
GENERAL NOTICE

NOTICE 418 OF 2006

DEPARTMENT OF TRADE AND INDUSTRY

CONSUMER PROTECTION BILL, 2006

I, Mandisi Mpahlwa, Minister of Trade and Industry, hereby publish the Consumer Protection Bill, 2006 for public comments.

Interested persons may submit their comments on the Bill to the following address:

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The closing date for comments is 26 May 2006

REPUBLIC OF SOUTH AFRICA**Department of Trade and Industry****BILL**

To 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, provide for improved standards of consumer information, to prohibit certain unfair marketing and business practices, to promote responsible consumer behaviour, to provide for harmonization of laws relating to the protection of consumers, to promote a consistent enforcement framework relating to consumer transactions and agreements, to establish the National Consumer Commission, to repeal the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), the Trade Practices Act, 1976 (Act No. 76 of 1976), the Sales and Service Matters Act, 1964 (Act No. 25 of 1964), the Business Names Act, 1960 (Act No. 27 of 1960), the Businesses Act, 1991 (Act No. 71 of 1991), the Price Control Act, 1964 (Act No. 25 of 1964), and Sections 2 to 13, and sections 16 to 17 of the Merchandise Marks Act, 1941 (Act No. 17 of 1941); and to make consequential amendments to various other Acts, and to provide for related incidental matters.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows

Preamble

The people of South Africa recognise –

That apartheid and other discriminatory laws of the past have burdened the nation with unacceptably high levels of poverty, illiteracy, and other forms of social and economic inequality;

That it is necessary to develop and employ innovative means to –

- (a) fulfil the rights of historically disadvantaged persons and to promote their full participation as consumers,
- (b) protect the interests of all consumers, ensure accessible, transparent, and efficient redress for consumers who are subjected to abuse or exploitation in the marketplace; and
- (c) give effect to the internationally recognised customer rights;

That recent and emerging technological changes, and trading methods, patterns and agreements have brought, and will continue to bring, new benefits, opportunities and challenges to the market for consumer goods and services within South Africa; and

That it is desirable to promote an economic environment that supports and strengthens a culture of consumer rights and responsibilities, business innovation and enhanced performance, and socially responsible use of environmental resources.

For the reasons set out above, and to give effect to the international law obligations of the Republic, the Parliament of the Republic of South Africa has enacted this Act in order to –

Promote and protect the economic interests of consumers;

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Improve access to, and the quality of, information that is necessary so that consumers are able to make informed choices according to their individual wishes and needs;

Promote sustainable and environmentally responsible consumption, and protect consumers from hazards to their health and safety;

Develop effective means of redress for consumers;

Promote and provide for consumer education, including education concerning the environmental, social and economic effects of consumer choices;

Facilitate the freedom of consumers to associate and form groups to advocate and promote their common interests; and

Promote consumer participation in decision making processes concerning the marketplace and the interests of consumers.

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Interpretation, Purpose and Application

PART A - INTERPRETATION

1. Definitions

In this Act -

“advertisement” means any direct or indirect communication transmitted by any medium, or any representation or reference written, inscribed, recorded, encoded upon, or embedded within, any medium, by means of which a person seeks to bring to the attention of all or part of the public the existence or identity of a supplier, or the existence, nature, availability, properties, advantages or uses of, conditions on, or prices at which -

(a) goods may be purchased, leased or otherwise acquired;

(b) any service is available or may be arranged;

“agreement” means an arrangement or understanding between or among two or more parties, that purports to establish a relationship in law between those parties, with respect to an actual, intended or potential transaction in the ordinary course of business ;

“alternative dispute resolution agent” means a person providing services to assist in the resolution of consumer disputes through conciliation, mediation or arbitration;

“applicable provincial consumer legislation” means legislation enacted by a province concerning consumer protection;

“apply” when used in relation to a trade description, price, notice or any similar form of information, means to emboss, impress, engrave, etch, print, or weave into, work into or onto, annex or affix to, or incorporate within;

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“Board” means the governing body of the National Consumer Commission, established in accordance with section 94;

“business” means the continuous offer to supply, and the continual supply, of any goods or services to consumers for consideration by -

- (a) any natural or juristic person
- (b) an organ of state;
- (c) an entity controlled, directed or contracted by an organ of state to offer or supply any goods or services;
- (d) a public- private partnership; or
- (e) a person required in terms of any public regulation to offer or supply those goods or services to the public;

“Cabinet” means the body of the national executive described in section 91 of the Constitution;

“Commission” means the National Consumer Commission established by section 93;

“complainant” means -

- (a) a person who intends to file or has filed a complaint with the Commission in terms of Chapter 3, or on whose behalf a complaint has been filed by another person; or
- (b) the Commission in respect of a complaint that it has initiated either directly or at the request of a provincial consumer protection authority;

“confidential information” means -

- (a) information concerning -

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- (i) a person's identity, including the person's name, date of birth, identity number, marital status and family relationships, past and current addresses and other contact details, and related matters;
- (ii) a person's education, employment, career, professional or business history, including the circumstances of termination of any employment, career, professional or business relationship, and related matters;
- (iii) a person's consumer history, including –
 - (aa) past transactions, applications for transactions, transaction histories or patterns, and related matters; and
 - (bb) applications for credit, credit agreements to which the person is or has been a party, pattern of payment or default under any such credit agreements, debt re-arrangement in terms of the National Credit Act, 2005 (Act No. 34 of 2005), incidence of enforcement actions with respect to any such credit agreement, the circumstances of termination of any such credit agreement, and related matters;
- (iv) a person's financial history, including the person's past and current income, assets and debts, and other matters within the scope of that person's financial means, prospects and obligations, as defined in section 78(3) of the National Credit Act, 2005, and related matters; and
- (b) other personal information by which a person may be identified that belongs to a person and is not generally available to or known by others;

“consideration” means anything of value given and accepted in exchange for goods or services, including -

- (a) money, property, a cheque, a token, a ticket, electronic credit, credit, debit or electronic chip, or similar object;
- (b) labour, barter or other goods or services;

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(c) loyalty credit or award, coupon, or other right to assert a claim; or

(d) any other thing, undertaking, promise, agreement or assurance,

irrespective of its apparent or intrinsic value, or whether it is transferred directly or indirectly, or involves only the supplier and consumer, or other parties in addition to the consumer and supplier;

“Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

“consumer”, depending on the context, means-

(a) a person to whom goods or services are advertised, offered, supplied, leased, sold or delivered in the course of business; or

(b) a user of such goods or a recipient or beneficiary of such services; or

(c) a person who has entered into an agreement or transaction with a supplier;

“consumer code” means a code of practice or similar document intended to safeguard or promote the interests of consumers by regulating the conduct of persons engaged in the supply of goods or services to consumers;

“consumer protection group” means an entity accredited in terms of section 83 to promote the interests or protection of consumers;

“consumer court” means a body of that name, or a consumer tribunal, established by or in terms of applicable provincial consumer legislation;

“continuous service” means the supply for consideration of a utility or service, alone or together with the supply of any goods that are essential for the utilization of that utility or service by the consumer, with the intent that, so long as the agreement remains in force, the supplier will make the service continuously available to be used, accessed or drawn upon –

(a) from time to time as determined by the consumer; and

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- (b) with any frequency or in any amount as determined, accessed, required, demanded, or drawn upon by the consumer, subject only to any total use or cost limits set out in the agreement;

“credit agreement” means an agreement that meets the criteria set out in section 8 of the National Credit Act, 2005 (Act No. 34 of 2005)

“defect” means any characteristic of a good, component of a good, or aspect of a service supplied to a consumer, that renders the good component, or service, less useful, practicable or safe than persons generally are entitled to expect, having regard to the circumstances of the transaction, subject to s. 58 (4) and (5);

“device” means any visual representation or illustration capable of being reproduced upon a surface, whether by printing or otherwise, but does not include a trade mark;

“display”, when used –

- (a) in relation to any goods, means placing those goods before the public in the ordinary course of business in a manner consistent with an open invitation to members of the public to inspect, and select, those goods for purchase by, or lease or supply to, a consumer; or
- (b) in relation to a price, mark, notice or device, means to place or publish anything in a manner that reasonably creates an association between a good or service and the price at which the supplier is willing to sell or supply it;

“distributor” means a person who supplies any good to another person who, in the ordinary course of business, promotes that product for resale to prospective consumers;

“effective date”, with reference to any particular provision of this Act, means the date on which that provision came into operation;

“electronic communication” includes communication by telephone, email, fax, sms, bluetooth, wireless computer access and any similar technology or device;

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“estimate” means the projected total price for services to be provided, and goods or components to be supplied, by a supplier;

“equality court” has the meaning set out in the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000);

“goods” includes -

- (a) any tangible object offered in the ordinary course of business for sale, lease, or supply to consumers;
- (b) any medium on which information is or may be written or encoded, and any thing written or encoded on any such medium;
- (c) an interest in land or any other immovable property; and
- (d) gas, water and electricity;

“historically disadvantaged person” means a person -

- (a) who is one of a category of natural persons who, before the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), came into operation, were disadvantageded by unfair discrimination on the basis of race;
- (b) that is an association, a majority of whose members are natural persons referred to in paragraph (a);
- (c) that is a juristic person other than an association, and natural persons referred to in paragraph (a) own and control a majority of its issued share capital or members' interest and are able to control a majority of its votes; or
- (d) that is a juristic person or association, and persons referred to in paragraph (a), (b) or (c) own and control a majority of its issued share capital or members' interest and are able to control a majority of its votes;

“importer” means a person who brings goods, or causes them to be brought, from outside the Republic into the Republic, with the intention of making them available for supply in the ordinary course of business;

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“inspector” means a person appointed as such in terms of section 101;

“intermediary” means a person who, in the ordinary course of business and for remuneration or gain, engages in the business of –

- (a) representing another person with respect to the actual or potential -
 - (i) sale or lease of any goods, property or service; or
 - (ii) supply of any service for consideration;
- (b) accepting possession of any goods or property from a person for the purpose of offering it for sale; or
- (c) offering to sell to a consumer, soliciting offers for or selling to a consumer any goods or property that belongs to a third person, or service to be supplied by a third person

but does not include an intermediary regulated in terms of other legislation.

“juristic person” includes a partnership, association or other body of persons corporate or unincorporated, and a trust if -

- (a) there are three or more individual trustees; or
- (b) the trustee is itself a juristic person;

“lease” means an agreement in the ordinary course of business, in terms of which temporary possession of any property is delivered to or at the direction of the consumer, or the right to use any such property is granted to or at the direction of the consumer;

“licence” means the authority, regardless of its specific title or form, issued to a person and in terms of which that person is authorised to conduct business;

“loyalty credit or award” means any

- (a) good, service or other benefit;

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- (b) right to a good, service or other benefit; or
- (c) point, credit, token, device or other thing which, when accumulated in sufficient quantities, entitles the holder to seek, request, or assert a claim for a good, service or other benefit

in terms of a loyalty program, irrespective of the name, nature, form or characterization assigned by that loyalty program to any such good, service or other benefit, right or thing;

“loyalty program” means any arrangement or scheme in the ordinary course of business, in terms of which a supplier of goods or services, association of such suppliers, or other person on behalf of or in association with such suppliers, offers or grants to a consumer any loyalty credit or award in connection with a transaction or an agreement;

“mark”, when used as a noun, means any device, name, signature, word, letter, numeral, shape, configuration, pattern, ornamentation, colour or container for goods or other sign capable of being represented graphically, or any combination of those things, but does not include a trade mark;

“market” when used as a verb, means to promote, sell or supply any goods or services in the ordinary course of business;

“member of the Board” means a person appointed to the Board in terms of section 95;

“membership based group” means a club, trade union, association, society, or other collectivity, whether corporate or unincorporate, of persons voluntarily associated and organised for a common purpose or purposes;

“Minister” means the member of the Cabinet responsible for consumer protection matters;

“offer to supply”, when used in relation to -

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- (a) goods, includes the exhibition or exposure of those goods for the purpose of sale, supply, exchange, lease, hire or hire-purchase; or
- (b) services, includes any notice, communication or representation that could reasonably be inferred as expressing a willingness to perform an activity for the benefit or at the direction of a consumer, or to grant a consumer access to an event, place or activity;

“official language” means a language mentioned in section 6(1) of the Constitution;

“ombud with jurisdiction”, in respect of any particular dispute arising out of an agreement or transaction between a consumer and a supplier who is, in terms of any public regulation, subject to the jurisdiction of an ‘ombud’, or a ‘statutory ombud’, means that ombud, or statutory ombud;

“organ of state” has the meaning set out in section 239 of the Constitution;

“person” includes a juristic person;

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

“prescribed” means determined, stipulated, required, authorized, permitted or otherwise regulated by a regulation made in terms of this Act;

“price”, when used in relation to –

- (a) a representation contemplated in section 27, includes any mark, device or representation that may reasonably be inferred to indicate or express a relationship between any good or service and the price at which the supplier is willing to sell or supply it; or
- (b) the consideration for any transaction, means the total amount paid or payable by the consumer to the supplier in terms of that transaction or agreement, including any amount that the supplier is required to impose, charge or collect in terms of any public regulation;

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“private supplier” means a supplier of goods or services in the ordinary course of business, other than a public supplier;

“prize” includes a reward, gift, free good or service, price reduction or concession, enhancement of quantity or quality of goods or services, or other discounted or free thing;

“producer” with respect to any particular good, means a person who, in the ordinary course of business, -

- (a) grows, nurtures, harvests, mines, generates, refines, creates or manufactures that good, or causes any of those things to be done;
- (b) imports the good for the purpose of promoting or supplying it to consumers; or
- (c) by applying a personal or business name, trade mark, trade description or similar device on or in relation to that good, has created or established a reasonable expectation that the person is a person contemplated in paragraph (a) or (b).

“prohibited conduct” means an act or omission in contravention of this Act, other than an offence in terms of this Act;

“promote” includes -

- (a) advertising, displaying, offering to supply or sell any goods or service in the ordinary course of business; and
- (b) any other conduct in the ordinary course of business that may reasonably be construed to be an inducement or attempted inducement to a person to participate in any activity;

“promotional competition” means any competition, game, scheme, arrangement, system, plan, or device for distributing prizes by lot or chance if -

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- (a) it is conducted in the ordinary course of business for the purpose of promoting a producer, distributor, supplier, or association of any such persons, or the sale of any goods or services; and
- (b) any prize offered exceeds the threshold prescribed in terms of section 42 (11);

“provincial consumer protection authority” means a body within the provincial sphere of government, designated by the responsible Member of the Executive Council of a province to have general authority to deal with consumer protection matters within that province;

“public regulation” means any national, provincial or local government legislation or subordinate legislation, or any license, tariff, directive or similar authorisation issued by a regulatory authority or pursuant to any statutory authority;

“public supplier” means a supplier in the ordinary course of business -

- (a) of any goods or services that are offered or supplied in terms of a public regulation; or
- (b) that is an organ of state, is owned or directed by an organ of state, is contracted by an organ of state to offer or supply any goods or services, or is a public-private partnership;

“Registrar” means the registrar of Companies appointed in terms of the Companies Act, 1973 (Act No. 61 of 1973);

“regulation” means a regulation made under this Act;

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

“repealed law” means an Act mentioned in section 149(3), or a public regulation made in terms of such an Act;

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

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“service” means -

- (a) an activity of any kind promoted, offered, made available or supplied in the ordinary course of business for the benefit of a consumer; or
- (b) access, or a right of access promoted, offered or made available in the ordinary course of business to -
 - (i) an event or activity;
 - (ii) any premises in which an event is to occur or an activity may be engaged in; or
 - (iii) any equipment in or on which an activity may occur

irrespective whether the person promoting, offering or providing that access participates in, supervises, or engages directly or indirectly in the event or activity;

“service provider” means a person who promotes, supplies or offers to supply a service in the ordinary course of business;

“sms” means a short message service provided through a telecommunication system;

“small business” has the meaning set out in the National Small Business Act, 1996 (Act No. 102 of 1996);

“solicit” means to approach a person at home or at the person’s place of business, in person or by electronic communication, for the direct or indirect purpose of -

- (a) promoting or offering to supply, in the ordinary course of business, any goods or services to the person; or
- (b) requesting the person to make a donation of any kind for any reason.

“solicit in person” means to solicit other than by electronic communication;

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“special-order goods” means goods that a supplier expressly or impliedly was required or expected to procure, create or alter specifically to satisfy the consumer’s requirements;

“supplier” means a person who in the ordinary course of business promotes, makes available, offers to supply, agrees to supply, or supplies any goods or services;

“supply”, when used as a verb -

- (a) in relation to goods, includes sell, lease, exchange, hire, or hire-purchase; or
- (b) in relation to services, means to perform an activity or to grant access to an event or a place or an activity;

“trade description” means

- (a) any description, statement or other direct or indirect indication, other than a trade mark, as to -
 - (i) the number, quantity, measure, weight or gauge of any goods;
 - (ii) the name of the manufacturer or producer of any goods;
 - (iii) the ingredients of which any goods consist, or material of which any goods are made;
 - (iv) the place or country of origin of any goods;
 - (v) the mode of manufacturing or producing any goods; or
 - (vi) any goods being the subject of any patent, privilege or copyright; or
- (b) any figure, work or mark, other than a trade mark, that, according to the custom of the trade, is commonly understood to be an indication of any matter contemplated in paragraph (a).

“trade mark” means -

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- (c) a trade mark as defined in section 2(1) of the Trade Marks Act, 1993 (Act No. 194 of 1993); or
- (d) a well-known trade mark as contemplated in section 35 of the Trade Marks Act, 1993.

“transaction” means any interaction, or agreement to interact, in the ordinary course of business, between a supplier and a consumer concerning the supply or potential supply of any goods or services in an exchange for consideration, including any such supply or potential supply of goods or services in an exchange for consideration in terms of any public regulation;

“Tribunal” means the National Consumer Tribunal established by section 26 of the National Credit Act 2005 (Act No. 34 of 2005);

“this Act” includes the regulations;

“trust” means a legal relationship between a person who holds trust property, and the person or persons for whose benefit that trust property is held;

“trustee” means a person who assumes or is assigned control of another person’s property by operation of law, under legal process or under the terms of a security agreement;

“trust property” means anything of value held by one person in trust for another person; and

“used goods” means any goods that have been previously supplied to a consumer and not returned to the supplier in terms of a right of rescission or cancellation; and

“utility” means the supply to consumers generally of an essential –

- (a) good, such as electricity, water or gas; or
- (b) service, such as waste removal, or access to sewage lines, telecommunication networks, or any transportation infrastructure.

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2. Interpretation

- (1) This Act must be interpreted in a manner that -
 - (a) gives effect to the purposes set out in section 3; and
 - (b) promotes the achievement of the objectives of section 4.
- (2) A person, court or Tribunal interpreting or applying this Act may consider appropriate -
 - (a) foreign and international law; and
 - (b) international conventions, declarations or protocols relating to consumer protection.
- (3) If a provision of this Act requires a document to be signed or initialled by a party to a transaction, that signing or initialling may be effected by use of -
 - (a) an advanced electronic signature, as defined in the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002); or
 - (b) an electronic signature, as defined in the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002) provided that the supplier must take reasonable measures to prevent the use of the consumer's electronic signature for any purpose other than the signing or initialling of the particular document that the consumer intended to sign or initial.
- (4) Despite the periods of time set out in section 6 (1), each successive threshold determined by the Minister in terms of that section continues in effect until a subsequent threshold in terms of that section takes effect.
- (5) When a particular number of business days is provided for between the happening of one event and another, the number of days must be calculated by -
 - (b) excluding the day on which the first such event occurs;
 - (c) including the day on or by which the second event is to occur; and

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- (d) excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in paragraphs (a) and (b) respectively.

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PART B – PURPOSE, POLICY AND APPLICATION OF THE ACT

3. Purpose and policy of Act

- (1) The purpose of this Act is to promote and advance the social and economic welfare of consumers in South Africa by -
 - (a) establishing a legal framework for the achievement and maintenance of a consumer market that is fair, accessible, efficient, sustainable and responsible;
 - (b) promoting fair business practices;
 - (c) protecting consumers from -
 - (i) unfair, unreasonable or otherwise improper trade practices; and
 - (ii) deceptive, misleading, unfair or fraudulent conduct;
 - (d) promoting social, economic and environmental responsibility in consumer markets;
 - (e) improving consumer awareness and information and encouraging responsible and informed consumer choice and behaviour;
 - (f) promoting consumer confidence and empowerment, and the development of a culture of consumer responsibility through individual and group education, vigilance, advocacy and activism;
 - (g) providing for a consistent, accessible and efficient system of consensual resolution of disputes arising from consumer transactions; and
 - (h) providing for an accessible, consistent, harmonized, effective and efficient system of redress for consumers.
- (2) The purposes, policies and provisions of this Act -
 - (a) apply equally to all consumers in South Africa in respect of a transaction to which this Act is applicable in terms of section 5; and

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- (b) as contemplated in section 9(3) of the Constitution, are intended in particular to protect and advance the interests of, and better assure the realization and enjoyment of consumer rights, by -
- (i) historically disadvantaged persons;
 - (ii) low income persons and communities;
 - (iii) remote, isolated or low density populations and communities;
 - (iv) minors, seniors and other similarly vulnerable consumers; and
 - (v) consumers whose ability to read and comprehend advertisements, agreements, marks, instructions, labels, warnings or notices is limited by reason of low literacy, vision impairment, or limited fluency in the language in which any such text is produced, published or presented.

