

REPUBLIC OF SOUTH AFRICA

BROADCASTING AMENDMENT BILL

*(As introduced in the National Assembly as a section 75 Bill; Bill published in Government
Gazette No 23745 of 15 August 2002)
(The English text is the official text of the Bill)*

(MINISTER OF COMMUNICATIONS)

[B 34—2002]

ISBN 0 621 32274 1

No. of copies printed 1 800

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Broadcasting Act, 1999, so as to add certain definitions; to provide for the conversion of the old Corporation into a public company in terms of the Companies Act; to clarify the relationship between the policies governing public commercial services and the values of the public broadcasting service; to provide for the continued existence of the old Corporation during the transitional period; to provide for a procedure relating to authorisation of all channels carried by the broadcasting services; to provide for the procedure relating to the granting of additional subscription television service licences and to open subscription television services to full competition; to provide for the application and granting of television licences; to provide for the imposition of penalties for failure to pay television licence fees; to provide for the appointment of inspectors; and to provide for the making of regulations; to amend the Independent Broadcasting Authority Act, 1993, and the Independent Communications Authority of South Africa Act, 2000; and to provide for matters connected therewith.

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

Amendment of the Preamble to Act 4 of 1999

1. The Preamble to the Broadcasting Act, 1999 (Act No. 4 of 1999) (hereinafter referred to as the principal Act), is hereby amended by the substitution for the third paragraph of the following paragraph: 5

“**Realising** that the broadcasting system must reflect the identity and diverse nature of South Africa, is controlled and managed by persons or groups of persons from a diverse range of communities, including persons from previously disadvantaged groups, and must reflect the multilingual and diverse nature of South Africa by promoting the entire spectrum of cultural backgrounds, religious backgrounds and official languages in the Republic;”. 10

Amendment of section 1 of Act 4 of 1999

2. Section 1 of the principal Act is hereby amended—
(a) by the insertion after the definition of “appointing body” of the following definition: 15

“ ‘authorised inspector’ means an authorised inspector appointed by the Corporation in terms of section 27(6) of this Act;”;

- (b) by the substitution for the definition of “Board” of the following definition:
 “ ‘Board’ means Board of [**South African Broadcasting Corporation Limited**] the Corporation;”;
- (c) by the substitution for the definition of “broadcaster” of the following definition: 5
 “ ‘broadcaster’ means any legal or natural person who composes or packages [**or distributes**] television or radio programme services for reception by the public or sections of the public or subscribers to such a service irrespective of technology used;”;
- (d) by the substitution for the definition of “broadcasting licence” of the 10
 following definition:
 “ ‘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 or the IBA Act to have been so granted and issued;”;
- (e) by the insertion after the definition of “broadcasting signal distribution licensee” of the following definition: 15
 “ ‘business’, for the purposes of the definition of ‘record’ and section 27 means a person who uses a television set—
 (a) in the course of conducting his or her business; 20
 (b) in the course of engaging in commercial transactions;
 (c) as part of his or her activities for gain; or
 (d) on premises which are occupied for business purposes, but excludes a dealer;”;
- (f) by the substitution for the definition of “channel” of the following definition: 25
 “ ‘channel’ means a single defined [**television**] programming service of a licensee other than a video on demand programming service;”;
- (g) by the insertion after the definition of “commercial broadcasting service” of the following definition: 30
 “ ‘commercial broadcasting service division’ means the commercial service division of the Corporation contemplated in section 9(1)(b);”;
- (h) by the substitution for the definition of “Corporation” of the following definition: 35
 “ ‘Corporation’ means the South African Broadcasting Corporation Limited [**established**] upon conversion of the old Corporation in terms of section 7 of this Act;”;
- (i) by the insertion after the definition of “Corporation” of the following definitions: 40
 “ ‘date of conversion’ means the date determined by the Minister by notice in the Gazette, as stipulated in section 7(1);
 “ ‘dealer’ means a person who engages in the business of selling television sets;”;
- (j) by the deletion of the definition of “direct to home broadcasting”;
- (k) by the insertion after the definition of “Department” of the following definitions: 45
 “ ‘distribution licence’ means a licence issued in terms of this Act to render a distribution service;
 ‘distribution service’ means a service whereby broadcasting signal distribution is provided;
 ‘due diligence report’ means the due diligence report to be prepared by the old Corporation in terms of item 11 of Schedule 2;”;
- (l) by the substitution for the definition of “free-to-air service” of the following definition: 50
 “ ‘free-to-air service’ means a service which is broadcast [**without encryption**] and capable of being received on universal receivers 55
 without payment by the end user to the broadcaster and without the use of receiving equipment;”;
- (m) by the deletion of the definition of “incorporation date”;
- (n) by the insertion after the definition of “IBA Act” of the following definitions: 60
 “ ‘inventory’ means the inventory to be prepared by the old Corporation and submitted to the Minister in accordance with the provisions of item 11 of Schedule 2;

