

No. 2

13 February 2014

[English text signed by the Premier]

**KWAZULU-NATAL
CONSUMER PROTECTION ACT, 2013
(Act No. 04 of 2013)**

Assented to on 31-10-2013

ACT

To provide for the realisation and protection of consumer rights in KwaZulu-Natal; to provide for the establishment of the KwaZulu-Natal Office of the Consumer Protector; to determine the objects, powers, duties and functions of the Office of the Consumer Protector; to provide for the investigation of consumer complaints; to provide for redress for consumers; to provide for consumer education and awareness of consumer rights and responsibilities; to provide for the establishment of Consumer Tribunals; to determine the objects, powers, duties and functions of Consumer Tribunals; and to provide for matters connected therewith.

BE IT ENACTED by the Provincial Legislature of the Province of KwaZulu-Natal, as follows: -

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CHAPTER 1
DEFINITIONS

Definitions

1. In this Act, unless the context otherwise indicates –

“**business**” means –

- (a) offering, supplying or making available any commodity; or
- (b) soliciting or receiving of any investment;

“**Commission**” means the National Consumer Commission established in terms of section 85 of the Consumer Protection Act, 2008 (Act No. 68 of 2008);

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**co-operative**” means a co-operative as defined in section 1 of the Co-operatives Act, 1981 (Act No. 91 of 1981);

“**consumer**” in respect of any particular goods or services, means—

- (a) a person to whom those particular goods or services are marketed in the ordinary course of the supplier’s business;
- (b) a person who has entered into a transaction with a supplier in the ordinary course of the supplier’s business, unless the transaction is exempt from the

application of this Act by section 5(2) or in terms of section 5(3);

(c) if the context so requires or permits, a user of those particular goods or a recipient or beneficiary of those particular services, irrespective of whether that user, recipient or beneficiary was a party to a transaction concerning the supply of those particular goods or services; and

(d) a franchisee in terms of a franchise agreement, to the extent applicable in terms of section 5(6)(b) to (e);

“Consumer Protector” means the person appointed as head of the KwaZulu-Natal Office of the Consumer Protector in terms of section 5(3);

“consumer protection group” means any consumer protection group as defined in section 1 of the Consumer Protection Act, 2008 (Act No. 68 of 2008);

“Consumer Tribunal” means a consumer tribunal established for the Province in terms of section 8(1);

“court” means any court contemplated in chapter 8 of the Constitution, other than the Consumer Tribunal;

“Department” means the department in the Provincial Government of KwaZulu-Natal responsible for consumer affairs;

“display” when used—

(a) in relation to any goods, means placing, exhibiting or exposing those goods before the public in the ordinary course of business in a manner consistent with an open invitation to members of the public to inspect, and select, those or similar goods for supply to a consumer; or

(b) in relation to a price, mark, notice or other visual representation, means to place or publish anything in a manner that reasonably creates an association between that price, mark, notice or other visual representation and any particular goods or services

“Executive Council” means the Executive Council of the Province of KwaZulu-Natal as contemplated in section 132 of the Constitution;

“facility” means any premises, space or equipment set up to fulfill a particular function, or at , in, or on which a particular service is available;

“financial interest” means ownership of shares in a company, a member’s interest in a close corporation, an interest in a partnership and, in respect of business or undertaking, any interest which enables the holder thereof to share in the profits and income of such business or undertaking;

“Gazette” means the official *Provincial Gazette* of the Province of KwaZulu-Natal;

“goods” includes—

(a) anything marketed for human consumption;

(b) any tangible object not otherwise contemplated in paragraph (a), including any medium on which anything is or may be written or encoded;

(c) any literature, music, photograph, motion picture, game, information, data, software, code or other intangible product written or encoded on any medium, or a licence to use any such intangible product;

(d) a legal interest in land or any other immovable property, other than an interest that falls within the definition of ‘service’ in this section; and

(e) gas, water and electricity;

“Head of Department” means the most senior officer of the department in the Provincial Government of KwaZulu-Natal responsible for consumer affairs;

“investigator” means a person appointed in terms of section 31(1)(a);

“Member of the Executive Council for Finance” means the member of the Executive Council of the Province of KwaZulu-Natal responsible for finance;

“Office” means the KwaZulu-Natal Office of the Consumer Protector established in terms of section 5(1);

“office bearer” means –

- (a) a member of the National Assembly, the National Council of Provinces or the Cabinet;
- (b) a member of a provincial legislature or Executive Council of a province;
- (c) a municipal councilor;
- (d) a diplomatic representative of the Republic who is not a member of the public service;
- (e) a member of the house of traditional leaders; or
- (f) a national or provincial office bearer of a political party, organization, body, alliance or movement registered in terms of section 15 or 15A of the Electoral Commission Act, 1996 (Act No. 51 of 1996);

“ombud with jurisdiction” in respect of any particular dispute arising out of an agreement or transaction between a consumer and a supplier who is—

- (a) subject to the jurisdiction of an ‘ombud’, or a ‘statutory ombud’, in terms of any national legislation, means that ombud, or statutory ombud; or
- (b) a ‘financial institution’, as defined in the Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004), means ‘the ombud’, as determined in accordance with section 13 or 14 of that Act;

“person” means a natural or a juristic person, a group of such persons or a corporate body, unless the context indicates a contrary meaning;

“Portfolio Committee” means the Portfolio Committee of the Provincial

Legislature responsible for economic development and tourism;

“**premises**” means land, or any building, structure, vehicle, ship, boat, vessel, aircraft or container;

“**prescribed**” means prescribed by regulation, and “**prescribe**” has a corresponding meaning;

“**price**” when used in relation to—

(a) a representation required to be displayed by section 23, includes any mark, notice or visual representation that may reasonably be inferred to indicate or express an association between any goods or services and the value of the consideration for which the supplier is willing to sell or supply those goods or services; or

(b) the consideration for any transaction, means the total amount paid or payable by the consumer to the supplier in terms of that transaction or agreement, including any amount that the supplier is required to impose, charge or collect in terms of any public regulation;

“**prohibited conduct**” means an act or an omission in contravention of this Act;

“**promote**” means to –

(a) advertise, display or offer to supply any goods or services in the ordinary course of business, to all or part of the public for consideration;

(b) make any representation in the ordinary course of business that could reasonably be inferred as expressing a willingness to supply any goods or services for consideration; or

(c) engage in any other conduct in the ordinary course of business that may reasonably be construed to be an inducement or attempted inducement to a person to engage in a transaction;

“Province” means the province of KwaZulu-Natal established in terms of section 103 of the Constitution and **“provincial”** has a corresponding meaning;

“Provincial Legislature” means the Legislature of the Province of KwaZulu-Natal as contemplated in section 105 of the Constitution and having the legislative authority for the Province as contemplated in section 104(1) of the Constitution;

“public servant” means a public servant as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and includes a municipal employee;

“regulations” means regulations made in terms of this Act;

“regulatory authority” means an organ of state or entity established in terms of national or provincial legislation responsible for regulating an industry, or sector of any industry;

“respondent” means a person or firm against whom a complaint or application has been initiated in terms of this Act;

“responsible Member of the Executive Council” means the Member of the Executive Council of the Province of KwaZulu-Natal responsible for consumer affairs;

“retailer” with respect to particular goods, means a person who, in the ordinary course of business, supplies those goods to a consumer;

“Revenue Fund” means the Provincial Revenue Fund established in terms of section 226 of the Constitution;

“service” includes, but is not limited to—

(a) any work or undertaking performed by one person for the direct or indirect benefit of another;

- (b) the provision of any education, information, advice or consultation, except advice that is subject to regulation in terms of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);
- (c) any banking services, or related or similar financial services, or the undertaking, underwriting or assumption of any risk by one person on behalf of another, except to the extent that any such service—
- (i) constitutes advice or intermediary services that is subject to regulation in terms of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002); or
- (ii) is regulated in terms of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), or the Short-term Insurance Act, 1998 (Act No. 53 of 1998);
- (d) the transportation of an individual or any goods;
- (e) the provision of—
- (i) any accommodation or sustenance;
- (ii) any entertainment or similar intangible product or access to any such entertainment or intangible product;
- (iii) access to any electronic communication infrastructure;
- (iv) access, or of a right of access, to an event or to any premises, activity or facility; or
- (v) access to or use of any premises or other property in terms of a rental;
- (f) a right of occupancy of, or power or privilege over or in connection with, any land or other immovable property, other than in terms of a rental; and
- (g) rights of a franchisee in terms of a franchise agreement, to the extent applicable in terms of section 5(6)(b) to (e),
- irrespective of whether the person promoting, offering or providing the services participates in, supervises or engages directly or indirectly in the service;

“**service provider**” means a person who promotes, supplies or offers to supply any service;

“**supplier**” means a person who market any goods or services;

“**supply**” when used as a verb—

(a) in relation to goods, includes sell, rent, exchange and hire in the ordinary course of business for consideration; or

(b) in relation to services, means to sell the services, or to perform or cause them to be performed or provided, or to grant access to any premises, event, activity or facility in the ordinary course of business for consideration;

“**this Act**” includes the regulations; and

“**transaction**” means—

(a) in respect of a person acting in the ordinary course of business—

(i) an agreement between or among that person and one or more other persons for the supply or potential supply of any goods or services in exchange for consideration; or

(ii) the supply by that person of any goods to or at the direction of a consumer for consideration; or

(iii) the performance by, or at the direction of, that person of any services for or at the direction of a consumer for consideration; or

(b) an interaction contemplated in section 5(6), irrespective of whether it falls within paragraph (a);

CHAPTER 2
OBJECTS OF ACT, EXEMPTIONS AND FUNCTIONS
OF RESPONSIBLE MEMBER OF EXECUTIVE COUNCIL

Objects of Act

2. The objects of this Act are –

- (a) to provide for a consistent, predictable and effective regulatory framework of consumer complaints in the Province;
- (b) to provide for mechanisms to foster consumer confidence;
- (c) to provide mechanisms for the protection of consumers in all areas of the Province whilst also aiming at promoting performance and competitiveness in the market place;
- (d) to lay a solid foundation for leveling the economic playing field between the historical vulnerability of consumers and the power and influence of business;
- (e) to promote and advance the social economic welfare of consumers in the Province; and
- (f) to provide for an accessible, consistent, harmonised, affective and effective system of redress for consumers in the Province.

Exemptions

3. This Act does not apply to –

- (a) an officer as defined in section 1(1) of the Customs and Exercise Act, 1964 (Act No. 91 of 1964), in the performance of his or her functions;
- (b) a sheriff or any officer of a court acting in terms of an order of a court; and
- (c) a judge or magistrate, acting in the performance of his or her functions.

Functions of responsible Member of Executive Council

4. The responsible Member of the Executive Council must –

- (a) within 12 months after the coming into operation of the Act, –
 - (i) develop a provincial policy and norms and standards pertaining to consumer matters and affairs;

- (ii) establish and set guidelines for the conduct of business regarding consumer matters and affairs in the Province;
- (b) where necessary, establish a social responsibility programme in respect of consumer issues; and
- (c) perform such other functions as may be assigned to him or her in terms of this Act.

CHAPTER 3 AGENCIES FOR CONSUMER PROTECTION IN KWAZULU-NATAL

Establishment of KwaZulu-Natal Office of Consumer Protector

5.(1) Subject to section 84 of the Consumer Protection Act, 2008 (Act No. 68 of 2008), an office to be known the KwaZulu-Natal Office of the Consumer Protector, is hereby established.

(2) The Office contemplated in subsection (1) is not a juristic person.

(3) The responsible Member of the Executive Council must, in terms of the relevant provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994), appoint a Consumer Protector as head of the Office of the Consumer Protector at the level determined by the responsible Member of the Executive Council.

(4) Where the Consumer Protector is unable to discharge his or her duties for whatever reason, the responsible Member of the Executive Council must appoint a person as Acting Consumer Protector pending the appointment of a full-time Consumer Protector.

(5) The administrative and secretarial work incidental to the performance of the functions of the Office must be performed by officers in the Department designated and assigned for such purpose by the Head of Department.

