



## **SYNOPSIS OF THE SUBMISSIONS MADE ON THE CONSUMER PROTECTION BILL**

### **1. BACKGROUND**

The Department of Trade and Industry considers it desirable to create and promote an economic environment that supports and strengthens a culture of consumer rights and responsibilities. A research project to review and recommend a consumer protection regime suitable for South Africa was therefore commissioned. The review included focus group discussions with various stakeholders, including industry associations, sector regulators, NGO's, various professional bodies, other government departments, business and consumers from a range of different income and racial profiles. It also included review of current consumer protection measures, a national consumer survey, statistical analysis of cases from complaints resolution, investigations conducted and a general audit of the consumer protection environment in South Africa.

In 2004, that review culminated in the publication of a Draft Green Paper on Consumer Policy Framework. Public consultation workshops were conducted in all provinces and comments from various stakeholders were received and reviewed. A pilot regulatory impact assessment of the policy was conducted. In 2006, the DTI published a draft Consumer Protection Bill for public comment. After considering the many submissions and consulting with stakeholders in industry, government and civil society, the Bill has been extensively revised to its present form.

### **2. THE CONSUMER PROTECTION BILL**

Various developments over the past few years have indicated that consumer protection legislation needed an overview. The motivation for the Consumer Protection Bill includes the following reasons:

- Discriminatory and unfair market practices.
- Proliferation of low-quality and unsafe products.
- Lack of awareness of consumer rights.
- Limited redress.
- Inadequate protection for consumers.
- Weak enforcement capacity.

The core purpose of the Bill remains true to the vision set out in the policy framework, and in the public exposure draft. As formulated in clause 3, the purposes of the Bill are to promote and advance the social and economic welfare of consumers in South Africa by:



- Establishing a legal framework for the achievement and maintenance of a consumer market that is fair, accessible, efficient, sustainable and responsible for the benefit of consumers generally.
- Reducing and ameliorating any disadvantages experienced in accessing any supply of goods or services by consumers:
  - who are low-income persons or persons comprising low-income communities;
  - who live in remote, isolated or low density population areas or communities;
  - who are minors, seniors or other similarly vulnerable consumers;
  - whose ability to read and comprehend any advertisement, agreement, mark, instruction, label, warning, notice or other visual representation is limited by reason of low literacy, vision impairment or limited fluency in the language in which the representation is produced, published or presented.
- Promoting fair business practices.
- Protecting consumers from—
  - unconscionable, unfair, unreasonable or unjust or otherwise improper trade practices; and
  - deceptive, misleading, unfair or fraudulent conduct.
- Improving consumer awareness and information and encouraging responsible and informed consumer choice and behaviour.
- Promoting consumer confidence and empowerment, and the development of a culture of consumer responsibility through individual and group education, vigilance, advocacy and activism.
- Providing for a consistent, accessible and efficient system of consensual resolution of disputes arising from consumer transactions.
- Providing for an accessible, consistent, harmonised, effective and efficient system of redress for consumers.

This Bill proposes to repeal several laws replacing them with a single Consumer Protection Act, which will also give priority to its own procedures for enforcement and will modify the common law in several respects. The laws that will be repealed, as set out in clause 121 and the consequential amendments, are:

- Consumer Affairs (Unfair Business Practices) Act (Act No. 71 of 1988)
- Trade Practices Act (Act No. 76 of 1976)
- Sale and Service Matters Act, 1964 (Act No. 25 of 1964)
- Business Names Act (Act No. 27 of 1960)
- Businesses Act (Act No. 71 of 1991)
- Price Control Act (Act No. 25 of 1964)
- Sections 2 to 13 and sections 16 to 17 of the Merchandise Marks Act (Act No. 17 of 1941)
- Section 54 of the Lotteries Act, 1997 (Act No. 57 of 1997), and related regulations.



