



PROVINCE OF THE EASTERN CAPE
IPHONDO LEMPUMA KOLONI
PROVINSIE OOS-KAAP

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DEPARTMENT OF HEALTH

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Government Printing Works

Notice submission deadlines

Government Printing Works has over the last few months implemented rules for completing and submitting the electronic Adobe Forms when you, the customer, submit your notice request.

In line with these business rules, GPW has revised the notice submission deadlines for all gazettes. Please refer to the GPW website www.gpwonline.co.za to familiarise yourself with the new deadlines.

CANCELLATIONS

Don't forget!

Cancellation of notice submissions are accepted by GPW according to the deadlines stated in the table above.

Non-compliance to these deadlines will result in your request being failed. **Please pay special attention to the different deadlines for each gazette.**

Please note that any notices cancelled after the cancellation deadline will be published and charged at full cost.

Requests for cancellation must be sent by the original sender of the notice and must be accompanied by the relevant notice reference number (N-) in the email body.

AMENDMENTS TO NOTICES

take note!

With effect from **01 October**, GPW will not longer accept amendments to notices. The cancellation process will need to be followed and a new notice submitted thereafter for the next available publication date.

CUSTOMER INQUIRIES



Many of our customers request immediate feedback/confirmation of notice placement in the gazette from our Contact Centre once they have submitted their notice – While GPW deems it one of their highest priorities and responsibilities to provide customers with this requested feedback and the best service at all times, we are only able to do so once we have started processing your notice submission.

GPW has a **2-working day turnaround time for processing notices** received according to the business rules and deadline submissions.

Please keep this in mind when making inquiries about your notice submission at the Contact Centre.

PROOF OF PAYMENTS



GPW reminds you that all notice submissions **MUST** be submitted with an accompanying proof of payment (PoP) or purchase order (PO). If any PoP's or PO's are received without a notice submission, it will be failed and your notice will not be processed.

When submitting your notice request to submit.egazette@gpw.gov.za, please ensure that a purchase order (GPW Account customer) or proof of payment (non-GPW Account customer) is included with your notice submission. All documentation relating to the notice submission must be in a single email.

A reminder that documents must be attached separately in your email to GPW. (In other words, your email should have an Adobe Form plus proof of payment/purchase order – 2 separate attachments – where notice content is applicable, it should also be a 3rd separate attachment).

REMINDER OF THE GPW BUSINESS RULES

- ☐ Single notice, single email – with proof of payment or purchase order.
- ☐ All documents must be attached separately in your email to GPW.
- ☐ 1 notice = 1 form, i.e. each notice must be on a separate form
- ☐ Please submit your notice **ONLY ONCE**.
- ☐ Requests for information, quotations and inquiries must be sent to the Contact Centre **ONLY**.
- ☐ The notice information that you send us on the form is what we publish. Please do not put any instructions in the email body.

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PROVINCIAL NOTICES • PROVINSIALE KENNISGEWINGS

PROVINCIAL NOTICE 25 OF 2016

DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENTAL AFFAIRS AND TOURISM

EASTERN CAPE CONSUMER PROTECTION BILL, 2016

The above- mentioned bill is hereby published for public comment in terms of rule 147 of the Standing Rules of the Legislature.

Any person who wishes to comment on the said Bill must submit such comments in writing within 30 days of publication hereof.

Comments must be submitted to -

The Head of Department

Department of Economic Development, Environmental Affairs & Tourism

2nd Floor Old Metro Building

Cnr of Hargreaves and Hockley Close Street

Beacon Hill

King William's Town.

Attention: Charnette Ferreira

Tel: (043) 605 7183 / 605 7058

Email: Charnette.ferreira@dedea.gov.za

EASTERN CAPE PROVINCIAL LEGISLATURE

As introduced by

**(THE MEMBER OF THE EXECUTIVE COUNCIL RESPONSIBLE FOR ECONOMIC
DEVELOPMENT, ENVIRONMENTAL AFFAIRS AND TOURISM)**

BILL

To provide for the realisation and protection of consumer rights in the Province of the Eastern Cape; to provide for the establishment of the Office of the Consumer Protector and its functioning; to provide for the establishment of the Consumer Tribunal and its functioning; to repeal the Consumer Affairs (Unfair Business Practices) Act (Eastern Cape), 1998 (Act No. 5 of 1998), and to provide for matters connected therewith.

PREAMBLE

WHEREAS the Constitution of the Republic of South Africa, 1996 provides that consumer protection is a functional area of concurrent jurisdiction;

AND WHEREAS the Consumer Protection Act, 2008 (Act No. 68 of 2008) was enacted to promote a fair, accessible and sustainable marketplace for consumer products and services and for that purpose provides consumers with consumer rights, establishes national norms and standards and promotes a consistent legislative and enforcement framework in respect of consumer protection;

AND WHEREAS there is a need for legislation to provide for a consumer protection authority and a Consumer Tribunal in the province aligned with the provisions of the Consumer Protection Act, 2008 in order to facilitate effective consumer protection in the province;

BE IT THEREFORE ENACTED by the Legislature of the Province of the Eastern Cape as follows—

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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 bears the same meaning unless the context otherwise indicates—

“Commission” means the National Consumer Commission established in terms of section 85 of the Consumer Protection Act;

“complainant” means any person contemplated in section 4 of this Act, and includes a complainant contemplated in section 141(1) of the National Credit Act;

“confidential information” means personal information that belongs to a person and is not generally available to or known by others;

“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 in terms of 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;

"Consumer Tribunal" means the Consumer Tribunal established in terms of section 22 of this Act;

"Consumer Protection Act" 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 7(1) of this Act;

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

"Department" means the Department responsible for consumer protection in the Province;

"Head of Department" means the Head of the Department responsible for consumer protection matters in the Province;

"inspector" means a person appointed as an inspector in terms of section 11(1);

"investigator" means a person appointed as an investigator in terms of section 11(4);

"juristic person" includes-

(a) a body corporate;

(b) a partnership or association; or

(c) a trust as defined in the Trust Property Act, 1988 (Act No. 57 of 1988);

"Magistrates' Court Act" means the Magistrates' Court Act, 1944 (Act 32 of 1944);

"National Consumer Tribunal" means the National Consumer Tribunal established in terms of section 26 of the National Credit Act;

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

"Office of the Consumer Protector" means the Office of the Consumer Protector established in terms of section 6;

“person” includes a juristic person;

“prescribed” means prescribed by regulation;

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

“Province” means the Province of the Eastern Cape referred to in section 103(1)(a) of the Constitution, and **“provincial”** has a corresponding meaning;

“Provincial Consumer Protection Authority” means the Office of the Consumer Protector established in section 6;

“Provincial Gazette” means the Provincial Gazette of the Province;

“Public Finance Management Act” means the Public Finance Management Act, 1999 (Act 1 of 1999);

“regulations” means the 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 an industry;

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

“responsible Member” means the Member of the Executive Council responsible for consumer protection matters in the Province;

“this Act” includes the regulations.

