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Ms Nonkqubela Jordan-Dyani
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31 August 2021

Dear Ms Jordna-Dyani

MMA, SOS COALITON AND SASFED: SUBMISSION ON THE SABC BILL

1. INTRODUCTION

- 1.1 In Notice No. 620 published in Government Gazette No. 44865 dated 15 July 2021, the Minister of the Department of Communications and Digital Technologies (the Department) published the SABC Bill 2021 (the Bill) for public notice and comment. Media Monitoring Africa (MMA), the SOS Coalition in Support of Public Broadcasting (SOS) and SASFED (collectively, the Organisations) thank the Department for the opportunity of making these written submissions and requests an opportunity to make oral presentations. In this regard, the Organisations are of the respectful view that the matters traversed in the SABC Bill are so essential that oral hearings must be held and trusts that the Department will ensure that this is done in due course.
- 1.2 The SOS Coalition is a civil society coalition that is committed to, and campaigns for, broadcasting services that advance the public interest. While the SABC is our primary focus – as the key site of and the institution established to drive public interest broadcasting – SOS also engages in the advancement of community broadcast media in South Africa. SOS is made up of a broad range of civil society organisations, trade unions and their federations, and individuals (including academics, freedom of expression activists, policy and legal consultants, actors, script-writers, film makers, producers and directors).
- 1.3 SOS campaigns tirelessly for an independent and effective public broadcaster. We engage with policymakers, regulators, and lawmakers to secure changes that will promote citizen-friendly policy, legislative and regulatory changes to broadcasting and its associated sectors.
- 1.4 Media Monitoring Africa (MMA) is a not-for-profit organisation that has been monitoring the media since 1993. MMA's objectives are to promote the development of a free, fair, ethical and critical media culture in South Africa and the rest of the continent. The three key areas that MMA seeks to address through a human rights-based approach are media ethics, media quality and media freedom.
- 1.5 MMA aims to contribute to this vision by being the premier media watchdog in Africa to promote a free, fair, ethical, and critical media culture. MMA has over 20 years' experience in media monitoring and direct engagement with media, civil society organisations and citizens. MMA is the only independent organisation that analyses and engages with media according to this framework. In all of our projects, we seek to demonstrate leadership, creativity and progressive approaches to meet the changing needs of the media environment.
- 1.6 The South African Screen Federation (SASFED), known as “the leading voice and champion of the South African Screen Industry,” is the national federation of independent film, television and audio-visual industry organisations in South Africa. Founded in 2006 in response to Government's call for the independent screen industry to speak with a united voice, SASFED represents many guilds, professionals and companies that are operating in an increasingly diverse and growing sector. The membership of these organisations

operates in all the provinces of South Africa, making SASFED's membership truly national.

1.7 SASFED represents the audio-visual sector across the value chain. Amongst our members are writers, filmmakers, animators, actors (and their managers), producers and editors. All of our membership, with the exception of the talent managers, are content creators.

1.8 Current SASFED membership includes the Documentary Filmmakers' Association (DFA), The Independent Black Filmmakers Collective (IBFC), Independent Producers' Organisation (IPO), Personal Managers' Association (PMA), Animation South Africa (A.S.A), South African Guild of Actors (SAGA), Sisters Working in Film and Television (SWIFT), South African Guild of Editors (SAGE) and Writers Guild of South Africa (WGSA).

1.9 This submission also represents the views and needs of the film and television production sector's representative organisations.

2. OVERALL COMMENT: WE ARE NOT MOVING FORWARD

2.1 The Organisations are genuinely bewildered at much of the contents of the Bill.

2.2 The Bill is quite simply, a restatement (using slightly different words, for example, "operational services" for "divisions") of the existing Broadcasting Act, 1999 (the Broadcasting Act) which is long past its sell-by date and which everyone agrees is in dire need of a complete overhaul to ensure that the legal framework of the SABC is fit for purpose in the era of convergence. In particular the Department has recognised the fundamental problems with the Broadcasting Act that must be addressed in its own Draft White Paper on Audio and Audio-Visual Content Services (the Draft White Paper).

2.3 In this regard, the Organisations can only quote the Department to itself:

2.3.1 ***"The [Broadcasting] Act must change to reflect the changing audio and audio-visual content environment"*** – at para 4.1.2 of the Draft White Paper;

2.3.2 ***"The SABC must be repurposed to be able to fulfil its mandate"*** – at para 4.1.4 of the Draft White Paper;

2.3.3 ***"The problem of the 'unfunded public mandate'...requires the creation for government...to fund information and content programming that is necessary in the public interest"*** - at para 4.1.4 of the Draft White Paper;

2.3.4 ***"The amendments to the legislation...must align to the judgment by Matojane J in SOS and Others v the SABC and Others"*** - at para 4.2.1 of the Draft White Paper;

