

NORTH-WEST BROADCASTING CORPORATION ACT**NO. 9 OF 1995**

[ASSENTED TO 5 SEPTEMBER, 1995] [DATE OF COMMENCEMENT: 8 SEPTEMBER, 1995]

(English text signed by the Premier)

ACT

To provide for the repeal of the Bophuthatswana Broadcasting Corporation Act, 1989; and for the continuance of the Bophuthatswana Broadcasting Corporation despite the repeal of that Act, as a Corporation in terms of this Act for the purpose of operating and carrying on broadcasting services within the ambit of its licence; to define the further objects of that Corporation and its functions, operations, and business in pursuit of its objects; to determine the funding and financing of that Corporation and define its financial responsibilities; to provide for the management, control and representation of that Corporation by a Board of Directors and to define the powers, functions and duties of that Board; and to provide for incidental matters.

1. Definitions.—In this Act, unless inconsistent with the context—

"Authority" means the Independent Broadcasting Authority established by section 3 of the Independent Broadcasting Authority Act, 1993 (Act 153 of 1993);

"Board" means the Board of Directors of the Corporation contemplated by section 4;

"broadcasting" means any form of uni-directional telecommunication and interactive electronic data interchange intended for the public or sections of the public or subscribers to any broadcasting service having appropriate receiving facilities, whether carried out by means of radio, television or any other means of telecommunication or any combination of the aforementioned, and **"broadcast"** shall be construed accordingly;

"broadcasting licence" means a licence granted and issued by the Authority in terms of the Independent Broadcasting Act, 1993, or deemed by that Act to have been so granted and issued;

"broadcasting service" means a single defined service which consists of the broadcasting of television or sound material to the public or sections of the public or to the subscribers of such service;

"chairperson" means the chairperson of the Board appointed in terms of section 4 (1) and includes any person acting as chairperson in accordance with the provisions of this Act;

"community" includes a geographically founded community or any group of persons or sector of the public having a specific ascertainable common interest;

"company" means any company and any external company, as defined in section 1 (1) of the Companies Act, 1973 (61 of 1973), and includes any close corporation as defined in section 1 of the Close Corporations Act, 1984 (69 of 1984) as well as any company and external company as defined in section 1 (1) of the Bophuthatswana Companies Act, 1973 (Act 61 of 1973);

"Constitution" means the Constitution of the Republic of South Africa Act, 1993 (Act 200 of 1993);

"deputy chairperson" means the deputy chairperson of the Board appointed in terms of section 4 (1);

"Deputy Executive Officer" means the Deputy Executive Office of the Corporation appointed in terms of section

20 (1);

"director" means any person who is a member of the Board;

"Chief Executive Officer" means the Chief Executive Officer of the Corporation appointed in terms of section 19 (1);

"Executive Council" means the executive council of the Province contemplated by section 149 of the Constitution;

"financial year" means the financial year of the Corporation commencing on the 1st day of April in any year and ending on the 31st day of March, first following, both days inclusive: Provided that the first financial year shall commence on the date of commencement of this Act;

"licence" means any radio listeners licence or television licence or other type of licences contemplated by paragraph (l) and (m) of section 29 (1);

"licensee" means the holder of any licence granted and issued under this Act or deemed by this Act to have been so granted or issued or a holder of any licence referred to in paragraph (l) and (m) of section 29 (1);

"Province" means the Province of the North-West as contemplated by section 124 (1) of the Constitution;

"public broadcasting service" means any broadcasting service provided by the Corporation in accordance with the provisions of this Act;

"radio broadcasting service" means the broadcasting service destined to be received by a sound radio set;

"Republic" means the Republic of South Africa;

"responsible Member" means the member of the Executive Council responsible for Public Media, Broadcasting and Information Services;

"statutory corporation" means any corporation which, by or in terms of any law of force in the Province, has been established or exists in the Province;

"telecommunications" means any system or method of conveying signs, signals, sounds, communications or other information by means of electricity, magnetism, electromagnetic waves or any agency of a like nature whether with or without the aid of tangible conductors, from one point to another, and **"telecommunication"** shall be construed accordingly;

"television broadcasting service" means a broadcasting service consisting in the sending of visual images or other visible signals whether with or without accompanying sounds, where the visual images are such that sequences of them are seen as moving pictures;

"the Council" means the Broadcasting Advisory Council established by section 18;

"the Corporation" means the Bophuthatswana Broadcasting Corporation contemplated by section 2; and

"this Act" includes any regulations made from time to time.

2. Continued Existence of the Corporation.—(1) (a) The Bophuthatswana Broadcasting Corporation established in terms of the Bophuthatswana Broadcasting Corporation Act, 1989 (Act 30 of 1989), shall, notwithstanding the repeal of that Act by this Act, continue to exist and operate under the name of Bophuthatswana Broadcasting Corporation and shall be deemed to have been established under this Act: Provided that the responsible Member may, after consultation with the Board, by notice in the *Provincial Gazette*, effect a change to the name of the Corporation (which he or she is hereby empowered to do).

(b) Without derogating from the generality of paragraph (a), the Corporation, for the purposes of the proper exercise and performance of its powers, functions and duties in terms of this Act shall be capable in law of suing and being sued, of purchasing or otherwise acquiring and holding and alienating or otherwise disposing of movable or immovable property or any other legal right or other right or interest, of entering into contracts and concluding agreements, and generally performing such other acts and doing such other things as juristic persons may by law perform and do, subject to the provisions of this Act.

(2) From and after the commencement of this Act and subject to the provisions thereof, the Corporation shall be controlled and represented by the Board of Directors as hereinafter provided and all acts of that Board shall be deemed to be acts of the Corporation.

(3) The Corporation shall function independently from any sectarian or political or other interests, bias or interference and shall, except in so far as provided for by this Act, be separate from the State, the national and provincial governments or any political party, or from any other functionary or body directly or indirectly representing the interest of the State, the national and provincial governments or any political party.

3. Objects of the Corporation.—(1) The objects of the Corporation shall be—

(a) to establish, promote, operate and continue to provide a diverse range of radio and television broadcasting services on a national and regional and local level which, when viewed collectively, cater for all groups irrespective of race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language and provide information, education and entertainment and, to that end, to continue the operation and carrying on of all such radio and television broadcasting services as, immediately prior to the commencement of this Act, were, in terms of the Bophuthatswana Broadcasting Act, 1989 (Act 30 of 1989), being operated and carried on by the Corporation;

(b) subject to the provisions of this Act,

(i) to broadcast programmes for reception in any provincial territory within the Republic or any foreign country or territory;

(ii) to broadcast programmes intended for the public or sections of the public or subscribers to any broadcasting service: Provided that, in the conduct of the Corporation's broadcasting operations in pursuit of the objects stated in Sub Section, the Corporation shall ensure that its broadcast includes:

(aa) in relation to radio and television broadcasting services due regard to the allocation of broadcasting time to programmes which have a local content and;

(bb) in relation to radio broadcasting service a specified minimum percentage of musical and dramatic works which qualify as South African music and drama, which minimum percentage shall be determined by the Board, in consultation with the Broadcasting Advisory Council.

(c) provide a premier public broadcasting service in the Republic and the continent through shared understanding and experience of broadcasting; and

(d) contribute to the reconstruction and development programme by providing an essential service through public broadcast.

