

Namibia

Communications Act, 2009

Regulations regarding Rule-Making Procedures, 2010

General Notice 334 of 2010

Legislation as at 15 November 2017

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Regulations regarding Rule-Making Procedures, 2010 (General Notice 334 of 2010)
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Republic of Namibia
Annotated Statutes

Communications Act, 2009

Regulations regarding Rule-Making Procedures, 2010
General Notice 334 of 2010

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[Note: The version of this legislation as at 15 November 2017 was revised and consolidated by the Legal Assistance Centre and the Government of the Republic of Namibia. All subsequent amendments have been researched and applied by Laws.Africa for NamibLII.]

1. Definitions

In these regulations, any word or expression to which a meaning is assigned in the Act, has that meaning, and-

“Act” means the Communications Act, 2009 (Act [No. 8 of 2009](#)).

2. Submission of documents

- (1) In these regulations where a person is required to submit a document “in writing to the Authority”, it must submit such document either physically or electronically-
 - (a) by hand to the head offices of the Authority, namely Communication House, 56 Robert Mugabe Avenue, Windhoek;
 - (b) by post to the head offices of the Authority, namely Private Bag 13309, Windhoek 9000;
 - (c) by electronic mail to the following address: cran@cran.na;
 - (d) by facsimile to the following facsimile number: +264 61 23 8646; or
 - (e) in any other manner approved in writing by the Authority.
- (2) The Authority may set out alternative addresses in the “Notice of Intention to Make Regulations” or other relevant *Government Gazette*.

[The entire phrase “Government Gazette” should be italicised or not italicised. It is not italicised elsewhere in these regulations.]

3. Applicability

- (1) These regulations are applicable to the making, amendment and revocation of regulations (hereafter, collectively, “the making of regulations”) for which the Act does require a rule-making procedure and to the making of regulations for which the Act does not require a rulemaking procedure.
- (2) In respect of the making of regulations for which the Act does not require a rulemaking procedure, the Authority may alter or forgo these procedures as appropriate, in its opinion, in accordance with the nature of the rule-making proceeding. Reasons why the Authority may alter or forgo these procedures include that the regulations are not contested or that time is of the essence in the making of the regulations.
- (3) In respect of the making of all regulations, the Authority may supplement these procedures as appropriate, in its opinion, in accordance with the nature of the rule-making proceeding.
- (4) The Authority may amend these procedures after conducting a rule-making procedure within twelve (12) months after the coming into force of these regulations.

4. Initiating Rule-Making proceedings

- (1) The Authority must initiate a rule-making proceeding to make the regulations required to be prescribed by the Act.
- (2) The Authority may initiate rule-making proceedings to make regulations that are necessary or expedient in order to implement the provisions of the Act, even though the Act does not explicitly require such regulations to be prescribed.
- (3) All Rule-making proceedings are initiated by the Authority by the publication of a “Notice of Intention to Make Regulations” in the *Government Gazette*.
- (4) The “Notice of Intention to Make Regulations” -
 - (a) must include a concise statement of the purpose of the proposed regulations,
 - (b) must include a draft of the proposed regulations; and
 - (c) may include an explanatory memorandum or other document, providing background, defining issues, or setting out the Authority’s preliminary views.
- (5) The “Notice of Intention to Make Regulations” must be made available at the head offices of the Authority during normal business hours and copies may be made on payment of a fee determined by the Authority, and on the Authority’s website where copies may be downloaded free of charge.

5. Requests to initiate rule-making proceedings

- (1) Any person may submit in writing to the Authority a “Request to Initiate a Rule-Making Proceeding”.
- (2) The “Request to Initiate a Rule-Making Proceeding” must include -
 - (a) the name and contact details of the person making the request and the name and contact details of the person for whom the request is made, if different;
 - (b) a concise statement of the purpose of the proposed regulations;
 - (c) a draft of the proposed regulations; and
 - (d) a clear and concise statement setting out the reasons for initiating the rule-making proceeding.

- (2) If, in the Authority's opinion, the "Request to Initiate a Rule-Making Proceeding" provides sufficient reasons for initiating a rule-making proceeding, the Authority must initiate a rulemaking proceeding.
- (3) If, in the Authority's opinion, the "Request to Initiate a Rule-Making Proceeding" does not provide sufficient reasons for initiating a rule-making proceeding, the Authority must deny the request and notify the person who submitted the request in writing, stating the reasons the request is denied.

6. Written submissions

- (1) After the Authority publishes a "Notice of Intention to Make Regulations", the public may submit in writing to the Authority comments within the time set out in the "Notice of Intention to Make Regulations", which time may not be less than thirty (30) days from the date of publication.
- (2) If the Act requires a rule-making procedure prior to making regulations, or if the Authority considers it appropriate, the Authority must also provide the opportunity for the submission of reply comments either in the "Notice of Intention to Make Regulations" or subsequently by notice in the *Government Gazette*.
- (3) Reply comments must be submitted in writing to the Authority within the time established by the Authority, which time may not be less than fourteen (14) days from the submission of written comments or if the opportunity for the submission of reply comments is published in a subsequent *Government Gazette*, not less than fourteen (14) days from the date of publication.
- (4) The times for the submission of comments and reply comments are to be determined by the Authority in light of the nature of the proposed regulations.
- (5) The Authority may consider written submissions not timeously filed if, in its opinion, it is practicable to do so.
- (6) The Authority may request further written submissions, for example, further information or clarification, which must be provided to the Authority in the manner set out by the Authority.
- (7) All written submissions must-
 - (a) contain the name and contact details of the person making the written submissions and the name and contact details of the person for whom the written submission is made, if different; and
 - (b) be clear and concise; and
 - (c) conform to any further requirements determined by the Authority as set out in the "Notice of Intention to Make Regulations" or other relevant *Government Gazette*.

