

REPUBLIC OF SOUTH AFRICA

**INDEPENDENT COMMUNICATIONS
AUTHORITY OF SOUTH AFRICA
AMENDMENT BILL**

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of
Bill published in Government Gazette No of)
(The English text is the official text of the Bill)*

(MINISTER OF COMMUNICATIONS)

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions
from existing enactments.

_____ Words underlined with a solid line indicate insertions in
existing enactments.

BILL

To amend the Independent Communications Authority of South Africa Act, 2000, so as to change the position of chief executive officer to chief operations officer; to clearly differentiate between the functions of the Council and the chief operations officer; to improve turn-around times; to establish a Tariff Advisory Council; to improve the functioning of the Complaints and Compliance Committee; and to provide for matters connected therewith.

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

Amendment of section 3 of Act 13 of 2000

1. Section 3 of the principal Act is hereby amended by the substitution for subsection (1A) of the following subsection:

“(1A) The Authority is **[deemed to be]** the Regulator contemplated in the Postal Services Act.”.

Amendment of section 4 of Act 13 of 2000

2. Section 4 of the principal Act is hereby amended –

(a) by the insertion of the following subsection after subsection (1):

“(1A) The Authority –

- (a) may defend legal proceedings instituted against the Authority and may institute legal proceedings connected with its functions;
- (b) must continue with the performance of its duties and functions despite the institution of legal proceedings against the Authority, until such time as a court order directs otherwise.”;

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

“(c) must **[manage]** assign the radio frequency spectrum in accordance with bilateral agreements or international treaties entered into by the Republic;”;

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

“(d) must develop, monitor and enforce compliance with licence conditions consistent with the objects of this Act and the underlying statutes for different categories of licences;”;

(d) by the insertion of the following paragraphs in subsection (3) after paragraph (n):

“(o) must implement policy and policy directions made by the Minister in terms of the Electronic Communications Act and Postal Services Act;”.

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

“(a) Subject to subsection (2), the Council must exercise general control over the performance of the Authority’s functions and 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.”.

(f) by the substitution for paragraph (f) of subsection (4) of the following paragraph:

“(f) The power to grant, renew, amend or transfer any individual licence may **[only]** not be delegated to a councillor or to a committee of the Council.”;

(g) by the deletion for paragraph (g) of subsection (4).

(h) by the substitution for subsection (5) of the following subsection:

“(5) The chairperson of the Council must—

- (a) provide overall leadership to the Council;
- (b) manage the activities of the councillors, assign responsibility to councillors to participate in public hearings and enquiries, monitor participation and ensure reporting by councillors within a reasonable period of time and ensure that appropriate terms of reference are prepared and adopted by the Council for each public hearing or enquiry; [and]
- (c) perform any function assigned to him or her in terms of any law[.];
- (d) perform such function assigned to him or her as contemplated under section 5(1B)(d); and
- (e) perform such other functions as the Minister may determine, subject to prior notification being given to the National Assembly.”.

Amendment of section 4B of Act 13 of 2000

3. Section 4B of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) submit written representations [**within 60 days from the date of publication**] on or before a date specified in the notice, which date may not be earlier than 30 days from the date of publication of the notice; and”.

Amendment of section 4C of Act 13 of 2000

4. Section 4C of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (6) of the following paragraph:

“(6) The Authority must, within [**180**] 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.”.

Amendment of section 5 of Act 13 of 2000

5. Section 5 of the principal Act is hereby amended –

(a) by the insertion of the following paragraph in subsection (1B) after paragraph (c):

“(d) The Minister must when appointing the chairperson and councillors, assign to the chairperson and each of the councillors respectively, primary responsibility for licensing, monitoring and compliance, markets and competition, technology engineering, economic regulation, postal matters and any other relevant field.”;

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

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

Amendment of section 6A of Act 13 of 2000

6. Section 6A of the principal Act is hereby amended –

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

“(2) The performance management system must—

- (a) set appropriate key performance indicators as a yardstick for measuring performance;
- (b) set measurable performance targets; and
- (c) set a procedure to measure and review performance at least **[once]** twice a year.”;

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

“(4) The evaluation of the performance of the chairperson or other councillor must be conducted by a panel constituted by the Minister, in consultation with the National Assembly for that purpose, which panel must be chaired by the Minister or his or her delegate.”;

(c) by the substitution for subsection (5) of the following subsection:

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

(d) by the insertion of the following subsection after subsection (5):

“(6)The Minister must ensure that the decisions of the National Assembly contemplated in subsection (5) are implemented.”.

Amendment of section 14 of Act 13 of 2000

7. Section 14 of the principal Act is hereby amended –

(a) by the substitution for the heading of the following heading:

“14. Chief Operations Officer and Staff.—“;

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

“(1) The Council must **[establish its own administration to assist]** determine the staff establishment necessary to enable the Authority [in the performance of] to perform its functions and to this end [the Council must appoint]—

“(a) the Council must appoint a suitably qualified and experienced person as chief **[executive] operations officer** of the Authority **[for the purpose of assisting the Authority]** responsible for the implementation of decisions of the Council and such duties as may be authorized by the Council, 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) the chief operations officer must appoint such staff as the Council may deem necessary to assist the Authority and the chief **[executive]** operations officer, as the case may be, with all such work as may arise through the performance of its functions.”;

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

“(2) The **[Council]** Authority 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.”.

