

ACCESS TO INFORMATION AND PROTECTION OF PRIVACY BILL, 2001

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MEMORANDUM

[This memorandum is not part of the proposed Act but is published with the Bill.]

Recognising the critical role of information in a constitutional democracy and the fact that information can be used usefully or harmfully, the purpose of this Bill is to give effect to freedom of expression enshrined in the Constitution of Zimbabwe.

The Bill provides for the type of information that is accessible and that which is not accessible to the public. It also provides for the protection of privacy.

The underlying principles of this Bill are as follows—

- (a) *Giving members of the public access to records and information held by public bodies*

The Bill allows members of the public to receive information without interference.

This is necessary in a democracy if we are to have an informed citizenry. Members of the public are entitled to check on the accuracy of information held or disseminated by public bodies as this will help improve transparency in the decision-making processes of public bodies.

- (b) *Making public bodies accountable to members of the public*

It is necessary to make public bodies accountable to members of the public because information is an integral part of the democratic process and is necessary for public accountability. In Zimbabwe, public bodies have been accused of being opaque yet their activities affect the public in that they have a direct implication on national defence, security, public health, safety and the economic well-being of citizens and their right to privacy. So citizens should have the right of access to information held by these public bodies. In the same vein, it is important to ensure that public bodies that disseminate information do not intrude on the privacy of individuals or compromise national defence or security.

- (c) *Correction of personal information that is in the custody of a public body*

Every person should have a right to request the correction of personal information that is in the custody or control of a public body if such information does not reflect the truth or the correct position. This is necessary as the continued misrepresentation of such information can result in prejudice to that person. For example if a public body holds a record or disseminates information which says an individual has a criminal record when that is not the case, that will have serious consequences on a person's rights. So it is imperative for such a record or information to be corrected so that it reflects the true position. It is also important that public bodies have accurate records of an individual as inaccurate information can seriously affect a person's reputation and livelihood.

- (d) *Protection of personal privacy*

There is need for legislation that provides for the protection of personal privacy because there is a clear and present collapse of both professional and ethical standards in the media industry and this has resulted in the wanton invasion of personal privacies. This can be evidenced by the increase in the number of defamation cases that members of the public have brought against the media.

Of late there have been cases of intrusion of personal privacy by the media through invasion of personal correspondence, private family affairs and trespassing by way of taking illegal photographs of persons or their properties for no apparent reasons of public interest or journalistic purposes.

Current legislation was not designed to cope with the kind of media invasion that we are witnessing today, and where there is provision, the penalties provided are not deterrent enough because they were not meant to deal with the type of media invasion that we are experiencing today.

(e) Regulation of the mass media

Media, like any other public bodies, should be accountable to society. They are the vehicles of communication, connecting centres of messages and receivers of those messages and so they have to be judged on how well and faithfully they convey those messages to members of the public without abridgement, distortions or in any way interfering with the right to freedom of expression given to members of the public by our Constitution.

Media are dealing with a public good, that is disseminating information that has a direct bearing on a citizen's capacity to play a meaningful role in society. There are various levels of power and authority within the media, thereby presenting the risk of arbitrary use to the detriment of the right to receive information. The predominance of the commercial media has created a new situation where profit or political agenda is put before professional and ethical service to the detriment of members of the public.

(f) Establishment of the Media and Information commission

This Bill also establishes a Media and Information Commission which will regulate the operations of the media industry in Zimbabwe. All along the media industry has been operating in an unstructured fashion which has led to ethical and professional lapses on the part of some of the media practitioners. The lacuna has also enabled some foreign created, foreign funded and foreign driven groups to take advantage by purporting to speak for and on behalf of Zimbabweans. Thus has opened wide and potentially harmful opportunities to malicious interests that could prejudice national defence and security. The media industry has failed to voluntarily structure itself as has been evidenced by the absence of a voluntary media council dramatised by the polarisation of the media. Further, there has been a discernible decline of public faith in the media industry as has been witnessed by complaints, open hostility and attacks on the media by some offended sections of the public who have regrettably taken the law unto their own hands. Thus, the need for a statutory remedy is clear and present.

Currently there is no institution which minds the growth of the media industry by way of investment and training skills beyond what individual publishers are doing and can do.

The media industry has been polarised to such an extent that it is now impossible for the industry to regulate itself through a meaningful voluntary body. There is so much mutual ill feeling amongst the players in the industry themselves that they have been unable to come together and form an organisation to regulate their activities, hence the need for a statutory body to perform this function.

Where an individual has been wronged by the media, the costs of litigation for redress are beyond the reach of the majority of our citizens such that there is a need for provision to be made for an affordable and reliable recourse to members of the public. The Media and Information Commission will be able to provide such kind of recourse.

In more detail the individual provisions of the Bill will provide as follows—

PART I

This Part deals with preliminary matters. Clause 1 sets out the Bill's short title and Clause 2 defines the terms that are used throughout the Bill.

PART II

This Part provides for access to information. Every person shall have a right of access to any record, including a record containing personal information that is in the custody or under the control of a public body, though certain information will be exempt from disclosure. Any person requiring information contained in a record held by a public body will make the request in writing and the head of the respective public body shall take every reasonable step to assist the applicant.

PART III

This Part protects certain type of information like for example, information pertaining to Cabinet deliberations from being disclosed to any person who has no right to have access to such information. It lists the information that is protected from disclosure. Of interest to note in this Part is the fact that the head of a public body is not allowed to disclose information that will result in the invasion of a third party's personal privacy.

PART IV

This Part deals with information pertaining to third parties. A head of a public body is obliged, under this Part to notify a third party where an applicant has requested to be granted access to a record or information pertaining to the third party.

This Part also allows a head of a public body to disclose information that is deemed to be in the public interest. Such information includes for example information about the risk of significant harm to the health or safety of members of the public.

PART V

This Part sets out how personal information is to be collected, protected and retained.

PART VI

This Part deals with how public bodies will use and disclose personal information that is in their custody or under their control. This Part also lists the instances when personal information can be disclosed.

PART VII

This Part establishes the Media and Information Commission. The Commission will be an independent body that will deal with members of the public's complaints against the media; deal with problems within the media as well as to ensure that every Zimbabwean has access to information. The operations of the Commission will be managed and controlled by a Board that will be chaired by an executive chairman. The usual conditions that apply to the appointment and tenure of office of members of statutory boards will apply to members of this Board.

PART VIII

This Part establishes a Media and Information Fund whose main object will be to assist in the training of journalists as well as promoting research and development. Every mass media house shall contribute a prescribed amount annually towards this Fund.

PART IX

This Part provides the Commission with further powers. The Commission is granted power to conduct an investigation, inquiry or hearing. This Part also protects a statement made, information supplied or record produced by a person during an investigation from being subject to defamation charges.

The Commission and members of its staff will not be allowed to disclose any information obtained during the performance of their duties

The Commission and members of staff are protected from liability for anything done or said as a result of the *bona fide* exercise or performance of their duties or powers.

PART X

This Part deals with reviews by the Commission. A person who makes a request to a head of a public body for access to a record or information held by that public body or for a request for correction of personal information may request the Commission to review any decision or act of the head of that public body that relates to that request. It also sets out the procedure to be followed when seeking such a review. The request for a review shall be made in writing and within 30 days of the date of the decision. The Commission shall after receiving a request for review, also give a copy of the request to the head of the respective public body. The Committee will then hold an enquiry and make an order as to its findings and the head of the public body shall, if Commission orders in favour of the applicant, be obliged to comply with the order unless an appeal against the order is lodged.

A person aggrieved by any decision of the Commission shall have a right to appeal to the Administrative Court.

PART XI

This Part regulates the activities of all mass media in the country and also deals with the accreditation of journalists. It will apply to all mass media in Zimbabwe and foreign mass media that disseminate mass media products in Zimbabwe.

Freedom of mass communication is declared in this Part though such freedom will have to be enjoyed within some stipulated guidelines which include disseminating true, useful and unbiased information to members of the public.

To entrench the freedom of mass communication, there will be no censorship of mass information or the suppression of the dissemination of information.

This Part also lists the instances which amount to abuse of freedom of mass communication.

Because of the sensitivity of disseminating mass media, only Zimbabwean citizens, companies, associations, state agencies or bodies may own or co-own mass media and every such mass media shall register with the Media and Information Commission and get a certificate of registration that will be valid for a period of two years and may be renewed thereafter. This part also exempts certain mass media from undergoing the process of registration.

A person who wishes to carry on or operate a news agency will have to register with the Commission. To ensure that there will be responsibility for articles published in any mass media, a product will only be disseminated after the editor-in-chief has given the go-ahead. This will ensure quality control.

PART XII

This Part deals with the rights and privileges of a journalist. No journalist will be allowed to practise in Zimbabwe without being accredited by the Commission. Accreditation will ensure that the Commission is able to know the number of journalists practising or covering stories in Zimbabwe at any given time.

This Part also provides for the Commission and the journalists to come up with a code of ethics to regulate the professional behaviour of journalists. Every journalist practising in Zimbabwe shall register with the Commission and the Commission shall keep a roll of all journalists practising in Zimbabwe. After registering, the Commission will issue the journalist with a certificate of registration that will be valid for one year and may be renewed thereafter.

Any member of the public aggrieved by the professional conduct of a journalist may appeal to the Commission.

PART XIII

This Part deals with general provisions. The head of a public body may delegate to any person any of his duties, powers or functions.

The Board shall submit to the Minister an annual report on the matters dealt with by the Commission.

This Part also protects a head of a public body and his officials from legal suits as well as makes provision for the payment of a fee for services provided by a public body in terms of this Act.

Clause 118 allows the Minister to make regulations to give effect to some of the provisions of the Act.

PRESENTED BY THE MINISTER OF STATE FOR INFORMATION AND PUBLICITY

BILL

To provide members of the public with a right of access to records and information held by public bodies; to make public bodies accountable by giving the public a right to request correction of misrepresented personal information; to prevent the unauthorised collection, use or disclosure of personal information by public bodies; to protect personal privacy; to provide for the regulation of the mass media; to establish a Media and Information Commission and to provide for matters connected therewith or incidental to the foregoing.

ENACTED by the President and the Parliament of Zimbabwe.

PART I PRELIMINARY

1 Short title

This Act may be cited as the Access to Information and Protection of Privacy Act, 2001.

2 Interpretation

In this Act—

“applicant” means a person requesting access to a record or information held by a public body;

“Commission” means the Media and Information Commission established by section 39;

“educational body” means a body defined in the Education Act [*Chapter 25:04*];

“exempted information” means records exempt from application of this Act and as prescribed under the First Schedule to this Act.