### 3. SUMMARY OF SUBMISSIONS

The following key points have been summarised from the submissions made on the Consumer Protection Bill to the Select Committee on Trade and Industry by a range of stakeholders. This brief provides an overview of the submissions, while it captures the pertinent point it should be read in conjunction with the individual submissions so as to get a sense of the detailed nuances:

#### GENERAL

The Bill appears to codify large areas of the common law and generally acceptable practices which are common place and prevalent in the South African market place. Common Law evolves over protracted periods of time through common practice and court mechanics and application, enforcement and resultant practices. By allowing the practice to be overlooked and replaced by a more rigid system will give rise to grave and serious consequence.

There is a real danger that the proposed principles will not adequately cater for every business eventuality and that the uncertainty created through the removal of established common law principles will result in increased litigation and a lack of confidence in South Africa's economy.

#### SECTION 1 "DEFINITIONS"

The definition of "**Court**" does not include the Tribunal, the Commission, the Provincial Consumer Courts, the Magistrate Court and the High Court.

There is no definition for a "**Fixed term agreement**". A definition setting out what amounts to a fixed term agreement must be set out. It was not clear if this include employment agreements and a credit transaction or agreement?

The Definition for a "**Franchise agreement**" is unclear - does it include a Dealership Agreement where no franchise fee or royalty is paid?

It is recommended that the exemption under "**service**" be expanded to apply to the financial services industry as a whole and to ensure that the exemption not only applies to services relating to "advice" but also to "intermediary services" as is defined in the FAIS Act (Financial Advisory and Intermediary Services Act). Specifically, FAIS regulates 2 types of financial service, namely (i) the giving of "advice", and (ii) the provision of "intermediary services" (as defined in FAIS). FAIS defines "financial services" as collectively "intermediary services" and "advice". Intermediary services include the activities of investment managers (which also encompass the activities of collective investment scheme managers) and administrative





financial services providers. Consequently, it is critical that the definition of "service" under the Bill excludes not only "advice" subject to regulation by FAIS, but also "financial services" as defined in FAIS and rendered subject to regulation by FAIS. Sub-sections (c)(i) and (c)(ii) of the definition of "**service**" currently exclude financial services regulated by the LTIA and STIA. It is recommended that this list be expanded to include the Collective Investment Schemes Control Act (Act No. 45 of 2002) ("CISCA").

The current definition of "**goods**" is very wide and does not exclude its applicability to the financial services industry. The definition of "**goods**" does not provide an exclusion for "**financial products**" as defined in FAIS. Unless this exclusion is provided for in the Bill, the result would be the anomalous and counterintuitive outcome whereby financial services provided under FAIS fall outside the ambit of the Bill, but the provision of financial products under FAIS are included under the definition of "**goods**" in the Bill. It is felt that there is already sufficient legislation and regulatory oversight governing financial services which protect consumers and it is therefore recommended that the definition of "**goods**" also be amended to make it clear that financial products and contracts are not brought within the ambit of the definition of "**goods**".

The word "**bearer**" is not defined (see section 63(3)).

The words "**prospective consumer**", "**potential consumer**" and "**potential customer**" are used (as well as "**individual**") and there is no clarity as to when a consumer would be considered to be either of these.

"**Direct marketing**" is described as approaching "...a person, either in person, or by mail or electronic communication ..." the wording of this section is considered to be too wide.

## SECTION 2 "INTERPRETATION"

It was stated that section 2 (4) makes no sense. Does it prevent the consumer from using this signature type for any other purpose but for the signature of agreements?

## SECTION 4 "REALISATION OF CONSUMER RIGHTS"

The Bill states that the courts must "strictly interpret any document to the benefit of the consumer so that.....". This provision infers that all matters brought before the court must be strictly interpreted to the benefit of the consumer. In consequence the Bill is asking the court to make a better deal for the consumer, rather than allowing the courts to interpret the matter on and in light of the surrounding circumstances.

## SECTION 5 "APPLICATION OF THE ACT"



It is felt that the Bill has a very wide application in that it applies to "every transaction within the Republic unless it's exempted", with transaction being very broadly defined. In addition, it is felt that the Bill is an Act of general application. As such, it cuts across many sectors without sympathy or understanding for the specific problems and challenges faced by particular industries.

