



NORTH WEST NOORDWES

EXTRAORDINARY • BUITENGEWOON

**PROVINCIAL GAZETTE
PROVINSIALE KOERANT**

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DEPARTMENT OF HEALTH

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PROVINCIAL NOTICES • PROVINSIALE KENNISGEWINGS**PROVINCIAL NOTICE 426 OF 2023****NOTICE**

**Department of Economic Development, Environment, Conservation and
Tourism**

NORTH WEST CONSUMER AFFAIRS BILL, 2019**INVITATION FOR PUBLIC COMMENTS: DRAFT NORTH WEST CONSUMER
AFFAIRS BILL, 2019**

I, G.T.V Tlhapi, Member of the Executive Council responsible for the Department of Economic Development, Environment, Conservation and Tourism, hereby give notice that the draft North West Consumer Affairs Bill is made available for public comments. The Draft Bill shall be posted on the Government Gazette.

The draft Bill seeks to provide for the realization, promotion and protection of consumer rights in the North West Province, and to give effect to the establishment of the North West Consumer Affairs Office.

The establishment of the Consumer Affairs Bill is further to determine the objects, powers, duties and functions of the North West Consumer Affairs Office.

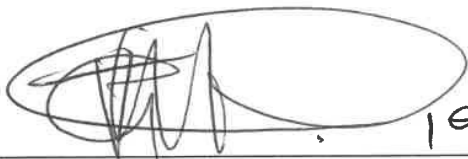
All interested persons and organizations are invited to submit written comments of the Draft Bill and Socio-Economic concerns no later than 45 days from the publication of this notice by –

- (i) Email to: ELetsogo@nwpg.gov.za
- (ii) Posting comments to:

Department of Economic Development Environment Conservation &
Tourism
Private Bag x 15
MMABATHO
2735
- (iii) Hand delivery at Department of Economic Development Environment
Conservation & Tourism, Corner University Drive and Provident Street,
Mmabatho 2735.

Kindly provide the name, postal and email address, telephone and fax numbers of the person or organization submitting the comments.

All enquiries in regard to access to a copy of the Draft Bill may be made to Mr Edwin Letsogo at telephone no: (018) 388 5847 or by email to : ELetsogo@nwpg.gov.za or osithole@nwpg.gov.za



19/01/2023

HON. G.T.V TLHAPI
MEMBER OF THE EXECUTIVE COUNCIL

CERTIFIED: 19 November 2019

Principal State Law Advisor

NORTH WEST PROVINCE

NORTH WEST CONSUMER AFFAIRS BILL, 2019

(As introduced in the Provincial Legislature)
(The English text is the official text of the Bill)

(MEMBER OF THE EXECUTIVE COUNCIL FOR ECONOMIC DEVELOPMENT,
ENVIRONMENT, CONSERVATION AND TOURISM)

CERTIFIED: 19 NOVEMBER 2019



Adv BW Tihale
PRINCIPAL STATE LAW ADVISOR

CERTIFIED:19 November 2019

Principal State Law Advisor

BILL

To provide for the realization, promotion and protection of consumer rights in North West Province; to provide for the establishment of the North West Consumer Affairs Office; to determine the objects, powers, duties and functions of the North West Consumer Affairs Office; to provide for the investigation and facilitation mechanism for mediation of consumer disputes, provide for monitoring of consumer market; to provide for the establishment of the North West Consumer Affairs Tribunal; to determine the objects, powers, duties and functions of the North West Consumer Affairs Tribunal; and to provide for matters incidental thereto in the North West Province.

PREAMBLE

RECOGNISING the need to create a legal framework for the realization, promotion and protection of consumer rights in the North West Province;

WHEREAS the section 104, read with Part A of Schedule 4 of the Constitution of the Republic of South Africa, 1996 assigns Provinces the concurrent competence to legislate on consumer matters;

AND WHEREAS the establishment of the North West Consumer Affairs Office and the North West Consumer Affairs Tribunal in the North West Province will benefit consumers and generations to come.

BE IT ENACTED by the Provincial Legislature of the Province of North West, as follows:-

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2. Objects of Act

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CHAPTER 1 DEFINITIONS AND OBJECTS OF ACT

Definitions

1. In this Act, unless the context otherwise indicates –

“**applicant**” means a consumer whose complaint has been referred to the North West Consumer Affairs Tribunal;

“**chairperson**” means the chairperson of the North West Consumer Affairs Tribunal appointed in terms of Section 16(1)(a) and includes Deputy Chairperson;

“**clerk**” means a clerk of the North West Consumer Affairs Tribunal, appointed in terms of section 7(1)(d);

“**complainant**” means a person who has lodged a complaint with the North West Consumer Affairs Office;

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

“**competent court**” means a Magistrate, Regional or High Court or any court contemplated in chapter 8 of the Constitution of South Africa, 1996;

“**consumer**” bears a meaning as defined in terms of the Consumer Protection Act, 2008 (Act No 68 of 2008) and has a corresponding meaning as defined in terms of the National Credit Act, 2005 (Act No 34 of 2005);

“**Consumer Protector**” means a person appointed in terms of section 6(1) (a) and (2)(b);

“**Department**” means the department in the Provincial Government of North West responsible for consumer affairs;

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

“inspector” means a person appointed in terms of section 7(1)(e);

“investigator” means a person appointed in terms of section 7(1)(a);

“Member of the Executive Council for Finance” means the member of the Executive Council of the North West Province responsible for finance;

“Office” means the North West Consumer Affairs Office established in terms of section 3(1);

“office bearer” means –

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

“prescribed” means prescribed by regulation or practice manual;

“prohibited conduct” means an act, conduct or an omission in contravention of this Act, the Consumer Protection Act, 2008 (Act No. 68 of 2008) and the National Credit, 2005 (Act No 15 of 2005) or any applicable consumer protection legislation;

“Province” means the North West Province established in terms of section 103 of the Constitution of the Republic of South Africa, 1996, and “provincial” has a corresponding meaning;

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“regulation” means regulation and includes practice manual made in terms of this Act;

“Regulator” means the National Credit Regulator established in terms of section 12(1) of the National Credit Act, 2005 (Act No. 34 of 2005);

“respondent” means a person against whom a complaint or application has been lodged with the Tribunal;

“responsible Member” means the Member of the Executive Council of the North West Province responsible for consumer affairs;

“this Act” includes the regulations and practice manual; and

“Tribunal” means the North West Consumer Affairs Tribunal established in terms of section 15(1).

