

N.C. Debate

1/3/5/3/3

[3]

Tues 3 August 1993.

5.1 Draft Bill on the IMC:

5.1.1 The Technical Committee on the IMC was welcomed. Present were A Armstrong, D Dison, P Pretorius and C Noffke. Apologies were noted from EJ Mabuza. M Markowitz attended the meeting as a technical support person.

5.1.2 It was agreed to deal with the Report on the IBA first.

5.1.3 It was noted that this Report had been made available for public comment and extensive submissions had been received in this regard. The Technical Committee was still processing these and other submissions received.

5.1.4 It was agreed to deal with the Draft Bill chapter by chapter. It was noted that the Technical Committee was free to give inputs on any section of the Draft Bill during the course of the discussion. Questions of clarity were addressed to the Technical Committee. During the discussion and debate the following was noted:

5.1.4.1 The Item on Definitions refers:

- * It was suggested that the formulation of the definition of "associate" was clumsy. The Technical Committee was requested to take note of this.
- * It was suggested that the definition of "Control" was too wide and vague. Various participants disagreed with this view. The Technical Committee was requested to reconsider this item in any case, taking into account the views expressed.
- * The definition of "Party Election Broadcast" was discussed and debated. At the end of the debate, it was agreed to request the Technical Committee to reconsider this item, taking into account the views of participants expressed.
- * The Bophuthatswana Government reserved its position with regard to the definition of "Republic".

5.1.4.2 Chapter 2 - Object and Policy refers:

- * The SA Government noted that it supported the suggestion of the Technical Committee in footnote 4. The PAC noted that it did not support this.
- * It was suggested that the question of religion was not catered for in as far as policy was concerned. The Technical Committee should consider this aspect. The SACP expressed a reservation in this regard.

- * It was suggested that Item 3 (a) should read "develop and protect a national identity, culture and characters;".
- * The Technical Committee was requested to clarify Item 7.
- * It was suggested that Item 10 was an over-regulation of the issue concerned and should not be laid down in the policy guidelines.

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- * It was suggested that the Technical Committee should be more gender sensitive throughout the Draft Bill.
- * It was suggested that under Item 1 (b) the words "full-time" be deleted. It was further suggested that the Authority should be representative of society as a whole.
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- * Item 17 (2) refers: It was suggested that the rules should be published in the Government Gazette.
- * Item 20 refers: It was suggested that this item was not necessary.

5.1.4.4 Chapter 4 - Committees, Appointment of Experts and Inquiries:

No comments were noted.

5.1.4.5 Chapter 5 - Broadcasting Frequency Spectrum Management:

- * Item 31 refers: It was suggested that the Draft Bill should make provision for a salient

provision regarding existing rights, taking into account the views expressed in the meeting.

- * Item 31 (1) refers: It was suggested that the following phrase be included "with the intention of providing the maximum number of allotments".
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The meeting adjourned for lunch at 13h05.

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5.1.4.8 Chapter 8 - Broadcasting Programmes:

- * Item 57 (2) refers: It was suggested that no broadcaster should be exempt from the provisions of the code.
- * Item 59 (4) refers: It was agreed that the word "determine" should appear after the word "may" in the third line.
- * Item 61 refers: The Technical Committee was requested to reconsider this item taking into account the views expressed in the meeting.
- * A further sub-section was proposed: "That the licensee shall not broadcast any polling forecast that is published within 72 hours of polling day". It was suggested that this should be dealt with in the Electoral Act.
- * It was further suggested that party political alliances, formed to contest an election, should be treated as a single party in relation to time allocated for a political broadcast.

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- * Item 64 refers: It was suggested that the Technical Committee considers an obligation on the part of the IBA to ensure confidentiality of information that it might obtain from licensees, as long as the information does not violate the terms of the licence.

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- * Item 69 refers: It was suggested that the Technical Committee should consider decriminalising offences.

5.1.4.10 Chapter 10 - Regulations, Amendment and Repeal of Laws, Short Title and Commencement:

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5.1.4.11 Schedule 1 (Section 5):

- * It was suggested that the Authority should be appointed by the Multi-Party Negotiating Process or the TEC and afterwards by Parliament with a four fifths majority.

