

NOTICE 100 OF 2016**LIMPOPO PROVINCIAL ADMINISTRATION
DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT AND TOURISM****LIMPOPO CONSUMER PROTECTION ACT, 2015 (ACT NO. 4 OF 2015)**

Please take notice that the Premier has assented to the Limpopo Consumer Protection Act, 2015 (Act No. 4 of 2015) which is hereby published for general information.

**LIMPOPO PROVINSIALE ADMINISTRASIE
DEPARTEMENT VAN EKONOMIESE ONTWIKKELING, OMGEWING EN TOERISME****LIMPOPO VERBRUIKER BESKERMING WET, 2015 (WET NOM. 4 VAN 2015)**

Neem asseblief hiermee kennis dat die Premier die Limpopo Verbruiker Beskerming Wet, 2015 (Wet Nom. 4 van 2015) goedgekeur het, wat hierdeur gepubliseer word vir algemene inligting.

**MAFAMBISELE YA XIFUNDZANKULU XA LIMPOPO
NDZAWULO YA NHLUVUKISO WA IKHONOMI, MBANGU NA VUPFHUMBA****NAWU WO SIRHELELA VATIRHISI WA LIMPOPO, 2015 (NAWU WA 4 WA 2015)**

Tiva leswaku Phirimiya u pfumerile Nawu wo Sirhelela Vatirhisi wa Limpopo, 2015 (Nawu wa 4 wa 2015) lowu wu tivisiwaka leswaku un'wana na un'wana a wu tiva.

**UKULAWULWA KWESIFUNDA SELIMPOPO
UMNYANGO WEZOKUTHUTHUKISWA KWEZOMNOTHO, IBHODULUKO NEZOKUVAKATJHA**

UMTHETHO WOKUVIKELA ABATHENGI ELIMPOPO, WE- 2015 (UMTHETHO WE-4 WE-2015)
Tjheja bona uNduvakulu uvumele umThetho wokuVikela abaThengi eLimpopo, we-2015 (umThetho we-4, we-2015) ozokukwaziswa njengelwazi mazombe.

**NDANGULO YA VUNDU LA LIMPOPO
MUHASHO WA MVELEDZISO YA IKONOMI, VHUPO NA VHUENDELAMASHANGO****MULAYO WA TSIRELEDZO YA VHARENGI WA LIMPOPO, 2015 (MULAYO 4 WA 2015)**

Vha humbelwa u dzhiela nzhele ya uri Mulangavundu vho tendelana na Mulayo wa Tsireledzo ya Vharengi wa Limpopo wa 2015 (Mulayo 4 wa 2015), zwenezwo, wo gandiswa uri vhathu vhothe vha kone u wana mafhungo awo nga vhudalo

**TAOLO YA PROFENSE YA LIMPOPO
KGORO YA TLHABOLLO YA LEAGO, TIKOLOGO LE BOETI
MOLAO WA TSHIRELETŠO YA BADIRIŠI WA LIMPOPO, 2015 (MOLAO WA BO. 4 WA 2015)**
O kgopelwa go ela tlhoko gore Tonakgolo o amogetše Molao wa Tšhireletšo ya Badiriši wa Limpopo wa 2015 (Molao wa bo 4 wa 2015) wo o phatlaladitšwego go tliša tshedimošo ya kakaretšo.

LIMPOPO PROVINCE

LIMPOPO CONSUMER PROTECTION ACT, 2015

[A04-2015]

LIMPOPO PROVINSIE

LIMPOPO WET OP VERBRUIKERSBESKERMING, 2015

[W04-2015]

PROFENSE YA LIMPOPO

MOLAO WA TSHIRELETSO YA MOREKI WA LIMPOPO, 2015

[M04-2015]

VUNDU LA LIMPOPO

**MULAYO WA TSIRELEDZO YA KHOTHE YA ZWA VHASHUMISI WA
LIMPOPO, 2015**

[M04-2015]

XIFUNDZANKULU XA LIMPOPO

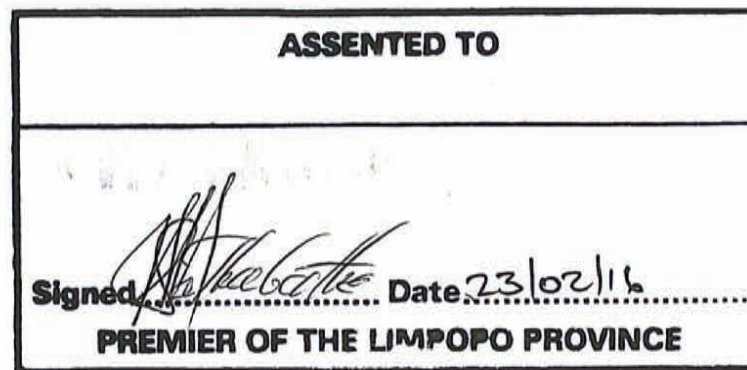
NAWU WA VUSIRHELELI BYA VAXAVI WA LIMPOPO, 2015

[N04-2015]

IPHROVINSI YELIMPOPO

**UMTHETHO WELIMPOPO WOKUVIKELWA KWABATHENGI WAKA--
2015**

[U04-2015]

**ACT**

To provide for a provincial consumer protection authority and its functioning; to provide for the Limpopo Consumer Court and its functioning; to regulate Consumer Court proceedings; to repeal the Consumer Affairs (Unfair Business Practices) Act, 1996 (Act No. 8 of 1996) and to provide for matters connected therewith.

