

- and such ineligibility shall, in respect of such public office, continue for a period of 18 months reckoned from the date upon which such term of office as a member has terminated, save in respect of the resumption of any previously held public office at the same level:
- (b) whether directly or indirectly, in any manner give support to, or oppose, any of the parties or candidates participating in the elections, or any of the issues in contention between such parties or candidates; 5
 - (c) by his or her membership, association, statement, conduct or in any other manner, place in jeopardy his or her perceived independence, or in any other manner harm the credibility, impartiality, independence or integrity of the Commission; 10
 - (d) make private use of or profit from any confidential information gained as a result of his or her appointment and functions as such member;
 - (e) divulge any such information to any third party save in the course and scope of his or her official functions and with the prior approval of the Commission; 15
 - (f) accept any remuneration, emolument or benefit, of whatever nature, arising from any other employment or occupation or the holding of any other office, unless specifically authorized thereto by the State President, acting upon the advice of the Transitional Council; 20
 - (g) during his or her term of office be eligible to serve as a member of the Transitional Council, Parliament or any other legislature, and such ineligibility shall continue for a period of 18 months reckoned from the date upon which such term of office has terminated; and
 - (h) after having served as such member, be eligible to serve as a member of the Parliament or any other legislature for which that Commission was responsible to conduct elections, during the term of such Parliament or legislature. 25

Disclosure of conflicting interests

7. (1) Subject to subsection (2), a member or international member shall not at any meeting of the Commission— 30
- (a) be present;
 - (b) exercise a vote;
 - (c) in any other manner participate in the proceedings thereof, during the discussion of any matter before such meeting in respect of which he or she has any financial or other interest which might preclude him or her from performing his or her functions in a fair, unbiased and proper manner. 35
- (2) If at any stage during the course of any proceedings before the Commission it appears that any member or international member has or may have an interest which may cause such a conflict of interests to arise on his or her part— 40
- (a) such member shall forthwith and fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining members to discuss the matter and determine whether such member is precluded from participating in such meeting by reason of a conflict of interests; and 45
 - (b) such disclosure and the decision taken by the remaining members regarding such determination, shall be recorded in the minutes of the relevant meeting.
- (3) If any member or international member fails to disclose any interest as required by subsection (2) or, subject to that subsection, is present at a meeting of the Commission or in any manner whatsoever participates in the proceedings of the Commission in relation to such matter, such proceedings may be reviewed, varied or set aside by the Commission. 50

Independence of Commission

8. (1) The Commission shall function without political or other bias or 55

interference and shall, save as may in this Act be expressly otherwise provided, be independent and separate from the Transitional Council, any party, any government and its administration or any other functionary or body, whether directly or indirectly representing the interests of any such entity.

(2) Any power of any of the entities referred to in subsection (1), in so far as it relates to the administration, organization, conduct and supervision of any election, shall be subject to the powers of the Commission, to which such entities shall be accountable for such of their acts and decisions as may influence or affect any election.

Dissolution of Commission

9. The Commission shall be dissolved upon the completion of its mandate on a date fixed by the State President by proclamation in the *Gazette*.

Conditions of service, remuneration and allowances of members of Commission and International Advisory Committee

10. The conditions of service, remuneration, allowances and other benefits of members of the Commission and the International Advisory Committee shall be determined by the Transitional Council after consultation with the State President.

Vacation of office, removal from office and filling of vacancies in Commission

11. (1) A member of the Commission may be removed from office by order of the Special Electoral Court on an application lodged by or on behalf of—

- (a) the State President;
- (b) the Transitional Council;
- (c) Parliament; or
- (d) any registered party eligible to participate in the election, or at least 1 000 voters: Provided that no such application by such party or such voters shall be heard save with the prior leave of the Chairperson of the Special Electoral Court, who shall first satisfy himself or herself as to the existence of probable cause, and who may impose such conditions upon the grant of leave, including the imposition of time limits for the institution of any such proceedings, as he or she may consider appropriate.

if the Special Electoral Court is satisfied as to the existence of good and sufficient reason therefor as contemplated in subsection (2).

(2) In considering any such application the Special Electoral Court shall determine that good and sufficient reason exists for the removal from office of a member of the Commission, in case of—

- (a) serious misconduct;
- (b) unfitness or incapacity, including continued ill health;
- (c) a material contravention of or failure to comply with the provisions of section 6(1)(a) or (b) or (2)(a), (b), (c), (d), (e) or (f) or 7(1) or (2); or
- (d) any other reason which the Special Electoral Court may consider material and inconsistent with such member's continuance in office.

(3) If a member of the Commission tenders his or her resignation in writing to the State President, is removed from office in terms of this section, or dies, the State President shall, upon the advice of the Transitional Council, either—

- (a) allow such appointment to lapse, provided there remains at least the minimum number of members provided for in section 5(1); or
- (b) appoint some other suitably qualified person as a member for the unexpired portion of the term of the Commission.

Meetings of Commission

12. (1) The Commission may meet at any place in the Republic determined by the Chairperson, Vice-Chairperson or Co-Chairpersons, as the case may be, for the purpose of performing its functions.

(2) Meetings may be convened at any time at the instance of the Chairperson, Vice-Chairperson or Co-Chairpersons, as the case may be, or at the instance of any two other members, and shall be convened at such intervals as circumstances may require.

(3) A quorum for a meeting of the Commission shall be 75% of the members. 5

(4) (a) Subject to paragraph (b) and section 5(3)(b), the decision of two-thirds of the members present at a meeting of the Commission shall be the decision of the Commission.

(b) The Commission shall in terms of section 18(b) certify that an election was substantially free and fair, only if at least 75% of the members present at the meeting of the Commission concur. 10

(5) The Commission may determine its own procedures to be followed at its meetings.

Powers, duties and functions of Commission

13. (1) The Commission may exercise the powers and shall perform the duties and functions conferred upon or assigned to it by this Act or any other law. 15

(2) The Commission shall—

(a) assume responsibility for the administration, organization and conduct, whether directly or indirectly, and the supervision of the administration, organization and conduct of any election; 20

(b) take such measures as it may consider necessary for the prevention of intimidation of voters, candidates and parties;

(c) be responsible for the education of voters concerning—

(i) democratic principles and values; 25

(ii) the electoral process and mechanisms;

(iii) the right to free political canvassing and campaigning;

(iv) secrecy of voting; and

(v) any other relevant matter,

by means of—

(aa) literature and the use of other media, including distribution and publication of suitable literature, advertisements and dissemination through radio, television and the public printed media, having due regard to the variety of languages spoken and varying levels of education throughout the Republic; and 35

(bb) workshops, seminars and meetings, as it may consider appropriate; and

(d) submit monthly reports in writing concerning its functions, which reports shall be delivered at the same time to the Transitional Council and the State President, and such reports shall be public documents. 40

(3) The Commission shall have power—

(a) to hear and determine appeals against decisions or actions of the Chief Directors: Administration and Monitoring in respect of prescribed matters, which decisions or actions may be confirmed, varied or set aside; 45

(b) to give instructions to the Chief Directors: Administration and Monitoring in respect of matters concerning their functions, which power may be exercised either upon request from the said Chief Directors or at its own initiative; and

(c) to establish such committees as it may consider necessary for the effective exercise and performance of its powers, duties and functions, and determine the composition, quorum for a meeting and a decision, procedure and functions thereof. 50

International Advisory Committee

14. (1) The State President shall, upon the advice of the Transitional Council, establish a committee to be known as the International Advisory Committee to advise the Commission on any matter regarding the performance of its functions as may be requested by it. 55

(2) The International Advisory Committee may consist of persons (not being citizens of the Republic) from the international community appointed in a non-representative capacity by the State President upon the advice of the Transitional Council.