- ‘lessor’ means a person who engages in the business of renting out television sets;
- ‘licence’ means a broadcasting licence or a distribution licence;”;
- (o) by the substitution for the definition of “licensee” of the following definition: 5
 “ ‘licensee’ means the holder of any licence granted and issued under **[this Act] the IBA Act** or deemed by **[this Act] the IBA Act** to have been so granted or so issued;”;
- (p) by the deletion of the definition of “local delivery service”;
- (q) by the substitution for the definition of “multi-channel distribution service” of the following definition: 10
 “ ‘multi-channel distribution service’ means a **[service which transmits more than one channel at the same time by means of radio waves or telecommunications]** broadcasting signal distribution service that provides broadcasting signal distribution of more than one channel at the same time on the same signal, and ‘multi-channel distributor’ is construed accordingly;” 15
- (r) by the insertion after the definition of “multi-channel distribution service” of the following definition:
 “ ‘national interest’ means the founding provisions of the Republic as provided in Chapter 1 of the Constitution, 1996 (Act No. 108 of 1996);” 20
- (s) by the insertion after the definition of “National Revenue Fund” of the following definition:
 “ ‘national sporting event’ means a sporting event that has national significance or interest;”;
- (t) by the insertion after the definition of “old Corporation” of the following definition: 25
 “ ‘person’ has the meaning assigned to it in section 2 of the Interpretation Act, 1957 (Act No. 33 of 1957), and includes any department of state or administration in the national, provincial or local spheres of government;”;
- (u) by the insertion after the definition of “public broadcasting service” of the following definitions: 30
 “ ‘public broadcasting service division’ means the public broadcasting service division of the Corporation contemplated in section 9(1)(a);
 ‘Public Finance Management Act’ means the Public Finance Management Act, 1999 (Act No. 1 of 1999);”;
- (v) by the insertion after the definition of “radio” of the following definitions: 35
 “ ‘radio station’ means an establishment involved in sound broadcasting;
 ‘record’ means the information as prescribed which must be provided by a business or dealer or such information as is reasonably required by an authorised inspector in order to determine whether a business or dealer has complied with this Act; 40
 ‘Registrar’ means the Registrar of Companies, as defined in the Companies Act;
 ‘regulation’ means a regulation made under section 40 but excludes financial regulations made under section 18;”;
- (w) by the insertion after the definition of “subscription broadcasting service” of the following definition: 45
 “ ‘subscription television’ means a television service provided to the end user upon payment of a fee and received through suitable receiving equipment;”;
- (x) by the insertion after the definition of “television broadcasting service” of the following definitions: 50
 “ ‘television licence’ means a current and valid written licence issued in terms of this Act for the use of a television set; 55
 ‘television licence fee’ means a fee prescribed in terms of this Act and payable for the use of a television set;”;
- (y) by the insertion after the definition of “terrestrial broadcasting service” of the following definitions: 60
 “ ‘use’ means the use or possession of a television set or permitting any other person to use or possess a television set and the words ‘user’ and ‘used’ are construed accordingly;”;
- (z) by the deletion of the definition of “transfer date”;
- (aa) by the deletion of subsection (3).

Amendment of section 3 of Act 4 of 1999

3. Section 3 of the principal Act is hereby amended by the substitution in subsection (5) for paragraph (a) of the following paragraph:

- (a) be varied and comprehensive, providing a balance of information, education and entertainment meeting the broadcasting needs of the entire South African population in terms of age, race, gender, religion, interests and backgrounds;”.

Amendment of section 4 of Act 4 of 1999

4. Section 4 of the principal Act is hereby amended by—

- (a) the substitution for subsections (1) and (2) of the following subsections: 10
- “(1) Any person who intends to provide a broadcasting or signal distribution service,~~[including distribution services]~~ whether by satellite or by terrestrial transmitters, **[or any other form of distribution which offer programming to the public]** is required to obtain **[a] the necessary** licence in accordance with the conditions **[which the Authority may determine from time to time]** prescribed by the Authority.
- (2) **[A] Any person providing a broadcasting service [existing] or distribution service without a licence at the commencement of this Act[, upon application to the Authority for a broadcasting licence, is] shall** be deemed to have the necessary permission to continue **[its activities for a period not exceeding six months from the commencement of this Act or until such time as the Authority has decided on the licence application and, in the event of a decision to grant the application, has issued such licence]** to operate such service until a date determined by the Authority in the *Gazette* or until the date upon which the Authority has granted or refused a broadcasting or distribution licence to such person after application by such person for a broadcasting or distribution licence, whichever date is the earlier.”;
- (b) the substitution for subsection (5) of the following subsection: 30
- “(5) **[No]** Subject to subsection (2), no person may provide a broadcasting service unless such service is provided in accordance with a broadcasting licence issued to that person by the Authority.”;
- (c) the substitution for subsections (6) and (7) of the following subsections: 35
- “(6) (a) Every broadcasting or distribution licence must define the channels and radio stations licensed by such broadcasting or distribution licence.
- (b) Subject to subsection (2), no broadcasting or distribution service shall provide a service through a channel or station that is not defined in a broadcasting or distribution licence and authorised by the Authority in terms of the regulations contemplated in subsection (8).
- (7) Any channel or radio station that carried on a broadcasting or distribution service immediately before the commencement of this Act is deemed to have the necessary permission to continue its activities until the Authority has made a decision, on application for authorisation in terms of the regulations contemplated in subsection (8).”;
- (d) the insertion after subsection (7) of the following subsection: 45
- “(8) In terms of section 78 of the IBA Act the Authority must make regulations prescribing the terms of and procedures for the authorisation of all channels and stations carried by broadcasting or distribution services.”.