4. Promotion of consumer policy and realization of consumer rights

- (1) The National Consumer Commission, in addition to its responsibilities set out elsewhere in this Act, is responsible to take reasonable and practical measures, in a manner consistent with the principles and purposes of this Act, to -
- (a) promote and support the development, where the need exists, of a fair, transparent, sustainable, responsible, efficient, effective and accessible consumer market and industry generally, and in particular to meet the needs of persons contemplated in section 3 (2)(b);
 - (b) monitor and report each year to the Minister on the following matters:
 - (i) the availability of goods and services to persons contemplated in section 3 (2)(b), including price and market conditions, conduct and trends and the performance of public and private suppliers in ensuring the realization and full enjoyment of their consumer rights by persons contemplated in section 3(2)(b);

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- (ii) access to the consumer market by small businesses or persons contemplated in section 3 (2)(b); and
 - (iii) any other matter relating to the consumer market; and
 - (c) conduct research and propose policies to the Minister in relation to any matter affecting the consumer market, including but not limited to proposals for legislative, regulatory or policy initiatives that would improve the realization and full enjoyment of their consumer rights by persons contemplated in section 3(2)(b).
- (2) Any of the following persons may, in the manner provided in this Act, approach a court, the Tribunal, or the National Consumer Commission alleging that a consumer's rights in terms of this Act have been infringed, impaired or threatened, or that prohibited conduct has occurred or is occurring:
- (a) A person acting on their own behalf;
 - (b) A duly authorised person acting on behalf of another person who cannot act in their own name;
 - (c) A person acting as a member of, or in the interest of, a group or class of persons;
 - (d) A person acting in the public interest; and
 - (e) An association acting in the interest of its members.
- (3) In any matter brought before the National Consumer Tribunal or a court in terms of this Act, the Tribunal or Court, as the case may be -
- (a) must promote the spirit, purpose and objects of this Act;
 - (b) must develop the common law as necessary to improve the realization and enjoyment of consumer rights generally, and in particular by persons contemplated in section 3 (2)(b);

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- (c) if any provision of this Act, read in its context, can be reasonably construed to have more than one meaning, must prefer the meaning that best promotes the spirit and purpose of this Act, and will best improve the realization and enjoyment of consumer rights generally, and in particular by persons contemplated in section 3 (2)(b);
- (d) must strictly interpret any document prepared or published by or on behalf of a supplier or required to be produced by a supplier, to the benefit of the consumer –
- (i) so that any ambiguity that allows for more than one reasonable interpretation of a part of such a document is resolved to the benefit of the consumer; and
- (ii) so that any restriction, limitation, exclusion or deprivation of a consumer's legal rights set out in such a document or notice is limited to the extent that a reasonable person would ordinarily contemplate or expect, having regard to the content of the document, the manner and form in which it was prepared and presented, and the circumstances of the transaction or agreement;
- (e) must make appropriate orders to give practical effect to the consumers' right of access to redress, including, but not limited to –
- (i) any order expressly provided for in this Act; and
- (ii) any innovative order that better advances, protects, promotes and assures the realization by consumers of their rights in terms of this Act.
- (4) In any dealings with a consumer or potential consumer in the ordinary course of business, a person must not –
- (a) engage in any conduct contrary to, or calculated to frustrate or defeat the purpose and policy of this Act;
- (b) engage in any conduct that is unconscionable, misleading or deceptive, or that is reasonably likely to mislead or deceive; or

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- (c) make any representation about a supplier or any goods or services, or a related matter, unless the person has reasonable grounds for believing that the representation is true.

5. Application of Act

- (1) Subject to subsections (2) to (4) this Act applies to every –
 - (a) transaction occurring within, or having an effect within, the Republic between parties dealing at arm's length, as described in subsection (3), except –
 - (i) a transaction concerning services to be supplied under an employment contract; or
 - (ii) a credit agreement, as defined in the National Credit Act, 2005 (Act No. 34 of 2005), irrespective whether that Act applies to that credit agreement;
 - (b) offer or agreement to enter into a transaction contemplated in paragraph (a);
 - (c) advertisement with respect to goods or services if those goods or services reasonably could be the subject of a transaction contemplated in paragraph (a) or an agreement contemplated in paragraph (b); and
 - (d) the production, distribution, promotion, sale, or supply of goods, or similar incidental activities relating to a transaction contemplated in paragraph (a) or an agreement contemplated in paragraph (b).
- (2) Despite subsection (1), if the consumer in respect of any transaction, agreement or a category or series of potential transactions or agreement is –
 - (a) the state, or an organ of state; or
 - (b) a juristic person, other than a juristic person which is a franchisee or potential franchisee of the supplier in respect of that transaction, if -

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- (i) the asset value or annual turnover of that juristic person, combined with the asset value or turnover of any related person, at the time of the transaction equalled or exceeded the threshold value determined by the Minister in terms of section 6(1)(a); or
- (ii) the value of the particular transaction equalled or exceeded the threshold value determined by the Minister in terms of section 6(1)(b).

only Part A of Chapter 2, and section 70, together with any provisions relating to the interpretation, application or enforcement of those provisions, apply to that agreement or transaction.

- (3) Despite subsection (1), Section 28 and 29 do not apply in respect of the marketing of used goods.
- (4) For greater certainty in applying subsections (1) and (2) –
 - (a) the asset value or annual turnover of a juristic person at the time of a transaction, or the time an agreement is made, is the value stated as such by that juristic person at that time;
 - (b) a juristic person is related to another juristic person if –
 - (i) one of them has direct or indirect control over the whole or part of the business of the other; or
 - (ii) a person has direct or indirect control over both of them; and
 - (c) in any of the following arrangements, the parties are not dealing at arm's length:
 - (i) a transaction between a juristic person, as consumer, and a person who has a controlling interest in that juristic person, as supplier;
 - (ii) a transaction between a juristic person, as supplier, and a person who has a controlling interest in that juristic person, as consumer;

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- (iii) a transaction between natural persons who are in a familial relationship and -
 - (aa) are co-dependent on each other; or
 - (bb) one is dependent upon the other; and
 - (iv) any other arrangement -
 - (aa) in which the parties are not independent of one another and consequently either of them does not necessarily strive to obtain the utmost possible advantage out of the transaction; or
 - (bb) that is of a type that has been held in law to be between parties who are not dealing at arm's length.
- (5) The application of this Act in terms of subsections (1) and (2) extends to a matter irrespective whether the supplier -
- (a) resides or has its principal office within or outside the Republic;
 - (b) operates on a for-profit basis or otherwise; or
 - (c) is an entity contemplated in the definition of "public supplier" as set out in section 1.
- (6) The application of this Act to any transaction applies equally to all goods and services involved in that transaction, irrespective whether any of those goods or services are offered or supplied in conjunction with other goods or services, or separate from any other goods or services.
- (7) The supply of any goods or services by a membership based group to any of its members is a transaction for all purposes of this Act irrespective whether the members are charged a price for any particular supply of those goods or services, unless -
- (a) there is no charge or economic contribution demanded or expected in order to become or remain a member of the membership based group;

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- (b) the goods or services are provided directly by the members to one another for their mutual benefit; or
 - (c) the membership based group, or the supply of goods or services, are of a prescribed category that is exempted from the application of the Act.
- (8) For all purposes of this Act –
- (a) a solicitation of offers to enter into a franchise agreement;
 - (b) an offer by a potential franchisor to enter into such an agreement with a potential franchisee;
 - (c) a franchise agreement or agreement supplementary to a franchise agreement; and
 - (d) any supply of goods or services in terms of such an agreement by the franchisor as supplier, to the franchisee, as consumer,
- is a transaction at arm's length within the meaning of this Act.
- (9) If this Act applies to a transaction -
- (a) it continues to apply to that transaction even if a party to it ceases to reside or have its principal office within the Republic; and
 - (b) it applies in relation to every transaction, act or omission under that transaction, whether or not that transaction, act or omission occurs within or outside the Republic.

6. Threshold determination

- (1) On the effective date, and at intervals of not more than five years, the Minister, by notice in the Gazette, must determine -
- (a) a monetary asset value or annual turnover threshold, of not more than R 1 000 000, for the purpose of section 5(2)(b)(i); and

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- (b) a monetary threshold applicable to the value of transactions, for the purposes section 5(2)(b)(ii).
- (2) The initial thresholds determined by the Minister in terms of this section take effect on the effective date, and each subsequent threshold takes effect six months after the date on which it is published in the Gazette.

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Chapter 2**Fundamental Consumer Rights****PART A – RIGHT TO EQUAL ACCESS TO THE CONSUMER MARKET****7. Protection against discriminatory market targeting**

A supplier of goods or services must not, in an unfairly discriminatory manner, or with an unfair discriminatory purpose or effect, offer or supply goods or services, or enter into an agreement to supply goods or services, by targeting particular communities, districts, populations or market segments, for -

- (a) unreasonably exclusive access to, exclusion from, or differential priority of access to, goods or services;
- (b) the supply of unreasonably different qualities of goods or services; or
- (c) unreasonable differential pricing of goods or services.

8. Protection against discrimination in consumer transactions

- (1) A supplier must not direct or indirectly treat any person differently than any other, in a manner that constitutes unfair discrimination on one or more grounds set out in section 9 (3) of the Constitution, or one or more grounds set out in Chapter 2 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), when –

- (a) assessing the ability of the person to pay the cost, or otherwise meet the obligations, of a proposed transaction or agreement;
- (b) deciding whether to refuse a request to enter into a transaction or agreement, or to offer or enter into a transaction or agreement;

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- (c) determining any aspect of the cost of a transaction or agreement to the consumer;
 - (d) interacting with the consumer or prospective consumer -
 - (i) in the supplier's place of business, or
 - (ii) in the course of displaying or demonstrating any goods, testing or fitting any goods, or negotiating the terms of a transaction or agreement; or
 - (e) selecting, preparing, packaging or delivering any goods to the consumer, or providing any services to the consumer;
 - (f) proposing or agreeing the terms and conditions of a transaction or agreement;
 - (g) assessing or requiring compliance by the person with the terms of a transaction or agreement;
 - (h) exercising any right of the supplier under a transaction or agreement, this Act or applicable provincial consumer legislation;
 - (i) determining whether to continue, enforce, seek judgment in respect of, or terminate a transaction or agreement; or
 - (j) determining whether to report, or reporting, any consumer information or record.
- (2) Despite subsection (1)(b), a supplier has the right to decline a request to supply, or to refuse to supply, particular goods or services to a prospective consumer if -
- (a) the supplier is a private supplier, and is -
 - (i) a natural person, partnership or close corporation; or
 - (ii) a juristic person or association formed for purposes that are predominantly concerned with matters of conscience, religion, thought, belief or opinion;

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- (b) having regard to the nature of the goods or services, and the use to which the prospective consumer intends to apply those goods or services, it would unreasonably infringe the supplier's right to exercise freedom of conscience, religion, thought, belief or opinion, in terms of section 15(1) of the Constitution, to be required to supply those goods or services to that prospective consumer; and
 - (c) the prospective consumer has reasonable access to an alternative supplier of similar or comparable goods or services.
- (3) Subsections (1) and (2) apply in respect of a consumer or prospective consumer that is an association or juristic person, to prohibit unfair discrimination against that association or juristic person based on the characteristics of any natural person who is a member, associate, owner, manager, employee, client or customer of that association or juristic person.

9. Fair or reasonable grounds for differential treatment of consumers

- (1) It is not unfair discrimination on the basis of age to -
- (a) refuse to supply or provide access to any particular goods or services to a minor, or to require the consent of a parent, guardian or other responsible adult before supplying or providing access to any particular goods or services to an unemancipated minor -
 - (i) in accordance with any public regulation; or
 - (ii) as a reasonable precaution to protect the health, welfare or safety of a minor;
 - (b) refuse on reasonable grounds to -
 - (i) enter into an agreement with an unemancipated minor for the supply of any goods or services; or
 - (ii) continue or renew an agreement contemplated in sub-paragraph (i);

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- (c) reasonably designate any facility or service for the exclusive use of -
 - (i) minors generally;
 - (ii) minors who are above or below a specified age, or between specified ages; or
 - (iii) adults who have attained a specified age of at least 55 years; or
 - (d) advertise, offer or agree to supply, or supply, any goods or services at a discounted price solely on the basis that the consumer or prospective consumer -
 - (i) is a minor who has not yet attained a specified age; or
 - (ii) is an adult who has attained a specified age of at least 55 years.
 - (2) It is not unfair discrimination on the basis of gender or sex to reasonably -
 - (a) provide and designate separate but substantially equivalent facilities for the exclusive use of each gender; or
 - (b) offer to supply or provide access to a facility exclusively to either gender.

10. Management of pricing and risk must not be discriminatory

In managing, underwriting or pricing any risk-based goods or services, or in pricing any other goods or services within a particular market, a supplier must not use any scoring or other evaluative mechanism or model that is unreasonably founded or structured upon a statistical or other analysis in which the primary or predominant basis of categorization, differentiation or assessment is a ground of unfair discrimination prohibited in section 9 (3) of the Constitution.

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11. Equality Court jurisdiction over this Part

- (1) In respect of an alleged contravention of this Part, a consumer protection group or any person contemplated in section 20(1) of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), may -
 - (a) institute proceedings before an equality court in terms of Chapter 4 of that Act; or
 - (b) file a complaint with the Commission, which must refer the complaint to the Equality Court, if the complaint appears to be valid.
- (2) In any proceedings contemplated in this Part -
 - (a) there is a presumption that any differential treatment contemplated in section 8 (1) is unfair discrimination unless it is established that the discrimination is fair; and
 - (b) a court may draw an inference that a supplier has discriminated unfairly if -
 - (i) the supplier has made a decision contemplated in section 8 (1)(a) through (j), with respect to that consumer or prospective consumer in a manner that constituted differential treatment compared to that accorded to another consumer;
 - (ii) in the circumstances, the differential treatment appears to be based on a prohibited ground of discrimination contemplated in section 8 (1); and
 - (iii) the supplier has refused or failed to offer a alternative reasonable and justifiable explanation for the difference in treatment.

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PART B – RIGHT TO CONFIDENTIALITY AND PRIVACY

12. Right to confidential treatment

- (1) Any person who, in terms of this Act, receives, compiles, retains or reports any confidential information pertaining to a consumer or prospective consumer must protect the confidentiality of that information, and in particular, must-
 - (a) use that information only for a purpose permitted or required in terms of this Act, other national legislation, or applicable provincial consumer legislation; and
 - (b) report or release that information only to the consumer or prospective consumer, or to another person -
 - (i) to the extent required by or in terms of this Act, other national legislation, or applicable provincial consumer legislation; or
 - (ii) as permitted or directed by –
 - (aa) the written consent or instructions of the consumer or prospective consumer; or
 - (bb) an order of a court or the Tribunal.
- (2) A person referred to in subsection (1) must report or release confidential information contemplated in subsection (1) in accordance with any written direction from the consumer or prospective consumer.
- (3) It is an offence for any person to refuse to comply with a compliance notice issued in terms of this Act, and in respect of this section.

13. Use of consumer information for marketing or related purposes

- (1) A supplier must not use, direct or permit any other person to use, or supply to another person to use, any confidential information pertaining to a consumer or prospective

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consumer for, or in relation to, any promotional purpose, or direct mass distribution of messages, whether printed or by electronic communication, unless the consumer has consented to such a use in the manner contemplated in subsection (2).

- (2) When entering into any transaction or agreement for the supply of any goods or services, the supplier may present to the consumer a written statement in the prescribed form -
 - (a) setting out the consumer's rights in terms of this section; and
 - (b) inviting the consumer to permit the supplier to use the consumer's information contemplated in subsection (1) in any
 - (i) direct promotional activity that may be conducted by or on behalf of the supplier;
 - (ii) direct mass distribution of messages by print, or electronic communication; or
 - (iii) marketing or customer list that may be sold or distributed by the supplier to another person.
- (3) A supplier who requests and receives any consents from consumers in terms of subsection (2) must maintain a register in the prescribed manner and form of all such consents granted by consumers.
- (4) A person must not initiate, sponsor, promote or knowingly participate in any activity, scheme or communication that is primarily designed for the purpose of accumulating confidential information or other identifying information concerning consumers, either surreptitiously or without their express consent.

14. Right to restrict unwanted telecommunication access to consumer

- (1) The right of every person to privacy includes the right to refuse to accept, or pre-emptively block, any electronic communication to that person if the electronic

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communication is primarily for the purpose of fundraising or marketing any goods or services.

- (2) To facilitate the realization of each consumer's right to privacy, and to enable consumers to efficiently protect themselves against the unwanted and intrusive activities contemplated in subsection (1), the National Consumer Commission may establish a registry in which any person may register a pre-emptive block, either generally or for specific purposes, against any electronic communication that is primarily for the purpose of fundraising or marketing any goods or services.
- (3) A person authorizing, directing or conducting any activity contemplated in this section must not direct or permit any person associated with that activity to direct or deliver any electronic communication to, or otherwise contact, a person who has registered a relevant pre-emptive block in terms of subsection (2).

15. Regulation of time for contacting consumers

- (1) A supplier must not initiate any direct personal contact with a consumer for any promotional purpose during a prohibited period prescribed in terms of this section, except to the extent that the consumer has expressly or implicitly requested or agreed otherwise.
- (2) In order to protect the privacy of consumers, the Minister may prescribe specific days, dates, public holidays, or times of days during which it is prohibited for a supplier to initiate direct personal contact with a consumer or prospective consumer for any promotional purpose.

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PART C – CONSUMER’S RIGHT TO CHOOSE**16. Consumer’s right to select suppliers and products**

- (1) A supplier must not require, as a condition of offering to supply, or supplying, any goods or services, or as a condition of entering into an agreement or transaction, that the consumer -
- (a) purchase any other goods or services from that supplier;
 - (b) enter into an additional agreement or transaction with the same or another supplier; or
 - (c) agree to purchase any goods or services from a designated third party,
- unless the supplier can show financial or other efficiency benefits to the consumer.
- (2) Without limiting the generality of subsection (1), a supplier requires a consumer to purchase additional goods or services if the supplier –
- (a) supplies the primary goods and any additional goods in a common package, and offers them for supply at a single price;
 - (b) attaches to or inserts within, or in the packaging of, any primary goods a promotional coupon, credit slip, voucher or similar device to be used as full consideration for the purchase of any additional goods or services; or
 - (c) installs within or encodes upon the primary goods, or any component of them, any additional goods

but does not alternatively offer them for supply separately and at individual prices.

17. Consumer’s right to authorize services

- (1) This section applies to any transaction or agreement in terms of which a service provider supplies a repair or maintenance service to, or supplies or installs any

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replacement parts or components in, any property belonging to or in the control of the consumer, if –

- (a) the service provider has or takes possession of that property for the purpose contemplated in this subsection; or
 - (b) in any other case, the consumer requests an estimate before any service goods are supplied.
- (2) A service provider to whom this section applies must not charge a consumer for the supply of any goods or services contemplated in subsection (1) unless -
 - (a) the supplier or service provider has given the consumer an estimate that satisfies the prescribed requirements, and the consumer has subsequently authorized the work; or
 - (b) the consumer, in writing, has -
 - (i) declined the offer of an estimate, and authorised the work; or
 - (ii) pre-authorised any charges up to a specified maximum, and the amount charged does not exceed that maximum.
- (3) A service provider must not charge a consumer for -
 - (a) an estimate required in terms of subsection (1)(a), unless the service provider has disclosed the price for preparing that estimate, and the consumer has approved it; or
 - (b) any diagnostic work, disassembly or re-assembly required in order to prepare an estimate, or for any damage to or loss of material or parts in the course of preparing an estimate, in addition to any estimate charge imposed in terms of paragraph (a).
- (4) The Minister, by regulation, may exempt from this section any transactions or services referred to in subsection (1) that are below a prescribe threshold.

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Section 18-r19

18. Consumer's right to choose or examine goods

- (1) If any goods are displayed in, or sold from, open stock, the consumer has the right to select or reject any particular item from that stock.
- (2) If the consumer has agreed to purchase goods on the basis of a description or sample of the goods it is an implied condition of the agreement that -
 - (a) the goods delivered to the consumer must correspond with the description or sample; and
 - (b) the goods must be free from any defect that would not be apparent from the description or on reasonable examination of the sample.
- (3) If the sale or lease is by sample, as well as by description, it is not sufficient that the bulk of the goods correspond with the sample if the goods do not also correspond with the description.
- (4) When the supplier tenders delivery of any goods to a consumer, the supplier must, on request, allow the consumer a reasonable opportunity to examine the goods for the purpose of ascertaining whether they are in conformity with the transaction.
- (5) If goods are delivered to the consumer that the consumer has not previously examined, the consumer is deemed not to have accepted them until the consumer has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the transaction.

19. Consumer's rights with respect to delivery of goods or supply of service

- (1) Unless otherwise expressly provided or anticipated in an agreement, it is an implied condition of every transaction for the supply of goods that -
 - (a) the supplier is responsible to deliver the goods to the consumer -
 - (i) within a reasonable time;
 - (ii) at the agreed place of delivery; and

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- (iii) at the cost and risk of the supplier;
 - (b) the agreed place of delivery is the supplier's place of business, if the supplier has one, and if not, the supplier's residence; and
 - (c) the goods remain at the supplier's risk until the consumer has accepted delivery.
- (2) The consumer has the right to require -
- (a) delivery of any goods at the date, time and place of the consumer's choice, but the supplier may require the consumer to pay the costs of delivery at any location other than as contemplated in subsection (1); or
 - (b) performance of any service at the time agreed with the supplier.
- (3) If an agreement does not provide a specific time for delivery of any goods or supply of any service, the supplier must not require that the consumer accept delivery or performance of the services at an unreasonable time.

20. Consumer's acceptance of goods or services

- (1) The consumer is deemed to have accepted any goods when -
- (a) the consumer expressly or implicitly communicates to the supplier that the consumer has accepted them;
 - (b) the goods have been delivered to the consumer, and the consumer does any act in relation to them that is inconsistent with the supplier's ownership of the goods; or
 - (c) after the lapse of a reasonable time, the consumer retains the goods without intimating to the supplier that the consumer has rejected them.
- (2) If the supplier delivers to the consumer a larger quantity of goods than the consumer agreed to buy, the consumer may accept the goods, and

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- (a) pay for the agreed quantity at the agreed rate; and
 - (b) treat the excess quantity as unsolicited goods in accordance with section 21.
- (3) If the supplier delivers to the consumer some of the goods the supplier agreed to sell mixed with goods of a different description not contemplated in the agreement, the consumer may
- (a) accept the goods that are in accordance with the agreement and reject the rest, or
 - (b) reject the whole.

21. Unsolicited goods or services

- (1) A consumer is not required to pay a supplier for any goods or services supplied to the consumer unless the consumer -
- (a) has implicitly requested the supplier to supply those particular goods or services by tendering payment for them, or by other conduct that could reasonably lead the supplier to believe that the consumer has requested the supplier to supply those particular goods or services;
 - (b) has expressly requested the supplier to supply those particular goods or services before they are supplied to the consumer; or
 - (c) is a party to an agreement with the supplier in terms of which the supplier has undertaken to supply goods or services of that particular class from time to time to the consumer without further approval or specific request.
- (2) If a consumer is a party to an agreement contemplated in subsection (1)(c) and, during the course of that agreement, the supplier introduces goods or services that are materially different from and in substitution for the goods or services previously supplied, the new goods or services must be regarded as being unsolicited from the time of the material change, unless the consumer has expressly consented to the material change.

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- (3) If a consumer receives any unsolicited goods from a supplier, the consumer –
- (a) may
 - (i) retain the goods without payment, subject to paragraph (b)(ii); or
 - (ii) return the goods to the supplier at the supplier's risk and expense; and
 - (b) is not liable for any -
 - (i) loss or damage to those goods while they are in transit, or at any time after they are received by the consumer, whether or not they remain in the consumer's possession; or
 - (ii) use or depletion of, or damage to those goods at any time more than 10 business days after the consumer receives the goods, unless during that time, the supplier has -
 - (aa) notified the consumer that the goods were delivered to the consumer in error, and
 - (bb) has arranged to recover them, at the suppliers risk and expense.
- (4) If a consumer retains any unsolicited goods, and the supplier does not give notice, or recover the goods, as contemplated in subsection (3)(b)(ii), the property in those goods passes unconditionally to the consumer.
- (5) A person must not demand or assert any right to, or attempt to collect, any payment from a consumer in respect of any charge relating to unsolicited goods delivered, or unsolicited services supplied to or for the benefit of, that consumer.
- (6) If a consumer has made any payment to a supplier in respect of any charge relating to unsolicited goods or services the consumer is entitled to recover that amount, with interest from the date on which it was paid to the supplier, in accordance with the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975).

