

**CONSUMER PROTECTION ACT [CHAPTER 14:14]**

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## ZIMBABWE

# ACT

To protect the consumer of goods and services by ensuring a fair, efficient, sustainable and transparent market place for consumers and business; to provide for the establishment of the Consumer Protection Commission and its functions; to provide for the regulation of Consumer Advocacy Organisations; to provide for alternative dispute resolution; to repeal the Consumer Contracts Act [*Chapter 8:03*]; and to provide for matters connected therewith or incidental thereto.

ENACTED by the Parliament and the President of Zimbabwe.

### PART I PRELIMINARY

#### 1 Short title

This Act may be cited as the Consumer Protection Act [*Chapter 14:44*].

#### 2 Interpretation

(1) In this Act—

“accreditation” means the process of vetting and officially recognising a consumer protection advocacy group as a partner to the Commission in consumer related activities;

“accredited consumer protection advocacy group” means a consumer protection advocacy group accredited by the Commission in terms of section 7;

“Commission” means the Consumer Protection Commission established in terms of section 4;

“business” means the continual marketing of any goods or services;

“complainant” means—

- (a) a person or group which has filed a complaint in terms of this Act; or
- (b) the Commission in respect of a complaint it has initiated either directly or at the request of the Minister or a regulatory authority, as the case may be;

“consumer” in respect of any particular goods or services, means—

- (a) a person to whom those particular goods or services are marketed in the ordinary course of the business of the supplier or service provider;
- (b) a person who has entered into a transaction with a supplier or service provider in the ordinary course of the business of the supplier or service provider, unless the transaction is exempt from the application of this Act in terms of section 3;
- (c) if the context so requires, a user, recipient or beneficiary of those particular goods or services, irrespective of whether that user, recipient or beneficiary was a party to a transaction concerning the supply of those goods or services;
- (d) any person, subject to section 3, who purchases or offers to purchase goods or services supplied by an enterprise in the ordinary course of business and includes a business person who uses the product or service supplied as an input to its own business, a wholesaler, a retailer and a final consumer;
- (e) any person who purchases or offers to purchase goods or services otherwise than for the purpose of resale but does not include a person who purchases goods or services for the purpose of using the goods or services in the production and manufacture of any other goods for sale or the provision of another service for remuneration;

“consumer agreement” means an agreement between a supplier or service provider on the one hand and a consumer on the other hand other than a franchise agreement;

“consumer contract” means a contract for the sale or supply of goods or services or both, in which the seller or supplier is dealing in the course of business and the purchaser or user is not, but does not include—

- (a) a contract for the sale, letting or hire of immovable property; or
- (b) a contract of employment;

“consumer dispute” means a dispute where the person or business against whom or which a complaint has been made denies or disputes the allegations contained in the complaint or, having accepted the allegations, refuses, declines or fails to compensate any loss or injury suffered by the complainant to the satisfaction of the complainant;

“court” means—

- (a) Small claims court; or
- (b) Magistrates court; or
- (c) High court; or

with regard being had to the jurisdiction of the court in question;

“defect” means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard of any goods or services;

“direct marketing” means to approach a person, either in person or by mail or electronic communication, for the direct or indirect purpose of—

- (a) promoting or offering to supply, in the ordinary course of business, any goods or services to the person; or
- (b) requesting the person to make a donation of any kind for any reason;

“dispute” means dispute between the consumer on one hand and the supplier or service provider on the other;

“goods” include—

- (a) anything marketed for human consumption;
- (b) any tangible object not referred to in paragraph (a), including any medium on which anything is or may be written or encoded;
- (c) any literature, music, photograph, motion picture, game, information, data, software, code or other intangible products written or encoded on any medium, or a licence to use any such intangible product;
- (d) a legal interest in land or any other immovable property other than legal interests specified in section 3(5);
- (e) gas, water and electricity;

“hazard” means a characteristic that—

- (a) has been identified as, or declared to be, a hazard in terms of any other law; or
- (b) presents a significant risk of personal injury to any person, or damage to property, when goods are utilised;

“importer” has the definition given to it in terms of the Customs and Excise Act [*Chapter: 23:02*];

“inspector” means a person appointed in terms of section 70;

“investigator” means a person appointed in terms of section 70;

“intermediary” means a person who, in the ordinary course of business and for remuneration or gain, engages in the business of—

- (a) representing another person with respect to the actual or potential supply of any goods or services; or
- (b) accepting possession of any goods or services; or
- (c) offering to sell to a consumer, soliciting offers for or selling to a consumer any goods or services that belong to or are supplied by a third person;

but does not include a person whose activities as an intermediary are regulated in terms of any other law;

“juristic person” includes—

- (a) a body corporate; or
- (b) a partnership or association; or
- (c) a trust registered in terms of the Deeds Registries Act [*Chapter 20:05*];

“market” when used as a verb, means to promote or supply any goods or services;

“Minister” means the Minister of Industry and Commerce or any other Minister that the President may from time to time assign the administration of this Act;

“price” when used in relation to—

- (a) a representation required to be displayed by this Act, includes any mark, notice or visual representation that may reasonably be inferred to indicate or express an association between any goods or services and the value of the consideration for which the supplier is willing to sell or supply those goods or services; or
- (b) the consideration for any transaction or agreement, means the total amount paid or payable by the consumer to the supplier in terms of that transaction or agreement, including any amount that the supplier is required to charge or collect in terms of any law;

“producer” with respect to any particular goods, means a person who—

- (a) grows, nurtures, harvests, mines, generates, refines, creates, manufactures or otherwise produces the goods within Zimbabwe, or causes any of those things to be done, with the intention of making them available for supply in the ordinary course of business; or
- (b) by applying a personal or business name, trade mark, trade description or other visual representation on or in relation to the goods, has created or established a reasonable expectation that he or she is the person referred to in paragraph (a);

“promote” means to—

- (a) advertise, display or offer to supply any goods or services in the ordinary course of business, to all or part of the public for consideration; or
- (b) make any representation in the ordinary course of business that could reasonably be inferred as expressing a willingness to supply any goods or services for consideration; or
- (c) engage in any other conduct in the ordinary course of business that may reasonably be construed to be an inducement or attempted inducement to a person to engage in a transaction;

“regulatory authority” means regulatory authority established in terms of an Act of Parliament that has competent jurisdiction and expertise to deal with consumer issues in its sector;

“retailer” with respect to any particular goods, means a person who, in the ordinary course of business, supplies those goods to a consumer;

“services” includes the rights or benefits provided under an agreement for the performance of work, whether with or without the supply of goods;

“service provider” means a person who promotes, supplies or offers to supply any service, and includes an agent of the service provider;

“supplier” means a person who is in the business of selling, leasing or trading in goods or services or is otherwise in the business of supplying goods or services, and includes an agent of the supplier;

“transaction” means—

- (a) in respect of a person acting in the ordinary course of business—
  - (i) an agreement between or among persons for the supply of any goods or services in exchange for consideration; or

- (ii) the supply by that person of any goods to or at the direction of a consumer for consideration; or
  - (iii) the performance by, or at the direction of that person of any services for or at the direction of a consumer for consideration;
  - (b) the supply of any goods or services in the ordinary course of business to any of its members by a club, trade union, association or society, whether corporate or unincorporated or for fair value consideration or otherwise, irrespective of whether there is a charge or economic contribution demanded or expected in order to become or remain a member of that entity—
  - (c) a solicitation of offers to enter into a franchise agreement;
  - (d) an offer by a potential franchisor to enter into a franchise agreement with a potential franchisee;
  - (e) a franchise agreement or an agreement supplementary to a franchise agreement; and
  - (f) the supply of any goods or services to a franchisee in terms of a franchise agreement.
- (2) Notice in terms of this Act may be served by—
- (a) fax; or
  - (b) e-mail; or
  - (c) registered letter; or
  - (d) any attested member of the Zimbabwe Republic Police; or
  - (e) messenger of court or his or her authorised agent; or
  - (f) deputy sheriff or his or her authorised agent; or
  - (g) any other method that may be prescribed by the Minister from time to time.

### 3 Application of Act

- (1) This Act applies to—
- (a) every transaction occurring within Zimbabwe, unless it is exempted by subsections (2) and (5) or in terms of subsections (3) and (4); or
  - (b) the promotion of any goods or services, or of the supply of any goods or services, within Zimbabwe, unless—
    - (i) those goods or services could not reasonably be the subject of a transaction to which this Act applies in terms of paragraph (a); or
    - (ii) the promotion of those goods or services has been exempted in terms of subsections (3) and (4);
 or
  - (c) goods or services that are supplied or performed in terms of a transaction to which this Act applies, irrespective of whether any of those goods or services are offered or supplied in conjunction with any other goods or services, or separately from any other goods or services.
- (2) This Act does not apply to any transaction—
- (a) in terms of which goods or services are promoted or supplied to the State; or

- (b) in terms of which the consumer is a juristic person whose asset value or annual turnover, at the time of the transaction, equals or exceeds the threshold value prescribed by the Minister in terms of subsection (4); or
- (c) if the transaction falls within an exemption granted by the Minister in terms of subsection (4); or
- (d) pertaining to services to be supplied under an employment contract.

(3) The application of this Act in terms of subsections (1) to (5) extends to a matter irrespective of whether the supplier—

- (a) resides or has its principal office within or outside Zimbabwe; or
- (b) operates on a profit basis or otherwise; or
- (c) is an individual, juristic person, partnership, trust, organ of state, an entity owned or directed by an organ of state, a person contracted or licensed by an organ of state to offer or supply any goods or services, or is a public-private partnership; or
- (d) is required or licensed in terms of any public regulation to make the supply of the particular goods or services available to all or part of the public.

(4) The Minister may, by notice in the *Gazette*, prescribe a monetary threshold applicable to the size of a juristic person for the purposes of subsection (2)(b).

(5) This Act shall not apply to a—

- (a) a transaction for the sale, letting or hire of immovable property; or
- (b) a contract of employment.

(6) When interpreting or applying this Act, the court or Commission may consider international law, and any international conventions, declarations or protocols relating to consumer protection.

## PART II

### ESTABLISHMENT, FUNCTIONS AND POWERS OF CONSUMER PROTECTION COMMISSION

#### **4 Establishment of Consumer Protection Commission**

There is hereby established a Commission, to be known as the Consumer Protection Commission, which shall be a body corporate capable of suing and being sued in its corporate name and performing all acts that body corporates may by law perform.

#### **5 Composition of Commission**

(1) The Commission shall consist of the Chief Executive Officer who shall be an *ex officio* member and twelve other members appointed by the Minister after consultation with the President, of whom—

- (a) one member shall be qualified or experienced in environmental matters; and
- (b) one member shall be qualified or experienced in agriculture matters; and
- (c) one member shall be nominated from the Ministry responsible for Industry and Commerce; and
- (d) one member shall be qualified or experienced in competition and trade matters; and

- (e) one member shall be qualified or experienced in standards and quality matters; and
- (f) one member shall be a legal practitioner registered as such in terms of the Legal Practitioners Act [*Chapter 27:07*]; and
- (g) one member shall be qualified or experienced in energy matters; and
- (h) five members shall be appointed from accredited consumer protection advocacy groups and shall be qualified or experienced in consumer protection matters.

(2) In appointing members of the Commission, the Minister shall—

- (a) designate one member as Chairperson and another as Vice-chairperson of the Commission:

Provided that if the Chairperson is a man, the Vice-chairperson shall be a woman or *vice versa*; and

- (b) endeavour to ensure that at least half the appointed members are women; and
- (c) ensure fair regional representation; and
- (d) take specific measures to ensure the inclusion and representation of persons with disabilities.

(3) A member of the Commission, other than an *ex-officio* member, shall hold office for a period of not more than five years and may be eligible for re-appointment for one more term, upon satisfactory performance, unless his or her appointment is terminated in terms of the First Schedule.

(4) The conditions of service of the Commission members shall be as specified in the First Schedule.

(5) For the Commission to better discharge its functions in terms of section 6, it shall have the powers specified in the Second Schedule.

(6) The Secretary of the Commission shall be the Chief Executive Officer and as such shall be—

- (a) responsible to the Commission for the administration and management of its affairs; and
- (b) in charge of all administrative, executive and other staff of the Commission; and
- (c) responsible for causing a proper records of minutes to be kept; and
- (d) in all such matters and at all times, be subject to the direction and control of the Commission.

(7) The Secretary of the Commission shall exercise such powers and perform such duties as the Commission may delegate to him or her in writing from time to time.

(8) Any delegation of functions in terms of subsection (7)—

- (a) may be made generally or specifically and subject to such conditions, restrictions, reservations and exceptions as the Commission may determine;
- (b) may be revoked by the Commission at any time;

- (c) shall not preclude the Commission itself from exercising such delegated functions.

(9) With the approval of the Minister and in consultation with the Chief Executive Officer, the Commission may employ such other members of staff as it considers necessary to further its functions.

## 6 Functions of Commission

The functions of the Commission shall be to—

- (a) protect consumers from unconscionable, unreasonable, unjust or otherwise improper trade practices; as well as deceptive, misleading, unfair or fraudulent conduct;
- (b) conduct conciliation and arbitration between parties;
- (c) promote fair business practices;
- (d) co-ordinate and network consumer activities and liaise with consumer organisations and the competent authorities and agencies locally and outside Zimbabwe to protect consumer interests;
- (e) promote consumer confidence, awareness, empowerment, and the development of a culture of consumer responsibility, through individual and group education, vigilance, advocacy and activism;
- (f) provide for a consistent, accessible and efficient system of consensual resolution of disputes and redress arising from consumer transactions;
- (g) refer matters to and appear before any court of law, as permitted or required by this Act;
- (h) negotiate and conclude undertakings and consent orders;
- (i) issue and enforce compliance notices in terms of section 68 of this Act;
- (j) receive complaints concerning alleged prohibited conduct or offences, and deal with those complaints;
- (k) investigate and evaluate alleged prohibited conduct and offences;
- (l) maintain a record of and publish annual reports on consumer complaints and the outcomes of any hearings;
- (m) encourage and assist governmental and official organisational support to further the interests of consumers and consumer organisations;
- (n) refer to the Competition Commission or any other relevant authority any concerns regarding market share, anti-competitive behaviour or conduct that may be prohibited in terms of the Competition Act [*Chapter 14:28*] or other relevant Acts;
- (o) cooperate with other consumer protection authorities to obtain redress across borders for consumers affected by fraudulent and deceptive commercial practices;
- (p) promote international co-operation in the comparative testing of consumer goods and services and facilitate exchange of test methods, plans and results;
- (q) recommend the effective implementation of this Act and any other laws affecting consumers;

- (r) monitor—
  - (i) the consumer market to ensure that prohibited conduct and offences are prevented, detected and prosecuted; and
  - (ii) the effectiveness of accredited consumer groups, industry codes of conduct and alternative dispute resolution schemes, service delivery to consumers by organs of State, and any regulatory authority exercising jurisdiction over consumer matters within a particular industry or sector;
- (s) regulate the accreditation of consumer protection advocacy bodies and industry associations; and
- (t) exercise any other function that may be conferred or imposed on the Commission by or in terms of this Act or any other enactment.

## **7 Accreditation of consumer protection advocacy groups**

(1) The Commission may accredit a consumer protection advocacy group if the group—

- (a) promotes or represents the interests of all or a specific category of consumers generally; or
- (b) is committed to achieving the purposes of this Act; or
- (c) engages in actions to promote and advance consumer interests:

Provided that the Commission may impose reasonable conditions on the accreditation of a consumer protection group to further the purposes of this Act.

(2) The Minister may prescribe standards, procedures and other related matters for the Commission to follow in assessing whether an applicant for accreditation meets the requirements of this section.

(3) Upon receiving sufficient documentation from the organisation seeking to be accredited, the Commission shall communicate its decision to the organisation within fourteen days from the date of receiving such documentation:

Provided that if the Commission rejects the application for accreditation of an organisation, it shall supply the reasons therefor.