“employee”, in relation to a public body, includes a person retained under a contract to perform services for the public body;

“head”, in relation to a public body, means—

(a) the person designated as the head of a public body in the second column of the Second Schedule; or

(b) any other person whom the Minister may, from time to time designate as the head of a public body for the purposes of this Act;

“health care body” means a hospital, clinic or a mental health facility as defined in the Mental Health Act [*Chapter 15:06*];

“judicial administration record” means a record containing information relating to a presiding officer or a justice of the peace, including—

(a) scheduling of presiding officers and trials;

(b) content of judicial training programmes;

(c) statistics of judicial activity prepared by or for a judge;

“law enforcement” includes—

(a) policing, including criminal intelligence operations; or

(b) investigations that lead to a penalty or sanction being imposed; or

(c) proceedings that result in a penalty or sanction being imposed; or

(d) control of immigration; or

(e) national defence and security; or

(f) maintenance of public order;

“local government body” means—

(a) a municipality as defined in the Urban Councils Act [*Chapter 29:15*];

(b) a council as defined in the Rural District Councils Act [*Chapter 29:19*];

(c) a catchment council or sub-catchment council established in terms of the Water Act [*Chapter 20:22*];

(d) a board of cemetery trustees established under the Cemeteries Act [*Chapter 5:04*];

(e) any board, committee, commission, panel, agency or corporation that is created or owned by a body referred to in paragraphs(a) to(e) and all the members or officers of which are appointed or chosen by or under the authority of that body;

“mass media owner” means an advertiser, publisher or broadcasting licensee as defined in the Broadcasting Services Act [*Chapter 12:06*] or any other licensee specified by the Minister by Statutory Instrument;

“Minister” means the Minister responsible for Information and Publicity or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“personal information” means recorded information about an identifiable person, and includes—

- (a) the name, address or telephone number;
- (b) the race, national or ethnic origin, colour, religious or political beliefs or associations;
- (c) the age, sex, sexual orientation, marital status or family status;
- (d) an identifying number, symbol or other particulars assigned to that person;
- (e) fingerprints, blood type or inheritable characteristics;
- (f) information about a person’s health care history, including a physical or mental disability;
- (g) information about educational, financial, criminal or employment history;
- (h) anyone else’s opinions about the individual; and
- (i) the individual’s personal views or opinions, except if they are about someone else;
- (j) personal correspondence, home and family;

“personal information bank” means a collection of personal information that is organised or retrievable by the name of an individual or by an identifying number, symbol or other particular assigned to that individual and includes personal images;

“public body” means any body prescribed as a public body in terms of the first column to the Second Schedule of this Act.

“record” includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by graphic, electronic, mechanical or other means, but does not include a computer programme or any other mechanism that produces records;

“third party”, in relation to a request for access to a record or for correction of personal information, means any person, group of persons or organisation other than the person who made the request;

“trade secret” means information, including a formula, pattern, compilation, programme, device, product, method, technique or process, that is used, or may be used, in business or for any commercial advantage and—

- (a) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use;
- (b) is the subject of reasonable efforts to prevent it from becoming generally known; and
- (c) the disclosure of which would result in harm or improper benefit.

3 Application of Act in relation to other laws

(1) This Act shall apply to matters relating to access to information, protection of privacy and the media and shall be construed as being in addition to and not in substitution for any other law which is not in conflict or inconsistent with this Act.

(2) If any other law relating to access to information, protection of privacy and the media is in conflict or inconsistent with this Act, this Act shall prevail.

4 General application of Act

(1) This Act shall apply to all records in the custody or under the control of a public body, including court administration records but shall not include the records listed in the First Schedule.

(2) This Act shall not limit the information available by law to a party to a legal proceeding.

PART II ACCESS TO INFORMATION

5 Right to information

(1) Subject to section 10, every person shall have a right of access to any record, including a record containing personal information, that is in the custody or under the control of a public body:

Provided that such access shall not extend to information exempt from disclosure in terms of this Act.

(2) Where information can be extracted from a record that contains exempt information, an applicant may have access to the part of the record that is not exempt.

(3) The right of access to a record shall be subject to the payment of a prescribed fee.

(4) Nothing contained in this Act shall confer any rights to information or to a record to—

- (a) a person who is not a citizen or permanent resident of Zimbabwe;
- (b) a body corporate, including a partnership, universitas or trust, whose entire control and membership is not comprised of a majority of Zimbabwean citizens other than a foreign company registered or incorporated in Zimbabwe;
- (c) any mass media service which is not registered in terms of this Act, or to a broadcaster who is not registered in terms of the Broadcasting Services Act [*Chapter 12:06*]; and
- (d) any foreign state or agency thereof.

6 Request for record

An applicant who requires access to a record that is in the custody or control of a public body shall make a request, in writing, to the public body, giving adequate and precise details to enable the public body to locate the information so requested.

7 Fees for services by a public body

(1) An applicant shall pay the prescribed fee for any service rendered by a public body.

(2) The head of a public body may excuse an applicant from paying all or part of the fee if, on good cause shown by the applicant, the applicant cannot afford to pay the fee, is excused, by law, from paying a fee or the record relates to a matter of public interest.

8 Duty to assist applicants

(1) The head of a public body shall take every reasonable step to assist an applicant requesting for a record and shall respond as soon as is reasonably possible in the circumstances, but not later than 30 days, to each request:

Provided that the head of a public body may delay to respond where an extension has been granted or where the request has been transferred to another public body.

(2) Where necessary, the head of a public body shall create a record for an applicant if—

- (a) the record can be created from a machine readable record in the custody or under the control of the public body using its normal computer hardware and software and technical expertise; and
- (b) creating the record would not unreasonably interfere with the operations of the public body.

9 Contents of response

(1) A response by the head of a public body to a request made in terms of section 6 shall inform the applicant—

- (a) whether or not he is entitled to access to the record or a part of the record; and
- (b) the place where, time when and manner in which such access will be given;

(2) Where the head of a public body refuses access to a record or part of a record, he shall inform the applicant of the reasons therefor.

(3) An applicant whose request for a record or part of a record has been refused by the head of a public body may request the Commission to review the public body's decision.

(4) The head of a public body may refuse a request for a record or part of a record if granting access to such a record—

- (a) contravenes this Act;
- (b) results in the disclosure of personal information pertaining to a third party that would result in an invasion of that person's privacy;
- (c) is in the public interest.

10 Access to information

(1) Where an applicant is granted access to a record or part of a record, the head of a public body shall—

- (a) give him the opportunity to examine such record or part thereof; or
- (b) where the applicant has requested for a copy of a record or part of the record, provide him with such copy if it can be reproduced, and where it cannot be reproduced, give the applicant an opportunity to examine such record Or part thereof;

(2) Where the head of a public body delays in responding to an applicant's request for a record or part of a record, he shall give the applicant the reasons for such delay.

(3) An applicant shall provide adequate details so as to enable the public body to locate the information sought.

11 Extension of time limit for responding

(1) The head of a public body may extend the time for responding to a request to a maximum of 30 days or, with the Commission's permission, for a longer period if—

- (a) the applicant does not give sufficient detail to enable the public body to identify the requested record;
- (b) a large number of records is requested or is to be searched, and meeting the time limit would unreasonably interfere with the operations of the public body; or
- (c) more time is needed to consult with a third party or other public body before the head can decide whether or not to give the applicant access to the requested record.

(2) Where the time is extended in terms of subsection (1), the head of the public body shall inform the applicant of—

- (a) the reason for such extension; and
- (b) when he should expect a response.

12 Transfer of a request

(1) The head of a public body may, within 10 days after a request for access to a record is received, transfer the request and or the record to another public body if it appears to him that the record is in the custody or under the control of the other public body or has implications for another body.

(2) Where a request or a record is transferred in terms of subsection (1) the head of the public body which effected such transfer shall notify the applicant of such transfer.

(3) The head of the public body to whom the transfer was effected shall respond to the applicant's request not later than 30 days after receiving the request, unless the time limit has been extended in terms of section 10.

13 Delegation by the head of a public body

(1) The head of a public body may delegate to any person any duty, power or function of the head of the public body under this Act, except the power to delegate under this section.

(2) A delegation made in terms of subsection (1) shall be in writing and may contain any conditions or restrictions the head of the public body considers appropriate.

14 Protection of public body from legal suit

No action shall lie and no proceeding may be brought against the government, a public body, the head of a public body, an elected official of a public body or any person acting on behalf of or under the direction of the head of a public body for damages resulting from—

- (a) the disclosure or non-disclosure, in good faith, of all or part of a record; or
- (b) consequences arising from disclosure or non-disclosure.

PART III PROTECTED INFORMATION

15 Protection of deliberations of Cabinet and local public bodies

(1) No information relating to the deliberations of Cabinet or any of its committees shall be revealed or disclosed to any person who is not authorised to have access to such information.

(2) The information referred to in subsection (1) shall include—

- (a) any advice, policy considerations and recommendations made to Cabinet; and
- (b) any draft legislation or regulations prepared for submission or submitted to Cabinet.

(2) Subsection (1) shall not apply to information contained in a record that has been in existence for 25 or more years.

(3) No information relating to the holding of a meeting of a governing body or a Committee in camera, where a public body is authorised in terms of this or other Act, shall be revealed or disclosed to any person who is not authorised to have access to such information.

(4) Subsection (3) shall not apply to circumstances where the deliberations, resolution or draft resolution was made or considered in the presence of members of the public.

16 Protection of advice relating to policy

(1) The head of a public body may not disclose to an applicant information relating to advice or recommendations given to the President, Cabinet Minister or to a public body.

(2) Subsection (1) shall not apply to the following classes of information—

- (a) a public opinion poll;
- (b) a statistical survey;
- (c) an appraisal of an employee of the public body;
- (d) a forecast of the economy;
- (e) information relating to the state of the environment;
- (f) an audit or performance report of a public body;
- (g) a consumer test report or a report of a test carried out on a product to test equipment of the public body;
- (h) a feasibility or technical study, including a cost estimate, relating to a policy or project of the public body;
- (i) a report on the results of a field research undertaken before a policy proposal is formulated;
- (j) a report of a committee, council or similar body that has been established to consider any matter and make reports or recommendations to a public body;
- (k) a plan or proposal to establish a new programme or to change a programme, where the original plan or proposal had been approved or rejected by the head of the public body;
- (l) information that the head of the public body has cited publicly as the basis for making a decision or formulating a policy;
- (m) a decision, including the reasons thereof, that is made in the exercise of a discretionary power or an adjudicative function that affects the rights of the applicant; or
- (n) information contained in a record that has been in existence for 10 or more years.

17 Protection of information subject to client-attorney privilege

The head of a public body shall not disclose to an applicant information that is subject to client-attorney privilege.

