

KwaZulu-Natal, South Africa

KwaZulu-Natal Consumer Protection Act, 2013

Act 4 of 2013

Legislation as at 13 February 2014

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KwaZulu-Natal Consumer Protection Act, 2013

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KwaZulu-Natal South Africa

KwaZulu-Natal Consumer Protection Act, 2013

Act 4 of 2013

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and includes any amendments published up to 4 April 2024.]*

ACT

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

(English text signed by the Premier)

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

Chapter 1 Definitions

1. Definitions

In this Act, unless the context otherwise indicates-

“**business**” means-

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

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

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

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

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

- (a) a person to whom those particular goods or services are marketed in the ordinary course of the supplier’s business;
- (b) a person who has entered into a transaction with a supplier in the ordinary course of the supplier’s business, unless the transaction is exempt from the application of this Act by section 5(2) or in terms of section 5(3);

- (c) if the context so requires or permits, a user of those particular goods or a recipient or beneficiary of those particular services, irrespective of whether that user, recipient or beneficiary was a party to a transaction concerning the supply of those particular goods or services; and
- (d) a franchisee in terms of a franchise agreement, to the extent applicable in terms of [section 5\(6\)\(b\)](#) to (e);

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

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

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

“court” means any court contemplated in chapter 8 of the [Constitution](#), other than the Consumer Tribunal;

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

“display” when used—

- (a) in relation to any goods, means placing, exhibiting or exposing those goods before the public in the ordinary course of business in a manner consistent with an open invitation to members of the public to inspect, and select, those or similar goods for supply to a consumer; or
- (b) in relation to a price, mark, notice or other visual representation, means to place or publish anything in a manner that reasonably creates an association between that price, mark, notice or other visual representation and any particular goods or services

“Executive Council” means the Executive Council of the Province of KwaZulu-Natal as contemplated in section 132 of the [Constitution](#);

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

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

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

“goods” includes—

- (a) anything marketed for human consumption;
- (b) any tangible object not otherwise contemplated in paragraph (a), including any medium on which anything is or may be written or encoded;
- (c) any literature, music, photograph, motion picture, game, information, data, software, code or other intangible product written or encoded on any medium, or a licence to use any such intangible product;
- (d) a legal interest in land or any other immovable property, other than an interest that falls within the definition of ‘service’ in this section; and
- (e) gas, water and electricity;

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

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

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

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

“office bearer” means-

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

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

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

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

“Portfolio Committee” means the Portfolio Committee of the Provincial Legislature responsible for economic development and tourism;

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

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

“price” when used in relation to—

- (a) a representation required to be displayed by [section 23](#), includes any mark, notice or visual representation that may reasonably be inferred to indicate or express an association between any goods or services and the value of the consideration for which the supplier is willing to sell or supply those goods or services; or
- (b) the consideration for any transaction, means the total amount paid or payable by the consumer to the supplier in terms of that transaction or agreement, including any amount that the supplier is required to impose, charge or collect in terms of any public regulation;

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

“promote” means to-

- (a) advertise, display or offer to supply any goods or services in the ordinary course of business, to all or part of the public for consideration;
- (b) make any representation in the ordinary course of business that could reasonably be inferred as expressing a willingness to supply any goods or services for consideration; or
- (c) engage in any other conduct in the ordinary course of business that may reasonably be construed to be an inducement or attempted inducement to a person to engage in a transaction;

“Province” means the province of KwaZulu-Natal established in terms of section 103 of the [Constitution](#) and “provincial” has a corresponding meaning;

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

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

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

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

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

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

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

“Revenue Fund” means the Provincial Revenue Fund established in terms of section 226 of the [Constitution](#);

“service” includes, but is not limited to—

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

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

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

“supply” when used as a verb—

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

“this Act” includes the regulations; and

“transaction” means—

- (a) in respect of a person acting in the ordinary course of business—
 - (i) an agreement between or among that person and one or more other persons for the supply or potential supply of any goods or services in exchange for consideration; or
 - (ii) the supply by that person of any goods to or at the direction of a consumer for consideration; or
 - (iii) the performance by, or at the direction of, that person of any services for or at the direction of a consumer for consideration; or
- (b) an interaction contemplated in [section 5\(6\)](#), irrespective of whether it falls within paragraph (a);

Chapter 2

Objects of Act, exemptions and functions responsible Member of Executive Council

2. Objects of Act

The objects of this Act are-

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

3. Exemptions

This Act does not apply to-

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

4. Functions of responsible Member of Executive Council

The responsible Member of the Executive Council must-

- (a) within 12 months after the coming into operation of the Act,-
 - (i) develop a provincial policy and norms and standards pertaining to consumer matters and affairs;
 - (ii) establish and set guidelines for the conduct of business regarding consumer matters and affairs in the Province;
- (b) where necessary, establish a social responsibility programme in respect of consumer issues; and
- (c) perform such other functions as may be assigned to him or her in terms of this Act.

