

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
SOUTH AFRICAN
COMMUNICATIONS REGULATORY
AUTHORITY BILL**

[B 14—2000]

*(As agreed to by the Portfolio Committee on Communications
(National Assembly))*

[B 14A—2000]

REPUBLIEK VAN SUID-AFRIKA

**PORTEFEULJEKOMITEE-AMENDEMENTE
OP
WETSONTWERP OP DIE
SUID-AFRIKAANSE
KOMMUNIKASIE-
REGULERINGSOWERHEID**

[W 14—2000]

*(Soos goedgekeur deur die Portefeuljekomitee oor Kommunikasie
(Nasionale Vergadering))*

[W 14A—2000]

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AMENDMENTS AGREED TO

SOUTH AFRICAN COMMUNICATIONS REGULATORY AUTHORITY BILL [B 14—2000]

PREAMBLE

1. On page 2, from the third line, to omit the second paragraph and to substitute:

Acknowledging that the establishment of an independent body to regulate broadcasting and telecommunications is required,

CONTENTS OF ACT

1. On page 2, in line 9, to omit “South African Communications Regulatory Authority” and to substitute Independent Communications Authority of South Africa”.
2. On page 2, in line 10, to omit “South African Communications Regulatory Authority” and to substitute “Independent Communications Authority of South Africa”.

CLAUSE 1

1. On page 4, in line 28, to omit “and” and to substitute “or”.
2. On page 4, in line 30, to omit “South African Communications Regulatory Authority” and to substitute “Independent Communications Authority of South Africa”.
3. On page 4, in line 34, to omit “3(2)” and to substitute “5”.

CLAUSE 2

1. On page 6, in line 13, to omit “and”.
2. On page 6, in line 14, to omit “Republic.” and to substitute “public interest; and”.
3. On page 6, after line 14, to add the following paragraph:

(c) achieve the objects contemplated in the underlying statutes.

CLAUSE 3

1. On page 6, from line 18, to omit subsection (1) and to substitute:

(1) There is hereby established a juristic person to be known as the Independent Communications Authority of South Africa.

2. On page 6, after line 21, to add the following subsection:

(3) The Authority is independent, and subject only to the Constitution and the law, and must be impartial and must perform its functions without fear, favour or prejudice.

(4) The Authority must function without any political or commercial interference.

CLAUSE 5

1. On page 6, in line 34, to omit “no fewer than five and no more than”.
2. On page 6, from line 35, to omit “advice of the Portfolio Committee on Communications” and to substitute “recommendation”.
3. On page 6, in line 41, after “(2)” to insert “(a)”.
4. On page 6, after line 41, to insert the following paragraph:

(b) In the absence of the chairperson, the remaining councillors must from their number elect an acting chairperson, who, while he or she so acts, may perform all the functions of the chairperson.
5. On page 6, in line 43, after “fairness” to insert “, freedom of expression”.
6. On page 6, in line 46, to omit “cross-selection” and to substitute “cross-section”.
7. On page 6, in line 47, after “Republic;” to insert “and”.
8. On page 6, in line 48, after “possess” to insert “suitable”.
9. On page 6, in line 50, after “law” to insert “, marketing, journalism, entertainment, education”.
10. On page 6, in line 51, after “finance” to insert “or any other related expertise or qualifications”.
11. On page 8, in line 1, after “fairness” to insert “, freedom of expression”.

CLAUSE 6

1. On page 8, in line 5, to omit “or continue to serve”.
2. On page 8, in line 14, to omit “controlling or any substantial” and to substitute “direct or indirect”.
3. On page 8, in line 16, after “partner” to insert “or associate”.
4. On page 8, in line 25, to omit “or”.
5. On page 8, after line 25, to insert the following paragraph:

(k) has been sentenced, after the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of

1993), to a period of imprisonment of not less than one year without the option of a fine; or

CLAUSE 7

1. On page 8, from line 32, to omit subsection (1) and to substitute:
 - (1) The chairperson holds office for a period of five years as from the date of his or her appointment.
 - (2) (a) Subject to paragraph (b), the other councillors hold office for a period of four years as from the date of their appointment.
 - (b) Such three of the other councillors appointed to the first Council constituted after this Act takes effect as are determined by lot in accordance with Schedule 2, must vacate their offices upon expiration of a period of two years as from the date of their appointment.
2. On page 8, in line 37, to omit “one” and to substitute “three”.
3. On page 8, in line 39, to omit “subsection (1)” and to substitute “subsections (1) and (2)”.
4. On page 8, from line 44, to omit subsection (5) and to substitute:
 - (6) Every councillor serves in a full-time capacity to the exclusion of any other remunerative employment, occupation or office which is likely to—
 - (a) interfere with the exercise by any such councillor of his or her functions in terms of this Act or the underlying statutes; or
 - (b) create a conflict of interests between such employment, occupation or office and his or her office as councillor.

