

- (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.
- (3) In making advertising time available for political parties, no sound broadcasting service shall discriminate against any political party or make or give any preference to any political party or subject such political party to any prejudice; nor shall any sound broadcasting service make any contract or other agreement which shall have the effect of permitting any political party to advertise to the exclusion of other political parties.
- (4) A political advertisement shall not contain any material which may reasonably expose the licensee to legal action if such material were to be broadcast.
- (5) The Commission may prescribe the standards to which such political advertisements shall conform.
- (6) This section shall be subject to the provisions of any law on political party expenditure during the election.

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

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

18. Equitable Treatment of Political Parties by all Broadcasting Services

- (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 licensee shall give the political party a reasonable opportunity to respond to the criticism.
- (3) If a licensee intends to broadcast a programme whererin 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 is reasonably possible thereafter.

- (4) The Commission may prescribe the standards to which broadcasting services shall be required to conform.

19. State-financed publications and state information services

- (1) The publisher of a state-financed publication shall be required, within 14 days of the commencement of this Act, to submit to the Commission information concerning such publication in the prescribed form.
- (2) Any state-financed publication which is published for the first time after the commencement of this Act shall be required, no less than 14 days prior to such publication, to submit to the Commission information concerning such publication in the prescribed form.
- (3) The Commission may require the publisher of a publication referred to in subsection (2) to provide the Commission with a copy of such publication prior to the printing thereof.
- (4) A state-financed publication shall be submitted free of charge within five days of the completion of the printing thereof.
- (5) No state-financed publication shall contain an advertisement in support of any political party.
- (6) No state-financed publications shall advance the interests of any political party.
- (7) Subsections (5) and (6) shall mutatis mutandis apply to state information services.

20. Hearings

- (1) Any political party which believes that a broadcasting service or a state-financed publication or a state information service has contravened the provisions of this Act and which was unable to have its grievance satisfactorily resolved, may lodge a complaint with the Commission.
- (2) A complaint made in terms of subsection (1) shall be in writing and shall be served on the respondent and lodged with the Commission.
- (3) For the purposes of subsection (2), "written" shall include a complaint delivered by hand or sent by registered post, telefax or telex.
- (4) The Commission shall afford the parties a hearing in response to a complaint made in terms of subsection (1).
- (5) The Commission shall determine the form and procedures of the hearing taking into account the urgency of the complaint.

- (6) The complainant and respondent respectively shall be entitled to legal representation when appearing before the Commission.
- (7) On completion of the hearing, the Commission shall make a determination and shall provide reasons therefor.
- (8) The Commission shall keep a written a written record of all its determinations and all such determinations shall be public documents.
- (9) The provisions of this section shall mutatis mutandis apply to hearings instituted by the Commission itself.
- (10) For the purposes of this section a state-financed publication and state information service shall be represented by the state official responsible for the state-financed publication or state information service.
- (11) The Commission may publish its determinations in any manner it deems fit.
- (12) The hearings held in terms of this section shall be held in public and the documents pertaining to such proceedings shall be open for public scrutiny.
- (13) The powers of the Commission shall, with regard to summoning and examination of witnesses, the administering of the oath or an affirmation and the production of books, documents and objects, be as prescribed.

21. Orders, Penalties and Recommendations

- (1) The Commission, when making a determination referred to in section 20, may issue an order in any one or more of the following terms:
 - (a) Requiring a public sound broadcasting service to broadcast a party election broadcast;
 - (b) Requiring a sound broadcasting service to broadcast a political advertisement;
 - (c) Requiring a broadcasting service to broadcast a counter-version of a particular programme or of facts and/or opinions expressed within a particular programme;
 - (d) Imposing financial penalties on broadcasting services for non-compliance with the provisions of this Act;
 - (e) Recommending to the Authority the suspension or revocation of a broadcast licence should the licence holder consistently fail to comply with the provisions of this Act.
 - (f) Conveying the ruling to the IEC/TEC, in circumstances where the state-financed publication or a state information service is the respondent;

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

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

23. Reporting Responsibility of Commission

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

24. Limitation of Liability in Respect of Anything Done Under this Act

The Commission or any staff member or an expert or a person referred to in section 12(1)(b) shall not be liable in respect of anything done in good faith under any provision of this Act.

25. Regulations

The State President shall, on the request of the Commission, make regulations as are prescribed in terms of this Act.