18 Protection of information whose disclosure will be harmful to the law enforcement process and national security

- (1) The head of a public body shall not disclose to an applicant information whose disclosure would—
- (a) affect the law enforcement process; or
 - (b) prejudice the defence and national security of the country and the safety or interests of the country by disclosing information protected from disclosure under the Official Secrets Act [*Chapter 11:09*]; or
 - (c) prejudice the defence and national security of a foreign country with which Zimbabwe has entered into a defence pact; or
 - (d) prevent the detection, prevention or suppression of espionage, sabotage or terrorism; or
 - (e) affect the effectiveness of investigation techniques and procedures used by the law enforcement agencies; or
 - (f) reveal the identity of a confidential source of law enforcement information; or
 - (g) reveal information relating to criminal intelligence that has a reasonable connection with the detection, prevention or suppression of organised criminal activities; or
 - (h) endanger the life or physical safety of a law enforcement officer or any other person; or
 - (i) reveal any information relating to or used in the exercise of prosecutorial discretion; or
 - (j) deprive a person of the right to a fair or impartial trial; or
 - (k) reveal information contained in a record that has been confiscated from a person by a peace officer in terms of the law; or
 - (l) facilitate the escape from custody of a person who is under lawful detention; or
 - (m) facilitate the commission of an offence in contravention of the law of Zimbabwe; or
 - (n) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system; or
 - (o) prejudice the operations of the defence and security forces within or outside Zimbabwe; or
 - (p) result in the contravention of an Act of Parliament; or
 - (q) result in exposing a person to civil liability for disclosing personal information contained in a law enforcement record; or
 - (r) affect the custody, supervision or release of a person in custody.
- (2) Notwithstanding subsection (1), the head of a public body may disclose—
- (a) the contents of a report prepared in the course of routine inspections by an agency that is authorised to enforce compliance with an Act;
 - (b) the contents of a report, including statistical analysis, on the degree of success achieved in a law enforcement programme; or
 - (c) statistical information on decisions made by the Attorney-General on the prosecution of offences:

Provided that the disclosure of such information will not contravene the prohibitions set out in subsection (1).

(4) The head of a public body may disclose, after the completion of an investigation by the police, the reasons for a decision not to prosecute to—

- (a) a person who was aware and had an interest in the investigation, including a victim, relative, friend of a victim or a complainant; or
- (b) any member of the public, where the investigation had been made public.

19 Protection of information relating to inter-governmental relations or negotiations

(1) The head of a public body may, on the advice of the Minister responsible for local government or the Minister responsible for foreign affairs as the case may be, refuse to disclose information to an applicant if such disclosure may—

- (a) affect the relations between the government and—
 - (i) a municipal or rural district council; or
 - (ii) the government of a foreign state; or
 - (iii) an international organisation of states;
- (b) divulge information received in confidence from a government, council or organisation referred to in paragraph (a).

(2) Subsection (1) shall not apply to information other than law enforcement information contained in a record that has existed for 20 or more years.

20 Protection of information relating to the financial or economic interests of a public body, the government or the country

(1) The head of a public body may refuse to disclose to an applicant information which may result in harm to the planning, financial or economic interests of the public body, the government and the country.

- (2) The information referred to in subsection (1) shall include—
 - (a) trade secrets of a public body or the government; or
 - (b) financial, commercial, scientific or technical information that belongs to a public body or to the government and has monetary value; or
 - (c) plans that relate to the management of personnel of or the administration of a public body or the government and that have not yet been implemented or made public; or
 - (d) information whose disclosure may result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;
 - (e) information relating to negotiations made by or for a public body or the government.
- (3) Subsection (1) shall not apply to the results of product or environment testing carried out by or for a public body, unless the testing was done—
 - (a) as a service to a person, group of persons or organisation who paid a fee for such service; or
 - (b) for the purpose of developing methods of testing.

21 Protection of research information

The head of a public body shall not disclose research information if such disclosure will result in the loss by the researcher of the right to first publish the results of such research or any intellectual property rights.

22 Protection of information relating to conservation of heritage sites

- (1) The head of a public body may refuse to disclose information to an applicant if the disclosure will result in damage to, or interference with the conservation of—
 - (a) fossil sites, natural sites or sites that have an anthropological or heritage value; or
 - (b) an endangered, threatened or vulnerable species, subspecies or race of plants, vertebrates or invertebrates; or
 - (c) any other rare or endangered living species.

23 Protection of information relating to personal or public safety

- (1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure will result in a threat to another person's safety, mental or physical health or interfere with public safety.
- (2) The head of a public body may refuse to disclose to an applicant personal information concerning the applicant if such disclosure will result in a threat to the applicant's safety, mental or physical health.

24 Protection of information available to the public

- (1) The head of a public body may refuse to disclose to an applicant information—
 - (a) that is available to members of the public upon payment of a specific fee; or
 - (b) that will be published or released to members of the public within 60 days of the date of reception of the applicant's request.
- (2) Where the head of a public body refuses to disclose information in terms of subsection (1), he shall notify the applicant, in writing, of the reasons thereof.
- (3) If, after the expiration of 60 days after the date of receiving a request for information from an applicant, the information so requested is not yet published, the head of a public body shall reconsider the request by the applicant and he shall treat it as a new request.

25 Protection of information relating to business interests of a third party

- (1) The head of a public body may refuse to disclose to an applicant information that would reveal the trade secrets, commercial, financial or labour relations or scientific or technical information of a third party that is supplied, implicitly or explicitly, in confidence, and the disclosure of which could reasonably be expected to—
 - (a) harm significantly the competitive position or interfere significantly with the negotiating position of the third party;
 - (b) result in similar information being no longer provided to the public body when it is in the public interest that such information continues to be so provided; or
 - (c) result in undue financial loss or gain to any person or organisation; or
 - (d) reveal information supplied to an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute; or
 - (e) reveal information that would harm the economic interests of the country.
- (2) The head of a public body shall not disclose to an applicant information contained in a tax return form or gathered so as to determine a person's tax liability or to collect outstanding tax.
- (3) Subsections (1) and (2) shall not apply where—
 - (a) the third party consents to the disclosure; or
 - (b) the information is contained in a record that is in the custody or control of the National Archives of Zimbabwe; or

- (c) the information is contained in a record that is in the archives of a public body and has been in existence for 30 or more years.

26 Protection of information relating to personal privacy

(1) The head of a public body shall not disclose personal information to an applicant if the disclosure will result in the invasion of a third party's personal privacy.

(2) In determining whether or not a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all the relevant circumstances, including whether—

- (a) the disclosure is desirable or necessary for the purpose of subjecting the activities of the government or a public body to public scrutiny;
- (b) the disclosure is likely to promote public health and safety or the protection of the environment;
- (c) the personal information is relevant to a fair determination of the applicant's rights;
- (d) the disclosure will assist in researching or validating the claims, disputes or grievances of indigenous people;
- (e) the third party will be exposed unfairly to financial or other harm;
- (f) the personal information has been supplied in confidence;
- (g) the personal information is likely to be inaccurate or unreliable; and
- (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

(3) A disclosure of personal information shall be presumed to be an unreasonable invasion of a third party's personal privacy if the personal information—

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, unless if disclosure is necessary to prosecute such violation or to continue the investigation;
- (c) relates to eligibility for income assistance or social welfare benefits or to the determination of benefit levels;
- (d) relates to employment, occupational or educational history;
- (e) was obtained on a tax return or gathered for the purpose of collecting a tax;
- (f) describes the third party's finances, income, assets, liabilities, net worth, bank balances financial history or activities, or creditworthiness;
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations concerning the third party;
- (h) disclosure could reasonably be expected to reveal that the third party supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation;
- (i) indicates the third party's racial or ethnic origin, religious or political beliefs or associations; or
- (j) consists of the third party's name, address, or telephone number and is to be used for mailing lists or solicitations by telephone or other means.

(5) A disclosure of personal information shall not be considered an unreasonable invasion of a third party's personal privacy if—

- (a) the third party has, in writing, consented to or requested the disclosure;
- (b) there are compelling circumstances affecting another person's health or safety and notice of disclosure is mailed to the last known address of the third party;
- (c) disclosure is authorised in terms of the laws of the country;
- (d) the disclosure is for purposes of research or statistics;
- (e) the information concerns the third party's position, functions or remuneration as an officer, employee or member of a public body;
- (f) the disclosure reveals financial and other details of a contract to supply goods or services to a public body;
- (g) the information is about expenses incurred by the third party while travelling on the business and at the expense of a public body;
- (h) the disclosure reveals details of a licence, permit or other similar discretionary benefit granted to the third party by a public body, not including personal information supplied in support of the application for the benefit; or
- (i) the disclosure reveals details of a discretionary benefit of a financial nature granted to the third party by a public body, not including personal information that is supplied in support of an application for the benefit referred to in paragraph (c) of subsection (3).

(6) The head of a public body shall, when refusing to disclose personal information supplied in confidence about a third party, give the applicant a summary of the information, if such summary can be prepared without disclosing the identity of the third party who supplied such personal information.

(7) The head of a public body may allow the third party to prepare the summary of personal information referred to in subsection (5).

PART IV
INFORMATION PERTAINING TO THIRD PARTIES

27 Requirement to notify third party

(1) The head of a public body shall, if he intends to give an applicant access to a record that he has reason to believe contains information exempted from disclosure and pertaining to a third party, notify the third party, in writing, of his intention to give such access.

(2) Where the head of a public body has been approached by an applicant with a request to give information pertaining to a third party and he does not intend to give the applicant access to such information, he shall notify the third party, in writing, of his intention not to give such access to a record.

(3) The head of a public body shall, when giving notice in terms of subsection (1), also give the applicant a notice stating that—

- (a) the record he has requested contains information whose disclosure may affect the interests or invade the personal privacy of a third party;
 - (b) the third party is being given an opportunity to make representations concerning disclosure; and
 - (c) a decision will be made within 30 days on whether or not to give the applicant access to the record.
- (4) The notice referred to in subsection (2) shall—
- (a) advise the third party that a request has been made by an applicant for access to a record containing information whose disclosure affect the interests or invade his personal privacy; and
 - (b) describe the contents of the record; and
 - (c) state that, within 20 days after the notice is given, the third party may, in writing, consent to the disclosure thereof or may make written representations to the public body explaining why the information should not be disclosed.

28 Time limit to give notice of decision

(1) Within 30 days after notice is given in terms of subsection (1) or (2) of section 20 four, the head of the public body shall decide whether or not to give access to the record or to part of the record, but no decision may be made before—

- (a) the lapse of 21 days after the day notice is given; or
- (b) the day a response is received from the third party;

whichever occurs first.

(2) After reaching a decision in terms of subsection (1), the head of the public body shall give notice, in writing, of his decision to both the applicant and the third party.

(3) If the head of the public body decides to give access to the record or to part of the record, the notice shall state that the applicant will be given access to the record within 20 days after the date the notice is given, unless the third party requests for a review.

29 Information to be disclosed if in the public interest

(1) The head of a public body shall have a duty to disclose to—

- (a) an applicant; or
- (b) members of the public or interested or affected persons, whether or not a request has been made; information concerning—
 - (i) the risk of significant harm to the health or safety of members of the public; or
 - (ii) the risk of significant harm to the environment; or
 - (iii) any matter that threatens national security; or
 - (iv) any matter that is in the interest of public order; or
 - (v) any matter that assists in the prevention, detection or suppression of crime; or
 - (vi) information threatening public security and public order:

Provided that information that threatens public order and public security shall only be disclosed to the relevant authorities.

(2) Before disclosing any information in terms of subsection (1), the head of a public body shall, if possible, notify any third party to whom the information relates or directly affects and the Commission.

(3) If it is not reasonably possible to comply with subsection (2), the head of the public body shall mail a notice of disclosure in the prescribed form to the last known address of the third party and to the Commission.

PART V
COLLECTION, PROTECTION AND RETENTION OF PERSONAL INFORMATION BY PUBLIC BODIES

30 Purposes for which personal information may be collected

A public body may only collect personal information if—

- (a) the collection of that information is expressly authorised in terms of an Act;
- (b) the information is to be collected for the purposes of national security, public order and law enforcement; or
- (c) the information is to be collected for the purposes of public health; or

- (d) the information relates directly to and is necessary for an operating programme, function or activity of the public body;
- (e) the information will be used to formulate public policy.