CLAUSE 8

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause

Removal from office

8. (1) Subject to subsection (2), a councillor may be removed from office on account of—
 - (a) misconduct;
 - (b) inability to perform the duties of his or her office efficiently;
 - (c) absence from three consecutive meetings of the Council without the permission of the Council, except on good cause shown;
 - (d) a contravention of section 7(6);
 - (e) failure to disclose an interest in terms of section 12(2)(a) or voting or attendance at, or participation in, proceedings of the Council while having an interest contemplated in section 12(1); or
 - (f) his or her becoming disqualified as contemplated in section 6(1).

- (2) A councillor may be removed from office only on—
 - (a) a finding to that effect by the National Assembly; and
 - (b) the adoption by the National Assembly of a resolution calling for that councillor's removal from office.
- (3) The President—
 - (a) may suspend a councillor from office at any time after the start of the proceedings of the National Assembly for the removal of that councillor;
 - (b) must remove a councillor from office upon adoption by the National Assembly of the resolution calling for that councillor's removal.

CLAUSE 9

1. On page 10, in line 11, to omit “or”.
2. On page 10, in line 12, to omit paragraph (d) and to substitute:
 - (d) dies; or
 - (e) becomes permanently incapable of doing his or her work.
3. On page 10, in line 16, after “office” to insert:

, unless the National Assembly directs that such councillor holds office for a longer period which period may not exceed four years

CLAUSE 10

1. On page 10, in line 20, to omit “approval” and to substitute “concurrency”.
2. On page 10, in line 20, after “Finance” to insert:

, subject to any applicable national legislation envisaged by section 219(5) of the Constitution

CLAUSE 11

1. On page 10, in line 29, to omit “two” and to substitute “seven”.
2. On page 10, in line 30, to omit “two” and to substitute “seven”.

CLAUSE 12

1. On page 10, in line 39, after “or” to insert “in any other manner”.
2. On page 10, in line 42, after “partner” to insert “or associate”.
3. On page 12, after line 4, to insert the following subsection:

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

4. On page 12, in line 6, to omit “maximum fine of R100 000” and to substitute:

fine not exceeding R250 000 or to imprisonment for a period not exceeding five years, or to both such fine and imprisonment,

CLAUSE 13

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Validity of proceedings

13. Subject to section 12, a decision taken by the Council or an act performed under that decision is not invalid merely by reason of—
(a) any irregularity in the appointment of a councillor;
(b) a vacancy in the Council; or
(c) the fact that any person not entitled to sit as a councillor sat as such at the time when the decision was taken,
provided such decision was taken by a majority of the councillors present at the time and entitled so to sit, and those councillors at the time constituted a quorum.

CLAUSE 15

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Financing of and accounting by Authority

15. (1) The Authority is financed from money appropriated by Parliament.

(2) The chief executive officer contemplated in section 14(1)(a) is, in accordance with section 36 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the accounting officer of the Authority and charged with the responsibilities referred to in that Act which include, amongst others, responsibilities regarding auditing, financial control, budgetary control and reporting.

(3) All revenue received by the Authority in a manner other than in accordance with subsection (1) must be paid into the National Revenue Fund within 30 days after receipt of such revenue.

(4) Cheques drawn by the Authority must be regarded to have been duly issued and signed on its behalf if issued under the joint signatures of the accounting officer and another member of the staff of the Authority designated by the Council.

CLAUSE 16

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Annual report

16. (1) The Council must—

- (a) supply the Minister with such information and particulars as he or she may in writing require in connection with the activities of the Authority; and
- (b) as soon as may be reasonably practicable after the end of each financial year but in any event within three months of the end of the financial year, supply the Minister with a copy of—
 - (i) the annual report of the Authority;
 - (ii) the financial statements of the Authority referred to in section 40(1)(e) of the Public Finance Management Act, 1999 (Act No. 1 of 1999); and
 - (iii) the Auditor-General's report on those statements.

(2) For purposes of this section, the annual report referred to in subsection (1)(b)(i) must include, amongst others—

- (a) information regarding licences granted, renewed, amended, transferred, suspended or revoked; and
- (b) such other information as the Minister may in writing require.

(3) The Minister must table a copy of the annual report in Parliament within 30 days after it has been received by him or her if Parliament is then sitting and, if Parliament is not in sitting, within 14 days after the next ensuing sitting of Parliament.