2.3.5 ***"To achieve the goal of the SABC becoming a multiplatform multichannel public content service provider, the provisions need to include the SABC's obligations"***

to distribute its audio and audio-visual content on both a linear and non-linear basis” - at para 4.2.2.1 of the Draft White Paper;

2.3.6 **“Provisions on...Financial Matters...require review and consequential amendments, including amendments to the TV Licence Fee section to broaden the definition and the collection system for television licence and to strengthen enforcement mechanisms and penalties for non-payment”** - at para 4.2.2.3 of the Draft White Paper;

2.3.7 **“The idea of a commercial division cross-subsidizing the public division has been a policy failure since inception...It has become impractical and expensive for the SABC to have separate books for the two divisions as it requires duplication of services to implement this legislative obligation.”** - at para 4.2.4 of the Draft White Paper;

2.3.8 **“The legislative provisions dealing with the split of the Corporation’s services into public and public commercial services should be removed and all of the current broadcasting licences held by the SABC should be converted into public broadcasting service licences”** - at para 4.2.5 of the Draft White Paper;

2.3.9 **“A strong and financially fit SABC is vital for South Africa and Government will take the necessary legislative and financial steps to ensure this”** - at para 4.3.1 of the Draft White Paper;

2.3.10 **“The public broadcaster should also have a mandate in legislation to operate international satellite television, radio and internet services”**- at para 4.3.4 of the Draft White Paper; and

2.3.11 **“The Draft White Paper proposes that there will be a comprehensive overhaul of the SABC’s funding model based on international best practice to ensure that the public broadcaster has adequate funds to meet its public mandate”** at para 4.3.5 of the Draft White Paper.

2.4 Each one of the above statements is an exciting, new, and laudable policy goal, and all of these have been advocated by SOS itself since its founding in 2007.

2.5 However, not one of the above policy statements of the Department is found in the SABC Bill. Instead, the SABC Bill is riddled with the exact wording that the Department has already, in writing and as a matter of policy, disassociated itself with as is clear from the extracts of the Draft White Paper quoted above. This is inexplicable and unacceptable. The SABC Bill is, quite simply, not taking us forward.

3. THE ORGANISATIONS’ ALTERNATIVE BILLS

- 3.1 In order to assist the Department, the Organisations have gone to great lengths in the unreasonably short comment period of a scant six weeks (which was not extended despite repeated written requests for such an extension and notwithstanding the overall policy process having taken 10 years to develop to date) to develop an alternative SABC Bill (the Alternative Bill) based on the requirements of the Constitution and on policy principles that have already been accepted and articulated by the Department in the Draft White Paper, which Alternative Bill is attached hereto.
- 3.2 In order to further assist the Department, the Organisations have drafted a Draft Nineteenth Constitutional Amendment Bill (the Constitutional Amendment Bill) to amend Chapter 9 of the Constitution of the Republic of South Africa, 1996 (the Constitution) in order to:
- 3.2.1 properly protect the independence of the SABC given its importance to democracy. In this regard, Majotane J made several important pronouncements in *SOS Coalition and Others v SABC and Others*¹ (the SOS Case) on the nature of the SABC and its critical role as a bulwark for democracy, including:
- 3.2.1.1 *The ability of the SABC to reach a vast number of people renders it a powerful tool that potentially could impact on the quality of democracy if it is not independent and pluralistic because the majority of South Africans receive their news and information primarily through the SABC's radio and television broadcasts*²;
- 3.2.1.2 *The SABC has a unique role and responsibility to players the public service broadcaster. The high rates of illiteracy in the country, the limited distribution and cost of newspapers and the cost of subscription television makes the SABC the primary source of information for the majority of South Africans*³;
- 3.2.1.3 *The SABC as a public service broadcaster must promote alternative views to encourage debate that is vital to the functioning of democracy. A healthy democracy requires that the public be able to discuss, share and receive information relating to political, social and cultural matters affecting their lives. The public broadcaster plays a crucial role in strengthening democracy and democratic governance by ensuring that the general public, in particular, those with neither political nor economic influence or power, have access to a broad spectrum of views on issues of public concern*⁴;

¹ <http://www.saflii.org/za/cases/ZAGPJHC/2017/289.html>

² At paragraph [39]

³ At paragraph [40]

⁴ At paragraph [41]