PREAMBLE

WHEREAS the Consumer Protection Act, 2008 (Act No. 68 of 2008) was enacted to, amongst others, promote a fair, accessible and sustainable marketplace for consumer products and services and for that purpose to establish national norms and standards relating to consumer protection;

AND WHEREAS there is a need for provincial consumer protection legislation to establish a provincial consumer protection authority and Consumer Court in the province to deal with consumer protection matters;

BE IT THEREFORE ENACTED by the Limpopo Provincial Legislature as follows:—

ARRANGEMENT OF SECTIONS**CHAPTER 1****INTRODUCTORY PROVISIONS**

1. Definitions
2. Objects of Act

CHAPTER 2**PROVINCIAL CONSUMER PROTECTION AUTHORITY**

Part A**OFFICE OF CONSUMER PROTECTOR**

3. Office of Consumer Protector
4. Consumer Protector

Part B**FUNCTIONING OF AUTHORITY**

5. Functions and powers of Office of Consumer Protector
6. Lodging complaints with Office of Consumer Protector
7. Role of Office of Consumer Protector in dealing with complaints
8. Inspectors and investigators
9. Outcomes of investigation
10. Consent orders
11. Referral to Consumer Court
12. Register of adverse notations

Part C**POWERS IN SUPPORT OF INVESTIGATION**

13. Subpoena of persons or documents
14. Authority to enter and search under warrant
15. Powers to enter and search
16. Conduct of entry and search
17. Claims that information is confidential

CHAPTER 3**LIMPOPO CONSUMER COURT****Part A****FUNCTIONING OF CONSUMER COURT**

18. Limpopo Consumer Court
19. Functions of Consumer Court
20. Composition of Consumer Court
21. Disqualification from appointment to Consumer Court
22. Appointment of members of Consumer Court
23. Term of office of members of Consumer Court
24. Resignation, removal from office and vacancies
25. Remuneration and allowances of members of Consumer Court
26. Declaration of business interests of members of Consumer Court
27. Conflicting interests
28. Suspension of member of Consumer Court

Part B

ADMINISTRATION OF COURT

29. Clerk of Consumer Court
30. Reporting by Consumer Court

Part C

CONSUMER COURT PROCEEDINGS

31. Consumer Court proceedings
32. Hearings by Consumer Court
33. Witness fees
34. Costs
35. Appeals and reviews

Part D

CONSUMER COURT ORDERS

36. Orders of Consumer Court
37. Administrative fines
38. Variation of orders

- 39. Standard of proof

CHAPTER 4

GENERAL PROVISIONS

Part A

OFFENCES AND PENALTIES

- 40. Breach of confidence
- 41. Hindering administration of Act
- 42. Failure to attend when summoned
- 43. Failure to answer fully or truthfully
- 44. Offences relating to Office of Consumer Protector and Consumer Court
- 45. Penalties

Part B

MISCELLANEOUS PROVISIONS

- 46. Delegation of power
- 47. Vicarious liability
- 48. Regulations
- 49. Repeal of laws
- 50. Transitional arrangements
- 51. Short title and commencement

CHAPTER 1

INTRODUCTORY PROVISIONS

- 1. **Definitions**

In this Act, any word or expression to which a meaning has been assigned in the Consumer Protection Act, 2008 (Act No. 68 of 2008) bears the same meaning and unless the context otherwise indicates—

"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;

"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 the Consumer Protection Act, 2008 (Act No. 68 of 2008) by section 5(2) or in terms of section 5(3) of that Act;
- (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;
- (d) a franchisee in terms of a franchise agreement, to the extent applicable in terms of section 5(6)(b) to (e) of the Consumer Protection Act, 2008 (Act No. 68 of 2008);

"Consumer Affairs (Unfair Business Practices) Act, 1996" means the Consumer Affairs (Unfair Business Practices) Act, 1996 (Act No. 8 of 1996);

"Consumer Court" means the Limpopo Consumer Court as contemplated in section 18;

"Consumer Protection Act, 2008" means the Consumer Protection Act, 2008 (Act No. 68 of 2008);

"Consumer Protector" means the person designated or appointed as head of the office of the Consumer Protector in terms of section 4(1);

"court" means any court contemplated in chapter 8 of the Constitution;

Department means the Department responsible for consumer affairs in the province;

full panel in relation to the Consumer Court, means a panel consisting of 3 members of the Consumer Court;

Head of Department means the Head of the Department responsible for consumer affairs in the province;

inspector means a person designated or appointed as an inspector in terms of section 8(1);

investigator means a person designated or appointed as an investigator in terms of section 8(1);

MEC means the Member of the Executive Council responsible for consumer affairs in the province;

National Credit Act, 2005 means the National Credit Act, 2005 (Act No. 34 of 2005);

Office of the Consumer Protector means the Office of the Consumer Protector contemplated in section 3;

prescribed means prescribed by regulation;

prohibited conduct means an act or an omission in contravention of this Act, the Consumer Protection Act, 2008 or the National Credit Act, 2005;

regulations mean regulations made in terms of this Act;

respondent means a person against whom a complaint or application has been initiated in terms of this Act, the Consumer Protection Act, 2008 or the National Credit Act, 2005;

this Act includes the regulations; and

Tribunal means the National Consumer Tribunal established under section 26 of the National Credit Act, 2005.

2. Objects of Act

The objects of this Act are to promote and advance the social and economic welfare of consumers in the province by providing for a—

- (a) provincial consumer protection authority; and
- (b) Consumer Court,

to investigate, mediate or adjudicate alleged infringements of consumer rights set out in Chapter 2 of the Consumer Protection Act, 2008.

