

Provincial Gazette Extraordinary

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Buitengewone Provinsiale Roerant

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PROVINCIAL NOTICE

The following Bill is hereby published for general information:

Western Cape Consumer Affairs (Unfair Business Practices) Bill

P.N. 131/2002 21 May 2002

Any person or organisation wishing to comment on the said Bill is requested to lodge such comment in writing before or on 11 June 2002:

(a) by posting it to:

The Secretary:
Western Cape
Provincial Parliament (Attention: Mr. A. Ferreira)
P.O. Box 648
Cape Town
8000

(b) by e.mail to:

aferreir@pawc.wcape.gov.za

(c) by fax to:

A. Ferreira
(021) 487-1685

P. J. C. Pretorius

Secretary to Parliament

INHOUD

PROVINSIALE KENNISGEWING

Die volgende Wetsontwerp word hierby vir algemene inligting gepubliseer:

Wes-Kaapse Wetsontwerp op Verbruikersake (Onbillike Sakepraktyke)

P.K. 131/2002

21 Mei 2002

Enige persoon of organisasie wat kommentaar oor die genoemde Wetsontwerp wens te lewer, word versoek om sodanige kommentaar skriftelik te lewer voor of op 11 Junie 2002:

(a) deur dit te pos aan:

Die Sekretaris
Wes-Kaapse
Provinsiale Parlement (Aandag: Mn. A. Ferreira)
Posbus 648
Kaapstad
8000

(b) deur dit te e.pos aan:

aferreir@pawc.wcape.gov.za

(c) deur dit te faks aan:

A. Ferreira
(021) 487-1685

P. J. C. Pretorius

Sekretaris van die Parlement

BILL

To provide for the investigation, prohibition and control of unfair business practices; to establish an Office for the Investigation of Unfair Business Practices and Consumer Affairs Tribunals; and to provide for matters incidental thereto.

PREAMBLE

WHEREAS consumers have the right not to be exploited;

AND WHEREAS consumers are inadequately protected against consumer abuse in our modern society;

THHEREFORE BE IT ENACTED by the Provincial Parliament of the Province of the Western Cape, as follows:—

Definitions

1. In this Act, unless the context otherwise indicates —
 - (1) “arrangement” means an arrangement or undertaking negotiated and concluded by the office in terms of section 11; 5
 - (2) “business” means—
 - (a) offering, supplying or making available a commodity, or
 - (b) soliciting or receiving an investment;
 - (3) “business practice” includes—
 - (a) an agreement, accord or undertaking in connection with business whether legally enforceable or not, between two or more persons;
 - (b) a scheme, practice or method of trading in connection with business, including a method of marketing or distribution;
 - (c) advertising, a type of advertising or another means of soliciting business; 15
 - (d) an act or omission in connection with business on the part of a person, whether acting in a representative capacity, independently or in concert with another person, and
 - (e) any situation in connection with the business activities of any person or group of persons,

but does not include a prohibited practice as regulated by the Competition Act, 1998 (Act 89 of 1998); 20
 - (4) “committee” means the standing committee of the Provincial Parliament responsible for consumer affairs;
 - (5) “commodity” means—
 - (a) any property, whether corporeal or incorporeal and whether movable or immovable, including any make or brand of commodity, or
 - (b) any service, excluding service due in terms of a contract of employment;
 - (6) “consumer” means a person contemplated in section 2(1);
 - (7) “Consumer Protector” means the person appointed in terms of section 4(1)(a); 30
 - (8) “investigation officer” means an investigating officer appointed in terms of section 9(1) or regarded in terms of section 9(2) to have been so appointed;

Wet van die Provinciale Parlement van die Provincie Wes-Kaap betreffende voorsiening te maak vir die ondersoek na, verbod op en beheer van onbillike sakepraktyke; om 'n Kantoor vir die Ondersoek van Onbillike Sakepraktyke en Verbruikersaktribunale in te stel; en om voorsiening te maak vir sake wat daarvan in verband staan.

WETSONTWERP

Om voorsiening te maak vir die ondersoek na, verbod op en beheer van onbillike sakepraktyke; om 'n Kantoor vir die Ondersoek van Onbillike Sakepraktyke en Verbruikersaktribunale in te stel; en om voorsiening te maak vir sake wat daarvan in verband staan.

AANHOF

AANGESIEN verbruikers die reg het om nie uitgebuit te word nie;

EN AANGESIEN verbruikers in ons moderne samelewing onvoldoende teen misbruik van die verbruiker beskerm word;

WORD DAAR DERHALWE BEPAAL deur die Provinsiale Parlement van die Provinsie Wes-Kaap, soos volg:

Woordomskrywings

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—
 - (1) "belegging" enige geld of ander eiendom of enige fasiliteit bedoel vir benutting in verband met 'n onderneming of skema vir die verkryging van wins of wat voorgee om aldus bedoel te wees;
 - (2) "besigheid"—
 - (a) die aanbied, verskaffing of beskikbaarstelling van 'n handelsartikel, of
 - (b) die werwing of ontvangs van 'n belegging;
 - (3) "handelsartikel"—
 - (a) enige eiendom, hetsy liggaamlik of onliggaamlik en hetsy roerend of onroerend, insluitende enige fabrikaat of merk van enige handelsartikel, of
 - (b) enige diens, buiten diens wat kragtens 'n indiensnemingskontrak verrig moet word;
 - (4) "hierdie Wet" ook 'n regulasie kragtens hierdie Wet gemaak;
 - (5) "kantoor" die Kantoor vir die Ondersoek van Onbillike Sakepraktyke ingevolge artikel 3 ingestel;
 - (6) "komitee" die staande komitee van die Provinsiale Parlement wat verantwoordelik is vir verbruikersake;
 - (7) "onbillike sakepraktyk" 'n sakepraktyk wat regstreeks of onregstreeks die uitwerking het of waarskynlik sal hê om—
 - (a) die verhoudinge tussen besighede en verbruikers te skaad;
 - (b) enige verbruiker onredelik te benadeel;
 - (c) enige verbruiker te mislei;
 - (d) enige verbruiker onredelik te raak, of
 - (e) onbillik teen 'n verbruiker te diskrimineer op die basis van ras, geslagtelikheid, geslag, swangerskap, huwelikstaat, etniese of sosiale herkoms, kleur, seksuele georiënteerdheid, ouderdom, gestremdheid, godsdienis, gewete, oortuiging, kultuur, taal of geboorte;
 - (8) "ondersoekbeampte" 'n ondersoekbeampte ingevolge artikel 9(1) aangestel of geag ingevolge artikel 9(2) aldus aangestel te gewees het;
 - (9) "Provinsie" die provinsie van die Wes-Kaap;

- (9) "investment" means any money or other property or any facility intended for use in connection with a venture or scheme for profit, or purported to be so intended;
- (10) "office" means the Office for the Investigation of Unfair Business Practices established in terms of section 3; 5
- (11) "prescribed" means prescribed by regulation in terms of section 29 of this Act;
- (12) "Province" means the province of the Western Cape;
- (13) "regulation" means a regulation made under section 29;
- (14) "responsible Minister" means the Minister responsible for economic affairs in the Province; 10
- (15) "this Act" includes a regulation made under this Act;
- (16) "tribunal" means an administrative body established in terms of section 13 and known as a Consumer Affairs Tribunal; 15
- (17) "unfair business practice" means a business practice which, directly or indirectly, has or is likely to have the effect of—
 (a) harming the relations between businesses and consumers;
 (b) unreasonably prejudicing any consumer;
 (c) deceiving any consumer;
 (d) unfairly affecting any consumer, or
 (e) unfairly discriminating against any consumer on the basis of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth. 20

Consumers

25

- 2.** (1) The following are consumers for the purposes of this Act:

- (a) a natural person to whom a commodity is offered, supplied or made available, if that person does not intend to use the commodity for the purpose of resale, lease, the provision of services or the manufacture of goods for gain;
- (b) a natural person from whom is solicited, or who supplies or makes available, 30 an investment, and
- (c) a person whom the responsible Minister declares to be a consumer in terms of subsection (2).

- (2) The responsible Minister may, with the concurrence of the committee, declare a person to be a consumer by notice in the *Provincial Gazette* and may withdraw, vary or 35 amend such a notice.

Establishment of Office for Investigation of Unfair Business Practices

- 3.** (1) An office called the Office for the Investigation of Unfair Business Practices is hereby established in the Department responsible for economic affairs in the Province.

- (2) The functions of the office will be performed by the Consumer Protector and his 40 or her office.

Consumer Protector and staff of office

- 4.** (1) Subject to the laws governing the Public Service, the responsible Minister—

- (a) must appoint a person as Consumer Protector;
- (b) may from time to time appoint an acting Consumer Protector to perform the duties of the Consumer Protector whenever the Consumer Protector is for any reason unable to perform those duties or pending the appointment of a person as Consumer Protector. 45

- (2) The staff required for the proper performance of the functions of the office and the administration of this Act is appointed in terms of the Public Service Act, 1994. 50

- (3) The Consumer Protector may, in the performance of his or her functions, also be assisted by a person or body whose service the Consumer Protector obtains for the purpose of a particular investigation.

- (10) "reëling" 'n reëling of onderneming wat ingevolge artikel 11 deur die kantoor onderhandel en getref is;
- (11) "regulasie" 'n regulasie kragtens artikel 29 gemaak;
- (12) "sakepraktyk" ook—
 - (a) 'n ooreenkoms, verdrag of onderneming in verband met besigheid, hetsy regtens afdwingbaar of nie, tussen twee of meer persone;
 - (b) 'n skema, praktyk of handelsmetode in verband met besigheid, insluitende 'n metode van bemarking of distribusie;
 - (c) reclame, 'n tipe reclame of 'n ander wyse om besigheid te werf;
 - (d) 'n handeling of versuim in verband met besigheid deur 'n persoon wat, hetsy in 'n verteenwoordigende hoedanigheid, onafhanklik of gesamentlik met 'n ander persoon optree, en
 - (e) enige toestand in verband met die besigheidsbedrywighede van enige persoon of groep persone,
- maar sluit dit nie 'n verbode praktyk in nie, soos deur die Wet op Mededinging, 1998 (Wet 89 van 1998), gereguleer;
- (13) "tribunaal" 'n administratiewe liggaam ingevolge artikel 13 ingestel en bekend as 'n Verbruikersaketreibunaal;
- (14) "verbruiker" 'n persoon in artikel 2(1) beoog;
- (15) "Verbruikersbeskermer" die persoon ingevolge artikel 4(1)(a) aangestel;
- (16) "verantwoordelike Minister" die Minister wat vir ekonomiese sake in die Provinsie verantwoordelik is, en
- (17) "voorgeskryf" by regulasie ingevolge artikel 29 van hierdie Wet voorgeskryf.

25 Verbruikers

- 2. (1) Die volgende is verbruikers vir die toepassing van hierdie Wet:
 - (a) 'n natuurlike persoon aan wie 'n handelsartikel aangebied, verskaf of beskikbaar gestel word, indien daardie persoon nie voornemens is om die handelsartikel te gebruik vir die doel van verkoop, verhuur, die verskaffing van dienste of die vervaardiging van goedere vir wins nie;
 - (b) 'n natuurlike persoon van wie 'n belegging gewerf word, of wat 'n belegging verskaf of beskikbaar stel, en
 - (c) 'n persoon van wie die verantwoordelike Minister verklaar dat hy of sy 'n verbruiker ingevolge subartikel (2) is.
- 35 (2) Die verantwoordelike Minister kan, met die instemming van die komitee, 'n persoon tot 'n verbruiker verklaar by kennisgewing in die *Provinsiale Koerant* en kan so 'n kennisgewing terugtrek, verander of wysig.

Instelling van Kantoor vir Ondersoek van Onbillike Sakeprakteke

- 3. (1) 'n Kantoor genoem die Kantoor vir die Ondersoek van Onbillike Sakeprakteke word hierby ingestel in die Departement wat vir ekonomiese sake in die Provinsie verantwoordelik is.
- (2) Die funksies van die kantoor sal deur die Verbruikersbeskermer en sy of haar kantoor verrig word.

Verbruikersbeskermer en personeel van kantoor

- 45 4. (1) Die verantwoordelike Minister, behoudens die wette wat die Staatsdiens beheer—
 - (a) moet 'n persoon as Verbruikersbeskermer aanstel;
 - (b) kan van tyd tot tyd 'n waarnemende Verbruikersbeskermer aanstel om die pligte van die Verbruikersbeskermer te verrig wanneer die Verbruikersbeskermer ookal om een of ander rede nie in staat is om dié pligte te verrig nie of hangende die aanstelling van 'n persoon as Verbruikersbeskermer.
- (2) Die personeel wat vir die behoorlike verrigting van die funksies van die kantoor en die administrasie van hierdie Wet nodig is, word ingevolge die Staatsdienswet, 1994, aangestel.
- 55 (3) Die Verbruikersbeskermer mag, by die verrigting van sy of haar funksies, ook bygestaan word deur 'n persoon of liggaam wie se diens die Verbruikersbeskermer vir die doel van 'n besondere ondersoek verky.

(4) A person or body contemplated in subsection (3) may be paid the remuneration, allowances and expenses determined by the appropriate national department, with the concurrence of the responsible Minister.

Functions of office

5. (1) The office must—

- (a) receive and investigate complaints of alleged unfair business practices which have been lodged with the office and dispose of those complaints in terms of this Act, and
- (b) perform the other functions assigned to it under this Act.

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(2) (a) The office must as soon as practicable after 31 March in each year, submit to the responsible Minister an annual report on its functions during the year ending on that date.

15
(b) The responsible Minister must table a copy of the annual report in the Provincial Parliament within 14 days after its receipt if the Provincial Parliament is then sitting or, if the Provincial Parliament is not then sitting, within 14 days after the commencement of its next ensuing ordinary sitting.

Lodging of complaints with office

6. (1) Any person may lodge a complaint with the office regarding an alleged unfair business practice.

20
(2) A complaint contemplated in subsection (1) that is not in writing must be reduced to writing by the office and be confirmed as correct and signed by the complainant.

Investigations by office

7. (1) The office may, where a complaint which is not manifestly frivolous or vexatious is lodged, institute any investigation that is necessary into—

- (a) an alleged unfair business practice which there is reason to suspect exists or may come into existence, and
- (b) a business practice or type of business practice, in general or in relation to a particular commodity or investment or any kind of commodity or investment or a particular business or any class or type of business or a particular area, which there is reason to suspect is commonly applied for the purpose of or in connection with the creation or maintenance of unfair business practices.

25
(2) If the responsible Minister refers a matter contemplated in (1)(a) or (b) to the office, the office must conduct an investigation into that matter.

