



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 471

Pretoria, 9 September 2004

No. 26774



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GENERAL NOTICES

NOTICE 1957 OF 2004

Department of Trade and Industry Draft Green Paper on the Consumer Policy Framework

Consumer Affairs Act, 71, 1998 (Unfair Business Practices Act);
Sale and Service Matters Act, 25, 1964;
Trade Practices Act, 76, 1976; and
Alienation of Land Act, 68, 1981

Members of the public are hereby invited to make written comments on the draft green paper on the consumer policy framework published herewith.

Hard copies are available at the Department of Trade and Industry, Block A, 3rd Floor, 77 Meintjies Street, Sunnyside, Pretoria, 0002.

Members of the public must submit written comment by no later than 16h00 on 09 November 2004. Comments should be titled as follows;

Green Paper on the Consumer Policy Framework, 2004
Ms. Nozipho Buthelezi: Project Manager : Consumer Law Reforms
Consumer and Corporate Regulation Division, the dti

Comments may be –

- Hand delivered to the offices of the dti at the above address;
- Posted by registered mail to Private Bag X 84, Pretoria, 0001;
- E-mailed by nozipho@thedti.gov.za or
- Faxed to (012) 394 2540.

Should you have any telephonic enquiries, contact Ms Nozipho Buthelezi at (012) 394 1540 or (012) 394 1535

DRAFT GREEN PAPER ON THE CONSUMER POLICY FRAMEWORK 09/04

Driving Competitiveness

Consumer confidence and business excellence

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Foreword by the Minister of Trade and Industry

Consumer protection is an integral part of a modern, efficient, effective and just market place. Confident consumers are one of the important drivers of competitiveness. By demanding competitive prices, improved product quality and better service, they provide an impetus for innovation and enhanced performance by business. The need to put in place a new framework for consumers must be seen in this context, in the context of the overall strategy to improve the competitiveness of our industry, rather than as an attempt by government to impose more onerous regulation on the private sector.

The apartheid legacy of poverty, high levels of illiteracy, socio-economic inequalities, and wide spread human rights abuses (including consumer rights abuses) still poses a great challenge to us. As a government we are determined to overcome this challenge by creating an environment where a culture of consumer rights and responsibilities prevails. Such an environment is not only beneficial to consumers but to business as well. It will rid the market of unethical traders and will contribute to the creation of a fair, competitive and equitable environment for all. It also requires us to consider carefully the measures that are put in place to ensure that historically disadvantaged consumers can effectively access their rights and obtain redress when necessary. By ensuring that access to redress for economic citizens, particularly the historically disadvantaged, is accessible, transparent and efficient. This will also have positive spin-offs by advancing the objectives of the board-based black economic empowerment strategy.

A consumer policy and consumer law reform must be able to address not only the historical legacy of our country, but must also be able to respond to new and emerging challenges and opportunities. Increased cross border trade, e-commerce and other new trading methods resulting from globalisation and technological advancement require government find innovative ways of protecting and promoting the interests of consumers. It is clear that the strengthening of consumer protection will also require the co-operation and formation of strategic regional and international partnership in respect of consumer issues. It will require a responsive, flexible and simple legislative and regulatory framework.

This policy framework will form the basis for an extensive consultation process that will involve business, labour, government, regulators and consumers. It is in the interest of every

citizen of South Africa to participate in the debate that will be initiated through the launch of this document. It will be our responsibility to ensure that the consultation process is as inclusive as possible. Let us not forget: we are all consumers.

Mandisi Mpahlwa, MP

Minister of Trade and Industry

Executive Summary

The system of consumer laws in South Africa is outdated, fragmented and predicated on principles contrary to the democratic system. South Africa does not have a comprehensive consumer protection statute that clearly spells out the rights and obligations of all market participants. In order for consumers to participate effectively in the market economy, it is important they are accorded basic rights in a comprehensive consumer law that sets out guiding principles for market conduct. Internationally most countries have moved towards developing comprehensive consumer laws that give consumers rights upfront. South Africa lags behind many countries in terms of reviewing its system of consumer laws in line with recent changes in global markets. Regions such as the EU, Sub-Saharan Africa, the Caribbean, Asia-Pacific have recently undertaken comprehensive consumer law reviews and adopted a rights-based culture towards consumer protection.

Appropriate and consumer friendly policies relating to trade, competition, intellectual property and the environment are critical in ensuring that markets work to the benefit of consumers. Competitive domestic markets ensure that consumers have access to choice and competitive prices. Fair and open markets also drive innovation, product quality and competitiveness. However, unbalanced terms of trade can have negative consequences for consumers and for the economies of developing countries, they can result in unsafe products, counterfeit and substandard goods. In addition unregulated industrial production processes can result in unsustainable production and consumption patterns, improper labeling and disclosure and lack of traceability.

Effective enforcement mechanisms are the most important part of any consumer protection policy. To enable consumers to obtain redress, a coherent, adequately resourced and easily accessible infrastructure must exist. At present redress for consumers is largely obtainable through the criminal and civil justice system as most laws empower magistrate courts to deal with consumer issues. The challenge facing government is that litigation of consumer abuses competes with serious and violent crimes and as a result consumer abuses receive less attention. Enforcement mechanisms must be credible and easily accessible, especially to vulnerable and rural consumers. Effective enforcement infrastructure may include access to advice, counseling and legal support in general.

In South Africa, consumer protection is a shared competence between national and provincial government. This means that both spheres must ensure effective enforcement and redress. The infrastructure for redress currently exists in a form of formal government institutions, non-profit organisations and paralegal associations. However, limited resources and information asymmetries tend to hamper delivery. It is therefore important that any systems that are put in place are harmonized and coordinated both at legislative and enforcement level. Of critical importance, are awareness and education programmes, early warning systems, dispute resolution and complaints handling systems.

South Africa lacks a vibrant and strong consumer movement. In large part the media represents the most active area of consumer activism in South Africa. Vocal and demanding consumers are important in driving competitiveness and promoting service excellence. Consumer advocacy contributes to better-informed government policies and enables government to identify problems and seek solutions. The absence of a strong consumer movement in South Africa has largely been attributed to lack of funding. Whilst it is important that government recognises the need for funding and capacity building, such initiatives must take into account long-term sustainability. Whilst government may provide long-term capacity building support, financial support must however be diversified overtime.

Customer responsiveness is an important aspect of competitiveness. Responsiveness involves firms voluntarily providing consumers with value for money and providing services that are best suited to their needs. It is therefore necessary that businesses put in place mechanisms for better customer service, complaints handling solutions, standards for product quality, corporate governance and corporate responsibility measures. Government can assist business to achieve these goals through incentives, setting standards and benchmarking and dissemination of best practice approaches.

Customer responsiveness is just as important in the public service as it is in the private sector. The public service provides basic services, to which in many instances consumers have no alternatives and which have a significant impact on large numbers of low-income consumers, who depend on the services provided by government in a number of areas, including health services. It is therefore important that the principles of good customer care are applied in the public sector.

While the White Paper on the Transformation of Public Service Delivery, "The Batho Pele Framework", provides a basis for setting standards in public service delivery, government in general has not progressively advanced towards adhering to the principles advocated by the framework. Standards for service delivery have not been set and complaints handling systems and mechanisms for redress have not been implemented.

Furthermore, given that local government delivers basic services, it is necessary that the principles of Batho Pele be extended as a mandatory requirement for this sphere of government. It is particularly important that standards are set and that mechanisms for complaints handling and redress are in place in this sphere of government. Local government is overwhelmingly responsible for delivering basic services, and consumers of these services currently have no effective recourse, especially where the billing of services is concerned. While consumer organisations can play an important role in monitoring the implementation of services, a more pro-active role for government in monitoring service standards is required.

This policy seeks to provide a broad framework for consumer protection in South Africa. In particular, to promote consistency, coherence and efficiency in the implementation of consumer laws.

CHAPTER ONE

Promoting performance, providing protection

1.1 Introduction

Consumers are at the heart of the economy. Empowered consumers are important drivers of competitiveness. However, in order for consumers to be able to play this role in imperfect markets where the balance of power lies in favour of businesses and suppliers, consumers must be protected.

In South Africa, the legacy of apartheid means that consumer policy must encompass further challenges: first, there is a need to promote the equitable consumption of goods and services and secondly, to provide vulnerable consumers with rights and redress. The principles of equity and non-discrimination enshrined in the Constitution are some of the cornerstones of consumer policy.

Since recognising this challenge in 1994, the Government has introduced social and economic policies, such as the Reconstruction and Development Programme (RDP) and the Growth, Employment and Redistribution framework (GEAR). The Government has also instituted various measures to put into effect international guidelines and principles, such as the United Nations Guidelines for Consumer Protection. These policies and measures have contributed to the development and promotion of market conditions that support the equitable and sustainable consumption of goods and services. They have included the introduction of provincial Consumer Affairs (Unfair Business Practices) legislation, a new Competition law, environmental management policy, the introduction of additional regulation in the areas of disclosure, such as the Home Mortgage Disclosure Act, a review of the Estate Agency Affairs Act, the Promotion of Access to Information Act, the Promotion of Equality and Prevention of Unfair Discrimination Act and the President's Office initiative on the Status of the Disabled. Of significance also has been the introduction of legislation on product safety in the areas of agriculture and health.

These developments have, however, proven insufficient to deal with contemporary and emerging challenges facing consumers. In particular, there is no overarching consumer law regulating the interaction of consumers and business in the market place with respect to issues such as marketing and selling practices, contracts, product safety and labeling, for

example. The emergence of new issues such as globalisation and e-commerce, which provide opportunities for universal access, need to be considered in the light of consumer privacy and the provision of redress and enforcement. E-commerce and the knowledge economy also expose consumers to old risks in new guises with many old practices, such as pyramid schemes re-emerging.

South Africa needs a comprehensive consumer policy to guide the welfare of all its economic citizens and to provide a coherent and consistent framework of statutes, policies and related government authorities to regulate consumer-business interaction. While the policy primarily targets the private individual who purchases goods and services for any purposes other than resale, it must be recognized that in certain instances small businesses are also vulnerable in the market place and thus require a measure of protection.

The framework must clearly define the role of government and other stakeholders, such as business and consumer champions. This policy document will outline such a vision and framework.

1.2 Consumers driving competitiveness

The government vision for the economy, outlined in the Integrated Manufacturing Strategy (IMS), is for an efficient and modern economy, with a well functioning market place that results in high-quality, value-added products, the creation of high value employment, and equitable access to economic activity by all economic citizens of the country. Such a vision is predicated on an understanding of the central role of consumers as purchasers of goods and services.

Any market is based on the interaction between producers and suppliers of goods and services, and the consumption of these by customers. Customers in this context include businesses and consumers. How well such a market functions depends on a number of factors, including the level of competition between producers and suppliers, the information available to consumers, the business ethics of producers and suppliers and the conduct of consumers.

In situations where consumers have little or distorted information at their disposal, where consumers passively accept the goods and services provided to them, and where producers

and suppliers have disproportionate power in the market place. The result will be an inefficient business environment, which provides poor quality, high cost products and services. It will further result in an economy that is uncompetitive internationally. Thus, active, confident and vocal consumers are key to driving competitiveness.

1.3 A case for consumer protection

Some economists and business people would argue that consumers do not need to be protected. They would argue that consumers have the choice not to buy goods and services and to send signals through their purchasing behaviour such that the market, if left to its own devices, would function better than in cases where there is intervention.

However, this view is predicated on assumptions of perfect information available to both consumers and businesses. The reality of the market place is somewhat different. Consumer transactions, namely purchases by individual consumers, are characterised by imbalances in information and bargaining power between businesses and consumers. In order to promote consumer confidence, it is therefore necessary to develop guiding principles for market interaction, and some fundamental rules of conduct. If these rules are enforced, consumers can be confident that the information provided to them is accurate, that they are given real choices and that the imbalance between individual consumers and businesses, especially larger businesses, is addressed.

The imbalance between consumers and businesses is of special concern in South Africa because the majority of consumers are poor and many consumers have low levels of literacy and reside in rural areas with no easy access to complaints assistance. The legacy of systematic dispossession and under investment in education for black South Africans has a fundamental impact on the current market place and exacerbates existing imbalances.

Whatever consumer regulation was in existence prior to 1994 responded in large part to the problems of white consumers. Since 1994, there have been significant changes in income distribution, with a large increase in black spending power and many new entrants into the consumer market. However, many of the new entrants to the marketplace are still vulnerable, with limited life-skills, high levels of illiteracy and poverty. This exacerbates the conventional information asymmetries and imbalances in bargaining power, and must be addressed.

The isolation of the South African economy and South African business from the global arena resulted in an uncompetitive domestic market. As markets have opened up since 1994 and South Africa has become increasingly integrated into international markets, a new set of challenges for consumers have emerged. South African consumers have become more vulnerable to substandard and unsafe products flooding our markets, including counterfeit goods. In addition, there is still a residual of uncompetitive conduct and a disregard for customer service. Business has largely failed to recognise the important role of consumers as stakeholders in the economy.

Consequently, many consumers are exposed to:

- unfair advertising and predatory selling mechanisms;
- lack of access to concise and balanced sale and purchase information;
- unfavourable deals and contract terms;
- Post-purchase harassment and denial of fair settlement terms; and
- unfriendly customer service.

Promoting efficient and competitive markets and customer responsiveness is therefore important to ensure consumer welfare, not only in the private sector, but also in the public sector. This policy document therefore also extends to government itself. However, "making markets work for consumers" is not sufficient to ensure consumer well-being and protection in the particular circumstances of South Africa, given our historical legacy, the large number of vulnerable consumers, and the absence of a rights-based consumer culture.

