

Northern Cape, South Africa

## Northern Cape Consumer Protection Act, 2012

Act 1 of 2012

Legislation as at 28 March 2012

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# Northern Cape South Africa

## Northern Cape Consumer Protection Act, 2012

### Act 1 of 2012

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## ACT

To provide for the establishment of a Provincial Consumer Protection Authority; to provide for the appointment of a Consumer Protector; to provide for the establishment of a Consumer Court for the Province; to provide for the appointment of members and a Registrar for the Consumer Court; to provide for the functioning and administration of the Consumer Court; to repeal the Northern Cape Consumer Affairs (Unfair Business Practices) Act, 1996; and to provide for matters connected therewith.

WHEREAS a need exists within the Northern Cape Province to protect the rights of consumers;

AND WHEREAS national legislation provides for concurrent consumer protection functions to be exercised by provincial consumer protection entities,

BE IT THEREFORE ENACTED by the Northern Cape Provincial Legislature, as follows:-

### Chapter 1

#### Interpretation and purpose of Act

#### Part A – Interpretation

##### 1. Interpretation

- (1) In this Act, any word or expression to which a meaning has been assigned in the Consumer Protection Act, 2008 ([Act No. 68 of 2008](#)) has the meaning so assigned to it, and, unless the context otherwise indicates-

“**accounting authority**” means the person mentioned in section 49(2)(b) of the Public Finance Management Act;

“**Authority**” means the Provincial Consumer Protection Authority established by [section 4](#);

“**Constitution**” means the [Constitution of the Republic of South Africa, 1996](#);

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

- (a) a person to whom those particular goods or services are marketed in the ordinary course of the supplier’s business;
- (b) a person who has entered into a transaction with a supplier in the ordinary course of the supplier’s business, unless the transaction is exempt from the application of the Consumer Protection Act by [section 5\(2\)](#) or in terms of section 5(3) of that Act;
- (c) if the context so requires or permits, a user of those particular goods or a recipient or beneficiary of those particular services, irrespective of whether that user, recipient or

beneficiary was a party to a transaction concerning the supply of those particular goods or services; and

- (d) a franchisee in terms of a franchise agreement, to the extent applicable in terms of [section 5\(6\)\(b\) to \(e\)](#) of the Consumer Protection Act;

“**Consumer Court**” means the Northern Cape Consumer Court established by [section 18](#);

“**Consumer Protection Act**” means the Consumer Protection Act, 2008 ([Act No. 68 of 2008](#));

“**consumer protection entity**” means the Authority or the Consumer Court;

“**Consumer Protector**” means the Northern Cape Consumer Protector appointed in terms of [section 5\(1\)](#);

“**Credit Act**” means the National Credit Act, 2005 ([Act No. 34 of 2005](#));

“**Department**” means the Department responsible for economic development in the Province;

“**Deputy Consumer Protector**” means the Deputy Consumer Protector appointed in terms of [section 5\(4\)](#);

“**functionary of a consumer protection entity**” means a member of the Consumer Court, the Registrar, the Consumer Protector or the Deputy Consumer Protector;

“**goods**” include-

- (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;

“**institution**” means-

- (a) the Provincial Consumer Protection Authority established by [section 4](#); or
- (b) the Northern Cape Consumer Court established by [section 18](#);

“**Province**” means the Northern Cape Province referred to in section 103(1)(f) of the [Constitution](#), or any part thereof;

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

“**Public Finance Management Act**” means the Public Finance Management Act, 1999 ([Act No. 1 of 1999](#));

“**Registrar**” means the Registrar of the Consumer Court appointed in terms of [section 27](#);

“**responsible Member**” means the Member of the Executive Council responsible for economic development in the Province;

“**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 provisions 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 \(e\)](#) of the Consumer Protection Act, irrespective of whether the person promoting, offering or providing the services participates in, supervises or engages directly or indirectly in the service;

“**supplier**” means supplier as defined in section 1 of the Consumer Protection Act;

“**this Act**” includes any regulation made under this Act; and

“**Tribunal**” means the National Consumer Tribunal established by section 26 of the Credit Act.

- (2) In this Act, whenever a provision of the Consumer Protection Act or the Credit Act is to apply, read with the changes required by the context, in such application, unless the context otherwise indicates, a reference in those Acts to –
  - (a) the “Act” must be construed as a reference to “this Act”;
  - (b) the “Commission” must be construed as a reference to the “Authority”;
  - (c) the “Minister” must be construed as a reference to the “responsible Member”; and
  - (d) the “Tribunal” must be construed as a reference to the “Consumer Court”.

## Part B – Objects and application of Act

### 2. Objects of Act

- (1) The objects of this Act are to promote and advance the social and economic welfare of consumers in the Province in accordance with provisions and principles set out in the Consumer Protection Act, by providing for institutions to-
  - (a) investigate;

(b) mediate; or

(c) adjudicate,

any alleged infringement of consumers' rights as set out in Chapter 2 of the Consumer Protection Act.

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

### 3. Application of Act

Subject to the exemptions set out in section 5 of the Consumer Protection Act, this Act applies within the Province to all activities referred to in that section to which that Act applies.