- 3.2.1.4 *The SABC is obliged to inform the public of all matters of public importance, and in particular of matters regarding the government of the day's performance. That will often include broadcasting that is critical of or disadvantageous to the government⁵;*
- 3.2.1.5 *The SABC is required to perform a watchdog function by investigating and reporting on the maladministration, abuses of power and corruption as these are matters of public interest⁶;*
- 3.2.1.6 *The requirements of an independent the SABC is implied in the duty of the state under section 7(2) of the Constitution to protect and promote the rights in the Bill of Rights, including the right to freedom of expression and a free press. Because the SABC is the medium that should allow the free flow of ideas that is necessary for democracy to function, the state must ensure that it has the necessary structural and operational independence. The SABC will only have such independence if there are entrenched mechanisms to ensure that it provides accurate, neutral and pluralistic content⁷;*
- 3.2.1.7 *The independent and pluralistic broadcaster is not only crucial for the right to freedom of expression and access to information. It is also vital to the citizens right to vote and the right to free and fair elections in terms of section 19 [of the Constitution]⁸;*
- 3.2.1.8 *The SABC is the primary source of political information for the majority of South Africans. They cannot exercise their right to vote meaningfully without access to independent and pluralistic information and opinion⁹;*
- 3.2.1.9 *If political or private interests govern the media, it cannot provide South Africans with accurate, neutral and pluralistic information they require to make the right to vote meaningful¹⁰; and*
- 3.2.1.10 *South Africa has ratified some regional and international treaties that commit the state to promote free and professional public media which is impartial, independent accurate and reliable;¹¹ and*
- 3.2.2 give recognition to the technological fact of convergence of telecommunications and traditional broadcasting services by expanding the constitutional independence

⁵ At paragraph [44]

⁶ At paragraph [46]

⁷ At paragraph [52]

⁸ At paragraph [60]

⁹ At paragraph [61]

¹⁰ At paragraph [63]

¹¹ At paragraph [64]

protection afford to the independent authority to regulate broadcasting in the public interest by recognising that independent regulation of all electronic communications is required in order to support constitutional democracy.

3.3 The Organisations' Draft Constitutional Amendment Draft Bill is also attached hereto.

3.4 The Organisations are aware that having a Chapter 9 body which is in the form of a corporation is novel. However, we are of the view that there is nothing in the Constitution itself that would preclude this.

4. AD PREAMBLE OF THE BILL

4.1 The Organisations submit that the preamble requires to be amended because:

4.1.1 it does not sufficiently set out the roles that are required to be played by the state as sole shareholder on behalf of the public and the Minister as public representative with regard to the SABC; and

4.1.2 it makes no reference to the need for the SABC to move beyond providing broadcasting services in a converged technological environment and, in this regard, it does not even refer to online or Internet-based services.

4.2 The Organisations have provided alternative wording for the Preamble in their Draft SABC Bill.

5. AD ARRANGEMENT OF SECTIONS

5.1 The Organisations submit that a number of these were superfluous because they:

5.1.1 were repetitious, for example different sections of the Bill dealt with the SABC's accounts, Annual Report etc; and/or

5.1.2 provided for matters which the Department has already described as a policy failure, for example, the separation of the SABC into public and public commercial divisions.

5.2 The Organisations have provided alternative wording for the Arrangement of Sections in their Draft SABC Bill.

6. AD SECTION 1: DEFINITIONS

6.1 The Organisations submits that a number of these required to be amended because they were:

- 6.1.1 superfluous because they provided for matters which the Department has already described as requiring to be changed, for example, all of the definitions relating to the television licence fee and those that pertained to public and public commercial services;
 - 6.1.2 the definitions related only to the broadcasting context and did not envisage audio and audio-visual and other content services whether provided via broadcasting and/or online and on a linear or non-linear basis; and
 - 6.1.3 did not make it sufficiently clear what public service content is.
- 6.2 The Organisations have provided alternative wording for and has included a number of new definitions in section 1 of its Draft SABC Bill.
7. AD SECTION 2: INTERPRETATION OF ACT
- 7.1 The Organisations largely agree with the provisions but notes that certain aspects of the Electronic Communications Act and of the Preferential Procurement Policy Framework Act will not accord with the Bill and therefore it is imperative that in relation to SABC matters, the Bill takes precedence (once enacted).
 - 7.2 The Organisations have redrafted section 1 in their Draft SABC Bill.
8. AD SECTION 3: OBJECT OF ACT
- 8.1 The Organisations have long criticized the Broadcasting Act for not clearly stipulating which provisions thereof constitute the actual public mandate of the SABC.
 - 8.2 The Organisations submit that these are spread throughout the Act and, sadly, the Bill makes the same fundamental error. SOS submits that public mandate issues can be found in sections: 3, 6, 7, 9, and 10 of the Bill and are essentially repetitious of the existing provisions in the Broadcasting Act many of which do not take account of technological convergence and are, in even the Department's view, outdated.
 - 8.3 In order to properly clarify the distinction between the Object of the Act, the Public Mandate of the SABC and Powers of the Corporation, these are required to be delineated properly.
 - 8.4 The Organisations have done this in their Draft SABC Bill and the Object of the Act is set out in section 3 of the Organisations' Draft SABC Bill.
9. AD SECTION 4: CONTINUED EXISTANCE OF CORPORATION
- 9.1 The Organisations submit that section 4 of the Bill does not sufficiently set out the roles that are required to be played by the state as sole shareholder on behalf of the public and the Minister as public representative with regard to the SABC.