5.1.4.12 Schedule 3 (Section 57):

- * Item 2 (1) refers: The question of who would determine whether material was acceptable or non-acceptable was raised.
- * Item 4 (1) refers: It was suggested that the sentence should end after the word "importance".
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5.1.5 The Technical Committee was requested to ensure that its

wording of the Draft Bills remained consistent.

5.1.6 The Technical Committee was requested to note the various comments, respond to the various requests and submit a further report. It was noted that when the next report of the Technical Committee was received, the Negotiating Council would not discuss the Draft Bill clause by clause but would only deal with the outstanding matters.

5.2 Draft Bill on the IMC:

5.2.1 The PAC requested the Technical Committee to take into account its submissions with regard to Section 15, 16 and 17 of this Draft Bill.

5.2.2 It was agreed to deal with the Draft Bill chapter by chapter. Questions of clarity were addressed to the Technical Committee. During the discussion and debate the following was noted:

5.2.2.1 Clause 1 - Definitions:

- * It was agreed that consistency should exist between definitions on the IBA Draft Bill and this Draft Bill.
- * "Republic" refers: The Ciskei Government noted that it did not regard itself being bound in this regard.
- * "State-financed publication" refers: It was proposed that the following wording be deleted "for the purposes of the promotion of state policy or the policy of a department of state". This was seconded and no objections were noted. The Technical Committee was requested to find, if necessary, more acceptable wording to convey the point in this definition.

5.2.2.2 Clause 3 - Objects:

- * The Technical Committee was requested to reconsider the wording.

5.2.2.3 Clause 4 - Appointment of Members of the Commission:

- * It was suggested that the heading should read "Composition of the Commission".

5.2.2.4 Clause 5 - Persons Qualified to be Members of the Commission:

- * It was suggested the composition should be reconsidered by the Technical Committee taking into account the views of the meeting.

5.2.2.5 Clause 6 - Persons Disqualified from being Members of Independent Media Commission:

- * Item 6 (a) refers: It was suggested that the word "present" be deleted.
- * Item 6 (f) refers: It was suggested that the Technical Committee reconsiders this item with regard to the type of un-rehabilitated insolvent, taking into account the views expressed in the meeting.

5.2.2.6 Clause 7 - Term of Office of Members of Commission:

- * Item 7 (2) refers: The Technical Committee was requested to consider any lengthening of the lifespan of the IMC. The wording of this item was suggested to be vague.

5.2.2.7 Clause 8 - Vacation of Office of Members of Independent Media Commission and the Filling of such Vacancy:

- * Item 8 (1) (b) refers: The Technical Committee was requested to consider putting in a reference in this item similar to the reference of the TEC in Item 8 (1) (f).

5.2.2.8 Clause 9 - Remuneration of Members of Commission:

- * It was suggested that the words "State President" be replaced by "Minister of State Expenditure".
- * It was suggested that the words "on recommendation of" be replaced by "in consultation with".
- * It was suggested that any references to the State President or a Minister should be omitted.

- * The Technical Committee required guidance on how all the interim structures would be financed. The SA Government was requested to make submissions to this Technical Committee and any other relevant Technical Committees in this regard.

5.2.2.9 Clause 10 - Meetings of the Commission:

- * Item 10 (1) refers: The Technical Committee should consider to what extent the members of the Commission would be involved full time during the run up to the election.
- * Item 10 (6) refers: It was suggested that this Item should also be provided for in the Draft Bill on the IBA.
- * It was suggested that, as is the case with the IBA, provision for casual vacancies should be made for in this Draft Bill.
- * It was suggested that Item 6 (b) be deleted.
- * Item 6 (a) refers: It was suggested that if a member had an interest he/she should be recused from the meeting.

5.2.2.10 Clause 11 - Establishment of Committees:

- * Item 11 (1) refers: The Technical Committee should consider placing restrictions on the Committees themselves, with the most important aspects reserved for the Commission itself. The Committees should only be appointed in consultation with the TEC.
- * It was suggested that Item 11 (2) should be made subject to 11 (1).
- * Item 11 (2) (a) (i) refers: It was suggested that the sentence should end after the word "advertisements", reformulated and the appropriate terminology found.
- * Item 11 (2) (a) (ii) refers: It was suggested that the sentence should end after the word "election", reformulated and the appropriate terminology found.