CHAPTER 2

PROVINCIAL CONSUMER PROTECTION AUTHORITY

Part A

OFFICE OF CONSUMER PROTECTOR

3. Office of Consumer Protector

The provincial consumer protection authority known as the Office for the Investigation of Unfair Business Practices established in terms of the Consumer Affairs (Unfair Business Practices) Act, 1996 is retained subject to section 50 of this Act, notwithstanding the repeal of the Consumer Affairs (Unfair Business Practices) Act, 1996 and is renamed the Office of the Consumer Protector.

4. Consumer Protector

- (1) The MEC must in terms of the laws governing the public service, designate or appoint a person with—
 - (a) suitable experience; and
 - (b) at least a university degree in either economics, law, commerce, industry or public affairs,as Consumer Protector in the Office of the Consumer Protector at a level determined by the MEC.
- (2) The Consumer Protector must perform all the functions of the Office of the Consumer Protector under this Act and the Consumer Protection Act, 2008.

- (3) The MEC—
- (a) must designate or appoint a Deputy Consumer Protector in the same manner as set out in subsection (1) who must—
 - (i) assist the Consumer Protector in carrying out the functions of the Office of the Consumer Protector; and
 - (ii) perform the duties of the Consumer Protector whenever the Consumer Protector is unable to do so for whatever reason; and
 - (b) may designate or appoint personnel in terms of the laws governing the public service to assist the Consumer Protector in the performance of his or her functions.
- (4) All personnel designated or appointed in terms of subsection (3)(b) are subject to the control and the direction of the Consumer Protector.

Part B

FUNCTIONING OF THE AUTHORITY

5. Functions and powers of Office of Consumer Protector

- (1) The Office of the Consumer Protector must—
- (a) consider all matters referred to it in terms of this Act, the Consumer Protection Act, 2008 or the National Credit Act, 2005;
 - (b) receive and investigate consumer complaints in accordance with this Act;
 - (c) monitor compliance with this Act and the Consumer Protection Act, 2008;
 - (d) facilitate the mediation or conciliation of disputes arising in terms of this Act or the Consumer Protection Act, 2008 between or among consumers, persons resident, or persons carrying on business within the Province;
 - (e) refer disputes arising from this Act or the Consumer Protection Act, 2008 to the Consumer Court in accordance with this Act;
 - (f) provide advice and guidance to the public on consumer protection matters;
 - (g) implement educational and information measures to develop public awareness of this Act and consumer protection in general; and

- (h) perform such other functions as may be assigned to the Office of the Consumer Protector in terms of this Act or the Consumer Protection Act, 2008.

(2) The Office of the Consumer Protector may—

- (a) directly initiate an investigation into prohibited conduct as contemplated in section 6(2);
- (b) issue compliance notices in terms of this Act or the Consumer Protection Act, 2008;
- (c) request the Commission to initiate a complaint in respect of any apparent prohibited conduct or offence arising within the province in terms of the Consumer Protection Act, 2008; and
- (d) advise the MEC on matters relating to consumer protection and on the nature and dynamics of the consumer market.

6. Lodging complaints with Office of Consumer Protector

- (1) Any person may lodge a complaint in the prescribed form and manner with the Office of the Consumer Protector regarding an alleged prohibited conduct.
- (2) The Office of the Consumer Protector may directly initiate a complaint regarding a prohibited conduct—
 - (a) on its own accord;
 - (b) when directed to do so by the MEC; or
 - (c) on the request of—
 - (i) a regulatory authority;
 - (ii) another provincial consumer protection authority;
 - (iii) a consumer protection group accredited under the Consumer Protection Act, 2008; or
 - (iv) any other person having material interest in the matter.

7. Role of Office of Consumer Protector in dealing with complaints

- (1) The Office of the Consumer Protector upon initiating or receiving a complaint in terms of this Act or the Consumer Protection Act, 2008 may—

- (a) issue a notice of non-referral to the complainant in the prescribed form, if the complaint—
 - (i) appears to be frivolous or vexatious;
 - (ii) does not allege any facts which, if true, would constitute grounds for a remedy under this Act or the Consumer Protection Act, 2008; or
 - (iii) is prevented, in terms of section 116 of the Consumer Protection Act, 2008, from being referred to the Consumer Court;

 - (b) assist the parties to attempt to resolve the dispute unless the parties have previously and unsuccessfully attempted to resolve the dispute in that manner;

 - (c) refer any investigation or aspect thereof to another competent authority with jurisdiction, including an authority in another province if a complaint may be more appropriately dealt with by the other authority; or

 - (d) direct an investigator to investigate the complaint as quickly as practicable.
- (2) The Office of the Consumer Protector must deal with all matters referred to it by the Consumer Court.

 - (3) The Office of the Consumer Protector may by notice in the *provincial gazette* or any other form of media—
 - (a) make known any investigation which it is conducting, and
 - (b) call upon any person to make written representations regarding the investigation to the Office of the Consumer Protector.

8. Inspectors and investigators

- (1) The MEC may—
 - (a) designate any suitable person in the Office of the Consumer Protector, or in the Department; or
 - (b) subject to the laws governing the public service, appoint any suitable person, as an inspector or an investigator in terms of this Act.

- (2) The MEC must issue the prescribed appointment or prescribed designation certificate to a person referred to in subsection (1).
- (3) In addition to any other function imposed in terms of this Act or the Consumer Protection Act, 2008—
 - (a) an inspector must monitor compliance with; and
 - (b) an investigator must investigate complaints in terms of, this Act or the Consumer Protection Act, 2008.
- (4) An inspector or investigator who performs a function in terms of this Act must be in possession of the prescribed appointment or prescribed designation certificate issued in terms of subsection (2) and must produce such certificate when a person who is affected by the inspector's or investigator's actions in terms of this Act requests to see such certificate.
- (5) The MEC may, after following proper procurement processes, appoint a suitably qualified person as an expert to conduct research, audits, inquiries or other investigations on behalf of the Office of the Consumer Protector.
- (6) A person appointed in terms of subsection (5) is not an investigator or inspector within the meaning of this Act.
- (7) The Consumer Protector is deemed to be an inspector and investigator in terms of this Act.

