

GAUTENG PROVINCIAL LEGISLATURE

GAUTENG CONSUMER PROTECTION BILL, 2021

(As introduced in the Gauteng Provincial Legislature as a Government Bill in terms of Rule 192(1) of the Standing Rules of the Gauteng Provincial Legislature (Version 5 – Revision 9 dated 27 November 2018))

(Member of the Executive Council responsible for matters related to economic affairs in the Province of Gauteng)

[B—2021]

BILL

To provide for the alignment of provincial legislation with the Consumer Protection Act, 2008 (Act No. 68 of 2008); to provide for the establishment and functioning of a provincial consumer protection authority and the appointment and functioning of a provincial consumer tribunal to enforce the realisation of consumer rights exclusively within the Province; to repeal the Consumer Affairs (Unfair Business Practices) Act, 1996 (Act No. 7 of 1996); and to provide for matters connected therewith or incidental thereto.

PREAMBLE

WHEREAS “consumer protection” is listed in Part A of Schedule 4 to the Constitution of the Republic of South Africa, 1996, as a functional area of concurrent national and provincial legislative competence;

AND WHEREAS the Consumer Protection Act, 2008 (Act No. 68 of 2008), was enacted to, among other things, provide for the realisation and protection of consumer rights and, for that purpose, establishes national norms and standards in respect of the protection of consumer rights;

RECOGNISING that Part A of Chapter 5 of the Consumer Protection Act, 2008, acknowledges the co-operative exercise of concurrent jurisdiction between the national and provincial spheres of government over matters related to consumer protection and, for that purpose, contemplates the co-ordination and harmonisation of functions performed by national consumer protection institutions and provincial consumer protection authorities established in terms of applicable provincial legislation;

AND RECOGNISING FURTHER that there is a need for the alignment of provincial legislation with the Consumer Protection Act, 2008, to provide for the establishment, purpose and functioning of a consumer protection authority for the Province.

BE IT THEREFORE ENACTED by the Provincial Legislature of the Province of Gauteng, as follows:—

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CHAPTER I

INTRODUCTORY PROVISIONS

Definitions

1. In this Act, any word or expression to which a meaning has been assigned in the Consumer Protection Act, 2008, bears the same meaning, and unless the context otherwise indicates—

“**complainant**” includes a complainant referred to in section 141(1)(a) of the National Credit Act;

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**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 supplier’s business;
- (b) a person who enters or has entered into a transaction with a supplier in the ordinary course of the suppliers business, unless the transaction is exempted from the application of the Consumer Protection Act by section 5(2) of that Act, or in terms of section 5(3) of that Act;
- (c) if the context so requires or permits, a user of those particular goods or a recipient or beneficiary of those particular services, irrespective of whether that user, recipient or beneficiary, was a party to a transaction concerning the supply of those particular goods or services; or
- (d) a franchisee in terms of a franchise agreement, to the extent applicable in terms of section 5(6)(b) to (e) of the Consumer Protection Act;

“**Consumer Protection Act**” means the Consumer Protection Act, 2008 (Act No. 68 of 2008);

“**Consumer Protector**” means the Gauteng Consumer Protector appointed in terms of section 8(1) of this Act;

“**court**” or “**court with competent jurisdiction**” means a court referred to in Chapter 8 of the Constitution;

“**Department**” means the department responsible for matters related to economic affairs in the Province;

“**Gauteng Consumer Protection Office**” means the Gauteng Consumer Protection Office established in terms of section 4(1)(a) of this Act;

“**Gauteng Consumer Tribunal**” means the Gauteng Consumer Tribunal established in terms of section 21(1) of this Act;

“**Head of Department**” means the head of the department responsible for matters related to economic affairs in the Province;

“**inspector**” means a person appointed as such in terms of section 9(1)(b)(i) of this Act or section 88(1)(a) of the Consumer Protection Act;

“**investigator**” means a person appointed as such in terms of section 9(1)(b)(ii) of this Act or section 88(3) of the Consumer Protection Act;

“**National Consumer Commission**” means the National Consumer Commission established by section 85(1) of the Consumer Protection Act;

“**National Consumer Tribunal**” means the National Consumer Tribunal established by section 26(1) of the National Credit Act;

“**National Credit Act**” means the National Credit Act, 2005 (Act No. 34 of 2005);

“**person**” includes a juristic person and an organ of state;

“**prescribed**” means prescribed by regulation;

“**prohibited conduct**” means an act or omission in contravention the Consumer Protection Act, the National Credit Act, or this Act;

“**protected consumer right**” means a fundamental consumer right provided for in Chapter 2 of the Consumer Protection Act;

“**Province**” means the Province of Gauteng as referred to in section 103(1)(c) of the Constitution;

“**regulation**” means a regulation issued or made in terms of section 62 of this Act;

“**respondent**” means a person against whom a complaint or application is initiated in terms of the Consumer Protection Act, the National Credit Act, or this Act;

“**responsible Member**” means the member of the Executive Council of the Gauteng Province responsible for matters related to economic affairs in the Province;

“**supplier**” means a person who promotes, supplies or offers to supply any goods or services; and

“**this Act**” includes any regulation issued or made in terms of this Act.

Objects of Act

2. The objects of this Act are—

- (a) to align provincial legislation with the Consumer Protection Act, and other policies and legislation that impact on the rights of consumers by providing for—
 - (i) a provincial consumer protection authority; and
 - (ii) a provincial consumer tribunal,to investigate and mediate or adjudicate the alleged infringement of consumer rights set out in Chapter 2 of the Consumer Protection Act;
- (b) to provide a consistent, predictable and effective regulatory framework that—
 - (i) recognises the developmental imperative of the Republic’s economy, as a whole, and that of the Province, in particular; and
 - (ii) fosters the confidence of the consumers;
- (c) to promote a fair, efficient and transparent marketplace for consumers and business;

- and
- (d) to provide access to quick, efficient and cost-effective redress for consumers as economic citizens.

Application of Act

3. (1) This Act applies to any person who promotes, renders, supplies, or offers to render or supply, any goods or services, exclusively within the Province.

(2) This Act does not apply to—

- (a) a transaction that is excluded from the application of the Consumer Protection Act;
- (b) a consumer who is excluded from the application of the Consumer Protection Act;
- and
- (c) any goods or services for which an exemption has been granted in terms of section 5(4) of the Consumer Protection Act.

CHAPTER II

GAUTENG CONSUMER PROTECTION OFFICE

Part A

Establishment of Gauteng Consumer Protection Office

Establishment of Gauteng Consumer Protection Office

4. (1) The Gauteng Consumer Protection Office—
- (a) is hereby established within the structure of the Department; and
- (b) exercises jurisdiction exclusively within the Province.
- (2) The functions and powers of the Gauteng Consumer Protection Office are performed and exercised through the control and coordination of the Consumer Protector.

