

EXECUTIVE SUMMARY

- 1 Although we comment in detail on numerous provisions of the Broadcasting Amendment Bill (“the Bill”), there are five issues which particularly concern us.

Broadcasting licences and channel authorisation

- 2 Whilst the provisions of s4 of the Broadcasting Act do not provide the legal clarity one would have liked, they are preferable to the proposed amendments to s4. The proposed new s4(2) does not guarantee the protection afforded by the present s4(2) in the Broadcasting Act to a broadcasting service existing at the commencement of the Broadcasting Amendment Act and which has applied timeously for a broadcasting licence. The proposed new s4(6) to (8) introduce confusion and legal uncertainty concerning the authorisation of channels : not only is it unclear as to who has to seek authorisation for a channel, but the distinction between the licensing of a broadcasting service and the authorisation of a channel is no longer clear.

Subscription broadcasting services

- 3 The proposed new s31(3) and (4), which involve the Minister as regards a recommendation of the Authority as to whether s49 and s50 of the IBA Act ought to apply to broadcasting services carrying more than one channel, conflict with s33(2) and (3) of the Broadcasting Act, and with s49(7) and s50(4) and (5) of the IBA Act. In addition, the proposed new subsections are unlikely to survive constitutional scrutiny.

Broadcasting signal distribution services

- 4 The proposed new s34(4) does not provide adequate protection to a person who provides a broadcasting signal distribution service at the commencement of the Broadcasting Amendment Act.

SABC

5 Our representations on the proposed amendments to the Chapter dealing with the SABC are in essence the following :

5.1 A number of the provisions involving the Minister are unlikely to survive constitutional scrutiny.

5.2 The Chapter is confused in its handling of the Charter, and as regards lines of authority and accountability.

5.3 The Chapter fails to deal with the funding of the commercial broadcasting service division of the SABC. This division should not be funded by any monies appropriated by Parliament, nor from an organ of state, nor from television licence fees. In addition, the legislation needs to state that the public broadcasting service division may not subsidise the commercial broadcasting service division.

5.4 The legislation is confused about the policies to apply to, and the regulation of, the commercial broadcasting service division.

5.5 The section dealing with the transfer of licences from the old Corporation to the new Corporation needs to be revised.

Regional television services

6 The requirement that the Authority license two regional services, which licences are to be issued to wholly state-owned entities, is likely to be unconstitutional.