REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 586 Cape Town, Kaapstad, 7 April 2014 No. 37537

THE PRESIDENCY

No. 267 7 April 2014

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 2 of 2014: Independent Communications Authority of South Africa Amendment Act, 2014

DIE PRESIDENSIE

No. 267 7 April 2014

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

Wet No 2 van 2014: Wysigingswet op die Onafhanklike Kommunikasie-owerheid van Suid-Afrika, 2014

GENERAL EXPLANATORY NOTE:

[ ]	Words in bold type in square brackets indicate omissions from existing enactments.
______	Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President)
(Assented to 3 April 2014)

ACT

To amend the Independent Communications Authority of South Africa Act, 2000, so as to insert new, amend existing and repeal obsolete, definitions; to provide for further clarity on the powers and duties of the Authority; to introduce mechanisms to ensure the accountability of the Authority, including that of councillors and committees; and to confirm the use of electronic communications networks and services for the purpose of electronic transactions; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 13 of 2000, as amended by section 2 of Act 3 of 2006

1. Section 1 of the Independent Communications Authority of South Africa Act, 2000 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion after the definition of "Authority" of the following definition:
" **'broad-based black economic empowerment'** has the meaning assigned to it in the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);".

(b) by the insertion after the definition of "Broadcasting Act" of the following definitions:
" **'Competition Act'** means the Competition Act, 1998 (Act No. 89 of 1998);
'Competition Commission' means the Competition Commission established in terms of section 19 of the Competition Act;";

(c) by the insertion after the definition of "Complaints and Compliance Committee" of the following definitions:
" **'concurrent jurisdiction agreement'** means a concurrent jurisdiction agreement concluded in terms of section 4(3A)*(b)*;
'Constitution' means the Constitution of the Republic of South Africa, 1996;";

(d) by the insertion after the definition of "Council" of the following definition:
" **'days'** means working days unless otherwise specified;";

(e) by the substitution for the definition of "Electronic Communications Act" of the following definition:
" **'Electronic Communications Act'** means **[an Act of Parliament providing for convergence in the broadcasting, broadcasting signal distribution and telecommunications sectors]** the Electronic Communications Act, 2005 (Act No. 36 of 2005);";

ALGEMENE VERDUIDELIKENDE NOTA:

[ ]	Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.
________	Woorde met 'n volstreep daaronder dui invoegings in bestaande verordenings aan.

(Engelse teks deur die President geteken)
(Goedgekeur op 3 April 2014)

WET

Tot wysiging van die Wet op die Onafhanklike Kommunikasie-owerheid van Suid-Afrika, 2000, ten einde nuwe omskrywings in te voeg, bestaande omskrywings te wysig en uitgediende omskrywings te skrap; voorsiening te maak vir verdere duidelikheid oor die bevoegdhede en pligte van die Owerheid; meganismes in te bring om die aanspreeklikheid van die Owerheid te verseker, met inbegrip van dié van die raadslede en komitees; en die gebruik van elektroniese kommunikasienetwerke en dienste vir elektroniese transaksies te bevestig; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 13 van 2000, soos gewysig deur artikel 2 van Wet 3 van 2006

1. Artikel 1 van die Wet op die Onafhanklike Kommunikasie-owerheid van Suid-Afrika, 2000 (hierna die Hoofwet genoem), word hierby gewysig—

(a) deur die volgende omskrywings voor die omskrywing van "gesinslid" in te voeg:

" **'beleidsvoorskrifte'** beleidsvoorskrifte uitgereik ingevolge artikel 3(1A), 3(2) of beoog in artikel 81(1) van die Wet op Elektroniese Kommunikasie of ingevolge artikel 2A(2) van die Posdienstewet;
breëbasis- swart ekonomiese bemagtiging' dit wat in die 'Broad-Based Black Economic Empowerment Act, 2003' (Wet No. 53 van 2003), daaraan toegeskryf word;
'dae' werksdae tensy anders vermeld;";
'elektroniese transaksie' dit wat in die Wet op Elektroniese Transaksies daaraan toegeskryf word;

(b) deur die volgende omskrywing na die omskrywing van "gesinslid" in te voeg:

" **'Grondwet'** die Grondwet van die Republiek van Suid-Afrika, 1996;";

(c) deur die volgende omskrywings voor die omskrywing van "Minister" in te voeg:

" **'konkurrente regsbevoegdheidsooreenkoms'** 'n konkurrente regsbevoegdheidsooreenkoms ingevolge artikel 4(3A)*(b)* aangegaan;
'lisensiehouer' dit wat in artikel 1 van die Wet op Elektroniese Kommunikasie daaraan toegeskryf word en ook, soos deur die samehang

(f) by the insertion after the definition of "Electronic Communications Act" of the following definitions:

" **'electronic transaction'** has the meaning assigned to it in the Electronic Transactions Act;

'Electronic Transactions Act' means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);";

(g) by the deletion of the definition of "former authorities";

(h) by the insertion before the definition of "Minister" of the following definitions:

" **'licence exemption'** has the meaning assigned to it in section 1 of the Electronic Communications Act;

'licensee' has the meaning assigned to it in section 1 of the Electronic Communications Act, and includes, as required by the context, a person granted a licence exemption in terms of section 6 of that Act;";

(i) by the insertion after "National Revenue Fund" of the following definition:

" **'policy directions'** means policy directions issued in terms of section 3(1A), 3(2) or contemplated in 81(1) of the Electronic Communications Act or in terms section 2A(2) of the Postal Services Act;"; and

(j) by the deletion of the definition of "Telecommunications Act".

Amendment of section 3 of Act 13 of 2000, as amended by section 4 of Act 3 of 2006

2. Section 3 of the principal Act is hereby amended by the addition of the following subsection:

"(5) A person affected by any action, finding or decision of the Authority may apply to a court with competent jurisdiction for review of that action, finding or decision.".

Amendment of section 4 of Act 13 of 2000, as substituted by section 5 of Act 3 of 2006

3. Section 4 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph *(a)* of the following paragraph:

"*(a)* must exercise the powers and perform the duties conferred and imposed upon it by this Act, the underlying statutes and **[by]** any other applicable law;";

(b) by the substitution in subsection (3) for the words preceding paragraph *(a)* of the following words:

"Without derogating from the generality of **[subsection]** subsections (1) and (2), the Authority—";

(c) by the substitution in subsection (3) for paragraphs *(a)*, *(b)*, *(c)*, *(d)* and *(e)* of the following paragraphs, respectively:

"*(a)* may make recommendations to the Minister on policy matters and amendments to this Act and the underlying statutes which accord with the objects of this Act and the underlying statutes to promote development in the broadcasting, electronic transactions, postal and electronic communications sectors;

(b) must monitor the broadcasting, postal and electronic communications **[sector]** sectors to ensure compliance with this Act and the underlying statutes;

(c) must **[manage]** control, plan, administer and manage the use and licensing of the radio frequency spectrum in accordance with bilateral agreements or international treaties entered into by the Republic;

(d) must develop, monitor and enforce compliance with licence conditions and regulations consistent with the objects of this Act and the underlying statutes for different categories of licences;

(e) **[must]** may grant, renew, amend, transfer and revoke licenses in accordance with the provisions of this Act and the underlying statutes;";

vereis, 'n persoon aan wie 'n lisensievrystelling ingevolge artikel 6 van daardie Wet toegestaan is;

'lisensievrystelling' dit wat in artikel 1 van die Wet op Elektroniese Kommunikasie daaraan toegeskryf word;

'Mededingingskommissie' die Mededingingskommissie ingestel ingevolge van artikel 19 van die Wet op Mededinging;";

(d) deur die omskrywing van "Telekommunikasiewet" te skrap.

(e) deur die omskrywing van "voormalige owerhede" te skrap;

(f) deur die omskrywing van "Wet op Elektroniese Kommunikasie" deur die volgende omskrywing te vervang:

" **'Wet op Elektroniese Kommunikasie' ['n Wet van die Parlement wat voorsiening maak vir konvergensie in die uitsaai-, uitsaaiseinverspreidings- en telekommunikasiesektore]** die Wet op Elektroniese Kommunikasie, 2005 (Wet No. 36 van 2005);"; en

(g) deur die volgende omskrywings na die omskrywing van "Wet op Elektroniese Kommunikasie" in te voeg:

" **'Wet op Elektroniese Transaksies'** die Wet op Elektroniese Kommunikasies en Transaksies, 2002 (Wet No. 25 van 2002);

'Wet op Mededinging' die Wet op Mededinging, 1998 (Wet No. 89 van 1998);".

Wysiging van artikel 3 van Wet 13 van 2000, soos gewysig deur artikel 4 van Wet 3 van 2006

2. Artikel 3 van die Hoofwet word hierby gewysig deur die volgende subartikel by te voeg:

"(5) 'n Persoon deur enige handeling, bevinding of beslissing van die Owerheid geraak, kan by 'n hof met regsbevoegdheid aansoek doen om 'n hersiening van daardie handeling, bevinding of beslissing.".