- * Item 11 (8) refers: It was suggested that a word was missing and the word "of" should be inserted between "performance" and "its".

5.2.2.11 Clause 12 - Appointment of Experts:

- * Item 12 (1) (b) refers: It was suggested that the item should read "An expert shall perform the functions assigned to him by the Commission".
- * Item 12 (5) refers: The Technical Committee was requested to consider a more appropriate word for "seconded".

5.2.2.12 Clause 13 - Staff of Commission:

- * Item 13 (2) refers: It was suggested that the TEC and its Sub-Councils should be involved in establishing the levels of remuneration.

5.2.2.13 Clause 15 - Party Election Broadcasts on Public Sound Broadcasting Services:

- * It was suggested that private sound broadcasting services with regard to party election broadcasts should be clearly set out in this item.

5.2.2.14 Clause 16 - Political Advertisements on Sound Broadcasting Services:

- * Item 16 (2) refers: It was suggested that if a broadcasting service altered its stance on this issue, appropriate notice of this should be given to each political party. The question of whether each political party should have a broadcast monitor was raised. This issue was referred back to the Technical Committee for consideration, taking into account the views expressed in the meeting.

5.2.2.15 Clause 17 - Prohibition on Party Election Broadcast and Political Advertisements on Television Broadcasting Services:

- * The Technical Committee was requested to clearly define what a "party election broadcast" is for the purposes of television broadcasting.

5.2.2.16 Clause 18 - Equitable Treatment of Political Parties by all

Broadcasting Services:

- * Item 18 (4) refers: The Technical Committee noted that this item should have been deleted.

5.2.2.17 Clause 21 - Orders, Penalties and Recommendations:

- * Item 21 (1) (d) refers: It was suggested that a restriction to the openness of financial penalties should be considered.

5.2.2.18 Clause 25 - Regulations:

- * It was suggested that the words "only on the request of" be deleted and replaced with "in consultation with".

5.2.2.19 Clause 26 - Offences and Penalties:

- * The Technical Committee was requested to consider the decriminalisation of offences.
- * Item 26 (b) refers: It was suggested that this item was inappropriate and the Technical Committee would should reconsider this item.

5.2.2.20 Clause 27 - Delegation:

- * A concern was expressed with regard to the inclusion of a state member/civil servant. The Technical Committee was requested to reconsider this issue.

5.2.3 The Technical Committee was requested to take note of comments arising out of the debate on the Draft Bill on the IBA that were also applicable to this Draft Bill.

5.3 Proposal to the Negotiating Council with regard to the Functioning of the Technical Committee on the Independent Media Commission and Independent Broadcasting Authority:

5.3.1 The following proposal was agreed to by the Negotiating Council:

5.3.1.1 Due cognisance has been taken of the work done so far by the Technical Committee, and appreciation for the progress in finalising the Bills on the Independent Media Commission and the Independent Broadcasting Authority needs to be expressed.

5.3.1.2 However, cognisance has also been taken of the fact that:

- * In respect of both Bills, there are still various outstanding matters that will require extensive deliberations in the Technical Committee; and
- * The Technical Committee received voluminous comment from the broadcasting industry and other interested bodies and parties on the IBA Bill after it was published for general information and comment.

5.3.1.3 In view of the aforementioned, and because time is of the essence, it was proposed that:

- * The Technical Committee finalises both Bills with incorporation of all alternative proposals in respect of those clauses in the Bills on which there are dissenting views;
- * The Committee submits its final report preferably before or on 29 July 1993.

5.3.2 It was noted that the Technical Committee was granted flexibility in terms of the above accepted proposal.

5.3.3 It was noted that the Planning Committee had decided to recommend to the Negotiating Council that wherever a Bill was in the process of preparation, a State Legal Advisor be appointed to that Technical Committee with a view to refining the language into appropriate legislative language.

