

MEDIA PRACTITIONERS' ASSOCIATION ACT, 2022

No. 36



of 2022

ARRANGEMENT OF SECTIONS

SECTION

PART I — *Preliminary*

1. Short title and commencement
2. Interpretation

PART II — *Media Practitioners' Association*

3. Continuation of Association
4. Objectives of Association
5. Functions of Association
6. Independence of Association
7. Membership of Association
8. Tenure and cessation of membership of Association

PART III — *Administration of Association*

9. Appointment of Executive Director of Association
10. Functions of Executive Director
11. Appointment of Secretary of Board
12. Functions of Secretary of Board
13. Accountability to Association
14. Conditions of service of Secretary of Board
15. Employees of Association

PART IV — *Media Practitioners' Board*

16. Establishment of Board
17. Membership of Board
18. Tenure of office of members of Board
19. Disqualification, removal and resignation of members of Board
20. Suspension of members of Board
21. Vacation of office of members of Board
22. Filling of vacancy in Board
23. Remuneration and allowances of members of Board

PART V — *Meetings and Proceedings of Board*

24. Meetings of Board
25. Quorum and procedure at meetings
26. Disclosure of interest
27. Confidentiality
28. Committees of Board
29. Co-option of advisory panel

PART VI — *Financial Provisions*

30. Funds of Association
31. Financial year of Association
32. Accounts and audit
33. Pension and other funds
34. Annual report

PART VII — *Media Fund*

35. Establishment of Media Fund
36. Administration of Media Fund

PART VIII — *Registration of Journalists*

37. Qualifications for registration
38. Removal from register

PART IX — *Conduct of Journalists*

39. Ethics and Conduct Committee
40. Tenure of office of members of Ethics Committee
41. General provisions relating to Ethics Committee
42. Secretariat of Ethics Committee
43. Code of Ethics
44. Names of journalists to be indicated

PART X — *Complaints and Disciplinary Committee*

45. Complaints and Disciplinary Committee
46. Functions of Complaints Committee
47. Powers of Complaints Committee
48. Tenure of office of members of Complaints Committee
49. General provisions relating to Complaints Committee
50. Secretariat of Complaints Committee
51. Lodging of complaints
52. Decisions of Complaints Committee
53. Right to reply

PART XI — *Appeals Committee*

54. Appeals Committee
55. Tenure of office of members of Appeals Committee
56. General provisions relating to Appeals Committee
57. Secretariat of Appeals Committee
58. Appeals

PART XII — *Miscellaneous Provisions*

59. Exemption from personal liability
60. Offences and penalties
61. Regulations
62. Repeal of Cap. 61:09
63. Savings and transitional provisions

An Act to provide for the establishment of the Media Practitioners' Association and its mandate, for the purpose of preserving the freedom and independence of the media; for the establishment of the Media Practitioners' Board, its functions and proceedings; for the establishment of the Complaints and Disciplinary Committee and Appeals Committee to adjudicate over breaches of the provisions of the Act; and for matters incidental thereto or connected therewith.

Date of Assent: 29.09.2022

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

1. This Act may be cited as the Media Practitioners' Association Act, 2022, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. In this Act, unless the context otherwise requires —

Interpretation

“Appeals Committee” means the Appeals Committee established under section 54;

“Association” means the Media Practitioners' Association continued under section 3;

“Board” means the Media Practitioners' Board established under section 16;

“Chairperson” means the Chairperson of the Board appointed under section 17 (2) (a);

“Code of Ethics” means the Code of Ethics for journalists and media enterprises issued under section 39, as read with section 43;

“Complaints Committee” means the Complaints and Disciplinary Committee established under section 45;

“Ethics Committee” means the Ethics and Conduct Committee established under section 39;

“Executive Director” means the Executive Director of the Association appointed as such under section 9;

“Fund” means the Media Fund established under section 35;

“journalism” means the collecting, writing, editing and presenting of news or news articles in newspapers and magazines, radio and television broadcasts, including any other electronic means;

“journalist” means any person who is recognised as such by the Association upon the fulfilment of any criterion as may be set by the Association;

“media” means the production of electronic and print media for circulation to the public, but does not include book publishing;

“media enterprise” means a media institution whose business involves the collection, processing and dissemination of news or articles, or entertainment and education through the media;

“member” means a member of the Board;

“professional body” means an organisation with members who practice a profession in which the organisation maintains an oversight of the knowledge, skills, conduct and practice of the media profession and includes the —

- (a) Botswana Editor’s Forum;
- (b) Media Institute of Southern Africa, Botswana Chapter;
- (c) Botswana Press Council; and
- (d) Botswana Media and Allied Workers Union;

“publication” means the dissemination to the public of any written, audio or video material, and includes material disseminated through any other electronic means; and

“repealed Act” means the Media Practitioners Act repealed under section 62.

Cap. 61:09

PART II — *Media Practitioners’ Association*

Continuation
of Association

3. (1) The Media Council established under section 3 of the repealed Act is hereby continued under the new name of the Media Practitioners’ Association and shall continue to exist as if established under this Act.

