



Ms Mamedupe Kgatshe

Project Manager, Amendment to the Municipal Elections Regulations

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Dear Ms Kgatshe

**WRITTEN SUBMISSIONS ON THE DRAFT AMENDMENT TO THE MUNICIPAL ELECTIONS REGULATIONS BY PRIMEDIA (PTY) LTD**

**INTRODUCTION**

- 1.1 On 31 October 2025 in Notice 6785 published in Government Gazette No. 53608, written representations were invited on the Draft Amendment to the Municipal Party Elections Broadcasts and Political Advertisements Regulations, 2011 (the Draft Municipal Elections Amendment Regs). The closing date for submissions was extended to 23 January 2026 in Notice 6948, published in Government Gazette No 53856 dated 15 December 2025.
- 1.2 Primedia (Pty) Ltd (Primedia) is the licensee of four commercial sound broadcasting services, namely: 947, K-FM, Cape Talk and 702.
- 1.3 Primedia usually agrees to accept political advertisements (PAs) during election periods in accordance with provisions of the Electronic Communications Act, 2005 (the ECA) and relevant regulations but does not generally carry PEBs. Consequently, it confines its submissions to the issue of PAs.
- 1.4 Primedia thanks the Authority for the opportunity to make these representations. Primedia is of the view that its written representations will suffice to draw ICASA's attention to our PA-related concerns and so does not require an opportunity to make oral submissions at the proposed hearings.

## PROPOSED REGULATION 6.1 OF THE DRAFT MUNICIPAL ELECTIONS AMENDMENT REGULATIONS

- 1.5 Primedia wishes to confine its submissions to a single issue which arose as a result of the Democratic Alliance's so-called Flag Burning PA that the SABC refused to broadcast during the 2024 national and provincial elections.
- 1.6 Primedia is aware that the CCC ruled against the SABC on its refusal to air the flag burning advertisement.
- 1.7 Primedia has always taken the view that section 6(11) of the Municipal Elections Regulations which provides that *"A political party or an independent candidate that submits a PA for broadcast to a BSL is deemed to have indemnified the BSL against incurred damages, losses, and third-party claims arising from the broadcast thereof."* protects a BSL from any liability arising from the broadcast of a PA and therefore absolves the broadcaster from exercising any editorial oversight over the content of a PA.
- 1.8 Primedia has certainly always relied on the provisions of 6(11) of the Municipal Amendment Regulations (that is, proposed regulation 6(9) in the Draft Amendment Regulations) as an indemnification of its broadcasting of any technically compliant PA.
- 1.9 Primedia has never considered that it (or indeed any other broadcaster) can or should exercise editorial or any other control over the *content* (our emphasis) of PAs precisely because the Municipal Regulations indemnify broadcasters from any claims arising out of the broadcasting of PAs.
- 1.10 The possibility that a broadcaster can reject a PA on the basis of its content introduces a level of uncertainty in the elections-related broadcasting legal landscape because it is at odds with the very basis for the broadcaster indemnification, that is, the political party or independent candidate concerned bears all legal liability for the content of its PA and indemnifies the broadcaster from all or any consequences arising out of the broadcast thereof.
- 1.11 Primedia respectfully submits that this legal uncertainty is unhelpful and unwarranted and can only risk the censorship of political messaging by broadcasters unsure about whether they or political parties/independent candidates exercise editorial responsibility to ensure compliance with existing regulation 6(10) of the Municipal Elections Regulations (proposed regulation 6(8) of the Draft Amendment Regs) as happened, unlawfully as it turns out, in the



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Chairman: JE Procter

Divisional Executives: K Moodley (Chief Financial Officer), M Jojwana (Chief Content Officer), K Storie (Chief Commercial Officer)

DA “flag-burning” advertisement case. Further, it could lead to absurd situations where a PA is broadcast by one or more broadcasters while being banned/refused by one or more others.

1.12 Primedia is of the respectful submission that only ICASA can properly determine whether or not the content of a PA does or does not comply with the requirements of regulation 6(10) of the Municipal Regulations (proposed regulation 6(8) of the Draft Amendments), during an election with the political party or independent candidate concerned bearing the legal risk if there is a violation as is already provided for in regulation 6(11) (proposed regulation 6(9) of the Draft Amendment Regulations).

1.13 Consequently, Primedia respectfully submits that section 6.1 of the Draft Amendment Regs be amended to read as follows:

“(3)<sup>1</sup> A BSL that intends to transmit a PA must ensure that the advertisement conforms to the technical standards and quality as listed in Schedule 2 to Annexure A and may not reject a PA on the basis of the contents thereof.”

1.14 Such an amendment would clarify for all broadcasters that political parties and independent candidates bear responsibility for their political messaging and it is not for broadcasters to involve themselves in the policing of such content precisely because of the inherent political risks, including the risk of inadvertent election interference, inherent in doing so.

Primedia thanks ICASA for the opportunity of making these submissions and wishes ICASA well with the finalisation thereof.

**Yours faithfully,**



**KGOTHATSO MAMPA**

**HEAD OF LEGAL**

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<sup>1</sup> Note there appears to be an obvious numbering error as this is to be regulation 6(3) and not 6(1) of the Municipal Elections Regulations.