26. Offences and Penalties

A person who -

- (a) Insults, disparages or belittles the Commission, or anticipates the proceedings at a hearing or the findings of the in a manner calculated to influence such proceedings or findings;
- (b) Wilfully hinders or obstructs the Commission or a member of its staff in the exercise of its or his/her powers or the performance of its or his/her duties or functions;
- (c) Wilfully interrupts the proceedings at a hearing of the Commission or misbehaves himself/herself in any other manner in the place where such hearing is held;

- (d) In connection with any hearing of the Commission does anything which, if such hearing were proceedings in a court of law, would have constituted contempt of court;
- (e) Does anything calculated improperly to influence the Commission in respect of any matter being or to be considered by the Commission in connection with a hearing;
- (f) a person who fails to comply with any order given by the Commission in terms of this Act.

shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or to imprisonment for a period not exceeding one year or both such fine and such imprisonment.

27. Delegation

- (1) The Commission may delegate any of its powers as it may deem fit.
- (2) The Commission shall not be divested of any power delegated under subsection (1) and may alter or repeal any decision made in terms of any delegated power.

28. Dissolution of Commission (still to be inserted)

29. Short Title and Commencement

This Act shall be called the Independent Media Commission Act, 1993 and shall come into operation on a date to be fixed by the State President, on the recommendation of the Transitional Executive Council, by proclamation in the Gazette.

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

INDEPENDENT MEDIA COMMISSION BILL

(EIGHTH DRAFT)

Prepared by the Technical Committee on the Independent Media Commission and the
Independent Telecommunications Authority, Multi-Party Negotiating Process

1 July 1993

ARRANGEMENT OF THE ACT

Section of the Act	Subject
section 1	Definitions
section 2	Establishment of Commission
section 3	Objects of Commission
section 4	Appointment of members of Commission
section 5	Persons qualified to be members of Commission
section 6	Persons disqualified from being members of Commission
section 7	Term of office of members of Commission
section 8	Vacation of office of members of Commission and the filling of such vacancy
section 9	Remuneration of members of Commission
section 10	Meetings of Commission
section 11	Establishment of committees
section 12	Appointment of experts
section 13	Staff of Commission
section 14	Powers and functions of Commission
section 15	Party election broadcasts on public sound broadcasting services
section 16	Political advertisements on sound broadcasting services
section 17	Prohibition on party election broadcasts and political advertisements on television broadcasting services
section 18	Equitable treatment of political parties by all broadcasting services
section 19	State-financed publications and state information services
section 20	Hearings
section 21	Orders, penalties and recommendations
section 22	Expenditure in connection with functions of Commission
section 23	Reporting responsibility of Commission
section 24	Limitation of liability in respect of anything done under this Act
section 25	Regulations
section 26	Offences and penalties
section 27	Delegations
section 28	Short title and commencement

INDEPENDENT MEDIA COMMISSION BILL

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

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

1. **Definitions:** - In this Act unless the context otherwise indicates -

"**Authority**" means the Independent Broadcasting Authority established by section 4 of the Independent Broadcasting Authority Act, 1993 (No. of 1993);

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

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

"**Commission**" means the Independent Media Commission established by section 2 of this Act;

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

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

"**Independent Electoral Commission**" means the body established in terms of the.....Act, 1993 (No.....of 1993);

"**licensee**" is a person who has been duly licensed to provide a broadcasting service;

"Multi-Party Forum" means the multi-party constitutional negotiating forum which conducts its work at the World Trade Centre, Kempton Park, Johannesburg;

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

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

"political party" means any organisation which has registered as a political party in terms of the.....Act, No.. of 1993;

"prescribed" means prescribed by regulation;

"private broadcasting service" means a commercial broadcasting service -

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

"public sound broadcasting service" means a sound broadcasting service:

- (a) provided by the South African Broadcasting Corporation in accordance with the Broadcasting Act, 1976; or
- (b) provided by any other statutory body; or
- (c) provided by a person that receiving revenue, either wholly or partly, from licence fees or from the State;

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

"Republic" means the Republic of Bophuthatswana, the Republic of Ciskei, the Republic of South Africa, the Republic of Transkei and the Republic of Venda; ⁽¹⁾

"respondent" means a licensee, a state-financed publication or a state information service in respect of which the Commission is investigating a complaint or which is subject to the procedure referred to in section 20 of this Act;

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

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

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

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

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

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

"this Act" includes the regulations;

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

1. This definition and all references to the TBVC states is based on the assumption that the TBVC states will be subject to the transitional arrangements in some form or another.