(2) The Association shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its own name and, subject to the provisions of this Act, of performing such acts as bodies corporate may, by law, perform, including to —

- (a) acquire and sell such movable and immovable property as may be necessary for the efficient operation of the Association; and
- (b) enter into such contracts as may be required under the seal, and for the efficient operation, of the Association.

4. The objectives of the Association shall be to —
- (a) promote and protect the freedom and independence of the media;
 - (b) determine professional standards for journalists and media enterprises;
 - (c) promote and enhance ethical and professional standards amongst journalists and media enterprises;
 - (d) ensure the promotion of the rights and privileges of journalists and media enterprises in the performance of their duties;
 - (e) develop and regulate ethical and disciplinary standards for journalists and media enterprises;
 - (f) register, in such manner as may be prescribed, professional bodies responsible for the training of journalists and the certification of the competence of the journalists;
 - (g) maintain a register of journalists, media enterprises and such other related registers as it may deem fit;
 - (h) establish media standards, regulate and monitor compliance with the media standards;
 - (i) promote public awareness of the rights and responsibilities of journalists through such outreach programmes as the Association may determine; and
 - (j) ensure cooperation between journalists, media enterprises and other media stakeholders, with a view to exchanging information, sharing ideas and dealing with any challenges facing the development of the media industry.
5. The Association shall, for the purpose of the attainment of its objectives, ensure —
- (a) compliance with this Act;
 - (b) that the freedom and independence of the media is exercised in a manner that respects the rights of others; and
 - (c) that the protection of national security, public order and public health is safeguarded in accordance with the applicable law.
6. The Association shall operate without any political interference, bias or influence and shall be wholly independent and separate from the Government, any political party or any other body.
7. (1) The membership of the Association shall consist of a person who —
- (a) is a publisher of news and information, in the public service or private sector;
 - (b) is a member of his or her respective professional body;
 - (c) is a professional body; and
 - (d) has paid to the Association, a membership fee as may be prescribed.
- (2) A person shall, as may be prescribed, apply to the Association to be registered as a member of the Association in terms of subsection (1).

Objectives of Association

Functions of Association

Independence of Association

Membership of Association

(3) Notwithstanding subsection (1) (d), a member of the Association shall pay to the Association such annual subscription fee and any fees as may be prescribed.

Tenure and
cessation of
membership of
Association

8. (1) A person shall be registered as a member of the Association for a period of one year.

(2) The Association may terminate the membership of any person and such person shall cease to be a member of the Association, where —

(a) the membership of such person with his or her respective professional body has been terminated;

(b) such person has failed to pay the annual subscription fee to the Association and any fees as may be prescribed;

(c) such person contravenes the Code of Ethics; or

(d) such person terminates his or her membership, in writing.

(3) A member whose membership is terminated under this section may apply to be registered as a member in accordance with section 7(2).

PART III — *Administration of Association*

Appointment
of Executive
Director of
Association

9. (1) The Association shall, in consultation with the Board, appoint an Executive Director of the Association for a fixed contract period not exceeding five years, who shall be eligible for re-appointment, for a further term not exceeding five years.

(2) A person shall not be appointed as an Executive Director of the Association unless he or she has editorial experience and qualifications as the Association may determine, and such person has demonstrated that he or she is competent to carry out the functions of the Association.

(3) The conditions of service, including the remuneration package of the Executive Director, shall be set by the Board.

(4) The Executive Director may resign from office by giving three months' notice in writing to the Association.

(5) The Association may, in consultation with the Board, remove the Executive Director from office by giving him or her three months' notice in writing, or by paying him or her three months' salary in lieu of notice, if the Executive Director —

(a) conducts himself or herself in a manner that is detrimental to the objective of, or the proper performance of the functions of the Association;

(b) has failed to carry out the functions of his or her office satisfactorily by reason that he or she suffers from a physical or mental disability; or

(c) becomes bankrupt or is declared insolvent by a court of law.

Functions of
Executive
Director

10. (1) The Executive Director shall, subject to such directions on matters of policy as may be given by the Board, be responsible for the day-to-day management of the affairs of the Association.

(2) Without prejudice to the generality of subsection (1), the Executive Director shall be responsible for —

- (a) the efficient administration of the Association;
- (b) the organisation and management of all employees of the Association;
- (c) the maintenance of discipline in respect of the employees of the Association;
- (d) the carrying out of the decisions of the Board;
- (e) the management of the support structure of the Association;
- (f) all income and expenditure of the Association;
- (g) all assets of the Association and the discharge of all the liabilities of the Association; and
- (h) managing the Association on sound commercial and financial principles in accordance with policies and decisions made by the Board.

(3) The Executive Director may delegate, in writing, to any senior officer of the Association, the exercise of any powers which he or she is authorised to exercise under this Act.

11. The Board shall, with the recommendation of the Executive Director, appoint a Secretary of the Board who shall be suitably qualified as a legal practitioner admitted to practice in the courts of Botswana, on such terms and conditions as may be specified in the instrument of appointment.