Part B

Functions and Powers of Gauteng Consumer Protection Office

Functions of Gauteng Consumer Protection Office

5. Without derogating from any function imposed on a provincial consumer protection authority in terms of the Consumer Protection Act, or any applicable legislation, the functions of the Gauteng Consumer Protection Office are—
- (a) to investigate any complaint of or apparent prohibited conduct or offence arising

- within the Province;
- (b) to request the National Consumer Commission to initiate an investigation in respect of any apparent prohibited conduct or offence arising within the Province;
 - (c) to investigate a complaint referred to it by the National Consumer Commission in terms of this Act or the Consumer Protection Act;
 - (d) to refer a complaint or matter to—
 - (i) another regulatory authority with jurisdiction over the complaint or matter for possible investigation or resolution; or
 - (ii) the National Prosecuting Authority, if in the opinion of the Consumer Protector, an offence in terms of this Act or the Consumer Protection Act, has been committed;
 - (e) to provide consumers with advice and information about their rights and recourse;
 - (f) to seek redress and negotiate settlement agreements on behalf of customers or suppliers;
 - (g) to conduct education and awareness programmes for the purposes of empowering consumers and suppliers;
 - (h) to partner with the National Consumer Commission and other stakeholders on various campaigns or programmes that are focused on awareness and education of consumers or suppliers; and
 - (i) to perform any other function assigned to it in terms of this Act or the Consumer Protection Act, or any applicable legislation.

Powers of Gauteng Consumer Protection Office

6. In the performance of its functions, the Gauteng Consumer Protection Office has the power—

- (a) to issue compliance notices to any person in terms of this Act, or on behalf of the National Consumer Commission in terms of the Consumer Protection Act;
- (b) to facilitate the mediation or conciliation of a dispute arising in terms of this Act or the Consumer Protection Act, between or among persons for the possible conclusion of a settlement agreement;
- (c) to refer the dispute or settlement agreement contemplated in paragraph (b) to the Gauteng Consumer Tribunal for adjudication or record in a form of an order, as the case may be;
- (d) to issue a notice of non-referral in the prescribed form to the complainant if, in the opinion of the Consumer Protector, the complaint—
 - (i) is frivolous or vexatious;
 - (ii) does not allege any facts which, if true, would constitute grounds for a remedy in terms of this Act or the Consumer Protection Act; or
 - (iii) cannot, in terms of section 33, be referred to the Gauteng Consumer Tribunal;

- (e) to engage with the National Consumer Commission or other competent authorities—
 - (i) in co-operative activities—
 - (aa) to detect, deter and facilitate the prosecution of prohibited conduct or offences, arising in terms of this Act or the Consumer Protection Act, if there are reasonable grounds to believe that any such conduct or offence may be occurring within the Province; and
 - (bb) of research, publication, education, staff development and training;
 - (ii) in staff exchange or secondment; and
- (f) to request technical assistance or expertise from the National Consumer Commission or other competent authorities.

Advice and recommendations to responsible Member

7. In addition to any other function, the Gauteng Consumer Protection Office is responsible to—

- (a) advise the responsible Member on matters relating to consumer protection;
- (b) advise the responsible Member on the determination of provincial norms and standards regarding consumer protection in terms of this Act or the Consumer Protection Act, that the responsible Member may prescribe for application generally throughout the Province;
- (c) enquire into and report to the responsible Member on any matter concerning this Act or the Consumer Protection Act, and, where necessary, recommend to the responsible Member changes in legislation; and
- (d) advise the responsible Member in respect of any matter referred to it by the responsible Member.

Part C

Consumer Protector and Staff of Gauteng Consumer Protection Office

Appointment of Consumer Protector

8. (1) The responsible Member must, subject to the laws of the Republic governing the public service, appoint and designate a person as a Consumer Protector who—

- (a) has a university degree in law;
- (b) is admitted as an advocate or attorney in terms of the laws of the Republic; and
- (c) has eight or more years of practical legal experience.

(2) The responsible Member may, whenever the Consumer Protector is unable to perform their duties for whatever reason, appoint and designate a person with

the qualifications and experience in subsection (1), from the staff of the Gauteng Consumer Protection Office or the Department, as the case may be, to act in the position and discharge the duties of the Consumer Protector.

(3) The Consumer Protector must—

- (a) perform the functions imposed and exercise the powers conferred on the Gauteng Consumer Protection Office in terms of this Act, the Consumer Protection Act, or other applicable legislation; and
- (b) discharge their duties in terms of this Act.

Appointment of staff, inspectors and investigators

9. (1) The responsible Member must, subject to the laws of the Republic governing the public service—

- (a) appoint any suitable person to the Gauteng Consumer Protection Office; and
- (b) appoint and designate suitable persons to perform the functions and exercise the powers of—
 - (i) an inspector to monitor compliance with any provision of this Act or the Consumer Protection Act; or
 - (ii) an investigator to conduct research, audits, inquiries or other investigations on behalf of the Gauteng Consumer Protection Office in terms of this Act or the Consumer Protection Act.

(2) The persons contemplated in subsection (1)—

- (a) are appointed or designated, as the case may be, to assist the Consumer Protector in—
 - (i) the performance of the functions and exercise of the powers of the Gauteng Consumer Protection Office;
 - (ii) the discharge of their duties, in terms of this Act and the Consumer Protection Act; and
- (b) are subject to the control and direction of the Consumer Protector.

(3) Whenever an inspector or investigator performs a function, exercises a power or discharges a duty in terms of this Act or the Consumer Protection Act, the inspector or investigator is a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and may exercise the powers conferred on a peace officer by law.

(4) The responsible Member must issue each investigator and inspector with a certificate in the prescribed form stating—

- (a) that the person has been appointed as an investigator or inspector in terms of this Act; and
- (b) as such, the person—
 - (i) is a peace officer as defined in section 1 of the Criminal Procedure Act, 1977;

and

(ii) may exercise the powers conferred on a peace officer by law.

(5) Whenever an inspector or investigator performs a function, exercises a power or discharges a duty in terms of this Act or the Consumer Protection Act, the inspector or investigator—

(a) must be in possession of a certificate of appointment issued to that inspector or investigator in terms of subsection (4);

(b) show that certificate issued to that inspector or investigator in terms of subsection (4) to any person who—

(i) is affected by the action of the inspector or the investigator; and

(ii) requires to see the certificate.

(6) The Consumer Protector may appoint or contract with any suitably qualified person to conduct research, audits, inquiries or other investigations on behalf of the Gauteng Consumer Protection Office.

(7) The person contemplated in subsection (6)—

(a) may be appointed or contracted on such terms and conditions, and for such time period, as may be determined by the Head of Department; and

(b) is not an inspector or investigator within the meaning of this Act.

Conduct of Consumer Protector and Gauteng Consumer Protection Office

10. The Consumer Protector and any person appointed, designated or contracted to the Gauteng Consumer Protection Office must not—

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

(b) participate in any investigation, hearing, or decision concerning a matter in respect of which that person has a direct financial interest or similar personal interest;

(c) make private use of, or profit from, any confidential information obtained as a result of performing that person's official duties in the Gauteng Consumer Protection Office; or

(d) divulge any information referred to in paragraph (c) to any third party, except as required as part of that person's official duty within the Gauteng Consumer Protection Office.

CHAPTER III

ENFORCEMENT OF CONSUMER RIGHTS

Part A

Lodging and investigating consumer complaints

Lodging of complaints

11. Any of the following persons may lodge a complaint in the prescribed manner and form with the Gauteng Consumer Protection Office and the Gauteng Consumer Tribunal where a protected consumer right is being or has been infringed, impaired or threatened, or prohibited conduct is occurring or has occurred:

- (a) a person acting on their own behalf;
- (b) an authorised person acting on behalf of another person who cannot act in their own name;
- (c) a person acting as a member of, or in the interest of, a group of affected persons;
- (d) a person acting in the public interest; and
- (e) an association acting in the interest of its members.

