



AN OPPORTUNITY FOR GREATER  
TRANSPARENCY: 1 AUGUST 2019

---

**POLITICAL PARTY FUNDING  
REGULATIONS SUBMISSION**

# WHO MMA IS

.....

**Established in 1993**

**Monitored > 300 projects  
focusing on human rights issues**

.....

**OUR VISION:  
A responsible and quality  
media**



**Holds the  
powerful to  
account**



**Enables an active  
and engaged  
citizenry**

## FUNDAMENTAL: ACCESS TO INFORMATION AND AN INFORMED PUBLIC

*“The system’s inbuilt capacity to sift the corrupt from the ethically upright is an indispensable requirement. For this reason, **any information that completes the picture of a political party or an independent candidate in relation to who they really are or could be influenced by, in what way and to what extent, is essential for the proper exercise of the voter’s “will”** on which our government is constitutionally required to be based. An environment must thus be created for **the public to know more than what is said in manifestos or during campaign trails**. As will become apparent below, what is implicitly envisioned by section 19 [of the Constitution] is an informed exercise of the right to vote.”*

- ▶ Clear from the My Vote Counts decision that **purpose of the Act**, and consequently the Proposed Regulations, is **not only to enable the Commission to exercise oversight over represented political parties, but also to enable the public to make informed political decisions. Central to this is the ability of the media, civil society organisations and watchdogs to be able to access relevant information made available through the Act and the Proposed Regulations, distil that information and share it with the broader public and the electorate.** Without this ability, the purpose and objectives of the Act and the Proposed Regulations would be severely undermined. This is the underlying rationale for the submissions below.

## NEED FOR RIGHTS BASED APPROACH

### ▶ Submit clause is included:

“Interpretation

(4) In undertaking any measure in terms of these Regulations, the rights contained in the Constitution must at all times be respected, protected, promoted and fulfilled, both online and offline, including the rights to freedom of expression and access to information, and nothing in these Regulations should be interpreted or relied up to unjustifiably infringe the free flow of information.

## REQUESTS FOR NON DISCLOSURE

- **Requests for non-disclosure** made on PPR1 **should be made under oath** in accordance with the Justices of the Peace and Commissioners of Oaths Act.
- The list of relevant factors set out in regulation 4(3) should be broadened to ensure that the Commission adequately **considers any countervailing public interest** considerations that may arise in the information being made publicly available, including for journalistic purposes.
- Regulation 4(5)(a) should be amended to provide that the Commission must **decline** a request made for non-disclosure **if there is reason to believe that “any provision of the Act or any other law has been contravened.”** The reference to the contributor should be deleted.
- The Proposed Regulations should require that the Commission **provide a report and statistical information of the number of requests received for non-disclosure**, the number of requests granted and refused, and a summary of the reasons provided for the requests.
- The Proposed Regulations should make clear that **disclosure is the point of departure, with requests for non-disclosure only being granted in exceptional circumstances where there compelling reasons to do so and there are no countervailing public interest considerations that would support disclosure.**

## PROHIBITED:

- ▶ Prohibited use of funds:
  - ▶ Accordingly, MMA submits that this provision should be amended to make clear that **no payments may be received by represented political parties “for any purpose which contravenes the law”**.
- ▶ Prohibited donations:
  - ▶ As such, MMA submits that, in the interests of transparency and accountability in line with the objectives of the Act, an additional regulation should be added to the Proposed Regulations should provide for **political parties to publicly disclose and report on any instance where a person or entity attempts to make a disclosure** in contravention of this section, both to the Commission and the relevant authorities.

## ADDITIONAL KEY ELEMENTS:

- ▶ Disclosure of donations by political parties - we submit ensure individual donations are cumulative within same entity
- ▶ Prohibitions on donations to parties - we submit should also included those who receive the funds
- ▶ Documents and disclosures to be made - we submit need greater detail and clarity, eg promotions and publications.

## ENFORCEMENT POWERS OF THE COMMISSION: FIGHTING THE DARKEST FORCES

- ▶ The Commission may request any person “to disclose any relevant information”. MMA submits an additional regulation be inserted into Proposed Regulations to give effect to this provision on a more systematic basis, to indicate the categories of information that may be sought and the stakeholders from whom such disclosure may be required.