Objects of Act

2. The objects of this Act are –

- (a) to provide for a consistent, predictable and effective regulatory framework for consumer protection in the Province;
- (b) to promote and advance the socio economic welfare of consumers in the Province;
- (c) to provide for an accessible, consistent, harmonized, efficient and effective system of redress for consumers in the Province.
- (d) to ensure the enjoyment and protection of consumer rights conferred by Consumer Protection Act, 2008 (No. 68 of 2008), the National Credit Act, 2005 (Act No. 68 of 2005) and any other applicable consumer protection legislation;
- (e) to ensure that the mechanisms provided to protect consumers in terms of this Act are in place;
- (f) create consumer awareness, information dissemination and encourage responsible consumer choice and behavior.

CHAPTER 2 NORTH WEST CONSUMER AFFAIRS OFFICE

Establishment of North West Consumer Affairs Office

3.(1) There is hereby established the North West Consumer Affairs Office, hereinafter referred to as the Office.

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(2) The Office –

- (a) is a component within the Department;
- (b) is not a public entity as defined in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); and
- (b) is not a juristic person.

(3) The administrative and financial support of the Office is provided by the Department.

Powers, Duties and functions of Office

4.(1) The Office must –

- (a) receive and investigate complaints of alleged prohibited conduct in terms of Consumer Protection Act, 2008, the National Credit Act, 2005 or any other applicable consumer protection legislation.
- (b) facilitate the conciliation or mediation of consumer disputes;
- (c) at its own initiative, institute an investigation against any supplier, service provider or credit provider whom the Office, on reasonable grounds, believes has engaged or is engaging in a prohibited conduct, unconscionable, unfair, unjust or otherwise improper trade practices;
- (d) enforce consumer rights contained in the Consumer Protection Act, 2008, the National Credit Act, 2005, or any other applicable consumer protection legislation;
- (e) refer unresolved complaints of prohibited conduct to the Tribunal or any other applicable regulatory authority;
- (f) investigate and make recommendations, to the responsible Member, any matter that has the potential to prejudice consumers;
- (g) issue a compliance notice to a supplier, service provider or any person or body whom the Office, on reasonable grounds, believes has engaged or is engaging in prohibited conduct;
- (h) remove and condemn goods that do not comply with labeling requirements as prescribed in the regulations;
- (i) issue fines to suppliers, service providers or any person who are engaged in a prohibited conduct.
- (j) make arrangement or undertaking with any supplier, service provider or credit provider who engaged in a prohibited conduct for discontinuance of engaging in a prohibited conduct and provide for redress for consumers who suffered financial loss as a result of such engagement in a prohibited conduct;
- (k) refer resolutions, undertakings or arrangements contemplated in section 4(2) and section 13, to the Tribunal, to be made an order of the Tribunal;

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- (l) initiate and participate in educational programmes aimed at reducing the abuse and exploitation of consumers in the Province;
- (m) implement education and information measures to develop public awareness on consumer rights
- (n) conduct compliance inspections, issue and enforce compliance notices;
- (o) monitor market places to ensure that prohibited conduct is detected, prevented and prosecuted;
- (p) engage with other regulatory authorities in co-operative activities on compliance enforcement.

(2) If the Office has resolved a dispute, it must –

- (a) record the resolution of a dispute in the prescribed form signed by both parties; and
- (b) subject to a consent of both parties, submit it to the Tribunal, to be made a consent order.

Lodging of complaint with Office

5.(1) Persons who may lodge a complaint with the Office—

- (a) a consumer or any other person affected by a prohibited conduct or whose consumer rights have been infringed; or
- (b) a person acting on behalf of, or in the interest of other consumers or in public interest.

(2) Despite the provision of subsection (1), the Office may on its own initiate an investigation into a suspected engagement in a prohibited conduct.

(3) Where a person contemplated in subsection (1), is a juristic person, the threshold prescribed by the Minister in terms of Section 6 of Consumer Protection Act, 2008, applies.

(4) A complaint in connection with a prohibited conduct must be reduced in writing on a prescribed consumer complaint form.

(5) The Office may –

- (a) after receipt of a complaint issue a notice of non-referral, if it appears that the complaint is frivolous, vexatious or does not allege any facts which if true would constitute a prohibited conduct assign a investigator to initiate an investigation or possible mediation;

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- (b) if satisfied that there are basis for a complaint or that a prohibited conduct may have taken place or is taking place,
assign a investigator to initiate an investigation or possible mediation;
- (c) on completion of investigation issue a notice of non-referral if there are no basis that a prohibited conduct has taken place or is taking place;
- (d) on completion of investigation or mediation and if satisfied from information placed before it that the supplier, service provider or credit provider or any person has engaged in a prohibited conduct or is engaging in a prohibited conduct make a determination or ruling based on the outcome of investigation or mediation.

(6) If the supplier, service provider, credit provider or any person refuses or ignores a determination made by the Office, the Office may refer such a complaint to the Tribunal or any other regulatory authority with jurisdiction.

CHAPTER 3 APPOINTMENT OF CONSUMER PROTECTOR AND OTHER STAFF MEMBERS

Appointment of Consumer Protector

6. Subject to the laws governing the public service, the responsible Member must –
- (a) appoint a person to be known as the Consumer Protector;
 - (b) appoint a Deputy Consumer Protector who must act as Consumer Protector in the absence of such Consumer Protector.

