

### CONTENTS

No.	Page	Gazette No.
<b>GENERAL NOTICE</b> Parliament of the Republic of South Africa		
<i>General Notice</i>		
77885 - 011 731 - 011 Regulations for the establishment of ICASA Consumer Advisory Panel.....	3	29977



Prevention is the cure

## Notice 731 of 2007

### INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

#### NOTICE OF INTENTION TO MAKE REGULATIONS IN TERMS OF SECTION 4 READ WITH SECTION 71 OF THE ELECTRONIC COMMUNICATIONS ACT ("the ECA") (ACT No. 36 OF 2005), FOR THE ESTABLISHMENT OF THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA CONSUMER ADVISORY PANEL (ICASA-CAP)

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

1. The Independent Communications Authority of South Africa ("the Authority"), hereby gives notice that it intends making regulations in terms of section 4 read with section 71 of the Electronic Communications Act, 2005 (No. 36 of 2005).

The purpose of this regulation is to:-

- a. Establish the Consumer Advisory Panel;
  - b. Prescribe the constitution of the Consumer Advisory Panel; and
  - c. Develop terms of reference for the Consumer Advisory Panel.
2. A copy of the proposed regulations is available on the Authority's website ([www.icasa.org.za](http://www.icasa.org.za)) and in the ICASA Library at 164 Katherine Street, Pin Mill Farm, First Floor, Block D between 10h00 and 16h30.
  3. Interested persons or organisations are hereby invited to submit written comments or representations with regard to the proposed regulations, **to be received by no later than 16h00 on the 9<sup>th</sup> of July 2007.**
  4. Interested persons must submit one hard paper copy and one electronic copy (Word or PDF), or post or hand delivery for the attention of:

Mr Dimakatso Mashile,  
Independent Communications Authority of South Africa  
Private Bag X10002, Marlboro, 2063

Or at

Block B,  
Pin Mill Farm,  
164 Katherine Street,  
Sandton;

facsimile (011) 321 8545  
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and/or e-mail: [dmashile@licasa.org.za](mailto:dmashile@licasa.org.za) and copy [tmabasa@licasa.org.za](mailto:tmabasa@licasa.org.za)

**PARIS MASHILE  
CHAIRPERSON  
ICASA**

**Draft Regulations for the establishment of the Independent Communications Authority of South Africa Consumer Advisory Panel (ICASA-CAP)**

**PURPOSE OF REGULATIONS**

- 1 (1) The purpose of the regulations is to provide for the establishment of the Consumer Advisory Panel, in compliance with Chapter 12: Section 71(1) and 71(2), which will advise the Authority on matters relating to consumer issues in the Republic.

The Council of ICASA intends, under Chapter 12: Section 71(1) and 71(2) of the ECA, making the regulations in this Schedule.

**DEFINITIONS**

2. In this schedule, unless the context indicates otherwise –

**“Act”** means the Electronic Communications Act no 36 of 2005

**“Day”** means a day calculated from midnight to midnight.

**“Panel”** means the Consumer Advisory Panel established in terms of Chapter 12: Section 71(1) and 71(2) of the ECA

**“Panel Member”** means a member of the Consumer Advisory Panel established in terms of Chapter 12: Section 71(1) and 71(2) of the ECA

**“The Authority”** means the Independent Communications Authority of South Africa (ICASA) established by Section 3 of the Independent Communications Authority of South Africa Act, 2000, No. 13 of 2000 as amended.

**“Regulations Committee”** means a standing or special committee established by the Independent Communications Authority of South Africa (“the Authority”) in

terms of section 17 of the Independent Communications Authority of South Africa Amendment Act No. 3 of 2006 ("the ICASA Amendment Act")

"**Council**" means the Council referred to in Section 5 of the Independent Communications Authority of South Africa Act, 2000 No. 13 of 2000.