(4) Where it comes to the attention of the Commission, after accreditation, that any consumer protection advocacy group has failed to comply with subsection (1) or acted in a manner inconsistent with the provisions of this Act, the Commission shall serve notice in writing on the group of the requirement to comply with subsection (1) or the provisions of this Act, as the case may be, and in such notice warn the group that if compliance is not made within seven days from the date of the service of the notice, then the group will be liable to the civil penalty referred to in subsection (5).

(5) A group that fails to comply with subsection (1) or the provisions of this Act after being served with a notice of compliance under subsection (4) shall be subject to a civil penalty of level 3 for each day the group is in default of compliance:

Provided that the group shall not be liable for a civil penalty for a period in excess of 180 days.

(6) A civil penalty shall constitute a debt due to the Commission by the group against which it is levied, and shall at any time after it becomes due be recoverable

by proceedings instituted in the name of the Commission in a court of competent civil jurisdiction.

(7) Where a group is in default of compliance after a period of 180 days from the date of expiry of the notice of compliance issued in terms of subsection (4), it shall be guilty of an offence and liable to a fine not exceeding level 11.

(8) The monies paid or recovered by way of civil penalties under this section shall form part of the funds of the Commission.

(9) The Commission may—

- (a) monitor the effectiveness of any accredited consumer protection advocacy group relative to the purposes and policies of this Act;
- (b) reasonably require any accredited consumer protection advocacy group to provide information necessary for the purposes of monitoring and strengthening consumer activism.

(10) The Commission may co-operate with, facilitate or support any of the following activities carried out by a consumer protection advocacy group and other sectors of civil society—

- (a) consumer advice and education activities and consumer-related publications;
- (b) research, market monitoring, surveillance and reporting;
- (c) promotion of consumer rights and advocacy of consumer interests;
- (d) representation of consumers in court;
- (e) alternative dispute resolution through mediation or conciliation;
- (f) participation in national and international programmes, conferences or forums concerned with consumer protection matters.

## **8 Suspension or cancellation of accreditation**

(1) The Commission may suspend or cancel an accreditation if it is satisfied that the group has failed to meet the requirements in section 7 or any other provisions of this Act.

(2) The Commission may not suspend or revoke an accreditation unless it has—

- (a) notified the group in writing of its intention to do so; and
- (b) given reasons for the suspension or cancellation; and
- (c) afforded the group an opportunity to make representations in writing within fourteen days or remedy the alleged breach.

(3) The Commission may suspend accreditation granted in terms of section 7 for a period not exceeding ninety days pending implementation of the procedures required in terms of subsection (2) only if the continued accreditation of the group will not cause irreparable harm to consumers.

## PART III

## FUNDAMENTAL CONSUMER RIGHTS

*SUB-PART A: RIGHT TO EDUCATION***9 Right to consumer education and awareness**

(1) A Consumer has the right to consumer education which includes but is not limited to information on the environmental impacts of consumer choices and behaviour and the possible implications, including benefits and costs, of changes in consumption.

(2) Where appropriate, consumer education may be incorporated into the educational system with a focus on—

- (a) product hazards;
- (b) product labelling;
- (c) how to obtain redress;
- (d) information on weights and measures, prices and quality;
- (e) environmental protection.

*SUB-PART B: RIGHT TO HEALTH AND SAFETY***10 Right to fair value, good quality and safety of goods and services**

(1) A supplier is prohibited from selling or marketing any goods or services to consumers unless such goods or services conform to the mandatory safety and quality standards prescribed in accordance with any laws.

(2) Every consumer has a right to receive goods or services that are safe and free from defects and hazards and that—

- (a) are reasonably suitable for the purposes for which they are generally intended; and
- (b) will be usable and durable for a reasonable period of time, having regard to the use to which the goods would normally be put and to all the surrounding circumstances of their supply; and
- (c) are free from defects; and
- (d) are serviceable where necessary; and
- (e) are of fair value.

(3) Subject to subsection (2), if a consumer has specifically informed the supplier of the particular purpose for which the consumer wishes to acquire or apply any goods or services, and the supplier—

- (a) ordinarily offers to supply such goods or services; or
- (b) acts in a manner consistent with being knowledgeable about the use or provision of those goods or services;

the consumer has a right to expect that they are reasonably suitable for the specific purpose that the consumer has indicated.

(4) In determining whether any particular goods or services satisfy the requirements of subsection (2), all of the circumstances of the supply of those goods or services must be considered, including but not limited to—

- (a) the manner in which and the purposes for which, the goods or services were marketed, packaged and displayed;
  - (b) the use of any trade description or mark;
  - (c) any instructions for, or warnings with respect to their use;
  - (d) the range of things that might reasonably be anticipated to be done with or in relation to the goods or services;
  - (e) the time when the goods or services were produced or supplied.
- (5) In applying subsection (2)—
- (a) it is irrelevant whether—
    - (i) a product failure or defect was latent or patent; or
    - (ii) the defect could have been detected by a consumer before delivery of the goods or services;
  - or
  - (b) a product failure or defect may not be inferred in respect of particular goods or services solely on the grounds that better goods or services have subsequently become available from the same or any other producer or supplier.
- (6) Subsections (3) and (4) do not apply to a transaction if the consumer has—
- (a) been expressly informed that particular goods were offered in a specific condition; and
  - (b) agreed in writing to accept the goods in that condition.

## 11 Implied warranty of quality

(1) In any transaction or agreement pertaining to the supply of goods or services to a consumer, there is an implied provision that the producer, importer, distributor or the retailer each warrant that the goods or services comply with the requirements and standards contemplated in section 10(2).

(2) Subject to subsection (1) within six months after the delivery of any goods to a consumer, the consumer may return the goods to the supplier, without penalty and at the supplier's risk and expense, if the goods fail to satisfy the requirements and standards contemplated in section 10(2), and the supplier at the direction of the consumer, shall—

- (a) repair or replace the failed, unsafe or defective goods; or
- (b) refund the consumer the amount paid by the consumer for the goods.

(3) If a supplier repairs any particular goods or any component of any such goods, and within three months a further failure, defect or unsafe feature is discovered, the supplier at his or her expense shall—

- (a) replace the goods; or
- (b) refund the consumer the amount paid by the consumer for the goods.

(4) In addition to remedies provided for in subsections (2) and (3), the consumer shall have access to remedies provided by common law and any other law.

## 12 Warranty on repaired goods

(1) A service provider warrants every new or reconditioned part installed during any repair or maintenance work, and the labour required to install it, for a period of six months after the date of installation or such longer period as the service provider may specify in writing.

(2) A warranty in terms of subsection (1) shall—

- (a) be read with any other, implied or express warranty; and
- (b) be void if the consumer has subjected the goods or part of the goods to misuse or abuse; and
- (c) not apply to ordinary wear and tear, having regard to the circumstances in which the goods are intended to be used.

## 13 Warning concerning fact and nature of risks

(1) No person shall supply goods or services that are subject to any—

- (a) risk of an unusual nature; or
- (b) risk of which a consumer could not reasonably be expected to be aware of, or which a consumer could not reasonably be expected to foresee in the circumstances; or
- (c) risk that could result in serious injury or death.

(2) A person who packages any hazardous or unsafe goods for supply to consumers shall display on or within that packaging a notice that meets the requirements of section 43 and any other applicable standards, providing the consumer with adequate instructions for the safe handling and use of those goods.

(3) A person who installs any hazardous or unsafe goods referred to in subsection (2) for a consumer, or supplies any such goods to a consumer in conjunction with the performance of any services, must give the consumer the original copy of—

- (a) any document required in terms of section 43(2); or
- (b) any similar document applied to those goods in terms of any law.

(4) Any person who contravenes this section shall be guilty of an offence and liable to a fine not exceeding level 14 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

## 14 Recovery and safe disposal of designated products or components

(1) If any law prohibits the disposal or deposit of any particular goods, components, remnants, containers or packaging of any goods into a common waste collection system, any person who in the ordinary course of business supplies, produces, sells, imports or distributes goods of that kind to consumers shall accept the return of the same without charge to the consumer, irrespective of whether that person supplied, produced, sold, imported or distributed the particular object to that particular consumer.

(2) Where any law or industry waste management plan approved for that purpose applies, the consumer may dispose or deposit the goods to a collection facility provided for in that law or industry waste management plan.

## 15 Safety monitoring and recall

(1) The Commission shall promote the development, adoption and application of industry codes of conduct providing for effective and efficient systems to—

- (a) receive notice of—
  - (i) consumer complaints or reports of product failures, defects or hazards; and
  - (ii) the return of any goods because of a failure, defect or hazard; and
  - (iii) personal injury, illness or damage to property caused wholly or partially as a result of a product failure, defect or hazard; and
  - (iv) other indications of failure, defect or hazard, in any particular goods or in any component of them, or injury or damage resulting from the use of those goods;
- (b) monitor the sources of information referred to in paragraph (a), and analyse the information received with the object of detecting or identifying any previously undetected or unrecognised potential risk to the public from the use of or exposure to those goods;
- (c) conduct investigations into the nature, causes, extent and degree of the risk to the public;
- (d) notify consumers of the nature, causes, extent and degree of the risk pertaining to those goods;
- (e) recall the goods for repair, replacement or refund if the goods are unsafe.

(2) If the Commission has reasonable grounds to believe that any goods may be unsafe, or that there is a potential risk to the public from the continued use of or exposure to the goods, and the supplier, producer or importer of those goods has not taken any steps required by an applicable code, the Commission, by written notice, may—

- (a) conduct an investigation referred to in subsection (1)(a); or
- (b) carry out a recall programme on any terms required by the Commission.

(3) A supplier, producer or importer affected by a notice issued in terms of subsection (2) may apply to the court to set aside the notice in whole or in part.

## 16 Liability for damage caused by goods

(1) This section applies to—

- (a) the producer of the product;
- (b) any person who, by putting his or her name on the product or using a trade mark or other distinguishing mark in relation to the product, has held himself or herself out to be the producer of the product;
- (c) any person who has imported the product into the country in order, in the course of any business of his or hers, to supply it to another;
- (d) the distributor, retailer or supplier of goods.

(2) Except as contemplated in subsection (5), the producer, importer, distributor or retailer of any goods is liable for any harm, as described in subsection (4), caused wholly or partly as a consequence of—

- (a) supplying any unsafe goods; or

- (b) a product failure, defect or hazard in any goods; or
- (c) inadequate instructions or warnings provided to the consumer pertaining to any hazard arising from or associated with the use of any goods, irrespective of whether the harm resulted from any negligence on the part of the supplier, producer, importer, distributor or retailer, as the case may be.

(3) A supplier of services who, in conjunction with the performance of those services, applies, supplies, installs or provides access to any goods, must be regarded as a supplier of those goods to the consumer, for the purposes of this section.

(4) If, in a particular case, more than one person is liable in terms of this section, their liability is joint and several.

- (5) Liability of a particular person in terms of this section does not arise if—
- (a) the unsafe product characteristic, failure, defect or hazard that results in harm is wholly attributable to compliance with any public regulation; or
  - (b) the alleged unsafe product characteristic, failure, defect or hazard—
    - (i) did not exist in the goods at the time it was supplied by that person to another person alleged to be liable; or
    - (ii) was wholly attributable to compliance by that person with instructions provided by the person who supplied the goods to that person, in which case the person who has provided such instructions shall be liable;
- or
- (c) it is unreasonable to expect the distributor or retailer to have discovered the unsafe product characteristic, failure, defect or hazard, having regard to that person's role in marketing the goods to consumers.

## 17 Defences

(1) Liability of a supplier, producer or importer, distributor or retailer of any goods or services in terms of this section does not arise if—

- (a) the unsafe product characteristic, failure, defect or hazard that results in harm is wholly attributable to compliance with any public regulation; or
  - (b) the person proceeded against did not at any time supply the product to another; or
  - (c) the alleged unsafe product characteristic, failure, defect or hazard—
    - (i) did not exist in the goods at the time it was supplied by that person to another person alleged to be liable; or
    - (ii) was wholly attributable to compliance by that person with instructions provided by the person who supplied the goods to that person, in which case subparagraph (i) does not apply;
- or
- (d) it is unreasonable to expect the distributor or retailer to have discovered the unsafe product characteristic, failure, defect or hazard, having regard to that person's role in marketing the goods to consumers; or
  - (e) the claim for damages is brought more than three years after—
    - (i) the death or injury of a person contemplated in subsection (2)(a); or
    - (ii) the earliest time at which a person had knowledge of the material facts about an illness contemplated in subsection (2)(b); or

- (iii) the earliest time at which a person with an interest in any property had knowledge of the material facts about the loss or damage to that property contemplated in subsection (2)(c); or
  - (iv) the latest date on which a person suffered any economic loss contemplated in subsection (2)(d).
- (2) Harm for which a person may be held liable in terms of this section includes—
- (a) the death of, or injury to, any natural person;
  - (b) an illness of any natural person;
  - (c) any loss of, or physical damage to, any property, irrespective of whether it is movable or immovable;
  - (d) any economic loss that results from harm contemplated in paragraph (a), (b) or (c).
- (3) Nothing in this section limits the authority of a court to—
- (a) assess whether any harm has been proven and adequately mitigated; or
  - (b) determine the extent and monetary value of any damages, including economic loss; or
  - (c) apportion liability among persons who are found to be jointly and severally liable.
- (4) In determining for the purposes of this Sub-Part who has suffered any loss of or damage to property and when any such loss or damage occurred, the loss or damage shall be regarded as having occurred at the earliest time at which a person with an interest in the property had knowledge of the material facts about the loss or damage.

*SUB-PART C: RIGHT TO CHOOSE*

**18 Right to choose and choice of goods or services**

(1) Every consumer has a right to choose goods or services of their preferred choice without any undue influence or pressure from suppliers of goods or services.

(2) If any goods are displayed in or sold from open stock, the consumer has the right to select or reject any particular item from that stock before completing the transaction.

(3) Where a transaction is completed, a consumer remains with the right to return goods on discovery that such goods are not of their preferred choice within the shortest period reasonable in the circumstances.

**19 Consumer's right to select suppliers**

No supplier, as a condition of offering to supply any goods or services, or as a condition of entering into an agreement or transaction, shall require that a consumer—

- (a) purchases any other particular goods or services from that supplier; or
- (b) enters into an additional agreement or transaction with the same supplier or a designated third party; or
- (c) agrees to purchase any particular goods or services from a designated third party, unless the supplier—

- (i) can show that the convenience to the consumer in having those goods or services bundled outweighs the limitation of the consumer's right to choice; or
- (ii) can show that the bundling of those goods or services results in economic benefit for consumers; or
- (iii) offers bundled goods or services separately and at individual prices.

## 20 Consumer's right to cancel advance reservation, booking or order

(1) A consumer has the right to cancel any advance booking, reservation or order for any goods or services to be supplied.

(2) A supplier who makes a commitment or accepts a reservation to supply goods or services on a later date may—

- (a) require payment of a reasonable deposit in advance; and
- (b) charge the prescribed fee for cancellation of the order or reservation.

(3) In determining the prescribed fee provided for in subsection (2)(b), the following factors may be taken into account—

- (a) the nature of the goods or services that were reserved or booked; or
- (b) the length of notice of cancellation provided by the consumer; or
- (c) the reasonable potential for the service provider, acting diligently, to find an alternative consumer between the time of receiving the cancellation notice and the time of the cancelled reservation; or
- (d) the general practice of the relevant industry.

(4) A supplier may not charge any cancellation fee in respect of a booking, reservation or order if the consumer is unable to honour the booking, reservation or order because of the death or hospitalisation of—

- (a) the person for whom, or for whose benefit the booking, reservation or order was made; or
- (b) an immediate family member.

## 21 Delivery of goods or supply of services

(1) Unless expressly provided in an agreement, it is an implied condition of every transaction for the supply of goods or services that—

- (a) the supplier is responsible for delivering the goods or performing the services—
  - (i) on the agreed date and time, if any, within a reasonable time after concluding the transaction or agreement; or
  - (ii) at the agreed place; or
  - (iii) at the cost of the supplier, in the case of delivery of goods;or
- (b) goods to be delivered remain at the supplier's risk until the consumer has accepted delivery:

Provided that if the supplier tenders the delivery of goods or the performance of any services at a location, on a date or at a time other than as agreed with the consumer, the consumer may either—

- (i) accept the delivery or performance at that location, date or time; or
- (ii) require the delivery or performance at the agreed location, date or time, if that date and time have not yet passed; or
- (iii) cancel the agreement without penalty, treating any delivered goods or performed services as unsolicited goods or services in accordance with section 22.