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Section 22

22. Right of consumer's estate to choose whether to uphold agreement

- (1) If a consumer dies after entering into an agreement for the supply of any goods or services, but before the delivery of those goods or the supply of those services, the administrator of the consumer's estate may give notice to the supplier –
 - (a) requiring delivery of the goods or supply of the services, in accordance with the agreement; or
 - (b) terminating the agreement as from the death of the consumer, subject to subsections (2) to (4).
- (2) Upon the death of a consumer as contemplated in subsection (1), any deposit paid by the consumer, and held by the supplier in trust in terms of section 74, remains in trust for the benefit of the consumer's estate, and remains subject to the provisions of section 74.
- (3) If an agreement that has been terminated in terms of subsection (1)(b) contemplated the supply of any special-order goods, after receiving notice of the termination, the supplier –
 - (a) must not order, procure or make anything not ordered, procured or made, and must see to the diligent completion of anything that had been ordered, procured or begun to be made;
 - (b) is entitled to reimbursement for any costs for such procurement or work, on the terms contemplated in the agreement; and
 - (c) upon acquisition or completion of those special-order goods, holds them in trust for the benefit of the consumer's estate, subject to further direction by the administrator of that estate.
- (4) This section does not apply in respect of any agreement between the consumer and a supplier of funeral or burial services.

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Section 23

23. Consumer's right to cancel reservation

- (1) A consumer has the right to cancel any advance booking or reservation for a service to be supplied, subject to subsections (2) and (3).
- (2) A supplier who makes a commitment or accepts a reservation to supply goods or services on a later date -
 - (a) may require payment of a deposit in advance, not exceeding the prescribed amount or prescribed percentage of the cost of the goods or services that have been reserved; and
 - (b) may impose a reasonable charge for cancellation of the order or reservation.
- (3) For the purposes of this section, a cancellation charge is unreasonable if it exceeds a fair amount in the circumstances, having regard to -
 - (a) the nature of the service that was reserved or booked;
 - (b) the length of notice of cancellation provided by the consumer; and
 - (c) the reasonable potential for the service provider, acting diligently, to find an alternative consumer between the time of receiving the notice, and the time of the cancelled reservation.
- (4) If a consumer is unable to carry out a reservation or advance booking because the consumer has died, the supplier -
 - (a) may not impose any cancellation fee in respect of the reservation or booking; and
 - (b) must refund to the administrator of the consumer's estate any deposit paid by the consumer in respect of the reservation or booking.
- (5) Section 22(3), read with the changes required by the context, applies in respect of a cancellation in terms of this section.

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24. Consumer's right to rescind or cancel transaction or agreement

- (1) The provisions of this section are in addition to and not in substitution for any right to return goods and receive a refund that may otherwise exist in law between a supplier and consumer.
- (2) A consumer may rescind a transaction or an agreement or renewal of an agreement –
 - (a) within 10 business days after delivery of goods to be supplied in terms of the agreement, if –
 - (i) the agreement or transaction arises as a result of –
 - (aa) direct, distance or electronic marketing by the supplier as contemplated in sections 38 or 39, and contemplates the delivery of goods to the consumer; or –
 - (ii) any other marketing in circumstances in which the consumer is unable to choose or examine goods as contemplated in section 18;
 - (b) within 5 business days after entering into the agreement or transaction if the agreement –
 - (i) arises as a result of direct, distance or electronic marketing by the supplier as contemplated in sections 38 or 39, but does not contemplate the delivery of goods to the consumer; or
 - (ii) concerns the purchase of a time-share interest.
- (3) At any time, by giving one month notice to the supplier or fund-raiser concerned, a consumer may cancel without penalty an agreement –
 - (a) for the supply of a continuous service, other than an agreement contemplated in section 46;
 - (b) to purchase any goods or services on a periodic recurring basis by subscription; or

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- (c) to make a donation on a periodic recurring basis.
- (4) Despite the time limits set out in subsection (2), a consumer may rescind a transaction or agreement as contemplated in that subsection within 1 year after the transaction or agreement if the supplier -
 - (a) was required to be licensed or registered in terms of any public regulation, and was not so licensed or registered; or
 - (b) contravened any provision of this Act in respect of the transaction.
- (5) The expense and risk of return is borne by -
 - (a) the supplier if goods are unacceptable;
 - (b) otherwise by the consumer.
- (6) A supplier -
 - (c) must return any payment received from a consumer within 5 business days after receiving notice of the rescission of a transaction in terms of this section or an agreement or renewal of an agreement; and
 - (d) must not attempt to collect any payment in terms of a rescinded donation or transaction or an agreement or renewal of an agreement.
- (7) This section does not apply with respect to -
 - (e) an agreement contemplated in section 46, or
 - (f) an agreement or transaction in terms of which any goods have been delivered to the consumer, if -
 - (i) any public regulation prohibits the return of those goods to a supplier once they have been supplied to, or at the direction of, a consumer; or
 - (ii) after having been supplied to, or at the direction of, the consumer, the goods have been -

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- (aa) partially or entirely eaten, consumed, depleted or destroyed, unless the consumer was reasonably unable to determine that the goods were unfit for the intended purpose without partially eating, consuming, depleting or destroying them; or
- (bb) partially or entirely disassembled, physically altered, or affixed, attached, joined or added to, blended or combined with, or embedded within, other goods or property.

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Section 25-r26

PART D – RIGHT TO DISCLOSURE AND INFORMATION**25. Identification of supplier**

- (1) A person must not carry on business, advertise, promote, offer to supply or supply any goods or services, or enter into a transaction or agreement with a consumer under any name except –
 - (a) the person's name, as –
 - (i) recorded in an identity document or any other recognised identification document, in the case of an individual; or
 - (ii) registered in terms of a public regulation, in the case of a juristic person; or
 - (b) a name registered to, and for the use of, that person in terms of Chapter 5 or any other public regulation.
- (2) A person doing anything contemplated in subsection (1) must include the following particulars on any trade catalogue, trade circular, business letter, order for goods, sales record or statement of account that the person issues:
 - (a) the name, title or description under which the business is carried on;
 - (b) a statement of the place at which, or from which, the business is carried on; and
 - (c) if the activity is carried on under a name contemplated in subsection (1)(b), the name of the person to whom that name is registered.

26. Disclosure by intermediaries

- (1) An intermediary must –
 - (a) disclose all prescribed information to –

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- (i) any person whom the intermediary solicits or agrees to represent with respect to the sale of any property or services, or from whom the intermediary accepts any used property for the purpose of offering it for sale; and
 - (ii) any person from whom the intermediary solicits an offer, or to whom the intermediary offers to supply, or supplies, -
 - (aa) any service to be performed by a third person; or
 - (bb) any goods or property belonging to a third person; and
 - (b) must keep the prescribed records of all relationships and transactions contemplated in this section.
- (2) Subsection (1)(a)(i) does not apply to -
- (a) the executor or other administrator of a deceased's estate, or the liquidator of an insolvent estate, in respect of any property of that estate; or
 - (b) a trustee in respect of any trust property.
- (3) The Minister may prescribe -
- (a) the information, including the manner and form of delivery of any such information, that an intermediary, or different categories of intermediary, must provide in terms of this section; and
 - (b) any records, including the form and content of any such records, that an intermediary, or different categories of intermediary, must keep in terms of this section.
- (4) Regulations contemplated in subsection (3)(a) must include, at least the requirement that an intermediary disclose to each person with whom the intermediary enters into a transaction -
- (a) the basis on which the intermediary gains, profits or is compensated or rewarded for that transaction; and

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- (b) any relationship between the intermediary and any party to the transaction.

27. Disclosure of price of goods or services

- (1) A supplier must not display any goods for sale, or offer to supply any prescribed services without displaying a price in relation to those goods or services, unless, in the case of goods, the display is –
- (a) in an area within the supplier's premises to which the public does not ordinarily have access; and
 - (b) designed and intended predominantly as a form of advertisement of the supplier, or of goods or services.
- (2) For the purposes of this section, -
- (a) a price is displayed in relation to particular goods if it is –
 - (i) annexed or affixed to, written, printed, stamped or located upon, or otherwise applied to the goods or to any band, ticket, covering, label, package, reel, shelf, or other thing used in connection with the goods or on which the goods are mounted for display or exposed for sale;
 - (ii) published in relation to the goods in a catalogue available to the public if –
 - (aa) a time is specified in the catalogue as the time after which the goods may not be sold at that price, and that time has not yet passed; or
 - (bb) in any other case, the catalogue may reasonably be regarded as not out of date; or
 - (iii) in any way represented in a manner from which it may reasonably be inferred that the price represented is a price applicable to the goods or services; and

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- (b) a price is not displayed in relation to any goods if -
 - (i) it is in relation to goods originating outside the Republic, and is expressed in a currency other than the currency of the Republic; or
 - (ii) the display of that price is fully covered and obscured by a second displayed price.
 - (3) If a supplier displays any goods or offers to supply any services in relation to which more than one price is concurrently displayed, the supplier must not sell those goods or services at a price higher than the lower or lowest of the prices so displayed.
 - (4) Subsection (4) does not apply in respect of the price of any goods or services if the price of those goods or services is determined by any public regulation.
 - (5) If a supplier has provided an estimate for any service, or goods and services, as contemplated in section 17, the price for that service, or goods and service, must not exceed the estimate, unless
 - (a) the service provider has informed the consumer of the additional estimated charges; and
 - (b) the consumer has authorized the work to continue.

28. Product labelling and trade descriptions

- (1) A supplier of goods must not display, offer to supply or supply any goods, other than goods that are exempt in terms of subsection (4), unless a trade description of those goods is
 - (a) applied to the goods, or to any covering, label or reel in or on which the goods are packaged, or attached to the goods;
 - (b) displayed together with, or in proximity to, the goods in a manner that is likely to lead to the belief that the goods are designated or described by that description; or

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- (c) is contained in any sign, advertisement, invoice, wine list, business letter, business paper, or other commercial communication on the basis of which a consumer may request or order the goods.
- (2) A trade description applied to goods must address all of the matters contemplated in-
- (a) subparagraphs (a)(i), (ii), and (iii) of the definition of trade description in section 1; and
- (b) section 29.
- (3) A supplier of goods must -
- (a) not offer to supply, display, or supply any goods if the supplier knows, reasonably could determine, or has reason to suspect, that
- (i) a trade description applied to those goods is likely to mislead the consumer as to any matter implied or expressed in that trade description; or
- (ii) a trade description or trade mark applied to those goods has been altered as contemplated in subsection (5); and
- (b) with respect to any goods within that person's control, take reasonable steps to prevent any other person from doing anything contemplated in paragraph (a).
- (4) The minister, by regulation, may -
- (a) prescribe categories of goods, in respect of which the trade description applied, must address the matters contemplated in subparagraphs (a)(iv), (v) and (vi) of the definition of trade description in section 1 and the manner in which these matters may be addressed;
- (b) exempt particular goods or categories of goods from the application of subsection (1) and (2) if -
- (i) those goods, or that category of goods, are subject to regulation in terms of any public regulation other than this Act, and the Minister is satisfied

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that the regulatory scheme provides for adequate disclosure of information to the consumer to achieve the purposes of this section; or

- (ii) the information required in terms of this section is self-evident given the nature of the goods, and the manner and circumstances in which they are customarily made available for supply to the public; or
 - (c) prescribe circumstances of displaying or selling particular goods or categories of goods, which if satisfied, would exempt those goods from the application of this section.
- (5) It is an offence for a person to -
- (a) knowingly apply to any goods a trade description that is likely to mislead the consumer as to any matter implied or expressed in that trade description;
 - (b) alter, deface, cover, remove or obscure a trade description or trade mark applied to any goods in a manner calculated to mislead consumers; or with respect to any goods within that person's control; or
 - (c) fail to take reasonable steps to prevent any other person from doing anything contemplated in paragraph (a) or (b).

29. Disclosure of environmental facts affecting goods

- (1) In addition to the requirements of section 28, a person who packages any prescribed goods, or imports any such goods, for supply to consumers must display on or in association with that packaging or those goods, a notice in the prescribed manner and form that -
 - (a) discloses the presence, nature and extent of any -
 - (i) genetically modified ingredients or components of those goods; or

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- (ii) ingredients or components that have been determined to present a chemical or biological hazard to humans, relative to their concentration in those goods;
 - (b) discloses the estimated energy requirements per hour of use, if the operation of the goods requires the utilization of energy other than muscle power;
 - (c) discloses the nature and intensity of any potentially harmful energy radiation, if the goods, or any component of the goods, emit any such radiation; and
 - (d) discloses the need for special handling, or waste disposal, of the goods, any component of them or any material in which the goods were packaged, if such special handling or waste disposal is -
 - (i) required in terms of any public regulation; or
 - (ii) is advisable in the interests of personal or public health or safety.
- (2) A person who, in connection with the supply of any services to a consumer, -
- (a) supplies to that consumer any goods that prescribed in terms of subsection (1), must -
 - (i) inform the consumer of any relevant information contemplated in subsection (1) before supplying those goods; and
 - (ii) after complying with sub-paragraph (i), obtain the consumer's express consent to install any goods that are the subject of a notice required by subsection (1), before supplying those goods.
- (3) Subsection (1) does not apply to any goods or services in respect of which a substantially similar label or notice has been applied or provided in terms of any other public regulation.
- (4) Section 28 (3) and (5), each read with the changes required by the context, apply in respect of a label or notice required by this section.

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Section 30-r31

30. Disclosure of re-conditioned goods

A person who offers or agrees to supply, or supplies, any goods that –

- (a) have been re-conditioned, re-built or re-made; and
- (b) that bear the trade mark of the original manufacturer or supplier

must apply a conspicuous notice to those goods stating clearly that they have been re-conditioned, re-built or re-made.

31. Sales Records

- (1) A supplier of goods or services must provide a written record of each transaction to the consumer to whom the goods or services are supplied, including in that record at least the following information:
 - (a) The supplier's name, or registered business name, and VAT registration number, if any;
 - (b) The address of the premises at which or from which the goods or services were supplied;
 - (c) The date on which the transaction occurred;
 - (d) A name or description of any goods or services supplied or to be supplied;
 - (e) The unit price for each good or service supplied or to be supplied
 - (f) The quantity of each good or service supplied or to be supplied
 - (g) The total price of the transaction, before any applicable taxes;
 - (h) The amount of any applicable taxes; and
 - (i) The total price of the transaction, including any applicable taxes.

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- (2) The Minister, by notice, may exempt categories of goods or services, or circumstances of trade, from the application of subsection (1).

32. Written consumer agreements

- (1) This section applies only to a continuous service agreement, or other prescribed categories of agreement.
- (2) The supplier must deliver, without charge to the consumer, a copy of a document that records an agreement, transmitted to the consumer in a paper form, or in a printable electronic medium.
- (3) The Minister may prescribe –
- (a) categories of additional agreements to which this section applies; and
 - (b) any specific wording to be included in such an agreement to give full effect to the purposes of this Act.
- (4) Regardless whether or not a particular written agreement is required in terms of this section –
- (a) any written agreement between a supplier and consumer must satisfy the requirements of sections 33 and 34;
 - (b) any change to a document recording a written agreement, or an amended agreement, after it is signed by the consumer, if applicable, or delivered to the consumer, is void unless –
 - (i) the change reduces the consumer's obligations or liabilities under the agreement; or
 - (ii) after the change is made, the consumer signs or initials in the margin opposite the change; and

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Section 33-r34

- (c) if the parties to a written agreement agree to change its terms, the supplier must deliver to the consumer a document that reflects their amended agreement within 20 business days after the date of the agreement to amend.

33. Right to information in official language

- (1) Subject to subsection (2), a consumer has a right to receive any document required in terms of this Act in an official language, as determined by the supplier or other person required to produce the document.
- (2) Despite subsection (1), if the Minister has prescribed any document in terms of subsection (3), a supplier or other person who is required to produce that document must -
 - (a) determine two official languages in which the supplier will make that document available, having regard to usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population ordinarily served by the supplier;
 - (b) offer each consumer an opportunity to choose which of those two languages the consumer prefers; and
 - (c) provide each such document to the consumer in the official language chosen by the consumer in terms of paragraph (b).
- (3) The Minister, by regulation, may prescribe the documents or categories of documents that are subject to the requirements of subsection (2).

34. Right to information in plain and understandable language

- (1) The producer of a document that is required to be delivered to a consumer in terms of this Act, must provide that document -
 - (a) in the prescribed form, if any, for that document, or;
 - (b) in plain language, if no form has been prescribed for that document.

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- (2) For the purposes of this Act, a document is in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the document is intended, with average literacy skills and minimal experience as a consumer of the relevant goods or services, could be expected to understand the content, significance, and import of the document without undue effort, having regard to –
- (a) the context, comprehensiveness and consistency of the document;
 - (b) the organization, form and style of the document;
 - (c) the vocabulary, usage and sentence structure of the text; and
 - (d) the use of any illustrations, examples, headings, or other aids to reading and understanding.
- (3) The National Consumer Commission may publish guidelines for methods of assessing whether a document satisfies the requirements of subsection (1)(b).

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Section 35

PART E – RIGHT TO FAIR AND RESPONSIBLE MARKETING AND PROMOTION**35. General standards for the promotion of goods or services**

A manufacturer, producer, importer, distributor, or supplier of any goods or services must not promote any goods or services -

- (a) in a manner that is misleading, fraudulent or deceptive in any way, including in respect of –
 - (i) the nature, properties, advantages or uses of the goods or services;
 - (ii) the manner in or conditions on which those goods or services may be purchased, leased or otherwise acquired;
 - (iii) the price at which the goods may be acquired, or the existence of, or relationship of the price to, any previous price, or competitors price for comparable or similar goods or services;
 - (iv) the sponsoring of any event; or
 - (v) any other material aspect of the goods or services.
- (b) in a manner that is reasonably likely to imply a false or misleading representation concerning those goods or services, as contemplated in section 51;
- (c) if those goods or services are unlawful, or if the supply, purchase, sale or possession of them is unlawful;
- (d) to be supplied in a manner that is inconsistent with any law; or
- (e) in a manner that -
 - (i) is degrading to the dignity of any person;

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- (ii) depicts, simulates, suggests, represents or reasonably appears to promote a use or application of those goods or services that is inconsistent with any law; or
- (iii) implies or expresses a preference for any particular group of prospective consumers distinguishable from the general population on the basis of a prohibited ground of unfair discrimination set out in section 9 (3) of the Constitution, except to the extent that particular goods or services are reasonably intended or designed to satisfy specific needs or interests that are common to or uniquely characteristic of the particular group of prospective consumers.

36. Bait marketing

- (1) Subject to subsection (2), a supplier must not advertise any goods or services as being generally available at a particular place and price for a particular period, unless the supplier reasonably anticipates having a quantity of those goods, or capacity to supply those services, sufficient to satisfy the reasonably anticipated demand on that date and at that place and price, from the market to which the advertisement is targeted.
- (2) Despite subsection (1), a supplier may advertise particular goods or services as being available -
 - (a) in a specified limited quantity at a specified price;
 - (b) on a specified date and at a specified time; and
 - (c) for a specified limited duration, or until the specified quantity is exhausted.
- (3) A supplier who has advertised goods or services as being generally available at a particular place and price for a particular period as contemplated in subsection (1) -
 - (a) must make those goods or services available for supply for that period at that place and for that price; and

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- (b) during that period and at that place, must not offer to supply any similar or comparable goods or services to any consumer at a higher price than the price at which the advertised goods were offered.
 - (4) It is a defence to an alleged failure to comply with subsection (3)(a) if –
 - (a) the supplier offered to
 - (i) supply or procure another person to supply the consumer with goods or services of the kind advertised within a reasonable time, in a reasonable quantity, and at the advertised price; or
 - (ii) immediately supply, or procure another person to supply within a reasonable time, equivalent goods or services in a reasonable quantity, and at the advertised price;
 - (b) the consumer accepted such an offer; and
 - (c) the supplier has supplied or procured another person to supply the goods or services so offered and accepted.

37. Negative option marketing

- (1) A supplier must not make an offer to supply, or to enter into or modify an agreement for the supply of, any goods or services, or induce a person to accept any goods or services or to enter into or modify such an agreement, on the basis that the goods or services are to be supplied, or the agreement or modification will automatically come into existence, unless the consumer declines the offer or inducement.
- (2) An agreement purportedly entered into as a result of an offer or inducement contemplated in subsection (1) is an unlawful agreement and void to the extent provided in section 56.
- (3) A modification of an agreement purportedly agreed as a result of an offer or inducement contemplated in subsection (1) is an unlawful provision and void to the extent provided in section 57.

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38. Direct marketing, installation and delivery

- (1) Whenever a person is marketing any goods or services in person at any residential premises, or performing any services for a consumer at any residential premises, or delivering any goods to, or installing any goods for, a consumer, the person must -
 - (a) visibly wear or display a badge or similar identification device that satisfies any prescribed standards; or
 - (b) provide suitable identification to the consumer.
- (2) Any prescribed standards contemplated in subsection (1) must require at least the following elements for an identification badge:
 - (a) the name and a photograph of the wearer;
 - (b) the name of any person on whose behalf the person wearing the badge is performing any service; and
 - (c) the business licence or registration number, if any, of any person contemplated in paragraph (a) or (b).
- (3) A person who is marketing any goods or services by telephone must orally provide suitable identification to the consumer, if the consumer so requests.
- (4) A person who is marketing any goods or services as contemplated in this section, and who concludes a transaction or agreement with a consumer, must inform the consumer of the right to rescind that agreement, as set out in section 24
- (5) If a person who has marketed any goods as contemplated in subsection (1) -
 - (a) left any goods with the consumer without requiring payment for them; or
 - (b) left any goods with, or delivered any goods to, the consumer in terms of a concluded transaction or agreement, which the consumer has subsequently rescinded, and the person has not recovered those goods within 5 business days after receiving the notice of rescission,

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those goods are unsolicited goods, to which section 21 applies.

39. Catalogue or electronic marketing

(1) This section applies to an agreement for the supply of goods or services that is not entered into in person, including an agreement concluded -

- (a) telephonically, if the contact is initiated by the consumer,
- (b) by postal order, fax, or internet transaction,
- (c) in any other manner in which, with respect to goods, the consumer does not have the opportunity to inspect the goods that are the subject of the transaction before concluding the agreement,

but does not apply to a agreement or transaction contemplated in section 38.

