

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NO. 2735

11 November 2022



DRAFT CONSUMER ADVISORY PANEL REGULATIONS

The Independent Communications Authority of South Africa ("The Authority") hereby publishes the Draft Consumer Advisory Panel Regulations in terms of section 4 read with section 71 of the Electronic Communications Act, 2005 (No 36 of 2005, as amended) to the extent reflected in the Schedule.

The Authority hereby invites interested persons to make written representations on the Draft Consumer Advisory Panel Regulations ("Draft Regulations").

A copy of the Draft Regulations will be made available on the Authority's website at <http://www.icasa.org.za> and at the Authority's library at 350 Witch-Hazel Avenue, Eco Point Office Park, Centurion between 09h00 and 16h00, Monday to Friday.

Written representations must be submitted to the Authority within thirty (30) working days from the date of publication of this notice in the Government Gazette by no later than 16h00. Written representations must be submitted to the Authority electronically via email at: CAPReview@icasa.org.za (in Microsoft Word or PDF), or by post or hand delivery and must be marked for attention of:

Chairperson: CAP Review Committee
Block C, Eco Park Office Park
350 Witch-Hazel Avenue
Eco Park
Centurion
0169

In terms section 4D of the ICASA Act, as well as the Protection of Personal Information Act, 2013, interested persons may request that any part of their submission be treated as confidential. Confidential documents must be clearly marked as such and submitted together with any submission. Requests for Confidentiality must be submitted in line with the Guidelines for Confidentiality Request in terms of section 4D of the ICASA Act published in Government Gazette No 41839 dated 17 August 2018.

Where an interested person has requested confidentiality on sections of its submission, the submission must be accompanied by one (1) non-confidential copy with sections that are redacted. The non-confidential version of the pre-registration notice will be published for public comment if the request for confidentiality is granted.

Requests for confidentiality will be considered within fourteen (14) working days of receiving the request. The Authority will communicate its decision to the respective Applicant. In the event that the request for confidentiality is refused, the Applicant may choose to withdraw the information on which confidentiality is requested.

Persons submitting written representations are further invited to indicate, as part of their submissions, whether they require an opportunity to make oral presentations to the Authority, should the Authority decide to hold public hearings.

Enquiries may be directed to Mr Gumani Malebusha, telephonically at 012 568 3423 or via email at CAPReview@icasa.org.za or at GMalebusha@icasa.org.za



Dr Charles Lewis
Acting Chairperson
ICASA

SCHEDULE

1. DEFINITIONS

In these Regulations, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned.

"Act" means the Electronic Communications Act, 2005 (Act No. 36 of 2005) as amended;

"Chairperson" means a panel member appointed by Council to chair the Panel;

"Consumer" means an end -user as defined in the Act;

"Community of interest" means a group of persons or sector of the public having a specific ascertainable, common interest. The distinctive feature of the group is the common interest that makes such a group of persons or sector of the public an identifiable community;

"ICASA Council" means the Council of the Authority appointed in terms of section 5 of the ICASA Act;

"ICASA Act" means the Independent Communications Authority of South Africa Act, 2000 (Act No 13 of 2000) as amended;

"Panel" means the Consumer Advisory Panel established in terms of section 71 of the Act;

"Panel member" means a member of the Panel established in terms of section 71 of the Act; and

"Quorum" means the majority of Panel members serving, including the Chairperson or Acting Chairperson.

2. PURPOSE OF REGULATIONS

The purpose of these Regulations is to:

- (a) establish the Panel;
- (b) set out the criteria and process for the appointment, disqualification, and removal of Panel members; and
- (c) set out the roles and responsibilities of the Panel.

3. ESTABLISHMENT AND FUNCTIONS OF THE PANEL

- (1) The Authority hereby establishes the Consumer Advisory Panel in terms of Section 71 of the Act to advise the Authority on matters relating to consumer issues in the Republic.
- (2) The functions of the Panel shall include the following:
 - (a) preparation and submission of quarterly and annual reports to the Authority, on consumer related issues resulting from the usage of Electronic Communications, Broadcasting, and Postal services, which includes:
 - (i) critical concerns affecting consumers; and
 - (ii) research on issues affecting consumers and report findings.
 - (b) providing a consumer perspective through commentary on relevant Regulations and regulatory projects when published for public comment; liaising and engaging with consumers on a quarterly basis to understand consumer perspectives on issues impacting the Electronic Communication, Broadcasting and Postal sectors;
 - (c) highlighting the promotion of consumer interests, with particular emphasis on persons with disabilities, senior citizens, women, youth, and people living in underserved areas when submitting their findings to the Authority;
 - (d) preparing an annual plan and budget of the Panel for approval by Council; and
 - (e) reporting quarterly and annually to the Council through the Panel's Chairperson on activities and findings for the year.

