

**DOCUMENT PACK FOR THE
MEETING OF THE PLENARY OF THE
MULTI-PARTY NEGOTIATING
PROCESS**

17 NOVEMBER 1993

VOLUME II

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MULTI-PARTY NEGOTIATING PROCESS
TO BE HELD ON 17 NOVEMBER 1993 AT 13H45**

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REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

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STATE PRESIDENT'S OFFICE

No. 1876. 27 October 1993

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

No. 151 of 1993: Transitional Executive Council Act, 1993.

KANTOOR VAN DIE STAATSPRESIDENT

No. 1876. 27 Oktober 1993

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

No. 151 van 1993: Wet op die Uitvoerende Oorgangsraad, 1993.

ACT

To establish a Transitional Executive Council with a view to promoting the preparation for and transition to a democratic order in South Africa; and to provide for matters connected therewith.

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

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

Definitions

1. In this Act, unless the context indicates otherwise—

- (i) "administration" means any department of state of any Government, or any provincial administration or local government body; (i) 5
- (ii) "armed force" means any armed force not established by or under any law and which is under the authority and control of, or associated with and promotes the objectives of, a participant in the Council; (iv) 10
- (iii) "Constitution" means the Constitution of the Republic of South Africa, 1993; (v)
- (iv) "Council" means the Transitional Executive Council established by section 2; (xix)
- (v) "defence force" means any defence force of any Government, established by or under any law; (xxx) 15
- (vi) "election" means an election for any legislative body established by any law; (xxix)
- (vii) "Government" means—
 - (a) the Government of the Republic of South Africa;
 - (b) the Governments of the self-governing territories; and 20
 - (c) the Government of the Republic of Transkei, Bophuthatswana, Venda or Ciskei, as the case may be, if the provisions of this Act have been incorporated into the law of the State concerned; (xx)
- (viii) "Independent Broadcasting Authority" means the Independent Broadcasting Authority established by the Independent Broadcasting Authority Act, 1993; (xiii) 25
- (ix) "Independent Electoral Commission" means the Independent Electoral Commission established by the Independent Electoral Commission Act, 1993; (xiv)
- (x) "Independent Media Commission" means the Independent Media Commission established by the Independent Media Commission Act, 1993; (xii) 30
- (xi) "intelligence service" means any intelligence service of any Government, established by or under any law; (vi)
- (xii) "intelligence structure" means any intelligence structure not established by or under any law and which is under the authority or control of, or associated with and promotes the objectives of, a participant in the Council; (vii) 35
- (xiii) "military force" means any defence force or armed force, but shall not include any policing agency; (viii) 40
- (xiv) "Multi-Party Negotiating Process" means the negotiating process that commenced in March 1993 at the World Trade Centre, Kempton Park; (xxviii)
- (xv) "National Peace Accord" means the National Peace Accord signed on 14 September 1991 at the Carlton Centre, Johannesburg; (xi) 45
- (xvi) "National Peacekeeping Force" means the National Peacekeeping Force referred to in section 16(10); (x)

- (xvii) "National Peace Secretariat" means the National Peace Secretariat established by section 2 of the Internal Peace Institutions Act, 1992 (Act No. 135 of 1992); (ix)
- (xviii) "Negotiating Council" means the Negotiating Council of the Multi-Party Negotiating Process; (xv) 5
- (xix) "participant", in relation to the Council, means any Government, political party or organization that is a participant in the Council by virtue of section 4; (ii)
- (xx) "Police Board" means the Police Board established in terms of Chapter 3 of the National Peace Accord; (xvi) 10
- (xxi) "policing agency" means any public police force in South Africa established or governed by or under any law; (xvii)
- (xxii) "political party" means any party or organization, whether on its own or as an alliance of parties or organizations, which participates in or intends to participate in an election in terms of the Constitution; (xviii) 15
- (xxiii) "region" includes a province or a self-governing territory; (xxiii)
- (xxiv) "self-governing territory" means a self-governing territory as defined in section 38(1) of the Self-Governing Territories Constitution Act, 1971 (Act No. 21 of 1971); (xxi) 20
- (xxv) "South Africa" means—
 - (a) the Republic of South Africa, including the self-governing territories; and
 - (b) the Republic of Transkei, Bophuthatswana, Venda or Ciskei, as the case may be, if the provisions of this Act have been incorporated into the law of the State concerned; (xxv) 25
- (xxvi) "Special Electoral Court" means the Special Electoral Court established by the Independent Electoral Commission Act, 1993; (xxii)
- (xxvii) "subcouncil" means a subcouncil established by or under this Act; (xxiv) 30
- (xxviii) "the Subcouncil", in sections 14, 15, 16, 17, 18, 19 and 20, means the subcouncil referred to in section 8(1)(a), (b), (c), (d), (e), (f) or (g), respectively; (iii)
- (xxix) "traditional authority" means any authority which in terms of indigenous law or any other law administers the affairs of any tribe or group of indigenous people or any other persons resident within an area under the control of a traditional leader; (xxvii) and 35
- (xxx) "traditional leader" means any person who in terms of indigenous law or any other law is in charge of or exercises control over a traditional authority; (xxvi) 40

TRANSITIONAL EXECUTIVE COUNCIL

Establishment of Transitional Executive Council

- 2. There is hereby established a council to be known as the Transitional Executive Council, which— 45
 - (a) shall, subject to section 3, for the purpose of attaining the objects referred to in that section, have the executive and other powers conferred upon it by or under this Act; and
 - (b) may exercise such other powers and shall perform such duties as may be conferred or imposed upon it by or under any other law. 50

Objects of Council

- 3. The objects of the Council shall be to facilitate and promote, in conjunction with all legislative and executive structures at all levels of government in South Africa, the preparation for and transition to a democratic order in South Africa by— 55
 - (a) creating and promoting a climate for free political participation by endeavouring to—

- (i) eliminate any impediments to legitimate political activities;
- (ii) eliminate any form of intimidation which has a bearing on the said transition;
- (iii) ensure that all political parties are free to canvass support from voters and to organize and hold meetings and for those purposes have access to all voters; 5
- (iv) ensure the full participation of women in the transitional and electoral structures and processes; and
- (v) ensure that no Government or administration exercises any of its powers in such a way as to advantage or prejudice any political party; 10
- (b) creating and promoting conditions conducive to the holding of free and fair elections;
- (c) exercising such powers and performing such duties as may be conferred or imposed upon it by any other law. 15

Constitution of Council

4. (1) Each Government, political party or organization which—
- (a) is or was at any time represented on the Negotiating Council; and
 - (b) by notice in writing to the Negotiating Council commits itself to the objects of the Council, and in respect of itself and all organizations which are under its authority or control, and any armed force which is under its authority and control, or associated with it and promotes its objectives— 20
 - (i) undertakes to be bound by and to implement directions issued by the Council in terms of this Act; and
 - (ii) renounces violence as a means of achieving political objectives. 25
- shall be a participant in the Council and shall be entitled to be represented by one member on the Council.
- (2) The Government of the Republic of Transkei, Bophuthatswana, Venda or Ciskei, or any political party registered only in or operating only from or any organization operating only from such a State, shall not be a participant in the Council unless— 30
- (a) the provisions of this Act, as well as the provisions of the Independent Electoral Commission Act, 1993, the Electoral Act, 1993, the Independent Media Commission Act, 1993, and the Independent Broadcasting Authority Act, 1993, have been incorporated into the law of the State concerned; or 35
 - (b) formal provision has been made by law in such a State for the application of any Act referred to in paragraph (a) in that State.
- (3) A participant in the Council that wishes to be represented on the Council shall within seven days after the commencement of this section by notice in writing to the State President nominate a member and an alternate member to the Council. 40
- (4) The State President shall within seven days after the receipt of such a notice, by proclamation in the *Gazette* appoint the persons so nominated as a member and alternate member, respectively, of the Council. 45
- (5) (a) If the Council determines that any Government, political party or organization which is not a participant in the Council, but which by notice in writing to the Council commits itself to the objects of the Council, and in respect of itself and all organizations which are under its authority or control, and any armed force which is under its authority and control, or associated with it and promotes its objectives— 50
- (i) undertakes to be bound by and to implement directions issued by the Council in terms of this Act; and
 - (ii) renounces violence as a means of achieving political objectives.
- should be such a participant, the Council shall notify the State President thereof in writing, and the State President shall by proclamation in the *Gazette* declare that Government, political party or organization to be a participant in the Council. 55

(b) If such a participant wishes to be represented on the Council, it shall within seven days after the date of the proclamation concerned by notice in writing to the State President nominate a member and an alternate member to the Council.

(c) The State President shall within seven days after the receipt of such a notice, by proclamation in the *Gazette* appoint the persons so nominated as a member and alternate member, respectively, of the Council.

(6) The Council shall determine whether a member thereof shall serve in a full-time or part-time capacity.

(7) If a member of the Council is for any reason unable to perform the duties of his or her office, the alternate member concerned shall act in the place of that member, and for that purpose the alternate member shall have all the powers and duties of the member concerned.

(8) (a) If a participant in the Council or any organization under its authority or control, or any armed force which is under its authority and control, or associated with it and promotes its objectives—

(i) breaches the undertaking or renunciation submitted by the participant in terms of subsection (1)(b) or (5)(a); or

(ii) fails or refuses to comply with any provision of this Act or any regulation made thereunder, or with any direction of the Council or a subcouncil in terms of this Act or any other law,

the Council may, if it has reason to believe that such breach, failure or refusal is of a material nature or has occurred persistently, by notice in writing to that participant direct it to refrain from such breach or to comply with such provision or direction, or to see to it that such organization or armed force refrains from such breach or complies with such provision or direction, as the case may be.

(b) If the participant concerned or such an organization or armed force, after the receipt of such a notice—

(i) fails or refuses to comply with a direction of the Council under paragraph (a) within a reasonable time; or

(ii) wilfully persists with any conduct referred to in subparagraph (i) or (ii) of paragraph (a),

the Council may, without derogating from its powers under section 7(1)(j), suspend that participant from participating in the Council or any subcouncil or any body, committee or subcommittee established by or under this Act, for such period and on such conditions as may be determined by the Council.

(9) A participant in the Council which fails or refuses to nominate a member on the Council, or terminates or suspends its participation in the Council, or whose participation in the Council is suspended under subsection (8), shall nevertheless remain bound by the obligations it incurred by becoming such a participant.

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

5. (1) If a member of the Council loses the confidence of the participant which nominated that member, the Council, on being advised thereof in writing by the participant concerned, shall inform the State President accordingly in writing, and the State President shall by proclamation in the *Gazette* remove that person from office.

(2) If a member of the Council dies, resigns from office (which shall be in writing to the State President) or is removed from office under subsection (1), the participant previously represented by that member shall be entitled to nominate another person as a member of the Council, and in respect of such nomination, section 4 shall apply *mutatis mutandis*.

(3) Subsections (1) and (2) shall apply *mutatis mutandis* in respect of an alternate member of the Council.

Conditions of service, remuneration and allowances of members of Council

6. (1) The conditions of service, remuneration, allowances and other benefits of members of the Council shall be determined by the State President in consultation with the Negotiating Council.

(2) Those members of the Council who receive remuneration, allowances or other benefits by virtue of their employment by or position in any Government or public service or administration and who continue to receive such remuneration, allowances or other benefits while serving on the Council, shall not receive any remuneration, allowance or other benefits by virtue of subsection (1), except to the extent required to place those members in the position in which they would have been were it not for such employment or position. 5

(3) The conditions of service, remuneration, allowances and other benefits contemplated in this section may differ according to whether a member is a full-time or part-time member of the Council. 10

(4) An alternate member shall be entitled to such allowances, if any, as may be determined by the Council.

General powers of Council

7. (1) The Council shall, in addition to the other powers conferred upon it by this Act or any other law, for the purpose of attaining its objects have the power to— 15

- (a) request and obtain, subject to any other provision of this Act, all such information and documents as may be necessary for attaining its objects;
- (b) direct a subcouncil to enquire into and to advise the Council on any matter in connection with the functions of the Council;
- (c) initiate or participate in negotiations relating to its functions and objects;
- (d) appoint staff to assist the Council and the subcouncils in the performance of their functions, and in consultation with the State President, to determine the conditions of service, remuneration, allowances and other benefits of such staff;
- (e) request the secondment of skilled staff from any public service in South Africa, subject to any law applicable to such staff in that regard, to assist the Council or a subcouncil in the performance of its functions;
- (f) make rules providing for the convening of and procedure at meetings of the Council and subcouncils;
- (g) appoint from among its members office-bearers, on either a fixed or a rotational basis;
- (h) appoint a person, body or subcommittee to investigate or deal with any matter relating to the Council's functions and to report thereon;
- (i) open and administer its own financial accounts; and
- (j) take such steps, including legal steps, in terms of any law or the common law, as may be necessary to give effect to this Act or to any decision taken by the Council or a subcouncil under this Act or any other law. 20 25 30 35

(2) The Council may delegate to a subcouncil any of its powers, but it shall not be divested of a power so delegated.

(3) In respect of any power delegated to a subcouncil under subsection (2) or any power referred to in sections 12(1) and 14 to 20, the Council— 40

- (a) shall identify categories of subjects in respect of which the Council shall itself take decisions or make recommendations;
- (b) shall identify categories of subjects in respect of which decisions or recommendations of subcouncils shall have no force or effect unless ratified by the Council;
- (c) shall be informed by each subcouncil of all decisions or recommendations of that subcouncil;
- (d) may review, amend or withdraw any such decision or recommendation of a subcouncil; and
- (e) may exercise that power itself. 45 50

(4) If the Council exercises any power by virtue of subsection (3), the relevant provisions of this Act relating to the subcouncil concerned shall apply *mutatis mutandis* in respect of the Council.

(5) Notwithstanding any provision of this Act, the Council or a subcouncil, in exercising any power referred to in section 14(e), 14(i), 15(1)(g), 16(2)(f), 16(2)(g), 17(1)(a), 17(1)(h), 17(3), 18(a), 19(j), 20(1)(k) or 20(1)(l) shall not be limited to acting within the scope of the objects of the Council.

SUBCOUNCILS

5

Establishment of subcouncils

8. (1) There are hereby established the following subcouncils under the control and supervision of the Council:

- (a) Subcouncil on Regional and Local Government and Traditional Authorities: 10
- (b) Subcouncil on Law and Order, Stability and Security;
- (c) Subcouncil on Defence;
- (d) Subcouncil on Finance;
- (e) Subcouncil on Foreign Affairs;
- (f) Subcouncil on the Status of Women; and 15
- (g) Subcouncil on Intelligence.

(2) (a) Additional subcouncils may be established at the request of the Council by means of an amendment to this Act as contemplated in section 28, if the establishment of such subcouncils is necessary for the Council to perform its functions. 20

(b) If any dispute between the Council and State President arises as to the necessity of establishing such subcouncils, the matter shall be referred to the Special Electoral Court for determination.

(3) A subcouncil shall—

- (a) subject to sections 3 and 7(2) and (3), for the purpose of attaining the objects of the Council have the powers conferred upon it by or under this Act or any other law; 25
- (b) report to the Council in such manner and at such times as may be determined by the Council.

Constitution of subcouncils

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9. (1) (a) The members of the subcouncils shall be appointed by the Council in a full-time capacity.

(b) The Council shall give notice in the *Gazette* of each such appointment.

(2) (a) The membership of a subcouncil shall not be restricted to members of the Council. 35

(b) The subcouncils referred to in section 8(1)(b), (c) and (g), shall each have eight members.

(c) The subcouncils referred to in section 8(1)(a), (d), (e) and (f), shall each have six members.

(3) The Council shall not appoint more than one person representing a particular participant in the Council on a particular subcouncil. 40

(4) If a member of a subcouncil is for any reason unable to perform the duties of his or her office, the Council may in writing appoint a substitute to act in the place of the member concerned, and for that purpose that substitute shall have all the powers and duties of the member concerned. 45

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

10. (1) If the Council is satisfied that a member of a subcouncil is unable to perform his or her duties satisfactorily, the Council shall remove that member from office and shall give notice of such removal in the *Gazette*.

(2) If a member of a subcouncil dies, resigns from office (which shall be in writing to the Council) or is removed from office in terms of subsection (1), the Council shall appoint another member to that subcouncil and give notice of such appointment in the *Gazette*. 50

Conditions of service, remuneration and allowances of members of subcouncils

11. (1) The conditions of service, remuneration, allowances and other benefits of members of the subcouncils shall be determined by the State President in consultation with the Council. 55

(2) Section 6(2) shall apply *mutatis mutandis* in relation to members of subcouncils.

(3) A substitute contemplated in section 9(4) shall be entitled to such allowances, if any, as may be determined by the Council.

General powers of subcouncils

12. (1) Except in so far as the Council determines otherwise under section 7(3), a subcouncil shall have the power to—

- (a) request and obtain, subject to any other provision of this Act, all such information and documents as may be necessary for performing its functions and attaining the objects of the Council;
- (b) initiate or participate in negotiations relating to its functions and objects;
- (c) appoint from among its members office-bearers, on either a fixed or a rotational basis; and
- (d) appoint a person or body to investigate any matter relating to the functions of the subcouncil and to report thereon.

(2) (a) A subcouncil may establish one or more subcommittees to assist it in the performance of its functions.

(b) A member of a subcommittee may be, but need not be, a member of the Council or of the subcouncil concerned.

SPECIFIC POWERS AND DUTIES OF COUNCIL AND SUBCOUNCILS

Powers in regard to certain proposed legislation and other actions

13. (1) (a) Each Government and administration shall keep the Council informed of and shall provide it with copies of all of its proposed legislation, including regulations, by-laws and other subordinate legislation, which have a bearing on the objects of the Council.

(b) If the Council or the subcouncil concerned has reason to believe that any proposed legislation of any Government or administration is likely to have an adverse effect on the attainment of the objects of the Council, it may, after affording the Government or administration concerned an opportunity to make representations to the Council or the subcouncil concerned, and subject to the other provisions of this Act, direct that Government or administration in writing not to proceed with the legislation concerned, and that Government or administration shall, subject to section 23, comply with such direction.

(2) (a) Each Government and administration, each political party or organization participating in the Council, and every other political party, shall keep the Council informed of, and the Council shall, subject to the other provisions of this Act, be entitled to request and obtain information in regard to, any decision and any proposed or intended action of that Government, administration, political party or organization likely to have a bearing on the objects of the Council.

(b) If the Council or the subcouncil concerned has reason to believe that a decision or action of any Government, administration, political party or organization referred to in paragraph (a) is likely to have an adverse effect on the attainment of the objects of the Council, it may, after affording the Government, administration, political party or organization concerned an opportunity to make representations to the Council or the subcouncil concerned, and subject to the other provisions of this Act, direct that Government, administration, political party or organization in writing not to implement that decision or proceed with that action, and that Government, administration, political party or organization shall, subject to section 23, comply with such direction.

(3) Subject to section 23, each Government and administration, each political party or organization participating in the Council and every other political party shall comply with and give effect to any direction made to it by the Council or a subcouncil in terms of this Act or any other law.

Powers and duties in regard to regional and local government and traditional authorities

14. The Council shall, for the purpose of attaining its objects, have the following powers to be exercised through its Subcouncil on Regional and Local Government and Traditional Authorities:

- (a) To acquaint itself with and monitor developments, policy objectives and targets in relation to regional and local government, relevant organizations active in the field of local government and traditional authorities;
- (b) in regard to regional and local government matters, to propose the amendment, repeal or enactment of legislation, including subordinate legislation;
- (c) to promote the objects of the Council generally, and in particular in regard to regional and local government elections, and to educate the public on the electoral processes;
- (d) to liaise with all organizations and bodies relevant to the functions of the Subcouncil, including the Local Government Negotiating Forum, regional governments, the Electrification Forum, the National Peace Secretariat, demarcation boards or commissions, the Independent Electoral Commission and the National Housing Forum;
- (e) to be informed of and to make proposals regarding regional and local government budgets, the powers, duties and functions and the restructuring and rationalization of regional and local government administrations, transitional measures, interim local government structures and the demarcation of boundaries, and shall consult with the Local Government Negotiating Forum and other interested bodies regarding such proposals;
- (f) to monitor any collapse of services and shortfall of finances in any regional or local government and to make recommendations designed to redress problems in this regard;
- (g) to request and obtain information regarding—
 - (i) the disposal and intended disposal of regional and local government assets; and
 - (ii) intended loans by any local government;
- (h) to make recommendations to the appropriate institutions and authorities on—
 - (i) legislative and executive measures, either existing or proposed, which may affect traditional leaders' powers during the transition;
 - (ii) free and fair political participation in areas in respect of which traditional leaders exercise their powers; and
 - (iii) matters of material concern to traditional leaders and their communities; and
- (i) to approve any amendment of the terms or conditions of, and any diminution of or increase in, the remuneration of traditional leaders.

Powers and duties in regard to law and order, stability and security

15. (1) The Council shall, for the purpose of attaining its objects, have the following powers to be exercised through its Subcouncil on Law and Order, Stability and Security:

- (a) To establish a national inspectorate comprised of members of policing agencies and such other persons as the Subcouncil may determine, which shall investigate and monitor all policing agencies, and shall liaise with all such agencies or their inspectorates in order to promote the objects of the Council;
- (b) to investigate, or order the investigation by the national inspectorate of, any matter relating to the functions of the Subcouncil, and for such purpose the Subcouncil and the national inspectorate shall, subject to the other provisions of this Act—

- (i) have the authority to interview such persons as they may consider necessary; and
 - (ii) have access to all such documents and facilities of any policing agency as may be necessary for the purpose of the investigation;
 - (c) to establish, in consultation with the Ministers responsible for the various policing agencies, a national independent complaints mechanism under the control of a civilian, which shall be responsible for the receipt and investigation of complaints lodged by members of the public concerning alleged misconduct by members of policing agencies: Provided that if no agreement is reached between the Ministers concerned and the Subcouncil within one month of the establishment of the Subcouncil, the matter shall be referred to the committee referred to in subsection (3)(c) for final determination;
 - (d) to request and obtain, subject to the other provisions of this Act, any information or crime intelligence reports compiled by any policing agency;
 - (e) to establish a committee comprised of local experts or of local and foreign experts, to evaluate or monitor any police action, conduct or reform relating to the objects of the Council;
 - (f) to call for a report on and evaluate the impact of any steps taken by any policing agency to prevent political violence, including such steps as any policing agency is required to take in terms of the National Peace Accord and relevant legislation;
 - (g) to make proposals, after such consultation as it may deem necessary and in consultation with the policing agencies concerned, to improve the effectiveness of and community co-operation with such policing agencies, which proposals shall be given effect to by the participants in the Council and the policing agencies concerned;
 - (h) to receive all recommendations of the Police Board, and to request the Police Board to conduct inquiries and to make recommendations in relation to any policing policy;
 - (i) to attend, and require the minutes of, any relevant meeting of any policing agency;
 - (j) to formulate a statement of values and objects for the promotion of law, order, peace, stability and security for policing agencies, and to introduce or amend a code of conduct which shall be binding on all policing agencies, all participants in the Council and, with the consent of any signatory of the National Peace Accord not participating in the Council, on that signatory as well;
 - (k) to require the investigation of any activity or action by a member of a policing agency which is alleged to have or to have had an adverse effect on the attainment of the objects of the Council and, in consultation with the appropriate Minister, where necessary, require the suspension, with full pay, of such member pending the outcome of the investigation;
 - (l) to liaise with the Independent Electoral Commission and the National Peace Secretariat and other structures of the National Peace Accord concerning matters relevant to the objects of the Council; and
 - (m) to receive all proposed regulations and directives governing the activities of the National Peacekeeping Force and to make recommendations in regard thereto.
- (2) (a) Notwithstanding any other law, the power of the State President to declare the existence of a state of emergency shall be exercised only after consultation with the Subcouncil.
- (b) The Council may by a decision which has the support of at least eighty percent of the members of the Council, review such a declaration and direct the State President to withdraw it, and the State President shall forthwith comply with such a direction.

(3) (a) Subject to subsection (2) and paragraph (b), any Minister or other person (hereinafter in this subsection referred to as "the functionary") who has the authority to declare the existence of a state of emergency or to declare an area to be an unrest area, as the case may be, and to make regulations with regard thereto, shall do so in consultation with the Subcouncil. 5

(b) Where the circumstances are urgent and pressing and the functionary concerned is unable to consult with the Subcouncil before making such a declaration, the functionary may make such a declaration without such consultation: Provided that if the Subcouncil at its first meeting thereafter, having due regard to such reasons as may be advanced by the functionary for such declaration, does not give its approval to the declaration concerned, the functionary, on being notified thereof by the Subcouncil, shall, subject to paragraph (c), forthwith withdraw the declaration. 10

(c) If the functionary and the Subcouncil are unable to reach agreement as to the necessity of a declaration referred to in paragraph (a) or (b), either party may refer the matter for determination to a committee, composed from the civilian membership of the Police Board, which determination shall be given within three days of such referral and shall be binding on the functionary, the Council and the Subcouncil, and be given effect to. 15

(d) The committee referred to in paragraph (c) shall be comprised of the chairperson and the vice-chairperson of the Police Board and one other member of that board elected by the civilian members of the board. 20

(4) To the extent that an agreement of the nature contemplated in section 34G of the Police Act, 1958 (Act No. 7 of 1958), could have an effect on the attainment of the objects of the Council, the decision to enter into such an agreement shall be taken by the responsible Minister or other responsible functionary in consultation with the Subcouncil. 25

(5) The State President and the Minister of Law and Order, exercising any power under section 3 of the Police Act, 1958, and the appropriate functionary exercising corresponding powers provided for in corresponding legislation of the Republic of Transkei, Bophuthatswana, Venda or Ciskei or any self-governing territory, in relation to an officer of the rank of brigadier or above, shall act in consultation with the Subcouncil, which may propose such action itself: Provided that if no agreement is reached between the State President or the Minister or the functionary concerned and the Subcouncil, any of them may refer the matter to the committee referred to in subsection (3)(c) for determination, which determination shall be given within seven days after such referral and shall be binding and be given effect to. 30 35

(6) (a) To the extent that it may affect the objects of the Council—

(i) the Minister of Law and Order, exercising any power in terms of section 33 of the Police Act, 1958, to make, amend or repeal regulations, or issue directives, governing relevant aspects of police conduct, functioning, structures and restructuring; and 40

(ii) the appropriate functionary exercising corresponding powers provided for in corresponding legislation of the Republic of Transkei, Bophuthatswana, Venda or Ciskei or any self-governing territory, shall act in consultation with the Subcouncil, which may propose such action itself: Provided that if no agreement is reached between the Minister or the functionary and the Subcouncil, either party may refer the matter to the committee referred to in subsection (3)(c) for determination, which determination shall be given within seven days after such referral and shall be binding and be given effect to. 45

(b) When the Minister of Law and Order, or the appropriate functionary exercising corresponding powers provided for in corresponding legislation of the Republic of Transkei, Bophuthatswana, Venda or Ciskei or any self-governing territory, issues directives of the nature contemplated in section 4 of the Police Act, 1958, the said Minister or functionary shall inform the Subcouncil thereof. 50

(7) (a) The various policing agencies shall designate officers of the rank of brigadier or above to assist the Subcouncil in drafting rules to ensure uniformity of conduct of members of the said agencies and the co-ordinated control and command of such agencies in so far as such conduct or the functions of those agencies have a bearing on the objects of the Council. 55

(b) The said rules shall be formulated within one month after the establishment of the Subcouncil and shall be promulgated by the Council by notice in the *Gazette*: Provided that if the rules are not formulated within that period or do not meet with the approval of the Minister or functionary referred to in subsection (6)(a), the matter shall be referred to the committee referred to in subsection (3)(c) for final determination. 5

(c) The officers referred to in paragraph (a) may be summoned at any time to assist the Subcouncil in the performance of its functions.