(3) The International Advisory Committee may determine its own procedures to be followed at its meetings. 5

Administration and staff of Commission

15. The Commission shall, in addition to the other powers conferred upon it by this Act or any other law, for the purpose of achieving its objects, have the power to—

- (a) appoint staff to assist it or a Chief Director of a directorate or the Secretary in the performance of its or his or her functions, and after consultation with the Minister of State Expenditure determine their conditions of service, remuneration, allowances and other benefits, including those of—
 - (i) members of committees who are not members of the Commission; 15
 - (ii) the Chief Directors: Administration and Monitoring and the Secretary; and
 - (iii) other officials;
- (b) request the secondment to it of skilled personnel from any public service, subject to any law applicable to such personnel in that regard, to assist the Commission, the Chief Directors of the directorates or the Secretary in the performance of its, his or her functions; 20
- (c) open and maintain its own financial accounts; and
- (d) take such steps, including legal steps, as are necessary to give effect to this Act or any decision taken under this Act. 25

Expenditure of Commission and budget

16. (1) The expenditure in connection with the exercise of the Commission's powers and the performance of its duties and functions shall be paid out of money appropriated by Parliament for such purpose. 30

(2) The Commission shall budget for and be allocated the necessary resources or additional resources to enable it to exercise its powers and perform its duties and functions effectively.

Accountability and finance

17. (1) The Commission shall at its first meeting or as soon thereafter as possible appoint a person to the office of Chief Executive Officer, who— 35

- (a) shall be responsible for the management of and administrative control over the staff appointed or seconded in terms of section 15(a) or (b), respectively, in respect of the Commission;
 - (b) shall, subject to the Exchequer Act, 1975 (Act No. 66 of 1975)— 40
 - (i) be charged with the responsibility of accounting for State money received or paid out for or on account of the Commission, the directorates and the Secretariat; and
 - (ii) cause the necessary accounting and other related records to be kept;
 - (c) may exercise the powers and shall perform the duties and functions which the Commission may from time to time confer upon or assign to him or her in order to achieve the objects of this Act, and shall for the purposes thereof be accountable to the Commission. 45
- (2) The records referred to in subsection (1)(b) shall be audited by the Auditor-General. 50
- (3) The Chief Executive Officer, and the persons referred to in section 15(a) or (b), shall exercise their powers and perform their duties and functions in an impartial manner and shall, in so doing, be subject to such provisions of the laws governing the public service of the Republic as may be indicated by the Commission and to the extent so indicated by the Commission as well as the Exchequer Act, 1975, and the Auditor-General Act, 1989 (Act No. 52 of 1989). 55

Determination and certification of election results, or declaration

18. Upon completion of the ballot, the Commission shall as expeditiously as possible, but not sooner than 2 days and not later than 10 days after the close of the poll—

- (a) determine and certify the results of the election; and
- (b) either certify in respect of the National Assembly and each other legislature that the election was substantially free and fair; or
- (c) declare that it was unable to certify it as such.

CHAPTER III***Election Administration Directorate*****Establishment of Election Administration Directorate**

19. There shall be established on the date on which the Commission is constituted, a directorate to be known as the Election Administration Directorate.

Constitution of Election Administration Directorate

20. (1) The Administration Directorate shall consist of a Chief Director: Administration, one or more deputy directors and such other officials as the Commission may consider necessary and appoint to enable that Directorate effectively to perform its functions in terms of this Act and the Electoral Act.

(2) In effecting the appointment of the Chief Director: Administration and any deputy director, the Commission shall invite and, where given, consider, but shall not be bound by, the advice of the Transitional Council.

Powers, duties and functions of Chief Director: Administration

21. (1) The Chief Director: Administration shall have the powers, duties and functions conferred upon or assigned to him or her by or under this Act and the Electoral Act.

(2) Any decision or action taken by any functionary of any sub-structure of the Administration Directorate in any geographic district or region in respect of any prescribed matter may be appealed against to the Chief Director: Administration, who may confirm, vary or set aside any such decision or action.

(3) The Chief Director: Administration shall—

- (a) operate independently of the Chief Director: Monitoring and the Secretary;
- (b) be under the supervision of the Commission; and
- (c) carry out the instructions of the Commission, to which he or she shall be accountable.

(4) The Chief Director: Administration may delegate the power to hear and determine appeals in terms of subsection (2) to any deputy director appointed in terms of section 20(1), and may delegate any other power conferred upon him or her by or under this Act and the Electoral Act to any official of his or her directorate as he or she may consider necessary.

CHAPTER IV***Election Monitoring Directorate*****Establishment of Election Monitoring Directorate**

22. There shall be established on the date on which the Commission is constituted, a directorate to be known as the Election Monitoring Directorate.

Constitution of Election Monitoring Directorate

23. (1) The Monitoring Directorate shall consist of a Chief Director: Monitoring and such other officials as the Commission may consider necessary and appoint to enable that Directorate effectively to perform its functions in terms of this Act. 5

(2) In effecting the appointment of the Chief Director: Monitoring, the Commission shall invite and, where given, consider, but shall not be bound by, the advice of the Transitional Council.

Powers, duties and functions of Chief Director: Monitoring

24. (1) The Chief Director: Monitoring shall— 10

- (a) appoint monitors and co-ordinate their functions to observe and report to him or her upon the electoral process, including political meetings, canvassing, advertising and other campaigns;
- (b) register observers and regulate their activities, and publish guidelines and, if he or she considers it necessary, a Code of Conduct binding upon all such observers; 15
- (c) facilitate the role of international observers and provide them with information and assistance as may be required to enable them to perform their duties;
- (d) investigate alleged infringements of the Electoral Code of Conduct, other alleged electoral offences and any other matters justiciable in terms of this Act and the Electoral Act and report to the Commission thereon; 20
- (e) issue and execute prescribed search warrants and subpoenas and seize items required in connection with the investigation of alleged infringements of the Electoral Code of Conduct, other alleged electoral offences and any other matters justiciable in terms of this Act and the Electoral Act, with the assistance of the National Peacekeeping Force as defined in section 1 of the Transitional Executive Council Act, 1993, the police or defence forces, as may be requested by the Commission; 25
- (f) initiate or co-ordinate meetings between the various registered parties participating in the election with a view to mediating and, if possible, resolving issues and disputes arising in the course of the election, by negotiation and mutual agreement; 30
- (g) issue prescribed warnings concerning alleged or threatened infringements of the Electoral Code of Conduct; 35
- (h) report to the Commission upon the electoral process as required by it;
- (i) operate independently of the Chief Director: Administration and the Secretary;
- (j) be under the supervision of the Commission; 40
- (k) carry out the instructions of the Commission, to which he or she shall be accountable; and
- (l) have such other powers, duties and functions as may be prescribed.

(2) Any decision or action taken by any functionary of any sub-structure of the Monitoring Directorate in any geographic district or region in respect of any prescribed matter may be appealed against to the Chief Director: Monitoring, who may confirm, vary or set aside any such decision or action. 45

(3) The Chief Director: Monitoring may delegate any power conferred upon him or her by or under this Act to any official of his or her directorate as he or she may consider necessary. 50

CHAPTER V

Election Adjudication Secretariat

Establishment of Election Adjudication Secretariat

25. There shall be established on the date on which the Commission is constituted a secretariat to be known as the Election Adjudication Secretariat. 55

Constitution of Election Adjudication Secretariat

26. (1) The Secretariat shall consist of a Secretary and such other officials as the Commission may consider necessary and appoint to enable the Secretariat effectively to perform its functions in terms of this Act.