4. THE APPOINTMENT PROCESS OF THE PANEL

- (1) The Authority shall call for the nomination of Panel members from members of the public for suitable candidates, who will advise the Authority on consumer issues following an advertisement on the Authority's website, media platforms and/or national newspapers.
- (2) The nominations must take into consideration the following:
 - (a) representation of a community of interest;
 - (b) knowledge and understanding in the fields of consumer legislations and rights, law, communications, academia, labour, or other relevant experience in the field of consumer protection;
 - (c) knowledge and understanding of the Electronic Communications, Broadcasting and Postal sectors;

- (3) Members of the Panel must represent a consumer segment or work in an environment that provides the member with relevant Electronic Communications, Broadcasting or Postal sectors consumer insight which will aid and enhance the Authority's consumer protection mandate.

5. MEMBERSHIP OF THE CONSUMER ADVISORY PANEL

- (1) The Authority will appoint nine (9) members of the Panel.
- (2) The Authority will appoint one (1) of the members to be the Chairperson of the Panel.
- (3) The Chairperson holds office for a period of four (4) years as from the date of his or her appointment as Chairperson.
- (4) The Chairperson may at the end of his or her term of office be re-appointed for one (01) additional term of four (4) years only.
- (5) The other members of the Panel hold office for a period of three (3) years as from the date of their appointment.
- (6) The other Panel members may at the end of their term of office be re-appointed for one (1) additional term of three (3) years only.

6. RESIGNATION

- (1) A Panel member may at any time, upon submitting at least one (1) month's written notice, tender his or her resignation from the Panel to the Authority.
- (2) Where a Chairperson resigns, the Authority may appoint a Chairperson or an acting Chairperson from any of the remaining Panel members for the remainder of his or her existing term of office.
- (3) Where a Panel member resigns, the Authority will call for the nomination of a replacement of the vacant position created by such resignation.

7. ELIGIBILITY OF PANEL MEMBERS

- (1) Members of the Panel must have a minimum of five (5) years' experience in the ICT sector.
- (2) In addition to the requirement of sub-regulation (1) above, the Authority will consider appointing representatives from organisations that represent the interests of the following groups:
 - (a) women;
 - (b) youth;
 - (c) persons with disabilities;
 - (d) small, micro, and medium enterprises; and/or

- (e) community-based organisations or non -governmental organisations.

8. DISQUALIFICATION

A person may not be appointed as a Panel member if he /she:

- (a) is not a citizen of the Republic;
- (b) is not a permanent resident of the Republic;
- (c) is a member of Parliament, a provincial legislature or municipal council;
- (d) is an office bearer or employee of a party, movement, or organisation of a party-political nature;
- (e) has a spouse/partner who has a direct or indirect financial interest in the Electronic Communications, Broadcasting, or Postal industry;
- (f) is declared by a court of law as mentally ill or disordered;
- (g) is an unrehabilitated insolvent;
- (h) has been convicted of an offence, after the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), and sentenced to imprisonment without the option of a fine; and
- (i) has at any time been removed from an office of trust on account of misconduct.

9. REMOVAL FROM OFFICE

- (1) Subject to a decision of Council, a Panel member may be removed from office on account of –

- (a) misconduct;
- (b) inability to perform the roles of Chairperson, Acting Chairperson or Panel member;
- (c) absence from three consecutive meetings of the Panel without permission of the Chairperson, except on good cause shown;
- (d) his or her disqualification as contemplated in regulation 8;
- (e) bringing the Panel or Authority into disrepute;
- (f) failure to disclose conflict of interest.

- (2) Where a Panel member is removed from office, the Authority will call for the nomination of a replacement of the vacant position created by such removal.