9. Outcomes of investigation

After concluding an investigation into a complaint, the Office of the Consumer Protector may—

- (a) issue a notice of non-referral to the complainant in the prescribed form;
- (b) propose a draft consent order in terms of section 10;
- (c) refer a matter to the Consumer Court in terms of section 11 if the Office of the Consumer Protector believes—

- (i) that a person has engaged in prohibited conduct; and
 - (ii) the issues raised by the complaint can be dealt with expeditiously and fully by such a referral;
-
- (d) issue a compliance notice in terms of this Act or section 100 of the Consumer Protection Act, 2008; or
 - (e) refer the matter to the National Prosecuting Authority, if the complaint concerns an offence in terms of this Act, the Consumer Protection Act, 2008 or the National Credit Act, 2005.

10. Consent orders

- (1) If a matter has been—
 - (a) resolved through mediation or conciliation; or
 - (b) investigated by the Office of the Consumer Protector; and the parties agree to the proposed terms of an appropriate order,the Consumer Court may, without hearing any evidence, confirm that agreement as a consent order.
- (2) The Consumer Court after hearing a motion for a consent order must—
 - (a) make an order as agreed to and proposed by the Office of the Consumer Protector and the respondent;
 - (b) indicate any changes that must be made in the draft order before it will make the final order; or
 - (c) refuse to make the order.
- (3) A consent order referred to in subsection (1)—
 - (a) may include an award of damages to the complainant if the complainant so agrees;
 - (b) must be published in the *provincial gazette*.

11. Referral to Consumer Court

- (1) A matter may be referred to the Consumer Court by—
 - (a) the Office of the Consumer Protector;
 - (b) the National Credit Regulator in terms of section 140(2)(a) of the National Credit Act, 2005;
 - (c) a complainant under the National Credit Act, 2005 in terms of section 141(1)(a) of that Act;
 - (d) the Commission in terms of section 73(2)(a) of the Consumer Protection Act, 2008;
 - (e) a complainant under the Consumer Protection Act, 2008 in terms of section 75(1)(a) of that Act; or
 - (f) any other person or body in terms of any other legislation providing for referral to the Consumer Court.
- (2) A person who has lodged a complaint with the Office of the Consumer Protector may refer such complaint to the Consumer Court if the Office of the Consumer Protector has either—
 - (i) issued a notice of non-referral in terms of section 7(1) (a); or
 - (ii) investigated that complaint and issued a notice of non-referral in terms of section 9(a) to that person.
- (3) A person seeking to enforce any right in terms of section 69(c)(ii) of the Consumer Protection Act, 2008 or in terms of this Act, may apply directly to the Consumer Court.

12. Register of adverse notations

- (1) The Office of the Consumer Protector must in the prescribed format maintain a register of adverse notations which records the details of persons who have been found by the Consumer Court to be engaged in prohibited conduct.
- (2) The Office of the Consumer Protector may only list details of a person in the register referred to in subsection (1) if the Consumer Court has issued an order to that effect.

- (3) A person affected by an entry in the register may apply to the Consumer Court to set aside such order, and the Consumer Court may do so on reasonable and just grounds.

Part C

POWERS IN SUPPORT OF INVESTIGATION

13. Subpoena of persons or documents

- (1) The Consumer Protector or a person authorised by him or her may for the purposes of an investigation, subpoena any person who is believed to be able to furnish any information on the subject of the investigation; or to have in his or her possession or under his or her control any book, document or other object relating to that subject—
- (a) to appear before the Consumer Protector or a person authorised by the Consumer Protector, to be questioned at a time and place specified in the subpoena; or
 - (b) to deliver or to produce to the Consumer Protector or a person authorised by the Consumer Protector, that book, document or other object at a time and place specified in the subpoena.
- (2) A subpoena referred to in subsection (1) (a)—
- (a) must—
 - (i) be in the prescribed form;
 - (ii) be signed by the Consumer Protector or a person authorised by the Consumer Protector; and
 - (b) may be served in the same manner as a subpoena in a criminal case issued by the magistrate's court.
- (3) The Consumer Protector or a person authorised by the Consumer Protector—
- (a) must administer an oath to, or accept an affirmation from, the person named in the subpoena;
 - (b) may question the person named in the subpoena; and

- (c) may retain any book, document or other object for examination, for a period not exceeding two months, or such longer period as the Consumer Court, on application and good cause shown, may allow.
- (4) (a) Subject to subsection (4)(b), where a person is questioned by the Consumer Protector or a person authorised by the Consumer Protector, that person must answer each question truthfully and to the best of that person's ability.
 - (b) The Consumer Protector or a person authorised by the Consumer Protector must inform the person being questioned of his or her right not to answer any question if the answer is self-incriminating.
- (5) No self-incriminating answer given or statement made by any person to the Consumer Protector or a person authorised by the Consumer Protector is admissible as evidence against the person who gave the answer or made the statement in criminal proceedings in any court, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in section 43 or 44(2)(d) and then only to the extent that the answer or statement is relevant to prove the offence charged.

