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## GENERAL NOTICES • ALGEMENE KENNISGEWINGS

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### INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

#### GENERAL NOTICE 689 OF 2021



#### **DRAFT AMENDMENT REGULATIONS GOVERNING ASPECTS OF THE PROCEDURES OF THE COMPLAINTS AND COMPLIANCE COMMITTEE OF THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA, 2021**

The Independent Communications Authority of South Africa (“**ICASA**” or “**the Authority**”) hereby declares its intention to amend the Regulations Governing Aspects of the Procedures of the Complaints and Compliance Committee of the Independent Communications Authority of South Africa, 2010 in accordance with the provisions of section 4 of the Electronic Communications Act 36 of 2005 (“**ECA**”) read with section 4 (3)(j) and 17C (5) of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) (“**ICASA Act**”), as amended.

The Authority hereby invites interested parties to make written representations on the draft Amendment Regulations Governing Aspects of the Procedures of the Complaints and Compliance Committee of the Independent Communications Authority of South Africa, 2021 set out herein (“**Draft Regulations**”).

A copy of the Draft Regulations will be made available on the Authority’s website at <https://www.icasa.org.za> or can be sent via email upon request by any individual or can be collected from ICASA Library at the following address: 350 Witch-Hazel Avenue, Eco Point Office Park, Eco Park, Centurion between 09h00 and 16h00, Monday to Friday.

Written representations must be submitted to the Authority by no later than thirty (30) working days subsequent to the publication hereof, by post, hand delivery or electronically (in Microsoft Word) and marked specifically for the attention of: **Miss Meera Lalla – Project Leader.**

Delivery address: Block C, 350 Witch-Hazel Avenue, Eco Point Office Park, Centurion; or by email at [MLalla@icasa.org.za](mailto:MLalla@icasa.org.za) and [JMalimavhi@icasa.org.za](mailto:JMalimavhi@icasa.org.za).

Telephonic enquiries should be directed to 012 568 4124 between 08h30 and 16h30, from Monday to Friday.

Written representations received by the Authority pursuant to this notice, will be made available for inspection by interested persons at the Authority's library.

When a person submits information to the Authority, such person may request that specific information be treated as confidential information in terms of section 4D of the ICASA Act. The request for confidentiality must be accompanied by a written statement explaining why the specific information should be treated as confidential, in accordance with ICASA Guidelines for Confidentiality Request published in Government Gazette No. 41839 of 17 August 2018.

The Authority may determine that such specific information or any portion thereof is to be treated as confidential in terms of section 4D of the ICASA Act. Where the request for confidentiality is refused, the person who made the request will be granted an opportunity to withdraw such representations or portion(s) thereof.

Persons submitting written representations are further invited to indicate, as part of their representations, whether they require an opportunity to make oral presentations.



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**DR. KEABETSWE MODIMOENG**  
**CHAIRPERSON**  
**DATE: 24/11/2021**

**GOVERNMENT NOTICE**

**INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**



**ELECTRONIC COMMUNICATIONS ACT, 2005 (ACT NO. 36 OF 2005) AND  
INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA ACT, 2000  
(ACT NO. 13 OF 2000)**

**REGULATIONS**

The Independent Communications Authority of South Africa has, under section 4 of the Electronic Communications Act, 2005 (Act No. 36 of 2005), read with sections 4 (3)(j) and 17C (5) of the Independent Communications Authority of South Africa, made the regulations in the Schedule.

**SCHEDULE**

**1. DEFINITIONS**

In these regulations "the Regulations" means the Regulations Governing Aspects of the Procedures of the Complaints and Compliance Committee of the Independent Communications Authority of South Africa, 2010 as published under Government Notice No. R. 886 in Government Gazette No. 33609 of 6 October 2010.