(2) In effecting the appointment of the Secretary, the Commission shall invite and, where given, consider, but shall not be bound by, the advice of the Transitional Council.

Powers, duties and functions of Secretary

27. (1) The Secretary shall—

- (a) co-ordinate the functions of the Electoral Tribunals, the Electoral Appeal Tribunals and the Special Electoral Court;
- (b) perform the administrative work connected with the performance of the functions of those Tribunals and that Court;
- (c) operate independently of the Chief Directors: Administration and Monitoring;
- (d) be under the supervision of the Commission; and
- (e) carry out the instructions of the Commission, to which he or she shall be accountable.

(2) The Secretary shall have such other powers, duties and functions as may be prescribed.

CHAPTER VI***Electoral Tribunals*****Establishment and constitution of Electoral Tribunals**

28. (1) The Commission shall, subject to subsection (2), establish such number of Electoral Tribunals with jurisdiction in respect of prescribed geographic areas as it may consider necessary to adjudicate and decide prescribed matters concerning alleged electoral irregularities and alleged infringements of the Electoral Code of Conduct.

(2) An Electoral Tribunal shall consist of one person, who shall be an attorney, advocate, magistrate or academic lawyer at a university with not less than five years' experience in one or more such capacities, appointed to that office by the Commission.

Powers, duties and functions of Electoral Tribunals

29. (1) An Electoral Tribunal hearing any matter falling within its jurisdiction, shall enquire into the matter in the prescribed manner, consider it and make such decision or give such order as in its opinion is fair and just.

(2) An Electoral Tribunal finding any person or party guilty of contravening or failing to comply with any prescribed matter or any provision of the Electoral Code of Conduct, may impose any such penalty or sanction as may be prescribed in terms of this Act and the Electoral Act as it may consider appropriate in the circumstances.

(3) An Electoral Tribunal shall have such other powers, duties and functions as may be prescribed.

CHAPTER VII***Electoral Appeal Tribunals*****Establishment and constitution of Electoral Appeal Tribunals**

30. (1) The Commission shall, subject to subsection (2), establish such number of Electoral Appeal Tribunals as it may consider necessary to hear and determine appeals and to review decisions from the Electoral Tribunals.

(2) An Electoral Appeal Tribunal shall consist of three persons appointed by the Commission, of whom—

- (a) the Chairperson shall be a judge of the Supreme Court;
- (b) one shall be an attorney, advocate or magistrate or academic lawyer at a university with not less than five years' experience in one or more such capacities;
- (c) one shall be a suitable person, who may or may not be legally qualified or experienced.

Powers, duties and functions of Electoral Appeal Tribunals

31. (1) An Electoral Appeal Tribunal hearing any appeal or reviewing any decision shall enquire into the matter in the prescribed manner, consider it and confirm, vary or set aside the decision, order, penalty or sanction of the Electoral Tribunal, or make such other decision or give such other order or impose such other penalty or sanction as in its opinion the Electoral Tribunal ought to have made, given or imposed.

(2) An Electoral Appeal Tribunal shall have such other powers, duties and functions as may be prescribed.

CHAPTER VIII

Special Electoral Court

Establishment and constitution of Special Electoral Court

32. (1) There is hereby established a court to be known as the Special Electoral Court with the powers, duties and functions referred to in section 33.

(2) The Special Electoral Court shall consist of—

- (a) a Chairperson, who shall be a judge of the Appellate Division of the Supreme Court, and two judges of the Supreme Court designated by the Chief Justice; and
- (b) two other members, of whom—
 - (i) one shall be an attorney, advocate, magistrate or academic lawyer at a university with not less than five years' experience in one or more such capacities; and
 - (ii) one shall be a suitable person, who may or may not be legally qualified or experienced.

appointed by the Transitional Council.

Powers, duties and functions of Special Electoral Court

33. (1) (a) Subject to section 36(6)(a), the Special Electoral Court shall have power to review any decision of the Commission.

(b) Any such review shall be conducted on an urgent basis, and shall be disposed of as expeditiously as possible.

(2) (a) Subject to section 36(6)(a), the Special Electoral Court shall have the power to hear and determine an appeal against any decision of the Commission only in so far as such decision relates to the interpretation of any law or any other matter for which an appeal is provided in the Electoral Act.

(b) No such appeal shall be heard save with the prior leave of the Chairperson of the Special Electoral Court granted on application within the period and in the manner determined by that Court.

(c) Such an appeal shall be heard, considered and summarily determined upon written submissions submitted within three days after leave to appeal was granted in terms of paragraph (b).

(3) The Special Electoral Court shall have power to remove any member of the Commission from office under section 11.

(4) Subject to section 36(7), the Special Electoral Court shall have power to hear appeals against and review decisions of any Appeal Tribunal.

(5) The Special Electoral Court shall determine its own practice and procedures and make its own rules.

(6) The Special Electoral Court shall have such other powers, duties and functions as may be conferred upon or assigned to it by the Electoral Act, the Transitional Executive Council Act, 1993, or any other law.

CHAPTER IX

General Provisions

Application of Act in event of conflict with other laws

34. In the event of a conflict between the provisions of this Act and those of any other law, the provisions of this Act shall prevail in so far as such provisions relate to the conduct and supervision of elections.

Dissolution of directorates, Secretariat and tribunals

35. (1) The directorates and the Secretariat shall be dissolved on the date upon which the Commission is dissolved.

(2) The Electoral Tribunals and the Electoral Appeal Tribunals shall be dissolved on final determination of the issues placed before them.

Appeal and review

36. (1) Any interested person, party or candidate who or which feels aggrieved by any decision or action taken by any functionary of a directorate in respect of any prescribed matter may, within the period and in the manner prescribed, appeal to the Chief Director of the relevant directorate against the decision or action in issue.

(2) Any interested person, party or candidate who or which feels aggrieved by any decision or action taken by the Chief Director: Administration or Monitoring in respect of any prescribed matter other than a decision or action on appeal referred to in subsection (1) may, within the period and in the manner prescribed, appeal to the Commission against the decision or action in issue.

(3) (a) Subject to section 33(2), there shall be no appeal against any decision of the Commission.

(b) Subject to section 33(1), any interested person, party or candidate may bring any decision of the Commission under review before the Special Electoral Court within the period and in the manner determined by that Court.

(4) Any interested person, party or candidate who or which feels aggrieved by any decision, order, penalty or sanction made, given or imposed by any Electoral Tribunal may, within the period and in the manner prescribed, appeal to the relevant Appeal Tribunal against the decision, order, penalty or sanction in issue.

(5) Any interested person, party or candidate may bring any decision of any Electoral Tribunal under review before the relevant Appeal Tribunal within the period and in the manner prescribed.

(6) Any—

(a) decision of the Commission in terms of section 18; and

(b) decision or order of the Special Electoral Court,

shall be final and not subject to appeal or review.

(7) No appeal against or review of a decision of an Appeal Tribunal shall be heard save with the prior leave of the Chairperson of the Special Electoral Court granted on application within the period and in the manner determined by that Court.

Remuneration and allowances of members of tribunals and Special Electoral Court

37. (1) Subject to subsection (3), the Transitional Council may, after consultation with the Minister of State Expenditure, determine the remuneration and allowances payable to members of the Special Electoral Court.

(2) Subject to subsection (3), the Commission may, after consultation with the Minister of State Expenditure, determine the remuneration and allowances payable to members of the Electoral and Appeal Tribunals.