Appointment of staff to assist Office

- 7.(1) Subject to the laws governing the public service, the responsible Member or his or her delegate must –
- (a) appoint suitably qualified persons, as investigators;
 - (b) appoint or contract any suitably qualified person to assist with carrying out of a particular investigation under this Act;
 - (c) appoint one or more persons to assist with the performance of the functions of the Office and the Tribunal, subject to the control and directions of the Consumer Protector;
 - (d) appoint a suitably qualified person as a clerk of the Tribunal; and
 - (e) appoint suitably qualified persons as inspectors.

(2) A person appointed or contracted in terms of subsection (1)(b) is not a investigator within the meaning of the Act.

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(3) A person contemplated in subsection (1)(b) may be paid such remuneration, allowances or expenses in accordance with the determined tariffs applicable in the public service.

(4) An investigator, clerk of the Tribunal and inspector must be provided with a certificate of appointment signed by or on behalf of a responsible Member, in which it is stated that he or she is a investigator, clerk of the Tribunal or consumer inspector appointed in terms of this Act.

(5) When an investigator, clerk of the Tribunal or inspector performs any function in terms of this Act, he or she must –

(a) be in possession of a certificate of appointment issued to that person in terms of an appropriate provision of the Act; and

(b) show that certificate to any person who –

(i) is affected by the investigator's, inspector's or clerk of the Tribunal's actions in terms of this Act; and

(ii) requests to see such certificate.

(6) An inspector and a investigator appointed in terms of this Act has powers of a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(7) The Consumer Protector or any other employee of the Office or Tribunal may not –

(a) engage in any activity that may undermine the integrity of the Office;

(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 Office; or

(d) divulge any information referred to in paragraph (c) to any third party, except as required by that person's official functions within the Office.

CHAPTER 4 POWERS IN RESPECT OF INVESTIGATIONS

Summoning of persons and production of books, objects or documents

8.(1) The Consumer Protector or any person appointed to investigate a matter referred to the Office, may summon any person who is believed to be able to furnish any information on a subject matter of investigation of a prohibited conduct, or to have

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possession or control of any book, document or object that has a bearing on that subject

–

(a) to appear before an investigator or a person appointed or contracted to assist in carrying out a particular investigation under this Act, for questioning at a time and place specified in the summons; or

(b) to deliver or produce any book, document or object at a time and place specified in the summons.

(2) A summons contemplated in subsection (1) must –

(a) be in a prescribed form;

(b) contain particulars of the matter in connection with which the person concerned is required to appear;

(c) be served in the prescribed manner.

(3) The person appearing in terms of subsection (1) –

(a) may be assisted at the questioning session by a legal representative or any person; and

(b) must, save for the transgressor, be entitled to a prescribed witness fees.

(4) The Office may retain or make copies of records placed before it during the inquiry for a reasonable period of time.

(5) A person commits an offence if having been summoned in terms of this section –

(a) fails without sufficient cause to attend at the time and place specified in the summons, or fails to remain in attendance until the conclusion of the proceedings or until he or she is been excused from further attendance;

(b) refuses to answer questions fully and satisfactorily, to the best of his or her knowledge and belief;

(c) gives an answer or provide information or explanation that he or she knows or ought to have known that is false and misleading;

(d) fails to produce any book, document or object in his or her possession or custody or under his or her control.

(6) An investigator must inform the person questioned in terms of this section, of his or her rights.

Right to entry, search and seizure

9.(1) In order to obtain any information required by the Office in relation to a prohibited

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conduct under investigation, an investigator or a person appointed in terms of section 7(1)(b) may, enter any premises on which any book, document, object or anything connected with such investigation is or is suspected to be and may search and seize under a warrant issued by a Magistrate or a Judge of the High Court.

(2) A Magistrate or a Judge of the High Court, may only issue a warrant contemplated in subsection (1), to an investigator or a person appointed in terms of section 7(1)(b), to enter and search any premises that are within the jurisdiction of that Magistrate or High Court if, satisfied from information on oath or affirmation placed before him or her by the Office, that there are reasonable grounds to believe that –

- (a) a prohibited conduct has taken place, is taking place, or is likely to take place on or in those premises; or
- (b) anything connected with an investigation in terms of this Act is in the possession of, or under the control of, a person who is on those premises.

(3) 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 investigator or a police officer to enter and search the premises.

(4) A warrant to enter and search is valid until one of the following events occurs –

- (a) the warrant is executed;
- (b) the warrant is revoked by the person who issued it;
- (c) the purpose for issuing it has lapsed; or
- (d) the expiry of one month after the date it was issued.

(5) A person executing a warrant must –

- (a) provide identification to the person affected by such warrant and explain to that person the authority by which the warrant is being executed; and
- (b) show and hand over a copy of a search warrant to any person named in it or affected by such a warrant.

Powers to enter and search

10.(1) A person who is authorized under section 9 to enter and search premises may –

- (a) search any person on those premises if there are reasonable grounds for believing that such person has personal possession of any article or document that has a bearing on the investigation;
- (b) examine any article or document that is on or in those premises that has a bearing on the investigation;

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- (c) 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;
- (d) 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;
- (e) use any computer system on the premises, or require assistance of any person or the premises to use that computer system, to –
 - (i) search any data contained in or available to or in that computer system;
 - (ii) reproduce any record from that data;
- (f) seize any output from that computer for examination and copying; and
- (g) attach and if necessary remove from the premises for examination and safekeeping anything that has a bearing on the investigation.

(2) A person authorized to conduct an entry and search in terms of section 9 may be accompanied and assisted by a police officer.

(3) An investigator or a person appointed in terms of section 7(1)(b) may perform functions contained in section 8, in the absence of a warrant, upon a written consent of the person in charge of that premises.