2. Purposes of the Act

(1) The purposes of this Act are—

- (a) to promote and advance the social and economic welfare of consumers in the Province;
- (b) to ensure the enjoyment and protection of the consumer rights recognised and conferred by Chapter 2 of the Consumer Protection Act on consumers in the Province, in particular those vulnerable consumers contemplated in section 3(1)(b) of the Consumer Protection Act, and which Chapter must be read into this Act with the necessary changes required by the context;
- (c) to ensure the protection of the consumer rights within the Province where provided for by the National Credit Act to the extent provided for by this Act; and
- (d) to provide for the—

- (i) Consumer Protection Authority; and
- (ii) Consumer Tribunal,

(2) For the purposes of this Act, sections 1, 2, 3 and 4 of the Consumer Protection Act, each read with the changes required by the context, shall apply to the interpretation and application of this Act.

3. Application of the Act

- (1) This Act applies within the Province—
 - (a) in all instances referred to in section 5 of the Consumer Protection Act and subject to the exemptions set out in that section; and
 - (b) to any matter properly referred to the Office of the Consumer Protector or the Consumer Tribunal in terms of legislation which allows for such referral.
- (2) A matter to which this Act applies in terms of subsection (1)(b) shall be resolved in accordance with this Act and the legislation in terms of which the matter was referred.

CHAPTER 2

REALISATION AND ENFORCEMENT OF CONSUMER RIGHTS

4. Realisation of consumer rights

Any of the following persons may, in the manner provided for in this Act, approach the Office of the Consumer Protector or the Consumer Tribunal where his or her rights in terms of this Act or the Consumer Protection 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 authorised 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, with leave of the Consumer Tribunal; or
- (e) an association acting in the interest of its members.

5. Enforcement of consumer rights

Any person contemplated in section 4 may seek to enforce any right in terms of this Act or the Consumer Protection Act by—

- (a) lodging a complaint with the Office of the Consumer Protector in terms of section 9 of this Act;
- (b) referring the matter directly to the Consumer Tribunal, subject to the provisions of this Act for such direct referral;
- (c) referring the matter to the applicable ombud with jurisdiction, and if there is no ombud with jurisdiction, then
 - (i) referring the matter to an applicable industry ombud, accredited in terms of section 82(6) of the Consumer Protection Act;
 - (ii) referring the matter to another alternative dispute resolution agent contemplated in section 70 of the Consumer Protection Act; or
 - (iii) filing a complaint with the Commission in accordance with section 71 of the Consumer Protection Act; or
- (d) approaching a court with jurisdiction over the matter, if all other remedies available to that person in terms of this Act and national legislation have been exhausted.

CHAPTER 3

CONSUMER PROTECTION AUTHORITY

Part A

Establishment of the Office of the Consumer Protector

6. Establishment of the Office of the Consumer Protector

- (1) There is hereby established a consumer protection authority known as the Office of the Consumer Protector.
- (2) The Office of the Consumer Protector—
 - (a) has jurisdiction throughout the Province; and
 - (b) reports to the responsible Member.

7. Appointment of the Consumer Protector

- (1) The responsible Member must, in terms of the laws governing the public service, designate or appoint as Consumer Protector a person with—
- (a) suitable experience; and
 - (b) a university degree in either law, commerce, industry or public affairs.
- (2) The Consumer Protector must exercise the functions assigned to him or her in terms of this Act or any other law, or by the responsible Member, in accordance with the values and principles set out in section 195 of the Constitution.
- (3) The Head of Department, on request of the Consumer Protector may, if the need arises in the performance of the duties of the Office, obtain the services of any person as an expert to conduct, or assist with the conducting of research, audits, inquiries or particular investigations on behalf of the Office of the Consumer Protector.
- (4) The person referred to in subsection (3) may be contracted by the Head of Department on such terms and conditions, and for such time period as may be agreed upon, subject thereto that any remuneration, allowances and expenses agreed to must be in accordance with a determination by the responsible Member in consultation with the Member of the Executive Council responsible for Finance.

Part B

Functioning of the Office of the Consumer Protector

8. Functions and powers of the Office of the Consumer Protector

- (1) The Office of the Consumer Protector must—
- (a) facilitate the on-going realisation of the purposes of this Act;
 - (b) consider all matters referred to it in terms of this Act or other legislation;
 - (c) receive and investigate consumer complaints in accordance with this Act;
 - (d) facilitate the mediation or conciliation of disputes arising in terms of this Act or the Consumer Protection Act between or among persons resident, or persons carrying on business exclusively within the Province;

- (e) refer matters arising from this Act, the Consumer Protection Act or other legislation, where appropriate, to the Consumer Tribunal in accordance with the applicable legislation;
 - (f) provide advice and guidance to the public on consumer protection matters;
 - (g) develop and implement educational and information measures to develop public awareness of this Act, the Consumer Protection Act and consumer protection in general;
 - (h) advise the responsible Member on any aspect pertaining to this Act specifically or consumer protection in general when so requested; and
 - (i) perform such other functions as may be assigned to the Office of the Consumer Protector in terms of this Act, the Consumer Protection Act or other legislation.
- (2) The Office of the Consumer Protector may—
- (a) initiate an investigation into suspected prohibited conduct as contemplated in section 9(2);
 - (b) issue compliance notices on behalf of the Commission in terms of section 84(a) of the Consumer Protection Act to any person carrying on business exclusively within the Province;
 - (c) issue compliance notices in terms of this Act to any person carrying on business exclusively within the Province;
 - (d) 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;
 - (e) request the Commission to engage with the Office of the Consumer Protector in co-operative activities to detect and suppress prohibited conduct or offences in terms of the Consumer Protection Act, if there are reasonable grounds to believe that any such conduct or offences may be occurring within the Province, or across its provincial boundaries;
 - (f) request the Commission to engage with the Office of the Consumer Protector in co-operative activities of research, publication, education, staff development and training;
 - (g) request the Commission, in consultation with the Minister, to engage with the Office of the Consumer Protector in staff exchanges and secondments, and the provision of technical assistance or expertise to the Office of the Consumer Protector; and
 - (h) provide the responsible Member with advice on matters relating to consumer protection and on the nature and dynamics of the consumer market.

