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INTRODUCTION

The legal structures of apartheid South Africa were incapable of supporting the organisation and conduct of non-racial multi-party democratic elections. Because of this fact, a completely new legal scheme had to be established for the organisation and conduct of the first non-racial democratic elections held in April 1994.

The new legal framework included a provisional Constitution, a Transitional Executive Council, an Electoral Act, an Independent Electoral Commission, an Independent Broadcasting Authority and an Independent Media Commission. These structures were in the main transitional and lapsed after the first non-racial democratic elections aforementioned. In the light of this, only the main features of these structures will be given herein.

These structures demonstrated the lengths to which legal resourcefulness can go in given situations to create the conditions necessary to ensure the delivery of free and fair elections in an otherwise hostile atmosphere to democratic elections.

— *Section 1* —

CONSTITUTIONAL PROVISIONS RELEVANT TO 1994 ELECTIONS

1.01 The Franchise

A person who is –

- (a) (i) a South African citizen; or
 - (ii) not such a citizen but who in terms of an Act of Parliament has been accorded the right to exercise the franchise;
 - (b) of or over the age of 18 years; and
 - (c) not subject to any disqualifications as may be prescribed by law,
- shall be entitled to vote in elections of the National Assembly, a provincial legislative or a local government and in referenda or plebiscites contemplated in the Constitution, in accordance with and subject to the laws regulating such elections, referenda and plebiscites.¹

1.02 Fundamental Rights – Political Rights

Every citizen shall have the right –

- (a) to form, to participate in the activities of and to recruit members for a political party;
- (b) to campaign for a political party or cause; and
- (c) freely to make political choices.

Every citizen shall have the right to vote, to do so in secret and to stand for election to public office.²

1.03 System for Election of National Assembly

Parties registered in terms of the Electoral Act 1993, and contesting an election of the National Assembly, shall nominate candidates for such election on lists of candidates prepared in accordance with Schedule 2 of the Constitution and the Electoral Act 1993.

The 400 seats in the National Assembly shall be filled as follows:

- (a) 200 seats from regional lists submitted by the respective parties, with a fixed number of seats reserved for each region as determined by the Commission for a particular election, taking into account available scientifically based data in respect of voter representations by interested parties and a proposed determination in respect of the various regions – (not reproduced here);
- (b) 200 seats from national lists submitted by the respective parties, or from regional lists where national lists were not submitted.³

1.04 Adoption of New Constitutional Text

The Constitutional Assembly shall pass a new constitutional text within two years as from the date of the first sitting of the National Assembly under the Constitution.

For the passing of the new constitutional text by the Constitutional Assembly, a majority of at least two-thirds of all the members of the Constitutional Assembly shall be required: provided that provisions of such text relating to the boundaries, powers and functions of provinces shall not be considered passed by the Constitutional Assembly unless approved also by a majority of two-thirds of all the members of the Senate.⁴

— Section 2 —

TRANSITIONAL EXECUTIVE COUNCIL

2.01 Establishment

The Transitional Executive Council (herein referred to as “the Council”) was established by the Transitional Executive Council Act 1993.⁵

2.02 Objects of Council

The objects of the Council shall be to facilitate and promote, in conjunction with all legislative and executive structures of all levels of government in South Africa, the preparation for and transition to a democratic order in South Africa by –

- (a) creating and promoting a climate for free political participation by endeavouring to –

- (i) eliminate any impediments to legitimate political activities;
- (ii) eliminate any form of intimidation which has a bearing on the said transition;
- (iii) ensure that all political parties are free to canvass support from voters and to organise and hold meetings and for those purposes have access to all voters;
- (iv) ensure the full participation of women in the transitional and electoral structures and processes; and
- (v) ensure that no Government or administration exercises any of its powers in such a way as to advantage or prejudice any political party;
- (b) creating and promoting conditions conducive to the holding of free and fair elections;
- (c) exercising such powers and performing such duties as may be conferred or imposed upon it by any other law.⁶

2.03 Constitution of Council

Each Government, political party or organisation which –

- (a) is or was at any time represented on the Negotiating Council; and
- (b) by notice in writing to the Negotiating Council commits itself to the objects of the Council, and in respect of itself and all organisations which are under its authority or control, and any armed force which is under its authority and control, or associated with it and promotes its objectives –
 - (i) undertakes to be bound by and to implement directions issued by the Council; and
 - (ii) renounces violence as a means of achieving political objectives,

shall be a participant in the Council and shall be entitled to be represented by one member on the Council.

The Government of the Republic of Transkei, Bophuthatswana, Venda or Ciskei, or any political party registered only in or operating only from or any organisation operating only from such a State, shall not be a participant in the Council unless –

- (a) the provisions of the Transitional Executive Council Act, as well as the provisions of the Independent Electoral Commission Act 1993, the Electoral Act 1993, the Independent Media Commission Act 1993 and the Independent Broadcasting Authority Act 1993, have been incorporated into the law of the State concerned; or
- (b) formal provision has been made by law in such a State for the application of any Act referred to in the foregoing provisions in that State.

A participant in the Negotiating Council that wishes to be represented on the Council shall within seven days after the commencement of the Act by notice in writing to the State President nominate a member and an alternate member to the Council.

The State President shall within seven days after the receipt of such a notice, by proclamation in the Gazette appoint the persons so nominated as a member alternate, respectively, of the Council.⁷

2.04 General Powers of Council

The Council shall, in addition to the other powers conferred upon it by the Act or any other law, for the purpose of attaining its objects have the power to –

- (a) request and obtain all such information and documents as may be necessary for attaining its objects;
- (b) direct a sub-council to enquire into and to advise the Council on any matter in connection with the functions of the Council;
- (c) initiate or participate in negotiations relating to its functions and objects;
- (d) appoint staff to assist the Council and sub-councils in the performance of their functions, and in consultation with the State President, to determine the conditions of service, remuneration, allowances and other benefits of such staff;
- (e) request the secondment of skilled staff from any public service in South Africa, subject to any law applicable to such staff in that regard, to assist the Council or a sub-council in the performance of its functions;
- (f) make rules providing for the convening of and procedure at meetings of the Council and sub-councils;
- (g) appoint from among its members office bearers, on either a fixed or a rotational basis;
- (h) appoint a person, body or subcommittee to investigate or deal with any matter relating to the Council's functions and to report thereon;
- (i) open and administer its own financial accounts; and
- (j) take such steps, including legal steps, in terms of any law or the common law, as may be necessary to give effect to the Act or to any decision taken by the Council or a sub-council.

The Council may delegate to a sub-council any of its powers, but it shall not be divested of a power so delegated.⁸

2.05 Decisions

All decisions of the Council or a sub-council shall be taken by the members thereof alone and shall, as far as possible, be taken on a basis of consensus.⁹

2.06 Duration

The Transitional Executive Council shall lapse upon the assumption of office by the members of the first Cabinet in terms of the Constitution.

The Council and every sub-council shall be dissolved on the date referred to in the foregoing provision.¹⁰

— *Section 3* —

ELECTION ADMINISTRATION

3.01 Independent Electoral Commission

The provisions of the Electoral Act 1993 were administered by the Independent Electoral Commission which was established by a separate Act. The Electoral Act required the Independent Electoral Commission to endeavour to create an environment which generated confidence in the electoral process and the secrecy of the ballot.¹¹

3.02 Establishment and Objects of Commission

The Independent Electoral Commission was established by the Independent Electoral Commission Act 1993.