Investigations

12. (1) The Gauteng Consumer Protection Office must initiate an investigation upon receipt of a complaint contemplated in section 11, if there are reasonable grounds to believe that a protected consumer right is being or has been infringed, impaired or threatened or prohibited conduct is occurring or has occurred.

(2) The Gauteng Consumer Protection Office may initiate an investigation—

- (a) upon request by the National Consumer Commission;
- (b) of its own accord; or
- (c) when directed by the responsible Member to do so.

Authority to enter and search under warrant

13. (1) The Consumer Protector, or any person authorised by the Consumer Protector, may apply to a court with competent jurisdiction for a warrant to enter and search any premises.

(2) The judge, regional magistrate or magistrate may issue a warrant to enter and search any premises that is within the jurisdiction of the High Court, regional court or magistrates' court if, from information on oath or affirmation, there are reasonable grounds to believe that—

- (a) a contravention of this Act or the Consumer Protection Act, has occurred, is occurring or is likely to occur on or in those premises; or
- (b) anything connected with an investigation in terms of this Act or the Consumer Protection Act, is in the possession, or under the control, of a person who is on or in those premises.

(3) A warrant to enter and search issued in terms of subsection (2) must specifically—

- (a) identify the premises that may be entered and searched; and
- (b) authorise an inspector or investigator, or a police officer, to enter and search the premises and to do anything listed in section 14.

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

- (a) the warrant is executed;
- (b) the warrant is cancelled by the person who issued it or, in that person's absence, by a person with similar authority;
- (c) the purpose for issuing it has lapsed; or
- (d) the expiry of one month after the date it was issued.

(5) A warrant to enter and search may be executed only during the day, unless the judge, regional magistrate or magistrate who issued it authorises that it may be executed at night at a time that is reasonable in the circumstances.

(6) A person authorised by warrant issued in terms of subsection (2) may enter and search premises named in that warrant.

(7) Immediately before commencing with the execution of a warrant, a person executing that warrant must either—

- (a) if the owner or person in control of the premises to be searched is present—
 - (i) provide identification to that person and explain to that person the authority by which the warrant is being executed; and
 - (ii) hand a copy of the warrant to that person or to the person named in it; or
- (b) if the owner or person in control of the premises is not present, affix a copy of the warrant to the premises in a prominent and visible place.

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

Powers to enter and search

14. (1) A person who is authorised in terms of section 13 to enter and search premises may—

- (a) enter upon or into those premises;
- (b) search those premises;
- (c) 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;
- (d) examine any article or document that is on or in those premises that has a bearing on the investigation;

- (e) request information about any article or document from the owner or person in control of the premises, or from any person who has control of the article or document, or from any other person who may have the information;
- (f) 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;
- (g) use any computer system on the premises, or require 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;
- (h) seize any output from that computer for examination and copying; and
- (i) attach and, if necessary, remove from the premises for examination and safekeeping anything that has a bearing on the investigation.

(2) Section 46(6) applies equally to an answer given or statement made to an investigator or police officer in terms of this section.

Conduct of entry and search

15. (1) A person who enters and searches any premises in terms of section 14 must conduct the entry and search with—

- (a) strict regard for decency and order; and
- (b) regard for each person's right to dignity, freedom, security and privacy.

(2) During any search under section 14(1)(c), only—

- (a) a female investigator or female police officer may search a female person; and
- (b) a male investigator or male police officer may search a male person.

(3) A person who enters and searches premises in terms of section 14, before questioning anyone, must—

- (a) advise that person of their rights—
 - (i) to be assisted at the time by an advocate or attorney;
 - (ii) not to answer any question if the answer is self-incriminating;
 - (iii) not to answer any question or produce a book, document or object on the ground that they would thereby be exposed to a criminal charge; and
- (b) allow that person to exercise the rights in subsection (a).

(4) A person who removes anything from premises being searched must—

- (a) issue a receipt for it to the owner 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) During a search, a person may refuse to permit the inspection or removal of an article or document on the ground that it contains privileged information.

(6) If the owner or person in control of an article or document refuses in terms of subsection (5) to give that article or document to the person conducting the search, the

person conducting the search may approach the Consumer Protector to request the registrar, clerk or sheriff of the court with competent jurisdiction to attach and remove the article or document for safe custody until the judge, regional magistrate or magistrate determines whether or not the information is privileged.

(7) A police officer who is authorised to enter and search premises in terms of section 13(3), or who is assisting an inspector or investigator in terms of section 13(8), may overcome resistance to the entry and search by using as much force as is reasonably required, including breaking a door or window of the premises.

(8) Before using force in terms of subsection (7), a police officer must audibly demand admission and must announce the purpose of the entry, unless it is reasonable to believe that doing so may induce someone to destroy or dispose of an article or document that is the object of the search.

Negotiation of settlement agreements to discontinue prohibited conduct

16. (1) The Gauteng Consumer Protection Office may negotiate and conclude a settlement agreement with any person for—

- (a) the compliance with a provision of this Act or the Consumer Protection Act;
- (b) the discontinuance or avoidance of any aspect of any prohibited conduct;
- (c) the reimbursement, with interest, to affected consumers;
- (d) the payment of damages to the complainant, as envisioned in section 74(3) of the Consumer Protection Act; or
- (e) any other matter relating to the prohibited conduct.

(2) A settlement agreement—

- (a) may be concluded at any time after the institution of an investigation, but before the making of an order by the Gauteng Consumer Tribunal;
- (b) must be in writing and signed by the parties thereto; and
- (c) must be subject to confirmation by the Gauteng Consumer Tribunal.

Relations with other regulatory authorities and giving of notice to competent authorities of prohibited conduct and offences

17. (1) The Gauteng Consumer Protection Office must—

- (a) if there is reason to suspect that an act of prohibited conduct which is or was the subject of an investigation by the Gauteng Consumer Protection Office, exists or may come into existence elsewhere in the Republic than in the Province, furnish the National Consumer Commission or any regulatory authority in the province concerned, with particulars of the business practice or conduct in question and any relevant information relating thereto which became known in the course of investigations by the Gauteng Consumer Protection Office or of proceedings before the Gauteng Consumer Tribunal; and

- (b) if there is reason at any time during or after the completion of an investigation to suspect that there has been or is being committed, or that an attempt has been or is being made to commit an offence, or a serious economic offence, refer the matter to the National Prosecuting Authority for its investigation for prosecution.

(2) The Gauteng Consumer Protection Office may—

- (a) monitor, require necessary information from, exchange information with, and receive information from, the National Consumer Commission or any authority pertaining to—
- (i) matters of common interest; or
 - (ii) a specific complaint or investigation;
- (b) negotiate any agreement with the National Consumer Commission or any regulatory authority—
- (i) to co-ordinate and harmonise the exercise of jurisdiction over consumer matters within the relevant industry or sector within the Province; and
 - (ii) to ensure the consistent application of the principles of this Act or the Consumer Protection Act;
- (c) participate in the proceedings of the National Consumer Commission or any regulatory authority; and
- (d) advise, or receive advice from, the National Consumer Commission or any regulatory authority.

(3) The Gauteng Consumer Protection Office may liaise with—

- (a) another provincial consumer protection authority or other regulatory authority on matters of common interest; and
- (b) any other authority having any objects similar to the functions and powers of the Gauteng Consumer Protection Office.

