



# Submission on the South African Weather Service Amendment Bill B22-2011

January 2012



# Introduction

- ☐ e.tv today represented by:
  - ☐ Derek Van Dam, Chief Meteorologist
  - ☐ Dan Rosengarten, Attorney
  - ☐ Nick Ferreira, Counsel

## Introduction (2)

- ☐ e.tv thanks the Committee for the opportunity to participate in these hearings
- ☐ e.tv recognises the importance of updating the South African Weather Service Act to allow the SA Weather Service to function effectively.
- ☐ However, e.tv is concerned about the effects of s 30A of the Amendment Bill, and believes that the Bill in its present form is unconstitutional.

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## 1. Effect of section 30A(1)

☐ Three new criminal offences (with severe penalties) which are of concern to e.tv:

1. issuing of a severe weather warning without the written permission of SAWS
2. issuing of an air pollution-related warning without the written permission of SAWS
3. unlawful and intentional or negligent commission of any action which detrimentally affects or is likely to detrimentally affect the SAWS (see opinion)

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## 2. Constitutionality of s 30A(1)(a)

### ☐ Examples:

- ☐ e.tv broadcasts a warning of a severe storm approaching the South African coastline.
- ☐ The survivor of a tornado warns friends and neighbours that it is heading their way, by text message or on the internet.
- ☐ An NGO conducts tests to determine the levels of air pollution in an industrial area. It publishes the details of its research and uses it to advocate for better controls.
- ☐ A provincial government conducts air sampling and testing programs. When it discovers that air pollution levels are dangerous, it issues an alert to residents to avoid the area.

## Freedom of expression

- ❑ This is protected expression under s 16(1) of the Constitution, which includes “*the right to receive or impart information*”. It is not excluded by s 16(2).
- ❑ Because they require permission before publication, the provisions constitute a “prior restraint” on expression.

***“[t]he prior restraint of publication, though occasionally necessary in serious cases, is a drastic interference with freedom of speech”.***

*Midi Television (Pty) Ltd t/a E-TV v Director of Public Prosecutions (Western Cape) 2007 (5) SA 540 (SCA)*  
at para 6

## Limitations analysis

### ☐ Nature of the right

***“Freedom of expression lies at the heart of democracy. It is valuable for many reasons, including its instrumental function as a guarantor of democracy, its implicit recognition and protection of the moral agency of individuals in our society and its facilitation of the search for truth by individuals and society generally. The Constitution recognises that individuals in our society need to be able to hear, form and express opinions and views freely on a wide range of matters.”***

*South African National Defence Union v Minister of Defence & Another*  
1999 (4) SA 469 (CC) at para 7

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- ☐ Nature and extent of the limitation:
  - ☐ Where publication occurs without permission, the penalties are severe
  - ☐ Even where permission is granted, delay in seeking and obtaining permission undermines the value of the expression – severe weather and air pollution warnings are time-bound
- ☐ Importance of the purpose of the limitation
  - ☐ Prevention of hoaxes and deterring publication of false information is an important and legitimate purpose

- ☐ Less restrictive means to achieve the legislation's purpose
  - ☐ The provisions are overbroad
  - ☐ The provisions could simply have criminalised hoaxes.
  - ☐ Legislation restricting expression should be “**appropriately tailored**” and “**narrowly focused**”.

*Islamic Unity Convention v Independent Broadcasting Authority and Others 2002 (4) SA 294 (CC) at para 51*

# Vagueness

- ☐ Amendment Bill does not define central elements:
  - ☐ “*severe weather warning*”: Does the discussion of *potential* hazards from a severe storm (hail, wind, tornadoes) warrant criminal action? It is not clear either what is meant by “severe weather” or by “warning”.
  - ☐ “*Issuing*”: does any publication suffice? Does it have to come to the attention of a certain number of people?
- ☐ The CC has found that legislation which limits fundamental rights and creates criminal liability must be clear so that people will know precisely what conduct is prohibited.

*Masiya v Director of Public Prosecutions, Pretoria 2007 (5)  
SA 30 (CC) at para 52*



## Conclusion

- ❑ S 30A(1)(a) unconstitutional because over-broad and vague
- ❑ e.tv respectfully suggests that the Bill should be amended to narrow the scope of the new criminal offences to more precisely achieve their purpose.



Thank you