(6) All staff members designated and assigned to provide administrative and secretarial support to the Office as contemplated in subsection (5), are subject to the control and the direction of the Consumer Protector.

(7) The Office may utilise the services of persons seconded or transferred from the public service in accordance with the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

(8) Where the need arises, the Consumer Protector may, in the performance of his or her duties and functions, be assisted by any person or body whose services may be obtained by him or her, on such terms and conditions and for such period as may be agreed upon, for the purposes of conducting a particular investigation on behalf of the Consumer Protector.

(9) A person referred to in subsection (8) may –

- (a) be dispatched to any part of the Province or Republic to conduct an investigation contemplated in subsection (8); and
- (b) be paid such remuneration, allowances and expenses as may be determined by the responsible Member of the Executive Council in consultation with the Member of the Executive Council for Finance.

Objects of Office of Consumer Protector

6. The objects of the Office of Consumer Protector are –

- (a) to ensure the provision of a consistent, predictable and effective regulatory framework of consumer complaints in the Province;
- (b) to foster consumer confidence in the Province;
- (c) to ensure that the mechanisms provided to protect consumers in terms of this Act are in place;
- (d) to ensure that the foundation for leveling the economic playing field between historically vulnerable consumers and business is in place;
- (e) to ensure the promotion and advancement of the social economic welfare of consumers in the Province; and
- (f) to ensure that an accessible, consistent, harmonised, affective and effective system of redress is provided for consumers in the Province.

Powers, duties and functions of Office of Consumer Protector

7.(1) The Office of the Consumer Protector must –

- (a) receive and investigate consumer complaints in accordance with this Act;
- (b) facilitate the mediation or conciliation of disputes arising in terms of this Act between or among consumers, persons resident, or persons carrying on business, within the Province;
- (c) refer disputes contemplated in paragraph (b) to the relevant provincial Consumer Tribunal;
- (d) make recommendations to the responsible Member of the Executive Council and take remedial action in respect of complaints lodged with the Office;
- (e) advise the responsible Member of the Executive Council on any matter referred to the Office by the responsible Member of the Executive Council;
- (f) investigate and make recommendations to the responsible Member of the Executive Council, regarding any matter relating directly or indirectly to consumer matters, affairs or issues in the Province;
- (g) advise the responsible Member of the Executive Council on the development of a social responsibility programme aimed at promoting and advancing the social economic welfare of consumers in the Province;
- (h) assist the responsible Member of the Executive Council in formulating policy and in establishing norms and standards in the Province, as contemplated in section 4(a)(i) of this Act;
- (i) collaborate with national, provincial and international stakeholders and participate in all educational programmes aimed at promoting awareness to the stakeholders in the consumer industry with regard to handling and dealing with consumers;
- (j) initiate and participate in educational programmes aimed at reducing the abuse and exploitation of consumers in the Province
- (k) assist and advise the responsible Member of the Executive Council on the development of a programme in order to pursue the objects of the Act set out in section 2;
- (l) within the framework of national and provincial consumer policies, assist and advise the responsible Member of the Executive Council with regard to advising and guiding –
 - (i) the stakeholders in the consumer industry, consumers and

organizations or institutions whose activities or aims have an impact on or relate to consumer matters, affairs or issues in the Province; and

(ii) the business unit within the Department responsible for small business development, co-operatives, local economic development and economic empowerment, and similar business units within other departments in the Province; and

(iii) business and further ensuring that business complies with the standing policies and legislation pertaining to consumers; and

(m) perform such other functions as may be assigned to it in terms of this Act.

(2) In addition to the powers, duties and functions contemplated in subsection (1), the Office must, after 31 March of each year, submit to the responsible Member of the Executive Council, an annual report on its functions during the year ending including the activities as contemplated in subsection (1).

(3) The responsible Member of the Executive Council must table a copy of the annual report submitted in terms of subsection (1), to the Provincial Legislature within 14 days after receipt thereof.

Establishment of Consumer Tribunals

8.(1) The responsible Member of the Executive Council must, within 12 months after the coming into operation of the Act, by notice in the *Gazette*, establish one or more Consumer Tribunals for the Province.

(2) A Consumer Tribunal referred to in subsection (1) –

(a) is established for the area described in the notice; and

(b) has its seat at such place mentioned in the notice.

(3) The responsible Member of the Executive Council may by notice in the *Gazette* –

(a) amend the area for a Consumer Tribunal contemplated in subsection (2); or

(b) withdraw the notice contemplated in subsection (1) and abolish a Consumer Tribunal contemplated in subsection (1);

(4) The responsible Member of the Executive Council may, subject to section 10(1)(b), determine that, in relation to particular proceedings, a Consumer Tribunal sits at a place other than the seat of that Consumer Tribunal.

Objects of Consumer Tribunal

9. The objects of a Consumer Tribunal are –

- (a) to receive, hear and decide on any consumer matter; and
- (b) to dispose of any consumer complaint or dispute.

Powers, duties and functions of Consumer Tribunal

10.(1) A Consumer Tribunal must –

- (a) receive, hear, consider and decide on any consumer complaint which is before it by virtue of proceedings contemplated in this Act;
- (b) sit on such days and during such hours and at such place as the presiding officer or Chairperson, in consultation with the Consumer Protector, may determine;
- (c) hold and resume sittings at such time and place throughout the areas of the Province as the presiding officer or the Consumer Protector may determine;
- (d) apply the existing law of South Africa in the assessment of a consumer complaint or dispute;
- (e) lay down the general principles to govern conflict resolution between consumers and business;
- (f) order the Consumer Protector to record, in the list of adverse notations to be maintained and kept by the Office, the name of the business, the name of person conducting such business and the finding of a Consumer Tribunal in respect of subsection (2)(a), (b) and (c); and
- (g) exercise any other powers and perform the functions and duties assigned to it in terms of this Act.

(2) A Consumer Tribunal may –

- (a) award costs, on the scale to be prescribed or in the amount determined by the Consumer Tribunal, against any person found liable to the consumer by

virtue of any unlawful conduct, by conduct or omission in terms of this Act or under any existing law;

(b) with regard to a consumer complaint relating to a hard bargain or conduct which the consumer rightly believes to be inequitable, unfair or grossly unreasonable, make a finding to that effect;

(c) at the hearing of a consumer complaint, if it is satisfied that the complaint is lodged frivolously or vexatiously, award costs against such consumer; and

(d) generally deal with all matters necessary or incidental to the performance of its functions in terms of this Act.

(3) The presiding officer of a Consumer Tribunal must as soon as practicable, after 31 March in each year, submit to the responsible Member of the Executive Council an annual report on the activities of the Consumer Tribunal.

(4) The report submitted to the responsible Member of the Executive Council in terms of subsection (3) must include a list of adverse notations contemplated in section 10(1)(f).

(5) The responsible Member of the Executive Council may require a Consumer Tribunal to submit additional reports to him or her as the responsible Member of the Executive Council may require from time to time.

(6) The responsible Member of the Executive Council must submit to the Provincial Legislature a copy of the annual report contemplated in subsection (3), within 14 days after its receipt.

Composition of Consumer Tribunal

11.(1) A Consumer Tribunal consists of –

(a) six and not more than eight members appointed by the responsible Member of the Executive Council; and

(b) the Chairperson, appointed in terms of section 12 of this Act.

(2) The membership contemplated in subsection (1) must include –

(a) a Chairperson, who must be an admitted Attorney or Advocate or retired

magistrate or law lecturer at a university with at least five years' experience in the legal profession or the administration of justice;

(b) a deputy Chairperson, who must also be an admitted Attorney or Advocate or retired magistrate or law lecturer at a university with at least three years' experience in the legal profession or the administration of justice;

(c) one person having knowledge and experience in the field of consumer advocacy, economics and commerce;

(d) one person who has knowledge and experience in the consumer industry and not actively involved nor having financial interest therein, whether directly or indirectly;

(e) one person as a secretary of the Consumer Tribunal to perform administrative work incidental to the functions of the Consumer Tribunal; and

(f) one such other person to assist the secretary of the Consumer Tribunal as may be necessary.

(3) In appointing the members to a Consumer Tribunal, the responsible Member of the Executive Council must ensure that historic imbalances are addressed.

(4) The responsible Member of the Executive Council must, by notice in two newspapers circulating widely in the Province and using any other method designated to reach the greatest number of residents in the Province, invite persons or any interested parties within the Province to nominate candidates for appointment to a Consumer Tribunal.

(5) The notice contemplated in subsection (4), must specify –

(a) the nomination procedure;

(b) the requirements for nominations; and

(c) the closing date for the nominations.

(6) The responsible Member of the Executive Council must consider all nominations submitted in response to the notice, and may appoint a selection panel consisting of no more than four senior departmental officials to review all the nominations and make recommendations to the responsible Member of the Executive Council regarding the candidates to a Consumer Tribunal.

(7) The responsible Member of the Executive Council must cause the names of the persons appointed to a Consumer Tribunal to be published in the *Gazette* and in at least two newspapers circulating in the Province, immediately after such persons have been notified, in writing, of their appointment to a Consumer Tribunal.

(8) The responsible Member of the Executive Council must, within two months after the appointment of members, provide the Portfolio Committee with the names of the appointed members including the term of their appointment.

(9) This section applies, with the necessary changes, to the filling of a vacancy on a Consumer Tribunal.

Disqualification from being appointed to Consumer Tribunal

12. A person is disqualified from being appointed to a Consumer Tribunal or from remaining on a Consumer Tribunal, by reason that he or she –

- (a) is or becomes an unrehabilitated insolvent;
- (b) is or has been declared by the competent court to be of unsound mind;
- (c) is directly or indirectly interested in any contract with the Consumer Protector or Consumer Tribunal and fails to declare his or her interest and the nature thereof in a manner required by this Act;
- (d) a person is under curatorship;
- (e) has at any time been removed from an office of trust on account of misconduct involving theft or fraud;
- (f) has been convicted and sentenced to a term of imprisonment without the option of a fine, except that the responsible Member of the Executive Council may, upon such nominee disclosing full details of the offence in an affidavit, condone a conviction that is consistent with section 106(1)(e) of the Constitution: Provided that a disqualification in terms of this subsection ends five years after the sentence has been completed;
- (g) fails to disclose an interest in accordance with section 13 or attended or participated in the proceedings of a Consumer Tribunal while having an interest contemplated in the said section;
- (h) is a public servant;

- (i) is an office bearer;
- (j) is not a citizen of the Republic; or
- (k) is not resident in the Province.

Declaration of financial or other interests of members of Consumer Tribunal

13.(1) A person who has been nominated to serve on a Consumer Tribunal in terms of section 11 must, within 10 days of being nominated, submit a written declaration to the responsible Member of the Executive Council of all direct or indirect interests in any company, close corporation and of any other business interests.

(2) Any failure by a nominee to disclose financial and other interests in terms of subsection (1) disqualifies such nominee in terms of section 12 from being appointed to a Consumer Tribunal.

(3) Every member of a Consumer Tribunal must, upon assuming office and at the beginning of every financial year of the Consumer Tribunal, submit a written declaration of his or her direct or indirect interest in any company, close corporation or other business interests to the responsible Member of the Executive Council.

(4) Where a member of a Consumer Tribunal acquires interest in any company, close corporation or other business interests, at any time during his or her tenure as a member of the Consumer Tribunal he or she must, within 10 days of the date of the acquisition of such an interest, submit a written declaration to the responsible Member of the Executive Council of such an interest.

(5) Any failure on the part of the member to disclose his or her interests as contemplated in subsections (3) and (4) results in the termination of appointment of such member in terms of section 16(2).

Failure to declare financial or other interests by member of Consumer Tribunal

14.(1) A member of a Consumer Tribunal who fails to make a declaration envisaged in section 13 may, subject to subsection (2), be disqualified from remaining on the

Consumer Tribunal.

(2) The responsible Member of the Executive Council, on becoming aware that a member of a Consumer Tribunal has failed to comply with the provisions of section 13, must investigate the matter and consider appropriate disciplinary action.

