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GENERAL NOTICE

NOTICE 415 OF 2012

NATIONAL CONSUMER COMMISSION

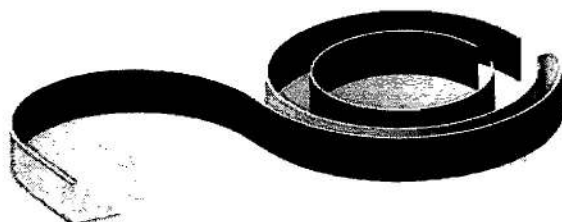
I, Mamodupi Mohlala-Mulaudzi, Commissioner of the National Consumer Commission, hereby public draft guidelines for the accreditation of Industry Codes of Conduct and Ombud- Schemes pursuant to the provisions of Section 82 of the Consumer Protection Act, 2008 (Act No 68 of 2008).

Interested persons may submit their comments on the draft guidelines in writing on or before 18th June 2012 quoting the following reference number (NCC/GN/0004) to: The National Consumer Commissioner, National Consumer Commission c/o Mr. Jeremiah Modiba National Consumer Commission 12 Bauhinia Street Berkley Office Park Techno Park Centurion Code: 0157 or email to j.modiba@thencc.org.za



Ms M Mohlala-Mulaudzi

COMMISSIONER: NATIONAL CONSUMER COMMISSION



N A T I O N A L C O N S U M E R C O M M I S S I O N

**GUIDELINES FOR THE DEVELOPMENT OF INDUSTRY
CODES OF CONDUCT FOR ACCREDITATION UNDER
THE CONSUMER PROTECTION ACT 68 OF 2008**

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1. Part A

1.1 Preamble

The National Consumer Commission (the Commission /NCC) has identified accreditation of industry codes and Alternative Dispute Resolution (ADR) ombuds schemes as one on its priority initiative for enforcement and compliance with the Consumer Protection Act 68 of 2008. Provisions of section 82 entrust the Commission with a responsibility to process applications from industries for accreditation of codes of conduct, ombuds schemes and put in place monitoring systems to ensure effectiveness of accredited codes and ombud schemes.

Purpose for processing the applications is for recommendation to the Minister of Trade and Industry (the Minister) for approval/disapproval of accreditation of industry codes of conduct and/or ombud schemes. The Commission may at its own initiative or acting upon request of a person conducting business in a particular industry, recommended the imposition of a proposed industry code of conduct to the Minister after consulting with the relevant industry, interested consumer groups and public commentary process.

The Commission had developed these guidelines to assist interested industry applicants for accreditation in terms section 82 to develop their codes and ombuds schemes within the purpose and policies of the Consumer Protection Act 68 of 2008. The guidelines have been reworked pursuant to industry concerns that the initial draft was not over inclusive to accommodate different industry configurations.

1.2 Introduction

The purpose of this document is to provide practical guidelines to industry groups on the development of industry codes of conduct. It should be noted that subjects listed in this document constitute the minimum contents to form part of an industry code of conduct.

The NCC welcomes the development of industry codes of conduct containing legally correct provisions that are aligned to the object and spirit of the Consumer Protection Act 68 of 2008 (the Act). Industry groups are encouraged to start drafting their industry



codes for submission to the Commission, for its review and recommendation to the Minister to accredit under section 82 of the Act. There are many positive aspects to be gained from having industry codes of conduct developed and accredited through the accreditation process. Formal accreditation of these codes of conduct reduces legal uncertainty where codes are used to guide the resolution of disputes in an industry.

Research conducted on behalf of the NCC suggests that codes of conduct tend to be more effective if they:

- Have widespread support of industry
- Comprise representatives of key stakeholders, including consumers, consumer associations, and the government.
- Operates an effective system of complaints handling.

Although the Act does not obligate this, the Commission prepared these guidelines to assist industry with aspirations to develop codes of conduct. It is important for industry groups to gather some information before the industry code of conduct is actually written. Codes of conduct should be consistent with the Act and all other relevant public regulations. For example, an industry code of conduct that refers to the disposal of hazardous waste should be consistent with public health, transport and environmental legislation as well as the relevant occupational safety and health legislation.