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

3. **Objects** - The objects of the Commission shall be:

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

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

4. **Appointment of Members of the Commission**

(1) The Commission shall consist of:

- (a) A chairperson;
- (b) A deputy chairperson; and
- (c) Not more than five other members.

(2) Each member of the Commission, including the chairperson and the vice-chairperson, shall be selected and appointed by the Multi-Party Forum/Transitional Executive Council and such appointments shall take effect from the date of publication of a notice in the Gazette.

5. **Persons Qualified to be Members of the Commission**

(1) The chairperson of the Commission shall be:

- (a) a judge or former judge of the Supreme Court of the Republic; or

- (b) A practising advocate or practising attorney who has been practising as such for a period of not less than ten years.
- (2) At least two of the members of the Commission shall have experience in the field of broadcasting media and at least one of the members of the Commission shall have experience in the field of the print media.
- (3) All members of the Commission shall be:
 - (a) Subject to the provisions of subsection (3), citizens of and permanently resident in the Republic;
 - (b) Persons who, in the opinion of the Multi-Party Forum/Transitional Executive Council, are of high standing and merit and are fit for appointment on account of the fact that by reason of such persons' experience or any other qualifications which they have, they will promote the effective exercise or performance of the objects, powers and functions of the Commission;
 - (c) Persons who are committed to openness and accountability in public life, freedom of expression, and a free and unrestricted flow of information;
 - (d) Persons, who taken together, are broadly representative of and acceptable to a broad cross-section of the population of the Republic. ⁽²⁾.

6. Persons Disqualified from being Members of Independent Media Commission

No person shall be appointed as a member of the Commission if that person:

- (a) Is a member of the present parliament or of the Multi-Party Forum/Transitional Executive Council or of a regional government body or a local government body, the latter being defined in section 1 of the Interim Measures for Local Government Act, No. 1991 (Act No. 128 of 1991) or referred to in section 15(a) of that Act;

2. This provision arises from the terms of reference but the technical committee feels, given the intended size of the Commission, that it is vague and difficult to comply with in a strict sense.

- (b) Is a person referred to in section 7 of the Public Service Act, 1984 (Act No. 111 of 1984);
- (c) Holds office in any political party, organisation or movement or has a high political profile of a partisan nature;
- (d) Holds any other office which may give rise to a conflict of interest which is likely to prejudicially affect the discharge by such person of his/her ⁽³⁾ functions as a member of the Commission;
- (e) Has a direct or indirect financial interest in the media, including the print media and broadcasting, or any telecommunications-related enterprise or matter, which is likely to prejudicially affect the discharge by such person of his/her functions as a member of the Commission, except insofar as such person declares such financial interest and agrees to divest himself/herself of such interest in a manner which satisfies the Multi-Party Forum/Transitional Executive Council;
- (f) Is an un-rehabilitated insolvent;
- (g) Is of unsound mind; or
- (h) has at any time been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), or any offence involving dishonesty, and has been sentenced therefore to imprisonment without the option of a fine.

7. Term of Office of Members of Commission

- (1) Subject to the provisions of section 8 of this Act, a member of the Commission shall hold office from the date of his/her appointment until the completion of the election.
- (2) The Commission established in section 2 of this Act shall dissolve and cease to exist upon the completion of the election.

³. One member of the Committee believes that there is no need for this formulation of gender to be included throughout the Bill and he would prefer either the male gender or the female gender to be inclusive of the other gender.

- (3) In the event of the dissolution of the Commission, the surplus assets of the Commission, if any, shall accrue to the State.

8. Vacation of Office of Members of Independent Media Commission and the Filling of such Vacancy

- (1) A member shall vacate his/her office if that member:
- (a) resigns in writing to the Multi-Party Forum/Transitional Executive Council upon the giving of not less than one month's notice;
 - (b) no longer meets the qualifications referred to in section 5 of this Act;
 - (c) becomes subject to a disqualification referred to in section 6 of this Act;
 - (d) has been absent from three consecutive meetings of the Commission without leave of the chairperson, unless the Commission condones his/her absence on good cause shown;
 - (e) is unable to perform his/her duties as a member due to continued ill-health; or
 - (f) is removed from office by virtue of a decision of the Multi-Party Forum/Transitional Executive Council on the basis that he/she is incompetent to fulfil his/her duties or is guilty of misconduct.
- (2) If a member dies or vacates his/her office in terms of sub-section (1), such member shall be replaced for the unexpired term of office of members of the Commission in accordance with the process for the appointment of members of the Commission as contained in section 4 of this Act.