(2) Subject to the provisions of this Act, all policy matters as well as guidelines, communication strategies and marketing objectives pertaining to the broadcasting services of the Corporation and the attainment of its objects envisaged by the foregoing subsections, shall be determined and formulated by the Board, in consultation with the Council: Provided that such policy matters, guidelines, communication strategies and marketing objectives shall not be inconsistent with the

provisions of the Independent Broadcasting Authority Act, 1993.

(3) The Corporation may not by virtue of the provisions of this Act perform any act or do anything for which a licence is required in terms of the provisions of the Independent Broadcasting Authority Act, 1993, unless it has obtained the licence in question and complies with the condition thereof or is deemed by virtue of the said Act, to have obtained such a licence.

4. Constitution of the Board of Directors of the Corporation, Appointment and Termination of Appointments of Directors of the Board and Remuneration, etc., of Directors of the Board.—(1) Subject to the provisions of this Act, the Corporation shall be managed, controlled and represented by a Board of Directors constituted in terms of this section, and all acts of that Board shall in law be regarded as the acts of the Corporation.

(2) The Board of Directors shall consist of—

(a) the following directors appointed by the responsible member, namely—

(i) a chairperson and a vice-chairperson; and

(ii) not less than eight and not more than twenty-four additional directors who, in the opinion of the responsible Member are representative of the broad cross-section of the population and are suitable by virtue of—

(aa) their qualifications, expertise and experience in the fields of, *inter alia*, broadcasting policy and technology, media law, frequency planning, business practice and finance, marketing, journalism, entertainment and education;

(bb) their commitment to fairness, freedom of expression, the right of the public to be informed, openness and transparency and accountability as officers of the Corporation;

(cc) their independence and impartiality in the due performance of their functions and duties as officers of the Corporation; and

(dd) their commitment to the objectives and principles of the Constitution and the broadcasting policy determined in the public interests by the Authority; and

(b) the Chief Executive Officer who shall be a director *ex officio*.

(2) The directors with the exception of those in the employment of the Corporation, shall be appointed by the responsible Member on such terms and conditions and for such period (not exceeding five years) as the responsible Member may in respect of each such director determine and cause to be specified in such director's letter of appointment: Provided that such appointments shall be according to the following principles, namely—

(a) participation by the public of the Province in the nomination process which shall be determined by the responsible Member by notice in two national daily newspapers and two Sunday newspapers;

(b) transparency and openness;

(c) the publication in the *Gazette* of a short list of candidates for the appointment taking into account the objects of the Corporation in section 3 of this Act.

(3) Subject to the provisions of subsection (1), the responsible Member shall, when making the appointments referred to in subsection (2), have due regard to the promotion and protection of the interest of disadvantaged persons.

(4) Any director whose term of office has expired, shall be eligible for re-appointment.

(5) The directors (with the exception of those already in the employment of the Corporation) shall be paid such remuneration and allowances and be entitled to such perquisites, benefits and privileges, as the responsible Member in consultation with the Member of the Executive Council responsible for Finance and Provincial Expenditure may from time to time determine.

5. Disqualification for Membership.—A person shall be disqualified from being appointed or remaining a director of the Board—

(a) if he or she is subject to a final order of court whereby his or her estate is sequestrated under the Insolvency Act 1936 (Act 24 of 1936), or if his or her estate is sequestrated in terms of the laws of any other country or territory by a competent court or authority of such a country or territory, or if he or she has assigned his or her estate for the benefit of his or her creditors;

(b) if he or she is subject to an order of a competent court declaring him or her to be of unsound mind or mentally disordered or defective;

(c) if he or she has been convicted of any offence for which he or she was sentenced to imprisonment without the option of fine for a period of not less than six months, irrespective of whether such imprisonment was wholly or partly suspended or not, unless he or she has received a grant of amnesty or a free pardon, or unless the period of such imprisonment or suspension has expired at least ten years before the date of his or her appointment as such a director of the Board; and

(d) if he or she—

(a) is nominated as a candidate for election as a member of the National Assembly or any Provincial Legislature; or

(b) is nominated as a Senator; or

(c) is a member of the Executive Council; or

(d) is a Minister or Deputy-Minister of State; or

(e) is nominated as a candidate for the Independent Broadcasting Authority or Independent Media Commission or is a member of such Authority or Commission;

(f) is a member or employee of any other broadcasting service or the Authority or Commission referred to in sub-paragraph (e) of this subsection.

6. Removal and Resignation from Office.—(1) Notwithstanding the provisions of section 4, the term of office of any director may, before the expiration thereof, be terminated by the responsible Member, whereupon such director shall be removed from office—

(a) on account of his or her misconduct;

(b) on account of unfitness for the duties of his or her office;

(c) on the ground of permanent infirmity of mind or body which renders him or her incapable of discharging the duties of his or her office or discharging them properly;

(d) if he or she has become disqualified in terms of section 5;

(e) if in the opinion of the responsible Member, there are good and sufficient reasons for doing so.

(2) Any director of the Board may at any time resign from the Board upon one month's written notice tendered to the responsible Member.

7. Suspension of Director of the Board Pending Enquiry or Investigation.—(1) The responsible Member may, whenever there is being undertaken any enquiry or investigation for the purpose of establishing whether or not there exists sufficient cause for the removal of a member from office in terms of section 6 (a) to (e) inclusive, suspend such member from his or her office pending the outcome of such an enquiry or investigation.

(2) Wherever a member is suspended in accordance with the provisions of subsection (1), he or she shall in respect of the period of his or her suspension not be entitled to any emoluments under this Act: Provided that—

(a) if the period of his or her suspension endures for longer than three months, the Board shall until such time as such suspension is terminated and the member is either removed from office under subsection (1), or restored to his or her office, as the case may be, pay to the member an amount equal to such portion of his or her basic salary as will have accrued to him or her in respect of the period in excess of such three-month period;

(b) if he or she is restored to his or her office, he or she shall, in respect of the period of his or her suspension, and in addition to any amount paid or payable to him or her under paragraph (a) of this provision (if any), be paid all such emoluments as would have been payable to him or her under this Act had he or she not been so suspended.

8. Vacancies on the Board.—(1) There shall be a vacancy on the Board—

(a) when a director dies; or

(b) when a director's resignation is accepted by the responsible Member; or

(c) upon the term of office of a director having been terminated in terms of section 7; or

(d) if at the time of the member's appointment, he or she was disqualified in terms of section 5 or he or she becomes so disqualified after his or her appointment; or

(e) if a director is absent from three or more consecutive meetings of the Board without its prior consent or subsequent explanation.

(2) Any vacancy on the Board occurring in terms of subsection (1) shall be filled by the appointment of another director by the responsible Member in terms of this Act as soon as may be reasonably practicable after the occurrence of such vacancy and any director so appointed shall remain in office with the unexpired portion of his or her predecessor's term of office.

9. Chairpersonship.—(1) The chairperson of the Board shall, subject to the provisions of this section, preside at the meeting of the Board.

(2) The deputy chairperson of the Board shall preside at the meetings of the Board and exercise and perform the powers, functions and duties of the chairperson whenever the office of the chairperson is vacant or the chairperson is absent or suspended or incapacitated or refuses or fails to act and whenever the office of the chairperson and deputy chairperson are vacant or both the chairperson and deputy chairperson are absent or suspended or incapacitated or refuse or fail to act, the responsible Member shall appoint one of the remaining directors of the Board as deputy chairperson for the unexpired portion of his or her predecessor's term of office or for such period as determined by the responsible Member which period shall not exceed the said unexpired period of the predecessor's term of office.