10. INDUCTION OF PANEL MEMBERS

The Authority will induct Panel members on how ICASA conduct its business and what is expected of Panel members before the Panel commences its advisory work.

11. FUNCTIONS OF THE CHAIRPERSON

The Chairperson must:

- (a) allocate and manage the work of the Panel;
- (b) chair meetings and ensure that all meetings are noted with minutes;
- (c) sign off submissions on behalf of the Panel in response to public comments/commentary by the Panel;
- (d) submit quarterly and annual reports to Council on behalf of the Panel;
- (e) review and assess the performance of Panel members quarterly and on an annual basis; and
- (f) manage the budget utilisation of the Panel.

12. FUNCTIONS OF PANEL MEMBERS

The panel members must:

- (a) identify issues affecting small business and consumers in the ICT sector;
- (b) contribute to the work of the Panel as assigned;
- (c) attend meetings and activities of the Panel;
- (d) provide advice to the Authority on issues affecting consumers;
- (e) carry out research on issues affecting consumers;
- (f) fulfil the objectives set out in the terms of reference; and
- (g) contribute information on its work to the Authority's annual report to ensure that issues affecting consumers are reflected.

13. MEETINGS OF THE PANEL

- (1) The Panel must meet once in a quarter.
- (2) Where there is a need for additional meetings, such must be requested and approved by the Authority.
- (3) The Chairperson or Acting Chairperson may make a request to the Authority to hold additional meetings and provide motivation for such further meetings.

14. AGENDA OF MEETINGS

The Chairperson or Acting Chairperson of the Panel shall prepare meeting agendas, which shall be circulated with any relevant supporting documentation at least seven (7) working days prior to each meeting to Panel members and standing invitees.

15. QUORUM OF MEETING

- (1) The quorum of the Panel shall consist of the majority of Panel members serving including the Chairperson or Acting Chairperson.
- (2) In the absence of the Chairperson or Acting Chairperson, Panel members in attendance may elect a Panel member to chair the meeting.

16. VENUE OF MEETINGS

The Panel shall meet online and/or at a place and time determined by the Chairperson or Acting Chairperson, in consultation with the Authority.

17. DECLARATION OF INTEREST

- (1) A Panel member must declare any actual, potential, or existing conflict of interest.
- (2) A Panel member must recuse himself or herself from voting on or engaging in a discussion over a matter pending before the Panel, in which he or she has a direct or indirect interest.
- (3) A Panel member must declare conflict of interest which arise during the course of his or her appointment.

18. MINUTES

- (1) Minutes of all Panel meetings must be adopted by the Panel and signed-off by the Chairperson or Acting Chairperson.
- (2) The Authority will offer administrative support to all Panel activities.

19. DECISIONS OF THE PANEL

- (1) Decisions and/or recommendations of the Panel are to be taken by majority vote of the panel members present at a meeting.
- (2) In the event of a split vote, the Chairperson or Acting Chairperson has a casting vote in addition to his or her deliberative vote.

20. FUNDING OF PANEL ACTIVITIES

The Authority shall be responsible for funding the activities of the Panel as identified in the Panel's annual workplan in line with the approved allocated budget and subject to the Authority's procurement processes.

21. REMUNERATION OF PANEL MEMBERS

Panel members will be remunerated at rates determined by the Authority from time to time for:

- (a) the attendance of meetings in line with regulation 13;
- (b) the attendance of special or other meetings at the written request of the Authority;
and
- (c) any work performed in line with regulations 3, 11 or 12.

22. RECOMMENDATIONS OF THE PANEL

- (1) The Panel must consider relevant matters and prepare a submission with recommendations to the Authority.
- (2) Every recommendation of the Panel must be:
 - (a) recorded in writing;
 - (b) within the scope of these Regulations;
 - (c) based on reliable information; and
 - (d) submitted by the Chairperson of the Panel to the Authority.

23. REPORTS BY THE PANEL

The Panel must:

- (a) submit a written report with respect to its findings, advice, and recommendations;
- (b) prepare and submit a written report on its activities on a quarterly basis or as may be directed by the Authority;
- (c) submit the written report(s) no later than two weeks after each meeting of CAP or any meeting with stakeholder; and
- (d) prepare and submit annual report for submission to the Authority.