**2. Amendment of regulation 1 of the Regulations**

Regulation 1 of the Regulations is hereby amended –

- (a) by the substitution of the definition "Complainant" for the following definition:
- ""Complainant" means any person who has lodged a complaint with or referred a dispute to the Authority or the CCC;"
- (b) by the insertion after the definition of "CCC" of the following definition:
- ""**CCC Assessor**" means an employee of the Authority, employed in the Office of the CCC, whose job profile, among others, is to assess and investigate all broadcasting, telecommunications and postal complaints and disputes on behalf of the CCC";
- (c) by substitution of "Day" by the following definition: ""**Days**" means working days unless otherwise specified.";
- (d) by the substitution of the definition "Deliver" for the following definition:
- ""**Deliver**" means to serve a document on all parties to the complaint by hand or electronically and then file such document, together with proof of service on all parties, with the CCC.";
- (e) by the insertion after the definition of "licensee" of the following definition:
- ""**quorum**" means the majority of CCC members at a hearing, pre-hearing or meeting which consists of the Chairperson, Councillor and two (2) CCC Members who must be in attendance.";
- (f) by the substitution of the definition "vexatious complaint or dispute" for the following definition:
- ""**vexatious complaint or dispute**" is a complaint or dispute filed by a person who has persistently and/or without any reasonable ground filed a complaint or dispute with the CCC or the Authority against a licensee, whether against the same licensee or against different licensees.".

### **3. Substitution of regulation 2 of the Regulations**

The following regulation is hereby substituted for regulation 2 of the Regulations:

#### **"2. FILING OF A COMPLAINT/ REFERRAL OF A DISPUTE**

- (1) A complaint is brought to the attention of the CCC by lodging it with the Co-ordinator and may be supported by an affidavit and supporting documents: provided that the Co-ordinator may require more details from the Complainant by way of an affidavit or otherwise before he or she refers the matter to the Chairperson.
  
- (2) A dispute is brought to the attention of the CCC by referring it to the Co-ordinator and it shall be filed in the form of an affidavit. This procedure also applies to the answer and, if applicable, to the reply by the Complainant."

### **4. Amendment of regulation 3 of the Regulations**

Regulation 3 of the Regulations is hereby amended-

(a) by the deletion of the word "brief" in sub-regulation (3).

(b) by the substitution for sub-regulation (4) of the following sub-regulation:

"In so far as the exercise of its discretion in terms of this regulation is concerned, the Co-ordinator provides the CCC with his or her advice as well as the result of the investigation by the CCC Assessor."

### **5. Substitution of regulation 4 of the Regulations**

The following regulation is hereby substituted for regulation 4 of the Regulations:

#### **"4. DOCUMENTS IN COMPLAINT OR DISPUTE**

##### **Documents in Complaint**

- (1) The Co-ordinator must provide the licensee with a copy of the complaint within five (5) days of receipt of the complaint by the CCC and must notify

the licensee in writing that it has fifteen (15) days within which to deliver a response thereto.

- (2) If the Complainant wishes to deliver a reply, the Complainant must do so within ten (10) days of receipt of the response.

### **Documents in Dispute**

- (3) The Co-ordinator must provide the licensee or the person whom a dispute is declared with a copy of the affidavit within five (5) days of receipt of the dispute by the CCC and must notify the licensee or that party in writing that it has fifteen (15) days within which to deliver an answering affidavit thereto.
- (4) If the Complainant wishes to deliver a replying affidavit, the Complainant must do so within ten (10) days of receipt of the answering affidavit."

## **6. Insertion of regulation 4A in the Regulations**

The following regulation is hereby inserted in the Regulations, after regulation 4:

### **"4A Close of Pleadings, Withdrawals, Settlements and Postponements**

- (1) Once the documents are filed by both parties in terms of Regulation 4 and/or any further documents where applicable, and the Chairperson directs that a hearing be held, and the Co-ordinator notifies the parties of the hearing date in terms of regulation 5(1), the pleadings are deemed to have closed unless otherwise stated by the CCC.
- (2) A Complainant may withdraw a complaint or dispute before close of pleadings by delivering a notice advising the other party and the CCC of his or her intention to withdraw a complaint or dispute.
- (3) If the parties reach a settlement agreement before close of pleadings, such settlement agreement must be filed with the CCC for consideration within five (5) days of reaching settlement unless otherwise stated by the CCC.
- (4) Where a party has valid reasons for seeking to postpone a hearing or pre-hearing, such party must make an application for postponement with the CCC as soon as reasonably possible but not later than five (5) days before

the hearing or pre-hearing. The CCC has the discretion to grant an application for postponement.”