The objects of the Commission shall be –

- (a) to administer, organise, supervise and conduct, whether directly or indirectly, free and fair elections for the National Assembly and all other legislatures in terms of the Constitution and the Electoral Act;
- (b) to promote conditions conducive to free and fair elections;
- (c) to determine and certify the results of elections, and to certify to what extent such elections have been free and fair;
- (d) to conduct voter education; and
- (e) to make and enforce regulations for the achievement of such objects.¹²

3.03 Constitution of Commission

The Commission shall consist of not fewer than seven and not more than 11 members, who shall be appointed by the State President upon the advice of the Council, and who shall be impartial, respected and suitably qualified men and women, do not have a high party political profile, are themselves voters, and represent a broad cross-section of the population.

The State President shall, upon the advice of the Council, appoint not more than five persons (not being citizens of the Republic) from the international community as members of the Commission in a non-representative capacity.

Such international members shall have the same rights and powers as other members, excluding the power to vote, and shall not constitute part of any quorum in terms of the Independent Electoral Commission Act.

The State President shall, upon the advice of the Council, designate two members as Chairperson and Vice-Chairperson of the Commission, respectively: provided that if the Transitional Council so decides, it may advise the State President to designate two members as Co-Chairpersons in lieu of a Chairperson and Vice-Chairperson, and designate which one of them shall preside at the first meeting of the Commission.

In the absence of both such Chairperson and Vice-Chairperson, or both such Co-Chairpersons, as the case may be, the remaining members shall by simple majority nominate another as acting Chairperson of the Commission.

The international members shall not be eligible to serve as Chairperson, Co-Chairperson, Vice-Chairperson or acting Chairperson.¹³

3.04 Conduct Required of Members

Every member and international member of the Commission shall –

- (a) be appointed in his or her individual capacity, and shall, notwithstanding any personal opinion, preference or party affiliation, serve impartially and independently and perform his or her functions in good faith and without fear, favour, bias or prejudice;
- (b) serve in a full-time capacity to the exclusion of any other duty or obligation arising out of any other employment or occupation or holding of any other office.¹⁴

3.05 Independence of Commission

The Commission shall function without political or other bias or interference and shall be independent and separate from the Council, any party, any government and its administration or any other functionary or body, whether directly or indirectly representing the interests of any such entity.

Any power of any of the entities referred to above, in so far as it relates to the administration, organisation, conduct and supervision of any election, shall be subject to the powers of the Commission, to which such entities shall be accountable for such of their acts and decisions as may influence or affect any election.¹⁵

3.06 Dissolution of Commission

The Commission shall be dissolved upon the completion of its mandate on a date fixed by the State President by proclamation in the Gazette.¹⁶

3.07 Powers, Duties and Functions of Commission

The Commission may exercise the powers and shall perform the duties and functions conferred upon or assigned to it by the Act or any other law.

The Commission shall –

- (a) assume responsibility for the administration, organisation and conduct, whether directly or indirectly, and the supervision of the administration, organisation and conduct of any election;
- (b) take such measures as it may consider necessary for the prevention of intimidation of voters, candidates and parties;
- (c) be responsible for the education of voters concerning –

- (i) democratic principles and values;
 - (ii) the electoral process and mechanisms;
 - (iii) the right to free political canvassing and campaigning;
 - (iv) secrecy of voting; and
 - (v) any other relevant matter,
- by means of –
- (aa) literature and the use of other media, including distribution and publication of suitable literature, advertisements and dissemination through radio, television and the public printed media, having due regard to the variety of languages spoken and varying levels of education throughout the Republic; and
 - (bb) workshops, seminars and meetings, as it may consider appropriate; and
- (d) submit monthly reports in writing concerning its functions, which reports shall be delivered at the same time to the Council and the State President, and such reports shall be public documents.

The Commission shall have power –

- (a) to hear and determine appeals against decisions or actions of the Chief Directors of Administration and Monitoring respectively in respect of prescribed matters, which decisions or actions may be confirmed, varied or set aside;
- (b) to give instructions to the Chief Directors: Administration and Monitoring in respect of matters concerning their functions, which power may be exercised either upon request from the said Chief Directors or at its own initiative; and
- (c) to establish such committees as it may consider necessary for the effective exercise and performance of its powers, duties and functions, and determine the composition, quorum for a meeting and a decision, procedure and functions thereof.¹⁷

3.08 International Advisory Committee

The State President shall, upon the advice of the Council, establish a committee to be known as the International Advisory Committee to advise the Commission on any matter regarding the performance of its functions as may be requested by it.

The International Advisory Committee may consist of persons (not being citizens of the Republic) from the international community appointed in a non-representative capacity by the State President upon the advice of the Council.

The International Advisory Committee may determine its own procedures to be followed at its meetings.¹⁸

3.09 Administration and Staff of Commission

The Commission shall, in addition to the other powers conferred upon it by the Act and any other law, for the purpose of achieving its objects, have power to –

- (a) appoint staff to assist it or a Chief Director of a directorate or the Secretary in the

performance of its or his or her functions, and after consultation with the Minister of State Expenditure determine their conditions of service, remuneration, allowances and other benefits, including those of –

- (i) members of committees who are not members of the Commission;
 - (ii) the Chief Directors: Administration and Monitoring and the Secretary; and
 - (iii) other officials;
- (b) request the secondment to it of skilled personnel from any public service, subject to any law applicable to such personnel in that regard, to assist the Commission, the Chief Directors of the directorates or the Secretary in the performance of its, his or her functions;
- (c) open and maintain its own financial accounts; and
- (d) take such steps, including legal steps, as are necessary to give effect to the Act or any decision taken thereunder.¹⁹

3.10 Expenditure of Commission and Budget

The expenditure in connection with the exercise of the Commission's powers and the performance of its duties and functions shall be paid out of money appropriated by Parliament for such purpose.

The Commission shall budget for and be allocated the necessary resources or additional resources to enable it to exercise its powers and perform its duties and functions effectively.²⁰

3.11 Determination and Certification of Election Results, or Declaration

Upon completion of the ballot, the Commission shall as expeditiously as possible, but not sooner than two days and not later than ten days after the close of the poll –

- (a) determine and certify the results of the election; and
- (b) either certify in respect of the National Assembly and such other legislature that the election was substantially free and fair; or
- (c) declare that it was unable to certify it as such.²¹

3.12 Election Administration Directorate

There shall be established on the date on which the Commission is constituted, a directorate to be known as the Election Administration Directorate.

The Administration Directorate shall consist of a Chief Director: Administration, one or more deputy directors and such other officials as the Commission may consider necessary and appoint to enable that Directorate effectively to perform its functions in terms of the Independent Electoral Commission Act and the Electoral Act.

In effecting the appointment of the Chief Director of Administration, and Deputy Director, the Commission shall invite and, where given, consider, but shall not be bound by, the advice of the Council.

Any decision or action taken by any functionary of any sub-structure of the Administration Directorate in any geographic district or region in respect of any prescribed matter may be appealed against to the Chief Director of Administration, who may confirm, vary or set aside any such decision or action.

The Chief Director of Administration shall –

- (a) operate independently of the Chief Director of Monitoring;
- (b) be under the supervision of the Commission; and
- (c) carry out the instructions of the Commission, to which he or she shall be accountable.

The Chief Director of Administration may delegate the power to hear and determine appeals, and may delegate any other power conferred upon him or her by or under the Electoral Act and the Independent Electoral Commission Act to any official of his or her directorate as he or she may consider necessary.²²

3.13 Election Monitoring Directorate

There shall be established on the date on which the Commission is constituted, a directorate to be known as the Election Monitoring Directorate.