Appointment of Secretary of Board

12. (1) The Secretary of the Board shall attend meetings of the Board but shall not vote, and shall —

Functions of Secretary of Board

- (a) advise the Board on all legal and procedural issues in respect of its deliberations and decisions;
- (b) be responsible for the accurate and complete recording of the Board's proceedings and decisions; and
- (c) represent the Board, if the Board considers it necessary.

(2) The Secretary of the Board shall be the liaison officer between the Association and the committees of the Board.

13. The Secretary of the Board shall be accountable to the Association, for his or her functions and responsibilities.

Accountability to Association

14. The conditions of service, including the remuneration package of the Secretary of the Board, shall be set by the Board, with the recommendation of the Executive Director.

Conditions of service of Secretary of Board

15. The Association shall appoint such employees of the Association on such terms and conditions as it may determine and shall be paid from the funds of the Association.

Employees of Association

PART IV — *Media Practitioners' Board*

16. (1) There is established a body to be known as the Media Practitioners' Board which shall be the governing body of the Association and shall be responsible for the proper management and direction of the affairs of the Association.

Establishment of Board

Cap. 08:07

Membership
of Board

(2) Notwithstanding subsection (1), the functions of the Association as an accountable institution under the Financial Intelligence Act shall be exercised by the Executive Director.

17. (1) The Board shall consist of nine members from amongst persons who are representatives of the professional bodies, who have experience or expertise in the media, law, or any other area relevant to the objects and functions of the Association.

(2) Notwithstanding the generality of subsection (1) the Board shall consist of the following members —

- (a) the Chairperson of the Board;
- (b) the Vice Chairperson of the Board;
- (c) one person from the Botswana Editor's Forum;
- (d) one person from the Botswana Press Council;
- (e) one person from the Media Institute of Southern Africa, Botswana Chapter;
- (f) one person from the Botswana Media and Allied Workers Union;
- (g) a legal practitioner admitted to practice in the courts of Botswana who is a member of the Law Society of Botswana established under the Legal Practitioners' Act;
- (h) a person from a public university, who teaches journalism, media or information studies; and
- (i) a person from a private university, who teaches journalism, media or information studies.

Cap. 61:01

(3) The Executive Director shall be an *ex officio* member of the Board but shall not vote.

(4) The members of the Board shall be elected at an annual general meeting of the Association by the professional bodies.

(5) Immediately after the election of the members of the Board at an annual general meeting of the Association, the members of the Board shall elect a Chairperson of the Board and a Vice Chairperson of the Board from amongst themselves.

(6) The Association shall, within 30 days of the appointments under this section being made, publish in a newspaper of national circulation or in electronic media, the appointment of the members, specifying the dates of their appointment and the period for which they are appointed to the Board.

Tenure of office
of members
of Board

18. A member shall hold office for a period not exceeding three years and shall be eligible for re-appointment for one further term not exceeding three years.

Disqualification,
removal and
resignation of
members of
Board

19. (1) A person shall not qualify for appointment as a member or continue to hold office as a member if he or she —

- (a) has, in terms of any law in force in any country —
 - (i) been adjudged or otherwise declared bankrupt and has not been discharged or rehabilitated, or
 - (ii) made an assignment, arrangement or composition with his or her creditors, which has not been rescinded or set aside;

- (b) has, within a period of five years immediately preceding the date of his or her appointment, been convicted —
 - (i) of a criminal offence in Botswana, or
 - (ii) outside Botswana, of an offence which if committed in Botswana, would have been a criminal offence, and sentenced to at least six months imprisonment without the option of a fine, and has not received a free pardon irrespective of whether the sentence has been suspended;
 - (c) has, within five years immediately preceding the date of his or her appointment, been disqualified or suspended by a competent authority from practising a profession on the ground of misconduct or negligence; or
 - (d) is at the time of appointment, a member of the National Assembly, a councillor, a member of *Ntlo ya Dikgosi*, or an official in a political party.
- (2) The Association shall remove a member from office, if the member —
- (a) becomes subject to a disqualification under subsection (1);
 - (b) is convicted of an offence under this Act, or under any other Act and after a period of 30 days, from the date that a ruling against the member is made on all appeals made in respect of the conviction, he or she is sentenced to imprisonment for a term of six months or more without an option of a fine;
 - (c) is absent, without reasonable cause, from three consecutive meetings of the Board of which that member has had notice;
 - (d) is found to be physically and mentally incapable of performing his or her duties efficiently, and a medical practitioner has issued a certificate to that effect;
 - (e) commits a material breach of the codes of professional conduct and ethics;
 - (f) contravenes the provisions of this Act or otherwise misconducts himself or herself to the detriment of the objectives of or the performance of the functions of the Board; or
 - (g) puts the Association in disrepute or behaves in such a manner that is detrimental to the image or reputation of the Association.
- (3) For purposes of subsection (2) (f) “misconduct” includes any act, done by a member without reasonable excuse which —
- (a) amounts to a failure to perform in a proper manner, any duty imposed on him or her as such;
 - (b) is prejudicial to the efficient carrying out of the functions of the Board; or
 - (c) tends to bring the Board into disrepute.
- (4) A member may resign from the Board by giving one month’s notice, in writing, to the Executive Director.