(2) If an agreement does not provide for a specific date or time for delivery of any goods or performance of any services, the supplier shall not deliver or perform the services at an unreasonable time.

(3) The consumer is regarded to have accepted delivery of goods or services where—

- (a) the consumer expressly or implicitly communicates to the supplier that he or she has accepted delivery of such goods or services; or
- (b) the goods or services have been delivered to the consumer; and—
  - (i) he or she tampers with the goods in a manner inconsistent with the supplier's ownership of the same; or
  - (ii) subject to subsection (4), within seven days, he or she retains the goods without indicating to the supplier that he or she has rejected delivery of the same.

(4) Upon delivery of any goods or services, the supplier shall give the consumer an opportunity to examine the goods or services for the purpose of ascertaining whether he or she is satisfied that the goods or services—

- (a) are of a type and quality contemplated in the agreement; or
- (b) in the case of a special-order agreement, conform to the material specifications of the special order.

(5) If the supplier delivers to the consumer a larger quantity of goods than the consumer agreed to buy, or supplies mixed goods of a different description not contemplated in the agreement, the consumer may either—

- (a) reject all of the delivered goods; or
- (b) accept delivery of the goods—
  - (i) and pay for the agreed quantity at the agreed rate in accordance with the agreement and reject the rest; or
  - (ii) treat the excess quantity as unsolicited goods in terms of section 22;

## 22 Unsolicited goods or services

(1) Subject to subsection (2), goods or services are unsolicited in any of the following circumstances—

- (a) where, during any direct marketing of goods or services, a supplier has left any goods with, or performed any service for, a consumer without requiring or arranging payment for them; or
- (b) where a consumer is a party to an agreement contemplating the periodic delivery of goods during the life of the agreement; and—
  - (i) the supplier introduces goods or services that are materially different from the goods or services previously supplied, to an extent not

reasonably contemplated in the agreement, unless the consumer expressly consented to the material change in writing; or

- (ii) after the termination of that agreement, the supplier delivers any further goods to the consumer, other than in terms of a different agreement or transaction;

or

- (c) where a supplier delivers goods or performs services at a location, date or time other than as agreed, and the consumer has rejected that delivery or performance of services, in terms of section 21(4); or
- (d) where a supplier delivers a larger quantity of goods than the consumer agreed to buy, unless the consumer has rejected the entire delivery, in terms of section 21(5); or
- (e) where any goods have been delivered to, or any services performed for a consumer by a supplier without the consumer having expressly or implicitly requested that delivery or performance.

(2) Notwithstanding subsection (1), where—

- (a) after delivery of any goods to a consumer, the supplier informs the consumer within seven days that the goods were delivered in error, those goods become unsolicited only if the supplier fails to collect them within fourteen days after so informing the consumer; or
- (b) any goods are delivered to a consumer and—
  - (i) those goods are clearly addressed to another person; or
  - (ii) having regard to the circumstances of the delivery, it would be clear to the consumer that the goods were intended to be delivered to another person;

the goods become unsolicited goods only if the recipient informs the supplier or the deliverer that the goods were wrongly delivered, and the goods are not recovered within fourteen days.

(3) Where a person is in possession of unsolicited goods, he or she—

- (a) shall not frustrate the supplier or deliverer from recovering the goods or services within the time allowed in subsection (2);
- (b) shall not be responsible for any cost pertaining to the recovery of the goods or services or further delivery of the same to another person; and
- (c) shall not be liable for any loss or damage to the goods during the time the goods or services are in the person's possession or control, other than loss caused by the person's intentional interference with the goods.

(4) A person who fails to comply with subsection (3)(a) is liable to the supplier or deliverer for any additional costs for recovery of, or damage to the goods or services arising as a result of anything done to frustrate the lawful recovery of the goods or services.

(5) Where a person is in possession of any unsolicited goods or services, he or she may—

- (a) retain the goods or services; or
- (b) at the risk and expense of the supplier or deliverer, return the goods or services to the supplier or deliverer.

(6) Where a person lawfully retains any unsolicited goods, the goods pass to that person, subject to any right or valid claim that a third party may have with respect to the goods.

(7) Subject to subsection (6), a supplier or deliverer of unsolicited goods is liable to any other person in respect of any right or valid claim relating to such goods.

(8) A person shall not be obliged to pay a supplier for unsolicited goods or services, or a deliverer for the cost of delivery of any unsolicited goods.

(9) No supplier shall demand or assert any right to, or collect, any payment from a consumer in respect of any charge relating to unsolicited goods left in the possession of a consumer, or the delivery of any such goods, or unsolicited services supplied to or for the benefit of, a consumer, except as referred to in subsection (4) or (6).

(10) Where a consumer has made a payment to a supplier or deliverer in respect of any charge relating to unsolicited goods or services, or the delivery of any such goods returned to the supplier, the consumer is entitled to recover that amount, with interest from the date on which it was paid to the supplier, in terms of the Prescribed Rate of Interest Act [*Chapter 8:10*].

### 23 Expiry and renewal of fixed-term agreements

(1) This section does not apply to transactions between juristic persons regardless of their annual turnover or asset value.

(2) If a consumer agreement is for a fixed term—

- (a) that term must not exceed the maximum period, if any, prescribed in terms of subsection (4) with respect to that category of consumer agreement; and
- (b) despite any provision of the consumer agreement to the contrary—

- (i) the consumer may cancel that agreement—

- A. upon the expiry of its fixed term, without penalty or charge, but subject to subsection (3)(a); or

- B. at any other time, by giving the supplier twenty business days' notice in writing or other recorded manner and form, subject to subsection(3)(a) and (b);

or

- (ii) the supplier may cancel the agreement twenty business days after giving written notice to the consumer of a material failure by the consumer to comply with the agreement, unless the consumer has rectified the failure within that time;

and

- (c) of not more than eighty, nor less than forty, business days before the expiry date of the fixed term of the consumer agreement, the supplier must notify the consumer in writing or any other recordable form, of the impending expiry date, including a notice of—

- (i) any material changes that would apply if the agreement is to be renewed or may otherwise continue beyond the expiry date; and

- (ii) the options available to the consumer in terms of paragraph (d);

and

- (d) on the expiry of the fixed term of the consumer agreement, it will be automatically continued on a month-to-month basis, subject to any material changes of which the supplier has given notice, as contemplated in paragraph (c)(i), unless the consumer expressly—

- (i) directs the supplier to terminate the agreement on the expiry date; or
  - (ii) agrees to a renewal of the agreement for a further fixed term.
- (3) Upon cancellation of a consumer agreement as contemplated in subsection (2)(b)—
  - (a) the consumer remains liable to the supplier for any amounts owed to the supplier in terms of that agreement up to the date of cancellation; and
  - (b) the supplier—
    - (i) may impose a reasonable cancellation penalty with respect to any goods supplied, services provided, or discounts granted, to the consumer in contemplation of the agreement enduring for its intended fixed term, if any; and
    - (ii) must credit the consumer with any amount that remains the property of the consumer as of the date of cancellation, as prescribed in terms of subsection (4).
- (4) The Minister may, by notice in the *Gazette*, prescribe—
  - (a) the maximum duration for fixed-term consumer agreements, generally, or for specified categories of such agreements; and
  - (b) the manner and form of providing notices to the consumer in terms of subsection (2)(c); and
  - (c) the manner, form and basis for determining the reasonableness of credits and charges contemplated in subsection (3); and
  - (d) other incidental matters as are required to provide for the proper administration of this section.

## 24 Pre-authorisation of repair or maintenance services

- (1) This section applies only to a transaction or consumer agreement—
  - (a) with a price value above the threshold prescribed in terms of subsection (5); and
  - (b) if, in terms of that transaction or agreement, a service provider supplies a repair or maintenance service to, or supplies or installs any replacement parts or components in, any property belonging to or in the control of the consumer, and—
    - (i) the service provider has, or takes, possession of that property for the purpose contemplated in this paragraph; or
    - (ii) in any other case, the consumer requests an estimate before any services or goods are supplied.
- (2) A service provider to whom this section applies, must not charge a consumer for the supply of any goods or services contemplated in subsection (1), unless—
  - (a) the supplier or service provider has given the consumer an estimate that satisfies the prescribed requirements, and the consumer has subsequently authorised the work; or
  - (b) the consumer, in writing, or by another recorded manner or form, has—
    - (i) declined the offer of an estimate, and authorised the work; or
    - (ii) pre-authorised any charges up to a specified maximum, and the amount charged does not exceed that maximum.

(3) A service provider to whom this section applies must not charge a consumer for preparing an estimate required in terms of subsection (2)(a), including—

- (a) any cost of performing any diagnostic work, disassembly or re-assembly required in order to prepare an estimate; or
- (b) any damage to or loss of material or parts in the course of preparing an estimate;

unless before preparing the estimate the service provider has disclosed the price for preparing that estimate, and the consumer has approved it.

(4) If a supplier has provided an estimate for any service, or goods and services, the supplier may not charge the consumer a price for that service, or those goods and services, that exceeds the estimate, unless after providing the estimate—

- (a) the service provider has informed the consumer of the additional estimated charges; and
- (b) the consumer has authorised the work to continue.

(5) The Minister may, by notice in the *Gazette*, prescribe a monetary threshold for the purpose of subsection (1) (a).

## 25 Consumer's right to cooling-off period after direct marketing

(1) This section does not apply to an electronic transaction—

- (a) by way of an auction; or
- (b) for the supply of foodstuffs, beverages or other goods intended for everyday consumption supplied to the home, residence or workplace of the consumer; or
- (c) where the goods—
  - (i) are made to the consumer's specifications; or
  - (ii) are clearly personalised; or
  - (iii) by reason of their nature cannot be returned or for reasons of public health or prohibitions by any law, or
  - (iv) are likely to deteriorate or expire rapidly;or
- (d) for the sale of newspapers, periodicals, magazines and books;
- (e) for the provision of gaming and lottery services; or
- (f) for the provision of accommodation, transport or catering and where the supplier undertakes, when the transaction is concluded, to provide these services on a specific date or within a specific period.

(2) To the extent that this section applies to a transaction or agreement, it is in addition to and not in substitution for any right to rescind a transaction or agreement that may otherwise exist in law between a supplier and a consumer.

(3) A consumer may rescind a transaction resulting from any direct marketing without reason or penalty, by verbal or written notice to the supplier, within five business days after the later of the date on which—

- (a) the transaction or agreement was concluded; or
- (b) the goods that were the subject of the transaction were delivered to the consumer.

- (4) A supplier must—
- (a) return any payment received from the consumer in terms of the transaction within fifteen business days after—
    - (i) receiving notice of the rescission, if no goods had been delivered to the consumer in terms of the transaction; or
    - (ii) receiving from the consumer any goods supplied in terms of the transaction;
 and
  - (b) not attempt to collect any payment in terms of a rescinded transaction.

*SUB-PART: D-RIGHT TO INFORMATION*

**26 Right to disclosure of information regarding goods or services and disclosure of prices**

- (1) In this section—  
“price” includes a unit price.

(2) Subject to subsection (3), no supplier shall display any goods for sale or services on offer without displaying to the consumer a price in relation to those goods or services.

(3) No supplier shall display a price for any goods that are displayed predominantly as a form of advertisement of the supplier, or of goods or services, in an area within the supplier’s premises to which the public does not ordinarily have access.

(4) A price is adequately displayed to a consumer where, in relation to any particular goods or services, a written indication of the price, expressed in the currency being used by the country, is—

- (a) annexed or affixed to, written, printed, stamped or located upon, or otherwise applied to the goods or to any band, ticket, covering, label, package, reel, shelf or any other thing used in connection with the goods or on which the goods or services are mounted for display or exposed for sale; or
- (b) published in relation to the goods or services in a catalogue, brochure, circular or similar form of publication available to the consumer, or to the public generally, where time and date are specified in the catalogue, brochure, circular or similar form of publication as the time and date after which the goods or services may not be sold at that price, and that time and date has not yet passed.

(5) No supplier shall require a consumer to pay a price for any goods or services—

- (a) higher than the advertised or displayed price:

Provided that the advertised or displayed price shall include all taxes or levies chargeable upon the goods or services;

or

- (b) where more than one price is advertised or displayed concurrently, the lowest shall be considered as the price of the goods or services.

(6) Subsection (5) shall not apply in respect of the price of any goods or services where—

- (a) the price of the goods or services is determined by any law; or
- (b) a price that was once advertised or displayed has been fully covered and obscured by a second displayed price, in which case that second price shall be regarded as the displayed price;
- (c) a price as advertised or displayed contains an error, in which case the supplier shall not be bound by it after correcting the error in the advertised or displayed price; and taken steps in the circumstances to inform consumers to whom the erroneous price may have been advertised or displayed of the error and the correct price.

(7) A supplier shall not be bound by a price advertised or displayed in relationship to any goods or services where an unauthorised person has altered, defaced, covered, removed or obscured the price advertised or displayed or authorised by the supplier and the supplier has taken steps to amend the unauthorised act.

(8) Where, in addition to advertising or displaying a price in relation to any goods or services, a supplier has advertised or displayed a placard or similar device announcing that prices are, will be or have been reduced by a monetary or percentage value, or in relationship to any particular goods or services, the advertised or displayed price for the purpose of subsection (5) shall be regarded as being the price advertised or displayed in relationship to the goods or services, minus the announced monetary or percentage reduction.

(9) Any person who contravenes this section shall be guilty of an offence and for each count, liable to a fine not exceeding level 5 or to imprisonment for a period not exceeding three months or to both such fine and imprisonment.

## **27 Disclosure by intermediaries**

- (1) An intermediary shall—
  - (a) disclose information to—
    - (i) any person whom he or she solicits or agrees to represent with respect to the sale of any goods or services, or from whom the intermediary accepts any goods or services for the purpose of offering it for sale; or
    - (ii) any person from whom the intermediary solicits an offer, or to whom he or she offers to supply any goods or services belonging to or performed by a third party;
  - and
  - (b) keep the records of all relationships and transactions referred to in this section.
- (2) Subsection (1) shall not apply to an intermediary who is—
  - (a) an executor or other administrator of a deceased's estate, in respect of any property of that estate; or
  - (b) a liquidator of an insolvent estate, in respect of any property of that estate; or
  - (c) a trustee in respect of any trust property.
- (3) The Minister may prescribe—
  - (a) the information, including the manner and form of delivery of any such information, that an intermediary, or different categories of intermediaries, must provide in terms of this section; and

- (b) any records, including the form and content of any such records, that an intermediary, or different categories of intermediaries, must keep in terms of this section.

## **28 Disclosure of reconditioned or grey market goods**

(1) A person who offers or agrees to supply, or supplies, any goods or services that—

- (a) have been reconditioned, rebuilt or remade; or
- (b) bear a trade mark of the original producer or supplier;

shall display a notice to those goods or services stating clearly that they have been reconditioned, rebuilt or remade.

(2) A person who markets any goods or services that bear a trade mark, but have been imported without the approval or licence of the registered owner of that trade mark, shall display a clear notice to those goods or services in the prescribed manner and form.

## **29 Identification of deliverers, installers and others**

Where a person is engaged in direct marketing or service provision, that person shall—

- (a) visibly wear or display a badge or similar identification device that satisfies any prescribed law; or
- (b) provide suitable identification on request by the consumer.

## **30 Right to noticeable and legible information in plain and understandable language**

(1) All goods and services marketed for Zimbabwe shall be labelled in plain and understandable language.

(2) The Commission may publish guidelines in the national media for methods of assessing whether a notice, document or visual representation satisfies the requirements of subsection (1).

(3) Guidelines published in terms of subsection (2) may be published for public comments.

