

REPUBLIC OF SOUTH AFRICA

**MEDIA DEVELOPMENT
AND DIVERSITY
AGENCY BILL**

*(As introduced in the National Assembly as a section 75 Bill; Bill published in
Government Gazette No 23090 of 4 February 2002)
(The English text is the official text of the Bill)*

(MINISTER IN THE PRESIDENCY)

[B 2—2002]

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BILL

To establish the Media Development and Diversity Agency; to provide for its objective and functions; to provide for the constitution of the Board and the management of the Agency by the Board; to provide for the chief executive officer and other staff of the Agency; to provide for the finances of the Agency; to provide for the support of projects aimed at promoting media development and diversity; and to provide for matters connected therewith.

Preamble

WHEREAS IT IS DESIRABLE TO—

ESTABLISH the Media Development and Diversity Agency to help create an enabling environment for media development and diversity that is conducive to public discourse and which reflects the needs and aspirations of all South Africans;

REDRESS exclusion and marginalisation of disadvantaged communities and persons from access to the media and the media industry;

PROMOTE media development and diversity by providing support primarily to community and small commercial media projects;

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

Definitions

1. In this Act, unless the context indicates otherwise—
- (i) “Agency” means the Media Development and Diversity Agency established by section 2; 5
 - (ii) “Board” means the Board referred to in section 4;
 - (iii) “community” means a geographically founded community and any group of persons or sector of the public having a specific, ascertainable common interest, including groups specified in section 17; 10
 - (iv) “community media” means media enterprises that are owned and controlled by a marginalised community where any financial surplus generated is reinvested in the community or the media enterprise;
 - (v) “diversity” with regard to media, means access to the widest range of sources of information and opinion, as well as equitable representation within the media in general; 15
 - (vi) “GCIS” means the Government Communication and Information System;
 - (vii) “media” means all forms of mass communication, including printed publications, radio, television and new electronic platforms for delivering content; 20
 - (viii) “media development” means the development of the media environment and infrastructure so that marginalised communities and persons have access to the media as owners, managers, producers and consumers of media;

- (ix) “media industry” means the entire media production process, including journalism, content provision, advertising, marketing, monitoring, printing, print distribution and signal distribution;
- (x) “member” means a member of the Board;
- (xi) “Minister” means the Minister responsible for GCIS; 5
- (xii) “Portfolio Committee” means the Portfolio Committee on Communications of the National Assembly;
- (xiii) “prescribe” means prescribe by regulation;
- (xiv) “projects” means projects referred to in section 18;
- (xv) “regulation” means a regulation made under section 21; 10
- (xvi) “small commercial media” means independent media enterprises or initiatives that are run for personal gain as micro, very small or small businesses as classified in the National Small Business Act, 1996 (Act No. 102 of 1996);
- (xvii) “support” means support referred to in section 15;
- (xviii) “this Act” includes any regulation made thereunder. 15

Establishment of Agency

- 2.** (1) A juristic person known as the Media Development and Diversity Agency is established by this section.
- (2) The Agency acts only through the Board, except in cases where the Board has delegated a function. 20
- (3) The Board must act in terms of section 47(2) of the Public Finance Management Act, 1999 (Act No. 1 of 1999).
- (4) The Agency is independent and must be impartial and exercise its powers and perform its duties without fear, favour or prejudice, and without any political or commercial interference. 25

Objective of Agency

- 3.** The objective of the Agency is to promote development and diversity in the South African media industry.

