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CHAPTER 10:27

**ACCESS TO INFORMATION AND PROTECTION OF PRIVACY ACT**

*Acts 5/2002, 5/2003*

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# ACT

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 Parliament of Zimbabwe.

## PART I

### PRELIMINARY

#### **1 Short title**

This Act may be cited as the Access to Information and Protection of Privacy Act [*Chapter 10:27*].

#### **2 Interpretation**

(1) In this Act—

“applicant” means a person requesting access in terms of section *six* to a record or information held by a public body;

“Commission” means the Media and Information Commission established by section *thirty-eight*;

“controlling interest”, in relation to a mass media service company, means—

- (a) the majority of the shares in the company; or
- (b) shares representing more than half the share capital of the company; or
- (c) shares of a value in excess of half the share capital of the company; or

(d) shares entitling the holder or holders thereof to a majority or preponderance of votes in the affairs of the company;

“dissemination”, in relation to any mass media product, includes the sale, subscription, delivery, diffusion or distribution of periodically printed publications, audio-recorded programmes, electronically distributed information or teletext programmes;<sup>1</sup>

“excluded information” means records excluded from the application of this Act in terms of section *four*;

“Fund” means the Media and Information Fund established by section *forty-three*;

“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;

“journalist” means a person who gathers, collects, edits or prepares news, stories, materials and information for a mass media service, whether as an employee of the service or as a freelancer;<sup>2</sup>

“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) the 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;

“legal representative” means—

(a) the liquidator of a company;

(b) the representative recognised by law of any person who has died, become insolvent or bankrupt or assigned his estate, is an infant or a minor, is of unsound mind or is otherwise under a disability;<sup>3</sup>

“local government body” means—

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<sup>1</sup> Definition inserted by s. 2 of Act 5/2003.

<sup>2</sup> Definition inserted by s. 2 of Act 5/2003.

<sup>3</sup> Definition substituted by s. 2 of Act 5/2003.

- (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 29:13*];
- (c) a catchment council or subcatchment council established in terms of the Water Act [*Chapter 20:24*];
- (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 (d) and all the members or officers of which are appointed or chosen by or under the authority of that body;

“mass media” includes any service, medium or media consisting in the transmission of voice, visual, data or textual messages to an unlimited number of persons, and includes an advertising agency, publisher or, except as otherwise excluded or specially provided for in this Act, a news agency or broadcasting licensee as defined in the Broadcasting Services Act [*Chapter 12:06*];<sup>4</sup>

“mass media owner” means—

- (a) in the case of a mass media service company, the person who holds a controlling interest in the company; or
- (b) in the case of a mass media service that is not a company, the person who owns or co-owns the service;

“mass media products” means an advertisement, the total print or part of the total print of a 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;<sup>5</sup>

“mass media service” means any service that produces mass media products, whether or not it also disseminates them;<sup>6</sup>

“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;

“National Archives” means the National Archives of Zimbabwe established in terms of the National Archives of Zimbabwe Act [*Chapter 25:06*];

“periodically printed publication” means a regular newspaper, magazine or journal, bulletin or any other publication with a constant name;<sup>7</sup>

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

- (a) the person's name, address or telephone number;

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<sup>4</sup> Definition inserted by s. 2 of Act 5/2003 (see footnote 6).

<sup>5</sup> Definition inserted by s. 2 of Act 5/2003 (see footnote 6).

<sup>6</sup> Definition inserted by s. 2 of Act 5/2003 (replacing former definition of "mass media service" or "mass media" with three new definitions – "mass media", "mass media products" and "mass media service").

<sup>7</sup> Definition inserted by s. 2 of Act 5/2003.

- (b) the person's race, national or ethnic origin, colour, religious or political beliefs or associations;
- (c) the person's 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;

"prescribe" means prescribe by regulations made in terms of section *ninety-one*;

"press card" means a document issued to a journalist in terms of section *seventy-nine*;

"public body" means any body prescribed as a public body in terms of the first column of the Second Schedule to 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; and
- (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.

(2) Where a mass media owner does not manage the mass media service of which he is the owner, any reference to a mass media owner in sections *forty-six*, *sixty-six*, *sixty-seven*, *seventy-one*, *seventy-three* and *eighty-six* shall be construed as a reference to the mass media service.



### **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 mass 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 mass 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, 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 *ten*, 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 excluded information.

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

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

- (a) a person who is not a citizen of Zimbabwe, or is not regarded as permanently resident in Zimbabwe by virtue of the Immigration Act [*Chapter 4:02*], or is not the holder of a temporary employment or residence permit or students permit issued in terms of that Act;
- (b) 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
- (c) 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 access to records and related services by public body**

Subject to any exemption prescribed under this Act or any other enactment, an applicant shall be required to pay such fee as may be so prescribed for—

- (a) obtaining access to any record; and
- (b) any service rendered in connection with the provision of access to any record by the public body concerned.

## 8 Duty to assist applicants

(1) The head of a public body shall take every reasonable step to assist an applicant and shall, subject to section *eleven* or *twelve*, respond as soon as is reasonably possible in the circumstances, but not later than thirty days, to each request for access to a record.

(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 will 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 *six* 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) will contravene this Act; or
- (b) will result in the disclosure of personal information pertaining to a third party that is protected from disclosure in terms of Part III; or
- (c) is not 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 a copy of a record or part of a record, provide him with such copy if it can be reproduced, and where it cannot be reproduced, give the applicant an opportunity to take notes from such record or part thereof.<sup>8</sup>

(2) *[Repealed]*<sup>9</sup>

## 11 Extension of time limit for responding

(1) The head of a public body may extend the time for responding to a request by a further period not exceeding thirty days or, with the Commission's permission, for a longer period if—

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<sup>8</sup> Paragraph (b) amended by s. 25 of as read with Schedule to Act 5/2003.

<sup>9</sup> Subsection (2) repealed by s. 25 of as read with Schedule to Act 5/2003.