Suspension of members of Board

20. The Association may, in writing, suspend from office a member against whom criminal proceedings are instituted for an offence in respect of which sentence of imprisonment may be imposed, and whilst that member is suspended, he or she shall not carry out any duties or be entitled to any remuneration or allowances as a member.

Vacation of office of members of Board

21. A member shall vacate his or her office and the office of a member shall become vacant —

- (a) if he or she is removed from office by the Association, in accordance with section 19(2);
- (b) upon the expiry of one month's notice in writing to the Association of his or her intention to resign from office;
- (c) upon his or her death; or
- (d) upon expiry of his or her term of office.

Filling of vacancy in Board

22. (1) Where the office of a member becomes vacant before the expiry of the member's term of office due to death, or removal or resignation from office in accordance with section 19, the Association shall elect another person to fill the vacancy for the remainder of the term.

(2) This section shall not apply where the remainder of the term for which the member whose office has been vacated would otherwise have held office is less than six months.

Remuneration and allowances of members of Board

23. A member shall be paid in connection with his or her service in the Board, out of funds of the Association, such remuneration and allowances as the Association may, from time to time determine.

PART V — *Meetings and Proceedings of Board*

Meetings of Board

24. (1) Subject to the provisions of this Act, the Board may regulate its own proceedings.

(2) The Board shall hold its first meeting on such date and at such place as the Executive Director may fix and thereafter the Board shall meet at least once in every three months.

(3) Meetings of the Board may be held virtually or in person, at such places and times as the Board may determine and shall be convened by the Chairperson.

(4) The Chairperson may, in writing, convene a meeting of the Board by giving the members of the Board a notice of not less than seven days of the meeting.

(5) The Chairperson may, where a matter is urgent and does not permit the giving of notice in terms of subsection (4), call a special meeting of the Board within a period not less than seven days of receipt of a special request in writing.

(6) There shall preside at any meeting of the Board —

- (a) the Chairperson;
- (b) in the absence of the Chairperson, the Vice Chairperson of the Board; or

(c) in the absence of the Chairperson and the Vice Chairperson of the Board, such member as the members present may elect from among themselves for the purpose of that meeting.

(7) The Secretary of the Board shall cause to be recorded and kept minutes of all proceedings of the meetings of the Board.

25. (1) The quorum at any meeting of the Board shall be a simple majority of the members.

(2) A decision of the Board on any question shall be by the majority of the members present and voting at the meeting and, in the event of an equality of the votes, the member presiding shall have a casting vote in addition to that member's deliberative vote.

(3) A decision of the Board shall not be rendered invalid by reason of a vacancy on the Board or the fact that a person who was not entitled to sit as a member did so sit.

26. (1) If a member is present at a meeting of the Board at which any matter in which the member or immediate family member of the member is directly or indirectly interested in a private capacity is the subject of consideration, the member shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion of, or vote on any question touching on the matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) Where a member fails to disclose his or her interest in accordance with subsection (1) and a decision by the Board is made benefitting such member, or an immediate family member of the member, such decision shall be null and void to the extent that it benefits such member or family member.

(4) A member who fails to comply with the provisions of subsection (1) commits an offence and is liable to a fine not exceeding P5 000, or to imprisonment for a term not exceeding one year, or to both.

27. (1) A member and any other person assisting the Board shall observe and preserve the confidentiality of all matters coming before the Board, and such confidentiality shall subsist even after the termination of their terms of office or their mandate.

(2) Any member or any person to whom confidential information is revealed through working with the Board shall not disclose that information to any other person unless he or she is required to do so in terms of this Act, any written law or for purposes of any judicial proceedings.

(3) Any member or any other person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P5 000, or to imprisonment for a term not exceeding one year, or to both.

28. (1) The Board may establish a committee or sub-committee which shall carry out any function of the Board, which the Board may delegate to the committee or sub-committee.

Quorum and
procedure
at meetings

Disclosure of
interest

Confidentiality

Committees of
Board

(2) A committee or sub-committee established in terms of subsection (1) shall be responsible for, but not limited to —

- (a) finance and audit;
- (b) risk management; and
- (c) compliance and monitoring.

(3) The provisions of sections 25, 26 and 27 shall, with the necessary modifications, apply to a member of a committee or sub-committee of the Board.

Co-option of
advisory
panel

29. (1) The Board may, where it considers it necessary, co-opt any person whose presence at a meeting of the Board is deemed necessary to —

- (a) attend and participate in the deliberations at the meeting of the Board; or
- (b) undertake occasional assignments related to the functions of the Board.

(2) A person co-opted under subsection (1) shall —

- (a) have no right to vote; and
- (b) be remunerated at the rate set by the Board.

(3) The provisions of sections 26 and 27 shall, with the necessary modifications, apply to co-opted persons.