(3) If the office of the deputy chairperson becomes vacant before the expiration of the period for which a deputy

chairperson has been appointed, the responsible Member shall appoint one of the directors of the Board as deputy chairperson for the unexpired portion of the period of office of his or her successor or for such period as determined by the responsible Member which period shall not exceed the said unexpired portion of the predecessor's term of office.

(4) Whenever it comes to the notice of the responsible Member that in consequence of the existence of vacancies in the Board or the absence, suspension or incapacity of its members or any refusal or failure to act contemplated by subsection (2), the number of remaining directors do not, pending the filling of such vacancies or the termination of any of the circumstances hereinbefore mentioned, form a quorum, the responsible Member shall appoint not less than such number of persons as are required to form such a quorum, but not more than such number of persons as are equal to the difference between the full compliment of the Board and the remaining members, to act as members of the Board during the period that such vacancies exist or such circumstances subsist, in order to enable the Board to exercise and perform its powers, functions and duties under this Act.

(5) Notwithstanding the provisions of subsection (2) and (3), the responsible Member may, if he or she deems it necessary, appoint any person to act as chairperson of the Board in the circumstances contemplated by subsection (2) for as long as such circumstances subsist.

10. Acts, Resolutions and Proceedings of the Board not Invalidated in Certain Circumstances.—The acts, decisions and proceedings of the Board shall not be rendered invalid or illegal by reason only of any vacancy occurring therein or due to any defect or irregularity in the appointment of a director or by reason of the disqualification of any director.

11. Meetings of the Board.—(1) All meetings of the Board shall subject to the provisions of subsection (3) be held on such dates and at such times as may be determined by resolution of the Board, but not less than ten times every year: Provided that the first meeting of a newly constituted Board shall be held at such time and such dates as the responsible Member may by written notice to all directors determine, which shall not be later than 21 days (Saturdays, Sundays and public holidays excluded) after such constitution of the Board.

(2) The chairperson may at any time call for an extraordinary meeting of the Board if in his or her opinion it is justified by the circumstances prevailing and shall, upon having been presented with a requisition for that purpose signed by at least two members of the Board, forthwith convene an extraordinary meeting of the Board, and if the chairperson fails to call for such an extraordinary meeting within seven days from such presentation, such two members may, on the expiration of such seven days, by written notice to all directors of the Board convene an extraordinary meeting which shall not be later than three days after the dispatch of such notice by means of telefax or telegram.

(3) Notwithstanding the provisions of this section, the responsible Member may at any time direct the chairperson to call an emergency meeting of the Board, if in the responsible Member's opinion there are circumstances relating to the Corporation or broadcasting or any other matters incidental thereto which urgently need to be addressed by the Board.

(4) In the event of a request by the responsible Member in terms of subsection (3) the chairperson shall upon receipt of such request forthwith convene an emergency meeting of the Board within three days of receiving the said directive.

(5) The chairperson shall submit to the responsible Member a report of the deliberations of a meeting contemplated by subsection (4) within three days thereof or sooner.

(6) If the chairperson—

(a) fails to convene the emergency meeting as directed in subsection (3) then the responsible Member shall direct the Chief Executive Officer to convene the meeting within twenty-four hours of receiving the said directive and shall submit a written report to the responsible Member within twelve hours of the conclusion of the emergency meeting;

(b) fails to submit a report of the deliberations of the emergency meeting within the time period specified in subsection (5) the responsible Member shall direct the deputy chairperson or the Chief Executive Officer to submit a report within twenty-four hours of the conclusion of the emergency meeting.

12. Quorum and Decisions of Board.—(1) At any meeting of the Board the quorum shall be one third of the total number

of members of the Board.

(2) The decision of the majority of members of the Board present at any meeting thereof, shall, subject to the provisions of subsection (1), constitute a decision, to be known as a resolution, of the Board: Provided that where the members of the Board present at any meeting thereof constitute a bare quorum, no decision or resolution adopted at such meeting shall be a decision or resolution of the Board and have any force or effect unless such decision or resolution is adopted unanimously by the members so present.

(3) In the event of an equality of votes in regard to any matter put to the vote, the chairperson of the Board or person acting as chairperson of the Board shall have a casting vote in addition to his or her deliberative vote.

13. Commercial and Other Interests of Directors of the Board in Matters Dealt with by the Board.—(1) No director of the Board shall be present at any meeting of the Board or any committee thereof, or be present in the room in which such meeting is held, or in any way whatsoever take part in the proceedings of the Board or such committee, during the discussion of a voting on—

(a) any matter in which he or she has, directly or indirectly, either by himself or herself or through his or her spouse, partner or business associate or through any person related to him or her within the third degree of consanguinity or affinity, any commercial or pecuniary interest which is greater than that which he or she has as a member of the general public; or

(b) any intended or pending legal arbitration or other proceedings to which the Board is or may become a party and in which such member has, directly or indirectly either by himself or herself or through his or her spouse, partner or business associate or through any other person related to him or her within the third degree of consanguinity or affinity, interest, whether as a party, witness, legal representative or otherwise.

(2) If, at any stage during the course of any proceedings before the Board it appears that a director has or may have an interest which may in terms of subsection (1) preclude him or her from further participation in such proceedings—

(a) he or she shall forthwith and fully disclose the nature of such interest and leave the meeting so as to enable the remaining directors who are present at the meeting in question to discuss the matter and to determine whether such director is so precluded;

(b) such disclosure and the decision taken by such remaining directors in relation to such determination, shall be recorded in the minutes of such meeting.

(3) If any director of the Board fails to disclose any interest on his or her part, as required by subsection (2), when the Board turns to consider and deal with any matter affected by such interest, or if such director otherwise contravenes or fails to comply with the preceding provisions of this section, such proceedings of the Board shall be null and void and such director shall be guilty of an offence, unless it is proved that such director did not know that he or she had such an interest.

(4) The Chief Executive Officer shall not be present at any meeting of the Board nor be present in the room in which such meeting is held nor in any way take part in the proceedings of the Board, in regard to any matter relating to the terms and conditions of service of, or the remuneration payable or to be paid to or the appointment of a Chief Executive Officer except in so far as he or she has been requested by the Board to furnish information or make representations in connection therewith.

14. Minutes of the Board.—(1) The Chief Executive Officer of the Corporation shall prepare and keep the minutes of the proceedings of every meeting of the Board and cause copies thereof to be circulated to all members of the Board.

(2) Every minute prepared in terms of subsection (1), when signed at a subsequent meeting of the Board by the chairperson or the person acting as chairperson shall, in the absence of proof of error therein, be deemed to be the true and correct record of the proceedings which it purports to minute, and shall, at any arbitration proceedings or proceedings before a court of law or administrative tribunal, constitute *prima facie* evidence of the proceedings of the Board and the matter it purports to minute.

15. Standing Orders.—Subject to the provisions of this Act, the Board may make, amend and rescind standing orders for the regulation of the proceedings and business of the Board and of any committee of the Board, and for all other matters connected with or incidental to the management of the Board and in connection with its business and duties.

16. Committees of the Board.—The Board may for the purposes of due and proper exercise and performance of its powers, functions and duties under this Act, by resolution establish, dissolve, extend, enlarge or limit committees consisting of directors of the Board or officers of the Corporation appointed in terms of sections 18, 19 and 20 or of both such directors and such officers.