(4) A person who enters and searches any premises under this section must conduct entry and search with strict regard for decency and order and with regard for person's right to dignity, freedom, security and privacy.

(5) A person commits an offence if he or she –

- (a) obstructs an investigator in the performance of his or her functions in terms of this Act;
- (b) refuses to answer questions fully and satisfactorily to the best of his or her knowledge and belief; or
- (c) gives an answer or provide information or explanation that he knows or ought to have known that it is false and misleading.

Powers duties and functions of inspectors

11(1) An inspector may at any time and without prior notice or permission enter, be and remain upon any business premises of the supplier or service provider and may –

- (a) monitor the consumer market to ensure that prohibited conduct is ~~are~~ prevented, detected and prosecuted;

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- (b) inspect goods for compliance with the Consumer Protection Act, 2008 or any applicable consumer protection legislation;
 - (c) condemn and remove goods that do not comply with labeling requirements;
 - (d) issue a compliance notice in the prescribed form to a person, supplier or service provider whom he or she has reasonable grounds to believe that has or is engaging in a prohibited conduct;
 - (e) after issuing a compliance notice to a regulated person, supplier or service provider, in terms of subsection 1(d), inform the regulatory authority that issued a license to that regulated body.
- (2) A compliance notice contemplated in subsection (1) must set out –
- (a) a person, service provider or supplier to whom the notice applies;
 - (b) the provision of the Act which has not been complied with;
 - (c) details of the nature and the extent of non-compliance;
 - (d) a fine payable or imposed for non-compliance;
 - (e) any steps that are required to be taken and the period within which those steps must be taken;
 - (f) the penalty that may be imposed in terms of this Act if those steps are not taken.
- (3) If the steps set out in subsection (2)(e) have been satisfied, the Office must issue a prescribed compliance certificate.
- (4) If a person to whom a compliance notice has been issued in terms of subsection (1) fails to comply with such notice, the Office may apply –
- (a) to the Tribunal, for declaration that the conduct complained of constitute a prohibited conduct;
 - (b) refer the matter to the National Prosecuting Authority for prosecution; or
 - (c) to the Tribunal for confirmation of a compliance notice.
- (5) A compliance notice issued in terms of this section remains in force until –
- (a) the Office issues a compliance certificate contemplated in subsection (3), or
 - (b) it is set aside by the Tribunal upon a review of the decision of the Tribunal by a Court.

Objection to compliance notice

12.(1) A supplier, service provider or any person issued with a compliance notice may apply to the Tribunal to review the notice within 20 business days after receipt of such

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notice.

(2) When an application is made in terms of subsection (1), the Office must be cited and served for a response.

(3) The Clerk of the Tribunal must set down the application made in terms of subsection (1), for adjudication by the Tribunal.

(4) The Tribunal may after consideration of all evidence placed before it, confirm, modify or nullify all or part of the notice.

(5) The Tribunal must, if it confirms or modifies the notice contemplated in subsection (1), indicate a period within which compliance must take place.

(6) The Tribunal may issue an administrative fine payable upon failure to comply with its order made in terms of this section.

Arrangement or undertaking to discontinue with a prohibited conduct

13.(1) The Office may after an investigation or inspection agree with a supplier, service provider or any person concerned to –

- (a) discontinue, refrain from or avoid engaging in a prohibited conduct which exists or may come into existence and which is a subject matter of an investigation or inspection; or
- (b) reimburse any amount due to affected consumers.

(2) An arrangement or undertaking contemplated in subsection (1) may be concluded any time during or after an investigation or inspection.

(3) An arrangement or undertaking concluded under subsection (1) may be made an order of the Tribunal.

Institution of proceedings after completion of investigation and referral

14.(1) The Consumer Protector may on referral of a complaint by the Office, Commission or any other Regulator and if satisfied that there is a remedy provided for by this Act, the Consumer Protection Act, 2008, the National Credit Act, 2005, or any other applicable consumer protection legislation, institute proceedings in the Tribunal against a supplier or service provider, a credit provider or any person alleged to be responsible for a prohibited conduct.

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(2) The Office may on its own and with a view to prevent financial loss to consumers, refer any matter for institution of proceedings to the Tribunal against a supplier, service provider, credit provider or any person who is believed to be engaging in or having engaged in a prohibited conduct.

(3) The Consumer Protector may also institute proceeding in the Tribunal on receipt of a notice of non-referral issued by the Commission or Regulator if satisfied from information placed before him or her that a supplier, service provider, credit provider or any person has engaged or is engaging in a prohibited conduct.

(4) If the Consumer Protector decides not to institute proceedings in a the Tribunal or refer the matter to another regulatory authority with jurisdiction, the Consumer Protector must, issue a notice of non-referral, notifying the consumer of his or her decision.

(5) The reasons for the decision contemplated in subsection (4) must be disclosed, upon issue of a notice of non-referral.

(6) If the consumer is aggrieved by the decision of the Consumer Protector, the consumer may, within a prescribed period, manner and form, appeal the decision of the Consumer Protector, to the Tribunal.

CHAPTER 5 NORTH WEST CONSUMER AFFAIRS TRIBUNAL

Establishment of North West Consumer Affairs Tribunal

15.(1) There is hereby established a body to be known as the North West Consumer Affairs Tribunal for the Province.

(2) The seat of the Tribunal is in Mmabatho.

(3) The responsible Member may by notice in a gazette determine other seats for the Tribunal.

(4) The Tribunal is a Tribunal of record.

(5) The Tribunal is inquisitorial in nature.

(6) The Tribunal must conduct its proceedings in a prescribed manner.

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(7) The Tribunal must exercise its functions in accordance with this Act or any other applicable legislation.