- (a) the applicant does not give sufficient detail to enable the public body to identify the requested record; or
- (b) a large number of records is requested or is required to be searched, and meeting the time limit will unreasonably interfere with the operations of the public body; or
- (c) more time is needed to consult with a third party affected by the request or another public body before the head of the public body 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—

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

## **12 Transfer of request**

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

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

(3) The head of the public body to whom the transfer was made shall respond to the applicant's request not later than thirty days after receiving the request, unless the time for responding has been extended in terms of section *eleven*.

## **13 Delegation by head of public body**

(1) The head of a public body may delegate to any person any function of a head of a public body under this Act, except such power of delegation.

(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.

## **PART III**

### **PROTECTED INFORMATION**

## **14 Protection of deliberations of Cabinet and local government 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.

(3) Subsection (1) shall not apply to information contained in a record that has been in existence for twenty-five or more years.

(4) No information relating to the deliberations of a local government body which were held *in camera* shall be revealed or disclosed to any person who is not authorised to have access to such information.

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

### **15 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, a Cabinet Minister or 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;
- (n) information contained in a record that has been in existence for ten or more years.

### **16 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.

### **17 Protection of information whose disclosure will be harmful to law enforcement process and national security**

(1) The head of a public body shall not disclose to an applicant information whose disclosure would—

- (a) prejudice the law enforcement process in any way, including the following—
  - (i) revealing the identity of a confidential source of law enforcement information;
  - (ii) revealing information relating to criminal intelligence that has a reasonable connection with the detection, prevention or suppression of organised criminal activities;

- (iii) compromising the effectiveness of investigation techniques and procedures used by the law enforcement agencies;
  - (iv) endangering the life or physical safety of a law enforcement officer or any other person;
- or
- (b) prejudice the defence and national security of the country and the safety or interests of the country<sup>10</sup>; 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) reveal any information relating to or used in the exercise of prosecutorial discretion; or
  - (f) facilitate the escape from custody of a person who is under lawful detention; or
  - (g) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system; or
  - (h) prejudice the operations of the defence and security forces within or outside Zimbabwe; or
  - (i) result in or facilitate the commission of an offence; or
  - (j) result in exposing a person to civil liability for disclosing personal information contained in a law enforcement record; or
  - (k) prejudice 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 authorized to enforce compliance with any enactment;
  - (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).
- (3) 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 or complainant, or relative or friend of a victim or complainant; or
  - (b) any member of the public, where the investigation had been made public.

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<sup>10</sup> Paragraph (b) amended by s. 25 of as read with Schedule to Act 5/2003.

## **18 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 twenty or more years.

## **19 Protection of information relating to the financial or economic interests of public body or the State**

(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 or the State.

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

- (a) trade secrets of a public body or the State; or
- (b) financial, commercial, scientific or technical information that belongs to a public body or to the State and has monetary value; or
- (c) plans that relate to the management of personnel of or the administration of a public body or the State 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 State.

(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.

## **20 Protection of research information**

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

## **21 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.

## **22 Protection of information relating to personal safety<sup>11</sup>**

(1) ...<sup>12</sup>

(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 or another person's safety or mental or physical health.<sup>13</sup>

## **23 Information otherwise available to public**

(1) The right of access to information in terms of section *five* shall not be held to be denied where under this Act or any other law the head of a public body refuses to disclose information—

- (a) that is otherwise 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 sixty days of the date of receiving the applicant's request.

(2) If the head of a public body refuses to disclose information on the ground referred to in paragraph (b) of subsection (1) and the information is not published after the expiry of sixty days from the date of receiving the request for the information, the applicant may make another request for the information and the head of the public body shall reconsider it.

## **24 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 will reveal the trade secrets or commercial, financial or employment, scientific or technical information of a third party that was supplied, implicitly or explicitly, in confidence to the public body, and the disclosure of which could reasonably be expected to—

- (a) significantly harm the competitive position or interfere with the negotiating position of the third party; or
- (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 officer or other person or body appointed to resolve or inquire into a labour relations dispute; or
- (e) reveal information that will harm the economic interests of the State.

(2) The head of a public body shall not disclose to an applicant information contained in a tax return form or gathered for the purpose of determining a person's tax liability or collecting outstanding tax.

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<sup>11</sup> Heading substituted by s. 3 of Act 5/2003.

<sup>12</sup> Subsection repealed by s. 3 of Act 5/2003.

<sup>13</sup> Subsection substituted by s. 3 of Act 5/2003.

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

## **25 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 unreasonable 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) subject to subsection (5), the personal information has been supplied in confidence by the third party about himself or herself, or by the third party about another person;<sup>14</sup>
- (g) the personal information is likely to be inaccurate or unreliable;
- (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; or
- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, unless disclosure is necessary to prosecute such violation or to continue the investigation; or
- (c) relates to eligibility for income assistance or social welfare benefits or to the determination of benefit levels; or
- (d) relates to employment, occupational or educational history; or
- (e) is contained in a tax return or gathered for the purpose of collecting a tax; or
- (f) describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness; or

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<sup>14</sup> Paragraph substituted by s. 4 of Act 5/2003.



- (g) consists of personal recommendations or evaluations, character references or personnel evaluations concerning the third party; or
  - (h) could reasonably be expected to reveal that the third party supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation; or
  - (i) indicates the third party's religious or political beliefs or associations<sup>15</sup>; 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; or
  - (k) constitutes intrusion into personal or family grief.
- (4) 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; or
  - (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; or
  - (c) disclosure is authorised by any enactment other than this Act; or
  - (d) the disclosure is for purposes of research or the compilation of statistics in a manner authorised by law; or
  - (e) the information concerns the third party's position, functions or remuneration as an officer, employee or member of a public body; or
  - (f) the disclosure reveals financial and other details of a contract to supply goods or services to a public body; or
  - (g) the information is about expenses incurred by the third party while travelling on the business and at the expense of a public body; or
  - (h) the disclosure reveals the details of, or the reasons for the grant by, a public body or authority of a licence, permit or other benefit whatsoever to the third party:
    - Provided that—
      - (i) the reasons for the grant of the benefit shall not be disclosed if the law under which the benefit was granted provides that the grant is at the sole discretion of the public body or authority, or that the reasons for the grant or refusal of the benefit shall not be disclosed to the beneficiary or any other person;
      - (ii) personal information supplied in support of the application for the benefit shall not be disclosed;<sup>16</sup>
    - (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).
- (5) The head of a public body shall, when refusing to disclose personal information supplied in confidence as described in paragraph (f) of subsection (2), give the applicant a summary

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<sup>15</sup> Paragraph amended by s. 4 of Act 5/2003.

