

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



# Government Gazette

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## THE PRESIDENCY

No. 267

7 April 2014

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**Act No. 2 of 2014: Independent Communications Authority of South Africa Amendment Act, 2014**



**AIDS HELPLINE: 0800-123-22 Prevention is the cure**

**GENERAL EXPLANATORY NOTE:**

- [ ] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.
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*(English text signed by the President)  
(Assented to 3 April 2014)*

## ACT

To amend the Independent Communications Authority of South Africa Act, 2000, so as to insert new, amend existing and repeal obsolete, definitions; to provide for further clarity on the powers and duties of the Authority; to introduce mechanisms to ensure the accountability of the Authority, including that of councillors and committees; and to confirm the use of electronic communications networks and services for the purpose of electronic transactions; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 13 of 2000, as amended by section 2 of Act 3 of 2006**

1. Section 1 of the Independent Communications Authority of South Africa Act, 2000 (hereinafter referred to as the principal Act), is hereby amended—
- (a) by the insertion after the definition of “Authority” of the following definition: 5  
“**broad-based black economic empowerment**’ has the meaning assigned to it in the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003)”;
- (b) by the insertion after the definition of “Broadcasting Act” of the following definitions: 10  
“**Competition Act**’ means the Competition Act, 1998 (Act No. 89 of 1998);  
“**Competition Commission**’ means the Competition Commission established in terms of section 19 of the Competition Act;”; 15
- (c) by the insertion after the definition of “Complaints and Compliance Committee” of the following definitions: 20  
“**concurrent jurisdiction agreement**’ means a concurrent jurisdiction agreement concluded in terms of section 4(3A)(b);  
“**Constitution**’ means the Constitution of the Republic of South Africa, 1996;”; 20
- (d) by the insertion after the definition of “Council” of the following definition: 25  
“**days**’ means working days unless otherwise specified;”; 25
- (e) by the substitution for the definition of “Electronic Communications Act” of the following definition:  
“**Electronic Communications Act**’ means [an Act of Parliament providing for convergence in the broadcasting, broadcasting signal distribution and telecommunications sectors] the Electronic Communications Act, 2005 (Act No. 36 of 2005)”; 25

- (f) by the insertion after the definition of “Electronic Communications Act” of the following definitions:
- “**‘electronic transaction’** has the meaning assigned to it in the Electronic Transactions Act;  
**‘Electronic Transactions Act’** means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002)”; 5
- (g) by the deletion of the definition of “former authorities”;
- (h) by the insertion before the definition of “Minister” of the following definitions:
- “**‘licence exemption’** has the meaning assigned to it in section 1 of the Electronic Communications Act;  
**‘licensee’** has the meaning assigned to it in section 1 of the Electronic Communications Act, and includes, as required by the context, a person granted a licence exemption in terms of section 6 of that Act;” 10
- (i) by the insertion after “National Revenue Fund” of the following definition: 15
- “**‘policy directions’** means policy directions issued in terms of section 3(1A), 3(2) or contemplated in 81(1) of the Electronic Communications Act or in terms section 2A(2) of the Postal Services Act”; and
- (j) by the deletion of the definition of “Telecommunications Act”.

#### **Amendment of section 3 of Act 13 of 2000, as amended by section 4 of Act 3 of 2006** 20

2. Section 3 of the principal Act is hereby amended by the addition of the following subsection:

- “(5) A person affected by any action, finding or decision of the Authority may apply to a court with competent jurisdiction for review of that action, finding or decision.” 25

#### **Amendment of section 4 of Act 13 of 2000, as substituted by section 5 of Act 3 of 2006**

3. Section 4 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 30
- “(a) must exercise the powers and perform the duties conferred and imposed upon it by this Act, the underlying statutes and [by] any other applicable law”;;
- (b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 35
- “Without derogating from the generality of [subsection] subsections (1) and (2), the Authority—”;
- (c) by the substitution in subsection (3) for paragraphs (a), (b), (c), (d) and (e) of the following paragraphs, respectively:
- “(a) may make recommendations to the Minister on policy matters and amendments to this Act and the underlying statutes which accord with the objects of this Act and the underlying statutes to promote development in the broadcasting, electronic transactions, postal and electronic communications sectors; 40
- (b) must monitor the broadcasting, postal and electronic communications [sector] sectors to ensure compliance with this Act and the underlying statutes; 45
- (c) must [**manage**] control, plan, administer and manage the use and licensing of the radio frequency spectrum in accordance with bilateral agreements or international treaties entered into by the Republic; 50
- (d) must develop, monitor and enforce compliance with licence conditions and regulations consistent with the objects of this Act and the underlying statutes for different categories of licences; 55
- (e) [**must**] may grant, renew, amend, transfer and revoke licenses in accordance with the provisions of this Act and the underlying statutes”;;