31 Collection of personal information

(1) A public body shall collect personal information directly from the person to whom it relates unless—

- (a) another method of collection is authorised by—
 - (i) that individual; or
 - (ii) the Commission; or
 - (iii) another enactment; or
- (b) the information is to be collected for the purpose of—
 - (i) determining the suitability for granting an honour or award including an honorary degree, scholarship, prize or bursary; or
 - (ii) proceedings before a court, judicial or quasi judicial tribunal; or
 - (iii) collecting a debt or fine or making a payment; or
 - (iv) law enforcement.

(2) A public body shall inform a person from whom it intends to collect personal information the purpose for which the personal information is being collected and the legal authority for collecting it.

(3) Subsection (2) shall not apply if—

- (a) the information relates to law enforcement; or
- (b) the Commission excuses a public body from complying with the subsection if doing so would result in the collection of inaccurate information, or defeat the purpose of, or prejudice the use for which the information is to be collected.

32 Accuracy of personal information

A public body shall, if it intends to use an individual's personal information to make a decision that will directly affect that individual, take every reasonable step to ensure that the information is accurate and complete.

33 Right to request correction of personal information

(1) Where a person has reason to believe that personal information relating to him that is in the custody or control of a public body contains an error or omission, he may request the head of that public body to correct such information.

(2) The head of a public body shall, upon receiving a request in terms of subsection (1), correct or annotate the personal information on the record pertaining to the person making the request.

(3) The head of a public body shall, when correcting or annotating personal information upon a request made in terms of subsection (1), notify about the correction to any other public body or any third party to whom that information has been disclosed during the last 12 months preceding the request for a correction.

34 Protection of personal information

The head of a public body shall protect personal information that is under his custody or control by taking reasonable steps to ensure that there is adequate security and there is no unauthorised access, collection, use, disclosure or disposal of such personal information.

35 Retention of personal information

If a public body uses an individual's personal information to make a decision that directly affects the individual, the public body shall retain that information for at least one year after using it so that the individual has a reasonable opportunity to have access to it.

36 Penalty for deliberately falsifying personal information

A person who, if requested to do so, deliberately supplies a public body with false personal information shall be guilty of an offence and shall be liable to a fine not exceeding \$20,000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

PART VI

USE AND DISCLOSURE OF PERSONAL INFORMATION BY PUBLIC BODIES

37 Use of personal information

A public body may only use personal information—

- (a) for the purpose for which that information was obtained or compiled, or for a use consistent with that purpose; or
- (b) if the person to whom the information relates has identified the information and has consented, in the prescribed manner to such use.

38 Disclosure for archival or historical purposes

The National Archives of Zimbabwe, or the archives of a public body may disclose personal information for archival or historical purposes if—

- (a) such disclosure would not result in an unreasonable invasion of a person's personal privacy in terms of this Act; or
- (b) the information is about a person who has been deceased for 30 or more years.

PART VII MEDIA AND INFORMATION COMMISSION

39 Establishment of Media and Information Commission

(1) For the purposes of this Act, there is hereby established a Commission, to be known as the Media and Information Commission, which shall be a body corporate capable of suing and being sued in its own name and, subject to this Act, of performing all acts that bodies corporate may by law perform.

40 Powers and functions of Commission

- (1) Subject to this Act, the powers and functions of the Commission shall be—
 - (a) to ensure that Zimbabweans have access to information and effective control of mass media services;
 - (b) receive and act upon comments from the public about the administration and performance of the mass media in Zimbabwe;
 - (c) comment on the implications of proposed legislation or programmes of public bodies on access to information and protection of privacy;
 - (d) comment on the implications of automated systems for collection, storage, analysis or transfer of information on access to information or protection of privacy;
 - (e) inform the public about this Act;
 - (f) engage in or commission research into anything affecting the achievement of the purposes of this Act;
 - (g) to conduct investigations and audits to ensure compliance with any provision of this Act;
 - (h) to advise the Minister on the adoption and establishment of standards and codes relating to the operation of mass media services;
 - (i) to receive, evaluate for registration and consider applications for registration as a journalist;
 - (j) to enforce professional and ethical standards in the mass media;
 - (k) to review the decisions of public bodies;
 - (l) to authorise the collection of personal information from sources other than the person to whom the information relates; and
 - (m) to bring to the attention of the head of a public body any failure to meet the prescribed standards for fulfilling the duty to assist applicants.
 - (n) to authorise a public body, at the request of the head, to disregard requests that would unreasonably interfere with the operations of the public body;
 - (o) to accredit journalists; and
 - (p) to monitor the media and raise user awareness of the media;
 - (q) to register mass media services in Zimbabwe;
 - (r) to perform any power or function that the Minister may, from time to time, prescribe as a power or function of the Commission;
 - (s) to investigate and resolve complaints.
- (2) In the exercise of its functions, the Commission shall have regard to the desirability of securing the following objects—
 - (a) to foster freedom of expression in Zimbabwe;
 - (b) to make information easily accessible to persons requiring it;
 - (c) to ensure accurate, balanced and unbiased reporting by the mass media services in Zimbabwe;
 - (d) the development of mass media services that uphold professional and ethical codes of conduct;
 - (e) to promote the preservation of national security and integrity of Zimbabwe;
 - (f) to foster a Zimbabwean national identity and integrity;
 - (g) to be responsible for enforcing and monitoring the enforcement of provisions of this Act, and to ensure that its purposes are achieved.
- (3) Subject to this Act, for the better exercise of its functions, the Commission shall have power to do or cause to be done, either by itself or through its agents, all or any of the things specified in the Fourth Schedule, either absolutely or conditionally and either solely or jointly with others.

41 Appointment and composition of Media and Information Commission

- (1) The operations of the Commission shall, subject to this Act, be controlled and managed by a Board.
- (2) Subject to subsection (3), the Board shall consist of no fewer than five members and not more than nine members appointed by the Minister after consultation with the President and in accordance with any directions that the President may give him.

(3) The Fifth Schedule shall apply to the qualifications of members of the Board and the Commission, their terms and conditions of office, vacation of office, suspension and dismissal, and the procedure to be followed by the Commission at meetings.

42 Financial and miscellaneous provisions relating to Commission

The Sixth Schedule shall govern the financial and certain other aspects of the operation of the Commission.

43 Annual report of Commission

(1) As soon as possible after the end of each year, the Board shall submit to the Minister an annual report on matters dealt with by the Commission during that year.

(2) At any time the Commission may submit a special report to the Minister on any matter upon which the Commission considers it desirable to report.

PART VIII MEDIA AND INFORMATION FUND

44 Interpretation in Part IV

In this Part—

“**Fund**” means the Media and Information Fund established by section 45.

45 Establishing and vesting of Media and Information Fund

(1) There is hereby established a fund to be known as the Media and Information Fund.

(2) Subject to this Part, the Fund shall be vested in and administered by the Commission as trustee.

46 Objects of Fund

The objects of the Fund shall be—

- (a) the standardisation of mass media services and the maintenance of high standards of quality in the provision of such services; and
 - (b) to assist in the training of persons in the provision of mass media services; and
 - (c) to promote and contribute towards research and development in the field of information and mass media;
 - (d) to promote public awareness on the right of access to information and protection of privacy;
- in accordance with an annual implementation plan prepared by the Commission in consultation with mass media owners’ offices.

47 Moneys of Fund

The Fund shall consist of—

- (a) such monies as may be raised by contributions imposed in terms of section 48.
- (b) such moneys as may be payable to the Fund from moneys appropriated by an Act of Parliament for the purpose of the Fund; and
- (c) any surplus of income over expenditure at the end of the Commission’s financial year appropriated in terms of paragraph 3 of the Sixth Schedule;
- (d) any other moneys the Fund may be lawfully entitled; and
- (e) accreditation fees.

48 Levies

(1) Every mass media owner shall pay the prescribed annual contribution to the Fund.

(2) The dates on which contributions to the Fund become payable and the manner in which they shall be paid shall be as prescribed.

(3) Any mass media which fails to pay a levy due to the Fund shall in addition to any other penalty imposed for non-compliance with this Act, be liable to—

- (a) pay to the Fund an amount equivalent to double the levy due.
- (b) the suspension of the registration certificate; or [*sic*]

49 Holding of Fund

(1) All moneys received on behalf of the Fund shall be paid into a banking account and no money shall be withdrawn there from except by means of cheques signed by such persons as are authorised in that behalf by the Commission.

(2) Any part of the Fund not immediately required for the purposes of the Fund may be invested in such manner as the Minister may determine:

Provided that such moneys shall not be invested directly in any securities issued by a mass media owners’ office that is a corporate body.

50 Financial year of Fund

The financial year of the Fund shall be the period of 12 months ending on the 31st December in each year.

51 Accounts and audit of Fund

(1) The Commission shall cause proper books of accounts of the Fund to be kept, together with adequate financial and other records in relation thereto, and, within three months after the end of the financial year to which the accounts relate, shall submit the accounts to the Comptroller and Auditor-General for audit in terms of subsection (2).

(2) The accounts of the Fund shall be audited by the Comptroller and Auditor-General, who shall have all the powers conferred upon him by section 9 of the Audit and Exchequer Act [*Chapter 22:03*] as though the assets of the Fund were public moneys or State property.

PART IX FURTHER POWERS OF COMMISSION

52 Power of Commission to conduct investigations, audits or inquiries

(1) For the purpose of conducting an investigation, inquiry or hearing in terms of this Act, the Commission shall have the same powers, rights, and privileges as are conferred upon a Commissioner by the Commissions of Inquiry Act [*Chapter 10:07*], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 18 of that Act shall apply, *mutatis mutandis*, in relation to any hearing and determination of any matter before the Commission under this Act and to any person summoned to give or giving evidence before the Commission.

(2) The Commission may require any record, including a record containing personal information held by a public body, to be produced as evidence.

(3) A public body requested by the Commission to produce a record in terms of subsection (2) shall do so within a period of 10 days from the day that such record was requested.

53 Protection against actions for defamation

Any statement made, information supplied or record produced by a person during an investigation or inquiry by the Commission shall be privileged and shall not subject the person to defamation charges.

54 Restrictions on disclosure of information by the Commission and staff

(1) The Commission and any person acting for or under its direction shall not disclose any information obtained during the performance of their duties, powers and functions under this Act, except in circumstances provided for in subsections (2) to (5).

(2) The Commission may disclose, or may authorise anyone acting on its behalf or under its direction to disclose information that is necessary to—

- (a) conduct an investigation, audit or inquiry under this Act; or
- (b) establish the grounds for findings and recommendations contained in a report made under this Act.

(3) In conducting an investigation, audit or inquiry under this Act and in a report made under this Act, the Commission and anyone acting for or under the direction of the Commission shall take every reasonable precaution to avoid disclosing information that a head of a public body may not disclose in terms of this Act.

(4) The Commission may disclose to the Attorney-General information relating to the commission of an offence if it considers that there is enough evidence to prove the commission of an offence.

(5) The Commission may disclose, or may authorise anyone acting for or under its direction to disclose information in an appeal.