It is proposed that section 5(2)(b), which refers to "high value transactions" and "transactions between persons in the supply chain", are split, rather than requiring that both these grounds co-exist. It is believed that the existence of either of these grounds would justify exemption. It is therefore proposed that the word "and" in section 5(2)(b)(i) be changed to "or".

Questions were raised whether a large juristic should be entitled to the right to consumer protection having regard to the nature of the right, and whether having regard to the size of the juristic person or its nature. This is in relation to the promotion of SMME development; it would not make sense to place compliance obligations on individuals and small entities doing business with large organisations. It is therefore proposed that any transaction between a supplier of goods/services and a juristic with asset value or annual turnover above a threshold to be prescribed should be exempt from the Act. It is suggested that this threshold should, in line with the National Credit Act (Act No.34 of 2005) ("NCA"), be set at R1 million per annum.

A number of submissions stated that section 5(2) is not clear and has created some confusion. It is suggested that the exclusion relating to employees be reinstated under the current Bill because it is not clear if the Bill covers the relationship between an employer and an employee.

It is stated that the wording set out under 5(2)(b) is confusing and it is suggested that the clause is simplified to read as follows:

"Where a supplier provides a service or product and the value of the transaction exceeds the threshold value determined by the Minister then such transactions will be excluded from the provision of the Bill"

It was stated that the financial services industry (excluding banking for present purposes) is already comprehensively regulated in terms of consumer protection. This includes consumer protection in terms of the Long-term Insurance Act, its regulations and Policyholder Protection Rules; the Short-term Insurance Act, its regulations and Policyholder Protection Rules; the FAIS Act, its regulations and Codes of Conduct; the Financial Services Ombud Schemes Act; the Pension Funds Act; the Medical Schemes Act; the National Credit Act and the Collective Investment Schemes Act. The current draft of the Bill does not make it clear whether the financial services industry is excluded from the Bill as a whole or whether certain



sectors are excluded and to what extent. A recommendation was made that all financial services providers and product suppliers of financial products as well as the Airlines Industry be excluded from the Consumer Protection Bill.

It is recommended that the provisions of the Bill should, in contradistinction to their present formulation, be made subservient to the specific provisions of any other national legislation, treaty, convention or protocol.

#### **SECTION 6 "THRESHOLD DETERMINATION"**

It is recommended that the threshold should be based on the supplier's annual asset or turnover value. The threshold should be determined now so that respondents can make a determination as to whether the Bill applies to them or not.

It would also appear that the review of such monetary threshold at intervals of not more than five years, may have a pendulum effect of frequently bringing the same transaction in or out of the ambit of the Bill as a result of inflation fluctuations.

#### **SECTION 7 "REQUIREMENTS OF FRANCHISE AGREEMENTS"**

A reference to sub-section (3) should be made under sub-section (1)(b)

#### **SECTION 8 "PROTECTION AGAINST DISCRIMINATORY MARKETING"**

It was suggested that this section should specifically state that any discrimination is acceptable so long as it is fair and reasonable. The Airline Industry submitted that based on the "international nature" of the industry that discrimination on certain limited grounds, relating to safety and security, may be necessary. It was highlighted that consideration should be given to include references to laws that provide for black economic empowerment and preferential procurement to clarify its application

#### **SECTION 10 "EQUALITY COURT JURISDICTION OVER THIS PART"**

It is recommended that section 10(1)(b) be deleted as any complaint against unfair discrimination should be lodged directly with the Equality Court.

#### **SECTION 14 "EXPIRY AND RENEWAL OF FIXED TERM AGREEMENTS"**

There is confusion as to whether this section come in to force once the Bill becomes law or only once the Minister has acted in accordance with sub-section 14(1)(a).





It was submitted that fairness requires taking into account the nature of the goods or services for which the contract was concluded. What is sufficient to meet the requirements relating to the rights of the consumer to dissolve the contract in practice will differ according to the particular product or service and the particular circumstances. It is proposed that the section be amended to provide for a general requirement to pay due regards to the interests of the consumer, having regard for the consumer's legitimate interests in relation to contracts over which they have had no influence but to which they will be nonetheless bound, and for a general indicative list of circumstances under which the consumer may be free to terminate the contract.