Term of office of member of Consumer Tribunal

15.(1) A member is appointed to serve on a Consumer Tribunal for a period of five years or such lesser period as the responsible Member of the Executive Council may determine.

(2) A member is eligible for re-appointment upon the expiry of his or her term of office for one additional term.

Vacancies, removal from office and resignation of members of Consumer Tribunal

16.(1) A member of a Consumer Tribunal must vacate office if he or she becomes subject to a disqualification contemplated in section 12.

(2) The responsible Member of the Executive Council may, after having afforded a member the opportunity to state his or her case, at any time terminate the term of office of such member if, in his or her opinion, there are sound, cogent and justifiable reasons for doing so.

(3) A member may resign from office by giving not less than 30 days written notice to the responsible Member of the Executive Council: Provided that the responsible Member of the Executive Council may waive the resignation notice.

(4) Whenever a vacancy occurs on a Consumer Tribunal, the responsible Member of the Executive Council must, subject to section 11, appoint a person to fill such vacancy for the unexpired portion of the period of office of the member in whose place such person is appointed.

(5) The responsible Member of the Executive Council may, subject to subsection (2), terminate the appointment of all or some of the members of a Consumer Tribunal.

(6) In the event that the responsible Member of the Executive Council exercises his or her powers in terms of subsection (5), he or she may, notwithstanding the procedure for the appointment of the members of a Consumer Tribunal set out in section 11, but subject to subsections (2) and (3) of section 11, appoint persons to serve as members of a Consumer Tribunal on an interim basis: Provided that –

- (a) the persons appointed to replace the members whose appointment has been terminated in terms of subsection (5), may not remain on the Consumer Tribunal for a period of more than 90 days from the date of their appointment; and
- (b) the responsible Member of the Executive Council, must, subject to section 11, appoint the permanent members of the Consumer Tribunal within 90 days of the appointment contemplated in paragraph (a) of this subsection.

Temporary suspension of member of Consumer Tribunal

17.(1) The responsible Member of the Executive Council may, after applying the relevant rules of natural justice, suspend a member of a Consumer Tribunal on full remuneration if –

- (a) the member is alleged to have committed a serious offence; and
- (b) the responsible Member of the Executive Council reasonably believes that the presence of such member at the Consumer Tribunal might jeopardise any investigation and the enquiry into the alleged misconduct, or endanger the well-being or safety of any person or state property: Provided that a suspension of this nature is a precautionary measure which does not constitute a finding.

(2) If a member is suspended as a precautionary measure contemplated in subsection (1), the responsible Member of the Executive Council must hold the enquiry within 60 days from the effective date of such suspension.

Constitution of Consumer Tribunal

18.(1) Subject to subsection (4), the quorum of a Consumer Tribunal is three members.

(2) Except where otherwise provided, a decision of the majority of members of a Consumer Tribunal present is the decision of the Consumer Tribunal.

(3) A member of a Consumer Tribunal must recuse himself or herself from proceedings on the grounds of any interest or association likely to affect his or her impartial consideration of the matter, or which is likely to be seen to do so.

(4) If at any stage during the proceedings before a Consumer Tribunal –

(a) the chairperson becomes incapable of acting or is absent, the proceedings must begin afresh;

(b) any other member becomes incapable of acting or is absent, the proceedings must continue before the remaining members; and

(c) two or more other members become incapable of acting or are absent, the proceedings must begin afresh unless all the parties to the proceedings agree unconditionally in writing to accept the decision of the majority of remaining members.

(5) In the event that the proceedings continue before an even number of members and there is a split decision, the chairperson's decision is final.

Remuneration of members of Consumer Tribunal

19.(1)(a) A member of a Consumer Tribunal may be paid such remuneration and allowances as may be determined by the responsible Member of the Executive Council in consultation with the Member of the Executive Council for Finance.

(b) A member of a Consumer Tribunal who receives remuneration, allowances or other benefits by virtue of his or her post or employment in –

(i) the national government;

(ii) a provincial government;

(iii) a municipality; or

(iv) a corporation, body or institution in which the national or a provincial

government has a controlling interest,
and who continues to receive such remuneration, allowances or other benefits while serving as a member of a Consumer Tribunal, may only receive remuneration and allowances referred to in paragraph (a) to the extent required to place such member in the financial position he or she would have been were it not for such post or employment.

(2)(a) A member of a Consumer Tribunal and a person who has been co-opted to the Consumer Tribunal may, in respect of his or her functions as a member or co-opted member, receive reimbursement for reasonable actual subsistence and traveling expenses necessitated by the actual attendance of a meeting or duties of the Consumer Tribunal;

(b) The responsible Member of the Executive Council, in consultation with the Member of the Executive Council for Finance must determine procedures, including control measures, for the management, handling and processing of claims for subsistence and traveling expenses contemplated in paragraph (a).

Expert and other assistance to Consumer Tribunal

20.(1) A Consumer Tribunal may appoint such experts or other persons as service providers as it may deem necessary with a view to assist it in the exercise and performance of its powers, duties and functions.

(2) The terms, conditions, and fees applicable to any expert or person appointed under subsection (1), and the work to be performed or services to be rendered must be determined by the Consumer Tribunal, and be contained in a written agreement entered into for that purpose between the Consumer Tribunal and the expert or person concerned.

(3) The experts or other persons appointed under subsection (1) may not vote on any decision taken by the Consumer Tribunal.

Proceedings of Consumer Tribunal

21.(1) The proceedings before a Consumer Tribunal must –

- (a) be initiated by summons in the prescribed form which must be served on the person concerned in any manner as may be prescribed, which may include service outside the Province;
- (b) be open to the public;
- (c) be prosecuted by any person who must have been appointed by the Office;
- (d) allow any person who may be adversely affected by any proceedings to appear in person or be represented or assisted by an attorney or advocate or any other person; and
- (e) allow a person against who the proceedings are instituted or who may be affected by the proceedings or the decision to appear in person or be represented or assisted by an advocate, attorney or any other person.

(2) A Consumer Tribunal may direct that the public or any member thereof may not attend any proceedings of the Consumer Tribunal or portion thereof, if this is justified in the interest of –

- (a) the conduct of the proceedings or the consideration of the matter in question;
or
- (b) the protection of the privacy of any person alleged to be involved in any unfair business practices or has contravened the provisions of the Act or of the confidentiality of any information relating to that person.

(3) A Consumer Tribunal must keep the records of the proceedings.

(4) Any person who has an interest in any proceedings that have taken place, may in the prescribed manner, obtain copies of the record contemplated in subsection (3).

Summoning of witnesses and production of documents before Consumer Tribunal

22.(1) For the purpose of ascertaining any matter relating to proceedings before a Consumer Tribunal, a Consumer Tribunal may –

- (a) by summons addressed to any person, including the person against whom a consumer complaint has been made, in the prescribed form under the hand of

the secretary to the Consumer Tribunal, and served in the prescribed manner –

- (i) subpoena such person to appear before the Consumer Tribunal at a time and place specified in such summons, to give evidence; and
- (ii) order such person to produce any book, document or object in the possession or custody or under the control of such person and which may be reasonably necessary, material and relevant in connection with the proceedings before the Consumer Tribunal;

(b) order such person to take an oath or make an affirmation; and

(c) question such person and examine any book, document or object which he or she has been required to produce.

(2) The oath or affirmation contemplated in subsection (1)(b) may be administered by any person qualified to administer an oath or accept an affirmation in terms of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963).

(3) A person is guilty of an offence if he or she, having been summoned in terms of this section –

(a) fails without sufficient cause to attend at the time and place specified in the summons, or to remain in attendance until the conclusion of the proceedings or until he or she has been excused by the Consumer Tribunal from further attendance;

(b) refuses to take the oath or make an affirmation;

(c) refuses to answer, or to answer fully and satisfactorily to the best of his or her knowledge and belief any question lawfully put to him or her;

(d) fails to produce any book, document or object in his or her possession or custody or under his or her control, which he or she was required to produce; or

(e) makes a false statement before the Consumer Tribunal knowing such statement to be false or not knowing or believing it to be true.

(4) A person who has been summoned to appear in terms of this section may not be entitled to refuse to answer any question or to produce any book, document or object on the ground that he or she would thereby be exposed to a criminal charge: Provided that, to the extent that such answer, book, document or article does expose the person concerned to a criminal charge, no evidence thereof may be admissible in any criminal

proceedings against that person, except where that person stands trial on a charge contemplated in subsection (2)(c) to (e), or in section 319(3) of the Criminal Procedure Act, 1955 (Act No. 56 of 1955).

(5) A person who has attended the proceedings of a Consumer Tribunal as a witness is entitled to the prescribed witness fee.

CHAPTER 4 REALISATION AND PROTECTION OF CONSUMER RIGHTS

Part 1 General

Consumer rights

23.(1) Every consumer has a right –

- (a) to have access to basic goods and services such as adequate food, clothing, housing, health care, education, clean water and sanitation;
- (b) to safety from and protection against production processes, products and services that are dangerous to health or life;
- (c) to be informed of, and to be provided with, the facts needed to make informed choices and to be protected against dishonest or misleading advertising and labeling;
- (d) to choose from a range of products and services offered at competitive prices with an assurance of satisfactory quality;
- (e) to have his or her interests represented in the making and execution of government policy and the development of products and services;
- (f) to redress or to receive a fair settlement of just claims, including compensation for misrepresentation, or shoddy goods or services;
- (g) to education as a consumer and to acquire knowledge and skills needed to make informed and confident choices about goods and services, while being aware of basic consumer rights and responsibilities and how to act on them; and
- (h) to live and work in a healthy environment that is not threatening to the well-being of present and future generations.

(2) The Office must take reasonable steps in ensuring that the rights contemplated in

subsection (1) are realized by all consumers in the Province.

Realization of consumer rights

24. Any of the following persons, may in the manner provided for in this Act, approach a Consumer Tribunal or the Consumer Protector where his or her rights in terms of this Act have been infringed, impaired or threatened or where any prohibited conduct has occurred or is occurring –

- (a) a person acting on his or her own behalf;
- (b) an authorized person acting on behalf of another person who cannot act in his or her own name;
- (c) a person acting as a member of, or in the interest of, a group or class of affected persons;
- (d) a person acting in the public interest, where the leave of the Consumer Protector or the Consumer Tribunal, as the case may be, has been granted for such person to act in the public interest; or
- (e) an association acting in the interest of its members.

Protection of consumer rights

25. If a consumer has exercised, asserted or sought to uphold any right set out in this Act or in an agreement or transaction with a supplier, the supplier may not, in response –

- (a) discriminate directly or indirectly against such consumer, compared to the supplier's treatment of any other consumer who has exercised, asserted or sought to uphold such a right;
- (b) penalize the consumer;
- (c) alter, or propose to alter, the terms or conditions of a transaction or agreement with the consumer, to the detriment of the consumer; or
- (d) take any action to accelerate, enforce, or terminate an agreement with the consumer.

Enforcement of rights by consumer

26.(1) A person contemplated in section 25 may seek to enforce any rights in terms of this Act or in terms of a transaction or agreement, or otherwise resolve a dispute with a supplier by –

- (a) referring the matter directly to the Consumer Protector;
- (b) referring the matter to a Consumer Tribunal, if such a direct referral is permitted by this Act in the case of the particular dispute; or
- (c) referring the matter to the applicable ombud with jurisdiction.

(2) Where the matter contemplated in subsection (1) does not concern a supplier contemplated in subsection (1)(c), a person contemplated in section 25 may seek to enforce any rights in terms of this Act or in terms of a transaction or agreement, or otherwise resolve a dispute with a supplier by –

- (a) referring the matter to the applicable industry ombud, accredited in terms of section 82(6) of the Consumer Protection Act, 2008 (Act No. 68 of 2008), if the supplier is subject to any such ombud;
- (b) referring the matter to another dispute resolution agent contemplated in section 70 of the Consumer Protection Act, 2008 (Act No. 68 of 2008);
- (c) filing a complaint with the Consumer Commission office in accordance with section 7 of the Consumer Protection Act, 2008 (Act No. 68 of 2008); or
- (d) approaching a Tribunal with jurisdiction over the matter, if all other remedies available to that person in terms of Consumer Protection Act, 2008 (Act No. 68 of 2008), has been exhausted.