Composition of Tribunal

16.(1) The Tribunal consists of three members who must be appointed by the responsible Member, namely –

- (a) a chairperson who must be a retired Judge of the High court, a law Professor or a practicing Advocate of the Bar Association;
- (b) A deputy chairperson who must be an attorney or university law lecturer, with not less than 10 years cumulative experience in one or more such capacities;
- (c) a member with proven knowledge, experience and expertise in consumer advocacy, economics, or commerce.

(2) The responsible Member may appoint an alternate member for a member contemplated under subsection 1(c).

(3) To enable the responsible Member to make the appointments contemplated in subsection (1) and (2), the responsible Member must cause a notice to be published in the provincial gazette inviting interested persons to submit within a specified period, which must not be shorter than one month after such publication, nominations for such appointment.

(4) A member or alternate member contemplated in this section must, before assuming office take and subscribe to an oath or solemn affirmation in the prescribed form before a Commissioner of Oaths.

Term of office of member of Tribunal

17.(1) A member is appointed to serve on the Tribunal for a period of three years.

(2) A member is eligible for re-appointment upon the expiry of his or her term of office for two additional terms only.

Remuneration of members of Tribunal

18. A member of the Tribunal may be paid such remuneration and allowances as may be determined by the responsible Member in consultation with the Member of the Executive Council for Finance.

Expert and other assistance to Tribunal

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19.(1) The responsible Member may appoint such experts or any other person as he or she may deem necessary to assist the Tribunal in the exercise and performance of its powers, duties and functions.

(2) The terms, conditions, and fees applicable to any expert or person appointed under subsection (1), and the work to be performed or services to be rendered must be determined by the responsible Member, and be contained in a written agreement entered into for that purpose between the responsible Member and the expert or the person concerned.

(3) The experts or other persons appointed under subsection (1) may not partake in any decision taken by the Tribunal.

Disqualification from being appointed to Tribunal

20. A person is disqualified from being appointed to the Tribunal or from remaining on the Tribunal, by reason that he or she –

- (a) is or becomes an un-rehabilitated insolvent;
- (b) is or has been declared by a Competent Court to be of unsound mind;
- (c) is directly or indirectly interested in any contract with the Consumer Protector and fails to declare his or her interest and the nature thereof in a manner required by this Act;
- (d) is a person is under curatorship;
- (e) has at any time been removed from an office of trust on account of misconduct involving dishonesty;
- (f) has been convicted and sentenced to a term of imprisonment without the option of a fine, except that the responsible Member may, upon such nominee disclosing full details of the offence in an affidavit, condone a conviction that is consistent with section 106(1)(e) of the Constitution, 1996; Provided that a disqualification in terms of this subsection ends five years after the sentence has been completed;
- (g) fails to disclose an interest in accordance with section 21 43 or attended or participated in the proceedings of the Tribunal while having an interest contemplated in the said section;
- (h) is a public servant;
- (i) is a public office bearer; or
- (j) is not a citizen of the Republic of South Africa.

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Declaration of financial or other interests of members of Tribunal

21.(1) A person who has been nominated to serve as a Tribunal member in terms of section 16 must, within 30 days of being nominated, submit a written declaration to the responsible Member of all direct or indirect interests in any company, close corporation and of any other business interests.

(2) Any failure by a nominee to disclose financial and other interests in terms of subsection (1) disqualifies such person from being appointed to the Tribunal.

(3) Every member of the Tribunal must, upon assuming duty and at the beginning of every financial year of the Tribunal, submit a written declaration of his or her direct or indirect interest in any company, close corporation or other business interests, to the responsible Member.

(4) Where a member of the Tribunal acquires an interest in any company, close corporation or other business interests, at any time during his or her tenure as a member of the Tribunal he or she must, within 30 days of the date of the acquisition of such an interest, submit a written declaration to the responsible Member of such an interest.

Failure to declare financial or other interests by member of Tribunal

22.(1) A member of the Tribunal who fails to make a declaration envisaged in terms of section 21 may be disqualified from remaining a member of the Tribunal and may be removed from the Tribunal.

(2) The responsible Member, upon becoming aware that a member of a Tribunal is disqualified in terms of section 20 or has failed to comply with the provisions of section 21, must investigate the matter and allow an affected member to state his or her case against the removal contemplated in subsection (1).

Vacancies, removal from office and resignation of members of Tribunal

23.(1) A member of the Tribunal must vacate office if he or she becomes subject to a disqualification contemplated in section 20.

(2) The responsible Member may, after having afforded a member the opportunity to state his or her case, at any time terminate the term of office of such member if, in his or her opinion, there are sound, cogent and justifiable reasons for doing so.

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(3) A member may resign from office by giving not less than 30 days written notice to the responsible Member: Provided that the responsible Member may waive such resignation notice.

(4) Whenever a vacancy occurs in the Tribunal, the responsible Member must, subject to the provisions of section 16, appoint a person to fill such vacancy for the unexpired portion of the period of office of the member in whose place such person is appointed.

(5) The responsible Member may, subject to the provisions of subsection (2), terminate the appointment of all or some of the members of the Tribunal.

(6) In the event that the responsible Member exercises his or her powers in terms of subsection (5), he or she may, notwithstanding the procedure for the appointment of the members of a Tribunal set out in section 16, but subject to subsections (3) and (4) of section 16, appoint persons to serve as members of a Tribunal on an interim basis: Provided that –

(a) the persons appointed to replace the members whose appointment has been terminated in terms of subsection (5), may not remain on the Tribunal for a period of more than 90 days from the date of their appointment; and

(b) the responsible Member, must, subject to section 16, appoint the permanent members of the Tribunal within 90 days of the appointment contemplated in paragraph (a) of this subsection.

Powers, functions and duties of Tribunal

24.(1) ~~(1)~~ The Tribunal may in accordance with this Act hear, consider, adjudicate and make any decision in relation to any –

(a) application that may be made in terms of this Act;

(b) allegation of prohibited conduct by determining whether prohibited conduct has occurred or not;

(c) application for objections to compliance notices.