Powers and duties in regard to defence

16. (1) (a) Each military force shall, at the same time as the submission of the relevant commitment, undertaking and renunciation contemplated in section 4(1)(b) or 4(5)(a), or as soon as possible thereafter, by notice in writing to the Negotiating Council or the Council— 10

(i) associate itself with that commitment, undertaking and renunciation: and 15

(ii) acknowledge the authority of the Council and the Subcouncil on Defence for the purpose of attaining the objects of this Act.

(b) Any military force which fails to comply with paragraph (a), shall not be regarded as an armed force, a defence force or a military force, as the case may be, for the purposes of this section. 20

(2) The Council shall, for the purpose of attaining its objects, have the following powers to be exercised through its Subcouncil on Defence:

(a) To be kept informed on a continuous basis by each military force regarding its activities (including, but not restricted to, the planning, preparation and execution of any action by such military force) likely to have an adverse effect on the attainment of the objects of the Council: 25

(b) to be kept informed on a continuous basis by each participant in the Council of any proposed legislation (including subordinate legislation) and internal directives or rules regarding the conduct and deployment of any military force; 30

(c) to investigate through an independent body appointed or designated by the Subcouncil, or order the investigation of, the conduct of any member or members of a military force which is likely to have an adverse effect on the attainment of the objects of the Council; 35

(d) in respect of any activity or action by any member or members of a military force which is alleged to have or to have had an adverse effect on the attainment of the objects of the Council, to recommend appropriate disciplinary measures or criminal proceedings and order, in consultation with the commander of the military force concerned, the restriction to barracks or suspension, on full pay, of such member or members pending the outcome of such measures or proceedings, or recommend appropriate measures in regard to any unit or element of such military force; 40

(e) to formulate a code of conduct which shall be binding on all members of all military forces, and to monitor its observance; 45

(f) to undertake or to commission research into any relevant matter, including, but not limited to, the parliamentary control, composition, manpower policy (including conscription), organization and executive command of a future South African defence force, the policy in regard to armed forces which are not under the authority and control of participants in the Council, and the future of the arms and related industries; 50

(g) to oversee any planning, preparation and training for a future South African defence force;

(h) to liaise with the media and with the various military forces so as to keep the military forces and the public informed of developments regarding defence-related matters; 55

(i) to monitor media reporting on defence-related matters;

(j) to establish a co-ordinating council, comprised of the commander, or a

- person designated by the commander, of every military force, which shall—
- (i) liaise with all military forces in order to promote the objects of the Council; and
 - (ii) report and make recommendations to the Subcouncil, as and when required, concerning any matter relating to the functions of the Subcouncil; and
 - (k) to budget for and be allocated additional resources for the daily maintenance, the remuneration and allowances, if any, and the administration in assembly points within South Africa of all armed forces: Provided that the location of and the security arrangements in regard to such assembly points, the extent of such maintenance, remuneration and allowances, if any, and the requirements entitling a person to be regarded as a member of an armed force for the purpose of this paragraph, shall be subject to agreement by a committee of experts appointed by the Planning Committee of the Multi-Party Negotiating Process, and comprised of representatives of the military forces of participants in the Negotiating Council designated by the commanders of those forces.
- (3) For the purpose of subsection (2)(k) a person shall not be considered a member of an armed force as defined in section 1, unless—
- (a) that person was a registered member of such armed force at the commencement of this section and qualifies in terms of the requirements referred to in subsection (2)(k); and
 - (b) that person's name and other particulars are included in a certified personnel register, which shall be submitted by such armed force to the Subcouncil within 21 days after the commencement of this section or, in the case of a participant referred to in section 4(5), within 21 days after the publication of the relevant proclamation referred to in section 4(5)(a), and which register shall be updated monthly.
- (4) (a) The Council shall, in consultation with the Minister of Defence, make regulations governing—
- (i) the deployment of any defence force unit in crime prevention or peacekeeping operations; and
 - (ii) the relationship and interaction between such a unit and any other unit of a defence force, the National Peacekeeping Force or any policing agency involved in such operations.
- and any such deployment and the discontinuance of such deployment shall take place only in accordance with such regulations and with the concurrence of both the said Minister and the Subcouncil.
- (b) Until such regulations have been promulgated, a defence force unit may be deployed or continue to be deployed in crime prevention and peacekeeping operations in terms of existing laws governing such deployment: Provided that in respect of any such deployment—
- (i) which took place before the commencement of this section, the Subcouncil may review such deployment and, in consultation with the Minister of Defence, order the discontinuance of such deployment;
 - (ii) which takes place after the commencement of this section, such deployment and the discontinuance of such deployment shall take place only with the concurrence of both the Minister and the Subcouncil.
- (c) If the Council or the Subcouncil and the Minister are unable to reach agreement on any matter dealt with in this subsection or, in the case of the regulations contemplated in paragraph (a), are unable to reach such agreement within one month of the appointment of the members of the Subcouncil, the matter shall be referred to the Special Electoral Court for determination.
- (5) Notwithstanding subsection (4)(a), but subject to section 13(2)(b), the command structure of any military force shall remain responsible for the day to day management of such force, including routine transfers, training, promotion and, in the case of any defence force, any routine defensive functions relating to the protection of the integrity of the borders of the State concerned.

(6) The Subcouncil may establish—

- (a) monitoring mechanisms to ensure that its directives are complied with and that the activities of any military force have no adverse effect on the attainment of the objects of the Council;
- (b) any mechanism to ensure appropriate interaction between the Subcouncil, the various military forces, the National Peacekeeping Force, policing agencies and any other relevant agency at national, regional or local level.

(7) The Minister of Defence, exercising the powers in terms of the Defence Act, 1957 (Act No. 44 of 1957), and the appropriate functionary exercising corresponding powers provided for in the corresponding legislation of the Republic of Transkei, Bophuthatswana, Venda or Ciskei, to make, amend or repeal regulations regarding matters concerning defence force conduct, functioning, structures and deployment relevant to the objects of the Council, and any commander of an armed force issuing directives in regard to such a matter, shall act in consultation with the Subcouncil, which may itself propose such regulations or directives or the amendment or repeal of such regulations or directives: Provided that if no agreement is reached between the Minister, functionary or commander and the Subcouncil, the matter shall be referred to the Special Electoral Court for determination.

(8) Without derogating from the rights of any participant in the Council in terms of section 23, the commander of any military force shall ensure that any directive of the Subcouncil regarding the deployment or conduct of any military force is made known to and binding upon all members of such military force, including, where appropriate, by incorporation thereof in the relevant standing orders and any disciplinary code.

(9) The Subcouncil shall have the responsibility to ensure and monitor—

- (a) the audit and effective supervision of the arms and armaments of any military force, by that force; and
- (b) the identification of the personnel of any military force, for which purpose every military force shall submit a certified personnel register to the Subcouncil within 21 days after the commencement of this section or, in the case of a participant referred to in section 4(5), within 21 days after the publication of the relevant proclamation referred to in section 4(5)(a), and shall update such register on a monthly basis.

(10) (a) The Subcouncil shall budget for and be allocated the necessary resources to establish and maintain a force, to be known as the National Peacekeeping Force, the functions of which shall relate to the maintenance of peace and public order in South Africa.

- (b) The National Peacekeeping Force shall be comprised of members of—
 - (i) all military forces, as far as practicable in equal numbers, except in so far as any such force prefers to contribute fewer members to that Force; and
 - (ii) every policing agency which falls under the authority and control of a participant in the Council.

wishing to be represented in that Force.

(11) The Subcouncil shall establish a National Peacekeeping Force Command Council, comprised of representatives of all the military forces and policing agencies participating in the National Peacekeeping Force and wishing to be represented on that Command Council.

(12) The Subcouncil, in consultation with the National Peacekeeping Force Command Council, having due regard also to the interests of women, shall—

- (a) establish and see to the training of a unit of National Peacekeeping Force instructors, who may be drawn from the participating military forces and policing agencies but shall also include foreign experts;
- (b) formulate the philosophy, doctrine, syllabi and training policy of the National Peacekeeping Force;
- (c) establish criteria for the recruitment, training and selection of members of the National Peacekeeping Force;

- (d) establish the command structure of the National Peacekeeping Force and appoint, and in its discretion dismiss, the Commander and other senior officers, above a rank to be determined by the Subcouncil, of that Force, which command structure shall be accountable to the Subcouncil through the National Peacekeeping Force Command Council: 5
- (e) determine standard operational procedures for the National Peacekeeping Force: 5
- (f) consult with other military forces and policing agencies regarding the deployment and operation of the National Peacekeeping Force; and 10
- (g) make regulations regarding— 10
 - (i) the powers and duties of the National Peacekeeping Force;
 - (ii) the circumstances under which the National Peacekeeping Force may be deployed;
 - (iii) the conditions of service and remuneration of members of the National Peacekeeping Force: Provided that the provisions of section 6(2) shall apply *mutatis mutandis* to such members: 15
 - (iv) the relationship and interaction between the National Peacekeeping Force and any other military force or policing agency deployed in a peacekeeping operation in the same area as the National Peacekeeping Force: 20
 - (v) a disciplinary code, including a code of conduct, for members of the National Peacekeeping Force;
 - (vi) the application of any existing law relating to any matter referred to in subparagraph (i), (ii), (iii), (iv) or (v), with such adjustments, if any, to that law as may be considered necessary. 25
- (13) (a) The National Peacekeeping Force shall have its own distinctive uniform and insignia, and its vehicles shall be marked distinctively.
- (b) The Subcouncil shall—
 - (i) in consultation with the National Peacekeeping Force Command Council and after consultation with the South African Defence Force, determine the requirements of the National Peacekeeping Force in respect of uniforms, transport, accommodation, equipment and other logistical support; and 30
 - (ii) budget for and be allocated funds for this purpose. 35
- (c) The uniforms, transport, accommodation, equipment and other logistical support referred to in paragraph (b) shall be supplied by the South African Defence Force, either from its own resources or from the resources of any other defence force or policing agency or any other source, for the account of the Subcouncil. 40
- (14) In the event of the Subcouncil and the National Peacekeeping Force Command Council being unable to reach agreement on any matter referred to in subsection (12), the matter shall be referred to the Council, which shall endeavour to resolve it, failing which the matter shall be referred to the Special Electoral Court for determination. 45

Powers and duties in regard to finance 45

- 17. (1) The Council shall, for the purpose of attaining its objects, have the following powers to be exercised through its Subcouncil on Finance:
 - (a) To be informed of recent economic developments, economic policy objectives and targets for the medium term and, more particularly, for the ensuing fiscal year (1994/95); 50
 - (b) to be represented on all function and budgeting committees in respect of the 1994/95 fiscal year of any Government or regional authority with a view to ensuring that funds are not applied in a manner favouring one or other political party;
 - (c) to receive such reports, and in addition such information relating to fiscal transfers, as are reasonably necessary for the Subcouncil to perform its functions in terms of this Act: 55

- (d) to approve any measures designed to rationalize Treasury functions in the process of realignment of governmental structures;
 - (e) to advise the relevant departments of State concerning the privatisation or tendering out of functions currently performed by those departments;
 - (f) to investigate or require the investigation of specific allegations of corruption or inefficiency that may have an adverse effect on the attainment of the objects of the Council; 5
 - (g) to monitor the contents of existing public service disciplinary codes and to request disciplinary investigations into the conduct of public servants who fail to perform their duties within guidelines governing financial discipline and authorized or proper expenditure; 10
 - (h) to make recommendations regarding the prevention of wasteful expenditure; and
 - (i) to monitor any expenditure of State funds by any Government or any department of State or any institution funded wholly or partly from State funds, and to ascertain whether any public monies or State funds have been allocated or given improperly to any political party. 15
- (2) In the exercise of its powers and the performance of its duties, the Subcouncil shall, subject to the other provisions of this Act—
- (a) have access to all information relating to its functions available from any Government or administration, the South African Reserve Bank, the Central Economic Advisory Service, the Tax Advisory Committee and the National Economic Forum; and 20
 - (b) be entitled to conduct such research as it considers necessary.
- (3) In the course of the preparation of the 1994/95 budgets of any Government, the views of the Subcouncil shall be taken into account, and there shall be consultation on— 25
- (a) the overall level of state expenditure;
 - (b) the composition of security, social, economic and general state expenditure, broken down into capital and recurrent expenditure; 30
 - (c) the level and composition of any taxes to be collected by any Government;
 - (d) the financing of budget deficits;
 - (e) the contingent liabilities of any Government; and
 - (f) any other matter considered by the Subcouncil to be relevant to the objects of the Council. 35
- (4) (a) The Subcouncil shall be informed of and its approval obtained for—
- (i) the upgrading of any post or the creation of any new post in the public service of any Government above a level to be determined by the Subcouncil; and 40
 - (ii) any amendment to or deviation from the laws governing the retirement of members of any such public service.
- (b) The Subcouncil shall be informed of the proposed filling of any vacant post in the public service of any Government above a level to be determined by the Subcouncil. 45
- (5) The Subcouncil shall be provided on a continuous basis with full particulars, including the intended purposes, concerning any new international financial agreement which is being negotiated between a Government and any foreign government or international agency, and no such agreement shall be concluded without the prior approval of the Subcouncil. 50
- (6) The Subcouncil shall be informed of transfers of public funds as between the various Governments, regardless of the departments from which the transfers are made.

(7) The Subcouncil shall be informed on a monthly basis of domestic borrowing by the various Governments of amounts in excess of a figure determined by the Council.

Powers and duties in regard to foreign affairs

18. The Council shall, for the purpose of attaining its objects, through its Subcouncil on Foreign Affairs, in regard to foreign policy liaise, monitor, make recommendations and, where it is considered necessary, assist with a view to—
- (a) achieving progressively the broadest possible consensus on matters affecting South Africa's international interests, particularly its long-term interests;
 - (b) securing appropriate agreements with the international community regarding the contribution that community could make to the peaceful transition to democracy in South Africa;
 - (c) in consultation with the Subcouncil on Finance, securing such international assistance as the Subcouncil considers necessary in order to address the socio-economic needs of the people as a whole and not to serve the interests of one or other political party;
 - (d) ensuring that any foreign policy initiative benefits the country as a whole and not one or other political party; and
 - (e) promoting such international relations, including trade, finance, culture and sport relations, as in the opinion of the Subcouncil will benefit the country as a whole.

Powers and duties in regard to the status of women

19. The Council shall, for the purpose of attaining its objects, with a view to the full and equal participation of women in the preparation for, the implementation of and the transition to a free and democratic order in South Africa, at national, regional and local levels, have the following powers to be exercised through its Subcouncil on the Status of Women:
- (a) To liaise with and advise all participants in the Council, all subcouncils, the Independent Electoral Commission, the Independent Media Commission, the Independent Broadcasting Authority, Governments, relevant departments of State, local governments, traditional authorities and policy-making forums;
 - (b) to propose amendments to existing or proposed legislation and facilitate the implementation of such legislation;
 - (c) to request information and make formal and substantive representations regarding any decision or action referred to in section 13(2)(a);
 - (d) to liaise with all employee and employer organizations, all groups of women (in particular rural women and women under customary unions) and any other relevant organizations and structures;
 - (e) to investigate any matter affecting the status of women and relating to the objects of the Council, for which purpose it shall have the authority to interview any officer or employee of any participant in the Council or of any regional or local government;
 - (f) to commission research;
 - (g) to promote and monitor educational programmes regarding the participation of women in the electoral process;
 - (h) to ensure that positive, practical steps are taken to enable all women to exercise fully their right to—
 - (i) vote in all elections and public referendums, be eligible for election to all publicly elected bodies and freely participate in the political, public and electoral processes at all levels in South Africa;
 - (ii) participate in the formulation and implementation of policy at all levels of government and in the Council;
 - (iii) equal opportunity in the appointment to, participation in, election to and promotion within all structures at all levels of government; and

- (iv) be free from intimidation and harassment;
- (i) to make recommendations to all participants in the Council, the other subcouncils, the Independent Electoral Commission, the Independent Media Commission, the Independent Broadcasting Authority, the National Peace Secretariat, policy-making forums, all statutory commissions and all electoral educational programmes on steps to promote the free and equal participation of women in the electoral process; and 5
- (j) to submit proposals to the Subcouncil on Finance and the relevant departments of State in regard to the 1994/95 budget on the allocation of resources for the promotion of the equality of women and their participation at all levels of government, including appropriate programmes and mechanisms. 10

Powers and duties in regard to intelligence

20. (1) The Council shall, for the purpose of attaining its objects, have the following powers to be exercised through its Subcouncil on Intelligence: 15
- (a) To acquaint itself, subject to the other provisions of this Act, with the nature, objects and functioning of every intelligence service or structure in South Africa (hereinafter in this section referred to as "service");
 - (b) to establish a Joint Co-ordinating Intelligence Committee (hereinafter in this section referred to as "the Committee"), comprised of the head or a duly authorized senior representative of every service, which Committee— 20
 - (i) shall monitor and liaise with all services in order to promote the objects of the Council, taking into account matters of common concern in relation to the Subcouncil on Law and Order, Stability and Security and the Subcouncil on Defence; and 25
 - (ii) may, if it considers it necessary to do so, establish a management structure which shall manage the affairs of the Committee;
 - (c) to adopt a set of basic principles on intelligence, which could also serve as a basis for the creation of a national intelligence capability in a new democratic dispensation; 30
 - (d) to formulate a code of conduct which shall be binding on all members of all services during the period of transition and which could serve as a basis for an official code of conduct in a new democratic dispensation;
 - (e) to monitor, in consultation with the Committee, the compliance of all services and their members with the said code of conduct; 35
 - (f) to investigate, or order the investigation by the Committee of, any matter (including complaints by members of the public) relating to the objects of the Council or the said code of conduct;
 - (g) to require the investigation by, or under the supervision of, the Committee of any activity or action by a member of any service which is alleged to have or to have had an adverse effect on the attainment of the objects of the Council or the said code of conduct and, in consultation with the appropriate Minister or the head of that service, as the case may be, where appropriate, require the suspension, with full pay, of such member pending the outcome of the investigation; 40 45
 - (h) to request and obtain, subject to the other provisions of this Act, on a regular basis from all services, via the Committee, evaluated information on the overall security situation in the country, highlighting threats, actions or events that may adversely affect the attainment of the objects of the Council: Provided that nothing in this subsection shall authorize the disclosure of a document or information relating to the above matters but which consists of unevaluated information; 50
 - (i) to request and obtain, subject to the other provisions of this Act, via the Committee, from any service evaluated information on matters of special concern or urgency: Provided that such service shall— 55

- (i) be informed beforehand what will be required of it;
 - (ii) be given reasonable time to prepare the required information and its presentation in that regard; and
 - (iii) have the right to be assisted or represented by persons duly authorized to do so;
 - (j) to make recommendations on steps to ensure that a service does not perform or carry out any act or operation likely or intended to undermine the attainment of the objects of the Council;
 - (k) to make proposals regarding suitable legislation relating to the practice of intelligence in a new political dispensation, including suitable mechanisms of accountability and political supervision; and
 - (l) to facilitate the transition to a future intelligence dispensation by commissioning research and making proposals in this regard.
- (2) The Subcouncil shall in the exercise of its powers and the performance of its duties —
- (a) taking into consideration the sensitive nature of intelligence, deal with intelligence matters in a manner conducive to the national interest and not sectional interests; and
 - (b) recognize that the day to day management of every service remains the responsibility of the relevant Minister or head of such service, and that all services shall during the period of transition, subject to section 3, continue to fulfil their duties to their respective principals.
- (3) (a) If there is any dispute in relation to an investigation referred to in subsection (1)(f) or (g), the matter shall, having regard to the sensitive nature of intelligence, be referred to the appropriate Minister or head of the service concerned in order to attempt to resolve the issue.
- (b) If the issue is not so resolved the matter shall be referred to the Special Electoral Court for determination.
- (4) Any power conferred upon the Subcouncil by this Act and which overlaps with any power conferred upon the Subcouncil on Law and Order, Stability and Security or the Subcouncil on Defence, shall be exercised in conjunction with such other subcouncil.

GENERAL AND SUPPLEMENTARY PROVISIONS

Application of Act

21. (1) Notwithstanding the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), or any other law, this Act and any amendment thereof or addition thereto under section 28, shall also apply in all self-governing territories.
- (2) (a) In the event of any of the Republics of Transkei, Bophuthatswana, Venda or Ciskei deciding to incorporate the provisions of this Act into its law, such agreements as may be required to secure the co-ordinated implementation of the relevant legislation may be concluded, and such an agreement shall have the force of law.
- (b) Any such proposed agreement shall be placed before the Negotiating Council or the Council, as the case may be.

Procurement of information

22. (1) The Council or a subcouncil shall comply with a request by a member of the Council or a subcouncil to the Council or subcouncil concerned to procure any information or document in terms of this Act, provided that—
- (a) the member concerned shows to the Council or subcouncil, as the case may be, that the procurement of such information or document is reasonably necessary in order to attain the objects of the Council; and
 - (b) that request has the support of at least one-third of the members of the Council or subcouncil, as the case may be.

and the information or document so procured, shall, subject to the other provisions of this Act, be made available to all members of the Council or of the subcouncil concerned.

(2) (a) Notwithstanding this section or any other provision of this Act, no military force, policing agency or intelligence service or structure shall be obliged to disclose any information or document in its possession or under its control in a form which could reveal the identity of any source of such information, if that information or document was provided under an express or implied assurance of confidentiality: Provided that this paragraph shall not prevent the disclosure of the remaining parts of information or a document if the parts which could reveal the identity of the source can be separated from the rest thereof.

(b) In the event of a dispute arising from the provisions of paragraph (a) as to whether or not the disclosure of any information or document in the possession or under the control of a military force, policing agency or intelligence service or structure may reveal the identity of the source of information or document, such dispute shall be referred for determination to a committee composed of the head of the relevant military force, policing agency or intelligence service or structure and a member of the Committee referred to in subsection (4) designated by the Committee in consultation with the said head.

(3) No provision of this Act shall be interpreted as entitling the Council or a subcouncil to have access to any information or document —

- (a) which does not have a bearing on the objects of the Council;
- (b) access to or disclosure of which is prohibited in terms of any law or the common law, and—
 - (i) could reasonably be expected to endanger the life or physical safety of any person when weighed against the need or necessity for disclosure;
 - (ii) would constitute an unwarranted invasion of the privacy of any person when weighed against the need or necessity for disclosure;
 - (iii) would be likely to lead to improper or unfair speculation in currencies, securities, property or commodities at the expense of the public, or would be likely to endanger the foreign exchange reserves or the stability of financial markets, the monetary system or any financial institution when weighed against the need or necessity for disclosure; or
 - (iv) would be likely to pose a substantial threat to the security of the State;
- (c) compiled by or in the possession or under the control of any policing agency for purposes of law enforcement or criminal proceedings, to the extent that the disclosure of such information or document could reasonably be expected—
 - (i) to prejudice law enforcement investigations; or
 - (ii) to deprive any person of his or her right to a fair trial or an impartial adjudication;
- (d) compiled by or in the possession or under the control of any intelligence service or structure in South Africa, except in so far as disclosure thereof is necessary for the purposes of section 20;
- (e) relating to the activities, installations, projects, plans, movements, dispositions, weapons, armaments, procurements, capabilities or technology of a military force, except in so far as disclosure thereof is necessary for the purposes of section 16;
- (f) contained in any staff file pertaining to any officer or employee of any public service, except in so far as disclosure thereof is necessary for the purposes of section 17(4) or for the purpose of any investigation in terms of this Act into the conduct of such officer or employee;
- (g) in connection with the provision of protective services to members or officials or employees of any participant in the Council;
- (h) in the case of information or any document requested from a political party, if that information or document concerns a lawful activity of that

party particulars of which it is, subject to section 13, not obliged to disclose in terms of any law:

(i) relating to any special or secret account established or governed by or under any law, except in so far as it concerns any expenditure from such account which has been found by the Auditor-General to have been unauthorized; or 5

(j) relating to any tax matter prohibited from disclosure by any law when weighed against the need or necessity for disclosure.

(4) (a) The Council shall establish a committee to be known as the Access to Information Committee (hereinafter in this section referred to as "the Committee"). 10

(b) The Committee shall consist of four members appointed by virtue of a decision of the Council which has the support of at least eighty percent of the members of the Council, including every member who represents a participant in the Council which has a military force or a policing agency. 15

(c) All persons appointed as members of the Committee shall be persons of integrity and trustworthiness in whom the Council has the fullest confidence.

(d) A member of the Council or a subcouncil may not be appointed as a member of the Committee.

(e) A member of the Committee who is not in the full-time service of any Government or administration shall be entitled to such remuneration, allowances and other benefits as may be determined by the Council. 20

(f) The Committee shall designate two of its members as a subcommittee to deal with all requests in terms of subsections (8) and (9) relating to any information or document compiled by or in the possession or under the control of any military force, policing agency or intelligence service or structure, excluding requests in respect of information or documents relating to a special or secret account referred to in subsection (3)(i), and the said members shall exercise the Committee's powers in respect thereof. 25

(g) The other two members of the Committee shall act as a subcommittee to deal with all requests in terms of subsections (8) and (9) relating to the special or secret accounts referred to subsection (3)(i) and any information or document other than that contemplated in paragraph (f), and the said members shall exercise the Committee's powers in respect thereof. 30

(5) The Committee shall, notwithstanding subsection (3) or any other law or the common law, but subject to subsection (2), have access to any information or document in the possession or under the control of any Government or administration, any participant in the Council or any political party: Provided that the Committee shall have such access only if and in so far as— 35

(a) it is in terms of subsection (8) or (9) requested by the Council or a subcouncil to scrutinize such information or document; and 40

(b) access to such information or document is reasonably necessary to attain the objects of the Council.

(6) (a) The Committee shall take special precautions to ensure that no information or document referred to in subsection (3) to which it gains access is disclosed to unauthorized persons. 45

(b) No person other than the members of the Committee or a subcommittee referred to in subsection (4)(f) or (g) shall be present at any meeting of the Committee or subcommittee unless such person's presence is necessary and is authorized by the Committee or the subcommittee concerned. 50

(7) Notwithstanding any other law prohibiting the disclosure of any information or document, any Government or administration, any participant in the Council and any political party shall be entitled, subject to subsections (2) and (3), to disclose or furnish any information or document in its possession or under its control to the Council or a subcouncil. 55

(8) If any Government or administration, any participant in the Council or any political party, on being requested by the Council or a subcouncil in terms of any provision of this Act to disclose or furnish any information or document to it, refuses or fails to disclose or furnish such information or document or contends that such information or document is exempt from disclosure by virtue of subsection (3), the Council or subcouncil may request the Committee to scrutinize that information or document. 60

(9) The Council or a subcouncil may at any time request the Committee to scrutinize any information or document in the possession or under the control of any Government or administration, any participant in the Council or any political party.