(2) A supplier must disclose the following information to a consumer, in an appropriate manner, having regard to the manner in which the supplier and consumer communicate in concluding the transaction, before concluding an agreement or transaction:

- (a) The supplier's name, and licence or registration number, if any;
- (b) The address of the supplier's physical business premises; and related contact details;
- (c) The supplier's electronic mail address, if applicable;
- (d) a trade description of the goods or services to be supplied under the agreement, including the information required by section 28(2), and any relevant technical or system specifications;
- (e) the information required by section 31;
- (f) the currency in which amounts under the agreement are payable;

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- (g) the supplier's delivery arrangements, including the identity of the shipper, the mode of transportation and the place of delivery to the consumer;
 - (h) the supplier's cancellation, return, exchange and refund policies, if any;
 - (i) manner and form in which a complaint may be lodged; and
 - (j) any other prescribed information.
- (3) Before concluding a transaction in electronic form, a supplier must
 - (a) make the information required under subsection (2), and a copy of any further agreement arising out of the transaction, available in a manner that requires the consumer to access the information and a copy of any such agreement, and
 - (b) provide a consumer with an express opportunity
 - (i) to correct errors in the information or any agreement;
 - (ii) to accept or decline any agreement;
 - (iii) to confirm the details of the transaction; and
 - (iv) to accept and print or copy, or decline the transaction and any agreement.
- (4) Within 10 business days after concluding an agreement with a consumer other than as contemplated in subsection (3), the supplier must deliver a dated copy of the agreement to the consumer, in an appropriate manner, having regard to the manner in which the supplier and consumer communicated in concluding the transaction.
- (5) A consumer may rescind, without penalty, a transaction or an agreement, if a copy of an agreement contemplated in subsection (4), has not been delivered to the consumer within a period contemplated in that subsection.

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40. Customer loyalty programs

- (1) The sponsor of a loyalty program, or a supplier who offers, or holds out a willingness, to accept any loyalty credits or awards as consideration for any goods or services -
 - (a) must accept any tender of sufficient loyalty credits or awards as adequate consideration for the price of those goods or services;
 - (b) must ensure that the supply of those goods or services available at any time is sufficient to accommodate all reasonably anticipated demands for those goods or services to be paid for with loyalty credits or awards, subject to subsection (3)(b);
 - (c) must not require the consumer to accept an inferior quality of any such goods or services than those generally available to any other consumer on the same date who tenders a different form of consideration;
 - (d) must not impose any monetary charge in respect of the administration, processing or handling of such a transaction; and
 - (e) must not demand -
 - (i) that the consumer purchase any other goods or services in connection with that transaction; or
 - (ii) payment by the consumer of any monetary charge in respect of that transaction, irrespective whether such a charge is or may be -
 - (aa) imposed in terms of any public regulation; or
 - (bb) incurred by the supplier to enable the consumer to gain access to or utilize the goods or services that are the subject of the transaction.
- (2) A sponsor of a loyalty program, or a supplier of goods or services who accepts loyalty credits or awards as consideration for any goods or services, may impose -

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- (a) a partial or complete restriction on the availability of any such goods or services in exchange for loyalty credits or awards; or
- (b) a higher price, in terms of loyalty credits or awards, for any such goods or services

during any specific period or periods totalling no more than 30 days within a 12 month period, if the program sponsor has directly or indirectly given notice in writing to the members of that program at least 60 business days before the beginning of each such period.

- (3) A sponsor of a loyalty program that maintains a register of the members of that program must give notice in writing to the members of that program at least 20 business days before any increase in the price, in terms of loyalty credits or awards, for any goods or services available under that program irrespective whether the sponsor of the program is the supplier of any such goods or services.
- (4) Despite any provision in any law, agreement or notice to the contrary, for all purposes of this Act, loyalty credits or awards are a legal medium of exchange when offered or tendered as consideration for any goods or services offered, or transaction contemplated, in terms of that loyalty program.

41. Trade coupons and similar promotions

- (1) A person must not offer any prize with the intention of not providing it, or providing it other than as offered.
- (2) Any document setting out an offer contemplated in subsection (1) must fully and clearly state --
 - (a) the nature of the prize being offered;
 - (b) the goods or services to which the offer relates;
 - (c) the steps required by a prospective consumer to accept the offer or to receive the benefit of the offer; and

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- (d) any person from whom, any place where, and any date and time on or at which the prospective consumer may receive the benefit.
- (3) Section 40 (1), read with the changes required by the context, apply in respect of any offer contemplated in this section.

42. Promotional competitions

- (1) In this section –
 - (a) “promoter” means a person who directly or indirectly promotes, sponsors, organizes or conducts a promotional competition, or for whose benefit such a competition is promoted, sponsored, organized or conducted;
 - (b) “participant” means a person who expressly or implicitly enters into a promotional competition.
- (2) A person must not directly or indirectly inform a consumer, or prospective consumer that the consumer has -
 - (a) won a competition, if -
 - (i) no competition has in fact been conducted;
 - (ii) the consumer has not expressly or implicitly entered into such a competition, or has not in fact won the competition;
 - (iii) the prize for that competition is subject to a previously undisclosed condition; or
 - (iv) the consumer is required to offer further consideration for the prize, after the results of the competition have been announced; or
 - (b) has a right to a prize or benefit -
 - (i) that the consumer has not solicited or to which the consumer does not in fact have a right;

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- (ii) if the prize or benefit was generally available or offered to all similar prospective consumers or class of prospective consumers; or
 - (iii) if, before becoming eligible to receive the prize or benefit, the consumer is required to offer further consideration for the prize or to purchase any particular goods or services.
- (3) The promoter of a promotional competition -
- (a) must not require any consideration to be paid by or on behalf of any participant in the promotional competition;
 - (b) must file an abstract of the competition rules in the prescribed manner and form with the Commission no later than the date on which consumers are first able to participate in the competition
 - (c) make the competition rules available on request and without cost to any participant;
 - (d) must not award a prize in a competition to -
 - (i) a winner of the competition if it is absolutely unlawful to supply those goods or services to the prize winner, but this sub-paragraph does not preclude awarding a prize to a person merely because that person's right to possess or use the prize is or may be restricted or regulated by, or otherwise subject to, any public regulation; or
 - (ii) to any person who is a director, member, partner, employee or agent of, or consultant to, -
 - (aa) the promoter or any other person who directly or indirectly controls, or is controlled by, the promoter; or
 - (bb) a supplier of goods or services in connection with that competition.

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- (4) For greater certainty in applying subsection (3)(a), a promoter must be regarded as having required or received consideration in respect of a promotional competition if –
- (a) the participant is required to pay any consideration, directly or indirectly for the opportunity to participate in the promotional competition, for access to the competition, or for any device by which a person may participate in the competition; or
 - (b) participation in the promotional competition requires the purchase of any goods or services, and the price charged for those goods or services is more than the price, excluding discounts, ordinarily charged for those or similar goods or services without the opportunity of taking part in a promotional competition.
- (5) An offer to participate in a promotional competition must be in writing, and must fully and clearly state –
- (a) the benefit or competition to which the offer relates;
 - (b) the steps required by a person to accept the offer or to participate in the competition;
 - (c) the basis on which the results of the competition will be determined;
 - (d) the maximum number of potential participants in the competition, and the odds of winning any particular prize in that competition;
 - (e) the medium through or by which the results of the competition will be made known, if any; and
 - (f) any person from whom, any place where, and any date and time on or at which the successful participant may receive any prize.
- (6) The requirements of subsection (5) may be satisfied either –

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- (a) directly on any medium through which a person participates in a promotional competition;
 - (b) on a document accompanying any medium contemplated in paragraph (a); or
 - (c) in any advertisement that –
 - (i) is published during the time and throughout the area in which the promotional competition is conducted; and
 - (ii) draws attention to and is clearly associated with the promotional competition.
- (7) The right to participate in a promotional competition is fully vested in a person immediately upon -
- (a) complying with any conditions that are required to earn that right; and
 - (b) acquiring possession or control of any medium through which a person may participate in that promotional competition.
- (8) The right to any benefit or right conferred on a person as a result of that person's participation in a promotional competition is fully vested immediately upon the determination of the results of the competition.
- (9) A right contemplated in subsection (7) or (8) must not be -
- (a) made subject to any further condition; or
 - (b) contingent upon a person -
 - (i) paying any consideration to the promoter for the prize; or
 - (ii) satisfying any further requirements than those stipulated in terms of subsection (5).
- (10) Section 40 (1), read with the changes required by the context, apply in respect of any prize or right to a prize conferred on a person as a result of that person's participation in a promotional competition.

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(11) The Minister may prescribe –

- (a) a monetary threshold for the purpose of excluding competitions with low value prizes from the definition of “promotional competition”;
- (b) minimum odds for prizes or categories of prizes offered in terms of any promotional competition;
- (c) minimum standards and forms for keeping records associated with promotional competitions; and
- (d) audit and reporting requirements in respect of promotional competitions.

43. Alternative work schemes

- (1) A person must not make a false representation with respect to the availability, or extent of availability, actual or potential profitability, risk, or other material aspect of the work, business or activity involved in any arrangement of an activity for gain in terms of which one person -
 - (a) invites, solicits or requires other persons to conduct the work, business or activity from their homes, or
 - (b) represents to others as being practicable, to a considerable extent, to conduct the work, business or activity from their homes; or
 - (c) invites, solicits or requires other persons to perform any the work, business or activity, invest money, or perform any work, business or activity in association with the investment of money.
- (2) An advertisement promoting any matter contemplated in subsection (1) must:
 - (a) be accompanied by a cautionary statement in the prescribed wording and form, disclosing the uncertainty of the extent of -
 - (i) work, business or activity available; and

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- (ii) income or other benefit to be derived.
- (b) disclose, at least, the following information-
 - (i) physical address;
 - (ii) contact numbers; and
 - (iii) nature of the work.
- (3) A person must not place an advertisement contemplated in subsection (2) otherwise than in accordance with the requirements of this section.
- (4) A person who does anything contemplated in subsection (1)(a) to (c) must not charge any person a fee in respect of the promotion or conduct of any such work, business, activity or investment except to the extent that the person charged has been assigned and performed the contemplated work, business, activity, or made or received the contemplated investment.

44. Referral selling

A person must not promote, offer, supply, agree to supply, or induce a consumer to accept any goods or services on the representation that the consumer will receive a rebate, commission, or other benefit if the consumer subsequently—

- (a) gives the supplier the names of prospective consumers; or
- (b) otherwise assists the supplier to supply goods or services to other consumers.

if that rebate, commission, or other benefit is contingent upon an event occurring after the consumer agrees to the transaction.

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PART F – RIGHT TO HONEST DEALING AND FAIR AGREEMENTS

45. Consumer's right to assume supplier is entitled to sell goods

- (1) Subject only to subsection (3), every consumer has a right to assume, and it is an implied provision of every transaction or agreement, that -
 - (a) in the case of a sale or lease, the supplier or lessor has the legal right to sell or lease the goods;
 - (b) in the case of an agreement to sell or lease, the supplier or lessor will have a legal right to sell or lease the goods at the time when the title to those goods is to pass to the consumer, or the lessee is to take possession of the leased goods;
 - (c) that the goods are free from any charge or encumbrance in favour of any third party; and
 - (d) that the supplier guarantees that the consumer or lessee is to have and enjoy undisturbed possession of the goods.
- (2) Despite any other any law to the contrary, the supplier is liable, and the consumer is not liable, to any third party whose rights or claims in respect of any goods supplied or leased as contemplated in subsection (1) have been infringed or compromised by that transaction, except to the extent that the supplier and consumer have colluded to defraud the third party.
- (3) This section does not apply in respect of used goods or immovable property.

46. Future and continuous services

- (1) This section applies in respect of any agreement in terms of which a supplier agrees to provide a consumer -
 - (a) a service to be delivered at a certain future date, or at periodic intervals during a specified period; or

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- (b) a continuous service.
- (2) An agreement for a continuous service –
- (a) to be supplied by a public supplier may be for an unlimited duration; or
 - (b) to be supplied by a private supplier -
 - (i) may be rescinded by the consumer within 5 business days after concluding or renewing the agreement;
 - (ii) must not exceed the prescribed period for the category of services to be provided;
 - (iii) is renewable only if the consumer expressly accepts the renewal, in writing, within 40 business days before, or 20 business days after, the end of the expiring agreement period; and
 - (iv) may be cancelled by the consumer with 20 business days notice at any time; and
 - (v) may be subject to a cancellation penalty of no more than 5% of the amount that would have been payable by the consumer during the unexpired period of the agreement, if -
 - (aa) such a penalty is disclosed to the consumer before the agreement is entered into; and
 - (bb) is set out in the written agreement required by section 32.
- (3) If, in terms of an agreement to which this section applies, the consumer agrees to pay –
- (a) a membership fee or similar charge or amount; or
 - (b) any amount in respect of services or access to services to be provided at a date more than 25 business days after the payment is made

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the supplier must hold that payment in trust for the benefit of the consumer, in accordance with section 74, and the supplier may make a charge against that trust once each month in advance for the pro-rata portion of the amount so held, as required to pay the ensuing month's cost of the membership or service.

- (4) If a supplier intends to close a facility to which the supplier has committed to provide future access in terms of an agreement with a consumer, the supplier must -
 - (a) give written notice of that intention to each such consumer at least 40 business days before the intended date of closure; and
 - (b) no later than five business days after closing that facility, refund to each such consumer the balance of any money held in trust for that consumer in terms of this Act.
- (5) Subsection (4) (b), read with the changes required by the context, applies equally in respect of any involuntary closing of a facility contemplated in this section.
- (6) Any money that is owed to a consumer as a refund in terms of this section is trust property held by the supplier, or the supplier's estate, for the benefit of the consumers concerned, and is subject to section 74.

47. Auctions

- (1) When goods are put up for sale by auction in lots, each lot is, unless there is evidence to the contrary, deemed to be the subject of a separate transaction.
- (2) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner, and until that announcement is made, a bid may be retracted;
- (3) Notice must be given in advance that a sale by auction is subject to -
 - (a) a reserved or upset price; or

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- (b) a right to bid by or on behalf of the supplier or auctioneer, in which case the supplier or auctioneer, or any one person on behalf of the supplier or auctioneer as the case may be, may bid at the auction.
 - (4) Unless notice is given in advance that a sale by auction is subject to a right to bid by or on behalf of the owner or auctioneer,—
 - (a) the owner or auctioneer must not bid or employ any person to bid at the sale;
 - (b) the auctioneer must not knowingly accept any bid from a person contemplated in paragraph (a); and
 - (c) the consumer may approach a court to declare the transaction fraudulent, if the provisions of this subsection have been violated.
 - (5) The Minister may prescribe requirements to be complied with by an auctioneer, or different categories of auctioneer, in respect of the conduct of an auction and the records to be maintained with respect to property placed for auction and the sale of any such property by auction.

48. Deferrals, waivers and changes and substitution of goods

- (1) The supply of goods or services as a result of a change to an existing agreement, or a deferral or waiver of a right under an existing agreement, is not to be treated as creating a new agreement for the purposes of this Act, if the change, deferral or waiver is made in accordance with this Act or the agreement.
- (2) If, after delivery to the consumer of goods that are the subject of a transaction, the consumer and the supplier agree to substitute other goods for all or part of the goods sold -
 - (a) from the date of delivery of the substituted goods, the transaction applies to the substituted goods rather than the goods originally described; and
 - (b) if the transaction was the subject of a written agreement, or the sales record identified any specific goods, the supplier must prepare and deliver to the

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consumer an amended agreement or sales record, describing the substituted goods, but without making any other changes to the original document.

49. Over-selling and over-booking

- (1) A supplier must not accept payment or other consideration for any goods or services if the supplier –
 - (a) has no reasonable basis to assert an intention to supply those goods or provide those services; or
 - (b) intends to supply goods or services that are materially different from the goods or services in respect of which the payment or consideration was accepted.
- (2) If a supplier makes a commitment or accepts a reservation to supply goods or services on specified date or at a specified time, and on the date and at the time contemplated in the commitment or reservation, fails because of insufficient stock or capacity to supply those goods or services, or similar or comparable goods or services of the same or better quality, class or nature, the supplier must –
 - (a) refund to the consumer any amount paid in respect of that commitment or reservation, together with interest at the prescribed rate from the date on which the amount was paid until the date of re-imbursement; and
 - (b) must in addition compensate the consumer for -
 - (i) breach of contract in an amount equal to the full contemplated price of the goods or services that were committed or reserved; and
 - (ii) consequential damages in an amount equal to the total of any economic loss, and loss of anticipated use or enjoyment, sustained by the consumer as a consequence of the supplier's breach of the contract.

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50. Exemptions from liability

- (1) If an agreement is in writing, or is subject to a written notice, any provision in that agreement or notice that purports to limit in any way the risk or liability of the supplier or any other person, purports to constitute an assumption of risk or liability by the consumer, purports to impose an obligation on the consumer to indemnify the supplier or any other person for any cause, or purports to be an acknowledgement of any fact by the consumer, is of no force or effect unless -
 - (a) the fact, nature and effect of that provision is drawn to the attention of the consumer before the consumer enters into the agreement;
 - (b) the provision is in plain language, as described in section 34; and
 - (c) if the provision is in a written agreement, the consumer has signed or initialled that provision indicating acceptance of it.
- (2) If a transaction, written or unwritten agreement, participation in an activity, or access to any facility, is subject to any provision of a kind contemplated in subsection (1), that provision is of no force or effect unless the fact, nature and effect of that provision is drawn to the attention of the consumer -
 - (a) before the earlier of the time at which the consumer -
 - (i) enters into the transaction or agreement, begins to engage in the activity, or enters or gains access to the facility; or
 - (ii) is required or expected to offer consideration for the transaction or agreement; and
 - (b) in a conspicuous manner and form that -
 - (i) is likely to attract the attention of an ordinarily alert consumer, having regard to the circumstances; and
 - (ii) is in plain language, as described in section 34.

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- (3) In addition to the consequences of subsection (1) or (2), a provision contemplated in either of those subsections in respect of any activity or facility that is subject to any –

- (a) unusual hazard;
- (b) hazard of which the consumer could not reasonably be expected to be aware, or which an ordinarily alert consumer could not reasonably be expected to contemplate in the circumstances; or
- (c) hazard that could result in serious injury or death,

is of no force or effect unless the supplier has specifically drawn the fact, nature and potential effect of that hazard to the attention of the consumer in a form and manner that meets the requirements of subsection (2), and the consumer has signed or initialled that provision indicating acceptance of it, or otherwise acted in a manner consistent with acknowledgement of the notice, awareness of the hazard and acceptance of the provision.

- (4) If, in any circumstances contemplated in this section, the supplier knows, or reasonably ought to perceive, that a particular consumer is unable to read a provision or notice as a result of impaired vision, limited literacy, or inability to comprehend any language in which the notice or provision is written, the notice or provision is of no force or effect with respect to that consumer unless the supplier has taken reasonable and appropriate steps in the circumstances to –

- (a) bring the nature, content and effect of the notice or provision to the attention of that consumer in a manner that overcomes the consumer's reading impediment; and
- (b) the consumer has expressly or by necessary implication assented to the notice or provision.

- (5) The Minister may make regulations prescribing the form, manner and minimum standards for bringing provisions, hazards and other matters contemplated in this section to the attention of consumers.

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51. False, misleading or deceptive representations

- (1) With respect to any goods or services that are the subject of an agreement, proposed agreement, transaction or proposed transaction between a supplier and a consumer or prospective consumer, or in the marketing of any such goods or services, the supplier must not, by words or conduct, -
 - (a) directly or indirectly express or imply a false, misleading or deceptive representation concerning a material fact to a consumer or prospective consumer;
 - (b) use exaggeration, innuendo or ambiguity as to a material fact, or fail to disclose a material fact if that failure amounts to a deception;
 - (c) knowingly permit a consumer or prospective consumer to believe a false, misleading or deceptive state of facts; or
 - (d) fail to correct an apparent misapprehension on the part of a consumer or prospective consumer, amounting to a false, misleading or deceptive representationor permit or require any other person to do so on behalf of the supplier.
- (2) A person acting on behalf of a supplier of any goods or services must not -
 - (a) falsely represent that the person has any sponsorship, approval or affiliation; or
 - (b) engage in any conduct that the supplier is prohibited from engaging in under subsection (1).
- (3) Without limiting the generality of subsection (1), it is a false, misleading or deceptive representation to falsely state or imply, or allow a consumer or prospective consumer to incorrectly believe, that -
 - (a) the supplier of any goods or services has status, affiliation, connection, sponsorship or approval that they do not have;
 - (b) any goods or services -

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- (i) have ingredients, performance characteristics, accessories, uses, benefits, qualities, sponsorship or approval that they do not have;
 - (ii) are of a particular standard, quality, grade, style or model;
 - (iii) are new or unused, if they are not or if they are re-conditioned or re-claimed, subject to subsection (5);
 - (iv) have been used for a period, to an extent, or in a manner that is materially different from the facts;
 - (v) have been supplied in accordance with a previous representation;
 - (vi) are available, or can be delivered or performed within a specified time;
 - (c) any land or other immovable property -
 - (i) has characteristics that it does not have;
 - (ii) may lawfully be used, or is capable of being used, for a purpose that is in fact unlawful or impracticable;
 - (iii) has or is proximate to any facilities, amenities or natural features that it does not have, or that are not available to it.
 - (d) necessary service, maintenance or repair facilities or parts are readily available for or within a reasonable period;
 - (e) any service, part, replacement, maintenance or repair is needed or advisable;
 - (f) a specific price advantage exists;
 - (g) a charge or proposed charge is for a specific purpose;
 - (h) an employee, salesperson, representative or agent has authority to negotiate the terms of, or conclude, an agreement;
 - (i) the transaction affects, or does not affect, any rights, remedies or obligations;

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- (j) a particular solicitation of, or communication with, the consumer or prospective consumer is for a particular purpose; or
 - (k) the consumer or prospective consumer will derive a particular benefit if they assist the supplier in obtaining a new or potential customer.
- (4) A representation contemplated in subsection (4)(b)(iii) to the effect that any goods are new is not false, misleading or deceptive if those goods have been used -
- (a) only by or on behalf of the manufacturer, importer, distributor or supplier; and
 - (b) only for the purposes of reasonable testing, service, preparation or delivery.

52. Unreasonable transactions

A supplier must not supply or agree to supply any particular goods or services to a consumer if the supplier knows, or reasonably ought to have known, or recognised from the interaction between the supplier and the consumer, -

- (a) that the goods or services are materially unsuitable for the purpose to which the consumer intends to apply them, irrespective whether the goods are of good quality or reasonably fit for their customary intended purpose; and
- (b) that the consumer is unlikely to be able to make such a determination, having regard to the nature of the goods or services, and the consumer's apparent age, education, experience, familiarity with such goods or services, and general consumer sophistication.

53. Unfair or unjust transactions

- (1) A supplier must not -
- (a) offer to supply, supply, or enter into an agreement to supply, any goods or services at a price or on terms that are unfair or unjust; or

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- (b) market any goods or services, or negotiate, enter into or administer an agreement for the supply of any goods or services, in a manner that is unfair or unjust,

having regard to the fair value of the goods or services, the circumstances of the agreement, the nature of the parties to that agreement, their relationship to each other and their relative capacity, education, experience, sophistication and bargaining position.

- (2) Without limiting the generality of subsection (2), a transaction is unfair or unjust if –
 - (a) the transaction is excessively one-sided in favour of any person other than the consumer or other person to whom goods or services are to be supplied;
 - (b) the terms of the transaction are so adverse to the consumer as to be inequitable; or
 - (c) the consumer relied upon a false, misleading or deceptive representation, or statement of opinion, provided by or on behalf of the supplier, to the detriment of the consumer.