PART VI — *Financial Provisions*

Funds of
Association

30. (1) The funds of the Association shall consist of —

- (a) members' voluntary contributions and bequests;
- (b) fees and other monies paid for services rendered by the Association;
- (c) any money accruing to the Association arising from the performance of its functions under this Act, including levies paid by the professional bodies as may be prescribed;
- (d) income that the Association may receive from rentals or sale of any property of the Association; and
- (e) grants, gifts or donations from organisations.

(2) The Association shall —

- (a) use the funds acquired under subsection (1) to meet the costs incurred for its operations and shall use any surplus accrued for such purposes as it may determine, including investing such funds; and
- (b) manage its own budget through the funds acquired under subsection (1).

Financial year
of Association

31. The financial year of the Association shall be the period of 12 months commencing and ending on the date to be determined by the Association.

Accounts and
audit

32. (1) The Association shall keep proper accounts and records in respect of every financial year relating to its assets, liabilities, income and expenditure, and shall prepare in each financial year, a statement of such accounts showing —

- (a) an income and expenditure statement, showing all monies that were received by and had accrued to the Association during the financial year, and all the expenditure incurred and payments made by the Association, during that year;
- (b) a balance sheet, showing the Association's financial position and the state of its assets and liabilities as at the end of the previous financial year; and
- (c) a cash flow statement for the previous year.

(2) The accounts of the Association in respect of each financial year shall, within three months of the end of each financial year, be audited by an auditor appointed by the Board, in accordance with the Financial Reporting Act.

Cap. 46:10

(3) The auditor shall report in respect of the accounts for each financial year, in addition to any other matter on which the auditor considers it pertinent to comment on, whether or not —

- (a) the auditor has received all the information and explanation which, to the best of the auditor's knowledge and belief, were necessary for the performance of the auditor's duties;
- (b) the accounts and related records of the Association have been properly kept;
- (c) the Association has complied with all the financial provisions of this Act with which it is the duty of the Association to comply; and
- (d) the statement of accounts prepared by the Association was prepared on a basis consistent with that of the preceding year and represents a true and fair view of the transactions and financial affairs of the Association.

(4) The report of the auditor and a copy of the audited accounts shall, within 14 days of the completion of the audit, be forwarded to the Association by the auditor.

(5) The auditor's report and the audited accounts shall be presented by the Board at an ordinary general meeting.

33. (1) The Association may, with the approval of the Board, out of its revenues, establish and maintain such pension, superannuation, provident or other funds as it may consider desirable or necessary for the payment of benefits or other allowances on the death, sickness, injury, superannuation, resignation, retirement or discharge of its officers and may make rules providing for the payment of money out of its revenues to such funds and providing for contributions to such funds by its officers.

Pension and other funds

(2) The Association may contract with insurance companies or such other bodies as may be appropriate for the maintenance and administration of the funds authorised under subsection (1).

34. The Board shall present to the ordinary general meeting a full report of the activities of the Association which shall be accessible to members of the public.

Annual report

PART VII — *Media Fund*

Establishment of Media Fund

35. (1) The Association shall establish a fund to be known as the Media Fund.

(2) There shall be paid into the Fund, such money as may, from time to time, be —

- (a) received by way of a levy imposed under section 30 (1) (c);
- (b) charged for services provided by the Association;
- (c) provided through grants and donations; and
- (d) received from any other source for payment into the Fund.

(3) There shall be paid out of the Fund such amounts as required for the purpose of funding the activities of the Association.

(4) The Association shall maintain a bank account with such bank as the Board may approve, into which money paid into the Fund shall be kept.

Administration of Media Fund

36. (1) The Board shall have the overall responsibility of the administration and management of the Fund.

(2) Without prejudice to subsection (1), the Board shall cause the Association to —

- (a) be responsible for the day to day administration and management of the Fund;
- (b) keep and maintain proper books of accounts and records of accounts of the Fund; and
- (c) maintain an account into which shall be recorded all receipts into the Fund, all disbursements from the Fund, and the reconciliation of the monthly accounts of the Fund.

PART VIII — *Registration of Journalists*

Qualifications for registration

37. (1) A person shall apply to a professional body in the form and upon payment of a fee to be prescribed, to be registered as a member of a professional body under this Act and to have his or her name entered in the register as a journalist if he or she —

- (a) is an employee of a media enterprise, the membership of which is recognised by the professional body as furnishing a sufficient guarantee of the required academic knowledge of, and practical experience in, journalism;
- (b) has taken an oath as may be prescribed, to uphold, respect and adhere to the Code of Ethics; and
- (c) is, in the opinion of the professional body, a fit and proper person to be registered as a journalist.

(2) A media enterprise shall, within 30 days of coming into operation of this Act, submit the names of the chief editor or head of publication, as the case may be, to the Executive Director for entry into the register.

