

South Africa

Independent Communications Authority of South Africa Act, 2000 Act 13 of 2000

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South Africa

**Independent Communications
Authority of South Africa Act, 2000**

Act 13 of 2000

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Assented to on 4 May 2000

There are multiple commencements

| Provisions | Status |
|---|--|
| Chapter IV, section 18(2) | commenced on 30 March 2000. <i>Note: See section 25</i> |
| Chapter I (section 1–2); Chapter II (section 3–16); Chapter III (section 17); Chapter IV, section 18(1), 18(3), section 19, section 20–22; Chapter V (section 23–25) | commenced on 11 May 2000 by Proclamation R29 of 2000 . |
| Chapter I, section 2(bA); Chapter II, section 3(1A), section 4(3), 4(4), 4(5), section 4A, section 4B–4D, section 5(1A), 5(1B), section 6A, section 7(1)(a), 7(1)(b), section 8(1)(g), 8(3)(c), section 11A, section 14(1A), section 14A, section 14B–14D, section 15(1A), section 16A; Chapter III, section 17A–17H | commenced on 19 July 2006. |
| Chapter II, section 3(5), section 4(3)(o), 4(3)(p), 4(3)(q), 4(3A), 4(4)(h), section 4B(7), 4B(8), 4B(9), section 6A(2)(d), section 7(6)(c), 7(7), section 11(5), section 11A(3), section 11B, section 14(4), section 14C(1)(d), section 15A; Chapter III, section 17(10), section 17A(1A), section 17C(1)(a)(i), 17C(1)(a)(ii), 17C(1)(a)(iii), 17C(1)(b)(i), 17C(1)(b)(ii), 17C(1)(b)(iii), section 17F(5)(c)(iv), section 17G(4)(b)(iii), 17G(8); Chapter V, section 23A | commenced on 16 May 2014. |
| Chapter II, section 10(1), 10(2), 10(3), 10(4), 10(5) | commenced on 1 April 2019. |

[This is the version of this document from 1 April 2019.]

[Amended by [Broadcasting Amendment Act, 2002 \(Act 64 of 2002\)](#) on 7 March 2003]

[Amended by [Prevention and Combating of Corrupt Activities Act, 2004 \(Act 12 of 2004\)](#) on 27 April 2004]

[Amended by [Independent Communications Authority of South Africa Amendment Act, 2006 \(Act 3 of 2006\)](#) on 19 July 2006]

[Amended by [Independent Communications Authority of South Africa Amendment Act, 2014 \(Act 2 of 2014\)](#) on 16 May 2014]

[Amended by [Determination of Remuneration of Office-bearers of Independent Constitutional Institutions Laws Amendment Act, 2014 \(Act 22 of 2014\)](#) on 1 April 2019]

(English text signed by the President.)

ACT

To provide for the establishment of the Independent Communications Authority of South Africa; to provide for the dissolution of the Independent Broadcasting Authority and the South African Telecommunications Regulatory Authority; to transfer the functions of the latter authorities to the Independent Communications Authority of South Africa; to amend the Independent Broadcasting Authority Act, 1993, the Telecommunications Act, 1996, and the Broadcasting Act, 1999; and to provide for matters connected therewith.

RECOGNISING that technological and other developments in the fields of broadcasting and electronic communications are causing a rapid convergence of these fields;

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;

[paragraph inserted by section 30(a) of [Act 2 of 2014](#)]

ACKNOWLEDGING that the establishment of an independent body to regulate broadcasting, postal services and electronic communications is required.

[paragraph substituted by section 30(b) of [Act 2 of 2014](#)]

[preamble substituted by section 1 of [Act 3 of 2006](#) and amended by section 30 of [Act 2 of 2014](#)]

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Chapter I Introductory provisions

1. Definitions

In this Act, unless the context indicates otherwise, any word or expression defined in the Broadcasting Act or the Electronic Communications Act has the meaning assigned to it in the Act in question and—

“**Authority**” means the Independent Communications Authority of South Africa established by section 3;

“**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](#));

[definition of "broad-based black economic empowerment" inserted by section 1(a) of [Act 2 of 2014](#)]

“**Broadcasting Act**” means the Broadcasting Act, 1999 ([Act No. 4 of 1999](#));

“**Competition Act**” means the Competition Act, 1998 ([Act No. 89 of 1998](#));

[definition of "Competition Act" inserted by section 1(b) of [Act 2 of 2014](#)]

“**Competition Commission**” means the Competition Commission established in terms of section 19 of the Competition Act;

[definition of "Competition Commission" inserted by section 1(b) of [Act 2 of 2014](#)]

“**Complaints and Compliance Committee**” means the committee established by the Authority in terms of section 17A;

[definition of "Complaints and Compliance Committee" inserted by section 2(b) of [Act 3 of 2006](#)]

"**concurrent jurisdiction agreement**" means a concurrent jurisdiction agreement concluded in terms of section [4\(3A\)\(b\)](#);

[definition of "concurrent jurisdiction agreement" inserted by section 1(c) of [Act 2 of 2014](#)]

"**Constitution**" means the [Constitution of the Republic of South Africa, 1996](#);

[definition of "Constitution" inserted by section 1(c) of [Act 2 of 2014](#)]

"**Council**" means the Council referred to in section [5](#);

"**days**" means working days unless otherwise specified;

[definition of "days" inserted by section 1(d) of [Act 2 of 2014](#)]

"**Electronic Communications Act**" means the Electronic Communications Act, 2005 ([Act No. 36 of 2005](#));

[definition of "Electronic Communications Act" inserted by section 2(c) of [Act 3 of 2006](#) and substituted by section 1(e) of [Act 2 of 2014](#)]

"**electronic transaction**" has the meaning assigned to it in the Electronic Transactions Act;

[definition of "electronic transaction" inserted by section 1(f) of [Act 2 of 2014](#)]

"**Electronic Transactions Act**" means the Electronic Communications and Transactions Act, 2002 ([Act No. 25 of 2002](#));

[definition of "Electronic Transactions Act" inserted by section 1(f) of [Act 2 of 2014](#)]

"**establishment date**" means the date determined as such by the Minister by notice in the *Gazette*;

"**family member**", in relation to any person, means his or her parent, child or spouse, and includes a person living with that person as if they were married to each other;

"**former authorities**" *[definition of "former authorities" deleted by section 1(g) of [Act 2 of 2014](#)]*

"**Independent Commission**" means the Independent Commission for the Remuneration of Public Office-bearers established by section 2 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 ([Act No. 92 of 1997](#));

[definition of "Independent Commission" inserted by section 10 of [Act 22 of 2014](#)]

"**IBA**" *[definition of "IBA" deleted by section 2(d) of [Act 3 of 2006](#)]*

"**IBA Act**" *[definition of "IBA Act" deleted by section 2(d) of [Act 3 of 2006](#)]*

"**licence exemption**" has the meaning assigned to it in section [1](#) of the Electronic Communications Act;

[definition of "licence exemption" inserted by section 1(h) of [Act 2 of 2014](#)]

"**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;

[definition of "licensee" inserted by section 1(h) of [Act 2 of 2014](#)]

"**Minister**" means the Minister of Communications;

"**National Revenue Fund**" means the Fund referred to in section [213](#) of the [Constitution](#);

"**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;

[definition of "policy directions" inserted by section 1(i) of [Act 2 of 2014](#)]

"**Postal Services Act**" means the Postal Services Act, 1998 ([Act No. 124 of 1998](#));

[definition of "Postal Services Act" inserted by section 2(e) of [Act 3 of 2006](#)]

“**prescribe**” means prescribe by regulation;

“**President**” means the President of the Republic;

“**SATRA**” *[definition of “SATRA” deleted by section 2(f) of [Act 3 of 2006](#)]*

“**Telecommunications Act**” *[definition of “Telecommunications Act” deleted by section 1(j) of [Act 2 of 2014](#)]*

“**this Act**” includes any regulation made under the underlying statutes;

“**underlying statutes**” means the Broadcasting Act, Postal Services Act and Electronic Communications Act.

