



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID AFRIKA

Vol. 613

21 July
Julie 2016

No. 40151

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ISSN 1682-5843



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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**NOTICE 439 OF 2016****GENERAL NOTICE: DRAFT AMENDMENT REGULATIONS ON THE ESTABLISHMENT
OF THE CONSUMER ADVISORY PANEL**

The Independent Communications Authority of South Africa ("the Authority") hereby publishes the draft amended regulations establishing the Consumer Advisory Panel ("CAP") in terms of section 4 read with Section 71 of the Electronic Communications Act, 2005 (36 of 2005, as amended). The objective of the draft amendments to the CAP regulations is to provide clarity on the appointment, constitution of and role of the CAP.

A copy of the amended draft regulations is available on the Authority's website at <http://icasa.org.za> and at the ICASA Library at 164 Katherine Street, Pinmill Farm, Sandton, Block D, between 8h30 and 16h00, Monday to Friday.

Interested parties are invited to submit written comments on the draft amended regulations by no later than 2 September 2016. Submissions may be made via post, e-mail or hand delivery for the attention of Mr Clarence Catin.

Post: The Independent Communications Authority of South Africa
Private Bag X10002
Sandton
2146

Hand delivery: Block D,
Pinmill Farm,
164 Katherine Street,

E-mail: chairperson@icasa.org.za or capregs@icasa.org.za

Note that comments received after the closing date may be disregarded.

General Enquiries

Contact Mr Clarence Catin on 011 566 3043 or e-mail him on ccatin@icasa.org.za for general enquiries in respect of this notice.

Media Queries

Contact Mr Paseka Maleka on 011 566 3455 or e-mail him at pmaleka@icasa.org.za in respect of media queries.



Rubben Mohlaloga

Acting Chairperson

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1. **DEFINITIONS**

In these Regulations, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned.

“Act” means the Electronic Communications Act, 2005 (Act No. 36 of 2005) as amended;

“Authority” means the Independent Communications Authority of South Africa;

“Chairperson” means a Panel Member appointed by the ICASA Council to chair the Panel;

“Consumer” means a natural or juristic person who uses or subscribes to a service provided by a service provider licensed by the Authority;

“Community of interest” means a group of persons or sector of the public having a specific ascertainable, common interest. The distinctive feature of the group is the common interest that makes such a group of persons or sector of the public an identifiable community;

“ICASA Council” means the Council of the Authority appointed in terms of section 5 of the ICASA Act;

“ICASA Act” means the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) as amended;

“Panel” means the Consumer Advisory Panel established in terms of Section 71 of the Act; and

“Panel Member” means a member of the Panel established in terms of Section 71 of the Act.

2. PURPOSE OF REGULATIONS

The purpose of these Regulations is to:

- 2.1. establish the criteria and process for the appointment, removal and disqualification of Panel Members; and
- 2.2. set out the roles and responsibilities of the Panel.

3. ESTABLISHMENT OF THE PANEL

The Authority hereby provides for the establishment of a Consumer Advisory Panel in terms of section 71 of the Act.

4. FUNCTIONS OF THE PANEL

Members of the Panel must represent a consumer segment or work in an environment that provides the member with relevant Information and Communications Technology consumer insight which will enhance the Authority's consumer protection mandate.

The Panel's role includes the following:

- 4.1. advise the Authority on consumer issues resulting from Information and Communications Technology usage, which includes:
 - a) critical concerns of consumers;
 - b) directing the focus of consumer protection research to be conducted by the Authority; and
 - c) annual priorities.
- 4.2. provide a consumer perspective through commentary on relevant regulations and regulatory projects;
- 4.3. liaise with consumers to understand their perspectives on issues impacting the sector;
- 4.4. promote the interest of consumers, with particular emphasis on, persons with disabilities, senior citizens and people living in underserved areas; and
- 4.5. report annually to the ICASA Council through the Panel's Chairperson on activities and findings for the year.