In the planning stage, industry groups should consider ways to produce, distribute, promote and evaluate their codes of conduct. This will remain responsibility of the industry group. It is important that copies of every accredited code of conduct are available within a reasonable time to people who require them and the distribution is not restricted to certain sectors of an industry, such as membership of an organization. Accreditation should be seen as a mutually beneficial exercise for both consumers and suppliers.



1.3 Legislative Framework

The Act provides for the Minister of Trade and Industry to prescribe industry codes of conduct. Section 82 of the Act sets out the objectives of an industry code as follows:-

- To regulate interaction between or among persons conducting business within an industry or
- Regulating the interaction, or providing for alternative dispute resolution between person conducting business in an industry and consumers.

A prescribed industry code should promote fair and equitable business practice in the industry among persons conducting business in industry, encourage fair play and open communication between industry participants and consumers as a means of avoiding disputes.

The code should also provide a simple, accessible and an alternative dispute resolution (ADR) mechanism to consumers in the event of a dispute.

To this end, where an industry ombud scheme exists and the NCC consider that scheme adequately situated in terms of any public regulation, such ombud scheme may be recommended for accreditation as an "accredited industry ombud".

2. Part B

The following captions constitute the minimum information that should be covered in the code to be presented to the NCC for accreditation. The guideline document does not purport to limit any additions if required in the circumstances of a particular industry (Industry configurations).



2.1 Interpretation and Definitions

- (i) A code should at least have definitions which clearly help explain technical and legal terms used therein to enable a lay person to understand the context in which terms applicable to the industry are used in the code.
- (ii) Acronyms and industry jargon in the code must be interpreted in plain and simple language in accordance with section 22 of the Act taking into account section 3 category consumers (vulnerable groups).
- (iii) If terms defined in the Act or its regulations are used, they should retain the same meaning in the code or proposed code.

2.2 Purpose and objectives of industry codes

- (i) A code of conduct should outline the purpose and objectives which must be in line with the objectives as outlined in Section 3 of the Act. Emphasis of the purpose and objectives must be for protection of consumers, guidance to suppliers, promotion of fair business practice, Alternative Dispute Resolution (ADR) etc.
- (ii) Universal purpose and objectives should be to raise the standards of conduct without endangering the vitality and growth of business, to reduce risk and generate growth in the sector by increasing the level of certainty for all participants.

2.3 Application, Scope and Type of Supplier (Demarcation of Industry)

- (i) A code of conduct must state to who it applies.
- (ii) It must clearly demarcate the suppliers trading in the industry it applies to.



- (A Breakdown of sectors in the industry code and a list of member suppliers within the code should be provided)
- (iii) Suppliers may be distinguished by the goods or services they render.
- (iv) If at all possible, list of all entities trading in the industry.
- (v) Scope and application of a code must not diminish consumer rights but it should enhance consumer rights equivalent or better than what is provided for in the Act.
- (vi) The code should be made mandatory for all suppliers belonging to the industry.
- (vii) Amendments or alterations to the application, scope and type of supplier shall only be effected after a period of five years of the accreditation and after review process by the Commission in terms of section 82(5).

2.4 Plain and Understandable Language

- (i) While the code should be consistent with the law, it should be easy for stakeholders to understand their rights and obligations. Using plain language will prevent ambiguity and vagueness and will instill confidence and certainty.
- (ii) The industry code of conduct must be written in plain language and be made available in English and other indigenous language of the Republic.
- (iii) It must be reasonable to conclude that an ordinary consumer of the class of persons for whom the code 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 importance of the code of conduct without undue effort, having regard to-
 - The context, comprehensiveness and consistency of the code
 - The organization, form and style of the code
 - The use of any illustrations, examples, headings or other aids to reading and understanding.