Part B

Issuing, review and enforcement of compliance notices

Compliance notices

18. (1) The Gauteng Consumer Protection Office may, in the prescribed manner and form, issue a compliance notice contemplated in section 6(a) upon the completion of an investigation where it has reasonable grounds to believe that a person has engaged in prohibited conduct.

(2) A compliance notice must set out—

- (a) the person to whom the notice applies;
- (b) the provision of this Act or the Consumer Protection Act, that is or has not been complied with;

- (c) details of the nature and extent of the non-compliance;
- (d) any steps that are required to be taken and the period within which those steps must be taken; and
- (e) any penalty that may be imposed in terms of this Act or the Consumer Protection Act, if those steps are not taken.

(3) The compliance notice remains in force until—

- (a) it is set aside by the Gauteng Consumer Tribunal, the National Consumer Tribunal or a court with competent jurisdiction on a review; or
- (b) the requirements of a compliance notice are satisfied and the Gauteng Consumer Protection Office, on behalf of the National Consumer Commission, issues a compliance certificate.

Review of compliance notice

19. (1) A person may, in the prescribed manner and form, apply to the Gauteng Consumer Tribunal to review a compliance notice issued in terms of section 18.

(2) An application in subsection (1) must be submitted to the Gauteng Consumer Tribunal within 15 business days after receiving a compliance notice or such longer period as may be allowed by the Gauteng Consumer Tribunal on good cause shown.

(3) The Gauteng Consumer Tribunal must consider the representations made by the applicant for the review of a compliance notice and any other relevant information, and may confirm, vary or set aside the whole or a part of the compliance notice including the period in which any steps must be taken.

Failure to comply with compliance notice

20. If a person to whom a compliance notice has been issued fails to comply with an item in a compliance notice detailed in section 18(2)(d), the Consumer Protector Office may either—

- (a) apply to the Consumer Tribunal for the imposition of an administrative fine; or
- (b) refer the matter to the National Prosecuting Authority for its investigation for prosecution as an offence in terms of section 53.

CHAPTER IV

GAUTENG CONSUMER TRIBUNAL

Part A

Appointment and Administration of Gauteng Consumer Tribunal

Establishment and composition of Gauteng Consumer Tribunal

21. (1) There is hereby established a body to be known as the Gauteng Consumer Tribunal, which—

- (a) is a juristic person;
- (b) has jurisdiction in the Province;
- (c) is a tribunal of record; and
- (d) must exercise its functions in accordance with this Act, the Consumer Protection Act and any other applicable legislation.

(2) The Gauteng Consumer Tribunal consists of five persons, namely—

- (a) a chairperson, who must be—
 - (i) a retired judge or magistrate; or
 - (ii) an attorney or an advocate, or a lecturer in law at a university, with cumulative experience of ten years or more; and
- (b) four additional members with special knowledge or experience of consumer advocacy, economics, industry, commerce or law.

Appointment procedure

22. (1) The responsible Member must publish a notice in the Provincial *Gazette* and two newspapers circulating in the Province inviting interested parties to nominate candidates, within 21 days of the publication of such notice, who comply with the qualification in section 21(2) and who are not subject to any disqualification contemplated in section 24, for consideration as members of the Gauteng Consumer Tribunal.

(2) The names of qualified nominees must, within 14 days from the closing date, be published in the Provincial *Gazette* and the two newspapers referred in subsection (1) inviting the public to submit written comment within 14 days from the date of publication.

(3) The responsible Member must, after the closing date for written comment contemplated in subsection (2), constitute a nomination panel to conduct interviews and recommend suitable candidates to the Executive Council for appointment as members of the Gauteng Consumer Tribunal.

(4) Interviews of nominees must be open to the public.

(5) The responsible Member must, in consultation with the Executive Council, by notice in the Provincial *Gazette*, appoint appropriately qualified persons to serve as members of the Gauteng Consumer Tribunal.

(6) The responsible Member must, within 14 days of appointment, publish in the Provincial *Gazette* and the two newspapers referred in subsection (1) the final names of persons who are appointed to serve as members of the Gauteng Consumer

Tribunal.

(7) A member of the Gauteng Consumer Tribunal must, before assuming office, make and subscribe to a prescribed oath or solemn affirmation before the responsible Member.

Functions and powers of Gauteng Consumer Tribunal

23. The Gauteng Consumer Tribunal must—

- (a) hear and consider any allegation of prohibited conduct which is before it by virtue of proceedings contemplated in this Act or the Consumer Protection Act;
- (b) adjudicate any application that may be made to it in terms of this Act or the Consumer Protection Act;
- (c) make any competent order as provided for in this Act or the Consumer Protection Act;
- (d) consider the referral to it of matters in terms of the Consumer Protection Act;
- (e) confirm, vary or set aside any decision made or settlement agreement negotiated by Gauteng Consumer Protection Office on behalf of a consumer or supplier;
- (f) hear and adjudicate any application for the condonation of a non-compliance with any procedure or timeframe provided for in this Act or the Consumer Protection Act, in relation to a matter that is before it;
- (g) hear and adjudicate an application for the review of a compliance order;
- (h) make any order which is just and equitable, including the imposition of administrative fines, the repayment of excess payments by a consumer or an award of damages; and
- (i) perform any other function or exercise any other power assigned to it in terms of this Act or the Consumer Protection Act.

Persons disqualified from being members of Gauteng Consumer Tribunal

24. (1) A person is not eligible to be appointed or remain a member of the Gauteng Consumer Tribunal if that person—

- (a) is not a fit and proper person;
- (b) is not a citizen of the Republic of South Africa;
- (c) is not resident in the Province;
- (d) is employed by an organ of state;
- (e) at the relevant time is, or during the preceding 12 months was, an office bearer or employee of any party, movement, organisation or body of a party-political nature;
- (f) is an unrehabilitated insolvent;
- (g) has at any time been convicted, whether in the Republic of South Africa or elsewhere, of an offence—
 - (i) under this Act;

- (ii) under the Consumer Protection Act;
 - (iii) under the National Credit Act;
 - (iv) under the Corruption Act, 1992 (Act No. 94 of 1992);
 - (v) under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004);
 - (vi) of theft, fraud, forgery or uttering a forged document, perjury or any offence involving dishonesty; or
- (h) has at any time been removed from an office of trust due to misconduct.

(2) A person who fails to disclose an interest which would require that person to withdraw from any proceedings of the Gauteng Consumer Tribunal in terms of section 27(2), is disqualified from remaining a member of the Gauteng Consumer Tribunal.

Term of office

25. (1) A member of the Gauteng Consumer Tribunal is appointed for a period of three years, and may be re-appointed for a further period of three years in accordance with the procedure in section 22.

(2) A member of the Gauteng Consumer Tribunal may not serve for more than two consecutive terms.

(3) Where a person is appointed to fill a vacancy occurring two years after the appointment of a member who resigned or is removed from office, that period is not regarded as a term.

Resignation, removal from office and vacancies

26. (1) A member of the Gauteng Consumer Tribunal may resign by providing the responsible Member with one month's written notice, or such shorter notice as may be approved by the responsible Member.

(2) The responsible Member may, subject to subsection (3), remove a member of the Gauteng Consumer Tribunal from office if that member—

- (a) becomes disqualified in terms of section 24(1);
- (b) fails to disclose an interest as provided for in section 27;
- (c) acts contrary to the provisions of section 28(5); or
- (d) fails to perform the functions of a member of the Gauteng Consumer Tribunal.