24. ENGAGEMENTS WITH OTHER CONSUMER BODIES

- (1) The Panel may engage with regional and international consumer protection bodies with similar mandates of the Panel to exchange and share information which enhance the protection of consumers.
- (2) The Chairperson of the Panel will seek permission from the Authority before engagements with such said bodies.

- (3) The Authority may pay for registration fees and membership fees required where necessary.

25. TRAVEL AND ACCOMMODATION COSTS

The Authority may pay the travel and accommodation expenses of a Panel member subject to prior arrangement with the Authority and in accordance with the Authority's Subsistence and Travel Policy.

26. CONFIDENTIALITY

Members of the Panel may not disclose any information with regard to any matter which may come to his/her knowledge in the performance of their duties under these Regulations, unless they are required by law or a court order to disclose such information.

27. INTERACTION WITH MEDIA AND PUBLIC

- (1) A Panel member must not issue media statements, comment in the media on the activities of the Panel or on any matter related to the work of the Authority.
- (2) All media enquiries on the Panel's activities or any matter relating to the Panel must be directed to the Authority.

28. TERMS OF REFERENCE

The Authority shall after consultation with the Panel, develop Terms of Reference which will guide the Panel on how to execute its mandate.

29. REPEAL OF REGULATIONS

These Regulations repeal the Regulations published in Government Gazette No. 40725 of 28 March 2017.

30. SHORT TITLE AND COMMENCEMENT

These Regulations shall be known as the Consumer Advisory Panel Regulations, 2022 and will come into effect on the date of publication in Government Gazette.

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA



**EXPLANATORY MEMORANDUM ON THE DRAFT CONSUMER ADVISORY PANEL
REGULATIONS, 2022**

1. INTRODUCTION

- 1.1 The Independent Communications Authority of South Africa ("the Authority") hereby publish the explanatory memorandum on the draft Consumer Advisory Panel Regulations.
- 1.2 The Council of the Authority took a decision to review and revise the current Consumer Advisory Panel Regulations as published in Government Gazette No. 40725 of 08 March 2017.
- 1.3 The regulations were reviewed in order to clarify the roles of the Panel Members, to strengthen CAP and address its functions.
- 1.4 The draft regulations further address the terms of office of the Panel Members and further deals with the issues of appointment of the Acting Chairperson in instances where the Chairperson resigns from office or his or her term of office comes to an end.

2. THE DRAFT CAP REVIEW REGULATIONS

Regulation 1

The revised Regulations introduce the definition of "Quorum" to provide clarity on how the Consumer Advisory Panel ("Panel") will quorate when it meets for meetings.

Regulation 2

Regulation 2 of the revised Regulations sets out the purpose of the Regulations.

Regulation 3

Regulation 3 of the revised Regulations sets out how the Panel will be established and which segments of the consumer constituency members of the Panel will be drawn from, including having relevant insight and experience in the Electronic Communications, Broadcasting and Postal Services sectors. The regulation further clarifies what will be the functions of panel members.

Regulation 4

Regulation 4 of the revised Regulations further provides how the Authority shall call for nomination of members to the Panel and which requirements will be needed for one to qualify to be a member of the Panel. The point of this regulation is to attract Panel members who not only represent the interests of a community of interest but also to ensure members have knowledge and understanding of the Electronic Communications, Broadcasting and Postal Services sectors.

Regulation 5

Regulation 5 of the revised Regulations sets out how many members will form part of the panel, the Panel will be composed of nine (9) members, and this is done in order to have a smaller Panel which is able to execute its mandate in a cost-effective manner and in a workable number. The provision also clarifies the term of office of the Chairperson and other Panel Members. The Chairperson will have a four (4) year tenure of office while the other Panel members will have a three (3) year tenure of office which may be renewed for one (1) additional term only. The Chairperson is given a four (4) year tenure instead of a three (3) year tenure so that he/she will be able to hand-over the work of the Panel to the next Panel once constituted.

Regulation 6

Regulation 6 of the revised Regulations sets out how Panel members, including the Chairperson, can resign from office. It further clarifies how the Authority will appoint a Chairperson, in a situation where the incumbent Chairperson resigns or appoint an acting Chairperson from the remaining Panel members. The regulation further explains how the Authority can call for nomination/s to replace Panel members who have resigned from office.

