



**SUBMISSION TO THE PORTFOLIO COMMITTEE ON
COMMUNICATIONS
IN RESPONSE TO THE
MEDIA DEVELOPMENT AND DIVERSITY AGENCY BILL**

1 March 2002

1. INTRODUCTION

- 1.1. The National Association of Broadcasters (“the NAB”) represents most South African broadcasters. The NAB aims to further the interests of the broadcasting industry in South Africa by contributing to the sector’s development and diversity.
- 1.2. NAB members include:
 - 1.2.1. the three television and nineteen radio stations of the public broadcaster, the South African Broadcasting Corporation;
 - 1.2.2. all commercial broadcasters in both radio and television;
 - 1.2.3. both the common carrier and the selective and preferential carrier licensed signal distributors; and
 - 1.2.4. over thirty community broadcasters.
- 1.3. The NAB supports government’s intention to promote media development and diversity by providing support to community and small commercial media projects. We are hopeful that this intervention will facilitate the support of existing community radio stations and will enable the promotion and establishment of further stations.
- 1.4. In 2000, a draft Position Paper on the Media Development and Diversity Agency (“MDDA”) was published by the South African government, to which the NAB responded by means of written and oral submissions.
- 1.5. At that time, the NAB voiced its concerns regarding some issues contained in the Draft Position Paper on Media Development and Diversity (“the Draft Position Paper”). The concerns raised by the NAB related to the following:
 - 1.5.1. the mandate of the MDDA as reflected in Chapter 4 of the Draft Position Paper;
 - 1.5.2. the MDDA's budget as reflected in Chapter 10.3 of the Draft Position Paper;

- 1.5.3. the MDDA's funding model as stated in Chapter 10.2 of the Draft Position Paper; and
 - 1.5.4. the MDDA and its possible impact on the independence of other statutory bodies.
- 1.6. The Media Development and Diversity Agency Bill ("the Bill") has subsequently been published in Government Gazette No 23090 dated 4 February 2002.
- 1.7. The NAB is pleased to note a number of our concerns have been addressed in the Bill. We do, however, have some additional comments to make. These issues are listed below and will be discussed with reference to specific sections of the Bill.
- 1.7.1. The powers granted to the Minister by the Bill are wide and reduce the MDDA's independence from government. The Bill currently empowers the Minister to intervene in a decision of the MDDA in accordance with the appeal procedure prescribed in the Bill and to make regulations which impact on the MDDA's decision-making function. The NAB is of the view that the Board of the MDDA, not the Minister, should be tasked with making regulations.
 - 1.7.2. The mandate of the MDDA could, in some instances be more clearly defined. The NAB is of the view that the MDDA's priority should be rolling out support to deserving entities and projects.
 - 1.7.3. Certain terminology used in the Bill requires clarification.

2. MINISTERIAL POWERS

- 2.1. The NAB supports the independence of the MDDA as laid out in section 2 (4) of the Bill. However, the NAB is concerned that certain sections of the Bill appear to erode this independence. The NAB therefore proposes the following:
- 2.2. Section 13(3)(b)
 This section should be deleted. The notification of an annual meeting of the Board with stakeholders in the media industry should be publicly advertised, as provided for in section 13(3)(c). Invitations should be extended to all stakeholders in the media industry.

2.3. Section 17(k)

Section 17 lists groups for whose benefit projects are to be regarded as priority projects for the purposes of receiving support from the MDDA. The additional groups envisaged by this section should be identified by the Board after consultation with stakeholders in the media industry.

2.4. Section 18(3)

2.4.1. This section empowers the Minister to prescribe criteria which will impact on the manner in which the MDDA is to fulfil its mandate, namely criteria for selecting projects, the manner in which application for support for projects must be made and the information to accompany applications.

2.4.2. The NAB is of the opinion that this Ministerial power will limit the impartiality and independent decision-making ability of the MDDA.

2.4.3. The NAB proposes that the selection criteria, together with the procedure to be followed and information to be submitted by applicants, as envisaged in sections 18(3)(a) to 18(3)(c), be determined by the Board, after consultation with stakeholders in the media industry. The findings of the Board should then be published as regulations to the Act.

2.5. Section 18(4) and 19 (3)

2.5.1. Similarly, these sections empower the Minister to prescribe the percentages of money to be utilised in support of community media projects, small commercial media projects and research projects and to intervene in a decision of the MDDA in accordance with the appeal procedure prescribed in the Bill.

2.5.2. The NAB is of the opinion that these Ministerial powers will limit the impartiality and independent decision-making ability of the MDDA.

2.5.3. The NAB proposes that the percentages, as envisaged in sections 18(4)(a) to 18(4)(c), be determined by the Board, after consultation with stakeholders in the media industry. The findings of the Board should then be published as regulations to the Act.