## **TERMS OF REFERENCE FOR THE ICASA CONSUMER ADVISORY PANEL (ICASA-CAP)**

### **INTRODUCTION AND BACKGROUND**

- 3 (1) The ECA Chapter 12, Section 71 (1) (2), states that:
- 71 (1): The Authority must establish a consumer advisory panel that will advise the Authority on matters relating to consumer issues in the Republic.
  - 71 (2): The constitution of the consumer advisory panel must be as prescribed.
- (2) At the presentation of its Strategic Plan and budget to the Portfolio Committee on Communications, on February 13 2007, ICASA undertook to, according to Section 71 of the ECA establish the Consumer Advisory Panel. This is in line with ICASA's efforts of promoting the interest and protection of consumers, all users and potential users of electronic communications and postal networks and services.
- (3) The establishment of a Consumer Advisory Panel is key to the coordination and improvement of consumer involvement in regulatory and policy-making in South Africa and to assist in ensuring that consumer protection issues are addressed proactively, that consumers are well informed about the electronic communications services, electronic communications network services, broadcasting services and postal services matters, and are aware of their rights, products and services available to them.
- (4) In this regard, it became very important that the Consumer Advisory Panel must be established so that the Authority continues to seek and understand

the views of consumers in order to ensure that the consumers are better informed about their rights and consumer laws.

## **DISCUSSION**

- 4 (1) The last number of years saw some important new developments and fundamental changes taking place within the electronic communications sector, especially the arrangements and nature of regulation and consumer involvement in the sector. This is after competition brought new choices to the market, and a trend emerged where consumers started to be overwhelmed and under informed.
- (2) These new developments saw regulators, policymakers and service providers, in recognising, responding and trying to ensure that there is a better system for consumer involvement, protection and representation in the communications industry rather than relying on complaints figures, establishing consumer representative panels, by legislation, as specialised panels or committees of regulatory agencies to ensure that consumers' interests are properly represented.

## **COMPARATIVE REGULATORY REGIME**

- 5 (1) Comparisons have to be made between South Africa's electronic communication regulatory framework and the frameworks applied by its competitors and countries facing similar problems.
- (2) Other regulators such as The Australian Communications and Media Authority (ACMA), Federal Communications Commission (FCC), Canadian Radio-Television and Telecommunications Commission (CRTC), Tanzania Civil Aviation Authority Consumer Consultative Council (TCAA CCC), Office of Communications (OFCOM), Commission for Communications Regulation (COMREG) and many others have developed their own approaches to engaging with consumers. The majority of these bodies protect customers/consumers through regulating markets to ensure fair competition and by improving the information available to consumers to enable them to make informed choices.

## **ESTABLISHMENT OF THE CONSUMER ADVISORY PANEL**

- 6 (1) The Consumer Advisory Panel will be established in the third-quarter of 2007 as a non-juristic person distinct from the Council and Committees established by Council. Its mandate is consistent with the objectives of the ICASA Amendment Act No. 13 of 2006, the ECA and its establishment will be sanctioned as per resolution of the Council of ICASA.

## **FUNCTIONS OF THE CONSUMER ADVISORY PANEL**

- 7 (1) The Consumer Advisory Panel –
- (i) Must assist ICASA's management and Council in the provision of expert advice on matters related to Consumer Affairs research and development in South Africa;
  - (ii) May advise the management and Council of ICASA on matters of national importance that have a material impact on ICASA's operation;
  - (iii) Make recommendations on suggested policy or strategies that need to be implemented at a national level;
  - (iv) May constitute sub-committees focused on a particular research theme as and when required;
  - (v) Must take into account any decisions of Parliament, Council or Departments of Communications as well Trade and Industry, relating to the consumers affairs issues and activities of ICASA;
  - (vi) Must provide general guidance and independent advice to ICASA on the diverse range of consumer issues that arise in the communications industry;
  - (vii) Must provide assessments on how ICASA's activities are impacting on consumers;
  - (viii) May gather data and information in order to inform ICASA of views and needs of different groups such as residential, small to medium enterprises and large businesses, and people with disabilities;
  - (ix) Must make recommendations and suggestions to ICASA on current consumer concerns;

- (x) Must advise ICASA on consumer interests in the markets regulated by ICASA;
- (xi) May perform those analyses that are necessary to respond to the questions or matters before it; and
- (xii) Must promote the interests of consumers with the aims maximising consumer welfare, protecting consumers and raising consumer awareness.

### **RESPONSIBILITIES OF THE PANEL**

- 8 (1) In addition to any other function or responsibility conferred in terms of the Act, the main purpose of the Panel is to support the Council in coordination and improvement of consumer involvement in regulatory and policy-making in South Africa and to assist in ensuring that consumer protection issues are addressed proactively, that consumers are well informed about the electronic communications and postal sectors matters, and are aware of their rights, products and services available to them.
- (2) All Panel members must perform their functions with due regard to—
- a) maintaining and raising the standard of integrity of the committee;
  - b) respecting the confidentiality of all parties;
  - c) generally accepted standards of professionalism; and
  - d) Uphold values and principles of participatory democracy.
- (3) ICASA must provide the Panel with the administrative and human resources reasonably required to enable them to adequately discharge their responsibilities.