It is therefore necessary to set out clear consumer rights and the guiding principles for the interaction between consumers and business in a strong consumer law and to pro-actively enforce the fundamental principles. Business needs to recognise that confident and satisfied consumers are key to ensuring their growth and development and put in place additional measures to ensure customer satisfaction. Government needs to incorporate consideration for consumers in its service delivery. Finally, it is critical that South African consumers develop a voice and demand product choice and quality.

1.4 The need for balance

Whilst providing the protection that consumers need, Government must also take into account the developing nature of the South African economy and the need to promote SMMEs. It must ensure that, in recognising and institutionalising consumer protection, business is not unduly burdened. Excessive compliance costs would prejudice businesses in their quest for competitiveness and consumers through higher prices.

It follows then that an effective Consumer Policy must bring together all the tools that consumers need to effectively participate in the market place, recognising the historical legacy of South Africa and the vulnerability of its consumers, but that it must balance these tools with the developmental imperatives of the South African economy. It must promote the performance of business, but at the same time provide protection to consumers.

1.5 Objectives of a new consumer policy

A consumer policy must outline the guiding principles and the underlying rules of conduct, which will promote performance and competitiveness in the market place, whilst ensuring that consumers are protected. It must further indicate how enforcement of these rules will take place, and how consumers will gain redress if their rights are infringed.

The objectives of this consumer policy framework are to:

- Promote a fair, efficient and transparent market place for consumers and business;
- Provide a consistent, predictable and effective regulatory framework that fosters consumer confidence, but also recognises the developmental imperatives of the South African economy;
- Provide access to effective redress for consumers as economic citizens;
- Recognise and support the role of activist and confident consumers in promoting a competitive economy;
- Promote customer responsiveness in the public and private sector;
- Harmonise our consumer protection framework with international best practice jurisdictions.

Co-ordination and integration with other policies and pieces of legislation, which impact on consumers is also vital for a comprehensive and coherent consumer policy framework.

CHAPTER TWO

Making markets work for consumers

2.1. Introduction

In many developed and developing countries with an established history of consumer rights and consumer activism, the emphasis is increasingly shifting to ensuring that markets work for consumers. Competitive domestic markets ensure that consumers have access to choice and competitive prices. Fair and open markets also drive innovation, product quality and competitiveness. However, unbalanced terms of trade can have negative consequences for consumers and for the economies of developing countries, they can result in unsafe products, counterfeit and substandard goods. In addition unregulated production processes can result in unsustainable production and consumption patterns, improper labeling and disclosure and lack of traceability. For the poor, the objective is to access affordable and quality supplies of goods and services.

The consistent and coherent application of policies across the economy and the importance of public institutions working well together is particularly relevant to consumer issues, as policy responsibilities are spread across a wide range of departments. This is true not only of the provision of public services, but also for privately provided goods and services, which are regulated.

2.2 Consumers and competition

Well-functioning markets provide consumers with a range of product choices and competitive prices. However, markets characterised by a lack of competition, or insufficient competition, and market failures do not work for consumers. They constrain access to goods and services, result in limited product choice and high prices at the expense of consumers, and often low income consumers. However, unfettered competition can also have deleterious effects on consumers and can result in the provision of unsafe or substandard products and services. It can also result in market structures and market conduct that prejudice consumers and small businesses in the long run, if there are no rules of conduct for businesses in their interaction with each other.

Competition policy is a critical tool to promote the competitiveness and adaptability of the South African economy. Competition law and policy is also a cornerstone of consumer policy. Competition policy recognizes that competition between businesses is important to ensure that consumers have access to fair, competitive prices and product choice. It also recognizes, however, that certain practices in an unregulated market may have a negative impact on the market place, for example when businesses collude to fix prices or when dominant firms use their position in the market to keep competition at bay. Finally, competition law regulates mergers between and acquisitions by firms to ensure that these structural changes to the market do not result in price increases and a significant reduction in product choice for consumers by removing effective competitors or by foreclosing entry to new firms.

In recognition of this, the South African government enacted a new Competition Act in 1998 and established three institutions tasked with the administration and enforcement of the law, namely the Competition Commission, the Competition Tribunal and the Competition Appeal Court.

While there was initial resistance to the new competition law, the business community has largely accepted the existence of the regime and is beginning to recognize its merits. Having crossed the initial hurdles of any newly established regulatory regime, however, it is critical that the Competition authorities remain vigilant in their detection of anti-competitive conduct and on ensuring that the market place is fair and level. This is particularly relevant for small businesses, which often have a fundamentally unequal position in the market and are subjected to abuses by entities with market power, such as in the franchising sector. The Competition authorities must become more pro-active in identifying conduct that prejudices small businesses due to an imbalance in bargaining power and more active in championing consumer issues. This extends beyond the scope of investigating anti-competitive practices, to monitoring prices and making policy recommendations to government on a number of issues that have an impact on consumers and small businesses. There is also a greater need to consider the voice of consumers in competition proceedings to ensure that the voice of business is balanced in merger reviews and investigations in anti-competitive conduct. Finally, the Competition authorities need to develop specific education and outreach programmes to explain the significance of competition policy to consumers and their champions and seek to pro-actively draw in consumer champions in various aspects of their work.

2.3 Consumers and international trade

Since 1994, the South African economy has opened up significantly to foreign trade, resulting in new products and services entering the country and competing with local products and producers. Tariff reform in 1996 removed significant barriers to entry for foreign firms and allowed consumers to access imported products at more competitive rates. At the same time, South Africa joined the World Trade Organisation and has acceded to and negotiated a number international trade agreements. This further enhanced South Africa's integration into global markets.

Globalisation and increased international trade can have positive and negative consequences for consumers. Imports bring greater choice of products for consumers, and, could potentially offer more competitive prices. On the other hand, unless adequate consumer protection measures are in place, the availability of unsafe and substandard products could increase. Globalisation can also result in the transfer of unsustainable consumption and production patterns from developed to developing countries. It can bring with it the large-scale dumping of substandard or subsidized products with a negative effect on domestic production. The world market for agricultural products is a case in point. It has been substantially skewed by subsidies so that world agricultural produce prices bear no accurate resemblance to the production costs. While a reduction on tariff in these areas will undoubtedly have short run benefits for consumers, it must be ensured that it does not in the longer run push domestic producers out of the market, leaving South African consumers vulnerable. International trade, therefore, has implications for consumer policy and its implementation.

In the first instance, with increasing international trade and South African participation in global markets, it is important that clear product safety standards must be set and enforced on imported goods. This consideration must also carry through into trade negotiations, where non-tariff barriers increasingly form part of the negotiation agenda. Care must be taken not to sacrifice essential safety or environmental standards. Furthermore, while intellectual property rights of local and international firms must be respected and enforced in South Africa, care must be taken that these rights do not compromise access to cheaper alternatives, whether imported or produced domestically. This is particularly relevant in the case of medicines. These issues must be dealt with strenuously at the multilateral and

bilateral level, to ensure that not only South African consumers, but consumers in all developing countries can exercise their right of choice.

It is also important that trade policy, in particular the tariff regime, does not undermine the benefits of import competition for consumers, not only in terms of the increased product choice, but also in the competitive impetus international trade offers for the domestic market and domestic producers. However, at the same time, it must be recognised that tariffs may be important to offer a level of protection to certain sectors, particularly those sectors in which the employment losses could be most severe, or which are most vulnerable to unfair international competition. Furthermore, it is important that the efficacy of anti-dumping investigations be strengthened, as dumping of products can have a long-term negative effect on domestic markets by squeezing out domestic producers who could offer the best prices and a range of products to consumers.

In conclusion, therefore there is a need to balance the needs of our domestic industry with consumer welfare in the international trade arena. In order to promote this balance, it is important that consumers have a voice when decisions about tariffs and trade negotiations are made. South Africa must also ensure that it is represented at international standard-setting bodies to ensure that South African consumers' needs are voiced.

2.4 Consumers and intellectual property rights

With increased international trade, consumers are more likely to be exposed to fake or counterfeited goods. While some consumers may believe that buying goods they know or believe to be counterfeit or pirated saves them money and does no damage, fake goods can be dangerous or destructive, ranging from defective brake pads to virus-infested software. Moreover, traders who sell fake goods will not offer a genuine manufacturer's guarantee or after-sales service.

At a broader economic level, the manufacture and sale of counterfeit goods can damage confidence in the market and can provide disincentives for manufacturers to invest in quality and brands. This will in the long term negatively impact on consumer choice and product quality.

It is therefore important not only that there is a concerted effort to enforce counterfeit goods provisions contained in the Counterfeit Goods Act, but also that consumers be made aware of the potential damage that counterfeit goods can cause them and are encouraged to monitor and report the sale of counterfeit goods.

2.5 Consumers and the environment

A safe and sustainable environment is a public good. It is one of the nine internationally recognized rights of consumers. However, it also imposes obligations on consumers, as their conduct in many cases has a direct impact on the environment.

Sustainable consumption is a concept derived from sustainable development. It captured global debate during the United Nations Conference on the Environment and Development held in Rio de Janeiro in 1992. The Rio Conference tabled Agenda 21, which not only identified sustainable development as one of the priority areas for governments, but it also introduced the concept of sustainable consumption. Sustainable consumption refers to the consumption of goods and services in a manner that will safeguard the needs of future generations of consumers, through the minimization of the use of non-renewable resources, toxic materials such as waste emissions and pollutants.

The World Summit on Sustainable Development, (WSSD) held in Johannesburg, 2002 noted the need for sustainable consumption patterns and stated the concern that governments across the globe have not progressed towards implementing the policy proposals of Agenda 21. The WSSD conference also observed that current production patterns do not address the need for sustainable consumption and continue to impact negatively on the environment, economy and the standard of living of society in general. The plan of implementation of the WSSD Summit, clearly articulates the need to change from unsustainable patterns of consumption and production. By adopting the plan of implementation, all countries committed to promoting sustainable consumption and production patterns by taking into account the principle of differentiated responsibilities, including governments, the private sector and non-governmental organisations.

As articulated in the cross-sectoral issues meeting during the WSSD Summit, consumer groups can play an important role in discouraging unsustainable consumption thereby promoting sustainable production. This is a major challenge for developing economies such

as South Africa where the need to "do more with less" has to be balanced with other societal goals such as poverty eradication and equitable access.

Generally, environmental degradation begins with a desire to satisfy consumer needs, this is translated by business into a production process. It is however the type of goods that consumers demand and the decisions by business regarding how and where the good will be produced that determines the environmental outcome.

On the consumption side, it is necessary for government, business and consumer groups to influence consumption patterns so that South Africans consume less non-renewable resources and non-biodegradable goods. On the supply side, it is necessary for government to implement regulatory instruments such as pollution control, product standards, awareness raising campaigns, eco-labeling etc.

Unsustainable consumption patterns are a form of market failure, the failure of market forces to yield sustainable outcomes. It does not only threaten consumer rights to a clean and safe environment but also poses a challenge for consumer health. The majority of South African consumers are not aware of the "world behind the product" and are therefore not empowered to make eco-efficient decisions. Where the market fails to innovate sustainable solutions in response to consumer needs, it becomes necessary for government to intervene through environmental regulations, standards and consumer awareness programmes. The National Environmental Management Framework Act, 1998 provides a broad framework for environmental protection and gives any person a right to seek relief in the event that their environmental rights might be violated.

According to the UN Consumer Guidelines, "[g]overnments should encourage the design, development and use of products and services that are safe and energy and resource efficient, considering their full life cycle impacts. Governments should encourage recycling programmes that encourage consumers to both recycle wastes and purchase recycled products. Governments should encourage impartial environmental testing of products and promote the development and use of national and international environmental health and safety standards for products and services."

2.7 Conclusion

Policies relating to competition, international trade, intellectual property and the environment shape the market place in which consumers are active. An important role for government is better regulation to ensure that markets work well for consumers. When markets work well, they provide incentives for investment by businesses, encourage the growth of SMEs, promote local and import competition and lead to improvements in productivity and innovation. Consumers derive direct benefits through fair prices, market transparency, wider choice, value addition and higher standards of product quality.

Consumers as individuals and consumer organisations can also play an important role to ensure that markets work to their benefit. It is therefore imperative that the consumer voice is heard and that consumers are included in decision-making processes. Markets work best in an environment where consumers set standards and make demands. Given the low levels of consumer activism in South Africa, it is therefore not sufficient to implement policies that promote better functioning markets. It is critical that a rights-based culture is created through a strong legal framework and that consumer activism is fostered.

CHAPTER THREE

Establishing consumer rights

3.1 Introduction

Confident consumers are integral to a well-functioning market. In order to promote trust by consumers, it is important that consumers develop confidence in the safety of the goods and products they purchase, the information provided to them and the manner in which products and services are sold to them. Consumers have a right to expect these basic standards of conduct and safety.

While ethical businesses will ensure that their conduct in the market place reflects these key principles, not all businesses adopt the same standards of good practice. Increased trade and new products make consumers more vulnerable. In order to create a fair and transparent market place, it is critical that an appropriate regulatory framework is developed that sets out the responsibilities of business in the market place and reflects the most fundamental rights that consumers have.

3.2 The historical legacy

The apartheid government and its policies deprived the majority of South Africans of political, economic and human rights. Policies based on segregation and separate development excluded people from gaining access to basic services, such as housing, sanitation and electricity. Systematic under investment in education has left a legacy of low literacy and skill levels. Historically disadvantaged South Africans were prevented from becoming active participants in the market, other than as a source of cheap labour.

The apartheid legacy also included a disregard for consumer rights. Former economic policies were based on the belief that economic growth and development takes place solely through a path dictated by production factors, such as investment in capital goods and the supply of cheap labour. This belief implicitly assumed that consumers in general played a minimal role in contributing to economic growth. These economic policies were exacerbated by the isolation of South Africa from the international arena and fostered a business sector characterized by inefficiency, a lack of competitiveness, anti-competitive conduct and limited regard for customer needs and service.