Wysiging van artikel 4 van Wet 13 van 2000, soos vervang deur artikel 5 van Wet 3 van 2006

3. Artikel 4 van die Hoofwet word hierby gewysig—

(a) deur paragraaf *(a)* in subartikel (1) deur die volgende paragraaf te vervang:

"*(a)* moet die bevoegdhede uitoefen en die pligte uitvoer wat by of kragtens hierdie Wet, die onderliggende wette en **[by]** enige ander toepaslike wet aan hom verleen en opgelê is;";

(b) deur in subartikel (3) die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

"Die Owerheid, sonder om afbreuk te doen aan die algemeenheid van **[subartikel]** subartikels (1) en (2)—";

(c) deur paragrawe *(a)*, *(b)*, *(c)*, *(d)* en *(e)* in subartikel (3) onderskeidelik deur die volgende paragrawe te vervang:

"*(a)* kan aan die Minister aanbevelings doen oor beleidsaangeleenthede en wysigings aan hierdie Wet en die onderliggende wette wat ooreenstem met die oogmerke van hierdie Wet en die onderliggende wette om ontwikkeling in die uitsaai-, elektroniese transaksie-, pos- en elektroniese kommunikasiesektore te bevorder;

(b) moet die uitsaai-, pos- en elektroniese **[kommunikasiesektor]** kommunikasiesektore moniteer om nakoming van hierdie Wet en die onderliggende wette te verseker;

(c) moet die gebruik en lisensiëring van radiofrekwensiespektrum **[bestuur]** beheer, beplan, administreer en bestuur ooreenkomstig bilaterale ooreenkomste of internasionale verdrae wat deur die Republiek gesluit is;

(d) moet nakoming van lisensievoorwaardes en regulasies ontwikkel, monitor en afdwing in ooreenstemming met die oogmerke van hierdie Wet en die onderliggende wetgewing vir verskillende kategorieë lisensies;

(e) **[moet]** kan lisensies toestaan, hernu, wysig, oordra en intrek ooreenkomstig die bepalings van hierdie Wet en die onderliggende wette;";

(d) by the substitution in subsection (3) for paragraph *(h)* of the following paragraph:

"*(h)* may conduct research on all matters affecting the broadcasting, electronic transactions, postal and electronic communications sectors in order to exercise its power and perform its duties;";

(e) by the substitution in subsection (3) for paragraphs *(k)* and *(l)* of the following paragraphs, respectively:

"*(k)* may make regulations on empowerment requirements **[in terms of Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003)]** to promote broad-based black economic empowerment;

(l) may inspect **[transmitters or other]** electronic communications apparatus used for electronic communications;";

(f) by the substitution in subsection (3) for paragraph *(n)* of the following paragraph:

"*(n)* must investigate and adjudicate complaints submitted to the Authority in terms of this Act, the underlying statutes, and licence conditions;";

(g) by the addition to subsection (3) of the following paragraphs:

"*(o)* may make recommendations to the Minister on matters dealt with or to be dealt with in the Electronic Transactions Act;

(p) except where section 74(1) of the Electronic Communications Act applies, must determine a penalty or remedy that may be appropriate for any offence of contravening any regulation or licence condition, as the case may be, contemplated in this Act or the underlying statutes, taking into account section 17H; and

(q) must exercise the powers and perform the duties of the Authority in terms of the Postal Services Act.";

(h) by the insertion after subsection (3) of the following subsections:

"(3A) The Authority, in exercising its powers and performing its duties—

(a) must consider policy made, and policy directions issued, by the Minister in terms of this Act, the underlying statutes and any other applicable law; and

(b) may conclude a concurrent jurisdiction agreement with any relevant authority or institution and must, at least once every three years, where necessary, review and revise the agreement by agreement with the authority or institution in question.";

(i) by the substitution in subsection (4) for paragraphs *(f)* and *(g)* of the following paragraphs, respectively:

"*(f)* The power to grant, renew, amend, revoke or transfer any individual licence may **[only]** not be delegated to a councillor or to a committee of the Council.

(g) Notwithstanding the provisions of this section, any councillor or committee delegated with **[the]** any power **[to grant, amend, revoke, transfer or renew a licence]** or duty of the Authority in terms of this Act, subject to paragraph *(f)* or the underlying statutes, must submit a report **[its decision]** on the exercise and performance of that power and duty to the Council."; and

(j) by the addition to subsection (4) of the following paragraph:

"*(h)* Notwithstanding the provisions of this subsection, the Council must exercise general control over the exercise of the powers and the performance of the duties of the Authority in terms of this Act and the underlying statutes.".

Amendment of section 4B of Act 13 of 2000, as inserted by section 6 of Act 3 of 2006

4. Section 4B of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for paragraph *(a)* of the following paragraph:

"*(a)* submit written representations **[within 60 days]** on or before a date specified in the notice, which date may not be less than 45 days from the date of publication of the notice; and"; and

7

(d) deur paragraaf *(h)* in subartikel (3) deur die volgende paragraaf te vervang:
"*(h)* kan navorsing doen oor alle aangeleenthede wat die uitsaai-, elektroniese transaksie-, pos- en elektroniese kommunikasiesektore raak ten einde sy bevoegdhede uit te oefen en sy pligte uit te voer;";

(e) deur paragrawe *(k)* en *(l)* in subartikel (3) onderskeidelik deur die volgende paragrawe te vervang:
"*(k)* kan regulasies maak oor bemagtigingsvereistes **[ingevolge die 'Broad-Based Black Economic Empowerment Act, 2003' (Wet No. 53 van 2003)]** om breëbasis- swart ekonomiese bemagtiging te bevorder;
(l) kan **[senders of ander]** elektroniese kommunikasie-apparaat wat vir elektroniese kommunikasie gebruik word, inspekteer;";

(f) deur paragraaf *(n)* in subartikel (3) deur die volgende paragraaf te vervang:
"*(n)* moet klagtes ondersoek en beoordeel wat by die Owerheid ingedien is ingevolge hierdie Wet, die onderliggende wette, en lisensie-voorwaardes;";

(g) deur die volgende paragrawe by subartikel (3) te voeg:
"*(o)* kan aanbevelings by die Minister doen oor aangeleenthede wat in die Wet op Elektroniese Transaksies hanteer word of hanteer gaan word;
(p) behalwe waar artikel 74(1) van die Wet op Elektroniese Kommunikasie geld, moet 'n straf of remedie bepaal wat gepas kan wees vir enige misdryf waar enige regulasie of lisensievoorwaarde, na gelang van die geval, oortree is, soos in hierdie Wet of die onderliggende wette beoog, met inagneming van artikel 17H; en
(q) moet die bevoegdhede en die pligte van die Owerheid ingevolge die Posdienstewet uitoefen en verrig.";

(h) deur die volgende subartikel na subartikel (3) in te voeg:
"(3A) Die Owerheid, in die uitvoering van sy bevoegdhede en die verrigting van sy pligte—
(a) moet IKT-sektorbeleid gemaak en beleidsvoorskrifte uitgereik deur die Minister ingevolge hierdie Wet, die onderliggende wette en enige ander toepaslike wet in ag neem; en
(b) kan 'n konkurrente regsbevoegdheidsooreenkoms met enige tersaaklike owerheid of instelling aangaan en moet, ten minste een keer elke drie jaar, waar nodig, die ooreenkoms hersien en verbeter by ooreenkoms met die betrokke owerheid of instelling.";

(i) deur paragrawe *(f)* en *(g)* in subartikel (4) onderskeidelik deur die volgende paragrawe te vervang:
"*(f)* Die bevoegdheid om 'n individuele lisensie toe te staan, te hernu, te wysig, te herroep of oor te dra, kan **[slegs]** nie gedelegeer word aan 'n raadslid of aan 'n komitee van die Raad nie.
(g) Ondanks die bepalings van hierdie artikel moet 'n raadslid of komitee aan wie **[die]** enige bevoegdheid of plig van die Owerheid gedelegeer is **[om 'n lisensie]** ingevolge hierdie Wet **[toe te staan, te wysig, te herroep, oor te dra of te hernu sy besluit]**, behoudens paragraaf *(f)* of die onderliggende wette, 'n verslag aan die Raad **[rapporteer]** voorlê."; en

(j) deur die volgende paragraaf by subartikel (4) te voeg:
"*(h)* Ondanks die bepalings van hierdie subartikel, moet die Raad algemene beheer uitoefen oor die uitoefening van die bevoegdhede en die verrigting van die pligte van die Owerheid ingevolge hierdie Wet en die onderliggende wette.".

