

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

**MEDIA DEVELOPMENT AND
DIVERSITY AGENCY BILL**

[B 2—2002]

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

[B 2A—2002]

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AMENDMENTS AGREED TO

MEDIA DEVELOPMENT AND DIVERSITY AGENCY BILL
[B 2—2002]

CLAUSE 1

1. On page 2, in line 8, to omit “and” and to substitute “or”.
2. On page 2, in line 10, to omit “, including groups specified in section 17”.
3. On page 2, in line 11, after “means” to insert “any”.
4. On page 2, in line 11, to omit “enterprises” and to substitute “project”.
5. On page 2, in line 11, to omit “are” and to substitute “is”.
6. On page 2, in line 12, to omit “marginalised”.
7. On page 2, in line 13, to omit “community or the”.
8. On page 2, in line 13, to omit “enterprise” and to substitute “project”.
9. On page 2, after line 13, to insert:
 - (v) “Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
10. On page 2, in line 22, to omit “marginalised” and to substitute “historically disadvantaged”.
11. On page 3, from line 1, to omit the definition of “media industry”.
12. On page 3, in line 9, to omit “18” and to substitute “19”.
13. On page 3, in line 10, to omit the definition of “regulation”.
14. On page 3, in line 14, to omit “15” and to substitute “17”.

CLAUSE 2

1. On page 3, in line 17, after “is” to insert “hereby”.
2. On page 3, in line 18, to omit “by this section”.
3. On page 3, from line 19, to omit “, except in cases where the Board has delegated a function”.
4. On page 3, in line 21, to omit “Board” and to substitute “Agency”.
5. On page 3, in line 21, to omit “of section 47(2)”.
6. On page 3, after line 25, to add:
 - (5) The Agency must not interfere in the editorial content of the media.

CLAUSE 3

1. On page 3, in line 28, to omit “industry” and to substitute:

throughout the country, consistent with the right to freedom of expression as entrenched in section 16(1) of the Constitution, in particular—

- (a) freedom of the press and other media; and
- (b) freedom to receive and impart information or ideas, and for that purpose to—
 - (i) encourage ownership and control of, and access to, media by historically disadvantaged communities as well as by historically diminished indigenous language and cultural groups;
 - (ii) encourage the development of human resources and training, and capacity building, within the media industry, especially amongst historically disadvantaged groups;
 - (iii) encourage the channelling of resources to the community media and small commercial media sectors;
 - (iv) raise public awareness with regard to media development and diversity issues;
 - (v) support initiatives which promote literacy and a culture of reading;
 - (vi) encourage research regarding media development and diversity; and
 - (vii) liaise with other statutory bodies such as the Independent Communications Authority of South Africa and the Universal Service Agency.

CLAUSE 4

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Constitution of and appointment of members of Board

- 4.** (1) (a) The Board consists of nine members.
 (b) Six members of the Board must be appointed by the President on the recommendation of the National Assembly, according to the following principles:
- (i) Participation by the public in the nomination process;
 - (ii) transparency and openness; and
 - (iii) the publication of a shortlist of candidates for appointment with due regard to subsection (4) and section 5.
- (c) Three members must be appointed by the President, taking into consideration section 15, of whom one must be from the commercial print media and another from the commercial broadcast media.
- (2) The President must appoint one of the members as chairperson of the Board.
- (3) Members are appointed on a non-executive basis.
- (4) Persons appointed to the board must be persons who are—
- (a) committed to fairness, freedom of expression, openness and accountability on the part of those entrusted with the governance of the public service;
 - (b) when viewed collectively—
 - (i) are representative of a broad cross section of the population of the Republic; and

- (ii) possess suitable qualifications, expertise and experience in fields such as community media, social, labour and development issues, media economics, financial management and funding, advertising and marketing, journalism and broadcast programming, media research, media training, literacy and education, media law, information and communication technology policy.

(5) A member must, before performing his or her functions, take an oath or affirmation 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.

CLAUSES 5 AND 6

Clauses rejected.