Constitution of Board

- 4.** (1) The Board of the Agency consists of at least seven members but not more than nine members. 30
- (2) The Board consists of one nominee from each of the sectors referred to in section 5(1)(a)(i) to (iv) and at least three nominees from the general public.
- (3) The Board consists of persons who, when viewed collectively—
- (a) are representative of a broad cross-section of the people of the Republic; and 35
 - (b) as far as possible, possess suitable qualifications, expertise and experience in fields such as—
 - (i) advertising;
 - (ii) media economics;
 - (iii) development economics; 40
 - (iv) social development;
 - (v) community media;
 - (vi) broadcast programming;
 - (vii) financial management;
 - (viii) law; 45
 - (ix) media, information and communication technology policy;
 - (x) journalism;
 - (xi) social science;
 - (xii) media training;
 - (xiii) literacy; and 50
 - (xiv) media funding.
- (4) A member must, before performing his or her functions, take an oath or affirm before a judge of the High Court, that he or she is committed to—
- (a) fairness, freedom of expression, openness and accountability; and
 - (b) upholding and protecting the Constitution and the other laws of the Republic. 55

Nomination and appointment of members

5. (1) (a) The Portfolio Committee must by notice, in the *Gazette* and in at least two newspapers circulating throughout the Republic, request nominations from—
- (i) GCIS;
 - (ii) the commercial print media sector; 5
 - (iii) the commercial broadcast media sector;
 - (iv) the community media sector; and
 - (v) the general public.
- (b) The notice referred to in paragraph (a) must specify the manner in which and time within which the nominations must be submitted. 10
- (c) For the purpose of the appointment of the first Board, the Portfolio Committee must within 60 days after the commencement of this Act, if Parliament is in session, or, if Parliament is not in session, within 60 days after the commencement of its next session, publish the notice in terms of paragraph (a).
- (d) For all subsequent appointments of members, the Portfolio Committee must, at 15
least 120 days prior to the expiry of the term of office of a member, request nominations from the relevant sector referred to in paragraph (a), by notice in terms of that paragraph.
- (2) The nominees recommended in terms of subsection (3) must be selected in a manner ensuring—
- (a) transparency and openness; and 20
 - (b) that a shortlist of nominees for recommendation is published.
- (3) The Portfolio Committee must, from the nominations received, recommend—
- (a) at least two but not more than three persons from each of the sectors specified in subsection (1)(a)(i) to (iv); and
 - (b) at least five but not more than 10 persons from the general public, 25
- to the President for appointment.
- (4) The President must appoint members from the nominees recommended by the Portfolio Committee.
- (5) (a) The President must appoint one of the members as chairperson of the Board.
- (b) In the absence of the chairperson, the remaining members must, from their 30
number, elect an acting chairperson, who while he or she so acts, must perform all the functions of the chairperson.
- (6) Members are appointed on a part-time basis.

Disqualification

6. (1) A person may not be appointed as a member if he or she— 35
- (a) is not a South African citizen and ordinarily resident in the Republic;
 - (b) is an unrehabilitated insolvent;
 - (c) is a member of Parliament, any provincial legislature or any municipal council;
 - (d) is an office-bearer or employee of any party, movement or organisation of a party-political nature; 40
 - (e) has, notwithstanding paragraph (f), at any time been convicted of theft, fraud, perjury, an offence under the Corruption Act, 1992 (Act No. 94 of 1992), or any other offence involving dishonesty;
 - (f) has been convicted after the commencement of the Constitution of a crime 45
specified in Schedule 1 to the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and has been sentenced to a period of imprisonment of not less than one year without the option of a fine;
 - (g) has, as a result of improper conduct, been removed from an office of trust; or
 - (h) is a public servant or the holder of any other remunerated position under the State, except a member nominated in terms of section 5(1)(a)(i). 50
- (2) A member ceases to be a member of the Board and must vacate his or her office if—
- (a) he or she becomes disqualified in terms of subsection (1), from being 55
appointed as a member;
 - (b) he or she submits his or her resignation in writing to the President;
 - (c) he or she is declared by a court to be of unsound mind or mentally disordered or is detained under the Mental Health Act, 1973 (Act No.18 of 1973);
 - (d) he or she has, without the leave of the Board, been absent from more than two 60
consecutive meetings of the Board;

