



KWAZULU-NATAL PROVINCE
KWAZULU-NATAL PROVINSIE
ISIFUNDAZWE SAKWAZULU-NATALI

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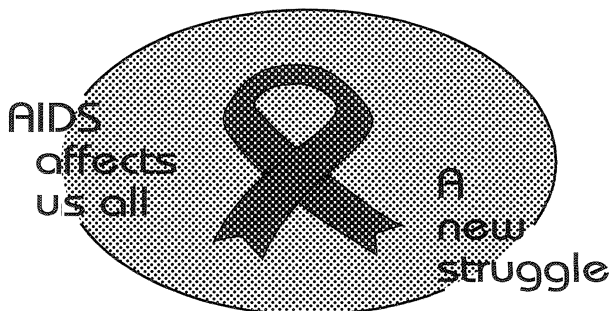
Vol. 6

PIETERMARITZBURG,

14 NOVEMBER 2012
14 KULWEZI 2012

No. 855

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GENERAL NOTICE—ALGEMENE KENNISGEWING—ISAZISO SIKAWONKE-WONKE

No. 26

14 November 2012

**KWAZULU-NATAL CONSUMER PROTECTION BILL,
2010****Notice in terms of Rule 194 of the Standing Rules of the KwaZulu-Natal Legislature**

Notice is hereby given in terms of Rule 194 of the Standing Rules of the Provincial Legislature that the KwaZulu-Natal Consumer Protection Bill, 2010 as set out hereunder, has been introduced into the aforesaid Legislature and will be considered by the Local Economic Development and Tourism Portfolio Committee. The public and other interested groups are invited to submit representations on the said Bill, which representations must be addressed to:

Attention: Mr DN Dimba
The Secretary
KwaZulu-Natal Legislature
Private Bag X 9112
PIETERMARITZBURG
3200

so as to reach her not later than 15 days from the date of publication.

N NAIDOO
Secretary to the KwaZulu-Natal Legislature

**KWAZULU-NATAL
CONSUMER PROTECTION BILL, 2010**

BILL

To provide for the realisation and protection of consumer rights in KwaZulu-Natal; to provide for the establishment of the KwaZulu-Natal Office of the Consumer Protector; to determine the objects, powers, duties and functions of the Office of the Consumer Protector; to provide for the investigation of consumer complaints; to provide for redress for consumers; to provide for consumer education and awareness of consumer rights and responsibilities; to provide for the establishment of Consumer Tribunals; to determine the objects, powers, duties and functions of Consumer Tribunals; and to provide for matters connected therewith.

BE IT ENACTED by the Legislature of the Province of KwaZulu-Natal, as follows: -

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CHAPTER 1
DEFINITIONS

Definitions

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

“**business**” means –

- (a) offering, supplying or making available any commodity; or
- (b) soliciting or receiving of any investment;

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

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

“**co-operative**” means a co-operative as defined in section 1 of the Co-operatives Act, 1981 (Act No. 91 of 1981);

“**consumer**” means a consumer as defined in section 1 of the Consumer Protection Act, 2008 (Act No. 68 of 2008);

“**Consumer Protector**” means the person appointed as head of the KwaZulu-Natal Office of the Consumer Protector in terms of section 5(3);

“**consumer protection group**” means any consumer protection group as defined in section 1 of the Consumer Protection Act, 2008 (Act No. 68 of 2008);

“**Consumer Tribunal**” means a consumer tribunal established for the Province in terms of section 8(1);

“**court**” means any court contemplated in chapter 8 of the Constitution, other than the Consumer Tribunal;

“**Department**” means the department in the Provincial Government of KwaZulu-Natal responsible for consumer affairs;

“**display**” means display, as defined in section 1 of the Consumer Protection Act, 2008 (Act No. 68 of 2008);

“**Executive Council**” means the Executive Council of the Province of KwaZulu-Natal as contemplated in section 132 of the Constitution;

“**facility**” means any premises, space or equipment set up to fulfill a particular function, or at , in, or on which a particular service is available;

“**financial interest**” means ownership of shares in a company, a member’s

interest in a close corporation, an interest in a partnership and, in respect of business or undertaking, any interest which enables the holder thereof to share in the profits and income of such business or undertaking;

“**Gazette**” means the official *Provincial Gazette* of the Province of KwaZulu-Natal;

“**goods**” means goods, as defined in section 1 of the Consumer Protection Act, 2008 (Act No. 68 of 2008);