Wysiging van artikel 4B van Wet 13 van 2000, soos ingevoeg deur artikel 6 van Wet 3 van 2006

4. Artikel 4B van die Hoofwet word hierby gewysig—
(a) deur paragraaf *(a)* in subartikel (2) deur die volgende paragraaf te vervang:
"*(a)* **[binne 60 dae]** op of voor 'n datum in die kennisgewing vermeld, welke datum nie minder as 45 dae vanaf die datum van publikasie van die kennisgewing mag wees nie, skriftelike vertoë te rig; en"; en

(b) by the addition of the following subsections:

"(7) The period provided for in subsection (2)*(a)* may be extended if an inquiry is of a complex nature or where substantial research or analysis is required by any interested person.

(8) Before the exercise and performance of any of its powers and duties in terms of this section, the Authority must—

(a) consider whether or not, in terms of any concurrent jurisdiction agreement concluded between the Authority and any other authority or institution, it would be appropriate to refer an inquiry to such authority or institution; or

(b) subject to section 67 of the Electronic Communications Act and the terms and conditions of any concurrent jurisdiction agreement concluded between the Authority and the Competition Commission, bear in mind that the Competition Commission has primary authority to detect and investigate past or current commissions of alleged prohibited practices within any industry or sector and to review mergers within any industry or sector in terms of the Competition Act.

(9) Subject to the terms and conditions of the concurrent jurisdiction agreement or unless otherwise agreed to by the Authority and the other authority or institution in question, the Authority may not take any action where a matter has already been brought to the attention of and is being dealt with by that other authority or institution.".

Amendment of section 4C of Act 13 of 2000, as inserted by section 6 of Act 3 of 2006

5. Section 4C of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for the words preceding paragraph *(a)* of the following words:

"The Authority may, subject to section 4D and any other law governing privilege, for the purpose of an inquiry—"; and

(b) by the substitution in subsection (6) for the words preceding paragraph *(a)* of the following words:

"The Authority must, within **[180]** 90 days from the date of conclusion of the inquiry—".

Amendment of section 5 of Act 13 of 2000, as amended by section 7 of Act 3 of 2006

6. Section 5 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

"(2) **[*(a)* The chairperson must, in writing, appoint a councillor as acting chairperson to perform the functions of the chairperson in his or her absence.**

***(b)* Where the chairperson is unable to make an appointment]** In the absence of the chairperson, the remaining councillors must from their number elect an acting chairperson, who, while he or she acts, may perform all the functions of the chairperson."; and

(b) by the substitution in subsection (3)*(b)* for subparagraph (ii) of the following subparagraph:

"(ii) possess suitable qualifications, expertise and experience in the fields of, amongst others, broadcasting, electronic communications and postal policy or operations, public policy development, electronic engineering, law, **[marketing, journalism, entertainment]** information technology, content in any form, consumer protection, education, economics, finance or any other relevant expertise or qualifications.".

(b) deur die volgende subartikels by te voeg:

"(7) Die tydperk in subartikel (2)*(a)* voor voorsiening gemaak, kan verleng word indien 'n ondersoek ingewikkeld is of waar wesenlike navorsing of analise deur enige belanghebbende persoon vereis word.

(8) Voor die uitoefening en verrigting van enige van sy bevoegdhede en pligte ingevolge hierdie artikel, moet die Owerheid—

(a) oorweeg of dit, ingevolge enige ooreenkoms ten opsigte van konkurrente regsbevoegdheid tussen die Owerheid en enige owerheid of instelling aangegaan, gepas sal wees om 'n ondersoek na sodanige owerheid of instelling te verwys, al dan nie; of

(b) behoudens artikel 67 van die Wet op Elektroniese Kommunikasie en die bedinge en voorwaardes van enige ooreenkoms ten opsigte van konkurrente regsbevoegdheid aangegaan tussen die Owerheid en die Mededingingskommissie, in gedagte hou dat die Mededingingskommissie primêre gesag het om vorige of huidige plegings van beweerde verbode praktyke in enige industrie of sektor te bespeur en daarna ondersoek in te stel en om samesmeltings in enige bedryf of sektor ingevolge die Wet op Mededinging, te hersien.

(9) Behoudens die bedinge of voorwaardes van die konkurrente regsbevoegdheidsooreenkoms of tensy andersins tussen die Owerheid en die ander betrokke owerheid of instelling ooreengekom, kan die Owerheid nie enige stappe doen waar 'n aangeleentheid reeds onder die aandag van daardie ander owerheid of instelling gebring is en deur hulle hanteer word nie.".

Wysiging van artikel 4C van Wet 13 van 2000, soos ingevoeg deur artikel 6 van Wet 3 van 2006

5. Artikel 4C van die Hoofwet word hierby gewysig—

(a) deur in subartikel (2) die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

"Die Owerheid kan, behoudens artikel 4D en enige ander wet wat privilegie reël, vir die doeleindes van 'n ondersoek—"; en

(b) deur in subartikel (6) die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

"Die Owerheid moet, binne **[180]** 90 dae vanaf die datum van die afsluiting van die verhoor—".

Wysiging van artikel 5 van Wet 13 van 2000, soos gewysig deur artikel 7 van Wet 3 van 2006

6. Artikel 5 van die Hoofwet word hierby gewysig—

(a) deur subartikel (2) deur die volgende subartikel te vervang:

"(2) **[*(a)* Die voorsitter moet 'n raadslid skriftelik as waarnemende voorsitter aanstel om die funksies van die voorsitter in sy of haar afwesigheid te verrig.**

***(b)* Waar die voorsitter nie in staat is om 'n aanstelling te maak nie,]** In die afwesigheid van die voorsitter, moet die oorblywende raadslede 'n waarnemende voorsitter uit eie geledere kies, wat terwyl hy of sy waarneem, al die werksaamhede van die voorsitter mag verrig."; en

(b) deur subparagraaf (ii) in subartikel (3)*(b)* deur die volgende subparagraaf te vervang:

"(ii) oor gepaste kwalifikasies, kundigheid en ervaring op die terreine van onder andere die uitsaai- elektroniese kommunikasie- en posbeleid of operasies, openbare beleidsontwikkeling, elektroniese ingenieurswese, die reg, **[bemarking, joernalisme, vermaak]** inligtingstegnologie, inhoud in enige vorm, verbruikersbeskerming, opvoeding, ekonomie, finansies of enige ander tersaaklike kundigheid of kwalifikasies beskik.".

Amendment of section 6A of Act 13 of 2000, as inserted by section 9 of Act 3 of 2006

7. Section 6A of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The Minister must, in consultation with the National Assembly, establish a performance management system to monitor and evaluate the performance of the chairperson **[and other]**, councillors and the Council, individually and collectively.".

(b) by the substitution in subsection (2) for paragraph *(a)* of the following paragraph:

"*(a)* set appropriate key performance indicators as a yardstick for measuring performance, including, amongst others, the matters and the time periods set out in sections 4(3A), 4B(2)*(a)*, (7), (8) and (9), 4C(6), 7(7), 11A(3) and (4), 11B, 12(2) and 16(1) and (2);";

(c) by the deletion in subsection (2) of the word "and" at the end of paragraph *(b)*, the insertion of the expression "; and" after the word "year" in paragraph *(c)* and the addition of the following paragraph:

"*(d)* be reviewed at least once a year."; and

(d) by the substitution for subsections (3), (4) and (5) of the following subsections, respectively:

"(3) As soon as is practicable after the appointment of the chairperson or any other councillor a performance agreement must be concluded between the chairperson **[or]**, other councillor, the Council and the Minister.

(4) The evaluation of the performance of the chairperson **[or]**, other councillor and the Council must be conducted by a panel constituted by the Minister, in consultation with the National Assembly, for that purpose.

(5) The panel contemplated in subsection (4) must, after an evaluation of the chairperson **[or]**, other councillor and the Council, submit a report to the National Assembly for consideration.".

Amendment of section 7 of Act 13 of 2000, as amended by section 10 of Act 3 of 2006

8. Section 7 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph *(b)* of the following paragraph:

"*(b)* The chairperson may at the end of his or her term of office be re-appointed in terms of section 5 for one additional term of five years only.";

(b) by the substitution for subsections (4), (5) and (6) of the following subsections, respectively:

"(4) **[Despite]** Notwithstanding the provisions of subsections (1) and (2), the **[councillors remain]** chairperson or a councillor remains in office after expiry of **[their]** his or her term of office until the commencement of the term of office of **[their successors]** his or her successor, but the extended term of office may not exceed 45 days.

(5) A councillor may at the end of his or her term of office be re-appointed in terms of section 5 for one additional term of four years only.