Since 1994, South Africans have reclaimed their inherent political, economic and human rights. Much progress has also been made in ensuring that historically disadvantaged persons participate in the economy as entrepreneurs and investors. Increased spending power has meant that more black South Africans have become active consumers. The opening up of the South African economy to international trade has brought benefits, but also potential dangers. All of these factors contribute to the need for South Africa to review its regulatory framework.

While progress has been made in a number of areas to address the inequalities of the past and the uncompetitive nature of the economy, a fundamental area of reform has been left largely untouched. This is the area of consumer law.

3.3 The need for a new legal framework

The current body of consumer law in South Africa is fragmented, outdated and predicated on principles that are not applicable in a democratic and developing society. South Africa has numerous pieces of legislation, which are either merely incidental to consumer protection or are scattered in numerous statutes and policies. General consumer protection measures are contained in the national and provincial Consumer Affairs (Unfair Business Practices) legislation, the Sale and Service Matters Act, the Alienation of Land Act, the Trade Metrology Act and the Trade Practices Act (which has been largely repealed).

Additional consumer protection measures are contained in a myriad of industry specific legislation such as the Estate Agency Affairs Act, the Usury Act, the Credit Agreements Act and the Housing Development Schemes for Retired Persons Act, the Standards Act, as well as in various industry codes of conduct. While the Standards Act does not provide explicitly for consumer protection, it is implicit that standards are central to the quality and standard of products that are made available in the market to consumers. In addition to the above, a range of laws administered by other government departments, also have an impact on consumers.

The absence of a single, comprehensive consumer law is based on a policy dating back to the 1980s, which sought to leave the market largely untouched, save for areas in which problems emerged. The result has been uneven regulation, with heavy regulation in some

areas and industries; but a reliance on self-regulation in most areas. Furthermore, consumers do not have some of the most basic rights, such as a right to fair contract terms and fair and transparent advertising and marketing practices.

A recent study conducted by the dti to benchmark the current status of South African general consumer laws against international regulatory frameworks, revealed that many countries are moving towards comprehensive legislation for consumer protection. Many regions, including Africa, Latin America and the Caribbean, Asia and the Pacific have developed comprehensive consumer laws that outline upfront the rights of consumers. The majority of these laws are informed by the UN resolution on Guidelines for consumer protection and Consumers' International proposed model laws for the different regions. South Africa lags behind most developing nations such as Argentina, Brazil, Chile, Botswana, Uganda, Malawi etc. who have already adopted a rights-based comprehensive approach to consumer protection.

In order to give consumers certainty in their interaction in the market place, it is therefore necessary to develop a simple, comprehensive and accessible consumer law. It should serve as a single reference to consumers and to business, outline the fundamental rules of conduct and grant consumers basic rights.

A general consumer law that sets out the basic principles for interaction in the market place will not be able to cater for all eventualities and all sectors. Some sectors have will have specific problems that require additional regulation. However, the principle adopted in this consumer policy is that there should be consistent regulation that sets out basic consumer rights, with additional obligations imposed on business in sectors, where specific problems emerge.

3.4 Towards a comprehensive consumer law

A new consumer law must set out the basic rules of conduct that governs the interaction between businesses and consumers to ensure a fair and transparent market place. It therefore needs to regulate all aspects of the purchasing cycle for goods and services, beginning with the advertising or marketing of products, the practices adopted in securing a sale, including the disclosure of information to consumers, the terms and conditions of

contracts and the conduct of a business after the purchase has been made, including honouring guarantees and warranties, refund and return principles and collection practices.

The new Consumer law will replace the Consumer Affairs (Unfair Business Practices) Act, the Trade Practices Act, the Sale and Service Matters Act and the Alienation of Land Act, will regulate national practices and will result in amendments to sector laws.

The fundamental objective of the new consumer law must be to ensure a fair and transparent market place in which the rights of consumers are recognized and protected. The law must recognize that promoting consumer rights stimulates better business performance, but also that consumer protection must be balanced with the development of enterprises, especially small enterprises.

Perhaps one of the greatest pitfalls in most consumer protection laws in South Africa, is the absence of a uniform definition of "a consumer". This has resulted in a difficulty for enforcers to accurately identify individuals that the State seeks to protect. Consumers must be defined broadly as individuals who purchase goods and services, and must include third parties who act on behalf of the consumer. Small businesses are also vulnerable in the market place, they must also be granted some protection from unfair contract terms. However any protection provided to legal entities must be capped in terms of the size of the business, as provided for by the Small Business Act. In particular, franchisees are often exposed to these practices and must be explicitly provided for in the law.

The basic tenets of such a consumer law are set out in the remainder of this chapter.

3.4.1 Misleading marketing and selling practices

Fair business practices in respect of advertising and selling ensure that real competition between businesses can occur, which in turn leads to lower prices and better products. They also lead to greater trust by consumers and better relationships between consumers and businesses. One of the most important fair business practices is that of telling the truth in advertising and selling.

Misleading conduct broadly encompasses any action by businesses or the media that actually mislead or deceive or are likely to mislead or deceive consumers. Misleading

someone includes lying to them, leading them to a wrong conclusion, creating a false impression, leaving out or hiding important information and making false or inaccurate claims.

Examples of misleading selling or advertising conduct include:

- Offering, in the course of a possible sale or promotion of goods, gifts, prizes or free items, with the intent of not giving them, or not giving them as promised;
- Advertising products at a specific price if it could be anticipated that those products would not be available in reasonable quantities and for a reasonable period at that price (**bait advertising**);
- Offering products on condition that prospective purchasers can then get commissions or other benefits for bringing others to the business (**referral selling**);
- Offering employment and business opportunities without describing the nature of the opportunity or without stating that pay is on a commission basis only (**work from home advertising**);
- Making false representations about the characteristics of goods or services, including sponsorship, price, place of origin, warranties, availability of spare parts or the buyers' need for goods;
- Inducing persons to join a trading scheme on the basis that they will receive benefits from the introduction of further persons (**pyramid selling**);
- Providing goods and services that are unsolicited, coupled with subsequent demands for payment (**inertia selling**);
- Refusing to sell a product unless the consumer also purchases another product from a third party (**third line forcing**);
- Placing disclaimers and limitations on the conditions of sale in an unobtrusive way so that consumers cannot be reasonably expected to have seen them;
- Making misrepresentations about the nature, conditions or circumstances of an interest in land;
- Accepting payment for goods and services if there is no intention to supply the goods and services, or if the intention is to supply materially different products;

- Using coercion, undue harassment or physical force in connection with the supply or possible supply of goods and services, or the payment for them (**pressure selling and debt collection**).
- Making false or misleading representations about **promotional competitions**

Internationally, misleading and unconscionable conduct is generally prohibited in consumer law. In South Africa, the Consumer Affairs (Unfair Business Practices) Act, 1989, allows the Minister of Trade and Industry to prohibit unfair business practices. Most provinces also have broadly similar provisions in their Consumer Affairs laws, although consumer courts can issue orders prohibiting certain conduct. However, very few general prohibitions are in place. Examples include the general prohibition on pyramid selling and a prohibition on pressure selling in the case of gyms. These prohibitions are issued by way of regulation, rather than clear prohibitions in the main body of law. Many investigations result in the prohibition of the particular conduct of a specific business. This approach, both to the application of the law and inherent in the law itself, does not give business and consumers the certainty necessary to create a fair and transparent market place, with clear rights and obligations.

Some marketing practices are regulated through industry codes of conduct, in particular the Advertising Code of Conduct, which is enforced through the Advertising Standards Authority. However, self-regulatory mechanisms cannot substitute for the need to have basic rules regarding the marketing and selling of products, although they play an important role in raising the standards of conduct by industries in the market place.

With the development of technology and the increased use of the internet in making purchases, many practices that have been dealt with are re-emerging in another form through the internet. The same principles, that are applicable to direct sales or mail-order sales, must also be applicable to sales and marketing and selling practices through the internet.

Unsubstantiated claims by intermediaries lead to consumer dissatisfaction. Transactions involving intermediaries often mean that consumers cannot hold anyone accountable. In such cases, intermediaries must be liable where the provider of the good or service cannot be held accountable. The Financial Advisers and Intermediary Services Act and the Estate

Agency Affairs Act are examples of laws that seek to regulate the conduct of intermediaries in specific sectors. What are lacking are the general principles that should regulate the conduct of intermediaries in all market segments. In addition, specific consideration must be given to holding the media responsible for the placement of advertisements that do not reform to legislative requirements or that are clearly misleading.

The new Consumer Law will therefore contain general prohibitions on misleading and unconscionable conduct and will prohibit certain types of conduct, including the practices outlined above, and must be neutral to the medium of advertising or selling.

3.4.2 Disclosure

Information disclosure is a general concern in consumer protection. There are three generally accepted reasons in support of information disclosure. First, it allows the consumer to make informed choices and thereby achieves customer driven outcomes. Consumers are able to compare products and the prices they are willing to pay for. Secondly, standard disclosure enhances consumer protection, because it enables basic information to be presented in a uniform format. Consumers are unlikely to be misled by complex advertising offers or mistaken beliefs about, for example, the environmental impact of products. Thirdly, it makes markets more efficient. Disclosure can drive down prices by allowing consumers to shop around and to compare prices.

Product labeling is a critical component of information disclosure. Labeling is a tool, which informs consumers about the contents and safety of goods and services. Labels should be designed to provide concise information to the consumer about the product and should be uniform, to allow consumers to compare products.

However, information disclosure needs to go beyond the label. Consumers need:

- A complete description of the products and services;
- The origin of the goods in question;
- Transparency in price information;
- An explanation of the implications of the purchase especially the terms by which a product is offered, applicable guarantees and after sale service;

- Environmental effects;
- Information about any applicable consumer protection measure that may form part of the transaction.

The description of the goods and services includes a description of its contents, where necessary. The description must be adequate to allow a consumer to make an informed decision about the product or service. There is a clear need to put in place mechanisms to ensure transparency and the flow of information so that products and services can be tracked throughout the production and distribution chain. This facilitates more accuracy in labeling and ethical standards regarding, for example, the use of genetically modified organisms or the origin of goods. The new Consumer Law will therefore contain general provisions for product tracing of food, feed and seed in respect of the country from which the product originates, the corporate entity that makes it and to transmit specific information regarding the genetic make up of a product. Currently, the Merchandise Marks Act, 17, 1941, makes provision for country of origin labeling. It is however necessary that this law be reviewed to explicitly provide a broad framework that will be applicable across all sectors.

In addition, since introducing product tracing systems can be costly, the consumer law will seek to balance the need for consumer safety with the ability of SMMEs to compete.

The disclosure of the price of goods and services similarly must be clearly displayed, understandable and comparable for a consumer. Price is key to purchasing decisions, especially for those with low incomes. Prices are, however, not always easy to compare, particularly when package size varies. Given the relatively low literacy levels in South Africa, it is important that consumers should be able to trust the standards and measurements applied to certain products. In addition, the display of prices is important. Prices are not always visible. Sometimes, this is a deliberate selling tactic to draw the consumer into negotiations, especially by smaller businesses. It is imperative that price information should be readily available to allow consumers to make informed, unpressurised decisions.

All information necessary to conclude a transaction must be provided at the point of sale. Information should be provided through labeling, where relevant, and possibly through a Terms of Service document that captures any additional information, where required.

While some of the above provisions are in place currently, they are not applied uniformly and sometimes are limited to certain sectors, where industry-specific legislation contains special disclosure and contracting requirements. The Sale and Service Matters Act regulates the way price information is displayed to consumers. However, the legislation is largely outdated, provides insufficient clarity and certainty for consumers and business, and does not create a general standard for disclosure.

The new consumer law must therefore set out basic standards for disclosure, the description of goods and services, traceability, the display or communication of their price, as well as any other information that is relevant to the consumer making a purchasing decision.

3.4.3 Contract terms

The inequality in bargaining power between consumers and businesses is particularly pronounced in sale contracts. In many cases, consumers, knowing that they have very limited recourse, enter into contracts without reading them. While consumers can be held responsible for signing contracts without familiarising themselves with the provisions, their actions can be attributed to the fact that contracts are often written in language that is difficult to understand and to the fact that consumers have little recourse and few options to negotiate the terms.

An extensive report on unreasonable stipulations in contract and the rectification of contracts, prepared by the South African Law Commission in 1998, recognized the "need to legislate against contractual unfairness, unreasonableness, unconscionability or oppressiveness in all contractual phases, namely at the stages when a contract comes into being, when it is executed and when its terms are enforced" (p. xiii).

The report outlined a number of examples of unfair contract terms: "the head of homeless family urgently in need of a roof over their heads signs a lease which gives the lessor the right to raise the rent unilaterally and at will, and the lessor doubles the rent within five months; an uneducated man signs a contract of loans in which he agrees to the jurisdiction of a High Court, to find out only later, when he is sued that a lower court also had jurisdiction over the matter and that the case could have been disposed of at a much lower cost to himself; a man from a rural area purchases furniture from a city store on standard, pre-

prepared hire-purchase terms, later to find out that he has waived all his rights relating to latent defects in the goods sold" (p.1).

The Commission concluded that unless measures against unfair or unconscionable contract terms were introduced, " South Africa would rather become the exception and its law of contracts would be deficient in comparison with those countries which recognize and require compliance with the principle of good faith in contracts" (p. xiii). The Commission recommended that Unfair Contracts legislation be adopted and presented as a draft Bill. The draft Bill will enable a court to determine whether contractual terms are unreasonable, unconscionable or oppressive in terms of the manner in which the contract was concluded, the form or content of the contract, the execution of the contract and the enforcement of the contract.