17. Delegation of Powers and Duties by the Board.—The Board may by resolution delegate any of its powers and duties under this Act, excluding any power conferred by section 38, to any director or committee of the Board or any officer appointed under sections 19 and 20 but shall not thereby be divested of any power or be relieved of any duty which it may so have delegated and may revoke or amend any such delegation and amend or withdraw any decision by a director, committee or officer in terms of a delegation under this section.

18. Broadcasting Advisory Council.—(1) There is hereby established the Broadcasting Advisory Council, the functions and duties of which shall be—

(a) to advise the responsible Member, the Board and the Chief Executive Officer in regard to all matters relevant to the needs, demands and views of the public in the constituent regions of the Republic including the communities in the North-West Province;

(b) conferred and imposed upon the Council by or under this Act;

(c) delegated to the Council by the responsible Member;

(d) assigned to the Council by the Chief Executive Officer, in consultation with the Board;

(e) from time to time make known any information or current broadcasting policy in relation to media and technological development in general and to serve as general guidelines referred to in section 3 (2) of this Act; and

(f) to make such preliminary investigations as it may consider necessary into, or confer with any interested party in connection with broadcasting all matters incidental thereto and to submit written reports to the responsible Member, the Board and the Chief Executive Officer.

(2) The Council shall consist of at least seven members or such greater number of members not exceeding seventeen who shall be appointed by the responsible member, of whom:

(a) one shall be the chairperson of the Board;

(b) the Chief Executive Officer of the Corporation, who shall be the secretary of the council; and

(c) not less than five or more than fifteen other persons designated by the responsible Member, all of whom shall be recognised experts in the fields of *inter alia*, broadcasting policy and technology, media strategy and law, frequency planning, business practices and finance advertising, marketing, journalism, telecommunication, journalism, art, culture, sports and education.

(3) The responsible member shall designate one Member of the Council as chairperson thereof and any other member as vice-chairperson, and such designation will be with due regard to the promotion and protection of the interests of disadvantaged persons.

(4) At the first meeting of the Council it shall determine the procedures regulating its meetings.

(5) The meeting of the Council (including any special meetings) shall be convened by the Secretary of the Council referred

to in subsection 2 (b) of this section, who shall determine the venue and agenda of any such meeting.

(6) The members of the Council, with the exception of the chairperson of the Board, the Chief Executive Officer and any other members in the employment of the Corporation, shall be paid such remuneration, allowances and be entitled to such perquisites as from time to time by the Board.

(7) The member of the Council, save for the chairperson of the Board and the Chief Executive Officer shall be appointed by the responsible Member on such terms and conditions and for such period not exceeding five years as the responsible Member may determine either generally or in respect of each individual member of the Council which he or she shall cause to be specified in the letter of appointment to be issued in respect of such member.

(8) The provisions of sections 5, 6 and 7 shall *mutatis mutandis* apply in relation to the members of the Council.

19. Chief Executive Officer of the Corporation.—(1) The Board shall from time to time appoint as the Chief Executive Officer of the Corporation, a person—

(a) who is suited to serve as the Chief Executive Officer of the Corporation by virtue of his or her qualifications, expertise and experience in the field of broadcasting policy and technology, broadcasting industry, frequency planning, business practice and finance, marketing, journalism, entertainment and education;

(b) who is committed to fairness, freedom of expression, right of the public to be informed, openness and transparency, and accountability; and

(c) who is not subject to any of the disqualifications mentioned in paragraphs (a), (b) and (d) of section 5; and

such appointment shall be on the principle of transparency, openness and regardless of race, gender, sex, ethnic or social origin, colour, sexual orientation, religion, conscience belief, culture or language.

(2) The Chief Executive Officer shall be the principal executive, administrative and accounting officer of the Corporation and shall, subject to the directions of the Board (if any) be charged with the administration of the every-day business, affairs and matters of the Corporation.

(3) The Chief Executive Officer shall be appointed for such period, on such terms and conditions as to service, be paid such salary and allowances and be entitled to such perquisites and benefits as the Board may from time to time determine.

(4) The Chief Executive Officer may on three months' written notice tendered to the Board resign from his or her office: Provided that in the event of the Chief Executive Officer resigning the Board shall invoke the provisions of section 19 (1) within thirty days from the said resignation.

(5) Whenever the post of Chief Executive Officer is vacant or the Chief Executive Officer is suspended in terms of sections 6 and 7 or he or she is incapacitated or refuses or fails to act, the Board may designate the Deputy Executive Officer appointed in terms of section 20 or one of the officers of the Corporation to act as the Chief Executive Officer in which event such Acting Chief Executive Officer shall exercise and perform the powers, functions and duties of the Chief Executive Officer for as long as any such vacancy exists or any of the aforementioned circumstances subsist.

20. Deputy Executive Officer.—(1) The Board may, in consultation with the Chief Executive Officer, appoint one or more persons as Deputy Executive Officer to assist the Chief Executive Officer subject to his or her direction and control, in exercising and performing the powers, functions and duties conferred and imposed upon him or her by or in terms of this Act.

(2) For the purposes of subsection (1) of this section, the considerations mentioned in section 19 (1) shall *mutatis mutandis* apply in relation to the appointment of a Deputy Executive Officer.

(3) The provisions of section 19 (3) shall *mutatis mutandis* apply to the tenure of office of the Deputy Executive Officer.

(4) The Deputy Director-General may on two months written notice tender to the Board to resign from his or her office.

21. Removal, Suspension and Disqualification from the Office the Chief Executive Officer or Deputy Executive Officer.—(1) Notwithstanding the provisions of section 19 (3) and section 20 (3), the term of office of the Chief Executive Officer and the Deputy Executive Office may, before the expiration thereof be terminated by the Board, whereupon such Chief Executive Officer or Deputy Executive Officer shall be removed from office—

(a) on account of his or her misconduct;

(b) on account of unfitness for the duties of his or her office;

(c) on the ground of permanent infirmity of mind or body which renders him or her incapable of discharging the duties of his or her office or discharging them properly;

(d) in the opinion of the Board, there are good and sufficient reasons for doing so.

(2) The Board may, whenever there is being undertaken any enquiry or investigation for the purpose of establishing whether or not there exists sufficient cause for the removal of the Chief Executive Officer or Deputy Executive Officer from office in terms of subsection (1) (a) to (d) inclusive, suspend him or her from his or her office pending the outcome of such enquiry or investigation.

(3) Whenever the Chief Executive Officer or Deputy Executive Officer is suspended in accordance with the provisions of subsection (4), he or she shall in respect of the period of his or her suspension not be entitled to any emoluments under this Act: Provided that—

(a) if the period of his or her suspension endures for longer than three months, the Board shall until such time as such suspension is terminated and he or she is either removed from office under subsection (1), or restored to his or her office, as the case may be, pay to the member an amount equal to such portion of his or her basic salary as will have accrued to him or her in respect of the period in excess of such three-month period;

(b) if he or she is restored to his or her office, he or she shall, in respect of the period of his or her suspension, and in addition to any amount paid or payable to him or her under paragraph (a) of this subsection (if any) be paid all such emoluments as would have been payable to him or her under this Act had he or she not been so suspended.

