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REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP DIE ONAFHANKLIKE MEDIAKOMMISSIE

(MINISTER VAN...coococscse)

[W =93 (AS)]

REPUBLIC OF SOUTH AFRICA

THE INDEPENDENT MEDIA COMMISSION BILL

(As introduced)

(MINISTER OF . ..convvcccccens) |

[B -93 (GA)]

BILL

To provide for the establishment of a Commission to promote to create a climate favourable to free and fair elections; to ensure fairness by broadcasting services in their elections coverage; to promote access to broadcasting services; to monitor and and review Government information services and publications;

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

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

"Authority" means the Independent Broadcasting Authority established by section.... of the Independent Broadcasting Authority Act.

"Board" 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;

"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; and which shall include the broadcasting services operated by the South African Broadcasting Corporation, the Bophututswana Broadcasting Corporation, the Transkei Broadcasting Corporation, Radio Ciskei, Radio Thohoyandou, the Electronic Media Network, Radio 702 and other broadcasting services licensed by the Independent Broadcasting Authority.

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

"candidate individual" means any individual who is a spokesperson, official or who appears on a national or regional list of any candidate party, organisation or movement or who has made a substantial showing of bona fide involvement with a candidate party, organisation or movement, including activities normally associated with political campaigning, 'such as making

election speeches, distributing election material, organising marches and rallies, issuing press releases.

"candidate party, organisation or movement" means a political party, organisation or movement which is participating in regional or national elections.

"corporation" means the South African Broadcasting Corporation established by the Broadcasting Act No.73 of 1976.

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

"government information services" means those services that are subject to the guidelines and provisions as contained in Schedule III;

"government publications" means those publications that are subject to the guidelines and provisions as contained in Schedule III;

"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;

"licence holder" means licensee; â\200\230

"licensee" means a the holder of a licence to operate a broadcasting service;

"Minister" means the Minister who from time to time is entrusted with the administration of this Act;

"multi-party forum" means ;

"national elections" means elections held in terms of the..... Act of 1993

"political broadcasts" means broadcasts produced by candidate parties, organisations or movements or candidat? individuals in terms of Schedule I;

"political advertising" means adverts produced by candidate parties, organisations or movements or candidate individuals in terms of Schedule II ;

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

"regional elections" means

2. Esgabishment of Commission - There is hereby established a jurisÂ®ie person called the Independent Media Commission and which shall also be known as IMC in English, and OMK in Afrikaans.

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

(1) the promotion of freedom of ekpression in order to create a climate favourable to free and fair elections;

(2) the promotion of fair access to broadcastin serviges by candidate parties, organisations or movements agyd candidate

- indidividual

(3) the monitoring of broadcasting services to ensure compliance with fairness guidelines on the coverage of the controversial issues with regard to national and regional elections, candidate individuals and candidate parties, organisations or

movements; and issues related thereto

(4) the monitoring of broadcasting services to ensure compliance by broadcasting services, candidate individuals and candidate parties, organisations or movements with provisions on political broadcasts and political advertising;

(5) the monitoring and review of all government information services and government-funded publications to ensure their impartiality;

(6) to perform such other functions as may be assigned to the Commission by or under this Act or any other law.

4. Constitution of Commission - (1) The Commission shall consist of -

(a)  
(b)  
(b)  
(2)

(3)

(4)

(3)

(6)

a chairperson;  
a vice-chairperson; and  
not more than five other members,

After nominations from the public to the TEC, the final selection by the TEC of the seven commissioners, including that of the chairperson and vice-chairperson, shall be confirmed by the State President by notice in the Gazette.

The chairperson shall be a person who has practiced as advocate or attorney, or has lectured in law at any university or has held judicial office for a period not less than five years.

If the chairperson is unable to perform his duties in terms of this Act, the vice-chairperson shall act as chairperson of the Commission, and while the vice-chairperson is thus acting, he shall exercise all the powers and perform all the duties and functions of the chairperson.

A member of the Commission shall hold office for a period not exceeding one year: Provided that the Commission's existence shall be subject to review after the completion of the first national elections.

If a member dies or vacates his office in terms of section 7, the State President may, subject to the provisions of this section and after the approval of the TEC, appoint a person in his place for the unexpired period of his term of office.

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5. Persons qualified to members of the Commission - (1) In order for a person to be qualified to serve as a member of the Commission that person shall be -

(a) a South African citizen of high standing and merit, who is permanently resident in the Republic of South Africa: Provided that citizens of the Transkei, Bophututswana, Ciskei and Venda shall not be disqualified from appointment to the Commission.

(b) experienced in the field of media, or culture, and have a committment to freedom of expression.