14. Authority to enter and search under warrant

- (1) A judge of the High Court or a magistrate may issue a warrant to enter and search any premises that are within the jurisdiction of that judge or magistrate if, from information on oath or affirmation, there are reasonable grounds to believe that—
 - (a) a contravention of this Act or the Consumer Protection Act, 2008 has taken place, is taking place, or is likely to take place on or in those premises; or
 - (b) anything connected with an investigation in terms of this Act or the Consumer Protection Act, 2008 is in the possession of, or under the control of a person who is on or in those premises.
- (2) A warrant to enter and search issued under subsection (1) may be issued at any time and must specifically—
 - (a) identify the premises that may be entered and searched; and
 - (b) authorise an investigator or a police officer to enter and search the premises and to do anything listed in section 15.
- (3) A warrant to enter and search is valid until one of the following events occurs—
 - (a) the warrant is executed;

- (b) the warrant is cancelled by the person who issued it or, in that person's absence, by a person with similar authority;
 - (c) the purpose for issuing it has lapsed; or
 - (d) the expiry of one month after the date it was issued.
- (4) A warrant to enter and search may be executed only during the day, unless the judge, or magistrate who issued it authorises that it may be executed at night at a time that is reasonable in the circumstances.
- (5) A person authorised by warrant issued in terms of subsection (2) may enter and search premises named in that warrant.
- (6) Immediately before commencing with the execution of a warrant, a person executing that warrant must either—
- (a) if the owner, or person in control of the premises to be searched is present—
 - (i) provide identification to that person and explain to that person the authority by which the warrant is being executed; and
 - (ii) hand a copy of the warrant to that person or to the person named in it; or
 - (b) if the owner, or person in control is not present, affix a copy of the warrant to the premises in a prominent and visible place.

15. Powers to enter and search

- (1) A person who is authorised under section 14 to enter and search premises may—
- (a) enter upon or into those premises;
 - (b) search those premises;
 - (c) search any person on those premises if there are reasonable grounds for believing that the person has personal possession of an article or document that has a bearing on the investigation;
 - (d) examine any article or document that is on or in those premises that has a bearing on the investigation;
 - (e) request information about any article or document from the owner of, or person in control of the premises or from any person who has control of the article or document, or from any other person who may have the information;

- (f) take extracts from or make copies of any book or document that is on or in the premises that has a bearing on the investigation;
 - (g) use any computer system on the premises, or require assistance of any person on the premises to use that computer system, to—
 - (i) search any data contained in or available to that computer system;
 - (ii) reproduce any record from that data;
 - (h) seize any output from that computer for examination and copying; and
 - (i) attach and if necessary remove from the premises for examination and safekeeping anything that has a bearing on the investigation.
- (2) Section 13(4) applies equally to an answer given or statement made to an investigator or police officer in terms of this section.
- (3) An investigator authorised to conduct an entry and search in terms of section 14 may be accompanied and assisted by a police officer.

16. Conduct of entry and search

- (1) A person who enters and searches any premises under section 15 must conduct the entry and search with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy.
- (2) During any search under section 15 (1) (c), only a female investigator or female police officer may search a female person, and only a male investigator or male police officer may search a male person.
- (3) A person who enters and searches premises under section 15, before questioning anyone, must—
- (a) advise that person of the right to be assisted at the time by an advocate or attorney; and
 - (b) allow that person to exercise that right.
- (4) A person who removes anything from premises being searched must—
- (a) issue a receipt for it to the owner of, or person in control of, the premises; and
 - (b) return it as soon as practicable after achieving the purpose for which it was removed.

- (5) During a search, a person may refuse to permit the inspection or removal of an article or document on the grounds that it contains privileged information.
- (6) If the owner or person in control of an article or document refuses in terms of subsection (5) to give that article or document to the person conducting the search, the person conducting the search may request the registrar or sheriff of the High Court that has jurisdiction to attach and remove the article or document for safe custody until that court determines whether or not the information is privileged.

17. Claims that information is confidential

- (1) An affected person may, when required to submit information to the Consumer Protector or a person authorised by the Consumer Protector, the Consumer Court or an investigator appointed in terms of this Act, claim that all or part of that information is confidential.
- (2) Any claim contemplated in subsection (1) must be supported by a written statement explaining why the information is confidential.
- (3) The Office of the Consumer Protector or the Consumer Court as the case may be must—
 - (a) consider any claim made in terms of subsection (1); and
 - (b) notify the claimant whether or not the information contemplated in subsection (1) will be treated as if it had been determined to be confidential.
- (4) When making any ruling, decision or order in terms of this Act, the Office of the Consumer Protector or the Consumer Court may take into account any information that has been the subject of a claim in terms of subsection (1).
- (5) If any reasons for a decision in terms of this Act would reveal any information that has been the subject of a claim in terms of subsection (1), the Office of the Consumer Protector or the Consumer Court, as the case may be, must provide a copy of the proposed reasons to the party claiming confidentiality at least five business days before publishing those reasons.
- (6) Where the claimant receives a notice in terms of subsection (3) (b), or a copy of proposed reasons in terms of subsection (5) from—

- (a) the Office of the Consumer Protector, the claimant may apply to the Consumer Court, or
 - (b) the Consumer Court, the claimant may apply to a court,
- for an appropriate order to protect the confidentiality of the relevant information.

CHAPTER 3

LIMPOPO CONSUMER COURT

PART A

FUNCTIONING OF CONSUMER COURT

18. Limpopo Consumer Court

- (1) The Consumer Court established for the province in terms of the Consumer Affairs (Unfair Business Practices) Act, 1996 is retained subject to section 50 of this Act, notwithstanding the repeal of the Consumer Affairs (Unfair Business Practices) Act, 1996 and is renamed the Limpopo Consumer Court.
- (2) The seat of the Consumer Court is in Polokwane.
- (3) The Consumer Court may hold sittings at places other than the seat of the Consumer Court as the Consumer Court in consultation with the Office of the Consumer Protector may determine.

