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## GENERAL NOTICE

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NOTICE 779 OF 2002

# **Independent Communications Authority of South Africa**

## **BROADCASTING MONITORING AND COMPLAINTS COMMITTEE**

**PROCEDURES TO BE FOLLOWED BY THE MONITORING AND COMPLAINTS UNIT AND THE BROADCASTING MONITORING AND COMPLAINTS COMMITTEE OF THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA IN THE PROCESSING AND ADJUDICATION OF COMPLAINTS FROM THE PUBLIC, AND THE PROCESSING AND ADJUDICATION OF INVESTIGATIONS BY THE MONITORING AND COMPLAINTS UNIT.**

**AS ADOPTED BY THE BROADCASTING MONITORING AND COMPLAINTS COMMITTEE ON 08 MAY 1995, AND AMENDED ON 09 APRIL 2002  
COMPLAINTS AND ADJUDICATION PROCEDURES TO BE FOLLOWED BY**

## **THE MONITORING AND COMPLAINTS UNIT OF THE INDEPENDENT BROADCASTING AUTHORITY**

### *Definitions:*

*"the Unit" refers to the Monitoring and Complaints Unit of ICASA*

*"the BMCC" refers to the Broadcasting Monitoring and Complaints Committee of ICASA*

*"the Act" refers to the Independent Broadcasting Authority Act, 153 of 1993, as amended*

### **1. Procedures to be followed in the case of complaints from the public.**

1.1. An interested person who has a reason to believe that a licensee is guilty of any non-compliance or non-adherence of the nature contemplated in section 62(1) of the Act, may in connection therewith lodge a complaint with the Monitoring and Complaints Unit within 30 days of the occurrence of the alleged or suspected non-compliance or non-adherence.

1.2. A complaint may be made in writing, provided such complaint is delivered by hand or sent by registered post, fax or telex.

1.3. A complaint may be made verbally over the telephone provided that such complaint is recorded on a legally acceptable recording device, and the identity and physical address of the complainant is stated clearly on the recording and provided that such identity and physical address is verified by the Unit.

1.4. On receipt of a complaint, the Unit shall determine whether the complaint falls within the jurisdiction of the BMCC.

1.5. If the Unit determines that a complaint falls within the jurisdiction of any other body, the complaint shall be forwarded to that body. The Unit shall inform the complainant in writing that the complaint has been forwarded to the relevant body. This letter shall explain why the complaint has been referred to another body.

1.6. If the Unit determines that the complaint is frivolous or vexatious, or that it does not fall within the jurisdiction of the BMCC or any outside body with which the Unit is familiar, the Unit shall inform the complainant in writing that no further action shall be taken on the matter. This letter shall furnish the complainant with reasons for the decision taken.

1.7. If the Unit determines that a complaint falls within the jurisdiction of the BMCC, it shall confirm receipt of such complaint in writing. Such written confirmation may be faxed or posted to the complainant and shall inform the complainant that the Unit is investigating the complaint.

1.8. The Unit shall forward a copy of the complaint to the broadcaster concerned and request the broadcaster's licensee's response to the complaint. Wherever possible, this shall be done by fax and/or registered post.

1.9. The Unit may request from the licensee a copy of the broadcast material, which gave rise to the complaint. The licensee shall be required to submit a copy of such material in a form acceptable to the Unit within 48 hours of the licensee's receipt of such request, or such lesser period as shall be determined by the Unit.

1.10. The Unit shall, as far as possible, attempt to determine whether the complaint has already been lodged with the licensee concerned, whether the licensee has responded to the complaint, and the reasons motivating the response.

1.11. The licensee shall have three (3) days from its receipt of the complaint in which to respond to the complaint in writing. The licensee shall send such response to the Unit and the complainant simultaneously.

1.12. On receipt of the licensee's response, the Unit shall determine whether the response adequately addresses the complaint.

1.13. Such response need not be limited to an argument on the basis of the complaint lodged. It may include an admission of a contravention by the licensee, and measures proposed for the implementation of corrective action.

1.14. Should the Unit find the licensee's response to adequately address the complaint, it shall immediately inform the complainant of this in writing. Such letter shall inform the complainant that s/he may appeal against the Unit's decision to the Chairperson of the BMCC.

1.15. Should the Unit find the licensee's response to be unsatisfactory, it shall immediately forward the matter to the BMCC Chairperson. The Unit shall inform the complainant and the licensee in writing of the decision to forward the matter to the BMCC.