Chapter 3 Agencies for consumer protection in KwaZulu-Natal

5. Establishment of KwaZulu-Natal Office of Consumer Protector

- (1) Subject to section 84 of the Consumer Protection Act, 2008 ([Act No. 68 of 2008](#)), an office to be known the KwaZulu-Natal Office of the Consumer Protector, is hereby established.
- (2) The Office contemplated in subsection (1) is not a juristic person.
- (3) The responsible Member of the Executive Council must, in terms of the relevant provisions of the Public Service Act, 1994 ([Proclamation No. 103 of 1994](#)), appoint a Consumer Protector as head of the Office of the Consumer Protector at the level determined by the responsible Member of the Executive Council.
- (4) Where the Consumer Protector is unable to discharge his or her duties for whatever reason, the responsible Member of the Executive Council must appoint a person as Acting Consumer Protector pending the appointment of a full-time Consumer Protector.
- (5) The administrative and secretarial work incidental to the performance of the functions of the Office must be performed by officers in the Department designated and assigned for such purpose by the Head of Department.
- (6) All staff members designated and assigned to provide administrative and secretarial support to the Office as contemplated in subsection (5), are subject to the control and the direction of the Consumer Protector.
- (7) The Office may utilise the services of persons seconded or transferred from the public service in accordance with the provisions of the Public Service Act, 1994 ([Proclamation No. 103 of 1994](#)).
- (8) Where the need arises, the Consumer Protector may, in the performance of his or her duties and functions, be assisted by any person or body whose services may be obtained by him or her, on such terms and conditions and for such period as may be agreed upon, for the purposes of conducting a particular investigation on behalf of the Consumer Protector.
- (9) A person referred to in subsection (8) may-
 - (a) be dispatched to any part of the Province or Republic to conduct an investigation contemplated in subsection (8); and
 - (b) be paid such remuneration, allowances and expenses as may be determined by the responsible Member of the Executive Council in consultation with the Member of the Executive Council for Finance.

6. Objects of Office of Consumer Protector

The objects of the Office of Consumer Protector are-

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

7. Powers, duties and functions of Office of Consumer Protector

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

- (l) within the framework of national and provincial consumer policies, assist and advise the responsible Member of the Executive Council with regard to advising and guiding–
 - (i) the stakeholders in the consumer industry, consumers and organizations or institutions whose activities or aims have an impact on or relate to consumer matters, affairs or issues in the Province; and
 - (ii) the business unit within the Department responsible for small business development, co-operatives, local economic development and economic empowerment, and similar business units within other departments in the Province; and
 - (iii) business and further ensuring that business complies with the standing policies and legislation pertaining to consumers; and
- (m) perform such other functions as may be assigned to it in terms of this Act.
- (2) In addition to the powers, duties and functions contemplated in subsection (1), the Office must, after 31 March of each year, submit to the responsible Member of the Executive Council, an annual report on its functions during the year ending including the activities as contemplated in subsection (1).
- (3) The responsible Member of the Executive Council must table a copy of the annual report submitted in terms of subsection (1), to the Provincial Legislature within 14 days after receipt thereof.

8. Establishment of Consumer Tribunals

- (1) The responsible Member of the Executive Council must, within 12 months after the coming into operation of the Act, by notice in the *Gazette*, establish one or more Consumer Tribunals for the Province.
- (2) A Consumer Tribunal referred to in subsection (1)–
 - (a) is established for the area described in the notice; and
 - (b) has its seat at such place mentioned in the notice.
- (3) The responsible Member of the Executive Council may by notice in the *Gazette*–
 - (a) amend the area for a Consumer Tribunal contemplated in subsection (2); or
 - (b) withdraw the notice contemplated in subsection (1) and abolish a Consumer Tribunal contemplated in subsection (1);
- (4) The responsible Member of the Executive Council may, subject to [section 10\(1\)\(b\)](#), determine that, in relation to particular proceedings, a Consumer Tribunal sits at a place other than the seat of that Consumer Tribunal.

9. Objects of Consumer Tribunal

The objects of a Consumer Tribunal are–

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

10. Powers, duties and functions of Consumer Tribunal

- (1) A Consumer Tribunal must–
 - (a) receive, hear, consider and decide on any consumer complaint which is before it by virtue of proceedings contemplated in this Act;

- (b) sit on such days and during such hours and at such place as the presiding officer or Chairperson, in consultation with the Consumer Protector, may determine;
 - (c) hold and resume sittings at such time and place throughout the areas of the Province as the presiding officer or the Consumer Protector may determine;
 - (d) apply the existing law of South Africa in the assessment of a consumer complaint or dispute;
 - (e) lay down the general principles to govern conflict resolution between consumers and business;
 - (f) order the Consumer Protector to record, in the list of adverse notations to be maintained and kept by the Office, the name of the business, the name of person conducting such business and the finding of a Consumer Tribunal in respect of subsection (2)(a), (b) and (c); and
 - (g) exercise any other powers and perform the functions and duties assigned to it in terms of this Act.
- (2) A Consumer Tribunal may-
- (a) award costs, on the scale to be prescribed or in the amount determined by the Consumer Tribunal, against any person found liable to the consumer by virtue of any unlawful conduct, by conduct or omission in terms of this Act or under any existing law;
 - (b) with regard to a consumer complaint relating to a hard bargain or conduct which the consumer rightly believes to be inequitable, unfair or grossly unreasonable, make a finding to that effect;
 - (c) at the hearing of a consumer complaint, if it is satisfied that the complaint is lodged frivolously or vexatiously, award costs against such consumer; and
 - (d) generally deal with all matters necessary or incidental to the performance of its functions in terms of this Act.
- (3) The presiding officer of a Consumer Tribunal must as soon as practicable, after 31 March in each year, submit to the responsible Member of the Executive Council an annual report on the activities of the Consumer Tribunal.
- (4) The report submitted to the responsible Member of the Executive Council in terms of subsection (3) must include a list of adverse notations contemplated in [section 10\(1\)\(f\)](#).
- (5) The responsible Member of the Executive Council may require a Consumer Tribunal to submit additional reports to him or her as the responsible Member of the Executive Council may require from time to time.
- (6) The responsible Member of the Executive Council must submit to the Provincial Legislature a copy of the annual report contemplated in subsection (3), within 14 days after its receipt.