2.5 IMPLEMENTATION AND REVIEW

2.5.1 Consumer and industry awareness

- (i) The code must incorporate a strategy on how the industry will raise consumer and industry awareness on the code and its contents, including its complaints handling provisions.
- (ii) In many cases a code fails to operate effectively, not because its principles and procedures are inadequate, but because employees or industry members are either unaware of the code or fail to follow its day to day dealings.
- (iii) It is therefore essential that the code contain a provision requiring employees and agents to be instructed in its principles and procedures.
- (iv) Procedure for redress mechanism in terms of a code must be available to consumers in at least more than one language for awareness.

2.5.2 Data Collection

- (i) The code must incorporate a requirement for collection of data about the origins and causes of complaints, and the identification of systemic and recurring problems which industry members need to address.
- (ii) The type of data collected should include details of –
 - Complainant
 - Business complained about
 - The type and frequency of complaint
 - How the complaint was resolved
 - Time taken to deal with complaint
 - Type of sanction(s) imposed



- (iii) The data should be able to be analyzed to produce reports that highlight any systemic issues and areas for potential improvement. The reports should provide important feedback for management, staff and industry to continually improve compliance with the Act.

2.5.3 Monitoring

- (i) The accredited ombud scheme should regularly monitor codes for compliance to ensure the desired outcomes for all stakeholders and the community at large. The accredited scheme should have a system for monitoring compliance which may include evaluating data collected regularly to identify and remedy problems as well as to identify ways of increasing compliance.

2.5.4 Accountability

- (i) The accredited ombud scheme should also produce annual reports on the operation of the code, allowing for periodic assessment of its effectiveness. The reports should be readily available to all stakeholders and interested parties.

2.5.5 Review

- (i) The code should provide for reviews to ensure that the standards incorporated are meeting identified objectives and current consumer expectations and that it is working effectively.
- (ii) This exercise is made obligatory by the Act to enable the NCC to report to the Minister from time to time on the effectiveness of accredited industry codes.

2.5.6 Performance indicator

- (i) Performance indicators should be developed with reference to these criteria and implemented as a means of measuring the code's effectiveness.
- (ii) The measurements may either be qualitative but should be objective so that another person in similar circumstances would obtain the same measurement.



2.5.7. Consultation

- (i) The code should lay down a mandatory consultation process before it is submitted to the NCC for accreditation. Sections 82 of the Act stipulate that groups developing an industry code of practice should consult within:
- All industry participants conducting business in the industry
 - Relevant consumer protection groups with interest in the industry
 - Any other relevant stakeholder
- (ii) Although the Act also provides that the NCC must publish the code for public comment, extensive consultation early in the development process may avoid delays in the review of the code of conduct of practice by the NCC, especially where some items are controversial.

3 PART C

3.1 SUSTAINABLE FUNDING MODEL

- (i) A code of conduct must propose a funding model for the maintenance and effective operation of the office of the ombud,
- (ii) Provision must be made in the code for collection of fees from all suppliers demarcated into the industry and who voluntarily subscribe to the ombud.
- (iii) Effect of non-payment of fee(provision on effect of non-payment which may be appropriate and effective within the particular industry);
- (iv) Automatic annual increase of fee (mechanism automatic rise in fee (e.g. CPI index, set percentage); annual date of automatic increase; provision that current fee is to be published on office of ombud website);
- (v) Fees may be billed to none-subscribing suppliers, within the accredited industry code value chain or demarcation, for ombud services rendered.



- (vi) The above proposed principles of funding model are simply suggestive to industry codes in nature; they are by no means prescriptive. These principles are intended to ensure independence and transparency regarding operations of an accredited ombud scheme.

4. PART D

DISPUTE RESOLUTION/ COMPLAINTS HANDLING

- 4.1 Complaints must be submitted in a prescribed manner on a prescribed form and may be submitted by hand; mail; fax; e-mail. All documentation related to the complaint must be attached to the complaint form. A code must also provide telephone and fax numbers, physical, postal and e-mail addresses at which consumers can submit their complaints.
- 4.2 Complaints should be submitted to the Ombuds as soon as it is reasonably possible, they may not be submitted more than three years from the date on which the cause of complaint arose.
- 4.3 Prior to submitting a complaint to the Ombuds, a consumer may in certain instances have to show that he/she attempted to resolve the dispute with the supplier first, and that such attempt was fruitless. i.e. there is a duty on the part of the consumer to try and resolve their dispute with the supplier before approaching the office of the ombuds.