- 38.** (1) A professional body may at any time direct that the name of a journalist be removed from the register where the journalist has —
- (a) failed to comply with any decision of the Complaints Committee or Appeals Committee within 60 days from the date such decision is made; or
 - (b) been disqualified from practising as a journalist on account of breach of the Code of Ethics.
- (2) A professional body shall remove from the register —
- (a) the name of every journalist who dies;
 - (b) the name of every media enterprise which ceases to operate as such; and
 - (c) any entry which has been incorrectly or fraudulently made.
- (3) Except as provided for under subsections (1) (a) and (2), the removal of a journalist's name from the register shall be notified by a professional body to the journalist concerned, by a registered letter addressed to the journalist's address, and the professional body shall, within 14 days, give such journalist the opportunity to be heard before such professional body effects such removal.
- (4) A journalist whose name has been removed from the register under this section shall, from the date of such removal, cease to be registered for the purposes of this Act.

Removal from register

PART IX — *Conduct of Journalists*

- 39.** (1) The Association shall establish an Ethics and Conduct Committee which shall consist of five members of the Association.
- (2) The functions of the Ethics Committee shall be to —
- (a) develop and issue a Code of Ethics for journalists and media enterprises which shall be consistent with international best practice;
 - (b) review and amend the Code of Ethics for journalists and media enterprises, in line with international best practice; and
 - (c) ensure adherence to high standards of journalism as provided in the Code of Ethics.
- (3) The Ethics Committee shall, after developing or reviewing the Code of Ethics, submit the Code of Ethics to an annual general meeting of the Association, for consideration and resolution by the members of the Association, before the Ethics Committee issues the Code of Ethics.
- (4) Where the Association resolves to amend the Code of Ethics in accordance with subsection (2) (b), the Executive Director shall, within seven days of acceptance of the amendments by the members of the Association, deposit a copy of the amendments with the Board.
- 40.** The Association shall appoint a member of the Ethics Committee for a period not exceeding two years, and such member shall be eligible for re-appointment for one further term not exceeding two years.

Ethics and Conduct Committee

Tenure of office of members of Ethics Committee

General provisions relating to Ethics Committee

41. Sections 19, 20, 21, 22, 23, 24, 25, 26, 27 and 29 shall, with the necessary modifications, apply to the members of the Ethics Committee.

Secretariat of Ethics Committee

42. (1) The Ethics Committee shall appoint a secretariat which shall consist of two members of the Association.

(2) The members of the secretariat under subsection (1) shall be *ex officio* members of the Ethics Committee but shall not vote.

(3) The functions of the secretariat shall be to —

(a) coordinate meetings of the Ethics Committee;

(b) record and keep minutes of the meetings and proceedings of the Ethics Committee;

(c) produce and disseminate information on matters related to the media; and

(d) carry out any other duties related to the media, as may be determined by the Ethics Committee.

Code of Ethics

43. (1) A journalist or media enterprise shall comply with the Code of Ethics issued in accordance with section 39 as may be determined by the Association, in respect of any activity related to the media.

(2) Without prejudice to section 39(2), the Code of Ethics shall include the following —

(a) provisions relating to the duties and obligations of journalists and media enterprises;

(b) provisions relating to the protection of minors;

(c) provisions relating to the protection of persons suffering from a physical or mental disability;

(d) provisions relating to advertising content;

(e) provisions allowing for fair competition in the media industry;

(f) provisions relating to the protection of the privacy of individuals, as guaranteed in the Constitution of Botswana;

(g) provisions relating to the unlawful publication of defamatory matter in accordance with the provisions of the Penal Code;

(h) provisions relating to the continuous professional development of journalists;

(i) provisions relating to sexual exploitation or sexual abuse;

(j) provisions relating to gender equality;

(k) provisions relating to unbiased and unfair reporting; and

(l) any other matter relevant to the conduct of a journalist or a media enterprise, as may be necessary.

Cap. 08:01

Names of journalists to be indicated

44. (1) A media enterprises shall, in publishing news or news articles in newspapers and magazines, radio and television broadcasts, any other electronic means or any other manner as may be prescribed, indicate the full names of the journalist responsible for the publication.

(2) Where news or a news article published under subsection (1) does not indicate the full names of the journalist, the chief editor or head of publication as the case may be, shall be deemed responsible for the publication.

PART X — *Complaints and Disciplinary Committee*

- 45.** The Association shall establish a Complaints and Disciplinary Committee which shall consist of nine members who shall be —
- (a) a Chairperson of the Complaints Committee, who shall be a member of the general public with expertise in matters related to the media;
 - (b) a legal practitioner, admitted to practice in the courts of Botswana, who shall be the Vice Chairperson;
 - (c) one person who is a senior editorial member of a professional body;
 - (d) one person who has industrial relations experience; and
 - (e) five persons who are members of the public and who —
 - (i) do not have financial interest in the media, and
 - (ii) are not in the employ of a media enterprise.
- 46.** The Complaints Committee shall be responsible for —
- (a) the mediation or adjudication of disputes on issues between —
 - (i) the Government and the media enterprises,
 - (ii) the public and the media enterprises,
 - (iii) a journalist and the public, or any other person, and
 - (iv) media enterprises;
 - (b) achieving impartial, speedy and cost effective settlements of complaints against journalists and media enterprises, in accordance with this Act; and
 - (c) dealing with the disciplinary matters of the members of the Association.
- 47.** The Complaints Committee shall, in exercise of its functions under section 46, have all the powers incidental to and necessary for the effective discharge of its functions under this Act, and shall —
- (a) establish and maintain an internal mechanism for the resolution of disputes;
 - (b) determine procedures for the determination of disputes relating to the media;
 - (c) receive, investigate and deal with complaints made by or against journalists and media enterprises; and
 - (d) summon and receive information of evidence relating to any matter.
- 48.** A member of the Complaints Committee shall be appointed by the Association for a period not exceeding two years and shall be eligible for re-appointment for one further term not exceeding two years.
- 49.** Sections 19, 20, 21, 22, 23, 24, 25, 26, 27 and 29 shall, with the necessary modifications, apply to the members of the Complaints Committee.
- 50.** (1) The Complaints Committee shall appoint a secretariat which shall consist of two members of the Association.