The Monitoring Directorate shall consist of a Chief Director of Monitoring and such other officials as the Commission may consider necessary and appoint to enable that Directorate effectively to perform its functions.

In effecting the appointment of the Chief Director of Monitoring, the Commission shall invite and, where given, consider, but shall not be bound by, the advice of the Council.

The Chief Director of Monitoring shall –

- (a) appoint monitors and co-ordinate their functions to observe and report to him or her upon the electoral process, including political meetings, canvassing, advertising and other campaigning;
- (b) register observers and regulate their activities, and publish guidelines and, if he or she considers it necessary, a Code of Conduct binding upon all such observers;
- (c) facilitate the role of international observers and provide them with information and assistance as may be required to enable them to perform their duties;
- (d) investigate alleged infringements of the Electoral Code of Conduct, other alleged electoral offences and any other matters justiciable in terms of the Commission Act and the Electoral Act and report to the Commission thereon;
- (e) issue and execute prescribed search warrants and subpoenas and seize items required in connection with the investigation of alleged infringements of the Electoral Code of Conduct, other alleged electoral offences and any other matters justiciable, with the assistance of the National Peacekeeping Force, the police or defence forces, as may be requested by the Commission;
- (f) initiate or co-ordinate meetings between the various registered parties participating in

- the election with a view to mediating and, if possible, resolving issues and disputes arising in the course of the election, by negotiation and mutual agreement;
- (g) issue prescribed warnings, concerning alleged or threatened infringements of the Electoral Code of Conduct;
 - (h) report to the Commission upon the electoral process as required by it;
 - (i) operate independently of the Chief Director of Administration, and the Secretary;
 - (j) be under the supervision of the Commission;
 - (k) carry out the instructions of the Commission, to which he or she shall be accountable; and
 - (l) have such other powers, duties and functions as may be prescribed.

Any decision or action taken by any functionary of any sub-structure of the Monitoring Directorate in any geographic district or region in respect of any prescribed matter may be appealed against to Chief Director of Monitoring, who may confirm, vary or set aside any such decision or action.

The Chief Director of Monitoring may delegate any power conferred upon him or her to any official of his or her directorate as he or she may consider necessary.²³

3.14 Election Adjudication Secretariat

There shall be established on the date on which the Commission is constituted a secretariat to be known as the Election Adjudication Secretariat. The Secretariat shall consist of a Secretary and such other officials as the Commission may consider necessary and appoint to enable the Secretariat effectively to perform its functions.

In effecting the appointment of the Secretary, the Commission shall invite and, where given, consider, but shall not be bound by, the advice of the Council.

The Secretary shall –

- (a) co-ordinate the functions of the Electoral Tribunals, the Electoral Appeal Tribunals and the Special Electoral Court;
- (b) perform the administrative work connected with the performance of the functions of those Tribunals and that Court;
- (c) operate independently of the Chief Directors: Administration and Monitoring;
- (d) be under the supervision of the Commission; and
- (e) carry out the instructions of the Commission, to which he or she shall be accountable.

The Secretary shall have such other powers, duties and functions, as may be prescribed.²⁴

3.15 Electoral Tribunals

The Commission shall establish such number of Electoral Tribunals with jurisdiction in respect of prescribed geographic areas as it may consider necessary to adjudicate and decide prescribed matters concerning alleged electoral irregularities and alleged infringements of the Electoral Code of Conduct.

An Electoral Tribunal shall consist of one person, who shall be an attorney, advocate, magistrate or academic lawyer at a university with not less than five years' experience in one or more such capacities, appointed to that office by the Commission.

An Electoral Tribunal hearing any matter falling within its jurisdiction, shall enquire into the matter in the prescribed manner, consider it and make such decision or give such order as in its opinion is fair and just.

An Electoral Tribunal finding any person or party guilty of contravening or failing to comply with any prescribed matter or any provision of the Electoral Code of Conduct, may impose any such penalty or sanction as may be prescribed, as it may consider appropriate in the circumstances.

An Electoral Tribunal shall have such other powers, duties and functions as may be prescribed.²⁵

3.16 Electoral Appeal Tribunals

The Commission shall establish such number of Electoral Appeal Tribunals as it may consider necessary to hear and determine appeals and to review decisions from the Electoral Tribunals.

An Electoral Appeal Tribunal shall consist of three persons appointed by the Commission, of whom –

- (a) the Chairperson shall be a judge of the Supreme Court;
- (b) one shall be an attorney, advocate or magistrate or academic lawyer at a university with not less than five years' experience in one or more such capacities;
- (c) one shall be a suitable person, who may or may not be legally qualified or experienced.

An Electoral Appeal Tribunal hearing any or reviewing any decision shall enquire into the matter in the prescribed manner, consider it and confirm, vary or set aside the decision, order, penalty or sanction of the Electoral Tribunal, or make such other decision or give such other order or impose such other penalty or sanction as in its opinion the Electoral Tribunal ought to have made, given or imposed.

An Electoral Appeal Tribunal shall have such other powers, duties and functions as may be prescribed.²⁶

3.17 Special Electoral Court

There is hereby established a court to be known as the Special Electoral Court.

The Special Electoral Court shall consist of –

- (a) a Chairperson, who shall be a judge of the Appellate Division of the Supreme Court, and two judges of the Supreme Court designated by the Chief Justice; and

- (b) two other members, of whom –
- (i) one shall be an attorney, advocate, magistrate or academic lawyer at a university with not less than five years' experience in one or more such capacities; and
 - (ii) one shall be a suitable person, who may or may not be legally qualified or experienced,
- appointed by the Council.

The Special Electoral Court shall have power to review any decision of the Commission.

Any such review shall be conducted on an urgent basis, and shall be deposited of as expeditiously as possible.

The Special Electoral Court shall have power to hear and determine an appeal against any decision of the Commission only in so far as such decision relates to the interpretation of any law or any other matter for which an appeal is provided in the Electoral Act.

No such appeal shall be heard save with the prior leave of the Chairperson of the Special Electoral Court granted on application within the period and in the manner determined by that Court.

Such an appeal shall be heard, considered and summarily determined upon written submissions submitted within three days after leave to appeal was granted.

The Special Electoral Court shall have power to remove any member of the Commission from office.

The Special Electoral Court shall have power to hear appeals against and review decisions of any Appeal Tribunal.²⁷

3.18 Dissolution of Directorates, Secretariat and Tribunals

The directorates and the Secretariat shall be dissolved on the date upon which the Commission is dissolved.

The Electoral Tribunals and the Electoral Appeal Tribunals shall be dissolved on final determination of the issues placed before them.²⁸

3.19 Party Liaison Committees

The Council shall –

- (a) as soon as practicable establish an interim party liaison committee which shall continue until the party liaison national committee has been established; and
- (b) appoint a chairperson for such committee, who may or may not be a person contemplated in the provisions of the following paragraph, and who shall determine the procedures to be followed at the meetings thereof. If a person contemplated in the following paragraph so appointed as chairperson, the party represented by

such person on such committee may designate another representative in his or her place.

The interim party liaison committee shall consist of such representatives of parties as may be appointed for that purpose by the Council.