55 Protection of Commission and staff from liability

No liability shall attach to the Commission, or to a person acting on behalf of or under its direction, for anything done, reported or said as a result of the *bona fide* exercise or performance or the intended exercise or performance of a duty, power or function conferred under this Act.

56 Delegation of powers by Commission

(1) The Commission may delegate to any person any duty, power or function under this Act except the power to delegate in terms of this section.

(2) A delegation made in terms of subsection (1) shall be in writing and may contain any conditions or restrictions that the Commission considers appropriate.

PART X REVIEWS BY THE COMMISSION

57 Right to request for a review

(1) A person who makes a request to a head of a public body, other than the Commission, for access to a record or for correction of personal information may request the Commission to review any decision or act of the head of that public body that relates to that request.

(2) A third party notified of a decision to give access may request the Commission to review any decision made by the head of the public body.

58 Procedure for seeking review

(1) For the purposes of this section, the failure by a head of a public body to respond within the time limit to a request for access to a record shall be deemed to be a decision to refuse access to the record.

(2) A person requesting a review in terms of this Part shall make such request, in writing, to the Commission.

(3) A request for a review of a decision of the head of a public body in terms of subsection (1) shall be made within 30 days from the date of the decision:

Provided that the Commission may allow a longer period upon a request made to the Commission for the extension of the period.

59 Notice of review

The Commission shall, on receiving a request for a review, give a copy of the request to the head of the public body and any other person that the Commission considers appropriate.

60 Inquiry by Commission

(1) The Commission shall conduct an inquiry and may decide all questions of fact and law arising in the course of the inquiry.

(2) An inquiry in terms of subsection (1) may be conducted *in camera*.

(3) The Commission shall give the person who requested the review, the head of the public body concerned or any person given a copy of the request for a review or anyone who has an interest in the matter an opportunity to make representations during the inquiry.

(4) The Commission may decide—

(a) whether representations are to be made orally or in writing; and

(b) whether a person is entitled to be present during or to have access to or to comment on representations made to the Commission by another person.

(5) The person who requested the review, the head of the public body concerned or any person given a copy of the request for a review may be represented at the inquiry by a legal practitioner.

(6) An inquiry into a matter under review shall be completed within 90 days from the date of receiving the request for the review.

61 Onus of proof

(1) At an inquiry into a decision to refuse an applicant access to all or part of a record, the head of the public body shall bear the onus of proving that the applicant has no right of access to the record or part thereof.

(2) If the record or that part that the applicant is refused access to contains personal information about a third party, the applicant shall bear the onus of proving that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

(3) At an inquiry into a decision to give an applicant access to all or part of a record containing information that relates to a third party, the third party shall bear the onus of proving that the applicant has no right of access to the record or part thereof.

62 Commission's orders

(1) The Commission shall make an order as to its findings on completing an inquiry.

(2) If the inquiry relates to a decision of the head of a public body to give or to refuse to give access to all or part of a record, the Commission shall, by order, do any of the following—

(a) require the head to give the applicant access to all or part of the record;

(b) either confirm the decision of the head or require the head to reconsider the decision;

(c) require the head to refuse access to all or part of the record.

(3) If the inquiry relates to any other matter, the Commission may, by order, do any of the following—

(a) require that a duty imposed by this Act or the regulations be performed;

(b) confirm or reduce the extension of a time limit;

(c) confirm, exempt or reduce a fee, or order a refund, in the appropriate circumstances, including if a time limit is not met;

(d) confirm a decision not to correct personal information or specify how personal information is to be corrected;

(e) require a public body to stop collecting, using or disclosing personal information in contravention of this Act;

(f) require the head of a public body to destroy personal information collected in contravention of this Act.

(4) The Commission may specify any terms or conditions in an order made in terms of this section.

(5) The Commission shall give a copy of an order made in terms of this section to the following persons—

- (a) the person who requested the review;
- (b) the head of the public body concerned;
- (c) the Minister;
- (d) any other interested party.

63 Duty to comply with orders

Not later than seven days after being given a copy of an order of the Commission, the head of the public body concerned shall comply with the order unless an appeal is lodged before that period ends.

64 Appeal against a decision of the Commission

(1) Subject to this section, any person aggrieved by any decision or action of the Commission may, within 28 days after being notified of that decision or action, appeal to the Administrative Court.

(2) An appeal in terms of subsection (1) shall be made in the form and manner prescribed and within the period prescribed in the rules of court.

(3) For the purpose of determining an appeal in terms of subsection (1) the President of the Administrative Court shall be assisted by two assessors.

(4) On an appeal in terms of subsection (1), the Administrative Court may, subject to subsection (5), confirm, vary or set aside the decision or action appealed against and may make such order, whether as to costs or otherwise, as the court thinks just.

(5) Any person whose appeal on a ground specified in paragraph (a) or (c) of subsection (1) is upheld shall not be entitled to receive a licence but shall be entitled to have his matter remitted to the Commission for re-determination in terms of this Act.

65 Offences and penalties

(1) Any person who wilfully—

- (a) makes a false statement to, or misleads or attempts to mislead the Commission or any other person in the performance of their duties, powers or functions in terms of this Act;
- (b) obstructs the Commission or any other person in the performance of their duties, powers or functions in terms of this Act;
- (c) fails to comply with an order made by the Commission;

shall be guilty of an offence and liable to a fine not exceeding \$20,000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

PART XI REGULATION OF MASS MEDIA

66 Interpretation in Part VII

In this Part—

“dissemination of mass media products” means the sale, subscription, delivery, diffusion or distribution of periodically printed publications, audio-recorded programmes, electronically distributed information or teletext programmes;

“distributor” means a person who disseminates mass media products under an agreement with the mass media owners’ office or on any other lawful grounds;

“journalist” means a person who gathers, collects, edits or prepares messages and materials for the office of a mass media and is connected with it by the provision of his labour and other contractual relations or obligations or engaged in such other activity authorised by the editor;

“mass communication” means messages intended for an unlimited range of persons;

“mass media products” means an advertisement, the total print or part of the total print of the separate issue of a periodically printed publication, a separate issue of a teletext programme, the total data or part of the data of any electronically transmitted material, or audio or video recorded programme;

“periodically printed publication” means a regular newspaper, magazine or journal, bulletin or any other publication with a constant name.

67 Application of this Part

This Part shall apply to all mass media owners in Zimbabwe and foreign mass media owners that disseminate mass media products in Zimbabwe.

68 Freedom of expression

(1) Except as prescribed by this Act or any other law in force in Zimbabwe, the retrieval, receipt, production and dissemination of information and opinion to the public shall not be liable to restrictions.

(2) Subject to the provisions of this Act or any other law in force in Zimbabwe there shall be no censorship of mass information or the suppression of the dissemination of information and materials and separate parts thereof meant for the public.

69 Abuse of freedom of expression

(1) Any person accredited or organisation registered in terms of this Act shall not make use, by any means, of a mass media service for the purposes of—

- (a) committing a criminal offence; or
- (b) divulging a lawfully protected secret; or
- (c) calling for the seizure or overthrow of constitutional government through violent means; or
- (d) advocating a change of government by violence or other unconstitutional means; or
- (e) denigrating, bringing into hatred or contempt or ridicule or to excite disaffection against the President, the law enforcement agents or the administration of justice in Zimbabwe; or
- (f) distributing materials propagating pornography, bestiality or the cult of violence and cruelty; or
- (g) distributing material which is harmful to children; or
- (h) contravening any provision of this Act; or
- (i) publishing a fabricated record of personal information.

(2) A person who contravenes subparagraphs (a) to (h) of subsection (1) is guilty of an offence and liable to a fine not exceeding \$100,000 or to imprisonment for a period not exceeding two years.

70 Ownership of mass media service

(1) The following may own or co-own a mass media service—

- (a) citizens of Zimbabwe;
- (b) an association of citizens of Zimbabwe; and
- (c) companies whose members are citizens of Zimbabwe;
- (d) a state body or agency.

(2) The following persons and bodies may not own or co-own a mass media service—

- (a) a person under the age of 18 years; or
- (b) a person who is serving a sentence of imprisonment;
- (c) an intellectually handicapped person recognised as legally unfit under the Mental Health Act [Chapter 15:06];
- (d) an association of persons or an organisation whose activity is banned or prohibited by law; or
- (e) a foreign citizen or a stateless person;
- (f) a company whom some or all of its members are not citizens of Zimbabwe.

(3) Co-owners shall act jointly and have the same duties and responsibilities as a mass media owner.

71 Registration of a mass media service

(1) A mass media owner shall carry on the activities of a mass media service only after registering and receiving a certificate of registration in terms of this Act.

(2) An application for the registration of a mass media service whose products are intended for dissemination in Zimbabwe shall be submitted by its owner to the Commission in the form and manner prescribed.

(3) The Commission shall, upon receiving an application for registration, send a notification of receipt of the application to the owner or person authorised by him indicating the date the application was received, and the Commission shall consider such application within a month of receiving it.

(4) A mass media service shall be registered when it is issued with a certificate of registration by the Commission.

(5) A certificate issued in terms of subsection (4) shall be valid for a period of two years and may be renewed thereafter.

(6) The registered owner shall start circulating his mass media's products six months from the date of the issue of the registration certificate, failing which the registration certificate shall be deemed to be cancelled.

72 Application for registration

(1) The application for the registration of a mass media service shall be as prescribed and shall be accompanied by the prescribed fee.

73 Re-registration and notification of changes

(1) A mass media service shall be re-registered if—

- (a) the owner is replaced;
- (b) the co-owners change;
- (c) the name, language, form and frequency of the periodical dissemination of mass media is altered;
- (d) the area where the mass media products are circulated is changed.

(2) The owner shall, within one month, notify the Commission, in writing, if the editorial office changes its place of location and form.

(3) A mass media service whose activity is terminated by a decision of a court of law shall not be re-registered.

74 Exemption from registration

- (1) The following mass media services are exempted from registering in terms of this Act—
 - (a) a mass media service founded under an Act of Parliament;
 - (b) a mass media service that circulates mass media products that are not for sale for mass circulation and subject to conditions prescribed by the Minister.

75 Refusal of registration of a mass media service

- (1) The Commission may refuse to register a mass media service—
 - (a) if it fails to comply with the provisions of this Part;
 - (b) if the information indicated in an application is false, misleading or contains any misrepresentation;
 - (c) if the name, area of focus or the specialisation of a mass media service are altered without obtaining the prior consent of the Commission;
 - (d) if the Commission has already registered a mass media service with the same name and form of dissemination of mass communication;

and the Commission shall forward a written notification of the refusal of registration, stating the grounds upon which such refusal is based.

- (2) An application for the registration of a mass media service shall not be considered—
 - (a) if it contravenes any provision of this Act;
 - (b) if the application has been filed by a person who has no authority to do so;
 - (c) if the application fee has not been paid.

(3) An application for registration may be re-submitted for consideration after the removal of any contraventions or when there is a change of circumstances.

76 Registration fee

- (1) The registration fee shall be as prescribed by the Minister:

Provided that the Minister may prescribe a higher fee for established mass media service specialising in commercial mass media services and advertising and a lower fee for a mass media service specialising in producing materials intended for children, adolescents and disabled persons and used for educational, philanthropic and social purposes.

