



Independent Communications Authority of South Africa
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TERMS OF REFERENCE COMPLAINTS AND COMPLIANCE COMMITTEE

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1. VISION

To be a world-class, independent tribunal for adjudication of complaints and issues of non-compliance in the Information Communication and Technology ("ICT") industry in South Africa.

2. MISSION

To dispense justice in a fair, transparent and impartial manner by expeditiously adjudicating complaints and disputes.

3. VALUES

The Complaints and Compliance Committee ("CCC") is guided by the following values:

- Accountability;
- Striving for excellence;
- Honesty, Integrity and Impartiality;
- Respect for stakeholders;
- An evidence-based approach to contribute to adjudication that has a meaningful impact on the industry.

4. ESTABLISHMENT

The CCC is established in terms of section 17A of the ICASA Act, Act No 13 of 2000 ("ICASA Act"), as Amended

5. APPOINTMENT OF MEMBERS

- 5.1 The appointment of CCC members will be made in terms of section 17A of the ICASA Act.
- 5.2 The CCC must consist of not more than seven members, one of whom must be a councillor.
- 5.3 The CCC Councillor must be appointed in terms of a Council resolution.
- 5.4 The CCC members will be appointed for a three year term which is renewable for one additional term only.
- 5.5 A CCC member must be a fit and proper person and must –
- 5.5.1 Have suitable qualifications and experience in communications, economics, electronic engineering, broadcasting, law, commerce, technology or public policy;
 - 5.5.2 Be committed to the functions and work of the CCC and the objects of the ICASA Act and the underlying statutes and must not act or behave in a manner that undermines those functions, work or objects;
 - 5.5.3 Not be an office-bearer or an employee of any party, movement or organisation of a party-political nature;
 - 5.5.4 Not be an unrehabilitated insolvent;
 - 5.5.5 Not be mentally ill or disordered;
 - 5.5.6 Not have been convicted of an offence after the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 2000 of 1993) and sentence to imprisonment without the option of a fine; and
 - 5.5.7 Not be subject to any disqualification contemplated in section 6 of the ICASA Act which provides that a person may not be appointed if he or she –

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- 5.5.7.1 Is not a citizen of the Republic;
- 5.5.7.2 Is not permanently resident in the Republic;
- 5.5.7.3 Is a public servant or the holder of any other remunerated position under the State;
- 5.5.7.4 Is a member of Parliament, any provincial legislature or any municipal council, or an office-bearer or employee of any party movement or organisation of a party-political nature;
- 5.5.7.5 Or his or her family member has a direct or indirect financial interest in the electronic communications, postal or broadcasting industry;
- 5.5.7.6 Or his or her business partner or associate holds an office in or with, or is employed by, any person or body, whether corporate or unincorporated, which has an interest in the broadcasting, postal or electronic communications industry;
- 5.5.7.7 has at any time been convicted, whether in the Republic or elsewhere, of – theft, fraud, forgery or uttering a forged document; perjury, an offence in term of anti-corruption legislation, or any other offence involving dishonesty; or an offence in terms of the ICASA Act or underlying statutes;
- 5.5.7.8 has at any time been removed from an office of trust on account of misconduct.

6. CHAIRPERSON

- 6.1 The Authority must appoint one of the members as chairperson.
- 6.2 The chairperson of the CCC must be –
- 6.2.1 A judge of the High Court of South Africa, whether in active service or not; or
 - 6.2.2 An advocate or attorney with at least 10 years' appropriate experience; or
 - 6.2.3 A magistrate with at least 10 years' appropriate experience, whether in active service or not.
- 6.3 An acting chairperson must be a committee member appointed by the committee:
- 6.3.1 To act in any instance where the Chairperson is not available for more than three (3) consecutive days;
 - 6.3.2 to perform all the functions of the chairperson, as set out in clause 8.1.

7. CONFLICT OF INTEREST

- 7.1 A CCC member, must be subject to the provisions of section 12 of the ICASA Act, in terms of which such member may not attend or in any other manner participate in a meeting or hearing not be present at the place where the meeting or hearing is held, if:
- 7.1.1 In relation to a hearing regarding a licensee matter, he or she or his or her family member is a director, member or business partner or associate of or has an interest in the business of the licensee or of any person who makes representation in relation to the licensee; or
 - 7.1.2 In relation to any matter where he or she has any interest which may preclude him or her from performing his or her functions as a member in a fair, unbiased and proper manner.
- 7.2 If, during the course of any proceedings before the CCC, there is reason to believe that a CCC member has any interest, that member must immediately fully disclose the nature of his or her interest and leave the meeting or hearing in question so as to enable the remaining members to discuss the

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matter and determine whether or not that member should be allowed to participate in the proceedings.

7.3 During the CCC member's absence, he or she will still be considered present for purposes of determination of the quorum

7.4 The disclosure and the decision taken by the remaining members, must be recorded in the minutes of the proceedings in question.

7.5 If any CCC member fails to disclose any interest as required or, if he or she is present at the place where a meeting of the CCC members or a hearing is held or in any manner participates in the proceedings, the relevant proceedings of the CCC shall be null and void.