CLAUSE 17

1. On page 16, in line 2, to omit “6(1)(e) to (k)” and to substitute “6(1)(d) to (l)”.
2. On page 16, in line 13, after “committee” to insert:

, including the Broadcasting Technical Committee and Broadcasting Monitoring and Complaints Committee referred to in section 21 of the IBA Act,

3.

On page 16, in line 15, to omit “with the approval of the Minister and the Minister of Finance”.

CLAUSE 18

1. On page 16, from line 27, to omit paragraph (b) and to substitute:

(b) If any councillor contemplated in paragraph (a) is not appointed in terms of section 5, the termination of that person's tenure of office must be dealt with in accordance with any terms and conditions relating to such termination in the agreement governing his or her appointment as councillor.

(c) If the agreement does not contain any such terms and conditions, that person's position must be considered by the Minister in concurrence with the Minister of Finance in the light of all relevant circumstances, including—

- (i) the legitimate expectations of the councillor;
- (ii) any financial constraints on expenditure by the Authority;

- (iii) the prospect of further employment of that person.
- (d) If the councillor is not satisfied with any offer made by the Minister, the matter must be referred to arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965).

CLAUSE 20

1. On page 18, in line 16, to omit all the words from “IBA” up to and including “Authority” in line 17 and to substitute:

underlying statutes must be regarded to have been issued, granted or given by the Authority

NEW CLAUSE

1. That the following be a new Clause:

Savings

- 22. (1) Anything done before the commencement of this Act under or in terms of a provision repealed or amended by this Act must be regarded, unless clearly inappropriate, to have been done under or in terms of the corresponding provision of this Act.
- (2) Any reference to any of the former authorities in any law must be regarded, unless clearly inappropriate, to be a reference to the Authority.
- (3) The Authority is the legal successor of the former authorities.

CLAUSE 24

1. On page 18, in line 35, to omit “South African Communications Regulatory Authority” and to substitute “Independent Communications Authority of South Africa”.
2. On page 18, in line 37, after “*Gazette*” to insert:

, except section 18(2) which must be regarded as having come into operation on 30 March 2000

LONG TITLE

1. On page 2, from the first line, to omit “South African Communications Regulatory Authority” and to substitute “Independent Communications Authority of South Africa”.
2. On page 2, from the fourth line, to omit “South African Communications Regulatory Authority” and to substitute “Independent Communications Authority of South Africa”.

SCHEDULE

1. On page 20, in the third column, to omit “South African Communications Regulatory Authority”, wherever it occurs, and to substitute “Independent Communications Authority of South Africa”.

2. On page 20, in the third column, to insert the following item:
 2. The amendment of section 2 by the insertion of the following paragraph after paragraph (g):
“(gA) promote the empowerment and advancement of women in the broadcasting services;”.
3. On page 20, in the third column, to omit item 21 and to substitute:
 21. The amendment of section 22 by the deletion of subsections (1), (2) and (3)(b).
4. On page 20, in the third column, to omit item 26.
5. On page 22, in the third column, to omit “South African Communications Regulatory Authority”, wherever it occurs, and to substitute “Independent Communications Authority of South Africa”.
6. On page 22, in the third column, to omit item 23.
7. On page 22, in the third column, to omit item 24 and to substitute:
 24. The amendment of section 28 by the deletion of subsection (3).
8. On page 24, in the third column, to omit “South African Communications Regulatory Authority”, wherever it occurs, and to substitute “Independent Communications Authority of South Africa”.

NEW SCHEDULE

1. That the following be a new Schedule:

Schedule 2

DETERMINATION BY LOT FOR PURPOSES OF SECTION 7(2)(b)

1. Upon having appointed the six other councillors in terms of section 5 of this Act, the National Assembly must forthwith proceed, in an open and transparent manner, to determine by lot, as required by section 7(2)(b) of this Act, which three of such six other councillors must vacate their offices upon the expiration of two years after their appointment, for which purpose the National Assembly must designate from its own number the person who must conduct the lot (hereinafter referred to as the designated person).

2. The designated person must thereupon ensure that the name of each one of the six other councillors is written on a separate piece of paper of equal size and identical shape and colour.

3. The designated person must thereafter display the six pieces of paper contemplated in item 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.

4. The designated person must 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.

5. The designated person must thereupon appoint an impartial person (hereinafter referred to as the drawer) to draw three pieces of paper from the said container.

6. The designated person must thereafter shake the container in such a manner as to thoroughly mix the pieces of paper therein, and must hold such container in such a position that the drawer is unable to see the pieces of paper inside.

7. The drawer must thereafter draw three pieces of paper from such container and hand them to the designated person without unfolding any of them.

8. The designated person must then unfold each of the three pieces of paper handed to him or her as contemplated in item 7, 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.

9. The three persons whose names have been so drawn, must vacate their offices as councillors two years after the date of their appointment as such.