## **31 Product labelling and trade descriptions**

(1) In this section—

“trade description”, in relation to any goods means any description, statement, indication, or suggestion, direct or indirect with reference to—

- (a) the nature, number, quantity, quality, purity, class, grade, measure, gauge, size, or weight of the goods or services; or
- (b) the country or place in or at which the goods or services were made or produced; or
- (c) the manufacturer or producer of the goods or services or the person by whom they were selected, packed, or in any way prepared for the market; or
- (d) the mode of manufacturing, producing, selecting, packing, or preparing the goods or services; or

- (e) the material or ingredients of which the goods or services are composed, or from which they are derived; or
- (f) the goods or services being the subject of an existing patent, privilege, or copyright.

(2) No person shall—

- (a) apply to any goods or services a trade description that is likely to mislead the consumer; or
- (b) alter, deface, cover, remove or obscure a trade description or trade mark applied to any goods or services in a manner designed to mislead consumers.

(3) No retailer of goods shall display, offer to supply or supply any particular goods or services where he or she knows that—

- (a) a trade description applied to the goods or services is likely to mislead the consumer; or
- (b) a trade mark applied to the goods or services has been altered as referred to in subsection (2)(b).

(4) The Minister may prescribe—

- (a) categories of goods that are required to have a trade description applied to them, as contemplated in subsection (5);
- (b) the rules to be used in accordance with any international agreement for the purpose of determining the country of origin of any goods or components of any goods;
- (c) the information that is required to be included in any trade description.

(5) The producer or importer of any goods or services that have been prescribed in terms of subsection (4) shall apply a trade description to the goods and services, disclosing—

- (a) the country of origin of the goods or services; and
- (b) any other prescribed information.

(6) Any person who produces, supplies, imports or packages any prescribed goods or services shall display, on or in association with the packaging of the goods or services, a notice in the prescribed manner and form that discloses the presence of any genetically modified ingredients or components of the goods or services in accordance with any law.

(7) Where a consumer has agreed to purchase goods or services solely on the basis of a description or sample or both, provided by the supplier, the goods or services delivered to the consumer shall correspond to that which any consumer would have been entitled to expect based on the description or on an examination of the sample.

(8) Where a supply of goods or services is by a sample or description, the goods or services shall correspond with the sample or description.

(9) Subject to subsection (5), a producer or importer who fails to apply a trade description to the goods or services shall be guilty of an offence and shall be liable to a fine not exceeding level 12 or to imprisonment not exceeding one year or to both such fine and such imprisonment.

### 32 Sales records

(1) A supplier of goods or services shall provide a written record of each transaction to a consumer to whom goods or services are supplied.

(2) A record referred to in subsection (1) shall include the following information—

- (a) the supplier's full name, or registered business name, and VAT registration number, if any; and
- (b) the address of the premises at which, or from which, the goods or services were supplied; and
- (c) the date on which the transaction occurred; and
- (d) the name or description of any goods or services supplied or to be supplied; and
- (e) the unit price of any particular goods or services supplied or to be supplied; and
- (f) the quantity of any particular goods or services supplied or to be supplied; and
- (g) the total price of the transaction, before any applicable taxes; and
- (h) the amount of any applicable taxes; and
- (i) the total price of the transaction, including any applicable taxes.

(3) The Minister may, by notice in the *Gazette*, exempt categories of goods or services, or circumstances of trade, from the application of subsections (1) and (2).

#### *SUB-PART E: RIGHT TO BE HEARD, REPRESENTATIONS AND REDRESS*

### 33 Right to be heard, access to justice and redress

(1) A consumer has a right to have his or her complaints heard before the Commission or the court and to seek redress through alternative dispute resolutions provided for in terms of this Act and any other law.

(2) A consumer has a right to choose and be represented by a person of his or her choice.

(3) Disputes must be heard and resolved within a reasonable time.

(4) Where a consumer has exercised, asserted or sought to uphold any rights set out in this Act or in an agreement or transaction with a supplier, the supplier shall not, in response—

- (a) discriminate against the consumer directly or indirectly; or
- (b) penalise the consumer; or
- (c) alter or propose to alter, the terms or conditions of a transaction or agreement with the consumer, to the detriment of the consumer; or
- (d) take any action to accelerate, enforce, suspend or terminate an agreement with the consumer.

(5) Where an agreement or any provision of an agreement is, in terms of this Act, declared to be void, the supplier who is a party to that agreement shall not, in response to the decision—

- (a) directly or indirectly penalise another party to that agreement; or
- (b) alter the terms or conditions of the transaction or agreement with the party to the impugned agreement, except to the extent necessary to correct a similarly unlawful provision; or

- (c) take any action to accelerate, enforce, suspend or terminate the agreement with the party to the impugned agreement.

### 34 Consumer's right to return goods

(1) Subject to subsections (2) to (5), a consumer may return goods to the supplier and receive a full refund of the amount paid for the goods, where the supplier has delivered—

- (a) goods to the consumer in terms of an agreement arising out of direct marketing, and the consumer has rescinded that agreement during the cooling off period, as referred to in section 25(2); or
- (b) goods that the consumer did not have an opportunity to examine before delivery, and the consumer has rejected delivery of those goods for any of the reasons referred to in section 21; or
- (c) unsolicited goods, and the consumer has refused delivery of any of those goods; or
- (d) goods intended to satisfy a particular purpose communicated to the supplier referred to in section 21 and within seven days after delivery to the consumer, the goods have been found to be unsuitable for that particular purpose.

(2) Subsection (1) shall not apply with respect to any goods where—

- (a) for reasons of public health or prohibitions by any law, the return of the goods to a supplier is against public health policy or any law; or
- (b) after having been supplied to a consumer, the goods have been partially or entirely disassembled, physically altered, permanently installed, affixed, attached, joined or added to, blended or combined with, or embedded within other goods or property.

(3) Goods returnable in terms of—

- (a) subsection (1)(a) shall be returned to the supplier at the consumer's risk and expense; or
- (b) subsection (1)(b) to (d) shall be returned to the supplier at the supplier's risk and expense, within seven days after delivery to the consumer.

(4) Upon return of any goods in terms of this section, the supplier shall refund the consumer the price paid for the goods, less any amount that may be charged in terms of subsection (5).

(5) In determining the right of a supplier to impose a charge referred to in subsection (4), if any goods returned to the supplier in terms of this section are—

- (a) in the original unopened packaging, the supplier may not charge the consumer any amount in respect of the goods;
- (b) in their original condition and repackaged in their original packaging, the supplier may charge the consumer a prescribed fee for—
  - (i) use of the goods during the time they were in the consumer's possession, unless they are goods that are ordinarily consumed or depleted by use, and no such consumption or depletion has occurred; or
  - (ii) any consumption or depletion of the goods, unless that consumption or depletion is limited to a prescribed fee necessary to determine whether the goods were acceptable to the consumer; or

- (c) in any other case, the supplier may charge the consumer a prescribed fee—
  - (i) as referred to in paragraph (b); and
  - (ii) for necessary restoration costs to render the goods fit for re-stocking, unless, having regard to the nature of the goods, and the manner in which they were packaged, it was necessary for the consumer to destroy the packaging in order to determine whether the goods conformed to the description or sample provided or were fit for the intended purpose.

*SUB-PART F: RIGHT TO FAIR CONTRACTUAL AGREEMENTS*

### **35 Right to fair and honest dealing and protection from unconscionable conduct**

(1) A consumer has a right to be treated fairly and honestly in any transaction or promotional activity by any supplier, marketer or service provider and to be protected from unconscionable conduct.

(2) No supplier, marketer or service provider shall use physical force, coercion, undue influence, pressure, duress, harassment or unfair tactics against a consumer in connection with any—

- (a) marketing of goods or services; or
- (b) supply of goods or services; or
- (c) negotiation, conclusion, execution or enforcement of an agreement to supply goods or services; or
- (d) demand for or collection of payment of goods or services; or
- (e) recovery of goods.

(3) It is unconscionable for a supplier to take advantage of a fact that the consumer, at the material time, was substantially unable to protect his or her own interests as a result of mental or physical disability, financial difficulty, illiteracy, ignorance or inability to understand the terms of an agreement or any other similar factor.

(4) Any supplier, marketer or service provider who contravenes this section shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

### **36 False and misleading representations**

(1) In relation to the marketing of goods or services, no supplier shall, by words or conduct—

- (a) directly or indirectly express or imply a false, misleading or deceptive representation concerning a material fact to a consumer; or
- (b) use exaggeration, insinuation or ambiguity as to a material fact, or fail to disclose a material fact if that failure amounts to a deception; or
- (c) fail to correct a misunderstanding by a consumer that amounts to a false, misleading or deceptive representation.

(2) A person acting on behalf of a supplier of goods or services shall not—

- (a) falsely represent that the person has any sponsorship, approval or affiliation that they do not have; or

- (b) engage in any conduct that the supplier is prohibited from engaging in under subsection (1).

(3) Subject to subsections (1) and (2), it is a false, misleading or deceptive representation to state or imply, or fail to correct a misunderstanding on the part of a consumer to the effect that—

- (a) the supplier of goods or services has any particular status, affiliation, connection, sponsorship or approval that they do not have;
  - or
- (b) any goods or services—
  - (i) have ingredients, performance characteristics, accessories, uses, benefits, qualities, sponsorship or approval; or
  - (ii) are of a particular standard, quality, grade, style or model; or
  - (iii) are new, reconditioned or reclaimed, subject to subsection (4); or
  - (iv) have been used for a period to an extent or in a manner that is materially different from the facts; or
  - (v) have been supplied in accordance with a previous representation; or
  - (vi) are available or can be delivered or performed within a specified time;
    - or
- (c) any land or other immovable property—
  - (i) has characteristics that it does not have; or
  - (ii) may lawfully be used or is capable of being used for a purpose that is unlawful or impracticable; or
  - (iii) has or is proximate to any facilities, amenities or natural features that it does not have, or that are not available or proximate to it;
- (d) the necessary service, maintenance or repair facilities or parts are readily available for or within a stipulated period; or
- (e) any service, part, replacement, maintenance or repair is needed or advisable; or
- (f) a specific price advantage exists; or
- (g) a charge or proposed charge is for a specific purpose; or
- (h) an employee, salesperson, representative or agent has the necessary authority to negotiate the terms of, or conclude, an agreement; or
- (i) the transaction affects, or does not affect, any rights, remedies or obligations of a consumer; or
- (j) a particular solicitation of, or communication with, the consumer is for a particular purpose; or
- (k) the consumer will derive a particular benefit if they assist the supplier in obtaining a new or potential customer.

(4) A representation referred to in subsection (3)(b)(iii) is not false, misleading or deceptive if those goods have been used only—

- (a) by or on behalf of the producer, importer, distributor or retailer; and
- (b) for the purposes of testing, service, preparation or delivery.

(5) Any supplier who knowingly contravenes this section shall be guilty of an offence and liable to a fine not exceeding level 14 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

**37 Fraudulent schemes and offers**

(1) In this section—

“non-natural means” includes any performance other than the natural way of doing things.

(2) No person shall initiate, sponsor, promote or knowingly participate in the distribution of any communication that—

- (a) offers to supply or enter into an agreement to supply any goods or services or offers to enter into a transaction or invites offers to enter into a transaction; or
- (b) falsely states, implies or represents that the communication is authorised by another person; or
- (c) the author of the communication represents another person.

(3) No person shall directly or indirectly promote, or knowingly join, enter or participate in—

- (a) a fraudulent currency scheme; or
- (b) a fraudulent financial transaction; or
- (c) a fraudulent transfer of property or legal rights; or
- (d) any other arrangement, agreement, practice or scheme declared by the Minister in terms of subsection (5).

(4) An arrangement, agreement, practice or scheme is a fraudulent currency scheme if it involves a person—

- (a) who represents that he or she is capable of—
  - (i) producing currency by washing, dipping or otherwise treating any substance that is not currency with a chemical substance, or exposing it to an electrical charge or to radiation of any kind; or
  - (ii) producing currency or increasing a sum of money through scientific or non-natural means;or
- (b) producing or issuing any currency or making representations as being capable of doing so unless the person is an authorised producer of that currency.

(5) The Minister, may by notice in the *Gazette* declare any arrangement, agreement, practice or scheme to be a scheme contemplated in subsection (4).

(6) Any person who contravenes the provisions of this section shall be guilty of an offence in terms of Part IV of Chapter VI of the Criminal Law Codification Act [Chapter 9:23].

**38 Consumer’s right to assume supplier is entitled to sell or supply goods or services**

(1) Subject to subsection (2), a consumer has a right to assume that—

- (a) in the case of a supply of goods or services, the supplier has the legal right or the authority of the legal owner to supply those goods or services; or
- (b) in the case of an agreement to supply goods or services, the supplier has a legal right or the authority to—

- (i) sell the goods or services at the time the title to those goods is to pass to the consumer; or
  - (ii) lease the goods or services at the time the lessee is to take possession of the leased goods or services;
- or
- (c) the supplier is liable for any charge or encumbrance pertaining to the goods or services in favour of a consumer unless—
    - (i) such a charge or encumbrance is disclosed in writing to the consumer before the transaction or agreement is concluded; or
    - (ii) the supplier and consumer have colluded to defraud the producer;
- or
- (d) he or she shall enjoy peaceful and undisturbed possession of the goods or services, subject to any charge or encumbrance disclosed as referred to in paragraph (c)(i).

(2) Where, as a result of any transaction or agreement in which goods or services are supplied to a consumer, a right or claim of a consumer pertaining to those goods is infringed or compromised, the supplier is liable to the consumer to the extent of the infringement or compromise of that person's rights pertaining to those goods, except to the extent of a charge or encumbrance disclosed as referred to in subsection (1)(c)(i).

### 39 Auctions

(1) In this section—

“auction” includes a sale in execution of or pursuant to a court order, to the extent that the order contemplates that the sale is to be conducted by an auction;

“relevant Minister” means any Minister who administers any auction legislation.

(2) When goods are put up for sale by auction in lots, each lot is, unless there is evidence to the contrary, regarded to be the subject of a separate transaction.

(3) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in any other customary manner, and until that announcement is made, a bid may be retracted.

(4) Notice must be given in advance that a sale by auction is subject to—

- (a) a reserved or upset price; or
- (b) a right to bid by or on behalf of the owner or auctioneer, in which case the owner or auctioneer, or any one person on behalf of the owner or auctioneer, as the case may be, may bid at the auction.

(5) Unless notice is given in advance that a sale by auction is subject to a right to bid by or on behalf of the owner or auctioneer—

- (a) the owner or auctioneer must not bid or employ any person to bid at the sale; and
- (b) the auctioneer must not knowingly accept any bid from a person contemplated in paragraph (a); and
- (c) the consumer may approach a court to declare the transaction fraudulent, if this subsection has been violated.

(6) Any auction in terms of this section shall be subject to any relevant legislation.

(7) The Minister, in consultation with any relevant Minister, may prescribe requirements to be complied with by any auctioneer in respect of—

- (a) the conduct of an auction; and
- (b) the records to be maintained with respect to property placed for auction; and
- (c) the sale of any such property by auction.

#### **40 Over-selling and over-booking**

(1) This section shall not apply to—

- (a) a franchise agreement; and
- (b) a consumer agreement pertaining to the supply of any special-order goods.

(2) No supplier or service provider shall accept payment or consideration for any goods or services if he or she—

- (a) is not capable of supplying those goods or provide those services; or
- (b) intends to supply goods or provide services that are different from the goods or services in respect of which the payment or consideration was accepted.

(3) Where a supplier or service provider makes a commitment or accepts a reservation to supply goods or services on a specified date or at a specified time and fails to do so as a result of insufficient stock or incapacity, the supplier or service provider may—

- (a) refund to the consumer the amount paid in respect of that commitment or reservation, together with interest at the prescribed rate from the date on which the amount was paid until the date of reimbursement; and
- (b) subject to subsection (5), compensate the consumer for costs directly incidental to the supplier's or service provider's breach of the contract.

