

## **SUMMARY OF THE EASTERN CAPE CONSUMER PROTECTION BILL, B7-2016**

### **1. BACKGROUND TO THE BILL**

The Bill's main objective is to provide for the realisation and protection of consumer rights in the Province of the Eastern Cape. It also seeks to:

- promote and advance the social and economic welfare of consumers in the Province;
- ensure the enjoyment and protection of the consumer rights recognised and conferred by Chapter 2 of the Consumer Protection Act, 2008 (Act No. 68 of 2008) on consumers in the Province - in particular those vulnerable consumers as contemplated in section 3(1)(b) of the Consumer Protection Act; and to
- ensure the protection of consumer rights within the Province where provided for by the National Credit Act, 2005 (Act No. 34 of 2005).

### **2. AMENDMENTS**

#### **CHAPTER 1 – INTRODUCTORY PROVISIONS**

- The Chapter seeks to define certain words and expressions. It also sets out the purposes and application of the Act. (Clauses 1 to 3.)

#### **CHAPTER 2 – REALISATION AND ENFORCEMENT OF CONSUMER RIGHTS**

**This Chapter deals with the following provisions:**

- Clause 4 deals with the realisation of consumer rights, which empowers certain persons to approach the Office of the Consumer Protector or the Consumer Tribunal where consumer rights have been infringed upon, impaired or threatened;
- Clause 5 regulates the enforcement of consumer rights through lodging a complaint with the Office of the Consumer Protector, referring a matter directly to the Consumer Tribunal or to the applicable ombudsman with jurisdiction or to another alternative dispute resolution agent. One can also file a complaint with the Consumer Commission or approach a court with jurisdiction over the matter, if all other remedies have been exhausted.;

### **CHAPTER 3 – CONSUMER PROTECTION AUTHORITY**

**This Chapter is composed of three parts (Part A – The establishment of the Office of the Consumer Protector, Part B - The functioning of the Office of the Consumer Protector & Part C – Powers in Support of Investigation. Below are some of the provisions dealt with:**

#### **Part A**

- Clause 5 establishes the Office of the Consumer Protector which will report to the MEC (Clause 5);
- Clause 6 deals with the qualifications for appointment and requires a person to have suitable experience and a university degree in either law, commerce, industry or affairs in order to be appointed by the MEC as a Consumer Protector (Clause 6).

#### **Part B**

- Some of the functions given to the Office of the Consumer include facilitating the on-going realisation of the purposes of this Act, receiving and investigating consumer complaints in accordance with the Act, and advising the MEC on aspects related to the Act when requested (Clause 8);
- Clause 8 deals with the powers of the Office of the Consumer Protector which include, amongst others, the power to initiate an investigation into suspected prohibited conduct, to issue compliance notices, etc. (Clause 8);
- Clauses 9 and 10 deal with the lodging of complaints with the Office of the Consumer Protector and the role of that Office in dealing with complaints;
- Clause 11 empowers the Head of Department to appoint any person in the employ of the provincial department as an inspector as well as requesting the relevant Minister to declare a person – who has been appointed as an investigator in terms of the Act - as a peace officer. This clause also requires inspectors to be in possession of a certificate of appointment when carrying out their duties;
- Clause 12 provides guidance to the Office of the Consumer Protector on possible steps to take once an investigation has been concluded, which include proposing an agreement of settlement, issuing a compliance notice, making an application to the Consumer Tribunal, etc.;
- Clause 13 permits parties to apply to the Consumer Tribunal for an agreement of settlement to be made a consent order;
- Clause 14 deals with the contents of Compliance Notices, period of application of such a Notice as well as consequences for failure to comply with the Notice;

- Clause 15 deals with objection to Compliance Notices and explains that this must be done within 15 business days after receiving a Notice unless the Consumer Tribunal has approved a longer time period, on good cause shown;
- Clause 16 deals with the powers of the MEC to issue policy directives to the Office of the Consumer Protector and to require an investigation.

#### **Part C**

- Clause 17 empowers the Consumer Protector to issue summons to secure the appearance of a person or the submission of any book, document or other object relating to an investigation;
- Clause 18 empowers the Consumer Protector with authority to enter and search any premises under a warrant issued by a Judge or Magistrate with jurisdiction in the matter;
- Clause 19 details the steps that may be taken by a person authorised under section 18 to enter and search premises;
- Clause 20 regulates the manner in which entry and search should be conducted, which amongst others, requires that the entry and search be done with regard for decency and order and for each person's right to dignity, freedom, security and privacy;
- Clause 21 deals with claims that information having been removed during a search is of a confidential nature, and requires such claims to be supported by a written statement explaining why such information is confidential. This claim will then be subjected to consideration by the Office of the Consumer Protector, the Consumer Tribunal or an inspector.