9. Lodging complaints with the Office of the Consumer Protector

- (1) Any person, referred to in section 4 of this Act, may lodge a complaint in the prescribed form and manner with the Office of the Consumer Protector regarding any alleged prohibited conduct.
- (2) The Office of the Consumer Protector may initiate a complaint in the prescribed form and manner regarding alleged prohibited conduct—
- (a) on its own accord;
 - (b) 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;
 - (iv) any other person having material interest in the matter; or
 - (v) the Commission.
- (3) The Office of the Consumer Protector must initiate a complaint in the prescribed form and manner regarding alleged prohibited conduct when directed to do so in writing by the responsible Member.

10. Role of the Office of the Consumer Protector in dealing with complaints

- (1) The Office of the Consumer Protector, upon the lodging, initiating or receiving of a complaint in terms of this Act, must—
- (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; or
 - (iii) is prevented, in terms of section 116 of the Consumer Protection Act, from being referred to the Consumer Tribunal;
 - (b) assist the parties to attempt to resolve the dispute and—

- (i) issue a certificate of non-resolution if the Office of the Consumer Protector believes the dispute is unable to be resolved;
 - (ii) draft an Agreement of Settlement which reflects the terms on which the parties to the dispute have agreed;
 - (iii) refer any complaint or aspect thereof to another competent authority with jurisdiction, including the Commission or an authority in another province if a complaint may be more appropriately dealt with by the other authority;
 - (iv) direct an inspector to investigate the complaint as quickly as practicable, after notice of such investigation to the supplier; or
 - (v) refer the complaint to the Consumer Tribunal.
- (2) The Office of the Consumer Protector may, by notice in printed or electronic 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.

11. Inspectors and investigators

- (1) The Head of Department—
 - (a) may appoint any person in the employ of the provincial government as an inspector;
 - (b) must issue each inspector with a certificate in the prescribed form stating that the person has been appointed as an inspector in terms of this Act; and
 - (c) may apply to the relevant Minister to declare any person, appointed as an inspector in terms of this Act, as a peace officer.
- (2) When an inspector performs any function of an inspector in terms of this Act, the inspector—
 - (a) must be in possession of a certificate of appointment issued to that inspector in terms of subsection (1);
 - (b) must show that certificate to any person who—
 - (i) is affected by the inspector's actions in terms of this Act; and
 - (ii) requests to see the certificate.
- (3) An inspector must, when instructed to do so by Consumer Protector—

- (a) monitor compliance with the provisions of this Act and any regulations promulgated in terms of this Act;
 - (b) investigate and evaluate any alleged or suspected non-compliance with the provisions of this Act and any regulations promulgated in terms of this Act;
 - (c) serve a notice of compliance; and
 - (d) appear before any other competent authority with jurisdiction.
- (4) The Head of Department may contract with any qualified person as an investigator to conduct research, audits, inquiries or other investigations on behalf of the Office of the Consumer Protector.
- (5) A person contracted in terms of subsection (4) is not an inspector within the meaning of this Act.

12. Outcome of an 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 an agreement of settlement;
- (c) issue a compliance notice in accordance with section 14 of this Act;
- (d) make an application to the Consumer Tribunal;
- (e) refer the matter to the National Prosecuting Authority in terms of section 14(5)(b), if the conduct complained of appears to constitute an offence in terms of this Act, the Consumer Protection Act, the National Credit Act or any other law;
- (f) refer the matter to an Equality Court if the conduct complained of appears to constitute a contravention of Part A of Chapter 2 of the Consumer Protection Act; or
- (g) refer the matter to the Commission if the matter was found to exceed the jurisdiction of the magistrates' court

13. Consent orders

- (1) If a dispute arising from alleged prohibited conduct has been conciliated or mediated between parties, either of the parties may apply to the Consumer Tribunal for the agreement of settlement to be made a consent order, and the Consumer Tribunal, without hearing any evidence, may confirm that agreement as a consent order.
- (2) The Consumer Tribunal, after considering an application for a consent order must—
 - (a) confirm the agreement of settlement as a consent order; or
 - (b) indicate any changes that must be made before the agreement of settlement will be made a consent order; or
 - (c) refuse the application.
- (3) A consent order confirmed in terms of subsection (1) may include an award of damages to the complainant.
- (4) A consent order confirmed by the Consumer Tribunal must be published on the official website of the Department, unless a party to the proceedings makes application to the Consumer Tribunal and shows good cause for such order not to be published.
- (5) An application contemplated in subsection (4) can be made simultaneously with the application for confirming the consent order.

14 Compliance notices

- (1) The Office of the Consumer Protector may issue a compliance notice, in the prescribed manner and form, to a person or association of persons whom the Office of the Consumer Protector, on reasonable grounds, believes has engaged in prohibited conduct which notice must set out—
 - (a) the person to whom the notice applies;
 - (b) the applicable legislative provision that has not been complied with;
 - (c) details of the nature and extent of the non-compliance;
 - (d) any measures that are required to be taken and the period within which those measures must be taken; and
 - (e) any penalty that may be imposed in terms of this Act if those steps are not taken.