(3) Before removing a member of the Gauteng Consumer Tribunal in terms of subsection (2), the responsible Member must afford the affected member an opportunity to submit a representation to the responsible Member regarding the grounds on which they should not be removed from office.

(4) Whenever a vacancy occurs in the Gauteng Consumer Tribunal, the responsible Member must, in accordance with the procedure set out in section 22, appoint

a person to fill the vacancy for the unexpired period of office of the member in whose place such person is appointed.

Declaration of business interests of members of Gauteng Consumer Tribunal

27. (1) A member of the Gauteng Consumer Tribunal must submit a declaration of their direct or indirect interest in any business undertaking or other business interests to the responsible Member, in the prescribed manner and form—

- (a) within 30 days of assuming office as a member of the Gauteng Consumer Tribunal;
- (b) within 30 days of the beginning of every financial year; and
- (c) within seven days of acquiring interests in any business undertaking or other business interests at any time during their tenure as a member of the Gauteng Consumer Tribunal.

(2) If, during a hearing in which a member of the Gauteng Consumer Tribunal is participating, it appears to that member that the matter concerns a financial or other interest of that member, that member must—

- (a) immediately and fully disclose the fact and nature of that interest to the remaining members of the Gauteng Consumer Tribunal; and
- (b) withdraw from any further involvement in that hearing.

Part B

Proceedings of Gauteng Consumer Tribunal

Hearings of Gauteng Consumer Tribunal

28. (1) At least three members of the Gauteng Consumer Tribunal must, either physically or on a virtual platform, be present for a hearing to commence. Provided that an application for the confirmation of a settlement agreement as a consent order by the Gauteng Consumer Protection Office may be heard by the chairperson or one member designated by the chairperson.

(2) Except where otherwise provided, a decision of the majority of members present at the proceedings of the Gauteng Consumer Tribunal constitutes a decision of the Gauteng Consumer Tribunal.

(3) If at any stage during the proceedings before the Gauteng Consumer Tribunal—

- (a) the chairperson becomes incapable of acting or is absent, the proceedings must begin afresh;
- (b) any other member becomes incapable of acting or is absent, the proceedings must continue before the remaining members; or
- (c) two or more other members become incapable of acting or are absent, the

proceedings must begin afresh unless all the parties to the proceedings agree unconditionally in writing to accept the decision of the majority of the remaining members.

(4) In the event that the proceedings continue before an even number of members and there is a split decision, the chairperson must cast a deciding vote in addition to an ordinary vote.

(5) A member of the Gauteng Consumer Tribunal may not represent any person before the Gauteng Consumer Tribunal.

(6) The Gauteng Consumer Tribunal hearing a matter must conduct its proceedings in a manner consistent with Part D of Chapter 7 of the National Credit Act, read with the changes required by the context of this Act.

Conduct of proceedings of Gauteng Consumer Tribunal

29. (1) All proceedings of the Gauteng Consumer Tribunal must be open to the public unless the chairperson of the Gauteng Consumer Tribunal directs that members of the public, specific persons or categories of persons are excluded from any proceedings of the Gauteng Consumer Tribunal or any portion thereof, where this is justified in the interests of—

- (a) the conduct of the proceedings or the consideration of the matter in question;
- (b) the protection of the privacy of any person alleged to be involved in the prohibited conduct in question or of the confidentiality of any information relating to that person;
- (c) if the proper conduct of the proceedings requires it; or
- (d) for any other reason that would be justifiable in civil proceedings in a High Court.

(2) Any person who may be adversely affected by the proceedings of the Gauteng Consumer Tribunal is entitled to apply to participate in the proceedings.

(3) Any person against whom proceedings are instituted or who may be adversely affected by such proceedings may appear in person or be represented or assisted by an advocate or attorney.

(4) The Gauteng Consumer Tribunal must keep a record of all its proceedings.

(5) Amendment of proceedings:

- (a) In any proceedings, the Gauteng Consumer Tribunal may, at any time before a ruling, amend any summons or other document forming part of the record. Provided that no amendment may be made by which any party other than the party applying for such amendment may (notwithstanding adjournment) be prejudiced in the conduct of their action or defence.
- (b) In proceedings an amendment may be made upon such terms as the Gauteng Consumer Tribunal may rule reasonable.

- (c) No misnomer regarding the name of any person or place may vitiate any proceedings of the Gauteng Consumer Tribunal if the person or place is described as commonly known, and the Gauteng Consumer Tribunal may, on application, correct such misnomer at any time before or after a ruling is given.

Joinder of parties

30. (1) Any number of consumers, each of whom has a separate claim against the same respondent, may join as complainants in one action if their right to relief depends upon the determination of some question of law or fact which, if separate actions were instituted, would arise in each action.

(2) Several respondents may be cited in the alternative or both in the alternative and jointly in one action, whenever a complainant or complainants alleges that they suffered as a result of prohibited conduct and that it is uncertain which of the respondents is in law responsible for such prohibited conduct.

(3) Any of the parties in proceedings in subsection (1) or (2) may apply to the Gauteng Consumer Tribunal for an order directing that separate proceedings be held, and the Gauteng Consumer Tribunal in its discretion may make such order as it deems just and expedient.

(4) In any joint proceeding instituted in subsection (1) or (2), a ruling may be given for one or more of the complainants or respondents as may be found entitled to relief.

Serving documents

31. Unless otherwise provided for in this Act, a notice, order or other document that must be served on a person, is properly served when it is either—

- (a) delivered to that person by a member of the Gauteng Consumer Protection Office;
- (b) sent by registered mail to that person's last known address;
- (c) served by the Gauteng Consumer Protection Office by means of facsimile to that person's last known facsimile address;
- (d) sent by email to that person's last known email address; or
- (e) served according to the Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa.

Standard of proof

32. The standard of proof in any proceedings before the Gauteng Consumer Tribunal is on a balance of probabilities.

Limitations of bringing action

33. (1) A complaint in terms of this Act may not be referred or made to the Gauteng Consumer Tribunal more than three years after—

- (a) the act or omission that is the cause of the complaint; or
- (b) in the case of a course of conduct or continuing practice, the date that the conduct or practice ceased.

(2) A complaint in terms of this Act may not be referred to the Gauteng Consumer Tribunal in terms of this Act against any person that is, or has been, a respondent in proceedings under any other law relating substantially to the same conduct.

Interim relief

34. (1) A person in a complaint that has been referred to the Gauteng Consumer Tribunal may apply for an interim order in respect of that complaint, and the Tribunal may grant such an order if—

- (a) there is evidence that the allegations may be true;
- (b) an interim order is reasonably necessary to—
 - (i) prevent serious, irreparable damage to that person; or
 - (ii) to prevent the purposes of this Act being frustrated;
- (c) the respondent has been given a reasonable opportunity to be heard, having regard to the urgency of the proceedings; or
- (d) the balance of convenience favours the granting of the order.

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

- (a) the conclusion of a hearing into a complaint; or
- (b) a date that is six months after the date of issue of the interim order.

(3) If an interim order has been granted, and a hearing into that matter has not been concluded within six months after the date of that order, the Gauteng Consumer Tribunal, on good cause shown, may extend the interim order for a further period not exceeding six months.