The above assertion may not be construed as a hurdle for section 3 (vulnerable) category consumers to approach office of an accredited ombud or the NCC directly as a first port of call to lodge complaints

- 4.4 In complex matters before the ombuds, parties thereto may need to ensure that the exchange of documents; inspection of goods or premises is done within the prescribed time limits, (e.g. 7 working days)



- 4.5 Arbitration as an alternative dispute resolution mechanism should be excluded from ombuds scheme accredited in terms section 82; because arbitration will defeat the purpose of section 70 (2) namely that where a dispute remains unresolved after conciliation or mediation a matter may have to be referred to the Commission.
- 4.6 An ombuds scheme must have a provision that makes it compulsory to engage the services of an interpreter for consumers who may require such assistance.
- 4.7 An ombuds scheme must ideally prescribe a procedure to be followed in conciliation or mediation proceedings. Proceedings of conciliation or mediation should be informal and easily accessible, however written or oral submissions may be required from all interested parties to assist in consideration of solutions and redress to consumer complaints.
- 4.8 Legal representation during mediation conciliation process (provision to allow, disallow or were is appropriate);
- 4.9 Time limit for resolution of complaints within an accredited industry code and ombud scheme should be at least more than 3 months thereafter followed by referral to the Commission where a dispute remains unresolved. An accredited industry code and ombud scheme may have to motivate to the NCC extension of the turnaround times for certain complaints
- 4.10 An ombuds must have the discretion of adjudicating objections relating to the extension of time limits. Such discretion should be exercised after hearing arguments for and against such extension. Special regard may need to be considered on urgency of a matter and circumstance affecting section 3 vulnerable group category consumers.
- 4.11 Office of ombud scheme should provide to indigent and/or unsophisticated consumers.



- 4.12 Prohibition on discrimination (provision on prohibition on discrimination on grounds contemplated in section 9 (3) of the constitution of the Republic of South Africa, 1996); and section 8 of the Consumer Protection Act.
- 4.13 A Conflict that may arise between one or more set of industry codes must be reported to the National Consumer Commission.
- 4.14 Confidentiality in relation to material aspects of a dispute should be observed by all interest parties except with consent or as dictated by law of general application. No supplier should be obliged to reveal trade secrets pursuant to a dispute resolution process except as it may be permissible by the Act or any other law.

Part E

5. Establishment of office of ombud

5.1 The purpose of establishing an Ombud Scheme

The industry code of conduct may propose the establishment of an ombud scheme. Provision on the establishment must also provide for the name, and general purpose of the ombud in line with the provisions of the Act.

5.2 Powers of the Ombud Scheme

- (i) The industry code must detail powers of the ombud scheme in handling of complaints both from consumers and suppliers in the industry within a turnover below threshold set by the Minister.
- (ii) Types of complaints (jurisdiction of office of ombud; consumer/ supplier and supplier /supplier);
- (iii) Matters outside jurisdiction of ombud (Matters subject to litigation; matters subject to jurisdiction of other ombud) must be referred to the NCC
- (iv) Disputes or challenges regarding competencies or jurisdiction of an accredited ombud must be referred to the Commission.



5.3 Independence of Office of Ombud for Industry

The industry code must have formal independence provision and mechanisms of dealing with threats to its independence. Ombud must have the following qualities;

- (i) Must be a fit and proper person who is honest and has impeccable integrity with regard to his or her character.
- (ii) Must demonstrate high level of competence and capability; and financial soundness.

