

**Subject:** Effect of presidential proclamation.docx

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## **Presidential Proclamation: Gazette No. 37839 dated 15 July 2014 Transfer of powers**

### **Introduction**

On 25 May 2014, the President announced the creation of two new Ministries: a Ministry of Telecommunications and Postal Services and a Ministry of Communications with responsibility for ICASA and the SABC amongst others. The assumption was then made that broadcasting including digital migration would report to the Minister of Communications. The proclamation published on 15 July 2014 did not give effect to this division.

### **Powers of the Minister of Communication as set out in the proclamation**

The Minister of Communication was given the powers set out in the ICASA Act, 2000 (Act No. 13 of 2000) and the Broadcasting Act, 1999 (Act No. 4 of 1999). These two Acts establish and deal with *administrative and governance* matters relating to ICASA and the SABC such as the appointment, removal, performance management, staffing, etc. of the two institutions. They do not include substantive matters relating to regulation of broadcasting. Broadcasting is regulated by the Electronic Communications Act, 2005 (Act No 36 of 2005). The ability to make broadcasting policy and issue broadcasting policy directions are set out in section 3 of this Act. These powers have been transferred from the Minister of Communications to the Minister of Telecommunications and Postal Services. It is therefore the Minister of Telecommunications and Postal Service who will make policy and issue policy directives to ICASA for broadcasting, including public service broadcasting.

### **Uncertainty still exists**

Uncertainty remains as to how the division will practically function especially in respect to ICASA. While the Minister of Communications appoints, removes and performance manages ICASA, she has no input into the substantive work to be done by ICASA. It's like having an employer being able to hire, fire and performance manage an employee but having no ability to set, direct, make input or give guidance on the work of that employee.

### **What should happen?**

If it is the intention of the President that broadcasting and matters related to broadcasting should sit with the Minister of Communications, then the powers and functions of the Minister as set out in the Electronic Communications Act needs to be split between the Minister of Telecommunications and Postal Services and the Minister of Communications. T

The President has transferred the powers in the Films and Publication Act, 1996 (Act 65 of 1996) to the Minister of Communication. The Minister of Communications in this instance has substantive (not just administrative) powers in respect of content which is not regulated as traditional broadcasting content. This regulation is currently applicable to video on demand services which will become more prevalent as convergence becomes a reality. These content services pose a real threat to traditional broadcasters and will predominantly come from international operators who are not regulated in South Africa. One would have expected that all content, whether regulated as broadcasting by the Electronic Communications Act or film by the Films and Publication Act should be housed in one Ministry.