## Chapter 2 Provincial Consumer Protection Authority

### Part A – Establishment of Provincial Consumer Protection Authority

#### 4. Establishment of Provincial Consumer Protection Authority

- (1) A Provincial Consumer Protection Authority for the Province is hereby established.
- (2) The Authority must, by notice in the *Provincial Gazette*, be designated by the responsible Member to have general authority to deal with consumer protection matters, and-
- (a) is a juristic person;
  - (b) has jurisdiction throughout the Province;
  - (c) must perform the specific functions –
    - (i) assigned to it by this Act, any other applicable law or by the responsible Member;
    - (ii) assigned to a provincial consumer protection authority by the Consumer Protection Act,

in the most cost-efficient and effective manner and in accordance with the values and principles mentioned in section 195 of the [Constitution](#).

#### 5. Appointment of Consumer Protector and Deputy Consumer Protector

- (1) The responsible Member must appoint a person with suitable experience and at least an university degree in economics, law, commerce, industry or public affairs as Provincial Consumer Protector in the Office of the Authority, who-
- (a) must perform all the functions of the Authority under this Act or any other law; and
  - (b) holds office for an agreed term not exceeding five years.
- (2) The Consumer Protector is the accounting authority for the Authority, and as such is responsible for –
- (a) all income and expenditure of the Authority;
  - (b) all revenue collected by the Authority;
  - (c) all assets, and the discharge of all liabilities of the Authority; and

- (d) the proper and diligent implementation of the Public Finance Management Act with respect to the Authority.
- (3) The responsible Member must appoint a person with suitable experience and at least an university degree in economics, law, commerce, industry or public affairs as Deputy Consumer Protector who —
- (a) must assist the Consumer Protector in carrying out the functions of the Authority;
  - (b) must perform the functions of the Authority whenever —
    - (i) the Consumer Protector is unable for any reason to perform the functions of the Authority; or
    - (ii) the office of the Consumer Protector is vacant; and
  - (c) holds office for an agreed term not exceeding five years.
- (4) A person may be reappointed as Consumer Protector or Deputy Consumer Protector respectively on the expiry of an agreed term of office, but may not serve in either capacity for a total period of more than ten years.
- (5) The Consumer Protector may in writing —
- (a) assign management or other duties to the Deputy Consumer Protector or to employees of the Authority with appropriate skills to assist the Consumer Protector in the management or control over the functioning of the Authority; and
  - (b) delegate, with or without conditions, any of the powers or functions of the Authority to the Deputy Consumer Protector or to any suitably qualified employee of the Authority, but any such delegation does not divest the Consumer Protector of responsibility for the exercise of any power or performance of any such function.

## **Part B – Functioning of the Authority**

### **6. Referral of matters to Consumer Court**

- (1) Subject to subsections (2) and (4), a matter to be considered by the Consumer Court in terms of this Act or the Consumer Protection Act may only be considered if referred in writing to the Consumer Court by the Authority.
- (2) A person contemplated in section 4(1) of the Consumer Protection Act who seeks to enforce any right in accordance with section 69(c)(ii) of that Act by applying directly to the Consumer Court, may do so only—
  - (a) if a complaint has beforehand been filed with and investigated by the Authority; and
  - (b) the Authority has issued a notice of non-referral to the person.
- (3) Proceedings before the Consumer Court must, subject to subsection (2), be prosecuted by the Authority, which may be represented by an advocate, attorney or any other person appointed in writing by the Consumer Protector.
- (4) The provisions of subsections (1), (2) and (3) do not apply to a matter referred to the Consumer Court in terms of sections 140 or 141 of the Credit Act.

### **7. Appointment of inspectors and investigators**

- (1) The responsible Member —
  - (a) may appoint or designate any suitable employee of the Authority or any other suitable person employed by the Department, as an inspector or investigator; and



- (b) must issue each inspector or investigator with a certificate in the prescribed form stating that the person has been appointed or designated as an inspector or investigator in terms of this Act.
- (2) Whenever an inspector or investigator appointed or designated under subsection (1)(a), performs a function under this Act in the presence of any person affected thereby, the inspector or investigator must, on demand by such person, produce to him or her the certificate referred to in subsection (1)(b).

## 8. Investigation by Authority

- (1) Upon initiating or receiving a complaint in terms of this Act or the Consumer Protection Act, the Authority may –
- (a) issue a notice of non-referral to the complainant in the prescribed form, if the complaint –
    - (i) appears to be frivolous or vexatious;
    - (ii) does not allege any facts which, if true, would constitute grounds for a remedy under this Act; or
    - (iii) is prevented, in terms of section 116 of the Consumer Protection Act, from being referred to the Consumer Court;
  - (b) direct an inspector or investigator to investigate the complaint as quickly as practicable, in any other case.
- (2) At any time during an investigation, the Authority may designate one or more persons to assist the inspector or investigator conducting the investigation contemplated in subsection (1).

## 9. Outcome of investigation

After concluding an investigation into a complaint, the Authority may –

- (a) issue a notice of non-referral to the complainant in the prescribed form;
- (b) refer the matter to the National Prosecuting Authority, if the Authority alleges that a person has committed an offence in terms of this Act; or
- (c) if the Authority believes that a person has engaged in prohibited conduct –
  - (i) propose a draft consent order in terms of [section 10](#); or
  - (ii) issue a compliance notice in terms of section 100 of the Consumer Protection Act.