5.4 Process for Appointment of office of Ombud for Industry

- (i) Public invitations for application for appointment as ombud (provision making publication of invitation to apply mandatory);
- (ii) The process of appointing an ombud must be transparent (provision to ensure transparent and accountable; identification of appointment body/entity; requirements, qualification and disqualifications for appointment);
- (iii) Appointment of ombud (provisions for appointment, including terms and conditions of employment);

5.5 ADMINISTRATIVE MATTERS

- (i) Mechanism, process and grounds for removal of the ombud must be in line with fair administrative procedures provided for by the Promotion of Administrative Justice Act (PAJA);
- (ii) Terms of office of ombud (period and possible renewal period);



- (iii) Conflict of interest provision (Person to be appointed and family member of business partner of him or her may not have any direct or indirect interest including shareholding in any supplier);
- (iv) Location of offices of ombud (physical address); branch offices (physical address) office of ombud website (mandatory website); in determining the location of the offices of the office of ombud, regard must be had to the geographical areas where the industry serves consumers, the categories or types of consumers, suppliers, goods or service to whom the code applies or for whose benefit it is to be prescribed.
- (v) Communication with consumer (information and education duty in respect of the general public);
- (vi) Access to information (PAIA requirements to be applicable)
- (vii) Register of suppliers (duty of supplier to whom the code applies to be available on office of ombud website);
- (viii) Annual report (Provision for annual report to the NCC; provision for publication of report on office of ombud website; time frame);
- (ix) Keeping of account records, drawing up of financial statements and auditing (Self-explanatory; provision to publish on office of ombud website; time frames);
- (x) Hindering administration of code (Provision to prohibit influencing or harassing ombud or staff of office of ombud or consumer, as the case may be; effective applicable sanctions);
- (xi) No detracting from any rights (provision to explicitly provide that the code does not amend, repeal or diminish any other right a consumer may have in law);



5.6 Existing Ombud schemes

- (i) In the event that an office of the ombud, irrespective of its name, already exists in a particular industry, and the Commission considers that the scheme is adequately situated and equipped to provide alternative dispute resolution services comparable to those generally provided in terms of any public regulation, the Commission may in its sole discretion recommend to the Minister to direct that such an office be accredited as an industry ombud.
- (ii) Where the office of the ombud replaces any other institution, adequate transitional provisions must be included to ensure a transition from the one to the other on the date of commencement of the code, especially in respect of proceedings initiated under the previous dispensation finalized on that date.

6 PART F

Safety monitoring and recall

6.1 The industry code must encompass the development, adoption and application of a safety monitoring and safety recall mechanism which will create an effective and efficient system to-

- (a) Receive notice of-
 - (I) Consumer complaints or reports of product failures, defects or hazards
 - (ii) The return of any goods because of a failure, defect or hazard
 - (v) Personal injury, illness or damage to property caused wholly or partially as a result of a product failure, defect or hazard; and
 - (iv) Other indication of failure, defect or hazard, in any particular goods or in any component of them, or injury or damage resulting from the use of those goods;



- (b) Monitor the source of information contemplated in paragraph (a), and analyze the information received with the object of detecting any previously undetected or unrecognized potential risk to the public from the use of or exposure to those goods;
- (c) Conduct investigation into the nature, extent and degree of the risk to the public;
- (d) Notify consumers of the nature, causes, extent and degree of the risk pertaining to those goods; and,
- (e) If the goods are unsafe, recall those goods for repair, replacement or refund.

7. PART G

7.1 APPLICATION PROCESS

Application for accreditation of industry codes must be submitted to the National Consumer Commission for its consideration and recommendation to the Minister of Trade and Industry and must be supported by the following information –

- (a) The extend of consultation with all relevant stakeholder;
- (b) An undertaking by the applicant to co-operate and comply with all reasonable requirements of the NCC.
- (c) Names of the industry group and/or people who have developed the code and their contact details.
- (d) The proposed method of publication, distribution and promotion of the code.

7.2 ACCREDITATION PROCESS

7.2.1 Upon receipt of an application for accreditation of a code the NCC will do the following-



- (a) Publishing the proposed industry code for public comment
- (b) Considering any submissions made during the public comment period;
- (c) Consulting with-
 - (i) Person conducting business within the relevant industry; and
 - (ii) Relevant accredited consumer protection groups; and
- (d) Making any revisions to the proposed industry code as published for comment.

7.2.2 When the Minister approves an industry code under section 82 of the Act, the industry will be informed in writing .The code cannot be circulated with any endorsement or statement that infers that it has been approved under section 82 until the NCC has arranged for publication of the notice stating the Minister's approval in the gazette.