Complaints and
Disciplinary
Committee

Functions of
Complaints
Committee

Powers of
Complaints
Committee

Tenure of office
of members
of Complaints
Committee

General
provisions
relating to
Complaints
Committee

Secretariat of
Complaints
Committee

(2) The members of the secretariat under subsection (1) shall be *ex officio* members of the Complaints Committee but shall not vote.

(3) The functions of the secretariat shall be to —

- (a) coordinate meetings of the Complaints Committee;
- (b) record and keep minutes of the meetings and proceedings of the Complaints Committee;
- (c) produce and disseminate information on matters related to the media; and
- (d) carry out any other duties related to the media.

Lodging of
complaints

51. (1) A person aggrieved by —

- (a) any conduct of a journalist or media enterprise in relation to this Act; or
- (b) anything done against a journalist or media enterprise that limits or interferes with the constitutional freedom of expression of such journalist or media enterprise,

may submit a written complaint to the Complaints Committee setting out the grounds for the complaint, for determination by the Complaints Committee.

(2) Notwithstanding subsection (1) —

- (a) an illiterate person aggrieved by any act or omission of a journalist or media enterprise in respect of a publication may lodge his or her complaint orally to the Complaints Committee and the secretariat of the Complaints Committee shall record such complaint in writing; and
- (b) where a complaint lodged with the Complaints Committee is before a court, the Complaints Committee shall not hear and deliberate on such complaint.

(3) A complaint under this section shall be made within 30 days of the conduct of a journalist, publication by the media enterprise or any act done against a journalist or media enterprise.

(4) A complaint under this section shall disclose to the Complaints Committee the particulars of an aggrieved party, including information relating to such party's identity and such other information as the Complaints Committee may require.

(5) The Complaints Committee shall, within 14 days from receipt of a complaint under this section, undertake any investigation into the complaint as the Complaints Committee considers necessary.

Decisions of
Complaints
Committee

52. (1) The Complaints Committee may, after hearing the parties to a complaint, make, in writing, any or a combination of the following decisions —

- (a) order the offending party to publish an apology and correction in such manner as the Complaints Committee may specify;
- (b) dismiss the complaint;
- (c) order the return, repair, or replacement of any equipment or material belonging to a journalist or media enterprise which has been confiscated, damaged or destroyed;

- (d) order the offending editor of the broadcast, print or online material to publish the Complaints Committee's decision in such manner as specified by the Complaints Committee;
- (e) recommend to a professional body the suspension or removal from the register of the journalist or media enterprise; or
- (f) make supplementary or ancillary rulings as may be considered necessary for putting into effect any previous rulings made in terms of this section.

(2) The Complaints Committee may consider both documentary and oral evidence provided by the parties and shall decide on the issue as it considers just in the circumstances of the case.

(3) The Complaints Committee may, where it considers it appropriate and with the approval of the Board, publish, in full or otherwise, its decision in respect of the investigations carried out by the Complaints Committee under section 51 (5).

(4) The Complaints Committee shall, in considering a complaint brought before it, provide effective and efficient service, and shall submit its decision to the parties as soon as it is reasonably practicable.

(5) The decision of the Complaints Committee shall be —

- (a) in writing; and
- (b) binding on the parties, unless appealed to the Appeals Committee.

53. Without prejudice to anything contained in section 58, a journalist or media enterprise who publishes a statement about or against a person shall, when requested to do so by the person in respect of whom the publication is made, publish a reply from such person.

Right to reply

(2) A reply published by a journalist or media enterprise, after a request is made under subsection (1), shall be published —

- (a) in not later than two subsequent editions of the publication; and
- (b) with the same prominence as the original statement was published.

(3) Where a person in respect of whom a publication is made feels aggrieved by an act or omission of a journalist or media enterprise under this section, he or she may lodge a complaint with the Complaints Committee under section 51.

PART XI — Appeals Committee

54. The Association shall establish an Appeals Committee which shall consist of —

Appeals
Committee

- (a) a legal practitioner, admitted to practice in the courts of Botswana, who shall be the Chairperson of the Appeals Committee;
- (b) a representative of the media nominated by the Association, who shall be the Vice Chairperson;
- (c) a member of the general public with expertise in media related matters; and
- (d) two other persons of good standing who are retired and have considerable knowledge and experience in the media.