30
(3) The office may by notice in the *Provincial Gazette*, make known any investigation which it is conducting, and state that any person may within a period specified in the notice make written representations regarding the investigation to the office.

35
(4) The office may, for the purpose of an investigation, take into account any investigation carried out or finding of any measure taken by the Consumer Affairs Committee established in terms of section 2 of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act 71 of 1988), or by the national Minister of Trade and Industry in terms of that Act, or by another competent authority, including an authority in another province.

40
(5) If the Consumer Protector is of the opinion that a complaint may more appropriately be dealt with by another competent authority, he or she may at any time refer an investigation or aspect thereof to that other authority, including an authority in another province or a national authority: provided that the office may, after consultation with the authority to which the matter has been referred, at any time resume the investigation into that matter.

45
(6) If any competent authority refers a complaint to the office, the office must conduct an investigation into that complaint.

50
(7) If the Consumer Protector is of the opinion, at any time during the investigation of a complaint, that no reasonable prospect exists that such investigation will result in the institution of proceedings in a tribunal, he or she may order the termination of the investigation: provided that, if the Consumer Protector becomes aware of facts that in

(4) 'n Persoon of liggaam in subartikel (3) beoog, kan die besoldiging, toelaes en uitgawes betaal word wat deur die toepaslike nasionale departement, met die instemming van die verantwoordelike Minister, bepaal word.

Funksies van kantoor

5 5. (1) Die kantoor moet—

- (a) klages van beweerde onbillike sakepraktyke wat by die kantoor ingedien is, ontvang en ondersoek en dié klages ingevolge hierdie Wet afhandel, en
- (b) die ander funksies verrig wat kragtens hierdie Wet aan hom toegewys is.

(2) (a) Die kantoor moet so gou doenlik na 31 Maart van elke jaar 'n jaarverslag oor 10 sy werkzaamhede gedurende die jaar eindigende op daardie datum, aan die verantwoordelike Minister voorlê.

(b) Die verantwoordelike Minister moet 'n afskrif van die jaarverslag in die Provinsiale Parlement indien binne 14 dae nadat dit ontvang is as die Provinsiale Parlement dan in sitting is of, as die Provinsiale Parlement nie dan in sitting is nie, 15 binne 14 dae nadat die eersvolgende gewone sitting begin.

Indiening van klagtes by kantoor

6. (1) Enige persoon kan 'n klagte aangaande 'n beweerde onbillike sakepraktyk by die kantoor indien.

(2) 'n Klagte in subartikel (1) beoog wat nie skriftelik is nie, moet deur die kantoor 20 op skrif gestel word en deur die klaer as korrek bevestig en onderteken word.

Ondersoek deur kantoor

7. (1) Die kantoor kan, waar 'n klagte ingedien is wat nie klaarblyklik beuselagtig of kwelsugtig is nie, enige ondersoek wat nodig is, instel na—

- (a) 'n beweerde onbillike sakepraktyk wat redelikerwys vermoed word te bestaan of tot stand kan kom, en
- (b) 'n sakepraktyk of tipe sakepraktyk in die algemeen of met betrekking tot 'n besondere handelsartikel of belegging of enige soort handelsartikel of belegging of 'n besondere besigheid of enige klas of tipe besigheid of 'n besondere gebied, wat redelickerwys vermoed word vir die doel van of in verband met die skepping of handhawing van onbillike sakepraktyke toegepas te word.

(2) Indien die verantwoordelike Minister 'n aangeleentheid in (1)(a) of (b) beoog, na die kantoor verwys, moet die kantoor 'n ondersoek na daardie aangeleentheid uitvoer.

(3) Die kantoor kan by kennisgewing in die *Provinsiale Koerant*, enige ondersoek 35 wat hy uitvoer, bekend maak en meld dat enige persoon binne 'n tydperk in die kennisgewing gespesifiseer, skriftelike vertoë aangaande die ondersoek tot die kantoor kan rig.

(4) Die kantoor kan, vir die doel van 'n ondersoek, enige ondersoek wat uitgevoer 40 is of die bevinding van enige maatreël wat getref is deur die Verbruikersakekomitee, ingestel, of deur die nasionale Minister van Handel en Nywerheid ingevolge artikel 2 van die Wet op Verbruikersake (Onbillike Sakepraktyke), 1988 (Wet 71 van 1988) ingestel, of deur 'n ander bevoegde owerheid, insluitende 'n owerheid in 'n ander provinsie, in aanmerking neem.

(5) Indien die Verbruikersbeskermer van oordeel is dat 'n ander bevoegde owerheid 45 op 'n meer toepaslike wyse met 'n klagte kan handel, kan hy of sy te eniger tyd 'n ondersoek of 'n aspek daarvan verwys na daardie owerheid, insluitende 'n owerheid in 'n ander provinsie of 'n nasionale owerheid; met dien verstande dat die kantoor, na oorleg met die owerheid waarna die aangeleentheid verwys is, te eniger tyd die ondersoek na daardie aangeleentheid kan hervat.

50 (6) Indien enige bevoegde owerheid 'n klagte na die kantoor verwys, moet die kantoor 'n ondersoek na dié klagte uitvoer.

(7) Indien die Verbruikersbeskermer te eniger tyd in die loop van die ondersoek van 55 oordeel is dat daar geen redelike vooruitsig is dat dié ondersoek tot die instelling van verrigtinge in 'n tribunaal sal lei nie, kan hy of sy gelas dat die ondersoek beëindig moet word: met dien verstande dat, indien die Verbruikersbeskermer bewus word van feite wat na die oordeel van die Verbruikersbeskermer die hervattung van die ondersoek

the Consumer Protector's opinion may warrant the resumption of the investigation, the office may at any time resume the investigation into that matter.

(8) If the office decides not to initiate an investigation, the Consumer Protector must inform the complainant of the office's decision and of the reasons for its decision.

Summons and questioning of persons and production of books and documents

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8. (1) For purposes of an investigation, the Consumer Protector or a person in the service of the office authorised thereto by the Consumer Protector may—

- (a) summons a person who is believed to be able to furnish any information on the subject of the investigation or to have in his or her possession or custody or under his or her control a book, document or other object relating to that subject, to appear before a person in the service of the office at a time and place specified in the summons, to be questioned or to produce that book, document or other object, and 10
 - (b) question that person, under oath or affirmation administered by the Consumer Protector or another person in the service of the office authorised thereto by the Consumer Protector, and examine or retain for further information or for safe custody that book, document or other object. 15
- (2) A summons referred to in subsection (1)(a) must—
- (a) be in the prescribed form;
 - (b) contain particulars of the matter in connection with which the person concerned is required to appear; 20
 - (c) be signed by the Consumer Protector or another person in the service of the office authorised thereto by the Consumer Protector, and
 - (d) be served in the prescribed manner.
- (3) A person appearing by virtue of subsection (1)(a)— 25
- (a) may be assisted at the examination by a person of his or her choice, and
 - (b) is entitled to the prescribed witness fees.
- (4) A person is guilty of an offence if he or she, having been summoned in terms of this section, without sufficient cause does any of the following—
- (a) fails to attend at the time and place specified in the summons or to remain in attendance until the conclusion of the proceedings or until excused from further attendance; 30
 - (b) refuses to take the oath or make an affirmation;
 - (c) 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;
 - (d) fails to produce a 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, and 35
 - (e) makes a false statement to the Consumer Protector or other person designated by him or her in the service of the office, knowing such statement to be false or not believing it to be true. 40

(5) A person summoned to appear in terms of this section may not refuse to answer a question or to produce a book, document or object on the ground that he or she would thereby be exposed to a criminal charge: provided that, to the extent that the answer, book, document or object does expose the person to a criminal charge, no evidence thereof is admissible in any criminal proceedings against that person, except where that person stands trial on a charge contemplated in subsection (4)(c) to (e), or in section 319(3) of the Criminal Procedure Act, 1955 (Act 56 of 1955). 45

Investigation officers

9. (1) The Consumer Protector may appoint persons in the service of the office or other suitable persons as investigating officers. 50

(2) The Consumer Protector is deemed to be appointed an investigating officer under subsection (1).

regverdig, die kantoor te eniger tyd die ondersoek na daardie aangeleentheid kan hervat.

(8) Indien die kantoor besluit om nie 'n ondersoek te inisieer nie, moet die Verbruikersbeskermer die klaer in kennis stel van die kantoor se besluit, asook van die 5 redes daarvoor.

Dagvaarding en ondervraging van persone en voorlê van boeke en stukke

8. (1) Vir die doel van 'n ondersoek kan die Verbruikersbeskermer of 'n persoon in die diens van die kantoor wat deur die Verbruikersbeskermer daartoe gemagtig is—

- 10 (a) 'n persoon wat vermoed word enige inligting oor die onderwerp van die ondersoek te kan verstrek of enige boek, stuk of ander voorwerp wat op daardie onderwerp betrekking het, in sy of haar besit of veilige bewaring of onder sy of haar beheer het, dagvaar om op 'n tyd en plek in die dagvaarding gespesifieer, te verskyn voor 'n persoon in die diens van die kantoor om ondervra te word of om daardie boek, stuk of ander voorwerp voor te lê; en
- 15 (b) daardie persoon ondervra onder eed of plegtige verklaring opgelê deur die Verbruikersbeskermer of 'n ander persoon in die diens van die kantoor wat deur die Verbruikersbeskermer daartoe gemagtig is, en dié boek, stuk of ander voorwerp ondersoek of vir verdere inligting of vir veilige bewaring behou.

20 (2) 'n Dagvaarding in subartikel (1)(a) bedoel, moet—

- (a) in die voorgeskrewe vorm wees;
- (b) besonderhede bevat van die aangeleentheid in verband waarmee die betrokke persoon moet verskyn;
- 25 (c) onderteken wees deur die Verbruikersbeskermer of 'n ander persoon in die diens van die kantoor wat deur die Verbruikersbeskermer daartoe gemagtig is, en
- (d) op die voorgeskrewe wyse beteken word.

(3) 'n Persoon wat uit hoofde van subartikel (1)(a) verskyn—

- 30 (a) kan by die ondervraging bygestaan word deur 'n persoon van sy of haar keuse, en
- (b) is geregtig op die voorgeskrewe getuiegeld.

(4) 'n Persoon is skuldig aan 'n misdryf indien hy of sy, wanneer ingevolge hierdie artikel gedagvaar, sonder voldoende rede enige van die volgende doen—

- 35 (a) versuum om te verskyn op die tyd en plek in die dagvaarding gespesifieer, of om aanwesig te bly tot die beëindiging van die verrigtinge of totdat hy of sy van verdere bywoning verskoon word;
- (b) weier om die eed af te lê of die plegtige verklaring te doen;
- (c) weier om enige vraag wat wettig aan hom of haar gestel is, te beantwoord of na sy of haar beste wete en oortuiging ten volle en op bevredigende wyse te beantwoord;
- 40 (d) versuum om 'n boek, stuk of voorwerp in sy of haar besit of veilige bewaring of onder sy of haar beheer wat hy of sy moet voorlê, voor te lê, en
- (e) 'n valse verklaring doen aan die Verbruikersbeskermer of aan 'n ander persoon aangewys deur hom of haar in die diens van die kantoor, in die wete dat daardie verklaring vals is of terwyl hy of sy nie dink dat dit juis is nie.

(5) 'n Persoon wat gedagvaar word om ingevolge hierdie artikel te verskyn mag nie weier om 'n vraag te beantwoord of 'n boek, stuk of voorwerp voor te lê op grond daarvan dat hy of sy daardeur aan 'n kriminele aanklag blootgestel sou word nie: met dien verstande dat, in die mate dat die antwoord, boek, stuk of voorwerp die persoon wel aan 'n kriminele aanklag blootstel, geen bewys daarvan in enige kriminele verrigting teen daardie persoon toelaatbaar is nie, uitgesonderd waar daardie persoon teregstaan op 'n aanklag in subartikel (4)(c) tot (e) of in artikel 319(3) van die Strafproseswet, 1955 (Wet 56 van 1955) beoog.

Ondersoekbeamptes

55 9. (1) Die Verbruikersbeskermer kan persone in die diens van die kantoor of ander gesikte persone as ondersoekbeamptes aanstel.

(2) Die Verbruikersbeskermer word geag kragtens subartikel (1) as ondersoekbeampte aangestel te wees.

(3) An investigating officer who is not in the full-time service of the State shall be appointed on the prescribed conditions and remuneration.

(4) An investigating officer must be provided with a certificate of appointment signed by or on behalf of the Consumer Protector, in which it is stated that he or she is an investigating officer appointed in terms of section 9(1) of this Act. 5

(5) An investigating officer must have the certificate of appointment on his or her person when performing a function in terms of this Act.

Search and seizure

10. (1) In order to obtain information required by the office in relation to an investigation an investigating officer may, subject to the provisions of this section, enter premises on or in which a book, document or other object connected with that investigation is or is suspected to be, and may—

- (a) inspect or search those premises, and there make the enquiries that are necessary for the purpose of obtaining that information;
- (b) examine an object found on or in the premises which has or might have a bearing on the investigation and request from the owner or person in charge of the premises or from any person in whose possession or charge that object is, information about that object;
- (c) make copies of or extracts from a book or document found on or in the premises which has or might have a bearing on the investigation in question, and request from any person who is suspected of having the necessary information, an explanation of any entry therein, and
- (d) seize, against the issue of a receipt, anything on or in the premises which has or might have a bearing on the investigation in question, if the investigating officer needs to retain it for further examination or for safe custody. 25

(2) Unless the owner or person in charge of the premises concerned has consented thereto in writing, an investigation officer may only enter premises and exercise powers contemplated in subsection (1) under a search warrant issued by a judge or magistrate if it appears to that judge or magistrate from information given to such judge or magistrate on oath or solemn affirmation or by sworn affidavit that there are reasonable grounds to suspect— 30

- (a) that an unfair business practice exists or may come into existence, and
- (b) that a book, document or other object which may afford evidence of that unfair business practice is on or in those premises.

(3) A search warrant contemplated in subsection (2) must— 35

- (a) authorise an investigating officer mentioned in the warrant to enter the premises identified in the warrant for the purpose of exercising a power contemplated in subsection (1);
- (b) be executed between the hours of 07:00 and 19:00, unless the judge or magistrate authorises the execution thereof by night, and
- (c) be of force until it is executed, cancelled by a judge or magistrate, or a period of one month from the day of issue expires, whichever occurs first. 40

(4) An investigating officer executing a search warrant under this section must, before its execution—

- (a) show his or her certificate of appointment to a person whose rights may be affected, and
- (b) hand a copy of the warrant to that person.