It is proposed that rather than enacting separate legislation, a general provision regarding unfair contracts be inserted in consumer law. The law should provide not only what the rights and responsibilities of the parties are, but also promote the use of plain language in consumer contracts, particularly in South Africa's context of low literacy levels. In addition, through guidelines that build on international precedent, the law could set out examples of unfair contract terms.

3.4.4 Product safety and liability

Basic standards for product safety and product liability in cases of unsafe products is a key feature of any consumer protection regime and is necessary to enhance the confidence with which consumers interact in the market place. The right to safety is one of the most basic rights that consumers have. The liberalisation of markets and new technological advances has resulted in South African consumers being flooded with many new products. Product safety information is vital, and particularly so for the vulnerable consumers in South Africa.

South Africa currently does have safety standards in certain areas, such as medicines, foodstuffs, transport and electrical goods. However, there are certain manufactured goods, such as children's clothing, for example, where there is no safety standard. Few consumers are aware of this fact. Many consumers confuse the SABS quality marks for a safety assurance.

Whilst the Standards Act allows for the setting of voluntary or compulsory standards, there is no general provision in law that explicitly recognizes consumers' right to safe products or any liability of manufacturers in cases of defective or unsafe products. This means that consumers have no recourse in cases where unsafe products cause them harm or damage.

Of special concern are also hazardous chemicals and substances destined for household use. In most circumstances, the dangerous nature of household chemicals cannot be done away with because of the use for which they are intended. For example, paraffin, pesticides, disinfectants, cleaning solvents, lawn and garden products, etc. Most of these products contain dangerous active ingredients that have side effects, such as eye and lung irritation and skin burns. The list is long.

The concerns associated with dangerous substances are often communicated by written word through labeling e.g. package inserts. However, the language used in labels is often difficult to understand for even well informed consumers, not to mention the vast majority of consumers who have no formal education. To add to the confusion, products destined for the industrial market (that should not be otherwise available to household consumers) are often repackaged into smaller unlabelled containers and sold via informal retailers. Even products for medicinal use such as tablets ranging from headache tablets to slimming products, are marketed informally in the streets. Often these products have passed their shelf life.

It is therefore necessary for the new consumer law to make provision for the consumer's right to product safety and the manufacturers liability in cases of unsafe products. This provision, however, should not duplicate provisions in the Standards Act and the functions of the SABS. The Standards Act may require review to explicitly provide for a consumer protection function for the SABS and for clear safety marks and warnings to enhance consumer confidence in product safety.

3.4.5 Product quality, guarantees, warranties and aftercare

While standards for product quality, the offering of guarantees and warranties and aftercare should remain competitive issues and therefore of a voluntary nature, it is necessary to give consumers some assurance that what is provided is fair, enforceable and of an acceptable standard.

A minimum mandatory product standard should require that the product meets a basic level of quality and performs to reasonable expectation, having regard for its price and the manner in which it is described. A product should be suitable for the purpose the consumer communicated to the supplier when negotiating or arranging to buy it, or a purpose that is obvious from the circumstances in which the sale took place. Goods that are supplied by description or sample must correspond to the description or sample. For example, if a consumer purchases paint or carpet it must be of a similar quality and colour as the sample the consumer chose from. Consumers should be in a position to have the same expectations in the delivery of services.

The offering of guarantees can either limit or extend the consumer's common law rights with respect to warranties. In South Africa, common law provides an implied 3-year warranty against latent defects, therefore a two-year guarantee may be viewed as a limitation of the consumer's common law rights. In order to avoid this, some jurisdictions expressly provide a compulsory minimum period of guaranteeing goods and services.

It is important that products should be unconditionally guaranteed and warranted against non-conformity and non-performance where there is no misuse by the consumer. A consumer should have the right to return a product that does not conform and have the option to claim a refund or replacement without any restrictions. However, in order to obtain a refund, consumers should return the goods within a reasonable time; not damage the goods in any way and provide proof of purchase where possible. It is thus necessary that parameters of guarantees and warranties be specified in law. In particular, where guarantees are offered, sellers should be obliged to make full disclosure of their terms and conditions and should be legally obliged to stand by their voluntary guarantees, once put in place.

Various goods need aftercare services and parts. Some goods are sold with partial free services and others with none. Goods may be discontinued, with no service parts to be provided in the future. It is necessary that some standardization be introduced and that consumers have assurance of some continuity.

It is therefore necessary for the new consumer law to introduce a minimum mandatory standard for product quality, set out parameters for guarantees and warranties, as well as returns and refunds, and impose an obligation on manufacturers and importers to ensure that repair facilities and spare parts are reasonably available. If such parts or facilities are

not reasonably available, consumers who suffer damage as a result should be able to claim for compensation.

3.4.6 Privacy

The OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data recommend that limitations be set on the collection of personal data by fair and lawful means and with the consent of the person. It further recommends that the information should be relevant for the purposes that it is collected and that the purpose for which such data is collected should be specified at the time of collection and the subsequent use should be limited to such purposes. Furthermore, it recommends that personal data should not be disclosed or made available or otherwise for purposes other than those specified, except it is with the content of the data subject. Finally, where personal data is collected, measures should be taken to ensure its security against risks such as loss, modification or destruction of that data or its unauthorized use or disclosure. Finally, individuals must have a right to obtain their personal data or to check its accuracy.

The Promotion of Access to Information Act, 2000 provides for the protection of personal data held by private and public institutions. However, the legislation does not impose limits on the collection of personal data by private institutions, nor are there limits on how the information may be used other than disclosure.

A recent survey canvassing consumer opinions and views, conducted by the dti, reveals that consumers feel aggrieved by unauthorized disclosure of their personal information. Similarly institutions, such as credit bureaus, derive income of the sale of information, which is essentially personal information, but have no responsibility in law to ensure that the information is accurate.

It is therefore necessary that standards for the collection and use of personal data of consumers by the private and public sector are clearly set out in law, preferably in Privacy law. In particular, it is important that consent is obtained from consumers in a clear and understandable fashion and that the purpose for such information usage is stipulated prior to obtaining such consent. Furthermore, it is important that limitations on the use of such information be incorporated in new law, in particular, that personal information should only be used for the purpose that it was collected and with the knowledge and approval of the individual consumer. Consideration will also be given to the necessity of stipulating that

private communications, including electronic communications, should be secure from unauthorised interference and should not be used to provide unsolicited commercial advertising. Finally, there must be disclosure of what measures companies take to protect the privacy and authorized use of personal data. However, voluntary disclosure by companies of measures undertaken to protect the privacy and authorized use of personal data should be encouraged, while the law should only encapsulate the principles. The dti will be working closely with the Department of Justice and Constitutional Development to ensure that appropriate provisions are contained either in new Privacy law or, if necessary, in new consumer law.

3.5 Giving effect to concurrent jurisdiction and co-operative government

Schedule 4 of the Constitution of the Republic of South Africa, 1996, stipulates that consumer protection is a functional area of concurrent national and provincial competence.

Section 146 of the Constitution applies to a conflict between national and provincial legislation and stipulates conditions under which national legislation will prevail. These are circumstances where national legislation deals with a matter that cannot be regulated effectively by the respective provinces individually, and where such legislation provides that uniformity by establishing norms and standards, frameworks or national policies. Furthermore, such legislation must be necessary amongst others, for the maintenance of economic unity, the protection of the common market in respect of the mobility of goods, services, capital and labour, the promotion of economic activities across provincial boundaries, or the protection of the environment.

A national consumer law must therefore take cognizance of the concurrent jurisdiction between national and provincial legislation, by providing norms and standards and mechanisms for giving effect to co-operative government. It must also recognize that some issues are better regulated at a provincial or even local level. This includes a number of issues that are currently regulated through the Sale and Service Matters Act, 1963, such as regulations regarding lay-byes, deposits on bottles etc. While these matters should be regulated and enforced at a provincial or local level, it is important that there is a degree of uniformity across all provinces. In such areas, it is important that national norms and standards be established, while providing flexibility for provincial regulators and legislators.

Furthermore, provision must be made for the establishment of a policy coordinating committee or such other mechanism to allow for consultation on policy matters, coordination and harmonization of laws and activities, and for the resolution of disputes between national and provincial government.

Concurrent jurisdiction is applicable not only to national and provincial government, but also impacts on different national regulators. There is thus also a need to make provision for conflict resolution between different regulators, with concurrent jurisdiction over consumer matters in a particular sector. New legislation will need to set out clearly the role and responsibilities of the national consumer regulator.

3.6 Conclusion

In order to address the historical legacy of South Africa, which has created a large number of vulnerable consumers, and in order to ensure that the market place in which consumers and businesses transact is fair and transparent, there is thus a need for a general consumer law that outlines basic consumer rights.

The consumer policy extends beyond the introduction of new consumer law. It must extend across government into other areas impacting on consumer welfare and protection to ensure policy coherence and consistency and to ensure that consumer welfare is protected.

CHAPTER FOUR

Improving access to redress

4.1 Introduction

Providing consumers with rights in law has little meaning if consumers cannot achieve quick and effective redress and if those rights are not effectively enforced. A lack of enforcement results in widespread non-compliance with legal provisions, defeating the objectives of regulation. Concurrent with creating a legal framework that provides rules of market conduct for businesses in transacting with consumers, it is also necessary to ensure that effective redress and enforcement mechanisms are in place and are easily accessible for consumers. This chapter focuses on the institutional framework that must be in put in place to improve and promote access to redress.

4.2 The challenge to achieving effective redress

Consumer protection provisions are spread across hundreds of pieces of legislation in South Africa. Yet, consumers complain that they have no consumer protection. Many, if not most, consumers become aware of legislative provisions that protect them only after they have encountered a problem and seek advice and assistance. They often do not complain because they do not know that a wrong has been committed against them. Consumers who wish to lodge complaints are faced with a bewildering number of regulators with responsibilities in various areas that impact on consumers. Very often, it is not clear who has jurisdiction over what matters and what the appropriate body is to lodge a complaint.

This is the challenge that we face in South Africa today – a consumer population that is unaware of its rights, a business community that is in many instances unaware of its obligations, and a fragmented institutional framework, populated by a bewildering number of regulators and responsible government departments. Because of the broad range of organizations involved in consumer protection, organizational roles and responsibilities must be clearly spelt out. Failure to do so could create many serious problems and could in some instances result in a loss of credibility.

It is also important that policies, laws and regulations are effectively communicated to all consumers. Finally, it is important that the facilitation of redress must involve not only government, but also consumer organizations and business.

4.3 The need to review of the institutional framework

The current institutional framework, tasked with providing consumers with access to redress, is fragmented, under resourced and in many areas largely ineffective. A common thread that runs through all consumer institutions in the country is limited capacity (expertise and human resource).

At the national level, the Consumer Affairs Committee and its small secretariat investigate consumer abuses, which are established in terms of the Consumer Affairs (Unfair Business Practices) Act, 1988. The Committee takes responsibility for the appointment of national investigators to investigate unfair business practices and to make recommendations to the Minister of Trade and Industry. Furthermore, a special court may be appointed to hear appeals on decisions made by the Minister. The Act requires that the Committee exercises oversight over all investigations and sets out a cumbersome process to be followed by investigators, limiting the effectiveness and efficiency of investigators in many instances. Furthermore, the role of the Committee is advisory and thus does not have decision-making powers. Thus, once an investigation has been completed and a consumer abuse is found to have occurred, a recommendation must be submitted to the Minister to have the same conduct declared illegal. Once a practice has been prohibited, however, it is largely left to the South African Police Services and the Public Prosecutor to finalise the case. As both entities are overloaded with other criminal matters, consumer issues do not always receive the necessary attention. Furthermore, commercial courts have been effective in some areas of law, but it is questionable whether the volume of consumer complaints can be dealt with effectively through the justice system.

The scope of the Consumer Affairs Committee is very wide, despite the existence of a number of sector regulators. This is primarily because few sector regulators have an explicit consumer protection mandate. For example, in the telecommunications area, there is little emphasis on consumer protection. The recently proposed Convergence Bill leaves consumer protection to a voluntary code of conduct. Similarly, in banking, non-credit consumer protection measures are contained in a voluntary Banking Code of Conduct.

In the area of standards and product safety, a host of regulators have responsibility, including the South African Bureau of Standards (SABS), the Departments of Agriculture, Health and Environmental Affairs. There is a lack of co-ordination between the various regulators, resulting in a lack of consistency and coherence in the setting of safety standards.

At provincial level, the majority of provinces have established consumer courts in terms of provincial legislation. The role of these consumer courts is to adjudicate and make decisions on cases relating to consumer abuses. However, the courts are quasi-judicial in nature and often have to refer cases to magistrate courts to administer punitive measures. Furthermore, the capacity and powers of provincial investigators are limited. Investigators often have to issue a warning after they have conducted an investigation, rather than referring the matter for prosecution. The absence of equivalent capacity in all provinces further results in large volumes of locally based cases filed at national level, when they should be and can be effectively prosecuted at provincial level.

Consumers are therefore faced with a bewildering number of regulators, national and provincial, whose mandates are not coordinated and whose activities occur in isolation of each other. Coupled with formal regulators, a host of alternative dispute resolution bodies exist in the form of statutory and voluntary ombudsmen. In some cases the roles and powers of regulators and ombudsmen are not clearly spelt out, enhancing the potential for confusion amongst consumers and the likelihood that they will be referred from one institution to the other. In addition, a number of NGOs assist consumers with complaints, often by providing legal advice and by mediating on behalf of the consumer. However, service provision is uneven and resources available to address consumer issues limited. Rural consumers are particularly disadvantaged in terms of access to advice or counseling, alternative dispute resolution mechanisms and through their distance from national (and even provincial) regulators.