## BRINGING TRANSPARENCY TO POLITICAL ADVERTISING

- ▶ Currently no regulations addressing an area which has been used to influence US and Brexit vote and other elections.
- ▶ Rise of mis and disinformation combined with “dark advertising” means that there is clear and present threat similar techniques could be used to interfere with our elections.
- ▶ Currently also gaping disparity between existing media advertising requirements and those of social media platforms

## BRINGING TRANSPARENCY TO POLITICAL ADVERTISING

- ▶ Good news: already precedent with the African Commission Principles on Access to Information in Election Period - used in last elections to build:



**Political Advert Repository**  
[www.padre.org.za](http://www.padre.org.za)

## BRINGING TRANSPARENCY TO POLITICAL ADVERTISING

- ▶ Number of countries engaging with relevant stakeholders to track and verify the information being provided by political parties in respect of political advertising, both online and offline.
- **United States:** In terms of the **Honest Ads Act**, those who purchase and publish **political adverts are required to disclose information about the advertisements to the public**; a **record of persons who paid** for political adverts is **required to be kept**; and a record of any request to purchase a political advert on an online platform is required to be kept where the aggregate amount of all requests exceeds \$500.
- **Canada:** In terms of the **Elections Modernisation Act**, **online platforms** are required to keep a **registry of all political adverts** that are published directly or indirectly as part of election campaigning. This is intended to **enable voters to be able to better judge the credibility** of a political advert if they know the source of it.

## BRINGING TRANSPARENCY TO POLITICAL ADVERTISING

- **India: Model code of conduct** and the Electoral Commission has put in place a system of **pre-certification of political adverts**, and only these adverts are allowed to be accepted by social media platforms. The Electoral Commission has indicated its concern at the **disjunct between the regulation of radio / broadcast political advertising and social media political advertising**, and its want to ensure **similar controls and safeguards apply across all platforms**. Candidates also required to submit details of their social media accounts at the time of filing their nominations. The Electoral Commission further requires **candidates to identify and account for expenditure incurred on social media campaigning (to be included within their limit of election expenditure)**, payments made to **internet companies and websites for carrying advertisements**, and **campaign-related operational expenditure on creative content and persons designated to social media management**.

## BRINGING TRANSPARENCY TO POLITICAL ADVERTISING

- **European Union:** The EU published the **Code of Practice on Disinformation**, which binds signatories in terms of transparency and disclosure requirements. This **includes requiring signatories to deploy policies and processes to disrupt advertising and monetisation incentives for relevant behaviour, such as misrepresentations. This could include restricting advertising services or limiting paid placements.** Further, the signatories commit to ensuring that **political adverts are clearly distinguishable from news or editorial content**, and that political adverts are presented in a way that ensures it is **readily recognisable as paid-for communication** or labelled as such. Signatories also commit to public disclosure of political advertising, including actual sponsor identity and the amounts spent.
- **United Kingdom:** The Electoral Commission in the United Kingdom has proposed that any **political advertising - whether it is a leaflet or on social media - needs to state that it has been sponsored, and the name and address of who has paid for it.**

## BRINGING TRANSPARENCY TO POLITICAL ADVERTISING

- ▶ MMA submits an additional regulation to the Proposed Regulations include information regarding political advertising from the represented political parties and other stakeholders - including the media, online platforms and telecommunications companies - which **information would include all official political advertisements, the amount spent on such advertisements, and the identity of the person or entity responsible for the payment of the spend on such advertisements.**
- ▶ MMA further submits that with the rise of social media and the ability to tailor adverts on an almost one-to-one basis, it is essential that **users and the public are aware that the content is paid for and which party has paid for it.** This is a key element of transparency of funding for the public. MMA thus submits that in addition to the information made available to the Commission that **all paid political advertisements and content are clearly identified as such on a user basis to ensure that ordinary members of the public are aware that content is paid for.** This principle is in line with standard ethical practice across most other media formats, including top and tail disclaimers.

## BRINGING TRANSPARENCY TO POLITICAL ADVERTISING

- MMA submits we need a combination of these elements that ensure we encourage openness, transparency and inform the public but also that doesn't undermine media freedom.
- MMA happy to help with drafting and further information on request.

## CONCLUSIONS

- MMA thanks the IEC for the opportunity and welcomes the regulations as a critical step in taking our democracy forward.
- We note the opportunity to ensure South Africa is at the forefront of addressing some of the emerging challenges in a manner that is in line with our constitution.



# THANKS, QUESTIONS?

---

William Bird  
Director  
Media Monitoring Africa

williamb@mma.org.za  
+2711 788 1278

---

[www.mediamonitoringafrica.org](http://www.mediamonitoringafrica.org)



@MediaMattersza



Media Matters

**MEDIA**  
MONITORING  
**AFRICA**