Upon the publication of the notice of registration of contesting political parties in the Gazette, the Commission shall –

- (a) establish a party liaison national committee consisting of all party election national agents or other authorised representatives of all registered parties participating in the election whether in respect of the National Assembly or any provincial legislature; and
- (b) establish party liaison provincial and local committees consisting of all party election provincial and district agents concerned, as the case may be, of all registered parties participating in the election whether in respect of the National Assembly or any provincial legislature.

The Commission shall appoint –

- (a) a chairperson for each of the committees who shall determine the procedures to be followed at the meetings thereof; and
- (b) a representative of the Commission to serve on any such committee.

The Commission may require any registered party which is unrepresented on any party liaison provincial or local committee to appoint a representative to attend the meetings of such committee and to serve thereon.

The functions of any party liaison committee shall be –

- (a) to establish liaison between the Commission and the parties represented thereon and between such parties regarding election matters, including –
 - (i) the administration of the electoral arrangements in general;
 - (ii) staffing;
 - (iii) the number and location of voting and counting stations;
 - (iv) the demarcation of electoral districts; and
 - (v) the number and location of foreign voting stations; and
- (b) to be a forum in which the parties represented on any such committee may –
 - (i) discuss matters of concern with a view to obviating the incidence of infringements of the Electoral Code of Conduct and, if possible, resolving the same without the necessity for formal complaint and investigation procedures; and
 - (ii) consult regarding the need for and formulation of regulations governing matters in connection with the election.²⁹

3.20 Appointment of and Control over Electoral Officers and Staff

The Chief Director (Administration) shall, in respect of any election, in consultation with the Commission, appoint –

- (a) a provincial electoral officer and one or more deputies in respect of each province;
- (b)
 - (i) a district electoral officer and one or more deputies in respect of each electoral district;
 - (ii) a presiding officer in respect of each voting station; and
 - (iii) a counting officer in respect of each counting station, or, subject to such consultation, authorise any such appointment by any provincial electoral officer;
- (c) one or more voting officers in respect of each voting station as he or she may consider for the effective administration of the election, or, subject to such consultation, authorise any such appointment by any provincial or district electoral officer; and
- (d) one or more enumerators in respect of each counting station as he or she may consider necessary for the effective administration of the counting of votes, or, subject to such consultation, authorise any such appointment by any provincial or district electoral officer.

Subject to section 15 (Administration and Staff of Commission) of the Commission Act, the Chief Director or any provincial or district electoral officer or any counting officer may, if authorised thereto by the Chief Director, appoint other staff as may be necessary for the effective administration of the election. All electoral officers, and staff appointed under these provisions, shall be under the control and carry out the instructions of the Chief Director. In the appointment of staff an endeavour shall be made to appoint a broad cross-section of the population, including women.

In effecting any appointment under these provisions, the Commission shall be required to invite submissions from the interim party liaison committee or the party liaison national committee, as the case may be, on a proposal regarding any such appointment, and, where such submissions are received within 48 hours, consider, but shall not be bound by, the advice of any such committee.

Any presiding, voting or counting officer or enumerator may be removed from office by the Chief Director on account of –

- (a) misconduct;
- (b) inability or failure to perform the duties connected with his or her office efficiently;
- (c) absence from duty without the prior permission of the Chief Director or his or her delegate;
- (d) incompetence;
- (e) displaying bias; or
- (f) unsuitability for office.³⁰

3.21 Powers, Duties and Functions of Provincial and District Electoral Officers

Subject to the control of the Chief Director, the provincial electoral officer shall assume responsibility for the administration, organisation, supervision and conduct of the election for both the National Assembly and the provincial legislature in the province in respect of which he or she has been appointed.

In addition to the powers, duties and functions conferred or imposed by the other provisions

of the Electoral Act 1993, the provincial electoral officer shall have such other powers, duties and functions as may be prescribed.

Subject to the control of the provincial electoral officer, the district electoral officer shall have such powers as may be delegated to him or her by the Chief Director in respect of the administration, organisation, supervision and conduct of the election in the electoral district in respect of which he or she has been appointed, and shall have such other powers, duties and functions as may be prescribed.³¹

3.22 Powers, Duties and Functions of Presiding Officers, Voting Officers, Counting Officers and Enumerators

The presiding officer at a voting station shall have power to –

- (a) take such steps as may be necessary for the orderly conduct of the voting, including the regulating of the number of voters to be admitted at a time to the election centre and the inner perimeter; and
- (b) exclude from the election centre and the inner perimeter all persons except –
 - (i) members and representatives of the Commission and employees of the Commission in the course of their official duties;
 - (ii) the Chief Director and any electoral officer concerned;
 - (iii) any party voting agent entitled to be present at a voting station;
 - (iv) any other person authorised by the Commission to be present as a monitor or international or other observer;
 - (v) any such prescribed number of candidates as the presiding officer may allow;
 - (vi) any interpreters and any such staff and other persons as may be necessarily admitted by the presiding officer; and
 - (vii) any person casting his or her vote.

Subject to the foregoing provisions, no person shall enter or remain in an election centre or inner perimeter without the permission of the presiding officer. The presiding officer shall take all reasonable steps for the protection of persons and property and for preventing any violence or disturbance in or in the vicinity of the voting station.

The powers conferred by these provisions shall not be so exercised as to prevent any person who is entitled to vote from having an opportunity to cast his or her vote.

Voting officers shall assist the presiding officer in exercise of the powers and the performance of the duties and functions of the presiding officer and carry out his or her lawful instructions.

The counting officer at a counting station shall have power to –

- (a) take such steps as may be necessary for the orderly conduct of the counting of the votes; and
- (b) exclude from the counting centre all persons except –
 - (i) members and representatives of the Commission and employees of the Commission in the course of their official duties;

- (ii) the Chief Director and any electoral officer concerned;
- (iii) any party voting agent entitled to be present at a counting station;
- (iv) any other person authorised by the Commission to be present as a monitor or international or other observer;
- (v) any such prescribed number of candidates as the counting officer may allow; and
- (vi) any such staff and other persons as may necessarily be admitted by the counting officer.

The counting officer shall take all reasonable steps for the protection of persons and property and for preventing any violence or disturbance in or in the vicinity of the counting station.

Subject to the control of the provincial electoral officer, the counting officer shall have such powers as may be delegated to him or her by the Chief Director in respect of the administration, organisation and conduct of the counting of the votes in respect of the area concerned. The counting officer shall have such other powers, duties and functions as may be prescribed.

The enumerator shall have such powers, duties and functions as may be prescribed.³²

3.23 Appointment and Powers, Duties and Functions of Party Election and Voting Agents

Upon registration the registered party concerned shall by written notice to the Chief Director –

- (a) if such party is contesting the election for the National Assembly, appoint a party election national agent and his or her deputy and a party election provincial agent in respect of each province, and shall furnish the names and business addresses of such party election agents;
- (b) if such party is contesting the election for any provincial legislature only, appoint a party election provincial agent and his or her deputy in respect of each province in respect of which it is contesting the election, and furnish the names and business addresses of such party election agents; and
- (c) when so required by the Commission, appoint a party election district agent within ten days after notification of such requirement and furnish the name and business address of such party election district agent.

The party election national agent or other authorised representative or party election provincial agent shall attend and represent the registered party concerned at meetings of the party liaison national or provincial committee, as the case may be, and every other forum which the Commission, a Chief Director of a directorate or the provincial electoral officer in its, his or her discretion may convene in respect of the election.

When a registered party revokes an appointment or if any party election agent resigns, becomes incapacitated or dies, the registered party concerned shall forthwith inform the Chief Director or the provincial electoral officer concerned in writing of such revocation, resignation, incapacity or death.