*Part 2**Lodging and investigation of consumer complaints***Lodging complaint with Office of Consumer Protector**

27.(1) Any consumer may in the prescribed manner lodge a consumer complaint with the Office of the Consumer Protector.

(2) A consumer complaint contemplated in subsection (1) which is not in writing must be reduced to writing by the Office.

(3) The Office may open a file or dossier concerning the consumer complaint and must maintain an index and filing system of consumer complaints.

Investigation procedure

28.(1) Upon receiving a consumer complaint in terms of this Act, the Consumer Protector must direct a person in the service of the Office of the Consumer Protector or an investigating officer, to investigate the complaint as quickly as practicable.

(2) The person or investigating officer referred to in subsection (1) must make a preliminary assessment of the consumer complaint as contemplated in this Act.

(3) The Office may not cause any person to be summoned for investigation until a preliminary assessment has been made of the consumer complaint.

(4) If, upon consideration of the preliminary assessment, the Consumer Protector is of the opinion that the consumer complaint may be more appropriately dealt with by another competent authority, he or she may at any time refer any investigation or aspect thereof to such other authority, including an authority in another province: Provided that the Office may at any time resume the investigation in relation to that matter.

Preliminary assessment of consumer complaint

29.(1) The Office of the Consumer Protector must make a preliminary assessment of the consumer complaint lodged in terms of section 27(1).

(2) The Office may at any time during its investigations, alter its preliminary assessment, *inter alia* in light of new evidence or law, and proceed according to an amended assessment.

(3) The Office must assess whether the consumer complaint lodged in terms of section 27(1), is being lodged by a *bona fide* consumer.

(4) The complainant bears the onus of establishing that he or she is a *bona fide* consumer.

(5) If the complainant contemplated in subsection (3) is not a *bona fide* consumer, the Office may not investigate the complaint.

(6) The Office must assess whether the consumer complaint against a business, or a person purporting to carry on business or a business practice, conveys the potential of criminal liability or civil liability.

Summoning and questioning of persons and production of books and documents

30.(1) For the purposes of an investigation contemplated in section 28(1) the Consumer Protector, or a person in the service of the Office of the Consumer Protector, authorised by the Consumer Protector, may –

(a) summon any person who is believed to –

- (i) be able to furnish any information on the subject of the investigation; or
- (ii) to have in his or her possession or under his or her control any book, document or other object relating to that subject,

to appear before a person in the service of the Office at a time and place specified in the summons, to be questioned or to produce that book, document or other object; and

(b) question that person, under oath or affirmation administered by the Consumer Protector or another person in the service of the Office of the Consumer Protector, authorized by the Consumer Protector, and examine or retain for further information or for safe custody such a book, document or other object.

(2) A summons referred to in subsection (1)(a) must –

- (a) be in the prescribed form citing the person summoned;
- (b) contain particulars of the matter in connection with which the person concerned is required to appear;
- (c) be signed by the Consumer Protector or another person in the service of the Office authorized by the Consumer Protector; and
- (d) be served in the prescribed manner.

- (3) A person appearing by virtue of subsection (1)(a) –
- (a) may be assisted at the examination by any person of his or her choice; and,
 - (b) is entitled to receive from moneys appropriated by law for such purpose, as witness fees, an amount equal to the amount which he or she would have received as witness fees had he or she been summoned to attend criminal proceedings in the High Court held at the place mentioned in the summons in question.
- (4) A person is guilty of an offence if he or she, having been summoned in terms of this section –
- (a) fails without sufficient cause to attend at the time and place specified in the summons, or to remain in attendance until the conclusion of the proceedings or until he or she has been excused from further attendance by the Consumer Protector; or
 - (b) refuses to take the oath or make an affirmation.
- (5) A person questioned in terms of subsection (1), must answer each question truthfully and to the best of that person's ability, but the person is not obliged to answer any question if the answer is self-incriminating.
- (6) No self-incriminating answer given or statement made to a person exercising any power in terms of this section is admissible as evidence against the person who gave the answer or made the statement in criminal proceedings, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in subsection (5), and then only to the extent that the answer or statement is relevant to prove the offence charged.

Appointment of investigators

31.(1) The Consumer Protector –

- (a) may appoint any suitable employee of the Office or any other suitable person employed by the State, as an investigator; and
- (b) must issue each investigator with a certificate in the prescribed form stating

that the person has been appointed as an investigator in terms of this Act.

(2) When an investigator performs any function of an investigator in terms of this Act, the investigator –

(a) must be in possession of a certificate of appointment issued to that investigator in terms of subsection (1);

(b) must show that certificate to any person who –

(i) is affected by the investigator's actions in terms of this Act; and

(ii) requests to see the certificate; and

(c) has the powers of a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and may exercise the powers conferred on a peace officer by law.

(3) The Consumer Protector may appoint or contract with any suitably qualified person as an investigator to conduct research, audits, inquiries or other investigations on behalf of the Consumer Protector.

(4) A person appointed in terms of subsection (3) is not an investigator as contemplated in subsection (1).

(5) Subject to the laws governing the public service, the Member of the Executive Council, in consultation with the Member of the Executive Council for Finance, may appoint persons in the service of the Office or any other suitable persons as investigating officers, who must be subject to the control and directions of the Consumer Protector.

(6) The Consumer Protector is deemed to have been appointed as an investigating officer.

(7) An investigating officer must be provided with a certificate of appointment signed by or on behalf of the Consumer Protector and in which it is stated that he or she is an investigating officer appointed in terms of this Act.

(8) An investigating officer must, when performing any function in terms of this Act, have

his or her certificate of appointment in his or her possession.

Search and seizure

32.(1) In order to obtain any information required by the Office of the Consumer Protector in relation to an investigation, an investigating officer may, subject to the provisions of this section, during office hours enter any premises on or in which any book, document or other object connected with that investigation is or is suspected to be, and may –

- (a) inspect or search those premises, and there make such inquiries as may be necessary for the purpose of obtaining any such information;
- (b) examine any object found on or in the premises which has or might have a bearing on the investigation in question and request from the owner or person in charge of the premises or from any person in whose possession or charge that object is, information regarding that object;
- (c) make copies of or extracts from any book or document found on or in the premises which has or might have a bearing on the investigation in question, and request from any person who is suspected of having the necessary information, an explanation of any entry therein; or
- (d) seize, against the issue of a receipt, anything on or in the premises which has or might reasonably have a bearing on the investigation in question, if the investigating officer needs to retain it for further examination or for safe custody.

(2) Unless the owner or person in charge of the premises concerned has consented thereto in writing, an investigating officer may enter premises and exercise any power contemplated in subsection (1) only under a search warrant, which may only be issued by a magistrate or a judge if it appears from information given to the magistrate or judge on oath or solemn affirmation that there are reasonable grounds to suspect that a book, document or other object which may afford evidence for the investigation is on or in those premises.

(3) A search warrant contemplated in subsection (2) must –

- (a) authorise an investigating officer mentioned in the warrant to enter the premises identified in the warrant for the purpose of exercising any power

contemplated in subsection (1);

(b) be executed by day, unless the magistrate or judge specifically authorises the execution thereof by night; and

(c) be of force until it is executed, cancelled by a competent court, or a period of one week from the day of its issue expires, whichever occurs first.

(4) An investigating officer executing a search warrant under this section must, before such execution, upon demand by any person whose rights may be affected –

(a) show that person his or her certificate of appointment; and

(b) hand to that person a copy of the warrant.

(5) A person from whose possession or charge a book or document has been taken under this section must, as long as it is in the possession or charge of the investigating officer concerned or of the Office be allowed on request to make copies thereof or to take extracts therefrom at any reasonable time at his or her own expense and under the supervision of that investigating officer or a person in the service of the Office.

(6) A person is guilty of an offence if he or she –

(a) obstructs or hinders an investigating officer in the performance of his or her functions in terms of this section; or

(b) after enquiry having been made of him or her under subsection (1)(a), or having been requested for information or an explanation under subsection (1)(b) or (c), gives an answer or information or an explanation which is false or misleading, knowing it to be false or misleading.

Negotiation of arrangement to resolve consumer complaint

33.(1) The Office of the Consumer Protector may negotiate and conclude an arrangement with any person for –

(a) the discontinuance or avoidance of the business practice which gave rise to the consumer complaint;

(b) the reimbursement, with or without interest, to the affected consumer;

(c) the discontinuance or avoidance of any aspect of the business practice which gave rise to the consumer complaint; or

(d) any other matter relating to the business practice which gave rise to the consumer complaint.

(2) An arrangement contemplated in subsection (1) –

(a) may be concluded at any time after the institution of an investigation, but before the making of an order by the High Court in terms of section 37;

(b) must be in writing and signed by the parties thereto; and,

(c) may be subject to confirmation by the High Court in accordance with section 37.

Institution of proceedings after completion of investigation

34.(1) Upon completion of an investigation and subject to subsection (6), the Consumer Protector may institute proceedings in support of the consumer in the Consumer Tribunal if it has jurisdiction over the person alleged to be responsible for the business practice which gave rise to the consumer complaint.

(2) For purposes of such proceedings, the Consumer Protector is deemed to have *locus standi*.

(3) If, in the opinion of the Consumer Protector, a consumer complaint relating to a hard bargain or a question of equity raises a constitutional law issue, the Office may institute proceedings in support of the consumer in the High Court;

(4) For purposes of the proceedings contemplated in subsection (3), the Consumer Protector is deemed to have *locus standi* in such proceedings;

(5) Whenever the Office institutes proceedings in the Consumer Tribunal or in the High Court, the Consumer Protector is cited as First Plaintiff or First Applicant and the consumer is cited as Second Plaintiff or Second Applicant, as the case may be.

(6) The Consumer Protector must choose the appropriate forum in which to prosecute the matter by taking into account the provisions of this Act, with particular regard to the expeditious completion of the litigation and effective redress for the consumer.

(7) When choosing the appropriate forum as contemplated in subsection (6), the Consumer Protector must take into account the costs of the litigation to the parties concerned and accordingly commence proceedings in the forum where costs would be the least onerous to a defendant.

(8) No proceedings may be instituted by the Consumer Protector unless the consumer –

- (a) signs a document in which the consumer confirms the veracity of the complaint and indemnifies the Consumer Protector; and
- (b) signs a document indemnifying the Office from the consequences of any false evidence which may be adduced by him or her.

Part 3
Adjudication and review of consumer complaints

Review panel

35.(1) If the Office of the Consumer Protector decides neither to institute proceedings nor to refer the matter to another authority nor to proceed before a Consumer Tribunal, the Consumer Protector must, in writing, notify the consumer and the person or business against whom the consumer complaint was lodged of such a decision together with the reasons therefor.

(2) The reasons for the decision contemplated in subsection (1) must accompany such notice contemplated in subsection (1).

(3) If the consumer is aggrieved by the decision of the Consumer Protector not to institute proceedings, the consumer may, within fourteen days of receipt of the decision, refer the decision for review to the Review Panel.

(4) The Review Panel referred to in subsection (1) must be situated at the Office.

(5) The Office must note the referral for a review and forthwith inform the responsible Member of the Executive Council of the need to convene a Review Panel.

(6) The responsible Member of the Executive Council must convene a Review Panel

within fourteen days of the consumer seeking a review of the Consumer Protector's decision contemplated in sub-section (1).

(7) The Review Panel convened by the responsible Member of the Executive Council in terms of subsection (6), must be composed of an *ad hoc* committee of three persons with experience and knowledge of consumer matters.

(8) The persons contemplated in subsection (7), may be in the employ of the State but not employed in the Office.

(9) Subject to the laws governing the public service, a person appointed to the Review Panel who is not in the full-time service of the State must be appointed on such conditions and at such remuneration as may be prescribed by the responsible Member of the Executive Council, in consultation with the Member of the Executive Council responsible for Finance.