54. Unconscionable conduct

- (1) A person must not use physical force, coercion, undue influence, pressure or harassment, unfair tactics or any other conduct, in connection with any –
 - (a) marketing of any goods or services;
 - (b) supply of goods or services to a consumer;
 - (c) negotiation, conclusion, execution or enforcement of an agreement to supply any goods or services to a consumer;
 - (d) demand for, or collection of, payment for goods or services by a consumer; or
 - (e) the recovery of goods from a consumer.

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- (2) In addition to any conduct contemplated in subsection (1), it is unconscionable for a supplier to take advantage of the fact that a potential consumer was substantially unable to protect the consumer's own interests because of disability, illiteracy, ignorance, inability to understand the language of an agreement, or any other similar factor.

55. Powers of a court over unreasonable, unfair, unjust or unconscionable transactions

- (1) In any circumstances contemplated in sections 53 to 55, if this Act does not otherwise provide a remedy sufficient to correct the relevant injustice or unconscionability, the Tribunal or a court may -
- (a) declare the transaction or agreement, or any aspect or provision of it, to be unreasonable, unfair, unjust or unconscionable; and
 - (b) make any further order the Tribunal or court considers just and reasonable in the circumstances, including, but not limited to, an order -
 - (i) to restore money or property to the consumer;
 - (ii) to compensate the consumer for losses or expenses relating to -
 - (aa) the agreement, or
 - (bb) the proceedings of the Tribunal or the court; and
 - (iii) requiring the supplier to alter or cease any practice, introduce a practice, or amend any form or document, as required to avoid a repetition of the supplier's conduct.
- (2) In any matter contemplated in this section, the National Consumer Tribunal or a court -
- (a) may have regard to -
 - (i) the relative strengths of the bargaining positions of the supplier and consumer, and the conduct of each of them;

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- (ii) whether there was any opportunity for negotiation between the supplier and consumer, and if so, the extent of that negotiation;
 - (iii) whether, as a result of conduct engaged in by the supplier, the consumer was required to comply with any condition that was not reasonably necessary for the legitimate interests of the supplier;
 - (iv) whether any documents relating to the transaction satisfied the requirements of sections 33 and 34; and
 - (v) the amount for which, and circumstances under which, the consumer could have acquired identical or equivalent goods or services from a different supplier; and
- (b) must consider -
- (i) only those circumstances that existed or were reasonably foreseeable at the time that the conduct or transaction occurred or agreement was made; and
 - (ii) the principles, purposes and provisions of this Act
- irrespective whether this Act was in force at that time.

56. Unlawful consumer agreements

- (1) Subject to subsection (2), an agreement for the supply of any goods or services is unlawful if -
- (a) at the time the agreement was made the consumer was an unemancipated minor, or was subject to -
 - (i) an order of a competent court holding that person to be mentally unfit;
 - or

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- (ii) an administration order referred to in section 74(1) of the Magistrates' Court Act, 1944 (Act No. of 1944), and the administrator concerned has not consented to the agreement

and the supplier knew, or could reasonably have determined, that the consumer was the subject of such an order;

- (b) the agreement results from an offer prohibited in terms of section 37 (1);
- (c) a court concludes that the agreement is unreasonable, unfair, unjust or unconscionable in terms of section 52 to 55, in which case the agreement is unlawful only to the extent ordered by the court;
- (d) the supplier was subject to a notice or an order in terms of any public regulation requiring the supplier -
 - (i) to stop offering, making available or supplying any such goods or services; or
 - (ii) to stop offering, making available or supplying any such goods or services under the particular form of agreement used by the supplier,

and no further appeal or review is available in respect of that notice or order.

- (2) Subsection (1)(a) does not apply to an agreement if the consumer, or any person acting on behalf of the consumer, directly or indirectly, by act or omission -
 - (a) induced the supplier to believe that the consumer had the legal capacity to contract; or
 - (b) attempted to obscure or suppress the fact that the consumer was subject to an order contemplated in that paragraph.
- (3) To the extent that an agreement is unlawful in terms of this section, that agreement is void as from the date was entered into, despite any provision of common law, any other legislation, or any provision of an agreement to the contrary.

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57. Unlawful provisions of consumer agreements

- (1) An agreement for the supply of any goods or services, whether or not it is in writing, must not contain an unlawful provision or be subject to an unlawful condition.
- (2) A provision of a agreement, or a condition to which an agreement is subject, is unlawful if -
 - (a) its general purpose or effect is to -
 - (i) defeat the purpose and policy of this Act as set out in section 3 and 4;
 - (ii) mislead or deceive the consumer; or
 - (iii) subject the consumer to fraudulent conduct;
 - (b) it directly or indirectly purports to -
 - (i) waive or deprive a consumer of a right set out in this Act;
 - (ii) avoid a supplier's obligation or duty in terms of this Act;
 - (iii) set aside or override the effect of any provision of this Act;
 - (iv) authorize the supplier to -
 - (aa) do anything that is unlawful in terms of this Act; or
 - (bb) fail to do anything that is required in terms of this Act;
 - (c) the provision results from an offer prohibited in terms of section 37 (2);
 - (d) it requires the consumer to enter into a supplementary agreement, or sign a document, prohibited by subsection (5)(a);
 - (e) it expresses an acknowledgement by the consumer that -
 - (i) before the agreement was made, no representations or warranties were made in connection with the agreement by the supplier or a person on behalf of the supplier; or

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- (ii) the consumer has received goods or services, or a document that is required by this Act to be delivered to the consumer, and that have or has not in fact been delivered or rendered to the consumer;
 - (f) it expresses an agreement by the consumer to forfeit any money to the supplier if the consumer -
 - (i) exercises the right of rescission in terms of section 24;
 - (ii) fails to comply with a provision of the agreement before the consumer receives any goods or services in terms of the agreement;
 - (g) it expresses, on behalf of the consumer -
 - (i) an authorization for any person acting on behalf of the supplier to enter any premises for the purposes of taking possession of goods to which the agreement relates; or
 - (ii) an undertaking to sign in advance any documentation relating to enforcement of the agreement, irrespective whether such documentation is complete or incomplete at the time it is signed; or
 - (iii) a consent to a pre-determined value of costs relating to enforcement of the agreement except to the extent that is consistent with this Act;
 - (h) it purports to cede to any person, charge, set off against a debt, or alienate in any manner, a right of the consumer to any claim against the Guardian's Fund;
 - (i) it expresses an Transport Contract agreement contemplated in Notice 31 in terms of the Consumer Affairs (unfair business practices) Act; or
 - (j) it expresses an agreement by the consumer to -
 - (i) deposit with the supplier, or with any other person at the direction of the supplier, an identity document, credit or debit card, bank account or automatic teller machine access card, or any similar identifying document or device; or

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- (ii) provide a personal identification code or number to be used to access an account.
- (3) In any agreement for the supply of any goods or services, a provision that is unlawful in terms of this section is void as from the date that the agreement took effect, or in the case of a provision added or altered by an amendment to an agreement, the date that the amendment took effect.
- (4) In any matter before it respecting an agreement that contains a provision contemplated in subsection (2), a court must –
- (a) sever that unlawful provision from the agreement, or alter it to the extent required to render it lawful, if it is reasonable to do so having regard to the agreement as a whole; or
 - (b) declare the entire agreement unlawful as from the date that the agreement, or amended agreement, took effect
 - (c) and make any further order that is just and reasonable in the circumstances with respect to that unlawful provision, or entire agreement, as the case may be.
- (5) A supplier must not –
- (a) directly or indirectly require or induce a consumer to enter into a supplementary agreement, or sign any document, that contains a provision that would be unlawful if it were included in a primary agreement;
 - (b) request or demand a consumer to –
 - (i) give the supplier temporary or permanent possession of an instrument referred to in subsection (2)(j)(i) other than for the purpose of identification, or to make a copy of the instrument;
 - (ii) reveal any personal identification code or number contemplated in subsection (2)(j)(ii); or

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- (c) direct, or knowingly permit, any other person to do anything referred to in this section on behalf or for the benefit of the supplier.

58. Unfair contract terms

- (1) In determining whether a term of a contract is unfair or unreasonable, a court must have regard to all the circumstances of the case and in particular to the following:
 - (a) the bargaining strength of the parties to the contract relative to each other, taking into account-
 - (i) the availability of equivalent goods or services; and
 - (ii) suitable alternative sources of supply;
 - (b) whether the consumer received an inducement to agree to the term, or, in agreeing to the term, had an opportunity of-
 - (i) acquiring the goods or services, or
 - (ii) equivalent goods or services,from any source of supply under a contract that did not include that term;
 - (c) whether the consumer knew or ought reasonably to have known of the existence and extent of the term, having regard to any custom of trade and any previous dealings between the parties; and
 - (d) in the case of supply of goods, whether the goods were manufactured, processed or adapted to the special order of the buyer.
- (2) If a court, after having considered all the circumstances contemplated in subsection (1), is of the opinion that a term of contract is unfair or unreasonable, it may:
 - (a) rescind or amend the contract or a term of contract; or

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- (b) make any other order as may be necessary to prevent the effect of the contract being unfair or unreasonable to any of the parties,

notwithstanding the principle that effect must be given to the contractual terms agreed upon by the parties.

59. Fraudulent schemes and offers

- (1) A person must not initiate, sponsor, promote or knowingly participate in the distribution of any communication that –
- (a) offers to supply, or enter into an agreement to supply, any goods or services, or offers to enter into a transaction, or invites offers to enter into a transaction; and
 - (b) falsely states, implies or represents that –
 - (i) the communication is authorised by another person; or
 - (ii) the author of the communication represents another person.
- (2) A person must not directly or indirectly promote, or knowingly join, enter or participate in –
- (a) a fraudulent currency scheme, as described in subsection (3);
 - (b) a fraudulent financial transaction, as described in subsection (4);
 - (c) a fraudulent transfer of property or legal rights, as described in subsection (5); or
 - (d) any other scheme declared by the Minister in terms of subsection (8);
- or cause another person to do so.
- (3) An arrangement, agreement, practice or scheme is a fraudulent currency scheme if it involves a person –

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- (a) with the intent to defraud another person, representing that the first person is capable of -
 - (i) producing currency by washing, dipping or otherwise treating any substance that is not currency with a chemical substance, or exposing it to an electrical charge, or to radiation of any kind; or
 - (ii) producing currency, or increasing a sum of money, through scientific means, invocation of any juju or use of other invisible medium; or
 - (b) making or issuing any currency, or making representations as being capable of doing so, unless the person is an authorized producer of that currency.
- (4) An arrangement, agreement, practice or scheme is a fraudulent financial transaction if it involves -
- (a) any proceeds of a specified unlawful activity,
 - (i) with intent to promote the carrying on of a specified unlawful activity; and
 - (ii) is designed in whole or in part to -
 - (aa) conceal or disguise the nature, location, source of ownership or control of the proceeds of a specified unlawful activity; or
 - (bb) avoid a lawful transaction; or
- (5) An arrangement, agreement, practice or scheme is a fraudulent transfer of property or legal rights it involves a person, by false pretence and with the intent to defraud another person, -
- (a) obtaining any property from that person or any third person; or
 - (b) inducing that person or any third person to -
 - (i) deliver property at the direction of the first person; or

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- (ii) confer a benefit of any kind on any person at the direction of the first person on the understanding that the benefit has or will be paid for.
 - (6) A person must not directly or indirectly represent, by false pretence or with the intent to defraud another person, to the effect that the first person -
 - (a) is in possession of -
 - (i) any property; or
 - (ii) information relating to the whereabouts of any property or relating to any legal rights or potential legal claims; or
 - (iii) has the ability to effect the transfer of any property or to locate or determine the whereabouts of an individual.
 - (7) A person must not -
 - (a) invite another person to participate for a fee in assisting to effect a transfer of any property that the first person is not authorized to transfer; or
 - (b) seek, demand or accept any consideration from another person in connection with any unlawful activity contemplated in this section.
 - (8) The Minister, by regulation published in accordance with section 148, may declare any arrangement, agreement, practice or scheme to be a scheme contemplated in subsection (1)(d), if it is similar in purpose or effect to a scheme contemplated in that subsection.

60. Pyramid and related schemes

- (1) In this section -
 - (a) "consideration" has the meaning set out in section 1, except that it does not include -

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- (i) the purchase of any goods at cost to be used in making sales, or not for re-sale,
 - (ii) the purchase of any goods in exchange for which the seller of those goods offers to re-purchase the participant's products under reasonable commercial terms; or
 - (iii) the participant's time and effort in pursuit of sales or recruiting activities; and
 - (b) "participant" means a person who is admitted to a scheme for consideration.
- (2) A person must not directly or indirectly promote, or knowingly join, enter or participate in –
- (a) a multiplication scheme, as described in subsection (3);
 - (b) a pyramid scheme, as described in subsection (4);
 - (c) a chain letter scheme, as described in subsection (5);
 - (d) any other scheme declared by the Minister in terms of subsection (7);
- or cause any other person to do so.
- (3) A multiplication scheme exists when a person offers, promises or guarantees to any prospective consumer, investor or participant an effective annual interest rate, as calculated in the prescribed manner, that is at least 20 per cent above the REPO rate determined by the South African Reserve Bank as at the date of investment or commencement of participation, irrespective whether the consumer, investor or participant becomes a member of the lending party.
- (4) An arrangement, agreement, practice or scheme is a pyramid scheme if:
- (a) participants in the scheme receive compensation derived primarily from their respective recruitment of other persons as participants, rather than from the sale of any goods or services; or

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- (b) the emphasis in the promotion of the scheme indicate an arrangement or practice contemplated in paragraph (a).
- (5) An arrangement, agreement, practice or scheme is a chain letter scheme if –
- (a) it has various levels;
 - (b) existing participants canvass and recruit new participants;
 - (c) each successive newly recruited participant –
 - (i) upon joining –
 - (aa) is required to pay certain consideration, which is distributed to one, some or all of the previously existing participants, irrespective whether the new participant receives any goods or services in exchange for that consideration; and
 - (bb) is assigned to the lowest level of participation in the scheme; and
 - (ii) upon recruiting further new participants, or upon those new participants recruiting further new participants, and so on in continual succession –
 - (aa) may participate in the distribution of the consideration paid by any such new recruit; and
 - (bb) moves to a higher level within the scheme, until being removed from the scheme after reaching the highest level.
- (6) The Minister, by regulation published in accordance with section 148, may declare any arrangement, agreement, practice or scheme to be a scheme contemplated in subsection (2)(e), if it is similar in purpose or effect to a scheme contemplated in that subsection.

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PART G – RIGHT TO FAIR VALUE, GOOD QUALITY AND SAFETY

61. General right to fair value, good quality and safety

- (1) Unless the consumer has been expressly informed and expressly agreed to accept, or knowingly acted in a manner consistent with accepting particular goods in the specific condition in which they are offered, the consumer has a right to receive goods that -
 - (a) are reasonably suitable for the purposes for which they are generally intended, subject to subsection (3);
 - (b) are of good quality, in good working order and free of defects;
 - (c) will be useable and durable for a reasonable period of time having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply or lease; and
 - (d) comply with the mandatory standard set under the Standards Act, 1993 (Act No.29 of 1993), if any.
- (2) In addition to the right set out in subsection (1)(a), if a consumer has specifically informed the supplier of the particular purpose for which the consumer wishes to acquire any goods, or the use to which the consumer intends to apply those goods, and the supplier –
 - (a) ordinarily offers to supply such goods; or
 - (b) acts in a manner consistent with being knowledgeable about the use of those goods;

the consumer has a right to expect that the goods are reasonably suitable for the specific purpose that the consumer has indicated.

- (3) The consumer of any goods has a right to receive goods that are free of any product failure, defect or hazard that would render the utility, practicability or safety of that

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good to be less than persons are generally entitled to expect, having regard to all the circumstances of its supply, including but not limited to –

- (a) the manner in which, and the purposes for which, that good has been marketed, packaged and displayed, the use of any trade description or mark, any instructions for, or warnings with respect to the use of that good;
 - (b) the range of things that might reasonably be anticipated to be done with or in relation to that good;
 - (c) the time when the good was manufactured and supplied.
- (4) For greater certainty in applying subsection (3) –
- (a) it is irrelevant whether a product failure, defect or hazard was latent or patent, or whether it could have been detected by a consumer before taking delivery of the good;
 - (b) a product failure, defect or hazard may not be inferred in respect of a particular good merely from the fact alone that a safer good has subsequently become available from the same or any other producer or supplier; and
 - (c) the safety of a good includes –
 - (i) the safety of, or with respect to, the component parts or ingredients of that good, or the raw material from which the good is produced; and
 - (ii) the risk of injury, death or illness to natural persons, or damage to property.
- (5) A person must not produce or distribute an unsafe good, or knowingly supply such a good to a consumer.

62. Implied warranty of quality

- (1) In any transaction or agreement in respect of the supply of goods to a consumer there is an implied provision that the manufacturer, importer or other producer, the

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distributor and the supplier each warrant that the goods comply with the requirements and standards contemplated in section 60, except to the extent that those goods have been altered contrary to the instructions, or after leaving the control, of the manufacturer, importer or other producer, the distributor or the supplier, as the case may be.

- (2) The implied warranty imposed by subsection (1) is in addition to -
- (a) any other implied warranty or condition imposed by the common law, this Act or any other public regulation; and
 - (b) any express warranty or condition stipulated by the manufacturer or importer, distributor or supplier.

63. Warranty on repaired goods

- (1) A service provider warrants every new or re-conditioned part installed during any repair or maintenance work, and the labour required to install it, for a period of 6 months after the date of installation.
- (2) A warranty in terms of this section -
- (a) is in addition to any other deemed or implied warranty; and
 - (b) is void if the consumer has subjected the part, or the goods or property in which it was installed, to misuse or abuse.

64. Warning concerning the fact and nature of hazards

- (1) The supplier of any activity or facility that is subject to any -
- (a) unusual hazard,
 - (b) hazard of which a consumer could not reasonably be expected to be aware, or which an ordinarily alert consumer could not reasonably be expected to contemplate, in the circumstances; or

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- (c) hazard that could result in serious injury or death,

must specifically draw the fact, nature and potential effect of that hazard to the attention of consumers in a form and manner that meets the standards set out in section 50 (2) to (5).

- (2) A person who packages any prescribed goods for supply to consumers –

- (a) that could reasonably present a risk of harm or injury to the consumer, user or other person present when the goods are being used, must display on or within that packaging a notice that meets the prescribed standards providing the consumer adequate instructions for the safe handling and use of those goods; or

- (b) that contain any ingredients or components that have been determined to present a chemical or biological hazard to humans or the environment, relative to their concentration in those goods, must display on or within that packaging, a notice that meets the prescribed standards informing the consumer of the appropriate steps to -

- (i) contain those ingredients or components so as to inhibit human exposure and minimize the risk of human or environmental contamination;
- (ii) remedy or mitigate the effects of those ingredients or components in the case of human or environmental exposure to them; and
- (iii) safely dispose of those goods, ingredients or components at the end of their useful life.

- (3) Subsection (2) does not apply to any goods or services to the extent that a substantially similar label or notice has been applied in terms of any other public regulation.

- (4) A person who installs any goods contemplated in subsection (2) for a consumer must give the consumer the original copy of -

- (a) any document required in terms of that subsection, or

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- (b) any similar document applied to those goods in terms of another public regulation.

65. Recovery and safe disposal of hazardous or dangerous products or components

If any public regulation prohibits the disposal or deposit of any particular goods, or any components, remnants, containers or packaging of any goods, into a common waste collection system -

- (a) any person who, in the ordinary course of business supplies goods of that kind to consumers, must accept the return of any such goods, components, remnants, containers or packaging from any consumer, without charge to the consumer; and
- (b) any person who, in the ordinary course of business, manufactures, imports, sells or distributes any such goods as part of the supply chain by which those goods reach the consumer, must in turn accept the return of any such goods, components, remnants, containers or packaging from the persons to whom they are ordinarily delivered as part of the supply chain.

66. Monitoring of prescribed goods for hazards

- (1) The manufacturer or importer of any prescribed goods must maintain a register identifying each original consumer of those goods, together with the consumer's contact details.
- (2) The manufacturer or importer of any prescribed goods must -
 - (a) establish a system to receive notice of -
 - (i) consumer complaints or reports of product failures, defects or hazards;
 - (ii) the return of any such goods because of a product failure, defect or hazard;

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- (iii) accidents caused wholly or partially as a result of a product failure, defect or hazard; and
 - (iv) other indicia of defects or premature failure
 - in those goods or in any component of them, or resulting from the use of those goods;
 - (b) For the period prescribed in respect of any such goods -
 - (i) continuously monitor the sources of information contemplated in paragraph (a), and
 - (ii) analyse the information received
 - with the object of detecting or identifying any previously undetected or unrecognised potential danger to the public from the use of or exposure to those goods; and
 - (c) Report to the Commission -
 - (i) The details of any accident report contemplated in paragraph (a)(iii); and
 - (ii) A periodic summary at the prescribed intervals and in the prescribed manner and form, concerning the information received in terms of this section.
 - (3) The Commission must publish an annual report in which it compiles the information reported to it in terms of this section.
 - (4) The Minister may prescribe -
 - (a) goods, or categories of goods, to which this section will apply, and
 - (b) the period of time contemplated in subsection (2)(b) with respect to any prescribed goods.

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- (5) The provisions of this section, and of section 67 – 69, are in addition to, and not in substitution for, any other legal obligation or duty on a manufacturer or importer of goods, whether at common law or in terms of any public regulation.

67. Duty to investigate apparent defects or failures

- (1) If a manufacturer or importer of any goods that have been prescribed in terms of section 65 has detected or identified any previously undetected or unrecognised potential danger to the public from the use of or exposure to those goods, the manufacturer or importer must –
- (a) conduct an investigation, sufficient to satisfy the prescribed standards, into the nature, causes and risks of that danger,
 - (b) inform the Commission in the prescribed manner and form when it commences such an investigation; and
 - (c) report to the Commission, in a manner sufficient to satisfy the prescribed standards, when it has concluded its investigation.
- (2) The Commission may publish the conclusions of a report submitted to it in terms of this section, and invite submissions from the public on those conclusions.

68. Duty to notify consumers of defects

- (1) If, after conducting an investigation in terms of section 67, a manufacturer or importer concludes that there is a potential danger to the public from the continued use of or exposure to the goods, the manufacturer or importer must –
- (a) promptly notify each registered consumer, if applicable, of the nature, extent and risks of the product failure, defect or hazard contributing to that danger; and
 - (b) submit to the Commission a plan for –
 - (i) notifying the public generally of the nature, extent and risks of that danger; and

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-
- (ii) remedying the product failure, defect or hazard contributing to that danger.
- (2) The National Consumer Commission must –
- (a) consider each proposal in terms of subsection (1) having regard to the nature of the product failure, defect or hazard, and the nature, extent and urgency of any resulting danger to the public; and
 - (b) either –
 - (i) approve the proposal; or
 - (ii) require the person making the proposal to submit a fresh proposal, if the Commission concludes that the proposal does not adequately address the need to notify consumers, minimize the danger to the public, or remedy the product failure, defect or hazard in the product.
- (3) The person who made a proposal that is the subject of a decision of the National Consumer Commission in terms of subsection (2) (b) (ii) may apply to the National Consumer Tribunal to review that decision, and the Tribunal may make an order partially or completely confirming or setting aside the decision.