### **CHAPTER 4 – CONSUMER TRIBUNAL**

**This Chapter is composed of three parts (Part A – Establishment and Composition of the Consumer Tribunal, Part B – Functions and Proceedings of the Consumer Tribunal & Part C – Orders of the Consumer Tribunal. Below are some of the provisions dealt with:**

#### **Part A**

- Clause 22 establishes the Consumer Tribunal as a tribunal of record with jurisdiction throughout the Province. Its seat will be determined by the MEC;
- Members of the Tribunal will be appointed by the MEC, following a notice in the media inviting nominations of candidates. This clause also stipulates the number of Tribunal members and requisite qualifications for the Chairperson, Deputy Chairperson and additional member(s) (clause 23);

- Clause 24 deals with disqualification from appointment to the Consumer Tribunal of persons who are unrehabilitated insolvents, or who have been declared mentally unfit or disordered, etc.;
- Clauses 25 & 26 deal with the declaration of business interests and conflicts of interest. Members of the Consumer Tribunal are required to disclose their business interests in writing at the beginning of every financial year of the Tribunal. Members are also encouraged to avoid conflicts of interest by recusing themselves from proceedings, where necessary;
- Clause 27 sets the term of office of members of the Consumer Tribunal at five years with a possible once-off renewal;
- Clause 28 regulates the resignation, removal from office and the process of filling of vacancies;
- Members of the Tribunal will be paid remuneration and allowances, which will be determined by the MEC in consultation with the MEC responsible for Finance in the Province (clause 29).

#### **Part B**

- Clause 30 deals with the powers of the Consumer Tribunal and stipulates that it is responsible for adjudicating in relation to any applications made in terms of the Act, as well as allegations of prohibited conduct. The Tribunal is empowered to make appropriate costs orders as prescribed. It must also submit an annual report on its activities;
- Clause 31 deals with the functioning of the Consumer Tribunal, including how work will be shared amongst the Tribunal members;
- Clauses 32 & 33 regulate the process of referral of complaints to the Consumer Tribunal as well as the manner of proceedings before the Tribunal;
- Clause 34 deals with the summoning of witnesses and production of evidence before the Consumer Tribunal;
- Clause 35 empowers the Consumer Protector, complainant, respondent, person identified in section 4 of the Act and any other person with a material interest in the hearing, with the right to participate in proceedings before the Consumer Tribunal;
- Clause 36 empowers a member of the Consumer Tribunal presiding at a hearing, to determine any matter of procedure for that particular hearing on condition that such a determination conforms to the rules of procedure of the Tribunal;

- Clause 37 clarifies that the standard of proof is on a balance of probabilities in any proceedings before the Consumer Tribunal;
- Clause 38 affords protection to a person appearing as a witness before the Consumer Tribunal;
- Clause 39 regulates appeals and reviews. A decision of a member of the Tribunal may be referred to a full panel of the Tribunal for appeal and a decision of a full panel is also subject to a review.

#### **Part C**

- Part C mainly regulates the orders that a Consumer Tribunal may make. These include an interim relief order (clause 40), final orders which are deemed to be orders of Magistrates' Courts (clause 41), administrative fines in line with those imposed by the National Consumer Tribunal (clause 42) and costs orders (clause 43).

#### **CHAPTER 5 – OFFENCES AND PENALTIES**

- This Chapter recognises a breach of confidence (clause 44) and hindering the administration of the Act (clause 45) as offences in terms of the Act;
- Clause 46 also recognises some offences such as altering, obscuring, falsifying, removing or omitting a displayed price, labeling or trade description without authority as prohibited conduct;
- Other offences relate to the functioning of the Offices of the Consumer Protector and the Consumer Tribunal;
- Penalties for the above offences are provided for in clause 48.

#### **CHAPTER 6 – MISCELLANEOUS PROVISIONS**

- This Chapter regulates matters relating to the Delegation of Power by the MEC to the Head of Department or Consumer Protector (clause 49), vicarious liability (clause 50), limitations of bringing action (clause 51) and proof of facts (clause 52).

#### **CHAPTER 7 – GENERAL PROVISIONS**

- Chapter 7 regulates issues relating to regulations by the MEC (clause 53), repeal of The Consumer Affairs (Unfair Business Practices) Act (Eastern Cape), 1998 (Act No. 5 of 1998) (clause 54), transitional arrangements (clause 55) and the short title and commencement of the Act (clause 56).

### **3. CONCLUSION**

Members of the public are urged to comment on the Bill as it will affect them once it is passed into law. Copies of the Bill may be obtained at [www.polity.co.za](http://www.polity.co.za) or at [www.ecleg.gov.za](http://www.ecleg.gov.za) or from Mr Makabongwe Tyiwani, the Committee Coordinator responsible for the Portfolio Committee on Economic Development and Environmental Affairs who may be contacted by writing an email to [mtyiwani@ecleg.gov.za](mailto:mtyiwani@ecleg.gov.za) or at 0794966490 or Mr. S. Mhlaba who may be contacted at 082 448 1199 or [smhlaba@ecleg.gov.za](mailto:smhlaba@ecleg.gov.za).

Verbal and written comments on the Bill are acceptable. Verbal comments on the Bill may be submitted to staff of the Portfolio Committee who will be visiting various areas in the Province conducting publicity. Comments may also be sent via email at the above email address or may be faxed to 040 639 3214.

Summary prepared by:

Adv. Koleka Beja

Legal Advisor

Eastern Cape Provincial Legislature