Applications can be submitted to:

National Consumer Commission

C/o Mr. Jeremiah Modiba Legal Division (Accreditation & Exemptions)

National Consumer Commission

12 Bauhinia Street

Berkley Office Park

Techno Park

Centurion

Code: 0157

Email address: j.modiba@thencc.org.za

Tel: 012 940 4450



BASIC PRINCIPLES OF COMPLAINTS HANDLING

A. GUIDELINES FOR COMPLAINTS HANDLING

The ombud scheme must follow the following guiding principles when handling complaints:

1. Visibility

Information about how and where complaints should be lodged must be well publicized to the consumers, suppliers, staff and other interested parties.

2. Accessibility

A complaints handling process should be easily accessible to all complainant. This means that the process should be easy to understand and use. The information and the assistance in lodging a complaint should be in a clear language.

3. Responsiveness

Receipt of each complaint should be acknowledged immediately. Complaint should be addressed promptly in accordance with their urgency. The complainant should be treated with courtesy and be kept informed of the progress of their complaint through the complaint handling process.

4. Objectivity

Each complaint should be addressed in an equitable, objective and unbiased manner through the complaints handling process.

5. Charges

Access to the complaints handling process should be free of charge to a complainant.



6. Confidentiality

Personal information of the complainant should be available where needed, but only for the purpose of addressing the complainant within the organization and should be actively protected from disclosure, unless the complainant expressly consents to its disclosure.

7. Customer Focus Approach

The ombud should adopt a customer focus approach, should open to feedback including complaints, and should show commitment to resolving complaints by its actions.

8. Accountability

Ensure that accountability for and reporting on the action and the decisions of the ombuds with respect to complaints handling is clearly established.

9. Continual Improvement

Continual improvement of the complaint handling process and the quality of the service should be a permanent objective of the scheme.

B. COMPLAINTS HANDLING PROCESS

1. Communication

Information concerning the complaints handling process should be made readily available to consumers, examples of such information are-

- Where and how complaints can be made
- Time period associated with various stages in the process
- The complaint option remedy
- How the complainant can obtain feedback on the status of the complaint.



9. Closing the complaint

If the complainant accepts the proposed decision, then the decision or action should be carried and recorded. If the complainant rejects the decision or action, the complainant should be advised of closure and referral or escalation options.

C. MAINTENANCE AND IMPROVEMENT

1. Collection of Information

The scheme should record the performance of its complaints-handling process. The scheme established must implement complaint handling process. The scheme should establish and implement procedures for recording complaints. In handling records of complaints and responds the scheme must protect personal information and ensure the confidentiality of complainants.

2. Analysis and Evaluation of Complaints

All complaints should be classified and analyzed to identify systematic, recurring and single incidents and trends.

3. Satisfaction with the Complaints-Handling Process

There should be regular action taken to determine the levels of satisfaction of complainants with the complaints-handling processes

These Basic Principles of Complaints Handling, are based on the South African Bureau of Standards (SABS) SANS 1002: 2005



2. Receipt of complaints

Upon reporting of the initial complaint, it should be reported with the supporting information and unique identifiable code. The record of the initial complaint should identify the remedy sought by the complainant and any other information necessary for the effective handling of the complaint.

3. Tracking of complaints

The complaint should be tracked from initial receipt through the entry process until complainant is satisfied or the final decision is made. An up to date status should be made available to the complainant upon request and at regular intervals.

4. Acknowledgment of Complaints

Receipt of each complaint should be acknowledged to the complainant immediately in writing.

5. Initial assessment of complaints

After receipt, each complaint should be assessed in terms of criteria such as severity, safety implications, complexity, impact and the need and the possibility of immediate action.

6. Investigation of Complaints

Every reasonable effort should be made to investigate all relevant circumstances and information surrounding complaint.

7. Response to complaints

A scheme should offer a response following the investigation

8. Communicating the decision

The decision or any action taken regarding the complaint should be communicated to the complainant as soon as the decision or action is taken.