Witness fees and allowance

35. Any person summoned as a witness must be paid such witness fees and allowances as that person is entitled to if that person appeared in a magistrates' court as a witness: Provided that such person is not—

- (a) the complainant, or an agent, a representative or an employee of the complainant; or
- (b) the respondent, or an agent, a representative or an employee of the respondent.

Costs

36. Each party participating in a hearing must bear its own costs unless the Gauteng Consumer Tribunal —

- (a) deems it just and appropriate to award costs to a successful party and against an unsuccessful party; or
- (b) finds that a complainant has initiated frivolous or vexatious proceedings.

Part C

Orders of Gauteng Consumer Tribunal

Confirmation of settlement agreements negotiated by Gauteng Consumer Protection Office as consent order

37. (1) Where a matter has been investigated by the Gauteng Consumer Protection Office, and the parties to the dispute agree to the proposed terms of a settlement agreement, the Gauteng Consumer Protection Office must apply to the Gauteng Consumer Tribunal for the confirmation of a settlement agreement concluded in terms of section 16 as a consent order.

(2) The Gauteng Consumer Tribunal may determine whether it will hear any evidence and after the due consideration of the interests of affected consumers, may—

- (a) issue an order confirming the settlement agreement as a consent order;
- (b) issue an order confirming the settlement agreement as a consent order with such modifications as may be agreed to by—
 - (i) the person concerned; and
 - (ii) subject to such conditions, as the Gauteng Consumer Tribunal may deem fit;or
- (c) decline to confirm that settlement agreement as a consent order if, after the persons involved in the agreement have been given an opportunity to be heard, the Gauteng Consumer Tribunal is satisfied that the settlement agreement will not ensure the discontinuance or avoidance of the prohibited conduct in question.

(3) A settlement agreement that is confirmed as a consent order in terms of subsection (2)(a) may include a refund to the complainant.

(4) A settlement agreement that is confirmed as a consent order in terms of this section must be published—

- (a) on the website of the Department or the Gauteng Consumer Protection Office; or
- (b) or any electronic medium.

(5) A settlement agreement that is published in terms of subsection (4) has the same effect as an order of the Gauteng Consumer Tribunal issued in terms of section 38.

Orders by Gauteng Consumer Tribunal after hearing evidence

38. (1) The orders that the Gauteng Consumer Tribunal may make after hearing evidence presented by the parties in the adjudication of a complaint where no settlement agreement has been concluded, include—

- (a) where it is satisfied that an act of prohibited conduct exists or may come into existence, an order directing—
 - (i) a respondent concerned in the prohibited conduct to take such action as may be necessary to ensure the discontinuance or prevention of the unfair prohibited conduct;
 - (ii) a respondent to pay an administrative fine;
- (b) where it finds that money was accepted from consumers in the course of any prohibited conduct, and it is necessary to limit or prevent financial loss to those consumers, an order against a respondent to repay such money to the affected consumers, together with interest at the rate determined in accordance with the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975); or
- (c) where it is satisfied that there is no act of prohibited conduct, an order dismissing the complaint.

(2) An order of the Gauteng Consumer Tribunal in terms of subsection (1)(a) or (b), must be made known by publication—

- (a) in the *Provincial Gazette*; and
- (b) on the website of the Department or the Gauteng Consumer Protection Office.

(3) An order of the Gauteng Consumer Tribunal in terms of subsection (1)(a) or (b) may, in addition to the publication in subsection (2), be made known by publication—

- (a) on any electronic medium; or
- (b) in any other manner, including a notice in a newspaper or magazine, or on the radio or television.

Administrative fines

39. (1) The Gauteng Consumer Protection Office may, in respect of prohibited or required conduct, refer matters to the Gauteng Consumer Tribunal to impose an administrative fine.

(2) An administrative fine imposed in terms of the Consumer Protection Act, or this Act, may not exceed the greater of—

- (a) 10 per cent of the respondent's annual turnover during the preceding financial year; or
- (b) R1 000 000.

(3) When determining an appropriate administrative fine, the Gauteng Consumer Tribunal must consider the following factors:

- (a) the nature, duration, gravity and extent of the contravention;
- (b) any loss or damage suffered as a result of the contravention;
- (c) the behaviour of the respondent;
- (d) the market circumstances in which the contravention took place;
- (e) the level of profit derived from the contravention;
- (f) the degree to which the respondent has co-operated with the Gauteng Consumer Protection Office or the Gauteng Consumer Tribunal, or both; and
- (g) whether the respondent has previously been found in contravention of this Act or the Consumer Protection Act.

(4) For the purpose of this section, the annual turnover of a supplier at the time when an administrative fine is assessed, is the total income of that supplier during the immediate preceding financial year, as determined in the prescribed manner.

(5) A fine payable in terms of this section must be paid into the Provincial Revenue Fund referred to in section 226 of the Constitution.

Correction and clarification of orders of Gauteng Consumer Tribunal

40. (1) The Gauteng Consumer Tribunal may, of its own accord or on application by a person who is affected by an order of the Gauteng Consumer Tribunal, vary that order to—

- (a) correct an omission or error in the order, but only to the extent of correcting such omission or error; and
- (b) clarify any ambiguity in the order, but only to the extent of clarifying such ambiguity.

(2) An order of the Gauteng Consumer Tribunal in terms of subsection (1)—

- (a) must be made known by publication of a notice in the Provincial *Gazette* and on the website of the Department or the Gauteng Consumer Protection Office; and
- (b) may, in addition, be made known in any other manner, including a notice in a newspaper or magazine or on the radio or television.

Effect of orders of Gauteng Consumer Tribunal

41. (1) An order of the Gauteng Consumer Tribunal—

- (a) is binding unless taken on review in an application to a court with competent jurisdiction by any party, after due notice to the other party or parties; and
- (b) may be enforced in the same manner and to the same effect as any judgment or order of a court with competent jurisdiction.

(2) The court to which application is made in terms of paragraph (a), may,

in addition to the review and its judgment, correct an error or omission by the Gauteng Consumer Tribunal.

Review

42. Any person who feels or is aggrieved by any proceeding, ruling or order of the Gauteng Consumer Tribunal may apply to a court with competent jurisdiction for its review.

Part D

Administration of Gauteng Consumer Tribunal

Registrar of Gauteng Consumer Tribunal

43. (1) The responsible Member, subject to the laws governing the public service—

- (a) must appoint or designate a person as the Registrar of the Gauteng Consumer Tribunal; and
- (b) may appoint or designate one or more other persons to assist the Registrar of the Gauteng Consumer Tribunal in discharging or carrying out their duties and responsibilities.

(2) The Registrar of the Gauteng Consumer Tribunal is responsible for—

- (a) receiving and processing applications lodged with the Gauteng Consumer Tribunal;
- (b) receiving and issuing summons for serving on the relevant person or persons;
- (c) notifying any relevant person of the hearing or sitting of the Gauteng Consumer Tribunal;
- (d) managing correspondence of the Gauteng Consumer Tribunal;
- (e) managing the records of the Gauteng Consumer Tribunal;
- (f) processing of witness fees and allowances; and
- (g) carrying out or discharging any other duty and responsibility—
 - (i) that is inherently assigned to the Registrar of the National Consumer Tribunal for the efficient functioning of the Gauteng Consumer Tribunal; or
 - (ii) as directed by the chairperson of the Gauteng Consumer Tribunal in terms of the Consumer Protection Act, or this Act.

(3) The Registrar of the Gauteng Consumer Tribunal reports to the Consumer Protector.

