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

89. Status and use of registered business name

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

90. Licensing of persons for direct marketing

- (1) The Minister may prescribe -

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

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91. Industry codes

(1) In this section-

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

(2) The Minister, by regulation, may:

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

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

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PART A –NATIONAL AND PROVINCIAL CO-OPERATION

92. Co-operative exercise of concurrent jurisdiction

(1) As contemplated in section 41(2) of the Constitution, the Minister must consult with the responsible Member of any relevant provincial Executive Council -

- (a) to co-ordinate and harmonize the functions to be performed by the National Consumer Commission, and one or more provincial consumer protection authorities; and
- (b) as necessary, to facilitate the settlement of any dispute between the National Consumer Commission, and one or more provincial consumer protection authorities,

concerning the functions to be performed by them relating to consumer protection.

(2) If this Act requires the several provincial consumer protection authorities to perform a particular function within their respective provinces, and

- (a) within a particular province, no provincial consumer protection authorities has been established; or
- (b) the Minister concludes on reasonable grounds that the provincial consumer protection authority within a particular province is unable to perform that function effectively,

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

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93. Provincial consumer protection authorities

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

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

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PART B – ESTABLISHMENT OF NATIONAL CONSUMER COMMISSION

94. Establishment of National Consumer Commission

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

95. Board of National Consumer Commission

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

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

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96. Qualifications for Board membership

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

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- (g) has been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine.
- (3) For the purpose of subsection (2)(b), a financial interest does not include an indirect interest held in any fund or investment if the person contemplated in that subsection has no control over the investment decisions of that fund or investment.

97. Conflicting interests

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

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

98. Resignation, removal from office, and vacancies

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

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

99. Appointment of Chief Executive Officer

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

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100. Conflicting interests

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

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

101. Appointment of inspectors and investigators

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

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

102. Finances

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

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103. Reviews and Reports to Minister

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

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PART C – GENERAL FUNCTIONS OF NATIONAL CONSUMER COMMISSION

104. General provisions concerning Commission functions

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

105. Monitoring interests of vulnerable consumers

The National Consumer Commission must:

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

106. Development of codes of practice relating to Act

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

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

107. Promotion of legislative reform

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

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

108. Promotion of consumer protection within organs of state

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

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

109. Research and public information

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

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

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110. Relations with other regulatory authorities

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

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

111. Reporting requirements of the National Consumer Commission

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

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

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PART D – ENFORCEMENT FUNCTIONS OF NATIONAL CONSUMER COMMISSION

112. Enforcement functions of the National Consumer Commission

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

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

113. Investigation by National Consumer Commission

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

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

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

114. Outcome of investigation

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

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

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

115. Notice to cease unlicensed or unaccredited practice

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

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

116. Issuance of compliance notices

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

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

117. Objection to notices

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

118. Consent orders

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

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

119. Referral to National Consumer Tribunal

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

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Chapter 6

Enforcement of the Act

PART A - TRIBUNAL CONSIDERATION OF COMPLAINTS AND REFERRALS

120. Hearings before Tribunal

- (1) The Tribunal must conduct its hearings in public –
 - (a) in an inquisitorial manner;
 - (b) as expeditiously as possible;
 - (c) as informally as possible; and
 - (d) in accordance with the principles of natural justice.
- (2) Despite subsection (1), the Tribunal member presiding at a hearing may exclude members of the public, or specific persons or categories of persons, from attending the proceedings-
 - (a) if evidence to be presented is confidential information, but only to the extent that the information cannot otherwise be protected;
 - (b) if the proper conduct of the hearing requires it; or
 - (c) for any other reason that would be justifiable in civil proceedings in a High Court.
- (3) The Chairperson of the Tribunal must assign any of the following matters to be heard by a single member of the Tribunal, sitting alone:
 - (a) consent orders in terms of this Act;
 - (b) applications to permit late filing; and
 - (c) review of a notice in terms of section 115;

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- (4) At the conclusion of a hearing, the Tribunal must make any order permitted in the circumstances in terms this Act and must issue written reasons for its decision.
- (5) The Tribunal must provide the participants and other members of the public reasonable access to the record of each hearing, subject to any ruling to protect confidential information made in terms of subsection (2)(a).

121. Right to participate in hearing

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

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

122. Powers of member presiding at hearing

The member of the Tribunal presiding at a hearing may-

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

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

123. Rules of procedure

Subject to the Tribunal's rules of procedure, the Tribunal member presiding at a hearing may determine any matter of procedure for that hearing, with due regard to the circumstances of the case, and the requirements of the applicable sections of this Act.