Amendment of section 5 of Act 4 of 1999

8. Section 5 of the principal Act is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection: 55
- “(2) Subject to **[the provisions of]** this Act, the broadcasting licences are categorised in the following classes:
- (a) Free-to-air radio service;
- (b) free-to-air television service;

- [(c) **satellite-free-to-air radio service;**
 (d) **satellite-free-to-air television service;**
 (e) satellite-subscription [**television**] service;
 (f) terrestrial-subscription television service;
 [(g) **direct-to-home delivery service, including multi-channel satellite distribution;** 5
 (h) **local delivery service;**
 (i) cable television subscription service;
 (j) low power radio service; and
 (k) any other class of licence as [**determined**] prescribed by the 10
Authority from time to time.”
 (b) by the addition of the following subsection:
 “(3) Sections 35, 36, 37, 38, 41, 42, 43, 44, 45(2), 46(1), 47(1), 48, 51,
 52 and 74 of the IBA Act apply with the necessary changes to
 applications for broadcasting or distribution licences under this Act.” 15

Substitution of section 6 of Act 4 of 1999

6. The following section is hereby substituted for section 6 of the principal Act:

“South African Broadcasting Corporation Limited

6. (1) The Corporation is governed by the Charter contained in Part 2 of this Chapter. 20

(2) **[In terms of this Charter, the Corporation will in pursuit of its objectives and in exercise of its powers, enjoy freedom of expression and journalistic, creative and programming independence.**

(3)] The Authority must monitor and enforce compliance with the Charter by the Corporation. 25

(3) The Board must ensure accurate, accountable and fair reporting by the Corporation in order to advance the national and public interest of the Republic.

(4) The Board must prepare and submit to the Minister for approval within three months after the date of conversion, policies governing the exercise of accurate, accountable and fair reporting in order to advance the national and public interest of the Republic. 30

(5) The Board and individual journalists of the Corporation shall be subject to the policies of the Corporation dealing with accurate, fair and responsible journalism and thus exercise care and skill and act in the best interests of the Corporation.” 35

Amendment of heading to Part 2 of Chapter IV of Act 4 of 1999

7. The following heading is hereby substituted for the heading to Part 2 of Chapter IV of the principal Act:

“Establishment, [incorporation] conversion, objectives and organisation of Corporation.” 40

Substitution of section 7 of Act 4 of 1999

8. The following section is hereby substituted for section 7 of the principal Act:

“[Incorporation] Conversion

7. (1) With effect from a date determined by the Minister by notice in the Gazette, which may be a date prior to the commencement of this Act, the Corporation must be converted into a public company in terms of the Companies Act and on the date of conversion the Corporation shall be known as the South African Broadcasting Corporation Limited. 45

(2) The Corporation must have a share capital as contemplated in section 19 of the Companies Act with the State as its sole shareholder with effect from the date of conversion referred to in subsection (1). 50

(3) The Minister must determine the memorandum and articles of association of the Corporation.

(4) The applicable transitional provisions relating to the conversion of the Corporation into a public company are set out in Schedule 2.” 55

Amendment of section 8 of Act 4 of 1999

9. Section 8 of the principal Act is hereby amended by the substitution for paragraph (d) of the following paragraph:

“(d) to provide, in its public broadcasting services, radio and television programming that informs, educates, spiritually enriches and entertains;” 5

Substitution of section 9 of Act 4 of 1999

10. The following section is hereby substituted for section 9 of the principal Act:

“(1) [The] While the State is the sole shareholder of the Corporation, the Corporation [consists] must consist of two separate operational [entities] divisions, namely— 10

- (a) a public broadcasting service division; and
- (b) a commercial broadcasting service division.

(2) The public and commercial broadcasting [services] service divisions [of the Corporation] must be separately administered and a separate set of financial records and accounts are to be kept in respect of each such division.” 15

Amendment of section 10 of Act 4 of 1999

11. Section 10 of the principal Act is hereby amended by—

- (a) the substitution in subsection (1) for paragraph (e) of the following paragraph:
 - “(e) include significant amounts of educational programming, both curriculum-based and informal educative topics from a wide range of social, political and economic issues, including, but not limited to, human rights, health, early childhood development, agriculture, culture, religion, justice and commerce and contributing to a shared South African consciousness and identity;” 20
- (b) the addition of the following subsections: 25

“(3) The old Corporation shall, by no later than three months prior to the date of conversion, submit to the Minister for approval—

- (a) a proposed budget in respect of the public broadcasting service division listing revenue, expenditure, borrowings and appropriation of funds for the financial year following the date of conversion; and 30
- (b) a three year business plan containing details of operational plans, marketing and financial plans and policies prepared in compliance with the objectives of the public broadcasting service of the Corporation and in compliance with the general objectives of this Act covering the public broadcasting service obligation of the Corporation in respect of the conduct of the business of the public broadcasting service division for the three financial years following the date of conversion; and 35
- (c) a set of policies of the public broadcasting service division relating to— 40
 - (i) news editorial policy;
 - (ii) programming policy;
 - (iii) local content policy;
 - (iv) educational policy;
 - (v) universal service and access policy; and 45
 - (vi) language policy.

(4) The policies of the public broadcasting service division stipulated in subsection (3)(c) must include a code of conduct of the Corporation services and personnel that reflects—

- (i) the constitutional principles of fairness, equality and equitable treatment of all segments of the South African population; 50
- (ii) the principle of equality and equitable treatment of all South African official languages as enshrined in the Constitution;
- (iii) the rights of all South Africans to both receive and impart information; 55
- (iv) a full range of audience interests, beliefs and perspectives in its services;
- (v) a high standard of accuracy and impartiality in news and programmes that deal with matters of public interest.

