



**INFORMATION  
REGULATOR  
(SOUTH AFRICA)**

*Ensuring protection of your personal information  
and effective access to information*

## **TERMS OF REFERENCE**

**For the**

**ENFORCEMENT COMMITTEE**

## **1. ESTABLISHMENT**

1.1 Section 50(1) of the of the Protection of Personal Information Act No. 4 of 2013 (POPIA) stipulates that the Regulator must, for the purposes of performing its functions, establish an Enforcement Committee.

1.2 Pursuant to the above-mentioned provision, and for the proper performance of its functions in terms of the POPIA and Promotion of Access to Information Act 2 of 2000 (PAIA), the Enforcement Committee is hereby established.

## **2. PURPOSE**

The purpose of these Terms of Reference is to govern the conduct of Members of the Enforcement Committee and the proceedings of the Enforcement Committee.

## **3. FUNCTIONS AND RESPONSIBILITIES OF ENFORCEMENT COMMITTEE**

3.1 The Enforcement Committee -

3.1.1 must consider all matters referred to it by the Regulator in terms of section 92 of POPIA or section 77C(1)(b) of PAIA, read with PAIA regulation 14(7), and make a finding in respect thereof; and

3.1.2 may make any recommendation, to the Regulator, necessary or incidental to any action that should be taken against-

3.1.2.1 a Responsible Party in terms of POPIA; or

3.1.2.2 an Information Officer or Head of a Private Body in terms of PAIA.

## **4. COMPOSITION OF THE ENFORCEMENT COMMITTEE**

4.1 The Enforcement Committee must be composed of at least three (3) Members, but not more than five (5) members namely: Chairperson or alternative

Chairperson, one (1) Member of the Regulator and three (3) Ordinary Members appointed by the Regulator.

- 4.2 A Member of the Regulator will be selected to preside over the matter at the Enforcement Committee on a rotational basis.
- 4.3 Ordinary Members who will preside over a matter will be selected from a panel of members of the Enforcement Committee appointed by the Regulator.
- 4.4 Ordinary Members will be selected, for a specific matter referred to the Enforcement Committee, by the Secretariat in consultation with the Chairperson of the Enforcement Committee.
- 4.5 Selection of Ordinary Members, referred to in paragraph 4.4 above, to preside over the matter referred to the Enforcement Committee shall be based on-
  - 4.5.1 their relevant expertise to the matter tabled for consideration by the Enforcement Committee; and
  - 4.5.2 a rotational basis that reflects broadly the race and gender composition of South Africa, to ensure fair participation of all the Ordinary Members of the Enforcement Committee.
- 4.6 The alternate Chairperson will only sit in the absence of Chairperson.

## **5. CONFLICT OF INTEREST**

- 5.1 A Members of the Regulator selected to preside over the matter at the Enforcement Committee, in accordance with paragraph 4.2 above, may not participate in any proceedings of the Members of the Regulator regarding the recommendation by the Enforcement Committee, as referred to in section 93(b) of POPIA.

- 5.2 If any member of the enforcement committee has a material interest in any matter which could conflict with the proper performance of his or her duties in terms of POPIA or PAIA, he or she must, in accordance with section 45 of POPIA, disclose that interest to the meeting before the matter is considered, as soon as practicable after the relevant facts came to his or her knowledge.
- 5.3 If any member of the Enforcement Committee fails to make a disclosure, referred in paragraph 5.2 above and is present at a meeting of the Enforcement Committee, as the case may be, or in any other manner participates in the proceedings, such proceedings in relation to the relevant matter must, as soon as the non-disclosure is discovered, be reviewed and be varied or set aside by the Regulator or the Enforcement Committee, as the case may be, without the participation of the member concerned.
- 5.4 Any disclosure, either in writing or verbal and referred to in paragraph 5.2 above, must be noted in the minutes of the relevant meeting of the Enforcement Committee.

## **6. CONFIDENTIALITY**

- 6.1 Members of the Enforcement Committee must, in accordance with section 54 of POPIA and both during or after his or her term of office, treat as confidential the personal information which comes to his or her knowledge in the course of the performance of his or her official duties, except if the communication of such information is required by law or in the proper performance of his or her duties.
- 6.2 All members of the Enforcement Committee shall sign a confidentiality undertaking not to disclose any of the proceedings of the Enforcement Committee, including outcomes of the Enforcement Committee's work, to any third parties.

