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FILE ONE OF TWO

**INDEPENDENT MEDIA COMMISSION
AND THE
INDEPENDENT TELECOMMUNICATIONS AUTHORITY**

NOTE: The IMC and the ITA (later the IBA) were initially discussed together. Documents are therefore filed in File One. From the special report on the fifth draft of the IBA onwards, the IBA is filed in File Two.

	<u>Date</u>
First report of the Technical Committee on the IMC and ITA	13 May 1993
Second report of the Technical Committee on IMC and ITA including the <u>SIXTH</u> draft of the IMC	21 May 1993
Third report of the Technical Committee on the IMC and ITA including the <u>SEVENTH</u> draft of the IMC	1 June 1993
Fourth Report	not available
Fifth report of the Technical Committee on the IMC and ITA including the <u>FOURTH</u> draft of the <u>Independent Broadcasting Authority Bill</u>	22 June 1993
Sixth report of the Technical Committee on the IMC and ITA including the <u>EIGHTH</u> draft of the IMC	1 July 1993
Special report on the <u>NINTH</u> draft of the IMC Bill, including the <u>NINTH</u> draft	2 August 1993
Special report on the <u>TENTH</u> draft of the IMC, including the <u>TENTH</u> draft	16 August 1993
<u>ELEVENTH</u> draft of the Independent Media Commission Bill	25 August 1993
Special report on the respective roles and powers of the Postmaster General and the IBA	31 August 1993

SIXTH DRAFT

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP DIE ONAFHANKLIKE MEDIAKOMMISSIE

(Soos ingedien)

(MINISTER VAN.....)

[W -93 (AS)]

REPUBLIC OF SOUTH AFRICA

THE INDEPENDENT MEDIA COMMISSION BILL

(As introduced)

(MINISTER OF.....)

[B -93 (GA)]

Govt

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Per

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Arrangement of the Act

<u>Section of the Act</u>	<u>Subject</u>
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	Terms of office of members of Commission
section 8	Vacation of office of members of Commission and the filling of such vacancy
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section 10	Meetings of Commission
section 11	Establishment of committees
section 12	Appointment of experts
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section 14	Powers and functions of Commission
section 15	Political Broadcasts on Public Sound Broadcasting Services
section 16	Political Advertising on Sound Broadcasting Services
section 17	Prohibition on Political Broadcasts and Political Advertisements on Television Broadcasting Services
section 18	Equitable treatment of political parties by all broadcasting services
section 19	State-financed publications
section 20	Inquiries
section 21	Referral of complaints to Commission and the mediation and/or adjudication of such disputes
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section 23	Expenditure in connection with functions of Commission
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section 25	Limitation of liability in respect of anything done under this Act
section 26	Regulations
section 27	Offences and penalties
section 28	Dissolution of Commission
section 29	Short title and commencement

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 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.... of the Independent Broadcasting Authority Act.

"Boards" means the Board of the South African Broadcasting Corporation appointed in terms of sections 4 and 5 of the Broadcasting Act No.73 of 1976; the Board of the Bophuthatswana Broadcasting Corporation appointed in terms of sections....of the.... Act No....of....; the Board of Radio Ciskei appointed in terms of of theAct No...of....; the Board of Radio Thohoyandou appointed in terms of of theAct No..of; (1)

"broadcasting material" means a copy of a programme or part of a programme which has been broadcast by a broadcasting service;

"broadcasting service" means a telecommunication service of transmissions consisting of sounds, images, signs or signals which takes place by means of radio and is intended for reception by the general public or a section of the public; and which shall include the broadcasting services operated by the South African Broadcasting Corporation, the Bophuthatswana Broadcasting Corporation, the Transkei Broadcasting Corporation, Radio Ciskei, Radio Thohoyandou, the Electronic Media Network, Radio 702 and other broadcasting services licensed by the Authority;

"Commission" means the Independent Media Commission established by section 2;

"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 or a state-financed publication;

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

1. Note: This definition and all references to the TBVC broadcasting services and states are based on the assumption that the TBVC states will subject to the transitional arrangements in some form or another.