(6) **[Every]** A councillor—

(a) serves in a full-time capacity to the exclusion of any other remunerative employment, occupation or office **[which is likely to—]**;

[*a*]*(b)* must not interfere with the exercise by any **[such]** other councillor of his or her functions in terms of this Act or the underlying statutes; **[or]** and

[*b*]*(c)* must not create a conflict of interests between **[such employment, occupation or office]** his or her other activities and his or her office as councillor."; and

(c) by the addition of the following subsection:

"(7) The provisions of subsection (6) do not apply to—

(a) a councillor who occupies office as a member of a public interest organisation and performs concomitant tasks for which a honorarium is paid or payable;

Wysiging van artikel 6A van Wet 13 van 2000, soos ingevoeg deur artikel 9 van Wet 3 van 2006

7. Artikel 6A van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Die Minister moet, in oorleg met die Nasionale Vergadering, 'n prestasiebestuurstelsel instel om die prestasie van die voorsitter **[en]**, ander raadslede en die Raad, individueel en gesamentlik, te moniteer en evalueer.".

(b) deur paragraaf *(a)* in subartikel (2) deur die volgende paragraaf te vervang:

"*(a)* gepaste sleutelprestasie-aanduiders as 'n maatstaf vir prestasiemeting bepaal, met inbegrip van, onder andere, die aangeleenthede en die tydperke uiteengesit in artikels 4(3A), 4B(2)*(a)*, (7), (8) en (9), 4C(6), 7(7), 11A(3) en (4), 11B, 12(2) en 16(1) en (2);";

(c) deur die woord "en" aan die einde van paragraaf *(b)* in subartikel (2) te skrap, die uitdrukking "; en" na die woord "hersien" in paragraaf *(c)* in te voeg en deur die volgende paragraaf by te voeg:

"*(d)* ten minste eenkeer per jaar hersien word."; en

(d) deur subartikels (3), (4) en (5) onderskeidelik deur die volgende subartikels te vervang:

"(3) So gou prakties doenlik na die aanstelling van die voorsitter of enige ander raadslid moet 'n prestasie-ooreenkoms tussen die voorsitter **[of]**, ander raadslid, die Raad en die Minister gesluit word.

(4) Die evaluering van die prestasie van die voorsitter **[of]**, ander raadslid en die Raad moet uitgevoer word deur 'n paneel wat die Minister in oorleg met die Nasionale Vergadering vir dié doel saamstel.

(5) Die paneel in subartikel (4) beoog, moet na 'n evaluasie van die voorsitter **[of]**, ander raadslid en die Raad, 'n verslag aan die Nasionale Vergadering voorlê vir oorweging.".

Wysiging van artikel 7 van Wet 13 van 2000, soos gewysig deur artikel 10 van Wet 3 van 2006

8. Artikel 7 van die Hoofwet word hierby gewysig—

(a) deur paragraaf *(b)* in subartikel (1) deur die volgende paragraaf te vervang:

"*(b)* Die voorsitter kan ingevolge artikel 5 aan die einde van sy of haar ampstermyn weer aangestel word vir 'n enkele bykomende termyn van slegs vyf jaar.";

(b) deur subartikels (4), (5) en (6) onderskeidelik deur die volgende subartikels te vervang:

"(4) Ondanks die bepalings van subartikels (1) en (2) bly die **[raadslede]** voorsitter of 'n raadslid na die verstryking van **[hul]** sy of haar ampstermyn in die amp aan tot met die aanvang van die ampstermyn van **[hul opvolgers]** sy of haar opvolger, maar die verlengde ampstermyn mag nie 45 dae te bowe gaan nie.

(5) 'n Raadslid kan aan die einde van sy of haar ampstermyn ingevolge artikel 5 heraangestel word vir 'n enkele bykomende termyn van slegs vier jaar.

(6) **[Elke raadslid]** 'n Raadslid—

(a) dien in 'n heeltydse hoedanigheid ter uitsluiting van enige ander besoldigde werk, beroep of amp **[wat waarskynlik—]**;

[a]*(b)* moet nie met die uitoefening deur **[so]** 'n ander raadslid van sy of haar werksaamhede ingevolge hierdie Wet of die onderliggende wette **[sal]** inmeng nie; **[of]** en

[b]*(c)* moet nie 'n botsing van belange tussen **[sodanige werk, beroep of amp]** sy of haar ander aktiwiteite en sy of haar amp as raadslid teweeg **[sal]** bring nie."; en

(c) deur die volgende subartikel by te voeg:

"(7) Die bepalings van subartikel (6) is nie van toepassing nie op—

(a) 'n raadslid wat 'n amp beklee as 'n lid van 'n openbarebelangeorganisasie en gepaardgaande take verrig waarvoor 'n honorarium betaal word of betaalbaar is;

(*b*) any incidental gift received or derived by a councillor for attendance at any conference or public lecture; or

(*c*) any other work which reasonably may be considered to advance the work of the Authority,

but such appointment, office and honorarium, or gift must be disclosed in writing and recorded as provided for in sections 11B and 12(2).".

Amendment of section 11 of Act 13 of 2000

9. Section 11 of the principal Act is hereby amended—

(*a*) by the substitution for subsection (1) of the following subsection:

"(1)[*(a)*] Meetings of the Council must be held at least once a month at such times and places as the Council may determine.

[*(b)* However, the first meeting must be held at such time and place as the chairperson determines.]";

(*b*) by the substitution for subsection (3) of the following subsection:

"(3) The quorum for any meeting of the Council is a majority of the councillors **[in office at the time]** presently serving as councillors, including the chairperson or an acting chairperson referred to in section 5(2)."; and

(*c*) by the addition of the following subsection:

"(5) The chief executive officer of the Authority must be invited to attend any meeting of the Council and may speak at any such meeting on any matter, which must be minuted, but he or she does not have a right to vote at a meeting.".

Amendment of section 11A of Act 13 of 2000, as inserted by section 13 of Act 3 of 2006

10. Section 11A of the principal Act is hereby amended by the addition of the following subsections:

"(3) The minutes, contemplated in subsection (2), must be signed, confirmed and published on the Authority's website and made available in its library within 30 days of the conclusion of the meeting, but any information determined to be confidential in terms of section 4D must be removed prior to such publication or availability.".

Insertion of section 11B into Act 13 of 2000

11. The following section is hereby inserted in the principal Act after section 11A:

"**Code of Ethics**

11B. (1) The Authority must, within 180 days of the date of the commencement of section 11 of the Independent Communications Authority of South Africa Amendment Act, 2014, publish and make publicly available on its website and in its library, a Code of Ethics, which addresses, amongst others, the processes for the disclosure required by sections 7(7) and 12(2), and which specifies the governance principles according to which the Authority or the Council functions, including, amongst others—

(*a*) principles of mutual respect and collective responsibility;

(*b*) a requirement that the Council will, at all relevant times or places, have all relevant information necessary to make an informed decision, taking account of all relevant facts at its disposal; and

(*c*) a commitment by the Council to conduct the affairs of the Authority in accordance with the highest level of corporate governance, including professionalism and integrity.

(2) All councillors and the chief executive officer must adhere to and comply with the requirements of the Code of Ethics and must, amongst others, disclose in writing any interest, financial or otherwise, direct or

(*b*) enige insidentele geskenk deur 'n raadslid ontvang of ontleen vir bywoning van enige konferensie of openbare lesing; of

(*c*) enige ander werk wat redelik geag kan word die werk van die Owerheid te bevorder,

maar sodanige aanstelling, amp en honorarium, of geskenk moet skriftelik bekend gemaak word en aangeteken word soos in artikel 11B en 12(2) voor voorsiening gemaak.".

Wysiging van artikel 11 van Wet 13 van 2000

9. Artikel 11 van die Hoofwet word hierby gewysig—

(*a*) deur subartikel (1) deur die volgende subartikel te vervang:

"(1)**[*(a)*]** Vergaderings van die Raad word ten minste een keer 'n maand gehou op die tye en plekke wat die Raad bepaal.

[*(b)* Die eerste vergadering word egter op die tyd en plek gehou wat die voorsitter bepaal.]";

(*b*) deur subartikel (3) deur die volgende subartikel te vervang:

"(3) Die kworum vir enige vergadering van die Raad is 'n meerderheid van die raadslede wat **[op daardie tydstip die amp beklee]** wat tans as raadslede dien, met inbegrip van die voorsitter of 'n waarnemende voorsitter in artikel 5(2) bedoel."; en

(*c*) deur die volgende subartikel by te voeg:

"(5) Die hoof- uitvoerende beampte van die Owerheid moet genooi word om enige vergadering van die Raad by te woon en kan by enige sodanige vergadering oor enige aangeleentheid praat, wat genotuleer moet word, maar hy of sy het nie stemreg by 'n vergadering nie.".

Wysiging van artikel 11A van Wet 13 van 2000, soos ingevoeg deur artikel 13 van Wet 3 van 2006

10. Artikel 11A van die Hoofwet word hierby gewysig deur die volgende subartikels by te voeg:

"(3) Die notule in subartikel (2) beoog, moet onderteken, bevestig en op die Owerheid se webtuiste gepubliseer word en in sy biblioteek beskikbaar gestel word binne 30 dae na die afsluiting van die vergadering, maar enige inligting wat ingevolge artikel 4D vertroulik bepaal is, moet voor sodanige publikasie of beskikbaarstelling, verwyder word.".