## 10. Consent orders

- (1) If a matter has been investigated by the Authority, and the Authority and the respondent agree to the proposed terms of an appropriate order, the Consumer Court or a court, without hearing any evidence, may confirm that agreement as a consent order.
- (2) After hearing a motion for a consent order, the Consumer Court or a court must –
- (a) make an order as agreed to and proposed by the Authority and the respondent;
  - (b) indicate any changes that must be made in the draft order before the order is made; or
  - (c) refuse to make the order.
- (3) With the consent of a complainant, a consent order confirmed in terms of subsection (1) may include an award of damages to the complainant.

### 11. Referral to Consumer Court by complainant

- (1) If the Authority issues a notice of non-referral in response to a complaint, other than on the grounds contemplated in section 116 of the Consumer Protection Act, the complainant concerned may refer the matter directly to the Consumer Court, with leave of the Consumer Court.
- (2) A referral to the Consumer Court, whether by the Authority or by a complainant in terms of subsection (1), must be in the prescribed form.

### 12. Responsible Member may direct policy and other matters and require investigation

The responsible Member may-

- (a) by notice in the *Provincial Gazette*, issue policy directives to the Authority with respect to the application, administration and enforcement of this Act, but any such directive must be consistent with this Act and the Consumer Protection Act; and
- (b) at any time direct the Authority to –
  - (i) investigate an alleged contravention of this Act or the Consumer Protection Act;
  - (ii) investigate any matter or circumstances with respect to the purposes of this Act or the Consumer Protection Act, whether or not those circumstances appear at the time of the direction to amount to a possible contravention of this Act or the Consumer Protection Act; or
  - (iii) give effect to any arrangement contemplated in section 83(1) of the Consumer Protection Act.

## Part C – Powers in support of investigation

### 13. Summons

- (1) At any time during an investigation being conducted in terms of [section 8\(1\)\(b\)](#), the Consumer Protector may issue a summons to any person who is believed to be able to furnish any information on the subject of the investigation, or to have possession or control of any book, document or other object that has a bearing on that subject –
  - (a) to appear before the Authority, or before an inspector or independent investigator, to be questioned at a time and place specified in the summons; or
  - (b) to deliver or produce to the Authority, or to an inspector or independent investigator, any book, document or other object referred to in paragraph (a) at a time and place specified in the summons.
- (2) A summons contemplated in subsection (1) –
  - (a) must be signed by the Consumer Protector, or by an employee of the Authority designated by the Consumer Protector; and
  - (b) may be served in the same manner as a subpoena in a criminal case issued by the magistrate's court.
- (3) An inspector or investigator before whom a person is summoned to appear, or to whom a person is required to deliver any book, document or other object, may –
  - (a) interrogate and administer an oath to, or accept an affirmation from, the person named in the summons; and

- (b) retain any such book, document or other object for examination, for a period not exceeding two months, or such longer period as the Consumer Court, on application and good cause shown, may allow.
- (4) A person questioned by the Authority or by an inspector or investigator conducting an investigation must answer each question truthfully and to the best of that person's ability, but —
  - (a) a person is not obliged to answer any question if the answer is self-incriminating; and
  - (b) the person asking the questions must inform that person of the right set out in paragraph (a).
- (5) No self-incriminating answer given or statement made by any person to the Authority or an inspector or investigator exercising powers in terms of this Act, will be admissible as evidence against that person in criminal proceedings against that person instituted in any court, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in section 37(3) or 38(2)(d), and then only to the extent that the answer or statement is relevant to prove the offence charged.

#### 14. Authority to enter and search under warrant

- (1) A judge of the High Court or a magistrate may issue a warrant to enter and search any premises that are within the jurisdiction of that judge or magistrate if, from information on oath or affirmation, there are reasonable grounds to believe that —
  - (a) a contravention of this Act has taken place, is taking place, or is likely to take place on or in those premises; or
  - (b) anything connected with an investigation in terms of this Act is in the possession of, or under the control of, a person who is on or in those premises.
- (2) A warrant to enter and search may be issued at any time and must specifically —
  - (a) identify the premises that may be entered and searched; and
  - (b) authorise an inspector, investigator or a police officer to enter and search the premises and to do anything listed in section 15.
- (3) A warrant to enter and search is valid until —
  - (a) the warrant is executed;
  - (b) the warrant is cancelled by the person who issued it or, in that person's absence, by a person with similar authority;
  - (c) the purpose for issuing it has lapsed; or
  - (d) the expiry of one month after the date it was issued.
- (4) A warrant to enter and search may be executed only during the day, unless the judge, regional magistrate or magistrate who issued it authorises that it may be executed at night at a time that is reasonable under the circumstances.
- (5) A person authorised by warrant issued in terms of subsection (2) may enter and search premises named in that warrant.
- (6) Immediately before commencing with the execution of a warrant, a person executing that warrant must either—
  - (a) if the owner, or person in control, of the premises to be searched is present —
    - (i) provide identification to that person and explain to that person the authority by which the warrant is being executed; and
    - (ii) hand a copy of the warrant to that person or to the person named in it; or