(2) The seven members of the Commission should be representative of the widest possible spectrum of South African society. â\200\230

(3) Other criteria

6. Persons disqualified from being members of Commission - No person shall be appointed as a member of the Commission -

(a) if he is a person referred to in section 7 of the Public Service Act, 1984 (Act No. 111 of 1984);

(b) if he is a member of Parliament or a local government body as defined in section 1 of the Interim Measures for Local Government Act, 1991 (Act No. 128 of 1991), or referred to in section 15(a) of that Act;

(c) if he is holding office in any political party, organisation or movement;

(d) if he has financial or other interest in an industry which is related to broadcasting, telecommunications or the printed media;

(e) if he holds an office in, or is in the employment of a body or organisation having a financial or other interest in an industry referred to in paragraph (d);

(f) if he is an unrehabilitated insolvent;

(g) if he is of unsound mind;

(h) if he 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 therfor to imprisonment without the option of a fine.

7. Vacating of office of Commission - A member of the Commission shall vacate his office -

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

(b) if he has been absent for more than three consecutive meetings of the Commission without leave or the chairman, unless the Commission condones his absence on good cause shown;

(c) if he tenders his resignation in writing to TEC; or

(d) if a majority of the members of the TEC discharge that member because he is incompetent to fulfill his duties or if he is guilty of misconduct.

8. Meetings of Commission -

9. Committees of the Commission

(1) The Commission shall establish:

(a) Political Communications Committee which shall monitor and enforce compliance with provisions on political broadcasts and political advertising as contained in Schedule I; A Â« o H1E = b  
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Fairness Guidelines Committee which shall monitor and enforce compliance with fairness guidelines, as contained in Schedule II, on the coverage of the controversial issues with regard to national and regional elections, candidate parties, organisations or movements or candidate individuals

and issues related thereto;

Government Information Services and Publications Committee which shall monitor and review government information services and publications in terms of the provisions of Schedule III. T

10. Secretariat -

The Commission and the committees established by the Commission shall be assisted by a Secretariat to provide administrative and logistical services.

11. Funds and remuneration of Commission -  
To be discussed

12. Pension rights of officers and employees -

To be discussed

13. Powers, functions and duties of the Commission:- The powers and functions of the Commission shall be to achieve its objects with the means at its disposal and in order to achieve those objects the Commission -

(a) shall require broadcasting services to broadcast the findings of the Commission with regard to non-compliance by broadcasting services of the provisions of Schedules I and II;

(b) shall require broadcasting services to broadcast a counter-version following a finding pursuant to the procedure as contained in Schedule II;

(c) may impose financial penalties on broadcasting services for contraventions of the provisions of Schedules I and II;

(d) shall inform both the Electoral Commission and the TEC should the Commission, in the furtherance of its objects, become aware of any matter that may, in the opinion of the Commission, have an adverse impact upon the maintenance of a climate in which free and fair elections can be conducted;

(e) shall act as the guarantor of the independence of the Board and the Authority by holding inquiries into and publishing findings on any alleged undue political or economic interference with the activities of both the Board and the Authority.

14. Rules by Commission -

To be discussed

15. Inquiries by Commission -

To be discussed

The Commission shall operate independently from the TEC and any other government or parastatal structure: Provided that from time to time it shall be required to report to the TEC with the regard to the Commission's financial affairs and to the Independent Electoral Commission with regard to

matters that may have an adverse impact upon the

16. Independence of Commission and Accounting Responsibility -

maintenance of a climate in which free and fair elections can be conducted.

17. Limitation of liability -

To be discussed

18. Liquidation -

To be discussed

19. Delegations -

To be discussed

20. Short\_title - This Act shall be called the Independent Media Commission Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.

#### Schedule I - Guidelines on Political Broadcasts and Political Advertising on Broadcasting Services

Compliance with guidelines on political broadcasts and political advertising on broadcasting services will be monitored and enforced by the Commission's political communication committee.

##### A. Political Broadcasts

1. Subject to the provisions of this section, the holder of a broadcasting licence, shall in each election period with regard to an election in respect of which its audience have the right to vote, permit candidate parties, organisations or movements or candidate individuals participating in the election, to broadcast election programmes free of charge.

2. The Commission shall determine the time to be made available to the political parties, organisations or movements or candidate parties for purposes of section 1.

3. The time made available in terms of section 2 shall be divided equally between the candidate parties, organisations or movements or candidate individuals participating in the election.

4. In making time available for candidate parties, organisations or movements or candidate individuals, no licensee shall make any discrimination between candidates in practices, regulations, facilities or services for or in connection with the service rendered pursuant to this section, or make or give any preference to any candidate party, organisation or movement or candidate individuals or subject such candidate party, organisation or movement or candidate individual to any prejudice or disadvantage; nor shall any licensee make any contract or other agreement which shall have the effect of permitting any candidate party, organisation or movement or candidate individual to broadcast to the exclusion of other candidate parties, organisations or movements or candidate individuals. \

5. The Commission shall prior to making a determination in terms of section 2 consult with the relevant broadcasters and candidate parties, organisations or movements concerning the determination.