- (5) The Board must—
- (a) keep proper and accurate books and records of the financial affairs of the public broadcasting service division separately from those of the commercial broadcasting service division; 5
 - (b) procure in addition to the annual financial statements of the Corporation drawn up in terms of section 20, audited annual financial statements prepared in respect of the public service broadcasting division in accordance with generally accepted accounting practice separately from those in respect of the commercial broadcasting service division; 10
 - (c) submit the financial statements stipulated in paragraph (b) within two months after the end of the financial year of the Corporation to the auditors of the Corporation for auditing; and
 - (d) submit to the Minister within four months after the end of the financial year of the Corporation— 15
 - (i) an annual written report on the activities of the public broadcasting service division during the financial year of the Corporation preceding the date of the report;
 - (ii) the financial statements of the public broadcasting service division for the preceding financial year of the Corporation in question after the statements have been audited by the auditors of the Corporation; and 20
 - (iii) the report of the auditors on the financial statements of the public broadcasting service division for the financial year of the Corporation.”. 25

Amendment of section 11 of Act 4 of 1999

12. Section 11 of the principal Act is hereby amended by the addition of the following subsections, the existing section becoming subsection (1):

- “(2) The Corporation must, by not later than a date three months prior to the date of conversion, submit to the Minister for approval— 30
- (a) a proposed budget in respect of the commercial broadcasting service division listing revenue, expenditure, borrowings and appropriation of funds for the financial year following the date of conversion; and
 - (b) a three year business plan containing details of operational plans, marketing and financial plans and policies prepared in compliance with the objectives of the commercial broadcasting service of the Corporation and in compliance with the general objectives of this Act covering the commercial broadcasting service obligation of the Corporation in respect of the conduct of business of the commercial broadcasting service division for the three financial years following the date of conversion; and 35 40
 - (c) a set of policies of the commercial broadcasting service division relating to—
 - (i) news editorial policy;
 - (ii) programming policy;
 - (iii) local content policy; and
 - (iv) language policy. 45
- (3) The Board must—
- (a) keep proper and accurate books and records of the financial affairs of the commercial broadcasting service division separately from those of the public broadcasting service division;
 - (b) procure in addition to the annual financial statements of the Corporation drawn up in terms of section 20, audited annual financial statements prepared in respect of the commercial broadcasting service division in accordance with generally accepted accounting practice separately from those in respect of the public broadcasting service division; 50
 - (c) submit the financial statements stipulated in paragraph (b) within two months after the end of the financial year of the Corporation to the auditors of the Corporation for auditing; and 55
 - (d) submit to the Minister within four months after the end of the financial year of the Corporation—
 - (i) an annual written report on the activities of the commercial broadcasting service division during the financial year of the Corporation preceding the date of the report; 60

- (ii) the financial statements of the commercial broadcasting service division for the preceding financial year of the Corporation in question after the statements have been audited by the auditors of the Corporation; and
- (iii) the report of the auditors on the financial statements of the commercial broadcasting service division for the financial year of the Corporation.”. 5

Amendment of section 12 of Act 4 of 1999

13. Section 12 of the principal Act is hereby amended by the substitution for paragraphs (b) and (c) of the following paragraph:

- “(b) the Group Chief Executive Officer, the Chief Operations Officer and the Chief Financial Officer or their equivalents, who are the executive members of the Board.” 10

Amendment of section 13 of Act 4 of 1999

14. Section 13 of the principal Act is hereby amended—

- (a) by the substitution for subsection (9) of the following subsection:
 - “(9) The Board of the old Corporation as constituted on the date of conversion constitutes the first Board of the Corporation.” 15
- (b) by the substitution for subsection (11) of the following subsection:
 - “(11) The Board determines the overall policies of the Corporation as contemplated in this Act.”

Insertion of section 13A in Act 4 of 1999 20

15. The following section is hereby inserted in the principal Act after section 13:

“Management boards

- 13A. (1) The management and control of the business and affairs—**
- (a) of the public broadcasting service division is vested in a public service management board; and 25
- (b) of the commercial broadcasting service division is vested in a commercial service management board.
- (2) The—
- (a) public service management board consists of the Group Chief Executive Officer, the Chief Operations Officer and the Chief Financial Officer of the Corporation and six non-executive directors, all of whom are members of the Board, nominated by the Minister; and 30
- (b) commercial service management board consists of the Group Chief Executive Officer, the Chief Operations Officer and the Chief Financial Officer of the Corporation and six non-executive directors, all of whom are members of the Board, nominated by the Minister, other than the six non-executive directors serving on the public service management board contemplated in paragraph (a). 35
- (3) In respect of—
- (a) the public broadcasting service division, the public service management board may exercise all the powers and must perform all the duties of the Corporation in relation to the public broadcasting service division, which may not be inconsistent with this Act or any policy of the Corporation determined or established by the Board; and 40
- (b) the commercial broadcasting service division, the commercial service management board may exercise all the powers and must perform all the duties of the Corporation in relation to the commercial broadcasting service division, which may not be inconsistent with this Act or any policy of the Corporation determined or established by the Board. 45
- (4) The specific powers and duties of each of the public service management board and the commercial service management board are set out in the memorandum and articles of association of the Corporation.”. 50

Amendment of section 14 of Act 4 of 1999

16. Section 14 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The public service management board and the commercial service management board may each delegate such of their powers and such of their duties as they deem fit to an executive committee consisting of the Group Chief Executive Officer, the Chief Operations Officer, the Chief Financial Officer and four other members appointed by the Board.”.