(3) Different or no remuneration or allowances may be determined under subsections (1) and (2) in respect of different members of those Tribunals and that Court. 5

Secrecy

38. (1) Every member of the Commission and every person employed in the performance of the functions of the Commission, the directorates and the Secretariat shall aid in preserving secrecy in regard to any matter or information that may come to his or her knowledge in the performance of his or her duties in connection with the said functions, except in so far as the publication of such matter or information is authorized by law. 10

(2) Any person who, in the exercise of powers or the performance of duties in terms of this Act, has obtained knowledge regarding the affairs of any registered party, candidate or voter, shall, subject to section 6(2)(e), not disclose such knowledge to any person other than is required in the course and scope of his or her duties or in response to a question lawfully put under order of any court of law or tribunal contemplated in this Act or the Special Electoral Court. 15

Offences and penalties

39. Any person who—

- (a) wilfully hinders or obstructs the Commission, a Chief Director of a directorate or the Secretary or a member of its, his or her staff in the exercise of its or his or her powers or in the performance of its or his or her duties or functions; 25
- (b) wilfully interrupts the proceedings at a meeting of the Commission or a sitting of an Electoral or Appeal Tribunal or the Special Electoral Court or misbehaves in any other manner in the place where such meeting or sitting is held;
- (c) in connection with any meeting of the Commission or sitting of such Tribunal or Court does anything which, if such meeting or sitting were proceedings in a court of law, would have constituted contempt of court; 30
- (d) does anything calculated improperly to influence the Commission or any such Tribunal or Court in respect of any matter being or to be considered by the Commission or such Tribunal or Court in connection with any decision or order; 35

who wilfully contravenes or fails to comply with any provision of section 38, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

Legal proceedings against Commission

40. (1) The State Liability Act, 1957 (Act No. 20 of 1957), shall apply *mutatis mutandis* in respect of the Commission. 40

(2) In such application a reference to a Minister of a department shall be construed as a reference to the Chairperson or Co-Chairperson of the Commission, as the case may be. 45

Regulations

41. (1) The Commission may make regulations regarding—

- (a) governing the permissible nature and content of political advertising, which shall be determined and enforced by the Commission in conjunction with the Independent Media Commission established by 50

- section 2 of the Independent Media Commission Act, 1993, and the Independent Broadcasting Authority established by section 3 of the Independent Broadcasting Authority Act, 1993:
- (b) the issue, contents, form, and the practice and procedure in connection with the execution, of search warrants, subpoenas and the seizure of items required in connection with the investigation of alleged infringements of the Electoral Code of Conduct, alleged electoral offences and matters justiciable in terms of this Act: 5
 - (c) the manner in which proceedings, and the nature of proceedings which, may be instituted in the Electoral and Appeal Tribunals: 10
 - (d) the time limits within and manner in which appeals may be noted or decisions may be brought under review in terms of this Act:
 - (e) electoral irregularities and other matters in respect of which contraventions or failures to comply shall constitute cause for proceedings to be instituted in the Electoral Tribunals: 15
 - (f) the issue, contents, form and use of process, and the practice and procedure in connection with the service and execution thereof:
 - (g) the manner of recording or noting evidence or proceedings and the disposal thereof:
 - (h) the appointment and functions of sworn interpreters: 20
 - (i) orders, penalties and sanctions which may be given or imposed by an Electoral or Appeal Tribunal, and the execution thereof:
 - (j) the manner in which a person, party or candidate may be summoned to appear in an Electoral Tribunal to face charges of contravening or failing to comply with a regulation contemplated in paragraph (e) or an infringement of the Electoral Code of Conduct, and the manner in which one or more persons may be selected to represent such party in such Tribunal: 25
 - (k) the procedures for investigating alleged infringements of the Electoral Code of Conduct, electoral offences or matters justiciable in terms of this Act in order to bring such investigations to an expeditious conclusion: 30
 - (l) the practice and procedure to be followed by the Chief Director: Administration and the Chief Director: Monitoring in hearing appeals against decisions or actions of functionaries of their directorates, due regard being had to the principles of natural justice: 35
 - (m) the practice and procedure to be followed by the Secretary in the performance of his or her functions:
 - (n) fees and costs and the recovery thereof in respect of legal proceedings in terms of this Act: 40
 - (o) representation or absence thereof in respect of legal proceedings in terms of this Act:
 - (p) the practice and procedure to be followed by the Electoral and Appeal Tribunals in the conduct of their proceedings in order to bring such proceedings to an expeditious conclusion, due regard being had to fairness and justice: 45
 - (q) the regulation of the conduct of all persons, parties and candidates in so far as such conduct may promote or inhibit the conduct of free and fair elections:
 - (r) any matter required or permitted to be prescribed in terms of this Act: 50
and
 - (s) generally, all matters which in its opinion are necessary or expedient to be prescribed to achieve the objects of this Act.
- (2) A regulation under subsection (1) may prescribe penalties for any contravention of the provisions thereof or any failure to comply therewith of a fine 55 or imprisonment for a period not exceeding two years.

(3) Regulations under subsection (1) affecting State expenditure shall be made only after consultation with the Minister of State Expenditure.

Short title and commencement

42. This Act shall be called the Independent Electoral Commission Act, 1993, and shall come into operation on a date fixed by the State President, on the advice of the Transitional Council, by proclamation in the *Gazette*. 5

BREAKDOWN OF THE INDEPENDENT
ELECTORAL COMMISSION BILL AS ADOPTED
BY THE
NEGOTIATING COUNCIL

THE INDEPENDENT ELECTORAL COMMISSION BILL

The Negotiating Council adopted the Independent Electoral Commission Bill by *general consensus* on Tuesday 31 August, 1993.

- * The AVU reserved its position with regard to all references in the Draft Bill to the Electoral Act as well as the Constitution and the powers, duties and functions this Commission will incur due to that legislation.
- * It was noted that the Explanatory Memorandum as adopted by the Negotiating Council on 30 April 1993 clearly differentiated between agreement on the one hand and implementation on the other.

CLAUSE	DESCRIPTION	STATUS
Clause 1	Definitions	Agreed general consensus
Clause 2	Application of the Act	Agreed general consensus
Clause 3	Act binding on State and State President	Agreed general consensus
Clause 4	Establishment and objects of Commission	Agreed general consensus
Clause 5	Constitution of Commission	Agreed general consensus
Clause 6	Conduct required of members	Agreed general consensus
Clause 7	Disclosure of conflicting interests	Agreed general consensus
Clause 8	Independence of Commission	Agreed general consensus

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Clause 9	Dissolution of Commission	Agreed general consensus
Clause 10	The conditions of service	Agreed general consensus
Clause 11	Vacation of office, removal from office and filling of vacancies in Commission	Agreed general consensus
Clause 12	Meetings of Commission	Agreed general consensus
Clause 13	Powers, duties and functions of Commission	Agreed general consensus
Clause 14	International Advisory Committee	Agreed general consensus
Clause 15	Administration and Staff of Commission	Agreed general consensus
Clause 16	Expenditure of Commission and budget	Agreed general consensus
Clause 17	Accountability and finance	Agreed general consensus
Clause 18	Determination and certification of election results, and declaration	Agreed general consensus The AVU reserved its position
Clause 19	Establishment of Election Administration Directorate	Agreed general consensus
Clause 20	Constitution of Election Administration Directorate	Agreed general consensus