The National Association of Automobile Manufacturers of South Africa (NAAMSA) believes it is important to clarify that vehicle warranty and maintenance plans do not constitute a separate agreement but represent a condition of purchase.

#### **SECTION 16 "CONSUMER'S RIGHT TO COOLING OFF PERIOD AFTER DIRECT MARKETING"**

There appears to be confusion regarding direct marketing to consumers versus marketing to consumers at home. A single clear definition of what constitutes direct marketing is needed.

#### **SECTION 17 "CONSUMER'S RIGHT TO CANCEL ADVANCE RESERVATION, BOOKING OR ORDER"**

It was felt that this is going to be quite a challenge to implement. Death is an understandable reason and easily verified however "hospitalisation" could well become the consumers "way out" when refusing to pay a cancellation fee. It is very difficult to prove or disprove without a fair amount of investigation and could be very time consuming for the business owners. It is recommended that obligation should be on the consumer to provide proof.

#### **SECTION 18 "CONSUMER'S RIGHT TO CHOOSE OR EXAMINE GOODS"**

It is suggested that the opening word "Despite .." be deleted and substituted with "Unless ...".

#### **SECTION 19 "CONSUMER'S RIGHTS WITH RESPECT TO DELIVERY OF GOODS OR SUPPLY OF SERVICE"**

It is suggested that the protection of section 47 (5), namely that the supplier would be protected if the failure to deliver was due to circumstances beyond his control, should apply to this section. It is acknowledged that section 19 (2) is only an implied term and thus can be altered by agreement but it is nevertheless felt to be a term that could adversely effect the unwary supplier.



## **SECTION 20 AND SPECIFICALLY THE PROVISIONS OF SECTION 20(6) "CONSUMER'S RIGHT TO RETURN GOODS"**

Section 20 gives consumers the right, subject to certain qualifications, to return goods to the supplier and receive a full refund of any consideration paid. Section 20(6) give suppliers the right to charge the consumer a reasonable amount for the use of the goods during the time they were in the consumers possession and any consumption or depletion of the goods or costs associated with restoration of the goods for restocking and resale.

These provisions are highly problematical and unacceptable to suppliers of new motor vehicles. The devaluation of goods arising from delivery and subsequent use in the case of a new motor car can be as much as 25% of the value of the product. As soon as a vehicle is registered, it becomes second hand and cannot be sold or resold as new.

The proposed recognition of costs of product usage and restoration would not equal the financial impact of the devaluation of a new motor vehicle once registered and used.

## **SECTION 22 "RIGHT TO INFORMATION IN PLAIN AND UNDERSTANDABLE LANGUAGE"**

This section appears to apply only to written agreements. If the agreement is oral then there are no section 22 obligations, which would appear inequitable.

## **SECTION 25 "GREY GOODS"**

In its current format, section 25(2), if complied by the supplier, is tantamount to an admission of liability. If this is the intention, it is doubtful if any supplier would comply with such a requirement.

## **REINSTATEMENT OF LABELLING FOR GM FOODS CLAUSE 29(1)(A)**

There is a call for the reinstatement of the labelling for GMO clause 29(1)(a). It is argued that people cannot exercise their democratic right to choose safe and healthy foods if food is not labelled. It is stated that the protection of the consumer cannot be left to Department of Agriculture (DoA), as the GMO Act makes it clear that consumer protection is not the agenda of the DoA. Excluding the clause will expose the final version of the Bill to a constitutional challenge.

It is felt that there is no reason that GM foods should not be labelled other than to deceive the consumer and enforce "acceptance".

It is important to note that more than 90% of the submissions received highlighted this issue.





## **SECTION 32 "DIRECT MARKETING TO CONSUMERS AT HOME"**

There appears to be confusion regarding direct marketing to consumers versus marketing to consumers at home. A single clear definition of what constitutes direct marketing is needed.