<sup>16</sup> Paragraph substituted by s. 4 of Act 5/2003.

of the information, if such summary can be prepared without disclosing the identity of the third party who supplied such personal information.<sup>17</sup>

(6) 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

#### **26 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 pertaining to a third party that may be protected from disclosure in terms of Part III, notify the third party, in writing, of his intention to give such access and afford him an opportunity within twenty days after the notice is given to make written representations to the public body explaining why the information should not be disclosed.

(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; and
- (b) the third party is being given an opportunity to make representations concerning disclosure; and
- (c) a decision will be made within thirty 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 may affect his interests or invade his personal privacy; and
- (b) describe the contents of the record; and
- (c) state that, within twenty days after the notice is given, the third party may, in writing, consent to the disclosure thereof.

#### **27 Time limit to give notice of decision**

(1) Within thirty days after notice is given in terms of subsection (1) or (2) of section *twenty-six*, 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 twenty-one days after the day notice is given; or

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<sup>17</sup> Subsection amended by s. 4 of Act 5/2003.

- (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 twenty days after the date the notice is given, unless the third party requests a review in terms of Part X.

## **28 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 security or public order, including any threat to public security or public order:

Provided that information concerning any threat to public security or public order shall only be disclosed to the relevant law enforcement authorities<sup>18</sup>;  
or

- (v) any matter that assists in the prevention, detection or suppression of crime.<sup>19</sup>  
(vi) ...<sup>20</sup>

(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**

## **29 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 authorized in terms of an enactment;

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<sup>18</sup> Paragraph substituted by s. 5 of Act 5/2003.

<sup>19</sup> Paragraph substituted by s. 5 of Act 5/2003.

<sup>20</sup> Paragraph repealed by s. 5 of Act 5/2003.

- (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.

### **30 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 authorized 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 or 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 of 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.

### **31 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.

### **32 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 the correction to any other public body or any third party to whom that information has been disclosed during the last twelve months preceding the request for a correction.

### **33 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.

### **34 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.

### **35 Penalty for deliberately falsifying personal information<sup>21</sup>**

Any person who, when required under any enactment to supply to a public body any personal information verbally or in writing about himself or herself or a third party, supplies any information which he or she knows to be false or does not have reasonable grounds for believing to be true, shall be guilty of an offence and liable to a fine not exceeding level five 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**

### **36 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 consented, in the prescribed manner, to such use.<sup>22</sup>

### **37 Disclosure for archival or historical purposes**

The National Archives, or the archives of a public body, may disclose personal information to a third party for the purpose of historical research or any other lawful purpose if<sup>23</sup>—

- (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 thirty or more years.

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<sup>21</sup> Section substituted by s. 6 of Act 5/2003.

<sup>22</sup> Paragraph amended by s. 25 of as read with Schedule to Act 5/2003.

<sup>23</sup> Words substituted by s. 25 of as read with Schedule to Act 5/2003.

PART VII

MEDIA AND INFORMATION COMMISSION

**38 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.

**39 Functions and powers 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; and
  - (b) to receive and act upon comments from the public about the administration and performance of the mass media in Zimbabwe; and
  - (c) to comment on the implications of proposed legislation or programmes of public bodies on access to information and protection of privacy; and
  - (d) to comment on the implications of automated systems for collection, storage, analysis or transfer of information or for access to information or protection of privacy; and
  - (e) to inform the public about this Act; and
  - (f) to engage in or commission research into anything affecting the achievement of the purposes of this Act; and
  - (g) to conduct investigations in terms of Part IX to ensure compliance with the provisions of this Act; and
  - (h) to advise the Minister on the adoption and establishment of standards and codes relating to the operation of mass media; and
  - (i) to receive, evaluate for accreditation and consider applications for accreditation as a journalist; and
  - (j) to enforce professional and ethical standards in the mass media; and
  - (k) to review the decisions of public bodies in terms of Part X; and
  - (l) 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; and
  - (m) to authorise a public body, at the request of its head, to disregard requests that would unreasonably interfere with the operations of the public body; and
  - (n) to accredit journalists; and
  - (o) to monitor the mass media and raise user awareness of the mass media; and
  - (p) to register mass media in Zimbabwe; and
  - (q) to investigate and resolve complaints against any mass media service in terms of the provisions of this Act.
- (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 in Zimbabwe;
- (d) the development of mass media that uphold professional and ethical codes of conduct;
- (e) to promote the preservation of the national security and integrity of Zimbabwe;
- (f) to foster a Zimbabwean national identity and integrity;
- (g) ...<sup>24</sup>

(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 Third Schedule, either absolutely or conditionally and either solely or jointly with others.

#### **40 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 seven members (at least three of whom shall be nominated by an association of journalists and an association of media houses) appointed by the Minister after consultation with the President and in accordance with any directions that the President may give him.

(3) The Fourth 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.

#### **41 Financial and miscellaneous provisions relating to Commission**

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

#### **42 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**

#### **43 Establishment and vesting of Media and Information Fund**

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

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<sup>24</sup> Paragraph repealed by s. 25 of as read with Schedule to Act 5/2003.

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

#### **44 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 registered mass media services<sup>25</sup>.

#### **45 Moneys of Fund**

The Fund shall consist of—

- (a) such moneys as may be raised by levies imposed in terms of section *forty-six*;
- (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 Fifth Schedule;
- (d) any other moneys to which the Fund may be lawfully entitled; and
- (e) accreditation fees.

#### **46 Levies**

(1) Every mass media owner, other than a broadcasting licensee as defined in the Broadcasting Services Act [*Chapter 12:06*], shall pay the prescribed annual levy to the Fund.