- (e) the President withdraws the appointment, after consultation with the other members, if that member is incompetent or unfit to fulfill his or her duties;
 - (f) he or she is found guilty of misconduct; or
 - (g) he or she is found guilty of an offence under section 10(4).
- (3) (a) If a member dies or vacates his or her office in terms of subsection (2), the President may appoint a suitably qualified person, from the nominees referred to in section 5(4), from which such member was appointed, to fill the vacancy for the unexpired term of office. 5
- (b) If an appointment cannot be made in terms of paragraph (a)—
- (i) the Portfolio Committee must, as soon as possible, request nominations from the relevant sector in terms of section 5(1)(a) and (b); 10
 - (ii) the Portfolio Committee must compile a shortlist in terms of section 5(2) and must make recommendations in terms of section 5(3); and
 - (iii) the President must appoint a member from the recommendations referred to in subparagraph (ii). 15

Term of office of members

7. (1) Subject to subsection (2), the term of office of members is three years.
- (2) At least 50 percent of the members of the first Board must hold office for a period of five years.
- (3) The President must, within two years after the appointment of the first Board and in consultation with the Board, determine by notice in the *Gazette*, the members who must hold office for a period of five years. 20
- (4) No member may be appointed for more than two consecutive terms of office.

Remuneration of Board members

8. The Minister must, in consultation with the Minister of Finance, determine the remuneration of the members. 25

Meetings of Board

9. (1) The first meeting of the Board must be held at a time and place determined by the Minister, and thereafter meetings must be held at such times and places as the Board may determine. 30
- (2) The Board must meet four times a year.
- (3) The chairperson of the Board may at any time, and must at the request in writing of not fewer than four members, convene a special meeting of the Board, to be held at such time and place as the chairperson may determine.
- (4) There may not be more than eight special meetings per year. 35
- (5) A quorum for a meeting of the Board is the majority of its members.
- (6) The chairperson must give 14 days' prior written notice of every meeting of the Board to all members.
- (7) A decision of the majority of the members present at any meeting constitutes a decision of the Board and, in the event of an equality of votes, the chairperson must have a casting vote in addition to his or her deliberative vote. 40
- (8) Subject to section 10(3), if the requisite majority of the members who are entitled to sit as members at a meeting of the Board take a decision or authorise an act at that meeting, the decision taken or act performed under that authorisation is valid despite the fact that a member who had become disqualified in terms of section 6 but had not vacated his or her office, sat as a member. 45
- (9) Minutes of proceedings of every meeting of the Board must be recorded and entered in a book kept for that purpose.
- (10) Minutes of the proceedings of each meeting must be submitted at the next meeting of the Board and, if passed as correct, must be confirmed by the signature of the chairperson and may, when so confirmed, be evidence in a court of law of the proceedings of the first-mentioned meeting. 50
- (11) The Board may require the chief executive officer to attend any of the Board's meetings.

Conflicting interests

- 10.** (1) A member may not vote at, attend or in any other manner participate in, any meeting of the Board, nor be present at the place where the meeting is held, if—
- (a) in relation to an application for support, he or she or his or her family member is a director, member or business partner or associate of, or has an interest in, the business of the applicant or of any person who made representations in relation to the application; or
 - (b) in relation to any matter before the Board, he or she has any interest which might preclude him or her from performing his or her functions as a member in a fair, unbiased and proper manner.
- (2) (a) If, during the course of any proceedings before the Board, there is reason to believe that a member has any interest contemplated in subsection (1), that member must immediately fully disclose the nature of his or her interest and leave the meeting or hearing in question so as to enable the remaining members to discuss the matter and determine whether or not that member should be allowed to participate in the proceedings.
- (b) The disclosure, and the decision taken by the remaining members, must be recorded in the minutes of the proceedings in question.
- (3) If any member 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 Board is held or in any manner participates in the proceedings of the Board, the relevant proceedings of the Board are null and void.
- (4) A member is guilty of an offence and liable on conviction to a fine not exceeding R250 000 or to imprisonment for a period not exceeding five years, or to both such fine and imprisonment, if he or she—
- (a) contravenes subsection (1); or
 - (b) fails to disclose any interest or fails to leave the meeting or hearing as required by subsection (2).