## **SECTION 36 "PROMOTIONAL COMPETITIONS"**

It was recommended that, in order to address the confusion with regards to this section, either section 36(4)(a) be deleted or an additional sub-section be added in which the standard, acceptable practice is spelt out and identified as acceptable promotional competition practice.

## **SECTION 40 "UNCONSCIONABLE CONDUCT"**

There is a concern that the term "unconscionable" in the heading of section 40 as well as in section 40(2) is too vague to describe the subject matter of section 40 adequately. It is therefore proposed that the heading be changed to "Threats, pressure and taking advantage of weakness". It is further suggested that the words "it is unconscionable for" be deleted from sub-section 40(2), since they are not required to give further meaning to this provision. The definition of "unconscionable" in the definition section should then be amended accordingly.

It was not clear why section 40(1) only specifically refers to the "use of physical force". For purposes of consumer protection it would be useful also to refer explicitly to economic duress, ie unlawful threats of economic harm, such as threatened breach of contract, retention of property, discontinuing services, etc. It is proposed that section 40(1) states that "A person must not use physical force or unlawful threats of harm (including economic harm)...". No need exists to refer separately to "coercion" in sub-section 40(1), since duress can already be covered by the phrase "physical force or unlawful threats of harm (including economic harm)".

It is well-recognised that contracts are generally concluded under some form of pressure. A legal system cannot provide relief merely because a party experienced pressure. It is necessary to distinguish between acceptable and unacceptable pressure. The term "pressure" is used synonymously with duress (ie actual physical harm or threats of harm) and it is unnecessary to refer to it separately from duress.

To prevent anomalies, it is proposed that undue influence should be moved to section 40(2). To fit in with sub-section 40(2)'s list of forms of advantage-taking, undue influence can then be redefined as "taking advantage of the fact that a potential consumer was substantially unable to protect the consumer's own interests because of ... the consumer's dependence".



This formulation of undue influence as taking advantage of dependence is in line with international practice.

It is very difficult to make sense of the provision for "unfair tactics". Unless the term is qualified in such a manner to refer more clearly to the means which are to be prohibited, it is suggested that this provision be deleted.

A recommendation was made that section 40(1)(e) reads "(e) recovery of goods or obtaining repayment from a consumer" because it is not clear why reference is only made to "recovery of goods from a consumer" and not also to obtaining repayment from a consumer.

#### **SECTION 47 "OVERSELLING AND OVER BOOKING"**

A recommendation was made that sub-section (3)(b) is deleted because it could be abused by a consumer which will expose the supplier to major liability, which will have to be insured and guarded against. This will be done at an additional cost which will most likely be passed on to the consumer.

The hotel and accommodation industry stated that this will be difficult to achieve for accommodation establishments due to the possible "no show" factor. It is recommended that provision be made for the supply of comparable goods or services at another location and time, which is currently the norm in instances of overbooking.

If the provisions of this section are retained, the Airline Industry would have to give serious consideration to abolishing "open tickets". This would not be in the interests of the consumer and, in particular, the business person, since the flexibility offered by the open ticket would be a thing of the past. It would then become common place for a consumer to pay for a ticket that he effectively ends up "forfeiting" in the event that he finds himself unable, for whatever reason, to travel on the specified flight. This would also no doubt have a dampening effect on the demand for air travel, with concomitant consequences for the profitability of the airlines.

#### **SECTION 48 "UNFAIR, UNREASONABLE OR UNJUST CONTRACT TERMS"**

It was stated that the distinction in sub-section 48(1)(a) between (i) "at a price that is manifestly unfair, unreasonable or unjust"; and (ii) "on terms that are unfair, unreasonable or unjust" is not clear.

In section 1 of the Bill, "price" is defined in terms of an "amount paid or payable by a consumer". "A price" therefore means an amount of money. The test of a "manifestly unfair, unreasonable or unjust" price therefore does not apply to an agreement of exchange (barter). There is no "price" in such an agreement. The implication is that an agreement of exchange



has to be measured by the standard of "terms that are unfair, unreasonable or unjust", as opposed to "manifestly unfair, unreasonable or unjust".