9.2 The Organisations have redrafted section 4 as section 5 of its Draft SABC Bill.

10. AD SECTION 5: POWERS AND DUTIES OF MINISTER

10.1 Section 5(b) of the Draft Bill is ultra vires the powers of the Minister as per the judgment of Matojane J in the SOS Case¹².

10.2 Further, as a proposed Chapter 9 institution, it is appropriate that the National Assembly, and not the Minister, be empowered to direct the Corporation to take action in the event of financial difficulty.

10.3 Consequently, the Organisations have made suggested amendments to section 5 of the Bill in section 6 of its Draft Bill.

11. AD SECTION 6: CHARTER OF THE CORPORATION

11.1 The Organisations have long criticized the Broadcasting Act for not clearly stipulating which provisions thereof constitute the actual public mandate of the SABC.

11.2 The Organisations submit that these are spread throughout the Act and, sadly, the Bill makes the same fundamental error. The Organisations submit that public mandate issues can be found in sections: 3, 6, 7, 9, and 10 of the Bill and are essentially repetitious of the existing provisions in the Broadcasting Act many of which do not take account of technological convergence and are, in even the Department's view, outdated. In this regard, the Department has stated:

11.2.1 ***"The [Broadcasting] Act must change to reflect the changing audio and audio-visual content environment"*** – at para 4.1.2 of the Draft White Paper;

11.2.2 ***"The SABC must be repurposed to be able to fulfil its mandate"*** – at para 4.1.4 of the Draft White Paper;

11.2.3 ***"To achieve the goal of the SABC becoming a multiplatform multichannel public content service provider, the provisions need to include the SABC's obligations to distribute its audio and audio-visual content on both a linear and non-linear basis"*** - at para 4.2.2.1 of the Draft White Paper; and

11.2.4 ***"The public broadcaster should also have a mandate in legislation to operate international satellite television, radio and internet services"***- at para 4.3.4 of the Draft White Paper.

¹² At paragraph [122].

11.3 Further, in order to properly clarify the distinction between the Object of the Act, the Public Mandate of the SABC and Powers of the Corporation, these are required to be delineated properly.

11.4 The Organisations have done this in their Draft SABC Bill and the Public Mandate of the SABC is set out in section 4 of the Organisations' Draft SABC Bill which section 4 has been entirely revamped and updated to provide for a comprehensive public mandate for the SABC that includes its obligations to provide broadcasting and online audio and audio-visual content services, both linear and non-linear, in the public interest.

12. AD SECTION 7: OBJECTIVES OF CORPORATION

12.1 The Organisations have long criticized the Broadcasting Act for not clearly stipulating which provisions thereof constitute the actual public mandate of the SABC.

12.2 The Organisations submit that these are spread throughout the Act and, sadly, the Bill makes the same fundamental error. The Organisations submit that public mandate issues can be found in sections: 3, 6, 7, 9, and 10 of the Bill and are essentially repetitious of the existing provisions in the Broadcasting Act many of which do not take account of technological convergence and are, in even the Department's view, outdated. many of which do not take account of technological convergence and are, in even the Department's view, outdated. In this regard, the Department has stated:

12.2.1 ***"The [Broadcasting] Act must change to reflect the changing audio and audio-visual content environment"*** – at para 4.1.2 of the Draft White Paper;

12.2.2 ***"The SABC must be repurposed to be able to fulfil its mandate"*** – at para 4.1.4 of the Draft White Paper;

12.2.3 ***"To achieve the goal of the SABC becoming a multiplatform multichannel public content service provider, the provisions need to include the SABC's obligations to distribute its audio and audio-visual content on both a linear and non-linear basis"*** - at para 4.2.2.1 of the Draft White Paper; and

12.2.4 ***"The public broadcaster should also have a mandate in legislation to operate international satellite television, radio and internet services"***- at para 4.3.4 of the Draft White Paper.

12.3 In order to properly clarify the distinction between the Object of the Act, the Public Mandate of the SABC and Powers of the Corporation, these are required to be delineated properly.

12.4 The Organisations have done this in their Draft SABC Bill and the Public Mandate of the SABC is set out in section 4 of the Organisations' Draft SABC Bill which section 4 has been

entirely revamped and updated to provide for a comprehensive public mandate (including objectives) for the SABC that includes its obligations to provide broadcasting and online audio and audio-visual content services, both linear and non-linear, in the public interest.

12.5 Consequently, the Objectives of the Corporation have been subsumed into the Public Mandate of the Corporation as set out above in the Organisations' Draft SABC Bill.