(2) In addition to its other powers in terms of this Act, the Consumer Protection Act, 2008, the National Credit Act, 2005, or any other applicable legislation, the Tribunal may make any appropriate order in relation to a prohibited conduct, including –

(a) declaring a conduct to be a prohibited conduct;

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- (b) confirming an arrangement, undertaking or resolution in terms of this Act, the Consumer Protection Act, 2008, or any other applicable legislation as an order of the Tribunal;
 - (c) grant interim relief order;
 - (d) directing a refund to the consumer for actual financial loss suffered or quantified prospective loss anticipated as a result of engagement in a prohibited conduct;
 - (e) condoning non-compliance with any procedure on good cause shown; or
 - (f) imposing administrative fine on the scale to be prescribed or in the amount determined by the Tribunal, against a supplier, service provider, credit provider or any person found to have conducted or engaged in a prohibited conduct.
- (3) When determining an appropriate administrative fine contemplated in subsection (2)(f), the Tribunal must consider the following factors –
- (a) the nature, duration, gravity and the extent of a contravention;
 - (b) any loss suffered as a result of a contravention;
 - (c) the behavior of the transgressor or offender;
 - (d) whether the transgressor or offender has previously been found to be in contravention of this Act;
 - (e) imposing administrative fine with or without addition of any other order in terms of this section; or
 - (f) ordering any other appropriate relief to a consumer.
- (4) The Tribunal may –
- (a) exercise any other powers and perform functions and duties assigned to it in terms of this Act or any other applicable legislation;
 - (b) make orders provided for in this Act in respect of such application; or
 - (c) generally deal with all matters necessary or incidental to the performance of its functions in terms of this Act.

Service of notices and administrative work incidental to Tribunal

25.(1) All notices of the Tribunal must be served with the clerk.

(2) The clerk performs administrative work incidental to the functions of the Tribunal.

Confirmation of Office arrangement, undertaking or resolution

26.(1) The Tribunal may on application by the Office confirm –

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- (a) any arrangement or undertaking concluded by the Office with such changes, if any, as may be agreed to by both parties;
- (b) any resolution of a dispute reached during mediation.

(2) The Tribunal may before confirming an arrangement or undertaking resolution, give the supplier, credit provider or service provider an opportunity to be heard.

Summoning of persons and production of documents before Tribunal

27.(1) The Consumer Protector may by summons addressed to a supplier, service provider, credit provider or any other person whom a complaint of prohibited conduct has been lodged against –

- (a) summon such a supplier, service provider, credit provider or any person to appear before the Tribunal at a time and place specified in such summons, to give evidence; and
- (b) order such supplier, service provider, credit provider or any person to produce any book, document or object in the possession or custody or under the control of such person and which may be reasonably necessary, material and relevant in connection with the proceedings before the Tribunal.

(2) The summons contemplated in subsection (1) must disclose the nature of a prohibited conduct complained against.

(3) The Tribunal must direct any person appearing before it to take an oath or make an affirmation.

(4) The Tribunal may question such person and examine any book, document or object which he or she has been required to produce.

(5) The oath or affirmation contemplated in subsection (3 2) must be administered by the chairperson.

(6) A person commits an offence if he or she, having been summoned in terms of this section –

- (a) fails without sufficient cause to attend at the time and place specified in the summons, or to remain in attendance until the conclusion of the proceedings or until he or she has been excused by the Tribunal from further attendance;
- (b) refuses to answer, or to answer fully and satisfactorily to the best of his or her knowledge and belief any question lawfully put to him or her;

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- (c) fails to produce any book, document or object in his or her possession or custody or under his or her control, which he or she was required to produce; or
- (d) makes a false statement before the Tribunal knowing such statement to be false.

(7) A person is not obliged to answer any question if the answer is self-incriminating.

Interim relief

28.(1) A Consumer Protector may apply to the Tribunal for an interim relief in respect of an application and the Tribunal may grant such an order if –

- (a) there is evidence that the allegations may be true;
- (b) an interim order is reasonably necessary to –
 - (i) prevent serious, irreparable harm or damage to that person; or
 - (ii) to prevent the purpose of this Act or any consumer protection legislation from being frustrated.

(2) In granting the interim order contemplated in subsection (1) the Tribunal must satisfy itself that –

- (a) the respondent has been given a reasonable opportunity to be heard; and
- (b) the balance of convenience favours the granting of the order.

Proceedings of Tribunal

29.(1) The proceedings before the Tribunal must be –

- (a) initiated by summons served on the person concerned in the prescribed manner and form;
- (b) open to the public;
- (c) prosecuted by the Consumer Protector; and
- (d) duly recorded.

(2) A supplier, service provider, credit provider or any person named in the summons may plead to the summons within ten 5 days after service of such summons.

(3) A default order may be granted against a person who fails to attend a Tribunal hearing if properly served with summons.

(4) Parties to a matter pending before a Tribunal may attend a pre-trial conference before a chairperson of the Tribunal.

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(5) Any person against whom the proceedings are instituted or who may be adversely affected by any proceedings before the Tribunal may appear in person or be represented or assisted by an attorney or advocate or any other person.

(6) The Tribunal may direct that the public or any member thereof not to attend any proceedings of the Tribunal or portion thereof, in order to ensure that –

- (a) the conduct of the proceedings or the consideration of the matter in question, is not compromised; or
- (b) the privacy of any person alleged to be responsible for a prohibited conduct, is protected.

(7) Any person who has an interest in any proceedings that have taken place, may in the prescribed manner, obtain copies of the record contemplated in subsection (1)(d).

Review of decision of Tribunal

30. Any party to a hearing before the Tribunal, who is aggrieved by the decision of the Tribunal, may apply to the High Court for review of such decision.