5.3.4 The Technical Committee was thanked for its work so far completed.

NEGOTIATING COUNCIL DEBATE ON THE FIFTH DRAFT OF THE INDEPENDENT BROADCASTING AUTHORITY BILL

DRAFT AGENDA

EXPLANATORY NOTE

The Technical Committee has prepared a draft agenda for the Negotiating Council's debate on the Fifth Draft of the IBA Bill. The matters listed below include significant amendments to the Bill and matters which have not yet been resolved.

SECTION 1 : DEFINITIONS (Pages 7 - 12)

As noted in the Special Report, the definitions of **political party** and **Republic** cannot be resolved by the Technical Committee.

There have been minor amendments to a number of the definitions and the Technical Committee is of the view that the Negotiating Council should only deal with particular problems raised by members of the Negotiating Council.

CHAPTER TWO : PRIMARY OBJECTS OF ACT (page 13)

Footnote 3 (page 13):

The Technical Committee has noted that it was unable to incorporate the SA Government's proposal that religion should be expressly catered for in section 2. The prevailing view in the Committee is that religion is sufficiently provided for under "culture".

Section 2(6) and 2(7) (page 14)

As noted in the Special Report, the Technical Committee resolved the issues of empowerment and equal opportunity employment practices by the insertion of these as two primary objects. Consequently, section 43(2)(h), as it appeared in the 4th Draft, has been dropped.

received by any of the relevant participants.

4.4.3 The SACP requested that the following be noted:

- * That it displayed gross disrespect to the whole process for the Process to not have been informed about the withdrawal of the relevant participants;
- * That this Process remained fully constituted and remained able to take the necessary decisions to move the country to democracy;
- * That all the withdrawn parties would be welcome to return but should not be allowed to complain about decisions taken in their absence;
- * That the Negotiating Council proceed with its agenda and appeal to the relevant participants to come back to the negotiating process;
- * That the SACP felt that as a result of the relevant participants not even officially informing the Negotiating Process about their withdrawal, this indicated a lack of seriousness as to how they regarded the process.

4.4.4 It was agreed that as a matter of procedure it should be noted that the following participants were absent from the meeting without apologies:

- * IFP
- * KP
- * Kwazulu Government

4.4.5 After discussion and the putting forward of various proposals it was agreed not to proceed with any of the proposals as the Multi-Party Negotiating Process had not been officially notified of the decision of the relevant participants. Until this was done, the meeting should proceed as planned. Furthermore, it was agreed that the meeting could not act on an issue that was not officially/formally before the meeting.

5. Substantive Issues

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- * "Republic" refers: The Bophuthatswana Government and the Ciskei Government noted that it did not regard itself being bound in this regard.
- * "State-financed publication" refers: It was proposed that the following wording be deleted "for the purposes of the promotion of state policy or the policy of a department of state". This was seconded and no objections were noted. The Technical Committee was requested to find, if necessary, more acceptable wording to convey the point in this definition.

5.2.2.2 Clause 3 - Objects:

- * The Technical Committee was requested to reconsider the wording.

5.2.2.3 Clause 4 - Appointment of Members of the Commission:

- * It was suggested that the heading should read

"Composition of the Commission".

5.2.2.4 Clause 5 - Persons Qualified to be Members of the Commission:

- * It was suggested the composition should be reconsidered by the Technical Committee taking into account the views of the meeting.

5.2.2.5 Clause 6 - Persons Disqualified from being Members of Independent Media Commission:

- * Item 6 (a) refers: It was suggested that the word "present" be deleted.
- * Item 6 (f) refers: It was suggested that the Technical Committee reconsiders this item with regard to the type of un-rehabilitated insolvent, taking into account the views expressed in the meeting.

5.2.2.6 Clause 7 - Term of Office of Members of Commission:

- * Item 7 (2) refers: The Technical Committee was requested to consider any lengthening of the lifespan of the IMC. The wording of this item was suggested to be vague.

5.2.2.7 Clause 8 - Vacation of Office of Members of Independent Media Commission and the Filling of such Vacancy:

- * Item 8 (1) (b) refers: The Technical Committee was requested to consider putting in a reference in this item similar to the reference of the TEC in Item 8 (1) (f).

