applicable;
- (c) television programme categories, where applicable; and
- (d) the minimum period within which the broadcasting licensee shall comply with the provisions of this section.

(5) The Authority shall, as soon as may be reasonably possible after the commencement of this Act, with a view to finalising and prescribing the percentages and matters referred in subsections (2), (3) and (4), conduct an inquiry in terms of section 26.

49. Term of broadcasting licence

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

50. Transfer of licence ²⁰

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

51. Register of licences

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

²⁰ Ibid.

Broadcasting accounts and records relevant to change in control of licensees

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

Record of programmes broadcast by broadcasting licensee

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

CHAPTER 8

BROADCASTING PROGRAMMES

54. Code of Conduct, and Exemptions

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

55. Control of advertisements

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

56. Party election broadcasts on sound broadcasting services during an election Period ²¹

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

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

commencement of the polling period.

57. Political advertising on sound broadcasting services during election period

- (1) A broadcasting licensee shall only broadcast a political advertisement which has been submitted by a political party.
- (2) No sound broadcasting service shall be required to broadcast a political advertisement mentioned in subsection (1), but if any sound broadcasting service broadcasts a political advertisement on behalf of a political party, it shall afford all other political parties, should they so request, a like opportunity.
- (3) A political advertisement shall not contain any material which may reasonably expose the broadcasting licensee to legal liability if such material were to be broadcast.
- (4) A political advertisement shall comply with a broadcast quality acceptable to the Authority.
- (5) No political advertisement shall be broadcast later than 48 hours prior to the commencement of the polling period.

58. Prohibition of party election broadcasts and the broadcasting of political advertisements except in certain circumstances ²²

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

²² 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.

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

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

CHAPTER 9

ENFORCEMENT

60. Broadcasting Monitoring and Complaints Committee

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

²³ This section will only apply when the IMC dissolves.

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

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

61. Authority may inspect licensees books and records

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

62. Powers of authorised persons

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

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

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

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

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

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

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

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

64. Offences ²⁵

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

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

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

65. Penalties ²⁶

²⁶ The details of this section are still being attended to

CHAPTER 10

GENERAL PROVISIONS

66. Liquidation

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

67. Delegations

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

decision made in terms of a delegation under this section.

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

68. Restriction on use of name or description implying connection with Authority²⁷

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

69. Limitation of liability

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

70. Regulations

- (1) The Council may make regulations regarding -

²⁷ This section is not yet in its final form and requires further elaboration.

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

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

71. Amendment of laws and savings

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

72. Short title and commencement

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

²⁸ 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 councillors

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

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

within a period specified in the said notice.

(2) The notice referred to in subparagraph (1), shall also prescribe the form of the nominations and shall include provision for:

- (a) signed and written acceptance by the nominees of their nomination;
- (b) motivations in support of these nominations which shall accompany such nominations;
- (c) nominations, when appropriate, to include nominations for the chairperson of the Council;
- (d) details of the nominee's qualifications, experience and expertise;
- (e) details concerning the disqualificatory provisions referred to in section 5 of this Act; and
- (f) the maximum number of nominations any person may submit;
- (g) other matters which the committee may deem necessary.

3. The committee shall cause to be published in the **Gazette** a notice containing the full list of nominations which were submitted to it and which complied with the prescribed form.

4. The committee shall consider these nominations in the context of the provisions of this Act, and shall:

- (1) decide upon a shortlist of nominees;

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

(4) a nominee may be assisted by a legal representative during the hearing.

8. The committee, in relation to each nominee, shall consider any written nominations⁷ and comment, as well as any oral evidence, which it has received, in the context of the provisions of this Act. On the basis of these considerations, the committee shall select the one or more persons to be appointed to the Council, including, when appropriate, the person to be appointed as the chairperson.
9. The committee shall submit to the Multi-Party Forum or the Transitional Executive Council, or its successors, a list of the one or more persons to be appointed to the Council, including, when appropriate, the person to be appointed as the chairperson of the Council.
10. Immediately thereafter, the Multi-Party Forum or the Transitional Executive Council, or its successors, shall cause the list referred to in paragraph 9 to be published in a notice in the **Gazette** and such appointment(s) shall take effect from the date of publication of this notice.

SCHEDULE 2

(Section 13(3))

Pension Rights of Officers and Employees

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

- (a) the fund of which he was a member shall transfer to the fund of which he becomes a member an amount equal to the funding level of the first-mentioned fund multiplied by the actuarial liability of the fund in respect of that officer or employee as on the date of the commencement of the employment of the officer or employee by the Authority, increased by the amount of interest thereon calculated at the prime rate from the date of the said commencement up to the date of transfer of the amount;
- (b) his membership of the fund of which he was a member shall lapse as from the date of the commencement of his employment by the Authority and he shall thereafter, except as is provided by subparagraph (a), not have any further claim against the said fund; and
- (c) the fund of which he was a member shall transfer any claim it may have against such officer or employee to the fund of which he so becomes a member.

3. In the case where such an officer or employee becomes a member of a fund in accordance with a request in terms of subparagraph (c) of paragraph (1) the State shall pay to such fund an amount equal to the difference between the actuarial liability of the fund of which he was a member, in respect of such an officer or employee as on the date of the commencement of his employment by the Authority, and the amount transferred in terms of subparagraph (c) of paragraph (2) to the first-mentioned fund, increased by the amount of interest thereon calculated at the prime rate from the date of the said commencement up to the date of the transfer of the amount.