“**Head of Department**” means the most senior officer of the department in the Provincial Government of KwaZulu-Natal responsible for consumer affairs;

“**investigator**” means a person appointed in terms of section 31(1)(a);

“**Member of the Executive Council for Finance**” means the member of the Executive Council of the Province of KwaZulu-Natal responsible for finance;

“**Office**” means the KwaZulu-Natal Office of the Consumer Protector established in terms of section 5(1);

“**office bearer**” means –

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

“**ombud with jurisdiction**” means an ombud with jurisdiction, as defined in

section 1 of the Consumer Protection Act, 2008 (Act No. 68 of 2008);

“**person**” means a natural or a juristic person, a group of such persons or a corporate body, unless the context indicates a contrary meaning;

“**Portfolio Committee**” means the Portfolio Committee of the Provincial Legislature responsible for economic development and tourism;

“**premises**” means land, or any building, structure, vehicle, ship, boat, vessel, aircraft or container;

“**prescribed**” means prescribed by regulation, and “**prescribe**” has a corresponding meaning;

“**price**” means a price, as defined in section 1 of the Consumer Protection Act, 2008 (Act No. 68 of 2008);

“**prohibited conduct**” means an act or an omission in contravention of this Act;

“**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;
- (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;

“**Province**” means the province of KwaZulu-Natal established in terms of section 103 of the Constitution and “**provincial**” has a corresponding meaning;

“**Provincial Legislature**” means the Legislature of the Province of KwaZulu-Natal as contemplated in section 105 of the Constitution and having the

legislative authority for the Province as contemplated in section 104(1) of the Constitution;

“public servant” means a public servant as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and includes a municipal employee;

“regulations” means regulations made in terms of this Act;

“regulatory authority” means an organ of state or entity established in terms of national or provincial legislation responsible for regulating an industry, or sector of any industry;

“respondent” means a person or firm against whom a complaint or application has been initiated in terms of this Act;

“responsible Member of the Executive Council” means the Member of the Executive Council of the Province of KwaZulu-Natal responsible for consumer affairs;

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

“Revenue Fund” means the Provincial Revenue Fund established in terms of section 226 of the Constitution;

“service” means service, as defined in section 1 of the Consumer Protection Act, 2008 (Act No. 68 of 2008);

“service provider” means a person who promotes, supplies or offers to supply any service;

“supplier” means a person who market any goods or services;

“**supply**” means to supply, as defined in section 1 of the Consumer Protection Act, 2008 (Act No. 68 of 2008);

“**this Act**” includes the regulations; and

“**transaction**” means a transaction as defined in section 1 of the Consumer Protection Act, 2008 (Act No. 68 of 2008).

CHAPTER 2 OBJECTS OF ACT, EXEMPTIONS AND FUNCTIONS OF RESPONSIBLE MEMBER OF EXECUTIVE COUNCIL

Objects of Act

2. The objects of this Act are –

- (a) to provide for a consistent, predictable and effective regulatory framework of consumer complaints in the Province;
- (b) to provide for mechanisms to foster consumer confidence;
- (c) to provide mechanisms for the protection of consumers in all areas of the Province whilst also aiming at promoting performance and competitiveness in the market place;
- (d) to lay a solid foundation for leveling the economic playing field between the historical vulnerability of consumers and the power and influence of business;
- (e) to promote and advance the social economic welfare of consumers in the Province; and
- (f) to provide for an accessible, consistent, harmonised, affective and effective system of redress for consumers in the Province.

Exemptions

3. This Act does not apply to –

- (a) an officer as defined in section 1(1) of the Customs and Excise Act, 1964 (Act No. 91 of 1964), in the performance of his or her functions;
- (b) a sheriff or any officer of a court acting in terms of an order of a court; and
- (c) a judge or magistrate, acting in the performance of his or her functions.

Functions of responsible Member of Executive Council**4. The responsible Member of the Executive Council must –**

- (a) within 12 months after the coming into operation of the Act, –
 - (i) develop a provincial policy and norms and standards pertaining to consumer matters and affairs;
 - (ii) establish and set guidelines for the conduct of business regarding consumer matters and affairs in the Province;
- (b) where necessary, establish a social responsibility programme in respect of consumer issues; and
- (c) perform such other functions as may be assigned to him or her in terms of this Act.

CHAPTER 3
AGENCIES FOR CONSUMER PROTECTION IN KWAZULU-NATAL

Establishment of KwaZulu-Natal Office of Consumer Protector

5.(1) Subject to section 84 of the Consumer Protection Act, 2008 (Act No. 68 of 2008), an office to be known the KwaZulu-Natal Office of the Consumer Protector, is hereby established.