Amendment of section 15 of Act 13 of 2000

8. Section 15 of the principal Act is hereby amended by the deletion of subsection (2).

Insertion of section 16B in Act 13 of 2000

9. The following section is hereby inserted in the principal Act after section 16A:

“**16B. Tariff Advisory Council.**—(1) The Authority must establish a Tariff Advisory Council to advise the Authority on rates in respect of electronic communications network services, electronic communications services, broadcasting services and postal services.

(2) The terms and conditions of allowances, composition and meetings applicable to the Tariff Advisory Council by virtue of its appointment in terms of subsection (1) must be as determined by the Authority in concurrence with the Minister.

(3) The Tariff Advisory Council must on the Authority’s request or at its own initiative—

(a) advise the Authority on tariffs and matters related thereto;

(b) advise the Authority on reducing communications costs and on any other matter that affects communications costs;

(c) review progress in lowering the communications costs;

(d) advise on pro-competitive measures in respect of tariffs as contemplated in section 67 of the Electronic Communications Act;

(e) perform research and act as a forum for discussion by stakeholders of ways to reduce communications costs.

(4) The Tariff Advisory Council must on the Minister’s request or at its own initiative, advise the Minister on—

(a) policies and best practices on reducing communications costs;

(b) matters of policy relevant to communications costs arising out of or in connection with the application of the provisions of the Electronic Communications Act and the Postal Services Act, 1999(Act 124 of 1998).”.

Amendment of section 17A of Act 13 of 2000

10. Section 17A of the principal Act is hereby amended –

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

“(1) The Authority must establish a Complaints and Compliance Committee which consists of not more than seven members nominated by the Minister in consultation with the National Assembly and appointed by the Authority, **[one] two** of whom must be **[a councillor] councillors.**”;

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

“(3) The chairperson of the Complaints and Compliance Committee must be appointed on a full-time basis and must—

[(a) manage the work of the Complaints and Compliance Committee; and]

(b) preside at hearings of the Complaints and Compliance Committee.”.

Amendment of section 17B of Act 13 of 2000

11. Section 17B of the principal Act is hereby amended by the substitution for subparagraph (i) of paragraph (a) of the following paragraph:

“(i) all matters referred to it by the **[Authority] Council**.”.

Amendment of section 17C of Act 13 of 2000

12. Section 17C of the principal Act is hereby amended –

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

“(1) (a) A person who has reason to believe that a licensee is guilty of any non-compliance with the terms and conditions of its licence or with this Act or the underlying statutes may lodge a complaint with the **[Authority] Complaints and Compliance Committee** within 60 days of becoming aware of the alleged non-compliance.

[(b) The Authority may direct the complaint to the Complaints and Compliance Committee for consideration.]”;

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

“(4) The Complaints and Compliance Committee may hold a pre-hearing conference for the purpose of the mediation of a complaint or 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.”;

(c) by the substitution for subsection (5) of the following subsection:

“(5) Notwithstanding this section, the Authority may prescribe procedures for the handling by the Complaints and Compliance Committee of urgent complaints and non-compliance matters.”.

Amendment of section 17D of Act 13 of 2000

13. Section 17D of the principal Act is hereby amended –

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

“(1) The Complaints and Compliance Committee must commence the hearing contemplated in section 17B within 45 days from the date the complaint is lodged as contemplated in section 17C and make a finding within [90 days from the date of conclusion of a hearing contemplated in section 17B] 60 days from the date the complaint is lodged.”;

(b) by the deletion of subsections (2) and (3).”.

Substitution of section 17E of Act 13 of 2000

14. The following section is substituted for section 17E of the principal Act:

“17E. **[Decision by Authority] Orders.**—(1) When making a **[decision]** finding contemplated in section 17D, the **[Authority]** Complaints and Compliance Committee 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]** issue 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 not 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]** a specified period **[as may be recommended by the Complaints and Compliance committee]**, subject to the proviso that a broadcasting, postal or electronic 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]** Complaints and Compliance Committee must make a decision permitted by this Act or the underlying statutes and provide persons affected by such decision with written reasons therefore.

(5) Any finding by the Complaints and Compliance Committee as contemplated in section 17D or order issued as contemplated in this section, shall be deemed a finding or order of the Authority.”.

Amendment of section 17H of Act 13 of 2000

15. Section 17H of the principal Act is hereby amended by the substitution for paragraph (f) of subsection (1) of the following paragraph:

“(f) fails to comply with **[a decision]** an order made by the **[Authority]** Complaints and Compliance Committee in terms of section 17E; or”.

Substitution of word “chief executive officer”, in the English text in Act 13 of 2000

16. The English text of the principal Act is hereby amended by the substitution for the word “chief executive officer”, wherever it occurs, of the word “chief operations officer”.

Transitional provision

17. The chief executive officer which is in office at the time of the promulgation of this Act, if any, shall be deemed to be the chief operations officer appointed in terms of section 14 of the principal Act for the remainder of his or her original period of office.

