GENERAL NOTICES • ALGEMENE KENNISGEWINGS

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NOTICE 241 OF 2017

GENERAL NOTICE: AMENDMENT REGULATIONS ON THE ESTABLISHMENT OF THE CONSUMER ADVISORY PANEL

The Independent Communications Authority of South Africa hereby publishes amended regulations establishing the Consumer Advisory Panel in terms of Section 4 read with Section 71 of the Electronic Communications Act, 2005 (36 of 2005, as amended) and repeals the existing regulations published in Government Gazette No. 30273 of 10 September 2007.

Rubben Mohlaloga

Acting Chairperson

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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 the ICASA 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; and

"Panel Member" means a member of the Panel established in terms of Section 71 of the Act.

2. PURPOSE OF REGULATIONS

The purpose of these Regulations is to:

2.1. establish the Panel;

2.2. set out the criteria and process for the appointment, removal and disqualification of Panel Members; and

2.3. set out the roles and responsibilities of the Panel.

3. ESTABLISHMENT OF THE PANEL

The Authority hereby provides for the establishment of a Consumer Advisory Panel in terms of section 71 of the Act to advise the Authority on matters relating to consumer issues in the Republic.

4. FUNCTIONS OF THE PANEL

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 Services consumer insight which will enhance the Authority's consumer protection mandate.

The Panel's functions include the following:

4.1. advising the Authority in a report submitted annually on consumer issues resulting from Electronic Communications, Broadcasting and Postal Services usage, which includes:

a) critical concerns of consumers;

b) consumer protection research to be conducted by the Authority; and

c) proposed annual priorities for the Authority.

4.2. providing a consumer perspective through commentary on relevant regulations and regulatory projects when published for public comment;

4.3. liaising with consumers on an annual basis to understand their perspectives on issues impacting the sector;

4.4. promote the interest of consumers, with particular emphasis on persons with disabilities, senior citizens and people living in underserviced areas when commentary is submitted or in the annual report;

4.5. preparing an annual plan and budget for the Panel for approval by the Authority; and

4.6. reporting quarterly and annually to the ICASA Council through the Panel's Chairperson on activities and findings for the year or as required.

5. DUTIES OF CHAIRPERSON AND PANEL MEMBERS

Duties of the Chairperson

5.1. The Chairperson must:

a) manage the work of the Panel;
b) chair meetings and ensure that all meetings are minuted;
c) make submissions in response to public processes with a consumer impact;
d) manage the budget of the Panel; and
e) submit quarterly and annual reports to the ICASA Council and present such annually.

Duties of Panel Members

5.2. A Panel Member must:

a) be committed to the functions and work of the Panel and contribute to the work of the Panel;
b) attend meetings and activities of the Panel;
c) conduct her/himself with integrity and professionalism and not undermine the functions, work or objectives of the Panel;
d) act in accordance with applicable laws, regulations and policies; and
e) act in the best interests of the consumer at all times

6. MEMBERSHIP

Constitution

6.1. The Panel shall consist of eleven (11) members.

6.2. Members of the Panel must be fit and proper and will be appointed by the Authority after a public nomination and selection process.

6.3. Members of the Panel must have relevant expertise in the Electronic Communications, Broadcasting or Postal sectors, which will enable them to effectively advise the Authority on consumer issues and may include:

a) representation of a community of interests;
b) competence in consumer rights, legal, communications, or other relevant areas that contribute to consumer protection within the Authority's jurisdiction; and
c) knowledge of the Electronic Communications, Broadcasting or Postal sectors.

6.4. The Panel may include representatives from organizations that include:

a) women;
b) youth;
c) persons with disabilities;
d) small micro and medium enterprises (SMME's);
f) community based organisations (CBO's) or non-governmental organizations (NGO's).

6.5. ICASA Council and delegated officials have a standing invitation to

attend all Panel meetings.

6.6. The Panel may invite experts to attend the Panel meetings.

7. DISQUALIFICATION OF A PANEL MEMBER

7.1. A person may not be appointed as a Panel Member if he/she:

a) is not a South African citizen;

b) is not a permanent resident of South Africa;

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) or his or her spouse / partner has a direct or indirect financial interest in the electronic communications, postal or broadcasting industry;

f) has been declared by the court to be mentally ill;

g) is an unrehabilitated insolvent;

h) has at any time been convicted, whether in the Republic or elsewhere, of:

(i) theft, fraud, forgery or uttering a forged document, perjury, an offence in terms of the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or another offence involving dishonesty; or

(ii) an offence under the ICASA Act or the underlying statutes;

i) has been sentenced, after the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), to a period of imprisonment of not less than one year without the option of a fine; or

j) has at any time been removed from an office of trust on account of misconduct.

8. APPOINTMENT OF CHAIRPERSON AND PANEL MEMBERS

Appointment process

8.1. The Chairperson of the Panel shall be appointed by the ICASA Council from the appointed Panel Members.

8.2. The ICASA Council shall appoint a person with appropriate expertise, experience, skills and knowledge to serve as a member of the Panel.