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Repeal of section 19 of Act 4 of 1999

17. Section 19 of the principal Act is hereby repealed.

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Substitution of section 22 of Act 4 of 1999

18. The following section is hereby substituted for section 22 of the principal Act:

“Transfer of broadcasting licences

22. (1) The old Corporation must, before the date of conversion, and in terms of section 4(2) of this Act and section 74 of the IBA Act, apply to the Authority for the requisite broadcasting licences to be issued to the Corporation with effect from the date of conversion.

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(2) The Authority may, on issuing the broadcasting licences to the Corporation in terms of subsection (1), impose such conditions as are necessary to achieve the objectives of this Act and the IBA Act.

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(3) Despite any other law, no transfer duty, stamp duty or any other duty is payable in respect of the transfer of any licence in terms of this section.”.

Amendment of section 24 of Act 4 of 1999

19. Section 24 of the principal Act is hereby amended by the addition of the following subsection:

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“(4) The Board must, whilst the State is the sole shareholder in the Corporation, ensure that the Corporation complies with the Public Finance Management Act in relation to accounting procedures by public entities.”.

Amendment of section 25 of Act 4 of 1999

20. Section 25 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

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“(1) In addition to the annual financial statements to be prepared in terms of the Companies Act and whilst the State is the sole shareholder in the Corporation and also in terms of the Public Finance Management Act the Corporation must cause its books and accounts to be audited annually by a person registered as an accountant and auditor under the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991), and appointed as auditor of the Corporation.”.

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Substitution of section 27 of Act 4 of 1999

21. The following section is hereby substituted for section 27 of the principal Act:

“27. (1) (a) No person may use any television set unless such person is in possession of—

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(i) a television licence issued by the Corporation against payment of the prescribed fee for each television set so used, unless exempted by regulation; or

(ii) a written exemption pursuant to the regulations; or

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(iii) written confirmation, issued by the owner of the television set in question that such person is a person to whom that television set has been rented, or otherwise made available in accordance with this Act.

- (b) No business or dealer may use any television set unless—
- (i) such business or dealer is in possession of a television licence issued in terms of this Act for each television set so used, unless exempted by regulation;
 - (ii) such television set is used in accordance with such licence; and
 - (iii) such business or dealer is able to produce such licence on demand. 5
- (c) If a television set is used for more than one purpose, a user who is required to be in possession of a television licence must possess all the categories of television licences as prescribed which pertain to such use.
- (2) Subsection (1) does not apply to a person who manufactures or repairs television sets, or who acts in the execution of his or her duties in the service of such a person, in so far as he or she uses any television set manufactured or repaired by him or her, in or on the premises where it was manufactured or repaired or on any other premises approved by the Corporation, for the purposes of testing such a television set. 10
- (3) Any person who contravenes subsection (1) may *in lieu* of prosecution and, in addition to payment of the prescribed licence fee— 15
- (a) pay to the Corporation by way of a penalty an amount equal to double the amount of the applicable prescribed licence fee; or
 - (b) in the event of a user proving that he or she had used the television set for a period of less than one year, pay to the Corporation, by way of a penalty, in respect of every month or part of a month during which such a person had failed to take out such television licence, an amount equal to 10% of the applicable prescribed television licence fee: Provided that the total amount of the penalty may not exceed the amount of such television licence fee, unless otherwise prescribed. 20 25
- (4) A dealer who sells or alienates a television set in contravention of this Act, may, *in lieu* of prosecution pay the penalty contemplated in subsection (3)(b) in respect of each television set sold or alienated to a person who is not in possession of a television licence and who is not exempted from the obligation to be in possession of a television licence. 30
- (5) Any person who—
- (a) contravenes or fails to comply with any provision of this Act; or
 - (b) after an authorised inspector, referred to in subsection (6), has produced his or her written authority to such person fails, without good reason, to comply with any lawful demand made by that authorised inspector, 35
- is guilty of an offence in relation to each television set in respect of which the offence is committed and shall be liable upon conviction to a fine not exceeding R500 in relation to each such offence or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.
- (6) (a) The Corporation may appoint any person as an authorised inspector. 40
- (b) An authorised inspector may—
- (i) require a person who is required in terms of subsection (1) to be in possession of a television licence to produce such television licence for inspection;
 - (ii) require a person who uses a television set, or a person who is the owner or occupier of any premises on which a television set is used, to produce such television set for examination, in order to determine whether the provisions of this Act have been complied with; 45
 - (iii) require a person who uses a television set to furnish his or her identity document or licence registration number, whichever is applicable;
 - (iv) require a person who uses a television set, or a person who is the owner or occupier of any premises on which a television set is used, to furnish such information as may be prescribed or necessary in order to determine whether the provisions of this Act have been complied with; 50
 - (v) require a business or dealer to produce records relating to transactions involving television sets for inspection, and make extracts therefrom or copies thereof; 55
 - (vi) enter upon any land, in so far as this may be necessary, in order to exercise a power conferred on him or her by the provisions of this Act: Provided that entry may not be gained to a residence after dark without a warrant or the occupier's permission. 60
- (c) A television licence is not, save as may be prescribed, transferable.

(d) All television licence fees collected by the Corporation must be used by the Corporation solely for the public broadcasting service to be provided by the Corporation as stipulated in section 10(1)(e) of this Act. The Board must furnish the Minister annually, within three months after the end of each financial year of the Corporation, with full details, records and accounts of all television licence fees collected. 5

(e) The Corporation must keep a national database register containing a list of all sales of television sets in the Republic, which must be prepared and produced for the purposes of the collection of television licence fees.