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Clause 21	Powers, duties and functions of Chief Director: Administration	Agreed general consensus
Clause 22	Establishment of Election Monitoring Directorate	Agreed general consensus
Clause 23	Constitution of Election Monitoring Directorate	Agreed general consensus
Clause 24	Powers, duties and functions of Chief Director: Monitoring	Agreed general consensus
Clause 25	Establishment of Election Adjudication Secretariat	Agreed general consensus
Clause 26	Constitution of Election Adjudication Secretariat	Agreed general consensus
Clause 27	Powers, duties and functions of Secretary	Agreed general consensus
Clause 28	Establishment and constitution of Electoral Tribunals	Agreed general consensus
Clause 29	Powers, duties and functions of Electoral Tribunals	Agreed general consensus
Clause 30	Establishment and constitution of Electoral Appeal Tribunals	Agreed general consensus
Clause 31	Powers, duties and functions of Electoral Appeal Tribunals	Agreed general consensus
Clause 32	Establishment and constitution of Special Electoral Court	Agreed general consensus

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Clause 33	Powers, duties and functions of Special Electoral Court	Agreed general consensus
Clause 34	Application of Act in event of conflict with other laws	Agreed general consensus
Clause 35	Dissolution of directorates, Secretariat and tribunals	Agreed general consensus
Clause 36	Appeal and review	Agreed general consensus
Clause 37	Remuneration and allowances of members of Tribunals and Special Electoral Court	Agreed general consensus
Clause 38	Secrecy	Agreed general consensus
Clause 39	Offences and penalties	Agreed general consensus
Clause 40	Legal proceedings	Agreed general consensus
Clause 41	Relations	Agreed general consensus
Clause 42	Short title	Agreed general consensus

The Independent Electoral Commission Bill was adopted by Parliament in September 1993.

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17 NOVEMBER 1993



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

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KAAPSTAD, 27 OKTOBER 1993

STATE PRESIDENT'S OFFICE

No. 1874.

27 October 1993

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 148 of 1993: Independent Media Commission Act, 1993.

KANTOOR VAN DIE STAATSPRESIDENT

No. 1874.

27 Oktober 1993

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geneg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 148 van 1993: Wet op die Onafhanklike Mediakommissie, 1993.

BILL

To establish a body to be known as the Independent Media Commission for the purpose of ensuring, during the period of the first national election for the National Assembly and other legislatures under the Constitution to be held after the commencement of this Act, the equitable treatment of political parties by broadcasting licensees and that State-financed publications and State information services do not advance the interests of any political party; to define the composition, powers, functions and duties of the said Commission; and to provide for incidental matters.

(Afrikaans text signed by the State President.)
(Assented to 18 October 1993.)

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

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 36. Short title and commencement

Definitions

1. In this Act, unless inconsistent with the context—

- (i) "Authority" means the Independent Broadcasting Authority established by section 3 of the Independent Broadcasting Authority Act, 1993; (xiii) 10
- (ii) "broadcasting" means a form of unidirectional telecommunication intended for the public or sections of the public or subscribers to any broadcasting service having appropriate receiving facilities, whether carried out by means of radio or any other means of telecommunication or any combination of the aforementioned, and "broadcast" shall be construed accordingly; (xxvi) 15
- (iii) "broadcasting licence" means a licence granted and issued by the Authority in terms of the Independent Broadcasting Authority Act, 1993, or deemed by that Act to have been so granted and issued to a person for the purpose of providing a defined category of broadcasting service; (xxviii) 20
- (iv) "broadcasting licensee" means the holder of a broadcasting licence; (xxix)
- (v) "broadcasting service" means a single defined service which consists in the broadcasting of television or sound material to the public or sections of the public or to the subscribers to such service, and includes the broadcasting of text; (xxvii) 25
- (vi) "chairperson" means the chairperson of the Commission referred to in section 4(1)(a) and includes any commissioner acting in the stead of the former in accordance with the provisions of section 11(2); (xxxiv) 30
- (vii) "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 or imposed upon the Commission by or in terms of this Act, includes any committee of the Commission acting under a delegation or authorization in terms of section 28; (x) 35
- (viii) "commissioner" means any member of the Commission referred to in section 4(1); (ix) 40
- (ix) "committee" means a committee established and appointed in terms of section 15; (viii)
- (x) "community" includes a geographically founded community or any group of persons or sector of the public having a specific, ascertainable common interest; (i) 45
- (xi) "community broadcasting service" means a broadcasting service which—
 (a) is fully controlled by a non-profit entity and carried on for non-profitable purposes;
 (b) serves a particular community; 50
 (c) encourages members of the community served by it or persons associated with or promoting the interests of such community to participate in the selection and provision of programmes to be broadcast in the course of such broadcasting service; and
 (d) may be funded by donations, grants, sponsorships or advertising or membership fees, or by any combination of the aforementioned; (ii) 55
- (xii) "complainant" means an aggrieved political party contemplated in section 23(2); (v)
- (xiii) "Constitution Act" means the Constitution of the Republic of South Africa Act, 1993; (iii) 60

- (xiv) "election" means the first election which, after the commencement of this Act, is conducted in terms of the Electoral Act, 1993, for the National Assembly or any other legislature contemplated in the Constitution Act; (xxxi)
- (xv) "election period" means the period commencing on the day immediately following upon the closing day determined under the Electoral Act, 1993, for the submission of lists of the nature referred to in the definition of "political party" in this section, and ending on the day immediately following upon the dissolution of the Independent Electoral Commission in terms of section 9 of the Independent Electoral Commission Act, 1993; (xxxii)
- (xvi) "Independent Electoral Commission" means the Independent Electoral Commission established by section 2 of the Independent Electoral Commission Act, 1993; (xi)
- (xvii) "party election broadcast" means a direct address or message broadcast free of charge on a broadcasting service and intended or calculated to advance the interests of any particular political party; (xiv)
- (xviii) "political advertisement" means an advertisement broadcast on a broadcasting service which is intended or calculated to advance the interests of any particular political party, for which advertisement the relevant broadcasting licensee has received or is to receive, directly or indirectly, money or any other consideration; (xv)
- (xix) "political party", except in the case of section 2(2), means any registered party as defined in section 1 of the Electoral Act, 1993, or any alliance of such registered parties (as the case may be), which, for the purpose of any particular election, has, before the commencement of the relevant election period, submitted its list of candidates for the National Assembly or other legislature contemplated in the Constitution Act; (xvi)
- (xx) "prescribed" means prescribed by regulation in terms of section 30; (xxxiii)
- (xxi) "private broadcasting service" means a broadcasting service operated for profit and controlled by a person who is not a public broadcasting licensee; (xvii)
- (xxii) "public broadcasting service" means—
 - (a) any broadcasting service provided by the South African Broadcasting Corporation in accordance with the provisions of the Broadcasting Act, 1976 (Act No. 73 of 1976);
 - (b) a broadcasting service provided by any other statutory body; or
 - (c) a broadcasting service provided by a person who receives his or her revenue either wholly or partly from licence fees levied in respect of the licensing of persons in relation to sound radio sets and in relation to television sets, or from the State, and shall include a commercially operated broadcasting service provided by a person referred to in paragraph (a), (b) or (c) of this definition; (xii)
- (xxiii) "radio" means an electromagnetic wave propagated in space without artificial guide and having by convention a frequency lower than 3000 GHz; (xviii)
- (xxiv) "respondent" means any broadcasting licensee, publisher or State information service contemplated in section 23(2); (xix)
- (xxv) "sound broadcasting service" means a broadcasting service intended to be received by a sound radio set; (vii)
- (xxvi) "sound radio set" means any apparatus designed or adapted to be capable of receiving, by radio, the transmissions broadcast in the course of a broadcasting service and reproducing them in the form of sounds, but not also in the form of images or visible signs or signals; (vi)
- (xxvii) "State" includes the government and administration of any self-governing territory contemplated in the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971); (xx)
- (xxviii) "State-financed publication" means any newspaper, book, period-

ical, 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 the State for the purpose of the promotion of State policy or the policy of a department of State: (xxi)