9. Remuneration of Members of Commission

A member shall be paid such remuneration and such travelling expenses and subsistence allowances incurred in connection with the business of the Commission as may be determined by the State President from time to time, on the recommendation of the Multi-Party Forum/Transitional Executive Council.

10. Meetings of Commission

- (1) The Commission shall meet as often as necessary to perform its functions and at such times and places as the Commission may determine: provided that the first meeting shall be held at such time and place as the chairperson may determine.
- (2) A majority of the members of the Commission as constituted at any time shall form a quorum for a meeting of the Commission.
- (3) The chairperson, or in his/her absence the vice-chairperson, shall preside at all meetings of the Commission.
- (4) When both the chairperson and the vice-chairperson are absent from a meeting of the Commission, the members present at the meeting shall elect from among their number an acting chairperson who, while he/she so acts, shall have all the powers and perform all the duties and functions of the chairperson.
- (5) The decision of a majority of the members present at a meeting of the Commission shall constitute the Commission's decision and, in the event of an equality of votes on any matter, the chairperson shall have a casting vote in addition to his/her deliberative vote.
- (6)
 - (a) A member who is in any way directly or indirectly interested in any matter that is considered at a meeting of the Commission shall disclose the nature of his/her interest to the meeting, and where such a disclosure is made, the disclosure shall be recorded in the minutes of the meeting, and the members shall not take part in any deliberation or decision of the Commission with respect to that matter.
 - (b) Paragraph (a) shall not apply in relation to any meeting of the Commission at which all of the other members present resolve that the member's interest should be disregarded for the purposes of that provision.
- (7) The Commission shall keep a record of the proceedings of its meetings and the public shall have access to such record.
- (8) The Commission may make rules in relation to the holding of, and procedures at, meetings of the Commission and the convening of special meetings.

11. Establishment of Committees

- (1) The Commission may establish as many committees as it may deem necessary for the effective exercise and performance of its powers, functions and duties.
- (2) The Commission shall have the following two committees:
 - (a) a broadcasting committee which shall monitor all broadcasting services in the Republic and enforce compliance by the broadcasting services with the guidelines on:
 - (i) party election broadcasts and political advertisements as contained in this Act; and
 - (ii) fairness concerning broadcasts related to the election, as contained in this Act.
 - (b) a state-financed publication and state information services committee which shall monitor state publications and state information services in accordance with the provisions of this Act.
- (4)
 - (a) a committee shall be chaired by a member of the Commission who shall be designated as such by the Commission.
 - (b) a committee shall consist of one or more additional members as may be determined and appointed by the Commission and may be members of the Commission and/or such other persons who, in the opinion of the Commission, have the necessary expert knowledge and experience to promote the effective exercise and performance of the powers, functions and duties of the committee.
- (5) Whenever a position of a member of a committee becomes vacant before the expiry of his/her period of office, the Commission shall appoint a person to fill the vacancy for the unexpired portion of the period of office of the previous member of the committee.
- (6) The provisions of sections 5(5), 6, 7, 8, 9, 10, 22 and 24 of this Act shall *mutatis mutandis* apply to each committee of the Commission, provided that a reference to the Commission shall be interpreted as a reference to the committee concerned.

- (7) The Commission may at any time dissolve or re-constitute a committee.
- (8) For the purposes of the performance of its functions a committee shall have the same powers as those conferred upon the Commission in terms of this Act for the performance its functions.

12. Appointment of Experts

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

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

13. Staff of Commission

- (1) The Commission shall employ such staff as it deems necessary to assist it and the committees of the Commission in the exercise and performance of its powers, functions and duties under this Act.

- (2) The Commission may pay from the funds of the Commission to the persons in its employ, or provide them with, such remuneration, allowances and other employment benefits as the Commission considers as being appropriate.
- (3) Every person employed in the exercise and performance of the powers, functions and duties of the Commission, including any person referred to in this section, shall assist in preserving secrecy in regard to any matter or information that may come to his/her knowledge in the performance of his/her duties in connection with the said powers and functions, except insofar as the publication of such matter or information shall be necessary for the purposes of this Act.

14. Powers and Functions of Commission

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

- (1) To monitor all broadcasting services in the Republic so as to ensure fair and equitable treatment of all political parties by these broadcasting services and so as to ensure and enforce compliance by these broadcasting services with the provisions of this Act.
- (2) To monitor state-financed publications and state information services so as to ensure compliance with the provisions of this Act.
- (3) To establish committees in accordance with the provisions of section 11 of this Act.
- (4) To appoint as many experts as it may deem necessary to assist in the exercise and performance of its powers, functions and duties, in accordance with the provisions of section 12 of this Act.
- (5) To employ as many staff as it may deem necessary in accordance with section 13 of this Act.
- (6) To conduct whatever hearings it may deem necessary in accordance with the provisions of section 20 of this Act.