(3) The Chief Executive Officer and/or Deputy Executive Officer shall be disqualified from being appointed or remaining in office if—

(a) he or she is subject to a final order of court whereby his or her estate is sequestrated under the Insolvency Act 1936 (Act 24 of 1936), or his or her estate is sequestrated in terms of the laws of any other country or territory by a competent court or authority of such a country or territory, or he or she has assigned his or her estate for the benefit of his or her creditors;

(b) he or she is subject to an order of a competent court declaring him to be of unsound mind or mentally disordered or defective;

(c) he or she has been convicted of any offence for which he or she was sentenced to imprisonment without the option of a fine for a period of not less than six months, irrespective of whether such imprisonment was wholly or partly suspended or not unless he or she has received a grant of amnesty or a pardon, or unless the period of such imprisonment or suspension has expired at least ten years before the date of his or her appointment either as Chief Executive Officer or Deputy Executive Officer;

(d) notwithstanding the provisions of subsection (4) (c) of this section, he or she has been

convicted of any offence involving dishonesty, theft, embezzlement, forgery or fraud; and

(e) he or she is —

(i) nominated as a candidate for election as a member of the National Assembly or any Provincial Legislature; or

(ii) nominated as a senator; or

(iii) is a member of the executive council of any Province; or

(iv) is a Minister or Deputy Minister of State; or

(v) nominated as a candidate for the Independent Broadcasting Authority or Independent Media Commission or is a member of such authority or commission; or

(vi) a member of the board of any other broadcasting service.

22. Other Staff of the Corporation.—(1) The Chief Executive Officer may appoint or engage such officers, employees and workpersons for the Corporation as he or she may deem necessary and determine the job description and designation of such officers, employees and workpersons, for the due, proper and effective exercise and performance of the powers, functions, duties and business incorporations of the Corporation, subject to such terms and conditions relating to service, salary and perquisites as the Chief Executive Officer, in consultation with the Board, may from time to time determine.

(2) (a) The provisions of this section shall not be construed so as to preclude the Board, in consultation with the Chief Executive Officer, from concluding, by way of agreement with the Government of the Province, the services of any officer of the public service on secondment to the Corporation in terms of the Public Services Act, 1994 and any regulations and rules thereunder, as amended from time to time, and any determination from time to time made in terms thereof (excluding any such determination relating to salary, salary range or scale or relating to any terms and conditions of service inconsistent with any terms and conditions of service determined or imposed under subsection (1)); or

(b) Any officer, employee or workperson of the public service (including any person employed by the Government of the Province on contract) seconded for service with the Corporation shall, in regard to the performance of his or her services with the Corporation, for all purposes in law be deemed to have been appointed under this section as an officer or employee or workperson of the Corporation.

(3) The Chief Executive Officer shall, subject to the provisions of this Act and of the by-laws (if any) made under section 24 (1) and to the directions of the Board (if any), exercise supervision and control over any officer, employee or workperson and have full and comprehensive powers regarding—

(a) his or her promotion or otherwise;

(b) the taking of any disciplinary action against him or her;

(c) his or her suspension or dismissal from the service of the Corporation;

(d) negotiating the termination or secondment of any officer, employee or workperson referred to in subsection 2 (b) of this section.

23. Procurement of Experts.—(1) The Chief Executive Officer may, in accordance with any guidelines established by the Board, engage the services of any experts, advisers, consultants or contractors as he or she deems necessary in order to assist the Corporation in due, proper and effective exercise, performance and execution of its functions, duties, business and operations.

(2) The services of the experts, advisers, consultants or contractors may be engaged only for such purpose as in accordance with any guidelines established by the Board or may have been authorised or ratified by the Board, and for the

purposes of any such engagement the terms and conditions subject to which services are engaged, shall be determined by the Chief Executive Officer subject to the direction (if any) of the Board.

24. Principal Powers and Functions of the Corporation.—(1) Without in any way derogating from the provisions of this Act, the principal powers and functions of the Corporation shall be—

(a) to acquire or erect and establish within the Province with the approval of the responsible Member and also outside the Province, with the approval of the responsible Member and the Premier in consultation with the Premier of that Province, broadcasting installations and an installations and facilities in connection therewith and to acquire any equipment therefor or rights in connection therewith;

(b) to apply for and acquire any broadcasting signal distribution licence or broadcasting licences as provided for in the Independent Broadcasting Act 1993;

(c) to enter into any agreements in relation to supplying or saving of programmes, information or news by or to any person or body for presentation by the Corporation on any one or more of its radio or television services, whether by means of transmission or otherwise;

(d) to broadcast current events or descriptions thereof or commentaries thereon from any locality where they are taking place;

(e) subject to the approval of the responsible member acting in consultation with the Member of the Executive Council for Finance and Provincial Expenditure, to enter into any agreement with the government or administration of any country or territory in relation to broadcasting and reception of programmes so contemplated;

(f) subject to the approval of the responsible Member, to establish a training programme for and/or centre of broadcasting media independently or in conjunction with any tertiary educational institution in the Province to promote the advancement of disadvantaged persons;

(g) to canvass, solicit and broadcast advertisements;

(h) to engage orchestras, bands and choirs, to acquire the services of artists and performers, and to arrange or subsidise public concerts, performances and other events involving such or any other orchestras, bands, choirs, artists or performers, whether with or without charge to the audience and in doing so have due regard to local content and the promotion of the interest of disadvantaged persons;

(i) to acquire copyright, performers' rights, patent rights and other rights and, where appropriate to economically exploit same;

(j) to compile, print, manufacture, publish, sell, lease, cede, or in any manner distribute any dramatic, literary or musical works or matters, or any films and sound, video or other recordings used or destined and/or capable of being used in relation to the broadcasting and any machine, set, appliance or equipment used or it is deemed in use in connection with any such film or recording;

(k) to print, publish, issue, sell and distribute any book, magazine, periodical, newspaper, brochure, programme, or pamphlet, communicating or dealing with matters, topics or events of interest to the broadcasting public of the Corporation;

(l) to reproduce, issue, sell and distribute any recordings, cassettes or radio cassettes of any programmes of the Corporation;

(m) to perform any other act or do any other thing which falls within the scope of the objects of the Corporation as contemplated by section 3 or which, in the opinion of the Board, is necessary or desirable for the attainment of such objects.

(2) The Corporation may, if reasonably necessary for the purpose of attaining any of its objects specified in section 3 or for the exercise and performance of any of its powers and functions under this section, or if economic and conducive to the efficiency of the business and operation of the Corporation under this Act—

(a) establish a company, whether for gain or otherwise, or acquire a majority or minority shareholding or proprietary interest in any company of such a nature; and

(b) to enter into an agreement with any company, which is registered and incorporated in the Republic or in any foreign country, to encourage investment in the broadcasting industry.