- (d) by the substitution in subsection (3) for paragraph (h) of the following paragraph:  
 “(h) may conduct research on all matters affecting the broadcasting, electronic transactions, postal and electronic communications sectors in order to exercise its power and perform its duties;”;
- (e) by the substitution in subsection (3) for paragraphs (k) and (l) of the following paragraphs, respectively:  
 “(k) may make regulations on empowerment requirements **[in terms of Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003)]** to promote broad-based black economic empowerment;  
 (l) may inspect **[transmitters or other]** electronic communications apparatus used for electronic communications;”;
- (f) by the substitution in subsection (3) for paragraph (n) of the following paragraph:  
 “(n) must investigate and adjudicate complaints submitted to the Authority in terms of this Act, the underlying statutes, and licence conditions;”;
- (g) by the addition to subsection (3) of the following paragraphs:  
 “(o) may make recommendations to the Minister dealt with or to be dealt with in the Electronic Transactions Act;  
 (p) except where section 74(1) of the Electronic Communications Act applies, must determine a penalty or remedy that may be appropriate for any offence of contravening any regulation or licence condition, as the case may be, contemplated in this Act or the underlying statutes, taking into account section 17H; and  
 (q) must exercise the powers and perform the duties of the Authority in terms of the Postal Services Act.”;
- (h) by the insertion after subsection (3) of the following subsections:  
 “(3A) The Authority, in exercising its powers and performing its duties—  
 (a) must consider policy made, and policy directions issued, by the Minister in terms of this Act, the underlying statutes and any other applicable law; and  
 (b) may conclude a concurrent jurisdiction agreement with any relevant authority or institution and must, at least once every three years, where necessary, review and revise the agreement by agreement with the authority or institution in question.”;
- (i) by the substitution in subsection (4) for paragraphs (f) and (g) of the following paragraphs, respectively:  
 “(f) The power to grant, renew, amend, revoke or transfer any individual licence may **[only]** not be delegated to a councillor or to a committee of the Council.  
 (g) Notwithstanding the provisions of this section, any councillor or committee delegated with **[the]** any power **[to grant, amend, revoke, transfer or renew a licence]** or duty of the Authority in terms of this Act, subject to paragraph (f) or the underlying statutes, must submit a report **[its decision]** on the exercise and performance of that power and duty to the Council.”;
- (j) by the addition to subsection (4) of the following paragraph:  
 “(h) Notwithstanding the provisions of this subsection, the Council must exercise general control over the exercise of the powers and the performance of the duties of the Authority in terms of this Act and the underlying statutes.”.

#### Amendment of section 4B of Act 13 of 2000, as inserted by section 6 of Act 3 of 2006 55

#### 4. Section 4B of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:  
 “(a) submit written representations **[within 60 days]** on or before a date specified in the notice, which date may not be less than 45 days from the date of publication of the notice; and”;

(b) by the addition of the following subsections:

“(7) The period provided for in subsection (2)(a) may be extended if an inquiry is of a complex nature or where substantial research or analysis is required by any interested person.

(8) Before the exercise and performance of any of its powers and duties in terms of this section, the Authority must—

(a) consider whether or not, in terms of any concurrent jurisdiction agreement concluded between the Authority and any other authority or institution, it would be appropriate to refer an inquiry to such authority or institution; or

(b) subject to section 67 of the Electronic Communications Act and the terms and conditions of any concurrent jurisdiction agreement concluded between the Authority and the Competition Commission, bear in mind that the Competition Commission has primary authority to detect and investigate past or current commissions of alleged prohibited practices within any industry or sector and to review mergers within any industry or sector in terms of the Competition Act.