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

## 15. Powers to enter and search

- (1) A person who is authorised under [section 14](#) to enter and search premises may –
  - (a) enter upon or into those premises;
  - (b) search those premises;
  - (c) search any person on those premises if there are reasonable grounds for believing that the person has personal possession of an article or document that has a bearing on the investigation;
  - (d) examine any article or document that is on or in those premises that has a bearing on the investigation;
  - (e) request information about any article or document from the owner of, or person in control of the premises or from any person who has control of the article or document, or from any other person who may have the information;
  - (f) take extracts from, or make copies of, any book or document that is on or in the premises that has a bearing on the investigation;
  - (g) use any computer system on the premises, or require assistance of any person on the premises to use that computer system, to-
    - (i) search any data contained in or available to that computer system;
    - (ii) reproduce any record from that data;
  - (h) seize any output from that computer for examination and copying; and
  - (i) attach and if necessary remove from the premises for examination and safekeeping anything that has a bearing on the investigation.
- (2) [Section 13\(5\)](#) applies equally to an answer given or statement made to an inspector, investigator or police officer in terms of this section.
- (3) An inspector or investigator authorised to conduct an entry and search in terms of [section 14](#) may be accompanied and assisted by a police officer.

## 16. Conduct of entry and search

- (1) A person who enters and searches any premises under [section 15](#) must conduct the entry and search with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy.
- (2) During any search under [section 15\(1\)\(c\)](#), only a female inspector, investigator or police officer may search a female person, and only a male inspector, investigator or police officer may search a male person.
- (3) A person who enters and searches premises under [section 15](#), before questioning anyone, must –
  - (a) advise that person of the right to be assisted at the time by an advocate or attorney; and
  - (b) allow that person to exercise that right.
- (4) A person who removes anything from premises being searched must –
  - (a) issue a receipt for it to the owner of, or person in control of, the premises; and
  - (b) return it as soon as practicable after achieving the purpose for which it was removed.

- (5) During a search, a person may refuse to permit the inspection or removal of an article or document on the grounds that it contains privileged information.
- (6) If the owner or person in control of an article or document refuses in terms of subsection (5) to give that article or document to the person conducting the search, the person conducting the search may request the Registrar or sheriff of the High Court that has jurisdiction to attach and remove the article or document for safe custody until that court determines whether or not the information is privileged.
- (7) A police officer who is authorised to enter and search premises under [section 13](#), or who is assisting an inspector or investigator who is authorised to enter and search premises under [section 14](#), may overcome resistance to the entry and search by using as much force as is reasonably required, including breaking a door or window of the premises.
- (8) Before using force in terms of subsection (6), a police officer must audibly demand admission and must announce the purpose of the entry, unless it is reasonable to believe that doing so may induce someone to destroy or dispose of an article or document that is the object of the search.
- (9) The Authority may compensate anyone who suffers damage because of a forced entry during a search when no one responsible for the premises was present.

## 17. Claims that information is confidential

- (1) When submitting information to the Authority, the Consumer Court, or an inspector or investigator appointed in terms of this Act, a person may claim that all or part of that information is confidential.
- (2) Any claim contemplated in subsection (1) must be supported by a written statement explaining why the information is confidential.
- (3) The Authority, Consumer Court, inspector or investigator, as the case may be, must –
  - (a) consider any claim made in terms of subsection (1); and
  - (b) notify the claimant whether or not the information contemplated in subsection (1) will be treated as if it had been determined to be confidential.
- (4) When making any ruling, decision or order in terms of this Act or the Consumer Protection Act, the Authority or Consumer Court may take into account any information that has been the subject of a claim in terms of subsection (1).
- (5) If any reasons for a decision in terms of this Act or the Consumer Protection Act would reveal any information that has been the subject of a claim in terms of subsection (1), the Authority or Consumer Court, as the case may be, must provide a copy of the proposed reasons to the party claiming confidentiality at least five business days before publishing those reasons.
- (6) Within five business days after receiving a notice in terms of subsection (3)(b), or a copy of proposed reasons in terms of subsection (5), a party may apply to a court for an appropriate order to protect the confidentiality of the relevant information.

## Chapter 3 Northern Cape Consumer Court

### Part A – Establishment and functioning of Consumer Court

#### 18. Establishment and constitution of Consumer Court

- (1) There is hereby established a body to be known as the Northern Cape Consumer Court, which-
  - (a) is a juristic person;
  - (b) has jurisdiction throughout the Province;
  - (c) is a court of record; and
  - (d) must exercise its functions in accordance with this Act or any other applicable legislation.
- (2) The Consumer Court consists of a Chairperson and not more than 6 other members appointed by the responsible Member, on a full or part-time basis.
- (3) The responsible Member must, subject to [section 20](#), –
  - (a) appoint the Chairperson and other members of the Consumer Court no later than the date on which this Act comes into operation; and
  - (b) appoint a person to fill any vacancy on the Consumer Court.

#### 19. Functions of Consumer Court

The Consumer Court or a member of the Consumer Court acting alone may, in accordance with this Act –

- (a) adjudicate in relation to any –
  - (i) application that may be made to it in terms of this Act, the Credit Act or the Consumer Protection Act and make any order provided for in this Act in respect of such an application; or
  - (ii) allegations of prohibited conduct by determining whether prohibited conduct has occurred and, if so, by imposing a remedy provided for in this Act, the Credit Act or the Consumer Protection Act;
- (b) grant an order for costs; and
- (c) exercise any other power conferred on it by law.