A registered party shall as soon as practicable but not later than five days after the occurrence of any vacancy, fill such vacancy by appointing any other person as party election agent and shall forthwith notify the Chief Director or the provincial electoral officer concerned in writing of the name and business address of the person so appointed: provided that in the case of a party election national agent, such appointment shall be made within 48 hours of the vacancy having occurred.

A record of all appointments and information noted in terms of these provisions shall be kept by the Chief Director and the provincial electoral officer in the electoral district concerned.

A party election provincial agent shall in the prescribed manner appoint the prescribed number of party voting agents for the purposes of monitoring voting at a voting station and the counting of votes at a counting station on behalf of a registered party.

No person shall be appointed as party election or voting agent unless he or she is a person entitled to vote.³³

3.24 Declaration of Secrecy

Before assuming or performing any of the duties or functions assigned to him or her by or under the Electoral Act, any officer or agent shall make a declaration of secrecy, under oath or affirmation, in the prescribed form and in accordance with the prescribed procedure.³⁴

— Section 4 —

ELECTORAL CODE OF CONDUCT

4.01 Features of Electoral Code of Conduct

The Electoral Code of Conduct (“the Code”) set out in Schedule 2 –

- (a) shall be subscribed to by –
 - (i) every party registered; and
 - (ii) every candidate nominated, as a condition of their respective rights to be so registered or nominated; and
- (b) shall, in so far as it is applicable, be binding on any party or on the leader or any office-bearer, member or supporter of such party or candidate.

Any party referred to above which, or the leader or any office-bearer, member or supporter of such party or candidate so referred to who, infringes any provision of the Code shall, upon finding that any such provision has been so infringed, be liable –

- (a) in the case of any party which has infringed the provisions of the Code, to one or more of the following penalties or sanctions, of which any or all may be suspended on specified conditions –
 - (i) a formal warning;
 - (ii) a fine not exceeding R100,000;

- (iii) the forfeiture of any deposit paid by such party or any part thereof;
- (iv) an order prohibiting such party, whether permanently or for a specified period, from utilising any media time, including any such television or broadcasting services as have been or may be made available to such party for electoral purposes by the Independent Media Commission;
- (v) an order prohibiting such party –
 - (aa) from holding particular public meetings, demonstrations or marches, or any kind of such meetings, demonstrations or marches;
 - (bb) from entering any specified electoral district or area for purposes of canvassing for membership, or for any other electoral purpose;
 - (cc) from erecting placards or banners or from publishing and distributing campaign literature;
 - (dd) from publishing or distributing campaign literature and electoral advertising, or limiting such party's rights to do so;
- (vi) an order prohibiting such party from receiving, whether wholly or partly, State or foreign funding including an order requiring the repayment, within a specified period, of any such funding or any part of such funding already received;
- (b) in the case of a party which has infringed the provisions of the Code –
 - (i) by any act or omission involving violence or intimidation or a gross or systematic violation of the rights of any registered party, candidate or voter, an order cancelling the registration of such party and consequently its right to participate in the election concerned;
 - (ii) by any fraudulent act by virtue of which votes have been obtained, an order reducing the number of votes counted in favour of that party by a specified number of votes;
 - (iii) by any act by virtue of which free and safe access by any other registered party has been prevented, an order excluding such party from any voting station situated in the area where such other registered party has been prevented free and safe access;
- (c) in the case of the leader or any office-bearer, member or supporter of such party or of any candidate –
 - (i) who has infringed the provisions of the Code, to one or more of the penalties or sanctions;
 - (ii) who has infringed the provisions of the Code by any act or omission involving violence or intimidation or a gross or systematic violation of the rights of any registered party, candidate or voter, an order disqualifying, in the case of a person who is a candidate, such person from being a candidate or deleting the name of such candidate from the list or lists of candidates concerned.³⁵

4.02 Provisions of Electoral Code of Conduct

1. The object of this Code shall be to promote conditions conducive to the conduct of a free and fair election, and a climate of democratic tolerance in which political activity may take place without fear of coercion, intimidation or reprisals.
2. All registered parties and other persons bound by this Code shall endeavour to

promote its object in order to enable free political campaigning and open public debate to take place in all parts of the Republic throughout the election period.

3. Registered parties and candidates further commit themselves –
 - (a) to give wide publicity to this Code;
 - (b) to promote voter education campaigns;
 - (c) to condemn violence and intimidation;
 - (d) to instruct their candidates, office-bearers, members and supporters accordingly; and
 - (e) generally, to affirm the rights of all participants in the election –
 - (i) to express divergent political opinions;
 - (ii) to debate and contest the policies and programmes of other parties;
 - (iii) to canvass freely for membership and support from voters;
 - (iv) to hold public meetings;
 - (v) to attend public meetings convened by others;
 - (vi) to distribute electoral literature and campaign materials;
 - (vii) to publish and distribute notices and advertisements;
 - (viii) to erect banners, placards and posters; and
 - (ix) to promote free electoral campaigns by all lawful means.

4. All those bound by this Code shall throughout the election period give effect to the following undertakings and stipulations:
 - (a) to publicly and repeatedly condemn violence and intimidation, and to avoid the use of language or any kind of action which may lead to violence or intimidation, whether to demonstrate party strength, gain any kind of political advantage, or for any other reasons;
 - (b) to refrain from any action involving violence or intimidation;
 - (c) to ensure that no arms or weapons of any kind are carried or displayed at political meetings or in the course of any march, demonstration or other event of a political nature;
 - (d) to refrain from publishing or repeating false, defamatory or inflammatory allegations concerning any person or party in connection with the election;
 - (e) to co-operate and liaise in good faith with other parties to avoid, in so far as possible, arrangements involving public meetings, demonstrations, rallies or marches taking place at the same time and venue as similar political events organised by other parties;
 - (f) to do nothing to impede the democratic right of any party, through its candidates, canvassers and representatives, to have reasonable access to voters for the purpose of conducting voter education, fund raising, canvassing membership and soliciting support;
 - (g) to avoid plagiarising the symbols, colours or acronyms of other parties; and to discourage and, if possible, prevent the removal, disfigurement or destruction of political campaign materials of any party;
 - (h) to refrain from offering any inducement or reward to any person in consideration of such person either joining or not joining any party; attending or not attending any political event; voting or not voting (either at all, or in any particular manner);

- or accepting, refusing or withdrawing such person's nomination as a candidate in the election;
- (i) to refrain from any attempt to abuse a position of power, privilege or influence, including parental, patriarchal or traditional authority, for political purposes, including any offer of reward or threat of penalty;
 - (j) to avoid any discrimination based on race, sex, ethnicity, class, gender or religion, in connection with the election and political activity;
 - (k) in relation to the role of women –
 - (i) to facilitate full participation by women in political activities on the basis of equality;
 - (ii) to ensure free access by women to all public political meetings, facilities, and venues;
 - (iii) to respect the right of women to communicate freely with political parties and organisations; and
 - (iv) generally, to refrain from forcing women to adopt a particular political position or to engage in or to refrain from engaging in, any political activity otherwise than in accordance with their free choice;
 - (l) in relation to the Commission –
 - (i) to acknowledge its authority in the conduct of the election;
 - (ii) to ensure the attendance and participation of representatives at meetings of any party liaison committee and other forums convened by or on behalf of the Commission;
 - (iii) to implement its orders and directions;
 - (iv) to facilitate its right of access through official monitors or other representatives to all public political meetings or other electoral activities;
 - (v) to co-operate in the official investigation of issues and allegations arising during the election period; and
 - (vi) to take all reasonable steps to ensure the safety of monitors and other representatives of the Commission from exposure to insult, hazard or threat in the course of their official duties;
 - (m) to reassure voters with regard to the impartiality of the Commission, the secrecy and integrity of the ballot, and furthermore, that no one will know how any other person has voted;
 - (n) to take reasonable steps to discipline and restrain their party office-bearers, employees, candidates, members and supporters from –
 - (i) infringing this Code;
 - (ii) committing any offence;
 - (iii) committing any prescribed electoral irregularity; and
 - (iv) contravening or failing to comply with any provision of this Act;
 - (o) to establish and maintain effective lines of communication with the Commission, and with other registered parties, at national, provincial and local level, including the exchange of names, addresses and contact telephone and facsimile numbers of party election agents and of other relevant office-bearers and representatives; and
 - (p) to accept the final outcome of the election, and the Commission's declaration and certification of the results thereof.³⁶