(9) Subject to the terms and conditions of the concurrent jurisdiction agreement or unless otherwise agreed to by the Authority and the other authority or institution in question, the Authority may not take any action where a matter has already been brought to the attention of and is being dealt with by that other authority or institution.”.

#### **Amendment of section 4C of Act 13 of 2000, as inserted by section 6 of Act 3 of 2006**

5. Section 4C of the principal Act is hereby amended— 25

(a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“The Authority may, subject to section 4D and any other law governing privilege, for the purpose of an inquiry—”; and

(b) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words: 30

“The Authority must, within [180] 90 days from the date of conclusion of the inquiry—”.

#### **Amendment of section 5 of Act 13 of 2000, as amended by section 7 of Act 3 of 2006**

6. Section 5 of the principal Act is hereby amended— 35

(a) by the substitution for subsection (2) of the following subsection:

“(2) [(a) **The chairperson must, in writing, appoint a councillor as acting chairperson to perform the functions of the chairperson in his or her absence.**

(b) **Where the chairperson is unable to make an appointment] In the absence of the chairperson, the remaining councillors must from their number elect an acting chairperson, who, while he or she acts, may perform all the functions of the chairperson.”; and**

(b) by the substitution in subsection (3)(b) for subparagraph (ii) of the following subparagraph: 45

“(ii) possess suitable qualifications, expertise and experience in the fields of, amongst others, broadcasting, electronic communications and postal policy or operations, public policy development, electronic engineering, law, **[marketing, journalism, entertainment] information technology, content in any form, consumer protection**, education, economics, finance or any other relevant expertise or qualifications.”. 50

**Amendment of section 6A of Act 13 of 2000, as inserted by section 9 of Act 3 of 2006**

7. Section 6A of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:  
 “(1) The Minister must, in consultation with the National Assembly, establish a performance management system to monitor and evaluate the performance of the chairperson **[and other]**, councillors and the Council, individually and collectively.”
- (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:  
 “(a) set appropriate key performance indicators as a yardstick for measuring performance, including, amongst others, the matters and the time periods set out in sections 4(3A), 4B(2)(a), (7), (8) and (9), 4C(6), 7(7), 11A(3) and (4), 11B, 12(2) and 16(1) and (2);”
- (c) by the deletion in subsection (2) of the word “and” at the end of paragraph (b), the insertion of the expression “; and” after the word “year” in paragraph (c) and the addition of the following paragraph:  
 “(d) be reviewed at least once a year.”; and
- (d) by the substitution for subsections (3), (4) and (5) of the following subsections, respectively:  
 “(3) As soon as is practicable after the appointment of the chairperson or any other councillor a performance agreement must be concluded between the chairperson **[or]**, other councillor, the Council and the Minister.  
 (4) The evaluation of the performance of the chairperson **[or]**, other councillor and the Council must be conducted by a panel constituted by the Minister, in consultation with the National Assembly, for that purpose.  
 (5) The panel contemplated in subsection (4) must, after an evaluation of the chairperson **[or]**, other councillor and the Council, submit a report to the National Assembly for consideration.”

**Amendment of section 7 of Act 13 of 2000, as amended by section 10 of Act 3 of 2006**

8. Section 7 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:  
 “(b) The chairperson may at the end of his or her term of office be re-appointed in terms of section 5 for one additional term of five years only.”;
- (b) by the substitution for subsections (4), (5) and (6) of the following subsections, respectively:  
 “(4) **[Despite]** Notwithstanding the provisions of subsections (1) and (2), the [councillors remain] chairperson or a councillor remains in office after expiry of [their] his or her term of office until the commencement of the term of office of [their successors] his or her successor, but the extended term of office may not exceed 45 days.  
 (5) A councillor may at the end of his or her term of office be re-appointed in terms of section 5 for one additional term of four years only.  
 (6) **[Every]** A councillor—  
 (a) serves in a full-time capacity to the exclusion of any other remunerative employment, occupation or office **[which is likely to—]**;  
**[a]**(b) must not interfere with the exercise by any **[such] other** councillor of his or her functions in terms of this Act or the underlying statutes; **[or]** and  
**[b]**(c) must not create a conflict of interests between **[such employment, occupation or office]** his or her other activities and his or her office as councillor.”; and
- (c) by the addition of the following subsection:  
 “(7) The provisions of subsection (6) do not apply to—  
 (a) a councillor who occupies office as a member of a public interest organisation and performs concomitant tasks for which a honorarium is paid or payable;