[definition of “underlying statutes” substituted by section 2(g) of [Act 3 of 2006](#)]

[section 1 amended by section 2(a) of [Act 3 of 2006](#)]

2. Object of Act

The object of this Act is to establish an independent authority which is to—

- (a) regulate broadcasting in the public interest and to ensure fairness and a diversity of views broadly representing South African society, as required by section 192 of the [Constitution](#);
- (b) regulate electronic communications in the public interest;
[paragraph (b) substituted by section 3(a) of [Act 3 of 2006](#)]
- (bA) regulate postal matters in the public interest in terms of the Postal Services Act; and
[paragraph (bA) inserted by section 3(b) of [Act 3 of 2006](#)]
- (c) achieve the objects contemplated in the underlying statutes.

Chapter II Independent Communications Authority of South Africa

3. Establishment of Independent Communications Authority of South Africa

- (1) There is hereby established a juristic person to be known as the Independent Communications Authority of South Africa.
- (1A) The Authority is deemed to be the Regulator contemplated in the Postal Services Act.
[subsection (1A) inserted by section 4 of [Act 3 of 2006](#)]
- (2) The Authority acts through the Council contemplated in section 5.
- (3) The Authority is independent, and subject only to the [Constitution](#) and the law, and must be impartial and must perform its functions without fear, favour or prejudice.
- (4) The Authority must function without any political or commercial interference.
- (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.
[subsection (5) added by section 2 of [Act 2 of 2014](#)]

4. Functions of Authority and chairperson

- (1) The Authority—
 - (a) must exercise the powers and perform the duties conferred and imposed upon it by this Act, the underlying statutes and any other applicable law;
[paragraph (a) substituted by section 3(a) of Act 2 of 2014]
 - (b) *[paragraph (b) omitted by section 5 of Act 3 of 2006]*
 - (c) subject to section 231 of the Constitution, must act in a manner that is consistent with the obligations of the Republic under any applicable international agreement.
- (2) The Authority is subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999).
- (3) Without derogating from the generality of subsections (1) and (2), the Authority—
 - (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;
[paragraph (a) substituted by section 3(c) of Act 2 of 2014]
 - (b) must monitor the broadcasting, postal and electronic communications sectors to ensure compliance with this Act and the underlying statutes;
[paragraph (b) substituted by section 3(c) of Act 2 of 2014]
 - (c) must 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;
[paragraph (c) substituted by section 3(c) of Act 2 of 2014]
 - (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;
[paragraph (d) substituted by section 3(c) of Act 2 of 2014]
 - (e) may grant, renew, amend, transfer and revoke licenses in accordance with the provisions of this Act and the underlying statutes;
[paragraph (e) substituted by section 3(c) of Act 2 of 2014]
 - (f) must approve technical parameters and transmitter and transmission characteristics to be used by licensees;
 - (g) may, by notice in writing, direct the holder of a licence in terms of the underlying statutes to produce or furnish to the Authority, at a time and place specified in the notice, any documents and information specified in such notice and relating to any matter in respect of which a duty or obligation is imposed on such licensee by this Act or the underlying statutes;
 - (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;
[paragraph (h) substituted by section 3(d) of Act 2 of 2014]
 - (i) may attend conferences convened by the relevant United Nations Specialised Agencies and any other bodies and, where applicable, must implement any decisions adopted by such Agencies and other bodies to which the Republic is a party;

- (j) may make regulations on any matter consistent with the objects of this Act and the underlying statutes or that are incidental or necessary for the performance of the functions of the Authority;
 - (k) may make regulations on empowerment requirements to promote broad-based black economic empowerment;
[paragraph (k) substituted by section 3(e) of Act 2 of 2014]
 - (l) may inspect electronic communications apparatus used for electronic communications;
[paragraph (l) substituted by section 3(e) of Act 2 of 2014]
 - (m) may undertake inquiries on any matter within its jurisdiction;
 - (n) must investigate and adjudicate complaints submitted to the Authority in terms of this Act, the underlying statutes, and licence conditions;
[paragraph (n) substituted by section 3(f) of Act 2 of 2014]
 - (o) may make recommendations to the Minister on matters dealt with or to be dealt with in the Electronic Transactions Act;
[paragraph (o) added by section 3(g) of Act 2 of 2014]
 - (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
[paragraph (p) added by section 3(g) of Act 2 of 2014]
 - (q) must exercise the powers and perform the duties of the Authority in terms of the Postal Services Act.
[paragraph (q) added by section 3(g) of Act 2 of 2014]
- [subsection (3) amended by section 3(b) of Act 2 of 2014]*
- (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.*[subsection (3A) inserted by section 3(h) of Act 2 of 2014]*
- (4) (a) Subject to subsection (2), the Council may in writing delegate any power, function or duty of the Authority in terms of this Act or the underlying statutes to—
 - (i) any councillor;
 - (ii) any committee of the Council established in terms of section 17; or
 - (iii) the chief executive officer appointed in terms of section 14.
 - (b) The power to make regulations may not be delegated in terms of paragraph (a).
 - (c) A power, function or duty delegated to the chief executive officer may be performed by any other staff member of the Authority authorised by the chief executive officer, except where precluded by the terms of such delegation.

- (d) Subject to paragraph (e), a delegation in terms of paragraph (a) or (c)—
 - (i) is subject to such conditions as may be determined by the Council or chief executive officer, as the case may be; and
 - (ii) may at any time be amended or revoked.
 - (e) The Council or chief executive officer, as the case may be, is not divested of any power, function or duty or relieved of any duty which it may have delegated in terms of paragraph (a) or (c) and may amend or revoke any decision made in terms of such delegation except where any licence will be affected by the revocation or the amendment of the decision.
 - (f) The power to grant, renew, amend, revoke or transfer any individual licence may not be delegated to a councillor or to a committee of the Council.
[paragraph (f) substituted by section 3(i) of Act 2 of 2014]
 - (g) Notwithstanding the provisions of this section, any councillor or committee delegated with any power or duty of the Authority in terms of this Act, subject to paragraph (f) or the underlying statutes, must submit a report on the exercise and performance of that power and duty to the Council.
[paragraph (g) substituted by section 3(i) of Act 2 of 2014]
 - (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.
[paragraph (h) added by section 3(j) of Act 2 of 2014]
- (5) The chairperson of the Council must—
- (a) provide overall leadership to the Council;
 - (b) manage the activities of the councillors; and
 - (c) perform any function assigned to him or her in terms of any law.

[section 4 substituted by section 5 of Act 3 of 2006]

4A. Register of licences

- (1) The Authority must keep a register in which it must record all licences granted and amended in terms of the underlying statutes and any transfer of such licences.
- (2) The register referred to in subsection (1) must be open to inspection by the public at the premises and during the normal office hours of the Authority.
- (3) The Authority must at the request of an interested person and on payment of the prescribed fee furnish such person with a copy of or extract from any part of the register.