### **DUTIES OF MEMBERS OF THE PANEL**

- 9 (1) Members of the PANEL must —
- a) at all times act in the interests of the PANEL and not in their own or sectional interests;



- b) declare any potential or existing conflict of interest and recuse themselves from and refrain from voting on or discussing any matter, pending before the Council, in which they have a direct or indirect pecuniary interest; and
- c) make decisions in the public interest.

## COMPOSITION AND APPOINTMENT OF PANEL MEMBERS

- 10 (1) In appointing the panel members, the Authority must ensure that the Panel represents a broad cross-section of the population of South Africa and comprises of persons who reflect South African society with special attention to race, gender, disability and geographical spread.
- (2) The Consumer Advisory Panel shall consist of not less than nine (9) and more than thirteen (13). Members of the Consumer Advisory Panel shall be invited by the ICASA Council and will be selected to balance the expertise and viewpoints that are necessary to address effectively the issues to be considered by the **ICASA-CAP** and shall be individuals, recognised nationally and internationally, for their expertise in Consumer Protection issues and research, with particular emphasis in their fields and include representatives from all areas of the community, including but not limited to:
- 1 consumer advocacy organisations
  - 2 organisations representing targeted groups (women, youth, disabled, children and the elderly)
  - 3 representatives of underserved populations
  - 4 representatives from Provinces
  - 5 equipment manufacturers
  - 6 internet and telecommunications service providers
  - 7 broadcast/cable providers
  - 8 postal service providers
  - 9 Government
  - 10 CBOs and NGOs
  - 11 Smaller businesses
  - 12 Department of Trade and Industry / Department of Provincial and Local Government

### 13 South African Local Government Association

- (3) Members should be prepared to attend a minimum of four (4) meetings per year of the **ICASA-CAP**, and are also expected to participate regularly in the deliberations of subcommittees.
- (4) Members will have an initial and continuing obligation to disclose any interests in, or connections to, persons or entities who are, or will be, regulated by, or who have interests before the ICASA.
- (5) ICASA will issue a general invitation via the ICASA website and various media to interested parties to participate in the panel.
- (6) The term of office for a member shall be three (3) years. A member may be reappointed at the discretion of the ICASA Council.
- (7) A member's term of office shall be terminated should that Member –
- (a) Be convicted of a criminal act that involves fraud or a sentence of imprisonment ;
  - (b) Act contrary to the provisions of this Terms of Reference;
  - (c) Fail to declare any conflict of interest that may arise during the process of proposing, reviewing and recommending further actions; or
  - (d) Bring ICASA into disrepute.

### MEETINGS OF THE CONSUMER ADVISORY PANEL

- 11 (1) The Consumer Advisory Panel must at its first meeting –
- (a) Note the appointment of the Chairperson of the committee by the Chairperson of the ICASA Council;
  - (b) Elect one of its members as a deputy Chairperson; and
  - (c) Appoint ICASA to provide secretarial services for the Consumer Advisory Panel.

- (2) The Panel must meet at such times and places as may be determined by the Chairperson, in consultation with the ICASA Council.
- (3) The Chairperson must as far as is reasonably practical provide at least seven days notice of a meeting and attach an agenda to such notice of a meeting.
- (4) The Chairperson must convene such meetings of the Panel as are necessary for the proper performance of its functions.
- (5) If the Chairperson is absent from a meeting the Deputy Chairperson must chair that meeting.
- (6) If both the Chairperson and the Deputy Chairperson are absent from a meeting, the members must elect a temporary chairperson to chair that meeting.
- (7) Unless other procedures are determined by the Panel, the chairperson of any meeting of the Panel must determine the procedures to be followed at that meeting.
- (8) The quorum for any meeting of the Panel is a majority of its serving members or seven members, whichever is the greater.
- (9) Decisions of the Panel must as far as is possible be taken by consensus.
- (10) A decision of the majority of the members present at a meeting constitutes a decision of the Panel.
- (11) In the event of an equality of votes on any matter the person chairing the meeting has a casting vote in addition to his or her deliberative vote.
- (12) Any meeting of the Panel must not be open to the public unless the quorate meeting passes a resolution to the effect that, for the part of the meeting concerned.