(5) A person from whose possession or charge a book or document has been taken under this section must, as long as it is in the possession or charge of the investigating officer or of the office, be allowed on request to make copies thereof or to take extracts therefrom at any reasonable time at his or her own expense and under the supervision of that investigating officer or a person in the service of the office. 50

(6) A person is guilty of an offence if he or she—

- (a) obstructs or hinders an investigating officer in the performance of his or her functions in terms of this section;
- (b) during enquiries made under subsection (1)(a), or having been requested to give information or an explanation under subsection (1)(b) or (c)—
 - (i) without sufficient cause refuses to answer, or to answer fully and satisfactorily to the best of his or her knowledge and belief, such enquiry or request for information, or

(3) 'n Ondersoekbeampte wat nie in die heeltydse diens van die Staat is nie, moet op die voorgeskrewe voorwaardes en teen die voorgeskrewe besoldiging aangestel word.

(4) 'n Ondersoekbeampte moet voorsien word van 'n aanstellingsertifikaat, deur of namens die Verbruikersbeskermer onderteken, waarin verklaar word dat hy of sy 'n ondersoekbeampte is wat ingevolge artikel 9(1) van hierdie Wet aangestel is.

(5) 'n Ondersoekbeampte moet die sertifikaat op sy of haar persoon dra wanneer hy of sy 'n funksie ingevolge hierdie Wet verrig.

Ondersoek en beslaglegging

10. (1) Ten einde inligting met betrekking tot 'n ondersoek wat deur die kantoor verlang word te verkry, kan 'n ondersoekbeampte alleenlik, behoudens die bepalings van hierdie artikel, 'n perseel betree waarop of waarin 'n boek, stuk of ander voorwerp rakende daardie ondersoek is of vermoedelik is, en kan daardie ondersoekbeampte—

(a) daardie perseel inspekteer of deursoek, en daar die navrae doen wat nodig is vir die doel van die verkryging van dié inligting;

15 (b) 'n voorwerp wat op of in die perseel gevind word en wat betrekking op die ondersoek het of kan hê, ondersoek en inligting van die eienaar of die persoon in beheer van die perseel of van enige persoon in wie se besit of sorg daardie voorwerp is, inligting aangaande daardie voorwerp verlang;

20 (c) kopieë van of uittreksels uit 'n boek of stuk op of in die perseel gevind wat betrekking op die betrokke ondersoek het of kan hê, maak, en van enige persoon wat vermoed word die nodige inligting te hê, 'n verduideliking van enige inskrywing daarin verlang, en

25 (d) teen uitreiking van 'n kwitansie, beslag lê op enigets op of in die perseel wat betrekking op die betrokke ondersoek het of kan hê, indien die ondersoekbeampte dit moet behou vir verdere ondersoek of vir veilige bewaring.

(2) Tensy die eienaar of persoon in beheer van die betrokke perseel skriftelike verlof daartoe gegee het, mag 'n ondersoekbeampte slegs 'n perseel betree en die bevoegdhede in subartikel (1) beoog, uitoefen kragtens 'n visenteringslasbrief deur 'n regter of landdros uitgereik indien dit vir daardie regter of landdros uit inligting wat onder eed of plegtige verklaring of beëdigde verklaring aan hom of haar verstrek is, voorkom asof daar redelike gronde is om te vermoed—

(a) dat 'n onbillike sakepraktyk bestaan of moontlik tot stand kan kom, en

(b) dat 'n boek, stuk of ander voorwerp wat bewys van daardie onbillike sakepraktyk kan lewer, op of in daardie perseel is.

35 (3) 'n Visenteringslasbrief in subartikel (2) beoog, moet—

(a) 'n ondersoekbeampte in die visenteringslasbrief genoem, magtig om die perseel wat in die lasbrief geïdentifiseer word, te betree met die doel om 'n bevoegdheid in subartikel (1) beoog, uit te voer;

40 (b) tussen die ure 07:00 en 19:00 uitgevoer word, tensy die regter of landdros die uitvoering daarvan gedurende die nag magtig, en

(c) van krag wees totdat dit uitgevoer word, deur 'n regter of landdros teruggetrek word, of 'n tydperk van een maand vanaf die dag van uitreiking verstryk, watter ook al eerste plaasvind.

(4) 'n Ondersoekbeampte wat 'n visenteringslasbrief kragtens hierdie artikel uitvoer, moet voor die uitvoering daarvan—

(a) sy of haar aanstellingsertifikaat toon aan 'n persoon wie se regte geraak kan word, en

(b) 'n kopie van die investeringslasbrief aan daardie persoon oorhandig.

(5) 'n Persoon uit wie se besit of sorg 'n boek of stuk kragtens hierdie artikel weggeneem is, moet, solank dit in die besit of sorg van die ondersoekbeampte of van die kantoor is, toegelaat word om op eie koste en onder toesig van daardie ondersoekbeampte of 'n persoon in die diens van die kantoor, te enige redelike tyd afskrifte daarvan of uittreksels daaruit te maak.

(6) 'n Persoon is skuldig aan 'n misdryf indien hy of sy—

55 (a) 'n ondersoekbeampte by die uitvoering van sy of haar werkzaamhede ingevolge hierdie artikel belemmer of hinder;

(b) tydens navrae kragtens subartikel (1)(a) gedoen of op 'n versoek kragtens subartikel (1)(b) of (c) om inligting of 'n verduideliking te verstrek—

60 (i) sonder voldoende rede weier om so 'n navraag of versoek om inligting te beantwoord of om dit ten volle en bevredigend na sy of haar beste wete en oortuiging te beantwoord, of

(ii) gives an answer or information or an explanation which is false or misleading, knowing it to be false or misleading.

(7) A person from whom information or an explanation is requested in terms of this section is not entitled to refuse to answer a question or to produce a book, document or object on the ground that he or she would thereby be exposed to a criminal charge: provided that, to the extent that the answer, book, document or object does expose the person to a criminal charge, no evidence thereof will be admissible in criminal proceedings against that person, except where that person stands trial on a charge contemplated in subsection (6)(a) or (b), or in section 319(3) of the Criminal Procedure Act, 1955 (Act 56 of 1955). 10

Negotiation of arrangements to discontinue unfair business practice

- 11.** (1) The office may negotiate and conclude an arrangement with any person for—
 (a) the stay or prevention of an unfair business practice;
 (b) the reimbursement, with interest, of affected consumers;
 (c) the stay or prevention of any aspect of an unfair business practice, or 15
 (d) any other matter relating to an unfair business practice.
- (2) An arrangement—
 (a) may be concluded at any time after the institution of an investigation, but before the making of a final order by a tribunal;
 (b) must be in writing and signed by the parties thereto; 20
 (c) must, if proceedings have been instituted in terms of section 18 or 20(7), be subject to confirmation by a tribunal in accordance with section 21, and
 (d) may be confirmed by a tribunal in accordance with section 21 without proceedings having yet been instituted in terms of section 18 or 20(7).

Institution of proceedings upon completion of investigation 25

- 12.** (1) Upon completion of an investigation, the Consumer Protector may institute proceedings in the tribunal of the area concerned—
 (a) against the person alleged to be responsible for the unfair business practice, or
 (b) with a view to the prohibition of a business practice or type of business practice, in general or in relation to a particular commodity or investment or any kind of commodity or investment or a particular business or any class or type of business or a particular area, which is commonly applied for the purpose of or in connection with the creation or maintenance of unfair business practices. 30
- (2) When the office decides whether or not to institute proceedings, the Consumer Protector must inform the complainant of the decision reached and the reasons for this decision. 35

Establishment of Consumer Affairs Tribunal

- 13.** (1) The responsible Minister must establish one or more Consumer Affairs Tribunals for the Province by notice in the *Provincial Gazette*. 40
- (2) A tribunal must be established for the area defined in that notice.
- (3) The responsible Minister may, in like manner—
 (a) vary such an area, and
 (b) withdraw such a notice and abolish such a tribunal.
- (4) The seat or seats of a tribunal must be at such place or places as the responsible Minister may from time to time determine in general or in relation to particular proceedings. 45

Appointment of tribunal members

- 14.** (1) Members of a tribunal must be appointed by the responsible Minister in concurrence with the committee. 50
- (2) A tribunal must consist of four persons, namely—
 (a) a chairperson, who must be—
 (i) a retired judge of the High Court, or
 (ii) an attorney, advocate, retired magistrate or a lecturer in law at a

(ii) 'n antwoord of inligting verstrek of 'n verduideliking bied wat vals of misleidend is in die wete dat dit vals of misleidend is.

(7) 'n Persoon van wie inligting of 'n verduideliking ingevolge hierdie artikel verlang word, is nie geregtig om te weier om 'n vraag te beantwoord of 'n boek, stuk of voorwerp voor te lê op grond daarvan dat hy of sy daardeur aan 'n kriminele aanklag blootgestel sou word nie: met dien verstande dat, in die mate dat die antwoord, boek, stuk of voorwerp die persoon wel aan 'n kriminele aanklag blootstel, geen bewys daarvan in kriminele verrigtinge teen daardie persoon toelaatbaar is nie, uitgesonderd waar daardie persoon teregstaan op 'n aanklag in subartikel (6)(a) of (b), of in artikel 319(3) van die Strafproseswet, 1955 (Wet 56 van 1955) beoog.

Onderhandeling oor reëlings om onbillike sakepraktyk te staak

- 11.(1) Die kantoor kan 'n reëling met enige persoon onderhandel en tref vir—
 (a) die staking of voorkoming van 'n onbillike sakepraktyk;
 (b) die skadeloosstelling, met rente, van verbruikers wat geraak is;
 (c) die staking of voorkoming van enige aspek van 'n onbillike sakepraktyk, of
 (d) enige ander aangeleentheid met betrekking tot 'n onbillike praktyk.
- (2) 'n Reëling—
 (a) kan te eniger tyd na die instelling van 'n ondersoek getref word, maar voordat 'n finale bevel deur 'n tribunaal gegee word;
 (b) moet skriftelik wees en deur die partye daarby onderteken word;
 (c) is, indien verrigtinge ingevolge artikel 18 of 20(7) ingestel is, onderworpe aan bekragtiging deur 'n tribunaal ooreenkomsdig artikel 21, en
 (d) kan deur 'n tribunaal bekragtig word ooreenkomsdig artikel 21 sonder dat verrigtinge reeds ingevolge artikel 18 of 20(7) ingestel is.

25 Instelling van verrigtinge by afhandeling van ondersoek

12. (1) By die voltooiing van 'n ondersoek kan die Verbruikersbeskermer verrigtinge in die tribunaal van die betrokke gebied instel—
 (a) teen die persoon wat na bewering vir die onbillike sakepraktyk verantwoordelik is, of
 (b) met die oog op 'n verbod op 'n sakepraktyk of tipe sakepraktyk in die algemeen of met betrekking tot 'n besondere handelsartikel of belegging of enige soort handelsartikel of belegging of 'n besondere besigheid of enige klas of tipe besigheid of 'n besondere gebied, wat algemeen toegepas word vir die doel van of in verband met die skepping of handhawing van onbillike sakepraktyke.
- (2) Wanneer die kantoor besluit om verrigtinge in te stel al dan nie, moet die Verbruikersbeskermer die klaer in kennis stel van die besluit wat geneem is en die redes vir die besluit.

Instelling van Verbruikersakatribunaal

13. (1) Die verantwoordelike Minister moet een of meer Verbruikersakatribunale vir die Provinsie by kennisgewing in die *Provinsiale Koerant* instel.
 (2) 'n Tribunaal moet ingestel word vir die gebied in daardie kennisgewing omskryf.
 (3) Die verantwoordelike Minister kan, op dergelyke wyse—
 (a) so 'n gebied verander, en
 (b) so 'n kennisgewing terugtrek en so 'n tribunaal afskaf.
 (4) Die setel of setels van 'n tribunaal moet op die plek of plekke wees wat die verantwoordelike Minister van tyd tot tyd in die algemeen of met betrekking tot besondere verrigtinge bepaal.

Aanstelling van tribunaallede

14. (1) Lede van 'n tribunaal moet deur die verantwoordelike Minister met die instemming van die komitee aangestel word.
 (2) 'n Tribunaal moet uit vier persone bestaan, naamlik—
 (a) 'n voorsitter wat—
 (i) 'n afgetrede regter van die Hoë Hof moet wees, of
 (ii) 'n prokureur, advokaat, afgetrede landdros of lektor in die regte aan 'n

- (a) university with not less than ten years cumulative experience in one or more such capacities, and
- (b) three additional members having special knowledge or experience of consumer advocacy, economics, industry or commerce.
- (3) The responsible Minister may appoint an alternate member for every member of a tribunal.
- (4) The responsible Minister must, by notice in the *Provincial Gazette* and an advertisement in the printed media regarded as appropriate by the responsible Minister, invite interested parties to nominate candidates, within 21 days of the publication of the notice and the advertisement, for consideration as members of a tribunal.
- (5) The names of the nominees must thereafter be published in the *Provincial Gazette* and the said printed media for comment.
- (6) Interviews with nominees are open to the public.
- (7) Interviews must be conducted by the responsible Minister, or by an official of the Department duly appointed for this purpose by the responsible Minister, and such members of the committee as the chairperson of the committee, in concurrence with the responsible Minister, may appoint for this purpose.
- (8) A member and an alternate member of a tribunal must, before assuming office, make or subscribe an oath or a solemn affirmation in the prescribed form before the responsible Minister.
- (9) A member and an alternate member of a tribunal must be appointed for the period and be paid the remuneration and allowances determined by the responsible Minister, and the remuneration and allowances may vary for different members and alternate members, as determined.
- Persons disqualified from being members of tribunals**
15. (1) A person may not be appointed or remain a member of a tribunal if he or she is not a fit and proper person or—
- (a) is not a citizen of the Republic of South Africa residing in the Province;
 - (b) is a public servant;
 - (c) at the time is, or during the preceding twelve months was, an office bearer or employee of any party, movement, organisation or body of a party political nature;
 - (d) is an unrepentant insolvent;
 - (e) has at any time been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, an offence under this Act or the Corruption Act, 1992 (Act 94 of 1992), or any offence involving dishonesty;
 - (f) has at any time been removed from an office of trust on account of misconduct, or
 - (g) is absent from two or more consecutive meetings of a tribunal without leave of the chairperson.
- (2) A person may not remain a member of a tribunal if he or she fails to disclose an interest which would require him or her to be recused, unless the responsible Minister, in concurrence with the committee, decides otherwise.
- Constitution of tribunal**
16. (1) Subject to subsection (4), the quorum of a tribunal consists of three members.
- (2) Except where otherwise provided, a decision of the majority of members of a tribunal present is the decision of the tribunal.
- (3) A member of a tribunal must recuse himself or herself from proceedings on the grounds of an interest or association likely to affect his or her impartiality with regard to the matter under discussion, or which is likely to be seen to do so.
- (4) If at any stage during the proceedings before a tribunal—
- (a) the chairperson becomes incapable of acting or is absent, the proceedings must begin afresh;
 - (b) any other member sitting in the proceedings becomes incapable of acting or is absent, the proceedings must continue before the remaining members, and