(10) Subject to the rules of natural justice, the Review Panel may consider the merits of the decision and any oral or written submissions, if any, by the consumer, the person or business against whom the consumer complaint was lodged and the Consumer Protector.

(11) The Review Panel may substitute its own decision for that of the Consumer Protector and order the Consumer Protector to institute proceedings or to confirm the decision of the Consumer Protector not to institute proceedings.

(12) The decision of the Review Panel taken in terms of subsection (11) is referred to as the review judgment.

(13) The review judgment contemplated in subsection (12) is final and binding on the consumer, the person or business against whom the consumer complaint was lodged and the Consumer Protector.

(14) The Review Panel must, in writing, inform the consumer, the person or business against whom the consumer complaint was lodged and the Consumer Protector of the

review judgment and must furnish each with a free copy of the review judgment.

Effect of review judgment

36. If the Review Panel orders the Consumer Protector to institute proceedings on behalf of a consumer, section 29 applies with the necessary changes required by the context.

CHAPTER 5 ARRANGEMENTS NEGOTIATED BY OFFICE OF CONSUMER PROTECTOR

Confirmation of arrangements negotiated by Office of Consumer Protector

37.(1) The Office may apply to the High Court for confirmation of an arrangement negotiated and concluded in terms of this Act.

(2) The High Court may, with due consideration of the interests of affected consumers and businesses and the parties concerned, issue an order –

- (a) confirming the arrangement;
- (b) confirming the arrangement with such amendments as may be agreed to by the parties concerned and subject to such conditions as the court may deem fit;
- (c) setting aside that arrangement if, after the parties involved in the arrangement have been given an opportunity to be heard, the court is satisfied that the arrangement will not ensure the discontinuance or avoidance of the business practice which gave rise to the consumer complaint.

(3) An order in terms of subsection (2) must be published in the *Gazette*.

CHAPTER 6 LAW ENFORCEMENT AND JUDICIAL PROCEEDINGS

Part 1

Confidentiality, limitation of liability, waiver of benefits and civil remedies

Confidentiality

38. No investigating officer or person in the service of the Office of the Consumer Protector or performing duties for the Office may disclose any information acquired by

him or her in the exercise or performance of any powers, functions or duties in terms of this Act, except –

- (a) in so far as may be necessary for the purpose of the due and proper exercise or performance of any power, function or duty in terms of this Act; or
- (b) on the order of a court of law.

Limitation of liability

39. No person, including the State, is liable in respect of anything done in good faith under this Act, save that the onus to establish good faith must be borne by such person or the State.

Waiver of benefits

40. Any agreement or contractual term purporting to exclude the provisions of this Act or to limit the application thereof is null and void.

Remedies

41. No provision of this Act may be construed as depriving any person of any civil remedy or right to institute any criminal prosecution.

Part 2 *Offences and penalties*

General offences

42.(1) A person is guilty of an offence if –

- (a) he or she as the owner or holder of any business or license to operate, allows an abuse of a consumer within his business premises;
- (b) he or she misrepresents himself or herself or any other person in the employ of such person in relation to goods or services, to the consumer.

(2) A member of a Consumer Tribunal, a member of staff, advisor, agent or other person employed by or acting on behalf of the Consumer Tribunal is guilty of an offence if he or

she directly or indirectly accepts any unauthorised fee or reward from any person in respect of or in connection with any service rendered or anything done or offered by the Consumer Tribunal.

(3) Any person is guilty of an offence if he or she, in respect of or in connection with any service rendered or anything done or offered by a Consumer Tribunal, bribes or attempts to bribe, or corruptly influences or attempts to corruptly influence, any member of staff or any adviser, agent or other person employed by or acting on behalf of the Consumer Tribunal.

(4) Any person who falsely claims that he or she is authorised to charge or collect fees on behalf of or by direction of a Consumer Tribunal is guilty of an offence.

Offences regarding hearing of Consumer Tribunal

43. A person who –

- (a) fails to appear before a Consumer Tribunal on the date and at the time and place when called upon to do so in terms of section 22 without having appointed a person to so appear on his or her behalf;
- (b) appears before a Consumer Tribunal in terms of section 22 but without the leave of the Chairperson fails to remain in attendance until the conclusion of the hearing or meeting;
- (c) having in terms of section 22 been called upon to appear and give evidence, or to produce any book, plan or other document or article which such person may at the time have in his or her possession, fails or refuses to do so;
- (d) having in terms of section 22 been required to give evidence, refuses to take the oath or make an affirmation; or
- (e) wilfully disrupts a hearing or meeting of a Consumer Tribunal or wilfully hinders or obstructs a Consumer Tribunal or any member thereof in the performance of his or her functions, is guilty of an offence.

Penalties**44. Any person convicted of an offence –**

- (a) in terms of section 42(2), (3) or (4), is liable to a fine or to imprisonment for a period not exceeding that determined by national legislation for corruption; or
- (b) in terms of sections 30(4), 32(6), 42(1) or 43, is liable to a fine or imprisonment for a period not exceeding 5 years, or both such fine and such imprisonment.

**CHAPTER 7
GENERAL PROVISIONS****Regulations****45.(1) The responsible Member of the Executive Council may make regulations regarding –**

- (a) any matter which in terms of this Act is required or permitted to prescribe;
- (b) any payment and amount of any fees payable in term of this Act;
- (c) the manner in which, and the days on which, if applicable, any application in terms of this Act may or must be made or lodged;
- (d) the manner and forms of service, delivery or dispatch of any summons, notice or other document required to be served, delivered or dispatched in terms of this Act;
- (e) the manner and form of the publication of notice or other document required to be published in terms of this Act;
- (f) the form, content and size, where applicable, of any notice, communication or other document required to be issued, delivered, served, given or published in terms of this Act;
- (g) time periods, or the extension of time periods, to be prescribed in terms of this Act;
- (h) the details of the premises in terms of which the complaint is lodged;
- (i) the tariff of witness fees payable on appeal or review proceedings;
- (j) the form and the manner in which a complaint must be submitted to the Office of the Consumer Protector;
- (j) procedure to be followed in dealing with a business entity that has been found to have contravened the provisions of this Act; and
- (k) in general, any matter in respect of which the responsible Member of the

Executive Council deems it necessary or expedient to make regulations in order to achieve the objects of this Act.

(2) Any regulation regarding fees or money to be paid must be made by the responsible Member of the Executive Council in consultation with the Member of the Executive Council for Finance.

Transitional arrangement

46. Any complaint lodged with the Consumer Business Unit of the Department made before the commencement of this Act in terms of any legislation whether repealed or amended, and the Regulations made in terms of that legislation, must be dispensed of and finalized in terms of this Act.

Short title and commencement

47.(1) This Act is called the KwaZulu-Natal Consumer Protection Act, 2013, and comes into operation on a date to be determined by the responsible Member of the Executive Council by notice in the *Gazette*.

(2) The responsible Member of the Executive Council may determine different dates for the coming into operation of different sections of this Act.

No. 2

13 Februarie 2014

[Engelse teks deur die Premier geteken]

KWAZULU-NATAL
WET OP VERBRUIKERSBESKERMING, 2013
(No. 04 van 2013)

Goedgekeur op 31-10-2013

WET

Om voorsiening te maak vir die verwesenliking en beskerming van verbruikersregte in KwaZulu-Natal; om voorsiening te maak vir die instelling van die KwaZulu-Natal Kantoor van die Verbruikersbeskermer; om die oogmerke, bevoegdhede, pligte en funksies van die Kantoor van die Verbruikersbeskermer te bepaal; om voorsiening te maak vir die ondersoek van verbruikersklagtes; om voorsiening te maak vir vergoeding vir verbruikers; om voorsiening te maak vir verbruikeropvoeding en bewustheid van verbruikersregte en verantwoordelikhede; om voorsiening te maak vir die instelling van verbruikertribunale; om die oogmerke, bevoegdhede, pligte en funksies van verbruikertribunale te bepaal; en om voorsiening te maak vir aangeleenthede wat daarmee verband hou.

DAAR WORD soos volg deur die Wetgewer van die provinsie KwaZulu-Natal bepaal:–

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HOOFSTUK 1
OMSKRYWINGS

Omskrywings

1. In hierdie Wet, tensy uit die konteks anders blyk, beteken –

“ampsdraer” –

- (a) ‘n lid van die Nasionale Vergadering, die Nasionale Raad van Provinsies of die Kabinet;
- (b) ‘n lid van ‘n provinsiale wetgewer of uitvoerende raad van ‘n provinsie;
- (c) ‘n munisipale raadslid;
- (d) ‘n diplomatieke verteenwoordiger van die Republiek wat nie ‘n lid van die staatsdiens is nie;
- (e) ‘n lid van die huis van tradisionele leiers; of
- (f) ‘n nasionale of provinsiale ampsdraer van ‘n politieke party, organisasie, liggaam, alliansie of beweging geregistreer ingevolge artikel 15 of 15A van die Wet op die Verkiesingskommissie, 1996 (Wet No. 51 van 1996);

“besigheid” –

- (a) die aanbied, verskaffing of beskikbaarmaking van enige kommoditeit;

of

(b) die uitnood of ontvangs van enige belegging;

"Departement" die Departement in die Provinsiale Regering van KwaZulu-Natal verantwoordelik vir verbruikersake;

"Departementshoof" die mees senior beampste van die Departement in die Provinsiale Regering van KwaZulu-Natal verantwoordelik vir verbruikersake;

"diens" insluitend, maar nie beperk nie tot —

(a) enige werk of onderneming wat deur een persoon verrig word tot die regstreekse of onregstreekse voordeel van iemand anders;

(b) die verskaffing van enige onderrig, inligting, advise of konsultasie, buiten advise wat aan regulasies onderhewig is ingevolge die Wet op Finansiële Advies- en Tussengangersdienste, 2002 (Wet No. 37 van 2002);

(c) enige bankdienste, of verwante of soortgelyke finansiële dienste, of die onderneming, onderskrywing of aanvaarding van enige risiko deur een persoon namens 'n ander, buiten tot die omvang waartoe enige sodanige diens —

(i) advies- of tussengangersdienste uitmaak wat onderhewig is aan regulasies ingevolge die Wet op Finansiële Advies- en Tussengangersdienste, 2002 (Wet No. 37 van 2002); of

(ii) gereguleer word ingevolge die Wet op Langtermynversekering, 1998 (Wet No. 52 van 1998), of die wet op korttermynversekering, 1998 (Wet No. 53 van 1998);

(d) die vervoer van 'n individu of enige goedere;

(e) die verskaffing van —

(i) enige akkommodasie of voedsel;

(ii) enige vermaak of soortgelyke ontasbare produk of toegang tot enige

sodanige vermaak of ontasbare produk;

(iii) toegang tot enige elektroniese kommunikasie-infrastruktuur;

(iv) toegang, of die reg tot toegang, tot 'n geleentheid of tot enige perseel, aktiwiteit of fasiliteit; of

(v) toegang tot of gebruik van enige perseel of ander eiendom ingevolge 'n huureiendom;

(f) die reg tot bewoning van, of mag of voorreg buiten of in verband met, enige grond of ander vaste eiendom, buiten ingevolge 'n huureiendom; en

(g) regte van 'n konsessiehouer ingevolge 'n konsessie-ooreenkoms, tot die mate toepaslik ingevolge artikel 5(6)(b) tot (e), ongeag of die persoon wat die diens bevorder, aanbied of verskaf, aan die diens deelneem, of daarvoor toesig hou of regstreeks of onregstreeks daarby betrokke is;

“diensverskaffer” 'n persoon wat enige diens promoveer, verskaf of aanbied om te verskaf;

“fasiliteit” enige perseel, ruimte of toerusting ingestel om 'n besondere funksie te vervul, of waarby, waarin of waarop 'n besondere diens beskikbaar is;

“finansiële belang” eienaarskap van aandele in 'n maatskappy, 'n lid se belang in 'n beslote korporasie, 'n belang in 'n vennootskap en, ten opsigte van 'n besigheid of onderneming, enige belang wat die houer daarvan in staat stel om in die winste en inkomste van sodanige besigheid of onderneming te deel;