(10) A request contemplated in subsection (8) or (9) shall specify with sufficient clarity the nature of the information or document concerned as well as the reasons why it is considered to have a bearing on the objects of the Council. 5

(11) The Committee shall as soon as possible after receiving a request contemplated in subsection (8) or (9), designate a member of the appropriate subcommittee to establish whether the information or document concerned has a bearing on the objects of the Council, and if so, the appropriate subcommittee shall scrutinize the information or document concerned with a view— 10

(a) to verifying whether or not that information or document is exempt from disclosure by virtue of subsection (3);

(b) if it is so exempt, to verifying whether or not the information or document or anything dealt with therein discloses anything which adversely affects the attainment of the objects of the Council, and if so, in what manner; and 15

(c) if it is not so exempt, to releasing the information or document to the Council or to the subcouncil concerned. 20

(12) (a) For the purpose of subsection (11), the Committee may interview the duly authorized senior representative, or a person designated by him or her, of the Government or administration, the participant in the Council or the political party concerned and may direct such representative or person in writing to appear before it to produce any information or document in the possession or under the control of that Government or administration, participant in the Council or political party, and may question such representative or person relating to such information and require an explanation of anything contained in such a document: 25
Provided that if the Committee is not satisfied with any such explanation, the Committee may direct any other person in writing to appear before it, and may question such person relating to such information and require an explanation of anything contained in such a document. 30

(b) Any person who fails to comply with a direction referred to in paragraph (a), shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding 12 months. 35

(13) If the member or subcommittee referred to in subsection (11) finds that any information or document that is exempt in terms of subsection (3) or anything dealt with therein, discloses anything which adversely affects the attainment of the objects of the Council, the Committee may make such information or document or any segregable portion thereof available to the Council or a subcouncil, subject to such limitations relating to access, publication and safekeeping as may be imposed by the Committee. 40

(14) The subcommittee shall in writing notify the Council or the subcouncil concerned and the Government, administration, participant in the Council or political party concerned, as the case may be, of any finding in terms of this section, which finding shall be binding on the parties concerned and shall be given effect to. 45

(15) (a) No person, including any member of the Council or a subcouncil or of the Committee, shall disclose any confidential information or document obtained by that person in the performance of his or her functions in terms of this Act, except— 50

(i) to the extent to which it may be necessary for the proper administration of any provision of this Act;

(ii) to any person who of necessity requires it for the performance of any function in terms of this Act; 55

(iii) when required to do so by order of a court of law; or

(iv) with the written permission of the Council.

(b) Any person who contravenes a provision of paragraph (a) shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding 12 months. 60

(c) Every member of the Council, the subcouncils and the Committee, and of any other structure, organ or body established by or under this Act, and every member of the staff of the Council, the subcouncils, the Committee and any such structure, organ or body, shall, before assuming office or duty, make and subscribe to an affirmation of secrecy in the following form:

"I,solemnly declare:

(a) I have taken cognizance of the provisions of section 22(15) of the Transitional Executive Council Act, 1993.

(b) I understand that I may not disclose any information or document, or the contents thereof, of whatever nature that comes to my knowledge or into my possession in consequence of my performance of any function in terms of the Transitional Executive Council Act, 1993, whether verbal or in writing, to any unauthorized person without prior written approval of the Transitional Executive Council.

(c) I am fully aware of the serious consequences which may follow any breach or contravention of the above-mentioned provisions.

.....
(Signature)".

Resolution of disputes

23. (1) When there is any dispute between the Council or a subcouncil and any Government, administration, political party or any organization as to whether or not—

(a) a particular matter falls within the scope of the powers of the Council or subcouncil;

(b) any proposed legislation or executive or other action may have an adverse impact on the attainment of the objects of the Council; or

(c) such Government, administration, political party or organization is obliged to comply with a direction of the Council or subcouncil.

the Government, administration, political party or organization concerned may refer the matter to the Special Electoral Court for determination.

(2) If any Government, administration, political party or organization contends, in relation to a direction issued by the Council in terms of section 13(1)(b) or (2)(b) or a direction referred to in section 13(3), that the necessity or desirability for any proposed legislation, or for any action or for the implementation of any decision, as the case may be, outweighs the adverse effect, if any, it may have on the attainment of the objects of the Council, that Government, administration, political party or organization may, within three days after such direction was issued, refer the matter concerned to the Special Electoral Court for determination, and may only proceed with such legislation or action or implement such decision, as the case may be, if or in so far as the Special Electoral Court authorizes it to do so.

(3) When any matter is referred to the Special Electoral Court in terms of this Act, that Court shall as soon as practicable consider the matter and give its decision, having due regard to—

(a) the views expressed on the matter in written submissions by members of the Council or the subcouncil concerned and by the Government, administration, political party or organization concerned; and

(b) any other matter considered by the Special Electoral Court to be relevant for its decision.

(4) The Special Electoral Court may make such findings and give such instructions or directions as it may consider appropriate in the circumstances.

(5) The findings of the Special Electoral Court shall be final and binding and shall not be subject to further appeal.

(6) A direction issued by the Council or a subcouncil in terms of this Act and which is not referred to the Special Electoral Court within three days after the Government, administration, political party or organization concerned was notified of that direction, shall be binding on the Government, administration, political party or organization concerned.

(7) The provisions of this section shall not apply to any matter referred to in subsection (1)(c), (2), (3), (5), (6) or (7) of section 15, or subsection (13) or (14) of section 22.

Meetings and office-bearers

24. (1) The first meeting of the Council shall take place on a date and at a place agreed to by the Negotiating Council and specified in the first proclamation under section 4(4), which date shall not be later than 14 days after the date of that proclamation. 5

(2) The Council shall, after its first meeting, meet at such times and places as it may determine. 10

(3) (a) The Council shall at its first meeting designate from among its members a chairperson or chairpersons.

(b) At that meeting a person designated by the Negotiating Council shall preside until a chairperson or chairpersons, as the case may be, have been designated. 15

(4) (a) The Council shall at its first meeting, from among its members, designate a management committee.

(b) The management committee shall—

(i) until the rules contemplated in section 7(1)(f) have been made, determine the manner of convening meetings of the Council and the procedure at such meetings; 20

(ii) convene a special meeting of the Council if requested thereto in writing by not less than one-third of the members of the Council;

(iii) determine a time and place for any meeting referred to in subparagraph (ii), which meeting shall be convened with at least three days' notice to members of the Council: Provided that an urgent meeting may be convened with less than three days' notice if it is ratified by the Council at that meeting; and 25

(iv) perform any other function assigned to it by the Council.

(5) A Minister or head of any department of State, or a person designated by such Minister or head, or any other person in the service of the State, shall, when requested to do so by the Council or a subcouncil, attend any meeting of the Council or subcouncil at which a matter relating to the functions of that department and the objects of the Council is to be discussed, and shall at such a meeting, subject to the other provisions of this Act, furnish such information or document or explanation in connection with such matter as may be required by the Council or subcouncil. 30 35

(6) The leader of any political party, or of any organization participating in the Council, or a person designated by such leader, shall, when requested to do so by the Council or a subcouncil, attend any meeting of the Council or subcouncil at which a matter relating to any activity or conduct of that party or organization and which has a bearing on the objects of the Council is to be discussed, and shall at such a meeting, subject to the other provisions of this Act, furnish such information or document or explanation in connection with such matter as may be required by the Council or subcouncil. 40 45

(7) Any person who has an interest in any matter under discussion at a meeting of the Council or a subcouncil may on the invitation of the Council or subcouncil attend that meeting and, if invited to do so, address it with regard to that matter.

(8) The Subcouncil on the Status of Women shall from time to time designate three persons from among its members, who shall be entitled to attend all meetings of the Council and to address it on any matter relating to the functions of that subcouncil, the interests of women and gender issues in general. 50

Decisions

25. (1) All decisions of the Council or a subcouncil shall be taken by the members thereof alone and shall, as far as possible, be taken on a basis of consensus. 55

- (2) When there is not total consensus in respect of any decision—
- (a) in the case of the Council, subject to sections 15(2)(b) and 22(4)(b), a decision which has the support of at least seventy-five percent of the members of the Council;
 - (b) in the case of the subcouncils referred to in section 8(1)(b), (c) and (g), a decision which has the support of at least seventy-five percent of the members of the subcouncil concerned; and
 - (c) in the case of the subcouncils referred to in section 8(1)(a), (d), (e) and (f), a decision which has the support of at least two-thirds of the members of the subcouncil concerned.
- shall be a decision of the Council or the subcouncil concerned, as the case may be.

Administrative staff, finance and accountability

26. (1) The Council shall at its first meeting, or as soon as possible thereafter, appoint a person to the office of the Executive Director, who—
- (a) shall be responsible for the management of and administrative control over the staff appointed or seconded in terms of section 7(1)(d) and (e), respectively;
 - (b) shall, subject to the Exchequer Act, 1975 (Act No. 66 of 1975)—
 - (i) be charged with the responsibility of accounting for State monies received, or paid out, for or on account of the Council, the subcouncils and any committee or body established by or under this Act;
 - (ii) cause the necessary accounting and other related records to be kept;
 - (c) may exercise the powers and shall perform the duties which the Council may from time to time confer or impose upon him or her in order to attain the objects of this Act, and shall for those purposes be accountable to the Council.
- (2) The records referred to in subsection (1)(b) shall be audited by the Auditor-General.
- (3) The Executive Director and the persons referred to in section 7(1)(d) and (e) shall exercise their powers and perform their duties in an impartial manner and shall, in so doing, be subject to such provisions of the laws governing the public service of the Republic of South Africa as may be determined by the Council and to the extent and subject to such adjustments as may be determined by the Council.
- (4) The financing of matters provided for in this Act shall be subject to—
- (a) requests being received in the prescribed form in accordance with the budgetary processes of the Republic of South Africa; and
 - (b) the provisions of the Exchequer Act, 1975, and the regulations and instructions issued in terms thereof, as well as the Auditor-General Act, 1989 (Act No. 52 of 1989).

Legal proceedings against Council

27. (1) The State Liability Act, 1957 (Act No. 20 of 1957), shall apply *mutatis mutandis* in respect of the Council.
- (2) In such application a reference in that Act to a Minister of a department shall be construed as a reference to the Chairperson or Chairpersons of the Council.

Amendment of Act

28. (1) The Council, in consultation with the State President, may determine the need for and the content of any amendment or supplement to or repeal of any provision of this Act, excluding section 3, and the State President shall, by proclamation in the *Gazette*, amend, supplement or repeal the provisions of this Act accordingly.
- (2) Any such amendment, supplement or repeal shall be limited to facilitating the pursuance of the objects of this Act.

(3) Any such amendment, supplement or repeal shall have the force and effect of an Act of Parliament.

Duration

29. (1) This Act shall lapse upon the assumption of office by the members of the first cabinet in terms of the Constitution. 5

(2) The Council and every subcouncil shall be dissolved on the date referred to in subsection (1).

(3) (a) At such dissolution of the Council and the subcouncils, all assets, monies and liabilities of the Council, the subcouncils, and any other structure, organ or body established by or under this Act, shall revert to such department of State as the first cabinet appointed in terms of the Constitution may designate. 10

(b) The Minister responsible for such department shall—

(i) have the authority to wind up the affairs of such structures, organs or bodies;

(ii) for the purpose of any legal relationships, including legal proceedings involving the Council, be the legal successor of the Council. 15

State bound

30. This Act shall bind the State.

Short title and commencement

31. (1) This Act shall be called the Transitional Executive Council Act, 1993, and shall come into operation on a date fixed by the State President, in consultation with the Negotiating Council or, after the commencement of section 2, if applicable, in consultation with the Council, by proclamation in the *Gazette*. 20

(2) Different dates may be so fixed in respect of different provisions of this Act.

**BREAKDOWN OF THE TRANSITIONAL
EXECUTIVE COUNCIL BILL AS ADOPTED BY
THE NEGOTIATING COUNCIL**

TRANSITIONAL EXECUTIVE COUNCIL BILL

The Negotiating Council adopted the Draft Transitional Executive Council Bill by *sufficient consensus* on Tuesday 7 September 1993.

- * The AVU reserved its position on the acceptance of the Draft Bill.
- * The Governments of Bophutatswana and Ciskei opposed the acceptance of the Draft Bill.
- * The PAC abstained from being party to the decision of the acceptance of the Draft Bill until further consultation with its principals.

CLAUSE	DESCRIPTION	STATUS
Long title		Agreed general consensus
Clause 1	Definitions	Agreed general consensus reservation by the PAC on the definition of "armed force"
Clause 2	Establishment of the TEC	Agreed general consensus
Clause 3	Objects of the Council	Agreed general consensus
Clause 4	Constitution of Council	Agreed general consensus The PAC objected to Clause 4(9).
Clause 5	Vacation of office, Removal from office, and filling of vacancies in Council	Agreed general consensus
Clause 6	Conditions of service, remuneration and allowances of members of Council	Agreed general consensus

TEC/PLENARY
17 NOVEMBER 1993

Clause 7	General powers of Council	Agreed with clause 7(5) agreed to by sufficient consensus . (The AVU; the Bophutatswana Government and the Ciskei Government objected to clause 7(5).
Clause 8	Establishment of Subcouncils	Agreed general consensus
Clause 9	Constitution of subcouncils	Agreed general consensus
Clause 10	Vacation of office, removal from office and filling of vacancies in subcouncils	Agreed general consensus
Clause 11	Conditions of service, remuneration and allowances of members of subcouncils	Agreed general consensus
Clause 12	General powers of subcouncils	Agreed general consensus
Clause 13	Powers in regard to certain proposed legislation and other actions	Agreed general consensus The AVU's reservations with regard to clause 13(2) were noted.
Clause 14	Powers and duties in regard to regional and local government and traditional authorities	Agreed general consensus

TEC/PLENARY
17 NOVEMBER 1993

Clause 15	Powers and duties in regard to law and order, stability and security	Agreed general consensus The PAC rejected the whole notion of a state of emergency with regard to clause 15(2)
Clause 16	Powers and duties in regard to defence	Agreed general consensus The Bophutatswana Government noted concern with regard to the wording of clauses 16(c) and (d). The PAC opposed and rejected clause 16(10) and objected to clause 16(4)(a). The DP objected to clause 16(11)
Clause 17	Powers and duties in regard to finance	Agreed general consensus
Clause 18	Powers and duties in regard to foreign affairs	Agreed general consensus The clause was rejected by the PAC.
Clause 19	Powers and duties in regard to the status of women	Agreed general consensus

Clause 27	Legal proceedings against Council	Agreed general consensus
Clause 28	Amendment of Act	Agreed general consensus
Clause 29	Duration	Agreed general consensus
Clause 30	State bound	Agreed general consensus
Clause 31	Short title and commencement	Agreed general consensus

The Transitional Executive Council Bill was adopted by Parliament in September 1993.



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

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No. 15183

STATE PRESIDENT'S OFFICE

No. 1875.

27 October 1993

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

No. 150 of 1993: Independent Electoral Commission Act, 1993.

KANTOOR VAN DIE STAATSPRESIDENT

No. 1875.

27 Oktober 1993

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

No. 150 van 1993: Wet op die Onafhanklike Verkiezingskommissie, 1993.

ACT

To make provision for the conduct of free and fair elections for the National Assembly and any other legislature to be elected contemplated in the Constitution of the Republic of South Africa Act, 1993; to make provision for the conduct of certain referendums by the Independent Electoral Commission; and to provide for matters in connection therewith.

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

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

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3. Act binding on State and State President

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CHAPTER I

Interpretation and Application of Act

Definitions

1. In this Act, unless the context otherwise indicates— 35
 (i) "Administration Directorate" means the Election Administration Directorate established by section 19; (iv)
 (ii) "Appeal Tribunal" means any Electoral Appeal Tribunal established in terms of section 30; (ii)
 (iii) "candidate" means any person whose name appears on a list of nominations by any registered party to become a member of the National Assembly or any other legislature in terms of the Constitution and the Electoral Act; (xvi) 40
 (iv) "Chief Director: Administration" means the person appointed to that office by the Commission in terms of section 20(1); (ix) 45
 (v) "Chief Director: Monitoring" means the person appointed to that office by the Commission in terms of section 23(1); (x)

- (vi) "Chief Executive Officer" means the person appointed to that office by the Commission in terms of section 17(1); (xi)
- (vii) "Commission" means the Independent Electoral Commission established by section 4(1); (xx)
- (viii) "committee" means any committee of the Commission established under section 13(3)(c); (xix) 5
- (ix) "Constitution" means the Constitution of the Republic of South Africa Act, 1993; (vii)
- (x) "directorate" means the Administration Directorate or the Monitoring Directorate; (iii) 10
- (xi) "election" means any election conducted in terms of the Electoral Act for the National Assembly or any other legislature; (xxvii)
- (xii) "Electoral Act" means the Electoral Act, 1993; (xviii)
- (xiii) "Electoral Code of Conduct" means the Electoral Code of Conduct for Political Parties contained in Schedule 1 to the Electoral Act; (xxxviii) 15
- (xiv) "Electoral Tribunal" means any Electoral Tribunal established in terms of section 28; (xxxix)
- (xv) "International Advisory Committee" means the International Advisory Committee established in terms of section 14; (xiii) 20
- (xvi) "international member" means any person appointed as a member of the Commission in terms of section 5(2)(a); (xiv)
- (xvii) "international observer" means any person appointed as a representative of the United Nations, the Organization of African Unity, the European Community, the Commonwealth or any other inter-governmental organization or foreign government accredited for that purpose by the Subcouncil on Foreign Affairs of the Transitional Council in consultation with the Department of Foreign Affairs, in order to observe and report on the electoral process; (xv) 25
- (xviii) "judicial office" means any appointment as a judge of the Supreme Court, whether permanent or on an acting basis; (xxix) 30
- (xix) "member" means any member of the Commission appointed in terms of section 5(1); (xxi)
- (xx) "monitor" means any person appointed as such in terms of section 24(1)(a); (xxii) 35
- (xxi) "Monitoring Directorate" means the Election Monitoring Directorate established by section 22; (v)
- (xxii) "National Assembly" means the National Assembly which together with the Senate shall constitute the Constitutional Assembly as contemplated in the Constitution; (xxiii) 40
- (xxiii) "observer" means any observer registered with the Monitoring Directorate in terms of section 24(1)(b) (xli);
- (xxiv) "other legislature" means any legislature contemplated in the Constitution, excluding the National Assembly and Senate; (i) 45
- (xxv) "Parliament" means Parliament as contemplated in the Constitution; (xxvi)
- (xxvi) "party" means any registered party, and any party, organization or movement of a political nature which publicly supports or opposes the policies, candidates or cause of any registered party, or which propagates non-participation in any election or the non-acceptance of the results certified by the Commission; (xxvii) 50
- (xxvii) "political office" means any executive appointment or elected office, including any elected or nominated public representative of a party, whether involving remuneration or not, or any other paid office, in the service of a party; (xxviii) 55
- (xxviii) "prescribe" means prescribe by regulation; (xl)
- (xxix) "public office" means any appointment or position in the service of the State, or any corporate or other body, institution or concern owned or controlled, whether directly or indirectly, by the State, and includes any such appointment or position in the legislative, executive or judicial organs of the State at any level of government, but excludes any appointment to judicial office and any academic 60

- appointment at any university or tertiary educational institution:
(xxv)
- (xxx) "registered party" means any registered party as defined in section 1 of the Electoral Act: (vi)
- (xxxi) "regulations" means the regulations made under section 41: (xxx) 5
- (xxxii) "Republic" means the Republic of South Africa, including any of the Republics of Transkei, Bophuthatswana, Venda or Ciskei which formally incorporated the provisions of this Act and the Electoral Act as part of its law: (xxxi)
- (xxxiii) "Secretariat" means the Election Adjudication Secretariat established by section 25: (xxxii) 10
- (xxxiv) "Secretary" means the person appointed to that office by the Commission in terms of section 26(1): (xxxiii)
- (xxxv) "Senate" means the Senate as contemplated in the Constitution: (xxxiv) 15
- (xxxvi) "Special Electoral Court" means the Special Electoral Court established by section 32: (xxxv)
- (xxxvii) "State" means the Republic: (xxxvi)
- (xxxviii) "Supreme Court" means the Supreme Court of South Africa, and the Supreme Court of the Republic of Transkei, Bophuthatswana, Venda or Ciskei if such Republic has formally incorporated the provisions of this Act and the Electoral Act as part of its law: (xii) 20
- (xxxix) "this Act" includes the regulations: (viii)
- (xl) "Transitional Council" means the Transitional Executive Council established by section 2 of the Transitional Executive Council Act, 1993: (xxiv) and 25
- (xli) "voter" means any eligible voter as contemplated in the Constitution and the Electoral Act. (xvii)

Application of Act

2. (1) The provisions of this Act shall apply in respect of— 30
- (a) the first elections to be conducted for the National Assembly and all other legislatures in terms of the Constitution and the Electoral Act; and
- (b) any referendum conducted under the supervision of the Commission in terms of subsection (2),
- until the First National Assembly and all other legislatures have been validly constituted. 35
- (2) Upon the advice of the Transitional Council the State President shall by proclamation in the *Gazette* declare—
- (a) the holding of a referendum; and
- (b) that the provisions of this Act shall, subject to subsection (3), apply in respect of the holding of that referendum. 40
- (3) The State President shall in consultation with the Transitional Council by proclamation in the *Gazette* make regulations for the holding of such a referendum, in which case the provisions of this Act shall, subject to such regulations, apply *mutatis mutandis* in respect of the holding of such referendum, whether nationally or within any particular geographic region, or in respect of any specified issue, as the case may be. 45
- (4) In the event of any of the Republics of Transkei, Bophuthatswana, Venda or Ciskei deciding formally to incorporate the provisions of this Act and the Electoral Act as part of its law, such agreements as may be required to secure the co-ordinated implementation of the relevant legislation may be concluded and any such agreements shall have the force of law. 50

Act binding on State and State President

3. (1) This Act shall bind the State.
- (2) This Act shall bind the State President in so far as he or she shall be obliged to act in accordance with the advice of the Transitional Council wherever so provided for in this Act. 55

CHAPTER II

*Independent Electoral Commission***Establishment and objects of Commission**

4. (1) There is hereby established a commission to be known as the Independent Electoral Commission. 5

(2) The objects of the Commission shall be—

- (a) to administer, organize, supervise and conduct, whether directly or indirectly, free and fair elections for the National Assembly and all other legislatures in terms of the Constitution and the Electoral Act;
- (b) to promote conditions conducive to free and fair elections; 10
- (c) to determine and certify the results of elections, and to certify to what extent such elections have been free and fair;
- (d) to conduct voter education; and
- (e) to make and enforce regulations for the achievement of such objects.

Constitution of Commission

15

5. (1) The Commission shall, subject to subsection (2), consist of not fewer than 7 and not more than 11 members, who shall be appointed by the State President upon the advice of the Transitional Council, and who shall be impartial, respected and suitably qualified men and women, do not have a high party political profile, are themselves voters, and represent a broad cross-section of the population. 20

(2) (a) The State President shall, upon the advice of the Transitional Council, appoint not more than five persons (not being citizens of the Republic) from the international community as members of the Commission in a non-representative capacity. 25

(b) Such international members shall have the same rights and powers as other members, excluding the power to vote, and shall not constitute part of any quorum in terms of this Act.

(3) (a) The State President shall, upon the advice of the Transitional Council, designate two members as Chairperson and Vice-Chairperson of the Commission, respectively: Provided that if the Transitional Council so decides, it may advise the State President to designate two members as Co-Chairpersons in lieu of a Chairperson and Vice-Chairperson, and designate which one of them shall preside at the first meeting of the Commission. 30

(b) In the absence of both such Chairperson and Vice-Chairperson, or both such Co-Chairpersons, as the case may be, the remaining members shall by simple majority nominate another member as acting Chairperson of the Commission. 35

(c) The international members shall not be eligible to serve as Chairperson, Co-Chairperson, Vice-Chairperson or acting Chairperson.

(4) The State President shall from time to time, upon the advice of the Transitional Council and subject to subsection (1), appoint additional members to the Commission, subject to the maximum number contemplated in that subsection. 40

Conduct required of members

6. (1) Every member and international member of the Commission shall— 45

- (a) be appointed in his or her individual capacity, and shall, notwithstanding any personal opinion, preference or party affiliation, serve impartially and independently and perform his or her functions in good faith and without fear, favour, bias or prejudice;
- (b) serve in a full-time capacity to the exclusion of any other duty or obligation arising out of any other employment or occupation or the holding of any other office. 50

(2) No member or international member of the Commission shall—

- (a) during his or her term of office be eligible for appointment or nomination to any political or public office, whether involving remuneration or not. 55

and such ineligibility shall, in respect of such public office, continue for a period of 18 months reckoned from the date upon which such term of office as a member has terminated, save in respect of the resumption of any previously held public office at the same level:

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

Disclosure of conflicting interests

7. (1) Subject to subsection (2), a member or international member shall not at any meeting of the Commission— 30

- (a) be present;
- (b) exercise a vote;
- (c) in any other manner participate in the proceedings thereof.

during the discussion of any matter before such meeting in respect of which he or she has any financial or other interest which might preclude him or her from performing his or her functions in a fair, unbiased and proper manner. 35

(2) If at any stage during the course of any proceedings before the Commission it appears that any member or international member has or may have an interest which may cause such a conflict of interests to arise on his or her part— 40

- (a) such member shall forthwith and fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining members to discuss the matter and determine whether such member is precluded from participating in such meeting by reason of a conflict of interests: and 45
- (b) such disclosure and the decision taken by the remaining members regarding such determination, shall be recorded in the minutes of the relevant meeting.

(3) If any member or international member fails to disclose any interest as required by subsection (2) or, subject to that subsection, is present at a meeting of the Commission or in any manner whatsoever participates in the proceedings of the Commission in relation to such matter, such proceedings may be reviewed, varied or set aside by the Commission. 50

Independence of Commission

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

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

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

Dissolution of Commission

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

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

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

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

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

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

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

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

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

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

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

Meetings of Commission

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

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

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

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

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

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

Powers, duties and functions of Commission

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

(2) The Commission shall—

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

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

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

(i) democratic principles and values; 25

(ii) the electoral process and mechanisms;

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

(iv) secrecy of voting; and

(v) any other relevant matter.

by means of—

(aa) literature and the use of other media, including distribution 30 and publication of suitable literature, advertisements and dissemination through radio, television and the public printed media, having due regard to the variety of languages spoken and varying levels of education throughout the Republic; and 35

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

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

(3) The Commission shall have power—

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

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

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

International Advisory Committee

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

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

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

Administration and staff of Commission

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

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

Expenditure of Commission and budget

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

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

Accountability and finance

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

- (a) shall be responsible for the management of and administrative control over the staff appointed or seconded in terms of section 15(a) or (b), respectively, in respect of the Commission;
- (b) shall, subject to the Exchequer Act, 1975 (Act No. 66 of 1975)— 40
 - (i) be charged with the responsibility of accounting for State money received or paid out for or on account of the Commission, the directorates and the Secretariat; and
 - (ii) cause the necessary accounting and other related records to be kept;
- (c) may exercise the powers and shall perform the duties and functions which the Commission may from time to time confer upon or assign to him or her in order to achieve the objects of this Act, and shall for the purposes thereof be accountable to the Commission. 45

(2) The records referred to in subsection (1)(b) shall be audited by the Auditor-General. 50

(3) The Chief Executive Officer, and the persons referred to in section 15(a) or (b), shall exercise their powers and perform their duties and functions in an impartial manner and shall, in so doing, be subject to such provisions of the laws governing the public service of the Republic as may be indicated by the Commission and to the extent so indicated by the Commission as well as the Exchequer Act, 1975, and the Auditor-General Act, 1989 (Act No. 52 of 1989). 55

Determination and certification of election results, or declaration

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

- (a) determine and certify the results of the election; and 5
- (b) either certify in respect of the National Assembly and each other legislature that the election was substantially free and fair; or
- (c) declare that it was unable to certify it as such.