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

(3) Where any mass media owner fails to pay the whole or any part of a levy within seven days after the date when it is due to the Fund the owner shall be liable to pay to the Fund an amount equivalent to double the levy due.

(4) The Commission may, by action in a competent court, recover the amount of a levy or penalty payable in terms of this section.

#### **47 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 therefrom except by means of cheques signed by such persons as are authorised in that behalf by the Commission.

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<sup>25</sup> Concluding words amended by s. 25 of as read with Schedule to Act 5/2003.



(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 service company<sup>26</sup>.

#### **48 Financial year of Fund**

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

#### **49 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**

#### **50 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 ten days from the day that such record was requested

#### **51 Restrictions on disclosure of information by 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 the circumstances provided for in subsections (2) to (5).

(2) The Commission may disclose, or may authorize 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

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<sup>26</sup> Proviso amended by s. 25 of as read with Schedule to Act 5/2003.

(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 authorize anyone acting for or under its direction to disclose, information in an appeal.

## **52 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.

### **52A Power of Commission to issue orders<sup>27</sup>**

(1) Subject to sections *fifty two B* and *ninety A*, the Commission shall have power—

- (a) to issue orders in relation to any matter referred to in paragraphs (a) to (e) or (g) of subsection (1) of section *fifty-two B*;
- (b) on its own initiative or at the request of any person, to issue orders—
  - (i) requiring that a duty imposed by or under this Act be performed;
  - (ii) extending a time limit in terms of section *eleven* or extending any other time limit in terms of this Act;
  - (iii) confirming, exempting or reducing a fee, or ordering a refund, in the appropriate circumstances;
  - (iv) confirming a decision not to correct personal information or specify how personal information is to be corrected;
  - (v) requiring a public body to stop collecting, using or disclosing personal information in contravention of this Act;
  - (vi) requiring the head of a public body to destroy personal information collected in contravention of this Act.

(2) The Commission may specify any terms or conditions subject to which an order is issued in terms of this section, including the time within which the person to whom the order is issued shall comply with the order.

### **52B Determinations and inquiries by Commission<sup>28</sup>**

(1) The Commission shall, in relation to the determination by it of the following matters—

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<sup>27</sup> Section inserted by s. 7 of Act 5/2003.

<sup>28</sup> Section inserted by s. 7 of Act 5/2003.

- (a) a request for a review in terms of Part X;
- (b) an application for registration of a mass media service, in terms of Part XI;
- (c) whether to suspend or cancel any registration certificate or make any other order in terms of section *seventy-one*;
- (d) whether to exercise any power referred to in subsection (2) of section *eighty-five*;
- (e) an appeal received by it in terms of section *eighty-six* or *eighty-seven*;
- (f) whether to issue an order in terms of paragraph (b) of subsection (1) of section *fifty-two A*;
- (g) any other matter in terms of this Act which it is required or empowered to determine;

do either of the following—

- (i) if it considers that the matter involves no substantial dispute of fact or law, and after affording any party concerned an opportunity to make written representations to it within the time it specifies, determine the matter and give notice of its determination orally or in writing to the party or the parties concerned; or
- (ii) if it considers that the matter involves any substantial dispute of fact or law, conduct an inquiry in terms of the following provisions of this section.

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

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

(4) The Commission shall give every person who has an interest in the matter an opportunity to make representations during the inquiry.

(5) The Commission may decide—

- (a) whether representations are to be made orally or in writing; and
- (b) whether a person other than the persons referred to in subsection (4) is entitled to be present during or to have access to or to comment on representations made to the Commission by another person.

(6) Every person appearing before the Commission at an inquiry may be represented at the inquiry by a legal practitioner.

(7) An inquiry into any matter shall be completed within ninety days from the date of commencement of the inquiry.

(8) On completing an inquiry the Commission shall make a written determination of its findings and may, on the basis of those findings, issue an appropriate order to the parties concerned in the matter and give a copy of it to the Minister and any other party considered by the Commission to have an interest in the matter.

(9) Any person aggrieved by any order or determination of the Commission made in terms of section *fifty-two A* or *fifty-two B*<sup>29</sup> may, within twenty-eight days after being notified of that order or determination, appeal to the Administrative Court.

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<sup>29</sup> Note by Law Reviser: This is section 52B. The reference should, therefore, be to "this section".

PART X

REVIEWS BY THE COMMISSION

**53 Right to request 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.

**54 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 thirty 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.

**55 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

**56 ...<sup>30</sup>**

**57 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.

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<sup>30</sup> Section repealed by s. 8 of Act 5/2003.

58 ...<sup>31</sup>

59 ...<sup>32</sup>

60 ...<sup>33</sup>

61 ...<sup>34</sup>

## PART XI

### REGULATION OF MASS MEDIA SERVICES

62 ...<sup>35</sup>

#### 63 Application of Part XI

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

#### 64 Abuse of freedom of expression<sup>36</sup>

A person registered in terms of this Part who makes use, by any means, of a mass media service for the purposes of publishing—

(a) information which he or she intentionally or recklessly falsified in a manner which—

(i) threatens the interests of defence, public safety, public order, the economic interests of the State, public morality or public health; or

(ii) is injurious to the reputation, rights and freedoms of other persons;

or

(b) information which he or she maliciously or fraudulently fabricated; or

(c) any statement—

(i) threatening the interests of defence, public safety, public order, the economic interests of the State, public morality or public health; or

(ii) injurious to the reputation, rights and freedoms of other persons;

in the following circumstances—

A. knowing the statement to be false or without having reasonable grounds for believing it to be true; and

B. recklessly, or with malicious or fraudulent intent, representing the statement as a true statement;

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<sup>31</sup> Section repealed by s. 8 of Act 5/2003.

<sup>32</sup> Section repealed by s. 8 of Act 5/2003.

<sup>33</sup> Section repealed by s. 8 of Act 5/2003.

<sup>34</sup> Section repealed by s. 8 of Act 5/2003.

<sup>35</sup> Section repealed by s. 8 of Act 5/2003.