19. Functions of Consumer Court

The Consumer Court must—

- (a) adjudicate in respect of any application that may be made to it in terms of this Act, the Consumer Protection Act; 2008 or the National Credit Act, 2005 and make any competent order as provided for in the mentioned Acts;
- (b) hear and consider allegations of prohibited conduct which is before it by virtue of proceedings contemplated in this Act, the Consumer Protection Act; 2008 or the National Credit Act, 2005 and make any competent order as provided for in the mentioned Acts; and

- (c) exercise any other powers and perform the functions and duties assigned to it in terms of this Act, the Consumer Protection Act, 2008 and the National Credit Act, 2005.

20. Composition of Consumer Court

- (1) The MEC must appoint members of the Consumer Court.
- (2) The Consumer Court must consist of six persons as follows:
 - (a) a chairperson and a deputy chairperson who must both be—
 - (i) a retired judge of a Superior Court as defined in the Superior Courts Act, 2013 (Act No. 10 of 2013); or
 - (ii) an attorney, advocate, retired magistrate or lecturer in law at a university, with not less than ten years' cumulative experience in one or more such capacities; and
 - (b) four other additional members of the Consumer Court having special knowledge or experience of consumer advocacy, economics, industry, commerce or law.

21. Disqualification from appointment to Consumer Court

No person may be appointed or remain a member of the Consumer Court if he or she—

- (a) is not a citizen of the Republic;
- (b) is not ordinarily resident in the province;
- (c) is a public servant, including a municipal employee;
- (d) is at the relevant time, or during the preceding twelve months was an office-bearer or employee of any party, movement, organisation or body of a party political nature;
- (e) is an unrehabilitated insolvent;

- (f) has within the previous ten (10) years been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, an offence under this Act or an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), or an offence involving dishonesty;
- (g) has at any time been removed from an office of trust on account of misconduct in respect of fraud or the misappropriation of money; or
- (h) is subject to an order of a competent court holding that person to be mentally unfit or disordered.

22. Appointment of members of Consumer Court

- (1) The MEC must publish a notice in two newspapers circulating in the province and in any other form of media, inviting persons who—
 - (a) comply with the qualifications in section 20(2); and
 - (b) are not subject to any disqualification contemplated in section 21,to apply, within 21 days of the publication of such notice for positions as members of the Consumer Court.
- (2) Applicants must, in response to the notice in terms of subsection (1), submit a comprehensive *curriculum vitae* containing—
 - (a) certified copies of all qualifications;
 - (b) supporting documents that reflect the applicant's knowledge, experience and relevant contribution to consumer protection in the province; and
 - (c) a sworn affidavit declaring any direct or indirect financial interests in any company, close corporation or any other business interests.
- (3) The MEC may verify the credentials of an applicant.
- (4) The MEC must, from the applications received, appoint suitable members to the Consumer Court.
- (5) A member of the Consumer Court must, before assuming office, make an oath or solemn affirmation in the prescribed form.

- (6) The MEC must cause the names of the persons appointed to the Consumer Court to be published in the *provincial gazette* and in any other form of media.

23. Term of office of members of Consumer Court

- (1) Each member of the Consumer Court serves for a period of three years.
- (2) The MEC may renew a Consumer Court member's term of office for a further term without following the procedure set out in section 22.
- (3) If members of the Consumer Court are still considering a matter before the Consumer Court on expiry of their term of office, they may continue to act as members of the Consumer Court in respect of that matter only and may still receive the remuneration and allowances due to them during the period in which they continue to act as members of the Consumer Court.

24. Resignation, removal from office and vacancies

- (1) A member of the Consumer Court may resign by providing the MEC with –
- (a) one months written notice; or
 - (b) less than one months written notice, with the approval of the MEC.
- (2) The MEC may, subject to subsection (3) remove a member of a Consumer Court if that member—
- (a) becomes disqualified in terms of section 21;
 - (b) fails to disclose an interest as provided for in section 26;
 - (c) acted contrary to the provisions of section 27; or
 - (d) fails to properly and professionally perform the functions of a member of the Consumer Court.
- (3) Before removing a member of the Consumer Court in terms of subsection (2), the MEC must afford the affected member of the Consumer Court an opportunity to state his or her case.

- (4) Whenever a vacancy occurs in a Consumer Court, the MEC must, in accordance with the procedure set out in section 22 appoint a person to fill such vacancy for the unexpired period of office of the member of the Consumer Court in whose place such person is appointed.
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- (5) If the position of both chairperson and deputy chairperson become vacant for whatever reason, the MEC may appoint a person with suitable legal qualifications and experience to temporarily act in the position of chairperson until the vacancy has been filled in accordance with section 22.
- (6) The person appointed in terms of subsection (5) is entitled to the remuneration and allowances set out in section 25.

25. Remuneration and allowances of members of Consumer Court

The MEC—

- (a) must determine the Consumer Court members' remuneration and allowances;
- (b) may determine different scales of remuneration and allowances in respect of different members of the Consumer Court in relation to their level of expertise and functions they perform,

in consultation with the Member of the Executive Council responsible for finance in the Province.

26. Declaration of business interests of members of Consumer Court

- (1) Every member of the Consumer Court must, upon assuming office and at the beginning of every financial year of the Consumer Court, submit the prescribed declaration of his or her direct or indirect interest in any company, close corporation or other business interests to the MEC.
- (2) Where a member of the Consumer Court acquires interest in any company, close corporation or other business interest, at any time during his or her tenure as a member of the Consumer Court, he or she must within 10 days of the date of acquiring such interest, submit a written declaration to the MEC of such interest.