CHAPTER III***Election Administration Directorate*** 10**Establishment of Election Administration Directorate**

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

Constitution of Election Administration Directorate 15

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

(2) In effecting the appointment of the Chief Director: Administration and any deputy director, the Commission shall invite and, where given, consider, but shall not be bound by, the advice of the Transitional Council. 20

Powers, duties and functions of Chief Director: Administration

21. (1) The Chief Director: Administration shall have the powers, duties and functions conferred upon or assigned to him or her by or under this Act and the Electoral Act. 25

(2) Any decision or action taken by any functionary of any sub-structure of the Administration Directorate in any geographic district or region in respect of any prescribed matter may be appealed against to the Chief Director: Administration, who may confirm, vary or set aside any such decision or action. 30

(3) The Chief Director: Administration shall—

- (a) operate independently of the Chief Director: Monitoring and the Secretary;
- (b) be under the supervision of the Commission; and
- (c) carry out the instructions of the Commission, to which he or she shall be accountable. 35

(4) The Chief Director: Administration may delegate the power to hear and determine appeals in terms of subsection (2) to any deputy director appointed in terms of section 20(1), and may delegate any other power conferred upon him or her by or under this Act and the Electoral Act to any official of his or her directorate as he or she may consider necessary. 40

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

22. There shall be established on the date on which the Commission is constituted, a directorate to be known as the Election Monitoring Directorate. 45

Constitution of Election Monitoring Directorate

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

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

Powers, duties and functions of Chief Director: Monitoring

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

- (a) appoint monitors and co-ordinate their functions to observe and report to him or her upon the electoral process, including political meetings, canvassing, advertising and other campaigns; 15
- (b) register observers and regulate their activities, and publish guidelines and, if he or she considers it necessary, a Code of Conduct binding upon all such observers; 20
- (c) facilitate the role of international observers and provide them with information and assistance as may be required to enable them to perform their duties; 25
- (d) investigate alleged infringements of the Electoral Code of Conduct, other alleged electoral offences and any other matters justiciable in terms of this Act and the Electoral Act and report to the Commission thereon; 30
- (e) issue and execute prescribed search warrants and subpoenas and seize items required in connection with the investigation of alleged infringements of the Electoral Code of Conduct, other alleged electoral offences and any other matters justiciable in terms of this Act and the Electoral Act, with the assistance of the National Peacekeeping Force as defined in section 1 of the Transitional Executive Council Act, 1993, the police or defence forces, as may be requested by the Commission; 35
- (f) initiate or co-ordinate meetings between the various registered parties participating in the election with a view to mediating and, if possible, resolving issues and disputes arising in the course of the election, by negotiation and mutual agreement; 40
- (g) issue prescribed warnings concerning alleged or threatened infringements of the Electoral Code of Conduct; 45
- (h) report to the Commission upon the electoral process as required by it;
- (i) operate independently of the Chief Director: Administration and the Secretary;
- (j) be under the supervision of the Commission; 50
- (k) carry out the instructions of the Commission, to which he or she shall be accountable; and
- (l) have such other powers, duties and functions as may be prescribed.

(2) Any decision or action taken by any functionary of any sub-structure of the Monitoring Directorate in any geographic district or region in respect of any prescribed matter may be appealed against to the Chief Director: Monitoring, who may confirm, vary or set aside any such decision or action. 55

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

CHAPTER V***Election Adjudication Secretariat*****Establishment of Election Adjudication Secretariat**

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

Constitution of Election Adjudication Secretariat

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

(2) In effecting the appointment of the Secretary, the Commission shall invite and, where given, consider, but shall not be bound by, the advice of the Transitional Council. 5

Powers, duties and functions of Secretary

27. (1) The Secretary shall—

- (a) co-ordinate the functions of the Electoral Tribunals, the Electoral Appeal Tribunals and the Special Electoral Court; 10
- (b) perform the administrative work connected with the performance of the functions of those Tribunals and that Court;
- (c) operate independently of the Chief Directors: Administration and Monitoring; 15
- (d) be under the supervision of the Commission; and
- (e) carry out the instructions of the Commission, to which he or she shall be accountable.

(2) The Secretary shall have such other powers, duties and functions as may be prescribed. 20

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

28. (1) The Commission shall, subject to subsection (2), establish such number of Electoral Tribunals with jurisdiction in respect of prescribed geographic areas as it may consider necessary to adjudicate and decide prescribed matters concerning alleged electoral irregularities and alleged infringements of the Electoral Code of Conduct. 25

(2) An Electoral Tribunal shall consist of one person, who shall be an attorney, advocate, magistrate or academic lawyer at a university with not less than five years' experience in one or more such capacities, appointed to that office by the Commission. 30

Powers, duties and functions of Electoral Tribunals

29. (1) An Electoral Tribunal hearing any matter falling within its jurisdiction, shall enquire into the matter in the prescribed manner, consider it and make such decision or give such order as in its opinion is fair and just. 35

(2) An Electoral Tribunal finding any person or party guilty of contravening or failing to comply with any prescribed matter or any provision of the Electoral Code of Conduct, may impose any such penalty or sanction as may be prescribed in terms of this Act and the Electoral Act as it may consider appropriate in the circumstances. 40

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

CHAPTER VII***Electoral Appeal Tribunals***

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Establishment and constitution of Electoral Appeal Tribunals

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

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

- (a) the Chairperson shall be a judge of the Supreme Court;
- (b) one shall be an attorney, advocate or magistrate or academic lawyer at a university with not less than five years' experience in one or more such capacities; 5
- (c) one shall be a suitable person, who may or may not be legally qualified or experienced.

Powers, duties and functions of Electoral Appeal Tribunals

31. (1) An Electoral Appeal Tribunal hearing any appeal or reviewing any decision shall enquire into the matter in the prescribed manner, consider it and confirm, vary or set aside the decision, order, penalty or sanction of the Electoral Tribunal, or make such other decision or give such other order or impose such other penalty or sanction as in its opinion the Electoral Tribunal ought to have made, given or imposed. 10 15

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

CHAPTER VIII

Special Electoral Court

Establishment and constitution of Special Electoral Court 20

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

(2) The Special Electoral Court shall consist of—

- (a) a Chairperson, who shall be a judge of the Appellate Division of the Supreme Court, and two judges of the Supreme Court designated by the Chief Justice; and 25
- (b) two other members, of whom—
 - (i) one shall be an attorney, advocate, magistrate or academic lawyer at a university with not less than five years' experience in one or more such capacities; and 30
 - (ii) one shall be a suitable person, who may or may not be legally qualified or experienced.

appointed by the Transitional Council.

Powers, duties and functions of Special Electoral Court

33. (1) (a) Subject to section 36(6)(a), the Special Electoral Court shall have power to review any decision of the Commission. 35.

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

(2) (a) Subject to section 36(6)(a), the Special Electoral Court shall have the power to hear and determine an appeal against any decision of the Commission only in so far as such decision relates to the interpretation of any law or any other matter for which an appeal is provided in the Electoral Act. 40

(b) No such appeal shall be heard save with the prior leave of the Chairperson of the Special Electoral Court granted on application within the period and in the manner determined by that Court. 45

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

(3) The Special Electoral Court shall have power to remove any member of the Commission from office under section 11. 50

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

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

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

5

CHAPTER IX

General Provisions

Application of Act in event of conflict with other laws

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

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Dissolution of directorates, Secretariat and tribunals

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

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

15

Appeal and review

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

20

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

25

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

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

30

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

35

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

(6) Any—

40

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

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

shall be final and not subject to appeal or review.

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

45

Remuneration and allowances of members of tribunals and Special Electoral Court

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

50

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

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

Secrecy

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

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

Offences and penalties

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39. Any person who—

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

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

Legal proceedings against Commission

40

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

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

Regulations

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

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

section 2 of the Independent Media Commission Act, 1993, and the Independent Broadcasting Authority established by section 3 of the Independent Broadcasting Authority Act, 1993:

- (b) the issue, contents, form, and the practice and procedure in connection with the execution, of search warrants, subpoenas and the seizure of items required in connection with the investigation of alleged infringements of the Electoral Code of Conduct, alleged electoral offences and matters justiciable in terms of this Act; 5
- (c) the manner in which proceedings, and the nature of proceedings which, may be instituted in the Electoral and Appeal Tribunals; 10
- (d) the time limits within and manner in which appeals may be noted or decisions may be brought under review in terms of this Act;
- (e) electoral irregularities and other matters in respect of which contraventions or failures to comply shall constitute cause for proceedings to be instituted in the Electoral Tribunals; 15
- (f) the issue, contents, form and use of process, and the practice and procedure in connection with the service and execution thereof;
- (g) the manner of recording or noting evidence or proceedings and the disposal thereof;
- (h) the appointment and functions of sworn interpreters; 20
- (i) orders, penalties and sanctions which may be given or imposed by an Electoral or Appeal Tribunal, and the execution thereof;
- (j) the manner in which a person, party or candidate may be summoned to appear in an Electoral Tribunal to face charges of contravening or failing to comply with a regulation contemplated in paragraph (e) or an infringement of the Electoral Code of Conduct, and the manner in which one or more persons may be selected to represent such party in such Tribunal; 25
- (k) the procedures for investigating alleged infringements of the Electoral Code of Conduct, electoral offences or matters justiciable in terms of this Act in order to bring such investigations to an expeditious conclusion; 30
- (l) the practice and procedure to be followed by the Chief Director: Administration and the Chief Director: Monitoring in hearing appeals against decisions or actions of functionaries of their directorates, due regard being had to the principles of natural justice; 35
- (m) the practice and procedure to be followed by the Secretary in the performance of his or her functions;
- (n) fees and costs and the recovery thereof in respect of legal proceedings in terms of this Act; 40
- (o) representation or absence thereof in respect of legal proceedings in terms of this Act;
- (p) the practice and procedure to be followed by the Electoral and Appeal Tribunals in the conduct of their proceedings in order to bring such proceedings to an expeditious conclusion, due regard being had to fairness and justice; 45
- (q) the regulation of the conduct of all persons, parties and candidates in so far as such conduct may promote or inhibit the conduct of free and fair elections;
- (r) any matter required or permitted to be prescribed in terms of this Act: 50 and
- (s) generally, all matters which in its opinion are necessary or expedient to be prescribed to achieve the objects of this Act.

(2) A regulation under subsection (1) may prescribe penalties for any contravention of the provisions thereof or any failure to comply therewith of a fine 55 or imprisonment for a period not exceeding two years.

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

Short title and commencement

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

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

THE INDEPENDENT ELECTORAL COMMISSION BILL

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

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

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

TEC/PLENARY
17 NOVEMBER 1993

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

IEC/PLENARY
17 NOVEMBER 1993

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

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

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



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

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KAAPSTAD, 27 OKTOBER 1993

STATE PRESIDENT'S OFFICE

No. 1874.

27 October 1993

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

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

KANTOOR VAN DIE STAATSPRESIDENT

No. 1874.

27 Oktober 1993

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

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

BILL

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

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

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

ARRANGEMENT OF ACT

Section No.	Subject matter	
1.	Definitions	5
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3.	Primary objects of Commission	
4.	Constitution of Commission and appointment of commissioners	
5.	Persons qualified to be commissioners	
6.	Persons disqualified from being commissioners	10
7.	Term of office of commissioners	
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- | | | |
|-----|--|---|
| 32. | Application of Act in respect of certain private broadcasters licensed elsewhere | |
| 33. | Application of Act in event of conflict with other laws | |
| 34. | Dissolution of Commission, and cessation of Act | |
| 35. | This Act binding on State and State President | 5 |
| 36. | Short title and commencement | |

Definitions

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

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

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

ical, pamphlet, poster or other printed matter, or any other object in or on which sound has been recorded for reproduction, which is wholly or partly financed by the State for the purpose of the promotion of State policy or the policy of a department of State: (xxi)

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

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

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

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

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

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

Establishment of Independent Media Commission

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

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

Primary objects of Commission

3. The primary objects of the Commission shall be—

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

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

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

Constitution of Commission and appointment of commissioners

4. (1) The Commission shall consist of—

(a) a chairperson; and

(b) not more than six other members.

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

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

Persons qualified to be commissioners

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

Persons disqualified from being commissioners

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

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

Term of office of commissioners

7. (1) Subject to the provisions of this Act, the commissioners shall hold office until the dissolution of the Commission in terms of section 34(1). 5
(2) A commissioner may at any time, upon at least three months' written notice tendered to the Transitional Executive Council, resign from office.

Removal from office

8. (1) Notwithstanding the provisions of section 7, a commissioner may be removed from office by the Transitional Executive Council on account of misconduct or inability to efficiently perform the duties of his or her office or by reason of his or her absence from three consecutive meetings of the Commission without the prior permission of the chairperson, except on good cause shown. 10
(2) A commissioner shall not be removed from office in terms of subsection (1) except after due inquiry, and then only upon a decision to that effect by the Transitional Executive Council. 15

Vacancies in Commission

9. (1) There shall be a vacancy in the Commission—
(a) if a commissioner becomes subject to a disqualification referred to in section 6; 20
(b) when a commissioner's written resignation, tendered as contemplated in section 7(2), takes effect; or
(c) if a commissioner is removed from office in terms of section 8.
(2) A vacancy in the Commission shall be filled by the appointment of another commissioner by the Transitional Executive Council in terms of this Act as soon as may be reasonably practicable after the occurrence of such vacancy. 25

Remuneration and allowances

10. Commissioners shall be paid such remuneration and allowances as the Transitional Executive Council, in consultation with the Minister of State Expenditure, may determine. 30

Meetings of Commission

11. (1) The meetings of the Commission shall be held at such times and places as may be determined by resolution of the Commission whenever necessary so as to conduct its business expeditiously: Provided that the first meeting shall be held at such time and place as the chairperson may determine. 35
(2) In the event of the chairperson being absent, the remaining commissioners shall from their number elect an acting chairperson, who, while he or she so acts, may exercise and perform all the powers, functions and duties of the chairperson.
(3) The chairperson may at any time in his or her discretion convene a special meeting of the Commission, which shall be held at such time and place as the chairperson may direct: Provided that the chairperson shall, upon having been presented with a requisition for that purpose signed by at least two commissioners, call for a special meeting, and if the chairperson fails to convene a special meeting within 48 hours of such presentation, such two commissioners may, upon the expiration of such 48 hours, convene the special meeting. 40
(4) The quorum for any meeting of the Commission shall be a majority of the total number of commissioners. 45
(5) Subject to the provisions of subsection (4), a decision of the Commission shall be taken by resolution agreed to by the majority of the commissioners present at any meeting of the Commission, and in the event of an equality of votes 50

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

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

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

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

Disclosure of conflicting interests 15

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

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

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

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

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

Proceedings of Commission not invalid in certain circumstances

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

Staff of Commission

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

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

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

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

Establishment of committees of Commission

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

(a) a broadcasting committee, which shall assist the Commission in the exercise and performance of its powers and functions contemplated in section 17(1)(a); and 10

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

(2) The Commission may establish such other committees for such purposes as it may deem necessary with a view to assisting it in the effective exercise and performance of any of its other powers, functions and duties in terms of this Act. 15

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

(4) A committee shall have two or more additional members, as may be determined by the Commission, who— 20

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

(b) on account of their qualifications, expertise and experience in relation to the mandate or terms of reference of the relevant committee, are suited to serve thereon. 25

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

(6) The provisions of sections 5(3), 10, 11, 12, 13 and 25 shall *mutatis mutandis* apply in respect of any committee, and for that purpose any reference to the Commission shall be construed as a reference to the committee in question. 30

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

Appointment of experts

16. (1) The Commission may appoint as many experts, including experts from other countries, as it may deem necessary with a view to assisting it in the exercise and performance of its powers, functions and duties and for the performance of any work arising therefrom. 35

(2) The terms, conditions, remuneration and allowances applicable to any expert by virtue of his or her appointment in terms of subsection (1), and the work to be performed or service to be rendered by virtue of such appointment, shall be as determined in a written agreement entered into for that purpose between the Commission and the expert concerned. 40

(3) Upon having performed the work or completed the service pursuant to the agreement contemplated in subsection (2), the expert concerned shall submit a report in regard thereto to the Commission for its consideration. 45

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

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

(b) to perform such further functions as the Commission may deem necessary or desirable. 50

Powers and functions of Commission

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

(a) monitor all broadcasting services in the Republic and enforce compliance by broadcasting licensees with the provisions of this Act relating to— 55

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

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

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

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

Party election broadcasts on sound broadcasting services during election period

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

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

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

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

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

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

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

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

Political advertising on sound broadcasting services during election period

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

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

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

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

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

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

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

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

Equitable treatment of political parties by broadcasting licensees during election period

21. (1) If, during the election period, the coverage by any broadcasting service extends to the field of the election and the political parties and issues relevant thereto, the broadcasting licensee concerned shall afford reasonable opportunities for the discussion of conflicting views and shall treat all political parties equitably.

(2) In the event of any criticism against a political party being levelled in a particular programme of any broadcasting service without such political party having been afforded an opportunity to respond thereto in such programme or without the view of such political party having been reflected therein, the broadcasting licensee concerned shall be obliged to afford such political party a reasonable opportunity to respond to the criticism.

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

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

State-financed publications and State information services

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

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

(3) The Commission may require the publisher of a publication referred to in subsection (2) to provide the Commission with a copy of such publication prior to the printing thereof.

(4) A State-financed publication shall be submitted by its publisher to the Commission free of charge within 48 hours of the completion of the printing thereof.

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

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

Hearings

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Orders and recommendations of Commission

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

(a) make an order requiring the respondent, if he or she—

(i) is a public sound broadcasting licensee, to broadcast a party election broadcast; 50

(ii) is a sound broadcasting licensee, to broadcast a political advertisement;

(iii) is a broadcasting licensee, to broadcast another version of the programme complained of or a counter-version of the opinions expressed or alleged facts stated in such a programme; 55

(b) order the respondent to pay such fine as the Commission may determine, but not exceeding such amount as may be prescribed in relation to the contravention in question;

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

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

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

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

Expenditure in connection with functions of Commission

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

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

Reporting responsibility of Commission

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

Offences and penalties

27. (1) Any person who—

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

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

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

- (a) any order referred to in section 24, shall be guilty of an offence and liable on conviction to a maximum fine of R100 000; 45
(b) any other order of the Commission, shall be guilty of an offence and liable on conviction to a maximum fine of R10 000.

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

(b) The provisions of paragraph (a) shall *mutatis mutandis* apply in respect of any member of a committee.

Delegations

28. (1) Subject to the provisions of subsection (4), the Commission may in writing—

(a) delegate to a committee any power, function or duty conferred or imposed upon the Commission by this Act;

(b) authorize a committee to exercise or perform any power, function or duty assigned to the Commission by this Act.

(2) Any delegation or authorization under subsection (1) may be made subject to such conditions and restrictions as may be determined by the Commission and may at any time be amended or revoked by the Commission.

(3) The Commission shall not be divested of any power nor be relieved of any duty which it may have delegated under this section, and may amend or rescind any decision of a committee by virtue of a delegation under this section.

(4) The Commission shall not delegate any of the powers, functions or duties referred to in sections 15, 16, 17, 19(2) and (4), 23, 24 and 30.

Limitation of liability

29. Neither the chairperson, any commissioner or any member of a committee nor any expert appointed in terms of this Act or any member of staff of the Commission, shall be personally liable for any damage or loss suffered by any person in consequence of any act which in good faith was performed or omitted in the course of the exercise or performance or supposed exercise or performance of any power, function or duty in terms of this Act.

Regulations

30. (1) The Commission may make regulations, not inconsistent with the provisions of this Act, in relation to any matter which in terms of this Act shall or may be prescribed or governed by regulation.

(2) A regulation in terms of subsection (1) may declare any contravention thereof or failure to comply therewith to be an offence, and may in respect thereof provide for the imposition of a fine not exceeding R10 000.

Extraterritorial extension of Commission's jurisdiction by agreement between Republic and any state or territory previously part of Republic

31. If the Transitional Executive Council, on behalf of the Republic, and the government of any state or territory which was previously part of the Republic, agree thereto, and a law of such state or territory provides therefor—

(a) the Commission may exercise and perform in respect of persons and matters in the said state or territory all such powers, functions and duties as it may in terms of this Act exercise and perform in respect of persons and matters in the Republic; and

(b) the provisions of this Act shall for the purposes of paragraph (a) be deemed to apply *mutatis mutandis* in such state or territory.

Application of Act in respect of certain private broadcasters licensed elsewhere

32. The provisions of this Act shall also apply in respect of the persons in control of the broadcasting services known as "Radio 702", "Capital Radio" and "Trinity Broadcasting Network" as if such persons were broadcasting licensees.

Application of Act in event of conflict with other laws

33. In the event of a conflict between the provisions of this Act and those of any other law, the provisions of this Act shall prevail.

Dissolution of Commission, and cessation of Act

34. (1) The Commission shall dissolve on the date when the Independent Electoral Commission is dissolved in terms of section 9 of the Independent Electoral Commission Act, 1993, on which date this Act shall cease to have effect. 5

(2) All assets, moneys and liabilities of the Commission shall on its dissolution in terms of subsection (1) devolve upon the State, which shall to that extent for all purposes in law be deemed to be the legal successor of the Commission. 10

This Act binding on State and State President

35. (1) This Act shall bind the State.

(2) This Act shall bind the State President in so far as he or she shall be obliged to act in accordance with the advice of the Transitional Executive Council wherever so provided for in this Act. 15

Short title and commencement

36. This Act shall be called the Independent Media Commission Act, 1993, and shall come into operation on a date to be determined by the Transitional Executive Council, which date shall be made known by the State President by proclamation in the *Gazette*. 20

**BREAKDOWN OF THE INDEPENDENT MEDIA
COMMISSION BILL AS ADOPTED BY
THE NEGOTIATING COUNCIL**

INDEPENDENT MEDIA COMMISSION BILL

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

CLAUSE	DESCRIPTION	STATUS
Clause 1	Definitions	Agreed general consensus
Clause 2	Establishment of Independent Media Commission	Agreed general consensus
Clause 4	Constitution of Commission and appointment of commissioners	Agreed general consensus
Clause 5	Persons qualified to be commissioners	Agreed general consensus
Clause 6	Persons disqualified from being commissioners	Agreed sufficient consensus
Clause 7	Term of office of commissioners	Agreed general consensus
Clause 8	Removal from office	Agreed general consensus
Clause 9	Vacancies in Commission	Agreed general consensus
Clause 10	Remuneration and allowances	Agreed general consensus
Clause 11	Meetings of Commission	Agreed general consensus
Clause 12	Disclosure of conflicting interests	Agreed general consensus
Clause 13	Proceedings of Commission not invalid in certain circumstances	Agreed general consensus

IMC/PLENARY
17 NOVEMBER 1993

Clause 14	Staff of Commission	Agreed general consensus
Clause 15	Establishment of committees of Commission	Agreed general consensus
Clause 16	Appointment of experts	Agreed general consensus
Clause 17	Powers and functions of Commission	Agreed general consensus
Clause 18	Prohibition on broadcasting of party election broadcasts and political advertisements	Agreed general consensus
Clause 19	Party election broadcasts on sound broadcasting services during election period	Agreed sufficient consensus The AVU, the PAC and the SACP reserved their position on sub-clause (8)
Clause 20	Political advertising on sound broadcasting services during the election period	Agreed general consensus
Clause 21	Equitable treatment of political parties by broadcasting licensees during election period	Agreed general consensus
Clause 22	State-financed publications and State information services	Agreed general consensus
Clause 23	Hearings	Agreed general consensus

IMC/PLENARY
17 NOVEMBER 1993

Clause 24	Orders and recommendations of Commission	Agreed general consensus The DP objected to the deletion of the wording "successively" in subclause (1) (c)
Clause 25	Expenditure in connection with functions of Commission	Agreed general consensus
Clause 26	Reporting responsibility of Commission	Agreed general consensus
Clause 27	Offences and penalties	Agreed general consensus
Clause 28	Delegations	Agreed general consensus
Clause 29	Limitation of liability	Agreed general consensus
Clause 30	Regulations	Agreed general consensus
Clause 31	Extraterritorial extension of Commission's jurisdiction by agreement between Republic and any state or territory previously part of Republic	Agreed general consensus

Clause 32	Application of this Act in respect of certain private broadcasters licensed elsewhere	Agreed general consensus It was noted that the B o p h u t a t s w a n a Government had made a submission to the Technical Committee setting out the position of the Bophutatswana Government with regard to Radio 702. This did not influence the acceptance of this clause.
Clause 33	Application of Act in event of conflict with other laws	Agreed by general consensus
Clause 34	Dissolution of Commission, and cessation of Act	Agreed general consensus
Clause 35	This Act binding on State and State President	Agreed general consensus
Clause 36	Short title and commencement	Agreed general consensus

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



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

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KAAPSTAD, 27 OKTOBER 1993

No. 15185

STATE PRESIDENT'S OFFICE

No. 1877.

27 October 1993

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

No. 153 of 1993: Independent Broadcasting Authority Act, 1993.

KANTOOR VAN DIE STAATSPRESIDENT

No. 1877.

27 Oktober 1993

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

No. 153 van 1993: Wet op die Onafhanklike Uitsaaioowerheid, 1993.

ACT

To provide for the regulation of broadcasting activities in the public interest; for that purpose to establish a juristic person to be known as the Independent Broadcasting Authority which shall function wholly independently of State, governmental and party political influences and free from political or other bias or interference; to provide for the representation of that Authority by and its functioning through a council, and to define the powers, functions and duties of that Authority; to provide for the devolution of powers relating to the administration, management, planning and use of the broadcasting services frequency bands to the said Authority; and to provide for incidental matters.