"executive" means the executive of the Authority mentioned in section....of the Independent Broadcasting Authority Act.

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

"Independent Broadcasting Authority Act" means the Act that provides for the regulation of broadcasting activities in South Africa;

"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;

"political party" means any organisation which has registered as a political party in terms of the..... Act, No.. of 19..;

"political 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 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; (2)

"public sound broadcasting services"

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

"respondent" means a licensee or a state-financed publication in respect of which the Commission is investigating a complaint, conducting an inquiry or which is subject to the procedure referred to in section 17 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 Republics;

"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 established in terms ofAct,.

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

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

"the Act" includes the regulations.

2. Establishment of Commission - There is hereby established a juristic person called the Independent Media Commission and which shall also be known as the IMC;

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

- (1) to ensure equitable treatment of political parties by broadcasting services; and
- (2) to ensure that state-financed publications 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) The members of the Commission, including the chairperson and the vice-chairperson, shall be appointed by the State President upon the recommendation of the Transitional Executive Council/Multi-Party Forum.

5. Persons Qualified to be Members of the Commission

- (1) The chairperson and vice-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) A third member of the Commission shall be a person who in the opinion of the Transitional Executive Council/Multi-Party Forum is fit for appointment on account of such person's tenure of any judicial office, or on account of such person's experience as an advocate or attorney, or as a professor or lecturer in law at a tertiary educational institution in the Republic.
- (3) One of the members of the Commission, other than the chairperson or vice-chairperson, may be a person seconded from an international organisation.
- (4) 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.
- (5) 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 Transitional Executive Council/Multi-Party Forum, 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. (3).

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 Transitional Executive Council/Multi-Party Forum or of a regional government body or a local government body, the latter being defined in section 1 of the Interim

3. 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.

Measures for Local Government Act, No. 1991 (Act No. 128 of 1991) or referred to in section 15(a) of that Act;

- (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, except insofar as such person declares such political office and agrees to remove himself/herself from such office in a manner which satisfies the Transitional Executive Council/Multi-Party Forum;
- (d) Is a political party representative;
- (e) 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 4 functions as a member of the Commission;
- (f) Has a financial or any other 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 or other interest and agrees to divest himself/herself of such interest in a manner which satisfies the Transitional Executive Council/Multi-Party Forum;
- (g) Is an un-rehabilitated insolvent;
- (h) Is of unsound mind; or
- (i) has at any time been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), or any offence involving dishonesty, and has been sentenced therefor 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.

4. Pierre Pretorius 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.

- (2) The Commission established in section 2 of this Act shall dissolve and cease to exist upon the completion of the election.

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 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 the Transitional Executive Council/Multi-Party Forum 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 Transitional Executive Council/Multi-Party Forum.

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.
- (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 any of the Republics and enforce compliance by the broadcasting services with the guidelines on:
 - (i) Political broadcasts and political advertising as contained in Schedule I of this Act; and
 - (ii) Fairness concerning broadcasts related to the election, as contained in Schedule I of this Act.

- (b) A state-financed publication committee which shall monitor state publications 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 expiration 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, 6, 7, 8, 9, 10, 23 and 25 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 its 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.

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, bonuses, subsidies, gratuities, pension and other employment benefits (whether contributory or not) 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 and enforce compliance by these broadcasting services with the provisions of this Act.
- (2) 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.
- (3) To monitor all and state-financed publications so as to ensure and enforce compliance with the provisions of this Act.
- (4) To establish committees in accordance with the provisions of section 11 of this Act.

- (5) 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.
- (6) To employ as many staff as it may deem necessary in accordance with section 13 of this Act.
- (7) To conduct whatever inquiries it may deem necessary in accordance with the provisions of section 15 of this Act.
- (8) To mediate and/or adjudicate disputes referred to it in accordance with the provisions of section 16 of this Act.
- (9) To inform the Transitional Executive Council/Multi-Party Forum 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;
- (10) To enter into contracts which are necessary for the due performance of its functions;
- (11) 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. Political 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 political broadcasts.
- (2) The Commission shall make a ruling on the time to be made available to the political parties for purposes of subsection (1), including the duration and scheduling of such political 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 ruling in terms of subsection (2), the Commission may impose conditions requiring the public sound broadcasting service to observe such rules with respect to political broadcasts as the Commission may, having regard to the fundamental underlying principle that all political parties must be treated equitably by the broadcasting service.