25. Ancillary Powers of the Corporation.—(1) For the purposes of attaining the objects of the Corporation and ensuring the due, proper and effective exercise and performance of its principal powers and functions under section 24, and in addition thereto and to such other powers and functions as are conferred and imposed on the Corporation by or in terms of this Act, the Board may—

(a) by way of purchase, hire or lease, acquire any movable and immovable property required by the Corporation for the purposes of its operations under this Act;

(b) if economic or conducive to productivity or the efficiency of the business, operation or affairs of the Corporation under this Act, let, sell, exchange or otherwise alienate, dispose of or hypothecate any property of the Corporation: Provided that any immovable property or any shareholding or any other proprietary interest of a capital nature in a company contemplated by section 24 (2) (a) or (b), the responsible Members' written consent shall first be obtained;

(c) make provision for the payment of pecuniary benefits to directors and to any officers, any employees and any workpersons of the Corporation or to the dependants of such directors, officers, employees or workpersons, in respect of personal injury or death sustained by such directors, officers, employees or workpersons whilst engaged in the exercise or performance of their powers, functions or duties in any such capacity, and may pay any premiums which may be payable in terms of any contract of insurance entered into by or on behalf of such directors, officers, employees or workpersons for the purpose or payment of such pecuniary benefits, or may subsidise any such premium so payable;

(d) ensure the Corporation with any company or association against loss, damage, risk, liability or accident whatsoever which the Corporation may suffer or incur;

(e) subsidise any contribution due by any officers, employees, and workpersons of the Corporation under any group medical aid scheme arranged or approved by the Board;

(f) take out an insurance policy with any insurer providing insurance cover for the directors and members of any committee of the Board and/or the officers, employees and workpersons of the Corporation, in respect of injury, disablement or death which may occur or which may be sustained by them in the exercise or performance of their powers, functions or duties in any such capacity;

(g) establish or arrange, and administer and control, for the benefit of the officers, employees and workpersons of the Corporation and, where appropriate, their dependance, a group insurance scheme, a provident fund or medical aid fund or scheme and, subject to compliance with the proviso to subsection 37 (2), the pension fund or scheme;

(h) subject to such regulations in terms of section 39 guidelines established by the Board, provide housing and accommodation for the officers, employees and workpersons of the Corporation, or establish, arrange and undertake any housing scheme or home ownership project for their benefit;

(i) establish guidelines by regulations in terms of section 39 for the granting of loans to the officers, employees and workpersons of the Corporation at the discretion of the Chief Executive Officer and upon such terms and conditions;

(j) train or provide or arrange training facilities for officers, employees and workpersons of the Corporation, and bear the study costs of officers, employees or workpersons studying at any university or technical or other educational institution which is approved by the Board and may grant bursaries and scholarships to any person for the purpose of research, study or further study in any field covered by the business or operations of the Corporation, at any such university or technical or educational institution subject to such conditions as determined by the Board;

(k) make regulations in terms of section 39 not inconsistent with the provisions of this Act, prescribing any staff employee or workperson of a nature contemplated in section 22 or referred to in the preceding provisions of this section, which by-laws shall be binding on all staff, employee and workperson of the Corporation affected thereby;

(l) subject to the directions of the Board (if any), hire out or make available for use, as against consideration, any such property, equipment, staff or services of the Corporation as are not required by it for immediate use;

(m) undertake, support and encourage investigations, study and research either by self or in conjunction with any person or any body regarding all aspects of broadcasting policy, service and technology, including the promotion of the development of public broadcasting services and community broadcasting services which are responsive to the needs of the public generally and communities at large, catering for all language, religious and cultural groups and providing entertainment, education and information, with particular reference to the needs of the constituent regions of the Republic and any local communities within the Province and all matters connected therewith and having due regard to the promotion of disadvantaged persons;

(n) to acquire by way of purchase, lease or otherwise any vehicles, equipment and materials to be used in connection with the purposes and objects of the Corporation;

(o) to incur expenditure in respect of official entertainment by the Board of directors and the Chief Executive Officer for the purposes of or in connection with advancing, promoting, executing or attaining the affairs, operations, purposes and objects of the Corporation, and

(p) to perform and do all such other acts and things which are not inconsistent with the provisions of this Act and which are necessary or expedient with due, proper and effective performance of its powers, functions and duties in terms of this Act.

(2) Notwithstanding the provisions of this Act, the Corporation shall in the exercise and performance of the powers, functions and duties conferred and imposed upon it by or in terms of this Act, and in conducting and carrying on its business, operations and undertakings under or by virtue of this Act, observe and comply with all laws and requirements thereunder which are applicable and in force in respect of such business, operation and undertaking.

26. Compulsory Purchase or Interest in or by Corporation.—(1) Notwithstanding the provision of any other law, the Corporation may, with the written authorization of the Minister of Land Affairs and subject to such conditions as he or she may impose, by compulsory purchase acquire—

(a) such land or right, in respect of land, as may be reasonably required by the Corporation for the erection of transmission or receiving plant and buildings, masts, power generators and other accessories and any process connected therewith.

(b) any land or right in respect of land which is required by the Corporation for an access road to such transmission or receiving plant or for a way leave for the construction and use of any such road or the erection, maintenance or inspection of power or programme lines.

(2) In the event of the Minister of Land Affairs granting his or her authorization for any acquisition in terms of subsection (1) the provisions of sections 6 to 24 inclusive of the Expropriation Act 1977 (Act 63 of 1977) or such other law as may be prescribed by him or her to be applicable, shall *mutatis mutandis* apply in relation to such acquisition.

(3) If the owner of any land agrees to the acquisition of his or her land or any right in, or in respect of such land by the Corporation, but is not prepared to accept the amount of compensation offered therefore, the parties may agree that the land or right be acquired by the Corporation subject to the determination of the amount of compensation payable in accordance with the provisions of sections 12, 14 and 15 of the Expropriation Act, 1975 and having regard to the principles of just and equitable compensation and whichever provision would have applied had the land or right been expropriated in terms of the provisions of that Act: Provided that, in such case, a date of notice as defined in section 1 of that Act, shall be deemed to be a date on which that agreement was concluded: Provided further, that if an application for the determination of the amount of compensation is not made to the appropriate court within six months after that date, the compensation offered by the Corporation shall constitute the amount of compensation payable for its acquisition of such land or right.

27. Transfer by Endorsement of Certain Land, etc., to or by the Corporation, and Exemption from Certain Duties, Fees and Charges.—(1) In the event of the National Government so approving either by way of law or otherwise:

(a) the transfer to the Corporation of any immovable property acquired by it from the State or a statutory Corporation, or the transfer by the Corporation of any immovable property to the State or a statutory corporation may, with the approval of the Registrar General of the Republic of South Africa or his or her duly appointed representative in the Province be effected by way of endorsement upon the title deed of such property and any such endorsement shall for all purposes in law be sufficient proof that the right of ownership of the property in question is vested in the Corporation or the State or the statutory corporation in question (as the case may be);

(b) no stamp duty or transfer duty shall be payable in respect of any transfer of property to the Corporation and no stamp duty or charge or fee of office shall be payable in respect of any document executed on behalf of the Corporation or in respect of any note made at the request of the Corporation, on any document in the deeds registry of the Republic or of the Province; and

(c) no certificate, document or instrument issued by the Corporation shall be subject to stamp duty or any fee of office or charge whatsoever, nor shall the Corporation be liable for the payment of any search or inspection fee in the deeds registry or any office of a provincial department.

28. Execution of Certain Instruments on Behalf of the Corporation.—Every contract, agreement, authority, cheque, bill, promissory note, document and any other instrument, executed for and on behalf of the Corporation, shall, if it complies with the provisions of this Act in all other aspects, be duly executed and signed by the Director-General or the chairperson of the Board, and any other director of the Board duly authorised thereto by the Board, or, if so authorised by the Board, by any two directors of the Board authorised thereto by the Board or the Chief Executive Officer and any officer of the Corporation duly authorised thereto by the Board.