- (a) universiteit met minstens tien jaar kumulatiewe ondervinding in een of meer van dié hoedanighede moet wees, en
- (b) drie bykomende lede met besondere kennis of ondervinding van verbruikersvoorspraak of die ekonomiese, nywerheid of handel.
- 5 (3) Die verantwoordelike Minister kan 'n plaasvervangende lid vir elke lid van 'n tribunaal aanstel.
- (4) Die verantwoordelike Minister moet, by kennisgewing in die *Provinsiale Koerant* en 'n advertensie in die gedrukte media wat die verantwoordelike Minister geskik ag, belanghebbende partye nooi om kandidate binne 21 dae vanaf die publikasie 10 van die kennisgewing en die advertensie te benoem vir oorweging as lede van 'n tribunaal.
- (5) Die name van die benoemdes moet daarna in die *Provinsiale Koerant* en die genoemde gedrukte media gepubliseer word vir kommentaar.
- (6) Onderhoude met benoemdes is oop vir die publiek.
- 15 (7) Onderhoude moet gevoer word deur die verantwoordelike Minister, of deur 'n beampete van die Departement wat behoorlik deur die verantwoordelike Minister aangestel is vir hierdie doel, en deur dié lede van die komitee wat die voorzitter van die komitee, met die instemming van die verantwoordelike Minister, vir hierdie doel aanstel.
- 20 (8) 'n Lid en 'n plaasvervangende lid van 'n tribunaal moet, voor die aanvaarding van diens, 'n eed of 'n plegtige verklaring in die voorgeskrewe vorm voor die verantwoordelike Minister aflê of doen.
- (9) 'n Lid en 'n plaasvervangende lid van 'n tribunaal moet vir die tydperk aangestel word en moet die besoldiging en toelaes betaal word wat deur die verantwoordelike 25 Minister bepaal word, en die besoldiging en toelaes kan wissel vir verskillende lede en plaasvervangende lede, soos bepaal.

Persone wat nie kwalifiseer om lede van tribunaal te wees nie

15. (1) 'n Persoon mag nie as lid van 'n tribunaal aangestel word of 'n lid bly as hy of sy nie 'n gesikte en gepaste persoon is nie of—
- 30 (a) nie 'n burger van die Republiek van Suid-Afrika is wat in die Provinsie woon nie;
- (b) 'n staatsamprentaar is;
- (c) op daardie tydstip, of gedurende die voorafgaande twaalf maande, 'n amptsdraer of werknemer van enige party, beweging, organisasie of liggaaam van 'n partypolitieke aard is of was nie;
- (d) 'n insolvente persoon is wat nie gerehabiliteer is nie;
- (e) te eniger tyd aan diefstal, bedrog, vervalsing of uitgifte van 'n vervalste dokument, meineend, 'n misdryf kragtens hierdie Wet of die Wet op Korruption, 1992 (Wet 94 van 1992), of enige misdryf waarby oneerlikheid betrokke is, hetsy in die Republiek of elders, skuldig bevind is;
- (f) te eniger tyd op grond van wangedrag uit 'n vertrouensamp ontslaan is, of
- (g) van twee of meer opeenvolgende vergaderings van 'n tribunaal afwesig is sonder verlof van die voorzitter.
- (2) 'n Persoon mag nie'n lid van 'n tribunaal bly as hy of sy versuim om 'n belang 45 te verklaar wat sy of haar onttrekking aan die aangeleentheid sou vereis nie, tensy die verantwoordelike Minister, met die instemming van die komitee, andersins besluit.

Samestelling van tribunaal

16. (1) Behoudens subartikel (4) is die kworum van 'n tribunaal drie lede.
- (2) Uitgesonderd waar anders bepaal, is 'n besluit van die meerderheid van lede van 50 'n tribunaal wat aanwesig is, die besluit van die tribunaal.
- (3) 'n Lid van 'n tribunaal moet hom of haar aan verrigtinge onttrek op grond van 'n belang of verband wat waarskynlik sy of haar onpartydigheid met betrekking tot die aangeleentheid onder oorweging kan affekteer, of wat waarskynlik as sodanig beskou sal word.
- 55 (4) Indien op enige stadium tydens die verrigtinge voor 'n tribunal—
- (a) die voorzitter nie in staat is om op te tree nie of afwesig is, moet die verrigtinge van voor af begin;
- (b) enige ander lid wat sitting in die verrigtinge het, nie in staat is om op te tree nie of afwesig is, moet die verrigtinge voortgaan voor die oorblywende lede, en

- (c) two or more members become incapable of acting or are absent, the proceedings must begin afresh unless all the parties to the proceedings agree unconditionally in writing to accept the decision of the majority of the remaining members.
- (5) If the proceedings continue before an even number of members and there is a split decision, the chairperson's decision is decisive. 5

Powers, functions and duties of tribunal

17. (1) A tribunal—
 (a) must hear, consider and make a decision on any matter which is before it by virtue of proceedings envisaged by this Act; 10
 (b) may award costs, on a scale to be prescribed or in an amount determined by the tribunal, against any person found to have conducted the unfair business practice concerned and to have acted in a fraudulent or grossly unreasonable manner;
 (c) may generally deal with all matters necessary or incidental to the performance of its functions under this Act, and 15
 (d) must exercise any other powers and perform the functions and duties assigned to it under this Act.
 (2) Process of a tribunal runs throughout the Province and orders of a tribunal have force throughout the Province. 20
 (3) The responsible Minister must, subject to the laws governing the Public Service, appoint—
 (a) a secretary for every tribunal to perform the administrative work incidental to the functions of the tribunal, and
 (b) any other persons that are necessary to assist the secretary of a tribunal. 25

Proceedings of tribunals

18. (1) Proceedings before tribunals must be instituted by the Consumer Protector and, except in respect of proceedings instituted in terms of section 20, be instituted by summons in the prescribed form, to be served on the person concerned in any manner that is prescribed, which may include service outside the Province. 30
 (2) A tribunal may direct that the public or a member thereof may not attend proceedings of the tribunal or a portion thereof, if this is justified in the interests of—
 (a) the conduct of the proceedings or the consideration of the matter in question, or
 (b) the protection of the privacy of a person alleged to be involved in the unfair business practice in question or of the confidentiality of information relating to that person. 35
 (3) All proceedings of a tribunal are, subject to the provisions of subsection (2), open to the public.
 (4) Proceedings before a tribunal must be prosecuted by the office, which may be represented or assisted by an advocate, attorney, or any other person approved by the Consumer Protector. 40
 (5) Subject to section 20(4), a person against whom proceedings are instituted or who may be adversely affected by those proceedings, is entitled to participate in the proceedings, and may appear in person or be represented or assisted by an advocate, attorney or any other person. 45
 (6) A tribunal must keep a record of its proceedings.

Summoning of witnesses and production of documents

19. (1) For the purpose of ascertaining any matter relating to proceedings before a tribunal, a tribunal may—
 (a) by summons in the prescribed form and under the hand of the secretary of the tribunal addressed to any person, including the person alleged to have performed the unfair business practice and served in the prescribed manner, require such person to appear before the tribunal at a time and place specified 50

- (c) twee of meer lede nie in staat is om op te tree nie of afwesig is, moet die verrigtinge van voor af begin, tensy al die partye by die verrigtinge onvoorwaardelik skriftelik instem om die besluit van die meerderheid van die oorblywende lede te aanvaar.
- 5 (5) Indien die verrigtinge voortgaan voor 'n gelyke getal lede en daar 'n verdeelde besluit is, is die voorsitter se besluit beslissend.

Bevoegdhede, funksies en pligte van tribunaal

- 6 17. (1) 'n Tribunaal—
- 10 (a) moet enige aangeleentheid wat vanweë verrigtinge by hierdie Wet beoog, voor hom is, aanhoor, oorweeg en 'n besluit daaroor neem;
- 15 (b) kan koste op 'n skaal wat voorgeskryf moet word of vir 'n bedrag deur die tribunaal bepaal, toeken teen enige persoon wat skuldig bevind word daaraan dat hy of sy die betrokke onbillike sakepraktyk bedryf het en op 'n bedrieglike of uiters onredelike wyse opgetree het;
- 20 (c) kan in die algemeen handel met alle aangeleenthede wat nodig is vir of in verband staan met die verrigting van sy funksies kragtens hierdie Wet, en (d) moet enige ander bevoegdhede uitoefen en die funksies en pligte verrig wat kragtens hierdie Wet daaraan toegewys word.
- (2) Die geregtelike proses van 'n tribunaal geld oor die hele Provinsie, en bevele van 'n tribunaal is oor die hele Provinsie van krag.
- (3) Die verantwoordelike Minister moet, behoudens die wette wat die Staatsdiens beheer, die volgende aanstel:
- 25 (a) 'n sekretaris vir elke tribunaal om die administratiewe werk wat met die funksies van die tribunaal verband hou, te verrig, en (b) enige ander persone wat nodig is om die sekretaris van 'n tribunaal van hulp te wees.

Verrigtinge van tribunale

18. (1) Verrigtinge voor tribunale moet deur die Verbruikersbeskermer ingestel word en, uitgesonderd waar verrigtinge ingevolge artikel 20 ingestel word, moet dit ingestel word by wyse van 'n dagvaarding in die voorgeskrewe vorm aan die betrokke persoon beteken op die wyse wat voorgeskryf is, wat betekening buite die Provinsie kan insluit.
- (2) 'n Tribunaal kan gelas dat die publiek of 'n lid van die publiek nie verrigtinge van die tribunaal of 'n deel daarvan mag bywoon nie, indien geregtverdig in die belang van—
- 35 (a) die uitvoering van die verrigtinge of die oorweging van die betrokke aangeleentheid, of (b) die beskerming van die privaatheid van 'n persoon wat na bewering betrokke is by die betrokke onbillike sakepraktyk of die vertroulikheid van inligting met betrekking tot daardie persoon.
- 40 (3) Alle verrigtinge van 'n tribunaal is, behoudens die bepalings van subartikel (2), oop vir die publiek.
- (4) Die kantoor lei die vervolging in verrigtinge voor 'n tribunaal en kan verteenwoordig of bygestaan word deur 'n advokaat, prokureur of enige ander persoon deur die Verbruikersbeskermer goedgekeur.
- 45 (5) Behoudens artikel 20 (4) is 'n persoon teen wie verrigtinge ingestel word of wat nadelig geraak kan word deur dié verrigtinge, is geregtig om deel te neem aan die verrigtinge, en kan hy of sy persoonlik verskyn of verteenwoordig of bygestaan word deur 'n advokaat, prokureur of enige ander persoon.
- (6) 'n Tribunaal moet 'n rekord van sy verrigtinge hou.

Dagvaarding van getuies en voorlegging van stukke

19. (1) Vir die doel van die vasstelling van enige aangeleentheid met betrekking tot verrigtinge voor 'n tribunaal, kan 'n tribunaal—
- 55 (a) by wyse van 'n dagvaarding, in die voorgeskrewe vorm en onderteken deur die sekretaris van die tribunaal, wat aan enige persoon, insluitende die persoon wat na bewering die onbillike praktyk bedryf het, gerig word en beteken word op die voorgeskrewe wyse, van daardie persoon verlang om op 'n tyd en plek in die dagvaarding gespesifiseer, voor die tribunaal te verskyn

in the summons, to give evidence and to produce a book, document or object in the possession or custody or under the control of the person which may be reasonably necessary, material and relevant in connection with those proceedings;

- (b) require such person to take an oath or make an affirmation, and
- (c) question such person and examine any book, document or object which he or she was required to produce.

(2) A person is guilty of an offence if he or she, when summoned in terms of this section, without sufficient cause—

- (a) fails to attend at the time and place specified in the summons or to remain in attendance until the conclusion of the proceedings or until excused by a tribunal from further attendance;
- (b) refuses to take the oath or make an affirmation;
- (c) refuses to answer, or to answer fully and satisfactorily to the best of his or her knowledge or belief, any question lawfully put to him or her;
- (d) fails to produce a 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
- (e) makes a false statement before a tribunal knowing such statement to be false or not knowing or believing it to be true.

(3) A person who is summoned to appear in terms of this section may not refuse to answer a question or to produce a book, document or object on the ground that he or she would thereby be exposed to a criminal charge: provided that, to the extent that the answer, book, document or object does expose the person to a criminal charge, no evidence thereof is admissible in any criminal proceedings against that person, except where that person stands trial on a charge contemplated in subsection (2)(c) to (e), or in section 319(3) of the Criminal Procedure Act, 1955 (Act 56 of 1955).

(4) A person who has attended the proceedings of a tribunal as a witness is entitled to the prescribed witness fee.

Urgent temporary orders

20. (1) A tribunal may, upon presentation of information by the office, issue a temporary order, subject to the provisions of subsection (2) or (3)—

- (a) prohibiting a person mentioned in the order from performing an act connected with the unfair business practice in question;
- (b) attaching money or other property or assets, whether corporeal or incorporeal, movable or immovable, held by that person;
- (c) making any other order that may be necessary to prevent the prejudice in question, and
- (d) authorising an investigating officer or a person in the service of the office to take the action specified in the order.

(2) An order contemplated in subsection (1)(a) may not be made unless the tribunal—

- (a) has a reasonable suspicion that an unfair business practice exists involving the person under investigation;
- (b) has a reasonable apprehension that without such action a consumer or a group or a class of consumers will be irreparably harmed;
- (c) is satisfied that there is no alternative legal remedy available, and
- (d) after considering what is stated above, is satisfied that the prospect of harm to consumers if the order is not granted, outweighs the harm to the interests of the affected person or persons if the order were granted.

(3) An order contemplated in subsection (1)(b) may not be made unless, in addition to meeting the requirements contained in subsection (2), the tribunal has a reasonable suspicion that the affected person has or will have the intention to defeat the claims of consumers by concealing, dissipating or alienating the money or other property or assets.

(4) Where the interests of justice cannot otherwise be served, an urgent temporary order under this section may be issued without notice to the affected person.