12.6 Further, the heading "Objectives of the Corporation" is misleading and incorrect as the matters provided for in section 7 are, actually, powers of the Corporation. Consequently, these Objectives have been subsumed (albeit updated to reflect the technological reality of convergence and the additional need of the SABC to provide online and non-linear services too and to be able to be much more flexible when trading content) subsumed into section 8, headed Powers of the Corporation, of the SOS Draft SABC Bill.

13. AD SECTIONS 8 TO 10: ORGANISATION, PUBLIC SERVICES AND COMMERCIAL SERVICES

13.1 The Organisations are disappointed that the Department saw fit to rehash these provisions from the Broadcasting Act almost word for word, substituting the term "operational services" for "divisions" in the original Broadcasting Act.

13.2 This is particularly troubling given the Department's own view of the failures of the attempted division of the SABC's services into public and public commercial, which have never been actualised in practice, namely:

13.2.1 ***"The idea of a commercial division cross-subsidizing the public division has been a policy failure since inception...It has become impractical and expensive for the SABC to have separate books for the two divisions as it requires duplication of services to implement this legislative obligation."*** - at para 4.2.4 of the Draft White Paper; and

13.2.2 ***"The legislative provisions dealing with the split of the Corporation's services into public and public commercial services should be removed and all of the current broadcasting licences held by the SABC should be converted into public broadcasting service licences"*** - at para 4.2.5 of the Draft White Paper.

13.3 The Organisations agree with the policy statements by the Department in its own Draft White Paper set out above and has drafted alternative wording on the Organisation and Funding of the Corporation to reflect same, in their Draft section 9 of Organisations' Draft SABC Bill.

13.4 The Organisations are disappointed that the Department saw fit to rehash the funding provisions from the Broadcasting Act almost word for word.

13.5 This is particularly troubling given the Department's own view of the failures by the Government to fund the admittedly-unfunded public mandate, namely:

13.5.1 ***"The problem of the 'unfunded public mandate'...requires the creation for government...to fund information and content programming that is necessary in the public interest"*** - at para 4.1.4 of the Draft White Paper;

13.5.2 ***"Provisions on...Financial Matters...require review and consequential amendments, including amendments to the TV Licence Fee section to broaden the definition and the collection system for television licence and to strengthen enforcement mechanisms and penalties for non-payment"*** - at para 4.2.2.3 of the Draft White Paper;

13.5.3 ***"A strong and financially fit SABC is vital for South Africa and Government will take the necessary legislative and financial steps to ensure this"*** - at para 4.3.1 of the Draft White Paper;

13.5.4 ***"The Draft White Paper proposes that there will be a comprehensive overhaul of the SABC's funding model based on international best practice to ensure that the public broadcaster has adequate funds to meet its public mandate"*** at para 4.3.5 of the Draft White Paper.

13.6 The Organisations agree with the policy statements by the Department in its own Draft White Paper set out above and has drafted alternative wording on the Organisation and Funding of the Corporation to reflect same, in their Draft section 9 of the Organisations' Draft SABC Bill.

13.7 Further, the Organisations have simplified a number of the provisions regarding funding and reporting given that the Bill contained a number of repetitious provisions.

14. AD SECTION 11: COMPOSITION OF THE BOARD

14.1 In the Explanatory Memorandum, the Department states that the Bill is expected to save the SABC almost R1million in Board fees and related costs.

14.2 The Organisations are of the respectful view that this is a relatively small amount given the quantum of the SABC's annual expenditure.

14.3 Nevertheless, the Organisations support the Department's draft amendment to reduce the number of non-executive Board members from 13 to 9.

14.4 However, the Organisations are strongly of the view that the Chief Operating Officer's position is essential to the operations of the SABC and that the team of three executive directors must remain in place for the proper operational management of the SABC. The

reasons of this are based on the complexity and sheer size of the organisation – it is simply too great an executive burden to be placed on the shoulders of a single person or two people, the executive directors are responsible for the implementation of the Board’s strategic directions and requirements and it essential that three executive directors be in place to ensure that this is done properly.

14.5 The Organisations note that apart from the above, many of the provisions of section 11 remain as worded in the Broadcasting Act. The Organisations are disappointed with this and its alternative Draft SABC Bill (see proposed section 10) has:

14.5.1 proposed additional provisions to improve public participation and transparency in the non-executive Board members’ appointments process, including through expanded nominations and shortlisting provisions;

14.5.2 proposed additional provisions to guard against political appointments (as opposed to public interest appointments) being made during in the non-executive Board members’ appointments process, including through expanded nominations and shortlisting provisions, for example, by the requiring of reasons for recommendations by the National Assembly; and

14.5.3 expanded the criteria for appointments of non-executive Board members’ appointments to ensure the appointment of people who represent important social constituencies and who are committed to the Public Mandate of the SABC.