1.16. In the case of both paragraphs 1.14 and 1.15, the BMCC Chairperson shall decide whether the complaint merits a formal hearing of the Broadcasting Monitoring and Complaints Committee.

1.17. The Chairperson may convene a meeting of representatives of the BMCC, the licensee and in the case of a complaint, the complainant, in an attempt to resolve the complaint through mediation.

1.18. In the case where the BMCC Chairperson decides not to hold a formal BMCC hearing on the complaint, the broadcaster shall be informed in writing of this decision and no further action shall be taken with regards to the complaint.

1.19. In the case where the BMCC Chairperson decides that the complaint merits a formal BMCC hearing, the complainant and the licensee shall be advised in writing by the Unit of the date, time and venue for the hearing. The complainant and the licensee shall be advised that they are entitled to legal representation at the hearing.

1.20. The BMCC hearing shall take place as soon as may be reasonably practicable, having regard for the urgency of the matter, after the Chairperson has notified the Unit that a hearing will be held.



1.21. The BMCC shall have such powers as are prescribed in the Regulations with regard to the summoning and examination of witnesses, the administering of the oath or an affirmation, recalcitrant witnesses and the production of books, documents, objects and material.,

1.22. Hearings of the BMCC shall be open to the public.

1.23. After having considered the complaint and the representations (if any) and evidence in regard thereto, the panel of the BMCC which heard the complaint shall make its finding as regards the complaint.

1.24. Upon having made a finding, the BMCC shall inform the licensee of the finding within a reasonable time. Should the BMCC find against the licensee, the Committee shall provide the licensee and the complainant with an opportunity to make representations to the BMCC with regard to its recommendations to the Council as to what penalty (if any), as contemplated in Section 66 of the IBA Act, should be imposed on the licensee.

1.25. Once it has heard the arguments of the parties the BMCC shall decide on its recommendation to the Council, in accordance with Section 66 of the IBA Act.

1.26. The finding of the BMCC and the recommended penalty (if any) to be imposed, together with a record of the proceedings, shall be submitted to the Council of the Authority for its consideration and decision on what penalty (if any) should be imposed. The licensee and the complainant shall also be provided with a copy of the recommendation of the BMCC.

1.27. In the event of the Council deciding that the contravention warrants a penalty heavier than that recommended by the BMCC, the licensee shall be given the opportunity to make representations to the Council, in writing, before the Council makes a final decision on the matter.

1.28. The Council of the Authority shall as soon as it has taken a decision on the recommendations made by the BMCC inform both the licensee and complainant of such decision with regards to the steps to be taken.

1.29. All findings and orders shall be placed in the relevant licensees' files and taken into consideration during any future licence applications/renewals as contemplated in Section 44 of the IBA Act.

## **2. Procedures to be followed in the case of investigations by the Unit**

2.1. If, through the monitoring activities of the Unit, or by means of an anonymous tip-off, a suspected contravention of licence conditions comes to the attention of the Unit, the Unit shall institute an investigation into the suspected contravention.

2.2. If, after investigating the suspected contravention, the Unit has reason to believe that the licensee is failing to comply with its licence conditions, it shall immediately inform the licensee, in writing, of this and advise the licensee to respond to the allegation of contravention of licence conditions within three (3) days of receipt of the Unit's letter.

2.3. The licensee shall also be requested to provide reasons in its response for the alleged contravention, and what steps, if any, it has taken to remedy the situation

2.4. If the Unit is satisfied that the licensee has provided satisfactory reasons for the alleged contravention, no further action shall be taken, provided that the alleged contravention does not constitute a serious offence in terms of the Act.

2.5. If the licensee disregards any enquiry or request made by the Unit, the Unit shall inform the BMCC Chairperson of the suspected contravention by the licensee. The Unit shall simultaneously inform the licensee that the matter has been referred to the BMCC Chairperson.

2.6. In the case where the Unit determines that the suspected contravention might warrant a formal BMCC hearing, the Unit shall forward all relevant documentation to the BMCC Chairperson for consideration.

2.7. In the case of both paragraphs 2.5 and 2.6, the BMCC Chairperson shall decide whether the complaint merits a formal hearing of the Broadcasting Monitoring and Complaints Committee.

2.8. Clauses 1.17 to 1.29 inclusive are applicable to the determination of such alleged contravention

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