[section 4A inserted by section 6 of Act 3 of 2006]

4B. Inquiries by Authority

- (1) The Authority may conduct an inquiry into any matter with regard to—
 - (a) the achievement of the objects of this Act or the underlying statutes;
 - (b) regulations and guidelines made in terms of this Act or the underlying statutes;
 - (c) compliance by applicable persons with this Act and the underlying statutes;

- (d) compliance with the terms and conditions of any licence by the holder of such licence issued pursuant to the underlying statutes; and
 - (e) the exercise and performance of its powers, functions and duties in terms of this Act or the underlying statutes.
- (2) The Authority must, in the *Gazette*, give notice of its intention to conduct an inquiry and such notice must indicate the purpose of the inquiry and invite interested persons to—
- (a) submit written representations 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
[paragraph (a) substituted by section 4(a) of Act 2 of 2014]
 - (b) indicate in their written representations whether they require an opportunity to make oral representations to the Authority.
- (3) Written representations made pursuant to a notice referred to in subsection (2) must, subject to subsection (5), be open to inspection by the public at the premises and during the normal office hours of the Authority.
- (4) The Authority must, when so requested by any person and upon payment of the prescribed fee, provide such person with a copy of or extract from any representation made.
- (5) Subject to section 4D, the Authority may, at the request of any person making a written representation, determine that any document or information that is commercially sensitive or any other matter reasonably justifying confidentiality may not be open to inspection by the public, if such document or information can be separated from the written representation or other documents in question.
- (6) (a) The Authority must advise persons contemplated in subsection (2)(b) of the place where and time when oral representations may be made.
- (b) Oral representations must, subject to section 4C, be open to the public.
- (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.
[subsection (7) added by section 4(b) of Act 2 of 2014]
- (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.
[subsection (8) added by section 4(b) of Act 2 of 2014]
- (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.
[subsection (9) added by section 4(b) of Act 2 of 2014]

[section 4B inserted by section 6 of Act 3 of 2006]

4C. Conduct of inquiries

- (1) Subject to this Act, a councillor presiding at an inquiry conducted in terms of section [4B](#) must determine the procedure at such inquiry.
- (2) The Authority may, subject to section [4D](#) and any other law governing privilege, for the purpose of an inquiry—
 - (a) through the person presiding at such inquiry, by notice in writing in the prescribed form, require from any person such particulars and information as may be reasonably necessary;
 - (b) by notice in writing in the prescribed form under the hand of a councillor, addressed and delivered by an authorised person or a sheriff to any person, require such person to—
 - (i) appear before it at the date, time and place specified in such notice;
 - (ii) make a statement; and
 - (iii) 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
 - (c) through the person presiding at such inquiry and after explaining applicable rights under the [Constitution](#) and this section, question any person referred to in paragraph (b) in connection with any matter which may be reasonably necessary.

[subsection (2) amended by section 5(a) of [Act 2 of 2014](#)]

- (3) The Authority may retain for a reasonable period for the purposes of this Act or the underlying statutes any document or object submitted to it.
- (4) A person may have a legal representative or other adviser present when such person—
 - (a) makes an oral representation, contemplated in section [4B\(2\)\(b\)](#), to the Authority; and
 - (b) appears before, makes a statement to and is questioned by the Authority as contemplated in subsection (2).
- (5) The person presiding at an inquiry may, after hearing representations from any person present at and connected to the inquiry and having regard to—
 - (a) any reasonable apprehension of prejudice or harm to the person to be questioned;
 - (b) the rights of reply and rebuttal of any person whose rights may be adversely affected; and
 - (c) whether it is in the interest of the achievement of the objects of the inquiry,determine that any part of the inquiry be held behind closed doors and direct that the public or any class thereof may not be present.
- (6) The Authority must, within 90 days from the date of conclusion of the inquiry—
 - (a) make a finding on the subject matter of the inquiry; and
 - (b) publish in the *Gazette*—
 - (i) a summary of its finding; and
 - (ii) the details of the place where and the time when the finding and the reasons for the finding can be obtained by the public.

[subsection (6) amended by section 5(b) of [Act 2 of 2014](#)]

[section [4C](#) inserted by section 6 of [Act 3 of 2006](#)]

4D. Confidential information

- (1)
 - (a) When a person submits information to the Authority, such person may request that specific information be treated as confidential information.
 - (b) The request for confidentiality must be accompanied by a written statement explaining why the specific information should be treated as confidential.
- (2) Within 14 days of receiving a request for confidentiality, the Authority must make a determination whether or not confidentiality will be granted and provide the person contemplated in subsection (1) with written reasons for such determination.
- (3) Should the Authority determine that a request for confidentiality cannot be acceded to, the party providing the information must be given an opportunity to withdraw the information that is the subject of the confidentiality request.
- (4) When considering a request contemplated in subsection (1), the Authority must treat the following information, as confidential information, namely—
 - (a) trade secrets of such person;
 - (b) financial, commercial, scientific or technical information, other than trade secrets, the disclosure of which is likely to cause harm to the commercial or financial interests of such person;
 - (c) information of which the disclosure could reasonably be expected—
 - (i) to put the person at a disadvantage in contractual or other negotiations; or
 - (ii) to prejudice the person in commercial competition;
 - (d) the names of prospective employees; and
 - (e) business plans of a licensee.
- (5) A determination of confidentiality may not be made in respect of a document or information that is in the public domain or is required to be disclosed by operation of law or a court order.

[section 4D inserted by section 6 of [Act 3 of 2006](#)]

5. **Constitution of and appointment of councillors to Council**

- (1) The Council consists of a chairperson and eight other councillors appointed by the Minister upon the approval by the National Assembly, according to the following principles, namely—
 - (a) participation by the public in the nomination process;
 - (b) transparency and openness; and
 - (c) the publication of a shortlist of candidates for appointment, with due regard to subsection (3) and section 6.

[subsection (1) substituted by section 7(a) of [Act 3 of 2006](#)]

- (1A)
 - (a) The National Assembly must submit to the Minister a list of suitable candidates at least one and a half times the number of councillors to be appointed.
 - (b) The National Assembly may invite technical experts to assist in the selection, evaluation and appointment processes of councillors.
 - (c) The experts contemplated in paragraph (b) may include:
 - (i) a person with knowledge of and experience in the industry;

- (ii) a person with a legal background, knowledge of the ICT sector and competition related matters;
- (iii) an academic in the field of electronic communications;
- (iv) a representative from the labour sector; and
- (v) a representative of consumer interests.

[subsection (1A) inserted by section 7(b) of [Act 3 of 2006](#)]

- (1B) (a) The Minister must recommend to the National Assembly, from the list contemplated in subsection (1A), persons whom he or she proposes to appoint to serve on the Council.
- (b) If the National Assembly is not satisfied that the persons recommended for appointment by the Minister comply with subsection (3), the National Assembly may request the Minister to review his or her recommendation.
- (c) Following approval by the National Assembly of the Minister's recommendation for appointment the Minister must appoint the Chairperson or other councillor by notice in the *Gazette*.

[subsection (1B) inserted by section 7(b) of [Act 3 of 2006](#)]

- (2) 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.

[subsection (2) substituted by section 7(c) of [Act 3 of 2006](#) and by section 6(a) of [Act 2 of 2014](#)]

- (3) Persons appointed to the Council must be persons who—
 - (a) are committed to fairness, freedom of expression, openness and accountability on the part of those entrusted with the governance of a public service; and
 - (b) when viewed collectively—
 - (i) are representative of a broad cross-section of the population of the Republic; and
 - (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, information technology, content in any form, consumer protection, education, economics, finance or any other relevant expertise or qualifications.

[subparagraph (ii) substituted by section 7(d) of [Act 3 of 2006](#), and by section 6(b) of [Act 2 of 2014](#)]

- (4) A councillor appointed under this section must, before he or she begins to perform his or her functions, take an oath or affirm that he or she—
 - (a) is committed to fairness, freedom of expression, openness and accountability; and
 - (b) will uphold and protect the [Constitution](#) and the laws of the Republic, including this Act and the underlying statutes.