- (5) A political broadcast shall not contain any material which may reasonably be anticipated to expose the licensee to legal action if such material were to be broadcast.

16. Political Advertising on Sound Broadcasting Services

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

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

No television broadcasting service shall broadcast political broadcasts and political advertisements.

18. Equitable Treatment of Political Parties by all Broadcasting Services

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.

19. State-financed publication

- (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 in such a way as to prejudice other political parties.

20. Inquiries

- (1) In the performance of its functions and duties as contained in sections 14(1), (2), (3) and 15, 16, 17, 18, 19 and 21 the Commission may conduct any inquiry which it deems necessary and shall determine the nature and extent of such inquiry.
- (2) In conducting such inquiry, the Commission may:
 - (a) Through the chairperson, or any member or staff member of the Commission authorised thereto in writing by the chairperson, request from any person, who in the reasonable opinion of the Commission has committed or has knowledge of the commission of an act which prima facie is in contravention of the provisions of this Act, such particulars and information as it may deem necessary in connection with an inquiry;
 - (b) By notice in writing under the hand of the chairperson or a member or staff member of the Commission authorised thereto in writing by the chairperson, addressed and delivered by such member or a sheriff to any person, require such person, in relation to an inquiry, to appear before it at a time and place specified in such notice and produce to it all documents or broadcasting material or in the possession or under the control of any such person and which the Commission may deem necessary in connection with that inquiry;
 - (c) Through the chairperson, or a member of staff of the Commission authorise thereto in writing by the chairperson, administer an oath to or take an affirmation from any person referred to in paragraph (b), or any person present at the place referred to in (b), irrespective of whether or not such person has been required under the said paragraph (b) to appear before it, and question such person under oath or affirmation in connection with any matter which it may deem necessary in connection with that inquiry.
- (3) Any person appearing before the Commission in terms of subsection (1)(b) who is not in the public service, shall be entitled to receive as witness fees an amount equal to the amount which such person would have received as witness fees had he/she been summoned to attend criminal proceedings in the Supreme Court held at the place mentioned in the written notice in question, and the payment of such fees shall be made from the funds of the Commission.

- 4) An incriminating answer given by a person in such an inquiry shall not be admissible as evidence against the person in any proceedings in a court of law before any body or institution established by or under any law.
- 5) (a) No person shall, without the written permission of the chairperson, disseminate any document or broadcasting material submitted to the Commission by any person in connection with an inquiry or publish the contents or any portion of the contents of such document.
- (b) No person may without the written permission of the chairperson peruse any document, including any statement, which is destined to be submitted to the chairperson or intercepted while it is being taken or forwarded to the chairperson.
- 6) No person shall, except insofar as it shall be necessary in the performance of the functions of the Commission, publish or furnish to any other person any report of the Commission or a copy or part thereof or information regarding the consideration of evidence by the Commission, unless and until the Commission has released the report for publication.

Referral of Complaints to Commission and the Mediation and Adjudication of such Disputes

- 1) Any political party which believes that a broadcasting service or a state-financed publication has contravened the provisions of this Act and which was unable to have its grievance satisfactorily resolved, may lodge a complaint with the Commission.

A complaint made in terms of subsection (1) shall be in writing and shall be served on the respondent and lodged with the Commission.

For the purposes of subsection (2), "written" shall include a complaint delivered by hand or sent by registered post, telefax or telex.

The Commission shall afford the parties a hearing in response to a complaint made in terms of subsection (1).

The Commission shall determine the form and procedures of the hearing taking into account the urgency of the complaint.

The complainant and respondent respectively shall be entitled to legal representation when appearing before the Commission.

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) Nothing in this section shall preclude the Commission, at its own instance, from requesting a licensee or the publisher of a state-financed publication to attend a hearing to determine whether such a broadcasting service or state-financed publication has contravened the provisions this Act.
- (10) For the purposes of this section a state-financed publication shall be represented by the state official responsible for the state-financed publication.
- (11) The Commission may publish its determinations in any manner it deems fit.