#### 20. Qualifications of members of Consumer Court

- (1) The members of the Consumer Court, viewed collectively-
  - (a) must represent a broad cross-section of the population of the Province; and
  - (b) must comprise sufficient persons with legal training and experience to satisfy the requirements of [section 23\(2\)](#).
- (2) Each member of the Consumer Court must –
  - (a) be a citizen of South Africa, who is ordinarily resident in the Province;
  - (b) have suitable experience and at least an university degree in economics, law, commerce, industry or consumer affairs; and

- (c) be committed to the purposes of this Act, the Credit Act and the Consumer Protection Act.

## 21. Term of office of members of Consumer Court

- (1) Each member of the Consumer Court serves for a term of five years.
- (2) The responsible Member may re-appoint a member of the Consumer Court at the expiry of that member's term of office, but no person may be appointed to the office of the Chairperson of the Consumer Court for more than two consecutive terms.
- (3) The Chairperson, on one month's written notice addressed to the responsible Member, may –
  - (a) resign from the Consumer Court; or
  - (b) resign as Chairperson, but remain as a member of the Consumer Court.
- (4) A member of the Consumer Court other than the Chairperson may resign by giving at least one month's written notice to the responsible Member.

## 22. Deputy Chairperson of Consumer Court

- (1) The responsible Member must designate a member of the Consumer Court as Deputy Chairperson of the Consumer Court.
- (2) The Deputy Chairperson performs the functions of Chairperson whenever –
  - (a) the office of Chairperson is vacant; or
  - (b) the Chairperson is for any other reason temporarily unable to perform those functions.

## 23. Consumer Court proceedings

- (1) The Chairperson is responsible to manage the caseload of the Consumer Court, and must assign each matter referred to the Consumer Court to –
  - (a) a member of the Consumer Court; or
  - (b) a panel composed of any three members of the Consumer Court, in any other case.
- (2) When assigning a matter to a member or a panel in terms of subsection (1), the Chairperson must –
  - (a) in the case of a single member, ensure that the member is a person who has suitable legal qualifications and experience; and
  - (b) in the case of a panel –
    - (i) ensure that at least one member of the panel is a person who has suitable legal qualifications and experience; and
    - (ii) designate a member of the panel to preside over the panel's proceedings.
- (3) If, because of resignation, illness, death, unwillingness or withdrawal from a hearing in terms of [section 21](#), a member of the panel is unable to complete the proceedings in a matter assigned to that panel, the Chairperson must-
  - (a) direct that the hearing of that matter proceed before the remaining members of the panel, subject to the requirements of subsection (2)(b); or
  - (b) terminate the proceedings before that panel and constitute another panel, which may include any member or members of the original panel, and direct that panel to conduct a new hearing.
- (4) The decision of a panel on a matter referred to it must be in writing and include reasons for that decision.

- (5) A decision of a single member of the Consumer Court hearing a matter as contemplated in subsection (1)(a), or of a majority of the members of a panel in any other case, is the decision of the Consumer Court.

#### **24. Hearings by Consumer Court**

- (1) When the Consumer Court hears a matter referred to it in terms of this Act, the Consumer Protection Act or the Credit Act, the provisions of Parts D and E of Chapter 7 of the Credit Act, each read with the changes required by the context, apply to the hearing.
- (2) An order of the Consumer Court made after hearing a matter contemplated in subsection (1), has the same force and effect as if it had been made by a consumer court making an order in terms of section 140 of the Credit Act or section 73 of the Consumer Protection Act, respectively.

#### **25. Conflicts and disclosure of interest**

- (1) A member of the Consumer Court may not represent any person before the Consumer Court.
- (2) If, during a hearing in which a member of the Consumer Court is participating, it appears to that member that the matter concerns a financial or other interest of that member contemplated in [section 29](#), that member must –
  - (a) immediately and fully disclose the fact and nature of that interest to the Chairperson and to the presiding member at that hearing; and
  - (b) withdraw from any further involvement in that hearing.

#### **26. Acting by member of Consumer Court after expiry of term of office**

If, on the expiry of the term of office of a member of the Consumer Court, that member is still considering a matter before the Consumer Court, that member may continue to act as a member in respect of that matter only.

### **Part B – Administration of Consumer Court**

#### **27. Registrar of Consumer Court**

- (1) The responsible Member must appoint a person with suitable experience and at least a university degree in economics, law, commerce, industry or public affairs as Registrar of the Consumer Court, who –
  - (a) is responsible for all matters pertaining to the administrative functions of the Consumer Court; and
  - (b) holds office for an agreed term not exceeding five years.
- (2) A person may be reappointed as Registrar on the expiry of the agreed term of office.
- (3) The Registrar is the accounting authority for the Consumer Court, and as such is responsible for –
  - (a) all income and expenditure of the Consumer Court;
  - (b) all revenue collected by the Consumer Court;
  - (c) all assets, and the discharge of all liabilities of the Consumer Court; and
  - (d) the proper and diligent implementation of the Public Finance Management Act with respect to the Consumer Court.