- (b) any incidental gift received or derived by a councillor for attendance at any conference or public lecture; or
- (c) any other work which reasonably may be considered to advance the work of the Authority,
- but such appointment, office and honorarium, or gift must be disclosed in writing and recorded as provided for in sections 11B and 12(2).” 5

#### Amendment of section 11 of Act 13 of 2000

9. Section 11 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 10  
 “(1)~~[(a)]~~ Meetings of the Council must be held at least once a month at such times and places as the Council may determine.  
**[(b) However, the first meeting must be held at such time and place as the chairperson determines.]”;**
- (b) by the substitution for subsection (3) of the following subsection: 15  
 “(3) The quorum for any meeting of the Council is a majority of the councillors **[in office at the time]** presently serving as councillors, including the chairperson or an acting chairperson referred to in section 5(2).”; and
- (c) by the addition of the following subsection: 20  
 “(5) The chief executive officer of the Authority must be invited to attend any meeting of the Council and may speak at any such meeting on any matter, which must be minuted, but he or she does not have a right to vote at a meeting.”.

#### Amendment of section 11A of Act 13 of 2000, as inserted by section 13 of Act 3 of 2006 25

10. Section 11A of the principal Act is hereby amended by the addition of the following subsections:

- “(3) The minutes, contemplated in subsection (2), must be signed, confirmed and published on the Authority’s website and made available in its library within 30 days of the conclusion of the meeting, but any information determined to be confidential in terms of section 4D must be removed prior to such publication or availability.” 30

#### Insertion of section 11B into Act 13 of 2000

11. The following section is hereby inserted in the principal Act after section 11A:

#### “Code of Ethics 35

- 11B.** (1) The Authority must, within 180 days of the date of the commencement of section 11 of the Independent Communications Authority of South Africa Amendment Act, 2014, publish and make publicly available on its website and in its library, a Code of Ethics, which addresses, amongst others, the processes for the disclosure required by sections 7(7) 40 and 12(2), and which specifies the governance principles according to which the Authority or the Council functions, including, amongst others—
- (a) principles of mutual respect and collective responsibility;
- (b) a requirement that the Council will, at all relevant times or places, have all relevant information necessary to make an informed decision, taking account of all relevant facts at its disposal; and 45
- (c) a commitment by the Council to conduct the affairs of the Authority in accordance with the highest level of corporate governance, including professionalism and integrity.
- (2) All councillors and the chief executive officer must adhere to and 50  
 comply with the requirements of the Code of Ethics and must, amongst others, disclose in writing any interest, financial or otherwise, direct or

indirect, to the Authority for record and transmission to the register which must be kept and maintained by the Authority.

(3) The register must be—

- (a) open for inspection during office hours on business days; and  
 (b) contained in the annual report referred to in section 16.”.

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#### **Amendment of section 12 of Act 13 of 2000**

12. Section 12 of the principal Act is hereby amended by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“A councillor is guilty of an offence and liable on conviction to a fine not exceeding [R250 000] R1 000 000 or to imprisonment for a period not exceeding [five] three years, or to both such fine and imprisonment, if he or she—”.

#### **Amendment of section 14 of Act 13 of 2000, as amended by section 14 of Act 3 of 2006**

13. Section 14 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 15

“The Council must establish such staff component as it requires in order to support its own administration and to assist the Authority in the performance of its functions, and to this end the Council must appoint—”;

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- (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) such other staff as the Council may deem necessary to assist the Authority and the chief executive officer, as the case may be, with all such work as may arise through the performance of its functions, including research, regulatory impact assessments, reports, the giving of reasons, preparing public consultation documents and preparing recommendations relating to this Act, the underlying statutes and the Electronic Transactions Act.”; and

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- (c) by the addition of the following subsection: 30

“(4) The staff must carry out the day to day operations of the Authority as directed by the chief executive officer in accordance with the annual plan referred to in section 15A.”.

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#### **Amendment of section 14A of Act 13 of 2000, as inserted by section 15 of Act 3 of 2006**

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14. Section 14A of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of following subsection:

“(1) The Authority may appoint as many experts as may be necessary with a view to assisting the Authority in the performance of its functions, but any appointment of experts which is not within the budget of the Authority for a particular year is subject to the approval of the Minister.”; and

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- (b) by the deletion of subsection (2).