Enforcement of Tribunal orders

31.(1) Where an aggrieved party contemplated in section 30, fails to, or elects not to apply for a review, the Tribunal may after 30 working days after such failure or election, apply to a competent court, for its order to be made an order of that Court, in terms of its rules.

(2) The court may, without hearing evidence –

- (a) confirm or endorse the order;
- (b) vary the order as the case may be; or
- (c) refuse to confirm or endorse the order.

(3) Where a Court has refused to confirm or endorse an order, it must provide reasons for such refusal.

Costs

32.(1) Each party to a hearing before the Tribunal bears its own costs.

(2) If the Tribunal –

- (a) has not made a finding against a respondent, it may award costs in favour of the respondent, against a complainant who referred the complaint in terms of

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section 141(1) of the National Credit Act, 2005, read with section 14(6) of this Act; and

(b) has made a finding against the respondent, it may award costs against the respondent to the applicant, who referred the complaint in terms of section 141(1) of the National Credit Act, 2005, read with section 14(6) of this Act.

CHAPTER 6 GENERAL PROVISIONS

Confidentiality of information

33. A member of the Tribunal or any person in the employ of the Office or performing duties for the Office may not disclose any information acquired by him or her in the exercise or performance of any powers, functions or duties in terms of this Act, except –

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

Offences

34.(1) A person commits an offence if such person fails to comply with an order of the Tribunal.

(2) A person commits an offence if such person –

- (a) obstructs or unduly influences any person who is exercising a power or performing any duty conferred or imposed on that person by this Act or any other applicable consumer protection legislation;
- (b) does anything calculated to influence the outcome of the Tribunal;
- (c) willfully disrupts the proceedings of a hearing or misbehaves in a place where a Tribunal hearing is being conducted;
- (d) defames the Tribunal or members of the Tribunal in their respective official capacities; or
- (e) fails to adhere to a compliance notice.

Penalties and fines

35. Any person convicted of an offence in terms of this Act is liable upon such conviction –

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- (a) to a fine not exceeding R100 000 or imprisonment for a period not exceeding 12 months or both such a fine and imprisonment; or
- (b) to a fine not exceeding R200 000 or an imprisonment for a period not exceeding 12 months or both such a fine and imprisonment in relation to offence under section 34.

Regulations

36.(1) The responsible Member may make regulations regarding –

- (a) any matter prescribed in terms of this Act;
- (b) any payment and amount of any fees payable in terms of this Act;
- (c) the manner in which, and the days on which, if applicable, any application in terms of this Act may or must be made or lodged;
- (d) the manner and forms of service, delivery or dispatch of any summons, notice or other document required to be served, delivered or dispatched in terms of this Act;
- (e) the manner and form of the publication of notice or other document required to be published in terms of this Act;
- (f) the form, content and size, where applicable, of any notice, communication or other document required to be issued, delivered, served, given or published in terms of this Act;
- (g) the time periods, or the extension of time periods, to be prescribed in terms of this Act;
- (h) the tariff of witness fees payable on ordinary, appeal or review proceedings;
- (i) the form and manner in which a complaint must be submitted to the Office;
- (j) the procedure to be followed in dealing with a business entity that has been found to have contravened the provisions of this Act; and
- (k) in general, any matter in respect of which the responsible Member deems it necessary or expedient to make regulations in order to achieve the objects of this Act.

(2) Any regulation regarding fees or money to be paid must be made by the responsible Member in consultation with the Member of the Executive Council for Finance.

(3) In addition to the regulations contemplate in subsection (1), the responsible Member may make rules or develop a practice manual for conduct of proceedings before the Tribunal.

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Repeal of law

37. The Consumer Affairs (Unfair Business Practices) Act, 1996 (Act No 4 of 1996) is hereby repealed.

Transitional arrangements

38.(1) Any complaint lodged with the Office for the investigation of Unfair Business Practices within the Department made before the commencement of this Act in terms of any legislation whether repealed or amended, and the regulations made in terms of that legislation, must be dispensed of and finalized in terms of this Act.

(2) The Consumer Affairs (Unfair Business) Practices Act, 1996, remains in force until the coming into operation of this Act.

Short title

39. This Act is called the North West Consumer Affairs Act, 2019.

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MEMORANDUM ON THE OBJECTS ON THE NORTH WEST CONSUMER AFFAIRS ACT, 2019

1. BACKGROUND

1.1 In order to address the affairs challenges specific to the North West Province and further address challenges experienced with administering the Consumer Affairs (Unfair Business) Practices Act, 1996 (Act No 4 of 1996), a need to review the Consumer Affairs (Unfair Business) Practices Act, 1996 (Act No 4 of 1996) has been identified, and resulted in the promulgation of this Act.

1.2 This Act seeks to repeal the Consumer Affairs (Unfair Business) Practices Act, 1996 (Act No 4 of 1996) and provide for the realization, promotion and protection of consumer rights in the North West Province.

1.3 This Act further seeks to provide for –

- (a) the establishment of the North West Consumer Protection Office; (b) the determination of the objects, powers, duties and functions of the Office;
- (c) the investigation and mediation of prohibited conduct;
- (d) the establishment of Consumer Affairs Tribunal;
- (e) the determination of the objects, powers, duties and functions of Consumer Affairs Tribunal; and
- (f) matters incidental thereto,

in the North West Province.

1.4 Section 104, read with Part A of Schedule 4 and 5 of the Constitution of the Republic of South Africa, 1996 assigns Provinces the concurrent competence to legislate on consumer matters.

2. CLAUSE BY CLAUSE ANALYSIS

Clause 1.

Clause 1 defines certain terms in the context they are used in the Act.

Clause 2.

Clause 2 provides for the Objects of Act.

Clause 3.

Clause 3 provides for the establishment of the North West Consumer Affairs Office.

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Clause 4.

Clause 4 provides for the Powers, Duties and functions of the North West Consumer Affairs Office.

Clause 5.