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

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

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CHAPTER I

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1. (1) In this Act, unless inconsistent with the context—
 - (i) "apparatus" means any apparatus or equipment used or destined, designed or adapted to be used in connection with broadcasting;
 - (ii) "appointing body" means the body charged with the appointment of councillors in terms of section 4; (i)
 - (iii) "Authority" means the Independent Broadcasting Authority established by section 3; (xvii)
 - (iv) "authorized person", in relation to any power, function or duty to be exercised or performed for or on behalf of the Authority in terms of this Act, means any councillor or member of a committee of the Council or any staff member of the Authority duly authorized by the Council in terms of this Act to act for or on behalf of the Authority; (iv)

- (v) "broadcasting" means any form of unidirectional telecommunication intended for the public or sections of the public or subscribers to any broadcasting service having appropriate receiving facilities, whether carried out by means of radio or any other means of telecommunication or any combination of the aforementioned, and "broadcast" shall be construed accordingly; (xxix) 5
- (vi) "broadcasting licence" means a licence granted and issued by the Authority in terms of this Act to a person for the purpose of providing a defined category of broadcasting service, or deemed by this Act to have been so granted and issued; (xxxii) 10
- (vii) "broadcasting licensee" means the holder of a broadcasting licence; (xxxiii)
- (viii) "broadcasting service" means a single, defined service which consists in the broadcasting of television or sound material to the public or sections of the public or to the subscribers to such service; (xxx) 15
- (ix) "broadcasting services frequency bands" means that part of the electromagnetic radio frequency spectrum which is assigned for the use of broadcasting services by the International Telecommunications Union (ITU), in so far as such assignment has been agreed to or adopted by the Republic, as well as any other additional part of the electromagnetic radio frequency spectrum determined nationally for the use of broadcasting services; (xxxi) 20
- (x) "broadcasting signal distribution" means the process whereby the output signal of a broadcasting service is taken from the point of origin, being the point where such signal is made available in its final content format, from where it is conveyed to any geographical broadcast target area by means of a telecommunications process, but excluding the use of facilities which operate on frequencies outside the broadcasting services frequency bands; (xxxiv) 25 30
- (xi) "broadcasting signal distribution licence" means a licence granted and issued by the Authority in terms of this Act to a person for the purpose of providing signal distribution for broadcasting purposes, or deemed by this Act to have been so granted and issued; (xxxv)
- (xii) "broadcasting signal distribution licensee" means the holder of a broadcasting signal distribution licence; (xxxvi) 35
- (xiii) "chairperson" means the chairperson of the Council referred to in subsection (1)(a) of section 4, or, where two chairpersons have been appointed for the Council in terms of subsection (3) of that section, any one of the two persons so appointed and acting as chairperson at the relevant time, and includes any councillor acting in the stead of the chairperson in accordance with the provisions of section 10(2); (xli) 40
- (xiv) "community" includes a geographically founded community or any group of persons or sector of the public having a specific, ascertainable common interest; (v) 45
- (xv) "community broadcasting service" means a broadcasting service which—
 - (a) is fully controlled by a non-profit entity and carried on for non-profitable purposes; 50
 - (b) serves a particular community;
 - (c) encourages members of the community served by it or persons associated with or promoting the interests of such community to participate in the selection and provision of programmes to be broadcast in the course of such broadcasting service; and 55
 - (d) may be funded by donations, grants, sponsorships or advertising or membership fees, or by any combination of the aforementioned; (vi)
- (xvi) "company" means any company and any external company, as defined in section 1(1) of the Companies Act, 1973 (Act No. 61 of 1973), and includes any close corporation as defined in section 1 of the Close Corporations Act, 1984 (Act No. 69 of 1984); (xlii) 60

- (xvii) "Constitution Act" means the Constitution of the Republic of South Africa Act, 1993; (vii)
- (xviii) "Council" means the council of the Authority referred to in section 3(2), as constituted in terms of section 4(1), and, in relation to the exercise or performance of any power, function or duty conferred or imposed upon the Council by this Act, includes any committee of the Council or any officer of the Authority acting under a delegation or authorization in terms of section 69; (xxii) 5
- (xix) "councillor" means any member of the Council referred to in section 4(1); (xxiii) 10
- (xx) "election" means any election for the National Assembly or any other legislature contemplated in the Constitution Act, and conducted in terms of the Electoral Act, 1993, but excludes the first election to be so held for the National Assembly and such other legislatures in respect of which the Independent Electoral Commission has been established by the Independent Electoral Commission Act, 1993, and has been vested with certain powers; (xxxviii) 15
- (xxi) "election period" means the period commencing on the day immediately following upon the last day determined under the Electoral Act, 1993, for the submission of lists of the nature contemplated in the definition of "political party" in this section, and ending on the day immediately following upon the day on which candidates of any of the political parties are declared elected in terms of that Act; (xxxix) 20
- (xxii) "financial year" means the financial year of the Authority commencing on the first day of April in any year and ending on the thirty-first day of March, first following, both days inclusive: Provided that the first financial year shall commence on the date of commencement of this Act; (iii) 25
- (xxiii) "foreign person" means— 30
- (a) a natural person who is not a South African citizen;
- (b) a company, wherever incorporated, where the natural persons who in actual fact control the company, whether directly or indirectly, are not South African citizens; or
- (c) a company, wherever incorporated, where— 35
- (i) a company referred to in paragraph (b) of this definition: or
- (ii) a natural person who is not a South African citizen and a company referred to in that paragraph, controls or control the first-mentioned company, whether directly or indirectly; (xlii) 40
- (xxiv) "licence area" means the geographical target area of a broadcasting service as specified in the relevant broadcasting licence; (xi)
- (xxv) "licensee" means the holder of any licence granted and issued under this Act or deemed by this Act to have been so granted or so issued: (xii) 45
- (xxvi) "Minister" means the Minister charged with the administration of this Act; (xiv)
- (xxvii) "National Assembly" means the National Assembly contemplated in the Constitution Act; (xv) 50
- (xxviii) "party election broadcast" means a direct address or message broadcast free of charge on a broadcasting service and which is intended or calculated to advance the interests of any particular political party; (xviii)
- (xxix) "political advertisement" means an advertisement broadcast on a broadcasting service which is intended or calculated to advance the interests of any particular political party, for which advertisement the relevant broadcasting licensee has received or is to receive, directly or indirectly, any money or other consideration; (xix) 55
- (xxx) "political party" for the purposes of sections 59, 60 and 61, means any registered party as defined in section 1 of the Electoral Act, 1993, or any alliance of such registered parties (as the case may be), which, for the purpose of any particular election, has, before the 60

commencement of the relevant election period, submitted its list of candidates for the National Assembly or any other legislature contemplated in the Constitution Act: (xx)

- (xxxi) "prescribed" means prescribed by regulation in terms of section 78; (xl) 5
- (xxxii) "private broadcasting service" means a broadcasting service operated for profit and controlled by a person who is not a public broadcasting licensee; (xxi)
- (xxxiii) "public broadcasting service" means—
 - (a) any broadcasting service provided by the South African Broadcasting Corporation in accordance with the provisions of the Broadcasting Act, 1976 (Act No. 73 of 1976); 10
 - (b) a broadcasting service provided by any other statutory body; or
 - (c) a broadcasting service provided by a person who receives his or her revenue, either wholly or partly, from licence fees levied in respect of the licensing of persons in relation to sound radio sets and in relation to television sets, or from the State; 15
 and shall include a commercially operated broadcasting service provided by a person referred to in paragraph (a), (b) or (c) of this definition; (xvi) 20
- (xxxiv) "radio" means an electromagnetic wave propagated in space without artificial guide and having by convention a frequency of lower than 3 000 GHz; (xxiv)
- (xxxv) "Republic" means the Republic of South Africa; (xxv)
- (xxxvi) "sound broadcasting service" means a broadcasting service destined to be received by a sound radio set; (x) 25
- (xxxvii) "sound radio set" means any apparatus designed or adapted to be capable of receiving by radio the transmissions broadcast by a broadcasting service, and reproducing them in the form of sounds, but not also in the form of images or other visible signs or signals; (ix) 30
- (xxxviii) "telecommunications" means any system or method of conveying signs, signals, sounds, communications or other information by means of electricity, magnetism, electromagnetic waves or any agency of a like nature, whether with or without the aid of tangible conductors, from one point to another, and the derivative noun "telecommunication" shall be construed accordingly; (xxvi) 35
- (xxxix) "television broadcasting service" means a broadcasting service consisting in the sending of visual images or other visible signals whether with or without accompanying sounds, where the visual images are such that sequences of them are seen as moving pictures; (xxviii) 40
- (xl) "television set" means any apparatus designed or adapted to be capable of receiving transmissions broadcast in the course of a television broadcasting service; (xxvii) 45
- (xli) "this Act" includes the Schedules to this Act and any regulations made from time to time under section 78; (viii) and
- (xlii) "Transitional Executive Council" means the Transitional Executive Council established by section 2 of the Transitional Executive Council Act, 1993. (xxxvii) 50

(2) For the purposes of this Act a person shall control, have control or be in control of or be in a position to exercise control over, a broadcasting licensee, a newspaper or a company, *inter alia* in the circumstances contemplated in paragraphs 1, 2 and 3, respectively, of Schedule 2 to this Act.

Primary objects of Act 55

2. The primary object of this Act is to provide for the regulation of broadcasting activities in the Republic in the public interest through the Independent Broadcasting Authority established by section 3, and for that purpose to—

- (a) promote the provision of a diverse range of sound and television broadcasting services on a national, regional and local level which, 60

- when viewed collectively, cater for all language and cultural groups and provide entertainment, education and information:
- (b) promote the development of public, private and community broadcasting services which are responsive to the needs of the public;
 - (c) ensure that broadcasting services, viewed collectively— 5
 - (i) develop and protect a national and regional identity, culture and character;
 - (ii) provide for regular—
 - (aa) news services;
 - (bb) actuality programmes on matters of public interest; 10
 - (cc) programmes on political issues of public interest; and
 - (dd) programmes on matters of international, national, regional and local significance;
 - (d) protect the integrity and viability of public broadcasting services;
 - (e) ensure that, in the provision of public broadcasting services— 15
 - (i) the needs of language, cultural and religious groups;
 - (ii) the needs of the constituent regions of the Republic and local communities; and
 - (iii) the need for educational programmes, 20
 - are duly taken into account: -
 - (f) encourage ownership and control of broadcasting services by persons from historically disadvantaged groups;
 - (g) encourage equal opportunity employment practices by all licensees;
 - (h) ensure that broadcasting services are not controlled by foreign persons;
 - (i) ensure that private and community broadcasting licences, viewed 25
 collectively, are controlled by persons or groups of persons from a diverse range of communities in the Republic;
 - (j) impose limitations on cross-media control of private broadcasting services;
 - (k) promote the most efficient use of the broadcasting services frequency 30
 bands;
 - (l) ensure that public broadcasting licensees, private broadcasting licensees and signal distribution licensees comply with internationally accepted technical standards;
 - (m) ensure that broadcasting signal distribution facilities are made available 35
 in respect of all licensed broadcasting services;
 - (n) refrain from undue interference in the commercial activities of licensees, whilst at the same time taking into account the broadcasting needs of the public;
 - (o) ensure fair competition between broadcasting licensees; 40
 - (p) promote and conduct research into broadcasting policy and technology;
 - (q) encourage investment in the broadcasting industry;
 - (r) promote the stability of the broadcasting industry;
 - (s) ensure equitable treatment of political parties by all broadcasting 45
 licensees during any election period;
 - (t) ensure that broadcasting licensees adhere to a code of conduct acceptable to the Independent Broadcasting Authority; and
 - (u) encourage the provision of appropriate means for disposing of complaints in relation to broadcasting services and broadcasting signal 50
 distribution.

CHAPTER II

Independent Broadcasting Authority

Establishment of Independent Broadcasting Authority

3. (1) (a) There is hereby established a juristic person to be known as the Independent Broadcasting Authority, which shall exercise and perform the powers, functions and duties conferred and imposed upon it by this Act or by or in terms of any other law. 55

(b) Without derogating from the generality of paragraph (a), the Independent Broadcasting Authority, for the purposes of the proper exercise and performance of its powers, functions and duties in terms of this Act and achieving and giving effect to the objects and principles as enunciated in section 2, shall be capable in law of instituting or defending or opposing legal proceedings of whatever nature, of purchasing or otherwise acquiring and holding and alienating or otherwise disposing of movable or immovable property or any other real right or other right or interest, of entering into contracts and concluding agreements, and generally, of performing such other acts and doing such other things as juristic persons may by law perform and do, subject to the provisions of this Act.

(2) The Authority shall be governed and represented by the council referred to in section 4, and all acts of such council shall in law be regarded as the acts of the Authority.

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

Constitution of Council

4. (1) The membership of the Council shall consist of—

- (a) a chairperson, subject to the provisions of subsection (3); and
- (b) six other councillors,

appointed by the State President on the advice of the Transitional Executive Council or, where the Transitional Executive Council has dissolved in terms of section 29 of the Transitional Executive Council Act, 1993, by the National Assembly in accordance with the Constitution Act and, in either case, according to the following principles, namely—

- (i) participation by the public in the nomination process;
- (ii) transparency and openness; and
- (iii) the publication of a shortlist of candidates for appointment.

duly taking into account the objects and principles as enunciated in section 2 of this Act.

(2) Councillors shall—

- (a) when viewed collectively, be persons who are suited to serve on the Council by virtue of their qualifications, expertise and experience in the fields of, *inter alia*, broadcasting policy and technology, media law, frequency planning, business practice and finance, marketing, journalism, entertainment and education;
- (b) be persons who are committed to fairness, freedom of expression, the right of the public to be informed, and openness and accountability on the part of those holding public office;
- (c) when viewed collectively, represent a broad cross-section of the population of the Republic; and
- (d) be persons who are committed to the objects and principles as enunciated in section 2.

(3) If the Transitional Executive Council or the National Assembly so decides, it may advise the State President to appoint two co-chairpersons in lieu of one chairperson.

Persons disqualified from being councillors

5. (1) A person shall not be appointed or remain a councillor if such person—

- (a) is not a citizen of and not permanently resident in the Republic;
- (b) at the relevant time holds, or during the preceding 12 months held, an office of profit under the State, subject to the provisions of section 22(3)(a);

- (c) at the relevant time is, or during the preceding 12 months was, a member of the Transitional Executive Council or Parliament or of any other legislature contemplated in the Constitution Act, or if he or she so is or was a member of any local authority;
 - (d) at the relevant time is, or during the preceding 12 months was, an office-bearer or employee of any party, movement, organization or body of a party political nature; 5
 - (e) directly or indirectly, whether personally or through his or her spouse, partner or associate, has a direct or indirect financial interest in the telecommunications, broadcasting or printed media industry; 10
 - (f) or his or her spouse, partner or associate, holds an office in or is employed by any company, organization or other body, whether corporate or incorporate, which has a direct or indirect financial interest of the nature contemplated in paragraph (e);
 - (g) is an unrehabilitated insolvent; 15
 - (h) is subject to an order of a competent court declaring such person to be mentally ill or disordered;
 - (i) is convicted, after the commencement of this Act, whether in the Republic or elsewhere, of any offence for which such person has been sentenced to imprisonment without the option of a fine; 20
 - (j) at any time prior to the date of commencement of this Act was convicted, or at any time after such commencement is convicted—
 - (i) in the Republic, of theft, fraud, forgery and uttering a forged document, perjury or an offence in terms of the Corruption Act, 1992 (Act No. 94 of 1992); or 25
 - (ii) elsewhere, of any offence corresponding materially with any offence referred to in subparagraph (i); or
 - (iii) whether in the Republic or elsewhere, of any other offence involving dishonesty; or
 - (k) has been convicted of an offence under this Act. 30
- (2) Notwithstanding the provisions of paragraph (e) or (f) of subsection (1), a person shall be eligible for appointment to the Council if such person divests himself or herself of the relevant financial interest in a manner which satisfies the appointing body.
- (3) For the purposes of subsection (1), "spouse" includes a *de facto* spouse. 35

Terms of office of councillors

6. (1) The chairperson shall hold office for a period of five years as from the date of his or her appointment.
- (2) (a) Subject to the provisions of paragraph (c) of this subsection, the additional councillors shall hold office for a period of four years as from the date of their appointment. 40
- (b) One half of the total number of additional councillors shall vacate their offices every two years.
- (c) For the purposes of paragraph (b), such three of the six additional councillors appointed to the first Council constituted after the commencement of this Act as shall be determined by lot in accordance with the provisions of Schedule 4, shall vacate their offices upon expiration of a period of two years as from the date of their appointment, whereas the three councillors remaining at that stage, shall vacate their offices on a date two years later. 45
- (3) A councillor may at any time upon at least three months' written notice tendered to the appointing body resign from office. 50
- (4) A councillor shall upon the expiration of his or her term of office be eligible for re-appointment.
- (5) For the purposes of this section and Schedule 4, "additional councillors" means the members of the Council referred to in section 4(1)(b). 55

Remuneration and allowances of councillors

7. Councillors shall, from the funds of the Authority, be paid such remuneration and allowances, and be entitled to such perquisites, as the Minister, in consultation with the Minister of State Expenditure, may determine.

Removal from office

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8. (1) Notwithstanding the provisions of section 6, a councillor may be removed from office by the appointing body on account of misconduct or inability to perform the duties of his or her office efficiently, or by reason of his or her absence from three consecutive meetings of the Council without the prior permission of the chairperson, except on good cause shown.

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

Vacancies in Council

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

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(a) if a councillor becomes subject to a disqualification referred to in section 5;

(b) when a councillor's written resignation, tendered as contemplated in section 6(3), takes effect; or

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

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(2) A vacancy in the Council shall be filled by the appointment of another councillor by the appointing body in terms of this Act as soon as may be reasonably practicable after the occurrence of such vacancy, and any councillor so appointed shall hold office for the unexpired period of his or her predecessor's term of office.

Meetings of Council

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

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

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

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

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(5) Subject to the provisions of subsection (4), a decision of the Council shall be taken by resolution agreed to by the majority of councillors at any meeting of the Council and, in the event of an equality of votes regarding any matter, the chairperson shall have a casting vote in addition to his or her deliberative vote.

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

Disclosure of conflicting interests

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

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

- (a) such councillor shall forthwith and fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining councillors to discuss the matter and determine whether such councillor is precluded from participating in such meeting by reason of a conflict of interests; and 5
- (b) such disclosure and the decision taken by the remaining councillors regarding such determination, shall be recorded in the minutes of the meeting in question. 10

(3) If any councillor fails to disclose any interest as required by subsection (2) or, subject to the provisions of that subsection, if he or she is present at the venue where a meeting of the Council is held or in any manner whatsoever participates in the proceedings of the Council, the relevant proceedings of the Council shall be null and void. 15

Proceedings of Council not invalid in certain circumstances

12. Subject to the provisions of section 11, a decision taken by the Council or an act performed under the authority of such a decision shall not be invalid merely by reason of any irregularity in the appointment of a councillor or a vacancy in the Council or the fact that any person not entitled to sit as a councillor sat as such at the time when such decision was taken, provided such decision was taken by a majority of the councillors present at the time and entitled so to sit, and the said councillors at the time constituted a quorum. 20

General powers of Authority

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13. Without derogating from the generality of the provisions of section 3, the Authority may, in addition to the powers conferred upon it elsewhere in this Act or by any other law, perform all such acts and do all such things as are reasonably necessary for or ancillary, incidental or supplementary to—

- (a) the achievement, pursuit, furtherance or promotion of the objects and principles as enunciated in section 2 and implementing, applying and giving effect to such principles and the provisions of this Act; 30
- (b) the exercise and performance of any of its powers, functions and duties in terms of this Act.

Staff of Authority

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14. (1) The Council shall appoint a suitably qualified and experienced person as chief administrative officer of the Authority for the purpose of assisting the Council, subject to the latter's directions and control, in the performance of all financial, administrative and clerical functions and work arising from the application and administration of this Act. 40

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

(3) Subject to the provisions of subsection (4), the Authority may pay to the persons in its employ, or provide them with, such remuneration, allowances, bonuses, subsidies, housing benefits, pensions and other employment benefits as the Authority may, after having obtained such professional advice as it may deem fit, consider as being competitive in the open employment market. 45

(4) The provisions of Schedule 3 shall apply in respect of persons who, immediately prior to assuming employment with the Authority, are members of any of the pension funds referred to in that portion of paragraph 1 of that Schedule which precedes subparagraph (a) of that paragraph. 50

Financing of Authority

15. (1) The Authority shall be financed and provided with operational capital from—

- (a) such moneys as, on the commencement of this Act, may be allocated from public funds to the Authority by the Minister with the concurrence of the Minister of State Expenditure, which allocation is hereby authorized; 5
- (b) such moneys as are from time to time appropriated to the Authority by Parliament;
- (c) fees and other moneys payable to the Authority in terms of this Act in respect of licences; 10
- (d) income derived by the Authority from its investment and deposit of surplus moneys in terms of section 18;
- (e) loans raised by the Authority in terms of section 16;
- (f) fines payable in terms of this Act on account of the contravention thereof and on account of the breach of licence terms, conditions and obligations; and 15
- (g) the proceeds derived from the sale by the Authority of anything declared forfeited to it in terms of section 67(3)(b).

(2) The moneys which, in terms of subsection (1), constitute the funds of the Authority, shall in accordance with the statement of estimated income and expenditure referred to in subsection (3) as approved in terms of that subsection, be utilized for defraying expenses incurred by the Authority in connection with or arising from the exercise and performance of its powers, functions and duties in terms of this Act: Provided that any amount or portion of an amount which, by the said statement, is required to be so utilized for a particular purpose in connection with a specified matter, may be so utilized by the Authority for any other purpose in connection with that matter. 20

(3) (a) The Council shall in each financial year at a time determined by the Minister for that purpose, submit a statement of the Authority's estimated income and expenditure in respect of the next ensuing financial year to the Minister for his or her approval, which approval may be granted with the concurrence of the Minister of State Expenditure. 30

(b) The statement referred to in paragraph (a) shall specify as a separate item of estimated income the amount which, in respect of the financial year to which such statement relates, is to be appropriated to the Authority by Parliament within the contemplation of subsection (1)(b). 35

Raising of loans by Authority

16. (1) The Authority may, with the written consent of the Minister granted with the concurrence of the Minister of Finance, raise loans to finance expenditure which may be incurred by the Authority for the purposes of its functions and operations in terms of this Act, in such maximum amounts and subject to such terms and conditions as may be determined by the Minister so acting. 40

(2) The Minister of Finance may, on behalf of the Government of the Republic and upon such terms and conditions as he or she deems fit, guarantee the repayment of any loan raised by the Authority in accordance with the provisions of subsection (1), as well as the interest and any other charges payable in connection with such loan. 45

(3) Any agreement entered into or guarantee furnished by virtue of the provisions of subsection (2), may be signed on behalf of the Government of the Republic by the Minister of Finance or any person authorized thereto in writing by the said Minister. 50

Banking account

17. (1) The Council shall, in the name of the Authority, open and maintain with a bank registered as such in the Republic or with any other financial institution so registered and approved by the Minister of State Expenditure, an account, in which there shall be deposited, subject to the provisions of section 18, the moneys 55

received by the Authority as contemplated in section 15 and from which payments for it or on its behalf shall be made.

(2) Cheques drawn on the Authority shall have been duly issued and signed on its behalf if issued under the joint signatures of any two members of the staff of the Authority from time to time authorized for that purpose by special resolution of the Council. 5

Investment of surplus moneys

18. The moneys of the Authority which are not immediately required for contingencies or to meet current expenditure may, upon a special resolution of the Council having been adopted for that purpose— 10

- (a) be invested on call or short-term fixed deposit with any bank or financial institution satisfying the requirements of section 17 (which requirements shall *mutatis mutandis* apply for the purposes of this paragraph);
- (b) be deposited with the Corporation for Public Deposits in an investment account in such manner and for such periods as the Minister acting with the concurrence of the Minister of State Expenditure may in writing approve. 15

Accounting and auditing

19. (1) The chief administrative officer referred to in section 14(1) shall be the accounting officer of the Authority charged with the responsibility to ensure that all moneys received and payments made on behalf of the Authority are duly accounted for. 20

(2) The accounting officer shall in respect of each financial year cause such records of account to be kept, in accordance with established accounting practice, principles and procedures, as are necessary to fairly, sufficiently and clearly reflect the revenue, expenditure and transactions of the Authority during such year and the state of its assets, liabilities and financial position and affairs at the end of such year, and to sufficiently explain such revenue, expenditure, transactions, financial position and state of affairs. 25

(3) (a) As soon as may be reasonably practicable after the end of each financial year, the accounting officer shall, in conformity with established accounting practice, principles and procedures, prepare financial statements comprising a statement reflecting, with suitable and sufficient particulars, the income and expenditure of the Authority in respect of the financial year having ended and a balance sheet showing the state of its assets, liabilities and financial position as at the end of the latter financial year. 30 35

(b) The financial statements referred to in paragraph (a), shall—

- (i) fairly reflect the transactions, state of affairs and financial position of the Authority and the operational results thereof; and
- (ii) refer to any relevant matter not specifically prescribed by this Act or in any regulation under section 78, which materially affects or is likely so to affect the affairs of the Authority, amplifying and explaining, where necessary, any figures in the financial statements. 40

(4) The Authority's record of accounts and financial statements contemplated in subsections (2) and (3), respectively, shall be audited annually by the Auditor-General. 45

Annual report

20. (1) The Council shall furnish to the Minister such information and particulars as he or she may from time to time in writing require in connection with the activities and financial position of the Authority, and shall annually, as soon as may be reasonably practicable after the end of each financial year, furnish to the Minister a report in regard to the functions, activities, affairs and financial position of the Authority in respect of such financial year. 50

(2) Without derogating from the generality of the provisions of subsection (1), the annual report referred to in that subsection shall *inter alia* include—

- (a) an audited balance sheet, including any notes thereon and documents annexed thereto whereby relevant information is provided;
- (b) a statement of income and expenditure contemplated in subsection (3) of section 19, duly audited in terms of subsection (4) of that section, including any notes thereon and documents annexed thereto whereby relevant information is provided;
- (c) information regarding licences granted, renewed, amended, transferred, suspended or revoked;
- (d) the auditor's report; and
- (e) such other information as the Minister may from time to time by notice in the *Gazette* determine, which he or she is hereby empowered to do.

(3) An annual report submitted in terms of subsection (1) shall be Tabled in the National Assembly by the Minister within 14 days after receipt thereof, if the National Assembly is then in session, or, if the National Assembly is not then in session, within 14 days after the commencement of its next ensuing session.

CHAPTER III

Committees, appointment of experts, and inquiries

Establishment of standing committees of Council

21. (1) The Council shall establish the following standing committees, namely—

- (a) the Broadcasting Technical Committee; and
- (b) the Broadcasting Monitoring and Complaints Committee.

(2) The Council may establish such other standing committees for such purposes as it may deem necessary with a view to assisting it in the effective exercise and performance of its powers, functions and duties, and may at any time extend, limit or dissolve any such committee.

Constitution of standing committees

22. (1) Each standing committee shall consist of—

- (a) at least one councillor designated by the Council; and
- (b) two or four additional members, as the Council may determine from time to time.

(2) The additional members shall be persons—

- (a) who are not subject to any of the disqualifications of the nature contemplated in section 5; and
- (b) who, on account of their expertise, qualifications and experience in relation to the mandate or terms of reference of the relevant committee, are suited to serve thereon.

(3) (a) In the case of the Broadcasting Monitoring and Complaints Committee, the chairperson shall be a judge or a retired judge of the Supreme Court of South Africa, a practising advocate or attorney of at least 10 years' standing or a magistrate with at least 10 years' appropriate experience.

(b) In the case of any other standing committee, the chairperson shall be the councillor concerned.

