

Inquiries in terms of section 4B of the ICASA Act

August 2008

ICASA has a wide discretion to conduct an inquiry into any aspect of the ECA, regulations and guidelines issued with it as well as non-compliance with the terms of the Act and licenses issued under it by any person or licensee.

When launching an inquiry the Authority must give notice of its intention to do so and invite interested parties to make written submissions within 60 days of the publication of the notice in the Government Gazette. Those submitting representations should also be allowed to indicate whether they wish to make public oral submissions and a date and time for such submissions should be published in due course.

Submissions are open to the public and generally published on ICASA's website. Where necessary an application for confidentiality under section 4D of the ICASA Act can be made: alternatively the party making the submission can make a request that a document be regarded as commercially sensitive or otherwise confidential and not made available to the general public.

The hearings themselves must be presided over by a councillor who will specify the procedure to be followed. The Authority has fairly extensive powers, limited only by law governing privilege, to:

- by notice in writing in the prescribed form, require from any person such particulars and information as may be reasonably necessary;
- 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 –
 - appear before it at the date, time and place specified in such notice;
 - make a statement; and
 - 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;
- through the person presiding at such inquiry and after explaining applicable rights under the Constitution and section 4C, question any person required to appear before it in connection with any matter which may be reasonably necessary.
- retain for a reasonable period for the purposes of this Act or the underlying statutes any document or object submitted to it.

Those appearing before the inquiry are entitled to legal representation.

The inquiry will as a rule be held in public, but section 4B(5) allows the councillor presiding to hear representations towards the holding of any part of the inquiry behind closed doors and make such a direction if warranted.

ICASA is required to make a finding within 180 (business) days of the date of conclusion of the inquiry and publish a summary in the Government Gazette. The findings themselves must also be made available to the public.