<sup>36</sup> Section substituted by s. 9 of Act 5/2003.

shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding three years.

## **65 Restriction on ownership of mass media service**

- (1) The following persons and bodies may not be mass media owners—
  - (a) any individual who is not a citizen of Zimbabwe or any body corporate in which a controlling interest is not held, directly or indirectly, whether through any individual, company or association or otherwise, by one or more individuals who are citizens of Zimbabwe;
  - (b) an association of persons or an organisation whose activity is banned or prohibited by law; or
  - (c) any person who is insolvent or bankrupt under a law in force in Zimbabwe or any other country, and has not been rehabilitated or discharged.
- (2) No person other than—
  - (a) a citizen of Zimbabwe or person who is regarded as permanently resident in Zimbabwe by virtue of the Immigration Act [*Chapter 4:02*]; or
  - (b) a body corporate in which a controlling interest is not held, directly or indirectly, whether through any individual, company or association or otherwise, by one or more individuals who are citizens of Zimbabwe or are regarded as permanently resident in Zimbabwe by virtue of the Immigration Act [*Chapter 4:02*];

may hold or acquire any shares in a mass media service.

(3) Nothing contained in this section shall prevent any person who is an existing mass media owner as at 31st January, 2002, from continuing to be a mass media owner after that date to the extent of his ownership on that date.

## **66 Registration of mass media services**

(1) Subject to section *sixty-eight*, 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.<sup>37</sup>

(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 and accompanied by the prescribed fee.

(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 when 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.

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<sup>37</sup> Subsection amended by s. 10 of Act 5/2003.

(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.

(7) The owner of a registered mass media service may, in the form and manner and subject to payment of the fee prescribed, apply to the Commission for the renewal of the registration of the mass media service upon the same terms and conditions that applied when the mass media service was originally registered:

Provided that if there are any material changes in the particulars furnished in connection with the original application for registration, the owner concerned shall make a new application for registration of the mass media service in terms of subsection (2).<sup>38</sup>

## **67 Notification of changes**

A mass media service shall be required to notify the Commission of any changes 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 products is altered;
- (d) the area where the mass media products are circulated is changed;
- (e) the editorial office changes its place of location and form.

## **68 Exemption from registration<sup>39</sup>**

The following mass media services and activities are exempted from registering in terms of this Act—

- (a) a mass media service founded by or under an Act of Parliament;
- (b) a mass media service consisting of the activities of a person holding a licence issued in terms of the Broadcasting Services Act [*Chapter 12:06*], to the extent that such activities are permitted by such licence; or
- (c) a representative office of a foreign mass media service permitted to operate in Zimbabwe in terms of section *ninety*;
- (d) the production of publications by any enterprise, association, institution or other person that are disseminated exclusively to members or employees of that enterprise, association, institution or other person:

Provided that the Commission may require the enterprise, association, institution or other person producing any such publication to register as a mass media service in terms of this Part if—

- (i) the publication is sold in a public place to members of the public or is otherwise not disseminated exclusively to members or employees of the enterprise, association, institution or other person concerned; or

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<sup>38</sup> Subsection inserted by s. 10 of Act 5/2003.

<sup>39</sup> Section substituted by s. 11 of Act 5/2003.

- (ii) the number of publications produced significantly exceeds the number of members or employees to whom the publication is intended to be disseminated, or exceeds a prescribed number.

## **69 Refusal of registration of mass media service**

- (1) The Commission may not refuse to register a mass media service unless—
  - (a) it fails to comply with the provisions of this Act ; or
  - (b) the information indicated in an application for registration is false, misleading or contains any misrepresentation; or
  - (c) that mass media service seeks to be registered in the name of an existing registered mass media service;

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

(2) An appeal shall lie to the Administrative Court against any decision made or action taken by the Commission in terms of this section.

- (3) ...<sup>40</sup>

## **70 Registration fee**

The registration fee shall be as prescribed by the Minister:

Provided that the Minister may prescribe a higher fee for established mass media services 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.

## **71 Suspension, cancellation and enforcement of registration certificates**

(1) Subject to this section, the Commission may, whether on its own initiative or upon the investigation of a complaint made by any interested person against the mass media service, suspend or cancel the registration certificate of a mass media service if it has reasonable grounds for believing that—

- (a) the registration certificate was issued in error or through fraud or there has been a misrepresentation or non-disclosure of a material fact by the mass media owner concerned; or
- (b) a mass media service concerned does not publish or go on air within twelve months from the date of registration; or
- (c) the mass media service concerned has contravened section *sixty-five, seventy-five, seventy-six, seventy-seven* or *eighty-nine* of this Act.<sup>41</sup>

(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 by reason of fraud, misrepresentation or non-disclosure of a material fact or contravention

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<sup>40</sup> Subsection (2) substituted for former subsections (2) and (3) by s. 12 of Act 5/2003.

<sup>41</sup> Paragraph amended by s. 25 of as read with Schedule to Act 5/2003.



of sections *sixty-five*, *seventy-five* and *eighty-nine* shall cease to operate forthwith and may not reapply for registration until after the expiry of a period of one year.

(4) Before taking any action in terms of subsection (1), the Commission shall notify the mass media service in writing of its intention to suspend or cancel the registration certificate of the mass media service and the reasons for doing so, and shall call upon the mass media service to show cause, within such reasonable period as may be specified in the notice, why the registration certificate should not be suspended or cancelled, as the case may be.

(5) If, at the expiry of the period specified in the notice given in terms of subsection (4), and after considering any representations made by the mass media service, the Commission is satisfied for any reason specified in subsection (1) that the registration certificate concerned should be suspended or cancelled, the Commission may, by notice in writing to the mass media service, suspend or cancel the registration certificate or take such other action as it considers appropriate.

(6) Without derogation from its powers in terms of subsection (1), where the Commission is satisfied that a mass media service is contravening, has contravened or is likely to contravene any of the provisions of this Act, the Commission may serve upon the mass media service an order—

- (a) requiring the mass media owner to do, or not to do, such things as are specified in the order for the purpose rectifying or avoiding any contravention or threatened contravention of this Act; and
- (b) stipulating the period within which any requirement referred to in paragraph (a) shall be commenced and completed.