“goedere” insluitend —

(a) enigiets wat vir menslike verbruik bemark word;

(b) enige tasbare voorwerp wat nie anders in paragraaf (a) beoog word nie, met inbegrip van enige medium waarop enigiets geskryf of geënkodeer is of mag wees;

(c) enige literatuur, musiek, foto, rolprent, speletjie, inligting, data, sagteware, kode of ander tasbare produk wat op enige medium geskryf of geënkodeer is, of 'n lisensie om enige sodanige tasbare produk te gebruik;

(d) 'n wettige belang in grond of enige ander vaste eiendom, buiten 'n belang wat binne die omskrywing van 'diens' in hierdie afdeling val; en

(e) gas, water en elektrisiteit;

“Grondwet” die Grondwet van die Republiek van Suid-Afrika, 1996;

“hierdie Wet” ook die regulasies;

“hof” enige hof bedoel in hoofstuk 8 van die Grondwet, buiten die Verbruikerstribunaal;

“Inkomstefonds” die Provinsiale Inkomstefonds ingestel ingevolge artikel 226 van die Grondwet;

“Kantoor” die KwaZulu-Natal Kantoor van die Verbruikersbeskermer ingestel ingevolge artikel 5(1);

“kleinhandelaar” ten opsigte van sekere goedere, 'n persoon wat, in normale omstandighede, daardie goedere aan 'n verbruiker verskaf;

“Koerant” die amptelike *Provinsiale Koerant* van die provinsie KwaZulu-Natal;

“Kommissie” die Nasionale Verbruikerskommissie ingestel ingevolge artikel 85 van die Wet op Verbruikerbeskerming, 2008 (Wet No. 68 van 2008);

“koöperatief” 'n koöperatief soos omskryf in artikel 1 van die Wet op Koöperatiewe, 1981 (Wet No. 91 van 1981);

“Lid van die Uitvoerende Raad vir finansies” die Lid van die Uitvoerende Raad

van die provinsie KwaZulu-Natal verantwoordelik vir finansies;

“ombud met jurisdiksie” met betrekking tot enige besondere geskil wat voortspruit uit 'n ooreenkoms of transaksie tussen 'n verbruiker en 'n verskaffer wat —

(a) onderhewig is aan die jurisdiksie van 'n 'ombud', of 'n 'statutêre ombud', ingevolge enige nasionale wetgewing, daardie ombud, of statutêre ombud; of

(b) 'n 'finansiële instelling', soos omskryf in die Wet op Finansiële Dienste Ombudskemas, 2004 (Wet No. 37 van 2004), 'die ombud', soos bepaal ooreenkomstig artikel 13 of 14 van daardie Wet;

“ondersoeker” 'n persoon aangestel ingevolge artikel 31(1)(a);

“perseel” grond, of enige gebou, struktuur, voertuig, skip, boot, vaartuig, lugvaartuig of houer;

“persoon” 'n natuurlike of 'n regspersoon, 'n groep van sodanige persone of 'n regspersoon, tensy die konteks 'n teenstrydige betekenis aandui;

“Portefeuljekomitee” die Portefeuljekomitee van die Provinsiale Wetgewer verantwoordelik vir ekonomiese ontwikkeling en toerisme;

“promoveer” om —

(a) enige goedere of dienste in gewone omstandighede aan die publiek of 'n deel van die publiek vir oorweging te adverteer, te vertoon of aan te bied om te verskaf;

(b) enige voorstelling te maak wat in gewone omstandighede redelikerwys gewilligheid kan aandui om enige goedere of dienste vir oorweging te verskaf; of

(c) gemoeid te wees met enige ander gedrag wat in gewone omstandighede redelikerwys vertolk kan word as 'n aansporing of poging tot aansporing vir 'n persoon om 'n transaksie aan te gaan;

“**Provinsiale Wetgewer**” die Wetgewer van die provinsie KwaZulu-Natal soos bedoel in artikel 105 van die Grondwet en het die wetgewende outoriteit vir die provinsie soos bedoel in artikel 104(1) van die Grondwet;

“**provinsie**” die provinsie KwaZulu-Natal ingestel ingevolge artikel 103 van die Grondwet en “**provinsiale**” het ‘n ooreenstemmende betekenis;

“**prys**” wanneer gebruik word ten opsigte van —

(a) ‘n voorstelling wat deur artikel 23 vertoon moet word, insluitend enige merk, kennisgewing of visuele voorstelling wat redelikerwys afgelei kan word om ‘n verband aan te dui of uit te druk tussen enige goedere of dienste en die waarde van die teenwaarde waarvoor die verskaffer gewillig is om daardie goedere of dienste te verkoop of te verskaf; of

(b) die teenwaarde van enige transaksie, die totale bedrag betaal of betaalbaar deur die verbruiker aan die verskaffer ingevolge daardie transaksie of ooreenkoms, insluitend enige bedrag wat die verskaffer ingevolge enige openbare regulasie moet oplê, hef of invorder;

“**regulasies**” regulasies uitgevaardig ingevolge hierdie Wet;

“**regulatoriese owerheid**” ‘n staatsorgaan of entiteit ingestel ingevolge nasionale of provinsiale wetgewing verantwoordelik vir regulering van ‘n bedryf, of sektor van enige bedryf;

“**respondent**” ‘n persoon of firma teen wie ‘n klagte of aansoek ingevolge hierdie Wet geïnisieer is;

“**staatsamptenaar**” ‘n staatsamptenaar soos omskryf in artikel 1 van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994), met inbegrip van ‘n munisipale werknemer;

“transaksie” –

(a) met betrekking tot 'n persoon wat in die gewone gang van sake optree —

(i) 'n ooreenkoms tussen daardie persoon en een of meer ander persone vir die verskaffing of potensiële verskaffing van enige goedere of dienste in ruil vir vergoeding; of

(ii) die verskaffing deur daardie persoon van enige goedere aan of onder leiding van 'n verbruiker vir vergoeding; of

(iii) die verrigting deur, of onder leiding van, daardie persoon van enige dienste vir of onder leiding van 'n gebruiker teen vergoeding; of

(b) 'n interaksie beoog in artikel 5(6), ongeag of dit binne paragraaf (a) val;

“Uitvoerende Raad” die Uitvoerende Raad van die provinsie KwaZulu-Natal soos bedoel in artikel 132 van die Grondwet;

“verantwoordelike lid van die Uitvoerende Raad” die Lid van die Uitvoerende Raad van die provinsie KwaZulu-Natal verantwoordelik vir verbruikersake;

“verbode gedrag” 'n handeling of versuim teenstrydig met hierdie Wet;

“verbruiker” 'n verbruiker ten opsigte van enige besondere goedere of dienste —

(a) 'n persoon aan wie daardie besondere goedere of dienste bemark word in die normale gang van die verskaffer se besigheid;

(b) 'n persoon wat 'n transaksie met 'n verskaffer aangegaan het in die normale gang van die verskaffer se besigheid, tensy die transaksie vrygestel is van die toepassing van hierdie Wet deur artikel 5(2) of kragtens artikel 5(3);

(c) indien die konteks sodanig vereis of toelaat, 'n gebruiker van daardie besondere goedere of 'n ontvanger of begunstigde van daardie besondere dienste, ongeag of daardie gebruiker, ontvanger of begunstigde 'n party was by 'n transaksie ten opsigte van die verskaffing van daardie besondere goedere of dienste; en

(d) 'n konsessiehouer kragtens 'n konsessie-ooreenkoms, tot die mate van

toepassing kragtens artikel 5(6)(b) tot (e);

“Verbruikersbeskermer” die persoon aangestel as hoof van die KwaZulu-Natal Kantoor van die Verbruikersbeskermer ingevolge artikel 5(3);

“verbruikersbeskermingsgroep” enige verbruikersbeskermingsgroep soos omskryf in artikel 1 van die Wet op Verbruikerbeskerming, 2008 (Wet No. 68 van 2008);

“Verbruikerstribunaal” ‘n verbruikerstribunaal ingestel vir die provinsie ingevolge artikel 8(1);

“verskaf” –

(a) met betrekking tot goedere, insluitend verkoop, pag, ruil en verhuur in die gewone gang van sake teen vergoeding; of

(b) met betrekking tot dienste, om die dienste te verkoop, of om dit te verrig of te laat verrig of te laat verskaf, of om teen vergoeding toegang tot enige perseel, geleentheid, aktiwiteit of fasiliteit in die gewone gang van sake te verleen;

“verskaffer” ‘n persoon wat goedere of dienste bemark;

“vertoon” wanneer gebruik word —

(a) met betrekking tot enige goedere, om daardie goedere in die gewone gang van sake voor die publiek te plaas, te vertoon of bloot te stel op ‘n wyse wat in ooreenstemming is met ‘n ope uitnodiging aan lede van die publiek om daardie of soortgelyke goedere te beskou, en uit te kies, vir verskaffing aan ‘n verbruiker; of

(b) met betrekking tot ‘n prys, merk, kennisgewing of ander visuele voorstelling, om enigiets te plaas of te publiseer op ‘n wyse wat redelikerwys ‘n verband skep tussen daardie prys, merk, kennisgewing of ander visuele voorstelling en enige besondere goedere of dienste;

“voorgeskrif” deur regulasie voorgeskryf, en “voorskryf” het ’n ooreenstemmende betekenis.

HOOFSUK 2 OOGMERKE VAN WET, VRYSTELLINGS EN FUNKSIES VAN VERANTWOORDELIKE LID VAN UITVOERENDE RAAD

Oogmerke van Wet

2. Die oogmerke van hierdie Wet is –

- (a) om voorsiening te maak vir ’n konsekwente, voorspelbare en doeltreffende regulatoriese raamwerk van verbruikersklagtes in die provinsie;
- (b) om voorsiening te maak vir meganismes om verbruikersvertroue te kweek;
- (c) om meganismes te voorsien vir die beskerming van verbruikers op alle terreine van die provinsie terwyl dit ook bevordering van werksverrigting en mededingendheid in die mark ten doel het;
- (d) om ’n soliede fondament te lê vir die gelykmaking van die ekonomiese speelveld tussen die historiese kwesbaarheid van verbruikers en die krag en invloed van besigheid;
- (e) om die sosiale ekonomiese welstand van verbruikers in die provinsie te bevorder; en
- (f) om voorsiening te maak vir ’n toeganklike, konsekwente, geharmoniseerde, affektiewe en doeltreffende vergoedingstelsel vir verbruikers in die provinsie.

Vrystellings

3. Hierdie Wet is nie van toepassing nie op –

- (a) ’n kantoor soos omskryf in artikel 1(1) van die Wet op Doeane en Aksyns, 1964 (Wet No. 91 van 1964), in die verrigting van sy of haar funksies;
- (b) ’n balju of enige beampte van ’n hof wat ingevolge ’n hofbevel optree; of
- (c) ’n regter of landdros, wat ter verrigting van sy of haar funksies optree.

Funksies van verantwoordelike Lid van Uitvoerende Raad

4. Die verantwoordelike lid van die Uitvoerende Raad moet –

(a) binne 12 maande na die inwerkingtreding van die Wet –

(i) 'n provinsiale beleid en norme en standaarde betreffende verbruikersaangeleenthede en -sake ontwikkel;

(ii) riglyne instel vir die bedryf van besigheid ten opsigte van verbruikersaangeleenthede en -sake in die provinsie;

(b) waar nodig, 'n maatskaplike verantwoordelikhedsprogram met betrekking tot verbruikerskwessies instel; en

(c) sodanige ander funksies verrig as wat hom of haar ingevolge hierdie Wet opgelê is.

HOOFSTUK 3**AGENTSAPPE VIR VERBRUIKERSBESKERMING IN KWAZULU-NATAL****Instelling van KwaZulu-Natal Kantoor van Verbruikersbeskermer**

5.(1) Onderhewig aan artikel 84 van die Wet op Verbruikerbeskerming, 2008 (Wet No. 68 van 2008), word 'n kantoor wat as die KwaZulu-Natal Kantoor van die Verbruikersbeskermer bekend sal staan, hiermee ingestel.

