



19 January 2022

ATTENTION: Ms. Meera Lalla

CC: Ms. J Malimavhi

Draft Amendment Regulations Governing Aspects of the Procedures of the Complaints and Compliance Commission Project Leader

Independent Communications Authority of South Africa

Block B, Eco Park

350 Witch-Hazel Avenue, Centurion

By e-mail: MLalla@icasa.org.za/JMalimavhi@icasa.org.za

Dear Ms Lalla

Consumer Advisory Panel Comments on Draft Amendment Regulations Governing Aspects of the Procedures of the Complaints and Compliance Commission of the Independent communications Regulatory Authority of South Africa, 26 November 2021

Please find attached CAP's submission in Word format as requested for the above-mentioned draft regulations for your consideration. CAP will not make any oral representations.

Yours sincerely,

A handwritten signature in black ink on a light blue background. The signature appears to read 'Jeremiah Sikhosana'.

Jeremiah Sikhosana

Chairperson: Consumer Advisory Panel



CONSUMER ADVISORY PANEL

SUBMISSION ON THE DRAFT AMENDMENT REGULATIONS GOVERNING ASPECTS OF THE PROCEEDURES OF THE COMPLAINTS AND COMPLIANCE COMMISSION OF THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

1. INTRODUCTION

- 1) The Independent Communications Authority of South Africa (ICASA) published its Draft Amendment Regulations Governing Aspects of the Procedures of the Complaints and Compliance Commission of the Independent communications Regulatory Authority of South Africa (hereinafter the Draft Regulations) in Government Gazette No. 45553 Notice 689) of 2021 on the 26th of November 2021.
- 2) The Consumer Advisory Panel (CAP) is set up by ICASA in terms of section 71 of the Electronic Communications Act of 2005. The role and functions of CAP are governed by the Consumer Advisory Panel Regulations, 2017 as amended. Our governing framework is like that of the Consumer and Compliance Commission (hereinafter “CCC”) in this regard.
- 3) The main role of CAP is to represent a consumer segment or work in an environment that provides the member with relevant Electronic Communications, Broadcasting or Postal Services consumer insights which will enhance ICASA’s consumer protection mandate. We are therefore interested in the CCC’s Draft Regulations from this perspective.



2. CAP SUBMISSION

2.1 General comments on ICASA rationale for the Draft Regulations

We support ICASA's rationale for the review of the 2010 Regulations considering several developments. While the Draft Regulations only mention a dynamic ICT industry, there are also other developments of relevance. For examples, South Africa's economic conditions have significantly worsened since 2010; evident in the increasing rate of unemployment and parts of the ICT industry which were negatively affected by the Covid-19 global pandemic. Therefore, changes both in the ICT environment and socio-economic conditions that South African consumers are subject to will have a bearing on the nature of the complaints as well as well as the urgency of some of these complaints.

We agree with the rational for the changes and have no comment on any of the definitions that have been changed including those of an editorial nature.

2.2 Specific Comments

2.2.1 Definitions – section of the Draft Regulations

Addition of definition of an "Interested Party"

We would like to refer to the use of an "Interested Party" in the context of the insertion of sub regulation 7(1A) included below for easy reference.



“Any interested person who wishes for the hearing or pre-hearing to be held via teleconferencing or virtual hearing; such party must make an application with justifiable reasons with the Coordinator...”

The inconsistent use of words is highlighted in bold italic for “person” and “party”. It is recommended for ICASA to go with one word. Party would be more consistent with its use to refer to a complainant or a licensee. In addition to the highlighted inconsistency, it is unclear who is an “Interested Party” (preferred instead of “interested person”) as referenced in the Draft Regulations. Parties that are mentioned in the 2010 Regulations and the Draft Regulations are as a “complainant”, “CCC assessor”, “Chairperson”, “Coordinator”, “Licensee”, “Witness”, or an “Interpreter”. It is important that this is clarified in the Regulations for editorial reasons.

Addition of “Respondent” to replace definition of a “Licensee”

The Draft Regulations as well as the 2010 Regulations do not define who is a “Respondent” but rather makes a reference to a “licensee”. We are aware that complaints are made against licensees in this context but recommend that **“Respondent”** is used rather than the current reference to a **“Licensee”**. In this way, there is a clear distinction between a complainant and a respondent.

We proposed the following wording which could be rationalized as an editorial change.



“Respondent” means a licensee who is a person licensed in terms of the Broadcasting Act 4 of 1999, the ECA or licensed or registered in terms of the Postal Services Act and includes a person who is exempted in terms of section 6 of the ECA.

Reference to an Interpreter

We propose that ICASA uses the phrase language interpreter (**Refer to Regulation providing for Application to call Witnesses, expert witnesses, and an Interpreter**). This will become important for the amendment to give effect to provincial hearings.

To contextualize the above point, it will be helpful for ICASA to stipulate the languages in which hearings for the CCC are conducted. ICASA’s own Language Policy developed in terms of the Use of Official Languages Act, 2012 should guide this process. All stakeholders, especially consumers/complainants will know upfront which languages outside ICASA’s Language policy are to inform a request for language interpretation for CCC pre-hearings and hearings. Sign language interpretation is included in this context. We recommend that the CCC uses sign language interpreters who are accredited when complainants and respondents who are hard of hearing apply for interpretation services for sign language.

Regulation 7 “Place of Hearings and Quorum”



We support the editorial changes for the above. Furthermore, we welcome the inclusion of teleconferencing and virtual hearings in this regard as this will go a long way to ensure business continuity for ICASA, CCC and benefit those who lodge urgent complaints and those that are not urgent. Overall, this inclusion will make the process expeditious, futureproof, and allow for flexibility should there be circumstances that make a physical meeting impossible or complex. Our point of departure is on how the provision for virtual meetings is framed.

We recommend that teleconferencing and virtual meetings are not treated as an exception that must be motivated for but rather to be part and parcel of the process where there is an option for all interested parties to agree to this (mutual agreement) as an additional justifiable ground as referred in Regulation 7(1A). This is in no way suggested to take away the Chairperson's discretion on such matters.

CAP applauds ICASA for the inclusion of hearings in the provinces. This will go a long way to reaching out to vulnerable consumers and assist in making the CCC and its processes more accessible. We proposed that the CCC should lean more towards conducting physical hearings in the provinces outside the metropolitan areas towards provinces which are underserved. These are Limpopo, Mpumalanga, Eastern Cape, Northern Cape, North West and Free State provinces. We encourage that such hearings are conducted at venues closest to the complainants who are from such provinces. This should be a de facto position where both the complainant and respondent are from the same coverage areas.



3. CONCLUSION

CAP thanks ICASA for the opportunity to comment on the Draft Regulations and extend our well wishes to the recently appointed CCC members. We applaud ICASA for the inclusion of hearings in the province and taking this opportunity to futureproof and tailor the CCC systems and processes to the needs of all South African consumers by improving location or distance access from major cities and bringing it closer to the people by including teleconferencing and virtual hearings above and beyond the business continuity rationale.

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Jeremiah Sikhosana

Chairperson: Consumer Advisory Panel