27. Conflicting interests

- (1) A member of the Consumer Court may not represent any person before the Consumer Court.
- (2) If, during a hearing in which a member of the Consumer Court is participating, it appears to that member of the Consumer Court that the matter concerns a financial or other interest of that member, that member of the Consumer Court must—
 - (a) immediately and fully disclose the fact and nature of that interest to the remaining members of the Consumer Court; and
 - (b) withdraw from any further involvement in that hearing.

28. Suspension of members of Consumer Court

- (1) The MEC, after applying the relevant rules of natural justice, may suspend a member of the Consumer Court if—
 - (a) the member of the Consumer Court is alleged to have committed serious misconduct; and
 - (b) the MEC reasonably believes that the presence of such member at the Consumer Court might jeopardise any investigation and enquiry into the alleged misconduct, or endanger the well-being or safety of any person or state property.
- (2) The suspension is a precautionary measure which does not constitute a finding.

**PART B
ADMINISTRATION OF COURT**

29. Clerk of Consumer Court

- (1) The MEC, subject to the laws governing public service—
 - (a) must designate or appoint a person as the clerk of the Consumer Court who is responsible for—
 - (i) receiving and processing applications lodged with the Consumer Court;

- (ii) preparing sittings of Consumer Court;
- (iii) notifying parties of sittings;
- (iv) managing correspondence of the Consumer Court;
- (v) managing Consumer Court records;
- (vi) processing witness fees; and
- (vii) performing any other function in terms of this Act or as directed by the chairperson of the Consumer Court;

(b) may designate or appoint such other persons in terms of the laws governing public service to assist the clerk of the Consumer Court in the performance of his or her functions.

(2) The clerk of the Consumer Court reports to the Head of Department.

30. Reporting by Consumer Court

The Consumer Court must submit quarterly and annual reports on its activities to the MEC no later than 14 days after the end of the quarter and the financial year.

PART C

CONSUMER COURT PROCEEDINGS

31. Consumer Court proceedings

- (1) All proceedings in the Consumer Court must be initiated in the prescribed form.
- (2) The Chairperson of the Consumer Court must assign each matter referred to the Consumer Court to—
 - (a) the chairperson or deputy chairperson sitting alone to the extent that this Act, section 75(5) of the Consumer Protection Act, 2008, section 142 (3) of the National Credit Act, 2005, or any other legislation provides for a matter to be considered by a single member; or
 - (b) a panel composed of the chairperson or deputy chairperson and two other Consumer Court members.
- (3) If at any stage during the proceedings before the Consumer Court, the chairperson becomes incapable of acting or is absent, the proceedings shall continue before the deputy chairperson.

- (4) If both the chairperson and deputy chairperson are for whatever reason unable to complete a matter—
- (a) in which the chairperson or deputy chairperson is sitting alone, the matter must proceed before a single member with suitable legal qualifications and experience; or
 - (b) as part of a panel of three members, the panel must be reconstituted so that at all times the panel consists of three members with at least one member having suitable legal qualifications and experience.
- (5) A decision of a single member of the Consumer Court hearing a matter contemplated in subsection (1)(a) or of the majority of the members of a panel in any other case, is a decision of the Consumer Court.

32. Hearings by Consumer Court

The Consumer Court hearing a matter must conduct its proceedings in a manner consistent with Part D of Chapter 7 of the National Credit Act, 2005, read with the changes required by the context of this Act.

33. Witness fees

Any person summoned as a witness must be paid such witness fees and allowances as he or she would have been entitled to if such person appeared in a magistrate's court as a witness.

34. Costs

- (1) Subject to subsection (2), each party participating in a hearing must bear its own costs.
- (2) The Consumer Court may in its discretion direct a party to pay costs.

35. Appeals and reviews

- (1) A participant in a hearing before a single member of the Consumer Court may appeal a decision by that member to a full panel of the Consumer Court.

- (2) A participant in a hearing before a full panel of the Consumer Court may—
- (a) apply to the High Court to review the decision of the Consumer Court in that matter; or
 - (b) appeal to the High Court against the decision of the Consumer Court in that matter, other than a decision in terms of section 10 of this Act.

PART D

CONSUMER COURT ORDERS

36. Orders of Consumer Court

- (1) The Consumer Court hearing a matter may make an order as provided for in Part E of Chapter 7 of the National Credit Act, 2005, read with the changes required by the context of this Act.
- (2) The Consumer Court may also order that—
- (i) the details of a person engaged in prohibited conduct be endorsed on the list of adverse notations referred to in section 12; or
 - (ii) the matter be referred to the Office of the Consumer Protector for investigations or dispute resolution or for any other purpose not inconsistent with the functions of the Office of the Consumer Protector.
- (3) An order of the Consumer Court must be made known by notice in the *provincial gazette* and may be made known in any other manner.

37. Administrative fines

- (1) The Consumer Court may impose an administrative fine in accordance with the Consumer Protection Act, 2008 or the National Credit Act, 2005 in respect of prohibited or required conduct.
- (2) A fine payable in terms of this Act must be paid into the Provincial Revenue Fund referred to in section 226 of the Constitution.

38. Variation of orders

The Consumer Court acting of its own accord or on application by a person affected by a decision or order, may vary or rescind its decision or order—

- (a) erroneously sought or granted in the absence of a party affected by it;
- (b) in which there is ambiguity, or an obvious error or omission, but only to the extent of correcting that ambiguity, error or omission; or
- (c) made or granted as a result of a mistake common to all the parties to the proceedings.

39. Standard of proof

In any proceedings before the Consumer Court in terms of this Act, the standard of proof is on a balance of probabilities.