(f) The Minister must issue policy directives on the use of television licence fees.”. 10

Amendment of section 28 of Act 4 of 1999

22. Section 28 of the principal Act is hereby amended by the addition of the following subsection:

“(3) The Board must, whilst the State is the sole shareholder in the Corporation, ensure that the Corporation complies with the provisions of the Public Finance Management Act relating to the preparation and submission of annual reports by public entities.” 15

Amendment of section 30 of Act 4 of 1999

23. Section 30 of the principal Act is hereby amended by— 20

(a) the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) reflect the culture, character, religion, needs and aspirations of the people in the regions that they are licensed to serve subject to licence conditions;”;

(b) the addition of the following subsection: 25

“(8) A subscription television service must—

(a) carry original programming, including South African programming, of a nature and to the extent determined by the Authority by regulation; and;

(b) provide diversity in the types of broadcast service and content.” 30

Amendment of section 31 of Act 4 of 1999

24. Section 31 of the principal Act is hereby amended by—

(a) the deletion of subsection (1);

(b) the substitution for subsection (2) of the following subsection:

“(2) The Authority must as soon as reasonably possible conduct a licensing process **[immediately if it finds that the provision of additional subscription television services is feasible]** for licences classified under section 5(2)(e) and (f).”; and 35

(c) the addition of the following subsections:

“(3) Pursuant to the inquiry referred to in section 33(1), the Authority shall as soon as possible after completion of such inquiry issue a recommendation to the Minister as to whether sections 49 and 50 of the IBA Act should apply to broadcasting services broadcasting on more than one channel, and if such sections should apply, as to the extent to which and terms upon which such sections should apply. 40 45

(4) Sections 49 and 50 of the IBA Act do not apply to broadcasting services broadcasting more than one channel, unless and until the Authority has issued the recommendation referred to in subsection (3) and such recommendation has been adopted by the Minister, in which event such sections apply to the extent so adopted.”. 50

Amendment of section 32 of Act 4 of 1999

25. Section 32 of the principal Act is hereby amended by the substitution in subsection (4) for paragraph (b) of the following paragraph:

“(b) be informational, educational, spiritually enriching and entertaining;”.

Insertion of section 32A in Act 4 of 1999

26. The following section is hereby inserted in the principal Act after section 32:

“Regional television services

32A. (1) There are two regional television services in the Republic that consist of—

- (a) The northern region television service; and
- (b) The southern region television service.

(2) The northern region television service covers North West, Limpopo Province, Gauteng and Free State and must broadcast programmes primarily in the official languages of Setswana, Sesotho, Sepedi, Xitsonga and Tshivenda.

(3) The southern region television service covers the Northern Cape, the Western Cape, the Eastern Cape, Mpumalanga and KwaZulu-Natal and must broadcast programming primarily in the official languages of isiXhosa, isiZulu, Setswana, siSwati, Afrikaans and isiNdebele.

(4) The Minister must, for the purposes of subsection (1), establish one or more corporate entities, which must be licensed to conduct either the northern region television service or the southern region television service, with the State initially as the sole shareholder and the Minister may thereafter invite public and private investor participation in the regional television services in compliance with the objectives set out in sections 2 and 3.”.

Amendment of section 34 of Act 4 of 1999

27. Section 34 of the principal Act is hereby amended by the addition—

- (a) to subsection (2) of the following paragraph:

“(g) the provision of efficient delivery of programming using the most effective technologies available at reasonable cost, considering prevailing market structures and in accordance with prescribed standards.”; and

- (b) of the following subsection:

“(4) A broadcasting signal distribution service that provided broadcasting signal distribution for broadcasting service immediately before the commencement of this Act without a broadcasting signal distribution licence, is regarded as having the necessary permission to continue to operate such broadcasting signal distribution service until—

- (a) a date to be determined by the Authority by notice in the *Gazette*; or
- (b) the date upon which the Authority grants or refuses an application by such broadcasting signal distribution service for a broadcasting distribution licence,

whichever date is the earliest.”.

Amendment of section 40 of Act 4 of 1999

28. Section 40 of the principal Act is hereby amended by the addition in subsection (1) of the following paragraph:

- “(c) (i) the television licence fee which is payable for any television licence issued in terms of this Act, including the manner of payment and the collection thereof, penalties and ancillary costs;

- (ii) the period of validity of a television licence;
- (iii) the purpose for which and the place where a television set may be used;
- (iv) different categories of television licences which any user of a television set may be required to possess;
- (v) the duty to keep, maintain and furnish records and information, including a duty to supply the Corporation with such records and information as may be prescribed;
- (vi) exemptions from the obligation to be in possession of a television licence; and

- (vii) the transferability of a television licence.”.