6. Disqualification

- (1) A person may not be appointed as a councillor if he or she—
 - (a) is not a citizen of the Republic;
 - (b) is not permanently resident in the Republic;
 - (c) is a public servant or the holder of any other remunerated position under the State;

- (d) is a member of Parliament, any provincial legislature or any municipal council;
 - (e) is an office-bearer or employee of any party, movement or organisation of a party-political nature;
 - (f) or his or her family member has a direct or indirect financial interest in the electronic communications, postal or broadcasting industry;
[paragraph (f) substituted by section 8 of Act 3 of 2006]
 - (g) 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 contemplated in paragraph (f);
 - (h) is an unrehabilitated insolvent;
 - (i) has been declared by a court to be mentally ill or disordered;
 - (j) has at any time been convicted, whether in the Republic or elsewhere, of—
 - (i) theft, fraud, forgery or uttering a forged document, perjury, an offence in terms of the Prevention of Corruption Act, 1958 ([Act No. 6 of 1958](#)), the Corruption Act, 1992 ([Act 94 of 1992](#)), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or any other offence involving dishonesty; or
[subparagraph (i) substituted by section 36 of Act 12 of 2004]
 - (ii) an offence under this Act or the underlying statutes;
 - (k) has been sentenced, after the commencement of the [Constitution of the Republic of South Africa](#), 1993 ([Act No. 200 of 1993](#)), to a period of imprisonment of not less than one year without the option of a fine; or
 - (l) has at any time been removed from an office of trust on account of misconduct.
- (2) A person who is subject to a disqualification contemplated in subsection (1)(b) to (i) may be nominated for appointment as a councillor, but may only be appointed if at the time of such appointment he or she is no longer subject to that disqualification.

6A. Performance management system

- (1) The Minister must, in consultation with the National Assembly, establish a performance management system to monitor and evaluate the performance of the chairperson, councillors and the Council, individually and collectively.
[subsection (1) substituted by section 7(a) of Act 2 of 2014]
- (2) The performance management system must—
 - (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);
[paragraph (a) substituted by section 7(b) of Act 2 of 2014]
 - (b) set measurable performance targets;
[paragraph (b) amended by section 7(c) of Act 2 of 2014]
 - (c) set a procedure to measure and review performance at least once a year; and
[paragraph (c) amended by section 7(c) of Act 2 of 2014]

- (d) be reviewed at least once a year.

[paragraph (d) added by section 7(c) of [Act 2 of 2014](#)]

- (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, other councillor, the Council and the Minister.

[subsection (3) substituted by section 7(d) of [Act 2 of 2014](#)]

- (4) The evaluation of the performance of the chairperson, other councillor and the Council must be conducted by a panel constituted by the Minister, in consultation with the National Assembly, for that purpose.

[subsection (4) substituted by section 7(d) of [Act 2 of 2014](#)]

- (5) The panel contemplated in subsection (4) must, after an evaluation of the chairperson, other councillor, submit a report to the National Assembly for consideration.

[subsection (5) substituted by section 7(d) of [Act 2 of 2014](#)]

[section 6A inserted by section 9 of [Act 3 of 2006](#)]

7. Terms of office

- (1) (a) The chairperson holds office for a period of five years as from the date of his or her appointment.

- (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.

[paragraph (b) substituted by section 8(a) of [Act 2 of 2014](#)]

[subsection (1) substituted by section 10(a) of [Act 3 of 2006](#)]

- (2) (a) The other councillors hold office for a period of four years as from the date of their appointment.

[paragraph (a) substituted by section 10(b) of [Act 3 of 2006](#)]

[paragraph (b) deleted by section 10(c) of [Act 3 of 2006](#)]

- (3) A councillor may at any time, upon at least three months' written notice tendered to the Minister, resign from office.

[subsection (3) substituted by section 10(d) of [Act 3 of 2006](#)]

- (4) Notwithstanding the provisions of subsections (1) and (2), the chairperson or a councillor remains in office after expiry of his or her term of office until the commencement of the term of office of his or her successor, but the extended term of office may not exceed 45 days.

[subsection (4) substituted by section 8(b) of [Act 2 of 2014](#)]

- (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.

[subsection (5) substituted by section 8(b) of [Act 2 of 2014](#)]

- (6) A councillor—

- (a) serves in a full-time capacity to the exclusion of any other remunerative employment, occupation or office;

- (b) must not interfere with the exercise by any other councillor of his or her functions in terms of this Act or the underlying statutes; and

- (c) must not create a conflict of interests between his or her other activities and his or her office as councillor.

[subsection (6) substituted by section 8(b) of Act 2 of 2014]

- (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).

[subsection (7) added by section 8(c) of Act 2 of 2014]

8. Removal from office

- (1) Subject to subsection (2), a councillor may be removed from office on account of—
 - (a) misconduct;
 - (b) inability to perform the duties of his or her office efficiently;
 - (c) absence from three consecutive meetings of the Council without the permission of the Council, except on good cause shown;
 - (d) a contravention of section 7(6);
 - (e) failure to disclose an interest in terms of section 12(2)(a) or voting or attendance at, or participation in, proceedings of the Council while having an interest contemplated in section 12(1);
[paragraph (e) amended by section 11(a) of Act 3 of 2006]
 - (f) his or her becoming disqualified as contemplated in section 6(1); or
[paragraph (f) amended by section 11(b) of Act 3 of 2006]
 - (g) refusal to sign a performance agreement.
[paragraph (g) added by section 11(c) of Act 3 of 2006]
- (2) A councillor may be removed from office only on—
 - (a) a finding to that effect by the National Assembly; and
 - (b) the adoption by the National Assembly of a resolution calling for that councillor's removal from office.
- (3) The Minister—
 - (a) may suspend a councillor from office at any time after the start of the proceedings of the National Assembly for the removal of that councillor;
 - (b) must remove a councillor from office upon adoption by the National Assembly of the resolution calling for that councillor's removal.

- (c) must suspend a councillor from office at any time after the start of the proceedings of the National Assembly for the removal of that councillor upon the request of the National Assembly.

[paragraph (c) added by section 11(e) of [Act 3 of 2006](#)]

[subsection (3) amended by section 11(d) of [Act 3 of 2006](#)]

9. Vacancies

- (1) A vacancy in the Council occurs if a councillor—
 - (a) becomes subject to a disqualification referred to in section 6;
 - (b) tenders his or her resignation as contemplated in section 7(3) and the resignation takes effect;
 - (c) is removed from office in terms of section 8;
 - (d) dies; or
 - (e) becomes permanently incapable of doing his or her work.
- (2) (a) Where a vacancy has arisen as contemplated in subsection (1), the procedure contemplated in section 5 applies.
- (b) Any councillor appointed under this subsection holds office for the rest of the period of the predecessor's term of office, unless the Minister, following approval by the National Assembly, directs that such councillor holds office for a longer period which may not exceed one subsequent term of four years.

[paragraph (b) substituted by section 12 of [Act 3 of 2006](#)]

10. Salary, allowances and benefits of councillors of Council

- (1) The chairperson and other councillors are entitled to the salary, allowances and benefits—
 - (a) as determined by the President, from time to time, by notice in the *Gazette*, after taking into consideration the recommendations of the Independent Commission; and
 - (b) approved by the National Assembly in terms of subsection (5).
- (2) The salary of the councillors may not be reduced, nor may the allowances and benefits be adversely altered, during their term of office.
- (3) The Independent Commission shall, when investigating or considering the salary, allowances and benefits of councillors, consult with the Minister and the Cabinet member responsible for finance.
- (4) A notice in terms of subsection (1)(a) or any provision thereof may commence with effect from a date specified in the notice, which date may not be more than one year before the date of publication of the notice.
- (5) (a) A notice issued under subsection (1)(a) shall be submitted to the National Assembly for approval before publication thereof.
- (b) The National Assembly shall, by resolution—
 - (i) approve the notice, whether in whole or in part; or
 - (ii) disapprove the notice.

[section 10 substituted by section 11 of [Act 22 of 2014](#)]

11. Meetings of Council

- (1) Meetings of the Council must be held at least once a month at such times and places as the Council may determine.

[subsection (1) substituted by section 9(a) of Act 2 of 2014]

- (2)
 - (a) The chairperson may at any time convene a special meeting of the Council, which must be held at such time and place as the chairperson determines.
 - (b) If at least two councillors request a special meeting in writing, the chairperson must convene such a meeting within seven days after receiving the request.
 - (c) If the chairperson fails to convene a special meeting within seven days after receiving the request, the councillors concerned may convene a special meeting.
 - (3) The quorum for any meeting of the Council is a majority of the councillors presently serving as councillors, including the chairperson or an acting chairperson referred to in section 5(2).
- [subsection (3) substituted by section 9(b) of Act 2 of 2014]*
- (4)
 - (a) Subject to subsection (3), a decision of the Council is taken by resolution agreed to by the majority of councillors at any meeting of the Council.
 - (b) In the event of an equality of votes regarding any matter the chairperson has a casting vote in addition to his or her deliberative vote.
 - (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.