- (2) Before issuing a compliance notice in terms of subsection (1) to a person subject to the jurisdiction of a regulatory authority, the Office of the Consumer Protector must consult with the regulatory authority that issued a license to that person.
- (3) A compliance notice issued in terms of this section remains in force until—
- (a) it is set aside by the Consumer Tribunal, or a court upon a review of a Consumer Tribunal decision concerning the notice; or
 - (b) the Office of the Consumer Protector issues a compliance certificate contemplated in subsection (4).
- (4) If the requirements of a compliance notice, issued in terms of subsection (1) have been satisfied, the person to whom the notice was issued, may request the Office of the Consumer Protector to issue a certificate of compliance in the form prescribed.
- (5) If a person to whom a compliance notice has been issued fails to comply with the notice, the Office of the Consumer Protector may either—
- (a) apply to the Consumer Tribunal for the imposition of an administrative fine; or
 - (b) refer the matter to the National Prosecuting Authority for prosecution as an offence in terms of section 47(2),
- but may not do both in respect of any particular compliance notice.

15. Objection to compliance notices

- (1) Any person issued with a notice in terms of section 14 may apply to the Consumer Tribunal in the prescribed form and manner to review that notice within—
- (a) 15 business days after receiving that notice; or
 - (b) such longer period as may be allowed by the Consumer Tribunal on good cause shown.
- (2) After considering any representations by the applicant and any other relevant information, the Consumer Tribunal may confirm, modify or cancel all or part of a notice.
- (3) If the Consumer Tribunal confirms or modifies all or part of a notice, the applicant must comply with that notice as confirmed or modified, within the time period specified in it.

16. Responsible Member may direct policy and other matters and require investigation

The responsible Member may—

- (a) issue policy directives to the Office of the Consumer Protector with respect to the application, administration and enforcement of this Act, provided that any such directive is consistent with this Act and the Consumer Protection Act; and
- (b) At any time direct the Office of the Consumer Protector to—
 - (i) investigate an alleged contravention of this Act or the Consumer Protection Act;
 - (ii) investigate any matter or circumstances with respect to the purpose of this Act or the Consumer Protection Act, whether or not those circumstances appear at the time of the direction to amount to a possible contravention of this Act of the Consumer Protection Act; or
 - (iii) give effect to any arrangement contemplated in section 83(1) of the Consumer Protection Act.

Part C***Powers in Support of Investigation*****17. Summons**

(1) The Consumer Protector or a person authorised by him or her in writing may, for the purposes of conducting an investigation, summons any person who is subject to the jurisdiction of the Office of the Consumer Protector and 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 investigation—

- (a) to appear before the Consumer Protector, an inspector or investigator to be questioned at a time and place specified in the summons; or
 - (b) to deliver or to produce to the Consumer Protector, an inspector or investigator such book, document or other object at a time and place specified in the summons.
- (2) A summons referred to in subsection (1) must—
- (a) be in the prescribed form;

- (b) be signed by the Consumer Protector or a person authorised in writing by the Consumer Protector; and
 - (c) be served by a person from the Office of the Consumer Protector in the prescribed manner.
- (3) The Consumer Protector, inspector or investigator before whom a person is summoned to appear or required to deliver any book, document or other object, may—
 - (a) question and administer an oath to, or accept an affirmation from, the person named in the summons; and
 - (b) retain any such book, document or other object for examination, for a period not exceeding two months, or such longer period as the Consumer Tribunal, on application and good cause shown, may allow.
- (4) Anyone conducting an investigation in terms of this Act must inform a person being questioned that such person—
 - (a) must answer each question truthfully and to the best of that person's ability; and
 - (b) is not obliged 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, inspector or investigator 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 in any court, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in section 45(3) or 47(2)(d) and then only to the extent that the answer or statement is relevant to prove the offence charged.

18. Authority to enter and search under warrant

- (1) On application of the Consumer Protector, or a person authorised in writing by the Consumer Protector, 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 submitted on oath or affirmation, there are reasonable grounds to believe that—
 - (a) a contravention of this Act or the Consumer Protection Act 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 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 inspector, investigator or a police officer to enter and search the premises and to do anything listed in section 19.
- (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 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) The execution of a warrant to enter and search may commence only during the hours of 8h00 and 16h00 on weekdays, excluding public holidays, unless the judge or magistrate who issued the warrant authorises that it may be executed at any other day or time that is reasonable in the circumstances.
- (5) A person authorised by a 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
 - (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.

19. Powers to enter and search

- (1) A person who is authorised under section 18 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 may have a bearing on the investigation;
 - (d) examine any article or document that is on or in those premises that may have 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 17(5) applies equally to an answer given or statement made to an inspector, investigator or police officer in terms of this section.
- (3) A person authorised to conduct an entry and search in terms of section 18 may be accompanied and assisted by a police officer.

20. Conduct during entry and search

- (1) A person who enters and searches any premises in terms of section 18 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 in terms of section 19(1)(c), only a female inspector, investigator or police officer may search a female person, and only a male inspector, investigator or police officer may search a male person.
- (3) A person who enters and searches premises in terms of section 18, before questioning anyone, must—
 - (a) advise that person of the right to be assisted at the time by a legal representative; and
 - (b) allow that person the opportunity to exercise that right.
- (4) A person who removes anything from the premises being searched must—
 - (a) issue a receipt for it to the owner 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 any book, document or object on the grounds that it contains privileged information.
- (6) If the owner or person in control of such book, document or object refuses in terms of subsection (5) to give that book, document or object to the person conducting the search, the person conducting the search may request the Registrar or Sheriff of the High Court or the Clerk or Messenger of the Magistrate's 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.
- (7) A police officer who is authorised to enter and search premises in terms of section 18, or who is assisting an inspector or investigator who is authorised to enter and search premises in terms of section 18, may overcome resistance to the entry and search by using as much force as is reasonably required, including breaking a door or window of the premises.
- (8) Before using force as contemplated in subsection (7), a police officer must audibly demand admission and must announce the purpose of the entry, unless it is reasonable to

believe that doing so may induce someone to destroy or dispose of anything that may constitute the object of the search.

(9) The Office of the Consumer Protector may compensate anyone who suffers damage because of a forced entry during a search when no one responsible for the premises was present.