## **7. Amendment of regulation 5 of the Regulations**

Regulation 5 of the Regulations is hereby amended by the substitution for sub-regulation (1) of the following sub-regulation:

“(1) The Co-ordinator must give the parties to the complaint or the dispute at least twenty (20) days’ notice in writing of the date, time and venue of the hearing. If the Chairperson decides that the matter is urgent, he or she may set a shorter time period.”

## **8. Insertion of regulation 5A in the Regulations**

The following regulation is hereby inserted in the Regulations, after regulation 5:

### **“5A. CCC PROCEDURE AT HEARINGS AND PRE-HEARINGS**

#### **Convener of Hearings and Pre-Hearings**

(1) The hearings and pre-hearings must be convened by the Chairperson of the CCC, who determines the procedure at the hearing and/or pre-hearing.

#### **Application to Call Witnesses, Expert Witnesses and an Interpreter**

(2) If either party wishes to call witnesses and/or expert witnesses, such party must make an application with the Co-ordinator for approval by the Chairperson of the CCC, by providing reasons for calling the intended witness/expert witness, the nature and relevance of the witness’s testimony and indicate whether witness statements and/or oral testimony will be tendered, within ten (10) days upon receipt of the Co-ordinator’s notice in terms of regulation 5(1). In the case of an expert witness, the party must provide the details and nature of the expert witness’s experience, skills and expertise.

- (3) Where a party requires the services of an interpreter at a hearing or pre-hearing, he or she must make an application with the Co-ordinator within ten (10) days upon receipt of the Co-ordinator's notice in terms of regulation 5(1).

### **Legal Representation**

- (4) Parties are permitted to be assisted by a legal representative or other adviser at a hearing or pre-hearing. If a party wishes to appoint a legal representative, written notice must be given to the other party and CCC within ten (10) days upon receipt of the Co-ordinator's notice in terms of regulation 5(1).

### **General CCC Decorum at Hearings and Pre-Hearings**

- (5) Parties and witnesses summoned to appear before the CCC at a hearing or pre-hearing are expected to attend timeously and adhere to the procedures determined by the Chairperson.
- (6) During the hearing or pre-hearing, the parties and witnesses must adhere to the procedures at all times."

## **9. Amendment of regulation 6 of the Regulations**

Regulation 6 of the Regulations is hereby amended –

- (a) by the substitution of the heading of regulation 6 of the following heading:

**"URGENT COMPLAINTS OR DISPUTES";**

- (b) by the substitution for sub-regulation (1) of the following sub-regulation:

"(1) A Complainant may request that the complaint or dispute be dealt with on an urgent basis and must file an application motivating the reasons for urgency."

## **10. Amendment of regulation 7 of the Regulations**

Regulation 7 of the Regulations is hereby amended –

- (a) by the substitution of the heading of regulation 7 of the following heading:



**"PLACE OF HEARINGS AND QUORUM";**

(b) by the substitution for sub-regulation (1) of the following sub-regulation:

"(1) The seat of the CCC is in Pretoria. The Chairperson of the CCC may, however, on good cause, decide to hold a hearing in the provinces and/or at any other place in the Republic of South Africa.";

(c) by the insertion of sub-regulation(1A) after sub-regulation (1):

"(1A) Any interested person who wishes for the hearing or pre-hearing to be held via teleconference or virtual hearing, such party must make an application with justifiable reasons with the Co-ordinator, within five (5) days upon receipt of the Co-ordinator's notice in terms of regulation 5(1), for approval by the Chairperson of the CCC. The Chairperson may take all relevant matters into account, including but not limited to the following:

(a) Access to and understanding of technology, internet and access to an appropriate environment to enable the parties to partake effectively in a virtual hearing, including having access to advice.