5. DUTIES OF A PANEL MEMBER

A Panel Member must:

- 5.1. contribute to the work of the Panel;

- 5.2. attend meetings and activities of the Panel;
- 5.3. conduct her/himself with integrity and professionalism;
- 5.4. act in accordance with applicable laws, regulations and policies; and
- 5.5. act in the best interests of the consumer at all times.

6. MEMBERSHIP

Constitution

- 6.1. The Panel shall consist of eleven (11) members.
- 6.2. Members of the Panel will be appointed by the Authority after a nomination and selection process.
- 6.3. Members of the Panel must have relevant expertise in the Information and Communications Technology sector, which will enable them to effectively advise the Authority on consumer issues and may include:
 - a) representation of a community of interests;
 - b) competence in consumer rights, legal, communications, or other relevant areas that contribute to consumer protection within the Authority's jurisdiction; and
 - c) knowledge of the communications industry.
- 6.4. The Panel may include representatives from organizations that include:
 - a) women;
 - b) youth;
 - c) persons with disabilities;
 - d) small micro and medium enterprises (SMME's);
 - e) government; and
 - f) community based organisations (CBO's) or non-governmental organizations (NGO's).

7. DISQUALIFICATION OF A PANEL MEMBER

- 7.1. A person may not be appointed as a Panel Member if s/he:
 - a) is not a South African citizen;
 - b) is not a permanent resident of South Africa;
 - c) is a member of Parliament, a provincial legislature or municipal council;
 - d) is an office bearer or employee of a party, movement or organisation of a party-political nature;

- e) or his or her spouse / partner has a direct or indirect financial interest in the electronic communications, postal or broadcasting industry;
- f) has been declared by the court to be mentally ill;
- g) is an unrehabilitated insolvent;
- h) 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 another offence involving dishonesty; or
 - (ii) an offence under the ICASA Act or the underlying statutes;
- i) 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
- j) has at any time been removed from an office of trust on account of misconduct.

8. APPOINTMENT OF CHAIRPERSON AND PANEL MEMBERS

Appointment Process

- 8.1. The Chairperson of the Panel shall be appointed by the ICASA Council from the pool of Panel Members.
- 8.2. The ICASA Council shall appoint a person with appropriate expertise, experience, skills and knowledge to serve as a member of the Panel.
- 8.3. The Authority shall advertise the positions of Panel Members on the ICASA website as well as national newspapers and other platforms at its discretion.
- 8.4. An interested person must submit a nomination.

Selection criteria

- 8.5. The Authority must consider all applications and make a selection based on:
 - a) representation of a community of interest;
 - b) competence in consumer rights, legal, communications, or other relevant areas that contribute to consumer protection;
 - c) knowledge of the communication industry; and
 - d) skills and expertise.

9. REMOVAL OF A PANEL MEMBER

9.1. A Panel Member may be removed from office on account of:

- a) misconduct;
- b) inability to perform duties;
- c) absence from three consecutive meetings without the acknowledgement of the Chairperson of the Panel, except on good cause shown;
- d) failure to disclose an interest;
- e) upon conviction of a criminal offence; and
- f) finding that the member has brought the Authority or the Panel into disrepute.

10. TERM OF OFFICE FOR PANEL MEMBERS AND PANEL CHAIRPERSON

The Chairperson

10.1. The term of office for the Chairperson is three (3) years from the date of appointment.

10.2. The Chairperson may hold a maximum of two (2) terms.

Panel members

10.3. The term of office for all Panel Members is two (2) years.

10.4. Each member may hold a maximum of two (2) terms.

10.5. A Panel Member may at any time, upon at least one (1) month's written notice tender to the Authority his or her resignation from the Panel.

11. MEETINGS OF THE PANEL

Frequency

11.1. The Panel must meet at least four (4) times a year, or more frequently if the circumstances dictate that the Panel holds additional meetings.

11.2. Additional meetings must be agreed to or approved by the Authority prior to such a meeting being held.

11.3. The CAP may meet with the department primarily responsible for consumer affairs to provide input on the annual plans.

Agenda

11.4. The Secretariat in consultation with the Chairperson of the Panel shall draw up an agenda, which shall be circulated with supporting documentation at least seven (7) days prior to each meeting to members of the panel and standing invitees.