Insertion of Schedule 2 in Act 4 of 1999

29. The principal Act is hereby amended by the insertion of the following Schedule, the existing Schedule becoming Schedule 1:

“SCHEDULE 2**TRANSITIONAL ARRANGEMENTS**

5

(Section 7(4))

1. The Registrar appointed in terms of section 7 of the Companies Act must on the date of conversion register the memorandum and the articles of association of the Corporation in terms of section 63(1) of the Companies Act and issue a certificate of incorporation and a certificate to commence business to the Corporation, but no fees are payable in respect of such registration or issue. 10

2. From the date of conversion the provisions of the Companies Act shall apply to the Corporation as if it had been incorporated in terms of the Companies Act on that date, save to the extent stipulated in items 3 and 4 of this Schedule. 15

3. Sections 32, 44, 54(2), 60, 63(2), 64, 65 and 172 of the Companies Act do not apply to the Corporation.

4. Whilst the State is the sole shareholder in the Corporation, sections 66, 190 and 344(b) and (d) of the Companies Act do not apply to the Corporation. 20

5. All references in this Act to the conversion of the old Corporation must be construed as references to the conversion of the legal nature of the old Corporation into a public company having a share capital and having been incorporated in terms of the Companies Act as stipulated in section 7(2) of this Act. 25

6. Neither the repeal of the Broadcasting Act, 1976 (Act No. 73 of 1976), nor the conversion of the old Corporation affects—

(a) the continued corporate existence of the old Corporation as from the date of its first establishment; 30

(b) any of the rights, liabilities or obligations acquired or incurred by the old Corporation or on the old Corporation’s behalf at any time before its conversion; or

(c) the terms and conditions of service of its employees. 35

7. (1) Any reference to the old Corporation in the patents register, trade marks register, design register, deeds register or any other register in the Republic is with effect from the date of conversion deemed to be a reference to the Corporation. 35

(2) The relevant registrar must make such entries or endorsements in any register referred to in item 7(1) or other documents in the registrar’s office or submitted to the registrar as are necessary to give effect to the conversion and this Schedule. 40

(3) No fees or other levies are payable in respect of such entries or endorsements.

8. Any legal proceedings instituted by or against the old Corporation prior to the date of conversion may, notwithstanding such conversion, be proceeded with or instituted by or against the Corporation subject to the law governing the prescription of claims. 45

9. (1) The Minister of Finance, after consultation with the Minister, must determine the tax values of the assets owned by the Corporation as at the date of conversion for the purpose of calculating any wear and tear or capital allowance or any deduction as contemplated in the Income Tax Act, 1962 (Act No. 58 of 1962). 50

(2) The assets contemplated in subitem (1) are for the purposes of sections 11(e), 12C, and 13 of the Income Tax Act, 1962 (Act No. 58 of 1962), deemed to have been brought into use for the first time at a cost equal to the value determined in terms of subitem (1). 55

10. (1) The old Corporation shall before the date of conversion conduct a legal and financial due diligence investigation into the state of its affairs for the purposes of identifying and establishing the status of all its assets, rights, obligations and liabilities.

(2) The old Corporation must submit to the Minister, by not later than three months prior to the date of conversion, a legal and a financial due diligence report containing details of all of such assets, rights, obligations and liabilities and the implications of the contracts concluded by or on behalf of the old Corporation in respect of such assets, rights, obligations and liabilities.

11. The old Corporation must, after submitting the due diligence report to the Minister and before the date of conversion, prepare and submit to the Minister for approval an inventory of all its assets, rights, obligations and liabilities. The inventory must allocate, for the purposes stipulated in item 13, all assets, rights, obligations and liabilities of the Corporation to the public broadcasting service division or the commercial broadcasting service division, as the case may be.

12. The Minister must—

- (a) upon receipt of the inventory, submit it to the Board of the Corporation; and
- (b) on or as soon as reasonably possible after the date of conversion, sign the inventory of assets, rights, obligations and liabilities of the Corporation and submit a copy of the inventory to the National Treasury and the Auditor-General.

13. In order to determine the true income of and expenditure incurred by the Corporation in rendering a public broadcasting service and the commercial broadcasting service, the public broadcasting service division must be regarded as the holder and owner of all the assets and rights of the Corporation as at the date of conversion.

14. (1) Any use or exercise of any right of the Corporation in accordance with item 13, must be accounted for in the financial records of the public broadcasting service division and the commercial broadcasting service division on an arms' length commercial basis.

(2) Any service deemed to have been rendered by the public broadcasting service division to the commercial broadcasting service division and the other way round, must be regarded as having been rendered on an arms' length commercial basis for purposes of the financial records to be prepared in respect of the public broadcasting service division and the commercial broadcasting service division as stipulated in this Act.

15. The Board must submit details of the deemed market-related considerations upon which any of the assets or rights of the Corporation are to be made available to the commercial broadcasting service division and the deemed market-related consideration upon which services are to be rendered by the public broadcasting service division to the commercial broadcasting service division and the other way round, in the manner contemplated in item 14, to the Minister for approval.”.

Repeal and amendments of laws

30. The laws specified in Schedule 1 are repealed or amended to the extent indicated in the third column thereof.

Short title and commencement

31. This Act is called the Broadcasting Amendment Act, 2002, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE

No. and year of Act	Short title	Extent of amendment or repeal
Act No. 153 of 1993	Independent Broadcasting Authority Act, 1993	<p>1. Substitution for section 21 of the following section:</p> <p style="text-align: center;"><u>“Establishment of Broadcasting Monitoring and Complaints Committee</u></p> <p style="text-align: center;"><u>21.</u> The Council shall establish a Broadcasting Monitoring and Complaints Committee.”.</p> <p>2. Section 30 is hereby repealed.</p> <p>3. Amendment of section 56 by the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">“(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] prescribed.</p> <p>4. Substitution for section 69 of the following section:</p> <p style="text-align: center;">“Delegations</p> <p style="padding-left: 20px;">69. (1) The Council may in writing—</p> <p style="padding-left: 40px;">(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 preclude such officer from doing so; and</p>