(b) The public interest in the expeditious disposal of complaints and disputes.

(c) In instances of *force majeure* and human induced events that may restrict the physical access to the place of the hearing.

(d) Rules, laws and policies that may restrict the physical gathering to the place of the hearing.

(e) Any prejudice to either party or witness to the complaint or dispute."

(d) by the substitution for sub-regulation (2) of the following sub-regulation:

"(2) A quorum is required to convene a hearing, pre-hearing or meeting of the CCC."

(e) by the deletion of sub-regulation (3).

(f) by the deletion of sub-regulation (4).

(g) by the deletion of sub-regulation (5).

### **11. Amendment of regulation 8 of the Regulations**

Regulation 8 of the Regulations is hereby amended –

- (a) by the insertion of regulation 8A after regulation 8:

#### **“8A COSTS**

The CCC does not have the jurisdiction to make an order regarding costs and/or delictual claims for damages.”

### **12. Amendment of the Schedule of the Regulations**

The Schedule of the of the Regulations is hereby amended –

- (a) by the substitution in paragraph (a) of the word "take" of the word "address".
- (b) by the substitution for sub-paragraphs ((ii) and (vi) of paragraph (d) of the following sub-paragraphs:

“(ii) handling additional documents that have not been filed”

“(vi) any other relevant matter; and”.

- (c) by the deletion of the words “attempt to” in paragraph (e).

### **13. Short Title and Commencement**

These regulations are called the Regulations Governing Aspects of the Procedures of the Complaints and Compliance Committee of the Independent Communications Authority of South Africa, 2021 and shall come into operation upon publication in the Government Gazette.



## INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

### EXPLANATORY MEMO

#### 1. INTRODUCTION

1.1. The Independent Communications Authority of South Africa ("the Authority" or "ICASA") acts in accordance with the empowering framework established by the Constitution of the Republic of South Africa<sup>1</sup>, the Broadcasting Act<sup>2</sup>, the Independent Communications Authority of South Africa Act ("the **ICASA Act**")<sup>3</sup>, the Electronic Communications Act ("**ECA**")<sup>4</sup> and Postal Services Act<sup>5</sup>.

1.2 The Authority is empowered in terms of section 4(1) of the ECA "*to make Regulations with regard to any matter which in terms of the ECA or the related legislation must or may be prescribed, governed or determined by regulation*".

Section 4 of the ECA is read together with sections 4(3)(j) and 17C (5) of the ICASA Act", to make regulations that, *inter alia*, prescribe procedures for the handling of urgent complaints and non-compliance matters. Section 4(3)(j) of the ICASA Act provides that:

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<sup>1</sup> 1996.

<sup>2</sup> Act 4 of 1999.

<sup>3</sup> Act 13 of 2000.

<sup>4</sup> Act 36 of 2005.

<sup>5</sup> Act 124 of 1998.

*"...the Authority may make regulations on any matter consistent with the objects of this Act and the underlying statutes or that are incidental or necessary for the performance of the functions of the Authority".*

- 1.3. Pursuant to the above framework, the Authority promulgated the Regulations Governing Aspects of the Procedures of the Complaints and Compliance Committee of the Independent Communications Authority of South Africa, 2010 (**"the CCC Regulations"**), published on 6 October 2010.
- 1.4 This explanatory memorandum needs to be read in conjunction with the 2010 Regulations and the proposed 2021 draft regulations ("the 2021 Draft Regulations").
- 1.5 Where a clause or part thereof is not amended, or the amendment is merely to effect editorial changes, an explanation is not provided.

