

INDEPENDENT BROADCASTING AUTHORITY ACT

NO. 153 OF 1993

[ASSENTED TO 18 OCTOBER, 1993][DATE OF
COMMENCEMENT: 30 MARCH, 1994]

(Unless otherwise indicated)

(English text signed by the State President)

as amended by

Electoral Amendment Act, No. 1 of 1994

Independent Broadcasting Authority Amendment Act, No. 36 of
1995

Independent Broadcasting Authority Amendment Act, No. 4 of
1996

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.

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CHAPTER I

INTRODUCTORY PROVISIONS

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

"apparatus" means any apparatus or equipment used or destined, designed or adapted to be used in connection with broadcasting;

"appointing body" means the body charged with the appointment of councillors in terms of section 4;

"Authority" means the Independent Broadcasting Authority established by section 3;

"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;

"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;

"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;

"broadcasting licensee" means the holder of a broadcasting licence;

"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;

"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;

"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;

"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;

"broadcasting signal distribution licensee" means the holder of a broadcasting signal distribution licence;

"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);

"community" includes a geographically founded community or any group of persons or sector of the public having a specific, ascertainable common interest;

"community broadcasting service" means a broadcasting service which-

(a) is fully controlled by a nonprofit entity and carried on for non-profitable purposes;

(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

(d) may be funded by donations, grants, sponsorships or advertising or membership fees, or by any combination of the aforementioned;

"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);

"Constitution " means the Constitution of the Republic of South Africa, 1993;

[Definition of "Constitution", formerly Constitution Act", substituted by s. 1 of Act No. 36 of 1995.]

"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;

"councillor" means any member of the Council referred to in section 4 (1);

"election" means any election for the National Assembly or any other legislature contemplated in the Constitution, 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;

"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;

"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;

"foreign person" means-

(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

(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;

"licence area" means the geographical target area of a broadcasting service as specified in the relevant broadcasting licence;

"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;

"Minister" means the Minister charged with the administration of this Act;

"National Assembly" means the National Assembly contemplated in the Constitution;

"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;

"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;

"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 commencement of the relevant election period, submitted its list of candidates for the National Assembly or any other legislature contemplated in the Constitution;

"prescribed" means prescribed by regulation in terms of section 78;

"private broadcasting service" means a broadcasting service operated for profit and controlled by a person who is not a public broadcasting licensee;

"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;

"radio" means an electromagnetic wave propagated in space without artificial guide and having by convention a frequency of lower than 3 000 GHz;

"Republic" means the Republic of South Africa;

"sound broadcasting service" means a broadcasting service destined to be received by a sound radio set;

"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;

"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;

"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;

"television set" means any apparatus designed or adapted to be capable of receiving transmissions broadcast in the course of a television broadcasting service;

"this Act" includes the Schedules to this Act and any regulations made from time to time under section 78;

"Transitional Executive Council" means the Transitional Executive Council established by section 2 of the Transitional Executive Council Act, 1993.

(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.

2. Primary objects of Act—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, 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

(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;

(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-

(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,

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 collectively, are controlled by persons or groups of persons from a diverse range of communities in the Republic;

(j)impose limitations on crossmedia control of private broadcasting services;

(k)promote the most efficient use of the broadcasting services frequency 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 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;

(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 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 distribution.

CHAPTER II

INDEPENDENT BROADCASTING AUTHORITY

3. Establishment of Independent Broadcasting Authority.—(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.

(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.

(Date of commencement of s. 3: 28 January, 1994.)

4. Constitution of Council.—(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 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.

(Date of commencement of s. 4: 28 January, 1994.)

5. Persons disqualified from being councillors: (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, 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 officebearer or employee of any party, movement, organization or body of a party political nature;

(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;

(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;

(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;

(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

(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.

(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.

(Date of commencement of s. 5: 28 January, 1994.)

6. Terms of office of councillors-(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.

(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.

(3) A councillor may at any time upon at least three months' written notice tendered to the appointing body resign from office.

(4) A councillor shall upon the expiration of his or her term of office be eligible for reappointment.

(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).

(Date of commencement of s. 6: 28 January, 1994.)

7. Remuneration and allowances of councillors-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.

8. Removal from office-(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.

(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.

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

(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.

(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.

10. Meetings of Council-(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.

(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.

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

(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.

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

11. Disclosure of conflicting interests.—(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.

(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

(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.

(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.

12. Proceedings of Council not invalid in certain circumstances.—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.

13. General powers of Authority-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;

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

14. Staff of Authority-(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.

(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.

(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.

15. Financing of Authority-(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;

(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;

(d) income derived by the Authority