- (4) The Registrar may in writing –
- (a) assign management or other duties to employees of the Consumer Court with appropriate skills to assist the Registrar in the management or control over the functioning of the Consumer Court; and
  - (b) delegate, with or without conditions, any of his or her powers or functions to any suitably qualified employee of the Consumer Court, but any such delegation does not divest the Registrar of responsibility for the exercise of any power or performance of any function.

## Chapter 4 General provisions

### Part A – Matters pertaining to members of consumer protection entities

#### 28. Eligibility to serve as functionary of a consumer protection entity

- (1) To be eligible to serve as a functionary of a consumer protection entity, and to continue to hold that office, a person must-
- (a) be a fit and proper person;
  - (b) not be subject to any disqualification set out in subsection (2);
  - (c) have submitted to the responsible Member the affidavit referred to in subsection (3); and
  - (d) be a citizen of the Republic and ordinarily residing in the Province.
- (2) A person may not be a functionary of a consumer protection entity if that person –
- (a) is a political office-bearer;
  - (b) is an unrehabilitated insolvent, or becomes insolvent and the insolvency results in the sequestration of his or her estate;
  - (c) was once, or is removed from an office of trust on account of misconduct;
  - (d) is subject to an order of a competent court holding that person to be mentally deranged;
  - (e) within the previous ten years has been, or is, convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 ([Act No. 12 of 2004](#)), an offence under Chapter 2 or 3 of the Prevention of Organised Crime Act, 1998 ([Act No. 121 of 1998](#)), an offence under the Financial Intelligence Centre Act, 2001 ([Act No. 38 of 2001](#)) or an offence involving dishonesty; or
  - (f) has been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1993 ([Act No. 200 of 1993](#)), took effect, and sentenced to imprisonment without the option of a fine.
- (3) Before being appointed a functionary of a consumer protection entity, the candidate must submit to the responsible Member an affidavit in which such candidate declares that he or she-
- (a) is eligible for such appointment; and
  - (b) is not disqualified in terms of this Act from such appointment.
- (4) The responsible Member is at any time entitled to call for proof to his or her satisfaction of the continued eligibility of any functionary of a consumer protection entity or to undertake or cause to be undertaken any investigation or enquiry in that regard.

## 29. Conflicting interests

- (1) A functionary of a consumer protection entity must not-
  - (a) engage in any activity that may undermine the integrity of the entity;
  - (b) attend, participate in or influence the proceedings of the entity if, in relation to the matter before the entity, that functionary has any financial or other interest that precludes the functionary from performing the duties of a functionary of the entity in a fair, unbiased and proper manner;
  - (c) vote at any of the proceedings of the entity in connection with a matter contemplated in paragraph (b);
  - (d) make private use of, or profit from, any confidential information obtained as a result of performing duties as a functionary of the entity; or
  - (e) divulge any information referred to in paragraph (d) to any third party, except as required as part of that person's official functions as a member of the entity.
- (2) For the purpose of subsection (1)(b), a financial interest does not include an indirect interest held in any fund or investment if the person contemplated in that subsection has no control over the investment decisions of that fund or investment.
- (3) If, at any time, it appears to a functionary of a consumer protection entity that a matter before the entity concerns an interest of that functionary referred to in subsection (1)(b), the functionary must –
  - (a) immediately and fully disclose the nature of that interest to the entity; and
  - (b) withdraw from the proceedings to allow the remaining functionaries to discuss the matter and determine whether the functionary should be prohibited from participating in any further proceedings concerning that matter.

## 30. Removal from office

- (1) The responsible Member must, by written notice, remove any functionary of a consumer protection entity from office if the functionary becomes subject to a disqualification contemplated in [section 28\(2\)](#).
- (2) The responsible Member may, after considering the findings of an investigating tribunal appointed by him or her, by written notice, remove from office any functionary of a consumer protection entity if the functionary –
  - (a) fails or refuses to comply with the provisions of this Act incumbent on the execution of his or her duties;
  - (b) is, without sound reason, absent from his or her office or from two or more scheduled activities of the entity concerned in one year, or, in the case of absence due to medical reasons, fails to present a valid medical certificate;
  - (c) is found guilty of improper conduct, or is found to be unable to duly perform his or her duties in terms of this Act.
- (3) A tribunal investigating allegations against a functionary of a consumer protection entity in accordance with subsection (2), may make a finding only after considering representations made by the functionary regarding the allegations made against him or her.
- (4) A notice contemplated in subsection (1) or (2) must state the reasons for removal of the functionary.

### 31. Remuneration and benefits of functionaries of consumer protection entities

A functionary of a consumer protection entity must be paid such reasonable remuneration and allowances out of the funds of the entity as the responsible Member, in consultation with the Member of the Executive Council responsible for Finance in the Province, may from time to time determine by notice in the *Provincial Gazette*.