Invoeging van artikel 11B in Wet 13 van 2000

11. Die volgende artikel word hierby na artikel 11A in die Hoofwet ingevoeg:

"**Etiese kode**

11B. (1) Die Owerheid moet, binne 180 dae na die inwerkingtreding van artikel 11 van die Wysigingswet op die Onafhanklike Kommunikasie-owerheid, 2014, 'n Etiese Kode publiseer en publiek beskikbaar stel op sy webtuiste en in sy biblioteek, welke Etiese Kode, onder andere, die prosesse vir die bekendmaking deur artikel 7(7) en artikel 12(2) vereis hanteer, en wat die beheerbeginsels bepaal waarvolgens die Owerheid of die Raad funksioneer, met inbegrip van, onder andere—

(*a*) beginsels van wedersydse respek en kollektiewe verantwoordelikheid;

(*b*) 'n vereiste dat die Raad, te alle tersaaklike tye of plekke, al die tersaaklike inligting sal hê wat nodig is om 'n ingeligte besluit te neem, met inagneming van al die tersaaklike feite wat tot sy beskikking is; en

(*c*) 'n verbintenis deur die Raad om die sake van die Owerheid ooreenkomstig die hoogste vlak van korporatiewe beheer, met inbegrip van professionaliteit en integriteit, te voer.

(2) Alle raadslede en die hoof- uitvoerende beampte moet hou by en voldoen aan die vereistes van die Etiese Kode en moet, onder andere, enige belang, hetsy finansieel of andersins, direk of indirek, skriftelik aan die

indirect, to the Authority for record and transmission to the register which must be kept and maintained by the Authority.

(3) The register must be—

(a) open for inspection during office hours on business days; and

(b) contained in the annual report referred to in section 16.".

Amendment of section 12 of Act 13 of 2000

12. Section 12 of the principal Act is hereby amended by the substitution in subsection (4) for the words preceding paragraph *(a)* of the following words:

"A councillor is guilty of an offence and liable on conviction to a fine not exceeding **[R250 000]** R1 000 000 or to imprisonment for a period not exceeding **[five]** three years, or to both such fine and imprisonment, if he or she—".

Amendment of section 14 of Act 13 of 2000, as amended by section 14 of Act 3 of 2006

13. Section 14 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words:

"The Council must establish such staff component as it requires in order to support its own administration and to assist the Authority in the performance of its functions, and to this end the Council must appoint—";

(b) by the substitution in subsection (1) for paragraph *(b)* of the following paragraph:

"*(b)* such other staff as the Council may deem necessary to assist the Authority and the chief executive officer, as the case may be, with all such work as may arise through the performance of its functions, including research, regulatory impact assessments, reports, the giving of reasons, preparing public consultation documents and preparing recommendations relating to this Act, the underlying statutes and the Electronic Transactions Act."; and

(c) by the addition of the following subsection:

"(4) The staff must carry out the day to day operations of the Authority as directed by the chief executive officer in accordance with the annual plan referred to in section 15A.".

Amendment of section 14A of Act 13 of 2000, as inserted by section 15 of Act 3 of 2006

14. Section 14A of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of following subsection:

"(1) The Authority may appoint as many experts as may be necessary with a view to assisting the Authority in the performance of its functions, but any appointment of experts which is not within the budget of the Authority for a particular year is subject to the approval of the Minister."; and

(b) by the deletion of subsection (2).

Repeal of section 14B of Act 13 of 2000

15. Section 14B of the principal Act is hereby repealed.

Amendment of section 14C of Act 13 of 2000, as inserted by section 15 of Act 3 of 2006

16. Section 14C of the principal Act is hereby amended by the deletion in subsection (1) of the word "or" at the end of paragraph *(b)*, the insertion of the expression "; or" after the word "law" in paragraph *(c)* and the addition of the following paragraph:

"*(d)* where required to do so in terms of section 12.".

Owerheid bekend maak vir rekords en oordrag na die register wat die Owerheid moet byhou en in stand hou.

(3) Die register moet—

(a) gedurende kantoorure op sakedae oop wees vir inspeksie; en

(b) in die jaarverslag in artikel 16 bedoel, vervat wees.".

Wysiging van artikel 12 van Wet 13 van 2000

12. Artikel 12 van die Hoofwet word hierby gewysig deur in subartikel (4) die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

" 'n Raadslid is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete van hoogstens **[R250 000]** R1 000 000 of met gevangenisstraf vir 'n tydperk van hoogstens **[vyf]** drie jaar, of met beide sodanige boete en gevangenisstraf, indien hy of sy—".

Wysiging van artikel 14 van Wet 13 van 2000, soos gewysig deur artikel 14 van Wet 3 van 2006

13. Artikel 14 van die Hoofwet word hierby gewysig—

(a) deur in subartikel (1) die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

"Die Raad **[stel]** moet sodanige personeelkomponent vestig wat hy benodig om sy eie administrasie **[in]** te ondersteun en om die Owerheid by te staan in die verrigting van sy werksaamhede, en vir hierdie doel moet die Raad—";

(b) deur paragraaf *(b)* in subartikel (1) deur die volgende paragraaf te vervang:

"*(b)* die ander personeel aanstel wat die Raad nodig ag om die Owerheid en die hoof- uitvoerende beampte, na gelang van die geval, by te staan met al die werk wat spruit uit die verrigting van sy werksaamhede, met inbegrip van navorsing, reguleringsinvloedbepaling, verslae, die gee van redes, voorbereiding van openbare oorlegdokumente en voorbereiding van aanbevelings wat op hierdie Wet, die onderliggende wette en die Wet op Elektroniese Transaksies, betrekking het."; en

(c) deur die volgende subartikel by te voeg:

"(4) Die personeel moet die dag-tot-dag bedryf van die Owerheid verrig soos deur die hoof- uitvoerende beampte gelas ooreenkomstig die jaarverslag in artikel 15A bedoel.".

Wysiging van artikel 14A van Wet 13 van 2000, soos ingevoeg deur artikel 15 van Wet 3 van 2006

14. Artikel 14A van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Die Owerheid kan soveel deskundiges aanstel as wat nodig is ten einde die Owerheid by te staan in die verrigting van sy werksaamhede, maar enige aanstelling van deskundiges wat nie in die begroting van die Owerheid vir 'n bepaalde jaar val nie, is onderhewig aan die Minister se goedkeuring."; en

(b) deur subartikel (2) te skrap.

Herroeping van artikel 14B van Wet 13 van 2000

15. Artikel 14B van die Hoofwet word hierby herroep.

Wysiging van artikel 14C van Wet 13 van 2000, soos ingevoeg deur artikel 15 van Wet 3 van 2006

16. Artikel 14C van die Hoofwet word hierby gewysig deur in subartikel (1) die woord "of" aan die einde van paragraaf *(b)* te skrap, die uitdrukking "; of" na die woord "hof" in paragraaf *(c)* in te voeg en die volgende paragraaf by te voeg:

"*(d)* waar ingevolge artikel 12 vereis om dit te doen.".

Repeal of section 14D of Act 13 of 2000

17. Section 14D of the principal Act is hereby repealed.

Amendment of section 15 of Act 13 of 2000, as amended by section 16 of Act 3 of 2006

18. Section 15 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) Cheques drawn by the Authority must be regarded to have been duly issued and signed on its behalf if issued under the joint signatures of the accounting officer and another member of the staff, or a councillor, of the Authority designated by the Council.".

Insertion of section 15A into Act 13 of 2000

19. The following section is hereby inserted in the principal Act after section 15:

"**Annual plan**

15A. The chief executive officer must, at least three months before the end of each financial year, prepare and submit to the Council for approval an annual plan which describes the proposed activities of the Authority with indicative timeframes for the coming year.".

Amendment of section 16 of Act 13 of 2000

20. Section 16 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph *(a)* of the following paragraph:

"*(a)* in addition to the requirements in terms of paragraph *(b)*, supply the Minister with such information and particulars as he or she may in writing require in connection with the activities of the Authority; and";

(b) by the substitution in section (1)*(b)* for subparagraph (i) of the following subparagraph:

"(i) the annual report of the Authority which must reflect in reasonable detail deliverables and those matters that were not dealt with in terms of the annual plan referred to in section 15A;"; and

(c) by the substitution for subsection (3) of the following subsection:

"(3) **[The Minister]** Subject to subsection (1)*(b)*, the chief executive officer must table **[a copy of]** the annual report and the audited financial statements of the Authority together with the Auditor-General's report on those statements, in Parliament within 30 days **[after it has been received by him or her]** if Parliament is then sitting and, if Parliament is not sitting, within 14 days after the next ensuing sitting of Parliament.".