[subsection (5) added by section 9(c) of Act 2 of 2014]

11A. Minutes of meetings

- (1) The Council and a committee contemplated in sections 17 and 17A must prepare and keep minutes of the proceedings of every meeting of the Council or committee and cause copies of such minutes to be circulated to all councillors or members of such committee.
- (2) The minutes prepared, when confirmed by a subsequent meeting and signed by the person presiding at such meeting, must be regarded as a true and correct record of the proceedings which they purport to minute and is *prima facie* evidence at proceedings before a court of law or any tribunal or in terms of this Act or the underlying statutes.
- (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.

[subsection (3) added by section 10 of Act 2 of 2014]

[section 11A inserted by section 13 of Act 3 of 2006]

11B. Code of Ethics

- (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) 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
 - (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 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.

[section 11(B) inserted by section 11 of [Act 2 of 2014](#)]

12. Conflicting interests

- (1) A councillor 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—
- (a) in relation to an application relating to a licence, 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 applicant or of any person who made representations in relation to the application; or
 - (b) in relation to any matter before the Council, he or she has any interest which may preclude him or her from performing his or her functions as a councillor in a fair, unbiased and proper manner.

[subsection (1) substituted by section 12 of [Act 2 of 2014](#)]

- (2) (a) If, during the course of any proceedings before the Council, there is reason to believe that a councillor has any interest contemplated in subsection (1), that councillor 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 councillors to discuss the matter and determine whether or not that councillor should be allowed to participate in the proceedings.
- (b) The disclosure, and the decision taken by the remaining councillors, must be recorded in the minutes of the proceedings in question.
- (3) If any councillor fails to disclose any interest as required by subsection (2) or, subject to that subsection, if he or she is present at the place where a meeting of the Council is held or in any manner participates in the proceedings of the Council, the relevant proceedings of the Council shall be null and void.
- (4) A councillor 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—
- (a) contravenes subsection (1); or

- (b) fails to disclose any interest or fails to leave the meeting or hearing as required by subsection (2).

[subsection (4) amended by section 12 of [Act 2 of 2014](#)]

13. Validity of proceedings

Subject to section 12, a decision taken by the Council or an act performed under that decision is not invalid merely by reason of—

- (a) any irregularity in the appointment of a councillor;
- (b) a vacancy in the Council; or
- (c) the fact that any person not entitled to sit as a councillor sat as such at the time when the decision was taken,

provided such decision was taken by a majority of the councillors present at the time and entitled so to sit, and those councillors at the time constituted a quorum.

14. Staff

- (1) 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—

- (a) a suitably qualified and experienced person as chief executive officer of the Authority for the purpose of assisting the Authority, subject to the Council's direction and supervision, in the performance of all financial and administrative functions in terms of this Act and the underlying statutes, work arising from the administration of this Act and the underlying statutes and to exercise any power delegated by the Council to him or her; and
- (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.

[paragraph (b) substituted by section 13(b) of [Act 2 of 2014](#)]

[subsection (1) substituted by section 14(a) of [Act 3 of 2006](#) and amended by section 13(a) of [Act 2 of 2014](#)]

- (1A) (a) The chief executive officer may appoint a senior official as acting chief executive officer to perform the functions of the chief executive officer in his or her absence.
- (b) A councillor may not be appointed as acting chief executive officer.
- (c) In the event that the chief executive officer is absent for a longer period the Council must appoint an acting chief executive officer.

[subsection (1A) inserted by section 14(b) of [Act 3 of 2006](#)]

- (2) The Council must, in the appointment of its staff—
 - (a) provide for the advancement of persons disadvantaged by unfair discrimination, with the aim that its staff, when viewed collectively, represents a broad cross-section of the population of the Republic;
 - (b) subject to paragraph (a), apply equal opportunity employment practices.

- (3) The Authority may pay to the persons in its employ such remuneration and allowances and provide them with such pension and other employment benefits as are consistent with that paid in the public sector.
- (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](#).

[subsection (4) added by section 13(c) of [Act 2 of 2014](#)]

14A. Appointment of experts

- (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.

[subsection (1) substituted by section 14(a) of [Act 2 of 2014](#)]

- (2) *[subsection (2) deleted by section 14(b) of [Act 2 of 2014](#)]*

- (3) The Authority and an expert must enter into a written agreement setting out the expert's terms and conditions of employment.

[section [14A](#) inserted by section 15 of [Act 3 of 2006](#)]

14B. ***

[section [14B](#) inserted by section 15 of [Act 3 of 2006](#) and repealed by section 15 of [Act 2 of 2014](#)]

14C. Confidentiality

- (1) No councillor or person in the employ of the Authority may disclose any information with regard to any matter which may come to his or her knowledge in the performance of any function in terms of this Act or the underlying statutes or by virtue of the office held by him or her, except—

- (a) in so far as the [Constitution](#), this Act, the underlying statutes or any other law require or provide for the access to information relating to such matter;

- (b) subject to paragraph (a), in so far as may be necessary for the due and proper performance of any function in terms of this Act or the underlying statutes;

[paragraph (b) amended by section 16 of [Act 2 of 2014](#)]

- (c) when so ordered by a competent court of law; or

[paragraph (c) amended by section 16 of [Act 2 of 2014](#)]

- (d) where required to do so in terms of section [12](#).

[paragraph (d) added by section 16 of [Act 2 of 2014](#)]

- (2) Any person performing any task or function for or on behalf of the Authority, or providing any advice to the Authority, is bound by the provisions of section [14](#).

[section [14C](#) inserted by section 15 of [Act 3 of 2006](#)]

14D. ***

[section [14D](#) inserted by section 15 of [Act 3 of 2006](#) and repealed by section 17 of [Act 2 of 2014](#)]

15. Financing of and accounting by Authority

- (1) The Authority is financed from money appropriated by Parliament.

- (1A) The Authority may receive money determined in any other manner as may be agreed between the Minister and the Minister of Finance and approved by Cabinet.
- [subsection (1A) inserted by section 16 of [Act 3 of 2006](#)]*
- (2) The chief executive officer contemplated in section [14\(1\)\(a\)](#) is, in accordance with section [36](#) of the Public Finance Management Act, 1999 ([Act No. 1 of 1999](#)), the accounting officer of the Authority and charged with the responsibilities referred to in that Act which include, amongst others, responsibilities regarding auditing, financial control, budgetary control and reporting.
- (3) All revenue received by the Authority in a manner other than in accordance with subsection [\(1\)](#) must be paid into the National Revenue Fund within 30 days after receipt of such revenue.
- (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.
- [subsection (4) substituted by section 18 of [Act 2 of 2014](#)]*

15A. Annual plan

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.

[section [15A](#) inserted by section 19 of [Act 2 of 2014](#)]

16. Annual report

- (1) The Council must—
- (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
- [paragraph (a) substituted by section 20(a) of [Act 2 of 2014](#)]*
- (b) as soon as may be reasonably practicable after the end of each financial year but in any event within three months of the end of the financial year, supply the Minister with a copy of—
- (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](#);
- [subparagraph (i) substituted by section 20(b) of [Act 2 of 2014](#)]*
- (ii) the financial statements of the Authority referred to in section [40\(1\)\(e\)](#) of the Public Finance Management Act 1999 ([Act No. 1 of 1999](#)); and
- (iii) the Auditor-General's report on those statements.
- (2) For purposes of this section, the annual report referred to in subsection [\(1\)\(b\)\(i\)](#) must include, amongst others—
- (a) information regarding licences granted, renewed, amended, transferred, suspended or revoked; and
- (b) such other information as the Minister may in writing require.
- (3) Subject to subsection [\(1\)\(b\)](#), the chief executive officer must table 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 if Parliament is then sitting and, if Parliament is not sitting, within 14 days after the next ensuing sitting of Parliament.