NEW CLAUSES

1. That the following be new Clauses:

Disqualification

5. A person may not be appointed as a member if he or she—

- (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;
- (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 the Republic of South Africa, 1993 (Act No. 200 of 1993) of a crime 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) has been declared by a court to be mentally ill or disordered.

Removal from office

6. (1) Subject to subsection (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 section 5, from being appointed as a member;
- (b) he or she submits his or her resignation in writing to the President;
- (c) he or she has, without the leave of the Board, been absent from more than two consecutive meetings of the Board;
- (d) he or she is found to be incompetent or unfit to fulfill his or her duties;
- (e) he or she is found guilty of misconduct; or
- (f) he or she is found guilty of an offence under section 11(4).

(2) A member may be removed from office only on—

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

Vacancies

7. (1) (a) If a member contemplated in section 4(1)(b) dies or vacates his or her office in terms of section 6, the President may appoint a suitably qualified person, from the nominees referred to in section 4(1)(b), from which such member was appointed, to fill the vacancy for the unexpired term of office.

(b) If an appointment cannot be made in terms of paragraph (a)—

- (i) the National Assembly must, as soon as possible, request nominations in terms of section 4(1)(b);
- (ii) the National Assembly must compile a shortlist in terms of section 4(1)(b)(iii) and must make recommendations in terms of section 4(1)(b); and
- (iii) the President must appoint a member from the recommendations referred to in subparagraph (ii).

(2) If a member contemplated in section 4(1)(c) dies or vacates his or her office in terms of section 6, the President must appoint another member in terms of section 4(1)(c) to fill the vacancy for the unexpired term of office.

CLAUSE 7

1. On page 5, in line 17, to insert:

(1) The chairperson holds office for a period of five years.

2. On page 5, in line 17, to omit “(2)” and to substitute “(3)”:

3. On page 5, from line 18, to omit subsection (2) and to substitute:

(3) Fifty per cent of the members of the first Board, who were nominated through a public process, must hold office for a period of five years.

4. On page 5, from line 20, to omit subsection (3) and to substitute:

(4) Members referred to in subsection (3) must be determined by lot in accordance with the Schedule.

CLAUSE 9

1. On page 5, from line 42, to omit subsection (8) and to substitute:

(8) In the absence of the chairperson the remaining members must from their number elect an acting chairperson who, while he or she so acts, performs all the functions of the chairperson.

(9) Subject to section 11(3), a decision taken by the Board or an act performed under that decision is not invalid merely by reason of—

- (a) any irregularity in the appointment of a member;
- (b) a vacancy on the Board; or

(c) the fact that any person not entitled to sit as a member sat as such at the time when the decision was taken:
 Provided such decision was taken by a majority of the Board members present at the time and entitled to sit, and those members at the time constituted a quorum.

2. On page 5, in line 53, to omit “may” and to substitute “must”.
3. On page 5, in line 54, after “meetings” to insert:
 , but the chief executive officer is not entitled to vote

CLAUSE 10

1. On page 6, in line 11, to omit “proceedings before” and to substitute “meetings of”.
2. On page 6, from line 13, to omit “or hearing”.
3. On page 6, in line 16, to omit “proceedings” and to substitute “meeting”.
4. On page 6, in line 18, to omit “proceedings” and to substitute “meetings”.
5. On page 6, in line 21, to omit “proceedings” and to substitute “meeting”.
6. On page 6, in line 22, to omit “proceedings” and to substitute “meeting”.
7. On page 6, in line 22, to omit “are” and to substitute “is”.

CLAUSE 11

1. On page 6, in line 32, to omit “4(3)(b)” and to substitute “4(4)(b)(ii)”.
2. On page 6, in line 35, to omit “6(1)” and to substitute “5”.
3. On page 6, in line 40, to omit “has repeatedly”.