8.3. The Authority shall call for nominations from the public for suitable persons following an advertisement of the positions of Panel Members on the ICASA website as well as at least one national newspaper and other platforms at its discretion.

Selection criteria

8.4. The Authority must consider all applications and make a selection based on:

a) representation of a community of interest;
b) competence in consumer rights, legal, communications, or other relevant areas that contribute to consumer protection;
c) knowledge of the Electronic Communications, Broadcasting or Postal sectors; and
d) skills and expertise.

9. REMOVAL OF A PANEL MEMBER

9.1. A Panel Member may be removed from office by the Council of ICASA on account of:

a) misconduct;
b) inability to perform duties;
c) absence from three consecutive meetings without the acknowledgement of the Chairperson of the Panel, except on good cause shown;
d) failure to disclose an interest;
e) upon conviction of a criminal offence; or
f) finding that the member has brought the Authority or the Panel into disrepute.

10. TERM OF OFFICE FOR PANEL MEMBERS AND CHAIRPERSON

The Chairperson

10.1. The term of office for the Chairperson is three (3) years.

10.2. The Chairperson may hold the position of Chairperson for a maximum of two (2) terms.

10.3. The Chairperson may at any time, upon at least one (1) month's written notice tender her or his resignation from the Panel to the Authority.

Panel members

10.4. The term of office for all Panel Members is two (2) years.

10.5. Each member may hold a maximum of two (2) terms.

10.6. A Panel Member may at any time, upon at least one (1) month's written notice tender her or his resignation from the Panel to the Authority.

11. MEETINGS OF THE PANEL

Frequency

11.1. The Panel must meet at least four (4) times a year, or more frequently if the circumstances dictate that the Panel holds additional

meetings.

11.2. Additional meetings must be agreed to and approved by the Authority prior to such a meeting being held.

11.3. The Panel may meet with the division primarily responsible for consumer affairs to provide input on its annual plans.

Agenda

11.4. The Authority shall provide administrative support to the Panel.

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

11.6. The Panel must establish an annual work plan for each year to ensure that all relevant matters are covered in accordance with these Regulations.

11.7. A Panel Member must be prepared for Panel meetings, to provide appropriate and constructive input on matters discussed.

Quorum

11.8. The majority of Panel Members in attendance either through a physical or online presence shall constitute a quorum.

Attendance

11.9. The Panel shall meet at a place and time as determined by the Chairperson, in consultation with the Authority.

11.10. Panel Members may participate through an online presence where the Authority has the requisite infrastructure.

Conflict of Interest

11.11. A Panel Member must declare a potential or existing conflict of interest.

11.12. A Panel Member must recuse her/himself from voting on or engaging in a discussion of a matter pending before the Panel, in which she or he has a direct or indirect interest.

Minutes

11.13. Minutes of all Panel meetings must be adopted by the Panel and signed by the Chairperson.

11.14. The Authority must ensure administrative support is provided for meetings and that all meetings are recorded.

11.15. In the absence of the Chairperson the meeting may select a Chairperson for that meeting.

Decisions of the Panel

11.16. Decisions of the Panel are to be taken by majority vote of the Members present at a meeting.

11.17. In the event of a split vote the Chairperson has a casting vote in addition to his or her deliberative vote.

Funding of Activities

11.18. Should any of the Panel activities require funding, the Authority shall be responsible provided that the expenditure is in terms of activities identified in the Panel's annual plan, in line with the Panel's approved budget and subject to the Authority's procurement processes.

12. REMUNERATION OF PANEL MEMBERS

12.1. Panel Members may be remunerated at rates determined by the ICASA Council from time to time for:

a) the attendance of the mandatory meetings; and

b) the attendance of special or other meetings at the written request of the Authority.

13. TRAVEL AND ACCOMMODATION COSTS

The Authority may pay for the travel and accommodation expenses of a Panel Member subject to prior agreement with the Authority and in accordance with ICASA's travel policies.

14. PROCEEDINGS OF THE PANEL

14.1. The Panel will consider relevant matters, after which, the Panel will prepare a submission with recommendations to the Authority.

14.2. 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 in line with the requirements of the relevant regulatory process or as otherwise required in these regulations.

15. REPORTS BY THE PANEL

The Panel must:

15.1. file a written report with respect to its findings, advice and recommendations;

15.2. prepare a written report on its activities on a quarterly basis or as may be directed by the Authority; and

15.3. submit the written report(s) no later than two (2) weeks after each meeting.

16. INTERACTION WITH THE MEDIA

16.1. 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 Authority, without the prior written permission of the Authority.

16.2. All media enquiries on the Panel's activities or any matter must be directed to the Authority.

17. AMENDMENT OF THE REGULATIONS

These regulations may be amended by the Authority as determined from time-to-time.

18. REPEAL OF REGULATIONS

These Regulations repeal the Regulations on the Establishment and Constitution of the Consumer Advisory Panel of ICASA as published in Government Gazette No. 30273 of 10 September 2007.

19. SHORT TITLE

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