15. AD SECTION 12: EXECUTIVE COMMITTEE

15.1 The Organisations reiterate that it is strongly of the view that the Chief Operating Officer’s position is essential to the operations of the SABC and that the team of three executive directors must remain in place for the proper operational management of the SABC.

15.2 Consequently this is provided for in proposed section 11 of the Organisations’ Alternative SABC Bill.

16. AD SECTION 13: REMOVAL FROM OFFICE

The Organisations agree with this wording which is contained in section 12 of Organisations’ Alternative SABC Bill too.

17. AD SECTION 14: RESOLUTION FOR REMOVAL OF MEMBER, DISSOLUTION OF BOARD AND APPOINTMENT OF INTERIM BOARD

17.1 The Organisations have long criticised the amendments made to the Broadcasting Act in 2010 which introduced the practice of removing whole Boards of Directors and replacing these with Interim Boards. This then happened twice is less than a decade.

- 17.2 The invitation to political interference is obvious.
- 17.3 The Organisations are of the view that should an individual non-executive Board member be unfit, unwilling or unable to perform his or her Board functions effectively, Parliament and the President must be able to remove her or him, but this cannot morph into an ability for the National Assembly and the President to collapse a Board and replace it with an Interim Board because of the instability of the institution that results.
- 17.4 Consequently, the Organisation are is of the view that section 14(2) to (7) must be removed from the Bill and has set out its proposed pared down removal provisions in section 13 of its Alternative SABC Bill.

18. AD SECTION 15: DISQUALIFICATION

- 18.1 The Organisations are of the view that the disqualification criteria (which repeat existing Broadcasting Act provisions) need to be expanded to bolster protection for the public against potential political interference and commercial conflicts of interests.
- 18.2 The Organisations have set out its proposed expanded disqualification criteria in section 14 of its Alternative SABC Bill.

19. AD SECTION 16: DISCLOSURE OF CONFLICT OF INTEREST

- 19.1 As a result of the Organisations' expanded disqualification criteria set out in its proposed Alternative SABC Bill, it is of the view that section 16(1) is unnecessary.
- 19.2 The Organisations have set out its proposed changes to section 16 in section 15 of its Alternative SABC Bill.

20. AD SECTION 17: APPOINTMENT OF GROUP CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER

- 20.1 The Organisations reiterate that it is strongly of the view that the Chief Operating Officer's position is essential to the operations of the SABC and that the team of three executive directors must remain in place for the proper operational management of the SABC.
- 20.2 Consequently this is provided for in proposed section 16 of the SOS's Alternative SABC Bill.

21. AD SECTION 18: CONDITIONS OF APPOINTMENT OF GROUP CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER

- 21.1 The Organisations reiterate that it is strongly of the view that the Chief Operating Officer's position is essential to the operations of the SABC and that the team of three executive directors must remain in place for the proper operational management of the SABC.

- 21.2 Consequently this is provided for in proposed section 17 of the SOS's Alternative SABC Bill.
- 21.3 Further, the Organisations are alarmed at the restrictions imposed on the Board regarding:
- 21.3.1 the length of contract/employment that the Group Chief Executive Officer, the Group Chief Operating Officer and the Group Chief Financial Officer in section 18(2) of the Bill; and
 - 21.3.2 the remuneration of the Group Chief Executive Officer, the Group Chief Operating Officer and the Group Chief Financial Officer in section 18(5) of the Bill.
- 21.4 The Organisations submit that the kind of Ministerial interference envisaged in section 18(5) is not in accordance with the requirements set out in the SOS Case regarding the need for the Board to control the affairs of the SABC.
- 21.5 Consequently this is also provided for in proposed section 17 of the Organisations' Alternative SABC Bill.
22. AD SECTION 19: TERMINATION OF EMPLOYMENT OF APPOINTMENT OF GROUP CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER
- 22.1 The Organisations reiterate that it is strongly of the view that the Chief Operating Officer's position is essential to the operations of the SABC and that the team of three executive directors must remain in place for the proper operational management of the SABC.
- 22.2 Consequently this is provided for in proposed section 18 of the SOS's Alternative SABC Bill.
- 22.3 Further, the Organisations are concerned that a notice period of only 30 days (provided for in section 19(4)) will not be conducive to the smooth operations of the SABC and has proposed that this period be increased to 90 days.
23. AD SECTION 20: ACTING GROUP CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER
- 23.1 The Organisations reiterate that it is strongly of the view that the Chief Operating Officer's position is essential to the operations of the SABC and that the team of three executive directors must remain in place for the proper operational management of the SABC.
- 23.2 Consequently this is provided for in proposed section 19 of the Organisations' Alternative SABC Bill.
24. AD SECTION 21: DELEGATION BY GROUP CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER

24.1 The Organisations reiterate that it is strongly of the view that the Chief Operating Officer's position is essential to the operations of the SABC and that the team of three executive directors must remain in place for the proper operational management of the SABC.