Establishment and constitution of special committees of Council, including regional broadcasting committees

23. (1) The Council may establish such special committees as it may deem necessary with a view to assisting it in the effective exercise and performance of its powers, functions and duties, and such committees shall sit on an *ad hoc* basis.

(2) The Council may, if deemed necessary, establish regional broadcasting committees after consultation with the executive of any constituent region of the Republic contemplated in the Constitution Act, for such purposes as the Council may deem necessary with a view to assisting it in the effective exercise and performance of its powers, functions and duties in the region in question.

(3) The provisions of section 22(1) and (2) shall apply *mutatis mutandis* in relation to any committee established under subsection (1) or (2) of this section.

(4) The Council shall from its number designate a chairperson for any such committee.

(5) The Council may at any time extend, limit or dissolve any such committee. 5

Powers, functions and duties of committees

24. A committee shall, with due regard to the objects and principles as enunciated in section 2, exercise and perform such powers, functions and duties as may—

(a) be conferred and imposed upon the committee by or under this Act: 10

(b) be delegated to the committee by the Council.

Meetings of committees

25. (1) The meetings of a committee (including any special meeting) shall be convened by the chairperson, who shall determine the procedure at any such meeting. 15

(2) The provisions of section 10(2), (4) and (5), shall *mutatis mutandis* apply as regards the meetings of any committee.

Remuneration and allowances of committee members

26. (1) The members of any committee who are not councillors or members of staff of the Authority, shall be paid such remuneration and allowances as the Council may from time to time determine, subject to the approval of the Minister granted with the concurrence of the Minister of State Expenditure. 20

(2) For the purposes of subsection (1), the Council may differentiate between members of the various committees and between the chairperson and the other members of the same committee. 25

Appointment of experts

27. (1) The Council may, as and when in its opinion the circumstances so require, appoint as many experts as may be deemed necessary, including experts from other countries, with a view to assisting the Council in the exercise and performance of its powers, functions and duties and for the performance of any work arising therefrom. 30

(2) The terms, conditions, remuneration and allowances applicable in respect of any expert by virtue of his or her appointment in terms of subsection (1), and the work to be performed or service to be rendered by virtue of such appointment, shall be as determined in a written agreement entered into for that purpose between the Council and the expert concerned. 35

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

(4) The Council, on receipt of the report referred to in subsection (3), may refer the matter back to the expert— 40

(a) for such further attention as may be determined by the Council:

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

Inquiries by Authority

28. (1) The Authority may from time to time conduct an inquiry into any matter relevant to—

(a) the achievement of the objects and application of the principles as enunciated in section 2;

(b) the exercise and performance of its powers, functions and duties in terms of this Act; and 50

(c) regulations proposed or made in terms of section 78.

(2) The Authority shall make known its intention to conduct such an inquiry by the publication in the *Gazette* of a notice to that effect.

(3) The notice referred to in subsection (2) shall indicate the subject matter of the inquiry and invite interested parties to—

- (a) submit written representations; and
- (b) indicate whether they require an opportunity to make oral representations to the Authority.

within the period specified in the notice.

(4) Written representations made pursuant to a notice referred to in subsection (2) shall be open to inspection by interested parties during the normal office hours of the Authority.

(5) The Authority shall, at the request of any interested party and on payment of such fee as may be prescribed (if any), furnish him or her with a certified copy of or extract from the representations contemplated in subsection (4).

(6) The Authority shall advise parties referred to in subsection (3)(b) of the place where and time when oral representations may be made.

(7) Oral representations referred to in subsection (3)(b) shall be made in public.

(8) The Authority shall, as soon as may be reasonably practicable after the commencement of this Act and as a matter of urgency, conduct a simultaneous inquiry in terms of this section into—

- (a) the matters referred to in section 45(1);
- (b) the matters referred to in section 50(1); and
- (c) the matters contemplated in section 53(7).

(9) An application for a broadcasting licence shall not be considered nor shall any such licence be granted until such time as the matters contemplated in paragraphs (a), (b) and (c) of subsection (8) have all been duly disposed of in accordance with the respective applicable provisions of this Act pursuant to the findings and, where applicable, the recommendations of the Authority following the conclusion of the inquiry contemplated in that subsection.

CHAPTER IV

Control of the broadcasting frequency spectrum

Authority principally vested with powers in relation to administration, management, planning and use of broadcasting services frequency bands

29. (1) Notwithstanding any provisions of the Radio Act, 1952 (Act No. 3 of 1952), or of any other relevant law to the contrary, all powers, functions and duties in relation to the administration, management, planning and use of the broadcasting services frequency bands, shall as from the date of commencement of this Act devolve upon the Authority, subject to the provisions of subsection (4).

(2) In administering, managing, planning and granting permission to use the broadcasting services frequency bands devolving upon the Authority in terms of subsection (1), the Authority shall comply with the applicable standards and requirements of the International Telecommunications Union as reflected in its current Radio Regulations, as agreed to or adopted by the Republic, and shall give its co-operation with a view to enabling the Postmaster General to meet the obligations of the Republic to the International Telecommunications Union as and when necessary.

(3) The Authority shall, in exercising its powers, functions and duties in terms of subsections (1) and (2), ensure that in the use of the broadcasting services frequency bands interference does not exceed acceptable interference levels.

(4) (a) The Authority may, if requested thereto in writing by the Postmaster General, make any of the broadcasting services frequency bands available to the Postmaster General for use by telecommunications users in terms of the Radio Act, 1952, which request shall not be unreasonably refused.

(b) Where, pursuant to any request contemplated in paragraph (a), the Authority has made any broadcasting services frequency bands available for use

by telecommunications users, the administration, management, planning and control over the use of those broadcasting services frequency bands shall cease to vest in the Authority.

(c) Frequencies within the broadcasting services frequency bands which, on 1 September 1993, are used by telecommunications users under valid licences issued for that purpose by the Postmaster General in terms of any law, shall be deemed to have been made available to the Postmaster General in terms of paragraph (b).

(5) Notwithstanding any other provisions contained in this Act, the Authority is obliged to honour present and future commitments of the Republic in terms of international agreements in respect of radio and telecommunications matters, with particular reference to the Convention of the International Telecommunications Union (ITU) as well as the main and operating agreements of the International Telecommunication Satellite Organisation (INTELSAT).

Broadcasting Technical Committee

30. The Broadcasting Technical Committee shall be responsible for—

- (a) the administration, management and planning of the broadcasting services frequency bands in accordance with bilateral, multilateral or international regulation agreed to or adopted by the Republic, and with the provisions of this Act;
- (b) the examination of all technical matters relevant to licence applications in order to determine the technical eligibility of applicants for licences;
- (c) the approval of technical parameters, signal standards, transmitters and transmission characteristics to be used by licensees;
- (d) the inspection of the plant, installations, transmitters and other apparatus used or to be used by any licensee or prospective licensee;
- (e) all the monitoring and investigative functions of the Authority with regard to contraventions of sections 32 and 39;
- (f) assisting the Broadcasting Monitoring and Complaints Committee in the circumstances contemplated in section 62(2);
- (g) giving effect to the provisions of section 29(2) and (3);
- (h) assisting the Postmaster General as regards matters relating to broadcasting, in preparing for international conferences convened by the International Telecommunications Union, and for that purpose attending such conferences and, where applicable, implementing any decisions adopted at such conferences in relation to broadcasting;
- (i) consultation with the bodies which, in neighbouring states, are charged with responsibility in respect of broadcasting in such states, subject to the directions of the Authority (if any);
- (j) the performance of all other technical functions of the Authority, subject to the directions of the Authority (if any).

Frequency plan

31. (1) The Authority shall, as soon as may be reasonably practicable after the commencement of this Act and before any application for a new broadcasting licence is considered in terms thereof, prepare a frequency plan whereby the maximum number of frequencies available for broadcasting services is determined.

(2) In preparing a frequency plan in terms of this section, the Authority shall—

- (a) have due regard to the reports of experts in the field of frequency planning and to internationally accepted methods for preparing such plans;
- (b) take into account the existing frequencies used by broadcasting services; and
- (c) reserve frequencies on all bands for the different categories of broadcasting licences referred to in section 40(1);

and publish its draft plan by notice in the *Gazette* and in such notice invite interested parties to submit their written comments and representations to the Authority within such period as may be specified in such notice.

(3) After due consideration of the comments and representations (if any) received pursuant to the notice referred to in subsection (2), the Authority shall determine the frequency plan and cause such plan to be published in the *Gazette*. 5

(4) (a) Any frequency plan determined in terms of this section and all such comments and representations as have been received in response to the notice contemplated in subsection (3), shall be kept at the offices of the Authority and be available for inspection by members of the public during the normal office hours of the Authority. 10

(b) The Authority shall at the request of any person and on payment of such fee as may be prescribed (if any), furnish him or her with a certified copy of or extract from any part of the documentation contemplated in paragraph (a).

(5) (a) The Authority shall annually review a frequency plan determined in terms of this section. 15

(b) The provisions of subsections (2), (3) and (4) shall *mutatis mutandis* apply in relation to any amendment contemplated in paragraph (a) of this subsection.

CHAPTER V

Broadcasting signal distribution licences

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Prohibition of broadcasting signal distribution without licence

32. Subject to the provisions of section 33(2), a person shall not provide broadcasting signal distribution unless provided under and in accordance with a licence issued to that person by the Authority under this Chapter.

Granting of broadcasting signal distribution licences

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33. (1) A broadcasting signal distribution licence—

(a) may be granted to—

(i) a person who, as a common carrier, is to provide broadcasting signal distribution for broadcasting licensees in the manner contemplated in section 37; 30

(ii) a person who is to provide broadcasting signal distribution for broadcasting licensees on a selective and preferential basis;

(iii) a broadcasting licensee who chooses to provide, either wholly or partly, broadcasting signal distribution for himself or herself but who does not provide the same for any other broadcasting licensee; 35

(b) shall, subject to the objects and principles as enunciated in section 2 and to the provisions of this Chapter, be granted to any person who satisfies the requirements of subsection (2) and has applied for such licence in accordance with the provisions of that subsection.

(2) Notwithstanding the provisions of section 32, any person who, immediately prior to the date of commencement of this Act, is engaged in broadcasting signal distribution in a manner not inconsistent with the provisions of this Act shall, for a period of 12 months from the said date, be deemed to be the holder of a broadcasting signal distribution licence contemplated in subparagraph (i), (ii) or (iii) of subsection (1)(a) if such person, within such period, applies to the Authority for a broadcasting signal distribution licence. 40

(3) A licence granted to a person under paragraph (b) of subsection (1) shall assume the format of one of the licences mentioned in subparagraph (i), (ii) or (iii) of paragraph (a) of that subsection and shall, subject to the provisions of this Act, confer no greater rights, privileges or empowerments and impose no stricter duties, conditions, obligations or responsibilities on such person than those with which he or she was vested or to which he or she was subject immediately prior to such date of commencement. 50

(4) Where the Republic has, in terms of section 79, entered into an agreement with any state or territory referred to in that section, the provisions of subsections (2) and (3) shall *mutatis mutandis* apply in relation to any person who, immediately prior to the date of entry into force of such an agreement, provides broadcasting signal distribution in that state or territory in a manner not inconsistent with the provisions of this Act. 5

Procedures in relation to granting, issuing, renewal, amendment and transfer of broadcasting signal distribution licences

34. The procedures in relation to any application for the granting, issuing, renewal, amendment and transfer of any broadcasting signal distribution licence shall be as prescribed. 10

Transmitters and transmission characteristics to be approved by Authority

35. (1) Broadcasting signal distribution in a licence area shall be provided only by means of transmitters the nature, number and transmission characteristics of which have been approved by the Authority. 15

(2) A broadcasting signal distribution licensee shall not—

(a) change any of his or her transmitters approved in terms of subsection (1) nor add to or reduce the number of transmitters so approved;

(b) effect any change in the transmission characteristics of any of his or her transmitters so approved, 20

except with the prior written permission of the Authority.

(3) A broadcasting signal distribution licence to be issued pursuant to the granting thereof in terms of section 33(1), shall stipulate the nature, number and transmission characteristics of the transmitters approved by the Authority under subsection (1) or (2) of this section for use in providing the licensed broadcasting signal distribution. 25

General obligations of broadcasting signal distribution licensees

36. A broadcasting signal distribution licensee shall—

(a) comply with the provisions of this Act and the frequency plan of the Authority; 30

(b) provide broadcasting signal distribution only to broadcasting services provided under an appropriate and valid broadcasting licence; and

(c) take due cognizance of the environmental impact of his or her operational activities and comply with all applicable rules of law relating to the protection of the environment. 35

Obligations of common carriers regarding provision of broadcasting signal distribution

37. A common carrier shall—

(a) be obliged, subject to its technological capacity to do so and to the provisions of paragraph (b), to provide broadcasting signal distribution to broadcasting licensees upon their request on an equitable, reasonable, non-preferential and non-discriminatory basis; 40

(b) in determining its tariffs, duly take into account, *inter alia*—

(i) the different categories of broadcasting licences referred to in section 40(1); and 45

(ii) the nature and technical parameters of the service provided to each broadcasting licensee with a view to ensuring that the different tariffs are appropriate to and commensurate with the various broadcasting services to which they relate.

Terms of broadcasting signal distribution licences

38. The term of validity of a broadcasting signal distribution licence—
- (a) in the case of a common carrier, shall be 15 years;
 - (b) in the case of a person referred to in section 33(1)(a)(ii), shall be eight years;
 - (c) in the case of a person referred to in section 33(1)(a)(iii), shall be concurrent with the term of the broadcasting licence of that person.
- whereafter the relevant broadcasting signal distribution licence shall, subject to the provisions of this Chapter, be renewable for like periods.

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CHAPTER VI

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Broadcasting licences**Prohibition on provision of broadcasting service without broadcasting licence**

39. Subject to the provisions of this Act, a person shall not provide a broadcasting service unless such service is provided under and in accordance with a broadcasting licence issued to that person by the Authority under this Chapter.

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Categories of broadcasting licences

40. (1) Subject to the provisions of this Act, the Authority may on such conditions as it may in any case determine, issue an applicant with a broadcasting licence to provide within a specified licence area—
- (a) a sound broadcasting service falling within one or more of the following categories, namely—
 - (i) a public sound broadcasting service;
 - (ii) a private sound broadcasting service;
 - (iii) a community sound broadcasting service;
 - (b) a television broadcasting service falling within one or more of the following categories, namely—
 - (i) a public television broadcasting service;
 - (ii) a private television broadcasting service;
 - (iii) a community television broadcasting service.
- (2) It shall be permissible for a broadcasting licensee conducting any of the broadcasting services contemplated in subsection (1) to broadcast text by radio in the course of his or her broadcasting service.

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Application procedure in relation to broadcasting licences

41. (1) The Authority shall, when it intends inviting applications for a broadcasting licence, cause a notice to that effect to be published in the *Gazette*.
- (2) Such notice shall state the following, namely—
- (a) the licence category, the frequency available, and, where applicable, the licence area and technical parameters, relevant to the broadcasting licence in respect of which application may be made;
 - (b) the person with whom and the period within which such an application has to be lodged; and
 - (c) the application fee payable, which shall be as prescribed.
- (3) Every application made pursuant to such notice shall be in the prescribed form, which form shall *inter alia* require the applicant to furnish particulars—
- (a) of his or her proposals in relation to the nature and licence area of the service; and
 - (b) which, having due regard to the provisions of section 45, 46 or 47 (whichever is applicable), may be reasonably necessary in order to enable the Authority to properly consider the application, and shall be accompanied by the prescribed application fee.
- (4) The provisions of subsection (3) shall *mutatis mutandis* apply in respect of any person who *mero motu* applies to the Authority for a broadcasting licence.

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(5) Notwithstanding the preceding provisions of this section, an applicant may be required in writing by the Authority to furnish the Authority, within the period specified by it, with such further information as may be reasonably necessary with a view to enabling it to properly consider the application.

(6) Within 14 days of receipt of any application in terms of this section, the Authority shall cause to be published in the *Gazette* a notice containing all the material particulars of the application and inviting interested persons to lodge their written representations in relation to the application in the manner specified in such notice within one month as from the date of such notice.

(7) (a) Any person who lodges representations pursuant to a notice in terms of subsection (6), shall at the time of lodgement furnish proof to the satisfaction of the Authority that he or she has sent by registered post or delivered a copy of such representations to the applicant concerned.

(b) Any person who has so lodged representations, may be required in writing by the Authority to furnish it, within the period specified by it, with such further information as it considers necessary.

(8) The applicant shall submit his or her written response (if any) to any representations lodged in terms of subsection (7) to the Authority within two months of the date of the notice contemplated in subsection (6), and shall at the same time furnish proof to the satisfaction of the Authority that he or she has sent by registered post or delivered a copy of such written response to the person having made such representations.

(9) If there is more than one licence application in terms of subsection (3) or (4) (hereinafter referred to as competitive licence applications) relating, substantially, to the same frequency and licence area, the Authority may, with due regard to the objects and principles as enunciated in section 2 and to the provisions of sections 45(2), 46(1) and 47(1) and (2), whichever is applicable, determine the most suitable applicant.

Hearings in relation to applications for broadcasting licences

42. (1) In respect of every application for a broadcasting licence received by the Authority, it shall hold a hearing as provided for in this section.

(2) A hearing in terms of subsection (1) shall be held as soon as may be reasonably practicable, due regard being had to the provisions of section 41(6), (7) and (8), and at such date, time and place as shall be determined by the Authority by notice in the *Gazette*.

(3) At any hearing in terms of subsection (1)—

(a) the applicant and each party having made representations in terms of subsection (7) of section 41, shall be afforded an opportunity to be heard;

(b) the parties referred to in paragraph (a) of this subsection may be assisted and represented by any person of their choice;

(c) the Authority, after having duly considered the application, the representations (if any) made in accordance with the provisions of that subsection, the applicant's written response thereto (if any), any further information furnished in terms of section 41 and any other evidence tendered to the Authority, shall grant or refuse the application and provide written reasons for its ruling.

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

(5) (a) The Authority shall keep a record of all applications and other documentation received by it in terms of section 41 and of all its proceedings, findings and rulings at any hearing in terms of this section.

(b) The records contemplated in paragraph (a) shall be open to public inspection by interested persons during the normal office hours of the Authority.

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

(6) Upon having reached a decision on any application, the Authority shall by notice in the *Gazette* and by written notice addressed to the applicant make known the outcome thereof.

Entitlements under and conditions pertaining to broadcasting licences

43. (1) (a) Notwithstanding any provisions to the contrary in any other law, a licence granted and issued under this Chapter shall by itself entitle the licensee concerned to use the radio frequency and the station as specified in his or her licence for the purpose of providing the broadcasting service to which such licence relates. 5

(b) For the purposes of paragraph (a), "station" shall mean any separate radio receiving or transmitting apparatus or any combination thereof, including any accessory equipment.

(2) Subject to the provisions of this Act, the Authority, in granting any broadcasting licence pursuant to a ruling in terms of section 42(3)(c), may impose such terms, conditions and obligations appropriate to such licence and consistent with the objects and principles as enunciated in section 2, as it deems fit. 10

(3) Any term, condition or obligation imposed in terms of subsection (2), shall be specified in the licence to which it pertains and shall upon the issue of such licence acquire the force of law. 15

(4) A broadcasting licensee shall commence with the broadcasting service to which his or her licence relates within such period as shall be determined by the Authority or within any extension of that period granted by the Authority on good cause shown, and upon failure by the broadcasting licensee so to commence with the said broadcasting service, the licence relating thereto shall lapse. 20

Renewal of broadcasting licences

44. (1) An application for the renewal of a broadcasting licence may be made to the Authority by the broadcasting licensee not earlier than six months, and not later than three months, before the date on which it expires by virtue of the provisions of section 54. 25

(2) Sections 41, 42 and 43 shall *mutatis mutandis* apply in relation to an application for the renewal of a broadcasting licence.

(3) The Authority shall not, in relation to any application for the renewal of a broadcasting licence, require from the applicant any information already in possession of the Authority pursuant to having been furnished to it in connection with any prior application made by the applicant in relation to such broadcasting licence. 30

(4) The Authority shall refuse an application for the renewal of a broadcasting licence only if the licensee has failed to materially comply with the licence conditions or the provisions of this Act during the term of the existing licence and if the Authority is satisfied that the applicant would not so comply if his or her licence were renewed. 35

(5) A broadcasting licence shall continue to be of force and effect until such time as the Authority has made its decision regarding the application for renewal of such licence. 40

(6) (a) Notwithstanding the provisions of subsection (1), a broadcasting licensee may at any time after the expiration of the three-month period referred to in that subsection but before the expiration of the term of his or her broadcasting licence, apply for the renewal thereof. 45

(b) Notwithstanding any provisions to the contrary, a broadcasting licence shall not be renewed where application for renewal has been made in the circumstances contemplated in paragraph (a), unless the broadcasting licensee pays to the Authority, in addition to the prescribed licence fee, a penalty, in such amount as may be prescribed, in respect of each day by which he or she delayed in making application timeously in terms of subsection (1). 50

Public broadcasting licences

45. (1) As soon as may be reasonably practicable after the commencement of this Act, the Authority shall conduct an inquiry in accordance with the provisions of section 28 into the protection and viability of public broadcasting services, with particular reference to the financing of such services, at the conclusion of which the Authority shall in writing furnish its findings and recommendations to the 55

Minister, who shall Table the same in the Transitional Executive Council or, where the Transitional Executive Council has been dissolved in terms of section 29 of the Transitional Executive Council Act, 1993, in the National Assembly, within 14 days of receipt thereof: Provided that if, where such findings and recommendations are to be Tabled in the National Assembly, the National Assembly is not in session at the time, such Tabling shall be effected within 14 days after the commencement of its next ensuing session. 5

(2) In the event of the Authority considering the granting of a new public broadcasting licence it shall, with due regard to the objects and principles as enunciated in section 2, *inter alia* take into account— 10

- (a) the demand for the proposed broadcasting service within the proposed licence area;
- (b) the need for the proposed service within such area, having regard to broadcasting services already existing therein; and
- (c) the technical quality of the proposed service, having regard to developments in broadcasting technology. 15

(3) Notwithstanding the provisions of this Act, any person who immediately prior to the date of commencement of this Act provides one or more public broadcasting services in accordance with law shall, for a period of 12 months as from such date of commencement, be deemed to be the holder of a public broadcasting licence contemplated in section 41(1)(a)(i) or (b)(i), as the case may be, in respect of each such service: Provided that such person shall for any such service be granted an appropriate public broadcasting licence in terms of this Act if he or she makes application therefor within the said period. 20

(4) Where the Republic has in terms of section 79 entered into an agreement with a state or territory referred to in that section, the provisions of subsection (3) of this section shall *mutatis mutandis* apply in respect of any person who, immediately prior to the entry into force of such agreement, provides one or more public broadcasting services in such state or territory in accordance with the laws in force therein at the time. 25 30

Private broadcasting licences

46. (1) In considering any application for a private broadcasting licence, the Authority shall, with due regard to the objects and principles as enunciated in section 2, *inter alia* take into account—

- (a) the demand for the proposed broadcasting service within the proposed licence area; 35
- (b) the need for the proposed service within such licence area, having regard to the broadcasting services already existing therein;
- (c) the expected technical quality of the proposed service, having regard to developments in broadcasting technology; 40
- (d) the capability, expertise and experience of the applicant;
- (e) the financial means and business record of the applicant;
- (f) the business record of each person who, if a licence were granted to the applicant, is or would be in a position to control the operations of the applicant either in his or her individual capacity or as a member of the board of directors or top management structure; 45
- (g) the applicant's record and the record of each person referred to in paragraph (f), in relation to situations requiring trust and candour;
- (h) whether the applicant is precluded by or in terms of section 48, 49, 50 or 51 from holding a broadcasting licence; and 50
- (i) whether either the applicant or the person referred to in paragraph (f) has been convicted of an offence in terms of this Act.

(2) (a) Notwithstanding the provisions of this Act, any person who immediately prior to the date of commencement thereof provides a private broadcasting service under a valid licence in terms of the provisions of any law in force at the time (hereinafter referred to as an existing licence), shall be deemed to be the holder of a broadcasting licence contemplated in section 40(1)(a)(ii) or (b)(ii), as 55

the case may be, granted and issued in terms of this Act, on the date of commencement thereof, for a period of six years and eight years, respectively, on the same terms, conditions and obligations as those applicable in respect of the existing licence immediately prior to such date of commencement: Provided that the terms, conditions and obligations of the existing licence as on the day immediately prior to such date of commencement, shall only for the duration of the said period of six years or eight years (as the case may be) be deemed to be in accordance with the provisions of this Act, and shall upon the expiration of such period be subject to amendment by the Authority to such extent as may be necessary so as to excise from such licence any such term, condition, obligation or other provision as may be inconsistent with the provisions of this Act, and thereupon the Authority may substitute therefor any other new term, condition or obligation.

(b) In applying the provisions of paragraph (a)—

- (i) the period of six years or eight years (as the case may be) shall be deemed to constitute the licence term in respect of the person deemed by that paragraph to be the holder of a broadcasting licence;
- (ii) Bophuthatswana Commercial Radio (Proprietary) Limited, a licensed broadcaster according to Bophuthatswana law, shall be deemed to be the holder of an existing licence as contemplated in that paragraph, unless an agreement such as that contemplated in section 79 has been entered into between the Governments of the Republics of South Africa and Bophuthatswana: Provided that the licence which may be deemed to be held in terms of this subparagraph shall in no way derogate from the validity of the licence held under Bophuthatswana law and from the authority of the Bophuthatswana Government to enforce the terms and conditions of that licence, as in force on the second day of September, 1993, under Bophuthatswana law.

(3) Where the Republic has in terms of section 79 entered into an agreement with a state or territory referred to in that section, the provisions of subsection (2)(a) shall *mutatis mutandis* apply in relation to any person who, immediately prior to the entry into force of such agreement, provides a private broadcasting service in such state or territory under a valid licence in terms of the laws in force in such state or territory at the time.

Community broadcasting licences

47. (1) In considering any application for a community broadcasting licence, the Authority shall, with due regard to the objects and principles as enunciated in section 2, *inter alia* take into account—

- (a) whether the applicant is fully controlled by a non-profit entity and carried on or to be carried on for non-profitable purposes;
- (b) whether the applicant proposes to serve the interests of the relevant community;
- (c) whether, as regards the provision of the proposed broadcasting service, the applicant has the support of the relevant community or of those associated with or promoting the interests of such community, which support shall be measured according to such criteria as shall be prescribed; and
- (d) whether the applicant proposes to encourage members of the relevant community or those associated with or promoting the interests of such community to participate in the selection and provision of programmes to be broadcast in the course of such broadcasting service.

(2) Paragraphs (a), (b), (d), (g) and (i) of section 46(1) shall *mutatis mutandis* apply in relation to a community broadcasting licence.

Limitations on foreign control of private broadcasting services

48. (1) One or more foreign persons shall not, whether directly or indirectly—
 (a) exercise control over a private broadcasting licensee; or
 (b) have financial or voting interests in a private broadcasting licensee exceeding twenty percent in total. 5
- (2) Not more than twenty percent of the directors of a private broadcasting licensee may be foreign persons.
- (3) The preceding provisions of this section shall not apply in respect of any person who—
 (a) by subsection (2) of section 46 is deemed; or 10
 (b) by virtue of subsection (3) of section 46 being read with paragraph (a) of the said subsection (2), is by the said subsection (2) deemed.
- to be a broadcasting licensee, for the duration of the period of six or eight years (as the case may be) deemed to constitute the first term of his or her licence.