(2) Die Kantoor bedoel in subartikel (1) is nie 'n regs persoon nie.

(3) Die verantwoordelike lid van die Uitvoerende Raad moet, ingevolge die tersaaklike bepaling van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994), 'n verbruikersbeskermer as hoof van die Kantoor van die Verbruikersbeskermer aanstel op die vlak soos deur die verantwoordelike lid van die Uitvoerende Raad bepaal.

(4) Indien die Verbruikersbeskermer nie in staat is om sy of haar pligte om watter rede ook al na te kom nie, moet die verantwoordelike lid van die Uitvoerende Raad 'n persoon as Waarnemende Verbruikersbeskermer aanstel, hangende die aanstelling van 'n voltydse verbruikersbeskermer.

(5) Die administratiewe en sekretariële werk verbonde aan die verrigting van die Kantoor se funksies moet verrig word deur beamptes in die Departement wat vir sodanige doel deur

die Departementshoof aangewys en aangestel is.

(6) Alle personeellede aangewys en aangestel om administratiewe en sekretariële bystand aan die Kantoor te verskaf soos bedoel in subartikel (5), is onderhewig aan die beheer en bestuur van die Verbruikersbeskermer.

(7) Die Kantoor kan die dienste gebruik van persone wat ooreenkomstig die bepalings van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994) vanaf die staatsdiens gesekondeer of oorgeplaas is.

(8) Waar die behoefte ontstaan, kan die Verbruikersbeskermer bygestaan word in die uitvoering en verrigting van sy of haar pligte en funksies, deur enige persoon of liggaam wie se dienste deur hom of haar bekom word op sodanige terme en voorwaardes en vir sodanige tydperk soos ooreengekom, vir die doel van die uitvoer van 'n bepaalde ondersoek namens die Verbruikersbeskermer.

(9) 'n Persoon vermeld in subartikel (8) kan –

- (a) na enige deel van die provinsie of Republiek gestuur word om 'n ondersoek bedoel in subartikel (8) uit te voer; en
- (b) sodanige besoldiging, toelae en uitgawes soos bepaal deur die verantwoordelike lid van die Uitvoerende Raad in oorleg met die Lid van die Uitvoerende Raad vir finansies betaal word.

Oogmerke van Kantoor van Verbruikersbeskermer

6. Die oogmerke van die Kantoor van die Verbruikersbeskermer is –

- (a) om die verskaffing van 'n konsekwente, voorspelbare en doeltreffende regulatoriese raamwerk van verbruikersklagtes in die provinsie te verseker;
- (b) om verbruikersvertroue in die provinsie te kweek;
- (c) om te verseker dat die meganismes verskaf om verbruikers ingevolge hierdie Wet te beskerm, in plek is;
- (d) om te verseker dat die fondament vir die gelykmaking van die ekonomiese speelveld tussen histories kwesbare verbruikers en besigheid in plek is;
- (e) om die bevordering van die sosiale ekonomiese welstand van

verbruikers in die provinsie te verseker; en

(f) om te verseker dat 'n toeganklike, konsekwente, geharmoniseerde, affektiewe en doeltreffende vergoedingstelsel vir verbruikers in die provinsie verskaf word.

Bevoegdhede, pligte en funksies van Kantoor van Verbruikersbeskermer

7.(1) Die Kantoor van die Verbruikersbeskermer moet –

- (a) verbruikersklagtes ooreenkomstig hierdie Wet ontvang en ondersoek;
- (b) die mediasie of konsiliasie fasiliteer van geskille wat ingevolge hierdie Wet tussen of onder verbruikers binne die provinsie, inwoners van die provinsie, of persone wat besigheid in die provinsie doen, ontstaan;
- (c) geskille bedoel in paragraaf (b) na die betrokke provinsiale Verbruikerstribunaal verwys;
- (d) aanbevelings aan die verantwoordelike lid van die Uitvoerende Raad maak en remediërende stappe doen ten opsigte van klagtes wat aan die Kantoor voorgelê word;
- (e) die verantwoordelike lid van die Uitvoerende Raad adviseer aangaande enige aangeleentheid wat deur die verantwoordelike lid van die Uitvoerende Raad na die Kantoor verwys word;
- (f) enige aangeleentheid wat direk of indirek met verbruikersaangeleenthede, sake of kwessies in die provinsie verband hou, ondersoek en aanbevelings aan die verantwoordelike lid van die Uitvoerende Raad maak;
- (g) die verantwoordelike lid van die Uitvoerende Raad adviseer aangaande die ontwikkeling van 'n maatskaplike verantwoordelikhedsprogram gemik op die bevordering van die maatskaplike ekonomiese welstand van verbruikers in die provinsie;
- (h) die verantwoordelike lid van die Uitvoerende Raad bystaan in die formulering van beleid en in die vasstelling van norme en standaarde in die provinsie, soos bedoel in artikel 4(a)(i) van hierdie Wet;
- (i) met nasionale, provinsiale en internasionale belanghebbendes saamwerk en deelneem aan alle opvoedkundige programme gemik op die bevordering van bewustheid by die belanghebbendes in die verbruikersbedryf met betrekking tot die hantering van verbruikers;
- (j) opvoedkundige programme gemik op die vermindering van misbruik en

uitbuiting van verbruikers in die provinsie inisieer en daaraan deelneem;

(k) die verantwoordelike lid van die Uitvoerende Raad bystaan en adviseer aangaande die ontwikkeling van 'n program ten einde die oogmerke van die Wet soos uiteengesit in artikel 2 na te volg;

(l) binne die raamwerk van nasionale en provinsiale verbruikersbeleid, die verantwoordelike lid van die Uitvoerende Raad bystaan en adviseer met betrekking tot advisering en leiding aan –

(i) die belanghebbendes in die verbruikersbedryf, verbruikers en organisasies of instellings wie se aktiwiteite of doelwitte 'n impak het op of met verbruikersaangeleenthede, sake of kwessies in die provinsie verband hou; en

(ii) die besigheidseenheid binne die Departement verantwoordelik vir kleinbesigheidsontwikkeling, koöperatiewe, plaaslike ekonomiese ontwikkeling en ekonomiese bemagtiging, en soortgelyke besigheidseenhede binne ander departemente in die provinsie; en

(iii) besighede en verder verseker dat besighede aan die staande beleid en wetgewing betreffende verbruikers voldoen; en

(m) sodanige ander funksies verrig as wat ingevolge hierdie Wet aan hom toegewys is.

(2) Buiten die bevoegdhede, pligte en funksies bedoel in subartikel (1), moet die Kantoor, na 31 Maart van elke jaar, 'n jaarverslag oor sy funksies gedurende die jaar met inbegrip van die aktiwiteite soos bedoel in subartikel (1) aan die verantwoordelike lid van die Uitvoerende Raad voorlê.

(3) Die verantwoordelike lid van die Uitvoerende Raad moet 'n afskrif van die jaarverslag wat ingevolge subartikel (1) voorgelê is, aan die Provinsiale Wetgewer ter tafel lê binne 14 dae na ontvangs daarvan.

Instelling van Verbruikerstribunale

8.(1) Die verantwoordelike lid van die Uitvoerende Raad moet, binne 12 maande na die inwerkingtreding van die Wet, deur middel van kennisgewing in die *Koerant*, een of meer Verbruikerstribunale vir die provinsie instel.

(2) Die Verbruikerstribunaal vermeld in subartikel (1) –

- (a) is ingestel vir die gebied wat in die kennisgewing beskryf word; en
- (b) het sy setel op sodanige plek soos in die kennisgewing vermeld.

(3) Die verantwoordelike lid van die Uitvoerende Raad kan deur middel van kennisgewing in die *Koerant* –

- (a) die gebied vir die Verbruikerstribunaal bedoel in subartikel (2) wysig; of
- (b) die kennisgewing bedoel in subartikel (1) onttrek en die Verbruikerstribunaal bedoel in subartikel (1) afskaf;

(4) Die verantwoordelike lid van die Uitvoerende Raad kan, onderhewig aan artikel 10(1)(b), bepaal dat die Verbruikerstribunaal, met betrekking tot bepaalde verrigtinge, by 'n ander plek as die setel van daardie Verbruikerstribunaal, gesetel is.

Oogmerke van Verbruikerstribunaal

9. Die oogmerke van die Verbruikerstribunaal is om –

- (a) enige verbruikersaak te ontvang, dit aan te hoor en daaroor te beslis; en
- (b) enige verbruikersklagte of geskil uit die weg te ruim.

Bevoegdhede, pligte en funksies van Verbruikerstribunaal

10.(1) Die Verbruikerstribunaal moet –

- (a) enige verbruikersklagte wat uit hoofde van verrigtinge bedoel in hierdie Wet voor hom dien, ontvang, aanhoor, oorweeg en daaroor beslis;
- (b) op sodanige dae en gedurende sodanige tye en op sodanige plek sit soos deur die voorsittende beampste of voorsitter, in oorleg met die Verbruikersbeskermer, bepaal;
- (c) sittings op sodanige tyd en plek dwarsdeur die gebiede van die provinsie hou en hervat soos deur die voorsittende beampste van die Verbruikersbeskermer bepaal;
- (d) die bestaande reg van Suid-Afrika toepas in die beoordeling van 'n verbruikersklagte of geskil;

(e) die algemene beginsels om konfliktoplossing tussen verbruikers en besigheid te bestuur, neerlê;

(f) die Verbruikersbeskermer gelas om die naam van die besigheid, die naam van die persoon wat sodanige besigheid bedryf en die bevinding van die Verbruikerstribunaal ten opsigte van subartikel (2)(a), (b) en (c) te noteer in die lys van negatiewe inskrywings wat deur die Kantoor gehandhaaf en bygehou moet word; en

(g) enige ander bevoegdhede uitvoer en die funksies verrig en pligte uitvoer wat ingevolge hierdie Wet aan hom toegewys is.

(2) Die Verbruikerstribunaal kan –

(a) kostes toestaan, teen die voorgeskrewe skaal of tot die bedrag bepaal deur die Verbruikerstribunaal, teen enige persoon wat as aanspreeklik aan die verbruiker bevind is uit hoofde van enige wederregtelike gedrag, deur gedrag of versuim ingevolge hierdie Wet of kragtens enige bestaande wet;

(b) met betrekking tot 'n verbruikersklagte wat betrekking het op 'n taai ooreenkoms of gedrag wat die verbruiker regtens glo dat dit onbillik, onregverdig of uiters onredelik is, 'n bevinding te dien effekte maak;

(c) by die verhoor van 'n verbruikersklagte kostes teen sodanige verbruiker toestaan indien hy tevrede is dat die klagte beuselagtig of kwelsugtig ingedien is; en

(d) oor die algemeen alle aangeleenthede wat nodig of verbonde is aan die verrigting van sy funksies ingevolge hierdie Wet hanteer.

(3) Die voorsittende beampte van die Verbruikerstribunaal moet so gou doenlik, na 31 Maart van elke jaar, 'n jaarverslag oor die aktiwiteite van die Verbruikerstribunaal aan die verantwoordelike lid van die Uitvoerende Raad voorlê.

(4) Die verslag voorgelê aan die verantwoordelike lid van die Uitvoerende Raad ingevolge subartikel (3) moet 'n lys van negatiewe inskrywings bedoel in artikel 10(1)(f) insluit.

(5) Die verantwoordelike lid van die Uitvoerende Raad kan van die Verbruikerstribunaal vereis om bykomende verslae aan hom of haar voor te lê soos die verantwoordelike lid

van die Uitvoerende Raad van tyd tot tyd mag vereis.

(6) Die verantwoordelike lid van die Uitvoerende Raad moet 'n afskrif van die jaarverslag bedoel in subartikel (3), binne 14 dae na ontvangs daarvan aan die Provinsiale Wetgewer voorlê.