Clause 5 provides for the lodging of complaints with the North West Consumer Affairs Office.

Clause 6.

Clause 6 provides for the appointment of the Consumer Protector

Clause 7.

Clause 7 provides for the appointment of staff to assist the North West Consumer Affairs Office.

Clause 8.

Clause 8 regulates the summoning of persons and production of books, objects or documents.

Clause 9.

Clause 9 provides for the right to entry, search and seizure by a consumer investigator or a person appointed in terms of section 7(1)(b).

Clause 10.

Clause 10 provides for powers to enter and search by a consumer investigator or a person appointed in terms of section 7(1)(b).

Clause 11.

Clause 11 provides for the powers duties and functions of consumer inspectors.

Clause 12.

Clause 12 empowers a supplier, service provider or any person issued with a compliance notice to apply to the Tribunal for review of the compliance notice within 20 business days after receipt of such notice.

Clause 13.

Clause 13 provides for arrangement or undertaking to discontinue with prohibited conduct

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Clause 14.

Clause 14 provides for institution of proceedings after completion of investigation and referral

Clause 15.

Cause 15 provides for the establishment of the Consumer Affairs Tribunal.

Clause 16.

Clause 16 provides for the composition of the Consumer Affairs Tribunal.

Clause 17.

Clause 17 provides for the term of office of members of the Consumer Affairs Tribunal.

Clause 18.

Clause 18 provides for the remuneration of members of the Consumer Affairs Tribunal.

Clause 19.

Clause 19 provides for the appointment of persons to render expert and other assistance to the Consumer Affairs Tribunal.

Clause 20.

Clause 20 provides for circumstances under which a person can be disqualified from appointment to

Clause 21

Clause 21 provides for the declaration of financial or other interests of members of the Consumer Affairs Tribunal.

Clause 22.

Clause 22 disqualifies a member of the Consumer Affairs Tribunal for failure to make a declaration envisaged in terms of section 21 and provides for his or her removal from office. It further allows the responsible Member to, upon becoming aware that a member of a Tribunal is disqualified in terms of section 20 or has failed to comply with the provisions of section 21, investigate the matter and allow an affected member to state his or her case against such removal from office.

Clause 23.

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Clause 23 provides for the filling of vacancies, removal from office and resignation of members of the Consumer Affairs Tribunal.

Clause 24.

Clause 24 provides for the powers of the Consumer Affairs Tribunal.

Clause 25.

Clause 25 provides for the service of notices and the provision of administrative work incidental to the Consumer Affairs Tribunal.

Clause 26.

Clause 26 accords the Consumer Affairs Tribunal a discretion to, on application by the Office, confirm any arrangement or undertaking concluded by the Office and any resolution of a dispute reached during mediation, subject to giving a supplier, credit provider or service provider an opportunity to be heard.

Clause 27.

Clause 27 empowers the Consumer Protector to summon a supplier, service provider, credit provider or any other person whom a complaint of prohibited conduct has been lodged against to appear before him or her.

Clause 28.

Clause 28 empowers the Consumer Protector to apply to the Consumer Affairs Tribunal for an interim relief in respect of an application and the Tribunal may grant such an order if there is evidence that the allegations may be true and an interim order is reasonably necessary to prevent serious, irreparable harm or damage to that person or to prevent the purpose of this Act or any consumer protection legislation from being frustrated.

Clause 29.

Clause 29 provides for process on how proceedings of the Consumer Affairs Tribunal should be conducted.

Clause 30.

Clause 30 provides for review of decisions of the Consumer Affairs Tribunal.

Clause 31.

Clause 31 provides for the enforcement of Consumer Affairs Tribunal orders.

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Clause 32.

Clause 32 directs that each party to a hearing before the Consumer Affairs Tribunal bears its own costs.

Clause 33.

Clause 33 places an obligation on a member of the Consumer Affairs Tribunal or any person in the employ of the Office or performing duties for the Office, not to disclose any information acquired by him or her in the exercise or performance of any powers, functions or duties in terms of this Act, except in so far as may be necessary for the purpose of the due and proper exercise any power or performance of any function or duty in terms of this Act or on order of the Tribunal or Court.

Clause 34.

Clause 34 provides for offences

Clause 35.

Clause 35 provides for penalties and fines

Clause 36.

Clause 36 empowers the responsible Member to make regulations.

Clause 37.

Clause 37 provides for the repeal of the Consumer Affairs (Unfair Business Practices) Act, 1996 (Act No 4 of 1996).

Clause 38.

Clause 38 provides for transitional arrangements.

Clause 39.

Clause 39 provides for the short title.

3. ORGANISATIONAL AND PERSONNEL IMPLICATIONS FOR PROVINCIAL GOVERNMENT

Since the Directorate dealing with consumer matters in terms of the Consumer Affairs (Unfair Business) Practices Act, 1996, already exists within the Department, and since this Act makes provision that the administrative support to both the Office of the Consumer Protector and the Consumer Affairs Tribunal will be provided by the

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Department, no organisational and personnel implications are foreseen in as far as the establishment of the North West Consumer Affairs Office and the Consumer Affairs Tribunal is concerned.

4. FINANCIAL IMPLICATIONS FOR PROVINCIAL GOVERNMENT

4.1 Since the Directorate and resources envisaged to provide administrative support to the North West Consumer Affairs Office and the Consumer Affairs Tribunal already exists within the Department, no financial implications in as far as the establishment of the North West Consumer Affairs Office and the Consumer Affairs Tribunal, are foreseen.

4.2 The members of the Consumer Affairs Tribunal will be paid fees for attending Tribunal sittings and the normal subsistence and travelling fees.

5. DEPARTMENTS/ BODIES/ PERSONS CONSULTED

5.1 Key staff members in the Department;

5.2 The municipalities; and

5.3 The office of the Chief State Law Advisor.

6. CONTACT PERSON:

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