The criteria in sub-section 48(1) are very broad, and it was welcomed that a more detailed indication is provided as to when such unfairness is present through the use of the criterion in sub-section 48(2)(a) that the content had to be "excessively one-sided".

In light of the provisions of section 49(1) it was recommended that section 48(1)(c) should be deleted on the grounds that the sanctity of contract should enable a supplier to exclude indirect consequential losses, including economic losses.

#### **SECTION 50 "WRITTEN CONSUMER AGREEMENTS"**

It was recommended that section 50(2)(a) should be deleted because this provision goes against South Africa's current principles of contract and party's contracting prerequisites and formalities.

#### **SECTION 52 "POWER OF THE COURTS"**

In terms of this section, an agreement for the supply of any goods or service, whether or not in writing, must not contain an unlawful, unfair or unconscionable provision or be subject to and unlawful, unfair or unconscionable condition. It is suggested that this section will create commercial havoc and uncertainty and the consequences needs to be carefully thought through.

#### **SECTION 53 "DEFINITIONS APPLICABLE TO THIS PART"**

As a result of the onerous penalties that could be imposed on a supplier, more especially a motor dealer, for "defects" in a vehicle in terms of the Act, it is requested that section 53(1) (a) (ii) be modified.

The modification requested is that it read: " (ii) any characteristic of the goods or components that renders the goods or components materially less useful, practicable or safe than persons generally ... "

#### **SECTION 54 "CONSUMER'S RIGHTS TO DEMAND QUALITY SERVICE"**

A recommendation was made to include, "that a failure to perform to be excused on the basis of *force majeure/vis major* (superior force) or *casus fortuitus* (inevitable accident)"





## **SECTION 55 “CONSUMER’S RIGHTS TO SAFE, GOOD QUALITY GOODS”**

It was stated that this section places an extremely onerous burden on a supplier had by making him /her liable for an unlimited period of time for patent as well as latent defects or defects he/she simply could not have known about [section 55 (5) (a)] . This despite the fact that the supplier made a detailed and careful examination of the item prior to sale. It would open, for example, the seller of a second-hand vehicle, whether a private individual or dealer, to potentially large exposure as any latent defect that came to light at any period of time after the sale would enable the consumer to cancel the sale. The effect would be to virtually kill the entire second-hand market.

It is not sure whether section 55 (6) relieves the seller if he/she states that the item is being sold “as is” or “voetstoots” since he/she cannot vouch for its history, i.e. the consumer “... has been expressly informed that (the) particular goods were offered in a particular condition; ...”? If not, is it the intention of the Legislature to remove the concept of voetstoots from our law of sale?

## **SECTION 56(2) “IMPLIED WARRANTY OF QUALITY”**

The Provisions of section 56 should be applied sensibly and with discretion. Specifically sections 56(2)(b) and 56(3)(b) should be amended to recognise the principle of devaluation/depreciation arising from product usage. It is recommended that this section be reviewed so as to distinguish between the failure of safety critical components versus failure or defects of minor parts.

## **SECTION 61 “LIABILITY FOR DAMAGE CAUSED BY GOODS”**

It is believed that this section will have severe consequences for both the producer’s action and that of its supplier, packager and bottler. This will place onerous and major risk on the supplier particularly where it incur joint and several liabilities with all in the supply chain and possibly for an action or activity that was out of the supplier’s control, which it was unable to control and manage. This opens the door for abuse by a consumer which will expose the supplier to major liability, which will have to be insured and guarded against. This will be done at an additional cost which will most likely be passed on to the consumer.

It is necessary to recognise the potential for conflict with other policy objectives pursued by various industry regulators. Specifically to the policy goal of financial inclusion that applies in the financial services sector. Financial inclusion is reliant on the presence of the right incentives on both the supply and demand sides of various financial sector markets in order to encourage the extension of the formal market. If the administrative, financial and risk burden of regulation that applies to financial service providers is quite onerous, it could imply an increase in the cost of financial service products. This cost is either likely to be passed on to the consumer, making the products more expensive, or could mean that financial service



providers will have to reconsider the provision of a specific product to a specific market segment, i.e. low-income people.