— *Section 5* —

STATE ELECTORAL FUND

The Act established a fund known as the “State Electoral Fund” which was administered by the Commission. The Fund had to comply with the following requirements:

- (a) the capital of the said Fund shall be constituted by –
 - (i) money appropriated by Parliament for that purpose, the amount of which is to be determined by the Council in consultation with the Minister of State Expenditure; and
 - (ii) such further amounts, if any, as may be contributed by donors, including foreign governments, intergovernmental and non-governmental organisations;
- (b) the object of the said Fund shall be to provide registered parties with financial assistance for the purposes of conducting their electoral campaigns: provided that no such assistance shall be utilised for the purposes of entertainment or for the purchasing of any immovable property;
- (c) the Chief Executive Officer of the Commission shall be the accounting officer charged with the responsibility of accounting for all money received by the said Fund and the utilisation thereof;
- (d) the said accounting officer shall cause such records of account to be kept as are necessary to present fairly the state of affairs of the said Fund and to explain the transactions and the financial position thereof;
- (e) the Auditor-General shall audit the books of accounts, accounting statements and annual financial statement of the said Fund;
- (f) subject to the provisions of the Exchequer Act 1975 the Commission may invest any unexpended portion of the money in the said Fund;
- (g) the Commission may utilise the interest on investments in pursuance of the object of the Fund;
- (h) if a person who is or was in the employment of the Commission caused the said Fund any loss or damage, the said accounting officer shall determine the amount of such loss or damage and order the recovery thereof in accordance with the Exchequer Act 1975;
- (i) in the event of the Commission or the said Fund being dissolved all remaining assets of the Fund shall be utilised in accordance with the recommendation of the Commission for the purposes of the encouragement and promotion of democratic values.

The Commission shall at regular intervals report to the Council on all income and expenditure in respect of the State Electoral Fund.

The Commission shall make the following forms of financial assistance available to any registered party which qualifies therefor –

- (a) an initial grant payable to all registered parties on an equal basis and without discrimination, on the basis provided below; and

- (b) a grant payable to such registered parties after the results of the election have been determined.

The initial grant referred to above shall only be payable to a registered party if an independent opinion poll recognised and accepted by the Commission for that purpose shows that such a party has in respect of an application for financial assistance to contest the election –

- (i) for the National Assembly or the National Assembly and any provincial legislature or legislatures, the potential support of at least two per cent of the voters for the National Assembly; or
- (ii) for any provincial legislature or legislatures, the potential support of at least two per cent of the voters of the legislature or legislatures concerned.

The requirements for the acceptance of an opinion poll shall be prescribed by the Commission: provided that no such poll may have been conducted earlier than six months before the final date on which parties have to submit their lists of candidates; provided further that the Commission may have an opinion poll conducted for the purpose of these provisions.

A party may, when applying for registration as a participant in the election, furnish the prescribed information in respect of the opinion poll on which that party intends to base its application for a grant.

The Commission shall not later than seven days after the application has been submitted to it notify the party concerned whether the poll is accepted by the Commission or not.

If the opinion poll referred to above is rejected by the Commission, or if a registered party so decides of its own accord, such a party may prove its potential support of voters by submitting a list containing –

- (a) 10,000 signatures of voters, of which at least 1,000 signatures shall be by voters from each of at least five provinces, if that party applies for a grant to contest the election for the National Assembly; or
- (b) 3,000 signatures by voters from each such province in respect of which such party applies for a grant with a view to contesting the election in such province or provinces.

The procedures for the collection of signatures and the circumstances under which a party may be disqualified from receiving a grant, shall be prescribed by the Commission.

A voter –

- (aa) may only sign the support list of one party;
- (bb) may sign both the lists in (a) and (b) above of a party;
- (cc) shall state his full name, home address and identity number on the list or lists; and

- (dd) shall, if he or she cannot sign or write his or her name, place his or her mark on the said list or lists, which mark shall be witnessed by a voter by placing his or her signature next to that mark.

The initial grant referred to above shall be payable from the money provided: provided that only 50 per cent of that money shall be utilised for that purpose.

A registered party which is contesting the election for any provincial legislature or legislatures may receive one quarter of the amount of the grant payable to a registered party contesting the election for the National Assembly in respect of each provincial legislature being contested, which grant shall be in addition to any grant which may be payable to such party for contesting the election for the National Assembly.

A registered party making use of the procedure of relying on signatures in its application, may only receive 50 per cent of the amount of a grant payable to a registered party entitled to such payment.

No party shall be allowed to apply for assistance unless it has submitted the list or lists of candidates required under the Act, and no registered party shall be eligible for a grant if its qualifying application has not been received by the Commission before the expiry of the period of 35 days stipulated.

The grant shall be payable from the remainder of the said Fund referred to above in the following manner –

- (a) 50 per cent shall be distributed equally among those registered parties which in terms of the total number of votes cast, are entitled to at least one seat in the National Assembly or any provincial legislature: provided that a party which contested the election for one provincial legislature only, may only receive one quarter of the amount of the grant payable to a party which contested the election for the National Assembly; and
- (b) the other 50 per cent shall be payable to each registered party proportional to the number of votes cast nationally and provincially in favour of such party.

With a view to ensuring that the object set out is pursued by registered parties, it shall be a precondition for the payment of the grants that –

- (a) registered parties which are recipients of the grants shall be obliged to deposit such funds in an account specially opened for that purpose, and to keep separate books, accounts, financial statements and vouchers of all financial assistance received and so deposited and expenditure incurred from that account;
- (b) the Commission shall prescribe a requirement for audit in respect of the said account, and may further require that the books, accounts, financial statements and vouchers relating to that account be submitted for scrutiny and audit by the Auditor-General, who shall have full and unrestricted access to such documentation as may be considered relevant by him or her.³⁷

— *Section 6* —

THE INDEPENDENT BROADCASTING AUTHORITY

6.01 Establishment

There is hereby established a juristic person to be known as the Independent Broadcasting Authority, which shall exercise and perform the powers, functions and duties conferred and imposed upon it by this Act (the Independent Broadcasting Authority Act 1993) or by or in terms of any other law.

The Authority shall function without any political or other bias or interference and shall be wholly independent and separate from the the government and its administration or any political party, or from any other functionary or body directly or indirectly representing the interests of the State, the government or any political party.³⁸

6.02 Relevant Provisions to Elections

A party election broadcast and a political advertisement shall not be broadcast on any broadcasting service except during an election period and then only if and to the extent authorised by the provisions (sections 59 and 60) of the Act.