124. Witnesses

- (1) Every person giving evidence at a hearing of the Tribunal must answer any relevant question.
- (2) The law regarding a witness's privilege in a criminal case in a court of law applies equally to a person who provides information during a hearing.
- (3) The Tribunal may order a person to answer any question, or to produce any article or document, even if it is self-incriminating to do so.
- (4) Section 113 (6) applies to evidence given by a witness in terms of this section.

125. Costs

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

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

126. Appeals and reviews

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

127. Interim relief

- (1) At any time, whether or not a hearing has commenced into a complaint, a complainant may apply to the Tribunal for an interim order in respect of that complaint, and the Tribunal may grant such an order if -
 - (a) there is evidence that the allegations may be true; and
 - (b) an interim order is reasonably necessary to -
 - (i) prevent serious, irreparable damage to that person; or
 - (ii) to prevent the purposes of this Act being frustrated;
 - (c) the respondent has been given a reasonable opportunity to be heard, having regard to the urgency of the proceedings; and
 - (d) the balance of convenience favours the granting of the order.

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- (2) An interim order in terms of this section must not extend beyond the earlier of -
 - (a) the conclusion of a hearing into the complaint; or
 - (b) the date that is six months after the date of issue of the interim order.
- (3) If an interim order has been granted, and a hearing into that matter has not been concluded within six months after the date of that order, the National Consumer Tribunal, on good cause shown, may extend the interim order for a further period not exceeding six months.

128. Orders of Tribunal

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

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

129. Administrative fines

- (1) The Tribunal may impose an administrative fine only in the circumstances expressly provided for in this Act.
- (2) An administrative fine imposed in terms of this Act may not exceed the greater of -
 - (a) 10% of the respondent's annual turnover during the preceding financial year; and
 - (b) R 1 000 000.
- (3) When determining an appropriate fine, the Tribunal must consider the following factors :
 - (a) the nature, duration, gravity and extent of the contravention;
 - (b) any loss or damage suffered as a result of the contravention;
 - (c) the behaviour of the respondent;
 - (d) the market circumstances in which the contravention took place;
 - (e) the level of profit derived from the contravention;
 - (f) the degree to which the respondent has co-operated with the National Consumer Commission and the Tribunal; and
 - (g) whether the respondent has previously been found in contravention of this Act.

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

130. Status and enforcement of orders

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

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PART B - SEARCHES

131. Authority to enter and search under warrant

- (1) A judge of the High Court, a regional magistrate, or a magistrate may issue a warrant to enter and search any premises that are within the jurisdiction of that judge or magistrate, if, from information on oath or affirmation, there are reasonable grounds to believe that –
 - (a) prohibited conduct has taken place, is taking place, or is likely to take place on or in those premises; or
 - (b) that anything connected with an investigation into that prohibited conduct is in the possession of, or under the control of, a person who is on or in those premises.
- (2) A warrant to enter and search may be issued at any time and must specifically –
 - (a) identify the premises that may be entered and searched; and
 - (b) authorise an inspector or a police officer to enter and search the premises and to do anything listed in section 132.
- (3) A warrant to enter and search is valid until one of the following events occurs:
 - (a) the warrant is executed;
 - (b) the warrant is cancelled by the person who issued it or, in that person's absence, by a person with similar authority;
 - (c) the purpose for issuing it has lapsed; or
 - (d) the expiry of one month after the date it was issued.
- (4) A warrant to enter and search may be executed only during the day, unless the judge, regional magistrate, or magistrate who issued it authorises that it may be executed at night at a time that is reasonable in the circumstances.

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- (5) A person authorised by warrant issued in terms of subsection (2) may enter and search premises named in that warrant.
- (6) Immediately before commencing with the execution of a warrant, a person executing that warrant must either-
 - (a) if the owner, or person in control, of the premises to be searched is present-
 - (i) provide identification to that person and explain to that person the authority by which the warrant is being executed; and
 - (ii) hand a copy of the warrant to that person or to the person named in it; or
 - (b) if none of those persons is present, affix a copy of the warrant to the premises in a prominent and visible place.