## **7. MEETINGS OF THE ENFORCEMENT COMMITTEE**

### **7.1 Frequency of meetings**

- 7.1.1 The meetings of the Enforcement Committee must be convened frequently as deemed appropriate and as determined by the Secretariat in consultation with the Chairperson of the Enforcement Committee.
- 7.1.2 Reasonable notice (ten days) of the Enforcement Committee meetings must be given to all members of the Enforcement Committee.
- 7.1.3 Meetings may be held in person or through electronic means such as tele-conference, or video conference.
- 7.1.4 Every member present at the Enforcement Committee meeting must sign an attendance register and declaration of interest.
- 7.1.5 An agenda and supporting documents must be prepared and circulated timeously to the members of the Enforcement Committee and at least ten (10) days before the intended date of a meeting to the members of the Enforcement Committee (or such other period as agreed by the Enforcement Committee members).

### **7.2 Charing of Meetings**

The Chairperson of the Enforcement Committee must, in terms of section 50(3) of POPIA, read with the Rules of Procedures for the Enforcement Committee, manage the work of and preside over the proceedings and/or hearings of the Enforcement Committee.

### **7.3 Quorum**

At least fifty percent 50%, plus one of members present at the meeting shall constitute a quorum.

## **7.4 Decision-Making**

- 7.4.1 Subject to paragraph 4.1 above, a decision of the Enforcement Committee is taken by resolution agreed to by the majority of members at any meeting of the Enforcement Committee.
- 7.4.2 In the event of an equality of votes regarding any matter, the Chairperson of the Enforcement Committee has a casting vote in addition to his or her deliberative.
- 7.4.3 Resolutions adopted at the Enforcement Committee meetings are binding on all Committee members.

## **7.5 Right to Vote**

Only Members of the Enforcement Committee have the right to vote.

## **8. SECRETARIAT**

- 8.1 The Chairperson of the Regulator, in consultation with the CEO must, designate employees to assist the Committee with the administrative and secretarial work arising from or connected with the performance of the functions of the Committee.
- 8.2 Minutes of all meetings of the Committee must be kept by the duly appointed secretariat of the Committee.
- 8.3 Recordings (and transcriptions) of the proceeding must also be kept, in accordance with procedure prescribed in the Rules of Procedures of the Enforcement Committee.
- 8.4 Minutes of the meetings of the Committee must record in sufficient detail the matters considered by the Committee and decisions reached, including any concerns and views raised by members.
- 8.5 Draft and final versions of minutes of such meetings should be sent to members of the Committee for comment and record respectively.

8.6 Adopted minutes of the Enforcement Committee must be signed by the Chairperson of the Committee.

## **9. RECOMMENDATIONS OF THE ENFORCEMENT COMMITTEE**

The Enforcement Committee must, through its Chairperson and in accordance with section 93 of POPIA, refer the report containing its findings and / or recommendations to the Members of the Regulator.

## **10. TERMINATION OF MEMBERSHIP**

The Members of the Regulator may, at any time, dissolve or reconstitute the Committee or terminate the membership of a committee member if, in the opinion of Members of the Regulator, the performance of the member(s) is unsatisfactory or a member is unable, due to illness or any other reason, to perform his or her functions effectively.

## **11. REVIEW AND EVALUATION**

11.1 The Enforcement Committee shall report to the Members of the Regulator on how it has discharged its responsibilities, including any other issues on which the Members of the Regulator has requested the Committee's opinion.

11.2 The Members of the Regulator may, annually or as and when it is necessary, review and evaluate adequacy and performance of the members of the Enforcement Committee and make any appropriate decisions and/or recommendations.

11.3 These Terms of Reference may be reviewed annually, or as and when it is necessary.

**ADOPTED BY MEMBERS OF THE INFORMATION REGULATOR ON THE DAY 26<sup>TH</sup> DAY  
OF JULY 2022**

*SP. Tlakula.*

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Chairperson: Adv. Pansy Tlakula

**INFORMATION REGULATOR**