(7) Before serving an order in terms of subsection (6), the Commission shall serve a notice upon the mass media owner concerned—

- (a) specifying the grounds upon which the order is to be issued and what the Commission considers is required for the purpose of rectifying or avoiding any contravention or threatened contravention of this Act; and
- (b) stipulating the maximum period that the Commission considers reasonable for the implementation of any requirement it proposes to order; and
- (c) calling upon the mass media owner, if he wishes to make representations, to make them to the Commission within such period from the date of service of the notice as it shall specify.

(8) After considering any representations made in terms of paragraph (c) of subsection (7), the Commission may serve, or refrain from or defer serving, an order in terms of subsection (6), or serve an order on different terms.

(9) An order served in terms of subsection (6) may specify a penalty for each day that the mass media service subjected to the order is in default of compliance with the order, not exceeding the period and amount prescribed.

(10) The amount of any penalty imposed in terms of subsection (9) shall form part of the funds of the Commission.

(11) Any mass media owner who is aggrieved by any decision or order of the Commission made in terms of this section may, within twenty-eight days after being notified of the decision

or action of the Commission concerned, appeal in writing to the Minister, submitting with his appeal such fee as may be prescribed.

(12) For the purpose of determining an appeal noted in terms of subsection (11), the Minister may require the Commission to furnish him with the reasons for the decision or action that is the subject of the appeal and a copy of any evidence upon which the reasons are based.

(13) The Minister, after due and expeditious inquiry, may make such order on any appeal noted in terms of subsection (11) as he considers just.

(14) An appeal shall lie to the Administrative Court against any order of the Minister in terms of subsection (12).

(15) An appeal in terms of subsection (14) shall be made in the form and manner and within the period prescribed in rules of court.

## **72 Penalties for operating mass media service without registration certificate**

(1) No person shall carry on or operate a mass media service without a valid registration certificate, licence or permit issued in terms of this Act or any other law.

(2) A person who contravenes subsection (1) shall be guilty of an offence and liable, upon conviction, to a fine not exceeding level twelve or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.<sup>42</sup>

(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).

## **73 ...<sup>43</sup>**

## **74 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) Sections *sixty-eight to seventy-two* shall apply to the registration of a news agency.<sup>44</sup>

(3) A person who contravenes subsection (1) shall be guilty of an offence and liable, upon conviction, to a fine not exceeding level twelve or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.<sup>45</sup>

(4) 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 sub-

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<sup>42</sup> Subsection (2) amended by s. 25 of as read with Schedule to Act 5/2003 (level twelve substituted for former three hundred thousand dollars).

<sup>43</sup> Section repealed by s. 13 of Act 5/2003.

<sup>44</sup> Subsection amended by s. 14 of Act 5/2003.

<sup>45</sup> Subsection amended by s. 14 of Act 5/2003 (level twelve substituted for three hundred thousand dollars).

section (1) may declare forfeited to the State any equipment or apparatus used for the purpose of or in connection with the offence.

(5) 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).

(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.

(7) A registration certificate issued in terms of subsection (1) shall be valid for two years.<sup>46</sup>

(8) A registered news agency may, in the form and manner and subject to payment of the fee prescribed, apply to the Commission for the renewal of its registration upon the same terms and conditions that applied when it was originally registered:

Provided that if there are any material changes in the particulars furnished in connection with the original application for registration, the news agency concerned shall make a new application for registration in terms of subsection (1).<sup>47</sup>

## **75 Publisher's imprint**

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

## **76 Deposit copies**

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

## **77 Obligatory reports<sup>48</sup>**

A mass media service shall, if ordered to do so by the Commission, publish, free of charge the full particulars or a summary approved by the Commission of a decision of a court or the Commission pertaining to its mass media service—

- (a) on the front page or centrespread, if it is a newspaper; or
- (b) if it is an electronic mass media service, on three consecutive occasions during prime time;

or in such other manner as the Commission may prescribe.

## **PART XII**

### **JOURNALISTS**

## **78 Rights of a journalist**

Subject to this Act and any other law, a journalist shall have the following rights (hereafter in this Act collectively referred to as "journalistic privilege")<sup>49</sup>—

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<sup>46</sup> Subsection inserted by s. 14 of Act 5/2003.

<sup>47</sup> Subsection inserted by s. 14 of Act 5/2003.

<sup>48</sup> Section substituted by s. 15 of Act 5/2003.

<sup>49</sup> Introductory words amended by s. 16 of Act 5/2003.

- (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 prohibit the publication of, remove his or her signature from or attach conditions to the manner of using a report or material whose content was distorted, in his or her opinion, in the process of editorial preparation; or<sup>50</sup>
- (g) to circulate reports and materials he prepared under his signature, under a pseudonym or without any signature.

## 79 Accreditation of journalists

(1) No journalist shall exercise the rights provided in section *seventy-eight* in Zimbabwe without being accredited by the Commission.

(2) Subject to subsection (4), no journalist shall be accredited who is not a citizen of Zimbabwe, or is not regarded as permanently resident in Zimbabwe by virtue of the Immigration Act [*Chapter 4:02*].

(3) Any person who wishes to be accredited as a journalist shall make an application to the Commission in the form and manner and accompanied by the fee, if any, prescribed:

Provided that a mass media service or news agency may file an application for accreditation on behalf of journalists employed by such mass media service or news agency.

(4) A journalist who is not a citizen of Zimbabwe, or is not regarded as permanently resident in Zimbabwe by virtue of the Immigration Act [*Chapter 4:02*], may be accredited for any period specified by the Commission not exceeding thirty days:

Provided that the Commission may, for good cause shown or for the purpose of enabling the journalist to work for the duration of any event he or she is accredited to cover, extend the period by a specified number of days.<sup>51</sup>

(5) The Commission may accredit an applicant as a journalist and issue a press card to the applicant if it is satisfied that the applicant—

- (a) has complied with the prescribed formalities; and
- (b) possesses the prescribed qualifications; and
- (c) is not disqualified by virtue of subsection (2), or applies for accreditation in terms of subsection (4).