132. Powers to enter and search

- (1) A person who is authorised under section 131 to enter and search premises may –
 - (a) enter upon or into those premises;
 - (b) search those premises;
 - (c) search any person on those premises if there are reasonable grounds for believing that the person has personal possession of an article or document that has a bearing on the investigation;
 - (d) examine any article or document that is on or in those premises that has a bearing on the investigation;
 - (e) request information about any article or document from the owner of, or person in control of, the premises or from any person who has control of the article or document, or from any other person who may have the information;
 - (f) take extracts from, or make copies of, any book or document that is on or in the premises that has a bearing on the investigation;

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- (g) use any computer system on the premises, or require assistance of any person on the premises to use that computer system, to –
 - (i) search any data contained in or available to that computer system;
 - (ii) reproduce any record from that data; and
 - (h) seize any output from that computer for examination and copying; and
 - (i) attach, and, if necessary, remove from the premises for examination and safekeeping, anything that has a bearing on the investigation.
- (2) Section 113 (6) applies to an answer given or statement made to an inspector in terms of this section.
- (3) An inspector authorised to conduct an entry and search in terms of section 131 may be accompanied and assisted by a police officer.

133. Conduct of entry and search

- (1) A person who enters and searches any premises under section 132 must conduct the entry and search with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy.
- (2) During any search under section 132 (1)(c), only a female inspector or police officer may search a female person, and only a male inspector or police officer may search a male person.
- (3) A person who enters and searches premises under section 132, before questioning anyone –
 - (a) must advise that person of the right to be assisted at the time by an advocate or attorney; and
 - (b) allow that person to exercise that right.
- (4) A person who removes anything from premises being searched must-

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- (a) issue a receipt for it to the owner of, or person in control of, the premises; and
 - (b) return it as soon as practicable after achieving the purpose for which it was removed.
- (5) During a search, a person may refuse to permit the inspection or removal of an article or document on the grounds that it contains privileged information.
- (6) If the owner or person in control of an article or document refuses in terms of subsection (5) to give that article or document to the person conducting the search, the person conducting the search may request the registrar or sheriff of the High Court that has jurisdiction to attach and remove the article or document for safe custody until that court determines whether or not the information is privileged.
- (7) A police officer who is authorised to enter and search premises under section 132, or who is assisting an inspector who is authorised to enter and search premises under section 132 may overcome resistance to the entry and search by using as much force as is reasonably required, including breaking a door or window of the premises.
- (8) Before using force in terms of subsection (7), a police officer must audibly demand admission and must announce the purpose of the entry, unless it is reasonable to believe that doing so may induce someone to destroy or dispose of an article or document that is the object of the search.
- (9) The National Consumer Commission may compensate anyone who suffers damage because of a forced entry during a search when no one responsible for the premises was present.

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PART C – OFFENCES AND PENALTIES

134. Breach of confidence

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

135. Hindering administration of Act

It is an offence to hinder, oppose, obstruct or unduly influence any person who is exercising a power or performing a duty delegated, conferred or imposed on that person by this Act.

136. Failure to attend when summoned

- (1) A person commits an offence who, having been directed or summoned to attend a hearing -
 - (a) fails without sufficient cause to appear at the time and place specified or to remain in attendance until excused; or
 - (b) attends as required, but -

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- (i) refuses to be sworn in or to make an affirmation; or
- (ii) fails to produce a book, document or other item as ordered, if it is in the possession of, or under the control of, that person.

137. Failure to answer fully or truthfully

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

- (a) subject to section 113(6), fails to answer any question fully and to the best of that person's ability; or
- (b) gives false evidence, knowing or believing it to be false.

138. Offences relating to Commission and Tribunal

- (1) A person commits an offence who contravenes, or fails to comply with an order of the Tribunal.
- (2) A person commits an offence who -
 - (a) does anything calculated to improperly influence the Tribunal or a regulator concerning any matter connected with an investigation;
 - (b) anticipates any findings of the Tribunal or a regulator concerning an investigation in a way that is calculated to influence the proceedings or findings;
 - (c) does anything in connection with an investigation that would have been contempt of court if the proceedings had occurred in a court of law;
 - (d) knowingly provides false information to a regulator;
 - (e) defames the Tribunal, or a member the Tribunal, in their respective official capacities;

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

139. Penalties

- (1) Any person convicted of an offence in terms of this Act, is liable -
 - (a) in the case of a contravention of section 138 (1), to a fine or to imprisonment for a period not exceeding 10 years, or to both a fine and imprisonment; or
 - (b) in any other case, to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and imprisonment.