(4) It is a defence to an alleged failure to supply any goods or provide any services, as referred to in subsection (3), where—

- (a) the supplier or service provider offered to supply or to provide or procure another person to supply or provide a consumer with comparable goods or services of the relevant kind to satisfy the consumer's request; and
- (b) the consumer accepts the offer, and the supplier supplies or procures another person to supply the goods, or the service provider provides or procures another person to provide the services.

(5) Subsection (3)(b) shall not apply where—

- (a) the shortage of stock or incapacity is due to circumstances beyond the supplier's control; and
- (b) the supplier took reasonable steps, including in writing, to inform the consumer of the shortage of stock or incapacity as soon as it was practicable to do so in the circumstances.

(6) Notwithstanding the generality of subsection (5)(a), a shortage of stock or capacity is not “due to circumstances beyond the supplier’s control” if the shortage results—

- (a) partially or completely; or
- (b) directly or indirectly;

from a failure on the part of the supplier to adequately and diligently carry out any ordinary or routine matter pertaining to the supplier’s business.

(7) Any supplier or service provider who contravenes this section shall be guilty of an offence and liable to a fine not exceeding level 5 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

#### **41 Unfair, unreasonable and unjust contract terms**

(1) A transaction or agreement, a term or condition of a transaction or agreement, or a notice to which a term or condition is purportedly subject, is unfair, unreasonable or unjust if—

- (a) it is excessively one-sided in favour of any person other than the consumer or other person to whom goods or services are to be supplied or provided; or
- (b) the terms of the transaction or agreement are so adverse to the consumer as to be inequitable; or
- (c) the consumer relied upon a false, misleading or deceptive representation, as referred to in section 36 or a statement of opinion provided by or on behalf of the supplier or service provider, to the detriment of the consumer; or
- (d) the transaction or agreement was subject to a term or condition, or a notice to a consumer referred to in section 43(1) and—
  - (i) the term, condition or notice is unfair, unreasonable, unjust or unconscionable; or
  - (ii) the fact, nature and effect of that term, condition or notice was not drawn to the attention of the consumer in a manner that satisfied the applicable requirements of section 43.

(2) Any supplier or service provider who contravenes this section shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

#### **42 Disclaimer Clause**

(1) No supplier, service provider of goods or services, owner or occupier of a shop or other trading premises shall display or cause to be displayed any sign or notice that purports to disclaim any liability or deny any right that a consumer has under this Act or any other law.

(2) In addition to subsection (1) unfair contractual clauses include such words as but not limited to—

- (a) no refund; or
- (b) no returns; or
- (c) no exchanges.

(3) Any supplier, service provider of goods or services, owner or occupier of a shop or other trading premises who contravenes this section shall be guilty of an offence and liable to a fine not exceeding level 12 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

#### **43 Notice required for certain terms and conditions**

(1) Subject to section 42, any notice to consumers or provision of a consumer agreement that purports to—

- (a) limit in any way the risk or liability of the supplier or any other person; or
- (b) constitute an assumption of risk or liability by the consumer; or
- (c) impose an obligation on the consumer to indemnify the supplier or any other person for any cause; or
- (d) be an acknowledgement of any fact by the consumer;

must be drawn to the attention of the consumer in a manner and form that satisfies the formal requirements of subsections (3) and (4).

(2) In addition to subsection (1), if a provision or notice concerns any activity or facility that is subject to any risk—

- (a) of an unusual character or nature; or
- (b) the presence of which the consumer could not reasonably be expected to be aware of or notice, or which a consumer could not reasonably be expected to notice or contemplate in the circumstances; or
- (c) that could result in serious injury or death;

the supplier shall—

- (i) specifically draw the fact, nature and potential effect of that risk to the attention of the consumer in a manner and form that satisfies the requirements of subsections (3) and (4); and
- (ii) the consumer shall have assented to that provision or notice by signing or initialling the provision or otherwise acting in a manner consistent with acknowledgement of the notice, awareness of the risk and acceptance of the provision.

(3) A provision, condition or notice referred to in subsection (1) or (2) must be written in plain and understandable language, as described in section 30.

(4) The fact, nature and effect of the provision or notice referred to in subsection (1) shall be drawn to the attention of the consumer in a conspicuous manner and form that is likely to attract the attention of a consumer, having regard to the circumstances, before the consumer enters into the transaction or agreement, begins to engage in the activity or enters or gains access to the facility.

#### **44 Written consumer agreements**

(1) The Minister may prescribe categories of consumer agreements that are required to be in writing.

(2) If an agreement between a supplier or service provider on one hand and a consumer on the other is in writing, whether as required by this Act or voluntarily, the supplier or service provider shall provide the consumer with a free copy, or free electronic access to a copy, of the terms and conditions of that agreement, which shall—

- (a) satisfy the requirements of section 30; and

- (b) set out an itemised break-down of the consumer's financial obligations under such agreement.

(3) If an agreement between a supplier or service provider on one hand and a consumer on the other is not in writing, a supplier or service provider shall keep a record of the transaction.

#### **45 Powers of court to enforce fair and just terms and conditions**

(1) If, in any proceedings before a court concerning a transaction or agreement between a supplier and consumer, a person alleges that—

- (a) the supplier contravened section 35, 36 and 51;
- (b) this Act does not otherwise provide a remedy sufficient to correct the relevant prohibited conduct, unfairness, injustice or unconscionability;

the court, after considering the principles, purposes and provisions of this Act, and the matters set out in subsection (2), may make an order contemplated in subsection (3).

(2) In any matter contemplated in subsection (1), the court must consider—

- (a) the fair value of the goods or services in question;
- (b) the nature of the parties to that transaction or agreement, their relationship to each other and their relative capacity, education, experience, sophistication and bargaining position;
- (c) the circumstances of the transaction or agreement that existed or were reasonably foreseeable at the time that the conduct or transaction occurred or agreement was made, irrespective of whether this Act was in force at that time;
- (d) the conduct of the supplier and the consumer, respectively;
- (e) whether there was any negotiation between the supplier and the consumer, and if so, the extent of that negotiation;
- (f) whether, as a result of conduct engaged in by the supplier, the consumer was required to do anything that was not reasonably necessary for the legitimate interests of the supplier;
- (g) the extent to which any documents relating to the transaction or agreement satisfied the requirements of section 42;
- (h) whether the consumer knew or ought reasonably to have known of the existence and extent of any particular provision of the agreement that is alleged to have been unfair, unreasonable or unjust, having regard to any—
  - (i) custom of trade; and
  - (ii) previous dealings between the parties;
- (i) the amount for which, and circumstances under which, the consumer could have acquired identical or equivalent goods or services from a different supplier;
- (j) in the case of supply of goods, whether the goods were manufactured, processed or adapted to the special order of the consumer.

(3) If the court determines that a transaction or agreement was, in whole or in part, unconscionable, unjust, unreasonable or unfair, the court may—

- (a) make a declaration to that effect; and
- (b) make any further order contemplated in section 46(1).

(4) If, in any proceedings before the court concerning a transaction or agreement between a supplier and a consumer, a person alleges that an agreement, a term or condition of an agreement, or a notice to which a transaction or agreement is purportedly subject, is void in terms of this Act or failed to satisfy any applicable requirements set out in section 42, the court may—

- (a) make an order—
  - (i) in the case of a provision or notice that is void in terms of any provision of this Act—
    - A. severing any part of the relevant agreement, provision or notice, or altering it to the extent required to render it lawful, if it is reasonable to do so having regard to the transaction, agreement, provision or notice as a whole; or
    - B. declaring the entire agreement, provision or notice void as from the date that it purportedly took effect;
  - or
  - (ii) in the case of a provision or notice that fails to satisfy any provision of section 43, severing the provision or notice from the agreement, or declaring it to have no force or effect with respect to the transaction;
- and
- (b) make any further order that is just and reasonable in the circumstances with respect to that agreement, provision or notice, as the case may be.

#### **46 Relief against unfair consumer contracts**

- (1) If the court is satisfied that—
- (a) any consumer contract is unfair; or
  - (b) any actual or reasonably anticipated exercise or non-exercise of a power, right or discretion under a consumer contract is or would be unfair; or
  - (c) any consumer contract contains a scheduled provision;

the court may make an order granting any one or more of the following forms of relief—

- (i) cancelling the whole or any part of the consumer contract; or
- (ii) varying the consumer contract; or
- (iii) enforcing part only of the consumer contract; or
- (iv) declaring the consumer contract to be enforceable for a particular purpose only; or
- (v) ordering restitution or awarding compensation to a party or reducing any amount payable under the consumer contract; or
- (vi) annulling the exercise of any power, right or discretion under the consumer contract or directing that any such power, right or discretion should be exercised in a particular way;

and any such order may be made subject to such conditions as the court may fix.

- (2) The court may grant relief under this section—
- (a) either on an application made to it for such relief or in the course of proceedings where any other relief is sought; and

(b) subject to subsection (3), either on its own initiative or at the instance of a party to the proceedings concerned.

(3) A court shall not grant relief under this section—

(a) on its own initiative if the party in whose favour the relief might be granted has waived his or her rights under this Act at any stage in the proceedings;

(b) solely on the ground that a consumer contract contains a scheduled provision if the contract was concluded before the provision concerned became a scheduled provision:

Provided that the court may grant relief where—

(i) it is satisfied that in all the circumstances the consumer contract is fair despite containing the scheduled provision; or

(ii) the claim for relief has become prescribed and the party against whom the relief might be granted invokes prescription.

(4) A court shall not find a consumer contract to be unfair for the purposes of this Act solely because—

(a) it imposes onerous obligations on a party; or

(b) it does not result in substantial or real benefit to a party; or

(c) a party may have been able to conclude a similar contract with another person on more favourable terms or conditions.

(5) In determining whether or not a consumer contract is unfair for the purposes of this Act, the court shall have regard to the interests of both parties and, in particular, shall take into account, where appropriate, any prices, charges, costs or other expenses that might reasonably be expected to have been incurred if the contract had been concluded on terms and conditions other than those on which it was concluded.

#### **47 Changes, deferrals and waivers, and substitution of goods**

(1) The supply of goods or services as a result of a change to an existing agreement, or a deferral or waiver of a right under an existing agreement, is not to be treated as creating a new agreement for the purposes of this Act, if the change, deferral or waiver is made in accordance with this Act or the agreement.

(2) If, after delivery to the consumer of goods that are the subject of a transaction, the consumer and the supplier agree to substitute other goods for all or part of the goods sold—

(a) from the date of delivery of the substituted goods, the transaction applies to the substituted goods rather than the goods originally described; and

(b) if the transaction was the subject of a written agreement, or the sales record identified any specific goods, the supplier must prepare and deliver to the consumer an amended agreement or sales record, describing the substituted goods, but without making any other changes to the original document.

#### **48 Right to confidentiality and privacy**

(1) Any person who in terms of this Act receives, compiles, retains or reports any confidential information pertaining to a consumer or prospective consumer must protect the confidentiality of that information and in particular must—

(a) use that information only for a purpose permitted or required in terms of this Act, or other national legislation;

- (b) report or release that information only to the relevant consumer or prospective consumer or to another person as the case may be—
  - (i) to the extent permitted or required by this Act or other national legislation; or
  - (ii) as directed by the instructions of the consumer or prospective consumer or an order of a court of law.

(2) When submitting information to the Commission, the court, or an inspector or investigator appointed in terms of this Act, a person may claim that all or part of that information is confidential.

(3) Any claim contemplated in subsection (2) must be supported by a written statement explaining why the information is confidential.

(4) The Commission, court, inspector or investigator, as the case may be, must—

- (a) consider any claim made in terms of subsection (2); and
- (b) notify the claimant whether or not the information contemplated in subsection (2) will be treated as if it had been determined to be confidential.

(5) When making any ruling, decision or order in terms of this Act, the Commission or court may take into account any information that has been the subject of a claim in terms of subsection (2).

(6) If any reasons for a decision in terms of this Act would reveal any information that has been the subject of a claim in terms of subsection (2), the Commission or court, as the case may be, must provide a copy of the proposed reasons to the party claiming confidentiality at least five business days before publishing those reasons.

(7) Within five business days after receiving a notice in terms of subsection (4) (b), or a copy of proposed reasons in terms of subsection (6), a party may apply to the court for an appropriate order to protect the confidentiality of the relevant information.

#### **49 Right to restrict unwanted direct marketing**

- (1) The consumer's right to privacy includes the right to—
  - (a) refuse to accept; or
  - (b) require another person to discontinue; or
  - (c) in the case of an approach other than in person, to pre-emptively block, any approach or communication to that person;

if the approach or communication is primarily for the purpose of direct marketing.

(2) To facilitate the realisation of each consumer's right to privacy, and to enable consumers to effectively protect themselves against the activities contemplated in subsection (1), a person who has been approached for the purpose of direct marketing may demand during or within a reasonable time after that communication that the person responsible for initiating the communication desist from initiating any further communication.

(3) The Commission or court may establish, or recognise as authoritative, a registry in which any person may register a pre-emptive block, either generally or for specific purposes, against any communication that is primarily for the purpose of direct marketing.

(4) A person authorising, directing or conducting any direct marketing—

- (a) must implement appropriate procedures to facilitate the receipt of demands contemplated in subsection (2); and
- (b) must not direct or permit any person associated with that activity to direct or deliver any communication for the purpose of direct marketing to a person who has—
  - (i) made a demand contemplated in subsection (2); or
  - (ii) registered a relevant pre-emptive block as contemplated in subsection (3).

(5) No person may charge a consumer a fee for making a demand in terms of subsection (2) or registering a pre-emptive block as contemplated in subsection (3).

(6) The Minister may prescribe regulations for the operation of a registry contemplated in subsection (3).

## 50 Regulation of time for contacting consumers

(1) A supplier must not engage in any direct marketing directed to a consumer at home for any promotional purpose during a prohibited period prescribed in terms of this section, except to the extent that the consumer has expressly or implicitly requested or agreed otherwise.

(2) In order to protect the privacy of consumers, the Minister, by notice in the *Gazette*, may prescribe specific days, dates, public holidays or times of days for the purpose of subsection (1).

## 51 Supplier's responsibilities

(1) Every supplier of goods or provider of services irrespective of whether such a supplier or provider is formally or informally trading shall be bound by the provisions of this Act to the extent that they have any dealings whatsoever with consumers, and shall—

- (a) take necessary and appropriate measures to provide fair value, good quality and safe products to consumers;
- (b) provide warranty on all goods or services;
- (c) ensure that all supplied goods or services are delivered on the agreed date at the agreed time and in the case of delivery of goods at the cost of the supplier, and goods to be delivered remain at the supplier's risk until the consumer has accepted delivery of them;
- (d) allow consumers reasonable opportunity to examine all supplied goods so as to ascertain that they are of the type and quality reasonably contemplated in their agreement;
- (e) not offer to supply, or enter into an agreement to supply any goods or services at unfair, unreasonable and unjust prices and terms;
- (f) not enter or attempt to enter into any transactions or agreements whose general purpose or effect is to—
  - (i) mislead or deceive the consumer; or
  - (ii) subject the consumer to fraudulent conduct; or
  - (iii) waive or deprive a consumer of a right in terms of this Act; or

- (iv) avoid a supplier's obligation or duty in terms of this Act; or
- (v) set aside or override the effect of any provision of this Act; or
- (vi) do anything that is unlawful in terms of this Act; or
- (vii) fail to do anything that is required in terms of this Act; or
- (viii) limit or exempt a supplier of goods or services from liability for any loss directly or indirectly attributable to the gross negligence of the supplier or any person acting for or controlled by the supplier; or
- (ix) constitute an assumption of risk or liability by the consumer for any contemplated or actual loss; or
- (x) impose an obligation on a consumer to pay for damage to, or otherwise assume the risk of handling, any goods displayed by the supplier;
- (g) co-operate with the Government or local authorities in the execution of policies relating to consumer protection;
- (h) not engage in any unfair trade practices;
- (i) produce and show a business record, when requested to do so in terms of this Act, to a member of the Commission or a person duly authorised by the Commission.

(2) Any supplier or trader who contravenes any part of this section shall be guilty of an offence.