Tenure of office
of members
of Appeals
Committee

55. A member of the Appeals Committee shall be appointed by the Association for a period not exceeding two years and shall be eligible for re-appointment for one further term not exceeding two years.

General
provisions
relating to
Appeals
Committee

56. Sections 19, 20, 21, 22, 23, 24, 25, 26, 27 and 29 shall, with the necessary modifications, apply to the members of the Appeals Committee.

Secretariat of
Appeals
Committee

57. (1) The Appeals Committee shall appoint a secretariat which shall consist of two members of the Association.

(2) The members of the secretariat under subsection (1) shall be *ex officio* members of the Appeals Committee but shall not vote.

(3) The functions of the secretariat shall be to —

(a) coordinate meetings of the Appeals Committee;

(b) record and keep minutes of the meetings and proceedings of the Appeals Committee;

(c) produce and disseminate information on matters related to the media; and

(d) carry out such other duties as may be relevant for the carrying out of the functions of the Appeals Committee.

Appeals

58. (1) A person or a member who is aggrieved by the decision of the Complaints Committee under section 52 may, upon payment of a fee to be prescribed, appeal the decision to the Appeals Committee in writing within 30 days of such decision being made.

(2) Notwithstanding subsection (1), the Appeals Committee may, on its own motion, review any decision of the Complaints Committee.

(3) The Appeals Committee shall note an appeal made under subsection (1) by delivering a written notice of an intention to appeal to the secretariat of the Appeals Committee, together with a statement setting out the grounds of the appeal.

(4) The Appeals Committee may dismiss, vary or confirm the decision of the Complaints Committee.

(5) The decision of the Appeals Committee shall —

(a) be in writing;

(b) be binding on the parties unless appealed to the High Court;

(c) have the same force and effect as a judgment or order of a court of competent jurisdiction and shall be enforceable in the same manner as such judgment or order; and

(d) be published by the concerned journalist or media enterprise, and the concerned journalist or media enterprise shall submit such publication to the complainant.

(6) A person who is aggrieved by the decision of the Appeals Committee may, within 30 days of the decision of the Appeals Committee, appeal to the High Court.

PART XII — *Miscellaneous Provisions*

59. A member of the Association, Board, or committee or sub-committee of the Board, any employee of the Association or any other person acting under the direction of the Association or the Board, a member of the Ethics Committee, Complaints Committee or Appeals Committee, or a co-opted person, shall not, in his or her personal capacity, be liable in civil or criminal proceedings in respect of any act done in good faith in the performance of his or her duties under this Act.

Exemption
from personal
liability

60. (1) A person who —

- (a) without lawful justification fails or refuses to comply with any decision made in terms of this Act;
- (b) obstructs or hinders any person in the exercise of any powers under this Act; or
- (c) furnishes information or makes a statement to the Complaints Committee or Appeals Committee which he or she knows to be false or misleading in any material particular,

Offences and
penalties

commits an offence and is liable to a fine not exceeding P2 000 or to imprisonment for a term not exceeding six months, or to both.

(2) Where any of the offences mentioned in subsection (1) is committed by a media enterprise, the director, the chief editor or head of publication who is directly responsible for the acts or omissions constituting an offence is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding one year, or to both.

(3) In this section, reference to a person in relation to a media enterprise means the director, chief editor or head of publication, as the case may be.

(4) A prosecution for an offence under this Act shall not be instituted except with the written consent of the Director of Public Prosecutions.

61. The Minister may, in consultation with the Association, make regulations —

Regulations

- (a) relating to any other matter intended to safeguard the interests of the public and promote professional standards in the media;
- (b) to provide for anything for the better carrying into effect of this Act; and
- (c) prescribing anything to be prescribed under this Act.

62. The Media Practitioners Act is hereby repealed.

Repeal of
Cap. 61:09

63. (1) All rights, obligations, assets and liabilities which have accrued to the Board in terms of the repealed Act, shall, upon this Act coming into force, pass and accrue to the Association and be dealt with in terms of this Act.

Savings and
transitional
provisions

(2) All employees of the Media Council of the repealed Act shall become the corresponding employees of the Association and shall continue in office for the period for which, and subject to the conditions under which they were appointed as employees of the Media Council of the repealed Act.

(3) Any disciplinary proceedings which, before the coming into operation of this Act, were pending under the repealed Act shall be continued by, enforced by or against the Board in the same manner as they would have been continued or enforced before the coming into operation of this Act.

(4) Any legal proceedings which, before the coming into operation of this Act, were pending under the repealed Act shall be continued or enforced by or against the Board in the same manner as they would have been continued or enforced before the coming into operation of this Act.

(5) Any proceedings which, before the coming into operation of this Act, were pending before Committees established under the repealed Act shall be continued or enforced by or against the Board in the same manner as they would have been continued or enforced before the coming into operation of this Act.

PASSED by the National Assembly this 28th day of July, 2022.

BARBARA N. DITHAPO,
Clerk of the National Assembly.