Amendment of section 17 of Act 13 of 2000, as amended by section 18 of Act 3 of 2006

21. Section 17 of the principal Act is hereby amended—

(a) by the substitution for subsection (4) of the following subsection:

"(4) The Council must appoint the chairperson of each committee **[from the councillors designated in terms of subsection (2)*(a)*]**."; and

(b) by the addition of the following subsection:

"(10) A committee must submit a report on its activities to the Council if and when required or on the completion of its task.".

Amendment of section 17A of Act 13 of 2000, as inserted by section 19 of Act 3 of 2006

22. Section 17A of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

Herroeping van artikel 14D van Wet 13 van 2000

17. Artikel 14D van die Hoofwet word hierby herroep.

Wysiging van artikel 15 van Wet 13 van 2000, soos gewysig deur artikel 16 van Wet 3 van 2006

18. Artikel 15 van die Hoofwet word hierby gewysig deur subartikel (4) deur die volgende subartikel te vervang:

"(4) Tjeks getrek deur die owerheid word geag behoorlik namens hom uitgereik en onderteken te wees indien dit onder die gesamentlike handtekeninge van die **[reken-pligtige]** <u>rekenpligtige</u> beampte en 'n ander lid van die personeel<u>, of 'n raadslid</u> van die Owerheid wat deur die Raad aangewys is, uitgereik is.".

Invoeging van artikel 15A in Wet 13 van 2000

19. Die volgende artikel word hierby na artikel 15 in die Hoofwet ingevoeg:

"**Jaarplan**

<u>**15A.** Die hoof- uitvoerende beampte moet, ten minste drie maande voor die einde van elke jaar, 'n jaarplan voorberei wat die voorgestelde aktiwiteite van die Owerheid met aanduidende tydsbestekke vir die komende jaar beskryf en dit aan die Raad voorlê.</u>".

Wysiging van artikel 16 van Wet 13 van 2000

20. Artikel 16 van die Hoofwet word hierby gewysig—

(a) deur paragraaf *(a)* in subartikel (1) deur die volgende paragraaf te vervang:

"*(a)* <u>benewens die vereistes ingevolge paragraaf *(b)*,</u> die Minister van die inligting en besonderhede voorsien wat hy of sy skriftelik vereis met betrekking tot die aktiwiteite van die Owerheid; en";

(b) deur subparagraaf (i) in artikel (1)*(b)* deur die volgende subparagraaf te vervang:

"(i) die jaarverslag van die Owerheid <u>wat in redelike besonderhede die lewerbares of nielewerbares ingevolge die jaarplan in artikel 15A bedoel, weergee</u>;"; en

(c) deur subartikel (3) deur die volgende subartikel te vervang:

"(3) **[Die Minister]** <u>Behoudens subartikel (1)*(b)*,</u> moet **['n afskrif van]** <u>die hoof- uitvoerende beampte</u> die jaarverslag <u>en die geouditeerde finansiële state van die Owerheid tesame met die Ouditeur-generaal se verslag oor daardie state,</u> binne 30 dae **[nadat dit deur hom of haar ontvang is]** in die Parlement ter tafel lê indien die Parlement dan in sitting is en, indien die Parlement nie in sitting is nie, binne 14 dae na die daaropvolgende sitting van die Parlement.".

Wysiging van artikel 17 van Wet 13 van 2000, soos gewysig deur artikel 18 van Wet 3 van 2006

21. Artikel 17 van die Hoofwet word hierby gewysig—

(a) deur subartikel (4) deur die volgende subartikel te vervang:

"(4) Die Raad moet die voorsitter van elke komitee aanstel **[uit die geledere van die raadslede wat ingevolge subartikel (2)*(a)* aangewys is]**."; en

(b) deur die volgende subartikel by te voeg:

"<u>(10) 'n Komitee moet 'n verslag oor sy aktiwiteite aan die Raad voorlê indien en wanneer dit nodig is of by voltooiing van sy taak.</u>".

Wysiging van artikel 17A van Wet 13 van 2000, soos ingevoeg deur artikel 19 van Wet 3 van 2006

22. Artikel 17A van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

"(1) The Authority must establish a Complaints and Compliance Committee which consists of not more than seven members, appointed for a three-year term of office which is renewable for one additional term only, one of whom must be a councillor.";

(b) by the insertion after subsection (1) of the following subsection:

"(1A) The Authority must appoint one of the members contemplated in subsection (1) as chairperson of the Complaints and Compliance Committee."; and

(c) by the substitution in subsection (4) for paragraph *(b)* of the following paragraph:

"*(b)* be committed to the functions and work of the Complaints and Compliance Committee and the objects of this Act and the underlying statutes and must not act or behave in a manner that undermines those functions, work or objects;".

Amendment of section 17C of Act 13 of 2000, as inserted by section 19 of Act 3 of 2006

23. Section 17C of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) *(a)* A person who has reason to believe that a licensee or another person is guilty of any non-compliance with—

(i) the terms and conditions of **[its]** a licence **[or]**;

(ii) **[with]** this Act; or

(iii) the underlying statutes,

may lodge a complaint with the Authority within 60 days of becoming aware of the alleged non-compliance.

(b) The Authority may—

(i) where the complaint concerns a licensee, direct the complaint within 30 days of receipt of the complaint, to the Complaints and Compliance Committee for consideration;

(ii) where the complaint concerns a person who is not a licensee, lay a charge against that person with the appropriate authority or institution or refer the matter to the appropriate authority or institution in terms of a concurrent jurisdiction agreement concluded between the Authority and that authority or institution within 30 days of receipt of the complaint; or

(iii) investigate the complaint as contemplated in section 4(3)*(n)*.".

Amendment of section 17F of Act 13 of 2000, as inserted by section 19 of Act 3 of 2006

24. Section 17F of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The Authority must appoint suitably qualified inspectors to perform the functions provided for in this Act and may terminate any such appointment for good cause."; and

(b) by the substitution for subsection (5) of the following subsection:

"(5) An inspector must, when instructed to do so by the Council—

(a) monitor compliance by licensees **[of]** with licence terms and conditions and licence exemptions;

(b) monitor compliance by licensees with the provisions of this Act and the underlying statutes;

(c) investigate and evaluate any alleged or suspected—

(i) non-compliance by a licensee with its licence terms and conditions, licence exemption, and provisions of this Act or the underlying statutes;

(ii) breach by a licensee of an agreement between such licensee and its subscribers;

19

"(1) Die Owerheid moet 'n Klagtes- en Nakomingskomitee instel wat uit hoogstens sewe lede bestaan, aangestel vir 'n ampstermyn van drie jaar wat slegs vir 'n enkele bykomende termyn hernu kan word, en waarvan een 'n raadslid moet wees.";

(b) deur subartikel (1) deur die volgende subartikel te vervang:

"(1A) Die Owerheid moet een van die lede in subartikel (1) beoog as voorsitter van die Klagtes- en Nakomingskomitee aanstel."; en

(c) deur paragraaf *(b)* in subartikel (4) deur die volgende paragraaf te vervang:

"*(b)* verbind wees tot die werksaamhede en werk van die Klagtes- en Nakomingskomitee en die oogmerke van hierdie Wet en die onderliggende wette en moet nie handel of optree op 'n wyse wat daardie werksaamhede, werk of oogmerke ondermyn nie;".

Wysiging van artikel 17C van Wet 13 van 2000, soos ingevoeg deur artikel 19 van Wet 3 van 2006

23. Artikel 17C van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

"(1) *(a)* 'n Persoon wat rede het om te glo dat 'n lisensiehouer of ander persoon skuldig is aan nienakoming van—

(i) die bedinge en voorwaardes van **[sy]** 'n lisensie **[of van]**;

(ii) hierdie Wet; of

(iii) die onderliggende wette,

kan 'n klag by die Owerheid indien binne 60 dae nadat hy of sy bewus geword het van die beweerde nienakoming.

(b) Die Owerheid **[moet]** kan—

(i) waar die klagte 'n lisensiehouer aangaan, die **[klag]** klagte binne 30 dae van ontvangs van die klagte aan die Klagtes- en Nakomingskomitee rig vir oorweging;

(ii) waar die klagte 'n persoon aangaan wat nie 'n lisensiehouer is nie, 'n klagte teen daardie persoon by die gepaste owerheid of instelling aanhangig maak of die aangeleentheid na die gepaste owerheid of instelling verwys ingevolge die konkurrente regsbevoegdheidsooreenkoms wat tussen die Owerheid en daardie owerheid of instelling aangegaan is binne 30 dae van ontvangs van die klagte; of

(iii) die klagte ondersoek soos in artikel 4(3)*(n)* beoog.".