21. Claims that information is confidential

(1) When information is submitted to the Office of the Consumer Protector, the Consumer Tribunal, an inspector or investigator when required to do so in terms of this Act or such information is removed during a search authorised in terms of section 18, a person may 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, the Consumer Tribunal, an inspector or the investigator, as the case may be, must—

(a) consider any claim made in terms of subsection (1);

(b) notify the person claiming confidentiality within a reasonable time in writing whether or not the information contemplated in subsection (1) will be treated as confidential and with the reasons for such decision;

(c) where the decision is that the information is not confidential, treat the information in respect of which a claim of confidentiality has been made as confidential until such time as the person making the claim has been informed of the decision and reasons for the decision, and the five day period contemplated in subsection (6) has lapsed; and

(d) where the decision is that the information is confidential, the information is to be treated as such.

(4) When making any ruling, decision or order in terms of this Act, the Office of the Consumer Protector or the Consumer Tribunal 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,

inspector, investigator or the Consumer Tribunal, 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) Within 5 business days after receiving a notice in terms of subsection (3)(b), or a copy of the proposed reasons in terms of subsection (5), a party may apply to a court for an appropriate order to protect the confidentiality of the relevant information.

CHAPTER 4 CONSUMER TRIBUNAL

Part A

Establishment and Composition of the Consumer Tribunal

22. Establishment of the Consumer Tribunal

- (1) There is hereby established the Consumer Tribunal which—
 - (a) has jurisdiction throughout the Province;
 - (b) is a tribunal of record; and
 - (c) must exercise its functions in accordance with this Act or any other applicable legislation.
- (2) The seat of the Consumer Tribunal shall be determined by the responsible Member.
- (3) The Consumer Tribunal may sit at a place other than its seat as may be determined by the Chairperson of the Consumer Tribunal in consultation with the Consumer Protector.

23. Composition of the Consumer Tribunal

- (1) The responsible Member must appoint the members of the Consumer Tribunal on a full or part-time basis in the prescribed manner.
- (2) The Consumer Tribunal must consist of at least 6 persons including—
 - (a) a Chairperson, who must be—

- (i) a practicing or retired legal practitioner or law lecturer, or a retired judge or magistrate, with not less than ten years' cumulative experience in one or more such positions; and
 - (b) a Deputy Chairperson who must be—
 - (i) a practicing or retired legal practitioner or law lecturer, or a retired judge or magistrate, with not less than 5 years' cumulative experience in one or more such positions; and
 - (c) an additional 4 members having special knowledge or experience of consumer advocacy, economics, industry, commerce or law.
- (3) The responsible Member must—
 - (a) appoint the Chairperson and other members of the Consumer Tribunal within a reasonable time after this Act comes into operation; and
 - (b) appoint a person with the required qualifications to fill any vacancy arising on the Consumer Tribunal.
 - (c) if the position of both Chairperson and Deputy Chairperson become vacant simultaneously, appoint a person with suitable legal qualifications and experience to temporarily act in the position of Chairperson until the vacancies have been filled.
- (4) The person appointed in terms of subsection (3)(c) is entitled to the remuneration and allowances set out in section 29.
- (5) Where the Chairperson is unable for any reason to perform any of his or her functions as required by law, the Deputy Chairperson will perform those functions.

24. Disqualification from appointment to the Consumer Tribunal

- (1) To qualify for appointment as a member of the Consumer Tribunal, and to continue to hold that office, a person must—
 - (a) meet the necessary requirements as set out in section 23;
 - (b) not be subject to any disqualification set out in subsection (2); and
 - (c) have submitted to the responsible Member a written declaration stating that the person—
 - (i) is not disqualified in terms of subsection (2); and

- (ii) does not have any conflicting interests referred to in subsection (2)(b).
- (2) A person may not be a member of the Consumer Tribunal if that person—
- (a) is an office-bearer of any party, movement, organisation or body of a partisan political nature;
 - (b) personally or through a spouse, partner or associate—
 - (i) has or acquires a direct or indirect financial interest in a registrant, registered in terms of the National Credit Act; or
 - (ii) has or acquires an interest in a business or enterprise, which may conflict or interfere with the proper performance of the duties of a member of the Consumer Tribunal;
 - (c) is an rehabilitated insolvent or becomes insolvent and the insolvency results in the sequestration of that person's estate;
 - (d) has ever been, or is, removed from an office of trust on account of a guilty finding in respect of a complaint of misconduct involving dishonesty;
 - (e) is subject to an order of a competent court holding that person to be mentally unfit or disordered;
 - (f) within the previous 10 years has been, or is, convicted in the Republic of South Africa or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, 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; or
 - (g) has been convicted of any other offence committed after the Constitution took effect, and sentenced to imprisonment without the option of a fine.
- (3) For the purpose of subsection (2)(b), a financial interest does not include an indirect interest held in any fund or investment if the person contemplated in that subsection has no control over the investment decisions of that fund or investment.

25. Declaration of business interests

- (1) A member of the 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 financial interest in any company, close corporation or any other business interests as contemplated in section 24(2)(b) to the responsible Member.

(2) Where a member of the Consumer Tribunal acquires a direct or indirect financial interest that is, or is likely to become, an interest as contemplated in section 24(2)(b), at any time during his or her tenure as a member of the Consumer Tribunal, he or she must within 10 business days of the date of acquiring such interest, submit a written declaration to the responsible Member of such interest.

26. Conflicts and disclosure of interests

(1) A member of the Consumer Tribunal may not represent any person before the Consumer Tribunal.

(2) A member of the Consumer Tribunal must not—

(a) engage in any activity that may undermine the integrity of the Consumer Tribunal;

(b) attend, participate in or influence the proceedings of the Consumer Tribunal, if, in relation to the matter before the Consumer Tribunal, that member has an interest—

(i) contemplated in section 24(2)(b); or

(ii) that precludes that member from performing the functions of a member of the Consumer Tribunal in a fair, unbiased and proper manner;

(c) make private use of, or profit from, any confidential information obtained as a result of performing that person's functions as a member of the Consumer Tribunal; or

(d) divulge any information referred to in subsection (2)(c) to any third party, except as required as part of that person's official functions as a member of the Consumer Tribunal.

(3) If, at any time during proceedings, it appears to a member of the Consumer Tribunal that a matter being considered by the Consumer Tribunal concerns an interest of that member referred to in section 24(2)(b), that member must—

(a) immediately and fully disclose the fact and nature of that interest to the Chairperson and to the presiding member at those proceedings; and

(b) withdraw from any further involvement in those proceedings.