Short title

18. This Act is called the Independent Communications Authority of South Africa Amendment Act, 2010

MEMORANDUM ON THE OBJECTS OF THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA AMENDMENT BILL, 2010

1. BACKGROUND AND OBJECTS

The main purpose of the Bill is to amend the Independent Communications Authority of South Africa Act, 2000 (the Act), so as to change the position of Chief Executive Officer to Chief Operations Officer and to clearly differentiate between the functions of the Council and the Chief Operations Officer. The turn-around times of some of the responsibilities of the Authority are improved. A Tariff Advisory Council is created. The functioning of the Complaints and Compliance Committee is revised to improve the turn-around times for resolution of complaints and its effectiveness.

2. PROVISIONS OF BILL

2.1 Amendment of section 3 of Act 13 of 2000

Clause 1 removes the deeming provision in section 3(1A) that deems ICASA as the Postal Regulator as it is now generally well known.

2.2 Amendment of section 4 of Act 13 of 2000

2.2.1 Clause 2 adds a new subsection (1A) to ensure that ICASA continues with the performance of functions despite legal challenges. Subsections 4(3)(c) and (d) of the Act are amended to correct terminology – ‘assign’ and not ‘manage’ the radio frequency spectrum, and add an obligation to monitor compliance with licence conditions. A new subsection 4(3)(o) is added to oblige ICASA to implement policy and policy directions.

2.2.2 Clause 2 further seeks to amend subsection 4(4)(a) of the Act and the deletion of 4(4)(g) to ensure that:

- ① The Council must exercise general control over the performance of the functions of the Authority;
- ① Licensing powers may not be delegated.

2.2.3 It further seeks to add more functions in respect of Chairperson in subsection 5(5) i.e. the obligation to -

- ① Assign councillors to public hearings, ensure terms of reference for such hearings as well as monitor participation by councillors;
- ① Handle a specific area of responsibility such as licensing or technology as contemplated in the new subsection 5(1B)(d);
- ① Perform other functions determined by the Minister, following notification given to the National Assembly.

2.3 Amendment of section 4B of Act 13 of 2000

The purpose of clause 3 is to reduce unreasonably long consultation periods during inquiries, to improve turn-around times and thereby strengthening the Regulator.

2.4 Amendment of section 4C of Act 13 of 2000

Clause 4 seeks to reduce the time within which ICASA must make a finding on the subject matter of an inquiry from 180 days to 90 days of the conclusion of the inquiry.

2.5 Amendment of section 5 of Act 13 of 2000

The purpose of clause 5 is to assign specific areas of responsibility to specific Councillors. It also removes less important qualification criteria in respect of the appointment of Councillors and adds more relevant fields such as consumer protection.

2.6 Amendment of section 6A of Act 13 of 2000

Clause 6 seeks to improve the performance management system applicable to the Council by further clarifying the responsibilities of the National Assembly and the Minister respectively.

2.7 Amendment of section 14 of Act 13 of 2000

Clause 7 seeks to amend the Chief Executive Officer position to that of a Chief Operations Officer. It further clarifies the role of the COO compared with Council. It states that the Council determines the staff establishment and appoints the COO. It further clarifies that the COO implements decisions of the Council and performs assigned and delegated functions and duties.

2.8 Amendment of section 15 of Act 13 of 2000

Clause 8 seeks to delete subsection 15(2) that determines that the Chief Executive Officer is the accounting officer of ICASA.

2.9 Insertion of section 16B in Act 13 of 2000

Clause 9 seeks to introduce a Tariff Advisory Council to advise ICASA and the Minister on tariffs and related matters.

2.10 Amendment of section 17A to 17E and 17H of Act 13 of 2000

Clause 10 to 15 seeks to improve the functioning of the Complaints and Compliance Committee (CCC) by –

- ① Removing the role of Council;
- ② Involving the Minister in the nomination of members of the CCC;
- ③ Changing the appointment of the Chairperson to a full-time appointment;
- ④ Shortening turn-around times in respect of findings;
- ⑤ Improving councillor representation on the CCC;
- ⑥ Ensuring direct referral of complaints to the CCC;
- ⑦ Deeming findings and orders of the CCC to be that of the Authority; and
- ⑧ Consequential amendments.

2.11 Substitution of word “chief executive officer”, in the English text in Act 13 of 2000

Clause 16 seeks to substitute the word “Chief Executive Officer” with “Chief Operations Officer” wherever it appears in the Act.

2.12 Transitional provision

The transitional provision in clause 17 is necessary to ensure the transition from Chief Executive Officer to Chief Operations Officer.

3. INSTITUTIONS CONSULTED

The Independent Communications Authority of South Africa

4. FINANCIAL IMPLICATIONS FOR STATE

Cost of changing the appointment of the chairperson of the Complaints and Compliance Committee to a full-time appointment and appointment of a Tariff Advisory Council.

5. IMPLICATIONS FOR PROVINCES

None.

6. PARLIAMENTARY PROCEDURE

6.1. The State Law Advisers and the Department of Communications are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

6.2. The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.