Staff

- 11.** (1) The Board must appoint a person qualified and experienced in accounting and financial matters, and who is, as far as possible, qualified or experienced in the fields set out in section 4(3)(b), as chief executive officer of the Agency.
- (2) A person is disqualified from being appointed or remaining a chief executive officer if he or she is a Board member or subject to any of the disqualifications mentioned in section 6(1).
- (3) A chief executive officer holds office for a period not exceeding five years and may not be appointed for more than three consecutive terms of office.
- (4) The Board may at any time terminate the appointment of the chief executive officer—
- (a) if that chief executive officer has repeatedly failed to perform the duties of his or her office efficiently;
 - (b) if, due to any physical or mental illness or disability, that chief executive officer has become incapable of performing his or her functions or performing them efficiently; or
 - (c) for misconduct.
- (5) The chief executive officer and staff must be appointed in accordance with procedures applicable to the appointment of public servants in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994).
- (6) The terms and conditions of service of the chief executive officer and other staff of the Agency, including their remuneration, allowances, pensions and other service benefits, are determined by the Board.
- (7) The remuneration, allowances, pension and other service benefits referred to in subsection (6) must be determined in accordance with a system approved by the Minister with the concurrence of the Minister of Finance.

Functions of chief executive officer

- 12.** (1) Subject to the written directions of the Board and section 14(2)(b), the chief executive officer may appoint such other staff for the Agency as are necessary to perform the work arising from or connected with the functions of the Board or the Agency.

- (2) The chief executive officer must—
- (a) ensure that the instructions of the Board are carried out;
 - (b) report to the Board on the activities of the Agency; and
 - (c) compile an annual report on the activities of the Agency and submit the report to the Board for approval. 5
- (3) The report referred to in subsection (2)(c) must include—
- (a) audited financial statements;
 - (b) a list of all beneficiaries;
 - (c) an evaluation of how the Agency’s mandate has been achieved; and
 - (d) a projection of forthcoming activities. 10

General functions of Board

13. (1) The Board must, in the promotion of media development and diversity—
- (a) identify communities and persons that are not adequately served by the media;
 - (b) select projects in accordance with the criteria prescribed in terms of section 18(3) to receive support; 15
 - (c) promote media needs of special groups referred to in section 17;
 - (d) raise public awareness with regard to media development and diversity issues;
 - (e) engage in research regarding media development and diversity;
 - (f) ensure that the Agency and its objectives are made known to the public through marketing; and 20
 - (g) negotiate with public utilities, organisations and financial institutions to acquire indirect support for projects, including support in the form of—
 - (i) discounts or subsidies in print and signal distribution, postal rates and telephone tariffs; and
 - (ii) low-interest rate loans. 25
- (2) The Board must submit the approved report referred to in section 12(2)(c), to the Minister within three months of the end of the relevant financial year.
- (3) (a) The Board must arrange an annual meeting with stakeholders in the media industry to give a report on the Agency’s activities.
- (b) The Minister may, in consultation with the Board, determine which stakeholders must be invited to the meeting referred to in paragraph (a). 30
- (c) The Board must, in addition to the invitation extended to stakeholders mentioned in paragraph (b), publish an invitation to the annual meeting in at least two newspapers circulating throughout the Republic.
- (4) The Board may, after public consultations, make recommendations regarding media development and diversity to government and the media industry. 35
- (5) The Board may delegate any of the functions mentioned in this section, except the function specified in subsection (1)(b), to the chief executive officer.