11. Composition of Consumer Tribunal

- (1) A Consumer Tribunal consists of-
- (a) six and not more than eight members appointed by the responsible Member of the Executive Council; and
 - (b) the Chairperson, appointed in terms of [section 12](#) of this Act.
- (2) The membership contemplated in subsection (1) must include-
- (a) a Chairperson, who must be an admitted Attorney or Advocate or retired magistrate or law lecturer at a university with at least five years' experience in the legal profession or the administration of justice;

- (b) a deputy Chairperson, who must also be an admitted Attorney or Advocate or retired magistrate or law lecturer at a university with at least three years' experience in the legal profession or the administration of justice;
 - (c) one person having knowledge and experience in the field of consumer advocacy, economics and commerce;
 - (d) one person who has knowledge and experience in the consumer industry and not actively involved nor having financial interest therein, whether directly or indirectly;
 - (e) one person as a secretary of the Consumer Tribunal to perform administrative work incidental to the functions of the Consumer Tribunal; and
 - (f) one such other person to assist the secretary of the Consumer Tribunal as may be necessary.
- (3) In appointing the members to a Consumer Tribunal, the responsible Member of the Executive Council must ensure that historic imbalances are addressed.
- (4) The responsible Member of the Executive Council must, by notice in two newspapers circulating widely in the Province and using any other method designated to reach the greatest number of residents in the Province, invite persons or any interested parties within the Province to nominate candidates for appointment to a Consumer Tribunal.
- (5) The notice contemplated in subsection (4), must specify-
- (a) the nomination procedure;
 - (b) the requirements for nominations; and
 - (c) the closing date for the nominations.
- (6) The responsible Member of the Executive Council must consider all nominations submitted in response to the notice, and may appoint a selection panel consisting of no more than four senior departmental officials to review all the nominations and make recommendations to the responsible Member of the Executive Council regarding the candidates to a Consumer Tribunal.
- (7) The responsible Member of the Executive Council must cause the names of the persons appointed to a Consumer Tribunal to be published in the *Gazette* and in at least two newspapers circulating in the Province, immediately after such persons have been notified, in writing, of their appointment to a Consumer Tribunal.
- (8) The responsible Member of the Executive Council must, within two months after the appointment of members, provide the Portfolio Committee with the names of the appointed members including the term of their appointment.
- (9) This section applies, with the necessary changes, to the filling of a vacancy on a Consumer Tribunal.

12. Disqualification from being appointed to Consumer Tribunal

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

- (a) is or becomes an unrehabilitated insolvent;
- (b) is or has been declared by the competent court to be of unsound mind;
- (c) is directly or indirectly interested in any contract with the Consumer Protector or Consumer Tribunal and fails to declare his or her interest and the nature thereof in a manner required by this Act;
- (d) a person is under curatorship;
- (e) has at any time been removed from an office of trust on account of misconduct involving theft or fraud;

- (f) has been convicted and sentenced to a term of imprisonment without the option of a fine, except that the responsible Member of the Executive Council may, upon such nominee disclosing full details of the offence in an affidavit, condone a conviction that is consistent with section 106(1)(e) of the [Constitution](#): Provided that a disqualification in terms of this subsection ends five years after the sentence has been completed;
- (g) fails to disclose an interest in accordance with [section 13](#) or attended or participated in the proceedings of a Consumer Tribunal while having an interest contemplated in the said section;
- (h) is a public servant;
- (i) is an office bearer;
- (j) is not a citizen of the Republic; or
- (k) is not resident in the Province.

13. Declaration of financial or other interests of members of Consumer Tribunal

- (1) A person who has been nominated to serve on a Consumer Tribunal in terms of [section 11](#) must, within 10 days of being nominated, submit a written declaration to the responsible Member of the Executive Council of all direct or indirect interests in any company, close corporation and of any other business interests.
- (2) Any failure by a nominee to disclose financial and other interests in terms of subsection (1) disqualifies such nominee in terms of [section 12](#) from being appointed to a Consumer Tribunal.
- (3) Every member of a Consumer Tribunal must, upon assuming office and at the beginning of every financial year of the Consumer Tribunal, submit a written declaration of his or her direct or indirect interest in any company, close corporation or other business interests to the responsible Member of the Executive Council.
- (4) Where a member of a Consumer Tribunal acquires interest in any company, close corporation or other business interests, at any time during his or her tenure as a member of the Consumer Tribunal he or she must, within 10 days of the date of the acquisition of such an interest, submit a written declaration to the responsible Member of the Executive Council of such an interest.
- (5) Any failure on the part of the member to disclose his or her interests as contemplated in subsections (3) and (4) results in the termination of appointment of such member in terms of [section 16\(2\)](#).

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

- (1) A member of a Consumer Tribunal who fails to make a declaration envisaged in [section 13](#) may, subject to subsection (2), be disqualified from remaining on the Consumer Tribunal.
- (2) The responsible Member of the Executive Council, on becoming aware that a member of a Consumer Tribunal has failed to comply with the provisions of [section 13](#), must investigate the matter and consider appropriate disciplinary action.

15. Term of office of member of Consumer Tribunal

- (1) A member is appointed to serve on a Consumer Tribunal for a period of five years or such lesser period as the responsible Member of the Executive Council may determine.
- (2) A member is eligible for re-appointment upon the expiry of his or her term of office for one additional term.