#### PART IV

##### ELECTRONIC TRANSACTIONS

### 52 Information to be provided

(1) A supplier offering goods or services for sale, hire or exchange by way of an electronic transaction shall make the following information available online to consumers where such goods or services are offered—

- (a) full name and legal status; and
- (b) physical address and telephone number; and
- (c) web site address and e-mail address; and
- (d) membership of any self-regulatory or accreditation body to which that supplier belongs or subscribes and the contact details of that body; and
- (e) any code of conduct to which that supplier subscribes and how that code of conduct may be accessed electronically by the consumer; and
- (f) in the case of a juristic person, its registration number, the names of its office bearers and its place of registration; and
- (g) the physical address where that supplier will receive legal service of documents; and
- (h) a sufficient description of the main characteristics of the goods or services offered by that supplier to enable a consumer to make an informed decision on the proposed electronic transaction; and
- (i) the full price of the goods or services, including transport costs, taxes and any other fees or costs; and

- (j) the method of payment; and
- (k) any terms of agreement, including any guarantees, that will apply to the transaction and how those terms may be accessed, stored and reproduced electronically by consumers; and
- (l) the time within which the goods will be dispatched or delivered or within which the services will be rendered; and
- (m) the manner and period within which consumers can access and maintain a full record of the transaction; and
- (n) the return, exchange and refund policy of that supplier; and
- (o) any alternative dispute resolution code to which that supplier subscribes and how the wording of that code may be accessed electronically by the consumer; and
- (p) the security procedures and privacy policy of that supplier in respect of payment, payment information and personal information; and
- (q) where appropriate, the minimum duration of the agreement in the case of agreements for the supply of products or services to be performed on an ongoing basis or recurrently; and
- (r) the rights of consumers in terms of section 53, where applicable.

(2) The supplier shall provide a consumer with an opportunity to—

- (a) review the entire electronic transaction; or
- (b) correct any mistakes; or
- (c) withdraw from the transaction, before finally placing any order.

(3) If a supplier fails to comply with subsection (1) or (2), the consumer may cancel the transaction within seven days of receiving the goods or services.

(4) If a transaction is cancelled in terms of subsection (3)—

- (a) the consumer shall return the goods to the supplier or, where applicable, cease using the services; and
- (b) the supplier shall refund all payments made by the consumer minus the direct cost of returning the goods.

(5) The supplier shall utilise a payment system that is sufficiently secure with reference to accepted technological standards at the time of the transaction and the type of transaction concerned.

(6) The supplier is liable for any damage suffered by a consumer due to a failure by the supplier to comply with subsection (5).

### **53 Cooling-off period in electronic transaction**

(1) A consumer is entitled to cancel without reason and without penalty any electronic transaction and any related credit agreement for the supply of goods or services within seven days after the date of the receipt of the goods or the conclusion of the agreement:

Provided that the only charge that may be levied on the consumer is the direct cost of returning the goods.

(2) Where payment for the goods or services has been effected prior to a consumer exercising a right referred to in subsection (1), the consumer is entitled to a full refund of such payment, within fourteen days of the date of cancellation.

(3) This section must not be construed as prejudicing the rights of a consumer provided for in any other law.

#### **54 Unsolicited goods, services or communications**

(1) Any person who sends unsolicited electronic commercial communication to consumers shall provide the consumer with—

- (a) the option to cancel his or her subscription to the mailing list of that person; and
- (b) identifying particulars of the source from which that person obtained the consumer's personal information, on request of the consumer.

(2) No agreement is concluded where a consumer has failed to respond to an unsolicited electronic communication.

(3) No person shall send unsolicited electronic commercial communication to a person who has advised the sender that such communication is unwelcome.

(4) Any person who contravenes this section shall be guilty of an offence and liable to a fine not exceeding level 5 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

### **PART V**

#### **CONSUMER PROTECTION ORGANISATIONS**

#### **55 Designation of consumer protection organisations**

The Minister shall, by Statutory Instrument, designate the Consumer Council of Zimbabwe and one or more other organisations to be the consumer protection organisations for purposes of conducting conciliation and arbitration of disputes between parties.

#### **56 Consumer protection officers**

(1) The Minister shall register persons to be known as consumer protection officers for purposes of conducting conciliation and arbitration of disputes between parties.

(2) Every consumer protection officer shall possess relevant knowledge of consumer protection.

(3) The Minister may, by Statutory Instrument, specify additional qualifications of the consumer protection officer.

#### **57 Application for registration as consumer protection officers**

(1) Any person who wishes to be registered as a consumer protection officer may, upon payment of a prescribed fee, apply to the Minister to be registered as such.

- (2) An application made in terms of subsection (1), shall be accompanied by—
- (a) the relevant qualifications of the applicant; and
  - (b) information of the consumer protection organisation to which the applicant is attached, if any; and
  - (c) any further particulars which the Minister may require.

(3) Upon receiving the application, the Minister may within ten days respond to the application:

Provided that the Minister shall not reject the application before inviting the applicant to make representations.

### **58 Powers of consumer protection officers**

(1) A consumer protection officer to whom a dispute has been referred, or to whose attention it has come, shall attempt to settle it through conciliation or, if agreed by the parties, by reference to arbitration.

(2) If the dispute is settled by conciliation, the consumer protection officer shall record the settlement in writing.

(3) If the dispute is not settled within thirty days after the consumer protection officer began to attempt to settle it under subsection (1), the consumer protection officer shall issue a certificate of no settlement to the parties to the dispute.

(4) The parties to a dispute may agree to extend the period for conciliation of the dispute referred to in subsection (3).

(5) After a consumer protection officer has issued a certificate of no settlement, the consumer protection officer, upon consulting any senior consumer protection officer to whom he or she is responsible in the area in which he or she attempted to settle the dispute may, with the agreement of the parties, refer the dispute or unfair consumer practice to arbitration and the provisions of section 60 shall apply to such reference to arbitration.

(6) If, in relation to any dispute—

- (a) after a consumer protection officer has issued a certificate of no settlement in relation to the dispute, it is not possible for any reason to refer the dispute to arbitration as provided in subsection (5); or
- (b) a consumer protection officer refuses, for any reason, to issue a certificate of no settlement in relation to any dispute after the expiry of the period allowed for conciliation under subsection (3) or any extension of that period under subsection (4);

any party to the dispute may, in the time and manner prescribed, apply to the court for the dispute to be disposed of.

### **59 Prescription of disputes**

(1) Subject to subsection (2), no consumer protection officer shall entertain any dispute unless—

- (a) it is referred to him or her; or
- (b) has otherwise come to his or her attention;

within three years from the date when the dispute first arose.

(2) Subsection (1) shall not apply to a dispute which is continuing at the time it is referred to or comes to the attention of a consumer protection officer.

(3) For the purposes of subsection (1), a dispute shall be deemed to have first arisen on the date when—

- (a) the acts or omissions forming the subject of the dispute first occurred; or

- (b) the party wishing to refer the dispute to the consumer protection officer first became aware of the acts or omissions referred to in paragraph (a), if such party cannot reasonably be expected to have known of such acts or omissions at the date when they first occurred.

## 60 Effect of reference to arbitration

(1) Subject to this section, the Arbitration Act [*Chapter 7:15*] shall apply to a dispute referred to arbitration.

(2) Before referring a dispute to arbitration, the consumer protection officer, shall afford the parties a reasonable opportunity of making representations on the matter.

(3) In ordering a dispute to be referred to arbitration, the consumer protection officer shall determine the arbitrator's terms of reference after consultation with the parties to the dispute.

(4) In referring a dispute to arbitration the consumer protection officer, after consulting any senior consumer protection officer to whom he or she is responsible in the area in which he or she attempted to conciliate the dispute, shall appoint as an arbitrator a person whose name appears on a list referred to in subsection (5):

Provided that the consumer protection officer who attempted to conciliate the dispute which is referred to arbitration shall not be appointed as the arbitrator in that dispute.

(5) The Minister, in consultation with the Commission and designated consumer protection organisations shall from time to time prepare a list of arbitrators consisting of—

- (a) any consumer protection officer, *ex-officio* or member of a designated consumer protection organisation whom he or she considers to be experienced or qualified in arbitration; and
- (b) any other person whom he or she considers to be experienced or qualified in arbitration.

(6) In referring a dispute to arbitration by a person other than a consumer protection officer employed by the Commission, the consumer protection officer shall determine the share of the costs of the arbitration to be borne by each party.

(7) In hearing and determining any dispute an arbitrator shall have the same powers as the court.

(8) Any person aggrieved by the decision of the arbitrator may appeal to the High Court within thirty days.

(9) At the conclusion of the arbitration the arbitrator shall submit sufficient certified copies of his or her arbitral award to each of the parties affected by it.

(10) Any party to whom an arbitral award relates may submit for registration the copy of it furnished to him or her in terms of subsection (9) to the magistrate of any court which would have had jurisdiction to make an order corresponding to the award had the matter been determined by it, or, if the arbitral award exceeds the jurisdiction of any magistrates court, the High Court.

(11) Where an arbitral award has been registered in terms of subsection (10) it shall have the effect, for purposes of enforcement, of a civil judgment of the appropriate court.

**61 Reports to Minister by consumer protection organisations**

(1) Every designated consumer protection organisation shall, by the 31st March every year, submit a report of all cases handled by it in the preceding year:

Provided that the Minister may demand a report from any designated consumer protection organisation if he or she has a well-grounded suspicion that such organisation is contravening the provisions of this Act.

(2) Any designated consumer protection organisation which contravenes the provisions of subsection (1) may be de registered by the Minister.

**62 De registration of consumer protection organisations**

(1) The Minister may deregister a designated consumer protection organisation if he or she is satisfied that it has failed to meet the requirements of this Act.

(2) The Minister may not deregister an organisation unless he or she has—

- (a) notified the organisation in writing of his or her intention to do so; and
- (b) given reasons for the proposed deregistration; and
- (c) afforded the organisation an opportunity to make representations in writing within fourteen days or to remedy the alleged breach.

**63 Renewal of certificates by consumer protection officers and arbitrators**

(1) Every consumer protection officer or arbitrator who wishes to continue practising as such in the following year, shall no later than the 30th November of every year, submit to the Minister an application for renewal of his or her registration upon payment of a prescribed fee.

(2) No consumer protection officer or arbitrator may continue practising as such in the following year unless his or her registration has been renewed.

(3) The Minister may, upon payment of prescribed fees, condone late applications for renewal of registration.

(4) Every consumer protection officer or arbitrator who contravenes the provisions of subsection (2) shall be guilty of an offence and liable to a fine not exceeding level 11 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

**64 De registration of consumer protection officers and arbitrators**

(1) The Minister may deregister a consumer protection officer or an arbitrator registered under this Part if he or she is satisfied that the consumer protection officer or arbitrator, as the case maybe, has failed to meet the requirements of this Act.

(2) The Minister may not deregister a consumer protection officer or arbitrator unless he or she has—

- (a) notified the consumer protection officer or arbitrator, as the case may be, in writing of his or her intention to do so; and
- (b) given reasons for the proposed deregistration; and
- (c) afforded the consumer protection officer or arbitrator, as the case may be, an opportunity to make representations in writing within fourteen days or to remedy the alleged breach.

## PART VI

## ENFORCEMENT OF RIGHTS

**65 Enforcement of rights by consumer**

(1) Any of the following persons may, in the manner provided for in this Act, approach the Commission, designated consumer protection organisation or court alleging that consumer's rights in terms of this Act have been infringed, impaired or threatened, or that prohibited conduct has occurred or is occurring—

- (a) a legal practitioner;
- (b) a person acting on his or her own behalf;
- (c) an authorised person acting on behalf of another person who cannot represent himself or herself due to legal disability;
- (d) a person acting as a member of, or in the interest of, a group or class of affected persons;
- (e) a person acting in the public interest;
- (f) an accredited consumer advocacy group.

(2) A person referred to in subsection (1) may seek to enforce any right in terms of this Act or in terms of a transaction or agreement, or otherwise resolve any dispute with a supplier, by referring the matter—

- (a) to the Commission; or
- (b) to the designated consumer protection organisation; or
- (c) directly to the court.

**66 Enforcement of rights by Commission**

(1) Any person who has failed to have their dispute resolved through alternative dispute resolution may approach the Commission, in the prescribed manner and form, concerning the dispute.

(2) Upon initiating or receiving a case in terms of subsection (1), the Commission may—

- (a) refer the case to another regulatory authority with jurisdiction over the matter for investigation; or
- (b) direct an inspector to inspect or investigate the case within fourteen days; or
- (c) conciliate or mediate the case.

(3) At any time during an investigation, the Commission may designate one or more persons with relevant expertise to assist the inspector conducting the investigation.

(4) The Commission may—

- (a) initiate the proceedings where it considers necessary; or
- (b) when directed to do so by the Minister or on the request of—
  - (i) an accredited consumer advocacy Group; or
  - (ii) a regulatory authority; or
  - (iii) any person acting in the public interest or on behalf of a group or class of affected persons;

refer a case to the court concerning any alleged prohibited conduct.

(5) The Commission may issue a notice of non-referral to the complainant in the prescribed form where the—

- (a) case appears to be frivolous and vexatious; or
- (b) facts alleged in the case do not constitute grounds for a remedy in terms of this Act; or
- (c) the case has prescribed in terms of the Prescription Act [*Chapter 8:11*].

#### **67 Powers of court to enforce consumer rights**

(1) In addition to any other order that it may make under this Act or any other law, the court considering a matter in terms of this Act may—

- (a) order a supplier to alter or discontinue any conduct that is inconsistent with this Act; or
- (b) make any order specifically referred to in this Act; or
- (c) award damages against a supplier for collective injury to all or a class of consumers, to be paid on any terms or conditions that the court considers just and equitable to achieve the purposes of this Act.

(2) This Act does not limit any right of the consumer or the supplier to recover—

- (a) interest or special damages in any case where by law interest or special damages may be recoverable; or
- (b) money paid if the consideration for the payment of it has failed.

#### **68 Compliance notices**

(1) The Commission may issue a compliance notice on any producer, distributor, supplier, wholesaler or retailer of goods or services concerning an actual or alleged prohibited conduct regarding any safety provisions or the safety and quality of goods or services—

- (a) on its own initiative; or
- (b) when directed to do so by the Minister; or
- (c) at the request of—
  - (i) an accredited consumer advocacy group; or
  - (ii) a regulatory authority; or
  - (iii) any person acting in the public interest or on behalf of a group or class of affected persons;

prohibiting that person from supplying, or from offering to supply goods or services for a specified period.

(2) The compliance notice shall describe—

- (a) the goods or services in a manner sufficient to identify them; and
- (b) the person or association to whom the notice applies; and
- (c) the provision of this Act that has been contravened; and
- (d) details of the nature and extent of the contravention or defect; and
- (e) any steps that are required to be taken to rectify the defect and the period within which those steps must be taken; and

- (f) any penalty that may be imposed in terms of this Act if those steps are not taken; and
- (g) the manner in which the person on whom the notice is served may appeal against the notice.

(3) A compliance notice referred to in subsection (1) may also require that the producer, distributor, supplier, wholesaler or retailer keep the Commission informed of the whereabouts, throughout that period, of any goods in which he or she has an interest.

(4) If the requirements of a compliance notice issued in terms of subsection (1) have been satisfied, the Commission must issue a compliance certificate.

(5) A compliance notice issued in terms of this section remains in force until—

- (a) it is set aside by the court; or
- (b) the Commission issues a compliance certificate.

(6) If a person to whom a compliance notice has been issued fails to comply with the notice, the Commission may—

- (a) apply to the court for the imposition of an administrative fine prescribed by the Minister; or
- (b) refer the matter to the National Prosecuting Authority for prosecution:

Provided that the Commission may not do both in respect of any particular compliance notice.

(7) The Commission may require the person referred to in subsection (1) to publish, at his or her own expense, a notice, warning about any goods or services which the Commission considers unsafe and which that person supplies or has supplied.

## **69 Objection to compliance notices**

(1) Any person issued with a notice in terms of section 68 may apply to the court in the prescribed manner and form to review that notice within fourteen days after receiving the notice.

