

REPUBLIC OF SOUTH AFRICA

BROADCASTING AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); draft Bill and memorandum
setting out its objects published in Government Gazette No. 31215 of 4 July 2008)
(The English text is the official text of the Bill)*

(PORTFOLIO COMMITTEE ON COMMUNICATIONS)

[B 72—2008]

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EXPLANATORY NOTE:

[] Words between brackets, in bold print, indicate omissions from current provisions.

_____ Words underlined indicate new insertions.

BILL

To amend the Broadcasting Act, 1999, so as to substitute the definition of “appointing body”; to provide for the removal of a member of the Board from office and for the resignation of a member; to make provision for a resolution of the National Assembly calling for the removal of a member and for the dissolution of the Board; to provide for the appointment of an interim board; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 4 of 1999, as amended by section 23 of Act 13 of 2000, section 2 of Act 64 of 2002 and section 97 of Act 36 of 2005

1. Section 1 of the Broadcasting Act, 1999, is hereby amended by the substitution in subsection (1) for the definition of “appointing body” of the following definition: 5

“**appointing body**” means the **[body charged with the appointment of members of the Board in terms of section 13 of this Act]** President acting in consultation with the Speaker of the National Assembly;”.

Amendment of section 13, as amended by section 14 of Act 64 of 2002 10

2. Section 13 of the Broadcasting Act, 1999, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The twelve non-executive members of the Board must be appointed, on the advice of the National Assembly, by the President **[on the advice of the National Assembly]** in consultation with the Speaker of the National Assembly.”;

(b) by the substitution for subsection (3) of the following subsection:

“The **[President must designate one of the members of the]** appointing body, on the recommendation of the National Assembly, must designate one of the members of the Board referred to in subsection (2) 15 as the chairperson and another member as a deputy chairperson, both of whom must be non-executive members of the Board.”;

- (c) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) be persons who are suited to serve on the Board by virtue of their qualifications, expertise and experience in the fields of broadcasting policy and technology, broadcasting regulation, media law, **[frequency planning,]** business practice and finance, marketing, journalism, entertainment and education, social and labour issues;”;

- (d) by the substitution for subsection (5) of the following subsection:

“(5) The members of the Board must hold office for such period as the **[President]** appointing body may determine which period must not exceed five years.”.

Substitution of section 15 of Act 4 of 1999

3. The following section is hereby substituted for section 15 of the Broadcasting Act, 1999:

“Removal from office and resignation of member”

15. (1) The appointing body—

- (a) may remove a member from **[the]** office on account of misconduct or inability to perform his or her duties efficiently after due inquiry and upon recommendation by the Board; or
 (b) must remove a member from office after a finding to that effect by a committee of the National Assembly and the adoption by the National Assembly of a resolution calling for that member’s removal from office in terms of section 15A.

(2) A non-executive member of the Board may resign by three months’ written notice addressed to the appointing body, provided that the appointing body may on good cause shown allow a shorter period.”.

Insertion of section 15A in Act 4 of 1999

4. The following section is hereby inserted in the Broadcasting Act, 1999, after section 15:

“Resolution for removal of member, dissolution of Board and appointment of interim Board”

15A. (1) (a) The National Assembly may, by the adoption of a resolution, recommend the removal of a member from office on account of—

- (i) misconduct;
 (ii) inability to perform the duties of his or her office efficiently;
 (iii) absence from three consecutive meetings of the Board without the permission of the Board, except on good cause shown;
 (iv) failure to disclose an interest in terms of section 17 or voting or attendance at, or participation in, proceedings of the Board while having an interest contemplated in section 17; or
 (v) his or her becoming disqualified as contemplated in section 16.

(b) The National Assembly may, by the adoption of a resolution, recommend the dissolution of the Board if—

- (i) it fails to discharge its fiduciary duties;
 (ii) it fails to adhere to the Charter; and
 (iii) it fails to carry out its duties as contemplated in section 13(11).

(2) The appointing body—

- (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 act in accordance with a recommendation contemplated in subsection (1) within 30 days;
 (c) must dissolve the Board if the resolution recommends the removal of all the members of the Board.

(3) (a) Upon the dissolution of the Board, contemplated in subsection (2)(c), the appointing body must appoint an interim Board consisting of the persons referred to in section 12(b) and five other persons recommended by the National Assembly.

(b) The interim Board must be appointed within 10 days of receiving such recommendations and is appointed for a period not exceeding six months.

(4) The appointing body, on the recommendation of the National Assembly, must designate one of the members of the interim Board as the chairperson and another member as the deputy chairperson, both of whom must be non-executive members of the interim Board.".

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Short title

5. This Act is called the Broadcasting Amendment Act, 2008.

MEMORANDUM ON THE OBJECTS OF THE BROADCASTING AMENDMENT BILL, 2008

BACKGROUND

In terms of the Broadcasting Act, 1999 (Act No 4 of 1999), members of the South African Broadcasting Corporation Board are appointed by the President on the recommendation of the National Assembly, and hold office for a term of five years. The Act only provides for the removal of individual members of the Board upon the recommendation of the Board itself.

To this end there is no mechanism provided for in the Act for the resignation or removal of a Board member who does not perform his or her obligations in terms of the Act or for the dissolution of the Board.

PURPOSE

The Bill seeks to address the lacuna identified in the Act, by redefining the “appointing body” and providing for mechanisms for a member of the Board to resign or to be removed by the appointing body, as well as to provide for a mechanism whereby the Board may be dissolved; to provide for the establishment of an interim Board and other incidental matters.

CLAUSE BY CLAUSE ANALYSIS

Clause 1 provides for a new definition for “appointing body”.

Clause 2 provides for the procedure for appointing members to the Board and the designation of the Chairperson and Deputy Chairperson of the Board and the deletion of “frequency planning” from the field of expertise of Board members.

Clause 3 sets out the removal and resignation procedures of Board members.

Clause 4 sets out the grounds for removal of Board members, provides for the dissolution of the Board and the appointment of an interim Board.

CONSULTATION

Department of Communications

The Bill was published in the *Government Gazette* for comment and various submissions were received and considered by the Portfolio Committee on Communications.

FINANCIAL IMPLICATIONS FOR THE STATE

There are no financial implications for the State.

PARLIAMENTARY PROCEDURE

The Parliamentary Legal Advisers are of the opinion that this Bill must be dealt with in accordance with the procedures established by section 75 of the Constitution.