## Part B – Administrative provisions

### 32. Staff of consumer protection entities

- (1) The responsible Member must-
  - (a) determine a staff establishment for each consumer protection entity; and
  - (b) appoint such staff as may be necessary on the establishment of each entity to enable it to perform its functions.
- (2) The responsible Member, in consultation with the Member of the Executive Council responsible for financial matters in the Province, must beforehand determine the salary and other terms and conditions of service of a person appointed in terms of subsection (1)(b).
- (3) The responsible Member may in writing delegate the power to appoint a person in terms of subsection (1)(b) to a consumer protection entity or to a functionary within such entity.
- (4) When making an appointment in terms of subsection (1), the responsible Member must –
  - (a) give preference to candidates residing in the Province; and
  - (b) have due regard to the inclusion of previously disadvantaged persons, young persons, women and disabled persons.
- (5) The provisions of sections 28 and 29, read with the changes required by the context, apply to a person appointed in terms of subsection (1)(b).

### 33. Finances

- (1) A consumer protection entity is financed from-
  - (a) money appropriated by the Provincial Legislature for the entity;
  - (b) any money payable to the entity in terms of this Act;
  - (c) income derived by the entity from its investment and deposit of surplus money in terms of subsection (6); and
  - (d) all monies accruing to the entity from any source.
- (2) The financial year of a consumer protection entity is the period from 1 April in any year to 31 March of the following year.
- (3) Each year, at a time determined by the responsible Member, but no later than 30 June of that year, each consumer protection entity must submit to the responsible Member a statement of the entity's estimated income and expenditure, and requested appropriation from the Provincial Legislature, with respect to the next ensuing financial year.
- (4) Each consumer protection entity must open and maintain an account in the name of the entity with a registered bank in the Republic and –
  - (a) any money received by the entity must be deposited into that account; and
  - (b) every payment on behalf of the entity must be made from that account.

- (5) Any withdrawal from the account of a consumer protection entity must be authorized on its behalf by two persons commissioned for that purpose by the entity.
- (6) A consumer protection entity may invest or deposit money of the entity that is not immediately required for contingencies or to meet current expenditures-
  - (a) on a call account or short-term fixed deposit with any registered bank or financial institution in the Republic; or
  - (b) in an investment account with the Corporation for Public Deposits established in terms of section 2 of the Corporation for Public Deposits Act, 1984 ([Act No. 46 of 1984](#)).
- (7) Any money standing to the credit of a consumer protection entity at the end of any financial year of the entity, excluding such money as has been approved by the responsible Member, being necessary for the reasonable immediate running expenses of the entity, must be paid into the Provincial Revenue Fund.
- (8) A consumer protection entity must submit the report and statements referred to in section 55(1) of the Public Finance Management Act to the responsible Member in the way required by section 55(3) of that Act.
- (9) A consumer protection entity must, in the report contemplated in subsection (8), as far as the exercise and performance of its powers and functions during the year being reported on, are concerned, also include reference to –
  - (a) its achievements;
  - (b) its failures;
  - (c) the financial implications of all such achievements and failures; and
  - (d) any recommendations pertaining to its objects, for consideration.
- (10) As soon as practicable after receiving the report and statements referred to in subsection (8), the responsible Member must table it in the Provincial Legislature.
- (11) A consumer protection entity must establish an audit committee for the entity consisting of at least three persons in accordance with Treasury Regulation 27.
- (12) The audit committee must prepare, sign and submit to the entity, within 15 days of the end of each quarter, a report in respect of the operations, including the income and expenditure of the entity with respect to the preceding quarter.

### **34. Appropriation of income and property**

The moneys appropriated by the Provincial Legislature to a consumer protection entity as contemplated in [section 33\(1\)\(a\)](#), must be utilized in accordance with such appropriation and all other income, property and profits of the entity must be utilized exclusively for the achievement of its objects and in accordance with the provisions of this Act.

### **35. Procurement**

- (1) When procuring any supply or service, or hiring or letting anything or acquiring or granting any right or acquiring or disposing of any asset for or on behalf of a consumer protection entity, the entity must ensure that such procurement is effected in accordance with, and duly complies with-
  - (a) the regulations made or instructions issued by the National Treasury in respect of an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective as contemplated in section 76(4)(c) of the Public Finance Management Act;

- (b) the instructions issued by the Provincial Treasury as contemplated in section 18(2)(a) of the Public Finance Management Act in respect of an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;
  - (c) the appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective as established by the consumer protection entity, as contemplated in section 51(1)(a)(iii) of the Public Finance Management Act; and
  - (d) the Preferential Procurement Policy Framework Act, 2000 ([Act No. 5 of 2000](#)).
- (2) Each consumer protection entity must adopt, within six months after the coming into operation of this Act, a procurement system consistent with subsection (1), which procurement system must be utilized for the procurement of all supplies, goods and services, as well as the disposal of supplies and goods by the entity.

## Part C – Offence and penalties

### 36. Breach of confidence

- (1) It is an offence to disclose any personal or confidential information concerning the affairs of any person obtained –
- (a) in carrying out any function in terms of this Act; or
  - (b) as a result of initiating a complaint or participating in any proceedings in terms of this Act.
- (2) Subsection (1) does not apply to information disclosed –
- (a) for the purpose of the proper administration or enforcement of this Act;
  - (b) for the purpose of the administration of justice; or
  - (c) at the request of an inspector, investigator, regulatory authority or Consumer Court member entitled to receive the information.