(6) Every news agency that operates in Zimbabwe, whether domiciled inside or outside Zimbabwe, shall in respect of its local operations not employ or use the services of any journalist other than an accredited journalist who is a citizen of Zimbabwe, or is regarded as permanently resident in Zimbabwe by virtue of the Immigration Act [*Chapter 4:02*]:

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<sup>50</sup> Paragraph substituted by s. 16 of Act 5/2003.

<sup>51</sup> Subsection substituted by s. 17 of Act 5/2003.

Provided that the news agency may employ or use the services of a journalist referred to in subsection (4) for the duration of that journalist's accreditation.

### **80 Abuse of journalistic privilege<sup>52</sup>**

A journalist who abuses his or her journalistic privilege by publishing—

- (a) information which he or she intentionally or recklessly falsified in a manner which—
  - (i) threatens the interests of defence, public safety, public order, the economic interests of the State, public morality or public health; or
  - (ii) is injurious to the reputation, rights and freedoms of other persons;
- or
- (b) information which he or she maliciously or fraudulently fabricated; or
- (c) any statement—
  - (i) threatening the interests of defence, public safety, public order, the economic interests of the State, public morality or public health; or
  - (ii) injurious to the reputation, rights and freedoms of other persons;

in the following circumstances—

- A. knowing the statement to be false or without having reasonable grounds for believing it to be true; and
- B. recklessly, or with malicious or fraudulent intent, representing the statement as a true statement;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years.

### **81 ...<sup>53</sup>**

### **82 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.

### **83 Prohibition against practice by, or in association with, unaccredited journalists**

(1) No person other than a accredited journalist shall practise as a journalist nor be employed as such or in any manner hold himself out as a journalist.<sup>54</sup>

(2) No person who has ceased to be a 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 practice 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.

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<sup>52</sup> Section substituted by s. 18 of Act 5/2003.

<sup>53</sup> Section repealed by s. 19 of Act 5/2003.

<sup>54</sup> Subsection amended by s. 25 of as read with Schedule to Act 5/2003.

#### **84 Evidence and duration of accreditation of journalists**

(1) A press card shall constitute evidence that the holder thereof is accredited as a journalist, and shall be valid for a period or any part of a period of twelve months ending on the 31st December each year.

(2) The holder of a press card may, in the form and manner and accompanied by the fee, if any, prescribed, make an application to the Commission for its renewal upon the same terms and conditions that applied when the initial press card was issued:

Provided that if there are any material changes in the particulars furnished in connection with the original application for accreditation, the holder of a press card concerned shall make a new application for accreditation in terms of section *seventy-nine*.

#### **85 Conduct and discipline of journalists**

(1) The Commission shall, in consultation with such organisations it considers to be representative of journalists, develop a code of conduct governing the rules of conduct to be observed by journalists.

(2) The Commission shall be responsible for enforcing the code of conduct referred to in subsection (1) and shall, for that purpose, have the following powers in relation to any journalist who contravenes the code or any provision of this Act—

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

(3) Before exercising any power in terms of subsection (2), the Commission shall notify the journalist in writing of its proposed action and the reasons for it, and shall call upon the journalist to show cause, within such reasonable period as shall be specified in the notice, why the proposed action should not be taken.

(4) At the expiry of the period specified in the notice given in terms of subsection (3), and after considering any representations made by the journalist and affording the journalist a fair hearing, the Commission may, by notice in writing to the journalist, take such action as it considers appropriate.

(5) The amount of any penalty imposed in terms of paragraph (d) of subsection (2) shall form part of the funds of the Commission.

(6) An appeal shall lie to the Administrative Court against any decision made or action taken by the Commission in terms of this section.

(7) ...<sup>55</sup>

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<sup>55</sup> Subsection repealed by s. 25 of as read with Schedule to Act 5/2003.

## **86 Correction of untruthful information**

(1) A person or his legal representative shall have the right, at no cost, to demand from a mass media service correction of untruthful information that denigrates his honour and dignity and that was published by that mass media service.<sup>56</sup>

(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.

## **87 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 when it was published by that mass media service.<sup>57</sup>

(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”.

(3) A person aggrieved by the manner in which a correction in terms of this section is made or published may appeal in the time and manner prescribed to the Commission.<sup>58</sup>

## **88 Grounds for the refusal of correction**

- (1) A correction may be refused if the demand or the submitted text of correction—
- (a) represents an abuse of the freedom of expression as set out in section *sixty-four*;
  - (b) contradicts a decision of a court;
  - (c) is anonymous;
  - (d) 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 mass media service.

(2) ...<sup>59</sup>

## **89 Right of reply<sup>60</sup>**

(1) A person or organisation in respect of whom a mass media service has published information that is not truthful or impinges on his rights or lawful interests shall have a right of reply in the same mass media service at no cost to him, and the reply shall be given the same prominence as the as that accorded to the offending information.<sup>61</sup>

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<sup>56</sup> Subsection amended by s. 25 of as read with Schedule to Act 5/2003.

<sup>57</sup> Subsection amended by s. 20 of Act 5/2003.

<sup>58</sup> Subsection inserted by s. 20 of Act 5/2003.

<sup>59</sup> Subsection repealed by s. 25 of as read with Schedule to Act 5/2003.

<sup>60</sup> Subsection repealed by s. 25 of as read with Schedule to Act 5/2003.

<sup>61</sup> Subsection amended by s. 21 of Act 5/2003.

(2) The reply shall be published in the earliest possible issue of the publication in which the offending information appeared after the request for the reply is received.<sup>62</sup>

## **90 Representative offices of foreign mass media services**

(1) A representative office of a foreign mass media service shall not be set up or operated in Zimbabwe except with the permission of the Commission.<sup>63</sup>

(2) Application for permission in terms of subsection (1) shall be made in the form and manner prescribed.