7.6 A CCC member is guilty of an offence and liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding three years, or to both such fine and imprisonment if he or she contravenes clause 4.1 of fails to disclose any interest or fails to leave the meeting or hearing as required.

8. FUNCTIONS OF THE CHAIRPERSON

8.1 The Chairperson :

8.1.1 Must manage the work of the Complaints and Compliance Committee;

8.1.2 Must preside at hearings of the Complaints and Compliance Committee;

8.1.3 Must chair meetings of the Complaints and Compliance Committee; and

8.1.4 Must determine whether a matter lodged to the Complaints and Compliance Committee on an urgent basis, is an urgent matter.

8.1.5 Has a casting vote regarding any matter, where votes are equal.

8.1.6 Shall be responsible for drafting the findings, after consideration of all input, and recording of dissenting views within 90 days of conclusion of the matter in accordance with section 17D.

9. FUNCTIONS, RESPONSIBILITIES AND PROCEDURES OF THE COMMITTEE

9.1 The Complaints and Compliance Committee will perform its functions, responsibilities and procedures in terms of , sections 17B and 17C ICASA Act as set out hereunder:

9.2 Investigation and Adjudication of Complaints/Disputes referred to the CCC: The Complaints and Compliance Committee must investigate, hear and make findings in terms of clause 6.3 below, regarding matters related to non-compliance with:

9.2.1 The terms and conditions of a licence;

9.2.2 The ICASA Act 13 of 2000;

9.2.3 The Electronic Communications Act 36 of 2005;

9.2.4 The Postal Services Act 124 of 1998;

9.2.5 The Broadcasting Act 4 of 1999;

9.2.6 Regulations issued in terms of any of the ICASA underlying statutes.

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9.3 Functions of the CCC: The Complaints and Compliance Committee must –

9.3.1 Investigate and hear if appropriate, and make a finding on –

9.3.1.1 All matters referred to it by the Authority;

9.3.1.2 Complaints received by it; and

9.3.1.3 Allegations of non-compliance with the ICASA Act or underlying statutes received by it; and

9.3.1.4 May make any recommendation to the Authority necessary or incidental to –

9.3.1.4.1 The performance of the functions of the Authority in terms of the ICASA Act or the underlying statutes; or

9.3.1.4.2 Achieving the objects of the ICASA Act.

9.4 Notification Process: The Complaints and Compliance Committee must, prior to hearing a matter:

9.4.1 Provide the licensee to the dispute with –

9.4.1.1 A copy of the complaint where a complaint has been lodged; and

9.4.1.2 A notice setting out the nature of the alleged non-compliance;

9.4.2 Afford the licensee a reasonable opportunity to respond to the allegations in writing; and

9.4.3 Afford the complainant a reasonable opportunity to reply to such response in writing where a complaint has been lodged.

9.5 Legal representative/adviser: The Complaints and Compliance Committee must hear oral representations made by the relevant parties and must permit such parties or a person referred to in clause 9.7.2, to be assisted by a legal representative or other adviser.

9.6 Compliance with regulations: The Complaints and Compliance Committee must comply with the Regulations governing aspects of the procedures of the Complaints and Compliance Committee of the Independent Communications Authority of South Africa, published on 6 October 2010 in Government Gazette No. 33609.

9.7 Request for information/appearance: The Complaints and Compliance Committee may as where it is reasonably necessary by notice in writing:

9.7.1 require such particulars and information from any relevant person;

9.7.2 on the instruction of a councillor; addressed and delivered by an authorised person or a sheriff to any person, require such person to –

9.7.2.1 Appear before the Complaints and Compliance Committee, at the date, time and place specified in such notice;

9.7.2.2 Make a statement; and

9.7.2.3 Submit to it all the documents or objects in the possession or custody or under the control of any such person which may be reasonably necessary; and

9.7.3 Through the person presiding at a hearing and after explaining applicable rights under the Constitution and the ICASA Act, question any person referred to in 9.7.2 in connection with any matter which may be reasonably necessary.

9.8 Closed meetings: The presiding officer at a hearing, may, after hearing representations from any person present at and connected to the hearing determine that any part of the hearing be held behind closed doors and direct that the public or any class thereof may not be present, and having regard to –

- 9.8.1 Any reasonable apprehension of prejudice or harm to the person to be questioned;
- 9.8.2 The rights of reply and rebuttal of any person whose rights may be adversely affected; and
- 9.8.3 Whether it is in the interest of the achievement of the objects of the hearing.

9.9 Record Keeping: The Complaints and Compliance Committee must:

- 9.9.1 Keep record of all complaints received by it;
- 9.9.2 Keep record of all notices setting out the nature of alleged non-compliance;
- 9.9.3 Record all its proceedings;
- 9.9.4 Keep record of all its findings;
- 9.9.5 Open all records to inspection by the public at the premises of the Authority during normal office hours; and
- 9.9.6 When so requested by any person and upon payment of the prescribed fee, provide such person with a copy of or extract from such record.