(4) The disclosure by a member of the Consumer Tribunal in terms of subsection (3)(a), and the withdrawal of that member in terms of subsection (3)(b), must be expressly recorded in the records of the proceedings in question.

- (5) In the event of a withdrawal from proceedings in terms of subsection (3)(b) the Consumer Tribunal must be constituted with due regard to the provisions of section 31.
- (6) Proceedings of the Consumer Tribunal, and any decisions taken by a majority of the members present and entitled to participate in those decisions, are binding despite—
- (a) a member of the Consumer Tribunal failing to disclose an interest as required by section 24(2); or
 - (b) a member of the Consumer Tribunal, having an interest, attending or participating in those proceedings.

27. Term of office of members of the Consumer Tribunal

- (1) Each member of the Consumer Tribunal shall serve for a period of five years.
- (2) The responsible Member may renew a member's term of office for a further term subject to the procedures set out for such renewal, but no member may serve more than two consecutive terms.
- (3) If a member of the Consumer Tribunal is still considering a matter before the Consumer Tribunal on expiry of his or her term of office, the member may continue to act as a member of the Consumer Tribunal in respect of that matter only and may still receive the remuneration and allowances due to the member during the period in which the member continues to act as a member of the Consumer Tribunal.

28. Resignation, removal from office and vacancies

- (1) The Chairperson, on one month written notice addressed to the responsible Member, may—
- (a) resign from the Consumer Tribunal; or
 - (b) resign as Chairperson, but remain as a member of the Consumer Tribunal.
- (2) A member of the Consumer Tribunal may resign by providing the responsible Member with—
- (a) one month written notice; or
 - (b) less than one month written notice, with the approval of the responsible Member.

(3) The responsible Member may, subject to subsection (4) remove a member of the Consumer Tribunal if that member-

- (a) becomes disqualified in terms of section 24;
- (b) fails to disclose an interest as provided for in section 25;
- (c) acted contrary to the provisions of section 26;
- (d) becomes permanently incapacitated; or
- (e) fails to properly and professionally perform the functions of a member of the Consumer Tribunal.

(4) Before removing a member of the Consumer Tribunal in terms of subsection (3), the responsible Member must afford the affected member of the Consumer Tribunal an opportunity to state his or her case.

29. Remuneration and allowances of members of the Consumer Tribunal

(1) The responsible Member, in consultation with the Member of the Executive Council responsible for finance in the Province—

- (a) must determine the remuneration and allowances of members of the Consumer Tribunal; and
- (b) may determine different scales of remuneration and allowances for different members of the Consumer Tribunal taking into consideration the qualifications, level of experience, functions which they perform and whether they are full-time or part-time members.

(2) The salary, allowances or benefits of a member of the Consumer Tribunal may not be reduced during the term of office of such a member.

Part B***Functions and Proceedings of the Consumer Tribunal*****30. Powers of Consumer Tribunal**

- (1) The Consumer Tribunal or a member of the Consumer Tribunal acting alone in accordance with section 33(4) of this Act, may—
- (a) adjudicate in relation to any—
 - (i) applications that may be made to it in terms of this Act, and make any order provided for in this Act in respect of such application; or
 - (ii) allegations of prohibited conduct by determining whether prohibited conduct has occurred and, if so, by imposing a remedy provided for in the Act;
 - (b) exercise any other powers conferred on it by law.
- (2) The Consumer Tribunal shall be competent to make an appropriate order for costs on the scale to be prescribed or in an amount determined to be just and equitable by the Consumer Tribunal.
- (3) The Consumer Tribunal must submit a report annually on its activities as required by the Public Finance Management Act.

31. Functioning of the Consumer Tribunal

- (1) The Chairperson of the Consumer Tribunal is responsible for managing the case load of the Consumer Tribunal and must assign each matter referred to the Consumer Tribunal in terms of this Act or any other legislation to—
- (a) the Chairperson or Deputy Chairperson sitting alone to the extent that this Act provides for a matter to be considered by a single member, subject to subsection (2)(a); or
 - (b) a panel composed of the Chairperson or Deputy Chairperson and two other Consumer Tribunal members in all other matters.
- (2) 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.
- (3) If, because of resignation, illness, death, or withdrawal in terms of section 26(3), a member of a panel is unable to complete the proceedings in a matter assigned to that panel, the Chairperson must-
- (a) direct that the hearing of the matter proceed before the remaining members of the panel, subject to the requirement that at least one member has suitable legal qualifications and experience; or
 - (b) terminate the proceedings before that panel and constitute another panel, which may include any member of the original panel, and direct that panel to conduct a new hearing.
- (4) A decision of a panel on a matter referred to it must be in writing and include reasons for that decision.
- (5) A decision of a single member of the Consumer Tribunal hearing a matter contemplated in subsection (1)(a) and subsection (2)(a) or of the majority of the members of a panel in any other case, is a decision of the Consumer Tribunal.

32. Referral to the Consumer Tribunal

- (1) A complaint may be referred to the Consumer Tribunal—
- (a) by the Office of the Consumer Protector as provided for in this Act;
 - (b) by a person as contemplated in section 5(b) of this Act;
 - (c) by a consumer as contemplated in section 70(1)(d) of the Consumer Protection Act;
 - (d) by a complainant contemplated in section 75(1)(a) of the Consumer Protection Act;
 - (e) by the Commission in terms of section 73(1)(c)(iii) read with section 73(2)(a) of the Consumer Protection Act;
 - (f) by a consumer in terms of section 129(1)(a) of the National Credit Act;
 - (g) by the National Credit Regulator in terms of section 139 and section 140 of the National Credit Act;

- (h) by a complainant in terms of section 141(1)(a) of the National Credit Act; or as otherwise permitted by any law, and
 - (i) by any person insofar as it is permitted by law.
- (2) Any person contemplated in subsection (1)(b), (c) or (i) may apply to the Consumer Tribunal provided—
 - (a) that person has first lodged such complaint with the Office of the Consumer Protector;
 - (b) the Office of the Consumer Protector has issued a notice of non-referral in terms of section 10(1)(a) or 12(a) to that person; and
 - (c) the Consumer Tribunal has granted the person leave to make direct application to the Consumer Tribunal.
- (3) Any application made to the Consumer Tribunal must be in the prescribed form and manner.
- (4) A complaint referred to the Consumer Tribunal in terms of section 134 or section 139(1)(b)(ii) of the National Credit Act must be dealt with in terms of section 134 and section 135 of the National Credit Act.
- (5) A complaint referred to the Consumer Tribunal in terms of section 140(2)(a) of the National Credit Act must be dealt with in accordance with the requirements of that section of the National Credit Act.