#### **Repeal of section 14B of Act 13 of 2000**

15. Section 14B of the principal Act is hereby repealed.

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#### **Amendment of section 14C of Act 13 of 2000, as inserted by section 15 of Act 3 of 2006**

16. Section 14C of the principal Act is hereby amended by the deletion in subsection (1) of the word “or” at the end of paragraph (b), the insertion of the expression “; or” after the word “law” in paragraph (c) and the addition of the following paragraph: 50

“(d) where required to do so in terms of section 12.”.



**Repeal of section 14D of Act 13 of 2000**

17. Section 14D of the principal Act is hereby repealed.

**Amendment of section 15 of Act 13 of 2000, as amended by section 16 of Act 3 of 2006**

18. Section 15 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection: 5

“(4) Cheques drawn by the Authority must be regarded to have been duly issued and signed on its behalf if issued under the joint signatures of the accounting officer and another member of the staff, or a councillor, of the Authority designated by the Council.”. 10

**Insertion of section 15A into Act 13 of 2000**

19. The following section is hereby inserted in the principal Act after section 15:

**“Annual plan**

**15A.** The chief executive officer must, at least three months before the end of each financial year, prepare and submit to the Council for approval an annual plan which describes the proposed activities of the Authority with indicative timeframes for the coming year.”. 15

**Amendment of section 16 of Act 13 of 2000**

20. Section 16 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 20

“(a) in addition to the requirements in terms of paragraph (b), supply the Minister with such information and particulars as he or she may in writing require in connection with the activities of the Authority; and”; 25

(b) by the substitution in section (1)(b) for subparagraph (i) of the following subparagraph:

“(i) the annual report of the Authority which must reflect in reasonable detail deliverables and those matters that were not dealt with in terms of the annual plan referred to in section 15A;”; and 30

(c) by the substitution for subsection (3) of the following subsection:

“(3) **[The Minister]** Subject to subsection (1)(b), the chief executive officer must table **[a copy of]** the annual report and the audited financial statements of the Authority together with the Auditor-General’s report on those statements, in Parliament within 30 days **[after it has been received by him or her]** if Parliament is then sitting and, if Parliament is not sitting, within 14 days after the next ensuing sitting of Parliament.”. 35

**Amendment of section 17 of Act 13 of 2000, as amended by section 18 of Act 3 of 2006** 40

21. Section 17 of the principal Act is hereby amended—

(a) by the substitution for subsection (4) of the following subsection:

“(4) The Council must appoint the chairperson of each committee **[from the councillors designated in terms of subsection (2)(a)]**.”; and 45

(b) by the addition of the following subsection:

“(10) A committee must submit a report on its activities to the Council if and when required or on the completion of its task.”.

**Amendment of section 17A of Act 13 of 2000, as inserted by section 19 of Act 3 of 2006**

22. Section 17A of the principal Act is hereby amended— 50

(a) by the substitution for subsection (1) of the following subsection:

- “(1) The Authority must establish a Complaints and Compliance Committee which consists of not more than seven members, appointed for a three-year term of office which is renewable for one additional term only, one of whom must be a councillor.”;  
 (b) by the insertion after subsection (1) of the following subsection: 5  
 “(1A) The Authority must appoint one of the members contemplated in subsection (1) as chairperson of the Complaints and Compliance Committee.”; and  
 (c) by the substitution in subsection (4) for paragraph (b) of the following paragraph: 10  
 “(b) be committed to the functions and work of the Complaints and Compliance Committee and the objects of this Act and the underlying statutes and must not act or behave in a manner that undermines those functions, work or objects;”.