24.2 Consequently this is provided for in proposed section 20 of the SOS's Alternative SABC Bill.

25. AD SECTION 22: RIGHTS AND OBLIGATIONS

The Organisations agree with this wording which is contained in section 22 of the Organisations' Alternative SABC Bill too.

26. AD SECTION 23: AMENDMENT OF CORPORATION LICENCE

26.1 The Organisations are of the view that this section does not take account of the need to transform the SABC's public commercial broadcasting services into public broadcasting services in line with the Department's own stated policy set out in the Draft White Paper, for example:

"The legislative provisions dealing with the split of the Corporation's services into public and public commercial services should be removed and all of the current broadcasting licences held by the SABC should be converted into public broadcasting service licences" - at para 4.2.5 of the Draft White Paper;

26.2 Consequently, the Organisations have drafted provisions in proposed section 23(1) and (3) of their Alternative SABC Bill to provide for this and to ensure that all ICASA regulations that differentiate between public commercial and commercial services are now to ensure that the obligations applicable to public broadcasting services (whether sound or television) are to apply to all of the SABC's services. The heading of the section has also required consequential amendments to take account of the need to deal with regulations currently in existence.

27. AD SECTION 24: REGIONAL TELEVISION SERVICES

27.1 The Organisations are perplexed at the inclusion of this section in the Bill when this exact wording has been in place for 22 years and ICASA has seen fit to determine that regional television services are not financially viable and sustainable.

27.2 Be that as it may, the Organisations' proposed new wording in respect of the Powers of the Corporation in section 8 of their Alternative SABC Bill is sufficiently broad to allow for regional television services should the SABC be able to demonstrate to ICASA that these can be provided in a sustainable way.

27.3 Consequently, the Organisations propose the deletion of this section.

28. AD SECTION 25: ACCOUNTS

28.1 The Organisations are disappointed that the Department saw fit to rehash certain provisions from the Broadcasting Act almost word for word, regarding separate books of account for public and public commercial services.

28.2 This is particularly troubling given the Department's own view of the failures of the attempted division of the SABC's services into public and public commercial, which have never been actualised in practice, namely:

28.2.1 ***"The idea of a commercial division cross-subsidizing the public division has been a policy failure since inception...It has become impractical and expensive for the SABC to have separate books for the two divisions as it requires duplication of services to implement this legislative obligation."*** - at para 4.2.4 of the Draft White Paper; and

28.2.2 ***"The legislative provisions dealing with the split of the Corporation's services into public and public commercial services should be removed and all of the current broadcasting licences held by the SABC should be converted into public broadcasting service licences"*** - at para 4.2.5 of the Draft White Paper.

28.3 The Organisations agree with the policy statements by the Department in its own Draft White Paper set out above and has drafted much simplified alternative wording on the Accounts of the Corporation to reflect same, in their Draft section 24 of the Organisations' Draft SABC Bill.

29. AD SECTION 26: AUDITING

The Organisations agree with this wording which is contained in section 25 of SOS's Alternative SABC Bill too.

30. AD SECTION 27: STAFF OF CORPORATION

The Organisations agree with this wording which is contained in section 21 of SOS's Alternative SABC Bill too. However, the Organisations are of the respectful view that the section is situated awkwardly in the Bill and that it ought to be moved up to be situated closer to the sections dealing with the executive team.

31. AD SECTION 28: TELEVISION LICENCES

31.1 The Organisations are disappointed that the Department saw fit to rehash this provision from the Broadcasting Act word for word, regarding the television licence fee which has proven impossible for the Corporation to enforce and collect. The Organisations are of the view that this section of the Bill must be scrapped and entirely rethought.

- 31.2 The Organisations find the provisions of section 28 of the Bill particularly troubling given the Department's own view of the failures of the television licence fee, namely:

“Provisions on...Financial Matters...require review and consequential amendments, including amendments to the TV Licence Fee section to broaden the definition and the collection system for television licence and to strengthen enforcement mechanisms and penalties for non-payment” - at para 4.2.2.3 of the Draft White Paper;

- 31.3 The Organisations agree with the policy statements by the Department in its own Draft White Paper set out above and has proposed:

31.3.1 an entirely new Public Information Levy to be levied on non-SASSA grant receiving adults who are able to access the public content services of the SABC. The principle is one person – one levy payment;

31.3.2 a collection system that involves retailers and subscription television and Electronic Communications Service operators assisting in the collection of the Public Information Levy in order to improve the rate of collection; and

31.3.3 a stipulation that the Public Information Levy be used solely to produce or acquire content, in the draft section 27 of SOS's Draft SABC Bill.