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

15. Party Election Broadcasts on Public Sound Broadcasting Services

- (1) Subject to the provisions of this section, a public sound broadcasting service shall permit political parties to make party election broadcasts.
- (2) The Commission shall make a ruling on the time to be made available and the conditions that are applicable to the political parties for the 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 Commission shall consult with the relevant public sound broadcasting services and political parties concerning the ruling.
- (4) In making the rulings in terms of subsection (2), the Commission may impose conditions requiring the public sound broadcasting service to observe such rules with respect to party election broadcasts as the Commission may determine, 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 expose the licensee to legal action if such material were to be broadcast.
- (6) The Commission may prescribe the standards to which party election broadcasts shall conform.

- (7) No private sound broadcasting service is required to broadcast a party election broadcast, but if any private sound broadcasting service broadcasts a party election broadcast, such broadcasting service shall comply with the provisions of this section.

16. Political Advertisements on Sound Broadcasting Services

- (1) A sound broadcasting service 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.
- (3) In making advertising time available for political parties, no sound broadcasting service shall discriminate against any political party or make or give any preference to any political party or subject such political party to any prejudice; nor shall any sound broadcasting service make any contract or other agreement which shall have the effect of permitting any political party to advertise to the exclusion of other political parties.
- (4) A political advertisement shall not contain any material which may reasonably expose the licensee to legal action if such material were to be broadcast.
- (5) The Commission shall prescribe the Code to which such political advertisements shall conform and in this regard, shall consult with the Advertising Standards Authority on compiling the Code and the appropriate mechanisms which should be applied in enforcing the Code.
- (6) This section shall be subject to the provisions of any law on political party expenditure during the election.

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

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

18. Equitable Treatment of Political Parties by all Broadcasting Services

- (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 licensee shall give the political party a reasonable opportunity to respond to the criticism.
- (3) If a 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 it is reasonably possible thereafter.
- (4) The Commission may prescribe the standards to which broadcasting services shall be required to conform.

19. State-financed publications and state information services

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

- (2) Any state-financed publication which is published for the first time after the commencement of this Act shall be required, no less than 14 days prior to such publication, to submit to the Commission information concerning such publication in the prescribed form.
- (3) The Commission may require the publisher of a publication referred to in subsection (2) to provide the Commission with a copy of such publication prior to the printing thereof.
- (4) A state-financed publication shall be submitted to the Commission free of charge within five days of the completion of the printing thereof.
- (5) No state-financed publication shall contain an advertisement in support of any political party.
- (6) No state-financed publications shall advance the interests of any political party.
- (7) Subsections (5) and (6) shall mutatis mutandis apply to state information services.

20. Hearings

- (1) Any political party which believes that a broadcasting service or a state-financed publication or a state information service has contravened the provisions of this Act and which was unable to have its grievance satisfactorily resolved, may lodge a complaint with the Commission.
- (2) A complaint made in terms of subsection (1) shall be in writing and shall be served on the respondent and lodged with the Commission.
- (3) For the purposes of subsection (2), "written" shall include a complaint delivered by hand or sent by registered post, telefax or telex.
- (4) The Commission shall afford the parties a hearing in response to a complaint made in terms of subsection (1).
- (5) The Commission shall determine the form and procedures of the hearing taking into account the urgency of the complaint.

- (6) The complainant and respondent respectively shall be entitled to legal representation when appearing before the Commission.
- (7) On completion of the hearing, the Commission shall make a determination and shall provide reasons therefor.
- (8) The Commission shall keep a written a written record of all its determinations and all such determinations shall be public documents.
- (9) The provisions of this section shall mutatis mutandis apply to hearings instituted by the Commission itself.
- (10) For the purposes of this section a state-financed publication and state information service shall be represented by the state official responsible for the state-financed publication or state information service.
- (11) The Commission may publish its determinations in any manner it deems fit.
- (12) The hearings held in terms of this section shall be held in public and the documents pertaining to such proceedings shall be open for public scrutiny.
- (13) The powers of the Commission shall, with regard to summoning and examination of witnesses, the administering of the oath or an affirmation and the production of books, documents and objects, be as prescribed.