(xxix) "State information service" means the South African Communication Service and includes any other service, organization or body which provides information services of a similar nature and is directly or indirectly controlled by the State: (xxii)

(xxx) "telecommunications" means any system or method of conveying signs, signals, sounds, communications or other information by means of electricity, magnetism, electromagnetic waves or any agency of a like nature, whether with or without the aid of tangible conductors, from one point to another, and the derivative noun "telecommunication" shall be construed accordingly: (xxiii)

(xxxi) "television broadcasting service" means a broadcasting service consisting in the sending of visual images or other visible signals, whether with or without accompanying sounds, where the visual images are such that sequences of them are seen as moving pictures: (xxv)

(xxxii) "television set" means any apparatus designed or adapted to be capable of receiving transmissions broadcast in the course of a television broadcasting service: (xxiv)

(xxxiii) "this Act" includes any regulations made from time to time under section 30: (iv) and

(xxxiv) "Transitional Executive Council" means the Transitional Executive Council established by section 2 of the Transitional Executive Council Act, 1993. (xxx)

Establishment of Independent Media Commission

2. (1) There is hereby established a juristic person to be known as the Independent Media Commission, which shall exercise and perform the powers, functions and duties conferred and imposed upon it by this Act.

(2) The Commission shall function without any political or other bias or interference and shall be wholly independent and separate from the State, the government and its administration or any political party, or from any other functionary or body directly or indirectly representing the interests of the State, the government or any political party.

Primary objects of Commission

3. The primary objects of the Commission shall be—

(a) to ensure equitable treatment of all political parties by broadcasting services; and

(b) to ensure that State-financed publications and State information services are not, directly or indirectly, used to advance the interests of any political party, whether directly or indirectly.

during the election period, so as to promote and contribute towards the creation of a climate favourable to free political participation and a free and fair election.

Constitution of Commission and appointment of commissioners

4. (1) The Commission shall consist of—

(a) a chairperson; and

(b) not more than six other members.

(2) (a) Each commissioner, including the chairperson, shall be appointed by the State President on the advice of the Transitional Executive Council with due regard to the provisions of this Act, with particular reference to the provisions of section 2(2).

(b) The appointments contemplated in paragraph (a) shall be made simultaneously, be made known by notice in the *Gazette* and be effective as from the date of publication of such notice.

Persons qualified to be commissioners

5. (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 5 years' standing or a magistrate with at least 10 years' appropriate experience. 5
- (2) At least two of the commissioners shall have experience in the field of the broadcasting media and at least one in the field of the printed media.
- (3) The commissioners shall—
- (a) be persons who, in the opinion of the Transitional Executive Council, are of high standing and merit and are suited to serve on the Commission by virtue of their qualifications, expertise and experience; 10
 - (b) be persons who are committed to fairness, freedom of expression, the right of the public to be informed and openness and accountability on the part of those holding public office;
 - (c) when viewed collectively, represent a broad cross-section of the population of the Republic; and 15
 - (d) be persons who are committed to the objects and principles of this Act.

Persons disqualified from being commissioners

6. (1) A person shall not be appointed or remain a commissioner if such person— 20
- (a) is not a citizen of and not permanently resident in the Republic;
 - (b) at the relevant time holds, or during the preceding 12 months held, an office of profit under the State, subject to the provisions of section 5(1);
 - (c) at the relevant time is, or during the preceding 12 months was, a member of the Transitional Executive Council or Parliament or of any provincial government or the legislature of the Republic of Transkei, the Republic of Bophuthatswana, the Republic of Venda or the Republic of Ciskei or any self-governing territory, or if he or she so is or was a member of any local authority; 25
 - (d) at the relevant time is, or during the preceding 12 months was, an office-bearer or employee of any party, movement, organization or body of a party political nature; 30
 - (e) directly or indirectly, whether personally or through his or her spouse, partner or associate, has a direct or indirect financial interest in the telecommunications, broadcasting or printed media industry; 35
 - (f) or his or her spouse, partner or associate holds an office in or with or is employed by any person or company, organization or other body, whether corporate or incorporate, which has a direct or indirect financial interest of the nature contemplated in paragraph (e);
 - (g) is an unrehabilitated insolvent; 40
 - (h) is subject to an order of a competent court declaring such person to be mentally ill or disordered;
 - (i) is convicted, after the commencement of this Act, whether in the Republic or elsewhere, of any offence for which such person has been sentenced to imprisonment without the option of a fine; 45
 - (j) at any time prior to the commencement of this Act was convicted, or at any time after such commencement is convicted—
- (i) in the Republic, of theft, fraud, forgery and uttering a forged document, perjury or an offence in terms of the Corruption Act, 1992 (Act No. 94 of 1992), or 50
 - (ii) elsewhere, of any offence corresponding materially with any offence referred to in subparagraph (i); or
 - (iii) whether in the Republic or elsewhere, of any other offence involving dishonesty; or

- (k) is or has been convicted of any offence under this Act.
- (2) For the purposes of subsection (1), "spouse" includes a *de facto* spouse.

Term of office of commissioners

7. (1) Subject to the provisions of this Act, the commissioners shall hold office until the dissolution of the Commission in terms of section 34(1).

(2) A commissioner may at any time, upon at least three months' written notice tendered to the Transitional Executive Council, resign from office.

Removal from office

8. (1) Notwithstanding the provisions of section 7, a commissioner may be removed from office by the Transitional Executive Council on account of misconduct or inability to efficiently perform the duties of his or her office or by reason of his or her absence from three consecutive meetings of the Commission without the prior permission of the chairperson, except on good cause shown.

(2) A commissioner shall not be removed from office in terms of subsection (1) except after due inquiry, and then only, upon a decision to that effect by the Transitional Executive Council.

Vacancies in Commission

9. (1) There shall be a vacancy in the Commission—

(a) if a commissioner becomes subject to a disqualification referred to in section 6;

(b) when a commissioner's written resignation, tendered as contemplated in section 7(2), takes effect; or

(c) if a commissioner is removed from office in terms of section 8.

(2) A vacancy in the Commission shall be filled by the appointment of another commissioner by the Transitional Executive Council in terms of this Act as soon as may be reasonably practicable after the occurrence of such vacancy.

Remuneration and allowances

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

Meetings of Commission

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

(2) In the event of the chairperson being absent, the remaining commissioners shall from their number elect an acting chairperson, who, while he or she so acts, may exercise and perform all the powers, functions and duties of the chairperson.

(3) The chairperson may at any time in his or her discretion convene a special meeting of the Commission, which shall be held at such time and place as the chairperson may direct: Provided that the chairperson shall, upon having been presented with a requisition for that purpose signed by at least two commissioners, call for a special meeting, and if the chairperson fails to convene a special meeting within 48 hours of such presentation, such two commissioners may, upon the expiration of such 48 hours, convene the special meeting.

(4) The quorum for any meeting of the Commission shall be a majority of the total number of commissioners.

(5) Subject to the provisions of subsection (4), a decision of the Commission shall be taken by resolution agreed to by the majority of the commissioners present at any meeting of the Commission, and in the event of an equality of votes

regarding any matter, the chairperson shall have a casting vote in addition to his or her deliberative vote.

(6) The Commission may, in its discretion, allow members of the public to attend any meeting thereof.