33. Proceedings before the Consumer Tribunal

- (1) The Consumer Tribunal must conduct its proceedings—
 - (a) in an inquisitorial manner;
 - (b) as expeditiously as possible;
 - (c) as informally as possible; and
 - (d) in accordance with the principles of natural justice.
- (2) The proceedings before the Consumer Tribunal must—
 - (a) be initiated by summons or notice which must be served on the person concerned in the prescribed manner and form and which may include service outside the Province;
 - (b) be open to the public;
 - (c) be prosecuted by any person duly appointed;

- (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.
- (3) Despite subsection (2)(b), the Consumer Tribunal member presiding at a hearing may exclude members of the public or specific persons or categories of persons, from attending the proceedings—
- (a) if evidence to be presented is confidential information, but only to the extent that the information cannot otherwise be protected;
 - (b) if the proper conduct of the hearing requires it; or
 - (c) for any other reason that would be justifiable in civil proceedings in a court.
- (4) The Chairperson of the Consumer Tribunal must assign any of the following matters to be heard by a single member of the Consumer Tribunal, sitting alone—
- (a) a consent order in terms of this Act;
 - (b) an application to permit late filing; and
 - (c) any other matter which, in the opinion of the Chairperson, may be decided by a single member in terms of this Act or any other applicable legislation.
- (5) At the conclusion of a hearing, the Consumer Tribunal must make any order permitted and must issue written reasons for its decision.
- (6) The Consumer Tribunal must provide the participants and members of the public reasonable access to the record of each hearing, subject to any ruling to protect confidential information made in terms of subsection (3)(a).

34. Summoning of witnesses and production of evidence before the Consumer Tribunal

For the purpose of ascertaining any matter before the Consumer Tribunal, the 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 and signed by the Clerk of 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) require 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 matter before the Consumer Tribunal;
- (b) require such person to take an oath or make an affirmation;
- (c) question such person and examine any book, document or object which he or she has been required to produce; and
- (d) give directions prohibiting or restricting the publication of any evidence given to the Consumer Tribunal.

35. Right to participate in proceedings

The following persons may participate in any proceedings before the Consumer Tribunal, in person or through a representative as contemplated in section 33(2)(c), (d) and (e), and may put questions to witnesses and inspect any books, documents or items presented at the proceedings:

- (a) the Consumer Protector;
- (b) the complainant,
- (c) the respondent;
- (d) a person as identified in section 4 of this Act; and
- (e) any other person who has a material interest in the hearing, unless, in the opinion of the presiding member of the Consumer Tribunal, that interest is adequately represented by another participant.

36. Rules of procedure

Subject to the rules of procedure of the Consumer Tribunal, the member of the Consumer Tribunal presiding at a hearing may determine any matter of procedure for that hearing, with due regard to the circumstances of the case and the requirements of the applicable sections of this Act.

37. Standard of proof

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

38. Witnesses

- (1) Every person giving evidence at the proceedings of the Consumer Tribunal must answer any relevant question.
- (2) The law regarding a witness's privilege in a criminal case in a court of law applies equally to a person who provides information during a hearing.
- (3) The Consumer Tribunal may order a person to answer any question or to produce any book, document or object, even if it is self-incriminating to do so.
- (4) No self-incriminating answer given or statement made by any person to the Consumer Tribunal is admissible in criminal proceedings as evidence against the person who gave the answer or made the statement, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in section 45(3) or section 47(2)(d), and then only to the extent that the answer or statement is relevant to prove the offence charged.

39. Appeals and reviews

A party in any proceedings before a single member of the Consumer Tribunal may—

- (a) appeal a decision by that member to a full panel of the Consumer Tribunal; or
- (b) apply to a full panel of the Consumer Tribunal for a review of a decision.

Part C
Orders of the Consumer Tribunal

40. Interim Relief

(1) At any time, whether or not a hearing has commenced into a complaint, a complainant may apply to the Consumer Tribunal for an interim order in respect of that complaint, and the Consumer Tribunal may grant such an order if—

- (a) there is evidence that the allegations may be true; and
- (b) an interim order is reasonably necessary to—
 - (i) prevent serious, irreparable damage to that person; or
 - (ii) prevent the purposes of this Act from being frustrated;
- (c) the respondent has been given a reasonable opportunity to be heard, having regard to the urgency of the proceedings; and
- (d) the balance of convenience favours the granting of the order.

(2) An interim order in terms of this section must not extend beyond the earlier of—

- (a) the conclusion of a hearing into the complaint; or
- (b) the date that is six months after the date of issue of the interim order.

(3) If an interim order has been granted, and a hearing into that matter has not been concluded within six months after the date of that order, the Consumer Tribunal, on good cause shown, may extend the interim order for a further period not exceeding six months.

41. Orders of the Consumer Tribunal

(1) The Consumer Tribunal may make any appropriate order in terms of this Act or other applicable legislation.

(2) Subject to subsection (3), any decision, judgment or order of the Consumer Tribunal is final and binding and is deemed to be an order of a magistrate's court in terms of the Magistrates' Court Act, and is enforced in terms of that Act.

(3) An order of the Consumer Tribunal made after hearing a matter referred to it in terms of section 73 of the Consumer Protection Act, shall have the same force and effect as if it had been made by the National Consumer Tribunal.