It's proposed that this section be amended and all reference to "Strict Liability" deleted. Consequential damage is not acceptable and should be deleted.

### **SECTION 63 "PREPAID CERTIFICATES, CREDITS AND VOUCHERS"**

It's believe that the proposed five year validity period for certificates, cards, credits and vouchers as stated in section 63(2) (b) is too long, impractical and prejudices supplier retailers and prepaid operators significantly. Firstly, it becomes extremely complex and costly to account for unredeemed certificates, credits and vouchers for a five year period, from an accounting perspective. Secondly, it creates a significant operational and financial burden on the supplier as card account numbers need to be maintained on the system and database for a period longer than is necessary. ie. this is analogous to suppliers holding onto obsolete stock in its stores that has very little likelihood of ever being sold. Currently most certificates, vouchers and cards in the South African and indeed international markets have a validity period of 1 (one) year. The proposed five year validity period for certificates, credits and vouchers conflicts with Visa International's Operational Regulations in terms of which a Visa prepaid card can only have a maximum validity period of 3 (three) years.

Regarding section 63(3), there could be circumstances where the 'bearer' is not the consumer who purchased the prepaid certificate, card, credit or voucher. ie the bearer could be the recipient of such certificate. It was also noted that the supplier has no control over the time at which the bearer will redeem his/her certificate, card or voucher for goods or services. The onus is rather on the bearer and not the supplier to redeem his/her certificate, card or voucher for goods or services.

It was stated that the whole intention of prepaid gift cards is that they cannot be exchanged for cash, but rather only for goods and services. This is to ensure that such suppliers do not act as a 'deposit taking institution' and hence fall foul of the Banks Act. The cash received in advance is therefore the property of the 'supplier' and the card entitling the consumer/bearer to future goods and services (and not cash) is the property of the consumer. A recommendation was made that the cards terms and conditions accepted by the consumer should rather clearly stipulate to the consumer that (i) "The card cannot be redeemed for cash' (ii). "No cash balance is given as change" (iii). "The card/voucher cannot be replaced if lost or stolen" (iv). 'The card is only valid for 12 months"

### **SECTION 69 "ENFORCEMENT OF RIGHTS"**

It is believed that the institutional structure provided for in the Consumer Protection Bill is likely to lead to the further fragmentation of the South African consumer recourse landscape.

under the Bill, as this will simplify the process and will allow the consumer to make an informed decision as to where he/she should take his/her matter for resolution. It was recommended that a clear direction be provided as to which forum should be used for which right.

#### **SECTION 71 "INITIATING A COMPLAINT TO THE NATIONAL CONSUMER COMMISSION"**

It was stated that there are no time frames in place for the referral of the dispute to the National Consumer Commission. This is required in order to ensure greater business certainty.

#### **SECTION 80 "REGISTRATION OF BUSINESS NAMES"**

It was stated that the registration of Business Names is quite an onerous requirement as it will add to the additional admin of the business.

#### **SECTION 83 "CO-OPERATIVE EXERCISE OF CONCURRENT JURISDICTION"**

This section is very problematic as it relies on co-ordination, co-operation and integration when there is no real authority on the part of the National Consumer Commission to require the same, and no real obligation or incentive on the part of the provincial authority to co-operate. In addition there is no co-ordinated quality control. It was submitted that this creates a system of duplication and inefficiency. A preferable approach was recommended to centralise all provincial functions under the office of the NCC, making the NCC accountable for services and standards throughout the country.

#### **SECTION 112 "ADMINISTRATIVE FINES" READ IN CONJUNCTION WITH SECTION 100(6) "COMPLIANCE NOTICES"**

There is confusion related to the scope and intent of the imposition of an administrative fine "only in circumstances expressly provided for in this Bill." Clarity is required whether this is intended to refer to any contravention, even relatively minor ones as a result of oversight, of this Act. It is recommended that the relevant clauses, to which administrative fines would be applicable, be identified. As currently worded the provision is unclear and does not comply with the principle of predictable rules for suppliers.