- (13) The Panel must cause minutes of its proceedings to be kept.
- (14) The Panel may establish subcommittees of its members to perform such functions of the Committee as it may determine, in line with the functions contemplated in Section 3 of this Terms of Reference.
- (15) The Panel must determine the composition of a subcommittee.
- (16) The Panel may at any time dissolve or reconstitute a subcommittee.
- (17) The Panel must designate a member of a subcommittee as chairperson of that subcommittee.
- (18) This Terms of Reference applies, with the changes required by the context, to a subcommittee established by the Panel.
- (19) The Panel must make rules governing –
- The period of notice of meeting.
  - The manner of giving notice of a meeting.
- (20) The Panel must determine in which archive the records of the Panel will be housed.

#### **RECOMMENDATIONS OF THE PANEL**

- 12 (1) Every recommendation of the Panel must –
- (a) be recorded in writing;
  - (b) be within the ambit of this Terms of Reference; and
  - (c) be based on facts and reliable information.

#### **REPORTING BY THE PANEL**

- 13 (1) The Panel must –

- (a) report to the management of the Council with respect to its findings, recommendations and advice;
- (b) Sub-committees to report via their chairperson to the main the Panel plenary on actionable items;
- (c) Prepare a written submission on its activities on a quarterly basis. These reports are to be submitted to the Council; and
- (d) Advice rendered to the Council is not construed as binding on the part of the Council.

#### **INTERACTIONS WITH THE MEDIA**

- 14 (1) Members of the Panel must not issue media statements and must not comment in the media on the activities of the Panel or any aspect related to the business operation of ICASA.

#### **VACANCIES AND REMOVAL OF A PANEL MEMBER**

- 15 (1) A vacancy will arise in the Panel if –

The Council decides to remove a committee member from office on the grounds that the member –

- a) has committed misconduct;
- b) has brought the committee into disrepute;
- c) is incapable or has not capably discharged his or her responsibilities;
- d) is no longer able to discharge his or her responsibilities;
- e) has not been able or been available to discharge his or her responsibilities for a continuous period of three months;
- f) has been absent from more than two consecutive ordinary meetings of the Panel without the permission of the Panel or without a written apology;
- g) a Panel member resigns; or
- h) a Panel member dies.

A vacancy will be considered to have occurred –

- a) upon the Council making the decision to remove a member;
- b) upon receipt of a written notice of resignation from the member; or

- c) on date of the member's death.
- (2) The Council may appointment any other person s/he deems fit to fill-in a vacant position.

### REMUNERATION, TRAVEL AND ACCOMMODATION AND OTHER ASSOCIATED EXPENSE

16 (1) A Panel member, excluding a member who is in the employ of the ICASA, must be paid allowances and disbursements as may be determined by the Council.

- (2) The remuneration of the Panel and its sub-committees will comprise –
- An honorarium covering all related subsistence and travel claims associated with the duties contemplated in Section 3 above;
  - The size and limits applicable to such honoraria will be determined by the Council;
  - Such honorarium to be payable after each meeting or after the completion of specific outputs ; and
  - No board fees will be payable, unless otherwise indicated by the Council.
- (3) The travel and accommodation policy and tariffs of the ICASA apply to committee members with the changes required by the context.
- (4) Entertainment and other associated expenses will be paid only –
- in respect of expenses reasonably incurred; and
  - upon submitting to the ICASA the relevant supporting vouchers.

### RESPONSIBILITY FOR PAYMENT OF EXPENDITURE

17 (1) All expenditure incurred in respect of the business of the Panel as set out in the Act and regulations, must be met by the vote of the controlling department.

- (2) ICASA must maintain separate subsidiary records of all expenditure on the Panel so as to ensure that particulars thereof are readily available if required by the Parliament or the Auditor-General.

### **SHORT TITLE**

- 18 (1) These regulations are called the Regulations on the terms, constitution and conditions for the establishment of the Independent Communications Authority of South Africa Consumer Advisory Panel (ICASA-CAP) in accordance with Chapter 12: Section 71(1) and 71(2) of the Electronic Communications Act (ECA), 2005 (Act No. 36 of 2005) regulations.

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