77 Cancellation of a registration certificate

- (1) The Commission may cancel a registration certificate if—
 - (a) the registration certificate has been obtained by fraudulent means;
 - (b) a mass media service does not publish or go on air within six months from the date of registration;
 - (c) the mass media owner contravenes a provision of this Act.
 - (d) the mass media owner fails to comply with an order or directive of the Commission.

(2) The Commission shall not refund the registration fee if a certificate of registration is cancelled in terms of subsection (1).

(3) A mass media service whose certificate of registration is cancelled in terms of this section shall cease to operate forthwith and may not reapply for registration until after the expiration of a period of two years.

78 Termination or suspension of activity

(1) The Commission or the owner of a mass media service may suspend or terminate the functioning of a mass media service.

(2) The owner may terminate or suspend the functioning of a mass media service only in terms of the statutes or articles of the editorial office.

(3) The Commission may, upon the determination of a complaint against any mass media service registered in terms of this Act, either suspend, terminate or censure that mass media service.

(4) The Commission may, after issuing four written warnings to the founder or mass media owner of a mass media service of repeated contraventions of any provision of this Act, terminate the registration of such mass media.

79 Penalties for operating a mass media service without registration certificate

(1) No person shall carry on or operate a mass media service without a valid registration certificate issued in terms of this Part.

(2) A person who contravenes subsection (1) shall be guilty of an offence and liable, upon conviction to a fine not exceeding one million dollars or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(3) In addition to any fine imposed in terms of subsection (2) and without derogation from any of its powers granted under any enactment a court convicting a person of contravening subsection (1) may declare forfeited to the State any product, equipment or apparatus used for the purpose of or in connection with the offence.

(4) The proviso to subsection (1) and subsections (3), (4), (5) and (6) of section 62 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply, *mutatis mutandis*, in relation to a declaration made in terms of subsection (3).

(5) If the Minister has reasonable grounds to believe that a mass media service is being operated in contravention of this Act, he shall issue a certificate authorising the police to seize the said media's products, equipment or apparatus, and impound them pending the finalisation of the criminal prosecution in terms of this section.

80 Accrual of rights and duties

(1) The rights and duties of the owner and the mass media service set out in this Act shall commence from the date of registration of a mass media service, while those set out in the articles of the mass media service shall commence from the date of incorporation.

(2) The owner, mass media service, or distributor may in addition institute mutual rights and duties on a contractual basis provided that they do not contravene the provisions of this Act or any other law.

81 News agencies

(1) Subject to this Act, no person shall carry on or operate a news agency without a valid registration certificate issued in terms of this Part.

(2) A person who contravenes subsection (1) shall be guilty of an offence and liable, upon conviction to a fine not exceeding one million dollars or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(3) In addition to any fine imposed in terms of subsection (2) and without derogation from any of its powers granted under any enactment a court convicting a person of contravening subsection (1) may declare forfeited to the State any equipment or apparatus used for the purpose of or in connection with the offence.

(4) The proviso to subsection (1) and subsections (3), (4), (5) and (6) of section 62 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply, *mutatis mutandis*, in relation to a declaration in terms of subsection (3).

(5) If the Minister has reasonable grounds to believe that a news agency is being operated in contravention of this Act, he shall issue a certificate authorising the police to seize the said agency's equipment or apparatus, and impound them pending the finalisation of the criminal prosecution in this section.

(6) Any messages or materials belonging to a news agency and distributed by another mass media service shall state the name of the news agency.

82 Publisher's imprint

Every issue of a periodically printed publication or electronic programme shall contain a publisher's imprint as prescribed.

83 Deposit copies

The mass media service shall send free deposit copies of a periodical to the Commission and the archives.

84 Obligatory reports

A mass media service shall be obliged to publish, free of charge and in the prescribed manner a decision of a court or the Commission pertaining to its mass media service that has come into effect, if it is a newspaper, on the front page or centrespread and if it is electronic media, three times during prime time.

PART XII JOURNALISTS

85 Rights of a journalist

Subject to this Act and any other law, a journalist shall have the right—

- (a) to enquire, gather, receive and disseminate information;
- (b) to visit public bodies with the express purpose of carrying out duties as a journalist;
- (c) to get access to documents and materials as prescribed in this Act;
- (d) to make recordings with the use of audio-video equipment, photography and cine-photography;
- (e) to refuse to prepare under his signature reports and materials inconsistent with his convictions;
- (f) to remove his signature from a report or material whose content was distorted, in his opinion, in the process of editorial preparations or to ban or stipulate in any other way the conditions and manner of using this report; or
- (g) to circulate reports and materials he prepared under his signature, under a pseudonym or without any signature.

86 Accreditation of journalists

(1) No journalist shall work in Zimbabwe without being accredited by the Commission.

(2) The Minister shall prescribe the form and manner in which journalists will be accredited.

(3) A mass media service may file an application for accreditation on behalf of journalists employed by such mass media service.

87 Journalists' code of conduct

The Commission shall, in consultation with journalists and mass media services' offices develop a code of conduct for journalists.

88 Use of hidden equipment

(1) A journalist may disseminate reports and materials prepared using hidden audio-video recording, photography and cine-photography if—

- (a) it is necessary to protect the interests of the public and reasonable measures have been taken to prevent the possible identification of affected persons;
- (b) the recording has been permitted by a decision of a court of law.

89 Abuse of journalistic privilege

(1) A journalist shall be deemed to have abused his journalistic privilege and committed an offence if he does the following—

- (a) except where he is employed by a news agency, he rewrites a story that has already been published by another mass media service without the permission of that mass media owner;
- (b) if he conceals, falsifies or fabricates information;
- (c) if he spreads rumours, falsehoods or causes alarm and despondency under the guise of authentic reports;
- (d) except where he is a freelance journalist, collects and disseminates information on behalf of another person who is not part of the mass media service that employs him;
- (e) if he deliberately spreads information that discredits a person or a category of persons on the basis of sex, age, race, nationality, language, religion, profession, place of residence and work, and of political convictions; or
- (f) if he contravenes a provision of this Act.

(2) A person who contravenes subparagraphs (a) to (f) of section (1) is guilty of an offence and liable to a fine not exceeding \$100,000 or to imprisonment for a period not exceeding two years.

90 Extent of status and recognition of journalists

The professional status and recognition of journalists established by this Act shall extend to workers of editorial offices involved in editing, writing, collecting or preparing communications and materials for newspapers with a large circulation and other mass media owners whose products are disseminated exclusively within one enterprise, association, organisation or institution.

91 Roll of journalists

The Commission shall maintain a roll of all journalists and shall issue to every person whose name is entered in the roll, a certificate of accreditation in the prescribed form.

92 Application for accreditation as a journalist

Any person who wishes to be accredited as a journalist shall apply to the Commission in the form and manner prescribed.

93 Accreditation as a journalist

The Commission may accredit an applicant as a journalist if it is satisfied that the applicant—

- (a) has complied with the prescribed formalities; and
- (b) possesses the prescribed qualifications; and
- (c) is a citizen of and is domiciled in Zimbabwe.

94 Prohibition against practice by, or in association with an unqualified journalist

(1) No person other than an accredited journalist shall practise as a journalist nor be employed as such or in any manner hold himself out as or pretend to be a journalist.

(2) No person who has ceased to be an accredited journalist as a result of the deletion of his name from the roll, or who has been suspended from practising as a journalist, shall, while his name is so deleted, or is so suspended, continue to practise directly or indirectly as a journalist, whether by himself or in partnership or association with any other person, nor shall he, except with the written consent of the Commission, be employed in any capacity whatsoever connected with the journalistic profession.

(3) No mass media shall employ or practise with any journalist who is not accredited in terms of this Act.

95 Duration of accreditation certificate of journalist

An accreditation certificate issued in terms of this Part shall be valid for a period of 12 months and may be renewed thereafter upon the same terms and conditions that applied when the initial certificate was issued.

96 Discipline of journalists

For the purpose of exercising disciplinary control and other powers over journalists, the Commission shall, after affording the journalist a fair hearing, have the following powers—

- (a) deleting his name from the roll of journalists;
- (b) ordering his suspension for a specified period;
- (c) imposing such conditions as it deems fit subject to which he shall be allowed to practise;
- (d) ordering him to pay a penalty not exceeding \$50,000;
- (e) cautioning him; or
- (f) referring the matter for prosecution.

97 Correction of untruthful information

(1) A person shall have the right, at no cost, to demand from a mass media service correction of untruthful information that denigrates his honour and dignity that was published by that mass media service and the same right shall vest in the lawful representatives of the person, if he has no opportunity of demanding a correction.

(2) A mass media owner shall be obliged to publish a correction in the next issue after the date of receipt of the demand for a correction of its text.

(3) If a person has submitted a text of the correction, the text shall be disseminated as long as it does not contravene a provision of this Act.

(4) A person aggrieved by a decision of a mass media owner to refuse to publish a correction may appeal to the Commission.

98 Manner in which correction is to be made

(1) A correction shall indicate the information published by the given mass media service that was not truthful and real and when it was published by that mass media service.

(2) A correction shall be published in the same manner as the refuted report or material was published and shall be set up with the same type and featured under the heading “Correction”.

(4) The scope of correction may not exceed twice as much the scope of the reflected fragment of the report or material.

99 Grounds for the refusal of a correction

(1) A correction may be refused if the demand or the submitted text of correction—

- (a) represents an abuse of the freedom of mass communication as set out in section 69;
- (b) contradicts a decision of a court;
- (c) is anonymous;
- (d) the demand for correction or the submitted text was received by the mass media service after the expiration of one year since the day of the publication of the information to be corrected by the given mass media service.

(2) The refusal to correct or the infringement of the order or manner in which a correction is to be made in terms of this Act may be appealed against to the Commission within one year from the date of the publication of the refuted information and the Commission shall consider the appeal within 30 days of receiving it.

100 The right of reply

(1) A person or organisation in respect of whom a mass media service has published information that is not truthful or real or impinges on his rights or lawful interests shall have a right of reply in the same mass media service and at no cost to him and the reply shall be given the same prominence as the offending story.

(2) The reply shall be featured in the next issue of the mass media service.

101 Foreign correspondents

(1) A representative office of foreign mass media service shall be set up in Zimbabwe only with the permission of the Minister.

(2) Only journalists accredited in terms of this Act shall represent foreign correspondents in Zimbabwe.

PART XIII GENERAL PROVISIONS

102 Regulatory powers of the Minister

(1) The Minister may, by regulation, order or notice, prescribe matters that, by this Act are required or permitted to be prescribed or that in the opinion of the Minister are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without derogating from the generality of subsection (1), regulations, orders or notices made in terms of subsection (1) may provide for—

- (a) the form, manner and period in which applications for registration shall be made;

- (b) the form, manner and period in which complaints against public bodies, mass media owners and journalists shall be dealt with;
- (c) the amount of annual levy payable to the Fund;
- (d) the manner in which moneys held in the Media and Information Fund may be invested;
- (e) the fees to be paid for application, accreditation and registration and the manner of their payment;
- (f) the form, manner and period in which requests for information from public bodies shall be made;
- (g) the standards to be observed by employees of public bodies when responding to requests for information;
- (i) the procedures to be followed when disclosing information;
- (j) persons, organisations or institutions exempted from the provisions of this Act;
- (k) the fees to be paid to a public body to access information or a record;
- (l) personal information that may be disclosed by a public body;
- (m) the information to be contained in an application for registration of a mass media;
- (n) information to be disclosed for research or statistical purposes;
- (o) the form and manner of publisher's imprints;
- (p) the qualifications for accreditation as a journalist;
- (q) the period when contributions to the Fund will be made;
- (r) periodicals or publications exempt from registration.