In order to enhance the enforcement capacity of consumer protection laws, foster co-ordination and give consumers access to effective redress mechanisms, it is therefore necessary to put in place a streamlined and more effective institutional framework for consumer protection.

4.4 The new national consumer institutions

As indicated above, the existing national framework for consumer protection is inadequate and does not achieve effective redress for consumers. Thus, it is necessary to put in place a new set of independent regulatory institutions, with a clear mandate and appropriate powers to investigate and enforce contraventions against consumers and instances of consumer abuse.

4.4.1 A national consumer commission

In order to ensure that consumer rights are effectively protected, it is critical that a credible and independent national consumer agency is established, that, in conjunction with its provincial counterparts, can effectively champion consumer protection and the enforcement of consumer rights in South Africa.

The role of the national consumer agency must extend beyond the mere administration and enforcement of consumer law, and must include the monitoring of market conduct and practices and the education of consumers and business alike, especially smaller businesses. In addition, the national agency must promote the coordination of activities of other regulators in respect of the implementation and enforcement of consumer protection measures, and advocacy on policy coherence, consistency and the consideration of consumer interests across government, both at the national and the provincial level.

4.4.1.1 A national consumer help line

Due to the array of bodies responsible for consumer protection, it is important that consumers can access a single point, which can provide them with information about their rights and recourse, advice on certain matters, refer matters to the relevant enforcement agencies or complaints handling bodies and follow up on these cases. Furthermore, the service should also be able to assist consumers with initial negotiations on their behalf.

To provide this single entry point, a national consumer help line will be established, located at the Consumer Commission, that will co-ordinate and monitor a host of services. It is envisaged that through the help line, consumer complaints will be channeled to the relevant enforcement agency. The consumer help line will also provide advisory support, will assist

consumers to resolve issues arising from a purchase of goods in the market or on the internet, give information on consumer rights and practical assistance towards obtaining redress.

4.4.1.2 Awareness and education

A very important step in promoting access to redress is therefore to ensure that consumer awareness of rights is significantly increased. Consumers must be educated about their rights and responsibilities in the market place. While consumer education and awareness is a function that is shared between industry, non-governmental organisations, educational institutions and the state, it is critical that government becomes much more pro-active in creating awareness of rights and recourse mechanisms and that effective mechanisms are established to ensure the dissemination of information.

A very important function of the Consumer Commission will therefore be to create awareness of the envisaged new consumer law amongst consumers and business. However, the role of the Commission must extend beyond this to promote greater consumer activism through national campaigns that alert consumers to potential abuses and market conduct and that seek to instil in consumers a greater confidence in their ability to make customer service excellence demands on businesses.

The Consumer Commission should also promote voluntary compliance by businesses with the new law, as well as generate greater awareness of the benefits of enhanced customer service. Special programmes may need to be put in place to reach small businesses. In addition, programmes to enhance corporate ethics and corporate citizenship should be put in place.

Formal consumer education needs to be included in the school curriculum to ensure that young consumers understand their rights and know how to exercise them. It is also important that tertiary institutions incorporate consumer law in their undergraduate degrees and diplomas. Formal consumer education will have to be driven by the national and provincial departments of education in collaboration with the department of trade and industry. At national level, the department of education through its Life Orientation programme is already making headway towards this direction.

4.4.1.3 Early warning systems

In addition to legal provisions outlining the rights of South African consumers, a number of additional issues must be explored to ensure that the South African market place is fair and transparent. This includes our ability to deal with scams and with counterfeit goods.

South Africa has seen its fair share of scams and South Africans have been victims of a number of international scams and pyramid schemes. In the case of scams and pyramid schemes, it is imperative that consumers be provided with ready information to prevent them from making investments in fraudulent schemes. It is often difficult to recover funds once they have been invested or contributed towards these schemes, as the operators are often sophisticated and adept at transferring funds out of the country. For this reason, it is important to make information available to consumers as quickly as possible to prevent exposure. Another area where quick information is necessary is in the area of product safety. The Consumer Commission will need to develop and manage systems for product alerts and product recalls.

In order to achieve the rapid information dissemination necessary, it is important that information be obtained from consumer agencies and organisations around the world, as these schemes often move from country to country. Furthermore, a scam hotline could be established to provide an avenue for consumers who have already involved themselves in a fraudulent scheme to make the information available to the public. The information obtained must be disseminated to consumers quickly and through various media.

4.4.1.4 Complaints handling

The traditional approach to enforcement, which involves the lengthy investigation of each individual complaint, results in long turnaround times and uncertain benefit to consumers. A new innovative approach will be adopted that promotes quicker outcomes for consumers. This will involve an explicit focus on complaints resolution and negotiation as a first step. Resources will need to be dedicated to this function to ensure its effectiveness.

4.4.1.5 Monitoring and enforcement

Enhanced enforcement activity in the area of consumer law is essential. To this end, it is particularly important that the Consumer Commission pro-actively monitors market conduct, identifies problem areas and initiates investigations into systemic conduct that affects large number of consumers. Of particular concern is the effective enforcement of scams and pyramid schemes, as well as the monitoring of product safety issues.

4.4.1.6 Research and advocacy

The Consumer Commission must also conduct research into international practice and trends and conduct research into areas affecting the South African market. It will therefore be necessary to identify areas of priority and to set a research agenda that meets the changing needs of consumer protection. A particular area of focus should involve the monitoring of prices, their benchmarking internationally in equivalent economies and the identification of possible underlying causes for increases or high prices.

The Commission must also advocate and monitor the establishment and implementation of service standards in the public and private sector. The Commission could also be tasked with assessing the capacity, skills, functions and resources of respective government departments and regulators with respect to consumer protection and making recommendations to government on their enhancement. In addition, the Commission must identify areas where consumer interests are not adequately considered and liaise appropriately.

Finally, the Commission should be tasked with working with business associations and consumer champions in developing new codes of conduct and reviewing the effectiveness of existing codes.

4.4.1.7 Cross-border enforcement and co-operation

Many of the most deceptive and misleading practices that target vulnerable consumers tend to have cross-border characteristics. The incidence of cross-border scams and misconduct has been facilitated by e-commerce and can be expected to further increase as more and more South Africans become active in the e-commerce zone. There is thus an increasing

need for cooperation between international consumer protection agencies and it is important that any consumer law makes explicit provision for such enforcement and the sharing of information between agencies. Furthermore, the establishment of SADC forum for consumer issues should be explored.

4.4.2 A consumer tribunal

Consumer complaints and investigations require a quick and effective resolution, for consumers and also for business. This implies that adjudication of these matters must be expedited. In order to ensure that consumer obtain quick access to justice and that market conduct can be effectively addressed, it is necessary to provide for appropriate penalties and sanctions in new consumer law. In particular, a system of administrative penalties must be introduced, as well as more extensive powers to close down operations or to seize assets in cases of illegal operations, such a pyramid schemes and other scams. These powers must be coordinated with existing powers of other enforcement agencies and in their respective laws.

It is for this reason that this policy framework proposes the establishment of an administrative tribunal to adjudicate consumer matters. The Consumer Tribunal would take over some of the responsibilities of the current Consumer Affairs Committee, but have decision-making powers, independent of the Minister. In order to limit the proliferation of institutions, the jurisdiction of the Consumer Tribunal could be extended to other consumer matters, such as for example, the adjudication of matters relating to consumer credit.

4.5 Working together: national and provincial government

In order to promote co-operative governance, it is important that respective roles of national and provincial government in consumer protection be clarified. To a large extent this clarification of roles has already occurred, through the co-ordination of activities in respect of Consumer Affairs (Unfair Business Practices) legislation at the national and provincial level. There is tacit agreement that the role of national government is to investigate and prosecute businesses with national reach or presence, while provincial consumer courts focus on individual complaints against regional or local businesses. It is important that the respective roles are clarified to avoid duplication and the misallocation of resources and that the respective spheres of government effectively enforce their areas of competence.

However, there is also a great need for co-ordination and co-operation between national and provincial government and the respective regulators, not only in the area of enforcement, but also in the area of policy, consumer awareness and education. It will be necessary for a coordinating mechanism to be established to ensure the consistent and coherent implementation of a consumer protection framework. While the proposed consumer law will delineate roles by clarifying the responsibility of the National Consumer Commission in enforcement activities, the role of MINMEC will be critical in facilitating coordination and co-operative governance at policy level.

4.6 The relationship between consumer law enforcement and other regulators

Due to the large number of regulators in the broader consumer area, it is necessary that roles and responsibilities are clearly defined and that coordinating mechanisms between national regulators are put in place to ensure the consistent, but also effective enforcement of consumer protection measures.

As a first step, the role of sector regulators must be clarified. In terms of the proposals contained in this policy document, it is recommended that sector regulators be given explicit mandates to investigate and enforce consumer issues in their respective sectors. In particular, sector regulators should create capacity to deal with complaints relating to the conduct of businesses in their sector. This does not preclude the Consumer Commission from initiating a crosscutting investigation into a particular sector in terms of new consumer law, for example in respect of contract terms, or from pursuing a prosecution as a result of an investigation. It will, however, require cooperation and communication between the regulators. A formal mechanism, such as a regulators forum, will need to be created to co-ordinate these activities. It may, however, not be necessary to create a new forum, as there is an existing regulators forum, hosted by the Competition Commission. Furthermore, it may also be necessary for the Consumer Commission to enter into Memorandums of Agreement between itself and other regulators and where necessary with chapter 9 institutions such as the Public Protector, the Gender Commission etc. Such agreements should foster consultation in decision-making, but more importantly they should outline how concurrent jurisdiction is to be exercised in order to promote consistency in the application of consumer law.

Specific coordination and harmonization will be necessary in the area of standards and product safety. Currently, the South African Bureau of Standards (SABS), the Departments of Agriculture, Health and Environmental Affairs and Tourism all develop standards for the health and safety of consumers. In order to ensure consistency in approach, it is necessary that a specific co-coordinating mechanism in the area of technical regulations or standards be created. It will further be necessary that the Consumer Commission be represented at such a forum to ensure that consumer interests are protected. In addition, the South African Revenue Services (SARS), through the Customs and Excise Division, also has a role to play in the enforcement of certain safety standards, in particular with respect to imported goods. SARS will therefore also need to be represented.

Due to the strong relationship between competition and consumer policy, it is important that mechanisms for close cooperation between the Consumer Commission and the Competition Commission are established and should include at minimum provisions for the referral of complaints, joint investigations and the exchange of information.

Finally, in order to maximize resources, it will be necessary that regulators jointly develop consumer education programmes and involve businesses in the respective sectors in developing and resourcing such campaigns.

4.7. Providing for rural and vulnerable consumers: a partnership between government and civil society

While the proposed institutional framework provides a central access point for all consumers and consumer complaints, consumers in rural areas, vulnerable consumers, and consumers that are less literate, will require additional assistance to be able to secure their rights. In particular, consumers may require additional support in the form of a face-to-face service that provides them with information, legal advice and counseling, and possibly mediation on their behalf with businesses and regulators.

Traditionally, this role has been fulfilled by Non Governmental Organisations (NGOs), such as the Black Sash, the Legal Resources Centre, the Paralegal Association and Community Advice Centres. Due to very limited financial support, the provision of these services to consumers has been limited and not consistent in all locations. It is therefore important that additional funding be made available for such service provision, but also that quality

standards and service delivery targets, accreditation criteria and capacity-building programmes are established and that service delivery is monitored and measured.

The role of providing support services to consumers, however, should not be limited to NGOs. Government also has a role to play, through provincial Consumer Affairs Offices and through other mechanisms, such as the 80 Multipurpose Community Centres (MPCCs), which aim, amongst others, to facilitate access to telecommunications infrastructure and e-commerce. Additional information could be disseminated to consumers through these centers and offices, and consumers could be given access to online services for lodging complaints or obtaining further information.

4.8 Alternative dispute resolution: industry funded complaints resolution

The first step in seeking redress should always be directed at the business that is in violation. Only if the consumer and the business are unable to resolve the complaint or dispute should alternative mechanisms be explored. For this reason it is important that businesses have effective complaints handling mechanisms in place.

Should the consumer and the business be unable to resolve the complaint or dispute, it is important that intermediary steps be available to consumers. Alternative dispute resolution mechanisms, play an invaluable role in achieving quick redress for consumers. However, if industry mechanisms are to be effective, it is important that they display certain characteristics, such as independence, and that they are adequately resourced.

An industry or voluntary dispute resolution mechanism usually involves enforcing a code of conduct. There are many codes of conduct in South Africa and internationally that function very successfully. Codes can be an effective and more flexible alternative to regulation, or, in some cases, can supplement regulation. A code of conduct is generally only effective, if it binds the majority of businesses in a sector. For this reason, codes of conduct are given statutory backing in some countries and in some instances, to ensure widespread compliance.

Industry mechanisms can be voluntary or statutory. Where effective, voluntary mechanisms should be explored, and only in cases where this has not been effective or where the industry is of such a nature that greater regulation is required, should statutory mechanisms

be considered. A range of voluntary and statutory mechanisms exists in South Africa at present and some are highly effective. In these areas, industry-specific regulation may therefore not be necessary.

Government needs to become more involved in the recognition and assessment of codes of conduct and their implementation and to work with industry to strengthen these initiatives. It is also necessary to create a climate where consumers' natural choice is to seek out those businesses that successfully meet the terms of a good code or has its own reputation for equal or higher standards.

4.9 Conclusion

In conclusion, this chapter has sought to outline a new institutional framework, with clear responsibilities between different regulators and spheres of government, as well as coordinating mechanisms. The new framework is intended to make access to redress much simpler for consumers.