### 37. Hindering administration of Act

- (1) It is an offence to hinder, oppose, obstruct or unduly influence any person who is exercising a power or performing a function delegated, conferred or imposed on that person by this Act.
- (2) A person commits an offence if that person, having been summoned –
- (a) fails without sufficient cause to appear at the time and place specified or to remain in attendance until excused; or
  - (b) attends as required, but –
    - (i) refuses to be sworn in or to make an affirmation; or
    - (ii) fails to produce a book, document or other item as ordered, if it is in the possession of, or under the control of that person.
- (3) A person commits an offence if that person, having been sworn in or having made an affirmation –
- (a) fails to answer any question fully and to the best of his or her ability, subject to [section 13\(5\)](#); or
  - (b) gives false evidence, knowing or believing it to be false.

### 38. Offences relating to Consumer Protector and Consumer Court

- (1) A person commits an offence if that person contravenes or fails to comply with an order of the Consumer Court.
- (2) A person commits an offence if that person-
  - (a) does anything calculated to improperly influence the Consumer Court or a regulatory authority concerning any matter connected with an investigation;
  - (b) anticipates any findings of the Consumer Court or a regulatory authority concerning an investigation in a way that is calculated to influence the proceedings or findings;
  - (c) does anything in connection with an investigation that would have been contempt of court if the proceedings had occurred in a court of law;
  - (d) knowingly provides false information to a regulatory authority;
  - (e) brings the Consumer Court, or a member of the Consumer Court, in their respective official capacities, into disrepute;
  - (f) wilfully interrupts the proceedings of a hearing or misbehaves in the place where a hearing is being conducted;
  - (g) acts contrary to a warrant to enter and search; or
  - (h) without authority, but claiming to have authority in terms of [section 14](#) –
    - (i) enters or searches premises; or
    - (ii) attaches or removes an article or document.
- (3) No self-incriminating answer given or statement made by any person to the Consumer Court, Consumer Protector, or an inspector or investigator exercising powers in terms of this Act, will be admissible as evidence against that person in criminal proceedings against that person instituted in any court, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in subsection (2)(d) or [section 37\(3\)](#), and then only to the extent that the answer or statement is relevant to prove the offence charged.

### 39. Offences relating to prohibited conduct

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

### 40. Penalties

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

- (a) in the case of a contravention of [section 36\(1\)](#), to a fine or to imprisonment for a period not exceeding 10 years, or to both a fine and imprisonment; or
- (b) in any other case, to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and imprisonment.

#### 41. Administrative fines

- (1) The Consumer Court may impose an administrative fine in respect of prohibited or required conduct.
- (2) An administrative fine imposed in terms of this Act may not exceed the greater of-
  - (a) 10 per cent of the respondent's annual turnover during the preceding financial year; or
  - (b) R1 000 000,or such higher percentage or larger sum of money as the responsible Member may, from time to time, determine by notice in the *Provincial Gazette*.
- (3) When determining an appropriate administrative fine, the Consumer Court must consider –
  - (a) the nature, duration, gravity and extent of the contravention;
  - (b) any loss or damage suffered as a result of the contravention;
  - (c) the behaviour of the respondent;
  - (d) the market circumstances under which the contravention took place;
  - (e) the level of profit derived from the contravention;
  - (f) the degree to which the respondent has co-operated with the Consumer Protector and the Consumer Court; and
  - (g) whether the respondent has previously been found in contravention of this Act.
- (4) For the purpose of this section, the annual turnover of a supplier at the time when an administrative fine is assessed, is the total income of that supplier during the immediately preceding year, as determined in the prescribed manner.
- (5) A fine payable in terms of this Act must be paid into the Provincial Revenue Fund referred to in section 226 of the [Constitution](#).

#### 42. Vicarious liability

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

### Part D – Miscellaneous matters

#### 43. Regulations

- (1) The responsible Member may make regulations regarding –
  - (a) any form required to be used for the purpose of this Act;
  - (b) any matter which in terms of this Act is required or permitted to be prescribed;
  - (c) any fee payable in terms of this Act; and
  - (d) in general, any matter in respect of which it is necessary or expedient to make regulations in order to achieve the objects of this Act.
- (2) Before making regulations in terms of subsection (1), the responsible Member must publish the draft regulations for public comment in the *Provincial Gazette*.

- (3) Any regulation made in terms of subsection (1)(c) or (d), may only be made with the concurrence of the Member of the Executive Council responsible for financial matters in the Province.

#### **44. Repeal of laws**

The Northern Cape Consumer Affairs (Unfair Business Practices) Act, 1996 ([Act No. 7 of 1996](#)), is hereby repealed.

#### **45. Transitional and founding arrangements**

- (1) For the purpose of this section, “previous Act” means the Northern Cape Consumer Affairs (Unfair Business Practices) Act, 1996 ([Act No. 7 of 1996](#)).
- (2) Any investigation done or arrangement concluded under the previous Act, is regarded to have been done or concluded under a comparable provision of this Act.
- (3) Any other thing done under a provision of the previous Act and which may be done under a corresponding provision of this Act is regarded to have been done under the latter provision.
- (4) The responsible Member may, for a period not exceeding 12 months after the coming into operation of this Act, second any official on the establishment of the Department to a consumer protection entity to be of assistance in founding the entity.

#### **46. Short title and commencement**

This Act is called the Northern Cape Consumer Protection Act, 2012, and comes into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*.