Limitations on control of private broadcasting services

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49. (1) No person shall—
 (a) directly or indirectly exercise control over more than one private television broadcasting licence; or
 (b) be a director of a company which is, or of two or more companies which between them are, in a position to exercise control over more than one private television broadcasting licence; or 20
 (c) be in a position to exercise control over a private television broadcasting licence and be a director of any company which is in a position to exercise control over any other private television broadcasting licence.
- (2) No person shall— 25
 (a) be in a position to exercise control over more than two private FM sound broadcasting licences;
 (b) be a director of a company which is, or of two or more companies which between them are, in a position to exercise control over more than two private FM sound broadcasting licences; or 30
 (c) be in a position to exercise control over two private FM sound broadcasting licences and be a director of any company which is in a position to exercise control over any other private FM sound broadcasting licence.
- (3) A person referred to in subsection (2) shall not be in a position to control two private FM sound broadcasting licences which either have the same licence areas or substantially overlapping licence areas. 35
- (4) No person shall—
 (a) be in a position to exercise control over more than two private AM sound broadcasting licences; 40
 (b) be a director of a company which is, or of two or more companies which between them are, in a position to exercise control over more than two private AM sound broadcasting licences; or
 (c) be in a position to exercise control over two private AM sound broadcasting licences and be a director of any company which is in a position to exercise control over any other private AM sound broadcasting licence. 45
- (5) No person referred to in subsection (4) shall be in a position to control two private AM sound broadcasting licences which either have the same licence areas or substantially overlapping licence areas. 50
- (6) (a) On application by any person the Authority may, on good cause shown and without departing from the objects and principles as enunciated in section 2, exempt such person from adhering to any one of the limitations contemplated in the preceding subsections.
- (b) An exemption in terms of paragraph (a) may be made subject to such terms and conditions as the Authority deems appropriate and equitable in the circumstances. 55

(7) The Authority may, whenever deemed necessary in view of developments in broadcasting technology or for the purpose of advancing the objects and principles enunciated in section 2, after due inquiry in terms of section 28 make recommendations to the Minister regarding the amendment of any of the preceding subsections, which recommendations shall be Tabled in the National Assembly by the Minister within 14 days after receipt thereof, if the National Assembly is then in session, or, if the National Assembly is not then in session, within 14 days after the commencement of its next ensuing session. 5

Limitations on cross-media control of private broadcasting services

50. (1) Cross-media control of broadcasting services shall be subject to such limitations as from time to time determined by the Transitional Executive Council acting on the recommendation of the Authority, or, where the Transitional Executive Council has dissolved in terms of section 29 of the Transitional Executive Council Act, 1993, by the National Assembly so acting, in accordance with the provisions of the Constitution Act. 10 15

(2) With a view to exercising its powers in terms of subsection (1), the Authority shall, as soon as may be reasonably practicable after the commencement of this Act, conduct an inquiry in accordance with the provisions of section 28 and shall in doing so *inter alia* have regard to—

- (a) the various categories of newspapers according to frequency of publication, geographical extent of circulation and circulation figures as well as any matter relevant to the existing and future control of any such newspaper; and 20
- (b) the maximum percentage of financial or voting interests which may be held in any one or more private broadcasting licensees by a person who controls one or more newspapers or groups of newspapers, 25

and any international precedents in that regard.

(3) The Authority may on good cause shown and without departing from the objects and principles as enunciated in section 2, exempt the publisher of a newspaper or, where such publisher is a company, the person in control of such company, from adherence to any of the limitations determined in terms of this section. 30

(4) The Authority may, whenever deemed necessary in view of developments in broadcasting technology or for the purpose of advancing the objects and principles as enunciated in section 2, institute and conduct a public inquiry and make recommendations to the Minister regarding the amendment of any of the preceding subsections of this section. 35

(5) The recommendations contemplated in subsection (4) shall be Tabled in the National Assembly by the Minister within 14 days of receipt thereof, if the National Assembly is then in session, or, if the National Assembly is not then in session, within 14 days after the commencement of its next ensuing session. 40

(6) A determination made in terms of subsection (1), whether pursuant to the first inquiry referred to in section 28(8) or to any subsequent inquiry conducted in accordance with the provisions of this Act, shall not be applicable to and not be enforceable against any broadcasting licensee to which such determination relates for the duration of the term of the licence valid at the time such determination is made, but shall become applicable to and enforceable against such a broadcasting licensee only upon the renewal of his or her licence upon the expiration of such term. 45

Prohibition on granting of broadcasting licences to party political entities

51. No broadcasting licence shall be granted to any party, movement, organization, body or alliance which is of a party political nature. 50

Amendment of broadcasting licences

52. (1) Subject to the provisions of section 46(2), a broadcasting licence may be amended by the Authority only—

- (a) to such extent as may be necessary in the interest of orderly frequency management, provided the amendment will not cause substantial prejudice to the licensee; or
- (b) to such extent as may be necessitated by virtue of any bilateral, multilateral or international agreement or convention relating to broadcasting to which the Republic is bound, whether as a party or otherwise; or
- (c) if requested thereto by the broadcasting licensee, and then only if and in so far as the proposed amendment—
- (i) does not militate against orderly frequency management;
 - (ii) will not prejudice any other broadcasting licensee; and
 - (iii) will not be inconsistent with the provisions of this Act or with any agreement or convention contemplated in paragraph (b).
- (2) Whenever the Authority considers amending a broadcasting licence in terms of subsection (1), it shall cause notice of the proposed amendment to be published in the *Gazette* and, in the case of an amendment contemplated in paragraph (a) or (c) of that subsection, invite interested persons to make their representations within a period of 14 days to a person specified in such notice.
- (3) When representations are lodged with the Authority in accordance with the requirements of the notice referred to in subsection (2), the provisions of subsections (5), (6), (7) and (8) of section 41 shall *mutatis mutandis* apply: Provided that in so applying the said subsections (6) and (8), the references therein to "one month" and "two months" shall be construed as a reference to "14 days".
- (4) The Authority may in its discretion hold a hearing with a view to making a decision regarding the amendment of a licence in terms of subsection (1)(a) or (c) of this section, in which event the provisions of section 42 shall *mutatis mutandis* apply.
- (5) The proceedings referred to in subsection (3) shall be held in public and the documents pertaining to such proceedings shall be open to public scrutiny.
- (6) After having decided to amend a broadcasting licence, the Authority shall cause such amendment to be published in the *Gazette* as soon as possible.

Imposition of specific broadcasting licence conditions regarding local television content and South African music

53. (1) For the purposes of this section—
- (a) "local television content" means a television programme (excluding transmissions of sports events and compilations thereof, advertisements, teletext and continuity announcements) which is produced—
- (i) by a broadcasting licensee; or
 - (ii) by a person who is a citizen of and permanently resident in the Republic; or
 - (iii) by a juristic person the majority of the directors, shareholders or members of whom are citizens of and permanently resident in the Republic; or
 - (iv) in a co-production in which persons referred to in subparagraph (i), (ii) or (iii) have at least a fifty percent financial interest; or
 - (v) by persons referred to in subparagraph (i), (ii), (iii) or (iv), in circumstances where the prescribed number of the key personnel who are involved in the production of the television programme, are citizens of and permanently resident in the Republic; or
 - (vi) by persons referred to in subparagraph (i), (ii), (iii) or (iv), in circumstances where the prescribed percentage of the production costs are incurred in the Republic;
- (b) "independent television production" means a production of local television content—
- (i) by a person not directly or indirectly employed by any broadcasting licensee; or

- (ii) by a person who is not controlled by or is not in control of any broadcasting licensee: and
- (c) a musical work broadcast by a broadcasting service referred to in subsection (3) shall qualify as "South African music" if such work complies with at least two of the following requirements, namely—
 - (i) if the lyrics (if any) were written by a South African citizen: 5
 - (ii) if the music was written by a South African citizen:
 - (iii) if the music or lyrics was or were principally performed by musicians who are South African citizens;
 - (iv) if the musical work consists of a live performance which is— 10
 - (aa) recorded wholly in the Republic; or
 - (bb) performed wholly in the Republic and broadcast live in the Republic.
- (2) The Authority shall in respect of a television broadcasting licence impose and specify therein such conditions, as prescribed, regarding local television content and independent television production, which, without derogating from the generality of the foregoing, may include any condition requiring the broadcasting licensee—
 - (a) annually to expend a specified sum of money, subject to reasonable yearly escalation or, alternatively, a specified minimum percentage of his or her gross revenue, on programmes which have a local television content: 20
 - (b) to allocate a specified minimum percentage of his or her total broadcasting time to television programmes which have a local television content: 25
 - (c) in the case where he or she provides a subscription broadcasting service a portion of which is unencoded, to allocate a specified minimum percentage of unencoded broadcasting time to programmes which have a local television content;
 - (d) in the case where he or she has a regional or local licence area, to allocate a specified minimum percentage of broadcasting time to local television programmes which have been produced in the relevant region or locality; and 30
 - (e) to allocate a specified minimum portion of the percentage referred to in paragraph (a), (b), (c) or (d), whichever is applicable, to a prescribed diversity of television programmes which are independent television productions. 35
- (3) The Authority shall, in relation to a broadcasting service which devotes a significant proportion of its broadcasting time to broadcasting music, prescribe a condition whereby the licensee is required to broadcast a specified minimum percentage of musical works which qualify as South African music. 40
- (4) In prescribing any amount or percentage referred to in subsection (2) or (3), the Authority may prescribe the application thereof with regard to—
 - (a) any of the categories of broadcasting licences referred to in section 40(1): 45
 - (b) defined viewing and listening times, where applicable;
 - (c) various categories of television programmes, where applicable; and
 - (d) the period within which the broadcasting licensee shall comply with the provisions of this section.
- (5) Notwithstanding the provisions of section 46(2) or (3), any person who by such section is deemed to be the holder of a broadcasting licence referred to in section 40(1)(a)(ii) or (b)(ii), shall be subject to any regulations made under section 78 for the purpose of prescribing conditions capable of being imposed in terms of subsection (2) or (3) of this section (whichever is applicable), and shall on demand submit to the Authority his or her licence with a view to having conditions specified thereon in accordance with the provisions of such regulations. 55
- (6) A condition imposed in terms of subsection (2) in respect of any television broadcasting licence shall become binding on and enforceable against the licensee concerned on the expiration of a reasonable period, not shorter than 18 months, as shall in each case be determined by the Authority and specified on the relevant licence. 60

(7) With a view to exercising its powers in terms of subsections (2), (3) and (4), the Authority shall, as soon as may be reasonably practicable after the commencement of this Act, conduct an inquiry in accordance with the provisions of section 28.

Terms of broadcasting licences

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54. The term of validity of a broadcasting licence—

- (a) in the case of a public and a private television broadcasting licence, shall be eight years;
- (b) in the case of a public and a private sound broadcasting licence, shall be six years; and
- (c) in the case of a community sound or television broadcasting licence, shall be four years,

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whereafter such licence shall, subject to the provisions of this Chapter, be renewable for like periods.

Record of programmes broadcast by broadcasting licensees

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55. (1) A broadcasting licensee shall—

- (a) retain, for a period of not less than 30 days, a recording of every programme broadcast in the course of his or her broadcasting service;
- (b) on demand of the Broadcasting Monitoring and Complaints Committee, produce to it any such recording for examination or reproduction;
- (c) on demand of the Broadcasting Monitoring and Complaints Committee, produce to it any script or transcript of a programme after the broadcast thereof.

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(2) Nothing in this Act shall be construed as requiring or authorizing the Authority or the Broadcasting Monitoring and Complaints Committee in the performance of its functions and duties, to view programmes prior to their being broadcast.

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CHAPTER VII

Broadcasting programmes

Code of Conduct for Broadcasting Services

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56. (1) Subject to the provisions of subsection (2), all broadcasting licensees shall adhere to the Code of Conduct for Broadcasting Services as set out in Schedule 1.

(2) The provisions of subsection (1) shall not apply to any broadcasting licensee if he or she is a member of a body which has proved to the satisfaction of the Authority that its members subscribe and adhere to a code of conduct enforced by that body by means of its own disciplinary mechanisms, and provided such code of conduct and disciplinary mechanisms are acceptable to the Authority.

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Control over advertisements

57. (1) All broadcasting licensees shall adhere to the Code of Advertising Practice (in this section referred to as the Code) as from time to time determined and administered by the Advertising Standards Authority of South Africa.

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(2) The Broadcasting Monitoring and Complaints Committee shall adjudicate complaints concerning alleged breaches of the Code by broadcasting licensees who are not members of the Advertising Standards Authority of South Africa, in accordance with the provisions of Chapter VIII.

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(3) Where a broadcasting licensee, irrespective of whether or not he or she is a member of the said Advertising Standards Authority, is found to have breached the Code, such broadcasting licensee shall be dealt with in accordance with the applicable provisions of Chapter VIII.

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

58. A party election broadcast and a political advertisement shall not be broadcast on any broadcasting service except during an election period and then only if and to the extent authorized by the provisions of sections 59 and 60. 5

Broadcasting of party election broadcasts on sound broadcasting services during election period

59. (1) Subject to the provisions of this section, a public sound broadcasting licensee shall permit a party election broadcast only during an election period and then only if such a broadcast is produced on behalf of the political party in question at the instance of its duly authorized representative. 10

(2) The Authority shall determine the time to be made available to political parties for the purposes of subsection (1), including the duration and scheduling of party election broadcasts, duly taking into account the financial and programming implications for the broadcasting services in question. 15

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

(4) In making any determination in terms of subsection (2), the Authority may impose such conditions on a public broadcasting licensee with respect to party election broadcasts as it deems fit, having due regard to the fundamental principle that all political parties are to be treated equitably. 20

(5) A party election broadcast shall not contain any material which may reasonably be anticipated to expose the broadcasting licensee to legal liability if such material were to be broadcast. 25

(6) A party election broadcast shall conform to a technical quality acceptable to the Authority.

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

(8) A private or community sound broadcasting licensee shall not be required to broadcast party election broadcasts, but if he or she elects to do so, the preceding provisions of this section shall *mutatis mutandis* apply. 30

Political advertising on sound broadcasting services during election period

60. (1) A sound broadcasting licensee shall not be required to broadcast a political advertisement, but if he or she elects to do so, he or she shall afford all other political parties, should they so request, a like opportunity. 35

(2) A sound broadcasting licensee may broadcast a political advertisement only during an election period and then only if it has been submitted to such licensee on behalf of a political party by its duly authorized representative.

(3) In making advertising time available to political parties, no sound broadcasting licensee shall discriminate against any political party or make or give any preference to any political party or subject any political party to any prejudice. 40

(4) A political advertisement shall not contain any material which may reasonably be anticipated to expose the broadcasting licensee to legal liability if such material were to be broadcast. 45

(5) A political advertisement shall conform to a technical quality acceptable to the Authority.

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

(7) This section shall be subject to the provisions of any law relating to the expenditure of political parties during an election. 50

Equitable treatment of political parties by broadcasting licensees during election period

61. (1) If, during an election period, the coverage of any broadcasting service extends to the field of elections, political parties and issues relevant thereto, the broadcasting licensee concerned shall afford reasonable opportunities for the discussion of conflicting views and shall treat all political parties equitably. 5

(2) In the event of any criticism against a political party being levelled in a particular programme of any broadcasting service without such party having been afforded an opportunity to respond thereto in such programme or without the view of such political party having been reflected therein, the broadcasting licensee concerned shall be obliged to afford such party a reasonable opportunity to respond to the criticism. 10

(3) If, within 48 hours before the commencement of the polling period or during the polling period, a broadcasting licensee intends broadcasting a programme in which a particular political party is criticized, the licensee shall ensure that the political party is given a reasonable opportunity to respond thereto in the same programme, or to do so as soon as is reasonably practicable thereafter. 15

(4) The preceding provisions of this section shall not apply in relation to the contents of any party election broadcast in the circumstances contemplated in section 59 and any political advertisement in the circumstances contemplated in section 60. 20

CHAPTER VIII

Enforcement

Broadcasting Monitoring and Complaints Committee

62. (1) Subject to the provisions of sections 56 and 57, the Broadcasting Monitoring and Complaints Committee shall— 25

- (a) monitor compliance by broadcasting licensees or their adherence to—
 - (i) the terms, conditions and obligations of their broadcasting licences;
 - (ii) the Code of Conduct for Broadcasting Services as set out in Schedule 1 to this Act; 30
 - (iii) the Code of Advertising Practice contemplated in subsection (1) of section 57;
- (b) monitor compliance by broadcasting licensees with the provisions of sections 58, 59, 60 and 61;
- (c) monitor compliance by broadcasting signal distribution licensees with the terms, conditions and obligations of their broadcasting signal distribution licences and with any requirement relating to such a licensee or licence as imposed by Chapter V or any regulation in terms of section 78; and 35
- (d) monitor compliance by licensees with any other material provisions of this Act relevant to them or their respective licences. 40

(2) In exercising its powers in terms of subsection (1)(a)(i), (c) or (d) in relation to technical matters, the Broadcasting Monitoring and Complaints Committee shall be assisted by the Broadcasting Technical Committee.

(3) The Broadcasting Monitoring and Complaints Committee shall, in accordance with the provisions of section 63, inquire into and adjudicate any alleged or suspected non-compliance or non-adherence contemplated in subsection (1). 45

Hearings held by Broadcasting Monitoring and Complaints Committee

63. (1) An interested person who has reason to believe that a licensee is guilty of any non-compliance or non-adherence of the nature contemplated in section 62(1), may in connection therewith lodge a complaint with the Broadcasting 50

Monitoring and Complaints Committee within 30 days after the occurrence of the alleged or suspected non-compliance or non-adherence.

(2) A complaint contemplated in subsection (1) shall be in writing and shall be served on the licensee concerned and be lodged with the Authority for consideration by the Broadcasting Monitoring and Complaints Committee.

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

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

(5) The Broadcasting Monitoring and Complaints Committee shall determine the form and procedure as regards the adjudication of any complaint.

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

(7) (a) After having considered the complaint and the representations (if any) and evidence in regard thereto, the Broadcasting Monitoring and Complaints Committee shall make its finding as regards the alleged or suspected non-compliance or non-adherence.

(b) Any finding in terms of paragraph (a) shall be published in such manner as the Broadcasting Monitoring and Complaints Committee may in its discretion determine.

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

(9) (a) The Broadcasting Monitoring and Complaints Committee shall keep a record of all complaints received by it and of all its proceedings, rulings and findings in relation thereto.

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

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

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

(11) The provisions of subsections (5), (6), (7), (8), (9) and (10) shall *mutatis mutandis* apply in relation to any investigation instituted *mero motu* by the Broadcasting Monitoring and Complaints Committee with regard to any suspected non-compliance or non-adherence of the nature contemplated in section 62(1).

Recommendations of Broadcasting Monitoring and Complaints Committee

64. (1) Upon having made a finding, in terms of subsection (7) of section 63, that any complaint adjudicated by it in terms of that section is justified, the Broadcasting Monitoring and Complaints Committee shall in writing make recommendations to the Authority as to which of the steps provided for in paragraphs (a) to (g), inclusive, of subsection (1) of section 66 should be taken against the licensee in relation to whom such finding was made, and forward its finding and such recommendations, together with the record of the adjudication proceedings, to the Authority for appropriate action in terms of section 66.

(2) The Broadcasting Monitoring and Complaints Committee shall, when forwarding its recommendations to the Authority in terms of subsection (1), simultaneously by written notice addressed to the licensee referred to in that subsection, inform him or her accordingly.

Powers of Broadcasting Monitoring and Complaints Committee regarding findings made by Advertising Standards Authority of South Africa

65. (1) Where the Advertising Standards Authority of South Africa has adjudicated any complaint against a broadcasting licensee who is a member thereof, that body shall forward a certified copy of the record of such adjudication and of its finding to the Broadcasting Monitoring and Complaints Committee. 5

(2) A finding forwarded to the Broadcasting Monitoring and Complaints Committee as envisaged by subsection (1) shall be dealt with by that body *mutatis mutandis* in accordance with the provisions of section 64 as if such finding was a finding made by itself in terms of section 63(7). 10

Powers of Authority in cases of proven non-compliance with Act, licence conditions or certain codes of conduct and, in limited circumstances, with Independent Media Commission Act, 1993

66. (1) As soon as may be reasonably practicable after receipt of any record of adjudication and the finding and recommendations relevant thereto, as forwarded to it by the Broadcasting Monitoring and Complaints Committee in terms of section 64, or section 65 read with section 64 (as the case may be), and having duly taken into account the nature, consequences and gravity of the non-compliance or non-adherence to which such finding relates, the circumstances in which it occurred and the recommendations so received, the Authority shall make any one or more of the following orders, namely— 20

- (a) where such finding is founded on non-compliance by the respondent with the provisions of section 58, 59, 60 or 61, an order whereby the respondent, if he or she—
 - (i) is a sound broadcasting licensee, is required to broadcast a party election broadcast or a political advertisement (as the case may be); 25
 - (ii) is a broadcasting licensee, is required to broadcast another version of the programme complained of or a counter-version of the opinions expressed or alleged facts stated in such a programme, whichever is applicable; 30
- (b) directing the respondent to desist from any further non-compliance or non-adherence;
- (c) directing the respondent to publish such finding at his or her own cost and in the manner required by the Authority;
- (d) directing the respondent to pay, as a fine, the amount prescribed in respect of such non-compliance or non-adherence; 35
- (e) directing the respondent to take such remedial and other steps, not inconsistent with the objects and principles as enunciated in section 2, as may be determined by the Authority;
- (f) prohibiting a respondent who is a licensee from carrying on his or her broadcasting service or broadcasting signal distribution service (as the case may be) for such period as determined by the Authority, or revoking his or her licence: Provided that such a prohibition shall not endure for longer than 30 days; 40
- (g) if satisfied that the non-compliance or non-adherence to which such finding relates, constitutes an offence, an order directing such record of adjudication and the finding and recommendations of the Broadcasting Monitoring and Complaints Committee relevant thereto, to be referred to the Attorney-General with a view to instituting a criminal prosecution. 45

(2) An order in terms of subsection (1)(f) may be made only in circumstances where the Broadcasting Monitoring and Complaints Committee has repeatedly in terms of section 63(7) found complaints against a licensee to be justified. 50

(3) Where a licensee is by virtue of an order made in terms of subsection (1)(f), temporarily prohibited from carrying on his or her service, the Authority may order that, for the duration of the period of such prohibition— 55

- (a) any premises used or capable of being used by such licensee for the provision of his or her broadcasting service or broadcasting signal distribution service (as the case may be) and any transmitters, apparatus and other equipment used or capable of being used for that purpose, be sealed; 5
- (b) any transmitters, apparatus and other equipment so used or capable of being so used, be seized and retained for such period.
- (4) (a) Failure by a licensee to comply with an order made in terms of subsection (1), shall be deemed to constitute non-compliance of the nature contemplated in subsection (1)(d) of section 62, entitling the Broadcasting Monitoring and Complaints Committee, in relation thereto, to act in terms of subsection (3) of that section. 10
- (b) The provisions of paragraph (a) may be invoked against the person contemplated therein, irrespective of whether or not such person is being prosecuted for or has been convicted of any offence referred to in section 67(2)(c) or (d). 15
- (5) Where the Independent Media Commission established by section 2 of the Independent Media Commission Act, 1993, after finalization of any adjudication proceedings in terms of section 23 of that Act—
- (a) has found a broadcasting licensee to have contravened the provisions of that Act; 20
- (b) has made an order in terms of section 24(1)(c) of that Act; and
- (c) has forwarded a certified copy of the said order and of the record of the adjudication proceedings relating thereto to the Authority in accordance with the provisions of section 24(2) of that Act, 25
- the Authority may, in relation to such broadcasting licensee, make an order contemplated in subsection (1)(f) of this section as if such order were made pursuant to a finding of the Broadcasting Monitoring and Complaints Committee in terms of section 63(7) of this Act.
- (6) An order in terms of subsection (1)(a), (c), (d), (e) or (f), or in terms of subsection (5) read with subsection (1)(f), as the case may be, shall not be made in any particular case unless the rules of natural justice have been observed. 30

Offences and penalties

67. (1) If a councillor fails to disclose any interest as required by section 11(2) or, subject to the provisions of that section, if he or she is present at the venue where a meeting of the Council is held or in any manner whatsoever participates in the proceedings thereat, such councillor shall be guilty of an offence and liable on conviction to a maximum fine of R100 000. 35
- (2) Any person who—
- (a) in applying for a licence in terms of this Act or for the renewal, amendment or transfer of such a licence, in his or her application furnishes any false or misleading information or particulars or makes any statement which is false or misleading in any material respect, or who wilfully fails to disclose any information or particulars material to his or her application; 40
- (b) contravenes the provisions of section 32, 39, 71 or 74; 45
- (c) fails to comply with any order made by the Authority in terms of section 66(1)(a), (b), (c), (d) or (e), or contravenes the provisions of section 75; 50
- (d) acts in disregard of any prohibition imposed by order of the Authority in terms of section 66(1)(f);
- (e) fails to produce any licence issued to him or her under this Act on the demand of any authorized person, or who hinders or obstructs any authorized person in the exercise or performance by the latter of his or her powers, functions or duties in terms of this Act. 55
- shall be guilty of an offence and liable on conviction—

- (i) in the case of an offence contemplated in paragraph (a) of this section, to a maximum fine of R250 000;
 - (ii) in the case of a contravention of section 32 or 39, to a maximum fine of R500 000;
 - (iii) in the case of a contravention of section 71(1) or 74, and in the case of an offence contemplated in paragraph (d) of this subsection, to a maximum fine of R100 000;
 - (iv) in the case of an offence contemplated in paragraph (c) of this subsection, to a maximum fine of R50 000;
 - (v) in the case of the offences contemplated in paragraph (e) of this subsection, and in the case of a contravention of section 71(2), to a maximum fine of R15 000.
- (3) (a) Any person who, without the written authorization of the Authority, breaks any seal contemplated in section 66(3)(a), shall be guilty of an offence and liable on conviction to a maximum fine of R250 000.
- (b) The court convicting a person of any offence referred to in paragraph (a) of this subsection may, in addition to any fine which it may impose in terms of that paragraph, declare any transmitters, apparatus and other equipment referred to in section 66(3) and any article, object or thing by means of which such offence was committed, to be forfeited to the Authority: Provided that no such declaration shall be so made upon proof to the satisfaction of the court that such transmitter, apparatus, equipment, article, object or thing is not the property of the person so convicted and that, as regards such article, object or thing, the owner thereof was unable to prevent it from being used as a means to commit such offence.

CHAPTER IX

General provisions

Minutes of Council and its committees

68. (1) The Authority and each of its committees shall cause minutes to be prepared and kept of the proceedings of every meeting of the Council and such a committee, respectively, and cause copies of such minutes to be circulated to all councillors or members of such a committee (as the case may be).
- (2) The minutes prepared in terms of subsection (1), when signed at a subsequent meeting of the Authority or such a committee by the person presiding thereat, shall, in the absence of proof of error therein, be deemed to be a true and correct record of the proceedings which they purport to minute and shall, at any proceedings in terms of this Act or before a court of law or any tribunal or commission of inquiry, constitute *prima facie* evidence of the proceedings of the Authority or such committee (as the case may be) and the matters they purport to minute.