CHAPTER FIVE

Developing the consumer voice

5.1 Introduction

Legislation and regulation cannot substitute for action by individual consumers or consumer champions. Vocal and demanding consumers are important in driving the competitiveness of business. They complain about quality, prices and service levels and demand improvement and redress. Vocal consumers make input into government policy, identify problems and demand solutions.

At the World Consumer Congress held in Durban, South Africa 2000, Consumers' International, an international consumer NGO, observed that the consumer movement needs to work as part of a strong participative citizens' movement that insists that the marketplace serve human rights and needs and that human interests be placed at the very core of business and government activity. Internationally, the consumer movement has been very effective in influencing governments and corporations to adopt policies and measures conducive to consumer welfare. Concerted action by consumer advocates resulted in the adoption of the United Nations Guidelines for Consumer Protection, which has become a benchmark for national consumer protection strategies.

In South Africa, the consumer movement is still in its infancy. It is hardly visible in the policy-making processes of government nor is its voice audible to corporations when consumer interests are violated.

5.2 Promoting consumer activism

In order to create a culture of consumer activism, it is important that the right conditions exist. These conditions include basic rights for consumers, their knowledge of these rights and the recourse available to them, confidence that they will be able to achieve redress, and access to information.

Information allows and empowers consumers to make the right choices about appropriate products and services and to obtain the best value. Information about scams and pyramid schemes and unsafe products makes consumers aware of dangers, allows them to make

more informed choices and to avoid costly mistakes. Information and education is particularly important in the South African context, as the majority of South Africans were excluded from active economic participation and were subjected to systematic under investment in education. As a result, it is important that consumers have easy access to information and that that information is presented in an understandable form.

However, education of consumers must go beyond awareness of basic rights. It must also touch on broader issues, such as sustainable consumption. It has been recognised that many of today's consumption patterns cannot be sustained without the risk of exhausting natural resources and in the long term damaging the environment. Sustainable consumption refers to reducing wasteful consumption and promoting more environmentally sound products and services. Informed and educated consumers will also make demands on industry to change their production methods and the impact that they have on the environment. Initiatives such as the Proudly South African campaign have already begun to educate consumers about environmental issues – the Proudly South African logo can only be awarded to products that are local, quality goods, which are produced using fair labour standards, and sound environmental practices.

Individual consumers must be encouraged to demand better service levels and product quality and to be vocal in their complaints. This will require sustained education and information initiatives on the part of government, consumer organisations and advocates and business. It will also require a responsive public and private sector. It is only through joint concerted efforts that consumers will develop their confidence and find their voice.

5.3 Consumer champions and advocacy

Consumer champions play a critical role in promoting consumer rights and providing information to consumers. They also proactively monitor the market practices, company ethics and product prices, conduct research, provide information and advice about products and warn consumers about unscrupulous practices and unsafe products. Consumer champions conduct informal investigations into consumer abuses and make representation about cases of a general nature to regulatory authorities and government institutions. They provide input into policy matters and represent consumer interests in decision-making and consultation processes in all areas affecting consumers.

Internationally, in developed and developing countries, consumer NGOs play a key role in providing services and information to consumers and in monitoring markets. Consumer organizations test products for safety and product quality and make product information available to consumers through a range of media. This type of information addresses some of the information asymmetries in the market place and allows consumers to make informed choices. Consumer advocates identify unsafe products and put pressure on government and regulatory institutions to ensure these products are not distributed or sold in the market place. Consumer organizations with a strong research base are able to make input into government policy. They monitor prices of products and highlight areas of concern.

Many strong consumer NGOs are membership based. Consumers International, an international NGO, has membership in more than a hundred and twenty countries and has been able to mobilise consumers around the world to challenge consumer related policies of big organizations, such as the World Bank and the World Trade Organisation.

In many countries, the consumer movement has been supported by government and by business. Two issues have emerged as key issues, however, namely independent funding to maintain the independence on consumer NGOs, and the need for consumer NGOs to provide services relevant to consumers to ensure their sustainability.

5.4. The state of consumer advocacy in South Africa

Whereas in South Africa, there is a history of mobilised worker and business representative structures which, through institutions such as the National Economic Development and Labour Council (NEDLAC) ensure that workers' and business' views are heard by government, there is not a strong history of consumer activism in the policy arena. This means that consumers' interests are not always taken into account in policy formulation processes.

To understand the current state of non-governmental organizations (NGOs) and consumer groups in particular, it is critical to understand the context within which the civil society movement existed during the past decade. Many NGOs originated during the liberation struggle and played a critical role in challenging the distribution of power in society and in lobbying for a democratic government. During this period, NGOs critiqued government policies, the priorities of government structures and provided research support to trade

unions and the liberation movement at large to assist them to better understand their challenges and to offer solutions. As a result of their important and highly visible role, NGOs attracted a large base of intellectual resources, for which funding was available through international donors.

The 1994 elections established a new, democratic and legitimate government. Many of the intellectual resources of NGOs and, more importantly their research base, migrated to other institutions, including the new State. This was accompanied by a re-direction of donor funding towards a now legitimate state. The struggle had turned from liberation to development and international agencies perceived the new government to be the driver of development.

NGOs have played an important role in supporting the development agenda since 1994. The re-direction of government-distributed donor funding towards rural and urban development resulted in many NGOs changing their focus towards "people-driven" development through participation in the delivery of electricity, water, transportation, housing, education, health and welfare. Local government and service delivery became the key point of engagement with government structures. A focus on rural and urban development by both government and the NGO sector was informed by the huge infrastructure backlog and the necessity to provide access to basic services. The development agenda did not incorporate an explicit focus on issues relating directly to consumers. As a result, the few specialized consumer NGOs that had emerged since the early 1990's remained with tight budgets and severely limited capacity.

According to a study on consumer NGOs, conducted for the dti in 2001, it is estimated that there are 178 NGOs in South Africa that touch on consumer related issues. However, only 38% of NGO services are consumers. Only 48 NGOs surveyed concentrate mostly on consumer issues. Most of the NGOs surveyed have tended to focus on specific issues, such as environmental safety, poverty alleviation, access to food, HIV/AIDS, housing, or the provision of general services, such as legal support for the vulnerable and poor, often because the areas of focus allowed for a more diversified funding base.

Very few consumer NGOs have been able to significantly engage government and regulators on policy issues relating to consumer welfare in general. In order to fulfill this role and provide meaningful participation, consumer advocacy groups have to conduct research

and engage at a technical level. Resource constraints have limited the capacity of organizations to fulfill this role. Most NGO's are involved in awareness campaigns or education of some sort, but on a limited scale. South Africa does not have membership-based consumer NGOs, primarily because of the limited services that can be extended to consumers, and also because of the limited ability of consumers, especially the poor, to pay for such services.

Perhaps the most developed area of consumer activism is the media, who play a critical role in identifying and investigating consumer issues and presenting these to the public through their medium. There is a need, however, to expand these initiatives and to support consumer journalists in their endeavours.

5.5. Building a South African consumer movement

The dearth of consumer advocacy can largely be attributed to the lack of funding for such activities and a regulatory environment that does not provide clear rights to consumers. It is therefore necessary for both government and business to support the development of such a consumer movement, as it will strengthen the South African market and the competitiveness of its businesses.

What should such a consumer movement look like? There are different approaches, and many countries have not adopted a consistent approach. In some jurisdictions such as the EU consumer organisations receive government financial support and capacity building. Other jurisdictions establish a national consumer association in terms of a piece of legislation, such as a consumer law or a law governing associations. Often national associations are constituted of membership-based organisations, are run by a board of directors or a committee and are administered in terms of predetermined rules for the association. The Association of European Consumers for example is constituted of national membership-based European consumer organisations. Other jurisdictions take a combined approach.

In answering the question for South Africa, it will be necessary to engage with the Non-Governmental sector and to take into account existing infrastructure, as well as funding requirements. In particular, the merits and feasibility of establishing a national consumer association with specific functions and powers will need to be evaluated.

In order to become sustainable over time, it will be essential that these consumer NGOs or the consumer association provide a range of services to their constituents and also that they are seen as effective advocates. Institutions will have to develop a strong research base and have powerful voices. Services provided could include conducting independent tests to determine compliance of products with the established laws, standards, norms and international standards and to test safety, quality and performance of products. Through testing and the publication of results, consumer NGOs can help consumers to find the best value for money.

It is the role of government, business, and NGOs themselves, to provide the tools and to create the right conditions for the establishment and growth of such institutions.

5.5.1 Providing the financial resources

While government recognizes that there will be a need to fund the Consumer Association or NGOs for research and advocacy initiatives for an extended period of time, this funding must decline over time as consumer institutions diversify their funding base. Any such funding initiatives will consider at the outset the long-term sustainability of these organizations. NGOs will increasingly have to source funding directly from donor organisations, business, consumer membership and charitable contributions. For this reason, it is important that funding of organizations and projects are accompanied by capacity-building support and mentorship. In recognition of the value of consumer participation in market surveillance, the new consumer law must create a mechanism to provide both financial and non-financial support to consumer organisations.

5.5.2 Exploring service delivery by consumer NGOs

Service delivery by consumer NGOs to their members will be critical to their sustainability. One of the possible services that could be rendered could include buying co-operatives, which would provide products to members at reduced prices, due to large-scale purchases and discounts. The viability of this and the regulatory framework for such consumer co-operatives will be explored in greater detail within the **dti**.

5.5.3 Providing additional powers to consumer champions

In addition to providing funding and capacity-building support to consumer organizations, it is important that such institutions are granted powers, which will enhance their ability to service their membership base or to have a more significant impact on society. One area that will be explored further is whether it will be possible, in law, to provide for representative actions on behalf of consumers by civil society organizations or public interest groups. In addition, mechanisms to allow consumers to claim compensation in cases of material loss will need to be explored. The use of civil and small claims courts in these instances will be critical. However, legislative provisions will need to be included.

5.5.4 Recognizing achievements

It is equally important that non-financial incentives are provided to consumer champions through the public recognition of their achievements. The dti has for the past two years celebrated consumer champions through annual awards. This annual event will be continued and expanded upon to ensure the high-level recognition of achievements, often under difficult circumstances. Other forms of recognition and non-financial reward will also be explored.

5.5.5 Ensuring that the consumer voice is heard

In building a consumer movement that can make vocal and quality inputs into policy processes, it is important that consumer champions and advocates be given the opportunity to be heard. This means that for a mechanism for interaction between government and consumer organizations may be created, such as a Consumer Advisory Panel, that makes inputs to government on new developments and the need for legislative and regulatory change. In addition, it is important that consumer advocates be involved in and consulted on policy formulation and decision, whether in the area of trade, product standards and safety or any other issue that touches on consumer interests, such as health care, transport or public service delivery. Furthermore, consumer representatives should be included on the Boards of regulators, as well as in national and international standard setting bodies. An audit of all regulatory and other relevant bodies will be conducted to establish where consumer representation would be appropriate.

5.6. Conclusion

The importance of consumer champions in taking up causes on behalf of consumers and ensuring that consumers have accurate information is vital to the effective implementation of consumer policy. The development of a vibrant and strong consumer movement is therefore a critical component to this policy framework and will be a priority for government. This objective will be most effectively achieved if it is supported by a partnership between government, business and civil society.

CHAPTER SIX

Promoting business excellence

6.1. Introduction

One of the government's objectives in its vision for the economy is for it to be internationally competitive. In order to achieve this vision, it is critical that industry become more able to compete domestically and with imports. Demanding consumers can provide a competitive spur that will help businesses to respond and to enhance their ability to compete. A customer service orientation assists businesses to provide better products and services and in turn enhances their competitiveness. It is therefore critical for business to begin to inculcate consumer needs and wishes into their business processes and to implement effective systems to improve customer service.

6.2 Corporate citizenship

More and more consumers are interested in the world behind the product, the production processes and the ethics of the company that produces the goods and services. Therefore product information, the use of sustainable and environmentally sound production methods, standards of corporate governance and accountability, and contributions to community development, become more relevant in allowing companies to differentiate themselves from competitors.

Worldwide, consumer groups are challenging the integrity of production processes and other elements in the value chain. Whilst there are legitimate concerns about quality, there are even stronger concerns about the integrity of processes used to get products to the market. The focus on production processes is largely driven by the renewed focus on environmental issues. In light of the outcome of WSSD 2002, it is important that corporations in pursuit of their activities contribute to sustainable communities and societies by putting in place measures to ensure that consumers are aware of the world behind the product.

As the consumer voice unfolds and becomes more vocal, firms will have to evolve ways of building consumer trust to protect their brands. Firms will have to carefully consider:

- The desire by consumers for integrity, trust and the need for transparency that can impact on their brands and products;
- The clear need to manage communication processes for new technologies. Firms introducing new technologies need to be more consumer aware and consumer focused; and
- That consumers have the ability to vote with their feet.

The corporate citizenship movement emerged to a greater extent in response to multinational corporations, and has over the years advocated for business to acknowledge the impact of profit-making activities to a wider group of stakeholders. Today, advocates of corporate citizenship argue that business responsibility should go beyond just transparency measures, but must also be geared towards poverty alleviation on a bigger scale.

While some South African companies have been implementing social responsibility programmes for some time, these programmes have been largely micro in scale and lacked critical mass, as a result the impact has been minimal. Government's vision is clearly to build an internationally competitive economy, foster economic growth and reduce poverty however, the extent to which the corporate sector can be a catalyst for poverty reducing growth, has not been sufficiently explored. It is necessary that corporate strategies draw clear linkages between competitiveness and social or public interest goals.