103 Transitional provision

Any person who, immediately before the date of commencement of this Act was lawfully operating a mass media service or practising as a journalist shall be deemed to be registered for the purpose of providing the same service for a period of three months from the date of commencement of this Act, and any application for registration or accreditation made after that date in terms of this Act for a certificate of registration or accreditation to provide that service shall be treated as an application for a new certificate and not for the renewal of a certificate.

FIRST SCHEDULE (Section 4)

RECORDS EXEMPT FROM APPLICATION OF ACT

- (a) a record in any court file, a record of a judge or presiding officer of any Court, a record of a master of the High Court, a record of a justice of the peace, a judicial administration record or a record relating to support services provided to the judges of those courts;
- (b) a personal note, communication or draft decision of a person who is acting in a judicial or quasi-judicial capacity;
- (c) a record that is created by or for, or is in the custody or control of an officer of Parliament and relates to the exercise of that officer's functions under an Act;
- (d) a record that is created by or for, or is in the custody or control of a person in terms of the Children's Protection and Adoption Act [Chapter 5:06] and relates to the exercise of that person's functions under that Act;
- (e) a record of a question that is to be used on an examination or test;
- (f) a record containing teaching materials or research information of employees of a post-secondary educational body;
- (g) material placed in the National Archives of Zimbabwe by or for a person or agency other than a public body;
- (h) material placed in the archives of a public body by or for a person or agency other than the public body;
- (i) a record relating to an uncompleted prosecution;
- (j) a record of an elected official of a local public body that is not in the custody or control of the local public body;
- (k) any record or information relating to any matter or issue referred to in section 31K of the Constitution, and any matter or issue relating to the exercise of the functions and powers of the President;
- (l) a record or information which has no bearing on the election campaign itself; [sic] and
- (m) intrusion into personal or family grief.

SECOND SCHEDULE (Section 2)

HEADS OF PUBLIC BODIES

<i>Public Body</i>	<i>Head</i>
Any government department, agency or office	The Permanent Secretary
Any statutory corporation, authority, board, committee, commission or council, or other statutory body	The Chairperson, Chief Executive Officer, Director General, General Manager
Office of the Registrar General	The Registrar-General
High Court/Supreme Court	The Registrar
Magistrates' Court/Community Court	The Clerk of Court
Local Authority	Executive Mayor, Town Clerk, Chief Executive

THIRD SCHEDULE**GOVERNING BODIES OF PROFESSIONS OR OCCUPATIONS***Governing Bodies*

Drugs Control Council of Zimbabwe
 Estate Agents Council of Zimbabwe
 Medical Council of Zimbabwe
 Bankers Association of Zimbabwe
 Institute of Bankers in Zimbabwe
 Institute of Chartered Secretaries and Administrators in Zimbabwe
 Institute of Chartered Accountants of Zimbabwe
 Zimbabwe Institute of Engineers
 Chartered Institute of Management Accountants
 Law Society of Zimbabwe
 Institute of Architects of Zimbabwe and Architects Council
 Institute of Directors
 Institute of Environmental Studies
 Institute of Mining Research
 Institute of Personnel Management (Zimbabwe)
 Zimbabwe Congress of Trade Unions
 Zimbabwe Federation of Trade Unions
 Medical Aid Society
 Zimbabwe Stock Exchange
 Zimbabwe National Traditional Healers Association
 Commercial Farmers Union
 Zimbabwe Farmers Union
 Indigenous Commercial farmers Union
 Incorporated Private Companies

FOURTH SCHEDULE (Section 40(3))**ANCILLARY POWERS OF COMMISSION**

1. To acquire by lease, purchase, or otherwise, immovable property and to construct buildings thereon.
2. To buy, take in exchange, hire or otherwise acquire movable property, including vehicles, necessary or convenient for the performance of its functions.
3. To maintain, alter and improve property acquired by it.
4. To mortgage or pledge any assets or part of any assets and, with the approval of the Minister, to sell, exchange, let, dispose of, turn to account or otherwise deal with any assets or part of any assets which are not required for the exercise of its functions for such consideration as the Commission may, with the approval of the Minister, determine.
5. To open bank and building society and post office accounts in the name of the Commission and to draw, make, accept, endorse, discount, execute and issue for the purposes of its functions, cheques, promissory notes, bills of exchange, bills of lading, securities and other instruments.
6. To insure against losses, damages, risks and liabilities which it may incur.
7. To enter into contracts and suretyships or give guarantees in connection with the exercise of its functions and to modify or rescind such contracts or rescind suretyships or guarantees.
8. With the approval of the Minister, to enter into, renew, cancel or abandon arrangements with any government or authority, local or otherwise, that may seem conducive to the exercise of its functions or any of them and to obtain from such government or authority rights, privileges and concessions which the Commission thinks desirable to obtain and carry out, exercise and comply with such arrangements, rights, privileges and concessions.
9. With the approval of the Minister, to raise loans or borrow money in such amounts and for such purposes and under such conditions as may be approved by the Minister.
10. To employ, upon such terms and conditions as the Authority may think fit, such persons as may be necessary for conducting its affairs, and suspend or discharge any such persons.
11. Subject to section 39 of the Audit and Exchequer Act [*Chapter 22:03*], to pay such remuneration and allowances and grant such leave of absence and to make such gifts and pay bonuses and the like to its employees as the Commission thinks fit.
12. To provide pecuniary benefits for its employees on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury and for their dependants, and for that purpose to effect policies of insurance, establish pension or provident funds or make such other provision as may be necessary to secure for its employees and their dependants any or all of the pecuniary benefits to which this paragraph relates.

13. With the approval of the Minister, to purchase, take in exchange, hire and otherwise acquire land or dwellings for use or occupation by its employees.
14. To construct dwellings, outbuildings or improvements for use or occupation by its employees on land purchased, taken in exchange, hired or otherwise acquired by the Commission.
15. To sell or let dwellings and land for residential purposes to its employees.
16. With the approval of the Minister, to guarantee loans to its employees or their spouses for the purchase of dwellings or land for residential purposes, the construction of dwellings and the improvement of dwellings or land which are the property of its employees or their spouses.
17. To provide security in respect of loans guaranteed in terms paragraph 16 by the deposit of securities.
18. With the approval of the Minister, to make loans to any employee of the Commission—
 - (a) for the purpose of purchasing vehicles, tools or other equipment used by him in carrying out his duties; or
 - (b) not exceeding three months' salary or wages payable to him, for any purpose; on such security as the Commission considers adequate.
19. To do anything for the purpose of improving the skill, knowledge or usefulness of its employees, and in that connection to provide or assist other persons in providing facilities for training, education and research and to pay for the aforesaid, where necessary.
20. To provide such services as the Authority considers could properly be provided by the Commission.
21. With the approval of the Minister, to provide financial assistance to any person, association, organisation or institution whose activities are such as to be, in the opinion of the Commission, of benefit to the Commission.
22. Generally, to do all such things as may be necessary, conducive or incidental to the exercise of the powers and the performance of the functions of the Commission under this Act or any other enactment.

FIFTH SCHEDULE (Section 41(3))

PROVISIONS APPLICABLE TO MEDIA AND INFORMATION COMMISSION

Terms of office and conditions of service of members

1. (1) Subject to this Schedule, a member shall hold office for such period, not exceeding three years, as the Minister may fix on his appointment.

(2) A member shall continue in office after the expiry of his term until he has been re-appointed or his successor has been appointed:

Provided that a member shall not hold office in terms of this subparagraph for longer than six months.

(3) Subject to paragraph 9, a member shall hold office on such terms and conditions as the Minister may fix in relation to members generally.

(4) A retiring member is eligible for re-appointment as a member.

(5) The terms and conditions of office of a member shall not, without the member's consent, be altered to his detriment during his tenure of office.

Disqualifications for appointment as member

2. (1) The Minister shall not appoint a person as a member and no person shall be qualified to hold office as a member who—

(a) is not a citizen of Zimbabwe; or

(b) has a financial interest in any business connected with broadcasting services or systems, or is engaged in any activity connected with any such service or system, or is married or connected to or associated with a person who has such an interest or is engaged in such an activity, unless the Minister is satisfied that the interest or activity will not interfere with the person's impartial discharge of his duties as a member; or

(c) has, in terms of a law in force in any country—

(i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or

(ii) made an assignment to, or arrangement or composition with, his creditors which has not been rescinded or set aside; or

(d) has, within the period of five years immediately preceding the date of his proposed appointment, been convicted—

(i) in Zimbabwe, of an offence; or

(ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would constitute an offence;

and sentenced to a term of imprisonment exceeding six months imposed without the option of a fine, whether or not any portion has been suspended, and has not received a free pardon.

(2) A person who is—

(a) a member of Parliament; or

- (b) a member of two or more other statutory bodies;
shall not be appointed as a member of the Authority, nor shall he be qualified to hold office as a member.

(3) For the purposes of subparagraph (b) of subparagraph (2) a person who is appointed to a council, board or other authority which is a statutory body or which is responsible for the administration of the affairs of a statutory body shall be regarded as a member of that statutory body.

Vacation of office by member

3. A member shall vacate his office and his office shall become vacant—
- (a) three months after the date upon which he gives notice in writing to the Minister of his intention to resign, or on the expiry of such other period of notice as he and the Minister may agree; or
 - (b) on the date he begins to serve a sentence of imprisonment imposed without the option of a fine—
 - (i) in Zimbabwe, in respect of an offence; or
 - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would constitute an offence; or
 - (c) if he becomes disqualified in terms of subparagraph (a), (b) or (c) of subparagraph (1) of paragraph 2, or in terms of subparagraph (2) of that paragraph, to hold office as a member; or
 - (d) if he is required in terms of paragraph 4 to vacate his office.

Dismissal or suspension of members

4. (1) The Minister may require a member to vacate his office if the member—
- (a) has, subject to subparagraph (3), been found to have conducted himself in a manner that renders him unsuitable as a member, including a contravention of paragraph 9; or
 - (b) has failed to comply with any term or condition of his office fixed by the Minister in terms of subparagraph (3) of paragraph 1; or
 - (c) is mentally or physically incapable of efficiently carrying out his functions as a member; or
 - (d) has been absent without the permission of the Board from two consecutive meetings of the Commission of which he was given at least seven days' notice, and there was no just cause for the member's absence.
- (2) The Minister may suspend a member—
- (a) whom he suspects on reasonable grounds of having been guilty of conduct referred to in subparagraph (a) of subparagraph (1); or
 - (b) against whom criminal proceedings have been instituted for an offence in respect of which a sentence of imprisonment without the option of a fine may be imposed;

and while that member is so suspended he shall not carry out any functions as a member.