## **2. BACKGROUND**

- 2.1. The CCC Regulations are aimed at prescribing the procedures to be followed when the CCC executes its mandate in accordance with section 17B of the ICASA Act which is to investigate, to hear if appropriate and make findings on:
  - (i) all matters referred to it by the Authority;
  - (ii) complaints received by it; and
  - (iii) allegations of non-compliance with this Act or the underlying statutes received by it.
- 2.2. On or about 18 August 2021, the Authority established a Committee of Council ("the Committee") to review and amend the CCC Regulations.

### **3. RATIONALE OF REVIEWING THE 2010 REGULATIONS**

- 3.1. The rationale of reviewing the CCC Regulations, apart from outlining the procedure to be followed when lodging a complaint with the CCC, is to determine whether the provisions of the CCC Regulations are still relevant in their current form since their promulgation in 2010.
- 3.2. The review was necessary to ensure that the CCC Regulations are accordingly updated and aligned with the ever changing and dynamic ICT industry.
- 3.3. The CCC Regulations must prescribe clear procedures which are current and practical in its application. Such clear guidelines will facilitate and aid the CCC in executing its mandate in terms of Section 17B of the ICASA Act.
- 3.4. The explanatory memo canvasses the reasons for the proposed amendments.

### **4. REASONS FOR PROPOSED DRAFT AMENDMENT REGULATIONS GOVERNING ASPECTS OF THE PROCEDURES OF THE COMPLAINTS AND COMPLIANCE COMMITTEE OF THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA, 2021**

It is proposed that the definitions contained in the 2010 Regulations be amended as follows:

#### **4.1 Regulation 1:**

- (1) The definition of "Complainant" is amended by deleting the reference to "an inspector appointed in terms of section 17F of the Act, Council, and any committee established under the Act". The specific reference to an inspector as a complainant, is no longer relevant in the context of the CCC Regulations, as an inspector can still be a complainant in terms of the definition, in as far as it speaks to "any other person".
- (2) A definition of "CCC Assessor" is inserted to ensure that the persons who investigate and assess complaints and disputes on behalf of the CCC are employees of the Authority. The "CCC Assessor" must be defined and reflected in the CCC Regulations as the reference to the inspector in

regulation 3(4) is no longer relevant and has been substituted by the "CCC Assessor".

- (3) The definition of "Days" is amended to ensure that the CCC Regulations are aligned with the definition of "days" in section 1 of the ICASA Act. The definition of "Days" is directly extrapolated from the ICASA Act to amend and clarify the existing definition (i.e. calendar day) in the CCC Regulations.
- (4) The definition of "Deliver" is amended firstly, to effect editorial changes and secondly, to insert the words "by hand or electronically". The insertion is to ensure that the parties are given an option to either deliver documents by hand or electronically, given their current available resources. This will enable a layman to easily lodge a complaint and ensure business continuity where it is not physically possible to hand deliver documents.
- (5) The definition of "quorum" is inserted to provide clarity and meaning to the reference of "quorum" in regulation 7 of the CCC Regulations.
- (6) The definition of "vexatious complaint or dispute" is to effect an editorial change to give effect to the grammatical meaning of the use of the word "persistently". A vexatious complaint need not be persistent to qualify as a vexatious complaint by the CCC. A vexatious complaint or dispute can either be a complaint that is persistently filed and/or without any reasonable grounds.

#### **4.2 Regulation 2:**

The following reasons are provided for the proposed amendment to regulation 2:

- (a) To create a comprehensive distinction between "filing of complaint" and "referral of dispute". The rationale for the above separation is that the CCC often encounters Complainants who interchangeably use the incorrect terminology and procedures when filing complaints and referring disputes. Therefore, the intention of the proposed amendment is to separate the distinct nature and procedures of a complaint vis-à-vis a dispute (see definitions of complaint and dispute in section 1 of the CCC Regulations). This separation will ensure that a layman who is not familiar with legal terminologies is able to complain to the CCC directly without any impediments. For example, a member of the public who wants to complain about their local community radio station can easily refer to regulation 2(1), draft his or her own complaint (without incurring costs for a legal representative) and file it directly with the CCC. The CCC Co-ordinator may

require more details from the Complainant in the form of an affidavit as and when required, depending on the merits of each case.