21. Orders, Penalties and Recommendations

- (1) The Commission, when making a determination referred to in section 20, may issue an order or recommendation in any one or more of the following terms:
 - (a) requiring a public sound broadcasting service to broadcast a party election broadcast;
 - (b) requiring a sound broadcasting service to broadcast a political advertisement;

- (c) requiring a broadcasting service to broadcast a counter-version of a particular programme or of facts and/or opinions expressed within a particular programme;
- (d) imposing financial penalties on broadcasting services for non-compliance with the provisions of this Act;
- (e) recommending to the Authority the suspension or revocation of a broadcast licence should the licence holder consistently fail to comply with the provisions of this Act.
- (f) conveying the ruling to the Multi-Party Forum/Transitional Executive Council, in circumstances where the state-financed publication or a state information service is the respondent;

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

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

22. Expenditure in connection with functions of the Commission

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

23. Reporting Responsibility of Commission

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

24. Limitation of Liability in Respect of Anything Done Under this Act

The Commission or any staff member or an expert or a committee of the Commission shall not be liable in respect of anything done in good faith under any provision of this Act.

25. Regulations

The State President shall, only on the request of the Commission, make regulations as are prescribed in terms of this Act.

26. Offences and Penalties

A person who -

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

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

27. Delegation

- (1) The Commission may delegate to a committee, an expert or state member any of its powers as it may deem fit: provided that it may not delegate any of its powers as contained in sections 11, 12, 20, 21 and 25.

- (2) The Commission shall not be divested of any power delegated under subsection (1) and may alter or repeal any decision made in terms of any delegated power, unless it will prejudicially effect the rights of any person.

28. Short Title and Commencement

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

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

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

2 August 1993

EMBARGOED UNTIL DELIVERY/TABLING IN THE NEGOTIATING COUNCIL

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

1. The Technical Committee has incorporated the suggestions made during the Negotiating Council debate, on the Independent Media Commission Bill, held on 26th July 1993.
2. As noted in the Special Report on the Fifth Draft of the Independent Broadcasting Authority, there are a number of issues which cannot be finalised without related matters, beyond the terms of reference of this Technical Committee, being decided upon by other Technical Committees:
 - 2.1 Definition of "political party"
 - 2.2 Definition of "Republic"
 - 2.3 Mechanisms providing for Ministerial consultation or concurrence with the TEC
3. The Technical Committee has also requested the Negotiating Council to decide on whether party election broadcasts and political advertising should be permitted on television (see section 19 of IMC Bill and section 58 of IBA Bill)
4. The Technical Committee is continuing, with the State Law Adviser, to work on the outstanding technical issues of the Bill with the view to preparing it in a certified form.

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

INDEPENDENT MEDIA COMMISSION BILL

(WORKING DRAFT 9)

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

2 August 1993

INDEPENDENT MEDIA COMMISSION BILL

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

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

ARRANGEMENT OF ACT

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

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

INTERPRETATION

1. Definitions

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

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

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

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

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

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

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

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

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

"commissioner" means a member of the Commission;

"community broadcasting service" means a broadcasting service which -

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

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

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

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

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

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

"political party" means... ¹

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

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

"public broadcasting service" means

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

and shall include a commercially-operated broadcasting service provided by

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

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

"Republic" means the Republic of South Africa;²

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

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

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

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

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

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

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

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

by a television set;

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

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

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

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

3. **Primary objects**

The objects of the Commission shall be:

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

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

4. **Constitution and appointment of Commission**

- (1) The Commission shall consist of:

(a) A chairperson; and

(b) Not more than six other members.

(2) Each member of the Commission, including the chairperson and the vice-chairperson, shall be selected and appointed by the appointing body and such appointments shall take effect from the date of publication of a notice in the Gazette.

5. Persons Qualified to be Members of the Commission

(1) The chairperson of the Commission shall be:

(a) a judge or retired judge of the Supreme Court of South Africa, or

(b) A practising advocate or practising attorney of at least ten years' standing.

(2) At least two of the members of the Commission shall have experience in the field of the broadcasting media and at least one in the field of the print media.

(3) The members of the Commission shall be -

(a) Subject to the provisions of subsections (1) and (2), citizens of and permanently resident in the Republic;

(b) Persons who, in the opinion of the Multi-Party Forum/Transitional Executive Council, are of high standing and merit and are fit for appointment on account of the fact that by reason of such persons' experience or any other qualifications which they have, they will promote the effective exercise or performance of the objects, powers and functions of the Commission;