- vir die lewering en voorlegging van getuienis en van 'n boek, stuk of voorwerp in die besit of veilige bewaring of onder die beheer van daardie persoon, wat redelikerwys nodig is vir en wesenlik en relevant is by dié verrigting;
- 5 (b) van so 'n persoon verlang om 'n eed af te lê of 'n plegtige verklaring te doen, en
 (c) so 'n persoon ondervra en enige boek, stuk of voorwerp wat hy of sy versoek was om voor te lê, te ondersoek.
- (2) 'n Persoon is skuldig aan 'n misdryf indien hy of sy, wanneer gedagvaar ingevolge hierdie artikel, sonder voldoende rede—
- 10 (a) versuim om die verrigtinge op die tyd en plek in die dagvaarding gespesifiseer, by te woon of aanwesig te bly tot die beëindiging van die verrigtinge of totdat hy of sy deur 'n tribunaal van verdere bywoning verskoon is;
 (b) weier om die eed af te lê of 'n plegtige verklaring te doen;
 (c) weier om enige vraag wat wettig aan hom of haar gestel word, te beantwoord, of ten volle en bevredigend na die beste van sy of haar wete of oortuiging te beantwoord;
 (d) versuim om 'n boek, stuk of voorwerp voor te lê wat in sy of haar besit of veilige bewaring of onder sy of haar beheer is en wat hy of sy moet voorlê,
 (e) 'n valse verklaring voor 'n tribunaal doen, in die wete dat so 'n verklaring vals is of terwyl hy of sy nie weet of nie dink dat dit juis is nie.
- (3) 'n Persoon wat gedagvaar word om ingevolge hierdie artikel te verskyn, mag nie weier om 'n vraag te beantwoord of 'n boek, stuk of voorwerp voor te lê op grond daarvan dat hy of sy daardeur aan 'n kriminele aanklag blootgestel sal word nie: met dien verstande dat, in die mate dat die antwoord, boek, stuk of voorwerp die persoon wel aan 'n kriminele aanklag blootstel, geen bewys daarvan in enige kriminele verrigting teen daardie persoon toelaatbaar is nie, uitgesonderd waar daardie persoon teregstaan op 'n aanklag in subartikel (2)(c) tot (e), of in artikel 319(3) van die Strafproseswet, 1955 (Wet 56 van 1955) beoog.
- (4) 'n Persoon wat die verrigtinge van 'n tribunaal as 'n getuie bygewoon het, is geregtig op die voorgeskrewe getuiegeld.

Dringende tydelike bevele

20. (1) 'n Tribunaal kan, wanneer inligting deur die kantoor voorgelê word, 'n tydelike bevel behoudens die bepalings van subartikel (2) of (3) uitrek—
- 35 (a) wat 'n persoon in die bevel genoem, verbied om 'n handeling in verband met die betrokke onbillike sakepraktyk te verrig;
 (b) wat beslag lê op geld of ander eiendom, hetsy liggaamlik of onliggaamlik, roerend of onroerend, wat deur daardie persoon gehou word;
 (c) wat enige ander bevel gee wat nodig kan wees om die betrokke skade te voorkom, en
 (d) wat 'n ondersoekbeampte of 'n persoon in die diens van die kantoor magtig om die stappe in die bevel gespesifiseer, te doen.
- (2) 'n Bevel in subartikel (1)(a) beoog, mag nie gegee word nie tensy die tribunaal—
- 40 (a) redelikerwys vermoed dat 'n onbillike sakepraktyk bestaan waarby die persoon wat ondersoek word, betrokke is;
 (b) redelikerwys vrees dat 'n verbruiker of 'n groep of klas verbruikers sonder dié stap onherstelbaar geskaad sal word;
 (c) tevrede is dat daar geen alternatiewe regsmiddel beskikbaar is nie, en
 (d) na oorweging van bogenoemde, tevrede is dat die vooruitsig op skade vir verbruikers indien die bevel nie gegee word nie, groter is as die skade vir die belang van die persoon of persone wat geraak word.
- (3) 'n Bevel in subartikel (1)(b) beoog, mag nie gegee word nie tensy, benewens voldoening aan die vereistes vervat in subartikel (2), die tribunaal redelikerwys vermoed dat die persoon wat geraak word, van voornemens is of sal wees om die aansprake van verbruikers te verydel deur die geld of ander eiendom of bates te versteek, verkwis of te vervreem.
- (4) Waar die belang van die gereg nie op 'n ander wyse gedien kan word nie, kan 'n dringende tydelike bevel kragtens hierdie artikel uitgereik word sonder kennisgewing aan die persoon wat geraak word.

(5) An order in terms of subsection (1), and any amendment, withdrawal or extension thereof in terms of subsection (6), must be served on the persons affected thereby, together with the reasons relied upon by the tribunal when issuing that order and a notification of the right of those persons under subsection (6)(a), as well as the right to appeal against the decision of the tribunal in terms of section 25, and, where a tribunal so directs, be made known by notice in the *Provincial Gazette* and in the other media regarded to be appropriate by a tribunal.

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(6) A temporary order contemplated in subsection (1)—

- (a) may be amended or withdrawn by a tribunal on application by the office or by a person affected thereby, and 10
- (b) remains in force for any period or extended period that a tribunal may from time to time determine, provided that a temporary order still in force at the finalisation of proceedings instituted under section 12(1) or 20(7) may not remain in force beyond that date.

(7) The service of an order in terms of subsection (1) will, where proceedings are not already before a tribunal, be regarded as the institution of proceedings before a tribunal. 15

Confirmation of arrangements negotiated by office

21. (1) The office may apply to a tribunal for confirmation of an arrangement concluded in terms of section 11; provided that where proceedings have been instituted in terms of section 12(1) or 20(7), the Consumer Protector must seek confirmation of 20 any arrangement.

(2) A tribunal may, with due regard to the interests of affected consumers, issue an order—

- (a) confirming the arrangement;
- (b) confirming the arrangement with the modifications agreed to by the persons concerned and subject to the conditions agreed to by those persons, as a tribunal may deem fit, or 25
- (c) setting aside that arrangement if, after the persons involved in the arrangement have been given an opportunity to be heard, it is satisfied that the arrangement will not ensure the stay or prevention of the unfair business practice in 30 question, and thereafter continue with proceedings if they have been instituted, or recommend that proceedings be formally instituted if not formally instituted.

(3) An order in terms of subsection (2)(a) or (b) must be published in the *Provincial Gazette* and will have the same effect as an order in terms of section 22 or 24. 35

Order by tribunal prohibiting unfair business practice

22. (1) If a tribunal, at the conclusion of any proceedings instituted in the tribunal in terms of section 12(1) or section 20(7), at which a reasonable opportunity to make representations has been afforded to all persons who may be adversely affected by the outcome thereof, is satisfied that an unfair business practice exists or may come into existence and has not confirmed an arrangement as contemplated in section 21(2), a tribunal may issue any order that may be necessary to ensure the stay or prevention of the unfair business practice in question, and that order may, without prejudice to the generality of the foregoing, direct—

(a) a person concerned in the unfair business practice to take any action, including steps for the dissolution of a body, whether corporate or unincorporated, or the severance of a connection or form of association between two or more persons, including such bodies, that may be necessary to ensure the stay or prevention of the unfair business practice, and 45

(b) a person who is or was party to an agreement, understanding or omission, or who uses or has used advertising or a type of advertising, or applies or has applied a scheme, practice or method of trading, including a method of marketing or distribution, or commits or has committed an act, or brings or has brought about a situation, or has or has had an interest in business or a type of business or derives or has derived any income from a business or type of 50

business or derives or has derived any income from a business or type of 55

(5) 'n Bevel ingevolge subartikel (1), en enige wysiging, terugtrekking of verlenging daarvan ingevolge subartikel (6), moet op die persone wat daardeur geraak word, beteken word tesame met die redes waarop die tribunaal gesteun het by die uitreiking van daardie bevel asook 'n kennisgewing van daardie persone se reg kragtens subartikel (6)(a), asook die reg om te appelleer teen die besluit van die tribunaal kragtens artikel 25, en moet, waar 'n tribunaal aldus gelas, by kennisgewing in die *Provinsiale Koerant* en in die ander media wat die tribunaal geskik ag, bekend gemaak word.

(6) 'n Tydelike bevel in subartikel (1) beoog—

- 10 (a) kan op aansoek van die kantoor of van 'n persoon wat daardeur geraak word, gewysig of teruggetrek word deur 'n tribunaal, en
- (b) bly van krag vir enige tydperk of verlengde tydperk wat 'n tribunaal van tyd tot tyd bepaal, met dien verstande dat 'n tydelike bevel wat nog van krag is by die afhandeling van verrigtinge kragtens artikel 12(1) of 20(7) ingestel, nie na daardie datum van krag mag bly nie.

(7) Die betekenis van 'n bevel ingevolge subartikel (1) sal, waar verrigtinge nie reeds voor 'n tribunaal is nie, beskou word as die instel van verrigtinge voor 'n tribunaal.

Bekragtiging van reëlings deur kantoor onderhandel

20 21. (1) Die kantoor kan by 'n tribunaal aansoek doen om bekragtiging van 'n reëling ingevolge artikel 11 getref: met dien verstande dat waar verrigtinge ingevolge artikel 12(1) of 20(7) ingestel is, die Verbruikersbeskermer bekragtiging van enige reëling moet verkry.

(2) 'n Tribunaal kan, met behoorlike inagneming van die belang van verbruikers wat geraak word, 'n bevel uitrek wat—

- (a) die reëling bekragtig;
- (b) die reëling, met die modifikasies waartoe die betrokke persone ingestem het, bekragtig en behoudens die voorwaarde waartoe daardie persone ingestem het, soos wat 'n tribunaal goed ag, of
- (c) daardie reëling tersyde stel indien, nadat die persone wat by die reëling betrokke is, die geleentheid gebied is om aangehoor te word, dit tevrede is dat die reëling nie die staking of voorkoming van die betrokke onbillike sakepraktyk sal verseker nie, en daarna voortgaan met verrigtinge as dit reeds ingestel is, of aanbeveel dat verrigtinge formeel ingestel word, indien nie reeds formeel ingestel nie.

(3) 'n Bevel ingevolge subartikel (2)(a) of (b) moet in die *Provinsiale Koerant* gepubliseer word en sal dieselfde regsgeldigheid as 'n bevel ingevolge artikel 22 of 24 hê.

Bevel deur tribunaal wat onbillike sakepraktyk verbied

40 22. (1) Indien 'n tribunaal, by die afhandeling van enige verrigtinge ingevolge artikel 12(1) of artikel 20(7) ingestel, waar alle persone wat deur die uitslag daarvan benadeel kan word 'n redelike geleentheid gebied is om vertoë te rig, tevrede is dat 'n onbillike sakepraktyk bestaan of tot stand kan kom en die tribunaal nie 'n reëling soos in artikel 21(2) beoog, bekragtig het nie, kan 'n tribunaal enige bevel uitrek wat nodig is om die staking of voorkoming van die betrokke onbillike sakepraktyk te verseker, en dié bevel kan, sonder inkorting van die algemene aard van die voorafgaande—

- (a) 'n persoon wat by die onbillike sakepraktyk betrokke is, gelas om enige stappe te doen, insluitende stappe vir die ontbinding van 'n liggaaam, hetsy met of sonder regspersoonlikheid, of die verbreking van 'n verband of enige vorm van assosiasie tussen twee of meer persone, insluitende dié liggame wat nodig is om die staking of voorkoming van die onbillike sakepraktyk te verseker, en
- (b) 'n persoon wat 'n party by 'n ooreenkoms, verstandhouding of versuim is of was, of wat reklame of 'n tipe reklame gebruik of gebruik het, of wat 'n skema, praktyk of 'n metode van handeldryf, insluitende 'n bemarkings- of distribusiemetode toepas of toegepas het, of wat 'n handeling verrig of verrig het, of wat 'n toestand veroorsaak of veroorsaak het, of wat 'n belang het of gehad het in 'n besigheid of tipe besigheid, of wat enige inkomste verkry of

- business which is connected with the unfair business practice and which may be specified in the order to—
- (i) terminate or cease to be a party to that agreement, understanding or omission;
 - (ii) refrain from using that advertising or that type of advertising;
 - (iii) refrain from applying that scheme, practice or method of trading;
 - (iv) cease to commit that act or to bring about that situation;
 - (v) cease to have an interest in that business or that type of business or to derive income therefrom;
 - (vi) refrain from at any time—
 - (aa) becoming a party to any agreement, understanding or omission;
 - (bb) using any type of advertising;
 - (cc) applying any scheme, practice or method of trading, or
 - (dd) committing any act or bringing about any situation of a nature specified in the order,
 - (vii) which a tribunal is satisfied is likely to be applied for purposes of or in connection with the creation or maintenance of an unfair business practice, and
- (vii) refrain from at any time obtaining any interest in or deriving any income from a business or a type of business specified in the order.
- (2) If a tribunal finds that money was accepted from consumers in the course of an unfair business practice, and it is necessary to limit or prevent financial loss to those consumers, a tribunal may—
- (a) order a person to repay that money to the affected consumers, together with interest at the prescribed rate;
 - (b) appoint a curator to perform the functions set out in section 23;
 - (c) give directions regarding security which the curator must furnish for the proper performance of his or her duties;
 - (d) determine the powers and duties of the curator, and
 - (e) give directions concerning the performance of the functions of the curator, or the management of the affairs of the person concerned, or any other matter incidental thereto, regarded as necessary.

(3) Irrespective of whether or not money to be recovered from the person involved in the unfair business practice in terms of an order of a court of law has been received by that person, if a tribunal is of the opinion that such an order has the effect of enforcing an unfair business practice, it may make any order that is necessary to restore the consumer to the position he or she would have been in if that unfair business practice had not taken place.

(4) At any time after a tribunal has granted an order in terms of this section, a tribunal may approve the correction of an omission or error or the clarification of a provision in the order if such correction or clarification is necessary, and such a correction or clarification must be made known by notice in the *Provincial Gazette*.

(5) An order of a tribunal in terms of subsection (1)—

- (a) must be made known by notice in the *Provincial Gazette*, and
- (b) may be made known in any other manner, including a notice in a newspaper or magazine or on radio or television.