**Amendment of section 17C of Act 13 of 2000, as inserted by section 19 of Act 3 of 2006** 15

23. Section 17C of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) (a) A person who has reason to believe that a licensee or another person is guilty of any non-compliance with— 20  
 (i) the terms and conditions of [its] a licence [**or**];  
 (ii) **[with]** this Act; or  
 (iii) the underlying statutes,  
 may lodge a complaint with the Authority within 60 days of becoming aware of the alleged non-compliance. 25  
 (b) The Authority may—  
 (i) where the complaint concerns a licensee, direct the complaint within 30 days of receipt of the complaint, to the Complaints and Compliance Committee for consideration;  
 (ii) where the complaint concerns a person who is not a licensee, lay a charge 30  
 against that person with the appropriate authority or institution or refer the matter to the appropriate authority or institution in terms of a concurrent jurisdiction agreement concluded between the Authority and that authority or institution within 30 days of receipt of the complaint; or  
 (iii) investigate the complaint as contemplated in section 4(3)(n).” 35

**Amendment of section 17F of Act 13 of 2000, as inserted by section 19 of Act 3 of 2006**

24. Section 17F of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 40  
 “(1) The Authority must appoint suitably qualified inspectors to perform the functions provided for in this Act and may terminate any such appointment for good cause.”; and  
 (b) by the substitution for subsection (5) of the following subsection: 45  
 “(5) An inspector must, when instructed to do so by the Council—  
 (a) monitor compliance by licensees **[of]** with licence terms and conditions and licence exemptions;  
 (b) monitor compliance by licensees with the provisions of this Act and the underlying statutes;  
 (c) investigate and evaluate any alleged or suspected— 50  
 (i) non-compliance by a licensee with its licence terms and conditions, licence exemption, and provisions of this Act or the underlying statutes;  
 (ii) breach by a licensee of an agreement between such licensee and its subscribers;

- (iii) failure to provide **[a] an electronic** communications service that the licensee is required to provide under the terms of its licence or licence exemption, or in terms of this Act or the underlying statutes; or
- (iv) non-compliance with the Act or the underlying statutes; 5
- (d) refer all non-compliance matters to the Complaints and Compliance Committee for consideration where an inspector determines that a licensee has not complied with the terms and conditions of its licence, licence exemption, the provisions of this Act or the underlying statutes or failed to provide broadcasting **[or], electronic** communications or postal services; 10
- (e) refer all complaints to the Complaints and Compliance Committee for consideration **[after an investigation into the complaint has been carried out]**;
- (f) appear before the Complaints and Compliance Committee when 15 requested by such committee; and
- (g) co-operate with law enforcement officials when performing his or her functions.”.

**Amendment of section 17G of Act 13 of 2000, as inserted by section 19 of Act 3 of 2006** 20

25. Section 17G of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:  
“(1) The Criminal Procedure Act, 1977 (Act No. 51 of 1977), applies with the **[necessary]** changes required by the context to entries, searches and seizures by inspectors in terms of this Act.”; 25
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:  
“An inspector appointed in terms of section 17F may, in order to carry out his or her functions under this Act or the underlying statutes, at any reasonable time without prior notice and on the authority of a warrant issued under subsection (4) enter any premises and, without the use of force or coercion—”; 30
- (c) by the substitution in subsection (2) for paragraph (a) of the following paragraph:  
“(a) demand the production of a licence or any other document issued in terms of the underlying statutes for inspection;” 35
- (d) by the substitution in subsection (2) for paragraph (d) of the following paragraph:  
“(d) inspect any radio apparatus, studio, plant, transmitters, apparatus, other equipment or other broadcasting, electronic communications or postal service facilities on the premises;” 40
- (e) by the insertion of the word “and” at the end subsection (2)(f);
- (f) by the substitution in subsection (2) for paragraph (g) of the following paragraph:  
“(g) seize for further examination or safe custody any document or thing which has or might have a direct bearing on the alleged non-compliance or other act referred to in section 17F on such premises.”; 45
- (g) by the substitution in subsection (4) for paragraph (a) of the following paragraph:  
“(a) A magistrate or judge may, upon request by an inspector, but subject to subsection (b), issue a warrant to such inspector.”; 50
- (h) by the deletion in subsection (4)(b) of the word “and” at the end of subparagraph (i), the insertion of the expression “; and” at the end of subparagraph (ii) and the addition of the following subparagraph: 55  
“(iii) is material to the investigation by the inspector.”; and
- (i) by the addition of the following subsection:  
“(8) The inspector must, at the request of the Complaints and Compliance Committee, and in the course of hearing a complaint or dispute, provide to the Complaints and Compliance Committee any document or thing which was obtained or confiscated in terms of this section.” 60