5.2.2.8 Clause 9 - Remuneration of Members of Commission:

- * It was suggested that the words "State President" be replaced by "Minister of State Expenditure".
- * It was suggested that the words "on recommendation of" be replaced by "in consultation with".
- * It was suggested that any references to the State

President or a Minister should be omitted.

- * The Technical Committee required guidance on how all the interim structures would be financed. The SA Government was requested to make submissions to this Technical Committee and any other relevant Technical Committees in this regard.

5.2.2.9 Clause 10 - Meetings of the Commission:

- * Item 10 (1) refers: The Technical Committee should consider to what extent the members of the Commission would be involved full time during the run up to the election.
- * Item 10 (6) refers: It was suggested that this Item should also be provided for in the Draft Bill on the IBA.
- * It was suggested that, as is the case with the IBA, provision for casual vacancies should be made for in this Draft Bill.
- * It was suggested that Item 6 (b) be deleted.
- * Item 6 (a) refers: It was suggested that if a member had an interest he/she should be recused from the meeting.

5.2.2.10 Clause 11 - Establishment of Committees:

- * Item 11 (1) refers: The Technical Committee should consider placing restrictions on the Committees themselves, with the most important aspects reserved for the Commission itself. The Committees should only be appointed in consultation with the TEC.
- * It was suggested that Item 11 (2) should be made subject to 11 (1).
- * Item 11 (2) (a) (i) refers: It was suggested that the sentence should end after the word "advertisements", reformulated and the appropriate terminology found.
- * Item 11 (2) (a) (ii) refers: It was suggested that the sentence should end after the word "election",

reformulated and the appropriate terminology found.

- * Item 11 (8) refers: It was suggested that a word was missing and the word "of" should be inserted between "performance" and "its".

5.2.2.11 Clause 12 - Appointment of Experts:

- * Item 12 (1) (b) refers: It was suggested that the item should read "An expert shall perform the functions assigned to him by the Commission".
- * Item 12 (5) refers: The Technical Committee was requested to consider a more appropriate word for "seconded".

5.2.2.12 Clause 13 - Staff of Commission:

- * Item 13 (2) refers: It was suggested that the TEC and its Sub-Councils should be involved in establishing the levels of remuneration.

5.2.2.13 Clause 15 - Party Election Broadcasts on Public Sound Broadcasting Services:

- * It was suggested that private sound broadcasting services with regard to party election broadcasts should be clearly set out in this item.

5.2.2.14 Clause 16 - Political Advertisements on Sound Broadcasting Services:

- * Item 16 (2) refers: It was suggested that if a broadcasting service altered its stance on this issue, appropriate notice of this should be given to each political party. The question of whether each political party should have a broadcast monitor was raised. This issue was referred back to the Technical Committee for consideration, taking into account the views expressed in the meeting.

5.2.2.15 Clause 17 - Prohibition on Party Election Broadcast and Political Advertisements on Television Broadcasting Services:

- * The Technical Committee was requested to clearly define what a "party election broadcast" is for the purposes of television broadcasting.

5.2.2.16 Clause 18 - Equitable Treatment of Political Parties by all Broadcasting Services:

- * Item 18 (4) refers: The Technical Committee noted that this item should have been deleted.

5.2.2.17 Clause 21 - Orders, Penalties and Recommendations:

- * Item 21 (1) (d) refers: It was suggested that a restriction to the openness of financial penalties should be considered.

5.2.2.18 Clause 25 - Regulations:

- * It was suggested that the words "only on the request of" be deleted and replaced with "in consultation with".

5.2.2.19 Clause 26 - Offences and Penalties:

- * The Technical Committee was requested to consider the decriminalisation of offences.
- * Item 26 (b) refers: It was suggested that this item was inappropriate and the Technical Committee would should reconsider this item.

5.2.2.20 Clause 27 - Delegation:

- * A concern was expressed with regard to the inclusion of a state member/civil servant. The Technical Committee was requested to reconsider this issue.

5.2.3 The Technical Committee was requested to take note of comments arising out of the debate on the Draft Bill on the IBA that were also applicable to this Draft Bill.