Reporting by Gauteng Consumer Tribunal

44. The Chairperson of Gauteng Consumer Tribunal must, no later than 14 days after the end of the quarter and the financial year, provide the responsible Member with

regular and full reports on its activities and matters under their control.

Remuneration payable to members of Gauteng Consumer Tribunal

45. (1) The responsible Member must, in consultation with the Member of the Executive Council responsible for finance in the Province, determine the remuneration and allowances payable to members of the Gauteng Consumer Tribunal.

(2) Depending on their level of expertise and the functions that they perform, different scales of remuneration and allowances may be determined in respect of different members of the Gauteng Consumer Tribunal.

CHAPTER V

GENERAL PROVISIONS

Subpoena of persons or witnesses and production of documents

46. (1) The Consumer Protector or any person authorised by the Consumer Protector may, for the purposes of an investigation, subpoena any person who is believed to be able to furnish any information on the subject of the investigation or to have in their possession or under their control any book, document or other object relating to that subject—

- (a) to appear before the Consumer Protector, a designated official, inspector or investigator to be questioned at a time and place specified in the subpoena; or
- (b) to produce to the Consumer Protector, a designated official, inspector or investigator that book, document or other object at a time and place specified in the subpoena.

(2) The Gauteng Consumer Tribunal may, for the purpose of ascertaining any matter relating to proceedings before the Gauteng Consumer Tribunal, by summons require any person, including the person alleged to have participated in prohibited conduct, to appear before the Gauteng Consumer Tribunal to—

- (a) give evidence at a time and place specified in such summons;
- (b) produce any book, document or object in the possession or custody or under the control of such person and which may be reasonably necessary, material and relevant in connection with those proceedings; and
- (c) question such person and examine any book, document or object which they have been required to produce.

(3) A subpoena or summons referred to in subsection (1) or (2) must—

- (a) be in the prescribed form;
- (b) be signed by the Consumer Protector or any person authorised by the Consumer

- Protector, or Registrar of the Gauteng Consumer Tribunal, as the case may be;
- (c) contain particulars of the matter in connection with which the person concerned is required to appear or produce the book, document or other object; and
 - (d) be served in the same manner as a subpoena or summons in a criminal court is issued by the magistrates' court.

(4) The Consumer Protector or any person authorised by the Consumer Protector, or the Chairperson or member of the Gauteng Consumer Tribunal, must administer an oath to, or accept an affirmation from, the person named in the subpoena or summons.

(5) The Consumer Protector, a designated official or person authorised by the Consumer Protector, an inspector or investigator, or the Chairperson or member of the Gauteng Consumer Tribunal may—

- (a) question the person named in the subpoena or summons; and
- (b) retain any book, document or other object for examination, for a period not exceeding two months, or such longer period as the Gauteng Consumer Tribunal on application and good cause shown may allow.

(6) Where a person is questioned in terms of subsection (5)—

- (a) the person must answer each question truthfully and to the best of that person's ability;
- (b) the person is not obliged to answer any question if the answer is self-incriminating;
- (c) the person is not entitled to refuse to answer any question or to produce any book, document or object on the ground that they would thereby be exposed to a criminal charge;
- (d) the person asking a question must inform the person being questioned of their right not to answer any question if the answer is self-incriminating; and
- (e) a self-incriminating answer given or statement made by the person, or an answer or production of a book, document or object that exposes a person to a criminal charge, is not admissible as evidence against that person in criminal proceedings in any court against that person, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in sections 52, 53 or 54, and then only to the extent that the answer or statement is relevant to prove the offence charged with.

Claims that information is confidential

47. (1) When required to submit information to the Consumer Protector or a person authorised by the Consumer Protector, or to the Gauteng Consumer Tribunal, a person may claim that all or part of that information is confidential.

(2) Any claim contemplated in subsection (1) must be supported by a written statement explaining why the information is confidential.

(3) The Consumer Protector or a person authorised by the Consumer Protector, or the Gauteng Consumer Tribunal, must—

- (a) consider any claim made in terms of subsection (1); and
- (b) notify the claimant whether or not the information contemplated in subsection (1) will be treated as if it had been determined to be confidential.

(4) When making any decision or order in terms of this Act, the Consumer Protector or a person authorised by the Consumer Protector, or the Gauteng Consumer Tribunal, may take into account any information that has been the subject of a claim in terms of subsection (1).

(5) If any reasons for a decision or order in terms of this Act would reveal information that was subject to claim in terms of subsection (1), the Consumer Protector or a person authorised by the Consumer Protector, or the Gauteng Consumer Tribunal, must provide a copy of the proposed reasons to the party claiming confidentiality at least five business days before publishing those reasons.

(6) Within five business days after receiving a notice in terms of subsection (3)(b), or a copy of proposed reasons in terms of subsection (5), a person may apply to a court with competent jurisdiction for an appropriate order to protect the confidentiality of the relevant information.

Civil actions and jurisdiction

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

(2) A person who has suffered loss or damage as a result of prohibited conduct—

- (a) may not institute a claim in a civil court for the assessment of the amount or awarding of damages if that person has consented to an award of damages in a settlement agreement that has been confirmed as a consent order; or
- (b) if entitled to commence an action that is not excluded in terms of paragraph (a), when instituting proceedings, must file with the registrar or clerk of the court a notice from the Chairperson of the Gauteng Consumer Tribunal in the prescribed form—
 - (i) certifying whether the conduct constituting the basis for the action has been found to be a prohibited or required conduct in terms of this Act;
 - (ii) stating the date of the ruling of the Gauteng Consumer Tribunal, if any; and
 - (iii) setting out the section of this Act in terms of which the Gauteng Consumer Tribunal made its ruling, if any.

(3) A certificate referred to in subsection (2)(b) is sufficient proof of its contents.

(4) If an agreement, provision of an agreement, or a notice to which a transaction or agreement is purported to be subject, has been declared by a provision of this Act to be void, that agreement, provision or notice must be regarded as having been of no force or effect at any time, unless a civil court has declared that the relevant provision of this Act does not apply to the impugned agreement, provision or notice.

CHAPTER VI

OFFENCES AND PENALTIES

Breach of confidentiality

49. (1) It is an offence to disclose any personal or confidential information concerning the affairs of any person obtained—

- (a) in the exercise of any power, performance of any function, or discharge of any duty, as the case may be, in terms of this Act; or
- (b) as a result of initiating a complaint or participating in any proceedings in terms of this Act.

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

- (a) for the purpose of the administration of this Act;
- (b) for the purpose of the administration of justice;
- (c) at the request of an investigator, regulatory authority or a member of the Gauteng Consumer Tribunal entitled to receive the information; or
- (d) on the order of a court.

Hindering administration of Act

50. It is an offence to hinder, oppose, obstruct or unduly influence any person who is exercising a power or performing a duty conferred or imposed, or delegated, on that person by or in terms of this Act.

Failure to attend when summoned

51. A person who, having been directed, summoned or subpoenaed to attend a hearing—

- (a) fails, without good cause, to appear at the time and place specified or to remain in attendance until excused; or
 - (b) attends as required, but—
 - (i) refuses to be sworn in or to make an affirmation; or
 - (ii) fails to produce a book, document or other item as ordered, if it is in the possession of, or under the control of, that person,
- commits an offence.

Failure to answer fully or truthfully

- 52.** A person who, having been sworn in or having made an affirmation—
- (a) subject to section 46(6), fails to answer any question fully and to the best of their ability; or
 - (b) gives false evidence, knowing or believing it to be false, commits an offence.