[subsection (3) substituted by section 20(c) of [Act 2 of 2014](#)]

16A. Restriction on use of name or description implying connection with Authority

No person may apply to any venture, undertaking, business, company or other association or body, whether corporate or incorporate, a name or description signifying or implying some connection between such venture, undertaking, business, company or other association or body and the Authority, except with the consent of the Authority.

[section 16A inserted by section 17 of [Act 3 of 2006](#)]

Chapter III Committees

17. Standing and special committees

- (1) The Council may establish standing committees or special committees for such purposes as the Council may deem necessary with a view to assisting it in the effective exercise and performance of its powers and duties.
- (2) Each committee established in terms of this section must consist of—
 - (a) one or more councillors or any member of staff designated by the Council; and
[paragraph (a) substituted by section 18(a) of [Act 3 of 2006](#)]
 - (b) such additional members as the Council may determine.
- (3) The additional members referred to in subsection (2)(b) must be persons who—
 - (a) are not subject to any disqualification contemplated in section 6(1)(d) to (l); and
 - (b) on account of their expertise, qualifications and experience are suited to serve on the relevant committee.
- (4) The Council must appoint the chairperson of each committee.
[subsection (4) substituted by section 21(a) of [Act 2 of 2014](#)]
- (5) A committee must perform such functions as may be delegated or assigned to it.
- (6) The meetings of a committee (including any special meetings) must be convened by the chairperson, who determines the procedure at the meeting.
- (7) Section 11 is applicable, with the necessary changes, as regards the meetings of any committee.
- (8) The members of any committee, including the Complaints and Compliance Committee, who are not councillors or members of the staff of the Authority must be paid such remuneration and allowances as the Council determines.
[subsection (8) substituted by section 30 of [Act 64 of 2002](#) and by section 18(b) of [Act 3 of 2006](#)]
- (9) For purposes of subsection (8), the Council may differentiate between different committees and different members thereof.
- (10) A committee must submit a report on its activities to the Council if and when required or on the completion of its task.
[subsection (10) added by section 21(b) of [Act 2 of 2014](#)]

17A. Establishment of Complaints and Compliance Committee

- (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.

[subsection (1) substituted by section 22(a) of [Act 2 of 2014](#)]

- (1A) The Authority must appoint one of the members contemplated in subsection (1) as chairperson of the Complaints and Compliance Committee.

[subsection (1A) inserted by section 22(b) of [Act 2 of 2014](#)]

- (2) The chairperson of the Complaints and Compliance Committee must be—
- (a) a judge of the High Court of South Africa, whether in active service or not;
 - (b) an advocate or attorney with at least 10 years' appropriate experience; or
 - (c) a magistrate with at least 10 years' appropriate experience, whether in active service or not.
- (3) The chairperson of the Complaints and Compliance Committee must—
- (a) manage the work of the Complaints and Compliance Committee; and
 - (b) preside at hearings of the Complaints and Compliance Committee.
- (4) A member of the Complaints and Compliance Committee must be a fit and proper person and must—
- (a) have suitable qualifications and experience in communications, economics, electronic engineering, broadcasting, law, commerce, technology or public policy;
 - (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;

[paragraph (b) substituted by section 22(c) of [Act 2 of 2014](#)]

- (c) not be an office-bearer or an employee of any party, movement or organisation of a party-political nature;
- (d) not be an unrehabilitated insolvent;
- (e) not be mentally ill or disordered;
- (f) not have been convicted of an offence after the commencement of the [Constitution of the Republic of South Africa, 1993 \(Act No. 200 of 1993\)](#) and sentenced to imprisonment without the option of a fine; and
- (g) not be subject to any disqualification contemplated in section 6 and be subject to the provisions of section 12.

[section 17A inserted by section 19 of [Act 3 of 2006](#)]

17B. Functions of Complaints and Compliance Committee

The Complaints and Compliance Committee—

- (a) must investigate, and hear if appropriate, and make a finding on—
 - (i) all matters referred to it by the Authority;
 - (ii) complaints received by it; and

- (iii) allegations of non-compliance with this Act or the underlying statutes received by it; and
- (b) may make any recommendation to the Authority necessary or incidental to—
 - (i) the performance of the functions of the Authority in terms of this Act or the underlying statutes; or
 - (ii) achieving the objects of this Act and the underlying statutes.

[section 17B inserted by section 19 of [Act 3 of 2006](#)]

17C. Procedure of Complaints and Compliance Committee

- (1) (a) A person who has reason to believe that a licensee or another person is guilty of any non-compliance with—
 - (i) the terms and conditions of a licence;
 - (ii) 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.
- (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 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\(3\)\(n\)](#).

[subsection (1) substituted by section 23 of [Act 2 of 2014](#)]

- (2) Before the Complaints and Compliance Committee hears a matter it must—
 - (a) provide the licensee to the dispute with—
 - (i) a copy of the complaint where a complaint has been lodged; and
 - (ii) a notice setting out the nature of the alleged non-compliance;
 - (b) afford the licensee a reasonable opportunity to respond to the allegations in writing; and
 - (c) afford the complainant a reasonable opportunity to reply to such response in writing where a complaint has been lodged.
- (3) The Complaints and Compliance Committee must hear oral representations made by the parties referred to in subsection (2) and must permit such parties to be assisted by a legal representative or other adviser.
- (4) The Complaints and Compliance Committee may hold a pre-hearing conference for the purpose of giving direction to the parties regarding the procedure to be followed at a hearing and other relevant matters determined by the Complaints and Compliance Committee.
- (5) Notwithstanding this section, the Authority may prescribe procedures for the handling of urgent complaints and non-compliance matters.

- (6) Sections 4C(2), (4) and (5) and 4D apply with the necessary changes required by the context to a hearing conducted by the Complaints and Compliance Committee.
- (7)
 - (a) The Complaints and Compliance Committee must keep a record of all complaints received by it, all notices contemplated in subsection (2) issued by it and a record of all its proceedings and findings.
 - (b) Such record must be open to inspection by the public at the premises and during the normal office hours of the Authority.
 - (c) The Authority must, 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.

[section 17C inserted by section 19 of Act 3 of 2006]

17D. Findings by Complaints and Compliance Committee

- (1) The Complaints and Compliance Committee must make a finding within 90 days from the date of conclusion of a hearing contemplated in section 17B.
- (2) The Complaints and Compliance Committee must recommend to the Authority what action by the Authority should be taken against a licensee, if any.
- (3) The Complaints and Compliance Committee must submit its finding and recommendations contemplated in subsections (1) and (2) and a record of such proceedings to the Authority for a decision regarding the action to be taken by the Authority.

[section 17D inserted by section 19 of Act 3 of 2006]

17E. Decision by Authority

- (1) When making a decision contemplated in section 17D, the Authority must take all relevant matters into account, including—
 - (a) the recommendations of the Complaints and Compliance Committee;
 - (b) the nature and gravity of the non-compliance;
 - (c) the consequences of the non-compliance;
 - (d) the circumstances under which the non-compliance occurred;
 - (e) the steps taken by the licensee to remedy the complaint; and
 - (f) the steps taken by the licensee to ensure that similar complaints will not be lodged in the future.
- (2) The Complaints and Compliance Committee may recommend that one or more of the following orders be issued by the Authority, namely—
 - (a) direct the licensee to desist from any further contravention;
 - (b) direct the licensee to pay as a fine the amount prescribed by the Authority in respect of such non-compliance or non-adherence;
 - (c) direct the licensee to take such remedial or other steps in conflict with this Act or the underlying statutes as may be recommended by the Complaints and Compliance Committee;
 - (d) where the licensee has repeatedly been found guilty of material violations—
 - (i) prohibit the licensee from providing the licensed service for such period as may be recommended by the Complaints and Compliance committee, subject to the proviso that a broadcasting or communications service, as applicable, must not be suspended in terms of this subsection for a period in excess of 30 days; or

- (ii) amend or revoke his or her licence; and
- (e) direct the licensee to comply with any settlement.
- (3) The Complaints and Compliance Committee must submit its finding and recommendations contemplated in subsections (1) and (2) and a record of its proceedings to the Authority for a decision regarding the action to be taken by the Authority within 60 days.
- (4) The Authority must make a decision permitted by this Act or the underlying statutes and provide persons affected by such decision with written reasons therefor.