(7) (a) The Commission shall cause minutes to be prepared and kept of the proceedings of every meeting and cause copies of such minutes to be circulated to all the commissioners. 5

(b) The minutes prepared in terms of paragraph (a), when signed at a subsequent meeting of the Commission by the chairperson, shall in the absence of proof of error therein be deemed to be a true and correct record of the proceedings which they purport to minute and shall, at any proceedings in terms of this Act or before a court of law or any tribunal or commission of inquiry, constitute *prima facie* evidence of the proceedings of the Commission and the matters they purport to minute. 10

Disclosure of conflicting interests 15

12. (1) Subject to the provisions of subsection (2), a commissioner shall not vote nor in any other manner participate in the proceedings at any meeting of the Commission nor be present at the venue where such a meeting is held if, in relation to any matter before the Commission, he or she has any interest which precludes him or her from performing his or her functions as commissioner in a fair, unbiased and proper manner. 20

(2) If at any stage during the course of any proceedings before the Commission it appears that a commissioner has or may have any interest which may cause such a conflict of interests to arise on his or her part—

(a) such commissioner shall forthwith and fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining commissioners to discuss the matter and determine whether such commissioner is precluded from participating in such meeting by reason of a conflict of interests; and 25

(b) such disclosure and the decision taken by the remaining commissioners regarding such determination, shall be recorded in the minutes of the meeting in question. 30

(3) If any commissioner fails to disclose any interest as required by subsection (2) or, subject to the provisions of that subsection, if he or she is present at the venue where a meeting of the Commission is held or in any manner whatsoever participates in the proceedings of the Commission, the relevant proceedings of the Commission shall be null and void. 35

Proceedings of Commission not invalid in certain circumstances

13. Subject to the provisions of section 12, a decision taken by the Commission or any act performed under the authority of such a decision shall not be invalid merely by reason of any irregularity in the appointment of a commissioner or a vacancy in the Commission or the fact that any person not entitled to sit as a commissioner sat as such at the time when such decision was taken, provided such decision was taken by a majority of the commissioners present at the time and entitled so to sit and the said commissioners at the time constituted a quorum. 40 45

Staff of Commission

14. (1) (a) The Commission shall appoint a suitably qualified and experienced person as chief administrative officer for the purpose of assisting the Commission, subject to its directions and control, in the performance of all financial, administrative and clerical functions and work arising from the application and administration of this Act. 50

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

(2) The staff of the Commission shall receive such remuneration, allowances and other employment benefits and shall be appointed on such terms and conditions and for such periods as the Commission may determine, subject to the provisions of section 34(1).

(3) In exercising its powers in terms of subsection (2), the Commission shall consult with the Minister of State Expenditure.

Establishment of committees of Commission

15. (1) The Commission shall establish the following two committees, namely—

(a) a broadcasting committee, which shall assist the Commission in the exercise and performance of its powers and functions contemplated in section 17(1)(a); and

(b) a State-financed publication and State information services committee, which shall assist the Commission in the exercise and performance of its powers and functions contemplated in section 17(1)(b).

(2) The Commission may establish such other committees for such purposes as it may deem necessary with a view to assisting it in the effective exercise and performance of any of its other powers, functions and duties in terms of this Act.

(3) The Commission shall from its number designate a chairperson for each committee.

(4) A committee shall have two or more additional members, as may be determined by the Commission, who—

(a) are not subject to any of the disqualifications of the nature contemplated in section 6; and

(b) on account of their qualifications, expertise and experience in relation to the mandate or terms of reference of the relevant committee, are suited to serve thereon.

(5) Whenever the office of a member of a committee becomes vacant, the Commission shall appoint a person to fill the vacancy.

(6) The provisions of sections 5(3), 10, 11, 12, 13 and 25 shall *mutatis mutandis* apply in respect of any committee, and for that purpose any reference to the Commission shall be construed as a reference to the committee in question.

(7) The Commission may at any time extend, limit or dissolve any such committee.

Appointment of experts

16. (1) The Commission may appoint as many experts, including experts from other countries, as it may deem necessary with a view to assisting it in the exercise and performance of its powers, functions and duties and for the performance of any work arising therefrom.

(2) The terms, conditions, remuneration and allowances applicable to any expert by virtue of his or her appointment in terms of subsection (1), and the work to be performed or service to be rendered by virtue of such appointment, shall be as determined in a written agreement entered into for that purpose between the Commission and the expert concerned.

(3) Upon having performed the work or completed the service pursuant to the agreement contemplated in subsection (2), the expert concerned shall submit a report in regard thereto to the Commission for its consideration.

(4) The Commission, on receipt of the report referred to in subsection (3), may refer the matter back to the expert—

(a) for such further attention as may be determined by the Commission;

(b) to perform such further functions as the Commission may deem necessary or desirable.

Powers and functions of Commission

17. (1) The Commission, in order to achieve the objects of this Act, shall—

(a) monitor all broadcasting services in the Republic and enforce compliance by broadcasting licensees with the provisions of this Act relating to—

(i) party election broadcasts and political advertisements; and
(ii) equitable treatment of all political parties; and
(b) monitor all State-financed publications and State information services, during the election period in accordance with the provisions of this Act, and shall exercise and perform such other powers and functions as may be assigned to it by this Act. 5

(2) The Commission shall inform the Transitional Executive Council and the Independent Electoral Commission of any matter which has come to its knowledge in the exercise and performance of its powers, functions and duties in terms of this Act which, in its opinion, may have an adverse impact upon the creation or achievement of a climate favourable to free political participation and the holding of the election on a free and fair basis. 10

Prohibition on broadcasting of party election broadcasts and political advertisements except in certain circumstances

18. No party election broadcast and no political advertisement shall be broadcast on any broadcasting service except during the election period and then only if and to the extent authorized by the provisions of sections 19 and 20. 15

Party election broadcasts on sound broadcasting services during election period

19. (1) Subject to the provisions of this section, a public sound broadcasting licensee shall permit a party election broadcast only during the election period and then only if such a broadcast is produced on behalf of the political party in question at the instance of its duly authorized representative. 20

(2) The Commission shall determine the time to be made available to political parties for the purpose of subsection (1), including the duration and scheduling of party election broadcasts, duly taking into account the financial and programming implications for the broadcasting services in question. 25

(3) The Commission shall consult with the relevant public sound broadcasting licensees and all the political parties prior to making any determination in terms of subsection (2).

(4) In making any determination in terms of subsection (2), the Commission may impose such conditions upon a public broadcasting licensee with respect to party election broadcasts as it deems fit, having due regard to the fundamental principle that all political parties are to be treated equitably. 30

(5) A party election broadcast shall not contain any material which may reasonably be anticipated to expose the broadcasting licensee to legal liability if it were to be broadcast. 35

(6) A party election broadcast shall comply with a technical quality acceptable to the Commission.

(7) No party election broadcast shall be broadcast later than 48 hours prior to the commencement of the polling period. 40

(8) A private or community sound broadcasting licensee shall not be required to broadcast party election broadcasts, but if he or she elects to do so, the preceding provisions of this section shall *mutatis mutandis* apply.

Political advertising on sound broadcasting services during election period

20. (1) A sound broadcasting licensee shall not be required to broadcast a political advertisement, but if he or she elects to do so, he or she shall afford all other political parties, should they so request, a like opportunity. 45

(2) A sound broadcasting licensee may broadcast a political advertisement only if it has been submitted on behalf of a political party at the instance of its duly authorized representative. 50

(3) In making advertising time available to political parties, no sound

broadcasting licensee shall discriminate against any political party or make or give any preference to any political party or subject any political party to any prejudice.