**Amendment of section 17H of Act 13 of 2000, as inserted by section 19 of Act 3 of 2006**

26. Section 17H of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph: 5
- “(c) makes a false statement before the Authority, including before the Complaints and Compliance Committee, on any matter, knowing such statement to be false;”;
- (b) by the substitution for subsection (2) of the following subsection: 10
- “(2) A person convicted of an offence in terms of subsection (1) is liable, in the case of a contravention of—
- (a) subsection (1)(a), (b) **[and]** or (c), to a fine not exceeding **[R250 000]** R5 000 000;
- (b) subsection (1)(d), to a fine not exceeding **[R50 000]** R1 000 000 or to imprisonment not exceeding **[three]** two years; 15
- (c) subsection (1)(e) **[and]** or (f), to a fine not exceeding R1 000 000 or to imprisonment not exceeding **[five years]** one year; and
- (d) subsection (1)(g), to a fine not exceeding **[R15 000]** R500 000.”;
- (c) by the substitution in subsection (3) for paragraphs (i), (ii), (iii) and (iv) of the following paragraphs, respectively: 20
- “(i) in the case of an offence contemplated in paragraph (a) to a maximum fine of **[R250 000]** R5 000 000;
- (ii) in the case of an offence contemplated in paragraph (b) to a fine not exceeding the greater of **[R1 000 000]** R5 000 000 or 10% of the person or licensee’s annual turnover for **[everyday]** every day or 25
- part thereof during which the offence continued;
- (iii) in the case of an offence contemplated in paragraph (c), (d) **[, and]** or (e) **[of this subsection]**, to a fine not exceeding **[R100 000]** R5 000 000; and
- (iv) in the case of an offence contemplated in paragraph (f), (g) **[, and]** 30
- or (h) **[of this subsection]**, to a maximum fine of **[R250 000]** R1 000 000.”; and
- (d) by the substitution for subsection (4) of the following subsection: 35
- “(4) The Authority may permit inspectors to dispose, in such manner as the Authority deems fit, of equipment that has been confiscated but that cannot be type-approved.”.

**Repeal of Chapter IV of Act 13 of 2000**

27. Chapter IV of the principal Act is hereby repealed.

**Insertion of section 23A in Act 13 of 2000**

28. The following section is hereby inserted in the principal Act after section 23: 40

**“Liability**

**23A.** (1) The State Liability Act, 1957 (Act No. 20 of 1957), read with the changes required by the context, applies to the Authority, but a reference in that Act to ‘the Minister of the Department concerned’ must be construed as a reference to the chairperson of the Council. 45

(2) A councillor, the chief executive officer or any member of staff or advisor or contractor of the Authority is not liable for the contents of any report, finding, point of view or recommendation that is given in good faith and that is submitted to Parliament, published or made available in terms of the Constitution or this Act.”. 50

**Substitution of section 24 of Act 13 of 2000**

29. The following section is hereby substituted for section 24 of the principal Act:

**“Application of Act**

24. In the event of any conflict between the provisions of this Act and any other [prior] law, except for the Constitution, relating to the regulation of broadcasting [and telecommunications], electronic communications and postal services, the provisions of this Act prevail.” 5

**Amendment of Preamble to Act 13 of 2000, as substituted by section 1 of Act 3 of 2006**

30. The Preamble to the principal Act is hereby amended— 10

- (a) by the insertion after the first paragraph of the following paragraph:  
 “**AND RECOGNISING** that the success of the information, communications and technology sector must be underpinned by appropriate regulation of broadcasting, postal services, electronic communications and electronic communications networks;” and 15
- (b) by the substitution for the last paragraph of the following paragraph:  
 “**ACKNOWLEDGING** that the establishment of an independent body to regulate broadcasting, postal services and electronic communications is required.”.

**Amendment of Contents of Act 13 of 2000, as amended by section 23 of Act 3 of 2006** 20

31. The Contents of Act after the Preamble of the principal Act is hereby amended—

- (a) by the insertion after item 11A of the following item:  
 “11B. Code of Ethics”;
- (b) by the insertion after item 15 of the following item: 25  
 “15A. Annual plan”;
- (c) by the insertion after item 23 of the following item:  
 “23A. Liability”; and
- (d) by the deletion of items 14B and 14D and of Chapter IV.

**Short title and commencement** 30

32. This Act is called the Independent Communications Authority of South Africa Amendment Act, 2014, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.