[section 17E inserted by section 19 of [Act 3 of 2006](#)]

17F. Inspectors

- (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.
[subsection (1) substituted by section 24(a) of [Act 2 of 2014](#)]
- (2) Any person who is not in the full-time service of the Authority and who is appointed as an inspector pursuant to subsection (1) must be paid such remuneration as the Authority may determine.
- (3) An inspector appointed in terms of subsection (1) must be provided with a certificate of appointment stating that he or she has been appointed as an inspector in terms of this Act signed by or on behalf of the chairperson of the Council.
- (4) When an inspector performs a function in terms of this Act, he or she must be in possession of such certificate of appointment and show it at the request of any person affected by the performance of such function.
- (5) An inspector must, when instructed to do so by the Council—
 - (a) monitor compliance by licensees 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—
 - (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 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;
 - (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, electronic communications or postal services;
 - (e) refer all complaints to the Complaints and Compliance Committee for consideration;
 - (f) appear before the Complaints and Compliance Committee when requested by such committee; and
 - (g) co-operate with law enforcement officials when performing his or her functions.

[subsection (5) substituted by section 24(b) of [Act 2 of 2014](#)]

- (6) The Authority may prescribe the procedures to be followed by inspectors.

[section 17F inserted by section 19 of [Act 3 of 2006](#)]

17G. Power of inspector to enter, search and seize

- (1) The Criminal Procedure Act, 1977 ([Act No. 51 of 1977](#)), applies with the changes required by the context to entries, searches and seizures by inspectors in terms of this Act.

[subsection (1) substituted by section 25(a) of [Act 2 of 2014](#)]

- (2) 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—

- (a) demand the production of a licence or any other document issued in terms of the underlying statutes for inspection;

[paragraph (a) substituted by section 25(c) of [Act 2 of 2014](#)]

- (b) search such premises or the owner or person in control of such premises;

- (c) inspect any book, record or other document found on such premises and make copies thereof;

- (d) inspect any radio apparatus, studio, plant, transmitters, apparatus, other equipment or other broadcasting, electronic communications or postal service facilities on the premises;

[paragraph (d) substituted by section 25(d) of [Act 2 of 2014](#)]

- (e) inspect anything referred to in paragraph (c) which is in the possession of or used by, or suspected of being in the possession of or being used by, any person in contravention of this Act, the underlying statutes or an applicable licence;

- (f) request the owner or person in control of such premises or any person on such premises who may reasonably be expected to have the necessary information to furnish information regarding a document or thing; and

[paragraph (f) amended by section 25(e) of [Act 2 of 2014](#)]

- (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.

[paragraph (g) substituted by section 25(f) of [Act 2 of 2014](#)]

[subsection (2) amended by section 25(b) of [Act 2 of 2014](#)]

- (3) An inspector requesting information from a person in terms of subsection (2) must, before requesting such information, inform the person in a language that the person understands of—

- (a) the right to remain silent; and
(b) the consequences of not remaining silent.

- (4) (a) A magistrate or judge may, upon request by an inspector, but subject to subsection (b), issue a warrant to such inspector.

[paragraph (a) substituted by section 25(g) of [Act 2 of 2014](#)]

- (b) A magistrate or judge must issue a warrant if it appears to him or her, from information on oath or affirmation, that there are reasonable grounds for believing that a document or thing which has a bearing on the alleged non-compliance or other act referred to in section 17F—
- (i) is or will be in the possession or under the control of any person or on or in any premises within the area of jurisdiction of that magistrate or judge;
[subparagraph (i) amended by section 25(h) of Act 2 of 2014]
 - (ii) cannot reasonably be obtained otherwise; and
[subparagraph (ii) amended by section 25(h) of Act 2 of 2014]
 - (iii) is material to the investigation by the inspector.
[subparagraph (iii) added by section 25(h) of Act 2 of 2014]
- (5) (a) The warrant contemplated in subsection (4) must identify the premises that may be entered and searched and specify which of the acts contemplated in subsection (2)(a) to (g) may be performed thereunder by the inspector to whom it is issued.
- (b) Such warrant may be issued on any day and is valid until—
- (i) it is executed;
 - (ii) it is cancelled by the person who issued it or, if such person is not available, by a person with similar authority;
 - (iii) the expiry of one month from the day of its issue; or
 - (iv) the purpose for which the warrant was issued no longer exists.
- (6) An inspector must, immediately before commencing the execution of a warrant issued in terms of subsection (4)—
- (a) identify himself or herself to the owner or person in control of the premises referred to in such warrant; and
 - (b) hand to such person a copy of the warrant.
- (7) An inspector who removes a document or thing from any premises under this section must issue a receipt to the person who is the owner or in possession or in control thereof.
- (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.
[subsection (8) added by section 25(i) of Act 2 of 2014]
- [section 17G inserted by section 19 of Act 3 of 2006]*

17H. Offences and penalties

- (1) A person is guilty of an offence if that person—
- (a) fails to comply with a notice issued under section 4(3)(g) or 4C(2)(a) or (b);
 - (b) fails to answer a question put to him or her in terms of section 4C(2)(c);
 - (c) makes a false statement before the Authority, including before the Complaints and Compliance Committee, on any matter, knowing such statement to be false;
[paragraph (c) substituted by section 26(a) of Act 2 of 2014]
 - (d) contravenes section 14C;

- (e) contravenes section [16A](#);
 - (f) fails to comply with a decision made by the Authority in terms of section [17E](#); or
 - (g)
 - (i) fails to comply with a demand of an inspector appointed in terms of section [17E](#);
 - (ii) hinders or obstructs such inspector in the exercise of his or her powers; or
 - (iii) falsely holds himself or herself out as an inspector.
- (2) A person convicted of an offence in terms of subsection [\(1\)](#) is liable, in the case of a contravention of—
- (a) subsection [\(1\)\(a\)](#), [\(b\)](#) or [\(c\)](#), to a fine not exceeding R5 000 000;
 - (b) subsection [\(1\)\(d\)](#), to a fine not exceeding R1 000 000 or to imprisonment not exceeding two years;
 - (c) subsection [\(1\)\(e\)](#) or [\(f\)](#), to a fine not exceeding R1 000 000 or to imprisonment not exceeding one year;
 - (d) subsection [\(1\)\(g\)](#), to a fine not exceeding R500 000.
- [subsection [\(2\)](#) substituted by section 26(b) of [Act 2 of 2014](#)]*
- (3) Any person who—
- (a) in applying for a licence in terms of this Act or the underlying statutes or for the renewal, amendment or transfer of such licence, in his or her application furnishes any false or misleading information or particulars or makes any statement which is false or misleading in any material respect, or who wilfully fails to disclose any information or particulars material to his or her application;
 - (b) provides a service without a licence or registering as required by this Act or the underlying statutes or fails to obtain the prior written permission of the Authority before transferring a licence;
 - (c) fails to keep records as required by this Act or the underlying statutes;
 - (d) fails to comply with any order made by the Authority in terms of this Act or the underlying statutes;
 - (e) acts in disregard of any prohibition imposed by order of the Authority in terms of this Act or the underlying statutes;
 - (f) fails to produce any licence issued to him or her under this Act or the underlying statutes on the demand of any authorised person, or who hinders or obstructs any authorised person in the exercise or performance by the latter of his or her powers, functions or duties in terms of this Act or the underlying statutes;
 - (g) has been required in terms of this Act or the underlying statutes to attend and make a statement or to produce any document or object before the Authority who, without sufficient cause, fails to attend at the time and the place specified in the notice, or to remain in attendance until the conclusion of the inquiry or hearing for the purpose he or she is required or until he or she is excused by the chairperson to do so or fails to answer fully and satisfactorily any question lawfully put to him or her, or fails to produce any document or object in his or her possession or custody or under his or her control, which he or she has been required to produce;
 - (h) wilfully interrupts the proceedings at any such inquiry or hearing or wilfully hinders or obstruct the Authority or any member thereof in the performance of its or his or her functions at the inquiry or hearing,
- is guilty of an offence and liable on conviction—