Finances of Agency

14. (1) Funds of the Agency consist of— 40
- (a) money appropriated by Parliament;
 - (b) money received in terms of agreements contemplated in section 20;
 - (c) domestic and foreign grants;
 - (d) interest derived from any investments; or
 - (e) money lawfully accruing from any other source. 45
- (2) The money referred to in subsection (1) must be utilised to—
- (a) fund projects and activities connected therewith, including project evaluation, feasibility studies and needs analyses; and
 - (b) defray expenses, including expenses regarding remuneration, allowances, pensions and other service benefits referred to in section 11(5), incurred by the Agency in the performance of its functions under this Act as long as such expenses do not exceed the prescribed percentage of the funds referred to in subsection (1). 50

Nature of support provided by Agency

15. The nature of support provided by the Agency may be in the form of— 55
- (a) financial support by—
 - (i) direct subsidies that are cash grants;

- (ii) indirect subsidies that are grants to support the development of an enabling environment for media development and diversity; and
- (iii) emergency funding aimed at strengthening and ensuring the survival of media projects;
- (b) training opportunities and capacity development in all areas of media production and distribution; 5
- (c) conducting feasibility studies for new projects;
- (d) media research;
- (e) any indirect support referred to in section 13(1)(g); and
- (f) identifying, gathering and distributing resources for media development through agreements with strategic partners. 10

Allocation of support

16. (1) Direct subsidies referred to in section 15(a)(i) must only be granted to community media projects and not to small commercial media projects.

(2) Community media projects may also receive any other support contemplated in the Act. 15

(3) Small commercial media projects primarily receive low interest rate loans referred to in section 13(1)(g)(ii) and may receive, subject to subsection (1), any other support contemplated in this Act.

Special groups 20

17. Projects benefiting the following groups must be regarded as priority projects for the purpose of receiving support referred to in section 15:

- (a) People historically disadvantaged as a result of apartheid;
- (b) poor people;
- (c) people living in rural areas; 25
- (d) people living in cities and towns having limited media resources;
- (e) women;
- (f) youth and children;
- (g) members of marginalised language groups;
- (h) illiterate people; 30
- (i) senior citizens;
- (j) people with disabilities; and
- (k) groups with special needs not covered by paragraphs (a) to (j) and identified by the Board in consultation with the Minister.

Projects 35

18. (1) All projects must be aimed at achieving the objective of the Agency as contemplated in section 3.

(2) The Board must, when selecting projects, take into consideration the communities and persons identified in terms of section 13(1)(a).

(3) The Minister must, in consultation with the Board, prescribe— 40

- (a) detailed criteria for selecting—
 - (i) community media projects;
 - (ii) small commercial media projects; and
 - (iii) research projects;
- (b) the manner in which an application for support for projects must be made; and 45
- (c) the information that must accompany the application.

(4) The Minister may, in consultation with the Board, prescribe the percentages of the money referred to in section 14(2)(a), to be utilised for—

- (a) community media projects;
- (b) small commercial media projects; and 50
- (c) research projects.

(5) The information referred to in subsection (3)(c) may include information regarding—

- (a) the objectives and goals of the project;
- (b) business plans containing measures for future sustainability; and 55
- (c) the proposed budget.

Evaluation of projects receiving support

- 19.** (1) The Board must evaluate all projects receiving support so as to—
- (a) assess the progress of such projects; and
 - (b) ensure that such projects are achieving its goals.
- (2) If the Board is of the opinion that a project concerned is not achieving its goals, the Board may—
- (a) instruct the person in control of the project, in writing, to rectify the problem identified by it;
 - (b) if the instruction contemplated in paragraph (a) is not complied with, suspend or terminate the support provided to the project concerned.
- (3) (a) Any person or institution aggrieved by a decision made in terms of subsection (2) may, after giving notice to the Board in the prescribed manner, within a period of 30 days after the date of such decision, appeal to the Minister in the prescribed manner against such decision concerned.
- (b) The Board must, within a period of 14 days after the date on which a notice in terms of paragraph (a) is received, furnish the Minister with written reasons for the decision in question.
- (c) The Minister may, after consideration of the said reasons and the appellant's grounds of appeal, confirm, amend or set aside the decision.

Agreements

- 20.** (1) The Board may enter into agreements with any organisation in terms of which financial or non-financial assistance is given to the Board for the furtherance of the objective of this Act.
- (2) Assistance referred to in subsection (1) must serve to—
- (a) benefit the groups specified in section 17; and
 - (b) satisfy the criteria prescribed in terms of section 18(3)(a).