11.5. The Panel must establish an annual work plan for each year to ensure that all relevant matters are covered in accordance with these Regulations annually.

11.6. A Panel Member must be prepared for Panel meetings, to provide appropriate and constructive input on matters discussed.

Quorum

11.7. The majority of Panel Members in attendance shall constitute a quorum.

Attendance

11.8. The Panel shall meet at a place and time as determined by the Chairperson, in consultation with the Authority.

11.9. The Chairperson must provide at least seven days written notice of a meeting and attach an agenda to such notice.

Conflict of Interest

11.10. A Panel Member must declare a potential or existing conflict of interest; and

11.11. A Panel Member must recuse him/herself from voting on or engaging in a discussion of a matter, pending before the Panel, in which she or he has a direct or indirect interest.

Minutes

11.12. Minutes of all Panel meetings must be signed by the Chairperson.

11.13. The Secretariat must attend and record all meetings.

11.14. In the absence of the Chairperson the meeting may select a Chairperson for that meeting.

Decisions of the Panel

11.15. Decisions of the Panel are to be taken by resolution of the majority of Panel Members present at a Panel meeting.

11.16. In the event of a split vote the chairperson has a casting vote in addition to his or her deliberative vote.

Funding of Activities

11.17. All expenditure incurred in respect of the activities and business of the Panel shall be in accordance with the approved budget for the Consumer Advisory Panel.

12. REMUNERATION OF PANEL MEMBERS

12.1 Panel Members may be remunerated at rates determined by the ICASA Council from time to time.

12.2 Panel Members will be paid for attendance of the mandatory meetings.

13. TRAVEL AND ACCOMMODATION COSTS

13.1. The Authority may pay for the travel and accommodation of Panel Members when required in accordance with ICASA's travel policies.

14. SECRETARIAT AND RECORD KEEPING

14.1. The Authority will establish a Secretariat to support the Panel and its duties will include the following:

- a) effective and up-to-date records;
- b) administrative and logistic support; and
- c) availability and tracking of usage and available resources.

15. PROCEEDINGS OF THE PANEL

15.1. The Panel will consider a matter before it, after which, the Panel will recommend an appropriate approach to the Authority for a final decision.

15.2. Every recommendation of the Panel must be:

- a) recorded in writing;
- b) within the ambit of these regulations;
- c) based on reliable information; and
- d) submitted by the Chairperson or Deputy Chairperson of the Panel to the Authority within a set timeframe or as soon as possible after completion thereof.

16. REPORTS BY THE PANEL

The Panel must:

- 16.1. file a written report with respect to its findings, advice and recommendations;
- 16.2. prepare a written report on its activities on a quarterly basis or as may be directed by the Authority; and
- 16.3. submit the written report(s) to the Authority no later than two (2) weeks after each meeting.

17. INTERACTION WITH THE MEDIA

- 17.1. The Panel or any of its members must not issue media statements and may not comment in the media on the activities of the Panel or on any matter related to the Authority, without the prior written or verbal permission of the Authority.
- 17.2. Any media enquiries on the Panel's activities or any matter must be directed to the Authority.

18. AMENDMENT OF THE REGULATIONS

These regulations may be amended by the Authority as and when it deems necessary.

19. REPEAL OF REGULATIONS

These Regulations repeal the Regulations on the Establishment and Constitution of the Consumer Advisory Panel of ICASA as published in Government Gazette No. 30273 of 10 September 2007.

20. SHORT TITLE

These Regulations shall be known as the Consumer Advisory Panel Regulations and will come into effect on the date of publication.

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Renny Chetty (012) 748-6375 (Renny.Chetty@gpw.gov.za),

Anna-Marie du Toit (012) 748-6292 (Anna-Marie.DuToit@gpw.gov.za) and

Siraj Rizvi (012) 748-6380 (Siraj.Rizvi@gpw.gov.za)

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za
Publications: Tel: (012) 748 6053, 748 6061, 748 6065