- (i) in the case of an offence contemplated in paragraph (a) to a maximum fine of R5 000 000;
[paragraph (i) substituted by section 26(c) of [Act 2 of 2014](#)]
- (ii) in the case of an offence contemplated in paragraph (b) to a fine not exceeding the greater of R5 000 000 or 10% of the person or licensee's annual turnover for every day or part thereof during which the offence continued;
[paragraph (ii) substituted by section 26(c) of [Act 2 of 2014](#)]
- (iii) in the case of an offence contemplated in paragraph (c), (d) or (e), to a fine not exceeding R5 000 000; and
[paragraph (iii) substituted by section 26(c) of [Act 2 of 2014](#)]
- (iv) in the case of an offence contemplated in paragraph (f), (g) or (h), to a maximum fine of R1 000 000.
[paragraph (iv) substituted by section 26(c) of [Act 2 of 2014](#)]
- (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.
[subsection (4) substituted by section 26(d) of [Act 2 of 2014](#)]
[section 17H inserted by section 19 of [Act 3 of 2006](#)]

Chapter IV

[Chapter IV repealed by section 27 of [Act 2 of 2014](#)]

18. ***

[section 18 repealed by section 20 of [Act 3 of 2006](#)]

19. ***

[section 19 repealed by section 20 of [Act 3 of 2006](#)]

20. ***

[section 20 repealed by section 20 of [Act 3 of 2006](#)]

21. ***

[section 21, previously subsection (1), renumbered and amended by section 21 of [Act 3 of 2006](#), and repealed by section 27 of [Act 2 of 2014](#)]

22. ***

[section 22 repealed by section 27 of [Act 2 of 2014](#)]

Chapter V General

23. Repeal and amendment of laws

The laws specified in the second column of Schedule 1 are hereby repealed or amended to the extent indicated in the third column thereof.

23A. Liability

- (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.
- (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.

[section 23A inserted by section 28 of [Act 2 of 2014](#)]

24. Application of Act

In the event of any conflict between the provisions of this Act and any other law, except for the [Constitution](#), relating to the regulation of broadcasting, electronic communications and postal services, the provisions of this Act prevail.

[section 24 substituted by section 29 of [Act 2 of 2014](#)]

25. Short title and commencement

This Act is called the Independent Communications Authority of South Africa Act, 2000, and comes into operation on a date fixed by the President by proclamation in the *Gazette*, except section [18\(2\)](#) which must be regarded as having come into operation on 30 March 2000.

Schedule 1
Laws amended or repealed

| No. and year of law | Short title | Extent of amendment or repeal |
|-------------------------------------|------------------------------------|---|
| Act No. 153 of 1993 | Independent Broadcasting Act, 1993 | <p>1. The amendment of section 1 by the substitution for the definitions of “Authority”, “chairperson”, “Council” and “councillor” of the following definitions, respectively:</p> <p>(a) <u>“Authority” means the Independent Communications Authority of South Africa established by section 3 of the Independent Communications Authority of South Africa Act, 2000;</u>”;</p> <p>(b) <u>“chairperson” means the chairperson appointed under section 5(2) of the Independent Communications Authority of South Africa Act, 2000;</u>”:</p> <p>(c) <u>“Council” means the Council contemplated in section 3(2) of the</u></p> |

Independent
Communications
Authority
of South
Africa Act,
2000;;

(d) “councillor”
means any
councillor
appointed
under
section
5(1) of the
Independent
Communications
Authority
of South
Africa Act,
2000;”.

2. The amendment of section 2 by the insertion of the following paragraph after paragraph (g):

“(gA) promote the empowerment and advancement of women in the broadcasting services;”.

3. The repeal of section 3.

4. The repeal of section 4.

5. The repeal of section 5.

6. The repeal of section 6.

7. The repeal of section 7.

8. The repeal of section 8.

9. The repeal of section 9.

10. The repeal of section 10.

11. The repeal of section 11.

12. The repeal of section 12.

13. The amendment of section 13 by the deletion of subsection (2).

| | | |
|-------------------------------------|------------------------------|---|
| | | <ol style="list-style-type: none"> 14. The amendment of section 13A by the deletion of subsection (9). 15. The repeal of section 14. 16. The repeal of section 15. 17. The repeal of section 17(2). 18. The repeal of section 18. 19. The repeal of section 19. 20. The repeal of section 20. 21. The amendment of section 21 by the deletion of subsection (2). 22. The amendment of section 22 by the deletion of subsections (1), (2) and (3) (b). 23. The repeal of section 23. 24. The repeal of section 24. 25. The repeal of section 25. 26. The repeal of section 26. 27. The amendment of section 29 by the deletion of subsection (4)(a) and (b). 28. The amendment of section 67 by the deletion of subsection (1). |
| Act No. 103 of 1996 | Telecommunications Act, 1996 | <ol style="list-style-type: none"> 1. The amendment of section 1— <ol style="list-style-type: none"> (a) by the substitution for the definitions of “Authority”, “Council” and “councillor” of the following definitions, respectively: <ol style="list-style-type: none"> (i) <u>“Authority” means the Independent Communications Authority of South</u> |

Africa established by section 3 of the Independent Communications Authority of South Africa Act, 2000;

(ii) “Council’ means the Council contemplated in section 3(2) of the Independent Communications Authority of South Africa Act, 2000;

(iii) “councillor” means any councillor appointed under section 5(1) of the Independent Communications Authority of South Africa Act, 2000;

- (b) by the insertion after the definition of “broadcasting signal distribution” of the following definition:

“chairperson” means the chairperson appointed under section 5(2) of the Independent Communications Authority of South Africa Act, 2000;”; and

- (c) by the deletion of the definition of “family member.”.

2. The amendment of section 5 by the deletion of subsections (1), (2) and (3).
3. The repeal of section 6.
4. The repeal of section 7.
5. The repeal of section 8.
6. The repeal of section 9.
7. The repeal of section 10.
8. The repeal of section 11.
9. The repeal of section 12.
10. The repeal of section 13.
11. The repeal of section 14.
12. The repeal of section 15.
13. The repeal of section 16.
14. The repeal of section 17.
15. The repeal of section 18.
16. The repeal of section 19.
17. The repeal of section 20.
18. The repeal of section 21.
19. The repeal of section 22.
20. The repeal of section 23.

| | | |
|-----------------------------------|------------------------|---|
| | | <ol style="list-style-type: none"> 21. The repeal of section 24. 22. The repeal of section 25. 23. The amendment of section 28 by the deletion of subsection (3). 24. The amendment of section 94 by the deletion of the expression “Authority and” wherever it appears in the heading and in subsections (1), (2) and (3). |
| Act No. 4 of 1999 | Broadcasting Act, 1999 | <ol style="list-style-type: none"> 1. The amendment of section 1 by the substitution for the definition of “Authority” of the following definition: <p style="margin-left: 40px;"><u>“Authority’ means the Independent Communications Authority of South Africa established by section 3 of the Independent Communications Authority of South Africa Act, 2000;”.</u></p> |

Schedule 2

[Schedule 2 repealed by section 22 of [Act 3 of 2006](#)]