(2) After considering any representations by the applicant and any other relevant information, the court may confirm, modify or cancel all or part of a compliance notice.

(3) If the court confirms or modifies all or part of a notice, the applicant must comply with the compliance notice as confirmed or modified, within the time period specified in it.

## **70 Appointment of inspectors and investigators**

(1) The Commission —

- (a) may appoint a Chief Inspector and such additional inspectors from its employees or any other suitable person employed by the Civil Service Commission whose duties are to carry out investigations and report their findings to the Commission; and
- (b) shall issue each inspector with a certificate of identity in the prescribed manner.

(2) When an inspector is on duty, he or she must—

- (a) be in possession of a certificate of appointment issued in terms of subsection (1)(a); and
- (b) show that certificate to any person whom he or she may require to investigate.

(3) Notwithstanding subsection (1), the Commission may, with the approval of the Minister, appoint any qualified person as an investigator to conduct research, audits, inquiries or other investigations on its behalf.

(4) Inspectors referred to in subsection (1) shall perform, subject to the directions of the Chief Inspector, the Chief Inspector's functions.

### **71 Outcome of investigation**

(1) After concluding an investigation into a complaint, the Commission may—

- (a) issue a notice of non-referral to the complainant in the prescribed form; or
- (b) refer the matter to the National Prosecuting Authority, if the Commission alleges that a person has committed an offence in terms of this Act; or
- (c) refer the matter to the court.

(2) If the Commission alleges that a person has engaged in prohibited conduct, the Commission may—

- (a) refer the matter to the court in terms of section 65; or
- (b) propose a draft consent order in terms of section 72; or
- (c) make a referral in terms of subsection (1)(a); or
- (d) issue a compliance notice in terms of section 68.

### **72 Consent orders**

(1) Where, after investigations the Commission and the respondent agree to the proposed terms of a provisional consent draft order, the court without hearing any evidence, may confirm it in terms of subsection (2).

(2) After hearing a motion for a provisional consent draft order referred to in subsection (1), the court may—

- (a) subject to any amendment, make an order as agreed to and proposed by the Commission and the respondent; or
- (b) decline to make the final order.

(3) A provisional consent order confirmed in terms of subsection (2) may include an award of damages to the complainant.

### **73 Interim relief**

(1) A person who has applied for relief to the Commission or court, or has been referred to the Commission or court, may apply to the Commission or court, as the case may be, for an interim order in respect of that application or case and the Commission or court may grant such an order if—

- (a) there is evidence that the allegations may be true; or
- (b) an interim order is reasonably necessary to—

- (i) prevent serious, irreparable damage to that person or any other person; or
  - (ii) prevent the purposes of this Act from being frustrated;
- or
- (c) the balance of convenience favours the granting of the order.

(2) An interim order in terms of this section shall not extend beyond the earlier of the following dates—

- (a) the conclusion of a hearing into an application or a case; or
- (b) a date that is three months after the date of issue of the interim order.

(3) Where an interim order has been granted, and a hearing into that matter has not been concluded within three months after the date of that order, the Commission or court, on good cause shown, may extend the interim order for a further period not exceeding three months.

#### **74 Powers of entry, inspection, etc.**

(1) For purposes of investigating a case, an inspector or investigator may subject to this section—

- (a) enter and inspect any premises;
  - (b) search any person on those premises if there are reasonable grounds for believing that the person has personal possession of an article or document that has a bearing on the investigation;
  - (c) examine any article or document that is on or in those premises that has a bearing on the investigation;
  - (d) request information about any article or document from—
    - (i) the owner; or person in control of the premises; or
    - (ii) any person who has control of the article or document; or
    - (iii) any other person who may have the information;
- or
- (e) take extracts from, or make copies of any book or document that is on or in the premises that has a bearing on the investigation;
  - (f) use any computer system on the premises, or demand assistance of any person on the premises to use that computer system, to—
    - (i) search any data contained in or available to that computer system;
    - (ii) reproduce any record from that data;
  - (g) seize any output from that computer for examination and copying;
  - (h) attach and if necessary remove from the premises for examination and safekeeping anything that has a bearing on the investigation:

Provided that before entering any premises, the inspector or investigator must obtain a search warrant or warrant of seizure in terms of the Criminal Procedure and Evidence Act [*Chapter 9:07*].

(2) An inspector or investigator authorised to conduct an entry and search in terms of this Act may be accompanied and assisted by a police officer.

**75 Conduct of entry and search**

(1) A person who enters and searches any premises in terms of section 74 shall conduct the entry and search with strict regard for decency and order, and with regard for each person's right to dignity, privacy, liberty and security.

(2) When it is desired to search or examine the body of a person in terms of this section, such search shall be made with strict regards to decency and decorum by an investigator or inspector of the same sex as the person being searched:

Provided that where an investigator or inspector of the same sex is not available, the investigator or inspector shall nominate any other person of the same sex to conduct the search.

(3) A person who enters and searches premises under section 74, before questioning anyone, shall—

- (a) advise that person of his or her rights as enshrined in the Constitution; and
- (b) allow that person to exercise that right.

(4) An investigator or inspector, who removes anything from premises being searched shall—

- (a) issue a receipt for it to the owner of, or person in control of the premises; and
- (b) return it as soon as practicable after achieving the purpose for which it was removed.

(5) If, during a search, a person refuses to permit the investigator or inspector to remove an article or document on the grounds that it contains privileged information, the investigator or inspector may apply for an order from the court that has jurisdiction to attach and remove the article or document to attach and remove it for safe custody until that court determines whether or not the information is privileged.

(6) An inspector or investigator who is authorised under this Act or any other enactment to enter and conduct a search or to seize any article or document may use such force as is reasonably justifiable where the inspector or investigator meets resistance from the person being searched or whose articles or documents are to be seized by any other person.

(7) Any person who hinders or obstructs an investigator or inspector in the exercise of his or her functions shall be guilty of an offence and liable to a fine not exceeding level 5 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

**76 Commission to provide assistance to inspectors or investigators**

The Commission, if required to do so by the Chief Inspector shall provide all such facilities and assistance as it is able to provide for the purpose of investigating any case.

**77 Summons**

(1) At any time during an investigation, the Commission may subpoena any person who is believed to be able to furnish any information on the subject of the investigation, or to have possession or control of any book, document or other object that has a bearing on the case—

- (a) to appear before the Commission, inspector or investigator, to be interviewed; or
- (b) to deliver or produce to the Commission, inspector or investigator, any book, document or other object referred to in paragraph (a);

at a time and place specified in the subpoena.

(2) A subpoena referred to in subsection (1) shall be—

- (a) signed by a designated official of the Commission; and
- (b) served in the same manner as a subpoena in a criminal case provided for in the Criminal Procedure and Evidence Act [*Chapter 9:07*].

(3) An inspector or investigator before whom a person is subpoenaed to appear before, or to whom a person is required to deliver any book, document or other object, may—

- (a) interview the person named in the subpoena; or
- (b) retain any such book, document or other object for examination, for a period not exceeding two months, or such longer period as the court, on application, may determine.

(4) A person interviewed by the Commission, or by an inspector or investigator shall answer each question truthfully and to the best of his or her ability, but—

- (a) no person shall be obliged to answer any question if the answer is self-incriminating; and
- (b) the interviewer shall inform the interviewee of the right set out in paragraph (a).

(5) No self-incriminating answer or statement made by any person to the Commission, inspector or investigator exercising powers in terms of this Act, shall be admissible as evidence against that person in criminal proceedings against that person in any court.

(6) Notwithstanding subsection (5), self-incriminating answer or statement may be used as evidence in any criminal proceedings for perjury or in which that person is tried for an offence referred to in section 78 or 79.

## PART VII

### OFFENCES AND PENALTIES

#### **78 Offences in relation to disclosure of confidential information**

- (1) It is an offence to disclose any person's confidential information obtained—
- (a) in carrying out any function in terms of this Act; or
  - (b) as a result of initiating an investigation or participating in any proceedings in terms of this Act.

(2) Subsection (1) shall not apply to information disclosed—

- (a) for the purpose of the proper administration or enforcement of this Act; or
- (b) for the purpose of the administration of justice; or
- (c) at the request of an investigator, inspector, regulatory authority, accredited consumer protection advocacy group, Commission, or Court.

(3) Any person who contravenes this section shall be guilty of an offence and liable to a fine not exceeding level 14 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

#### 79 Offences relating to Commission or court

Any person who—

- (a) fails to comply with an order of the Commission or court; or
- (b) does anything calculated to improperly influence the Commission or court concerning any matter connected with an investigation; or
- (c) anticipates any findings of the Commission or court concerning an investigation in a way that is calculated to influence the proceedings or findings; or
- (d) does anything in connection with an investigation that would have been regarded as contempt of court if the proceedings had occurred in a court of law; or
- (e) knowingly provides false information to the Commission or court; or
- (f) defames the Commission or court, or a member of the Commission or court in their respective official capacities; or
- (g) wilfully interrupts the proceedings of a hearing or misbehaves in the place where a hearing is being conducted; or
- (h) fails to comply with a warrant issued by a court to enter and search or seize any article or document; or
- (i) without authority—
  - (i) enters or searches premises; or
  - (ii) attaches or removes an article or document;

shall be guilty of an offence and liable to a fine not exceeding level 14 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

#### 80 Administrative fines

(1) The court may impose administrative fines in respect of prohibited conduct.

(2) An administrative fine imposed in terms of this Act may not exceed—

- (a) two and a half *per centum* of the respondent's annual net profit during the preceding financial year; or
- (b) any amount the court may determine.

(3) When determining an appropriate administrative fine, the court may consider the following factors—

- (a) the nature, duration, gravity and extent of the contravention; or
- (b) any loss or damage suffered as a result of the contravention; or
- (c) the behaviour of the respondent; or
- (d) the market circumstances in which the contravention took place; or
- (e) the level of profit derived from the contravention; or
- (f) the degree to which the respondent has co-operated with the Commission or court; or

- (g) whether the respondent has previously been found in contravention of this Act.

(4) Administrative fines paid in terms of this section shall accrue to the Consumer Protection Fund referred to in section 82.

### **81 Vicarious liability**

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

## **PART VIII**

### **FINANCIAL PROVISIONS**

### **82 Funds of Commission**

(1) The Minister in consultation with the Commission shall, subject to the constitution drawn up for the regulation of the fund in terms of section 18 of the Public Finance Management Act [*Chapter 22:18*], establish the Consumer Protection Fund.

(2) The Consumer Protection Fund shall be applied for the purpose of enabling the Commission to fulfil its functions in terms of section 6 and to capacitate consumer organisations.

(3) The Consumer Protection Fund shall consist of—

- (a) monies appropriated by Parliament for the achievement of the objectives of the Commission;
- (b) monies received by the Commission by virtue of the regulations made in terms of this Act;
- (c) monies obtained by means of loans raised by the Commission with the approval of the Minister, in consultation with the Minister responsible for Finance;
- (d) interest on investments;
- (e) donations, bequests, grants, contributions or royalties received by the Commission with the approval of the Minister;
- (f) fees, levies and other income accruing to the Commission from registration, accreditation or any services provided by the Commission;
- (g) such other monies as may vest in or accrue to the Commission, whether in the course of its operations or otherwise.

(4) The Commission shall employ its funds to defray expenses in connection with the performance of its functions.

(5) The Commission shall in each financial year at such time and in such forms as the Minister may determine, submit a statement of its estimated income and expenditure for the ensuing financial year to the Minister for approval.

(6) The monies referred to in subsection (3) shall be employed by the Commission in accordance with the approved statement of income and expenditure referred to in subsection (5) above and any unexpected balance shall be carried forward as a credit to the following year.

(7) Subject to the provisions of subsection (6), the Commission may invest any portion of its funds in such manner as the Minister with the concurrence of the Minister responsible for Finance may approve.

### **83 Investment of monies not immediately required by the Commission**

Monies not immediately required by the Commission may be invested in such manner as the Commission after consultation with the Minister considers appropriate.

### **84 Financial year of Commission**

The financial year of the Commission shall be the period of twelve months ending on 31 December of each year.

### **85 Accounts of Commission**

(1) The Commission shall ensure that proper accounts and other records relating to such accounts are kept in respect of all the Commissions' activities, funds and property, including such particular accounts and records as the Minister may direct.

(2) Not later than three months after the end of each financial year of the Commission, the Commission shall prepare and submit to the Minister a statement of accounts in respect of that financial year or such other period as the Minister may direct.

(3) Section 80 of the Public Finance Management Act [*Chapter 22.19*] (No. 11 of 2009), shall apply, with such changes as may be necessary, to the appointment of an internal auditor to the Commission in all respects as if the Commission were a Ministry or a department of a Ministry.

## **PART IX**

### **MISCELLANEOUS PROVISIONS**

### **86 Minister may give policy directions**

(1) The Minister may give the Commission such general directions relating to the policy the Commission is to observe in the exercise of its functions as the Minister considers to be necessary in the national interest:

Provided that the Minister, before requiring the Commission to comply with such directions, must afford the Commission an opportunity to make its own representations.

(2) Subject to subsection (1), the Commission shall take all necessary steps to comply with any direction given to it.

(3) When any direction has been given to the Commission in terms of subsection (1), the Commission shall ensure that the direction and any views the Commission has expressed on the direction are set out in the Commission's annual report.

### **87 Relations with regulators**

(1) The Commission may—

- (a) liaise with any regulatory authority and, without limiting the generality of its power, may monitor, require necessary information from, exchange information with, and receive information from, any such regulatory authority pertaining to—

- (i) matters of common interest; or
  - (ii) a specific complaint or investigation;
- or
- (b) negotiate agreements with any regulatory authority—
    - (i) to co-ordinate and harmonise the exercise of jurisdiction over consumer matters within the relevant industry or sector; or
    - (ii) to ensure the consistent application of the principles of this Act; or
  - (c) to participate in the proceedings of any regulatory authority; or
  - (d) to advise or receive advice from any regulatory authority.

(2) A regulatory authority that, in terms of any law, exercises jurisdiction over consumer matters within a particular industry or sector may—

- (a) negotiate agreements with the Commission as provided for in subsection(1)(b); and
- (b) exercise its jurisdiction by way of such an agreement in respect of a particular matter.

(3) The Minister may assign to the Commission any duty to exchange information with a similar foreign authority in terms of an international agreement relating to the purposes of this Act.

(4) The Commission may liaise with any foreign or international authorities having any objects similar to the functions and powers of the Commission.

## 88 Reports of Commission

(1) In addition to any report which the Commission is required to submit to the Minister in terms of this Act or the Public Finance Management Act [*Chapter 22:19*] (No. 11 of 2009), the Commission—

- (a) shall submit to the Minister such other reports as the Minister may require; and
- (b) may submit to the Minister such other reports as the Commission considers advisable;

in regard to the operations and property of the Commission.

(2) The Minister shall, within one of the thirty days on which Parliament sits next after the Minister has received the report, lay before Parliament a report submitted to him or her by the Commission in terms of subsection (1).

## 89 Exemption from liability

No liability shall attach to the Commission or to any employee of the Commission or a Committee of the Commission or to a member of the committee for any loss or damage sustained by any person as a result of the *bona fide* exercise or performance of any function which by or in terms of this Act is conferred or imposed upon the Commission or a committee:

Provided that this section shall not be construed so as to prevent any person from recovering compensation for any loss or damage sustained by him or her which was caused by gross negligence or recklessness.

## 90 Appeals

(1) Subject to this section, any person who is aggrieved by a decision or action of the Commission under this Act may appeal against the decision or action to the Minister.

(2) An appeal in terms of subsection (1) shall be made in the form and manner prescribed and shall be lodged with the Minister within thirty days after the appellant was notified of the decision, proposal or action appealed against.

(3) In an appeal in terms of subsection (1), the Minister may conduct or cause to be conducted such inquiry into the matter as he or she thinks appropriate and may confirm, vary or set aside the decision or action appealed against:

Provided that the Minister shall ensure that the appellant and the Commission, as the case may be, are given an adequate opportunity to make representations in the matter.

(4) The Minister shall ensure that the appellant and the Commission, as the case may be, are notified of any decision reached by him or her in terms of subsection (3).