No. and year of Act	Short title	Extent of amendment or repeal
		<p><u>(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.</u></p> <p><u>(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.</u></p> <p><u>(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.</u></p> <p><u>(4) The power to make regulations shall not be delegated under subsection (1).”.</u></p> <p>5. Schedule 1 is hereby repealed.</p>
Act No. 13 of 2000	Independent Communications Authority of South Africa Act, 2000	<p>1. Amendment of section 17 by the substitution for subsection (8) of the following subsection:</p> <p>“(8) The members of any committee, including the [Broadcasting Technical Committee and] Broadcasting Monitoring and Complaints Committee referred to in section 21 of the IBA Act, who are not councillors or members of the staff of the Authority must be paid such remuneration and allowances as the Council determines.”.</p>

MEMORANDUM ON THE OBJECTS OF THE BROADCASTING AMENDMENT BILL OF 2002

SUMMARY

1. The Broadcasting Amendment Bill seeks to address and give clarity relating to the following policy imperatives:

- * The amendment Bill closes the gap that currently exists by requiring not only broadcasting services but all distribution services to hold licenses prior to commencing operations.
- * The Bill seeks to harmonise the licensing processes and procedures relating to broadcasting and distribution services with the provisions of the IBA Act, 1993 (Act No.153 of 1993). The Bill makes sections 35, 36, 37, 41, 43, 44, 45(2), 46(1), 47(2), 48, 51, 52 and 74 of the IBA Act, 1993, applicable to any application for a broadcasting or distribution license in terms of this section.
- * The Bill seeks to provide for the SABC (hereinafter referred to as “the Corporation”) to develop policies that clarify its role and achieve its mandate. The Bill requires the Corporation in all its reporting to be accurate, accountable, fair and to advance national and public interest of the Republic in accordance with the Constitution.
- * The Bill outlines a clear procedure for the incorporation of the Corporation into a public company. The Bill requires the Corporation to conduct an extensive legal and financial due diligence investigation for the purposes of identifying all of its assets, liabilities, rights and obligations in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999), prior to the incorporation. Two sets of financial records, one for the public broadcasting service and another for the commercial broadcasting service division of the Corporation must be prepared. The Bill seeks to ensure that the public broadcasting service division of the Corporation does not subsidise the commercial broadcasting service of the Corporation. It is provided that the current Corporation continues to exist until the date of its incorporation.
- * The amendment Bill incorporates provisions that require the Board to prepare and submit to the Minister for approval business plans, financial statements, and a set of policies of both the public service division and commercial service division.
- * The Bill introduces a provision that requires the Board to establish two standing committees to ensure that the mandates and policies of the public broadcasting service and commercial broadcasting service are achieved and to allocate clear responsibility to the members of the Board .
- * Section 27 of the Act is amended to provide for a detailed television license collection mechanism and to prohibit the use of a television set by individuals and businesses without a television licence.
- * Section 30 is amended to provide for commercial broadcasters to pay license fees, and to have South African content in their programmes. ICASA is empowered to prescribe conditions in ethics regards.
- * Section 31 is amended to empower ICASA to conduct a licensing process for additional subscription services and to promote competition in that area.
- * Section 32 is amended to provide for the establishment of two regional television services in the country which will assist the national broadcaster in rolling out programming in indigenous languages which are not adequately covered by the national broadcaster.
- * The Bill provides that existing signal distribution services and multi-channel distribution services must apply to ICASA for a licence to continue with their operations. ICASA is empowered to impose licence conditions.

AMENDMENTS TO THE IBA ACT, 1993 AND ICASA ACT, 2000

Schedule 1 to this Bill seeks to—

- * repeal the provisions which refer to the Broadcasting Technical Committee in sections 21 and 30 of the IBA Act, 1993, and section 17 of the ICASA Act, 2000;

- * empower ICASA in section 56 and Schedule 1 to the IBA Act, 1993, to promulgate the code of Broadcasters in the form of regulations in accordance with section 78 of the IBA Act, 1993.

FINANCIAL IMPLICATIONS

The Broadcasting Amendment Bill contains no financial implications for the National Revenue Fund, the State, the SABC or the Regulator prior to the passing of the Bill into law. There will be financial implications for the National Revenue Fund in the implementation process of certain provisions of the Bill, for example, the rolling out of regional television services and the mechanism for the collection of television licence fees.

OTHER DEPARTMENTS/AGENCIES CONSULTED

An extensive consultative process was followed in the development and finalisation of the drafting of the Broadcasting Amendment Bill. The following stakeholders were consulted and their input taken into account:

- * The South African Broadcasting Corporation (SABC)
- * Independent Communications Authority of South Africa (ICASA)
- * The National Treasury
- * The Department of Trade and Industry
- * The Department of Education
- * The Department of Sports and Recreation
- * The Department of Labour
- * The Departments of Agriculture and of Land Affairs
- * Government Communication and Information Systems
- * The Department of Housing
- * The Department of Social Development
- * The Department for Public Enterprises
- * The Department of Health
- * The Department of Arts, Culture, Science and Technology
- * The Department of Water Affairs
- * The Department of Public Works
- * The Department of Home Affairs
- * The Department of Public Service and Administration
- * The Department of Minerals and Energy
- * The Department of Environmental Affairs and Tourism
- * The Department of Transport
- * Intelligence Services
- * The Department of Provincial and Local Government
- * The Department of Foreign Affairs

The Bill was sent to all Directors-General of the Departments mentioned above for comments.

PARLIAMENTARY PROCEDURE

The Department of Communications and the State Law Advisers are of the opinion that the Bill must be dealt with in accordance with the procedure established by Section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

Printed by Creda Communications

ISBN 0 621 32274 1