32. AD SECTION 29: ANNUAL REPORT

- 32.1 The Organisations are disappointed that the Department saw fit to rehash certain provisions from the Broadcasting Act almost word for word, regarding full and proper records for public and public commercial services.

- 32.2 This is particularly troubling given the Department's own view of the failures of the attempted division of the SABC's services into public and public commercial, which have never been actualised in practice, namely:

32.2.1 ***“The idea of a commercial division cross-subsidizing the public division has been a policy failure since inception...It has become impractical and expensive for the SABC to have separate books for the two divisions as it requires duplication of services to implement this legislative obligation.”*** - at para 4.2.4 of the Draft White Paper; and

32.2.2 ***“The legislative provisions dealing with the split of the Corporation's services into public and public commercial services should be removed and all of the current broadcasting licences held by the SABC should be converted into public broadcasting service licences”*** - at para 4.2.5 of the Draft White Paper.

32.3 The Organisations agree with the policy statements by the Department in its own Draft White Paper set out above and has drafted much simplified alternative wording on the Annual Report to reflect same, in their Draft section 26 of SOS's Draft SABC Bill.

32.4 Further, the Organisations have rearranged the situating of the section on the Annual Report so that it comes above the proposed sections on the Public Information Levy and Regulations relating thereto.

33. AD SECTION 30: REGULATIONS

33.1 Again, the Organisations are disappointed that the Department saw fit to rehash the provisions on television licence fee regulations from the Broadcasting Act when the television licence fee has proven impossible for the Corporation to enforce and collect. The Organisations are of the view that this section of the Bill must be scrapped and entirely rethought.

33.2 The Organisations find the provisions of section 29 of the Bill particularly troubling given the Department's own view of the failures of the television licence fee, namely:

“Provisions on...Financial Matters...require review and consequential amendments, including amendments to the TV Licence Fee section to broaden the definition and the collection system for television licence and to strengthen enforcement mechanisms and penalties for non-payment” - at para 4.2.2.3 of the Draft White Paper;

33.3 The Organisations agree with the policy statements by the Department in its own Draft White Paper set out above and has proposed an entirely new section empowering ICASA to make Public Information Levy Regulations in line with its proposals regarding the introduction of such a Public Information Levy, in section 28 of its proposed Alternative SABC Bill.

33.4 Further, while The Organisations recognise the strides made by the Department in proposing that ICASA makes these Regulations instead of the Minister, SOS remains concerned at the unconstitutional hobbling of ICASA's regulatory independence with regard to the making of regulations by giving a veto power thereover to both the Corporation and the Minister.

33.5 The Organisations are of the view that prior consultation with the Corporation (but not with the Minister) is appropriate and has made provision for same in section 28 of its proposed Alternative SABC Bill.

34. AD SECTION 31: REPEAL OF LAWS

The Organisations agree with this wording which is contained in section 29 of SOS's Alternative SABC Bill too.

35. AD SECTION 32: SHORT TITLE AND COMMENCEMENT

The Organisations agree with this wording which is contained in section 30 of SOS's Alternative SABC Bill too.

36. AD: SCHEDULE

The Organisations agree with this wording of the Schedule which is contained in the Schedule to the Organisations' Alternative SABC Bill too.

37. WHAT IS MISSING FROM THE BILL:

37.1 The Organisations are of the respectful view that Compliance with the Public Mandate provisions and entirely absent from the Bill and that this needs to be rectified to ensure that the Corporations obligations to comply with the public mandate are set out in a detailed and holistic way.

37.2 The Organisations have sought to do this, including through drafting provisions:

37.2.1 on the need for the Office of the Public Editor of the Corporation to act in the public interest in an advisory capacity on editorial matters;

37.2.2 on the need for the Office of the Public Editor to consult audience focus groups and local content engagement forums;

37.2.3 to make it clear that the editorial policies are to be aligned to the Public Mandate in order to deepen the Corporation's commitment to the Public Mandate.

37.3 The Organisations have made provision for same in its proposed section 7, Compliance with the Public Mandate, of Organisations' Alternative SABC Bill.

37.4 MMA and SOS trust that the Department will incorporate these provisions in the next iteration of the Bill.

38. The Organisations thank the Department for the opportunity to comment on the Bill and to put forward its proposed Alternative SABC and Constitutional Amendment Bills.

39. The Organisations trust that the Department will take seriously the call to make substantial amendments to the Bill and trusts that its proposed Bills will assist the Department to draft the necessary amendments to the Bill.

40. The Organisations note that we would welcome the opportunity to make oral presentations on the SABC Bill to supplement the written presentations made. While we have made this submission jointly we would welcome independent slots to allow for specific organisational concerns to be adequately reflected.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'W. Bird', written over a horizontal line.

William Bird (MMA Director)

Koketso Moeti (SOS Chairperson)

Unathi Malunga (SASFED Executive Officer)

31 August 2021