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

- (1) A member of a Consumer Tribunal must vacate office if he or she becomes subject to a disqualification contemplated in [section 12](#).
- (2) The responsible Member of the Executive Council may, after having afforded a member the opportunity to state his or her case, at any time terminate the term of office of such member if, in his or her opinion, there are sound, cogent and justifiable reasons for doing so.
- (3) A member may resign from office by giving not less than 30 days written notice to the responsible Member of the Executive Council: Provided that the responsible Member of the Executive Council may waive the resignation notice.
- (4) Whenever a vacancy occurs on a Consumer Tribunal, the responsible Member of the Executive Council must, subject to [section 11](#), appoint a person to fill such vacancy for the unexpired portion of the period of office of the member in whose place such person is appointed.
- (5) The responsible Member of the Executive Council may, subject to subsection (2), terminate the appointment of all or some of the members of a Consumer Tribunal.
- (6) In the event that the responsible Member of the Executive Council exercises his or her powers in terms of subsection (5), he or she may, notwithstanding the procedure for the appointment of the members of a Consumer Tribunal set out in [section 11](#), but subject to subsections (2) and (3) of [section 11](#), appoint persons to serve as members of a Consumer Tribunal on an interim basis: Provided that-
 - (a) the persons appointed to replace the members whose appointment has been terminated in terms of subsection (5), may not remain on the Consumer Tribunal for a period of more than 90 days from the date of their appointment; and
 - (b) the responsible Member of the Executive Council, must, subject to [section 11](#), appoint the permanent members of the Consumer Tribunal within 90 days of the appointment contemplated in paragraph (a) of this subsection.

17. Temporary suspension of member of Consumer Tribunal

- (1) The responsible Member of the Executive Council may, after applying the relevant rules of natural justice, suspend a member of a Consumer Tribunal on full remuneration if-
 - (a) the member is alleged to have committed a serious offence; and
 - (b) the responsible Member of the Executive Council reasonably believes that the presence of such member at the Consumer Tribunal might jeopardise any investigation and the enquiry into the alleged misconduct, or endanger the well-being or safety of any person or state property: Provided that a suspension of this nature is a precautionary measure which does not constitute a finding.
- (2) If a member is suspended as a precautionary measure contemplated in subsection (1), the responsible Member of the Executive Council must hold the enquiry within 60 days from the effective date of such suspension.

18. Constitution of Consumer Tribunal

- (1) Subject to subsection (4), the quorum of a Consumer Tribunal is three members.
- (2) Except where otherwise provided, a decision of the majority of members of a Consumer Tribunal present is the decision of the Consumer Tribunal.
- (3) A member of a Consumer Tribunal must recuse himself or herself from proceedings on the grounds of any interest or association likely to affect his or her impartial consideration of the matter, or which is likely to be seen to do so.

- (4) If at any stage during the proceedings before a Consumer Tribunal-
 - (a) the chairperson becomes incapable of acting or is absent, the proceedings must begin afresh;
 - (b) any other member becomes incapable of acting or is absent, the proceedings must continue before the remaining members; and
 - (c) two or more other members become incapable of acting or are absent, the proceedings must begin afresh unless all the parties to the proceedings agree unconditionally in writing to accept the decision of the majority of remaining members.
- (5) In the event that the proceedings continue before an even number of members and there is a split decision, the chairperson's decision is final.

19. Remuneration of members of Consumer Tribunal

- (1)
 - (a) A member of a Consumer Tribunal may be paid such remuneration and allowances as may be determined by the responsible Member of the Executive Council in consultation with the Member of the Executive Council for Finance.
 - (b) A member of a Consumer Tribunal who receives remuneration, allowances or other benefits by virtue of his or her post or employment in-
 - (i) the national government;
 - (ii) a provincial government;
 - (iii) a municipality; or
 - (iv) a corporation, body or institution in which the national or a provincial government has a controlling interest,and who continues to receive such remuneration, allowances or other benefits while serving as a member of a Consumer Tribunal, may only receive remuneration and allowances referred to in paragraph (a) to the extent required to place such member in the financial position he or she would have been were it not for such post or employment.
- (2)
 - (a) A member of a Consumer Tribunal and a person who has been co-opted to the Consumer Tribunal may, in respect of his or her functions as a member or co-opted member, receive reimbursement for reasonable actual subsistence and traveling expenses necessitated by the actual attendance of a meeting or duties of the Consumer Tribunal;
 - (b) The responsible Member of the Executive Council, in consultation with the Member of the Executive Council for Finance must determine procedures, including control measures, for the management, handling and processing of claims for subsistence and traveling expenses contemplated in paragraph (a).

20. Expert and other assistance to Consumer Tribunal

- (1) A Consumer Tribunal may appoint such experts or other persons as service providers as it may deem necessary with a view to assist it in the exercise and performance of its powers, duties and functions.
- (2) The terms, conditions, and fees applicable to any expert or person appointed under subsection (1), and the work to be performed or services to be rendered must be determined by the Consumer Tribunal, and be contained in a written agreement entered into for that purpose between the Consumer Tribunal and the expert or person concerned.
- (3) The experts or other persons appointed under subsection (1) may not vote on any decision taken by the Consumer Tribunal.

