

SACF Comments on the Draft Amendment Regulations Governing Aspects of the Procedures of the Complaints and Compliance Committee of the Independent Communications Authority of South Africa, 2021

Introduction

1. The SACF welcomes the opportunity to submit comments on the Draft Amendment Regulations Governing Aspects of the Procedures of the Complaints and Compliance Committee of ICASA and thanks ICASA for the extension to the submission deadline.
2. The SACF further welcomes the publication of the accompanying explanatory memorandum as it provides context for the amendments helping stakeholders provide meaningful comment.
3. The SACF would like to place on record its interest to participate in all future processes in relation to amending these regulations.

General Comments

4. The SACF welcomes the review and amendment of the regulations which seeks to provide clarity promoting efficiency and efficacy.
5. The review process ought to also make it explicit that complaints referred to the CCC are limited to allegations of or non-compliance with relevant legislation, regulations and licence terms and conditions. Alternate mechanisms can be setup to hear other complaints. Strengthening this clarity will in our view address the concerns raised in respect of fruitless and wasteful expenditure and resources.
6. The purpose of the CCC is set out clearly in Section 17 of the ICASA and in the 2010 regulations. it has not been amended in the 2021 regulations.
7. The SACF is of the view that the purpose ought to amend the regulations as well to reflect the complaints which are limited to those related to non-compliance as referred to the CCC, i.e., complaints may only relate to non-compliance.

Rejection of a Complaint

8. Regulation 3(2) of the 2010 provides for the rejection of the complaint on the grounds that “insufficient attempts were made to settle the complaint”. It is not clear what constitutes insufficient grounds. In the interests of transparency, clarity and for a more efficient process, the SACF suggests that it would be useful to prescribe the elements that would constitute sufficient grounds to settle before being referred to the CCC.

Definitions

9. We welcome the attempts to provide clarity on the definitions and the alignment to the ECA and ICASA Act. However, in instances where the definition is the same as that of the ICASA or Electronic Communications Act it may not be necessary to repeat the definition in the regulation. Perhaps ICASA ought to adopt the approach where it only includes definitions not contained in the ECA or the ICASA Act or in instances where it deviates. For example, days in these regulations was defined as calendar days which is a deviation from the definition in the ECA.
10. The amendment aligns the definition in the regulation with that of the ECA and is no longer relevant. The SACF supports the alignment of the definition of days.

Withdrawals and Settlements

11. It is our understanding that the ICASA Act limits the jurisdiction to hearing matters and allegations of non-compliance either referred to it by ICASA, licensees or other parties.
12. The mandate of the CCC is further limited to making recommendations to the Council of ICASA which will either accept or amend a recommendation that will result in a finding and sanction if applicable.
13. Should the parties to a complaint of non-compliance decide to withdraw a complaint, it is our view that ICASA's jurisdiction over the matter will cease.
14. Therefore, we are of the view that a settlement agreement, would fall outside of the jurisdiction of the CCC as the complaint would no longer exist.

Application to call a Witness, Expert or Interpreter

15. While we understand the need for parties to a complaint to make an application for an interpreter, we are of the view that this rationale does not equally apply to the parties calling a witness or expert.
16. It is standard practice at hearings to allow the parties to call experts and / or witnesses as may be required to assist in the articulation of a matter. Therefore, the rationale behind this proposed amendment is unclear and difficult to understand. It will in our view not contribute to enhancing the process as the amendment regulations seeks to do. Instead, it will simply add an unnecessary step to the process and increase the administrative steps with no real benefit to the process or outcome.
17. However, for the sake of transparency and fairness the parties could be required to submit a list of witnesses and experts that will form part of the proceedings.

Urgency

18. The 2010 regulations deem all Election complaints as urgent but does not set out the grounds or characteristics of an urgent complaint.
19. In the spirit of enhancing the efficacy and efficiency of the regulations, it would be useful to include the considerations that would deem a matter as urgent.

Clarification of Process

20. The SACF welcomes the clarification of the process and it being documented as this is likely to make the process more efficient.

Place and Quorum

21. We note the deletion of the sections that provide for the election of an acting Chairperson due to the unavailability of the Chairperson has been deleted. While we understand that these are clearly linked to the definition of quorum.
22. We understand that methodology for setting up a hearing includes ascertaining the availability of the Chairperson and other applicable and essential members of the CCC.

23. It does however not consider instances where the Chairperson may be unavailable for protracted periods. As the amendment seeks to clarify applicable processes and rules for the operation of the CCC, for the sake of transparency, we would urge ICASA to include the process and applicable circumstance for appointing a temporary or interim Chairperson.
24. Accordingly, we would urge ICASA to retain 7(3) of the 2010 Regulations as it already provides for the scenario envisaged above.