Regulation 7

Regulation 7 of the revised Regulation further to sub regulations 3 and 4 above sets out what experience is needed for one to be considered for membership into the Panel with emphasis on members with experience from organisations that represents women, youth, persons with disabilities, small micro and medium enterprises and community-based organisations or non-governmental organisations.

Regulation 8

Regulation 8 of the revised Regulations sets out a list of circumstances or scenarios that would lead to the disqualification from office or eligibility to the Panel.

Regulation 9

Regulation 9 of the revised Regulations sets out instances which could lead to the removal of a Panel member.

Regulation 10

Regulation 10 of the revised Regulations aims at ensuring that Panel members are inducted into the work of the Authority prior to their commencement of service.

Regulation 11

Regulation 11 of the revised Regulations sets out the functions of the Chairperson of the Panel.

Regulation 12

Regulation 12 of the revised Regulations sets out the functions of Panel members.

Regulation 13

Regulation 13 of the revised Regulations sets out how the Panel shall meet and what it will need to do if there is a need for additional meetings.

Regulation 14

Regulation 14 of the revised Regulations sets out how the Chairperson or the Acting Chairperson of the Panel will prepare for meetings.

Regulation 15

Regulation 15 of the revised Regulations sets out how a quorum of the Panel will be constituted and how meetings will proceed if the Chairperson or Acting Chairperson is not available to chair such meetings.

Regulation 16

Regulation 16 of the revised Regulations sets out how meetings will be held.

Regulation 17

Regulation 17 of the revised Regulations sets out the requirements for Panel members to declare any actual, potential, or existing conflict of interest and further guides such a Panel member on how to manage such conflict of interest if any. Further, regulation 17 requires a Panel member to declare any conflict of interest which may arise during the course of appointment period on the Panel.

Regulation 18

Regulation 18 of the revised Regulations sets out the guidelines for meeting minutes and further indicates that the Authority will offer administrative support to the Panel.

Regulation 19

Regulation 19 of the revised Regulations sets out the guidelines for the Panel on how it will go about reaching decisions on its work through voting in certain instances and further clarifies what the Chairperson or Acting Chairperson will be required to do in the event of a split vote. Regulation 19 further gives the Chairperson or Acting Chairperson a casting vote over and above his or her deliberative vote.

Regulation 20

Regulation 20 of the revised Regulations sets out the Authority's commitment and dedication to fund the activities of the Panel subject to budget availability.

Regulation 21

Regulation 21 of the revised Regulations sets out the Panel's remuneration process as determined by the Authority from time to time.

Regulation 22

Regulation 22 of the revised Regulations sets out the guidelines for the Panel on making recommendations to the Authority. This is further done to ensure that the work that the Panel provides the Authority high quality work based on reliable information.

Regulation 23

Regulation 23 of the revised Regulations sets out the guidelines for the Panel on submitting written reports to the Authority and applicable timelines for such reporting.

Regulation 24

Regulation 24 of the revised Regulations allows for Panel engagement with regional and international consumer protection bodies with similar mandates to that of the Panel and further allows for the exchange of information which enhance consumer protection/rights. Regulation 24 further guides the Chairperson or Acting Chairperson of the Panel on how to seek permission from the Authority before engaging with such said bodies. Lastly, regulation 24 confirms that the Authority may cover registration fees needed when engaging such bodies.

Regulation 25

Regulation 25 of the revised Regulations sets out the Authority's responsibility for travel and accommodation costs in line with the Authority Subsistence and Travel Policy.

Regulation 26

Regulation 26 of the revised Regulations requires Panel members to keep information confidential for the integrity of the Authority's work if such information comes to a Panel member(s) by virtue of holding the office of a Panel member and further guides Panel members on circumstances under which they will be allowed to disclose information.

Regulation 27

Regulation 27 of the revised Regulations restricts Panel members from interacting and issuing media statements. It further sensitises the Panel to speak on behalf of the Panel and not the Authority when engaging stakeholder, industry or interacting with the members of the public.

Regulation 28

Regulation 28 of the revised Regulations sets out how the Authority will, after constituting the Panel, consult the Panel and draft Terms of Reference which will guide the Panel on how to execute its mandate with ease.