7. Oral hearings

- (1) If the Authority considers it appropriate, it may also hear oral submissions.
- (2) The Authority must invite the public to make oral submissions either in the "Notice of Intention to Make Regulations" or subsequently by notice in the *Government Gazette*, provided that the public must be given at least fourteen (14) days notice prior to the hearing.
- (3) Unless otherwise specified by the Authority, hearings are open to the public.
- (4) The format and agenda of the hearing is at the discretion of the Authority, depending on the nature of the rule-making proceeding, provided however, that the hearing should be informal in nature and may take on the character of a workshop or conference.

- (5) All oral submissions must-
 - (a) include a statement of the name and contact details of the person making the oral submission and the name and contact details of the person for whom the oral submission is made, if different; and
 - (b) be clear and concise; and
 - (c) conform to any further requirements determined by the Authority as set out in the “Notice of Intention to Make Regulations” or other relevant Government *Gazette*.
- (6) The Authority may request further oral or written submissions, for example, further information or clarification, which must be provided to the Authority in the manner set out by the Authority.
- (7) At the conclusion of the hearing, a concise report summarising the oral submissions must be prepared and placed in the relevant rule-making file by the Authority.

8. Confidential information

- (1) Any person making written submissions may designate information as confidential, provided, however, if the Authority is of the opinion that the information is not confidential, it must inform the person that it may withdraw the information from the rule-making proceeding, agree that it will not be treated as confidential, or request a hearing on the issue of confidentiality to be conducted in terms of section 28 of the Act.
- (2) Any person making oral submissions may request a closed hearing on the grounds that the submissions are confidential. Closed hearings will be treated as confidential meetings in terms of section 29 of the Act, and the notice of the closed meeting required by section 29(4) must be maintained in the relevant rule-making file.

9. Ex parte communications

- (1) A person may not communicate with the members of the Board to discuss the subject matter of the rule-making proceeding, unless a request to do so addressed to the Chairperson of the Board, has been granted; and provided that the person and the Chairperson must submit a written report to the Authority within forty-eight (48) hours summarising the substance of the discussion and indicating whom was communicated with and when.
- (2) A person may communicate with the CEO or staff members of, or consultants to the Authority at the official premises of the Authority to discuss the subject matter of the rule-making proceeding, provided however, the person and the CEO or staff members of, or consultants to the Authority must submit a report to the Authority within forty-eight (48) hours, summarising the substance of the discussion and indicating whom was communicated with and when.

[The word “forty-eight” is misspelt in both subregulations (1) and (2), as reproduced above.]

10. Record of proceedings

- (1) All documents deemed relevant by the Authority to a rule-making proceeding, including “Requests to Initiate a Rule-Making Proceeding”, “Notices of Intention to Make Regulations”, written submissions, petitions for reconsideration, reports of oral hearings, reports of confidential meetings, and ex parte communication reports must be maintained by the Authority in a rule-making file kept separate for each rule-making proceeding, physically at the head offices of the Authority and electronically, on the Authority’s website.
- (2) Except for confidential information, any person may examine a rule-making file either at the head offices of the Authority during normal business hours and copies may be made on payment of a fee determined by the Authority, and on the Authority’s website where copies may be downloaded free of charge.

11. Publication of regulations

- (1) After considering all written submissions timeously filed and oral submissions if any, the Authority may-
 - (a) publish final regulations in the *Government Gazette*, with or without changes to the draft regulations;
 - (b) decide not to publish final regulations, provided that the Authority must publish reasons for that decision;
 - (c) call for further written or oral submissions to be made in the manner stated by the Authority;
 - (d) initiate a new rule-making proceeding by publishing a new “Notice of Intention to Make Regulations”.
- (2) The Authority must maintain a register of regulations made or deemed to have been made in terms of the Act and copies of all regulations, physically at the head offices of the Authority and electronically, on the Authority’s website.
- (3) Any person may examine the register of regulations and copies of regulations either at the head offices of the Authority during normal business hours and copies may be made on payment of a fee determined by the Authority, or on the Authority’s website where copies may be downloaded free of charge.

12. Reconsideration

- (1) The Authority may reconsider any regulation made in terms of these rulemaking procedures, within the time frame set out in section 31 of the Act.

Any person may submit a request in writing to the Authority to reconsider any regulation made in terms of these rule-making procedures, within 30 days of the publication of the final regulations, and the Authority must reconsider such regulation within the time frame set out in section 31 of the Act.

The Authority may publish its decision on reconsideration without further submissions being received, or it may provide an opportunity for the public to provide further written or oral submissions in a manner stated by the Authority.