Regulations

- 21.** (1) The Minister may, in consultation with the Board, make regulations regarding any matter that is required or permitted to be prescribed in terms of this Act.
- (2) The Board must, not less than two months before any regulation is made, cause the text of such regulation to be published in the *Gazette*, together with a notice declaring the Minister's intention to make that regulation and inviting interested persons to furnish the Board with comments thereon or representations in regard thereto.

Short title and commencement

- 22.** This Act is called the Media Development and Diversity Agency Act, 2002, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE MEDIA DEVELOPMENT AND DIVERSITY AGENCY BILL, 2002

1. PURPOSE

The Media Development and Diversity Agency (MDDA) draft position paper was launched by the Minister in The Presidency on 29 November 2000 and was subsequently published for public comment. Submissions closed on 28 February 2001. Parallel to the review of submissions, the Government Communication and Information System (GCIS) was involved in ongoing stakeholder consultations and discussions. The proposed legislation has been drafted in the light of these submissions and consultations with stakeholders.

2. THE PROPOSED BILL SEEKS TO PROVIDE FOR:

- 2.1 The establishment of the Media Development and Diversity Agency (MDDA).
- 2.2 The establishment of the MDDA Board, to oversee the functions of the Agency.
- 2.3 The procedures for the appointment of the MDDA Chief Executive Officer and staff members.
- 2.4 The determination of projects to be supported and the types of support available to successful applicants to the Agency.
- 2.5 The determination of finances for the Agency.
- 2.6 The making of regulations regarding any matter that is required or permitted to be prescribed in terms of this Bill specifically with regard to funding criteria and how these are to be administered.

3. CONSULTATION

The following persons and bodies were consulted:

- 3.1 Submissions in response to the draft position paper were received on 28 February 2001 from the following organisations and individuals:
 - Association of Advertising Agencies
 - Association of Marketers
 - Caxton Publishers and Printers Limited
 - Development Bank of Southern Africa
 - Freedom of Expression Institute
 - Freedom of Commercial Speech Trust
 - Independent Communications Authority of South Africa
 - Johnnic Publishing
 - Marketing Industry Trust
 - Media Monitoring Project
 - Media 24 Limited (Subsidiary of Naspers)
 - M-Net
 - National Association of Broadcasters
 - National Community Radio Forum
 - National Electronic Media Institute of South Africa
 - Open Window Network
 - Primedia Broadcasting (Pty) Ltd
 - Print Media SA
 - SA National Editors' Forum
 - South African Advertising Research Foundation
 - Thornton & Morris Attorneys
 - Independent Media Development Trust

Submissions in personal capacity:

- Sean Jacobs
- GF Joubert
- Moeletsi Mbeki

- 3.2 On 27 March 2001 the parliamentary Portfolio Committee on Communication held public hearings on the MDDA.

Organisations and interested parties represented included:

Portfolio committee members
Print Media SA
National Association of Broadcasters
Association of Marketers
Association of Advertising Agencies
Media 24
Freedom of Expression Institute
National Community Radio Forum
Communications Workers Union
South African Communist Party

- 3.3 Ongoing consultations have been conducted with the following organisations and departments:

Government departments consulted were:

Department of Communications
Department of Justice (State Law Advisers)
Department of Trade and Industry
Department of Arts & Culture, Science & Technology

Other organisations consulted were:

Association of Marketers
Competitions Commission
Development Bank of SA
Freedom of Expression Institute
Independent Communications Authority of South Africa
National Association of Broadcasters
National Community Radio Forum
Print Media SA

4. FINANCIAL IMPLICATIONS FOR STATE

It is anticipated that government's contribution to the MDDA will be covered by existing allocations to departments within the Medium Term Expenditure Framework (MTEF).

5. PARLIAMENTARY PROCEDURE

The State Law Advisers and the GCIS are of the opinion that this Bill must be dealt with in accordance with the procedure set out in 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.