21. Proceedings of Consumer Tribunal

- (1) The proceedings before a Consumer Tribunal must-
 - (a) be initiated by summons in the prescribed form which must be served on the person concerned in any manner as may be prescribed, which may include service outside the Province;
 - (b) be open to the public;
 - (c) be prosecuted by any person who must have been appointed by the Office;
 - (d) allow any person who may be adversely affected by any proceedings to appear in person or be represented or assisted by an attorney or advocate or any other person; and
 - (e) allow a person against who the proceedings are instituted or who may be affected by the proceedings or the decision to appear in person or be represented or assisted by an advocate, attorney or any other person.
- (2) A Consumer Tribunal may direct that the public or any member thereof may not attend any proceedings of the Consumer Tribunal or portion thereof, if this is justified in the interest of-
 - (a) the conduct of the proceedings or the consideration of the matter in question; or
 - (b) the protection of the privacy of any person alleged to be involved in any unfair business practices or has contravened the provisions of the Act or of the confidentiality of any information relating to that person.
- (3) A Consumer Tribunal must keep the records of the proceedings.
- (4) Any person who has an interest in any proceedings that have taken place, may in the prescribed manner, obtain copies of the record contemplated in subsection (3).

22. Summoning of witnesses and production of documents before Consumer Tribunal

- (1) For the purpose of ascertaining any matter relating to proceedings before a Consumer Tribunal, a Consumer Tribunal may-
 - (a) by summons addressed to any person, including the person against whom a consumer complaint has been made, in the prescribed form under the hand of the secretary to the Consumer Tribunal, and served in the prescribed manner-
 - (i) subpoena such person to appear before the Consumer Tribunal at a time and place specified in such summons, to give evidence; and
 - (ii) order such person to produce any book, document or object in the possession or custody or under the control of such person and which may be reasonably necessary, material and relevant in connection with the proceedings before the Consumer Tribunal;
 - (b) order such person to take an oath or make an affirmation; and
 - (c) question such person and examine any book, document or object which he or she has been required to produce.
- (2) The oath or affirmation contemplated in subsection (1)(b) may be administered by any person qualified to administer an oath or accept an affirmation in terms of the Justices of the Peace and Commissioners of Oaths Act, 1963 ([Act No. 16 of 1963](#)).

- (3) A person is guilty of an offence if he or she, having been summoned in terms of this section-
- (a) fails without sufficient cause to attend at the time and place specified in the summons, or to remain in attendance until the conclusion of the proceedings or until he or she has been excused by the Consumer Tribunal from further attendance;
 - (b) refuses to take the oath or make an affirmation;
 - (c) refuses to answer, or to answer fully and satisfactorily to the best of his or her knowledge and belief any question lawfully put to him or her;
 - (d) fails to produce any book, document or object in his or her possession or custody or under his or her control, which he or she was required to produce; or
 - (e) makes a false statement before the Consumer Tribunal knowing such statement to be false or not knowing or believing it to be true.
- (4) A person who has been summoned to appear in terms of this section may not be entitled to refuse to answer any question or to produce any book, document or object on the ground that he or she would thereby be exposed to a criminal charge: Provided that, to the extent that such answer, book, document or article does expose the person concerned to a criminal charge, no evidence thereof may be admissible in any criminal proceedings against that person, except where that person stands trial on a charge contemplated in subsection (2)(c) to (e), or in section 319(3) of the Criminal Procedure Act, 1955 ([Act No. 56 of 1955](#)).
- (5) A person who has attended the proceedings of a Consumer Tribunal as a witness is entitled to the prescribed witness fee.

Chapter 4

Realisation and protection of consumer rights

Part 1 – General

23. Consumer rights

- (1) Every consumer has a right-
- (a) to have access to basic goods and services such as adequate food, clothing, housing, health care, education, clean water and sanitation;
 - (b) to safety from and protection against production processes, products and services that are dangerous to health or life;
 - (c) to be informed of, and to be provided with, the facts needed to make informed choices and to be protected against dishonest or misleading advertising and labeling;
 - (d) to choose from a range of products and services offered at competitive prices with an assurance of satisfactory quality;
 - (e) to have his or her interests represented in the making and execution of government policy and the development of products and services;
 - (f) to redress or to receive a fair settlement of just claims, including compensation for misrepresentation, or shoddy goods or services;
 - (g) to education as a consumer and to acquire knowledge and skills needed to make informed and confident choices about goods and services, while being aware of basic consumer rights and responsibilities and how to act on them; and

- (h) to live and work in a healthy environment that is not threatening to the wellbeing of present and future generations.
- (2) The Office must take reasonable steps in ensuring that the rights contemplated in subsection (1) are realized by all consumers in the Province.

24. Realization of consumer rights

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

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

25. Protection of consumer rights

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

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

26. Enforcement of rights by consumer

- (1) A person contemplated in [section 25](#) may seek to enforce any rights in terms of this Act or in terms of a transaction or agreement, or otherwise resolve a dispute with a supplier by-
 - (a) referring the matter directly to the Consumer Protector;
 - (b) referring the matter to a Consumer Tribunal, if such a direct referral is permitted by this Act in the case of the particular dispute; or
 - (c) referring the matter to the applicable ombud with jurisdiction.
- (2) Where the matter contemplated in subsection (1) does not concern a supplier contemplated in subsection (1)(c), a person contemplated in [section 25](#) may seek to enforce any rights in terms of this Act or in terms of a transaction or agreement, or otherwise resolve a dispute with a supplier by -
 - (a) referring the matter to the applicable industry ombud, accredited in terms of section 82(6) of the Consumer Protection Act, 2008 ([Act No. 68 of 2008](#)), if the supplier is subject to any such ombud;
 - (b) referring the matter to another dispute resolution agent contemplated in section 70 of the Consumer Protection Act, 2008 ([Act No. 68 of 2008](#));

- (c) filing a complaint with the Consumer Commission office in accordance with section 7 of the Consumer Protection Act, 2008 ([Act No. 68 of 2008](#)); or
- (d) approaching a Tribunal with jurisdiction over the matter, if all other remedies available to that person in terms of Consumer Protection Act, 2008 ([Act No. 68 of 2008](#)), has been exhausted.