(3) The permission to set up or operate a representative office of a foreign mass media service shall be valid for twelve months.<sup>64</sup>

(4) A foreign mass media service may, in the form and manner and subject to payment of the fee prescribed, apply to the Commission for the renewal of permission to operate a representative office upon the same terms and conditions that applied when it originally applied for permission:

Provided that if there are any material changes in the particulars furnished in connection with the original application for permission, the foreign mass media service concerned shall make a new application for permission in terms of subsection (1).<sup>65</sup>

## **PART XIII**

### **GENERAL PROVISIONS**

#### **90A Appeals to Administrative Court<sup>66</sup>**

(1) Any appeal to the Administrative Court shall be made in the form and manner prescribed and within the period prescribed in the rules of court.

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

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

(4) Any person whose appeal against a refusal by the Commission to register a mass media service in terms of section *sixty-nine* or news agency section *seventy-four* or give permission for the setting up within Zimbabwe of a representative office of a foreign mass media service in terms of section *ninety*, is upheld shall not be entitled to be registered or permitted but shall have his or her matter remitted to the Commission for re-determination in terms of Part XI or section *ninety*, as the case may be.

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<sup>62</sup> Subsection substituted by s. 21 of Act 5/2003.

<sup>63</sup> Subsection amended by s. 22 of Act 5/2003.

<sup>64</sup> Subsection inserted by s. 22 of Act 5/2003.

<sup>65</sup> Subsection inserted by s. 22 of Act 5/2003.

<sup>66</sup> Section inserted by s. 23 of Act 5.2003.



## **90B Offences and penalties<sup>67</sup>**

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

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) Any person who wilfully contravenes section *sixty-five, seventy-five, seventy-six, seventy-seven or eighty-nine* shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment

## **91 Regulatory powers of 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 services 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 Fund may be invested;
- (e) the fees to be paid for applications, 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 fee 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 service;
- (n) information to be disclosed for research or statistical purposes;

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<sup>67</sup> Section inserted by s. 23 of Act 5.2003.

- (o) the form and manner of publisher's imprints;
- (p) the qualifications for accreditation as a journalist;<sup>68</sup>
- (q) the period for when contributions to the Fund will be made;
- (r) periodicals or publications exempt from registration.

## **92 Amendment of section 4 of Cap. 11:09**

The Official Secrets Act [*Chapter 11:09*] is amended in section 4 by the insertion after subsection (1) of the following subsection—

“(1a) For the avoidance of doubt it is declared that subsection (1) shall not apply to the disclosure in accordance with the Access to Information and Protection of Privacy Act [*Chapter 10:27*] (Act No. 5 of 2002) of any document or information by a person who, being the head of a public body as defined in that Act, has lawful access to that document or information.”.

## **93 Transitional provisions**

(1) Any person who, immediately before the date of commencement of this Act, was lawfully operating a mass media service 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 made after that date in terms of this Act for a certificate of registration to provide that service shall be treated as an application for a new certificate and not for the renewal of a certificate.<sup>69</sup>

(2) Any journalist who was accredited before the coming into operation of this Act shall be deemed to be accredited for the remainder of the year 2002.

### FIRST SCHEDULE (*Section 4*)

#### RECORDS EXCLUDED FROM APPLICATION OF ACT

- (a) A personal note, communication or draft decision of a person who is acting in a judicial or quasi-judicial capacity;
- (b) any record that is protected in terms of the Privileges, Immunities and Powers of Parliament Act [*Chapter 2:08*];
- (c) a record that is created by or for, or is in the custody or control of a person in terms of the Children's Act [*Chapter 5:06*] and relates to the exercise of that person's functions under that Act;
- (d) a record of a question that is to be used in an examination or test;
- (e) a record containing teaching materials or research information of employees of a post-secondary educational body;

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<sup>68</sup> Paragraph amended by s. 25 of as read with Schedule to Act 5/2003.

<sup>69</sup> Subsection amended by s. 24 of Act 5/2003.

- (f) material placed in the National Archives or the archives of a public body by or for a person or agency other than a public body;
- (g) 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.

SECOND SCHEDULE (*Section 2*)

PUBLIC BODIES AND HEADS OF PUBLIC BODIES

PART I

<i>Public Body</i>	<i>Head</i>
Any government department	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
Any government agency or office of which the Permanent Secretary is not the head	The person in charge of such agency or office
Office of the Registrar General	The Registrar-General
Office of the Registrar of the High Court/Supreme Court/Administrative Court/ Office of the Labour Relations Tribunal	The registrar of that court
Office of the Clerk of the Magistrates Court/Community Court	The clerk of court of that court
Local authority	Executive Mayor, Town Clerk, Chief Executive Officer
A body referred to in Part II	The chairperson, chief executive officer, director-general, general manager, registrar or other person by whatever title called having responsibilities similar to those attaching to the foregoing offices

PART II

Estate Agents Council of Zimbabwe  
 Medical Council of Zimbabwe  
 Medicines Control 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 Institution 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 societies  
Zimbabwe Stock Exchange  
Zimbabwe National Traditional Healers Association  
Commercial Farmers Union  
Zimbabwe Farmers Union  
Indigenous Commercial Farmers Union  
Public companies.

THIRD SCHEDULE (*Section 39(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 Commission 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 Commission 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.

FOURTH SCHEDULE (*Section 40(3)*)

PROVISIONS APPLICABLE TO 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 Commission, 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 fourteen 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 forty-eight 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 level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.<sup>70</sup>

*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 subsection (1) of section *forty*; 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:

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<sup>70</sup> Subparagraph amended by s. 25 of as read with Schedule to Act 5/2003.

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.

FIFTH SCHEDULE (*Section 41*)

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 Commission shall be the period of twelve months ending on the 31st December in each year.

*Surplus funds of Commission to be appropriated to Fund*

3. Any surplus of income over expenditure at the end of the Commission's financial year shall be appropriated to the Fund.

*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 level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.<sup>71</sup>

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<sup>71</sup> Subparagraph amended by s. 25 of as read with Schedule to Act 5/2003.

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 Fourth Schedule to vacate his office had that paragraph and subparagraphs (a), (b) and (c) of subparagraph (1) of paragraph 2 of the Fourth 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 Commission.

(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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