4. The provisions of paragraphs (2) and (3), shall mutatis mutandis apply in respect of an officer or employee who has by virtue of a choice in terms of subparagraph (a) of paragraph (1) become a dormant member and thereafter requests that his accrued pension benefits be transferred in terms of the provisions of section 15A(1) of the General Pensions Act, 1979, to a pension fund referred to in the said Act or a

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

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

6. For the purpose of this schedule -

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

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

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

SCHEDULE 3

(Section 57)

CODE OF CONDUCT FOR BROADCASTING SERVICES

1. Preamble

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

2. General

Broadcasting services shall-

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

3. News

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

of obscene and lascivious matter.

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

4. Comment

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

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

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

person so request.

6. Elections

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

7. Privacy

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

8. Payment for information from a criminal

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

SCHEDULE 4 ²⁹

(Sections 42, 43 and 44)

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

²⁹ See Footnotes to sections 42, 43 and 44.

SCHEDULE 5

(Section 72)

AMENDMENT OF LAWS

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

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

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

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

20 August 1993

EMBARGOED UNTIL DELIVERY/TABLING IN THE NEGOTIATION COUNCIL

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

Technical Committee on the Independent Media Commission and Independent Telecommunications Authority
Multi-Party Negotiation Process
20 August 1993

Introductory Remarks

The technical committee has taken into account the Negotiating Council debate on the fifth draft of the IBA Bill, as well as the proposals of certain members of the *ad hoc* committee.

Immediately following this report is an appended list of clauses which -

- a) are unchanged and approved;
- b) have been reworded for reasons of drafting only (including new clauses);
- c) have been substantially changed; and
- d) are new clauses of substance introduced by the technical committee.

The most important issues which ought to be considered by the Negotiating Council are set out below.

Important issues to be considered by the Negotiating Council

Section 1:

Definition of "political party"

The technical committee has attempted to formulate a definition of "political party". While the committee has noted comments made by members of the Negotiating Council during the debate on the tenth draft of the IMC Bill (18 August 1993), it must be reiterated that problems may arise if both the IBA Bill and IMC Bill become law before the Electoral Act. Furthermore, the technical committee wishes to point out that the definition of "political party" must be seen in relation to the intention behind certain provisions of the IBA Bill, firstly to only allow registered political parties, movements and organisations access to party election broadcasts and political advertisements, and secondly to prevent all political parties, movements and organisations (whether registered or not) from being granted a broadcasting licence. The technical committee therefore still requires guidance from the Negotiating Council on this issue.

Definition of "Republic"; and

Section 78: Extraterritorial extension of Authority's jurisdiction by agreement between Republic and state or territory previously part of Republic

The technical committee has been advised that there is a possibility that the TBVC states may only be reincorporated after the first national election. This possibility creates obvious jurisdictional problems for the IBA.

The technical committee has sought to address these problems by way of the definition of the Republic and section 78.

Section 2(5)(a):

Inclusion of "religion" in primary objects

The technical committee has accommodated the South African Government's proposal that "religion" should be expressly catered for in section 2.

Section 4: Constitution of Council; and

Schedule 1: Procedure for appointing of councillors

The technical committee strongly advises against the proposal that there may be two IBA chairpersons. This proposal gives rise to a host of practical difficulties and unanswered questions concerning the constitution and functioning of the IBA Council.

It seems as if this proposal was made to deal with a situation where consensus cannot be reached on the appointment of a single chairperson. The technical committee is of the view that a system of co-chairpersons would simply perpetuate the lack of consensus and would create leadership problems for the IBA.

The majority of the technical committee are also opposed to the proposal made by certain members of the *ad hoc* committee that Schedule 1 be deleted and that the appointment procedure be left for the TEC or Parliament to determine.

Schedule 1 details an open procedure which encapsulates the important principles of transparency and public accountability and, read in conjunction with other provisions of this Bill, is essential in order to guarantee the legitimacy and independence of the IBA.

If the TEC was left to decide the appointment procedure, or if such a procedure was thrashed out behind closed doors in the form of a political agreement, then the problems associated with the recent SABC Board appointment process are likely to recur.

Indeed, most parties in the Negotiating Council and members of the public and organisations who made submissions to the technical committee supported the provisions of Schedule 1.

An appointment procedure will need to be agreed to by the Negotiating Council, or the Transitional Executive Council, sooner or later. For the reasons stated above, the majority of the technical committee recommends that the Negotiating Council debate the provisions of Schedule 1 with a view to including this Schedule or similar provisions in the IBA Bill.

Section 6:

Terms of office of councillors

Certain members of the *ad hoc* committee proposed that the terms of office of the chairperson and councillors be amended to six years with one half of the total number of councillors vacating office every three years. However, the technical committee feels that a term of six years is too long and that section 6 should not be amended.

Section 28(8):

Inquiries into three critical policy and regulatory issues

Certain members of the *ad hoc* committee have proposed that the inquiry into public broadcasting in terms of section 28(8)(a) should 'be put on hold' and that the inquiry into cross-media ownership regulations, in terms of section 28(8)(b) should be dropped and provisions setting out fixed percentages should be included in section 50 of the IBA Bill.

For the reasons already extensively set out in paragraph 4 of the special report on the fifth draft of the IBA Bill, the technical committee is unanimously in favour of section 28(8) and section 50 (formerly section 26(6) and section 44) being retained in their present form. Any disadvantages flowing from the short delay which may be occasioned by the inquiry into cross-media control, are far outweighed by the advantages of a more sophisticated and transparent approach to regulating this issue.

Section 29:

Authority vested with exclusive powers in relation to administration, management and planning of broadcasting services frequency bands

In terms of the Radio Act, 1952, the Postmaster General has overall legal responsibility for the administration, management and planning of the frequency spectrum for both telecommunications and broadcasting.

Section 29(1) now provides that "as from the date of the commencement of this Act, the Authority shall, notwithstanding the provisions of any other law, be vested with exclusive powers in relation to the administration, management and planning of the broadcasting services frequency bands, whereupon the Postmaster General shall cease to be so vested".