22. Orders, Penalties and Recommendations

- (1) The Commission, when making a determination referred to in section 21, may issue an order in any one or more of the following terms:
 - (a) Requiring a public sound broadcasting service to broadcast a political 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 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.

23. 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.

24. Reporting Responsibility of Commission

Without in any way 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.

25. 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.

26. Regulations

The State President, acting on the recommendation of the Commission, may make regulations as to any matter required or committed to be prescribed in terms of this Act.

27. Offences and Penalties

A person who -

- (a) Refuses or fails to comply with a notice under section 20(2)(b) or refuses to take the oath or to make an affirmation at the request of the Commission in terms of section 20(2)(c) or refuses to answer any question put to him/her under that section, or gives to such question an answer which to his/her knowledge is false, or refuses or fails to furnish particulars or information required from him/her under that section;
- (b) Insults, disparages or belittles the Commission, or anticipates the proceedings at an inquiry or the findings of the in a manner calculated to influence such proceedings or findings;
- (c) 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;
- (d) Wilfully interrupts the proceedings at an inquiry of the Commission or misbehaves himself/herself in any other manner in the place where such inquiry is held;
- (e) In connection with any inquiry of the Commission does anything which, if such inquiry were proceedings in a court of law, would have constituted contempt of court;

- (f) Does anything calculated improperly to influence the Commission in respect of any matter being or to be considered by the Commission in connection with an inquiry;
- (g) 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.

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 by proclamation in the Gazette.

SEVENTH DRAFT

INDEPENDENT MEDIA COMMISSION BILL

Prepared by the Technical Committee on the Independent Media
Commission and the Independent Telecommunications Authority

1 June 1993

Arrangement of the Act

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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 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.... of the Independent Broadcasting Authority Act.

"broadcasting service" means a telecommunication service of transmissions consisting of sounds, images, signs or signals which takes place by means of radio and is intended for reception by the general public or a section of 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, No.....of 1993.

"Independent Broadcasting Authority Act" means the Act that provides for the regulation of broadcasting activities in South Africa;

"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;

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

"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;

"prescribed" means prescribed by regulation;

"public sound broadcasting services" means a sound broadcasting service that receives revenue, either wholly or partly, from licence fees or from the state;

"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 Republics;

"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;

"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 are based on the assumption that the TBVC states will be subject to the transitional arrangements in some form or another.

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

"the Act" includes the regulations.

2. Establishment of Commission - There is hereby established a juristic person called the Independent Media Commission and which shall also be known as the IMC;

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

- (1) to ensure equitable treatment of political parties by broadcasting services; and
- (2) 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) The members of the Commission, including the chairperson and the vice-chairperson, shall be selected by the Transitional Executive Council/Multi-Party Forum and formally appointed by the State President.

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) One of the members of the Commission, other than the chairperson, shall be a person who in the opinion of the Transitional Executive Council/Multi-Party Forum is fit for appointment on account of such person's tenure of any judicial office, or on account of such person's experience as an advocate or attorney, or as a professor or lecturer in law at a tertiary educational institution in the Republic.

- (3) 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.
- (4) 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 Transitional Executive Council/Multi-Party Forum, 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 Transitional Executive Council/Multi-Party Forum 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;
- (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;

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.

- (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 financial or any other 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 or other interest and agrees to divest himself/herself of such interest in a manner which satisfies the Transitional Executive Council/Multi-Party Forum;
- (f) Is an un-rehabilitated insolvent;
- (h) Is of unsound mind; or
- (i) has at any time been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), or any offence involving dishonesty, and has been sentenced therefor 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.

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 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;

3. Pierre Pretorius 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.

- (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 Transitional Executive Council/Multi-Party Forum 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 subsection (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 Transitional Executive Council/Multi-Party Forum.

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 any of the Republics and enforce compliance by the broadcasting services with the guidelines on:
 - (i) Party election broadcasts and political advertising 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 and 20 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 its 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 for 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 Transitional Executive Council/Multi-Party Forum 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.

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.