29. Financing of the Corporation.—(1) The Corporation shall be financed and be provided with certain capital, out of—

(a) such moneys as may from time to time be appropriated to the Corporation by the Provincial Legislature, together with such moneys, which prior to the commencement of this Act, had been appropriated by the Provincial Legislature from public funds;

(b) such moneys as immediately prior to the date of the commencement of this Act, constituted the unexpended credit balance of moneys derived by the State from any radio and television services which were provided by it prior to such date of commencement, together with unexpended balances, as the day immediately preceding such date of commencement, of all such amounts as had at any time prior to such date been appropriated by the provincial legislature for use exclusively for the operation and provision by the Province of such radio and television services;

(c) loans granted to the Corporation by the Government of the Province on such terms and conditions as the responsible Member in consultation with the member of the Executive Council for Finance and Provincial Expenditure may from time to time specify;

(d) loans raised or overdrafts obtained from any bank or financial institution registered in the Republic or elsewhere;

- (e) loans negotiated by the Corporation with other states, or with international bodies, agencies, institutions or financiers;
- (f) all income derived by the Corporation from—
- (i) its performance under any agreement;
 - (ii) its broadcast of advertisements;
 - (iii) any concerts, performances and events contemplated;
 - (iv) the economic exploitation of any of the rights;
 - (v) the economic exploitation, in accordance with the provisions of section 23 (1) (h) of any dramatic, literary or musical work or matter or any other film, recording, machine, set, appliance or equipment; and
 - (vi) the sale and distribution of any book, magazine, periodical, newsletter, brochure, programme, pamphlet or merchandise;
- (g) the hiring out or making available of any property, equipment, staff or services;
- (h) donations and bequests made to the Corporation and accepted on its behalf by the Board;
- (i) interest derived from the investments or deposits of moneys of the Corporation;
- (j) the proceeds derived by the Corporation from the realisation of any of its assets or property;
- (k) the rentals paid in respect of any land, dwellings, buildings and other property leased out by the Corporation; and
- (l) all licence fees paid from time to time to the Postmaster General in respect of radio listeners licences and television licences issued to him or her in terms of section 12 of the Bophuthatswana Broadcasting Control Act, 1989, (No. 28 of 1989), including all amounts which in terms of section 13 of that Act, are so paid as penalties in respect of such licenses;
- (m) subject to an agreement with the Minister of Posts, Telecommunications and Broadcasting and the South African Broadcasting Corporation to receive a pro-rata share of licence fees derived in respect of radio listeners and television licences as well as other types of licences by the South African Broadcasting Corporation from licences in the Province:

Provided that the acquisition of capital or funds abroad for the Corporation in terms of paragraph (d) or (e) shall be subject to the prior consent of the Executive Council of the Province.

(2) The Corporation shall open and maintain with a registered commercial or other bank in the Republic or with any other financial institution an account in which shall be deposited all moneys and income of the Corporation under this Act and from which all payments by the Corporation shall be effected.

30. Reserve Fund of the Corporation.—(1) The Corporation shall establish a reserve fund which shall from time to time be credited with any surplus of the income of the Corporation over its expenditure at the end of the financial year.

(2) Any deficit in the books of the Corporation at the end of the financial year and any loss which may arise in consequence of any transactions or the business operations of the Corporation shall be made good from the reserve fund unless and insofar as such deficit or loss is, in the circumstances determined by the Executive Council of the Province,

defrayed by the Government of the Province from moneys specially appropriated by the Provincial Legislature for that purpose.

(3) The money standing to the credit of the reserve fund at the end of the financial year may, insofar as it is not required for any purpose mentioned in subsection (2) and to such extent as may be determined by the Board, be invested on call with any general or commercial bank or any building society within the Republic or any other financial institution or may, if deemed necessary or expedient by the Board be merged with the liquid assets of the Corporation.

(4) The Corporation shall if the National Government so approve, either through legislation or otherwise, not be liable for the payment of income tax or any other tax on any surplus of the Corporation over its expenditure as reflected at the end of the financial year in respect of such year.

31. Government of the Province may Guarantee Repayment of Loans Raised by the Corporation.—(1) The Member of the Executive Council for Finance and Provincial Expenditure may, subject to the provisions of section 157 (3) of the Constitution and in accordance with the provisions of the North-West Exchequer Act, 1994, on behalf of the Government of the Province and upon such terms and conditions as he or she deems fit, guarantee the repayment of any loans raised or negotiated by the Corporation in terms of the provisions of section 28 (1) (d) or (e) as well as the interest on any other charges payable in connection with such loans.

(2) An agreement entered into in pursuance of the provisions of subsection (1) may be signed on behalf of the government of the Province by the Member of the Executive Council for Finance and Provincial Expenditure or any person authorised thereto in writing by him or her.

32. Corporation may Utilise its Funds in Connection with Remuneration, etc., and of all Pensions and Medical Aid Benefits for, Members of the Board and the Staff of the Corporation.—(1) The salaries, allowances and perquisites of the chairperson, deputy chairperson and other directors of the Board, chairperson and other members of the Council, the Chief Executive Officer and any other officers, employees and workpersons of the Corporation shall be paid out of the funds of the Corporation.

(2) The Corporation may from its funds contribute towards any pension fund or scheme or any medical aid scheme established or arranged in terms of the provisions of the Act for the benefit of the members of the Board, the Chief Executive Officer and any other officers, employees and workpersons of the Corporation, and dependants of any aforementioned persons.

33. Financial Accountability of the Corporation and Provisions Relating to the Annual Report.—(1) The Board shall, in respect of every financial year, cause proper books and records of account to be kept in accordance with established accounting practice, principles and procedures, of—

(a) all the moneys received by the Corporation;

(b) all moneys deposited in and payments made from the account;

(c) all moneys of the Corporation invested or deposited;

(d) all movable and immovable property and other assets held by the Corporation and every loan raised or overdraft obtained by or for the Corporation and the capital amount outstanding on each loan or overdraft;

(e) all costs incurred or moneys expended or owing by the Corporation in connection with the exercise and performance of its powers, functions and duties under this Act;

(f) the interest paid and/or payable by the Corporation in respect of every loan or overdraft; or

(g) the interest received and/or accrued in moneys deposited or invested.

(2) The Board shall, within three months as from the end of each financial year or such longer period as the responsible

Member may in writing allow, submit the said books and records of account, together with the financial statements of the Corporation in respect of each such year, comprising the income and expenditure statement and a balance sheet, to be audited in accordance with the provisions of section 34.

34. Operations Relating to Audit, Offences and Penalties in Connection with Audit.—(1) The statements, records, books, accounts and documents of the Corporation (together with all vouchers, invoices and receipts) relating to the business and financial affairs, position and transaction of the Corporation, shall be fully audited by the Auditor-General (who is hereby empowered to carry out such an audit) or a practising public accountant and auditor appointed by him or her for that purpose, at the conclusion of which the auditor concerned shall furnish his or her report to the Board: Provided that in the event of the Auditor-General not being authorised in terms of the law whereunder it operates to so audit the books of the Corporation, the audit shall be performed by such auditor as the responsible Member may appoint.

(2) In carrying out any audit in terms of subsection (1), the Auditor-General or the public accountant or auditor referred to in subsection (1) may direct any person (including any department of a Province, any statutory or other corporation, or body or any company, firm or association of persons) to furnish to him or her such information in the possession of such person or to make available for examination of all such statements, records, books, accounts and documents in the possession or under the control of such person, as in the opinion of the Auditor-General or such accountant or auditor related to or are relevant in connection with any transactions or with any business, operation or undertaking of the Corporation and are likely to facilitate the carrying out of such audit.

(3) Any person who fails or refuses to comply with any direction under subsection (2) shall be guilty of an offence and liable on conviction to a fine not exceeding R5 000,00 and twelve months, or to both such fine and such imprisonment.