69. Repair or replacement of hazardous goods

- (1) A manufacturer or importer, at its own cost, must –
- (a) contact each registered consumer of a good or component of a good that –
 - (i) it has concluded is a potential danger to the public; or
 - (ii) the Commission has ordered to be repaired or replaced in terms of section 70; and
- offer to repair or replace each such good or component of a good; and

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- (b) repair or replace each such good or component of a good that is submitted to it by a consumer of a good in response to such an offer or a public notice contemplated in section 68.
 - (2) If after a reasonable effort to repair a good or component of a good, the defect or hazard has not been remedied, such a good or a component of a good must be replaced.
 - (3) The cost that the manufacturer or importer must absorb includes any cost of –
 - (c) shipping and handling of the hazardous goods from or to the consumer; and
 - (d) labour and parts required to effect the repair or replacement.

70. Authority of Commission to require investigation or order recall

- (1) If the National Consumer Commission has reasonable grounds to believe that any goods prescribed in terms of section 66 may be hazardous, and the producer of those goods has not taken any steps required by section 67 or 68, the Commission, by written notice, may require that producer to –
 - (a) conduct an investigation contemplated in section 67(1);
 - (b) make a proposal contemplated in section 67(2); or
 - (c) carry out a program of notice and repair and replacement as contemplated in section 68, on any terms required by the Commission.
- (2) A manufacturer or importer affected by a notice issued in terms of this section may apply to the Tribunal to set aside the notice in whole or in part.

71. Liability for products

- (1) Any producer, distributor or supplier of a good is strictly liable for any damage, as described in subsection (2), caused wholly or partly as a consequence of a product failure, defect or hazard in a good, or as a result of inadequate instructions or

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warnings provided to the consumer, and if in a particular case, more than one person is liable in terms of this subsection, their liability is joint and several.

- (2) Subject to subsection (3), damage for which a person may become liable in terms of this section includes, but is not limited to –
- (a) the death or injury of any natural person;
 - (b) loss of, or damage to, any property, irrespective whether it is movable or immovable; and
 - (c) economic loss that results from a loss contemplated in paragraph (a) or (b).
- (3) Liability of a particular person in terms of this section does not arise in any of the following circumstances:
- (a) if the product failure, defect or hazard that results in damage is wholly attributable to compliance with any public regulation;
 - (b) if the alleged product failure, defect or hazard –
 - (i) did not exist in the good at the time it was supplied to another by the person alleged to be liable;
 - (ii) was wholly attributable to compliance by that person with instructions provided by another person who supplied the good to that person; or
 - (iii) arose after that person supplied the good to another person, as a result of the second person's action, which compromised the good;
 - (c) that it is unreasonable to expect the distributor or supplier to have discovered the product failure, defect or hazard, having regard to –
 - (i) that person's role in introducing the good to the consumer market; and
 - (ii) the state of scientific and technical knowledge at the time the good was under the control of that person; or
 - (d) the claim for damages is brought more than 3 years after the –

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- (i) death or injury of a person; or
 - (ii) earliest time at which a person with an interest in any property had knowledge of the material facts about the loss or damage to that property; or
 - (iii) the latest date on which a person suffered any economic loss.
- (4) The liability of any person in terms of this section is in addition to, and not in substitution for, any other liability of that person in terms of any law.

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PART H – SUPPLIERS’ ACCOUNTABILITY TO CONSUMERS**72. Lay-bys**

- (1) If a supplier makes an agreement to sell particular goods to a consumer, to accept payment for those goods in periodic instalments, and to hold those goods until the consumer has paid the full price for the goods, -
 - (a) each amount paid by the consumer is held by the supplier in trust for the benefit of the consumer, as a deposit subject to section 74; and
 - (b) the particular goods remain at the risk of the supplier until the consumer takes possession of them.
- (2) If a supplier is unable to deliver possession of any goods contemplated in subsection (1) when the consumer has paid the full price for the goods, the supplier must either, at the option of the consumer, -
 - (a) supply the consumer with an equivalent quantity of goods that are comparable or superior in description, design and quality; or
 - (b) refund to the consumer -
 - (i) the money paid by the consumer, with interest at a legal rate, if the inability to supply the goods is due to circumstances beyond the supplier’s control; or
 - (ii) double the amount paid by the consumer, as compensation for breach of contract.
- (3) If a consumer contemplated in subsection (1) -
 - (a) terminates or rescinds the agreement before fully paying for the goods, the supplier may charge a cancellation penalty before complying with the requirements of section 74; or

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-
- (b) fails to complete the payment for the goods within 60 business days after the anticipated date of completion, the supplier -
 - (i) may regard the consumer as having rescinded the agreement; and
 - (ii) may charge a cancellation penalty in respect of the goods before complying with the requirements of section 74.
 - (4) A cancellation penalty contemplated in subsection (3), may not be charged unless the supplier informed the consumer of the fact and extent of the penalty before the consumer entered into the lay-by agreement.
 - (5) The Minister may prescribe a maximum amount for a cancellation penalty contemplated in subsection (3).

73. Prepaid certificates, credits and vouchers

- (1) This section applies to any transaction in which a supplier -
 - (a) accepts consideration from a person in exchange for a prepaid certificate, card, credit, voucher or similar device; and
 - (b) expressly or implicitly agrees to provide goods or services to any person who subsequently presents that certificate, card, credit, voucher or similar device, up to the value represented by it.
- (2) A supplier contemplated in subsection (1) –
 - (a) must hold all consideration paid in exchange for all such certificates, cards, credits, vouchers or similar devices in trust in accordance with section 74; and
 - (b) may make a charge against that trust only when, and to the extent that, a certificate, card, credit, voucher or similar device is presented as consideration for goods or services supplied or to be supplied to or on behalf of a consumer.
- (3) Any person in possession of a certificate, card, credit, voucher or similar device contemplated in this section is a beneficiary of the trust imposed by subsection (2), to

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the extent of the unused value of that certificate, card, credit, voucher or similar device.

74. Supplier to hold and account for consumer's property

- (1) When a supplier has possession of any property belonging to or ordinarily under the control of the consumer, that property is held by the supplier in trust for the benefit of the consumer and is subject to the Trust Property Act, 1988 (Act No. 57 of 1988).
- (2) Any amount paid by a consumer to a supplier to be held as a deposit against the cost of goods or services to be supplied at a later date, or owed to a consumer by a supplier in terms of any provision of this Act, or required by this Act to be held by a supplier in trust for a consumer –
 - (a) is held by the supplier in trust for the benefit of the consumer and is subject to the Trust Property Act, 1988 (Act No. 57 of 1988); and
 - (b) if held by the supplier for at least 40 business days, must be credited with interest at rates determined in accordance with the Prescribed Rates of Interest Act, 1975 (Act No. 55 of 1975).
- (3) A person who assumes control of a supplier's property, as administrator, executor or liquidator of an estate, -
 - (a) has a duty to the consumer -
 - (i) to diligently investigate the circumstances of the supplier's business to ascertain the existence of any trust contemplated in this section; and
 - (ii) to ensure that any valid and existing trust imposed by this section, and of which the trustee has knowledge, is dealt with for the consumer's benefit in accordance with this section; and
 - (b) is liable to the consumer for any loss, unless that person has acted -
 - (i) in good faith; and

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- (ii) without knowledge of the existence of the consumer's interest.

75. Deposits in respect of containers, pallets or similar objects

- (1) The Minister may make regulations establishing a minimum or maximum deposit that a supplier must or may require a consumer to pay in respect of the return of a bottle, container, pallet, reel, or similar object used in respect of the packaging or delivery of any goods.
- (2) If a person returns a bottle, container, pallet, reel, or similar object contemplated in subsection (1) to any supplier of goods ordinarily sold in that bottle or container or on that pallet or in or on that reel or similar object, the supplier must pay that person the amount of the deposit -
- (a) if any, that is required to be charged in terms of any public regulation on the date on which the object is returned to the supplier; or
- (b) that the supplier charged for that object, or ordinarily charges for such an object
- irrespective whether the person returning the container paid a deposit for that object to that supplier.
- (3) A deposit paid by a consumer to a supplier as contemplated in this section is not trust property subject to section 74, except to the extent that an agreement or any public regulation requires otherwise.

76. Return of parts and materials

- (1) When a supplier is authorized to perform any service to any goods or property belonging to or ordinarily under the control of the consumer, the supplier must -
- (a) retain any parts or components removed from any goods or property in the course of any repair or maintenance work;

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-
- (b) keep those parts or components separate from parts removed from other goods or property; and
 - (c) return those parts or components to the consumer in a reasonably clean container

unless the consumer declined the return of any such parts or materials.

- (2) This section does not apply to any substance, parts or components that are required –
 - (a) in terms of any warranty under which the work was carried out, to be returned to, or disposed of at the direction of, the manufacturer or distributor;
 - (b) in terms of any insurance claim under which the work was carried out, to be returned to, or disposed of at the direction of, the insurer; or
 - (c) in terms of any public regulation, to be recovered or disposed of in a safe manner in the interests of environmental safety or public health and safety.

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PART A – CONSUMERS RIGHT TO BE HEARD AND OBTAIN REDRESS

77. Protection of consumer rights

- (1) If a consumer has exercised, asserted or sought to uphold any right set out in this Act or in an agreement with the supplier, the supplier must not, in response –
 - (a) discriminate directly or indirectly against that consumer, compared to the supplier's treatment of any other consumer who has not exercised, asserted or sought to uphold such a right;
 - (b) penalise the consumer;
 - (c) alter, or propose to alter, the terms or conditions of a transaction or agreement with the consumer, to the detriment of the consumer; or
 - (d) take any action to accelerate, enforce, suspend or terminate an agreement with the consumer.
- (2) If an agreement, or any provision of such an agreement is, in terms of this Act, declared to be unlawful, or is severed from the agreement, the supplier who is a party to that agreement must not, in response to that decision -
 - (a) directly or indirectly penalise another party to that agreement when taking any action contemplated in section 7(1);
 - (b) alter the terms or conditions of any other transaction or agreement with another party to the impugned agreement, except to the extent necessary to correct a similarly unlawful provision; or
 - (c) take any action to accelerate, enforce, suspend or terminate another agreement with another party to the impugned agreement.

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78. Enforcement of rights by consumer

A person referred to in section 4(2) may seek to enforce any right in terms of this Act or in terms of a transaction or agreement to by –

- (a) attempting to resolve any dispute with a supplier through alternative dispute resolution in accordance with section 79;
- (b) applying to the consumer court of the province with jurisdiction over the matter, if there is such a consumer court, subject to the law establishing or governing that consumer court;
- (c) filing a complaint with the Commission in accordance with section 81; or
- (d) approaching a court with jurisdiction over the matter.

79. Alternative dispute resolution

- (1) As an alternative to filing a complaint with the National Consumer Commission in terms of section 81, a person may refer a matter that could be the subject of such a complaint as follows: -
 - (a) If the supplier concerned is a participant in an authorized or recognised ombud scheme, the matter may be referred to the ombud with jurisdiction.
 - (b) If there is no ombud with jurisdiction as contemplated in paragraph (a), the matter may be referred to either -
 - (i) a consumer court, for resolution in accordance with this Act and any applicable provincial consumer legislation ; or
 - (ii) a provincial consumer protection authority or a consumer protection group, for resolution by conciliation or mediation, if those services are offered by that authority or group.

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- (2) The respondent in a matter referred to a provincial consumer protection authority or to a consumer protection group under subsection (1)(b)(ii) may object to that referral in writing within 10 business days, in which case –
- (a) the matter may not be resolved by that entity;
 - (b) the matter is deemed to have been filed as a complaint in terms of section 81.
- (3) In respect of any dispute between a supplier and a consumer that could be the subject of an application to the Tribunal in terms of this Act, the consumer or supplier, before either may apply directly to the Tribunal, -
- (a) must attempt to resolve that matter directly between themselves; and
 - (b) if unable to do so, must refer the matter to an entity as contemplated in subsection (1).
- (4) If an entity to whom a matter is referred for alternative dispute resolution concludes that either party to the conciliation or mediation in terms of this section is not participating in that process in good faith, or that there is no reasonable probability of the parties resolving their dispute through that process, the entity must issue a certificate in the prescribed form stating that the process has failed.

80. Dispute resolution may result in consent order

The ombud with jurisdiction, consumer court or other entity that has resolved, or assisted parties in resolving, a dispute in terms of this Part may -

- (a) record the resolution of that dispute in the form of an order, and
- (b) if the parties to the dispute consent to that order, submit it to a Court to be made a consent order, in terms of its Rules.

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81. Initiating a complaint to National Consumer Commission

- (1) Any person may file a complaint with the National Consumer Commission in the prescribed manner and form, alleging that any person has acted in a manner inconsistent with this Act.
- (2) A complaint may be initiated directly by the National Consumer Commission on its own motion, on the request of a provincial consumer protection authority or request of a consumer group accredited in terms of section 83.
- (3) A consumer or supplier who has unsuccessfully attempted to resolve a dispute directly with the other party and through alternative dispute resolution in terms of Section 79, may file an application contemplated in this Act at any time within –
 - (a) 20 business days after the failure of the attempted alternative dispute resolution; or
 - (b) such longer time as the Tribunal may allow on good cause shown.

82. Powers of a court to enforce consumer rights

- (1) In addition to any other order that it may make under this Act or any other law, a court considering a matter in terms of this Act may –
 - (a) order a supplier to alter or discontinue any conduct that is inconsistent with this Act;
 - (b) make any order specifically contemplated in this Act; and
 - (c) award damages against a supplier for collective injury to all or a class of consumers generally, to be paid to any person and on any terms or conditions that the court considers just and equitable and suitable to achieve the purposes of this Act.
- (2) This Act does not diminish any right of the consumer or the supplier to recover interest or special damages in any case where by law interest or special damages may

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be recoverable, or to recover money paid if the consideration for the payment of it
has failed.

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Section 83-r84

PART B – ROLE OF CIVIL SOCIETY**83. Accreditation of consumer protection groups**

- (1) The Commission may accredit any juristic person, or association of persons, as a consumer protection group if that person or association –
 - (a) functions predominantly to promote or represent the interests of all or a specific category of consumers generally;
 - (b) is committed to achieving the purposes of this Act;
 - (c) has sufficient human, financial and operational resources, and adequate administrative procedures and safeguards, to enable it to function efficiently and to effectively carry out its functions in terms of this Act, or presents to the Commission a credible plan to acquire or develop those resources; and
 - (d) engages in, or makes a realistic proposal to engage in, actions to promote and advance the consumer interests of persons contemplated in section 3(2)(b).
- (2) The Commission may impose reasonable conditions on the accreditation of a consumer protection group to further the purposes of this Act.
- (3) The Minister may prescribe criteria for the Commission to follow in assessing whether an applicant for accreditation meets the requirements of this section.

84. Support for consumer protection groups

The Commission may co-operate with, facilitate, or otherwise support any of the following activities carried out by a consumer protection group:

- (a) Consumer advice and education activities and publications;
- (b) Research, market monitoring, surveillance and reporting;
- (c) Promotion of consumers' rights and advocacy of consumers' interests;

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- (d) Representation of consumers, either specifically or generally, in court;
- (e) Alternative dispute resolution through mediation or conciliation;
- (f) Participation in national and international associations, conferences or forums concerned with consumer protection matters;

85. Consumer protection group may initiate consumer protection actions

- (1) A consumer protection group may -
 - (a) commence or undertake any act to protect the interests of a consumer individually, or of consumers collectively, in any matter or before any forum contemplated in this Act; and
 - (b) intervene in any matter before any forum contemplated in this Act, if the interests of consumers represented by that group are not otherwise adequately represented in that forum.
- (2) In addition to any other authority set out in this Act, a consumer protection group may direct a generally stated concern or complaint to the Commission in respect of any matter within the purpose of this Act.

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Chapter 4 : Industry Regulation

Section 86

Chapter 4**Industry Regulation****86. Registration of business names**

- (1) A person may apply to the Registrar, either directly or through a provincial consumer protection authority, in the prescribed manner and form to register a business name that is different from the name of the person.
- (2) The Registrar, or a provincial consumer protection authority, must register a business name in accordance with the application, unless that name
 - (a) is the same as, or confusingly similar to, a name -
 - (i) of a company registered in terms of the Companies Act or Close Corporations Act; or
 - (ii) registered for use by any other person in terms of this section;
 - (b) falsely implies or suggests, or could reasonably mislead the public to believe, that the business,-
 - (i) is part of, or associated with, any other business with which it is not so associated;
 - (ii) is an organ of state, or operated, sponsored, supported or endorsed by an organ of state;
 - (iii) enjoys the patronage of any foreign head of state or head of government;
 - (iv) is owned, managed or conducted by persons having any particular educational designation or professional qualifications, standards, skills or capacity; or
 - (v) is owned, operated, sponsored, supported or endorsed by -

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- (aa) any foreign country, government or administration or any department of such a government or administration; or
- (bb) any international organization; or
- (c) includes any words or expression that, in isolation or in context within the name, -
 - (i) fall into the category of expression contemplated in section 16(2) of the Constitution; or
 - (ii) may reasonably be considered to offend persons of a particular race, ethnicity, gender or religion.

87. Registrar's decisions with respect to business names

- (1) Subject to subsection (2), the Registrar may refuse to register a business name if the name or amended name of that company
 - (a) does not comply with the requirements of section 86; or
 - (b) is reserved in terms of the Companies Act for use by another person.
- (2) An applicant for registration of a business name may apply to the High Court to review a refusal by the Registrar to register that name.

88. Power of court on review concerning business names

- (1) For a period of two years immediately following the registration of a business name, any person may apply to the High Court to review the decision of the Registrar to register that name, solely on the grounds that the name -
 - (a) was reserved for the use of the applicant in terms of the Companies Act at the time of the Registrar's decision;
 - (b) is confusingly similar to a name under which the applicant -

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- (i) was licensed or registered in terms of any public regulation, and
 - (ii) was conducting business
 - before, and at the time of, the Registrar's decision; or
 - (c) contravenes section 86(2)(b) or (c).
- (2) A court hearing an application in terms of section 87(2), or subsection (1), may make an order –
- (a) requiring the Registrar to register, or cancel the registration of, a disputed business name, or -
 - (b) directing a person to stop using a disputed business name, within a period, and on any terms, that the court considers just, equitable and expedient in the circumstances.

89. Status and use of registered business name

- (1) A person may -
- (a) register more than one business name; or
 - (b) transfer a registered business name to another person by filing a notice with the Registrar in the prescribed manner and form and paying the prescribed transfer fee.
- (2) In addition to a registered business name, a person may register a translation of any business name registered to it in one or more official languages by filing a notice in the prescribed manner and form and paying the prescribed filing fee.

90. Licensing of persons for direct marketing

- (1) The Minister may prescribe -

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-
- (a) categories of persons who are required to be licensed to engage in direct marketing, as contemplated in section 38, if they are not otherwise required to be licensed or registered in terms of any public regulation; and
 - (b) the criteria to be used in assessing and approving or rejecting applications for such licences.
- (2) A person who is required to be licensed in terms of subsection (1), but who is not so registered, must not engage in direct marketing, or direct other persons to do so, irrespective whether those other persons are required to be so licensed.
- (3) A person who is required in terms of this section to be licensed to engage in direct marketing must apply for registration in the prescribed manner and form to -
- (a) the provincial consumer affairs authority in the province in which that person resides or has its principal office, if -
 - (i) the person seeks a licence to solicit only within that province; and
 - (ii) there is a provincial consumer affairs authority in that province; or
 - (b) the National Consumer Commission.
- (4) A provincial consumer protection authority, or the National Consumer Commission, as the case may be, may—
- (a) require further information relevant to an application contemplated in subsection (1); and
 - (b) refuse an application if the applicant has not supplied any information required in terms of paragraph (a) within the prescribed time.
- (5) If an application complies with the provisions of this Act and the applicant meets the criteria set out in terms of this Act for registration, a provincial consumer protection authority, or the National Consumer Commission, as the case may be, after considering the application, must licence the applicant.

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91. Industry codes

(1) In this section-

“Industry code” means a code regulating the conduct of participants in an industry towards other participants in the industry or towards consumers in the industry.

(2) The Minister, by regulation, may:

- (a) prescribe an industry code, or specified provisions of an industry code, for a specific industry;
- (b) declare the industry code to be a mandatory industry code or a voluntary industry code; and
- (c) in respect of a voluntary industry code, specify the method by which a supplier agrees to be bound by the code and the method by which a supplier ceases to be so bound.

(3) A supplier must not, in the ordinary course of business, contravene an applicable industry code

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Chapter 5 : National Consumer Protection Institutions

Section 92

Chapter 5

National Consumer Protection Institutions

PART A –NATIONAL AND PROVINCIAL CO-OPERATION

92. Co-operative exercise of concurrent jurisdiction

- (1) As contemplated in section 41(2) of the Constitution, the Minister must consult with the responsible Member of any relevant provincial Executive Council -
 - (a) to co-ordinate and harmonize the functions to be performed by the National Consumer Commission, and one or more provincial consumer protection authorities; and
 - (b) as necessary, to facilitate the settlement of any dispute between the National Consumer Commission, and one or more provincial consumer protection authorities,concerning the functions to be performed by them relating to consumer protection.
- (2) If this Act requires the several provincial consumer protection authorities to perform a particular function within their respective provinces, and
 - (a) within a particular province, no provincial consumer protection authorities has been established; or
 - (b) the Minister concludes on reasonable grounds that the provincial consumer protection authority within a particular province is unable to perform that function effectively,

the Minister must consult with the responsible Member of the Executive Council of that province to determine the steps be taken to ensure the fulfilment of that statutory obligation.

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Section 93

93. Provincial consumer protection authorities

- (1) A provincial consumer protection authority has jurisdiction within its province to –
- (a) consider applications for, and issue, licences to direct marketers as required in terms of this Act;
 - (b) register, on behalf of the Registrar, a business name as applied for by any person resident, or carrying on business exclusively, within that province;
 - (c) issue compliance notices in terms of this Act on behalf of the National Consumer Commission to any person carrying on business exclusively within that province; and
 - (d) facilitate the mediation or conciliation of a dispute arising in terms of this Act between or among persons resident, or carrying on business exclusively within that province;
 - (e) refer a dispute contemplated in paragraph (d) to the provincial consumer court within that province, if there is one; and
 - (f) request the National Consumer Commission to initiate a complaint in respect of any apparent prohibited conduct or offence in terms of this Act arising within that province.
- (2) A provincial consumer protection authority must keep a register of each person whom it licences in terms of subsection (1)(a), including in the register the following information:
- (a) the activities permitted under each such licence.
 - (b) the address of any premises in, on or from which the licensed activities may be engaged in, conducted or made available; and
 - (c) any other prescribed information.