Wysiging van artikel 17F van Wet 13 van 2000, soos ingevoeg deur artikel 19 van Wet 3 van 2006

24. Artikel 17F van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Die Owerheid moet toepaslik gekwalifiseerde inspekteurs aanstel om die werksaamhede te verrig waarvoor in hierdie Wet voorsiening gemaak word en kan enige sodanige aanstelling op goeie gronde beëindig."; en

(b) deur subartikel (5) deur die volgende subartikel te vervang:

"(5) 'n Inspekteur moet, wanneer deur die Raad opdrag gegee om dit te doen—

(a) nakoming deur lisensiehouers van lisensiebedinge en -voorwaardes en -vrystellings moniteer;

(b) nakoming deur lisensiehouers van die bepalings van hierdie Wet en die onderliggende wette moniteer;

(c) ondersoek instel na en 'n evaluering doen van enige beweerde of vermoedelike—

(i) nienakoming deur 'n lisensiehouer van sy lisensiebedinge en -voorwaardes, -vrystelling, en bepalings van hierdie Wet of die onderliggende wette;

(ii) verbreking deur 'n lisensiehouer van 'n ooreenkoms tussen sodanige lisensiehouer en sy intekenaars;

(iii) failure to provide **[a]** an electronic communications service that the licensee is required to provide under the terms of its licence or licence exemption, or in terms of this Act or the underlying statutes; or

(iv) non-compliance with the Act or the underlying statutes;

(d) refer all non-compliance matters to the Complaints and Compliance Committee for consideration where an inspector determines that a licensee has not complied with the terms and conditions of its licence, licence exemption, the provisions of this Act or the underlying statutes or failed to provide broadcasting **[or]**, electronic communications or postal services;

(e) refer all complaints to the Complaints and Compliance Committee for consideration **[after an investigation into the complaint has been carried out]**;

(f) appear before the Complaints and Compliance Committee when requested by such committee; and

(g) co-operate with law enforcement officials when performing his or her functions.".

Amendment of section 17G of Act 13 of 2000, as inserted by section 19 of Act 3 of 2006

25. Section 17G of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The Criminal Procedure Act, 1977 (Act No. 51 of 1977), applies with the **[necessary]** changes required by the context to entries, searches and seizures by inspectors in terms of this Act.";

(b) by the substitution in subsection (2) for the words preceding paragraph *(a)* of the following words:

"An inspector appointed in terms of section 17F may, in order to carry out his or her functions under this Act or the underlying statutes, at any reasonable time without prior notice and on the authority of a warrant issued under subsection (4) enter any premises and, without the use of force or coercion—";

(c) by the substitution in subsection (2) for paragraph *(a)* of the following paragraph:

"*(a)* demand the production of a licence or any other document issued in terms of the underlying statutes for inspection;";

(d) by the substitution in subsection (2) for paragraph *(d)* of the following paragraph:

"*(d)* inspect any radio apparatus, studio, plant, transmitters, apparatus, other equipment or other broadcasting, electronic communications or postal service facilities on the premises;";

(e) by the insertion of the word "and" at the end subsection (2)*(f)*;

(f) by the substitution in subsection (2) for paragraph *(g)* of the following paragraph:

"*(g)* seize for further examination or safe custody any document or thing which has or might have a direct bearing on the alleged non-compliance or other act referred to in section 17F on such premises.";

(g) by the substitution in subsection (4) for paragraph *(a)* of the following paragraph:

"*(a)* A magistrate or judge may, upon request by an inspector, but subject to subsection *(b)*, issue a warrant to such inspector.";

(h) by the deletion in subsection (4)*(b)* of the word "and" at the end of subparagraph (i), the insertion of the expression "; and" at the end of subparagraph (ii) and the addition of the following subparagraph:

"(iii) is material to the investigation by the inspector."; and

(i) by the addition of the following subsection:

"(8) The inspector must, at the request of the Complaints and Compliance Committee, and in the course of hearing a complaint or dispute, provide to the Complaints and Compliance Committee any document or thing which was obtained or confiscated in terms of this section.".

(iii) versuim om 'n <u>elektroniese</u> kommunikasiediens te verskaf wat die lisensiehouer verplig is om te verskaf kragtens die bedinge van sy lisensie <u>of lisensievrystelling,</u> of ingevolge hierdie Wet of die onderliggende wette; <u>of</u>

<u>(iv) nienakoming van die Wet of die onderliggende wette;</u>

(d) alle nienakomingsaangeleenthede na die Klagtes- en Nakomingskomitee vir oorweging verwys waar 'n inspekteur bepaal dat 'n lisensiehouer nie die bedinge en voorwaardes van sy lisensie, <u>-vrystelling,</u> die bepalings van hierdie Wet of die onderliggende wette nagekom het nie, of versuim het om uitsaai- of <u>elektroniese</u> kommunikasiedienste <u>of posdienste</u> te lewer;

(e) alle klagtes na die Klagtes- en Nakomingskomitee verwys vir oorweging **[nadat 'n ondersoek na die klag uitgevoer is]**;

(f) voor die Klagtes- en Nakomingskomitee verskyn wanneer aldus versoek deur sodanige komitee; en

(g) met wetstoepassingsbeamptes saamwerk wanneer sy of haar werksaamhede verrig word.".

Wysiging van artikel 17G van Wet 13 van 2000, soos ingevoeg deur artikel 19 van Wet 3 van 2006

25. Artikel 17G van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Die Strafproseswet, 1977 (Wet No. 51 van 1977), is met die **[nodige]** veranderinge soos deur die konteks vereis van toepassing op betredings, deursoekings en beslagleggings <u>deur inspekteurs</u> ingevolge hierdie Wet.";

(b) deur in subartikel (2) die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

" 'n Inspekteur ingevolge artikel 17F aangestel kan, ten einde sy of haar werksaamhede ingevolge hierdie Wet of die onderliggende wette te verrig, op enige redelike tyd, sonder voorafkennisgewing en op gesag van 'n lasbrief uitgereik ingevolge subartikel (4) enige perseel betree en<u>,</u> <u>sonder om geweld of dwang te gebruik</u>—";

(c) deur paragraaf *(a)* in subaritkel (2) deur die volgende paragraaf te vervang:

"*(a)* die lewering eis ter inspeksie van 'n lisensie <u>of enige ander dokument</u> uitgereik ingevolge die onderliggende wette;";

(d) deur paragraaf *(d)* in subartikel (2) deur die volgende paragraaf te vervang:

"*(d)* enige radio-apparaat, ateljee, aanleg, senders, apparaat, ander toerusting of ander uitsaai-, <u>elektroniese</u> kommunikasie- of posdiensfasiliteit op die perseel inspekteer;";

(e) deur die woord "en" aan die einde van subartikel 2*(f)* in te voeg;

(f) deur paragraaf *(g)* in subartikel (2) deur die volgende paragraaf te vervang:

"*(g)* vir verdere ondersoek beslag lê op of in veilige bewaring neem enige dokument of ding wat betrekking het <u>of direk betrekking kan hê</u> op die beweerde nienakoming of ander handeling bedoel in artikel 17F op sodanige perseel.";

(g) deur paragraaf *(a)* in subartikel (4) deur die volgende paragraaf te vervang:

"*(a)* 'n Landdros of regter kan, op versoek van 'n inspekteur, <u>maar behoudens subartikel *(b)*,</u> 'n lasbrief aan sodanige inspekteur uitreik.";

(h) deur in subartikel (4)*(b)* die woord "en" aan die einde van subparagraaf (i) te skrap, die uitdrukking "; en" aan die einde van subparagraaf (ii) in te voeg en die volgende subparagraaf by te voeg:

"<u>(iii) deurslaggewend in die ondersoek deur die inspekteur is.</u>"; en

(i) deur die volgende subartikel by te voeg:

"<u>(8) Die inspekteur moet, op versoek van die Klagte- en Nakomingskomitee, en in die loop van die aanhoor van 'n klagte of geskil, enige dokument of ding wat ingevolge hierdie artikel verkry of op beslag gelê is, aan die Klagte- en Nakomingskomitee verskaf.</u>".

Amendment of section 17H of Act 13 of 2000, as inserted by section 19 of Act 3 of 2006

26. Section 17H of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph *(c)* of the following paragraph:

"*(c)* makes a false statement before the Authority, including before the Complaints and Compliance Committee, on any matter, knowing such statement to be false;";

(b) by the substitution for subsection (2) of the following subsection:

"(2) A person convicted of an offence in terms of subsection (1) is liable, in the case of a contravention of—

(a) subsection (1)*(a)*, *(b)* **[and]** or *(c)*, to a fine not exceeding **[R250 000]** R5 000 000;

(b) subsection (1)*(d)*, to a fine not exceeding **[R50 000]** R1 000 000 or to imprisonment not exceeding **[three]** two years;

(c) subsection (1)*(e)* **[and]** or *(f)*, to a fine not exceeding R1 000 000 or to imprisonment not exceeding **[five years]** one year; and

(d) subsection (1)*(g)*, to a fine not exceeding **[R15 000]** R500 000.";

(c) by the substitution in subsection (3) for paragraphs (i), (ii), (iii) and (iv) of the following paragraphs, respectively:

"(i) in the case of an offence contemplated in paragraph *(a)* to a maximum fine of **[R250 000]** R5 000 000;

(ii) in the case of an offence contemplated in paragraph *(b)* to a fine not exceeding the greater of **[R1 000 000]** R5 000 000 or 10% of the person or licensee's annual turnover for **[everyday]** every day or part thereof during which the offence continued;

(iii) in the case of an offence contemplated in paragraph *(c)*, *(d)* **[, and]** or *(e)* **[of this subsection]**, to a fine not exceeding **[R100 000]** R5 000 000; and

(iv) in the case of an offence contemplated in paragraph *(f)*, *(g)* **[, and]** or *(h)* **[of this subsection]**, to a maximum fine of **[R250 000]** R1 000 000."; and

(d) by the substitution for subsection (4) of the following subsection:

"(4) The Authority may permit inspectors to dispose, in such manner as the Authority deems fit, of equipment that has been confiscated but that cannot be type-approved.".