42. Administrative fines

- (1) The Consumer Tribunal may impose an administrative fine in respect of prohibited or required conduct.
- (2) An administrative fine imposed in terms of this Act may not exceed an amount which may be imposed by the National Consumer Tribunal.
- (3) When determining an appropriate administrative fine, the Consumer Tribunal must consider the following factors—
 - (a) The nature, duration, gravity and extent of the contravention;
 - (b) any loss or damage suffered as a result of the contravention;
 - (c) the behaviour of the respondent;
 - (d) the market circumstances in which the contravention took place;
 - (e) the level of profit derived from the contravention;
 - (f) the degree to which the respondent has co-operated with the Office of the Consumer Protector and the Consumer Tribunal; and
 - (g) whether the respondent has previously been found in contravention of this Act.
- (4) For the purpose of this section, the annual turnover of a supplier at the time when an administrative fine is imposed is the total income of that supplier during the immediately preceding year, as determined in the prescribed manner.
- (5) A fine payable in terms of this section must be paid into the Provincial Revenue Fund.

43. Costs

- (1) Subject to subsection (2), each party participating in proceedings must bear its own costs.
- (2) If the Consumer Tribunal has—
 - (a) not made a finding against a respondent, the Consumer Tribunal may award costs on the scale prescribed by regulation to the respondent and against a complainant who referred the complaint in terms of section 32(2); or

(b) made a finding against a respondent, the member of the Consumer Tribunal presiding at a hearing may award costs on the scale prescribed by regulation against the respondent and to a complainant who referred the complaint in terms of section 32(2).

CHAPTER 5

OFFENCES AND PENALTIES

44. Breach of confidence

- (1) It is an offence to disclose any confidential information concerning the affairs of any 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 investigator, Office of the Consumer Protector or member of the Consumer Tribunal entitled to receive the information; or
 - (d) on the order of a court.

45. Hindering the administration of the Act

- (1) 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.
- (2) A person commits an offence who, having been summoned 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 object as ordered, if it is in the possession of, or under the control of, that person.
- (3) A person commits an offence who, having been sworn in or having made an affirmation—
 - (a) fails to answer any question fully and to the best of that person's ability, subject to section 17(5); or
 - (b) gives false evidence, knowing or believing it to be false.

46. Offences relating to prohibited conduct

- (1) It is an offence for any person to alter, obscure, falsify, remove or omit a displayed price, labelling or trade description without authority.
- (2) It is an offence to fail to act in accordance with a compliance notice, but no person may be prosecuted for such an offence in respect of the compliance notice if, as a result of the failure of that person to comply with that notice, the Office of the Consumer Protector has applied to the Consumer Tribunal for the imposition of an administrative fine.

47. Offences relating to the Office of Consumer Protector and the Consumer Tribunal

- (1) A person who contravenes or fails to comply with an order of the Consumer Tribunal commits an offence.
- (2) A person who—
 - (a) does anything calculated to improperly influence the Consumer Tribunal or the Office of the Consumer Protector concerning any matter connected with an investigation;
 - (b) anticipates any findings of the Consumer Tribunal 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 Tribunal or a member thereof in his or her official capacity as a member of the Consumer Tribunal;

- (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 18—
 - (i) enters or searches premises; or
 - (ii) attaches or removes a book, document or other object,
- commits an offence.

48. Penalties

Any person convicted of an offence in terms of this Act is liable—

- (a) in the case of a contravention of section 44(1), to a fine or to imprisonment for a period not exceeding 10 years, or to both a fine and imprisonment; or
- (b) in any other case, to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and imprisonment.

CHAPTER 6 MISCELLANEOUS PROVISIONS

49. Delegation of power

- (1) The responsible Member may, subject to the provisions of this section, in writing, delegate a power, function or duty conferred, entrusted or imposed on the responsible Member in terms of this Act to the Head of Department or the Consumer Protector with or without conditions.
- (2) The responsible Member may not delegate the power—
 - (a) to appoint the members of the Consumer Tribunal; and
 - (b) to make regulations.
- (3) The Consumer Protector may delegate his or her powers, duties or functions to any member in the service of the Office of the Consumer Protector.

- (4) A delegation under this section does not prevent the responsible Member 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 responsible Member or the Consumer Protector, as the case may be.

50. Vicarious liability

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

51. Limitations of bringing action

- (1) A complaint in terms of this Act may not be referred or made to the Consumer Tribunal more than three years after—
 - (a) the act or omission that is the cause of the complaint; or
 - (b) in the case of a course of conduct or continuing practice, the date that the conduct or practice ceased.
- (2) A complaint in terms of this Act may not be referred to the Consumer Tribunal in terms of this Act, against any person that is, or has been, a respondent in proceedings under another section of this Act or the Consumer Protection Act or other legislation relating substantially to the same conduct.

52. Proof of facts

- (1) In any criminal proceedings in terms of this Act—

- (a) if it is proved that a false statement, entry or record or false information appears in or on a book, document, plan, drawing or computer storage medium, the person who kept that item must be presumed to have made the statement, entry, record or information unless the contrary is proved; and
 - (b) an order certified by the Chairperson of the Consumer Tribunal is *prima facie* proof of the contents of the order.
- (2) A statement, entry, record or information in or on any book, document, plan, drawing or computer storage medium is admissible in evidence as an admission of the facts in or on it by the person who appears to have made, entered, recorded or stored it unless it is proved that that person did not make, enter, record or store it.

CHAPTER 7

GENERAL PROVISIONS

53. Regulations

- (1) Subject to subsections (2) and (3), the responsible Member may make regulations regarding—
- (a) any matter which in terms of this Act is required or permitted to be prescribed;
 - (b) any form required to be used for the purposes of this Act;
 - (c) any fee payable in terms of this Act; and
 - (d) in general, any matter which is considered necessary or expedient to prescribe for achieving the purpose of this Act.
- (2) The responsible Member, after consulting with the Chairperson of the Consumer Tribunal, may make regulations regarding the practice and rules of proceedings of the Consumer Tribunal.
- (3) Any regulation made regarding fees or money to be paid must be made by the responsible Member in consultation with the Member of the Executive Council responsible for Finance.
- (4) Before making regulations in terms of subsections (1) and (2), the responsible Member must publish the proposed regulations in the Provincial Gazette for public comment.

54. Repeal of laws

The Consumer Affairs (Unfair Business Practices) Act (Eastern Cape), 1998 (Act No. 5 of 1998) is hereby repealed.

55. 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 or a member of staff in the service of the Office of the Consumer Protector 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.

56. Short title and commencement

(1) This Act is called the Eastern Cape Consumer Protection Act, 2016 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.

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