5.3 Proposal to the Negotiating Council with regard to the Functioning of the Technical Committee on the Independent Media Commission and Independent Broadcasting Authority:

5.3.1 The following proposal was agreed to by the Negotiating Council:

5.3.1.1 Due cognisance has been taken of the work done so far by the Technical Committee, and appreciation for the progress in finalising the Bills on the Independent Media Commission and the Independent Broadcasting Authority needs to be expressed.

5.3.1.2 However, cognisance has also been taken of the fact that:

- * In respect of both Bills, there are still various outstanding matters that will require extensive deliberations in the Technical Committee; and
- * The Technical Committee received voluminous comment from the broadcasting industry and other interested bodies and parties on the IBA Bill after it was published for general information and comment.

5.3.1.3 In view of the aforementioned, and because time is of the essence, it was proposed that:

- * The Technical Committee finalises both Bills with incorporation of all alternative proposals in respect of those clauses in the Bills on which there are dissenting views;
- * The Committee submits its final report preferably before or on 29 July 1993.

5.3.2 It was noted that the Technical Committee was granted flexibility in terms of the above accepted proposal.

5.3.3 It was noted that the Planning Committee had decided to recommend to the Negotiating Council that wherever a Bill was in the process of preparation, a State Legal Advisor be appointed to that Technical Committee with a view to refining the language into appropriate legislative language.

5.3.4 The Technical Committee was thanked for its work so far completed.

6. Procedural Issues

6.1 Sufficient Consensus:

6.1.1 The Administration, on behalf of the Planning Committee and PJ Gordhan on behalf of the ad-hoc committee, gave a reportback on this issue and the following was noted:

- * A further meeting of the ad-hoc committee would occur at 13h00 on Tuesday 20 July 1993 and a report would then be made to the Planning Committee, and subsequently to the

NEGOTIATING COUNCIL DEBATE ON THE FIFTH DRAFT OF THE INDEPENDENT BROADCASTING AUTHORITY BILL

DRAFT AGENDA

EXPLANATORY NOTE

The Technical Committee has prepared a draft agenda for the Negotiating Council's debate on the Fifth Draft of the IBA Bill. The matters listed below include significant amendments to the Bill and matters which have not yet been resolved.

SECTION 1 : DEFINITIONS (Pages 7 - 12)

As noted in the Special Report, the definitions of **political party** and **Republic** cannot be resolved by the Technical Committee.

There have been minor amendments to a number of the definitions and the Technical Committee is of the view that the Negotiating Council should only deal with particular problems raised by members of the Negotiating Council.

CHAPTER TWO : PRIMARY OBJECTS OF ACT (page 13)

Footnote 3 (page 13):

The Technical Committee has noted that it was unable to incorporate the SA Government's proposal that religion should be expressly catered for in section 2. The prevailing view in the Committee is that religion is sufficiently provided for under "culture".

Section 2(6) and 2(7) (page 14)

As noted in the Special Report, the Technical Committee resolved the issues of empowerment and equal opportunity employment practices by the insertion of these as two primary objects. Consequently, section 43(2)(h), as it appeared in the 4th Draft, has been dropped.

CHAPTER THREE : INDEPENDENT BROADCASTING AUTHORITY (page 16)

Section 3(3) (page 16)

This new subsection has been included to strengthen the Authority's status as an **independent** regulatory authority.

Section 4(1) on the Constitution of the Council (pages 16-17) and Schedule 1 on the Appointment Procedure for councillors (pages 71-74)

As noted in the Special Report, the appointment procedure outlined in Schedule 1 has been opposed by the South African Government and the matter is being dealt with by an **ad hoc** committee.

Section 4(2) on qualificatory provisions (page 17)

The Technical Committee has taken into account the comments of the Negotiating Council in this regard and the subsection has been amended accordingly.

Section 5 Persons Disqualified from being members of the Council (page 17)

The Technical Committee has taken into account the comments of the Negotiating Council in this regard and section 5 has been amended accordingly.

Section 6 Terms of Office of Councillors (page 19)

The section has been amended substantially in order to provide for staggered terms office and continuity on the Council. The new section now makes it impossible for any one political party to decide on the total composition of the Council.

CHAPTER 4 : COMMITTEES, APPOINTMENT OF EXPERTS AND INQUIRIES

Section 20(1)(a) (page 28)

The Technical Committee has changed the name of one of the standing committees from the Broadcasting Frequency Spectrum Management Committee to the **Broadcasting Technical Committee**.