Repeal of Chapter IV of Act 13 of 2000

27. Chapter IV of the principal Act is hereby repealed.

Insertion of section 23A in Act 13 of 2000

28. The following section is hereby inserted in the principal Act after section 23:

"**Liability**

23A. (1) The State Liability Act, 1957 (Act No. 20 of 1957), read with the changes required by the context, applies to the Authority, but a reference in that Act to 'the Minister of the Department concerned' must be construed as a reference to the chairperson of the Council.

(2) A councillor, the chief executive officer or any member of staff or advisor or contractor of the Authority is not liable for the contents of any report, finding, point of view or recommendation that is given in good faith and that is submitted to Parliament, published or made available in terms of the Constitution or this Act.".

Wysiging van artikel 17H van Wet 13 van 2000, soos ingevoeg deur artikel 19 van Wet 3 van 2006

26. Artikel 17H van die Hoofwet word hierby gewysig—

(a) deur paragraaf *(c)* in subartikel (1) deur die volgende paragraaf te vervang:

"*(c)* 'n vals verklaring aflê voor die Owerheid, met inbegrip van die Klagte- en Nakomingskomitee, oor enige aangeleentheid, wetende dat sodanige verklaring vals is;";

(b) deur subartikel (2) deur die volgende subartikel te vervang:

"(2) 'n Persoon wat skuldig bevind is aan 'n misdryf ingevolge subartikel (1) is strafbaar, in die geval van 'n oortreding van—

(a) subartikel (1)*(a)*, *(b)* **[en]** of *(c)*, met 'n boete van hoogstens **[R250 000]** R5 000 000;

(b) subartikel (1)*(d)*, met 'n boete van hoogstens **[R50 000]** R1 000 000 of met gevangenisstraf van hoogstens **[drie]** twee jaar;

(c) subartikel (1)*(e)* **[en]** of *(f)*, met 'n boete van hoogstens R1 000 000 of met gevangenisstraf van hoogstens **[vyf]** een jaar; en

(d) subartikel (1)*(g)*, met 'n boete van hoogstens **[R15 000]** R500 000.";

(c) deur paragrawe (i), (ii), (iii) en (iv) in subartikel (3) onderskeidelik deur die volgende paragrawe te vervang:

"(i) in die geval van 'n misdryf beoog in paragraaf *(a)*, met 'n maksimum boete van **[R250 000]** R5 000 000;

(ii) in die geval van 'n misdryf beoog in paragraaf *(b)*, met 'n boete van hoogstens die grootste van **[R1 000 000]** R5 000 000 of 10% van die persoon of lisensiehouer se jaarlikse omset vir elke dag of deel daarvan waartydens die misdryf voortgeduur het;

(iii) in die geval van 'n misdryf beoog in paragraaf *(c)*, *(d)* **[, en]** of *(e)* **[van hierdie subartikel]**, met 'n boete van hoogstens **[R100 000]** R5 000 000; en

(iv) in die geval van 'n misdryf beoog in paragraaf *(f)*, *(g)* **[en]** of *(h)* **[van hierdie subartikel]**, met 'n maksimum boete van **[R250 000]** R1 000 000."; en

(d) deur subartikel (4) deur die volgende subartikel te vervang:

"(4) Die Owerheid kan inspekteurs toelaat om, op die wyse wat die Owerheid gepas ag, te beskik oor toerusting wat gekonfiskeer is maar wat nie tipe-goedgekeur kan word nie.".

Herroeping van Hoofstuk IV van Wet 13 van 2000

27. Hoofstuk IV van die Hoofwet word hierby herroep.

Invoeging van artikel 23A in Wet 13 van 2000

28. Die volgende artikel word hierby na artikel 23 in die Hoofwet ingevoeg:

"**Aanspreeklikheid**

23A. (1) Die Wet op Staatsaanspreeklikheid, 1957 (Wet No. 20 van 1957), gelees met die veranderinge deur die samehang vereis, is op die Owerheid van toepassing, maar 'n verwysing in daardie Wet na 'die Minister van die betrokke Departement', moet uitgelê word as 'n verwysing na die voorsitter van die Raad.

(2) 'n Raadslid, die hoof- uitvoerende beampte of enige personeellid of adviseur of kontrakteur van die Owerheid is nie aanspreeklik vir die inhoud van enige verslag, bevinding, oogpunt of aanbeveling wat in goeie trou gegee word en wat aan die Parlement voorgelê word, gepubliseer word of ingevolge die Grondwet of hierdie Wet beskikbaar gestel word nie.".

Substitution of section 24 of Act 13 of 2000

29. The following section is hereby substituted for section 24 of the principal Act:

> "**Application of Act**
>
> **24.** In the event of any conflict between the provisions of this Act and any other **[prior]** law, except for the Constitution, relating to the regulation of broadcasting **[and telecommunications]**, electronic communications and postal services, the provisions of this Act prevail.".

Amendment of Preamble to Act 13 of 2000, as substituted by section 1 of Act 3 of 2006

30. The Preamble to the principal Act is hereby amended—

(a) by the insertion after the first paragraph of the following paragraph:
"**AND RECOGNISING** that the success of the information, communications and technology sector must be underpinned by appropriate regulation of broadcasting, postal services, electronic communications and electronic communications networks;"; and

(b) by the substitution for the last paragraph of the following paragraph:
"**ACKNOWLEDGING** that the establishment of an independent body to regulate broadcasting, postal services and electronic communications is required.".

Amendment of Contents of Act 13 of 2000, as amended by section 23 of Act 3 of 2006

31. The Contents of Act after the Preamble of the principal Act is hereby amended—

(a) by the insertion after item 11A of the following item:
"11B. Code of Ethics";

(b) by the insertion after item 15 of the following item:
"15A. Annual plan";

(c) by the insertion after item 23 of the following item:
"23A. Liability"; and

(d) by the deletion of items 14B and 14D and of Chapter IV.

Short title and commencement

32. This Act is called the Independent Communications Authority of South Africa Amendment Act, 2014, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

Vervanging van artikel 24 van Wet 13 van 2000

29. Artikel 24 van die Hoofwet word hierby deur die volgende artikel vervang:

"**Toepassing van Wet**

24. In die geval van enige strydigheid tussen die bepalings van hierdie Wet en enige ander **[vroeëre]** wet, met uitsondering van die Grondwet, betreffende die regulering van die **[uitsaai- en telekommunikasiewese]** uitsaaiwese, elektroniese kommunikasie- en posdienste, gee die bepalings van hierdie Wet deurslag.".

Wysiging of Aanhef tot Wet 13 van 2000, soos vervang deur artikel 1 van Wet 3 van 2006

30. Die Aanhef van die Hoofwet word hierby gewysig—

(a) deur die volgende paragraaf na die eerste paragraaf in te voeg:
"**EN IN ERKENNING** dat die sukses van die inligtings-, kommunikasie- en tegnologiesektor op gepaste regulering van die uitsaaiwese, posdienste, elektroniese kommunikasiewese en elektroniese kommunikasienetwerke moet steun;"; en

(b) deur die laaste paragraaf deur die volgende paragraaf te vervang:
"**IN DIE BESEF** dat die instelling van 'n onafhanklike liggaam om die **[uitsaai]** uitsaaiwese, posdienste en elektroniese kommunikasiewese te reguleer, vereis word.".

Wysiging van Inhoud van Wet 13 van 2000, soos gewysig deur artikel 23 van Wet 3 van 2006

31. Die Inhoud van Wet na die Aanhef van die Hoofwet word hierby gewysig—

(a) deur die volgende item na item 11A in te voeg:
"11B. Etiese Kode";

(b) deur die volgende item na item 15 in te voeg:
"15A. Jaarplan";

(c) deur die volgende item na item 23 in te voeg:
"23A. Aanspreeklikheid"; en

(d) deur items 14B en 14D van Hoofstuk IV te skrap.

Kort titel en inwerkingtreding

32. Hierdie Wet heet die Wysigingswet op die Onafhanklike Kommunikasie-owerheid van Suid-Afrika, 2014, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.