Functions of curator appointed by tribunal

23. (1) A curator appointed under section 22(2) may, to the extent authorised by a tribunal and subject to any conditions imposed by it—

- (a) realise those assets of the person involved in the unfair business practice in question that are necessary for the reimbursement of the consumers concerned, and distribute them among the consumers;
- (b) take control of and manage all or any part of the business or affairs of such a person, in which event the management of the business or affairs of the person

- verkry het uit 'n besigheid of tipe besigheid wat met die onbillike sakepraktyk verband hou en wat in die bevel gespesifiseer kan word, gelas om—
- (i) daardie ooreenkoms, verstandhouding of versum te beëindig of op te hou om 'n party daarby te wees;
 - (ii) hom of haar daarvan te weerhou om daardie reklame of daardie tipe reklame te gebruik;
 - (iii) hom of haar daarvan te weerhou om daardie skema, praktyk of handelsmetode toe te pas;
 - (iv) op te hou om daardie handeling te verrig of daardie toestand te veroorsaak;
 - (v) op te hou om 'n belang in daardie besigheid of daardie tipe besigheid te hê of inkomste daaruit te verkry;
 - (vi) hom of haar daarvan te weerhou om te eniger tyd—
 - (aa) 'n party by enige ooreenkoms, verstandhouding of versum te word;
 - (bb) enige tipe reklame te gebruik;
 - (cc) enige skema, praktyk of handelsmetode toe te pas, of
 - (dd) enige handeling te verrig of enige toestand te veroorsaak waarvan die aard in die bevel gespesifiseer word,
 - (vii) om hom of haar daarvan te weerhou om te eniger tyd enige belang in enige vorm van besigheid of tipe besigheid in die bevel gespesifiseer te verkry of enige inkomste daaruit te verkry.
- (2) Indien 'n tribunaal bevind dat geld in die loop van 'n onbillike sakepraktyk van verbruikers ontvang is en dit nodig is om finansiële verlies vir daardie verbruikers te beperk of te voorkom, kan 'n tribunaal—
- (a) 'n persoon beveel om daardie geld terug te betaal aan die verbruikers wat geraak word, tesame met rente teen die voorgeskrewe koers;
 - (b) 'n kurator aanstel om die funksies in artikel 23 uiteengesit, te verrig;
 - (c) voorskrifte aangaande sekuriteit wat die kurator vir die behoorlike verrigting van sy of haar pligte moet verskaf, uitreik;
 - (d) die bevoegdhede en pligte van die kurator bepaal, en
 - (e) opdragte gee aangaande die verrigting van die funksies van die kurator, of die bestuur van die betrokke persoon se sake, of enige ander saak wat in verband daarmee staan wat nodig geag word.
- (3) Ongeag of geld, wat ingevolge 'n bevel van 'n gereghof verhaal moet word op die persoon wat by die onbillike sakepraktyk betrokke is, deur daardie persoon verkry is al dan nie, kan 'n tribunaal, indien hy van oordeel is dat so 'n bevel die uitwerking het om 'n onbillike sakepraktyk te versterk, enige bevel gee wat nodig is om die verbruiker te herstel in die posisie waarin hy of sy sou gewees het as daardie onbillike sakepraktyk nie plaasgevind het nie.
- (4) Te eniger tyd nadat 'n tribunaal 'n bevel ingevolge hierdie artikel toegestaan het, kan hy die regstelling van 'n weglatting of fout of die verduideliking van 'n bepaling in die bevel goedkeur indien so 'n regstelling of verduideliking nodig is, en so 'n regstelling of verduideliking moet by kennisgewing in die *Provinsiale Koerant* bekend gemaak word.
- (5) 'n Bevel van 'n tribunaal ingevolge subartikel (1)—
- (a) moet by kennisgewing in die *Provinsiale Koerant* bekend gemaak word, en
 - (b) kan op enige ander wyse bekend gemaak word, insluitende 'n kennisgewing in 'n koerant of tydskrif of oor die radio of op televisie.

Funksies van kurator deur tribunaal aangestel

23. (1) 'n Kurator kragtens artikel 22(2) aangestel kan, in die mate dat hy of sy deur 'n tribunaal gemagtig is en onderworpe aan enige voorwaardes deur hom opgelê—
- (a) daardie bates van die persoon wat by die betrokke onbillike sakepraktyk betrokke is en wat vir die skadeloosstelling van die betrokke verbruikers nodig is, realiseer en dit onder die verbruikers verdeel;
 - (b) beheer oorneem van alle of enige deel van so 'n persoon se besigheid of sake en dit bestuur, in welke geval die bestuur van die besigheid of sake van die persoon wat by die onbillike sakepraktyk betrokke is, berus by die kurator,

- involved in the unfair business practice shall vest in the curator, subject to the supervision of a tribunal, and any other person vested with the management of the business or affairs of that person shall be divested thereof;
- (c) suspend or restrict, as from the date of his or her appointment as curator or any subsequent date, the right of creditors of the person involved in the unfair business practice to claim or receive any money owing to them by that person until the due performance of the order of a tribunal; 5
 - (d) make payments, transfer property or take steps for the transfer of property of the person involved in the unfair business practice at the time, in the order and in the manner deemed fit by the curator; 10
 - (e) open and maintain banking or similar interest-bearing accounts;
 - (f) enter into agreements on behalf of the person involved in the unfair business practice;
 - (g) convene from time to time, in the manner deemed fit by him or her, a meeting of creditors of the person involved in the unfair business practice for the purpose of establishing the nature and extent of the indebtedness of that person to the creditors and for consultation with the creditors in so far as the curator deems it necessary; 15
 - (h) negotiate with any creditor of the person involved in the unfair business practice with a view to the final settlement of the affairs of that creditor against that person; 20
 - (i) make and carry out, in the course of the management by the curator of the business or affairs of the person involved in the unfair business practice, any decision which in terms of the provisions of the Companies Act, 1973 (Act 61 of 1973), would have been required to be made by means of a special resolution contemplated in section 199 of that Act; 25
 - (j) by public auction, tender or negotiation, dispose of any asset of the person involved in the unfair business practice, including—
 - (i) any advance or loan, or
 - (ii) any asset for the disposal of which approval is necessary in terms of section 228 of the Companies Act, 1973, and
 - (k) perform any further incidental or ancillary duties or functions that are necessary to give effect to any order of a tribunal.
- (2) A tribunal may at any time after it has appointed a curator, amend, withdraw or vary a power granted to the curator, and any such amendment, withdrawal and variation may be made known by notice in the *Provincial Gazette*. 35
- (3) At the appointment of a curator—
- (a) the management of the business or affairs of the person involved in the unfair business practice vests in the curator, subject to the supervision of a tribunal, and any other person vested with the management of the business or affairs of that person is divested of that management, and 40
 - (b) the curator must recover and take possession of those assets of the person involved in the unfair business practice that may be necessary.
- (4) A curator who is not in the full-time service of the State must, in respect of the services rendered by him or her, be paid out of the funds of the person involved in the unfair business practice, the remuneration that may be prescribed: provided that if the funds of the person involved in the unfair business practice are insufficient to adequately compensate the curator, the curator must be paid from provincial funds any further remuneration and allowances that the responsible Minister may determine. 45
- (5) The curator must report to a tribunal on his or her administration of the business or affairs of the person involved in the unfair business practice and must at the request of the tribunal provide any other information set out in that request. 50
- (6) The curator must keep a proper record of the steps taken by him or her in the performance of his or her functions and of the reasons why such steps were taken.

- onderhewig aan die toesig van 'n tribunaal, en enige ander persoon by wie die bestuur van die besigheid of sake van daardie persoon berus, moet van daardie persoon ontneem word;
- (c) vanaf die datum van sy of haar aanstelling as kurator of enige latere datum die reg van krediteure van die persoon wat by die sakepraktyk betrokke is om enige geld wat daardie persoon aan hulle verskuldig is, te eis of te ontvang, opskort of beperk totdat die bevel van 'n tribunaal behoorlik uitgevoer is;
- (d) betalings doen, eiendom oordra of stappe doen, in die volgorde en op die wyse wat die kurator goed ag, vir die oordrag van eiendom van die persoon wat op daardie tydstip by die onbillike sakepraktyk betrokke is;
- (e) bank- of dergelike rentedraende rekenings open en handhaaf;
- (f) namens die persoon wat by die onbillike sakepraktyk betrokke is, ooreenkoms aangaan;
- (g) van tyd tot tyd op die wyse wat hy of sy goed ag, 'n vergadering van krediteure van die persoon wat by die onbillike sakepraktyk betrokke is, belê met die doel om die aard en omvang van dié persoon se skuld by die krediteure te bepaal en vir oorlegpleging met die krediteure vir sover die kurator dit nodig ag;
- (h) met enige krediteur van die persoon wat by die onbillike sakepraktyk betrokke is, onderhandel met die oog op die finale vereffening van die sake van dié krediteur teen daardie persoon;
- (i) in die loop van die kurator se bestuur van die besigheid of sake van die persoon wat by die onbillike sakepraktyk betrokke is, enige besluit neem en uitvoer wat ingevolge die bepalings van die Maatskappywet, 1973 (Wet 61 van 1973) geneem sou moes word deur middel van 'n spesiale resolusie in artikel 199 van daardie Wet beoog;
- (j) by wyse van 'n openbare veiling, tender of onderhandeling enige bate van die persoon wat by die onbillike sakepraktyk betrokke is, van die hand sit, insluitende—
- (i) enige voorskot of lening, of
- (ii) enige bate vir die hand sit waarvan goedkeuring ingevolge artikel 228 van die Maatskappywet, 1973 nodig is, en
- (k) enige verdere verbandhoudende of aanvullende pligte of funksies verrig wat nodig is om uitvoering aan enige bevel van 'n tribunaal te gee.
- (2) 'n Tribunaal kan te eniger tyd nadat hy 'n kurator aangestel het, 'n bevoegdheid wat aan die kurator verleen is, wysig, terugtrek of verander, en so 'n wysiging, terugtrekking en verandering kan by kennisgewing in die *Provinciale Koerant* bekend gemaak word.
- (3) By die aanstelling van 'n kurator—
- (a) moet die bestuur van die besigheid of sake van die persoon wat by die onbillike sakepraktyk betrokke is, by die kurator berus, onderhewig aan toesighouding deur 'n tribunaal, en enige ander persoon by wie die bestuur van die besigheid of sake van daardie persoon berus, moet daardie bestuur ontneem word, en
- (b) moet die kurator dié bates van die persoon wat by die onbillike sakepraktyk betrokke is, wat nodig is, verhaal en hulle in besit neem.
- (4) 'n Kurator wat nie in die heetydse diens van die Staat is nie, moet ten opsigte van die dienste wat hy of sy lewer, die besoldiging wat voorgeskryf is, betaal word uit die fondse van die persoon wat by die onbillike sakepraktyk betrokke is: met dien verstande dat as die fondse van die persoon wat by die onbillike sakepraktyk betrokke is, onvoldoende is om die kurator voldoende te vergoed, enige verdere besoldiging en toelaes wat die verantwoordelike Minister bepaal, uit provinsiale fondse aan die kurator betaal moet word.
- (5) Die kurator moet verslag doen aan 'n tribunaal oor sy of haar administrasie van die besigheid of sake van die persoon wat by die onbillike sakepraktyk betrokke is en moet op versoek van die tribunaal enige ander inligting verstrek wat in daardie versoek verlang word.
- (6) Die kurator moet 'n behoorlike rekord hou van die stappe wat hy of sy by die verrigting van sy of haar funksies gedoen het en van die redes waarom dié stappe gedoen is.

Declaration of certain business practices to be unlawful

24. (1) If a tribunal, pursuant to proceedings instituted in a tribunal in terms of section 12(1) or section 20(7) is satisfied that it is in the public interest that a particular business practice or type of business practice which was the subject of the proceedings in question should be declared unlawful, it may—
- (a) declare the business practice or type of business practice concerned, unlawful, either generally or in respect of a particular area, depending upon whether the investigation was of a general nature or was undertaken in relation to a particular area; 5
 - (b) declare an agreement, accord or undertaking or a term thereof void; 10
 - (c) prohibit a person from entering into or being or continuing to be a party to an agreement, arrangement or understanding, or from using advertising, or from applying a scheme, practice or method of trading, or from committing an act or bringing about a situation which was the subject of the proceedings, either wholly or to the extent specified by a tribunal or subject to a condition or exemption so specified or to an exemption contemplated in subsection (4), 15 and
 - (d) regulate a business practice or type of business practice which was the subject of the proceedings by determining conditions or requirements to be complied with in respect thereof. 20
- (2) An order of a tribunal in terms of subsection (1)—
- (a) must be made known by notice in the *Provincial Gazette*, and
 - (b) may be made known in any other manner, including a notice in a newspaper or magazine or on radio or television.
- (3) A notice under subsection (1) may at any time, on application by the Consumer Protector after further investigation by the office, be withdrawn by a tribunal or be amended by it in a manner that is fitting. 25
- (4) A tribunal may, on application by a person and after hearing the Consumer Protector and any other interested person, grant exemption from a provision, condition or requirement contemplated in subsection (1), to the extent and for the period and subject to the conditions specified in the exemption. 30
- (5) The provisions of section 22(2) shall *mutatis mutandis* apply to an order, a withdrawal or an amendment or exemption contemplated in this section.
- (6) The person or body seeking an order in terms of subsection (3) or (4) must make that intention known by notice in the *Provincial Gazette*, and interested persons must be invited to make objections to such an order. 35

Appeal

25. (1) Subject to section 13(1)(b) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act 71 of 1988), there may be an appeal from any decision of a tribunal to the special court established in terms of section 13(2) of that Act. 40
- (2) If an appeal is lodged with the special court in respect of a decision of a tribunal under section 20(1) of this Act, the operation of that decision may not be suspended unless the special court hearing that appeal, on application by the appellant concerned, so directs.