Section 26(6) - Inquiries into three critical policy and regulatory issues (page 32)

As noted in the Special Report, the inquiry mechanism has been extended for a number of reasons.

Section 26(6) now provides that the Authority shall, as soon as may be reasonably practicable after the commencement of this Act and before any new broadcasting licences are granted, conduct a single inquiry into:

- a) the matters referred to in section 39(1), that is the protection and viability of public broadcasting services in the Republic, with particular reference to the financing, control and accountability of such services;
- b) the matters referred to in section 44(2), namely the the exact nature of the regulations on cross-media ownership which must be prescribed by the Authority;
- c) the matters referred to in section 48(5), namely local television content and South African music minimum percentages or conditions which must be prescribed by the Authority.

CHAPTER 6 : BROADCASTING SIGNAL DISTRIBUTION LICENCES (pages 35-37)

The Technical Committee has made a number of amendments to this chapter which can be addressed should any specific questions or suggested amendments be proposed by members of the Negotiating Council.

CHAPTER 7 : BROADCASTING LICENCES

The Authority will no longer predetermine licence areas. A licence area will now simply mean the chosen geographical target area of the broadcasting licensee.

Security will no longer be required from applicants for broadcasting licences.

Section 38(13) on the levying of fees (pages 41-42):

In response to comments of the Negotiating Council and submissions from the public, this subsection now gives the Authority the power to prescribe different fees for different licence categories. Section 38(13) also contains an important proviso that the fees "shall not

constitute payment in consideration for the granting of the licence". In other words, it lays to rest notions of 'franchising off' frequencies and licences.

Section 39(3) and footnote 12 on the grandfathering of public broadcasting licensees (pages 42-43)

The Technical Committee refers here to the problem of grandfathering public broadcasters who have been licensed in the TBVC states.

Section 40(2) and footnote 13 on the grandfathering of private broadcasting licensees (page 44)

The Technical Committee refers here to the problem of grandfathering private broadcasters who have been licensed in the TBVC states.

Section 41(1)(b) and footnote 14 on the mechanisms to ascertain whether an applicant for a community broadcasting licence has the support of the relevant community (page 44)

The Technical Committee now proposes that a uniform standard/test should be prescribed by the Authority.

Section 42 and footnote 15 on the definition of "control" (page 45)

Footnote 15 refers succinctly to the problem of defining "control" in relation to sections 42, 43 and 44 and Schedule 4.

Section 43(6) and footnote 16 on the amendment of the limitations on the control of private broadcasting services (pages 45 and 47)

This new subsection provides that the Authority may make recommendations on the amendment of the limitations should this be necessitated in certain circumstances.

Section 44 and footnote 17 - Limitations on the cross-media control of private broadcasting services (pages 47-48)

This section has been entirely reworked. Reference has already been made to the section 26 inquiry that must be held on the setting of cross-ownership limitations. Section 44(2) lists some of the factors which the Authority must take into account in that inquiry.

Section 45 and footnote 18 on the prohibition of political parties being granted broadcasting licences (page 48)

The Technical Committee has already noted the problems it has had relating to the definition of political party.

Section 48(1)(c) on South African music (pages 52-53)

A new qualifying definition of South African music has been added. The Technical Committee has been assisted in this regard by the highly successful mechanisms applied in Australia and Canada.

Section 49 Term of Broadcasting Licence (page 54)

The Technical Committee has resolved this issue. The licence terms are now definitively set out in section 49.

Section 50 Transfer of Licence (page 55)

This section will also apply to any privatisation of public broadcasting services.

CHAPTER 10 : GENERAL PROVISIONS

Section 70 Regulations (page 68)

The Technical Committee has now provided that the Council will make regulations.

**AREAS OF THE BILL WHICH REQUIRE MORE TECHNICALLY PRECISE
DRAFTING**

Sections 14, 15, 16, 17, 18, 33, 36, 39(3), 40(2), 42, 43, 44, 54, 63(1)(e), 64, 65 and 68.

Schedule 5 on Amendment of Laws