Part 2 – Lodging and investigation of consumer complaints

27. Lodging complaint with Office of Consumer Protector

- (1) Any consumer may in the prescribed manner lodge a consumer complaint with the Office of the Consumer Protector.
- (2) A consumer complaint contemplated in subsection (1) which is not in writing must be reduced to writing by the Office.
- (3) The Office may open a file or dossier concerning the consumer complaint and must maintain an index and filing system of consumer complaints.

28. Investigation procedure

- (1) Upon receiving a consumer complaint in terms of this Act, the Consumer Protector must direct a person in the service of the Office of the Consumer Protector or an investigating officer, to investigate the complaint as quickly as practicable.
- (2) The person or investigating officer referred to in subsection (1) must make a preliminary assessment of the consumer complaint as contemplated in this Act.
- (3) The Office may not cause any person to be summoned for investigation until a preliminary assessment has been made of the consumer complaint.
- (4) If, upon consideration of the preliminary assessment, the Consumer Protector is of the opinion that the consumer complaint may be more appropriately dealt with by another competent authority, he or she may at any time refer any investigation or aspect thereof to such other authority, including an authority in another province: Provided that the Office may at any time resume the investigation in relation to that matter.

29. Preliminary assessment of consumer complaint

- (1) The Office of the Consumer Protector must make a preliminary assessment of the consumer complaint lodged in terms of [section 27\(1\)](#).
- (2) The Office may at any time during its investigations, alter its preliminary assessment, *inter alia* in light of new evidence or law, and proceed according to an amended assessment.
- (3) The Office must assess whether the consumer complaint lodged in terms of [section 27\(1\)](#), is being lodged by a *bona fide* consumer.
- (4) The complainant bears the onus of establishing that he or she is a *bona fide* consumer.
- (5) If the complainant contemplated in subsection (3) is not a *bona fide* consumer, the Office may not investigate the complaint.
- (6) The Office must assess whether the consumer complaint against a business, or a person purporting to carry on business or a business practice, conveys the potential of criminal liability or civil liability.

30. Summoning and questioning of persons and production of books and documents

- (1) For the purposes of an investigation contemplated in [section 28\(1\)](#) the Consumer Protector, or a person in the service of the Office of the Consumer Protector, authorised by the Consumer Protector, may-
 - (a) summon any person who is believed to-
 - (i) be able to furnish any information on the subject of the investigation; or
 - (ii) to have in his or her possession or under his or her control any book, document or other object relating to that subject,to appear before a person in the service of the Office at a time and place specified in the summons, to be questioned or to produce that book, document or other object; and
 - (b) question that person, under oath or affirmation administered by the Consumer Protector or another person in the service of the Office of the Consumer Protector, authorized by the Consumer Protector, and examine or retain for further information or for safe custody such a book, document or other object.
- (2) A summons referred to in subsection (1)(a) must-
 - (a) be in the prescribed form citing the person summoned;
 - (b) contain particulars of the matter in connection with which the person concerned is required to appear;
 - (c) be signed by the Consumer Protector or another person in the service of the Office authorized by the Consumer Protector; and
 - (d) be served in the prescribed manner.
- (3) A person appearing by virtue of subsection (1)(a)-
 - (a) may be assisted at the examination by any person of his or her choice; and,
 - (b) is entitled to receive from moneys appropriated by law for such purpose, as witness fees, an amount equal to the amount which he or she would have received as witness fees had he or she been summoned to attend criminal proceedings in the High Court held at the place mentioned in the summons in question.
- (4) A person is guilty of an offence if he or she, having been summoned in terms of this section-
 - (a) fails without sufficient cause to attend at the time and place specified in the summons, or to remain in attendance until the conclusion of the proceedings or until he or she has been excused from further attendance by the Consumer Protector; or
 - (b) refuses to take the oath or make an affirmation.
- (5) A person questioned in terms of subsection (1), must answer each question truthfully and to the best of that person's ability, but the person is not obliged to answer any question if the answer is self-incriminating.
- (6) No self-incriminating answer given or statement made to a person exercising any power in terms of this section is admissible as evidence against the person who gave the answer or made the statement in criminal proceedings, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in subsection (5), and then only to the extent that the answer or statement is relevant to prove the offence charged.

31. Appointment of investigators

- (1) The Consumer Protector-
 - (a) may appoint any suitable employee of the Office or any other suitable person employed by the State, as an investigator; and
 - (b) must issue each investigator with a certificate in the prescribed form stating that the person has been appointed as an investigator in terms of this Act.
- (2) When an investigator performs any function of an investigator in terms of this Act, the investigator-
 - (a) must be in possession of a certificate of appointment issued to that investigator in terms of subsection (1);
 - (b) must show that certificate to any person who-
 - (i) is affected by the investigator's actions in terms of this Act; and
 - (ii) requests to see the certificate; and
 - (c) has the powers of a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 ([Act No. 51 of 1977](#)), and may exercise the powers conferred on a peace officer by law.
- (3) The Consumer Protector may appoint or contract with any suitably qualified person as an investigator to conduct research, audits, inquiries or other investigations on behalf of the Consumer Protector.
- (4) A person appointed in terms of subsection (3) is not an investigator as contemplated in subsection (1).
- (5) Subject to the laws governing the public service, the Member of the Executive Council, in consultation with the Member of the Executive Council for Finance, may appoint persons in the service of the Office or any other suitable persons as investigating officers, who must be subject to the control and directions of the Consumer Protector.
- (6) The Consumer Protector is deemed to have been appointed as an investigating officer.
- (7) An investigating officer must be provided with a certificate of appointment signed by or on behalf of the Consumer Protector and in which it is stated that he or she is an investigating officer appointed in terms of this Act.
- (8) An investigating officer must, when performing any function in terms of this Act, have his or her certificate of appointment in his or her possession.