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- (3) Each provincial consumer protection authority must promptly report to the Registrar the information kept by that provincial consumer protection authority in terms of subsection (2).
- (4) A provincial consumer protection authority must, on request from another such authority, provide a copy of all prescribed information in its possession concerning a licensee.
- (5) The Minister, by regulation in accordance with section 148, may prescribe the timing, manner and form, and content of information to be provided in terms of this section.

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PART B – ESTABLISHMENT OF NATIONAL CONSUMER COMMISSION

94. Establishment of National Consumer Commission

- (1) There is hereby established a body to be known as the National Consumer Commission, which -
 - (a) has jurisdiction throughout the Republic;
 - (b) is a juristic person;
 - (c) is independent and subject only to the Constitution and the law;
 - (d) must be impartial; and
 - (e) must perform its functions in accordance with the law, and -
 - (i) in as transparent a manner as is appropriate having regard to the nature of the specific function; and
 - (ii) without fear, favour, or prejudice.
- (2) Each organ of state must assist the National Consumer Commission to maintain its independence and impartiality, and to effectively carry out its powers and duties.

95. Board of National Consumer Commission

- (1) The National Consumer Commission is governed by a Board consisting of -
 - (a) a member designated by the Cabinet member responsible for social development, to serve until substituted by that Cabinet member;
 - (b) a member designated by the Cabinet member responsible for education, to serve until substituted by that Cabinet member;
 - (c) a member designated by the Cabinet member responsible for transportation, to serve until substituted by that Cabinet member;

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- (d) a member designated by the Cabinet member responsible for housing, to serve until substituted by that Cabinet member;
 - (e) a member designated by the Cabinet member responsible for health, to serve until substituted by that Cabinet member;
 - (f) a Chairperson appointed by the Minister;
 - (g) a Deputy Chairperson appointed by the Minister; and
 - (h) not more than six other members appointed by the Minister.
- (2) The Chairperson, deputy Chairperson and members contemplated in subsection (1)(h) -
- (a) must each have applicable knowledge or experience of matters connected with the purposes of this Act; and
 - (b) may each serve for a period of not more than five years, as determined by the Minister in each case at the time of appointment.
- (3) The Board is responsible to -
- (a) guide the strategic development of the National Consumer Commission;
 - (b) oversee and ensure the efficient and effective use of the resources of the National Consumer Commission;
 - (c) ensure that the National Consumer Commission is in compliance with all of its legal requirements, and reporting and financial accountability obligations; and
 - (d) provide advice to the Chief Executive Officer concerning the exercise of the functions and powers of the National Consumer Commission.
- (4) The Board may refer to the Minister any matter concerning the functioning of the National Consumer Commission.

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96. Qualifications for Board membership

- (1) To be eligible for appointment or designation as a member of the Board, and to continue to hold that office, a person must –
 - (a) not be subject to any disqualification set out in subsection (2); and
 - (b) have submitted to the Minister a written declaration stating that the person –
 - (i) is not disqualified in terms of subsection (2); and
 - (ii) does not have any interests referred to in subsection (2)(b).
- (2) A person may not be a member of the Board 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 has or acquires an interest in a business or enterprise that may conflict or interfere with the proper performance of the duties of a member of the Board;
 - (c) is an unrehabilitated 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 misconduct in respect of fraud or the misappropriation of money;
 - (e) is subject to an order of a competent court holding that person to be mentally unfit or disordered;
 - (f) within the previous ten years has been, or is, convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Corruption Act, 1992 (Act No. 94 of 1992), an offence under Chapter 2 or 3 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), an offence under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) or an offence involving dishonesty; or

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- (g) has been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), 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.

97. Conflicting interests

- (1) A member of the Board must promptly inform the Minister in writing after acquiring an interest that is, or is likely to become, an interest contemplated in section 96(2)(b).
- (2) A member of the Board must not -
 - (a) engage in any activity that may undermine the integrity of the National Consumer Commission;
 - (b) attend, participate in or influence the proceedings during a meeting of the Board, if, in relation to the matter before the Board, that member has an interest -
 - (i) contemplated in section 96(2)(b); or
 - (ii) that precludes that member from performing the functions of a member of the Board in a fair, unbiased and proper manner;
 - (c) vote at any meeting of the Board in connection with a matter contemplated in paragraph (b);
 - (d) 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 Board; or
 - (e) divulge any information referred to in paragraph (d) to any third party, except as required as part of that person's official functions as a member of the Board.

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- (3) If, at any time, it appears to a member of the Board that a matter before the Board concerns an interest of that member referred to in subsection (2)(b), that member must –
- (a) immediately and fully disclose the nature of that interest to the meeting; and
 - (b) withdraw from the meeting to allow the remaining members to discuss the matter and determine whether the member should be prohibited from participating in any further proceedings concerning that matter.
- (4) A disclosure by a member of the Board in terms of subsection (3)(a), and the decision by the Board in terms of subsection (3)(b), must be expressly recorded in the minutes of the meeting at which the disclosure is made.
- (5) Proceedings of the Board, and any decisions taken by a majority of the members present and entitled to participate in those decisions, are valid despite the fact that –
- (a) a member of the Board failed to disclose an interest as required by subsection (3); or
 - (b) a member of the Board who had such an interest attended those proceedings, participated in them in any way, or directly or indirectly influenced those proceedings.

98. Resignation, removal from office, and vacancies

- (1) A member of the Board designated in terms of section 95(1)(a) to (e) may resign by giving written notice jointly to the Minister and the relevant member of the cabinet responsible for the designation of that member.
- (2) A member of the Board appointed in terms of section 95(1)(f) to (h) may resign by giving to the Minister –
 - (a) one month written notice; or
 - (b) less than one month written notice, with the approval of the Minister.

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- (3) The Minister, after taking the steps required by subsection (4), may remove a member of the Board appointed in terms of section 95(1)(f) to (h), only if that member has -
- (a) become disqualified in terms of section 96(2);
 - (b) acted contrary to section 97(2);
 - (c) failed to disclose an interest or withdraw from a meeting as required by section 97(3); or
 - (d) neglected to properly perform the functions of their office.
- (4) Before removing a person from office in terms of subsection (3), the Minister must afford the person an opportunity to state a case in defence of their position.
- (5) Upon the expiry of the first term of office of a member of the Board appointed in terms of section 95(1)(f) to (h), the member may be re-appointed to a further term, subject to subsection (6).
- (6) A person may not be appointed in terms of section 95(1)(f) to (h) to serve for more than two terms as a member of the Board.

99. Appointment of Chief Executive Officer

- (1) The Minister must appoint a suitably qualified and experienced person as Chief Executive Officer of the National Consumer Commission, who, -
- (a) with the advice, and subject to the oversight, of the Board, is responsible for all functional responsibilities pertaining to the Commission; and
 - (b) is accountable to the Board.
- (2) The Chief Executive Officer is an ex officio member of the Board, but may not vote at its meetings.

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100. Conflicting interests

The Chief Executive Officer, and each other employee of the National Consumer Commission, must not –

- (a) engage in any activity that may undermine the integrity of the National Consumer Commission;
- (b) participate in any investigation, hearing, or decision concerning a matter in respect of which that person has a direct financial interest or any similar personal interest;
- (c) make private use of, or profit from, any confidential information obtained as a result of performing that person's official functions in the National Consumer Commission; or
- (d) divulge any information referred to in paragraph (c) to any third party, except as required as part of that person's official functions within the National Consumer Commission.

101. Appointment of inspectors and investigators

- (1) The Chief Executive Officer may appoint any suitable employee of the National Consumer Commission, or any other suitable person employed by the State, as an inspector.
- (2) The Chief Executive Officer must issue each inspector with a certificate stating that the person has been appointed as an inspector in terms of this Act.
- (3) When an inspector performs any function in terms of this Act, the inspector must –
 - (a) be in possession of a certificate of appointment issued to that inspector in terms of subsection (2); and
 - (b) show that certificate to any person who –
 - (i) is affected by the inspector's action's in terms of this Act; and

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- (ii) requests to see the certificate.
- (4) When exercising powers in terms of this Act, an inspector is a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and may exercise the powers conferred on a peace officer by law.
- (5) The Chief Executive Officer may appoint or contract with any suitably qualified person to conduct research, audits, inquiries or other investigations on behalf of the National Consumer Commission, but a person appointed in terms of this subsection is not an inspector within the meaning of this Act.

102. Finances

- (1) The National Consumer Commission is financed from -
 - (a) money appropriated by Parliament;
 - (b) any fees payable in terms of this Act;
 - (c) income derived from its investment and deposit of surplus money in terms of subsection (2); and
 - (d) other money accruing from any source.
- (2) The National Consumer Commission may invest or deposit money that is not immediately required for contingencies or to meet current expenditures -
 - (a) on a call or short-term fixed deposit with any registered bank or financial institution in the Republic; or
 - (b) in an investment account with the Corporation for Public Deposits established in terms of section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984).

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103. Reviews and Reports to Minister

- (1) At least once every five years, the Minister must conduct an audit review of the exercise of the functions and powers of the National Consumer Commission.
- (2) In addition to any other reporting requirement set out in this Act, the National Consumer Commission must report to the Minister at least once every year on its activities, as required by the Public Finance Management Act, 1999 (Act No. 1 of 1999).
- (3) As soon as practicable after receiving a report of a review contemplated in subsection (1), or after receiving a report contemplated in subsection (2), the Minister must –
 - (a) transmit a copy of the report to the Premier of each Province; and
 - (b) table it in Parliament.

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PART C – GENERAL FUNCTIONS OF NATIONAL CONSUMER COMMISSION

104. General provisions concerning Commission functions

- (1) In carrying out its functions, the National Consumer Commission may -
 - (a) have regard to international developments in the field of consumer protection;
or
 - (b) consult any person, organisation or institution with regard to any matter.
- (2) In respect to a particular matter within its jurisdiction or responsibility, the National Consumer Commission may exercise its responsibility by way of an agreement contemplated in section 110(4)(b).
- (3) The Minister must prescribe at least two official languages to be used by the National Consumer Commission in any documents it is required to deliver in terms of this Act, for all or any part of the Republic, to give maximum effect to the requirements of section 6 (3) and (4) of the Constitution.

105. Monitoring interests of vulnerable consumers

The National Consumer Commission must:

- (a) monitor trends in the consumer market and industry with respect to the needs and interests of persons contemplated in section 3(2)(b); and
- (b) submit an annual workplan to the Minister in this regard.

106. Development of codes of practice relating to Act

The National Consumer Commission may develop, and promote the voluntary use of codes of practice in respect of –

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- (a) a standardized or uniform means of presenting and communicating the information contemplated in section 28 or 29;
 - (b) the requirements of sections 66 to 69;
 - (c) use of official languages and plain language in documents;
 - (d) alternative dispute resolution in terms of section 79; or
 - (e) any other matter to better achieve the purposes of this Act.

107. Promotion of legislative reform

In order to better achieve the purposes of this Act in relation to laws that govern matters affecting consumers, the National Consumer Commission must –

- (a) identifying any national or provincial legislation, or other public regulation, that -
 - (i) affects the welfare of consumers; and
 - (ii) is inconsistent with the purposes of this Act;
- (b) consult with relevant provincial consumer protection authorities, organs of state within the national sphere of government, and accredited consumer protection groups with respect to legislation identified in terms of paragraph (a) with the object of developing proposals for reform of that legislation; and
- (c) report from time to time to the Minister with recommendations for achieving the progressive transformation and reform of law contemplated in this section.

108. Promotion of consumer protection within organs of state

In order to better achieve the purposes of this Act in relation to goods and services supplied to consumers by or through any organs of state, the National Consumer Commission must –

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- (a) consult with relevant provincial consumer protection authorities, organs of state within the national sphere of government, and accredited consumer protection groups with respect to the delivery of any such goods or services, with the object of -
 - (i) identifying any practices that are inconsistent with the purposes and principles of this Act; and
 - (ii) developing proposals for reform of any such practices; and
- (b) report from time to time to the Minister with recommendations for achieving the progressive transformation and reform of practices contemplated in this section.

109. Research and public information

The National Consumer Commission is responsible to increase knowledge of the nature and dynamics of the consumer market, and to promote public awareness of consumer protection matters, by –

- (a) implementing education and information measures to develop public awareness of the provisions of this Act;
- (b) providing guidance to the public by -
 - (i) issuing explanatory notices outlining its procedures, or its non-binding opinion on the interpretation of any provision of this Act;
 - (ii) applying to a court for a declaratory order on the interpretation or application of any provision of this Act; or
 - (iii) publishing any orders and findings of the Tribunal or a court in respect of a breach of the Act.

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110. Relations with other regulatory authorities

- (1) At the request of the relevant Member of the Executive Council of a province, or a provincial consumer protection authority, the National Consumer Commission -
 - (a) may engage with that provincial consumer protection authority in co-operative activities of research, publication, education, staff development and training; and
 - (b) in consultation with the Minister, may -
 - (i) engage with that provincial consumer protection authority in staff exchanges or secondments; or
 - (ii) provide technical assistance or expertise to that provincial consumer protection authority.
- (2) At the request of the relevant Member of the Executive Council of a province, or a provincial consumer protection authority, the National Consumer Commission may engage with that provincial consumer protection authority in co-operative activities to detect and suppress prohibited conduct or offences in terms of this 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.
- (3) At the direction of the Minister, the National Consumer Commission must engage with any relevant provincial consumer protection authority in co-operative activities to detect and suppress prohibited conduct or offences in terms of this Act, occurring within the province, or across its provincial boundaries.
- (4) The National Consumer Commission may
 - (a) liaise with any regulatory authority on matters of common interest;
 - (b) negotiate agreements with any regulatory authority to co-ordinate and harmonize the exercise of jurisdiction over consumer matters within the relevant industry or sector, and to ensure the consistent application of the principles of this Act;

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- (c) participate in the proceedings of any regulatory authority; and
 - (d) advise, or receive advice from, any regulatory authority.
- (5) A regulatory authority that, in terms of any public regulation, exercises jurisdiction over consumer matters within a particular industry or sector-
- (a) may negotiate agreements with the National Consumer Commission, as anticipated in subsection (4)(b), and
 - (b) may exercise its jurisdiction by way of such an agreement in respect of a particular matter within its jurisdiction.
- (6) The National Consumer Commission may request a provincial consumer protection authority to submit any report or information related to the activities of that provincial consumer protection authority to the National Consumer Commission.
- (7) The President may assign to the National Consumer Commission any duty of the Republic to exchange information with a similar foreign agency in terms of an international agreement relating to the purposes of this Act.
- (8) The National Consumer Commission may liaise with any foreign or international authorities having any objects similar to the functions and powers of the National Consumer Commission.

111. Reporting requirements of the National Consumer Commission

- (1) In addition to any other advice or reporting requirements set out in this Part, the National Consumer Commission is responsible to –
- (a) advise the Minister on matters of national policy relating to consumer protection and on the determination of national norms and standards regarding consumer protection in terms of this Act that should apply generally throughout the Republic;

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- (b) recommend to the Minister changes to bring about uniformity in the legislation in the various provinces in relation to consumer protection in terms of this Act;
 - (c) report annually on market practices and the implications for consumer choice and competition in the consumer market;
 - (d) enquire into and report to the Minister on any matter concerning the purpose of this Act; and
 - (e) advise the Minister in respect of any matter referred to it by the Minister.
- (2) The Minister must table in Parliament any report submitted in terms of -
- (a) section 4(1)(b); or
 - (b) any other provision of this Part, if that report deals with a substantial matter relating to the purposes of this Act.

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Section 112-r113

PART D – ENFORCEMENT FUNCTIONS OF NATIONAL CONSUMER COMMISSION

112. Enforcement functions of the National Consumer Commission

The National Consumer Commission is responsible to enforce this Act by–

- (a) promoting informal resolution of any dispute arising in terms of this Act between a consumer and a supplier, but is not responsible to intervene in or directly adjudicate any such dispute;
- (b) receiving complaints concerning alleged prohibited conduct or offences;
- (c) monitoring the consumer market to ensure that prohibited conduct and offences are prevented, or detected and prosecuted;
- (d) investigating and evaluating alleged prohibited conduct and offences;
- (e) issuing and enforcing compliance notices;
- (f) negotiating and concluding undertakings and consent orders contemplated in section 118;
- (g) referring to the Competition Commission any concerns regarding market share, anti-competitive behaviour or conduct that may be prohibited in terms of the Competition Act, 1998 (Act 89 of 1998);
- (h) referring matters to the National Consumer Tribunal, and appearing before the Tribunal, as permitted or required by this Act; and
- (i) referring alleged offences in terms of this Act to the National Prosecuting Authority.

113. Investigation by National Consumer Commission

- (1) In addition to receiving complaints in any manner contemplated in this Act, the National Consumer Commission may initiate a complaint in its own name.

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- (2) Upon initiating or receiving a complaint in terms of this Act, the National Consumer Commission may –
- (a) issue a notice of non-referral to the complainant in the prescribed form, if the complaint appears to be frivolous or vexatious, or does not allege any facts which, if true, would constitute grounds for a remedy under this Act;
 - (b) refer the complaint to an ombud with jurisdiction, a provincial consumer protection authority, a consumer court, an accredited consumer protection group or an alternative dispute resolution agent for the purposes of assisting the parties to attempt to resolve the dispute in terms of section 79; or
 - (c) direct an inspector to investigate the complaint as quickly as practicable, in any other case.
- (3) At any time during an investigation, the National Consumer Commission may designate one or more persons to assist the inspector conducting the investigation.
- (4) At any time during an investigation, the National Consumer Commission may summon any person who is believed to be able to furnish any information on the subject of the investigation, or to have possession or control of any book, document or other object that has a bearing on that subject –
- (a) to appear before the National Consumer Commission to be interrogated at a time and place specified in the summons; or
 - (b) to deliver or produce to the National Consumer Commission any book, document or other object referred to in paragraph (a) at a time and place specified in the summons.
- (5) A person questioned by an inspector conducting an investigation must answer each question truthfully and to the best of that person's ability, but –
- (a) a person is not obliged to answer any question if the answer is self-incriminating; and

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- (b) the inspector questioning such a person must inform that person of the right set out in paragraph (a).
 - (6) No self-incriminating answer given or statement made by any person to an inspector exercising powers in terms of this section will be admissible as evidence against that person in criminal proceedings against that person instituted in any court, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in section 137, and then only to the extent that the answer or statement is relevant to prove the offence charged.

114. Outcome of investigation

- (1) After completing an investigation into a complaint, the National Consumer Commission may -
 - (a) issue a notice of non-referral to the complainant in the prescribed form;
 - (b) refer the matter to the National Prosecuting Authority, if the Commission alleges that a person has committed an offence in terms of this Act; or
 - (c) if the National Consumer Commission believes that a person has engaged in prohibited conduct -
 - (i) refer the matter to the Equality Court, as contemplated in section 11, if the complaint involves a matter in terms of Part A of Chapter 2;
 - (ii) make a referral in accordance with subsection (2); or
 - (iii) issue a notice in terms of section 115 to stop engaging in an unlicensed or unaccredited practice; or
 - (iv) issue a compliance notice in terms of section 116.
- (2) In the circumstances contemplated in subsection (1)(c)(ii), the National Consumer Commission may refer the matter -

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- (a) to the consumer court of the province in which the supplier has its principal place of business in the Republic, if -
- (i) there is a consumer court in that province; and
 - (ii) the Commission believes that the issues raised by the complaint can be dealt with expeditiously and fully by such a referral; or
- (b) to the Tribunal.
- (3) If, in respect of a matter contemplated in subsection (2)(a), there is no consumer court within the applicable province, the National Consumer Commission may refer the matter to either -
- (a) a consumer court in another province, if the balance of convenience or interests of justice so permit; or
 - (b) the Tribunal.
- (4) If the National Consumer Commission refers a matter to a consumer court in terms of subsection (2)(a) or (3)(a), any party to that referral may apply to the Tribunal, in the prescribed manner and form and within the prescribed time, for an order that the matter be referred to -
- (a) a different consumer court, or
 - (b) the Tribunal.
- (5) If an application has been made to the National Consumer Tribunal -
- (a) in terms of subsection (4)(a), the Tribunal may order that the matter be referred to a different consumer court, if the balance of convenience or interests of justice so require;
 - (b) in terms of subsection (4)(b), the Tribunal may order that the matter be referred to it instead of the consumer court if the balance of convenience or interests of justice so require.

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- (6) A consumer court hearing a matter referred to in this section –
 - (a) must conduct its proceedings in a manner consistent with the requirements of Part A of Chapter 6 ; and
 - (b) may make any order that the Tribunal could have made in terms of this Act after hearing that matter.
- (7) An order of a consumer court made after hearing a matter referred to in terms of this section has the same force and effect as if it had been made by the Tribunal.

115. Notice to cease unlicensed or unaccredited practice

- (1) Subject to subsection (2), the National Consumer Commission may issue a notice in the prescribed form requiring a person who is not accredited or licensed to stop engaging in an activity, offering to engage in an activity, or pretending to be authorized to engage in an activity that, in terms of this Act, requires accreditation or a licence.
- (2) A notice contemplated in subsection (1) must set out—
 - (a) the name of the person or association to whom the notice applies;
 - (b) details of the nature and extent of the activity concerned;
 - (c) the date as from which the person must discontinue engaging in those activities;
 - (d) the basis of the opinion that the person engaging in those activities is required to be accredited or licensed; and
 - (e) any penalty that may be imposed in terms of this Act if the person fails to discontinue those activities.
- (3) A notice issued in terms of this section remains in force until—

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- (a) An accreditation certificate or licence is issued to the person to whom the notice was issued; or
 - (b) the notice is set aside by the Tribunal, or a court upon an appeal or review of a Tribunal decision concerning the notice.
- (4) It is an offence under this Act to fail to comply with a notice issued in terms of this section.

116. Issuance of compliance notices

- (1) Subject to subsection (2), the National Consumer Commission may issue a compliance notice in the prescribed form to a person or association of persons whom the National Consumer Commission on reasonable grounds believes has engaged in prohibited conduct.
- (2) Before issuing a notice in terms of subsection (1) to a regulated entity, the National Consumer Commission must consult with the regulatory authority that issued a licence to that regulated entity.
- (3) A compliance notice contemplated in subsection (1) must set out—
 - (a) the person or association to whom the notice applies;
 - (b) the provision of this Act that has not been complied with;
 - (c) details of the nature and extent of the non-compliance;
 - (d) any steps that are required to be taken and the period within which those steps must be taken; and
 - (e) any penalty that may be imposed in terms of this Act if those steps are not taken.
- (4) A compliance notice issued in terms of this section remains in force until—

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- (a) it is set aside by the Tribunal, or a court upon an appeal or review of a Tribunal decision concerning the notice; or
 - (b) the National Consumer Commission issues a compliance certificate contemplated in subsection (5).
- (5) If the requirements of a compliance notice issued in terms of subsection (1) have been satisfied, the National Consumer Commission must issue a compliance certificate.
- (6) It is an offence under this Act to fail to comply with a notice issued in terms of this section.