A public sound broadcasting licensee shall permit a party election broadcast only during an election period and then only if such a broadcast is produced on behalf of the political party in question at the instance of its only authorised representatives.

The Authority shall determine the time to be made available to political parties for such purposes, including the duration and scheduling of party election broadcasts, duly taking into account the financial and programming implications for the broadcasting services in question.

The Authority shall consult with the relevant public sound broadcasting licensees and all the political parties prior to making any determination.

In making any determination, the Authority may impose such conditions on a public broadcasting licensee with respect to party election broadcasts as it deems fit, having due regard to the fundamental principle that all political parties are to be treated equitably.

A party election broadcast shall not contain any material which may reasonably be anticipated to expose the broadcasting licensee to legal liability if such material were to be broadcast.

A party election broadcast shall conform to a technical quality acceptable to the Authority.

No party election broadcast shall be broadcast later than 48 hours prior to the commencement of the polling period.

A private or community sound broadcasting licensee shall not be required to broadcast party election broadcasts, but if he or she elects to do so, the preceding provisions shall apply.

A sound broadcasting licensee shall not be required to broadcast a political advertisement, but if he or she elects to do so, he or she shall afford all other political parties, should they so request, a like opportunity.

A sound broadcasting licensee may broadcast a political advertisement only during an election period and then only if it has been submitted to such licensee on behalf of a political party by its duly authorised representative.

In making advertising time available to political parties, no sound broadcasting licensee shall discriminate against any political party or make or give any preference to any political party or subject any political party to any prejudice.

A political advertisement shall not contain any material which may reasonably be anticipated to expose the broadcasting licensee to legal liability if such material were to be broadcast.

A political advertisement shall conform to a technical quality acceptable to the Authority.

No political advertisement shall be broadcast later than 48 hours prior to the commencement of the polling period.

These provisions shall be subject to the provisions of any law relating to the expenditure of political parties during an election.

If, during an election period, the coverage of any broadcasting service extends to the field of election, political parties and issues relevant thereto, the broadcasting licensee concerned shall afford reasonable opportunities for the discussion of conflicting views and shall treat all political parties equitably.

In the event of any criticism against a political party being levelled in a particular programme of any broadcasting service without such party having been afforded an opportunity to respond thereto in such programme or without the view of such political party having been reflected therein, the broadcasting licensee concerned shall be obliged to afford such party a reasonable opportunity to respond to the criticism.

If, within 48 hours before the commencement of the polling period or during the polling period, a broadcasting licensee intends broadcasting a programme in which a particular political party is criticised, the licensee shall ensure that the political party is given a reasonable opportunity to respond thereto in the same programme, or to do so as soon as is reasonably practicable thereafter.

The Broadcasting Monitoring and Complaints Committee shall monitor compliance by the broadcasting licensees with the foregoing provisions and report to the Authority which may make the following orders, namely – where a finding is founded on non-compliance

by the respondent with the foregoing provisions, an order whereby the respondent, if he or she –

- (a) is a sound broadcasting licensee, is required to broadcast a party election broadcast or a political advertisement (as the case may be);
 - (b) is a broadcasting licensee, is required to broadcast another version of the programme complained of or a counter-version of the opinions expressed or alleged facts stated in such a programme,
- whichever is applicable.

Any person who fails to comply with any order made by the Authority under the foregoing provisions is guilty of an offence and is liable on conviction to a maximum fine of R50,000.³⁹

— Section 7 —

THE INDEPENDENT MEDIA COMMISSION

7.01 Establishment and Objects of Media Commission

There is hereby established a juristic person to be known as the Independent Media Commission, which shall exercise and perform the powers, functions and duties conferred and imposed upon it by this Act (the Independent Media Commission Act 1993).

The primary objects of the Commission shall be –

- (a) to ensure equitable treatment of all political parties by broadcasting services; and
 - (b) to ensure that State-financed publications and State information services are not, directly or indirectly, used to advance the interests of any political party,
- during the election period, so as to promote and contribute towards the creation of a climate favourable to free political participation and a free and fair election.⁴⁰

7.02 Appointment of Commissioners

The Commission shall consist of –

- (a) a chairperson; and
- (b) not more than six other members.

Each Commissioner, including the Chairperson, shall be appointed by the State President on the advice of the Council with due regard to the provisions of the Act.

The appointments shall be made simultaneously and be made known by notice in the Gazette and be effective as from the date of publication of such notice.

The Chairperson of the Commission shall be –

- (a) a judge or retired judge of the Supreme Court of South Africa; or
- (b) a practising advocate or practising attorney of at least five years' standing or a magistrate with at least ten years' appropriate experience.

At least two of the Commissioners shall have experience in the field of broadcasting media and at least one in the field of the printed media.

The Commissioners shall –

- (a) be persons who, in the opinion of the Council, are of high standing and merit and are suited to serve on the Commission by virtue of their qualifications, expertise and experience;
- (b) be persons who are committed to fairness, freedom of expression, the right of the public to be informed and openness and accountability on the part of those holding public office;
- (c) when viewed collectively, represent a broad cross-section of the population of the Republic; and
- (d) be persons who are committed to the objects and principles of the Act.⁴¹

7.03 Powers and Functions of Commission

The Commission, in order to achieve the objects of the Act, shall –

- (a) monitor all broadcasting services in the Republic and enforce compliance by broadcasting licensees with the provisions of the Act relating to –
 - (i) party election broadcasts and political advertisements; and
 - (ii) equitable treatment of all political parties; and
- (b) monitor all State-financed publications and State information services, during the election period, and shall exercise and perform such other powers and functions as may be assigned to it.

The Commission shall inform the Council and the Independent Electoral Commission of any matter which has come to its knowledge in the exercise and performance of its powers, functions and duties which, in its opinion, may have an adverse impact upon the creation or achievement of a climate favourable to free political participation and the holding of the election on a free and fair basis.⁴²

7.04 Party Election Broadcasts and Political Advertising

A public sound broadcasting licensee shall permit a party election broadcast only during the election period and then only if such a broadcast is produced on behalf of the political party in question at the instance of its duly authorised representative.

The Commission shall determine the time to be made available to political parties for the purpose of the foregoing provision, including the duration and scheduling of party election

broadcasts, duly taking account of the financial and programming implications for the broadcasting services in question.

The Commission shall consult with the relevant public sound broadcasting licensees and all the political parties prior to making any determination.

In making any determination, the Commission may impose such conditions upon a public broadcasting licensee with respect to party election broadcasts as it deems fit, having due regard to the fundamental principle that all political parties are to be treated equitably.

A party election broadcast shall not contain any material which may reasonably be anticipated to expose the broadcasting licensee to legal liability if it were to be broadcast.

A party election broadcast shall comply with a technical quality acceptable to the Commission.

No party election broadcast shall be broadcast later than 48 hours prior to the commencement of the polling period.

A private or community sound broadcasting licensee shall not be required to broadcast party election broadcasts, but if he or she elects to do so, the preceding provisions shall *mutatis mutandis* apply.

A sound broadcasting licensee shall not be required to broadcast a political advertisement, but if he or she elects to do so, he or she shall afford all other political parties, should they so request, a like opportunity.

A sound broadcasting licensee may broadcast a political advertisement only if it has been submitted on behalf of a political party at the instance of its duly authorised representative.

In making advertising time available to political parties, no sound broadcasting licensee shall discriminate against any political party or make or give any preference to any political party or subject any political party to any prejudice.