The outcome of the National Corporate Responsibility index 2003 ranked South Africa at an aggregate of 54% when measured against 7 areas of corporate responsibility, which included:

- Corporate governance structures;
- Ethical business practices;
- Progressive policy formulation;
- Building human capital;
- Engagement with civil society;
- Contributions to public finance; and
- Environmental management

All of the above areas are positively related to economic growth and social upliftment. Clearly government has to create an environment in which corporate sector activities yield sustainable outcomes. Corporate citizenship as a principle, must become more embedded in our corporate culture and be expanded in creative ways. In South Africa, there is a growing number of corporates who believe in balancing private and public value, however the issue often raised is whether the notion of balancing public and private value (value-based enterprise) can comfortably co-exist with the need to create shareholder value. Becoming a value-based enterprise does not mean that the processes of maximizing shareholder value and corporate governance become less important, but rather the less formal processes of interacting with the civil environment in which firms operate become just as important. Stakeholder representation, in particular consumer representation, may need to be considered by firms.

Businesses will therefore need to adopt corporate citizenship as a principle, which means that industrial activities must be seen to contribute to, rather than detracting from, environmental sustainability, good employment practices, community development and consumer welfare. It involves identifying opportunities to contribute to development and welfare goals in ways that go beyond traditional responsibilities towards shareholders, employees and the law. And it involves communicating these achievements effectively and credibly to consumers and the public at large.

6.3 Customer responsiveness and service excellence

Strategic management principles state that enhanced customer responsiveness by firms contributes to their competitive advantage. Customer responsiveness involves voluntary measures by firms to differentiate themselves from competitors through providing superior design, superior service and superior after-sales service to customers. Enhanced efficiency and innovation results in better products at lower prices. Differentiation through better products at better prices and with enhanced customer service allow a company to build brand loyalty and to charge a premium for their products.

In an increasingly globalising world with higher levels of competition, it is therefore important that South African companies set standards for themselves in product quality and customer service, governance and corporate practice, and make more information available to consumers. Companies must also put in place mechanisms to enhance their responsiveness

to customers. In order to achieve superior customer responsiveness, mechanisms for continuous customer feedback must be developed. Call centers are increasingly becoming a feature in South Africa's corporate landscape. Customer responsive companies are able to effectively deal with consumer complaints and their resolution. Reasonable refund and returns policies further enhance brand loyalty.

In a survey conducted by the dti, only 57% of respondents felt that South African businesses provide good customer service. This highlights the importance of developing greater customer responsiveness and customer orientation in South African businesses.

6.4 Effective complaints handling and resolution

The effective disposal and resolution of complaints by consumers is a hallmark of business excellence. Businesses that have effective systems in place are highly regarded by consumers and build a reputation of reliability and good service.

Many South African businesses have established call centers and other help lines to deal with customer complaints. This increasing trend, however, needs to be firmly embedded in the business culture in South Africa. It is important to develop South African best practice in the area of customer complaint handling and customer service and to publish and celebrate these successes. The implementation of voluntary standards for complaints handling and resolution and the recognition of businesses that comply with the standard may serve to further enhance this trend. Such a voluntary standard could be established through the SABS. Other innovative ways should be identified to ensure that South African business implement best practice in this area.

In terms of voluntary standards developed by the Australian Standards Authority, best practice customer complaints handling systems have the following hallmarks:

- **Commitment:** The service provider must have a written policy about complaints handling that is available to everyone in the business and to customers. The policy should clearly articulate the rights and obligations of all parties.
- **Fairness:** Negotiating power must be balanced. Complaints must be handled courteously and speedily.

- **Effectiveness:** The business must commit adequate resources to efficiently handle complaints. The policy should make provision for redress, so that a customer is either compensated or the defective product is replaced.
- **Accountability:** All complaints, oral or written, must be recorded so that recurring and systematic problems can easily be identified and rectified.
- **Accessibility:** The complaints handling system will be of no use to customers if it is not easily accessible. Information on how to lodge a complaint must be readily available.

In a recent survey of consumers conducted by the dti, it was established that 23% of respondents had complained about faulty or bad products, but that their experience with companies, after a complaint, had been unsatisfactory. 42% of the respondents, who had lodged a complaint with the manufacturer or supplier of the product, were refused help. This highlights the need for businesses to pay more attention to complaints handling and particularly, their resolution. It further highlights the need for an escalation of complaints, if they are not resolved between the business and consumers, and for alternative dispute resolution mechanisms, such as an industry ombudsmen, to be linked to the business's complaints handling system.

6.5 Supporting and promoting industry initiatives

While industry efforts to improve product quality and service and corporate ethics and accountability will be of direct benefit to them in enhancing their domestic and international competitiveness, it is important that these initiatives are supported and promoted by government and civil society.

6.5.1 Setting standards

Government can assist in building the competitive advantage of South African firms through establishing and maintaining voluntary standards for product quality and customer care. It is particularly important that these standards are appropriate also for SMEs and that additional training be provided to SMEs on the implementation of such programmes and standards.

Through setting and enforcing standards for corporate governance, ethics and accountability, government can further assist business in achieving excellence. Consumer advocates can play an important role in these processes by monitoring that standards and codes of conduct are adhered to, informing consumers about products and practices and by providing direct input to businesses through industry associations.

6.5.2 Providing financial support

The dti already offers financial support packages to encourage learning and innovation in firms. It may be necessary to explore whether these programmes can be tailored to include assistance to firms to develop new and innovative customer responsiveness programmes, particularly for smaller firms. Such support programmes could further focus on product quality innovations.

6.5.3 Encouraging learning

Government can measure and recognize through research and awards the level of customer responsiveness and satisfaction. Government can assist through benchmarking aspects of competitive advantage internationally and by disseminating this information to industry, especially to smaller firms who lack the resources to conduct their own research. Through conferences, workshops and seminars, as well as newsletters and other pertinent information, learning amongst firms can be further encouraged.

6.5.4 Recognizing achievement

It is important that customer service excellence and product quality improvement and innovation is recognised and rewarded – by industry, consumer organisations and by government.

The dti is currently piloting a survey methodology to determine the level of customer satisfaction with the service they receive from major industry players in selected industries. The index, the Customer Satisfaction Index, is an internationally recognised index and should be able to assist in benchmarking the levels of customer satisfaction in our industry with international industries. However, it is not enough to survey customer responses.

These outcomes must be publicised and industry feedback mechanisms must be developed. The results must further be recognised in **the dti** annual business awards, as promoting competitiveness.

6.6 .Conclusion

In conclusion, whilst the challenge to business is to recognise that consumer friendly values and behaviour form a critical part of economic growth, and well as sustainable social and economic development, government also recognises that it has a role to play in promoting good practice, and will endeavour to support business in its quest for consumer-friendliness wherever possible.

CHAPTER SEVEN

Service excellence in the public sector

7.1. Introduction

The preceding chapters have to a greater extent addressed consumer protection issues in the context of business behaviour and have as a result stressed the need to protect consumer interests in business to consumer transactions. This chapter turns its attention to the relationship between government and consumers in the provision of public goods and services. It is important to recognize that consumers are at the receiving end of government service delivery. In order to ensure that consumer needs are met and that consumers have a voice, it is important that government sets an example to business in terms of accountability and in terms of setting standards of service delivery that are linked to performance indicators.

The first step towards this direction has been accomplished through the White Paper on the Transformation of the Public Service or *Batho Pele (People First)*. Batho Pele recognizes government as a service provider and as a seller of goods and services, and citizens as customers and therefore advocates for a public service delivery approach, which enables citizens to hold the delivery agents of government accountable for the services they receive.

7.2 Implementing the Batho Pele principles

The Batho Pele policy outlines certain government commitments to service delivery and also recognises the need for a customer service orientation in the delivery of public services. These commitments include :

- **Consultation:** Citizen consultation around the level of, and quality of public service to be provided, where possible to be given a choice about services that are offered.
- **Service Standards:** Citizens must be informed regarding the level and quality of service to expect.
- **Access:** All citizens must have access to public services that they are entitled to.
- **Courtesy:** Citizens must be treated with courtesy and consideration.
- **Information:** Citizens must be adequately and accurately informed regarding public services they are to receive.
- **Openness and transparency:** Citizens must be informed about the administrative processes of national and provincial government.

- **Redress:** Citizens must have access to redress mechanisms where the standard of service delivery has not been met, and effective remedies must be put in place.
- **Value for money:** Public services must be attained through efficient use of resources to ensure that citizens receive value for money.

It is however important to note that Batho Pele provides a broad policy framework intended to guide national and provincial government regarding how public services are to be delivered. Therefore it does not set standards for service delivery i.e. the volume, level, quality or even safety but leaves this responsibility to national and provincial governments themselves.

Service delivery occurs largely at municipal level, where consumers are confronted with for example water and electricity meters that do not work, bills that are incorrect or highly excessive, refuse dumps in residential areas and electricity and water cut-offs that are not always explained. When this happens, it is often difficult for the individual consumer to know whether the complaint must be directed to ESKOM or the municipality. Lack of competition in the provision of public goods further complicates matters as the consumer often cannot abandon the service provider in search of a better service.

The Batho Pele white paper provides guidance to **all** levels of government but does not give effect to realizable consumer rights at local government level. Given the impact of local government service delivery, it is therefore the position of this consumer policy framework that the Batho Pele principles should be extended as mandatory principles to local government sphere.

The dti acknowledges that the responsiveness of local government in particular to consumer needs has significantly increased over the last ten years. However, given the number of consumer complaints that are received about local government service delivery, it is important that clear performance measures and service delivery standards be developed and monitored, if government is serious about placing consumers and customers at the heart of government.

In addition, it is important that government put in place mechanisms to ensure the implementation of the Batho Pele principles. Measures should include the implementation of customer complaints systems, which allow customers to voice their dissatisfaction about services rendered and which also allow for the resolution of these complaints. **The dti** is planning to launch such a customer complaints line in the year 2004. Other measures could

also include corruption help lines, which a number of government departments have already implemented.

7.3 Service delivery and accountability

Batho Pele requires both national and provincial governments to set measurable standards for service delivery. Service delivery standards are aimed at informing the consumer / citizen about the quality at which the public service will be delivered and the time it will take for service to be provided. Furthermore, the Batho Pele principles require of government as a service provider to set general milestones for progressively increasing access to basic services. These service standards must be published and made available to the public.

The biggest challenge facing local government in particular is the absence of mechanisms for accountability and transparency. It is important that local government sets standards for service delivery and to put in place proper mechanisms to ensure accuracy in for example water and electricity billing.

The Association for Public Service Excellence in the UK, plays a key role in assisting local governments to implement best value performance indicators. However best value performance indicators need to be designed by local government itself and revised annually to ensure that indicators are current and relevant for that service area. This enables local governments to compare service delivery between themselves, across a basket of comparable indicators. Over time such an initiative will provide data for viewing trends in performance levels over an extended period of time and a quick identification of problem areas.

While it is acknowledged in this policy that SALGA and the Public Service Commission have a role in ensuring better standards of customer care in the public service, it is important that there are additional measures in place to encourage better performance and to assist in enhancing service delivery. It is therefore proposed that the Consumer Commission is actively involved in pursuing consumer protection in all areas including the public service in order to ensure that consistency in terms of policy and law and to ensure that such matters are accorded the necessary attention. It is further proposed that in order to ensure that consumer rights are realized at local government level, a mutual cooperation agreement between the Consumer Commission and SALGA may be pursued. Such an agreement would foster accountability, transparency and assist in balancing local government resources with the setting of standards for quality in service delivery.

7.4 Access to basic services at competitive prices

In a competitive market, different firms provide products to a whole range of consumers. The South African market, however, has been characterised by unequal access for consumers, with poor, historically disadvantaged consumers effectively excluded from significant participation in the economy. This applies to access to housing and enterprise finance, banking services, food and basic goods, as well as to basic services, such as water, sanitation, electricity and telecommunications.

In many areas, public enterprises and government institutions have made significant strides. Poorer households have already felt the positive impact of recent changes to the provision of water. The government has adopted a similarly progressive approach in the provision of housing and has achieved significant progress in providing access to housing in poor communities. However, in other areas of infrastructure provision, such as electricity and telecommunications, extension of basic services has lagged behind, and have, in part been assumed by the private sector, for example through the extension of cell phone coverage.

7.4.1 Utilities and basic services

Utilities provide services that are essential to consumer welfare such as water and sanitation, communication, energy, postal services, transport etc. therefore they are subject to regulation. Due to the fact that utility services are basic services, consumption of which is guaranteed, it is important that the supply of these services is secured, the quality is monitored and prices are reasonable.

The restructuring process in many of these sectors has sought to introduce competition. There are however still areas where there is little or no competition. The extent to which consumer protection is introduced in each utility sector must be consistent with the extent of competition in that industry and must be particularly pronounced in sectors where monopolies exist and where consumers have no effective choice. The regulatory mechanisms that are eventually chosen must be designed to secure efficient and fair outcomes for consumers.

It is important that government recasts and extend the role of utility regulators to include consumer protection, in particular to consider issues such as access and affordability options for low-income consumers. There is a need to integrate consumer interests as an integral

part of sector regulation. This is more so because, as mentioned above utilities deliver basic services to communities. Generally, rural communities have less access to utility services than their urban counter parts. Sometimes lack of rural access is a function of local geography e.g. in the information communication and technology sector, but other times service providers simply find it uneconomic to service rural communities. As a result remote areas are often left without the infrastructure to provide basic services. Similar problems arise in informal and peri-urban settlements. The inhabitants usually do not have a formal title to the land. Lack of freehold presents certain problems for utilities e.g. they may be many families co-habiting, liability for utility bills becomes uncertain thereby decreasing security against non-payment.

Physical conditions, economic capabilities social patterns, land tenure etc. mean that regulators and utilities cannot have a one-size fits all approach to service provision and charging. Poor communities need non-standard service delivery mechanisms, mechanisms that are tailored to the type of consumers to be serviced.