(4) Notwithstanding the provisions of subsection (1), if the responsible Member is of the opinion that for any reason the Corporation's finances have become unsound he or she may appoint an independent auditor to conduct an interim audit and he or she shall call for and receive from the chairperson a report as contemplated in section 32 (2) for such period determined by the responsible Member and, such report to be submitted to the responsible Member within a period specified by the responsible Member and the provisions of subsection (2) of such section shall *mutatis mutandis* apply.

35. Auditor-General's Report of Chairperson of the Board and the Financial Statements of the Corporation to be Tabled in the Provincial Legislature.—The responsible member shall, within fourteen days after he or she has received the Auditor-General's report as to the audit in terms of section 33 (2) and the report and financial statements contemplated by such section, lay such reports and statements on the table in the Provincial Legislature, if the Provincial Legislature is then in session, or, if it is not then in session within fourteen days after the commencement of its next ensuing session.

36. Execution of Documents of Corporation.—(1) Subject to any resolution of the Board whereby any arrangement is made, every contract, agreement, authority or approval and any other document or instrument, shall have been duly executed for and on behalf of the Corporation, if it complies with the provisions of this Act in all other respects and has been signed by the Chief Executive Officer.

(2) The Chief Executive Officer, in his or her discretion, and any other officer of the Corporation authorised thereto in writing by the Chief Executive Officer, may subject to the provisions of this Act, execute or prepare, and sign any such notice, document or instrument as may be necessary or expedient in connection with the administration of every-day business, operations and affairs of the Corporation.

37. Provisions Relating to Pensions of Staff of Corporation.—(1) Subject to the repeal thereof by the National Government by way of an act of Parliament and subject to the provisions of subsection (2) of this section, the Corporation shall continue to be deemed to have been declared an associated institution under section (3) of the Associated Institutions Pension Act, 1980 (Act 2 of 1980), as provided for by section 34 of the Bophuthatswana Broadcasting Corporation Act, 1989.

(2) The provisions of subsection (1) shall not be construed so as to derogate from the power of the Board under section 24 (1) (g) to establish or arrange its own pension fund or scheme: Provided that—

(a) such pension fund or scheme shall not be established or arranged unless it is approved by the responsible Member and at least two thirds of all members of staff of the Corporation who by virtue of the application of the provisions of section (2) of the Associated Institutions Pension Act, 1980, are liable to contribute towards the pension fund envisaged thereby.

(b) the Board, with the approval of the responsible Member, shall give to the administrators of the pension fund last mentioned in paragraph (a) of this proviso, at least three months prior written notice of the date of establishment or arrangement of its own pension fund or scheme, being the date of termination of its participation in the pension fund so referred to, upon expiration of such period the provisions of subsection (1) of this section shall cease to apply.

38. Vesting and Dissolution of Certain Rights.—(1) As from the date of commencement of this Act, the ownership of—

(a) all such land, whether improved or unimproved, which immediately prior to the commencement of this Act—

(i) is occupied for use by the Corporation exclusively for the purposes of or in connection with any broadcasting service operated and carried out on by and under the Bophuthatswana Broadcasting Corporation Act, 1989;

(ii) is used or at the disposal of the Corporation or the exclusive purpose of providing housing or accommodation to officers, employees and workpersons of the Corporation; and

(b) all such radio, apparatus and equipment and other equipment, appliances, plant, machinery, furniture, vehicles, stores, articles and other property, rights, interests, and assets which, immediately prior to such date of commencement, vested in the Corporation and are used, utilised, kept, held or destined for use or utilisation exclusively for the purposes of or in connection with any such broadcasting service,

shall continue to vest in the Corporation in terms of this Act.

(2) (a) The Corporation shall for all purposes in law continue to be deemed to be the legal successor in relation to all transactions, agreements, contracts, proceedings, matters, acts or things which prior to commencement of this Act, were concluded, brought, performed or done by the Government of Bophuthatswana and the Minister of Post and Telecommunication and Broadcasting of Bophuthatswana, on behalf of, for the purposes of, in respect of or in connection with any function or matter or the Department of Bophuthatswana Broadcasting relating to or connected with any broadcasting service which prior to such date of commencement, was operated and carried on by it under the repealed Bophuthatswana Broadcasting Act, 1978.

(b) All transactions, agreements, contracts, proceedings, matters, acts or things which after the date of commencement of this Act but prior to the date of promulgation thereof in the *Gazette* were concluded, brought, performed or done or issued in furtherance of the object of the Corporation or in carrying on of its business and operation with the *bona fide* yet mistaken belief that the same were in accordance with the provisions of the Act shall be deemed to have been lawfully concluded, brought, performed or done.

(3) All moneys which, immediately prior to the date of commencement of this Act, are owing or payable to or by the State and Government of Bophuthatswana in respect of any debts, obligations, liabilities, rights or privileges, incurred, acquired, arising or conferred for the purposes of or in connection with any broadcasting service referred to in subsection (2) and which were, in terms of section 35 (3) of the Bophuthatswana Broadcasting Corporation Act, 1989 owing or payable to or by the Corporation shall continue to be deemed to have been devolved upon the Corporation as from such date.

39. Regulations.—(1) The Board may publish any notices or make any regulations not inconsistent with the provisions of this Act, relating to—

(a) the rights, powers, functions, duties and conditions and terms of service including salary and perquisites of the staff, employees and workpersons of the Corporation and the manner in which it is to be exercised to perform, and the control and supervision of such staff;

(b) the management, supervision and control of the Corporation;

(c) the establishment or arrangement and the administration and control of any pension fund or

scheme, group insurance scheme and medical aid fund or scheme for the staff of the Corporation hereinbefore mentioned and for members of the Board;

(d) the contributions of the Corporation towards any fund or scheme referred to in paragraph (c);

(e) the due, proper and effective conducting of business, operations, undertakings and activities of the Corporation, generally;

(f) any matter which is required to be prescribed or determined or may be prescribed or determined by the Board in terms of the provisions of this Act, insofar as such provisions do not require the Board to exercise its discretion separately in respect of every individual case presented to or to be considered by it; and

(g) to the guidelines referred to in section 23 (1) and section 25 (h) and (i).

Provided that in so far as any notice or regulation under this subsection relates to matters financial or matters having financial implications, it shall be made in consultation with the responsible Member and the Member of the Executive Council for Finance and Provincial Expenditure.

(3) Every notice or regulation made in terms of the proviso to subsection (1) shall be laid on the table of the Provincial Legislature within fourteen days of its publication in the *Gazette*, if the Provincial Legislature is then in session, or, if it is not then in session, within fourteen days after the commencement of its next ensuing session.

(4) Notwithstanding the provisions of subsection (1), the responsible Member may, if he or she deems it necessary, make such regulations that are necessary for the proper functioning and administration of the Corporation and implementation of the broadcasting and public media policy of the Province.

40. Repeal and Amendment of Laws.—(1) Subject to the provisions of subsection (2), the Bophuthatswana Broadcasting Corporation Act, 1989, (Act 30 of 1989) is hereby repealed in so far as the provisions thereof has been assigned to the Premier of the North-West Province by the President in terms of section 235 (8) of the Constitution.

(2) Any regulation, licence, appointment, designation, determination or other thing which was made, issued or done under a law repealed by subsection (1) and which could be made, issued or done under any provision of this Act, shall be deemed to have been made, issued or done under the last-mentioned provisions.

41. Short Title.—This Act shall be called the North-West Broadcasting Act, 1995.