(4) A political advertisement shall not contain any material which may reasonably be anticipated to expose the broadcasting licensee to legal liability if it were to be broadcast.

(5) A political advertisement shall comply with a technical quality acceptable to the Commission.

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

(7) This section shall be subject to the provisions of any law relating to the expenditure of political parties during an election.

Equitable treatment of political parties by broadcasting licensees during election period

21. (1) If, during the election period, the coverage by any broadcasting service extends to the field of the election and the political parties and issues relevant thereto, the broadcasting licensee concerned 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 of any broadcasting service without such political party having been afforded an opportunity to respond thereto in such programme or without the view of such political party having been reflected therein, the broadcasting licensee concerned shall be obliged to afford such political party a reasonable opportunity to respond to the criticism.

(3) If, within 48 hours before the commencement of the polling period or during the polling period, a broadcasting licensee contemplates broadcasting a programme in which a particular political party is criticized, the licensee shall ensure that the political party is given a reasonable opportunity to respond thereto in the same programme, or to do so as soon as is reasonably practicable thereafter.

(4) The preceding provisions of this section shall not apply in relation to the contents of any party election broadcast in the circumstances contemplated in section 19 and any political advertisement in the circumstances contemplated in section 20.

State-financed publications and State information services

22. (1) The publisher of any State-financed publication in existence immediately prior to the commencement of this Act shall, within 14 days of such commencement, submit to the Commission the prescribed information concerning such publication.

(2) The publisher of any State-financed publication which is published for the first time after the commencement of this Act, shall not later than 14 days prior to the proposed date of publication submit to the Commission the prescribed information concerning such publication.

(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 by its publisher to the Commission free of charge within 48 hours of the completion of the printing thereof.

(5) A State-financed publication shall not contain any advertisement or other material which is intended or calculated to support or advance the interests of any political party, whether directly or indirectly.

(6) The provisions of subsection (5) shall *mutatis mutandis* apply in respect of any statement, material or advertisement made or issued by any State information service.

Hearings

23. (1) Any political party which has reason to believe that a broadcasting licensee, the publisher of a State-financed publication or any State information

service has contravened the provisions of this Act in relation to such party, and which was unable to resolve the matter with the licensee, publisher or information service (as the case may be), may in relation thereto lodge a complaint with the Commission.

(2) A complaint contemplated in subsection (1) shall be in writing and shall be served on the licensee, publisher or information service referred to in subsection (1), and be lodged with the Commission. 5

(3) For the purposes of subsection (2), a complaint may be delivered by hand or sent by registered post, fax or telex.

(4) The Commission shall as soon as may be reasonably practicable, having due regard to the urgency of the matter, investigate and adjudicate any complaint received by it and shall, in doing so, afford the complainant and the respondent a reasonable opportunity to make representations and to be heard in relation thereto. 10

(5) The Commission shall determine the form and procedure as regards the adjudication of any complaint. 15

(6) The complainant and the respondent shall be entitled to legal representation at any hearing held by the Commission for the purpose of adjudicating a complaint.

(7) (a) After having considered the complaint and the representations (if any) and evidence in regard thereto, the Commission shall make a ruling in respect of the matter. 20

(b) Any ruling of the Commission in terms of paragraph (a) shall be published in such manner as the Commission may in its discretion determine.

(8) Hearings held in terms of this section shall be open to the public. 25

(9) (a) The Commission shall keep records of all complaints received by it and of all its proceedings, rulings and findings in relation thereto.

(b) The records contemplated in paragraph (a) shall be kept in the offices of the Commission and be open to inspection by interested parties during the normal office hours of the Commission. 30

(c) The Commission shall at the request of any interested party and on payment of such fee as may be prescribed (if any), furnish him or her with a certified copy of or extract from any record referred to in paragraph (a).

(10) With regard to the summoning and examination of witnesses, the administering of the oath or an affirmation, recalcitrant witnesses and the production of books, documents, objects and material, the Commission shall have such powers as shall be prescribed. 35

(11) For the purposes of this section, a State-financed publication and State information service shall be represented by the official of the State at the head of the State-financed publication or State information service in question. 40

(12) The provisions of subsections (5), (6), (7), (8), (9), (10) and (11) shall *mutatis mutandis* apply in relation to any investigation instituted *mero motu* by the Commission in regard to any suspected contravention of the provisions of this Act by any broadcasting licensee or publisher of a State-financed publication or by any State information service. 45

Orders and recommendations of Commission

24. (1) If the Commission, in making a ruling referred to in section 23, has found the respondent to have contravened the provisions of this Act, it may—

- (a) make an order requiring the respondent, if he or she—
 - (i) is a public sound broadcasting licensee, to broadcast a party election broadcast; 50
 - (ii) is a sound broadcasting licensee, to broadcast a political advertisement; 55
 - (iii) is a broadcasting licensee, to broadcast another version of the programme complained of or a counter-version of the opinions expressed or alleged facts stated in such a programme;
- (b) order the respondent to pay such fine as the Commission may determine, but not exceeding such amount as may be prescribed in relation to the contravention in question;

- (c) make an order prohibiting the respondent from carrying on his or her broadcasting service for such period as the Commission may determine: Provided that such a prohibition shall not extend beyond the day of the dissolution of the Commission in terms of section 34(1).

and may, with due regard to the provisions and objects of this Act, make any other order which it considers appropriate with a view to remedying the matter complained of. 5

(2) Where the Commission has made an order against a broadcasting licensee in terms of subsection (1)(c) it may, having due regard to the nature, consequences and gravity of the contravention with reference to which such order was made, forward a certified copy of such order and of the record of its adjudication proceedings relevant thereto, to the Authority with a view to the Authority taking steps against such broadcasting licensee in terms of section 66(5) of the Independent Broadcasting Authority Act, 1993. 10

(3) In any case where either the publisher of a State-financed publication or any State information service is the respondent, the Commission shall convey its ruling to the Transitional Executive Council. 15

Expenditure in connection with functions of Commission

25. (1) The expenditure in connection with the application and administration of this Act and the exercise and performance of the powers, functions and duties of the Commission, shall be paid out of public funds allocated for that purpose by the Transitional Executive Council in consultation with the Minister of State Expenditure. 20

(2) The chief administrative officer referred to in section 14(1)(a) acting on the authority and subject to the general or special directions of the Commission (if any), may from time to time in writing requisition moneys for the purposes contemplated in subsection (1). 25

Reporting responsibility of Commission

26. Without in any way derogating from its independence, the Commission shall on a quarterly basis report in writing to the Transitional Executive Council in regard to its expenditure and the performance of its functions in terms of this Act. 30

Offences and penalties

27. (1) Any person who—

- (a) wilfully hinders or obstructs the Commission, any committee, any commissioner, any member of a committee or any member of the staff of the Commission in the exercise or performance of its, his or her powers, functions or duties in terms of this Act; or 35
- (b) wilfully hinders, obstructs or interrupts the proceedings at any hearing of the Commission.

shall be guilty of an offence and liable on conviction to a maximum fine of R5 000. 40

(2) Any person who contravenes or fails to comply with—

- (a) any order referred to in section 24, shall be guilty of an offence and liable on conviction to a maximum fine of R100 000;

- (b) any other order of the Commission, shall be guilty of an offence and liable on conviction to a maximum fine of R10 000. 45

(3) (a) If any commissioner fails to disclose any interest as required by section 12(2) or, subject to the provisions of that section, if he or she is present at the venue where a meeting of the Commission is held or in any manner whatsoever participates in the proceedings of the Commission, such commissioner shall be guilty of an offence and liable on conviction to a maximum fine of R100 000. 50