140. Vicarious liability

If an employee or agent of a person is liable in terms of this Act for anything done or omitted in the course of that person's employment or activities on behalf of their principal, the employer or principal is jointly and severally liable with that person.

141. Magistrate's Court jurisdiction to impose penalties

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

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PART D – MISCELLANEOUS MATTERS

142. Civil actions and jurisdiction

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

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

143. Variation of order

- (1) The Tribunal, acting of its own accord or on application of a person affected by a decision or order, may vary or rescind its decision or order -
 - (a) erroneously sought or granted in the absence of a party affected by it;
 - (b) in which there is ambiguity, or an obvious error or omission, but only to the extent of correcting that ambiguity, error or omission; or

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

144. Limitations of bringing action

- (1) A complaint in terms of this Act may not be referred or made to the Tribunal or to a consumer court more than three years after –
 - (a) the act or omission that is the cause of the complaint; or
 - (b) in the case of a course of conduct or continuing practice, the date that the conduct or practice ceased.
- (2) A complaint in terms of this Act may not be referred to the Tribunal or to a consumer court in terms of this Act, against any person that is, or has been, a respondent in proceedings under another section of this Act relating substantially to the same conduct.

145. Standard of proof

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

146. Serving documents

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

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

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Section 147-r148

147. Proof of facts

- (1) In any criminal proceedings in terms of this Act -
 - (a) if it is proved that a false statement, entry or record or false information appears in or on a book, document, plan, drawing or computer storage medium, the person who kept that item must be presumed to have made the statement, entry, record or information, unless the contrary is proved; and
 - (b) an order certified by the Chairperson of the Tribunal is conclusive proof of the contents of the order of the Tribunal.
- (2) A statement, entry or record, or information, in or on any book, document, plan, drawing or computer storage medium is admissible in evidence as an admission of the facts in or on it by the person who appears to have made, entered, recorded or stored it unless it is proved that that person did not make, enter, record or store it.

Chapter 7

General Provisions

148. Regulations

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

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Section 149

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

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

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

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

150. Short title and commencement

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

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Schedule 1 : Conflicting Legislation

Section 150

Schedule 1

Conflicting Legislation

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

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Schedule 2 : Consequential Amendments

Section 1

Schedule 2

Consequential Amendments

1. Amendment of the National Credit Act, 2005

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

“Restrictions on certain practices relating to credit agreements

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

- (a) the breaching of a credit agreement, or
- (b) the unauthorised transfer of any right of a credit provider under a credit agreement to a third person.

(2) Subsection (1)(b) does not apply in respect of -

- (a) any negotiation, by an attorney on behalf of a consumer, with the credit provider concerned; or
- (b) any action carried out by, on behalf of, or with the permission of the the credit provider concerned.

(3) A person who offers to supply, or supplies, any service for the express or implied purpose of -

- (a) improving a consumer’s credit record, credit history or credit rating; or
- (b) causing a credit bureau to adverse credit information from its records concerning that consumer

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Schedule 2 : Consequential Amendments

Section 2

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

- (4) Subsection (3) does not apply in respect of any credit repair service rendered by an attorney, or a registered credit bureau.
- (5) A person who offers to supply, or supplies -
 - (a) any service for the express or implied purpose of investigating fees, charges, or interest charged on a credit agreement; or
 - (b) a computer software program originating within the Republic, which is programmed to calculate fees, charges, or interest charged on a credit agreement, for valuable consideration

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

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

2. Amendment of the Lotteries Act

- (1) The Lotteries Act, 1997 (Act No. 57 of 1997) is amended by -
 - (a) The substitution, in section 1, for the definition “promotional competition” of the following:

“promotional competition” has the meaning set out in the Consumer Protection Act, 2006 (Act No. # of 2006)”; and
 - (b) the repeal of section 54.

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Schedule 3 : Transitional Provisions

Section 1-r2

Schedule 3
Transitional Provisions

1. Definition

(1) In this Schedule –

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

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

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

(2) A reference in this Schedule

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

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

(ii) this Act, in any other case.

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

2. Delayed operation of section 14(3)

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

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

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Schedule 3 : Transitional Provisions

Section 3-r4

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

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

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

4. Delayed enforcement of requirement to register business names

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

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Schedule 3 : Transitional Provisions

Section 5-r7

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

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

6. Provincial regulatory capacity

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

7. Continued application of repealed laws

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

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Schedule 3 : Transitional Provisions

Section 8

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

8. Regulations

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

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