A political advertisement shall not contain any material which may reasonably be anticipated to expose the broadcasting licensee to legal liability if it were to be broadcast.

A political advertisement shall comply with a technical quality acceptable to the Commission.

No political advertisement shall be broadcast later than 48 hours prior to the commencement of the polling period.

These provisions shall be subject to any law relating to the expenditure of political parties during an election.⁴³

7.05 Equitable Treatment of Political Parties

If, during the election period, the coverage by any broadcasting service extends to the field of the election and political parties and issues relevant thereto, the broadcasting licensee concerned shall afford reasonable opportunities for the discussion of conflicting views and shall treat all political parties equitably.

In the event of any criticism against a political party being levelled in a particular programme of any broadcasting service without such party having been afforded an opportunity to respond thereto in such programme or without the view of such political party having been reflected therein, the broadcasting licensee concerned shall be obliged to afford such political party a reasonable opportunity to respond to the criticism.

If, within 48 hours before the commencement of the polling period or during the polling period, a broadcasting licensee contemplates broadcasting a programme in which a particular political party is criticised, the licensee shall ensure that the political party is given a reasonable opportunity to respond thereto in the same programme, or to do so as soon as is reasonably practicable thereafter.⁴⁴

7.06 State-Financed Publications and State Information Services

The publisher of any State-financed publication in existence immediately prior to the commencement of the Act shall, within 14 days of such commencement, submit to the Commission of the prescribed information concerning such publication.

The Commission may require the publisher of a publication to provide the Commission with a copy of such publication prior to the printing thereof.

A State-financed publication shall be submitted by its publisher to the Commission free of charge within 48 hours of the completion of the printing thereof.

A State-financed publication shall not contain any advertisement or other material which is intended or calculated to support or advance the interests of any political party, whether directly or indirectly.⁴⁵

7.07 Hearings

Any political party which has reason to believe that a broadcasting licensee, the publisher of a State-financed publication or any State information service has contravened the provisions of the Act in relation to such party, and which was unable to resolve the matter with the licensee, publisher or information service (as the case may be), may in relation thereto lodge a complaint with the Commission.

Any such complaint must be in writing and must be served on the licensee, publisher or information service and lodged with the Commission. A complaint may be delivered by hand or sent by registered post, fax or telex.

The Commission shall as soon as may be reasonably practicable, having due regard to the urgency of the matter investigate and adjudicate any complaint received by it and shall, in doing so, afford the complainant and the respondent a reasonable opportunity to make representations and to be heard in relation thereto.

The Commission shall determine the form and procedure as regards the adjudication of any complaint.

The complainant and the respondent shall be entitled to legal representation at any hearing held by the Commission for the purpose of adjudicating a complaint.

After having considered the complaint and the representations (if any) and evidence in regard thereto, the Commission shall make a ruling in respect of the matter.

Any ruling of the Commission shall be published in such manner as the Commission may in its discretion determine.

Hearings shall be open to the public.

The Commission shall keep records of all complaints received by it and of all its proceedings, rulings and findings in relation thereto. The records shall be kept in the offices of the Commission and be open to inspection by interested parties during the normal office hours of the Commission. The Commission shall at the request of any interested party and on payment of such fee as may be prescribed, furnish him or her with certified copy of or extract from any record.

With regard to the summoning and examination of witnesses, the administering of the oath or an affirmation, recalcitrant witnesses, and the production of books, documents, objects and material, the Commission shall have such powers as shall be prescribed.

For the purposes of these provisions, a State-financed publication and State information service shall be represented by the official of the State at the head of the State-financed publication or State information service in question.⁴⁶

7.08 Orders and Recommendations of Commission

If the Commission, in making a ruling, has found the respondent to have contravened the provisions of the Act, it may –

- (a) make an order requiring the respondent, if he or she –
 - (i) is a public sound broadcasting licensee, to broadcast a party election broadcast;
 - (ii) is a sound broadcasting licensee, to broadcast a political advertisement;
 - (iii) is a broadcasting licensee, to broadcast another version of the programme complained of or a counter-version of the opinions expressed or alleged facts stated in such a programme;
- (b) order the respondent to pay such fine as the Commission may determine, but not exceeding such amount as may be prescribed in relation to the contravention in question;

- (c) make an order prohibiting the respondent from carrying on his or her broadcasting service for such period as the Commission may determine: provided that such a prohibition shall not extend beyond the day of the dissolution of the Commission, and may, with due regard to the provisions of the Act, make any other order which it considers appropriate with a view to remedying the matter complained of.

Where the Commission has made an order against a broadcasting licensee it may, having due regard to the nature, consequences and gravity of the contravention with reference to which the order was made, forward a certified copy of such order and of the record of its adjudication proceedings relevant thereto, to the Authority with a view to the Authority taking steps against such broadcasting licensee in terms of the Independent Broadcasting Authority Act 1993.

In any case where either the publisher of a State-financed publication or any State information service is the respondent, the Commission shall convey its ruling to the Council.

Any person who contravenes or fails to comply with any order referred to in the foregoing provisions shall be guilty of an offence and liable on conviction to a maximum fine of R100,000.⁴⁷

7.09 Dissolution of Commission and Cessation of Act

The Commission shall be dissolved on the date when the Independent Electoral Commission is dissolved in terms of section 9 of the Independent Electoral Commission Act 1993, on which date this Act shall cease to have effect.

All assets, monies and liabilities of the Commission shall on its dissolution devolve upon the State, which shall to that extent for all purposes in law be deemed to be the legal successor of the Commission.⁴⁸

NOTES

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| 1. Constitution of the Republic of South Africa 1993, see section 6 | 13. Ibid., see section 5 |
| 2. Ibid., see section 21 | 14. Ibid., see section 6 |
| 3. Ibid., see Schedule 2 | 15. Ibid., see section 8 |
| 4. Ibid., see section 73 | 16. Ibid., see section 9 |
| 5. Transitional Executive Council Act 1993, see section 2 | 17. Ibid., see section 13 |
| 6. Ibid., see section 3 | 18. Ibid., see section 14 |
| 7. Ibid., see section 4 | 19. Ibid., see section 15 |
| 8. Ibid., see section 7 | 20. Ibid., see section 16 |
| 9. Ibid., see section 25 | 21. Ibid., see section 18 |
| 10. Ibid., see section 29 | 22. Ibid., see sections 19-21 |
| 11. Electoral Act 1993, see section 4 | 23. Ibid., see sections 22-24 |
| 12. Independent Electoral Commission Act 1993, see section 4 | 24. Ibid., see sections 25-27 |
| | 25. Ibid., see sections 28-29 |
| | 26. Ibid., see sections 30-31 |

27. Ibid., see sections 32-33
28. Ibid., see section 35
29. Electoral Act 1993, see sections 5 and 6
30. Ibid., see section 7
31. Ibid., see sections 8-9
32. Ibid., see sections 10-12
33. Ibid., see section 13
34. Ibid., see section 14
35. Ibid., see section 69
36. Ibid., see Schedule 2
37. See section 74 (as amended), Electoral Act 1993
38. Independent Broadcasting Authority Act 1993, see section 3
39. Ibid., see sections 58-62 and 66
40. Independent Media Commission Act 1993, see sections 2 and 3
41. Ibid., see sections 4 and 5
42. Ibid., see section 17
43. Ibid., see sections 19 and 20
44. Ibid., see section 20
45. Ibid., see section 21
46. Ibid., see section 23
47. Ibid., see sections 24 and 27
48. Ibid., see section 34