(5) Any person who is aggrieved by a decision of the Minister on an appeal in terms of subsection (1) may appeal against his or her decision to the Administrative Court within the time and in the manner prescribed in rules of that court.

(6) In an appeal in terms of subsection (5), the Administrative Court may confirm, vary or set aside the decision or action appealed against and give such other order, whether as to costs or otherwise, as the Court considers just.

## 91 Regulations

(1) The Minister may make regulations providing for all matters which by this Act are required or permitted to be prescribed or which in his or her opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Subject to this Act, the Commission may, with the concurrence of the Minister, make regulations providing for the conditions of service of the members of the Commission.

(3) Without derogating from the generality of subsection (1) regulations may provide for—

- (a) the monies payable to the Commission in terms of section 82(1); or
- (b) methods of assessing whether a notice, document or visual representation satisfies the requirements of section 30(1).

## 92 Repeal of Cap. 8:03, transitional provisions and savings

(1) In this section—

“repealed Act” means the Consumer Contracts Act [Chapter 8:03].

(2) Subject to this section, the Consumer Contracts Act [Chapter 8:03] is repealed.

(3) Any regulations which were made by the Minister under the repealed Act and which were in force immediately before the enactment of this Act shall continue in force as if they had been made by the Commission under the appropriate provision of this Act.

(4) Any order, notice, application, exemption, approval, permission or other thing which was lawfully made, granted, given, issued, done or commenced in terms of the repealed Act and which, immediately before the enactment of this Act, had or was capable of acquiring legal effect, shall continue to have, or be capable of acquiring, as the case may be, the same effect as if it had been made, granted, given, issued, done or commenced, as the case may be, under the appropriate provision, if any, of this Act.

### **FIRST SCHEDULE (Sections 5(3) and (4))**

#### PROVISIONS APPLICABLE TO COMMISSION

##### *Paragraphs*

1. Interpretation in Schedule.
2. Terms of office and conditions of service of members.
3. Disqualifications for appointment as member.
4. Chairperson and vice-chairperson.
5. Vacation of office by member.
6. Dismissal or suspension of member.
7. Filling of vacancies on Commission.
8. Meetings and procedure of Commission.
9. Committees of Commission.
10. Remuneration and expenses of Commission and members of committees.
11. Validity of decisions of Commission.
12. Minutes of proceedings of Commission and committees.
13. Members of the Commission to disclose certain connection and interests.

##### *Interpretation in Schedule*

1. "member" means a member of the Commission.

##### *Terms of office and conditions of service of members*

2. (1) Subject to this Schedule, a member shall hold office for such period, not exceeding three years, as the Minister may fix on his or her appointment.

(2) A member shall continue in office after the expiry of his or her term until he or she has been re-appointed or his or her successor has been appointed.

Provided that a member shall not hold office in terms of this subparagraph for longer than six months.

(3) Subject to subparagraph (1) a member shall hold office on such terms and conditions as the Minister may fix in relation to members generally.

(4) A retiring member is eligible for re-appointment as a member:

Provided that no member may be re-appointed for a third term in office.

(5) The terms and conditions of office of a member shall not, without the member's consent, be altered to his or her detriment during his or her tenure of office.

##### *Disqualifications for appointment as member*

3. (1) The Minister shall not appoint a person as a member and no person shall be qualified to hold office as a member who—

- (a) is not a citizen of Zimbabwe; or
  - (b) has, in terms of a law in force in any country—
    - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
    - (ii) made an assignment to, or arrangement or composition with, his or her creditors which has not been rescinded or set aside;
 or
  - (c) has, immediately preceding the date of his or her proposed appointment, been convicted—
    - (i) in Zimbabwe, of an offence involving dishonesty; or
    - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would constitute an offence;
 and sentenced to a term of imprisonment imposed without the option of a fine.
- (2) A person who is—
- (a) a member of Parliament; or
  - (b) a member of two or more other statutory bodies;

shall not be appointed as a member, nor shall he or she be qualified to hold office as a member.

(3) For the purposes of subparagraph (2)(b), a person who is appointed to a council, board or other authority which is a statutory body or which is responsible for the administration of the affairs of a statutory body shall be regarded as a member of that statutory body.

#### *Chairperson and vice-chairperson of Commission*

4. (1) The chairperson and vice-chairperson of the Commission may at any time, by written notice to the Minister resign their offices as such.

(2) Within three weeks after being notified of a vacancy in the office of chairperson or vice-chairperson of the Commission, the Minister shall appoint another member to fill the vacancy;

(3) The vice-chairperson of the Commission shall perform the functions of the chairperson whenever the chairperson is unable to perform them or the office of the chairperson is vacant.

#### *Vacation of office by member*

5. A member shall vacate his or her office and his or her office shall become vacant—

- (a) three months after the date upon which he or she gives notice in writing to the Minister of his or her intention to resign, or on the expiry of such other period of notice as he or she and the Minister may agree; or
- (b) on the date he or she begins to serve a sentence of imprisonment imposed without the option of a fine—
  - (i) in Zimbabwe, in respect of an offence involving dishonesty; or
  - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would constitute an offence;
 or

- (c) if he or she becomes disqualified in terms of paragraph 2 (1) (a), (b) or (c) or in terms of subparagraph (2) of that paragraph, to hold office as a member; or
- (d) if he or she is required in terms of paragraph 3 to vacate his or her office.

*Dismissal or suspension of members*

6. (1) The Minister may require a member to vacate his or her office if the member—

- (a) has, subject to subparagraph (3), been found to have conducted himself or herself in a manner that renders him or her unsuitable as a member; or
- (b) has failed to comply with any term or condition of his or her office fixed by the Minister; or
- (c) is mentally or physically incapable of efficiently carrying out his or her functions as a member; or
- (d) has been absent without the permission of the Commission from two consecutive meetings of the Commission of which he or she was given at least seven days' notice, and there was no just cause for the member's absence.

(2) The Minister, may suspend a member—

- (a) whom he or she suspects on reasonable grounds of having been guilty of conduct referred to in subparagraph (1)(a); or
- (b) against whom criminal proceedings have been instituted for an offence in respect of which a sentence of imprisonment without the option of a fine may be imposed;

and while that member is so suspended he or she shall not carry out any functions as a member.

(3) A member suspended in terms of subparagraph (2)(a) shall be given notice in writing of the grounds for the suspension and may, within fourteen days of being so notified, make written representations to the Minister showing cause why no finding of misconduct rendering him or her unsuitable to be member of the Commission should be made.

(4) The Minister, after consultation with the President, shall require a member suspended in terms of subparagraph (2) (a) to vacate his or her office if—

- (a) no representations are made by the member in terms of subparagraph (3); or
- (b) the Minister finds that, notwithstanding representations made in terms of subparagraph (3), the member is guilty of the misconduct alleged.

*Filling of vacancies on Commission*

7. On the death of, or vacation of office by, a member, the Minister may appoint a qualified person to fill the vacancy:

Provided that if as a result of the vacancy the number of members falls below the number specified in this Act, the Minister shall fill the vacancy within three weeks.

*Meetings and procedure of Commission*

8. (1) The Commission shall hold its first meeting on such date and at such place as the Minister may fix, being not more than three months after the fixed date, and

thereafter the Commission shall meet for the dispatch of business as often as is necessary or expedient and, subject to this paragraph, may adjourn, close and otherwise regulate its meetings and procedure as it thinks fit:

Provided that the Commission shall meet not less than six times in each financial year of the Commission.

(2) The chairperson of the Commission—

- (a) may at any time convene a special meeting of the Commission; and
- (b) shall convene a special meeting of the Commission on the written request of not fewer than two members, not later than fourteen days after his or her receipt of such request.

(3) Written notice of any special meeting shall be sent to each member not later than seven days before the meeting and shall specify the business for which the meeting has been convened:

Provided that if, in the opinion of the chairperson, the urgency of the business for which the meeting is to be convened so requires, notice of not less than forty-eight hours may be given.

(4) No business shall be discussed at a special meeting other than—

- (a) such business as may be determined by the chairperson of the Commission, where he or she has convened the meeting in terms of subparagraph (2)(a); or
- (b) the business specified in the request for the meeting, where he or she has convened the meeting in terms of subparagraph (2)(b).

(5) The chairperson or, in his or her absence, the vice-chairperson shall preside at all meetings of the Commission:

Provided that, if the chairperson and the vice-chairperson are both absent from a meeting of the Commission, the members present may elect one of their number to preside at that meeting as chairperson.

(6) Five members shall form a quorum at any meeting of the Commission.

(7) All acts, matters or things authorised or required to be done by the Commission may be decided by a majority vote at a meeting of the Commission at which a quorum is present.

(8) Subject to this Act at all meetings of the Commission each member present shall have one vote on each question before the Commission and, in the event of an equality of votes, the chairperson shall have a casting vote in addition to a deliberative vote.

(9) Any proposal circulated among all members and agreed to in writing by a majority of all members shall have the same effect as a resolution passed at a duly constituted meeting of the Commission and shall be incorporated in the minutes of the next succeeding meeting of the Commission:

Provided that, if a member requires that such proposal be placed before a meeting of the Commission, this subparagraph shall not apply to such proposal.

#### *Committees of Commission*

9. (1) For the better exercise of its functions, the Commission may establish one or more committees and vest in the committees such of its functions as it thinks fit:

Provided that the vesting of any functions in a committee shall not divest the Commission of those functions in relation to any matter that has not been decided by the committee.

(2) Where it has established a committee, the Commission—

- (a) shall appoint at least one member of the Commission to be a member of the committee and shall designate that member, or one of those members, as the case may be, to be chairperson of the committee; and
- (b) subject to subparagraph (3), may appoint persons who are not members of the Commission to be members of the committee.

(3) The Commission shall not appoint a person to be a member of a committee if he or she is disqualified in terms of paragraph 2 from appointment as a member of the Commission.

(4) The office of a member of a committee of the Commission shall terminate—

- (a) in the case of a member who is a member of the Commission, upon his or her ceasing to be a member of the Commission;
- (b) in the case of a member who is not a member of the Commission, if he or she would be required in terms of paragraph 3(2) to vacate office had that paragraph and paragraph 3(1)(a), (b) and (c) applied to him or her.

(5) Subject to this paragraph, members of committees of the Commission shall hold office on such conditions as the Commission may fix for members of committees generally.

(6) The chairperson of the Commission convenes a meeting of a committee of the Commission at any time and place.

(7) The procedure to be followed at any meeting of a committee of the Commission shall be fixed by the Commission.

*Remuneration and expenses of members of Commission and members of committees*

10. (1) Members and members of committees of the Commission shall be paid from the funds of the Commission—

- (a) such remuneration, if any, as the Commission, with the approval of the Minister, may from time to time fix for such members generally; and
- (b) such allowances as the Commission, with the approval of the Minister, may from time to time fix to meet any reasonable expenses incurred by such members in connection with the business of the Commission or of the committee concerned, as the case may be.

(2) The remuneration of a member or member of a committee of the Commission shall not, without the member's consent, be altered to his or her detriment during his or her tenure of office.

*Validity of decisions and acts of Commission*

11. No decision or act of the Commission or act done under the authority of the Commission shall be invalid on the ground that—

- (a) the Commission consisted of fewer than the number of persons prescribed in paragraph 8(6); or
- (b) a disqualified person acted as a member of the Commission at the time the decision was taken or act was done or authorised:

Provided that the Commission shall ratify any such decision or action within a month after it becomes aware that the decision or action was taken in the circumstances described in paragraph (a) or (b).

*Minutes of proceedings of Commission and committees*

12. (1) The Commission shall cause minutes of all proceedings of and decisions taken at every meeting of the Commission or of a committee of the Commission to be entered in books kept for the purpose.

(2) Any minutes which purport to be signed by the chairperson of the meeting to which the minutes relate or by the chairperson of the next following meeting of the Commission or the committee concerned, as the case may be, shall be accepted for all purposes as *prima facie* evidence of the proceedings of and decisions taken at the meeting concerned.

*Members to disclose certain connections and interests*

13. (1) In this section—

“relative” in relation to a member means the Member’s spouse, child, parent, brother or sister.

(2) Subject to subsection (4)—

(a) if a member—

(i) knowingly acquires or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Commission; or

(ii) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member’s private interest coming or appearing to come into conflict with his or her functions as a member; or

(iii) knows or has reason to believe that a relative of his or hers—

A. has acquired or holds direct or indirect interest in any matter that is under consideration by the Commission; or

B. owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member’s private interest coming or appearing to come into conflict with his functions as member;

or

(b) if for any reason the private interest of a member comes into conflict with his or her functions as a member;

the member shall forthwith disclose the facts to the Commission.

(3) A member referred to in subparagraph (2) shall take no part in the consideration or discussion of, or vote on, any question before the Commission which relates to any contract, right, immovable property or interest referred to in that subparagraph.

(4) A member who contravenes subparagraph (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level 7 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

**SECOND SCHEDULE (Section 5(5))**

## ANCILLARY POWERS OF COMMISSION

1. To acquire premises necessary or convenient for the exercise of its functions and for that purpose to buy, take on lease or in exchange, hire or otherwise acquire immovable property and any interest therein and any rights concessions, grants, powers and privileges in respect thereof.
2. To buy, take in exchange, hire or otherwise acquire movable property necessary or convenient for the exercise of its functions.
3. To maintain, alter or improve property acquired by it.
4. To mortgage any assets, or part of any assets and, with the approval of the Minister, to sell, exchange, lease, dispose of turn to account or otherwise deal with any assets or part of any assets which are not required for the exercise of its functions for such consideration as it may determine.
5. To open bank accounts in the name of the Commission and to draw, make, accept, endorse, discount, execute and issue for the purposes of its functions, promissory notes, bills of exchange, securities and other negotiable or transferable instruments.
6. To insure against losses, damages, risks and liabilities which it may incur.
7. In consultation with the Minister, to establish and administer such funds and reserves not specifically provided for in this Act as the Commission considers appropriate or necessary for the proper exercise of its functions.
8. To pay such remuneration and allowances and grant such leave of absence and to make such gifts, bonuses and the like to staff of the Commission as it considers fit.
9. To provide pecuniary benefits for staff of the Commission on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury and for their dependants, and for that purpose to effect policies of insurance, provident funds or make such other provision as may be necessary to secure for its staff and their dependants any or all of the pecuniary benefits to which the provisions of this paragraph relate.
10. To purchase, take on lease or in exchange or otherwise acquire land for residential purposes or dwellings-houses for use or occupation by staff of the Commission.
11. To construct dwellings, out buildings or improvements for use or occupation by members of the Commission.
12. To provide or guarantee loans made to members of the Commission for the purchase of dwelling-houses or land for residential purposes, the construction of dwelling-houses and the improvement of dwelling houses or land which are the property of its members of the Commission, subject to any conditions that may be imposed by the Commission from time to time.
13. To provide security in respect of loans by the deposit of securities, in which the Commission may invest such money as it may consider necessary for the purpose.
14. Subject to any conditions that may be imposed by the Commission from time to time, to provide loans to—
  - (a) members of the Commission for the purpose of purchasing vehicles or other equipment to be used by the members of staff in carrying out their duties;  
or

- (b) members of the staff for the procuring of vehicles which may be resold to such members after five years:

Provided that the Commission may fix further terms and conditions for this vehicle scheme; or

- (c) not exceeding twelve months' salary or wages payable to the members concerned, for any purpose and on such security as the Commission thinks adequate.

15. To register, in the Commission's name, any property, whether movable or immovable, purchased for any member of Commission or member of staff through loan or loan guarantee until the loan or loan guarantee has been discharged.
16. To do anything for the purpose of improving the skill, knowledge or usefulness of members of the Commission, and members of staff, and in that connection to provide or assist other persons in providing facilities for training, education and research, including the awarding of scholarships for such training:  

Provided that the duration of such training shall not exceed two years.
17. To do anything which by this Act or any other enactment is required or permitted to be done by the Commission.
18. Generally, to do all such things that are conducive to the performance of the functions of the Commission in terms of this Act or any other enactment.