It is therefore important that the new consumer law will requires sector and utility regulators to exercise their powers and conduct their duties in a manner that is best calculated to protect the interests of poor consumers. The interests of consumers include prices, conditions of supply, the degree of competition, continuity of service etc. Furthermore, regulators must ensure that service providers are in a position to finance and extend service provision to consumers efficiently and effectively.

It is therefore important that standards for equitable access to basic goods and services are developed, especially in cases where the restructuring and partial privatization of state owned enterprises is considered. It is equally important that safeguards are built into processes of restructuring of state owned enterprises to ensure that consumers have fair and equal access to efficient services that are competitively priced. Any privatization initiatives must include the participation of the competition and consumer authorities.

Privatized monopolies have strong incentives to raise the cost of services, which may make them inaccessible to the poor people. These issues range from the provision of transport infrastructure to telecommunications services. Thus, the efficiency of state owned enterprises, whether partially privatized or not, should not be achieved at the cost of access to basic services and infrastructure for the poor, nor at the cost of monopolistic pricing

behaviour. Sector regulators, established to regulated utilities, should therefore also have an explicit mandate to monitor prices and access requirements.

In addition it is necessary that utilities create mechanisms for consumers to lodge complaints for non-provision of equitable, efficient and competitively priced goods.

7.5 Customer satisfaction in government

In April 2003, the Public Service Commission commissioned a survey on citizen satisfaction with public services. Areas surveyed included Health, Education, Housing and Social Development in provinces. The survey revealed that there is a gap between the expectations of citizens and government's actual delivery. The majority of citizens cited that they were unaware of any complaints handling mechanisms that exist within government. Of those aware of such systems, an insignificant percentage had actually lodged a complaint. Those who complained were dissatisfied with the manner in which the complaint was handled.

It is important that government implement complaints handling systems across the board and ensures that those complaints handling systems meet the same requirements as those expected of the private sector. Furthermore, it is imperative that information about these complaints handling systems reaches consumers. It is important that surveys, such as the one conducted by the Public Service Commission in 2003 be conducted annually. This should not preclude the Consumer Commission from investigating consumer abuses of any nature with regard to the provision of public goods and services.

In order to ensure the implementation of proper complaints handling systems, it is important that government departments receive guidance and assistance in their establishment and that significant achievements are recognized publicly. The Office of the Public Protector currently investigates complaints against government departments, where the actions of or the inability to act by government departments violates the democratic rights of citizens. In addition, the office of the Public Protector can recommend remedial steps if the outcome of its investigation reveals that the citizen has been prejudiced. These powers are however limited to the recommendation of remedial action. It is important that the role of the public protector is expanded to include redress in public service delivery, such a responsibility must be accompanied by enforcement powers.

7.6 Encouraging learning and recognising achievement

Working in the public sector in the new millennium poses many challenges for both employers and employees in the public service. New skills and learning is necessary to ensure that the public service rises to the challenges and exploits opportunities presented by global markets and modernization.

There is a need for collaboration between the National Consumer Commission, SALGA and the Public Service Commission to entrench a culture of lifelong learning and development, through international benchmarking of other governments and disseminating information to national, provincial and local government. The impact of benchmarking and setting performance indicators cannot be maximized if it does not go hand in hand with recognition of good practice. The National Consumer Commission should further promote service excellence and good customer care through recognition awards and competitions. Local authorities that promote a safe environment through good environmental policies and good practices in for example waste management or promoting clean air can be recognised for good practice.

7.7 Conclusion

Service excellence is important not only in the private sector, but as this chapter has shown, equally so in the public sector. The public sector has a significant impact on the lives of poor consumers, who often do not have the time or the luxury of ensuring that their complaints are addressed. The burden of bad service thus falls disproportionately on them. As a result, non-payment is often the only defense that these consumers have. In order to address issues relating to the payment of services, it is therefore critical that government takes very seriously the effective implementation of the Batho Pele principles in all spheres of government.

CHAPTER EIGHT

The Way Forward

8.1 Introduction

This framework for consumer policy provides an overarching and comprehensive view of how government sees the development of consumer policy in the future. This framework has been put together as a result of a number of studies and discussion documents that have been tabled within government over the past few years. These have included an audit of the consumer protection environment, and a process of identifying regulatory gaps in consumer legislation. What is required now is to formulate the necessary legislation required to implement a comprehensive consumer policy, and to establish the infrastructure necessary to implement and control consumer protection. However, it is important that public consultation now takes place in order to test the views of government against those of other important stakeholders in the economy.

8.2 Public consultation

The first step in taking this policy framework forward, will be to interact with other government departments, as well as **the dti's** provincial counterparts in order to ensure that there is a common view across government, national and provincial, of the steps that need to be taken. This would be followed by public consultation, including taking the document through the NEDLAC process, where organised business, labour and community groups will have the chance to input. In that the consumer voice is not particularly strong in any institutionalised structures, including NEDLAC, special efforts will be made to ensure that consumer advocacy groups are able to interact with government on the framework.

8.3 Formulating drafting instructions

Initial public consultation on the policy framework will be followed by the formulation of specific drafting instructions to legal experts who will draft the legislation for those areas of the policy which require to be set down in law. Initial approval of this draft legislation within government would then have to follow.

8.4 Public consultations on consumer law

Once draft legislation is on the table, this would then be taken through extensive public consultations, including holding public hearings and workshops.

The final stage of the legislative process would then be to take the law through Parliament. Simultaneously, the regulatory reviews outlined in Chapter eight could begin.

Activities	End Date
Initial Focus Group Workshops with all relevant stakeholders	June – August 2004
Seek Cabinet approval for broader consultation	July-August 2004
Introduce policy to Parliamentary Committees and Nedlac	August- September 2004
Release policy for public comments	September-November 2004
Initial drafting of the Bill	September-October 2004
Seek Cabinet approval of Draft Bill	November – December 2004
Publication of Bill for public comments including workshops and other public consultation	November-January 2005
Evaluation of comments & preparation of revision instructions to drafters	January-February 2005
Certification by State Law Advisors	February- March 2005
Submission of Bill to Parliament	March – June 2005
Proclamation of Bill by President	July 2005
Launch of new institutions	August 2005

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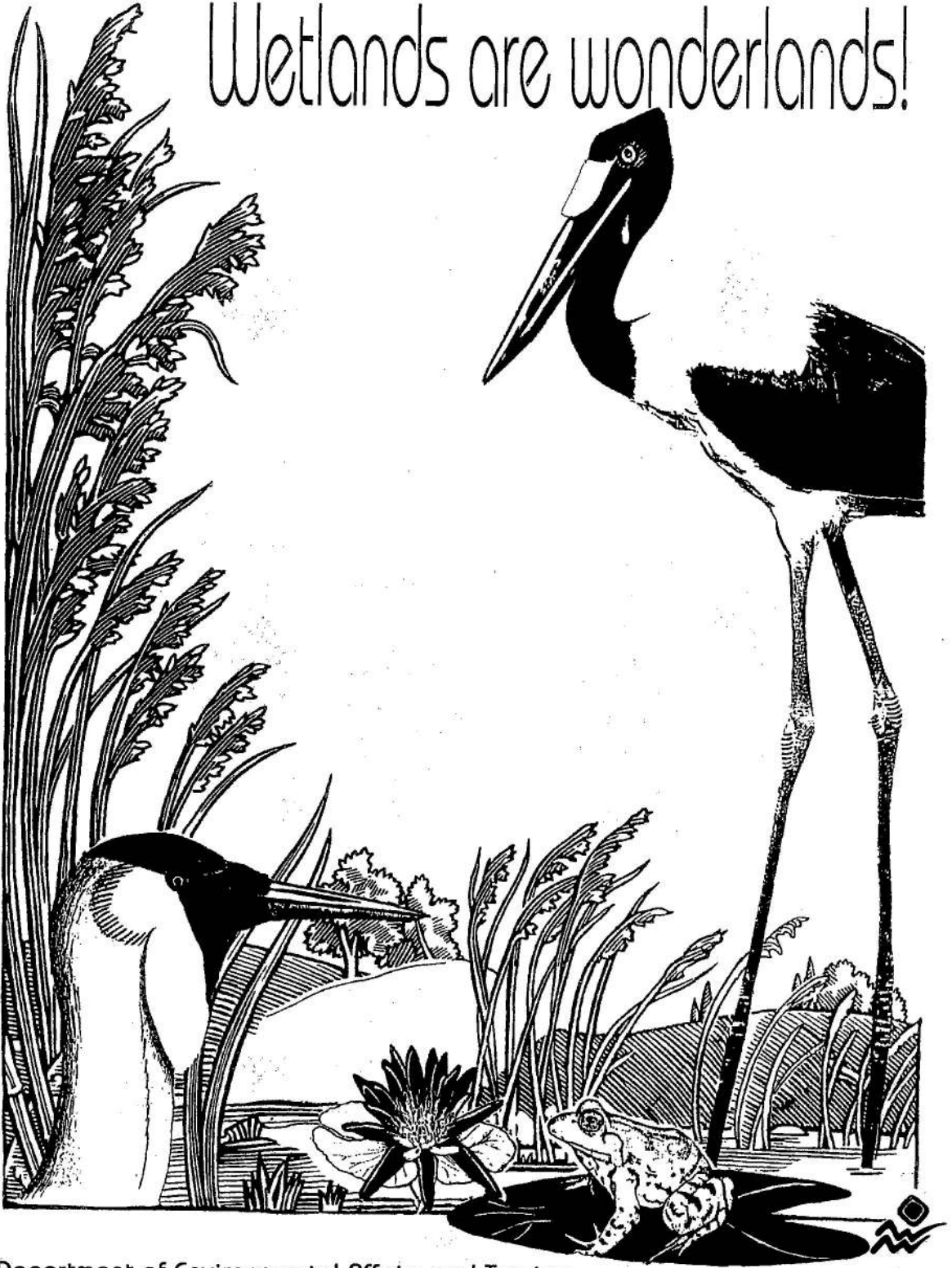
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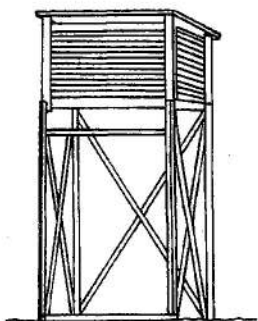
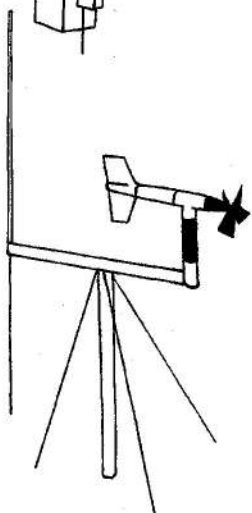
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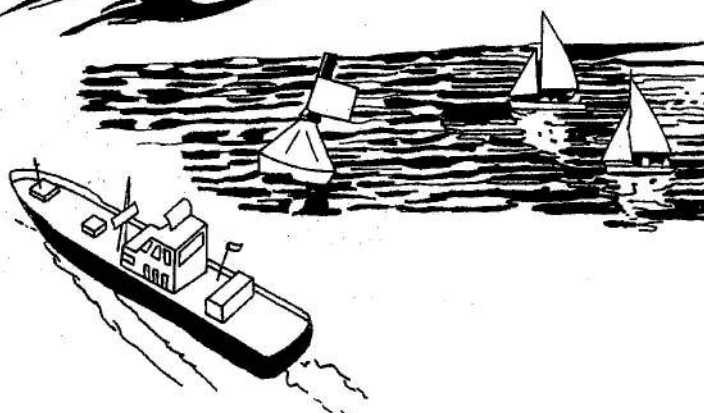
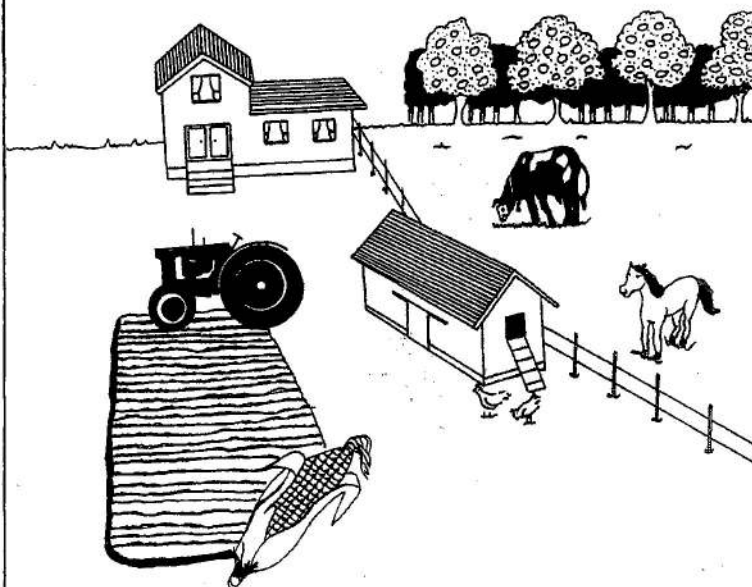
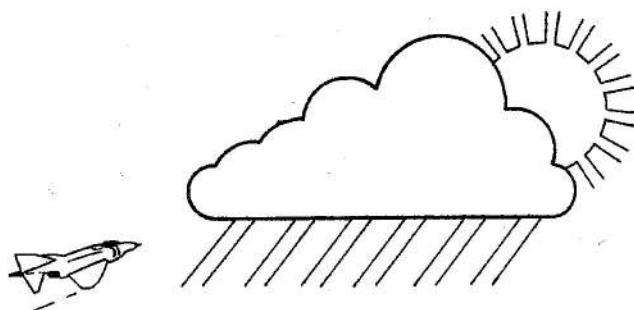


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