Samestelling van Verbruikerstribunaal

11.(1) Die Verbruikerstribunaal bestaan uit –

- (a) ses en nie meer nie as agt lede aangestel deur die verantwoordelike lid van die Uitvoerende Raad; en
- (b) die voorsitter, aangestel ingevolge artikel 12 van hierdie Wet.

(2) Die lidmaatskap bedoel in subartikel (1) moet –

- (a) 'n voorsitter, wat 'n erkende prokureur of advokaat of afgetrede landdros of regsdosent by 'n universiteit moet wees met ten minste vyf jaar ondervinding in die regsprofessie of die regswese;
- (b) 'n adjunkvoorsitter, wat ook 'n erkende prokureur of advokaat of afgetrede landdros of regsdosent by 'n universiteit moet wees met ten minste drie jaar ondervinding in die regsprofessie of die regswese;
- (c) een persoon met kennis en ondervinding op die terrein van verbruikersadvokatuur, ekonomie en handel;
- (d) een persoon met kennis en ondervinding in die verbruikersbedryf en wat nie aktief betrokke is by of direkte of indirekte finansiële belang daarin het nie;
- (e) een persoon as 'n sekretaris van die Verbruikerstribunaal om administratiewe werk verbonde aan die funksies van die Verbruikerstribunaal te verrig; en
- (f) een sodanige ander persoon om die sekretaris van die Verbruikerstribunaal by te staan soos nodig,

insluit.

(3) By aanstelling van die lede op die Verbruikerstribunaal, moet die verantwoordelike lid van die Uitvoerende Raad verseker dat historiese ongelykhede aangespreek word.

(4) Die verantwoordelike lid van die Uitvoerende Raad moet, deur middel van

kennisgewing in twee koerante met wye sirkulasie in die provinsie en deur enige ander metode te gebruik wat bestem is om die grootste aantal inwoners in die provinsie te bereik, persone of enige belanghebbende partye binne die provinsie uitnoui om kandidate te benoem vir aanstelling op die Verbruikerstribunaal.

(5) Die kennisgewing bedoel in subartikel (4), moet –

- (a) die benoemingsprosedure;
- (b) die vereistes vir benoemings; en
- (c) die sluitingsdatum vir die benoemings,

spesifiseer.

(6) Die verantwoordelike lid van die Uitvoerende Raad moet alle benoemings wat voorgelê word in reaksie op die kennisgewing oorweeg, en kan 'n keurpaneel aanstel bestaande uit nie meer as vier senior departementele beamptes om al die benoemings te hersien en aanbevelings rakende die kandidate vir die Verbruikerstribunaal aan die verantwoordelike lid van die Uitvoerende Raad te maak.

(7) Die verantwoordelike lid van die Uitvoerende Raad moet die name van die persone wat op die Verbruikerstribunaal aangestel word in die *Koerant* en in ten minste twee koerante met wye sirkulasie in die provinsie laat publiseer, onmiddellik nadat sodanige persone skriftelik van hul aanstelling op die Verbruikerstribunaal in kennis gestel is.

(8) Die verantwoordelike lid van die Uitvoerende Raad moet, binne twee maande na die aanstelling van lede, die Portefeuljekomitee voorsien van die name van die aangestelde lede met inbegrip van hul aanstellingstermyn.

(9) Hierdie artikel is, met die nodige veranderinge, van toepassing op die vul van 'n vakature op die Verbruikerstribunaal.

Onbevoegdheid vir aanstelling op Verbruikerstribunaal

12. 'n Persoon is onbevoeg vir aanstelling op die Verbruikerstribunaal of om op die Verbruikerstribunaal te bly, indien hy of sy –

- (a) 'n ongerehabiliteerde insolvent is of word;

- (b) deur 'n bevoegde hof geestelik siek verklaar is;
- (c) 'n direkte of indirekte belang in enige kontrak met die Verbruikersbeskermer of Verbruikerstribunaal het en versuim om sy of haar belang en die aard daarvan te verklaar soos deur hierdie Wet vereis;
- (d) 'n persoon onder kuratorskap is;
- (e) te eniger tyd uit 'n vertrouensamp verwyder is as gevolg van wangedrag wat diefstal of bedrog insluit;
- (f) skuldig bevind en gevangenisstraf opgelê is sonder die keuse van 'n boete, buiten dat die verantwoordelike lid van die Uitvoerende Raad 'n vonnis mag kondoneer, op 'n wyse wat ooreenstem met artikel 106(1)(e) van die Grondwet, indien sodanige benoemde volle besonderhede van die misdryf in 'n beëdigde verklaring verklaar: Met dien verstande dat onbevoegdheid ingevolge hierdie subartikel vyf jaar nadat die vonnis voltooi is, eindig;
- (g) versuim om 'n belang te verklaar ooreenkomstig artikel 13 of verrigtinge van die Verbruikerstribunaal bygewoon het of daaraan deelgeneem het terwyl hy of sy 'n belang het soos in die vermelde artikel bedoel;
- (h) 'n staatsdiensamptenaar is;
- (i) 'n openbare ampsdraer is;
- (j) nie 'n burger van die Republiek is nie; of
- (k) nie in die provinsie woonagtig is nie.

Verklaring van finansiële of ander belange van lede van Verbruikerstribunaal

13.(1) 'n Persoon wat benoem is om op die Verbruikerstribunaal te dien ingevolge artikel 11 moet, binne 10 dae na die benoeming, 'n skriftelike verklaring by die verantwoordelike lid van die Uitvoerende Raad indien van alle direkte of indirekte belange in enige maatskappy, beslote korporasie en of enige ander besigheidsbelange.

(2) Enige versuim deur 'n benoemde om finansiële en ander belange ingevolge subartikel (1) te verklaar, maak sodanige benoemde ingevolge artikel 12 onbevoeg vir aanstelling op die Verbruikerstribunaal.

(3) Elke lid van die Verbruikerstribunaal moet, by ampsaanvaarding en aan die begin van elke finansiële jaar van die Verbruikerstribunaal, 'n skriftelike verklaring van sy of

haar direkte of indirekte belang in enige maatskappy, beslote korporasie of ander besigheidsbelange aan die verantwoordelike lid van die Uitvoerende Raad voorlê.

(4) Indien 'n lid van die Verbruikerstribunaal te eniger tyd gedurende sy of haar ampstermyn as 'n lid van die Verbruikerstribunaal 'n belang in enige maatskappy, beslote korporasie of ander besigheidsbelange bekom, moet hy of sy binne 10 dae na die datum van verkryging van sodanige belang, 'n skriftelike verklaring van sodanige belang by die verantwoordelike lid van die Uitvoerende Raad indien.

(5) Enige versuim deur die lid om sy of haar belange soos bedoel in subartikels (3) en (4) te verklaar, lei tot die beëindiging van die aanstelling van sodanige lid ingevolge artikel 16(2).

Versuim om finansiële of ander belange van lid van Verbruikerstribunaal te verklaar

14.(1) 'n Lid van die Verbruikerstribunaal wat versuim om 'n verklaring beoog in artikel 13 te doen, kan, onderhewig aan subartikel (2), onbevoeg verklaar word om op die Verbruikerstribunaal te bly.

(2) Die verantwoordelike lid van die Uitvoerende Raad moet, wanneer hy of sy daarvan bewus raak dat 'n lid van die Verbruikerstribunaal versuim het om aan die bepalings van artikel 13 te voldoen, die aangeleentheid ondersoek en toepaslike dissiplinêre stappe oorweeg.

Ampstermyn van lid van Verbruikerstribunaal

15.(1) 'n Lid word op die Verbruikerstribunaal aangestel vir 'n tydperk van vyf jaar of vir sodanige korter tydperk soos deur die verantwoordelike lid van die Uitvoerende Raad bepaal.

(2) 'n Lid kan vir een bykomende termyn heraangestel word by die verstryking van sy of haar ampstermyn.

Vakatures, ontslag en bedanking uit amp van lede van Verbruikerstribunaal

16.(1) 'n Lid van die Verbruikerstribunaal moet sy of haar amp ontruim indien hy of sy onbevoeg raak soos in artikel 12 bedoel.

(2) Die verantwoordelike lid van die Uitvoerende Raad kan, nadat 'n geleentheid aan die lid gebied is om sy of haar saak te stel, die ampstermyn van sodanige lid te eniger tyd beëindig indien, na sy of haar mening, daar grondige, afdoende en regverdigbare redes is om dit te doen.

(3) 'n Lid kan uit sy of haar amp bedank deur nie minder nie as 30 dae skriftelike kennis aan die verantwoordelike lid van die Uitvoerende Raad te gee: Met dien verstande dat die verantwoordelike lid van die Uitvoerende Raad van die bedankingskennisgewing kan afsien.

(4) Wanneer 'n vakature op die Verbruikerstribunaal ontstaan, moet die verantwoordelike lid van die Uitvoerende Raad, onderhewig aan artikel 11, 'n persoon aanstel om sodanige vakature te vul vir die onverstreke gedeelte van die ampstermyn van die lid in wie se plek sodanige persoon aangestel is.

(5) Die verantwoordelike lid van die Uitvoerende Raad kan, onderhewig aan subartikel (2), die aanstelling van al of sommige van die lede van die Verbruikerstribunaal beëindig.

(6) In die geval dat die verantwoordelike lid van die Uitvoerende Raad sy of haar bevoegdhede ingevolge subartikel (5) uitoefen, kan hy of sy, ondanks die prosedure vir die aanstelling van die lede van die Drankowerheid soos in artikel 11 uiteengesit, maar onderhewig aan subartikels (2) en (3) van artikel 11, persone aanstel om as lede van die Verbruikerstribunaal op 'n tussentydse basis te dien: Met dien verstande dat –

(a) die persone aangestel om die lede te vervang wie se aanstelling ingevolge subartikel (5) beëindig is, nie op die Verbruikerstribunaal mag aanbly vir 'n tydperk van meer as 90 dae na die datum van hul aanstelling nie; en

(b) die verantwoordelike lid van die Uitvoerende Raad, moet, onderhewig aan artikel 11, die permanente lede van die Verbruikerstribunaal binne 90 dae na die

aanstelling bedoel in paragraaf (a) van hierdie subartikel aanstel.

Tydlike skorsing van lid van Verbruikerstribunaal

17.(1) Die verantwoordelike lid van die Uitvoerende Raad kan, na toepassing van die tersaaklike reëls van natuurlike geregtigheid, 'n lid van die Verbruikerstribunaal met volle besoldiging skors indien –

- (a) die lid na bewering 'n ernstige misdryf gepleeg het; en
- (b) die verantwoordelike lid van die Uitvoerende Raad redelikerwys glo dat die teenwoordigheid van sodanige lid op die Verbruikerstribunaal enige ondersoek en navraag aangaande die beweerde wangedrag in gevaar mag stel, of die welstand of veiligheid van enige persoon of staatseiendom in gevaar mag plaas: Met dien verstande dat hierdie soort skorsing 'n voorsorgmaatreël is, wat nie 'n bevinding uitmaak nie.

(2) Indien 'n lid as voorsorgmaatreël geskors word soos bedoel in subartikel (1), moet die verantwoordelike lid van die Uitvoerende Raad die ondersoek binne 60 dae na die inwerkingtredingsdatum van sodanige opskorting hou.

Grondwet van Verbruikerstribunaal

18.(1) Onderhewig aan subartikel (4), bestaan die kworum van die Verbruikerstribunaal uit drie lede.

(2) Tensy anders bepaal, is 'n beslissing van die meerderheid van die lede van die Verbruikerstribunaal teenwoordig, die beslissing van die Verbruikerstribunaal.

(3) 'n Lid van die Verbruikerstribunaal moet hom- of haarself onttrek van verrigtinge op grond van enige belang of assosiasie wat sy of haar onpartydige oorweging van die aangeleentheid mag beïnvloed, of wat as sodanig gesien kan word.

(4) Indien, op enige stadium gedurende die verrigtinge voor die Verbruikerstribunaal, –
(a) die voorsitter onbevoeg raak om voor te sit of afwesig is, moet die verrigtinge van voor af begin;