Giving of notice to competent authorities of unfair business practices and offences 45

26. (1) The Consumer Protector must, if there is reason to suspect that an unfair business practice which is or was the subject of an investigation by the office, exists or may come into existence somewhere in the Republic outside the Province, furnish the Consumer Affairs Committee established in terms of section 2 of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act 71 of 1988), and any competent authority in the province concerned with particulars of the business practice in question and any relevant information which became known in the course of investigations by the office or proceedings before a tribunal. 50
- (2) The Consumer Protector must, if there is reason at any time during or after the completion of an investigation to suspect that there has been or is being committed, or that an attempt has been or is being made to commit— 55

Verklaring dat sekere sakepraktyke onwettig is

24. (1) As 'n tribunaal ooreenkomstig verrigtinge ingevolge artikel 12(1) of artikel 20(7) ingestel, tevrede is dat dit in die openbare belang is om 'n besondere sakepraktyk of tipe sakepraktyk wat die onderwerp van die betrokke verrigtinge was, onwettig te verklaar, kan hy—
- (a) verklaar dat die betrokke sakepraktyk of tipe sakepraktyk óf in die algemeen óf ten opsigte van 'n bepaalde gebied onwettig is, na gelang die ondersoek van 'n algemene aard was of in verband met 'n bepaalde gebied onderneem is;
 - (b) 'n ooreenkoms, verdrag of onderneming of 'n bepaling daarvan nietig verklaar;
 - (c) 'n persoon verbied om 'n ooreenkoms, reëling of verstandhouding aan te gaan, of 'n party daarby te wees of te bly, of om reclame te gebruik, of om 'n skema, praktyk of handelsmetode toe te pas, of om 'n handeling te verrig of 'n toestand te veroorsaak wat die onderwerp van die verrigtinge was, óf in die geheel óf in die mate wat deur 'n tribunaal gespesifiseer word of onderworpe aan 'n voorwaarde of vrystelling aldus gespesifiseer of in subartikel (4) beoog, en
 - (d) 'n sakepraktyk of tipe sakepraktyk wat die onderwerp van die verrigtinge was, reguleer deur voorwaardes of vereistes ten opsigte daarvan wat nagekom moet word, te bepaal.
- (2) 'n Bevel van 'n tribunaal ingevolge subartikel (1)—
- (a) moet by kennisgewing in die *Proviniale Koerant* bekend gemaak word, en
 - (b) kan op enige ander wyse, insluitende 'n kennisgewing in 'n koerant of tydskrif of oor die radio of op televisie, bekend gemaak word.
- (3) 'n Kennisgewing kragtens subartikel (1) kan te eniger tyd op aansoek van die Verbruikersbeskermer ná verdere ondersoek deur die kantoor, deur 'n tribunaal teruggetrek word of op paslike wyse gewysig word.
- (4) 'n Tribunaal kan, op aansoek van 'n persoon en nadat die tribunaal die Verbruikersbeskermer en enige ander belanghebbende party aangehoor het, vrystelling van 'n bepaling, voorwaarde of vereiste in subartikel (1) beoog, verleen in die mate en vir die tydperk en onderworpe aan die voorwaardes in die vrystelling gespesifiseer.
- (5) Die bepalings van artikel 22(2) is *mutatis mutandis* van toepassing op 'n bevel, terugtrekking of wysiging of vrystelling in daardie artikel beoog.
- (6) Die persoon of liggaaam wat 'n bevel ingevolge subartikel (3) of (4) verlang, moet daardie voorname by kennisgewing in die *Proviniale Koerant* bekend maak, en belanghebbende persone moet genooi word om besware teen so 'n bevel te opper.

Appèl

25. (1) Behoudens artikel 13(1)(b) van die Wet op Verbruikersake (Onbillike Sakepraktyke), 1988 (Wet 71 van 1988) kan appèl teen enige besluit van 'n tribunaal aangeteken word by die spesiale hof ingevolge artikel 13(2) van daardie Wet ingestel.
- (2) Indien appèl ten opsigte van 'n besluit van 'n tribunaal kragtens artikel 20(1) van hierdie Wet by die spesiale hof aangeteken word, mag die werking van daardie besluit nie opgeskort word nie, tensy die spesiale hof wat daardie appèl aanhoor, op aansoek van die betrokke appellant aldus gelas.

Kennisgewing aan bevoegde owerhede van onbillike sakepraktyke en misdrywe

26. (1) Die Verbruikersbeskermer moet, as daar rede is om te vermoed dat 'n onbillike sakepraktyk wat die onderwerp van 'n ondersoek deur die kantoor is of was, lewers in die Republiek buite die Provinsie bestaan of tot stand kan kom, die Verbruikersakekomitee, ingevolge artikel 2 van die Wet op Verbruikersake (Onbillike Sakepraktyke), 1988 (Wet 71 van 1988) ingestel, en enige bevoegde owerheid in die betrokke provinsie, voorsien van besonderhede van die betrokke sakepraktyk en enige tersaaklike inligting wat in die loop van ondersoeke deur die kantoor of verrigtinge voor 'n tribunaal bekend geword het.
- (2) Die Verbruikersbeskermer moet, indien daar te eniger tyd gedurende of na die voltooiing van 'n ondersoek rede is om te vermoed—

- (a) an offence, notify the Director of Public Prosecutions concerned accordingly,¹²⁷
and
- (b) a serious economic offence as defined in the Investigation of Serious
Economic Offences Act, 1991 (Act 117 of 1991), lay the matter in question¹²⁸
before the Director of the Office for Serious Economic Offences in the manner¹²⁹
provided in section 4 of that Act.

Confidentiality

27. (1) An investigating officer, a person in the service of the office, a member of a tribunal, a curator or a person contemplated in section 4 or 19 may not disclose information acquired by him or her in the exercise or performance of powers, functions¹³⁰ 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 or performance of a power, function or duty in terms of this Act, or
- (b) on the order of a court of law.

Limitation of liability

28. A person, including the State, will not be liable for anything done in good faith under this Act.

Regulations

29. (1) The responsible Minister must, with the concurrence of the committee and after consultation with the chairpersons of tribunals, make regulations relating to—

- (a) the practice and proceedings of tribunals;
- (b) any matter which in terms of this Act is required or permitted to be prescribed,
and
- (c) any matter in general which is considered necessary or expedient to prescribe
in order to achieve the objects of this Act.

(2) The responsible Minister must, not less than one month before any regulation is made, cause the text of such regulation to be published in the *Provincial Gazette*, together with a notice declaring the intention to make that regulation and inviting interested persons to furnish comments or make representations which they may wish to furnish or make in regard thereto.

(3) The provisions of subsection (2) shall not apply in respect of a regulation which, after the provisions of that subsection have been complied with, is amended by the responsible Minister after consultation with the chairpersons of the tribunals in consequence of comments or representations received on behalf of the responsible Minister in pursuance of such compliance.

Offences in relation to prohibited business practices

30. A person who contravenes or fails to comply with an order of a tribunal which has been made known by notice in the *Provincial Gazette*, is guilty of an offence.

Penalties

31. A person who is convicted of an offence in terms of this Act is liable, in the case¹⁴⁰ of an offence referred to in—

- (1) section 30, to a fine not exceeding R200 000 or to imprisonment for a period not exceeding five years or to both that fine and that imprisonment, and
- (2) any other provision of this Act, to a fine not exceeding R100 000 or to imprisonment for a period not exceeding 12 months, or to both that fine and that imprisonment.

- (a) dat 'n misdryf gepleeg is of gepleeg word, of dat 'n poging aangewend is of aangewend word om 'n misdryf te pleeg, die betrokke Direkteur van Openbare Vervolgings dienooreenkomsdig in kennis stel, en
- (b) dat 'n ernstige ekonomiese misdryf, soos in die Wet op die Ondersoek van Ernstige Ekonomiese Misdrywe, 1991 (Wet 117 van 1991) omskryf, gepleeg is of gepleeg word, of dat 'n poging aangewend is of aangewend word om 'n ernstige ekonomiese misdryf te pleeg, die betrokke saak aan die Direkteur van die Kantoor vir Ernstige Ekonomiese Misdrywe voorlê op die wyse waarvoor in artikel 4 van daardie Wet voorsiening gemaak word.

10 Vertroulikheid

27. (1) 'n Onderzoekbeampte, persoon in diens van die kantoor, lid van 'n tribunaal, kurator of persoon in artikel 4 of 19 beoog, mag nie inligting wat hy of sy by die uitoefting of verrigting van bevoegdhede, funksies of pligte ingevolge hierdie Wet verkry het, onthul nie, uitgesonderd—
- (a) vir sover as wat nodig is vir die doel van die behoorlike uitoefting of verrigting van 'n bevoegdheid, funksie of plig ingevolge hierdie Wet, of
- (b) op bevel van 'n gereghof.

Beperking van aanspreeklikheid

28. 'n Persoon, insluitende die Staat, sal nie aanspreeklik wees vir enigets wat te goeder trou kragtens hierdie Wet gedoen word nie.

Regulasies

29. (1) Die verantwoordelike Minister moet, met die instemming van die komitee en na oorleg met die voorsitters van tribunale, regulasies maak betreffende—
- (a) die praktyk en verrigtinge van tribunale;
- (b) enige aangeleentheid wat ingevolge hierdie Wet voorgeskryf moet of kan word, en
- (c) enige aangeleentheid in die algemeen wat nodig of doenlik geag word om voor te skryf ten einde die oogmerke van hierdie Wet te bereik.
- (2) Die verantwoordelike Minister moet, minstens een maand voordat enige regulasie gemaak word, die teks van daardie regulasie in die *Provinsiale Koerant* laat publiseer, tesame met 'n kennisgewing wat die voorneme afkondig om daardie regulasie te maak en 'n uitnodiging rig aan belanghebbende persone om kommentaar te lewer of vertoë te rig in verband daarmee.
- (3) Die bepalings van subartikel (2) is nie van toepassing nie ten opsigte van 'n regulasie wat, nadat daar aan die bepalings van daardie subartikel voldoen is, deur die verantwoordelike Minister, na oorleg met die voorsitters van die tribunale gewysig is as gevolg van kommentaar of vertoë wat ter voldoening aan dié bepalings namens die verantwoordelike Minister ontvang is.

Misdrywe met betrekking tot verbode sakepraktyke

40. 30. 'n Persoon wat 'n bevel van 'n tribunaal wat by kennisgewing in die *Provinsiale Koerant* bekend gemaak is, oortree of versuim om daaraan te voldoen, is skuldig aan 'n misdryf.

Strafbepalings

31. 'n Persoon wat skuldig bevind word aan 'n misdryf ingevolge hierdie Wet is strafbaar, in die geval van 'n misdryf genoem in—
- (1) artikel 30, met 'n boete van hoogstens R200 000 of met gevangenisstraf vir 'n tydperk van hoogstens vyf jaar of met daardie boete sowel as daardie gevangenisstraf, en
- (2) enige ander bepaling van hierdie Wet, met 'n boete van hoogstens R100 000 of met gevangenisstraf vir 'n tydperk van hoogstens 12 maande, of met daardie boete sowel as daardie gevangenisstraf.

State bound

32. This Act binds the State, except in so far as criminal liability is concerned.

Waiver of benefits

33. Any agreement or contractual term purporting to exclude the provisions of this Act or to limit their application is void.

Civil remedies

34. (1) A provision of this Act may not be construed as depriving a person of any civil remedy.

(2) If a person seeks to rely on or enforce an alleged unfair business practice in proceedings before a civil court, that court may, on application by a party to those proceedings, stay those proceedings in the interests of justice until a tribunal has come to a decision in terms of this Act.

Short title and commencement

35. (1) This Act is called the Western Cape Consumer Affairs (Unfair Business Practices) Act, 2002.

(2) This Act comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette* and different dates may be determined for the coming into operation of different sections of this Act.

Staat gebind

32. Hierdie Wet bind die Staat, uitgesonderd vir sover dit kriminele aanspreeklikheid betref.

Afstanddoening van voordele

5 33. Enige ooreenkoms of kontrakuele bepaling wat voorgee om die bepalings van hierdie Wet uit te sluit of die toepassing daarvan te beperk, is ongeldig.

Siviele regsmiddele

34. (1) 'n Bepaling van hierdie Wet mag nie uitgelê word as sou dit enige persoon enige siviele regsmiddel ontneem nie.

10 (2) Indien 'n persoon probeer om steun op of om 'n beweerde onbillike sakepraktyk in verrigtinge voor 'n siviele hof af te dwing, kan daardie hof, op aansoek van 'n party by daardie verrigtinge, dié verrigtinge in die belang van geregtigheid opskort totdat 'n tribunaal tot 'n besluit gekom het ingevolge hierdie Wet.

Kort titel en inwerkingtreding

15 35. (1) Hierdie Wet heet die Wes-Kaapse Wet op Verbruikersake (Onbillike Sakepraktyke), 2002.

(2) Hierdie Wet tree in werking op 'n datum deur die Premier by proklamasie in die *Provinsiale Koerant* bepaal en verskillende datums kan bepaal word vir die inwerkingtreding van verskillende artikels van hierdie Wet.

EXPLANATORY MEMORANDUM

(i) Introduction and reasons for the Bill

Schedule 4 Part A of the Constitution of the Republic of South Africa, Act 108 of 1996, provides that consumer protection is a functional area of concurrent national and provincial legislative competence.

Consumers within the country have increasingly been exposed to unscrupulous business practices that the common law does not provide adequate protection against. The sophistication and complexity of many of the schemes mislead consumers, many of whom may be semi-literate. Certain of the schemes appear to hold much promise but are, in reality, to the consumer's detriment. It is incumbent on the government to protect consumers from unfair business practices. As a result of an agreement reached between the national Department of Trade and Industry and the provincial departments responsible for consumer protection, legislation was drafted to provide for a mechanism for the protection of consumers from unfair business practices. The provisions of this legislation, the Western Cape Consumer Affairs (Unfair Business Practices) Bill, are based on the Consumer Affairs (Unfair Business Practices) Act, 1988, but the latest constitutional developments and judgments were considered in drafting the provisions.

(ii) Social impact of the Bill

The Bill provides for the investigation of business practices which have, or are likely to have, the effect of deceiving or unreasonably prejudicing any consumer. The Bill provides for the establishment of an Office for the Investigation of Unfair Business Practices, with power to investigate the activities of businesses suspected of creating or maintaining business practices that are unfair to consumers.

The Bill also provides for the establishment of one or more Consumer Affairs Tribunals to hear evidence presented by the Office for the Investigation of Unfair Business Practices, and with power to issue orders and directions prohibiting unfair business practices.

(iii) Financial implications of the Bill

The most important implication of the Bill is that provision will have to be made for the remuneration of the officers of the new Office for the Investigation of Unfair Business Practices and its investigating officers and other assistants, and the members of the Consumer Affairs Tribunal or tribunals.

The Office for the Investigation of Unfair Business Practices will be established within the Department of Economic Affairs, Agriculture and Tourism of the Province. A Consumer Protector will manage it. Its personnel will be appointed subject to the laws governing the public service, as can investigating officers attached to the Office. It is envisaged that the existing staff of the Sub Directorate: Consumer Services and Fair Trade in the Department of Economic Affairs, Agriculture and Tourism will be appointed as investigating officers. It is also foreseen that additional posts may have to be created in the future, if necessary, which posts will be filled by investigating officers to be attached to this Office.

The Bill also provides, if required for the purposes of any particular investigation, that persons outside the public service can be appointed to assist the Office as investigating officers who will be paid such remuneration and allowances as the Consumer Protector may determine with the concurrence of the Minister responsible for economic affairs in the Province.

VERKLARENDE MEMORANDUM

(i) Inleiding en redes vir die Wetsontwerp

Bylae 4 Deel A van die Grondwet van die Republiek van Suid-Afrika (Wet 108 van 1996), bepaal dat verbruikersbeskerming 'n funksionele gebied van konkurrente nasionale en provinsiale wetgewende bevoegdheid is.