9.10 Findings: The Complaints and Compliance Committee must:

- 9.10.1 Make a finding within 90 days from the date of conclusion of a hearing;
- 9.10.2 Recommend to the Authority what action by the Authority should be taken against a licensee, if any; and
- 9.10.3 Submit its finding and recommendations, and a record of proceedings to the Authority for a decision regarding the action to be taken by the Authority.

9.11 Recommendations: The Complaints and Compliance Committee may recommend that one of the following orders be issued by the Authority, within 60 days of the finding being made in clause 9.10.1:

- 9.11.1 Direct the licensee to desist from any further contravention;
- 9.11.2 Direct the licensee to pay as a fine the amount prescribed by the Authority in respect of such non-compliance or non-adherence;
- 9.11.3 Direct the licensee to take such remedial or other steps;
- 9.11.4 Where the licensee has repeatedly been found guilty of material violations –
 - 9.11.4.1 Prohibit the licensee from providing the licensed service for a specified period, subject to the proviso that a broadcasting or communications service, as applicable must not be suspended for a period in excess of 30 days; or
 - 9.11.4.2 Amend or revoke a licence; and
 - 9.11.4.3 Direct the licensee to comply with any settlement.

9.12 Committee duties: The general duties of the Complaints and Compliance Committee, include:

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- 9.12.1 Preparation of an annual strategic plan;
- 9.12.2 Submission of quarterly reports.

9.13 Committee Member duties: Each member of the Complaints and Compliance Committee, including the Chair must:

- 9.13.1 prepare for a matter to be heard by studying the documentation sent by the Coordinator on instructions of the Chairperson;
- 9.13.2 withdraw from a case well in advance if it appears that there is a conflict of interest;
- 9.13.3 ask objective questions during the hearing
- 9.13.4 Attend deliberations;
- 9.13.5 participate in the preparation of any relevant findings document (judgement);
- 9.13.6 Ensure findings are made in an unbiased and fair manner, based on the facts presented as part of the process;
- 9.13.7 Prepare documents of the highest quality;
- 9.13.8 Comply with all applicable policies of the Authority.

10. REMOVAL OF A MEMBER FROM OFFICE

10.1 The Authority may terminate any member's appointment to the Complaints and Compliance Committee prior to the conclusion of any three year appointment or additional three year renewal period, after due notice of the intention to terminate the appointment has been given, for any of the following:

- 10.1.1 If the member acts in breach of any of the provisions in these Terms of Reference, the ICASA Act or underlying statutes;
- 10.1.2 Where a member does not attend three consecutive meetings of the Complaints and Compliance Committee without adequate cause;
- 10.1.3 Due to death or incapacity; and
- 10.1.4 Where a member consistently fails to carry out the required duties.

10.2 Any member may terminate their services, subject to Council approval.

11. QUORUM

- 11.1 The CCC quorum shall be constituted by a majority of the members.
- 11.2 Where attention is drawn to a loss of quorum, the meeting may be adjourned until such time as the Committee determines.

12. MEETINGS

- 12.1 CCC meetings may be held in person, by telephone, videoconference, or other electronic means.
- 12.2 CCC meetings shall be held at least quarterly. The committee shall however, meet as regularly, as required.
- 12.3 CCC members are required to be fully prepared for each meeting, having read the documentation in advance, and to make every reasonable effort to attend each meeting.

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- 12.4 Any member of the CCC, may call for a meeting after consultation with the Chairperson.
- 12.5 A detailed agenda and supporting documentation, as well as confirmation of the date and time of the meeting, must be circulated at least seven (7) days prior to the scheduled meetings.
- 12.6 The minutes of each meeting shall be circulated for review by the Chairperson and members, within seven (7) days of the meeting taking place, for review by all attendees.

13. DRAFTING OF RECOMMENDATIONS AND RULINGS OF THE CCC

- 13.1 The CCC recommendations and/or rulings shall be drafted by the Chairperson subsequent to the following:
 - 13.1.1 A matter must be deliberated upon by all the members who adjudicated the matter
 - 13.1.2 The recommendations and/or rulings of the CCC must be considered and agreed to be a fair reflection of the proceedings, by all the members prior to being tabled before the Council of ICASA and prior to informing the relevant parties of the outcome of such recommendations and/or rulings.
 - 13.1.3 Any dissenting views of the members must be reflected in the final ruling and / or recommendation to be tabled to the Council of ICASA

14. REMUNERATION

- 14.1 Having regard to the duties performed by members of the CCC, the Chairperson and members of the Committee shall be paid such remuneration as determined by Council from time to time.
- 14.2 In instances where a member does not remain in the meeting for the full duration thereof, fees payable shall be in proportion to the time of such attendance, this principle will apply to cancelled meetings and/or hearings.

15. ACCESS TO RESOURCES

- 15.1 The members of the Complaints and Compliance Committee may, with prior arrangement, gain access to the boardroom for the Committee, and ICASA library in order to fulfil their duties.

16. REVIEW AND APPROVAL

- 16.1 These terms of reference shall be reviewed annually and amended as required, subject to the approval of the Council.

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