- (b) In the case of a dispute or inter-operator disputes, the standard of referral must be in the form of an affidavit. This will apply, for example, in an interconnection dispute referred to the CCC in terms of section 37(4)(c) of the ECA, between licensees.

#### **4.3 Regulation 3:**

The following reasons are provided for the proposed amendment to regulation 3:

- (a) The word "brief" in sub-regulation 3(3) is deleted to afford the CCC its own discretion to provide "sufficient" reasons after consideration of the merits of each case. Where the CCC rejects the complaint, reasons will be provided to the complainant. These reasons need not be "brief".
- (b) The deletion of the reference to inspectors and substitution of the CCC Assessors in sub-regulation 3(4) is recommended as the role of the inspector in terms of section 17F of the ICASA Act has evolved. With the appointment of CCC Assessors who are primarily responsible for the assessment and investigation of matters, the direct reference to the role of inspectors in this context is no longer relevant (the current Inspectors' Regulations do not permit direct referral of complaints by ICASA Inspectors). The CCC Assessors currently investigate matters received by the CCC and directly liaise with inspectors as and when the need arises.

#### **4.4 Regulation 4:**

The following reasons are provided for the proposed amendment to regulation 4:

- (a) To create a comprehensive distinction between "documents in complaint" and "documents in dispute". The rationale for the above separation is for the same reasons solicited for regulation 2 above. The separation of the documents in the complaint and dispute procedure will ensure consistency and integration in the drafting prose of regulations 2(1), 2(2) and 4, for ease of reference by the reader.

- (b) The amalgamation of the “documents in complaint and dispute” in Regulation 4 of the 2010 Regulations creates confusion. The sub-division of Regulation 4 (with the same heading) into sub-headings creates clarity regarding the documents to be filed by each party in the event of a complaint and a dispute.
  
- (c) In the case of a complaint, the licensee against whom the complaint is lodged will file a response and the Complainant may in turn file a reply within the stipulated timeframes. Whereas in the declaration of a dispute, the sequence of documents follows that of a Court of Law namely – Founding Affidavit, Answering Affidavit and Replying Affidavit to be filed within the stipulated timeframes.
  
- (d) The rationale for the insertion of regulation 4A is to codify the procedures and guidelines to be followed by the CCC when dealing with “Close of Pleadings, Withdrawals, Settlements and Postponements”. The CCC has since experienced some challenges that ultimately impact on their financial resources and timelines for executing their legislative mandate. For example, the CCC invests a substantial amount of time and resources in the preparation of the hearing. The Office of the CCC has to prepare bundles of documents and procure transcription services to be rendered on the day of the hearing. Where a Complainant withdraws or settles a matter at the eve of the hearing, it places the CCC in a precarious position and opens up the floodgates of liability for wasteful expenditure by the CCC. Furthermore, some Complainants who do not have legal representation, appoint a lawyer on the day of the hearing and request a postponement from the CCC during the course of the proceedings. It is for these reasons that there must be some level of control in place with an incorporation of reasonable timelines, to safeguard against the potential abuse of the system.

#### **4.5 Regulation 5:**

The following reasons are provided for the proposed amendment to regulation 5:

- (a) Sub-regulation 5(1) is amended to effect editorial changes. The sentence does not read well and the division into two parts will clarify the meaning of the sub-regulation.



- (b) The rationale for the insertion of regulation 5A is to provide the procedure in the CCC Regulations for the following: hearings and pre-hearings, the application to call witnesses, expert witnesses, interpreters, legal representation and general decorum.

The CCC often has to explain to the parties the procedure that is determined by the Chairperson. Given the fact that the procedure for application of witnesses or an interpreter is not currently in the CCC Regulations, the procedure is required to ensure a fair and consistent approach herein. The CCC, at its proceedings has experienced in the past, instances of disobedience and disregard for the procedures where parties opt to leave proceedings midway. To ensure that parties do not wilfully disrupt the proceedings at such hearings or obstruct the CCC from performance of its functions, a regulation has been inserted to address the general decorum at CCC hearings. This will act as a safeguard for insubordination at the CCC's formal hearings and ensure that the parties must adhere to the proceedings in their entirety.