2.5.4. The NAB further proposes that the Minister should not be permitted to intervene in a decision made by the Board, but that provision should be made in this section for an appeal to be made by an aggrieved person to an *ombudsman*, who shall act independent of the Minister and of the Board, within a period of 30 days after the date of a decision made in terms of section 19(2).

2.6. Section 21

2.6.1. Section 21(1) empowers the Minister to “make regulations regarding any matter that is required or permitted to be prescribed in terms of [the] Act”.

2.6.2. Again, the NAB is of the opinion that this Ministerial power will limit the impartiality and independent decision-making ability of the MDDA.

2.6.3. The NAB proposes that the Board of the MDDA, not the Minister, should be tasked with making the necessary regulations.

2.6.4. The text of a proposed regulation should be published in accordance with the manner prescribed in section 21(2), together with a notice declaring the Board’s intention to make a regulation, and not the Minister’s intention.

2.6.5. The NAB believes that regulations made in terms of the Bill should be limited to issues which will facilitate the mandate of the Board to roll out support to deserving entities. The NAB would oppose the MDDA having wide regulatory powers to examine and effect change in existing media policy and laws. (See also our comments on Section 13.4).

3. **MANDATE AND FUNCTIONS OF THE MDDA**

3.1. Section 13(1)

The NAB submits that the general functions of the Board be reformulated in order to allow it to more clearly focus on the goal for which it was established, namely to fund community and small commercial media projects. The NAB believes that open-ended provisions in section 13 (1) such as the provisions to “promote media needs”, “engage in research” and conduct “marketing” may distract the board from this goal and should therefore be removed. This reformulation will also prevent any possible

overlap with the mandate of the Independent Communications Authority of South Africa (“ICASA”).

The NAB therefore submits that section 13(1) should read as follows:

“13(1) The Board must, in the promotion of media development and diversity –

- (a) engage in research to select projects in accordance with the criteria prescribed in terms of section 18(3) to receive support;
- (b) select projects in accordance with the criteria prescribed in terms of section 18(3) to receive support;
- (c) raise public awareness with regard to media development and diversity issues;
- (d) negotiate with public utilities, organisations and financial institutions to acquire indirect support for projects, including support in the form of -
 - (i) discounts or subsidies in print and signal distribution, postal rates and telephone tariffs; and
 - (ii) low-interest rate loans.

3.2. Section 13(4)

3.2.1. This section empowers the Board to make recommendations to government and the media industry regarding media development and diversity.

3.2.2. The primary mandate of the MDDA is the rollout of support to deserving projects and entities in order to achieve the objectives of the Agency.

3.2.3. The NAB is of the opinion that this section makes the mandate of the MDDA too wide and detracts from its primary purpose and function.

3.2.4. The ability of the MDDA to make recommendations to government and the media industry could be perceived as shadowing the function and objectives of the Authority.

3.2.5. The NAB therefore proposed that this section should be deleted.

4. TERMINOLOGY AND DRAFTING ISSUES

4.1. Section 5(4)

To ensure equal representation of all media industry stakeholders, this section should be amended to read as follows:

“(4) The President must appoint members from the nominees recommended by the Portfolio Committee in accordance with the provisions of section 4(2)”

4.2. In the definition of “community media” the word “marginalised” should be deleted. This word is not defined in the Bill and all community media enterprises, whether “marginilised” or not, should be considered as comprising community media in South Africa. Section 17 provides the priority projects to be considered for support.

4.3. Section 17(b)

The term “poor people” as a category is vague and requires clarification in monetary terms, e.g. persons who belong to a group categorised by specified household income thresholds.

4.4. Section 17(c)

The use of the word “rural” should be further explained to demarcate its application.

4.5. Section 17(d)

The phrase “limited media resources” should be explained in order for the criteria which define it to be ascertainable.

4.6. Section 17(g)

The phrase “marginalised language groups” should be explained to demonstrate which language groups it refers to.

4.7. Section 18(2)

In line with the amendments proposed to section 13(1), this section should consequently be amended to read, “The Board must, when selecting projects take into consideration the research undertaken in terms of section 13(1)(a)”.

5. **CONCLUSION**

5.1. The NAB supports and agrees with the proposed objective of the MDDA and the majority of the proposed functions of the Board.

5.2. However, the NAB is concerned that the independence and impartiality of the MDDA will be compromised if the issues listed above are not dealt with, particularly, the ability of the Minister to intervene in decisions made by the Board, and to make regulations which will impact on the MDDA and its mandate.

5.3. The NAB is also concerned that the mandate of the MDDA should be clearly laid out to prioritise and facilitate the delivery of support to deserving entities.

5.4. The NAB is grateful for the opportunity to comment on the Bill and is hopeful that this input will assist the committee in its deliberations.