CLAUSE 12

1. On page 6, in line 56, to omit “14(2)(b)” and to substitute “15(2)(b)”.

CLAUSE 13

1. On page 7, in line 13, after “identify” to insert “historically disadvantaged”.
2. On page 7, in line 15, to omit “18(3)” and to substitute “19(3)”.
3. On page 7, from line 16, to omit paragraphs (c), (d) and (e).
4. On page 7, in line 19, to omit “Agency and it’s” and to substitute “Agency’s”.
5. On page 7, in line 19, after “objectives” to insert “, achievements and activities”.
6. On page 7, in line 20, to omit “through marketing”.
7. On page 7, from line 26, to omit subsections (2), (3) and (4).

CLAUSE 14

1. On page 7, in line 42, to omit “20” and to substitute “21”.
2. On page 7, in line 48, after “studies” to omit “and”.
3. On page 7, in line 48, after “analyses” to insert “, research and training”.
4. On page 7, in line 50, to omit “11(5)” and to substitute “12(6)”.
5. On page 7, after line 53, to add:
 - (3) The Auditor-General must audit the financial statements of the Agency.

NEW CLAUSE

1. That the following be a new Clause:

Annual Report

16. (1) The Board must submit the approved report referred to in section 13(2)(c), to the Minister within three months of the end of the relevant financial year.

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

CLAUSE 15

1. On page 7, in line 55, after “provided” to insert “or facilitated”.
2. On page 8, from line 1, to omit subparagraph (ii).
3. On page 8, in line 9, to omit “13(1)(g)” and to substitute “14(1)(d)”.

CLAUSE 16

1. On page 8, in line 13, after “referred” to insert “to”.
2. On page 8, in line 13, to omit “15(a)(i)” and to substitute “17(a)(i)”.
3. On page 8, in line 13, to omit “must only” and to substitute “may”.
4. On page 8, in line 14, to omit “and not to small commercial media projects”.
5. On page 8, in line 18, to omit “13(1)(g)(ii)” and to substitute “14(1)(d)(ii)”.

CLAUSE 17

Clause rejected.

CLAUSE 18

1. On page 8, in line 36, to omit “objective” and to substitute “objectives”.
2. On page 8, in line 39, to omit “13(1)(a)” and to substitute “14(1)(a)”.

3. On page 8, in line 40, to omit “Minister” and to substitute “Board”.
4. On page 8, in line 40, to omit “, in consultation with the Board,”.
5. On page 8, in line 47, to omit “Minister may” and to substitute “Board must”.
6. On page 8, in line 47, to omit “, in consultation with the Board,”.
7. On page 8, in line 48, to omit “14(2)(a)” and to substitute “15(2)(a)”.
8. On page 8, in line 52, to omit “may” and to substitute “must”.

CLAUSE 19

1. On page 9, in line 4, to omit “its” and to substitute “their agreed”.
2. On page 9, from line 11, to omit subsection (3).

CLAUSE 20

1. On page 9, in line 22, to omit “Board” and to substitute “Agency”.
2. On page 9, in line 23, to omit “objective” and to substitute “objectives”.
3. On page 9, from line 24, to omit subsection (2).

NEW SCHEDULE

1. After page 9, to insert the following Schedule:

Schedule

DETERMINATION BY LOT FOR PURPOSES OF SECTION 8(4)

1. Upon having appointed the members of the Board in terms of section 4 of this Act, the Board must forthwith proceed, in an open and transparent manner, to determine by lot, as required by section 8 of this Act which three of such six members must hold their offices for a period of five years after their appointment. The chairperson of the Board must conduct the lot (hereinafter referred to as the designated person).

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

3. The designated person must thereafter display the six pieces of paper contemplated in item 2 to every person who is present at the place where the lot is being conducted who is desirous of inspecting any such piece of paper.

4. The designated person must thereafter fold every such piece of paper in such a manner that the name thereon is not visible, and place all such pieces of paper in an empty container.

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

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

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

8. The designated person must then unfold each of the three pieces of paper handed to him or her as contemplated in item 7, read out the names written thereon and display every such piece of paper to every person who is present at the place where the lot is being conducted and who is desirous of inspecting the same.

9. The three persons, whose names have been so drawn, must hold their offices for a period of five years after the date of their appointment as such.