Verbruikers in die land word toenemend blootgestel aan beginsellose sakepraktyke waarteen die gemenereg nie voldoende beskerming bied nie. Die sofistikasie en kompleksiteit van baie van die skemas mislei verbruikers, wat in baie gevalle moontlik halfgeletterd is. Sekere van die skemas kom belowend voor, maar is in werklikheid nadelig vir die verbruiker. Die regering is verplig om verbruikers teen onbillike sakepraktyke te beskerm. Omrede 'n ooreenkoms tussen die nasionale Departement van Handel en Nywerheid en die provinsiale departemente wat vir verbruikersbeskerming verantwoordelik is, is wetgewing opgestel om voorsiening te maak vir 'n meganisme vir die beskerming van verbruikers teen onbillike sakepraktyke. Die bepalings van hierdie wetgewing, die Wes-Kaapse Wetsontwerp op Onbillike Sakepraktyke, is gebaseer op die Wet op Verbruikersake (Onbillike Sakepraktyke), 1988 (Wet 71 van 1988), maar die nuutste grondwetlike ontwikkelings en uitsprake is in ag geneem by die opstel van die bepalings.

(ii) Maatskaplike impak van die Wetsontwerp

Die Wetsontwerp maak voorsiening vir die ondersoek van sakepraktyke wat aanleiding gee of waarskynlik aanleiding sal gee daartoe dat enige verbruiker bedrieg of onredelik bevooroordeel word. Die Wetsontwerp maak voorsiening vir die instelling van 'n Kantoor vir die Ondersoek van Onbillike Sakepraktyke, met die bevoegdheid om die aktiwiteite van sakeondernemings te ondersoek wat daarvan verdink word dat hulle sakepraktyke wat onbillik vir verbruikers is, skep of handhaaf.

Die Wetsontwerp maak ook voorsiening vir die instelling van een of meer Verbruikersaketrebuieale om getuenis wat deur die Kantoor vir die Ondersoek van Onbillike Sakepraktyke voorgelê word, aan te hoor, en met bevoegdheid om bevele en voorskrifte wat onbillike sakepraktyke verbied, uit te reik.

(iii) Finansiële implikasies van die Wetsontwerp

Die belangrikste implikasie van die Wetsontwerp is dat voorsiening gemaak sal moet word vir die vergoeding van die beampies van die nuwe Kantoor vir die Ondersoek van Onbillike Sakepraktyke en sy ondersoekbeampies en ander assistente, en die lede van die Verbruikersaketrebuieaal of tribuale.

Die Kantoor vir die Ondersoek van Onbillike Sakepraktyke sal binne die Provinsiese Departement van Ekonomiese Sake, Landbou en Toerisme ingestel word. 'n Verbruikersbeskermer sal dit bestuur. Die personeel sal aangestel word behoudens die wette wat die staatsdiens beheer, so ook ondersoekbeampies wat aan die Kantoor verbonde sal wees. Daar word voorsien dat die bestaande personeel van die Subdirektoraat: Verbruikersdienste en Billike Handel in die Departement van Ekonomiese Sake, Landbou en Toerisme as ondersoekbeampies aangestel sal word. Daar word ook voorsien dat, indien nodig, bykomende poste moontlik in die toekoms geskep sal moet word en dat hierdie poste gevul sal word deur ondersoekbeampies wat aan hierdie Kantoor verbonde sal wees.

Die Wetsontwerp maak ook voorsiening daarvoor dat, indien dit vir die doeleindes van enige bepaalde ondersoek nodig is, personele van buite die staatsdiens aangestel kan word om die Kantoor as ondersoekbeampies by te staan en die vergoeding en toelaes betaal sal word waartoe die Verbruikersbeskermer, in oorleg met die Minister verantwoordelik vir ekonomiese sake in die Provinsie, betaal sal word.

A Consumer Affairs Tribunal will consist of a chairperson with legal experience, and three additional members with appropriate knowledge and experience. Provision is made for alternate members of a tribunal to be appointed. Members and alternate members are to be paid remuneration and allowances determined by the Minister. Provision was made in the 2001-2002 budget of the Sub-Programme: Business Regulation within the departmental vote for the appointment of such members. Provision has been made for such expenditure on an ongoing basis within the present medium-term expenditure cycle. The Bill also provides for the possibility of different Consumer Affairs Tribunals being established for different areas of the Province.

The future costs to be incurred will need to be provided for in provincial estimates of expenditure and in appropriation by the Provincial Parliament.

(iv) Clause-by-clause explanation

Clause 1: Most of the definitions are self-explanatory.

Clause 2: This clause defines a consumer as a natural person to whom a commodity is offered or supplied or from whom an investment is solicited. The Minister may declare any other person to be a consumer.

Clause 3: This clause provides the establishment of an Office for the Investigation of Unfair Business Practices.

Clause 4: This clause provides for the appointment of the Consumer Protector and staff of the Office subject to the laws governing the public service, and also for obtaining the services of other persons.

Clause 5: The main function of the Office is to receive and investigate complaints of alleged unfair business practices.

Clause 6: This clause states that any person may lodge a complaint regarding an alleged unfair business practice with the Office.

Clause 7: This clause sets out the general powers of the Office to conduct investigations.

Clause 8: This clause states that the Office may summon persons to be questioned or to produce documents or objects to investigate a complaint. The constitutional provisions relating to the right of privacy and the right not to incriminate oneself were taken into account in drafting this clause.

Clause 9: This clause provides for the appointment of investigating officers.

Clause 10: This clause authorizes investigating officers to enter premises and inspect or remove books and objects. An investigating officer may enter premises and exercise these powers only by virtue of a search warrant issued by a magistrate or a judge, and relevant constitutional provisions were also taken into consideration.

Clause 11: This clause authorizes the Office to negotiate and conclude an arrangement or undertaking with any business or persons to discontinue any unfair business practice.

Clause 12: The Office may, on completing an investigation, institute proceedings in a Consumer Affairs Tribunal to obtain an order to prohibit the unfair business practice in question.

'n Verbruikersaketribunaal sal bestaan uit 'n voorsitter met regsondervinding en drie bykomende lede met toepaslike kennis en ondervinding. Voorsiening word gemaak vir die aanstelling van plaasvervangende lede vir 'n tribunaal. Lede en plaasvervangende lede sal die vergoeding en toelaes betaal word wat deur die Minister bepaal word. Voorsiening vir die aanstelling van dié lede is gemaak in die 2001-2002-begroting van die Subprogram: Besigheidsregulerung binne die departementele begroting. Voorsiening vir dié uitgawe is op 'n deurlopende grondslag binne die huidige mediumtermyn- uitgawesiklus gemaak. Die Wetsontwerp maak ook voorsiening vir die moontlikheid dat verskillende Verbruikersaketribunale vir verskillende dele van die Provinsie ingestel kan word.

Voorsiening vir die toekomstige koste wat aangegaan sal moet word, sal gemaak moet word in provinsiale begrotings van uitgawe en deur middel van bewilliging deur die Provinsiale Parlement.

(iv) Klousule-vir-klousule-verduideliking

Klousule 1: Die meeste van die omskrywings is selfverklarend.

Klousule 2: Hierdie klousule omskryf 'n verbruiker as 'n natuurlike persoon aan wie 'n kommoditeit gebied of verskaf word of van wie 'n belegging gewerf word. Die Minister kan enige ander persoon tot verbruiker verklaar.

Klousule 3: Hierdie klousule maak voorsiening vir die instelling van 'n Kantoor vir die Ondersoek van Onbillike Sakepraktyke.

Klousule 4: Hierdie klousule maak voorsiening vir die aanstelling van die Verbruikersbeskermer en personeel van die Kantoor behoudens die wette wat die staatsdiens beheer, asook vir die verkryging van ander persone se dienste.

Klousule 5: Die hooffunksie van die Kantoor is om klagtes van beweerde onbillike sakepraktyke te ontvang en te ondersoek.

Klousule 6: Hierdie klousule bepaal dat enige persoon 'n klage aangaande 'n beweerde onbillike sakepraktyk by die Kantoor kan indien.

Klousule 7: Hierdie klousule gee 'n uiteensetting van die Kantoor se algemene bevoegdhede om ondersoekte uit te voer.

Klousule 8: Hierdie klousule bepaal dat die Kantoor persone kan dagvaar vir ondervraging of vir die voorlegging van stukke of voorwerpe ten einde 'n klage te ondersoek. Die grondwetlike bepalings betreffende 'n persoon se reg op privaatheid en die reg om nie self-inkriminerende getuienis af te lê nie, is in ag geneem by die opstel van hierdie klousule.

Klousule 9: Hierdie klousule maak voorsiening vir die aanstelling van ondersoekbeamptes.

Klousule 10: Hierdie klousule magtig ondersoekbeamptes om persele te betree en boeke en voorwerpe te inspekteer of te verwijder. 'n Ondersoekbeampte mag slegs uit hoofde van 'n visenteringslasbrief wat deur 'n landdros of regter uitgereik is, 'n perseel betree en hierdie bevoegdhede uitoefen, en relevante grondwetlike bepalings is ook in ag geneem.

Klousule 11: Hierdie klousule magtig die Kantoor om te onderhandel oor 'n ooreenkoms of onderneming met enige sakeonderneming of persoon om 'n onbillike sakepraktyk te staak, en om so 'n ooreenkoms of onderneming aan te gaan.

Klousule 12: Die Kantoor kan, wanneer 'n ondersoek afgehandel is, geregtelike stappe in 'n Verbruikersaketribunaal instel om 'n lasgewing te verkry wat die betrokke onbillike sakepraktyk sal verbied.

Clause 26: This clause compels the Consumer Protector to report on his or her findings to the Consumer Affairs Committee in terms of the national Consumer Affairs (Unfair Business Practices) Act (Act 71 of 1988) and to other competent authorities in the other provinces, as well as to the attorneys-general concerned, and to the Office for Serious Economic Offences established in terms of the national Investigation of Serious Economic Offences Act, 1991.

Clause 27: This clause states that an investigating officer, a person in the service of the Office, a member of a tribunal or persons performing the administrative work of a tribunal may not disclose information acquired in the performance of their functions except to the extent necessary for the performance of those functions, or on the order of a court of law.

Clause 28: This clause limits the liability on the part of an individual or the State.

Clause 29: This clause states that the responsible Minister may, with the concurrence of a committee of the Provincial Parliament with responsibility for consumer affairs, and after consultation with the chairpersons of the tribunals, make regulations relating to various matters. A draft of the regulations must be published one month beforehand with an invitation to interested persons to furnish representations thereon.

Clause 30: This clause states that any person who fails to comply with an order of a tribunal, which has been published in the *Provincial Gazette*, is guilty of an offence.

Clause 31: This clause sets out the penalties to which a person convicted of an offence is liable.

Clause 32: This clause binds the State as far as criminal liability is concerned.

Clause 33: This clause states that any agreement attempting to limit or exclude the provisions of this Act is void.

Clause 34: This clause states that no person is deprived of any civil remedy by the provisions of the Bill.

Clause 35: This clause contains the short title.

Klousule 26: Hierdie klousule verplig die Verbruikersbeskermer om ingevolge die nasionale Wet op Verbruikersake (Onbillike Sakepraktyke), 1988 (Wet 71 van 1988) oor sy of haar bevindings verslag te doen aan die Verbruikersakekomitee en aan ander bevoegde owerhede in die ander provinsies, asook aan die betrokke prokureurs-generaal, en aan die Kantoor vir Ernstige Ekonomiese Misdrywe wat ingevolge die nasionale Wet op die Ondersoek van Ernstige Ekonomiese Misdrywe, 1991, ingestel is.

Klousule 27: Hierdie klousule bepaal dat 'n ondersoekbeampte, 'n persoon in die diens van die Kantoor, 'n lid van 'n tribunaal of persone wat die administratiewe werk van 'n tribunaal verrig, nie inligting wat hulle in die verrigting van hul funksies verkry het, mag onthul nie, behalwe in die mate wat nodig is vir die verrigting van dié funksies, of op bevel van 'n geregshof.

Klousule 28: Hierdie klousule beperk aanspreeklikheid van die kant van 'n individu of die Staat.

Klousule 29: Hierdie klousule bepaal dat die verantwoordelike Minister met die instemming van 'n komitee van die Provinsiale Parlement wat vir verbruikersake verantwoordelik is, en na oorleg met die voorsitters van die tribunale, regulasies kan maak betreffende verskeie aangeleenthede. Die konsepregulasies moet een maand vooraf gepubliseer word, met 'n uitnodiging aan belanghebbende persone om vertoë ten opsigte daarvan te rig.

Klousule 30: Hierdie klousule bepaal dat enige persoon wat versuim om te voldoen aan 'n tribunaal se bevel wat in die *Provinsiale Koerant* gepubliseer is, skuldig is aan 'n misdryf.

Klousule 31: Hierdie klousule gee 'n uiteensetting van die strawwe waarmee 'n persoon wat aan 'n misdryf skuldig bevind word, strafbaar is.

Klousule 32: Hierdie klousule bind die Staat sover dit strafrechtelike aanspreeklikheid betref.

Klousule 33: Hierdie klousule bepaal dat enige ooreenkoms wat probeer om die bepalings van hierdie Wet te beperk of uit te sluit, nietig is.

Klousule 34: Hierdie klousule bepaal dat die bepalings van die Wetsontwerp geen persoon enige siviele regsmiddele ontneem nie.

Klousule 35: Hierdie klousule bevat die kort titel.

with significant new information from the 1990 census. The new edition also includes a 10% sample of the 1990 census data, which can be used to analyze specific topics such as the aging population, the growth of the service sector, and migration patterns. This new edition also contains a new section on the U.S. Census Bureau's projections for the year 2000.

And since an entire new chapter is devoted to the impact of AIDS on the elderly and their communities, this edition of the book, which also includes relevant historical and demographic data, clearly shows that AIDS has changed the way we think about the elderly. The new edition also includes a new section on the U.S. Census Bureau's projections for the year 2000.

10. **Demographic and Medical Needs of the Senior Population: A Guide to Health Care Services**

This book is a valuable resource for anyone involved in health care delivery or planning. It provides a comprehensive overview of the medical needs of the elderly, including information on the types of services available, the cost of services, and the impact of medical technology on the elderly. The book also includes a section on the impact of medical technology on the elderly, including information on the types of services available, the cost of services, and the impact of medical technology on the elderly.

Demographic and Medical Needs of the Senior Population: A Guide to Health Care Services is an essential reference for anyone involved in health care delivery or planning. It provides a comprehensive overview of the medical needs of the elderly, including information on the types of services available, the cost of services, and the impact of medical technology on the elderly.

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