#### **4.6 Regulation 6:**

The following reasons are provided for the proposed amendment to regulation 6:

- (a) The heading of regulation 6 is amended to effect editorial changes. The heading "Urgent Complaints or Disputes" instead of "Urgent Matters" will ensure uniformity in the contents of the CCC Regulations.
- (b) Sub-regulation 6(1) is amended to expand on the incomplete sentence ending in "must motivate why". The amendment clarifies and ensures that reasons for the urgency are canvassed in the Complainant's application for urgency.

#### **4.7 Regulation 7:**

The following reasons are provided for the proposed amendment to regulation 7:

- (a) The heading of regulation 7 is amended to effect editorial changes. The heading "Quorum and Place of Hearings" is inverted to read "Place of

Hearings and Quorum". This follows the sequence of the contents in the sub-regulations below the heading.

- (b) Sub-regulation 7(1) is amended to document ICASA's relocation of their head office from Johannesburg to Pretoria – Centurion which falls within the City of Tshwane. Furthermore, hearings in the provinces will allow the CCC to reach out to communities to access justice and form a regional presence in creating public awareness of the CCC's mandate.
- (c) The insertion of sub-regulation 7(1A) is to provide for teleconferences and virtual hearings in the CCC Regulations to ensure business continuity by considering instances where it is not possible to hold physical hearings and to outline the procedure for parties who wish to make an application for such a teleconference or virtual hearing. The criteria enlisted is included to ensure fairness and certainty regarding the Chairperson's determination whilst granting an application to hold a teleconference or virtual hearing as opposed to a physical hearing.
- (d) Sub-regulation 7(2) is amended to clarify the constitution of a CCC quorum. This sub-regulation must be read in conjunction with the proposed definition of "quorum" in regulation 1 above.
- (e) Sub-regulation 7(3) and 7(4) are deleted as the current administrative processes adopted by the Office of the CCC ensures that a quorum is met before a hearing or meeting is held. The insertion of the definition of "quorum" in regulation 1 above read with regulation 7(2) specifies the requirements for a CCC quorum as follows: "quorum means the majority of CCC members at a hearing, pre-hearing or meeting which consists of the Chairperson, Councillor and two (2) CCC Members who must be in attendance". Should the quorum not be met, the hearing or meeting will be adjourned and/or postponed by the CCC.
- (f) Sub-regulation 7(5) is deleted as the term for the appointment of CCC Members is sufficiently regulated and addressed by section 17A(1) of the ICASA Act. The CCC Regulations must be aligned to the ICASA Act. Sub-regulation 7(5) is incomplete in its current form and misplaced under regulation 7 entitled "Place of Hearings and Quorum".

#### **4.8 Regulation 8:**

The insertion of regulation 8A deals with the issue of costs. The CCC has encountered a number of cases where the Complainant withdraws at the eve of the hearing. This results in the Respondent enquiring from the CCC whether costs can be recovered from for the inconvenience and prejudice caused in employing legal Counsel. Therefore, the CCC Regulations should clearly state that the CCC as a quasi-judicial body, is not empowered to award costs.

#### **4.9 Schedule**

The following reasons are provided for the amendment of the schedule to the Regulations–

- (a) To effect editorial changes to the word "take" in paragraph (a). "Take" is not grammatically correct in the context of the sentence.
- (b) Sub-paragraph (d)(ii) is amended to effect editorial changes by paraphrasing the sentence to ensure that the meaning is clear and concise.
- (c) Sub-paragraph (d)(vi) is amended to effect editorial changes to clarify the meaning of the sentence.
- (d) The word "attempt" in paragraph (e) does not create an onerous obligation on the CCC. Deletion of "attempt to" will cure the defect.