Delegations

69. (1) Subject to the provisions of subsection (4), the Council may in writing—
- (a) delegate to any councillor or any of its committees or to the chief administrative officer any power, function or duty conferred or imposed upon the Authority by or in terms of this Act: Provided that a power, function or duty so delegated to the chief administrative officer may be exercised or performed by any other staff member of the Authority specially authorized thereto except where the terms of such delegation precludes such officer from doing so; and
 - (b) authorize a standing committee or a special committee to exercise or perform any power, function or duty assigned to the Authority by or in terms of this Act.
- (2) Any delegation or authorization under subsection (1) may be made subject to such conditions and restrictions as the Council may determine, and may at any time be amended or revoked by the Council.

(3) The Council shall not be divested of any power nor be relieved of any duty which it may have delegated under this section, and may amend or rescind any decision made in terms of such a delegation.

(4) The power to grant, renew, amend or transfer any licence, and the powers contemplated in sections 16, 18, 21, 23, 26, 56(2), 59, 60, 61, 66 and 78 and in this section, shall not be delegated under this section. 5

Register of licences

70. (1) The Authority shall keep a register in which it shall record all licences granted in terms of this Act as well as any amendments to or transfers of such licences. 10

(2) The register referred to in subsection (1) shall be open to inspection by interested persons during the normal office hours of the Authority.

(3) The Authority shall at the request of any interested person and on payment of such fee as may be prescribed (if any), furnish him or her with a certified copy of or extract from any part of the said register. 15

Records to be kept by licensees

71. (1) A licensee which is a company shall inform the Authority in writing of any change in the control of that company.

(2) A broadcasting signal distribution licensee and a broadcasting licensee shall keep such particulars and statistics relating to its broadcasting signal distribution activities or broadcasting activities (as the case may be) as may be prescribed. 20

Authority may demand production of licensees' books, records, etc.

72. The Authority may by notice in writing direct a licensee to produce or furnish to the Authority, at a time and place specified in the notice, such documents, accounts, estimates, returns and other records and information as may be specified in such notice and relating to any matter in respect of which a duty or obligation is imposed on the licensee by or in terms of this Act or the regulations, or by the relevant licence. 25

Powers of authorized persons

73. An authorized person may at any reasonable time and without prior notice enter into or onto any premises and— 30

- (a) inspect, and make copies of or extracts from, specified books of account or other records of the licensee in order to determine whether the licensee is in compliance with the terms, conditions and obligations of his or her licence and with the provisions of this Act, or for any other purpose connected with the achievement of the objects of this Act; 35
- (b) where a broadcasting service or broadcasting signal distribution service is conducted in or on such premises, demand the production of the necessary broadcasting licence;
- (c) inspect any licence issued to any person under this Act; 40
- (d) inspect the studio, plant, transmitters, apparatus and other equipment used by any person for the purposes of or in connection with broadcasting or broadcasting signal distribution, as the case may be;
- (e) inspect anything referred to in paragraph (d) which is in the possession of or used by, or suspected of being in the possession of or being used by, any person in contravention of this Act. 45

Transfer of licences

74. (1) A licence issued under this Act shall not be transferred—

- (a) unless the broadcasting service or broadcasting signal distribution service to which the relevant licence relates, as the case may be, is transferred together with such licence to the same transferee; and 50

(b) without the prior written permission of the Authority.

(2) (a) The provisions of sections 41 and 42 governing the procedure applicable in relation to applications for and the granting of broadcasting licences, shall *mutatis mutandis* apply in relation to applications for the transfer of broadcasting licences and the granting of permission for such transfers.

(b) Subject to the provisions of subsection (1), the procedure applicable in respect of applications for the transfer of broadcasting signal distribution licences and the granting of permission for such transfers, shall be as prescribed.

Restriction on use of name or description implying connection with Authority

75. No person shall apply to any venture, undertaking, business, company or other association or body (whether corporate or incorporate) a name or description signifying or implying some connection between such venture, undertaking, business, company or other association or body, of the one part, and the Authority, of the other.

Limitation of liability

76. Neither the chairperson, any councillor or any member of a committee of the Council, nor any expert appointed in terms of this Act or any member of the staff of the Authority, shall be personally liable for any damage or loss suffered by any person in consequence of any act or thing which in good faith was performed or done or omitted in the course of the exercise or performance or supposed exercise or performance of any power, function or duty in terms of this Act.

Confidentiality

77. Every councillor, every member of any committee of the Council and any member of the staff of the Authority shall aid in preserving secrecy and shall not disclose any information in regard to any matter which may come to his or her knowledge in the actual or supposed exercise or performance on behalf of the Authority of any of its powers, functions or duties in terms of this Act or in performing any work arising from the functioning or functions of the Authority in terms of this Act, or by virtue of the office held by him or her, except—

- (a) in so far as the provisions of this Act require or provide for the publication of or access by the public or any interested person to information relating to such matter;
- (b) in so far as may be necessary for the purpose of the due and proper exercise or performance of any power, function or duty in terms of this Act; or
- (c) on the order of a competent court of law.

Regulations

78. (1) The Council may make regulations, not inconsistent with the provisions of this Act, in relation to—

- (a) any technical matter necessary or expedient for the regulation of broadcasting activities and the possession and use of transmitters, apparatus and other equipment, including any standards, specifications and prohibitions relevant thereto;
- (b) conferring any additional powers on authorized persons, and the procedures to be followed by such persons;
- (c) any matter which in terms of this Act shall or may be prescribed or governed or determined by regulation; and

(d) any matter of procedure or form which may be necessary or expedient to prescribe for the purposes of this Act.

(2) A regulation in terms of subsection (1) may declare any contravention thereof or failure to comply therewith to be an offence, and may in respect thereof provide for the imposition of a fine not exceeding R10 000.

(3) When proposing to make any regulation in relation to any matter, other than a matter referred to in subsection (1)(d), the procedure contemplated in subsections (2) to (6) of section 28 shall be followed by the Authority.

Extraterritorial extension of Authority's jurisdiction by agreement between Republic and any state or territory previously part of Republic

79. If the Government of the Republic and the government of any state or territory which was previously part of the Republic agree thereto and a law of such state or territory provides therefor—

(a) the Authority may exercise and perform in respect of persons and matters in the said state or territory all such powers, functions and duties as it may in terms of this Act exercise and perform in respect of persons and matters in the Republic; and

(b) the provisions of this Act shall for the purposes of paragraph (a) be deemed to apply *mutatis mutandis* in such state or territory.

Application of Act in event of conflict with other laws

80. In the event of a conflict between the provisions of this Act and those of any other law, the provisions of this Act shall prevail.

Liquidation

81. The Authority shall not be placed in liquidation except under the authority of and in accordance with an Act of Parliament specially adopted for that purpose.

This Act binding on State and State President

82. This Act shall bind the State, and shall bind the State President in so far as he or she is required by this Act to act on the advice of the Transitional Executive Council or the National Assembly.

Short title and commencement

83. (1) (a) This Act shall be called the Independent Broadcasting Authority Act, 1993, and shall, subject to the provisions of paragraph (b), come into operation on a date to be determined by the Transitional Executive Council, which date shall be made known by the State President by proclamation in the *Gazette*.

(b) Sections 49(6) and 50(3) shall come into operation on 1 January 1996.

(2) Different dates may under subsection (1)(a) be determined in respect of different provisions of this Act.

Schedule 1**CODE OF CONDUCT FOR BROADCASTING SERVICES****(Section 56)****Preamble**

1. The fundamental principle to be upheld, is that the freedom of all broadcasting licensees is indivisible from and subject to the same restraints as those relevant to the individual person, and is founded on the individual's fundamental right to be informed and to freely receive and disseminate opinions.

General

2. Broadcasting licensees shall—

- (a) not broadcast any material which is indecent or obscene or offensive to public morals or offensive to the religious convictions or feelings of any section of the population or likely to prejudice the safety of the State or the public order or relations between sections of the population;
- (b) not, without due care and sensitivity, present material which depicts or relates to brutality, violence, atrocities, drug abuse and obscenity;
- (c) exercise due care and responsibility in the presentation of programmes where a large number of children are likely to be part of the audience.

News

3. (1) Broadcasting licensees shall be obliged to report news truthfully, accurately and objectively.

(2) News shall be presented in the correct context and in a balanced manner, without intentional or negligent departure from the facts, whether by—

- (a) distortion, exaggeration or misrepresentation;
- (b) material omissions; or
- (c) summarization.

(3) Only that which may reasonably be true, having due regard to the source of the news, may be presented as fact, and such facts shall be broadcast fairly with due regard to context and importance. Where a report is not based on fact or is founded on opinion, supposition, rumours or allegations, it shall be presented in such manner as to indicate clearly that such is the case.

(4) Where there is reason to doubt the correctness of a report and it is practicable to verify the correctness thereof, it shall be verified. Where such verification is not practicable, that fact shall be mentioned in the report.

(5) Where it subsequently appears that a broadcast report was incorrect in a material respect, it shall be rectified forthwith, without reservation or delay. The rectification shall be presented with such a degree of prominence and timing as may be adequate and fair so as to readily attract attention.

(6) Reports, photographs or video material relating to matters involving indecency or obscenity shall be presented with due sensitivity, due regard being had to the prevailing moral climate. In particular, broadcasting licensees shall avoid the broadcasting of obscene and lascivious matter.

(7) The identity of rape victims and other victims of sexual violence shall not be divulged in any broadcast without the prior consent of the victim concerned.

Comment

4. (1) Broadcasting licensees shall be entitled to comment on and criticize any actions or events of public importance.

(2) Comment shall be presented in such manner that it appears clearly to be comment, and shall be made on facts truly stated or fairly indicated and referred to.

(3) Comment shall be an honest expression of opinion.

Controversial issues of public importance

5. (1) In presenting a programme in which controversial issues of public importance are discussed, a broadcasting licensee shall make reasonable efforts to fairly present significant points of view either in the same programme or in a subsequent programme forming part of the same series of programmes presented within a reasonable period of time and in substantially the same time slot.

(2) A person whose views have been criticized in a broadcasting programme on a controversial issue of public importance, shall be given a reasonable opportunity by the broadcasting licensee to reply to such criticism, should that person so request.

Elections

6. During any election period, the provisions of sections 58, 59, 60 and 61 of this Act shall apply, and all broadcasting services shall in terms of those sections be subject to the jurisdiction of the Authority.

Privacy

7. In so far as both news and comment are concerned, broadcasting licensees shall exercise exceptional care and consideration in matters involving the private lives and private concerns of individuals, bearing in mind that the right to privacy may be overridden by a legitimate public interest.

Paying a criminal for information

8. No payment shall be made to persons involved in crime or other notorious behaviour, or to persons who have been engaged in crime or other notorious behaviour, in order to obtain information concerning any such behaviour, unless compelling societal interests indicate the contrary.

Schedule 2

INSTANCES OF CONTROL OF PRIVATE BROADCASTING LICENSEES,
NEWSPAPERS AND COMPANIES

Control of a private broadcasting licensee

1. (1) For the purposes of this Act, a person shall control or be in a position to exercise control over any existing or prospective private broadcasting licensee if, *inter alia*—

- (a) such person, either alone or together with an associate, is in a position to exercise control over such broadcasting licensee;
- (b) such person, either alone or together with an associate, is in a position to exercise direct or indirect control over the selection or provision of a significant proportion of the programmes broadcast or proposed to be broadcast by such broadcasting licensee;
- (c) such person, either alone or together with an associate, is in a position to exercise direct or indirect control over a significant proportion of the operations of such a broadcasting licensee in providing a broadcasting service under the broadcasting licence;
- (d) such person, either alone or together with an associate, is in a position—
 - (i) where the licensee or prospective licensee is a company, to veto any action taken by the board of directors of such licensee or to appoint or secure or veto the appointment of at least half of the board of directors of such licensee; or
 - (ii) to give or exercise in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the broadcasting licensee; or
- (e) the existing or prospective broadcasting licensee or, where such a licensee is a company, more than fifty percent of the directors of such company—
 - (i) acts or is accustomed to act; or
 - (ii) under a contract, arrangement or understanding (whether formal or informal) is destined, required or expected to act,

in accordance with the directions, instructions or wishes of, or in concert with, such person or such person and his or her associate acting together or, if such person is a company, the directors of the latter company.

(2) Subparagraph (1)(b) shall not apply in relation to the provision of programmes by a person to a broadcasting licensee under any agreement if the conditions of such agreement relate only to the programmes so provided or to the promotion thereof.

(3) An employee of a broadcasting licensee shall not by virtue of the provisions of subparagraph (1) be regarded as being in a position to exercise control over such licensee merely because of his or her being an employee, except where he or she is placed in such a position of control by virtue of his or her association with any other person.

(4) More than one person may be in a position to exercise control over a licensee.

Control of a newspaper

2. (1) For the purposes of this Act, a person shall control or be in a position to exercise control over a newspaper if—

- (a) such person is the publisher of the newspaper;
- (b) such person is in a position, either alone or together with an associate, and either directly or indirectly—
 - (i) to exercise control over a significant proportion of the operations of the publisher in publishing the newspaper; or
 - (ii) to exercise control over the selection or provision of a significant proportion of the material to be published in the newspaper;
- (c) where the newspaper is published by a company, the person, either alone or together with an associate, is in a position—
 - (i) to exercise control over such company;
 - (ii) to veto any action taken by the board of directors of such company;
 - (iii) to appoint or secure or veto the appointment of at least one half of the board of directors of such company; or
 - (iv) to give or exercise, in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management of the affairs of such company; or
- (d) where the newspaper is published by a company, the company or more than fifty percent of its directors—
 - (i) acts or is accustomed to act; or
 - (ii) under a contract or an arrangement (whether formal or informal) is destined, required or expected to act, in accordance with the directions, instructions or wishes of, or in concert with, such person or such person and his or her associate acting together or, if such person is a company, the directors of the latter company.

(2) Subparagraph (1)(b)(ii) shall not apply in relation to the provision of material by a person to a newspaper under any agreement for the supply of material of that kind if the conditions of such agreement relate only to the material so provided.

(3) An employee of the publisher of a newspaper shall not by virtue of the provisions of subparagraph (1) be regarded as being in a position to exercise control over such newspaper merely because of his or her being an employee, except where he or she is placed in such a position of control by virtue of his or her association with any other person.

Deemed control of a company

3. Without derogating from the provisions of any law or from the common law, and in the absence of proof to the contrary, a person shall be regarded as being in control of, or being in a position to exercise control over, a company if he or she has equity shareholding in the company exceeding twenty-five percent or has other financial interests therein equal to at least twenty-five percent of its nett assets.

Schedule 3

CONTINUATION OF EXISTING PENSION RIGHTS OF STAFF MEMBERS OF AUTHORITY
UPON ASSUMING EMPLOYMENT

1. Any staff member of the Authority who, immediately prior to assuming employment with the Authority, was a member of the Government Service Pension Fund, the Temporary Employees Pension Fund, any other pension fund or scheme administered by the Department of Finance or the pension funds established by section 9 of the Post Office Act, 1958 (Act No. 44 of 1958), hereinafter referred to as an officer or employee, may upon assuming such employment—

- (a) choose to remain a member of any such pension fund, and from the date of exercising such a choice, such an officer or employee shall, notwithstanding the provisions of any other law, be deemed to be a dormant member of the relevant pension fund within the contemplation of section 15(1)(a) of the General Pensions Act, 1979 (Act No. 29 of 1979); or
- (b) request to become a member of the Associated Institutions Pension Fund established under the Associated Institutions Pension Fund Act, 1963 (Act No. 41 of 1963), as if the Authority had under section 4 of the lastmentioned Act been declared to be an associated institution; or
- (c) request to become a member of any other pension fund registered as such under the Pension Funds Act, 1956 (Act No. 24 of 1956).

2. In the case where an officer or employee becomes a member of a fund in accordance with a request in terms of paragraph 1(b) or (c)—

- (a) the pension fund of which the officer or employee was a member (hereinafter referred to as the former fund) shall transfer to the pension fund of which he or she becomes a member (hereinafter referred to as the new fund) an amount equal to the funding level of the former fund multiplied by the actuarial liability of that fund in respect of that officer or employee as on the date of the commencement of the employment of the officer or employee with the Authority, increased by the amount of interest thereon calculated at the prime rate from the date of the said commencement of employment up to the date of transfer of the amount;
- (b) his or her membership of the former fund shall lapse as from the date of the commencement of his or her employment with the Authority, and thereafter he or she shall cease to have any further claim against the former fund except as provided in subparagraph (a); and
- (c) the former fund shall transfer any claim it may have against such officer or employee to the new fund.

3. In the case where an officer or employee becomes a member of a new fund pursuant to a request in terms of paragraph 1(c) the State shall pay to such new fund an amount equal to the difference between the actuarial liability of the former fund in respect of such an officer or employee as on the date of the commencement of his or her employment with the Authority, and the amount transferred in terms of paragraph 2(c) to the new fund, increased by the amount of interest thereon calculated at the prime rate from the date of the said commencement of employment up to the date of the transfer of the amount.

4. The provisions of paragraphs 2 and 3 shall *mutatis mutandis* apply in respect of any officer or employee who, by virtue of a choice in terms of paragraph 1(a), has become a dormant member and thereafter requests that his or her accrued pension benefits be transferred in terms of section 15A(1) of the General Pensions Act, 1979, to a pension fund referred to in the said Act or a pension fund registered in terms of the Pension Funds Act, 1956.

5. Where, in the case of any officer or employee referred to in paragraph 1 who pursuant to a request in terms of subparagraph (c) of that paragraph has become a member of any other pension fund, any lump sum benefit has become payable by such pension fund in consequence of the death of such officer or employee or on his or her withdrawal or resignation from such pension fund or his or her retirement, or on the winding-up of such pension fund, such pension fund shall for the purposes of paragraph (e) of the definition of "gross income" in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), be deemed, in relation to such officer or employee, to be a fund referred to in paragraph (a) of the definition of "pension fund" in the said section 1.

6. For the purpose of this Schedule—

"actuarial liability" of a pension fund in respect of a particular member or a group of members of such a fund, means such actuarial liability as determined by an actuary nominated for that purpose by the Minister;

"funding level of a pension fund" means the market value of the assets of the fund expressed as a percentage of the total actuarial liability of the fund, after such assets and liabilities have been reduced by the amount of the liabilities of the fund in respect of all its pensioners, as determined at the time of the most recent actuarial valuation of the fund or any review thereof carried out under direction of the responsible Minister of State; and

"prime rate" means the average amount prime rate of the three largest banks in the Republic.

Schedule 4**DETERMINATION BY LOT FOR PURPOSES OF SECTION 6(2)(c)**

1. Upon having appointed the six additional councillors in terms of section 6 of this Act, the appointing body shall forthwith proceed, in an open and transparent manner, to determine by lot, as required by subsection (2)(c) of that section, which three of such six additional councillors shall vacate their offices upon the expiration of two years after their appointment, for which purpose that appointing body shall designate from its own number the person who shall conduct the lot (hereinafter referred to as the designated person).

2. The designated person shall thereupon ensure that the name of each one of the six additional councillors is written on a separate piece of paper of equal size and identical shape and colour.

3. The designated person shall thereafter display the six pieces of paper contemplated in paragraph 2 to every person who is present at the place where the lot is being conducted and who is desirous of inspecting any such piece of paper. The designated person shall thereafter fold every such piece of paper in such a manner that the name thereon is not visible, and place all such pieces of paper in an empty container.

4. The designated person shall thereupon appoint an impartial person (hereinafter referred to as the drawer) to draw three pieces of paper from the said container.

5. The designated person shall thereafter shake the container in such a manner as to thoroughly mix the pieces of paper therein, and shall hold such container in such a position that the drawer is unable to see the pieces of paper inside.

6. The drawer shall thereafter draw three pieces of paper from such container and hand them to the designated person without unfolding any of them.

7. The designated person shall then unfold each of the three pieces of paper handed to him or her as contemplated in paragraph 6, read out the names written thereon and display every such piece of paper to every person who is present at the place where the lot is being conducted and who is desirous of inspecting the same.

8. The three persons whose names have been so drawn, shall vacate their offices as councillors two years after the date of their appointment as such.

**BREAKDOWN OF THE INDEPENDENT
BROADCASTING AUTHORITY BILL AS ADOPTED
BY THE
NEGOTIATING COUNCIL**

INDEPENDENT BROADCASTING AUTHORITY BILL

The Negotiating Council adopted the Independent Broadcasting Authority Bill by *general consensus* on Thursday 2 September, 1993.

<i>CLAUSE</i>	<i>DESCRIPTION</i>	<i>STATUS</i>
Clause 1	Definitions	Agreed general consensus
Clause 2	Primary objects of the Act	Agreed general consensus
Clause 3	Establishment of Independent Broadcasting Authority	Agreed general consensus
Clause 4	Constitution of Council	Agreed general consensus
Clause 5	Persons disqualified from being councillors	Agreed general consensus
Clause 6	Terms of office of councillors	Agreed general consensus
Clause 7	Remuneration and allowances of councillors	Agreed general consensus
Clause 8	Removal from office	No comment/ Agreed
Clause 9	Vacancies in Council	No comment/ Agreed
Clause 10	Meetings of Council	No comment/ Agreed
Clause 11	Disclosure of conflicting interests	No comment/ Agreed
Clause 12	Proceedings of Council not	

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	invalid in certain circumstances	No comment/ Agreed
Clause 13	General powers of Authority	Agreed general consensus
Clause 14	Staff of Authority	No comment/ Agreed
Clause 15	Financing of Authority	No comment/ Agreed
Clause 16	Raising of loans by Authority	Agreed general consensus
Clause 17	Banking account	Agreed general consensus
Clause 18	Investment of surplus moneys	Agreed general consensus
Clause 19	Accounting and auditing	Agreed general consensus
Clause 20	Annual report	Agreed general consensus
Clause 21	Establishment of standing committees of Council	No comment/ Agreed
Clause 22	Constitution of standing committees	No comment/ Agreed
Clause 23	Establishment and constitution of special committees of Council, including regional broadcasting committees	Agreed general consensus
Clause 24	Powers, functions and duties of committees	No comment/ Agreed
Clause 25	Meetings of committees	No comment/ Agreed

Clause 26	Remuneration and allowances of committee members	Agreed general consensus
Clause 27	Appointment of experts	No comment/ Agreed
Clause 28	Inquiries by Authority	Agreed general consensus
Clause 29	Authority principally vested with powers in relation to administration, management, planning and use of broadcasting services frequency bands	Agreed general consensus
Clause 30	Broadcasting Technical Committee	Agreed general consensus
Clause 31	Frequency plan	No comment/ Agreed
Clause 32	Prohibition of broadcasting signal distribution without licence	Agreed general consensus
Clause 33	Granting of broadcasting signal distribution licences	Agreed general consensus
Clause 34	Procedures in relation to granting, issuing, renewal, amendment and transfer of broadcasting signal distribution licences	Agreed general consensus
Clause 35	Transmitters and transmission characteristics to be approved by Authority	Agreed general consensus
Clause 36	General obligations of broadcasting signal distribution licensees	Agreed general consensus

Clause 37	Obligations of common carriers regarding provision of broadcasting signal distribution	Agreed general consensus
Clause 38	Terms of broadcasting signal distribution licences	Agreed general consensus
Clause 39	Prohibition on provision of broadcasting service without broadcasting licence	No comment/ Agreed
Clause 40	Categories of broadcasting licences	Agreed general consensus
Clause 41	Application procedure in relation to broadcasting licences	Agreed general consensus
Clause 42	Hearings in relation to applications for broadcasting licences	Agreed general consensus
Clause 43	Entitlements under and conditions pertaining to broadcasting licences	Agreed general consensus
Clause 44	Renewal of broadcasting licences	No comment/ Agreed
Clause 45	Public broadcasting licences	Agreed general consensus
Clause 46	Private broadcasting licences	Agreed general consensus
Clause 47	Community broadcasting licences	No comment/ Agreed
Clause 48	Limitations on foreign control of private broadcasting services	Agreed general consensus

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Clause 49	Limitations on control of private broadcasting services	Agreed general consensus
Clause 50	Limitations on cross-media control of private broadcasting services	Agreed general consensus
Clause 51	Prohibition on granting of broadcasting licences to party political entities	Agreed general consensus
Clause 52	Amendment of broadcasting licences	No comment/ Agreed
Clause 53	Imposition of specific broadcasting licence conditions regarding local television content and South African music	Agreed general consensus
Clause 54	Terms of broadcasting licences	No comment/ Agreed
Clause 55	Record of programmes broadcast by broadcasting licensees	No comment/ Agreed
Clause 56	Code of Conduct for Broadcasting Services	Agreed general consensus
Clause 57	Control of advertisements	No comment/ Agreed
Clause 58	Prohibition on broadcasting of party election broadcasts and political advertisements except in certain circumstances	Agreed general consensus
Clause 59	Broadcasting of party election broadcasts on sound broadcasting services during election period	Agreed general consensus

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Clause 60	Political advertising on sound broadcasting services during election period	Agreed general consensus
Clause 61	Equitable treatment of political parties by broadcasting licensees during election period	Agreed general consensus
Clause 62	Broadcasting Monitoring and Complaints Committee	Agreed general consensus
Clause 63	Hearings by Broadcasting Monitoring and Complaints Committee	Agreed general consensus
Clause 64	Recommendations of Broadcasting Monitoring and Complaints Committee	Agreed general consensus
Clause 65	Powers of Broadcasting Monitoring and Complaints Committee regarding findings made by Advertising Standards Authority of South Africa	Agreed general consensus
Clause 66	Powers of Authority in places of proven non-compliance with Act, licence conditions or certain codes of conduct and, in limited circumstances, with Independent Media Commission Act, 1993	Agreed general consensus
Clause 67	Offences and penalties	Agreed general consensus
Clause 68	Minutes of Council and committees	Agreed general consensus
Clause 69	Delegations	
Clause 70	Register of licences	Agreed general consensus

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Clause 71	Records to be kept by licensees	No comment/ Agreed
Clause 72	Authority may demand production of licensees' books, records, etc.	No comment/ Agreed
Clause 73	Powers of authorised persons	No comment/ Agreed
Clause 74	Transfer of licences	No comment/ Agreed
Clause 75	Restriction on use of name or description implying connection with the Authority	No comment/ Agreed
Clause 76	Limitation of liability	No comment/ Agreed
Clause 77	Confidentiality	Agreed general consensus
Clause 78	Regulations	Agreed general consensus
Clause 79	Extraterritorial extension of Authority's jurisdiction by agreement between Republic and any state or territory previously part of Republic	Agreed general consensus
Clause 80	Application of Act in event of conflict with other laws	No comment/ Agreed
Clause 81	Liquidation	No comment/ Agreed
Clause 82	This Act binding on State and State President	Agreed general consensus

The Independent Broadcasting Authority Bill was adopted by Parliament in September 1993.

Clause 71	Records to be kept by licensees	No comment/ Agreed
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Clause 78	Regulations	Agreed general consensus
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