32. Search and seizure

- (1) In order to obtain any information required by the Office of the Consumer Protector in relation to an investigation, an investigating officer may, subject to the provisions of this section, during office hours enter any premises on or in which any book, document or other object connected with that investigation is or is suspected to be, and may-
 - (a) inspect or search those premises, and there make such inquiries as may be necessary for the purpose of obtaining any such information;
 - (b) examine any object found on or in the premises which has or might have a bearing on the investigation in question and request from the owner or person in charge of the premises or from any person in whose possession or charge that object is, information regarding that object;

- (c) make copies of or extracts from any book or document found on or in the premises which has or might have a bearing on the investigation in question, and request from any person who is suspected of having the necessary information, an explanation of any entry therein; or
 - (d) seize, against the issue of a receipt, anything on or in the premises which has or might reasonably have a bearing on the investigation in question, if the investigating officer needs to retain it for further examination or for safe custody.
- (2) Unless the owner or person in charge of the premises concerned has consented thereto in writing, an investigating officer may enter premises and exercise any power contemplated in subsection (1) only under a search warrant, which may only be issued by a magistrate or a judge if it appears from information given to the magistrate or judge on oath or solemn affirmation that there are reasonable grounds to suspect that a book, document or other object which may afford evidence for the investigation is on or in those premises.
- (3) A search warrant contemplated in subsection (2) must-
 - (a) authorise an investigating officer mentioned in the warrant to enter the premises identified in the warrant for the purpose of exercising any power contemplated in subsection (1);
 - (b) be executed by day, unless the magistrate or judge specifically authorises the execution thereof by night; and
 - (c) be of force until it is executed, cancelled by a competent court, or a period of one week from the day of its issue expires, whichever occurs first.
- (4) An investigating officer executing a search warrant under this section must, before such execution, upon demand by any person whose rights may be affected-
 - (a) show that person his or her certificate of appointment; and
 - (b) hand to that person a copy of the warrant.
- (5) A person from whose possession or charge a book or document has been taken under this section must, as long as it is in the possession or charge of the investigating officer concerned or of the Office be allowed on request to make copies thereof or to take extracts therefrom at any reasonable time at his or her own expense and under the supervision of that investigating officer or a person in the service of the Office.
- (6) A person is guilty of an offence if he or she-
 - (a) obstructs or hinders an investigating officer in the performance of his or her functions in terms of this section; or
 - (b) after enquiry having been made of him or her under subsection (1)(a), or having been requested for information or an explanation under subsection (1)(b) or (c), gives an answer or information or an explanation which is false or misleading, knowing it to be false or misleading.

33. Negotiation of arrangement to resolve consumer complaint

- (1) The Office of the Consumer Protector may negotiate and conclude an arrangement with any person for-
 - (a) the discontinuance or avoidance of the business practice which gave rise to the consumer complaint;
 - (b) the reimbursement, with or without interest, to the affected consumer;
 - (c) the discontinuance or avoidance of any aspect of the business practice which gave rise to the consumer complaint; or

- (d) any other matter relating to the business practice which gave rise to the consumer complaint.
- (2) An arrangement contemplated in subsection (1)-
 - (a) may be concluded at any time after the institution of an investigation, but before the making of an order by the High Court in terms of [section 37](#);
 - (b) must be in writing and signed by the parties thereto; and,
 - (c) may be subject to confirmation by the High Court in accordance with [section 37](#).

34. Institution of proceedings after completion of investigation

- (1) Upon completion of an investigation and subject to subsection (6), the Consumer Protector may institute proceedings in support of the consumer in the Consumer Tribunal if it has jurisdiction over the person alleged to be responsible for the business practice which gave rise to the consumer complaint.
- (2) For purposes of such proceedings, the Consumer Protector is deemed to have *locus standi*.
- (3) If, in the opinion of the Consumer Protector, a consumer complaint relating to a hard bargain or a question of equity raises a constitutional law issue, the Office may institute proceedings in support of the consumer in the High Court;
- (4) For purposes of the proceedings contemplated in subsection (3), the Consumer Protector is deemed to have *locus standi* in such proceedings;
- (5) Whenever the Office institutes proceedings in the Consumer Tribunal or in the High Court, the Consumer Protector is cited as First Plaintiff or First Applicant and the consumer is cited as Second Plaintiff or Second Applicant, as the case may be.
- (6) The Consumer Protector must choose the appropriate forum in which to prosecute the matter by taking into account the provisions of this Act, with particular regard to the expeditious completion of the litigation and effective redress for the consumer.
- (7) When choosing the appropriate forum as contemplated in subsection (6), the Consumer Protector must take into account the costs of the litigation to the parties concerned and accordingly commence proceedings in the forum where costs would be the least onerous to a defendant.
- (8) No proceedings may be instituted by the Consumer Protector unless the consumer-
 - (a) signs a document in which the consumer confirms the veracity of the complaint and indemnifies the Consumer Protector; and
 - (b) signs a document indemnifying the Office from the consequences of any false evidence which may be adduced by him or her.