CHAPTER 4**GENERAL PROVISIONS****PART A****OFFENCES AND PENALTIES****40. Breach of confidence**

- (1) It is an offence to disclose any confidential information concerning the affairs of any person or juristic person obtained—
 - (a) in carrying out any function in terms of this Act; or
 - (b) as a result of initiating a complaint or participating in any proceedings in terms of this Act.
- (2) Subsection (1) does not apply to information disclosed-
 - (a) for the purpose of the due and proper exercise or performance of any power, function or duty in terms of this Act;
 - (b) for the purpose of the administration of justice;

- (c) at the request of an inspector, investigator, Office of the Consumer Protector or member of the Consumer Court entitled to receive the information; or
- (d) on the order of a court of law.

41. Hindering administration of Act

It is an offence to hinder, oppose, obstruct or unduly influence any person who is exercising a power or performing a duty delegated, conferred or imposed on that person by this Act.

42. Failure to attend when summoned

A person who having been directed, summoned or subpoenaed to attend a hearing—

- (a) fails without sufficient cause to appear at the time and place specified or to remain in attendance until excused; or
- (b) attends as required, but—
 - (i) refuses to be sworn in or to make an affirmation; or
 - (ii) fails to produce a book, document or other item as ordered, if it is in the possession of, or under the control of, that person,commits an offence.

43. Failure to answer fully or truthfully

A person who, having been sworn in or having made an affirmation—

- (a) subject to section 13(4), fails to answer any question fully and to the best of that person's ability; or
 - (b) gives false evidence, knowing or believing it to be false,
- commits an offence.

44. Offences relating to Office of Consumer Protector and Consumer Court

- (1) A person who contravenes or fails to comply with an order of the Consumer Court commits an offence.
- (2) A person who—

- (a) does anything calculated to improperly influence the Consumer Court or the Office of the Consumer Protector concerning any matter connected with an investigation;
- (b) anticipates any findings of the Consumer Court or the Office of the Consumer Protector concerning an investigation in a way that is calculated to influence the proceedings or findings;
- (c) does anything in connection with an investigation that would have been contempt of court if the proceedings had occurred in a court of law;
- (d) knowingly provides false information to the Office of the Consumer Protector;
- (e) defames the Consumer Court or a member of the Consumer Court, in their respective official capacities;
- (f) wilfully interrupts the proceedings of a hearing or misbehaves in the place where a hearing is being conducted;
- (g) acts contrary to a warrant to enter and search; or
- (h) without authority, but claiming to have authority in terms of section 14—
 - (i) enters or searches premises; or
 - (i) attaches or removes an article or document,commits an offence.

45. Penalties

Any person convicted of an offence in terms of this Act, is liable to a fine or to imprisonment or to both such fine and imprisonment.

PART B

MISCELLANEOUS PROVISIONS

46. Delegation of power

- (1) The MEC may, subject to the provisions of this section, in writing, delegate a power, function or duty conferred, entrusted or imposed on the MEC in terms of this Act to

the Head of Department, the Consumer Protector or an employee in the Office of the Consumer Protector, with or without conditions.

- (2) The MEC may not delegate the power—
 - (a) to appoint Court members and the Consumer Protector; and
 - (b) to make regulations.
- (3) The Consumer Protector may, with the approval of the MEC, delegate his or her powers, duties or functions, including a power, duty or function delegated to Consumer Protector by the MEC, to any member in the service of the Office of the Consumer Protector.
- (4) A delegation under this section does not prevent the MEC or the Consumer Protector from exercising or performing that respective delegated power, duty or function.
- (5) A delegation under this section may be revoked or withdrawn at any time.
- (6) Anything done in the exercise or performance of a delegated power, duty or function is regarded to have been done by the MEC or the Consumer Protector, as the case may be.

47. Vicarious liability

- (1) If an employee or agent of a person is liable in terms of this Act for anything done or omitted in the course of that person's employment or activities on behalf of their principal, the employer or principal is jointly and severally liable with that person.
- (2) This section does not apply in respect of criminal liability.

48. Regulations

- (1) The MEC may, after consulting with the chairperson of the Consumer Court, make regulations relating to—
 - (a) the practice and rules of proceedings of the Consumer Court;
 - (b) any matter which in terms of this Act is required to be prescribed;
 - (c) any fee payable under this Act; and
 - (d) in general, any matter which is considered necessary or expedient to prescribe for achieving the objects of this Act.
- (2) The MEC must cause the draft regulations to be published in the *provincial gazette* for public comments.

49. Repeal of laws

The Consumer Affairs (Unfair Business Practices) Act, 1996 (Act No. 8 of 1996) is hereby repealed.

50. Transitional arrangements

- (1) Any complaint lodged with the Office of the Consumer Protector before the commencement of this Act in terms of any repealed legislation must be dispensed with and finalised in terms of this Act.
- (2) Where the Consumer Protector, member of staff of the Office of the Consumer Protector or investigator has been designated or appointed in terms of any legislation repealed by this Act, such designation or appointment shall continue as a designation or appointment in terms of this Act.
- (3) A Consumer Court established in terms of legislation repealed by this Act must continue as a Consumer Court established in terms of this Act.
- (4) A member or alternate member of the Consumer Court established in terms of legislation repealed by this Act continues to be a member or alternate member under this Act for the unexpired term of office.

51. Short title and commencement

- (1) This Act is called the Limpopo Consumer Protection Act, 2015 and comes into operation on a date to be determined by the Premier by proclamation in the *provincial gazette*.
- (2) The Premier may determine different dates for the coming into operation of different sections of this Act.

This is to certify that this Act has complied
With the Standing Rules and Orders of the
House and was duly adopted by the Honorable
House on this 19th Day of Nov 2015
Signed: *P. Mokoena* Date: 08/02/2016
SPEAKER OF THE LIMPOPO LEGISLATURE