Offences relating to prohibited conduct

53. (1) A person who fails to satisfy the requirements of a compliance notice commits an offence.

(2) Despite subsection (1), a person may not be prosecuted for an offence in respect of the compliance notice if, as a result of the failure of that person to comply with the notice, the Gauteng Consumer Protection Office applies to the Gauteng Consumer Tribunal for the imposition of an administrative fine.

Offences relating to Gauteng Consumer Protection Office and Gauteng Consumer Tribunal

54. (1) A person who contravenes or fails to comply with an order of the Gauteng Consumer Tribunal commits an offence.

- (2) A person who—
- (a) does anything calculated to improperly influence the Gauteng Consumer Tribunal or the Gauteng Consumer Protection Office concerning any matter connected with an investigation;
 - (b) anticipates any findings of the Gauteng Consumer Tribunal or the Gauteng Consumer Protection Office concerning an any matter connected with an investigation in a way that is calculated to influence the proceedings or findings;
 - (c) does anything in connection with an investigation that would have been contempt of court if the proceedings had occurred in a court of law;
 - (d) knowingly provides false information to the Gauteng Consumer Protection Office;
 - (e) defames the Gauteng Consumer Tribunal, or a member the Gauteng Consumer Tribunal, in their respective official capacities;
 - (f) wilfully interrupts the proceedings of a hearing or misbehaves in the place where a hearing is being conducted;
 - (g) acts contrary to a warrant to enter and search; or
 - (h) without authority, but claiming to have authority in terms of section 13—
 - (i) enters or searches premises; or
 - (ii) attaches or removes an article or document,commits an offence.

Proof of facts

- 55.** (1) In any criminal proceedings in terms of this Act—
- (a) if it is proved that a false statement, entry or record or false information appears in or on a book, document, plan, drawing or computer storage medium, the person who kept that item is presumed to have made the statement, entry, record or information; and
 - (b) an order certified by the chairperson of the Gauteng Consumer Tribunal is *prima facie* proof of the contents of the order.
- (2) A statement, entry, record or information in or on any book, document, plan, drawing or computer storage medium is admissible in evidence as an admission of the facts in or on it by the person who appears to have made, entered, recorded or stored it.

Penalties

- 56.** (1) Any person who is convicted of an offence in terms of this Act is liable—
- (a) in the case of a contravention of section 49(1), to a fine or to imprisonment for a period not exceeding 10 years, or to both a fine and imprisonment; or
 - (b) in any other case, to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and imprisonment.
- (2) Despite any other law, a magistrates' court has jurisdiction to impose any penalty provided for in subsection (1).

CHAPTER VII

MISCELLANEOUS PROVISIONS

Delegations and assignments

- 57.** (1) The responsible Member may, subject to this section—
- (a) delegate to the Head of Department or the Consumer Protector any power conferred on the responsible Member in terms of this Act; or
 - (b) assign to the Head of Department or Consumer Protector any function or duty imposed or entrusted on the responsible Member by this Act.
- (2) Despite subsection (1), the responsible Member may not delegate the power or assign the function or duty—
- (a) to appoint the Consumer Protector;
 - (b) to appoint members of the Gauteng Consumer Tribunal; or
 - (c) to make regulations.

(3) The Head of Department or the Consumer Protector may delegate or assign to any employee or official of the Department or the Gauteng Consumer Protection Office any power, function or duty conferred, imposed or entrusted on the Head of Department or the Consumer Protector.

(4) A delegation or assignment under this section—

- (a) must be in writing;
- (b) may be with or without conditions;
- (c) may be revoked or withdrawn at any time; and
- (d) does not prevent—
 - (i) the responsible Member;
 - (ii) the Head of Department; or
 - (iii) the Consumer Protector,

from exercising or performing the power, function or duty so delegated or assigned.

(5) Anything done in the exercise of power, performance of function or discharge of duty so delegated or assigned is regarded to have been done by—

- (a) the responsible Member;
 - (b) the Head of Department; or
 - (c) the Consumer Protector,
- as the case may be.

Limitation of liability

58. The following persons are not personally liable in respect of the exercise of any power, performance of any function or discharge of any duty in good faith in terms of this Act:

- (a) the Consumer Protector;
- (b) an inspector or investigator;
- (c) any other employee or official of the Gauteng Consumer Protection Office;
- (d) a member of the Gauteng Consumer Tribunal;
- (e) a police officer contemplated in section 15(7) read with section 13(3) and 13(8); or
- (f) any person contemplated in section 9(6).

State bound

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

Waiver of benefits

60. Any agreement or contractual term purporting to exclude the provisions of this Act or the Consumer Protection Act, to limit the application thereof is void.

Vicarious liability

61. (1) If an employee or agent of a person is liable in terms of this Act for anything done or omitted to be done in the course of that employee's or agent's employment or activities on behalf of the principal, the employer or principal is jointly and severally liable with that employee or agent.

(2) This section does not apply in respect of criminal liability.

Regulations

62. (1) The responsible Member must make regulations relating to—

- (a) any matter which in terms of this Act or the Consumer Protection Act is required or permitted to be prescribed;
- (b) the practice and proceedings of the Gauteng Consumer Tribunal;
- (c) the form of a notice of non-referral in terms of section 6(d);
- (d) the certificate to be issued to an investigator or inspector in terms of section 9(4);
- (e) the manner and form for lodging of complaints in terms of section 11;
- (f) the manner and form for issuing a compliance notice in terms of section 18(1);
- (g) the manner and form for application for the review of a compliance notice in terms of section 19(1);
- (h) the oath and affirmation in terms of section 22(7);
- (i) the manner and form for the submission of declarations of interest by members of the Gauteng Consumer Tribunal in terms of section 27(1);
- (j) the manner for the determination of the annual turnover of a supplier in terms of section 39(4);
- (k) the form of a subpoena and summons in terms of section 46(3)(a);
- (l) the form of the notice in terms of section 48(2)(b); and
- (m) any matter which is considered necessary or expedient to prescribe for achieving the objects of this Act.

(2) The responsible Member may make regulations relating to the determination of provincial norms and standards regarding consumer protection in the Province in terms of section 7(b).

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

(4) Subsection (3) does not apply in respect of any regulation which, after the provisions of that subsection have been complied with, has been amended by the responsible Member in consequence of comments or representations received in pursuance of that compliance.

Repeal of laws

63. The Consumer Affairs (Unfair Business Practices) Act, 1996 (Act No. 7 of 1996), is hereby repealed.

Transitional arrangements

64. (1) Any investigation that had commenced, and any complaint that was lodged with the Office for the Investigation of Unfair Business Practices, in terms of the Consumer Affairs (Unfair Business Practices) Act, 1996 before the commencement of this Act, must be dispensed with and finalised in terms of this Act. Provided that where the Consumer Affairs Court has already commenced any proceedings, that matter shall be dealt with in terms of the Consumer Affairs (Unfair Business Practices) Act, 1996.

(2) Where the Consumer Protector, or an employee or official of the Gauteng Consumer Protection Office, has been designated or appointed in terms of the Consumer Affairs (Unfair Business Practices) Act, 1996, such designation or appointment must continue as a designation or appointment in terms of this Act.

Short title and commencement

65. This Act is called the Gauteng Consumer Protection Act, 2021, and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*.