Part 3 – Adjudication and review of consumer complaints

35. Review Panel

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

- (3) If the consumer is aggrieved by the decision of the Consumer Protector not to institute proceedings, the consumer may, within fourteen days of receipt of the decision, refer the decision for review to the Review Panel.
- (4) The Review Panel referred to in subsection (1) must be situated at the Office.
- (5) The Office must note the referral for a review and forthwith inform the responsible Member of the Executive Council of the need to convene a Review Panel.
- (6) The responsible Member of the Executive Council must convene a Review Panel within fourteen days of the consumer seeking a review of the Consumer Protector's decision contemplated in subsection (1).
- (7) The Review Panel convened by the responsible Member of the Executive Council in terms of subsection (6), must be composed of an *ad hoc* committee of three persons with experience and knowledge of consumer matters.
- (8) The persons contemplated in subsection (7), may be in the employ of the State but not employed in the Office.
- (9) Subject to the laws governing the public service, a person appointed to the Review Panel who is not in the full-time service of the State must be appointed on such conditions and at such remuneration as may be prescribed by the responsible Member of the Executive Council, in consultation with the Member of the Executive Council responsible for Finance.
- (10) Subject to the rules of natural justice, the Review Panel may consider the merits of the decision and any oral or written submissions, if any, by the consumer, the person or business against whom the consumer complaint was lodged and the Consumer Protector.
- (11) The Review Panel may substitute its own decision for that of the Consumer Protector and order the Consumer Protector to institute proceedings or to confirm the decision of the Consumer Protector not to institute proceedings.
- (12) The decision of the Review Panel taken in terms of subsection (11) is referred to as the review judgment.
- (13) The review judgment contemplated in subsection (12) is final and binding on the consumer, the person or business against whom the consumer complaint was lodged and the Consumer Protector.
- (14) The Review Panel must, in writing, inform the consumer, the person or business against whom the consumer complaint was lodged and the Consumer Protector of the review judgment and must furnish each with a free copy of the review judgment.

36. Effect of review judgment

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

Chapter 5

Arrangements negotiated by Office of Consumer Protector

37. Confirmation of arrangements negotiated by Office of Consumer Protector

- (1) The Office may apply to the High Court for confirmation of an arrangement negotiated and concluded in terms of this Act.
- (2) The High Court may, with due consideration of the interests of affected consumers and businesses and the parties concerned, issue an order-
 - (a) confirming the arrangement;

- (b) confirming the arrangement with such amendments as may be agreed to by the parties concerned and subject to such conditions as the court may deem fit;
 - (c) setting aside that arrangement if, after the parties involved in the arrangement have been given an opportunity to be heard, the court is satisfied that the arrangement will not ensure the discontinuance or avoidance of the business practice which gave rise to the consumer complaint.
- (3) An order in terms of subsection (2) must be published in the *Gazette*.

Chapter 6

Law enforcement and judicial proceedings

Part 1 – Confidentiality, limitation of liability, waiver of benefits and civil remedies

38. Confidentiality

No investigating officer or person in the service of the Office of the Consumer Protector or performing duties for the Office may disclose any information acquired by him or her in the exercise or performance of any powers, functions or duties in terms of this Act, except-

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

39. Limitation of liability

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

40. Waiver of benefits

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

41. Remedies

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

Part 2 – Offences and penalties

42. General offences

- (1) A person is guilty of an offence if-
 - (a) he or she as the owner or holder of any business or license to operate, allows an abuse of a consumer within his business premises;
 - (b) he or she misrepresents himself or herself or any other person in the employ of such person in relation to goods or services, to the consumer.
- (2) A member of a Consumer Tribunal, a member of staff, advisor, agent or other person employed by or acting on behalf of the Consumer Tribunal is guilty of an offence if he or she directly or indirectly

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

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

43. Offences regarding hearing of Consumer Tribunal

A person who-

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

44. Penalties

Any person convicted of an offence-

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

Chapter 7 General provisions

45. Regulations

- (1) The responsible Member of the Executive Council may make regulations regarding-
 - (a) any matter which in terms of this Act is required or permitted to prescribe;
 - (b) any payment and amount of any fees payable in term of this Act;
 - (c) the manner in which, and the days on which, if applicable, any application in terms of this Act may or must be made or lodged;
 - (d) the manner and forms of service, delivery or dispatch of any summons, notice or other document required to be served, delivered or dispatched in terms of this Act;
 - (e) the manner and form of the publication of notice or other document required to be published in terms of this Act;

- (f) the form, content and size, where applicable, of any notice, communication or other document required to be issued, delivered, served, given or published in terms of this Act;
 - (g) time periods, or the extension of time periods, to be prescribed in terms of this Act;
 - (h) the details of the premises in terms of which the complaint is lodged;
 - (i) the tariff of witness fees payable on appeal or review proceedings;
 - (j) the form and the manner in which a complaint must be submitted to the Office of the Consumer Protector;
 - (j) procedure to be followed in dealing with a business entity that has been found to have contravened the provisions of this Act; and
 - (k) in general, any matter in respect of which the responsible Member of the Executive Council deems it necessary or expedient to make regulations in order to achieve the objects of this Act.
- (2) Any regulation regarding fees or money to be paid must be made by the responsible Member of the Executive Council in consultation with the Member of the Executive Council for Finance.

46. Transitional arrangement

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

47. Short title and commencement

- (1) This Act is called the KwaZulu-Natal Consumer Protection Act, 2013, and comes into operation on a date to be determined by the responsible Member of the Executive Council by notice in the *Gazette*.
- (2) The responsible Member of the Executive Council may determine different dates for the coming into operation of different sections of this Act.