(3) A member suspended in terms of subparagraph (a) of subparagraph (2) shall be given notice in writing of the grounds for the suspension and may, within fourteen days of being so notified, make written representations to the Minister showing cause why no finding of misconduct rendering him unsuitable to be member of the Board should be made.

(4) The Minister, shall require a member suspended in terms of subparagraph (a) of subparagraph (2) to vacate his office if—

- (a) no representations are made by the member in terms of subparagraph (3); or
- (b) the Minister finds that, notwithstanding representations made in terms of subparagraph (3), the member is guilty of the misconduct alleged.

Filling of vacancies on Board

5. On the death of, or vacation of office by, a member, the Minister may appoint a qualified person to fill the vacancy:

Provided that if as a result of the vacancy the number of members falls below the minimum number specified in paragraph 5, the Minister shall fill the vacancy within three weeks.

Chairman and vice-chairman of Board

6. (1) The Minister shall designate one of the members as chairman of the Board and another member as vice-chairman of the Board.

(2) The vice-chairman of the Board shall perform the chairman's functions whenever the chairman is for any reason unable to perform them.

(3) The chairman or vice-chairman of the Board may at any time resign his office as such by one month's notice in writing to the Minister.

(4) Whenever the office of chairman or vice-chairman of the Board falls vacant, the Minister shall fill the vacancy within three weeks.

Meetings and procedure of Board

7. (1) The Board shall hold its first meeting on such date and at such place as the Minister may fix, being not more than three months after the fixed date, and thereafter the Board shall meet for the dispatch of business as often as is necessary or expedient and, subject to this paragraph, may adjourn, close, and otherwise regulate its meetings and procedure as it thinks fit:

Provided that the Board shall meet not less than six times in each year.

(2) The chairman of the Board—

(a) may at any time convene a special meeting of the Board; and

(b) shall convene a special meeting of the Board on the written request of—

(i) the Minister, within such period as the Minister may specify; or

(ii) not fewer than two members, not later than 14 days after his receipt of such request.

(3) Written notice of any special meeting convened in terms of subparagraph (2) shall be sent to each member not later than seven days before the meeting and shall specify the business for which the meeting has been convened:

Provided that if, in the opinion of the chairman or Minister, as the case may be, the urgency of the business for which the meeting is to be convened so requires, notice of not less than 48 hours may be given.

(4) No business shall be discussed at a special meeting convened in terms of subparagraph (2) other than—

(a) such business as may be determined by the chairman of the Board, where the chairman of the Board has convened the meeting in terms of subparagraph (a) of subparagraph 2; or

(b) the business specified in the request for the meeting, where the chairman of the Board has convened the meeting in terms of subparagraph (b) of subparagraph 2.

(5) The chairman or, in his absence, the vice-chairman shall preside at all meetings of the Board:

Provided that, if the chairman and the vice-chairman are both absent from a meeting of the Board, the members present may elect one of their number to preside at that meeting as chairman.

(6) Three members shall form a quorum at any meeting of the Board.

(7) All acts, matters or things authorised or required to be done by the Board may be decided by a majority vote at a meeting of the Board at which a quorum is present.

(8) Subject to paragraph 9, at all meetings of the Board each member present shall have one vote on each question before the Board and, in the event of an equality of votes, the chairman shall have a casting vote in addition to a deliberative vote.

(9) Any proposal circulated among all members and agreed to in writing by a majority of all members shall have the same effect as a resolution passed at a duly constituted meeting of the Board and shall be incorporated in the minutes of the next succeeding meeting of the Board:

Provided that, if a member requires that such proposal be placed before a meeting of the Board, this subparagraph shall not apply to such proposal.

Remuneration and expenses of members

8. Members of the Board shall be paid—

(a) such remuneration, if any, as the Minister may from time to time fix for members generally; and

(b) such allowances, if any, as the Minister may from time to time fix to meet any reasonable expenses incurred by members in connection with the business of the Board.

Members to disclose certain connections and interests

9. (1) In this paragraph—

“**relative**”, in relation to a member, means the member’s spouse, child, parent, brother or sister.

(2) Subject to subparagraph (4)—

(a) if a member of the Board—

(i) knowingly acquires or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Board; or

(ii) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member’s private interests coming or appearing to come into conflict with his functions as a member; or

(iii) knows or has reason to believe that a relative of his—

A. has acquired or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Board; or

B. owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member’s private interests coming or appearing to come into conflict with his functions as a member;

or

(b) if for any reason the private interests of a member come into conflict with his functions as a member;
the member shall forthwith disclose the fact to the Board.

(3) A member referred to in subparagraph (2) shall take no part in the consideration or discussion of, or vote on, any question before the Board which relates to any contract, right, immovable property or interest referred to in that subparagraph.

(4) Any person who contravenes subparagraph (2) or (3) shall be guilty of an offence and liable to a fine not exceeding \$10,000 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Validity of decisions and acts of Board

10. No decision or act of the Board or act done under the authority of the Board shall be invalid on the ground that—

- (a) the Board consisted of fewer than the minimum number of persons prescribed in subparagraph (1) of paragraph 5; or
- (b) a disqualified person acted as a member of the Board at the time the decision was taken or act was done or authorised:

Provided that the Board shall ratify any such decision or action as soon as possible after it becomes aware that the decision or action was taken in the circumstances described in subparagraph (a) or (b).

Minutes of proceedings of Board

11. (1) The Board shall cause minutes of all proceedings of and decisions taken at every meeting of the Board to be entered in books kept for the purpose.

(2) Any minutes referred to in subparagraph (1) which purport to be signed by the chairman of the meeting to which the minutes relate or by the chairman of the next following meeting of the Board or the committee concerned, as the case may be, shall be accepted for all purposes as *prima facie* evidence of the proceedings of and decisions taken at the meeting concerned.

(3) The Board shall cause copies of all minutes that have been signed as provided in subparagraph (2) to be sent without delay to the Minister for his information.

SIXTH SCHEDULE (Section 42)

FINANCIAL AND MISCELLANEOUS PROVISIONS RELATING TO COMMISSION

PART I

FINANCIAL PROVISIONS

Funds of Commission

1. The funds of the Commission shall consist of—

- (a) fees, charges and other income accruing to the Commission from licences issued and other things done by it in terms of this Act; and
- (b) the proceeds of any monetary penalties imposed by the Commission; and
- (c) such moneys as may be payable to the Commission from moneys appropriated for the purpose by Act of Parliament; and
- (d) such other moneys as may vest in or accrue to the Commission, whether in the course of its operations or otherwise.

Financial year of Commission

2. The financial year of the Authority shall be the period of 12 months ending on the 31st December in each year.

Surplus funds of Commission to be appropriated to Media and Information Fund

3. Any surplus of income over expenditure at the end of the Commission's financial year shall be appropriated to the Media and Information Fund established by section 45.

Accounts of Commission

4. (1) The Board shall ensure that proper accounts and other records relating to such accounts are kept in respect of all the Commission's activities, funds and property, including such particular accounts and records as the Minister may direct.

(2) Not later than three months after the end of each financial year of the Commission, the Commission shall prepare and submit to the Minister a statement of accounts in respect of that financial year or such other period as the Minister may direct.

Audit of Commission's accounts

5. (1) Subject to the Audit and Exchequer Act [Chapter 22:03], the Commission shall appoint as auditors one or more persons approved by the Minister who are registered as public auditors in terms of the Public Accountants and Auditors Act [Chapter 27:12].

(2) The accounts kept by the Commission in terms of subparagraph (1) of paragraph 4 shall be examined by the auditors appointed in terms of subparagraph (1).

(3) The auditors appointed in terms of subparagraph (1) shall make a report to the Board and the Minister on the statement of accounts prepared in terms of subparagraph (2) of paragraph 4 and such report shall state whether or not in their opinion the statement of accounts gives a true and fair view of the Commission's affairs.

(4) In addition to the report referred to in subparagraph (3), the Minister may require the Board to obtain from its auditors appointed in terms of subparagraph (1) such other reports, statements or explanations in connection with the Commission's operations, funds and property as the Minister may consider expedient, and the Board shall forthwith comply with any such requirement.

Powers of auditors

6. (1) An auditor referred to in paragraph 5 shall be entitled at all reasonable times to require to be produced to him all accounts and other records relating to such accounts which are kept by the Commission or its agents and to require from any member of the Board or employee or agent of the Commission such information and explanations as in the auditor's opinion are necessary for the purposes of his audit.

(2) Any member of the Board or employee or agent of the Commission who fails without just cause to comply with a requirement of an auditor in terms of subparagraph (1) shall be guilty of an offence and liable to a fine not exceeding \$1,000 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

PART II

MISCELLANEOUS PROVISIONS RELATING TO COMMISSION

Execution of contracts and instruments by Commission

7. Any agreement, contract or instrument approved by the Board may be entered into or executed on behalf of the Commission by any persons generally or specially authorised by the Board for that purpose.

Reports of Commission

8. (1) In addition to any report which the Authority is required to submit to the Minister in terms of this Act or the Audit and Exchequer Act [Chapter 22:03], the Commission—

- (a) shall submit to the Minister such other reports as the Minister may require; and
- (b) may submit to the Minister such other reports as the Commission considers advisable; in regard to the operations and property of the Commission.

(2) The Minister shall, within six months of the end of the Commission's financial year, lay before Parliament a report submitted to him by the Commission in terms of subparagraph (1), together with the statement of accounts and auditor's report for the preceding financial year of the Commission referred to in paragraphs 4 and 5.

Chief Executive and other employees of Commission

9. (1) For the better exercise of the functions of the Commission the Board may, in consultation with the Minister, appoint a person to be the Chief Executive of the Commission, on such terms and conditions as the Board, with the approval of the Minister, may fix.

(2) The Board shall terminate the appointment of the Chief Executive if he would be required in terms of subparagraph (b) or (c) of paragraph 3 of the Fifth Schedule to vacate his office had that paragraph and subparagraphs (a), (b) and (c) of subparagraph (1) of paragraph 2 of the Fifth Schedule, and subparagraph (2) of that paragraph, applied to him.

(3) The Board shall not terminate the services of the Chief Executive on a ground other than one referred to in subparagraph (2) without the approval of the Minister.

(4) The Board shall employ such persons in addition to the Chief Executive as it considers expedient for the better exercise of the functions of the Authority.

(5) Subject to the general control of the Board, the Chief Executive shall be responsible for—

- (a) managing the operations and property of the Commission; and
- (b) supervising and controlling the activities of the employees of the Commission in the course of their employment.

(6) The Board may assign to the Chief Executive such of the functions of the Board as the Board thinks fit:

Provided that the Board shall not assign to the Chief Executive any duty that has been assigned to the chairman of the Board.

(7) Any assignment of functions in terms of subparagraph (6) may be made either generally or specially and subject to such reservations, restrictions and exceptions as the Board may determine, and may be revoked by the Board at any time.

(8) The Chief Executive shall have the right to attend meetings of the Board and, except in the case of any discussion relating to the terms and conditions of his appointment, to take part in the proceedings of the Board as if he were a member, but shall not have a vote on any question before the Board.

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