6. The Commission may impose conditions requiring the licence holder to observe such rules with respect to political broadcasts as the Commission may determine in a programme standard, having regard to the fundamental underlying principle that all political parties, organisations and movements must be treated fairly and impartially by the license holder.

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7. The Commission shall determine the length and frequency of the broadcasts referred to in section 1 unless the political parties, organisations or movements prior to such determination - come to terms with the broadcasters themselves.

8. Any holder of a broadcasting licence who fails to grant access to a candidate party, organisation or movement or to a candidate individual, shall be liable to a financial penalty as may be prescribed by the Commission.

9. The Commission may recommend the revocation of a broadcasting licence should the holder of that licence wilfully and repeatedly fail to allow reasonable access to a candidate party, organisation and movement or to a candidate individual.

10. Conciliation T i . |  
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11. Adjudication 3 -

## B. Political Advertising

1. The holder of a broadcasting licence shall comply with the following requirements in respect of political advertisements:

(a) a licensed television broadcasting service shall not include -

(1) any advertisement which is inserted by or on behalf of any body whose objects are wholly or mainly of a political nature

(ii) any advertisement which is directed towards a political end, or

(iii) any advertisement which has any relation to any industrial dispute (other than an advertisement of a public service nature inserted by, or on behalf of a government department);

a licensed sound broadcasting service shall not include -

(1) any advertisement which has any relation to any industrial dispute (other than an advertisement of a public service nature inserted by, or on behalf of a government department);

a licensed sound broadcasting service may include -

(1) any advertisement which is inserted by or on behalf of any body whose objects are wholly or mainly of a political nature

(ii) any advertisement which is directed towards a political end, or

provided that a licensed sound broadcasting service shall have no power of censorship over such advertisements[

(d) No licensed sound broadcasting service is required to permit the use of its facilities for advertisements mentioned in paragraph (c)(i) and (ii), but if any licensed sound broadcasting service shall permit any candidate party or candidate individual to use its facilities for such advertisements, it shall afford other candidate parties and candidate individuals the opportunity to use its facilities for advertisements contemplated in paragraph (c)(i) and (ii)

(e) conciliation procedure

(f) adjudication procedure

## Schedule II - Fairness Guidelines

Compliance with the Fairness Guidelines shall be monitored and enforced by the Commission's Fairness Guidelines Committee. The aim of the Fairness Guidelines is to ensure fairness by broadcasting services in their coverage of the national and regional elections, candidate parties, organisations and movements, candidate individuals and issues related thereto.

1. Licence holders shall afford reasonable opportunity for the discussion of conflicting views in their coverage of the national elections, candidate parties, organisations or movements and candidate individuals.

2. A licence holder shall be obliged to broadcast a counter-version presented by any candidate party, organisation or movement and candidate individual affected by an assertion of fact in a programme transmitted in the event that such assertion is false. !

3. A licence holder shall not be obliged to transmit a counter-version referred to in paragraph 1 if -

(a) the candidate party, organisation or movement or candidate individual has no direct interest in the transmission of the counter-version; or

(b) the counter-version is not of reasonable length, and in particular, if it is substantially longer than the part of the broadcast which dealt with the false assertion of fact.

4. The counter-version contemplated in paragraph 1 shall -

(a) be limited to a factual account;

(b) not contain any material which may reasonably be anticipated

to expose the licence holder to legal action if such material were to be broadcast; (

(c) be made in writing;

(d) specify the programme and the assertions to which objection is raised; and

(e) be signed by the candidate individual, or in the case of a candidate party, organisation or movement, by the general secretary thereof.

5. The candidate party, organisation or movement or candidate individual affected shall not be entitled to insist on the transmission of a counter-version as contemplated in paragraph 1 if the counter-version is presented to the licence holder after the expiry of a period of thirty days from the date of broadcast of the false assertion of fact.

6. The licence holder shall, subject to the provisions of paragraph 3(a) and (b) and 5 -

(a) at the first opportunity, but not later than ten days from receipt of a counter-version referred to in paragraph 1, broadcast the counter-version within the same programme or programme section as the one in which the false assertion was made and at the same time of day or, should that not be possible, at a time equal in value to that of the programme objected to; or

(b) broadcast the counter-version without any omissions and interruptions; and

(c) broadcast the counter-version free of charge except in the event that the counter-version concerns assertions made in a commercial broadcast.

7. A licence holder shall immediately upon receipt of a counter-version referred to in paragraph 1, inform the Authority thereof, and shall keep and store the programme objected to and the counter-version until notice to the contrary by the Authority.

8. Should the licence holder and the candidate individual or candidate party, organisations or movement not reach agreement

on the counter-version, the complainant shall inform the Commission which shall -

- (a) conciliation procedure
- (b) adjudication procedure

9. Requirement that licence holder shall broadcast the findings of the Commission.

#### Schedule III Provisions on Government Information Services and Publications

This schedule will be completed by tomorrow. 200/230