117. Objection to notices

- (1) Any person issued with a notice in terms of section 115 or 116 may apply to the Tribunal in the prescribed manner and form to review the notice within—
 - (a) 15 business days after receiving that notice; or
 - (b) such longer period as may be allowed by the Tribunal on good cause shown.
- (2) After considering any representations by the applicant and any other relevant information, the Tribunal may confirm, modify or cancel all or part of a notice.
- (3) If the 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.

118. Consent orders

- (1) If a matter has been investigated by the National Consumer Commission, and the National Consumer Commission and the respondent agrees to the proposed terms of an appropriate order the Tribunal or a court, without hearing any evidence, may confirm that resolution or agreement as a consent order.

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- (2) With the consent of a complainant, a consent order confirmed in terms of subsection (1)(b) may include an award of damages to that complainant.

119. Referral to National Consumer Tribunal

- (1) If the National Consumer Commission issues a notice of non-referral in response to a complaint, the complainant concerned may refer the matter directly to -
- (a) the consumer court of the province within which the complainant resides, or in which the respondent has its principle place of business in the Republic, subject to the provincial legislation governing the operation of that consumer court; or
 - (b) the Tribunal, with leave of the Tribunal.
- (2) If a matter is referred directly to a consumer court in terms of subsection (1), -
- (a) the respondent may apply to the Tribunal, in the prescribed manner and form and within the prescribed time, for an order that the matter be referred to -
 - (i) a different consumer court, or
 - (ii) the Tribunal;
 - (b) the provisions of section 114 (6) and (7), read with the changes required by the context apply to an application made in terms of paragraph (a); and
 - (c) if the matters remains referred to a consumer court, the provisions of Part A of Chapter 6, each read with the changes required by the context, , apply to the hearing of the matter by the consumer court.
- (3) A referral to the Tribunal, whether by the National Consumer Commission, or by a complainant in terms of subsection (1), must be in the prescribed form.
- (4) The Tribunal must conduct a hearing into any matter referred to it under this Chapter, in accordance with the requirements of this Act.

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PART A - TRIBUNAL CONSIDERATION OF COMPLAINTS AND REFERRALS

120. Hearings before Tribunal

- (1) The Tribunal must conduct its hearings in public –
 - (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) Despite subsection (1), the 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 High Court.
- (3) The Chairperson of the Tribunal must assign any of the following matters to be heard by a single member of the Tribunal, sitting alone:
 - (a) consent orders in terms of this Act;
 - (b) applications to permit late filing; and
 - (c) review of a notice in terms of section 115;

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- (4) At the conclusion of a hearing, the Tribunal must make any order permitted in the circumstances in terms this Act and must issue written reasons for its decision.
- (5) The Tribunal must provide the participants and other 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 (2)(a).

121. Right to participate in hearing

The following persons may participate in a hearing contemplated in this Part, in person or through a representative, and may put questions to witnesses and inspect any books, documents or items presented at the hearing:

- (a) the National Consumer Commission;
- (b) the applicant or complainant, or a consumer protection group acting in terms of section 85(1);
- (c) the respondent; and
- (d) any other person who has a material interest in the hearing, unless, in the opinion of the presiding member of the Tribunal, that interest is adequately represented by another participant.

122. Powers of member presiding at hearing

The member of the Tribunal presiding at a hearing may-

- (a) direct or summon any person to appear at any specified time and place;
- (b) question any person under oath or affirmation;
- (c) summon or order any person-
 - (i) to produce any book, document or item necessary for the purposes of the hearing; or

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- (ii) to perform any other act in relation to this Act; and
 - (d) give directions prohibiting or restricting the publication of any evidence given to the Tribunal.

123. Rules of procedure

Subject to the Tribunal's rules of procedure, the Tribunal member 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.

124. Witnesses

- (1) Every person giving evidence at a hearing of the 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 Tribunal may order a person to answer any question, or to produce any article or document, even if it is self-incriminating to do so.
- (4) Section 113 (6) applies to evidence given by a witness in terms of this section.

125. Costs

- (1) Subject to subsection (2), each party participating in a hearing must bear its own costs.
- (2) If the Tribunal –
 - (a) has not made a finding against a respondent, the Tribunal member presiding at a hearing may award costs to the respondent, and against a complainant who referred the complaint in terms of section 119 (1); or

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Section 126-r127

- (b) has made a finding against a respondent, the Tribunal member presiding at a hearing may award costs against the respondent, and to a complainant who referred the complaint in terms of section 119 (1).

126. Appeals and reviews

- (1) A participant in a hearing before a single member of the Tribunal may appeal a decision by that member to a full panel of the Tribunal.
- (2) Subject to the rules of the High Court, a participant in a hearing before a full panel of the Tribunal may -
 - (a) apply to the High Court to review the decision of the Tribunal in that matter; or
 - (b) appeal to the High Court against the decision of the Tribunal in that matter, other than a decision in terms of section 80 or 122.

127. Interim relief

- (1) At any time, whether or not a hearing has commenced into a complaint, a complainant may apply to the Tribunal for an interim order in respect of that complaint, and the 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) to prevent the purposes of this Act 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.

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- (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 National Consumer Tribunal, on good cause shown, may extend the interim order for a further period not exceeding six months.

128. Orders of Tribunal

- (1) In addition to its other powers in terms of this Act, the Tribunal may -
 - (a) make an appropriate order in relation to prohibited conduct, including -
 - (i) declaring conduct to be prohibited in terms of this Act;
 - (ii) interdicting any prohibited conduct;
 - (iii) imposing an administrative fine in terms of section 127, with or without the addition of any other order in terms of this section;
 - (b) confirming a consent agreement in terms of this Act as an order of the Tribunal; or
 - (c) condoning any non-compliance of its rules and procedures on good cause shown;
 - (d) confirming an order that an unaccredited or unlicensed person must stop engaging in activity that requires the person to be accredited or licensed;
 - (e) requiring a supplier to -
 - (i) pay or repay to a consumer any money owed to that consumer in terms of this Act;

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- (ii) alter any practice that is inconsistent with this Act; or
- (iii) take reasonable steps to publicly acknowledge past contraventions of the Act or abuse of consumer rights; or
- (f) any other appropriate order required to give effect to a right contemplated in this Act.

129. Administrative fines

- (1) The Tribunal may impose an administrative fine only in the circumstances expressly provided for in this Act.
- (2) An administrative fine imposed in terms of this Act may not exceed the greater of -
 - (a) 10% of the respondent's annual turnover during the preceding financial year; and
 - (b) R 1 000 000.
- (3) When determining an appropriate fine, the 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 National Consumer Commission and the Tribunal; and
 - (g) whether the respondent has previously been found in contravention of this Act.

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- (4) For the purpose of this section, the annual turnover of -
- (a) a supplier at the time an administrative fine is assessed, is the total income of that supplier during the immediately preceding year under all credit agreements to which this Act applies, less the amount of that income that represents the repayment of principal debt under those credit agreements; or
 - (b) any other person, is the amount determined in the prescribed manner.
- (5) A fine payable in terms of this section must be paid into the National Revenue Fund referred to in section 213 of the Constitution.

130. Status and enforcement of orders

- (1) Any decision, judgment or order of the Tribunal may be served, executed and enforced as if it were an order of the High Court, and is binding on the National Consumer Commission, provincial consumer protection authorities, a consumer court, an alternative dispute resolution agent or the ombud with jurisdiction, a debt counsellor, and a Magistrate's Court.
- (2) The National Consumer Commission may institute proceedings in the High Court on its own behalf for recovery of an administrative fine imposed by the Tribunal.
- (3) A proceeding under subsection (2) may not be initiated more than three years after the imposition of the administrative fine.

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PART B - SEARCHES**131. Authority to enter and search under warrant**

- (1) A judge of the High Court, a regional magistrate, 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) prohibited conduct has taken place, is taking place, or is likely to take place on or in those premises; or
 - (b) that anything connected with an investigation into that prohibited conduct 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 may be issued at any time and must specifically –
 - (a) identify the premises that may be entered and searched; and
 - (b) authorise an inspector or a police officer to enter and search the premises and to do anything listed in section 132.
- (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, regional magistrate, or magistrate who issued it authorises that it may be executed at night at a time that is reasonable in the circumstances.

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-
- (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 none of those persons is present, affix a copy of the warrant to the premises in a prominent and visible place.

132. Powers to enter and search

- (1) A person who is authorised under section 131 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;

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- (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; and
 - (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 113 (6) applies to an answer given or statement made to an inspector in terms of this section.
 - (3) An inspector authorised to conduct an entry and search in terms of section 131 may be accompanied and assisted by a police officer.

133. Conduct of entry and search

- (1) A person who enters and searches any premises under section 132 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 132 (1)(c), only a female inspector or police officer may search a female person, and only a male inspector or police officer may search a male person.
- (3) A person who enters and searches premises under section 132, before questioning anyone –
 - (a) must 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-

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- (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.
- (7) A police officer who is authorised to enter and search premises under section 132, or who is assisting an inspector who is authorised to enter and search premises under section 132 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 in terms of 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 an article or document that is the object of the search.
- (9) The National Consumer Commission may compensate anyone who suffers damage because of a forced entry during a search when no one responsible for the premises was present.

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PART C – OFFENCES AND PENALTIES**134. 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 proper administration or enforcement of this Act;
 - (b) for the purpose of the administration of justice; or
 - (c) at the request of an inspector, regulator or Tribunal member entitled to receive the information.

135. 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.

136. Failure to attend when summoned

- (1) A person commits an offence who, having been directed or 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 -

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-
- (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.

137. Failure to answer fully or truthfully

A person commits an offence who, having been sworn in or having made an affirmation -

- (a) subject to section 113(6), 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.

138. Offences relating to Commission and Tribunal

- (1) A person commits an offence who contravenes, or fails to comply with an order of the Tribunal.
- (2) A person commits an offence who -
 - (a) does anything calculated to improperly influence the Tribunal or a regulator concerning any matter connected with an investigation;
 - (b) anticipates any findings of the Tribunal or a regulator 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 a regulator;
 - (e) defames the Tribunal, or a member the Tribunal, in their respective official capacities;

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- (f) wilfully interrupts the proceedings or misbehaves in the place where a hearing is being conducted;
- (g) acts contrary to a warrant to enter and search;
- (h) without authority, but claiming to have authority in terms of section 131 -
 - (i) enters or searches premises; or
 - (ii) attaches or removes an article or document.

139. Penalties

- (1) Any person convicted of an offence in terms of this Act, is liable -
 - (a) in the case of a contravention of section 138 (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.

140. Vicarious liability

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.

141. Magistrate's Court jurisdiction to impose penalties

Despite anything to the contrary contained in any other law, a Magistrate's Court has jurisdiction to impose any penalty provided for in section 139.

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PART D – MISCELLANEOUS MATTERS

142. Civil actions and jurisdiction

- (1) Nothing in this Act renders void an agreement or a provision of an agreement that, in terms of this Act, is prohibited or may be declared unlawful, unless a court declares that agreement or provision to be unlawful.
- (2) In any action in a civil court, other than a review or appeal of a Tribunal decision, if a person raises an issue concerning this Act or a transaction or agreement to which this Act applies, and the Tribunal –
 - (a) has previously considered and determined, that court, other than the High Court -
 - (i) must not consider the merits of that issue; and
 - (ii) must apply the determination of the Tribunal with respect to the issue;
or
 - (b) has not previously considered and determined, that court may -
 - (i) consider the merits of that issue; or
 - (ii) refer the matter to the Tribunal for consideration and determination.
- (3) A person who has suffered loss or damage as a result of prohibited conduct, or dereliction of required conduct,-
 - (a) may not commence an action in a civil court for the assessment of the amount or awarding of damages if that person has consented to an award of damages in a consent order; or
 - (b) if entitled to commence an action referred to in paragraph (a), when instituting proceedings, must file with the Registrar or Clerk of the Court a notice from the Chairperson of the Tribunal in the prescribed form -

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-
- (i) certifying that the conduct constituting the basis for the action has been found to be a prohibited or required conduct in terms of this Act;
 - (ii) stating the date of the Tribunal finding; and
 - (iii) setting out the section of this Act in terms of which the Tribunal made its finding.
- (4) A certificate referred to in subsection (3)(b) is conclusive proof of its contents, and is binding on a civil court.
- (5) An appeal or application for review against an order made by the Tribunal in terms of this Act suspends any right to commence an action in a civil court with respect to the same matter.
- (6) A person's right to damages arising out of a prohibited or required conduct comes into existence -
- (a) on the date that the Tribunal made a determination in respect of a matter that affects that person; or
 - (b) in the case of an appeal, on the date that the appeal process in respect of that matter is concluded.
- (7) For the purposes of section 2A(2)(a) of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), interest on a debt in relation to a claim for damages in terms of this Act will commence on the date of issue of the certificate referred to in subsection (6).

143. Variation of order

- (1) The Tribunal, acting of its own accord or on application of 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

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- (c) made or granted as a result of a mistake common to all of the parties to the proceeding.

144. Limitations of bringing action

- (1) A complaint in terms of this Act may not be referred or made to the Tribunal or to a consumer court 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 Tribunal or to a consumer court in terms of this Act, against any person that is, or has been, a respondent in proceedings under another section of this Act relating substantially to the same conduct.

145. Standard of proof

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

146. Serving documents

Unless otherwise provided in this Act, a notice, order or other document that, in terms of this Act, must be served on a person, will have been properly served when it has been either -

- (a) delivered to that person; or
- (b) sent by registered mail to that person's last known address.

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Chapter 7 : General Provisions

Section 147-r148

147. 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 Tribunal is conclusive proof of the contents of the order of the Tribunal.
- (2) A statement, entry or 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****148. Regulations**

- (1) The Minister -
 - (a) may make any regulations expressly authorised or contemplated elsewhere in this Act, in accordance with subsection (2);
 - (b) in consultation with the National Consumer Commission, and by notice in the Gazette, may make regulations for matters relating to the functions of the National Consumer Commission, including -
 - (i) forms;
 - (ii) time periods;
 - (iii) information required;

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- (iv) additional definitions applicable to those regulations;
 - (v) filing fees;
 - (vi) access to confidential information; and
 - (vii) manner and form of participation in National Consumer Commission procedures;
- (c) in consultation with the Chairperson of the Tribunal, and by notice in the Gazette, may make regulations for matters relating to the functions of the Tribunal, and Rules for the conduct of matters before the Tribunal; and
- (d) may make regulations regarding –
 - (i) any forms required to be used for the purposes of this Act; and
 - (ii) in general, any incidental matter that may be considered necessary or expedient to prescribe in order to achieve the objects of this Act.
- (2) Before making any regulations in terms of subsection (1)(a), the Minister –
 - (a) must publish the proposed regulations for public comment; and -
 - (b) may consult the National Consumer Commission and provincial regulatory authorities.
- (3) A regulation in terms of this Act must be made by notice in the Gazette.

149. Conflicting legislation, consequential amendments, repeal of laws and transitional arrangements

- (1) If there is an inconsistency between a provision of this Act and an Act mentioned in Schedule 1, the inconsistency must be resolved in the manner indicated in that Schedule.
- (2) The laws referred to in Schedule 2 are hereby amended in the manner set out in that Schedule.

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- (3) Subject to subsection (4) and the provisions of Schedule 3, the following Acts are hereby repealed:
- (a) Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988);
 - (b) Trade Practices Act, 1976 (Act No. 76 of 1976);
 - (c) Sales and Service Matters Act, 1964 (Act No. 25 of 1964);
 - (d) Business Names Act, 1960 (Act No. 27 of 1960);
 - (e) Businesses Act, 1991 (Act No. 71 of 1991);
 - (f) Sections 2 to 13, and sections 16 to 17 of the Merchandise Marks Act, 1941 (Act No. 17 of 1941); and
 - (g) Price Control Act, 1964 (Act No. 25 of 1964)
- (4) The repeal of the laws specified in this section does not affect the transitional arrangements, which are set out in Schedule 3.

150. Short title and commencement

This Act is called the Consumer Protection Act, 2006, and comes into operation on a date fixed by the President by proclamation in the Gazette.

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Schedule 1 : Conflicting Legislation

Section 150

Schedule 1

Conflicting Legislation

- (1) If there is an inconsistency between any provision of -
- (a) Part B of Chapter 3 and a provision of the Promotion of Access to Information Act 2000 (Act No. 2 of 2000), the provisions of this Act and that Act apply concurrently, to the extent that the provisions of this Act are not excluded in terms of section 5 of that Act;
 - (b) Chapter 5 of this Act and a provision of the Public Finance Management Act, 1999 (Act No. 1 of 1999) or the Public Service Act, 1994 (Proclamation 103 of 1994), the provisions of the Public Finance Management Act, 1999 or of the Public Service Act, 1994, as the case may be, prevail;
 - (c) this Act and a provision of any Act not mentioned in paragraph (a) or (b) -
 - (i) the provisions of both Acts apply concurrently, to the extent that it is possible to apply and comply with one of the inconsistent provisions without contravening the second; and
 - (ii) the provisions of this Act prevail to the extent that it is impossible to apply or comply with one of the inconsistent provisions without contravening the second.

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Schedule 2 : Consequential Amendments

Section 1

Schedule 2**Consequential Amendments****1. Amendment of the National Credit Act, 2005**

The National Credit Act, 2005 (Act No. 18 of 2005) is amended by the insertion of the following new section immediately after section 126

“Restrictions on certain practices relating to credit agreements

126A (1) A person must not promote, offer to supply, supply or induce any person to accept the supply of any service that has as its dominant function -

- (a) the breaching of a credit agreement, or
 - (b) the unauthorised transfer of any right of a credit provider under a credit agreement to a third person.
- (2) Subsection (1)(b) does not apply in respect of -
- (a) any negotiation, by an attorney on behalf of a consumer, with the credit provider concerned; or
 - (b) any action carried out by, on behalf of, or with the permission of the the credit provider concerned.
- (3) A person who offers to supply, or supplies, any service for the express or implied purpose of -
- (a) improving a consumer's credit record, credit history or credit rating; or
 - (b) causing a credit bureau to adverse credit information from its records concerning that consumer

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Schedule 2 : Consequential Amendments

Section 2

must not charge a consumer, or receive any payment from the consumer, for the credit repair service until that service has been fully performed, and must provide each consumer with a disclosure statement in the prescribed manner and form.

- (4) Subsection (3) does not apply in respect of any credit repair service rendered by an attorney, or a registered credit bureau.

- (5) A person who offers to supply, or supplies -

- (a) any service for the express or implied purpose of investigating fees, charges, or interest charged on a credit agreement; or
- (b) a computer software program originating within the Republic, which is programmed to calculate fees, charges, or interest charged on a credit agreement, for valuable consideration

must provide each consumer of the service or software, as the case may be, with a disclosure statement in the prescribed manner and form.

- (6) This section does not apply to a debt counsellor in respect of any action authorised in terms of this Act."

2. Amendment of the Lotteries Act

- (1) The Lotteries Act, 1997 (Act No. 57 of 1997) is amended by -

- (a) The substitution, in section 1, for the definition "promotional competition" of the following:

"promotional competition" has the meaning set out in the Consumer Protection Act, 2006 (Act No. # of 2006); and

- (b) the repeal of section 54.

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Schedule 3 : Transitional Provisions

Section 1-r2

Schedule 3**Transitional Provisions****1. Definition****(1) In this Schedule –**

“effective date” means the date on which this Act, or any relevant provision of it, came into operation in terms of section 149;

“pre-existing agreement” means an agreement that was made before the effective date, and to which this Act applies; and

“previous Act” means a law repealed by section 148.

(2) A reference in this Schedule

(a) to a section by number, is a reference to the corresponding section of –

(i) the previous Act, if the number is followed by the words “of the previous Act”; or

(ii) this Act, in any other case.

(b) to an item or a sub-item by number is a reference to the corresponding item or sub-item of this Schedule.

2. Delayed operation of section 14(3)

The provisions of section 14(3) remain inoperative until a date declared by the Minister by notice in the *Gazette* after—

(a) the National Consumer Commission has established the register contemplated in section 14(2); and

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Schedule 3 : Transitional Provisions

Section 3-r4

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- (b) the Minister has received advice from an independent auditor that the National Consumer Commission has established reasonable and effective means to receive compile and utilize information in the manner contemplated in section 14 (2) and (3).

3. Application of Act to pre-existing transactions and agreements

- (1) This Act applies to an agreement that was made before the effective date, if that agreement contemplated that the parties to it would be bound until a date that is on or after the second anniversary of the effective date, subject to sub-item (2).
- (2) The application of this Act to a pre-existing agreement applies only to -
- (a) any prepayment for services, deposit or right to a refund under that agreement;
- (b) any property of the consumer held by the supplier on or after the effective date; and
- (c) any action, forbearance, obligation or right contemplated in that agreement and to be performed or enjoyed on or after the effective date.
- (3) Sections 65 to 70 of this Act apply in respect of goods that were first supplied to a consumer during a prescribed period before the effective date.

4. Delayed enforcement of requirement to register business names

- (1) No person may take any action to enforce section 25 (1) until a date determined by the Minister by notice in the Gazette.
- (2) The Minister must publish a notice contemplated in subsection (1) at least 6 months before the date on which that notice is to take effect.

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Schedule 3 : Transitional Provisions

Section 5-r7

5. General preservation of regulations, rights, duties, notices and other instruments

- (1) Any other right or entitlement enjoyed by, or obligation imposed on, any person in terms of any provision of a previous Act, that had not been spent or fulfilled immediately before the effective date must be considered to be a valid right or entitlement of, or obligation imposed on, that person in terms of any comparable provision of this Act, as from the date that the right, entitlement or obligation first arose, subject to the provisions of this Act.
- (2) A notice given by any person to another person in terms of any provision of the previous Act must be considered as notice given in terms of any comparable provision of this Act, as from the date that the notice was given under the previous Act.
- (3) A document that, before the effective date, had been served in accordance with the previous Act must be regarded as having been satisfactorily served for any comparable purpose of this Act.
- (4) An order given by an inspector, in terms of any provision of the previous Act, and in effect immediately before the effective date, continues in effect, subject to the provisions of this Act.

6. Provincial regulatory capacity

Until provincial legislation has been enacted in a province establishing for that province a provincial consumer protection authority as contemplated in this Act, the Minister, by notice in the Gazette, may delegate to the relevant member of the Executive Council of that province any or all of the functions of the National Consumer Commission to be exercised within that province and in accordance with this Act.

7. Continued application of repealed laws

- (1) Despite the repeal of the previous Acts, for a period of 3 years after the effective date,-

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Schedule 3 : Transitional Provisions

Section 8

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- (a) the National Consumer Commission may exercise any power in terms of any such previous Act to investigate any breach of that Act that occurred during the period of 3 years immediately before the effective date, subject to sub-item (2)(b); and
- (b) [the Tribunal may make any order that could have been made in the circumstances by a court under that Act.]
- (2) In exercising authority under sub-item (1), the National Consumer Commission must conduct the investigation, as if it were proceeding with a complaint in terms of this Act.

8. Regulations

On the effective date, and for a period of 60 business days after the effective date, the Minister may make any regulation contemplated in the Act without meeting the procedural requirements set out in section 147 or elsewhere in this Act, provided the Minister has published such proposed regulations in the Gazette for comment for at least 30 business days.