(2) The Office contemplated in subsection (1) is not a juristic person.

(3) The responsible Member of the Executive Council must, in terms of the relevant provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994), appoint a Consumer Protector as head of the Office of the Consumer Protector at the level determined by the responsible Member of the Executive Council.

(4) Where the Consumer Protector is unable to discharge his or her duties for whatever reason, the responsible Member of the Executive Council must appoint a person as Acting Consumer Protector pending the appointment of a full-time Consumer Protector.

(5) The administrative and secretarial work incidental to the performance of the functions of

the Office must be performed by officers in the Department designated and assigned for such purpose by the Head of Department.

(6) All staff members designated and assigned to provide administrative and secretarial support to the Office as contemplated in subsection (5), are subject to the control and the direction of the Consumer Protector.

(7) The Office may utilise the services of persons seconded or transferred from the public service in accordance with the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

(8) Where the need arises, the Consumer Protector may, in the performance of his or her duties and functions, be assisted by any person or body whose services may be obtained by him or her, on such terms and conditions and for such period as may be agreed upon, for the purposes of conducting a particular investigation on behalf of the Consumer Protector.

(9) A person referred to in subsection (8) may –

- (a) be dispatched to any part of the Province or Republic to conduct an investigation contemplated in subsection (8); and
- (b) be paid such remuneration, allowances and expenses as may be determined by the responsible Member of the Executive Council in consultation with the Member of the Executive Council for Finance.

Objects of Office of Consumer Protector

6. The objects of the Office of Consumer Protector are –

- (a) to ensure the provision of a consistent, predictable and effective regulatory framework of consumer complaints in the Province;
- (b) to foster consumer confidence in the Province;
- (c) to ensure that the mechanisms provided to protect consumers in terms of this Act are in place;
- (d) to ensure that the foundation for leveling the economic playing field between historically vulnerable consumers and business is in place;

(e) to ensure the promotion and advancement of the social economic welfare of consumers in the Province; and

(f) to ensure that an accessible, consistent, harmonised, affective and effective system of redress is provided for consumers in the Province.

Powers, duties and functions of Office of Consumer Protector

7.(1) The Office of the Consumer Protector must –

(a) receive and investigate consumer complaints in accordance with this Act;

(b) facilitate the mediation or conciliation of disputes arising in terms of this Act between or among consumers, persons resident, or persons carrying on business, within the Province;

(c) refer disputes contemplated in paragraph (b) to the relevant provincial Consumer Tribunal;

(d) make recommendations to the responsible Member of the Executive Council and take remedial action in respect of complaints lodged with the Office;

(e) advise the responsible Member of the Executive Council on any matter referred to the Office by the responsible Member of the Executive Council;

(f) investigate and make recommendations to the responsible Member of the Executive Council, regarding any matter relating directly or indirectly to consumer matters, affairs or issues in the Province;

(g) advise the responsible Member of the Executive Council on the development of a social responsibility programme aimed at promoting and advancing the social economic welfare of consumers in the Province;

(h) assist the responsible Member of the Executive Council in formulating policy and in establishing norms and standards in the Province, as contemplated in section 4(a)(i) of this Act;

(i) collaborate with national, provincial and international stakeholders and participate in all educational programmes aimed at promoting awareness to the stakeholders in the consumer industry with regard to handling and dealing with consumers;

(j) initiate and participate in educational programmes aimed at reducing the abuse and exportation of consumers in the Province;

(k) assist and advise the responsible Member of the Executive Council on

the development of a programme in order to pursue the objects of the Act set out in section 2;

(l) within the framework of national and provincial consumer policies, assist and advise the responsible Member of the Executive Council with regard to advising and guiding –

(i) the stakeholders in the consumer industry, consumers and organizations or institutions whose activities or aims have an impact on or relate to consumer matters, affairs or issues in the Province; and

(ii) the business unit within the Department responsible for small business development, co-operatives, local economic development and economic empowerment, and similar business units within other departments in the Province; and

(iii) business and further ensuring that business complies with the standing policies and legislation pertaining to consumers; and

(m) perform such other functions as may be assigned to it in terms of this Act.

(2) In addition to the powers, duties and functions contemplated in subsection (1), the Office must, after 31 March of each year, submit to the responsible Member of the Executive Council, an annual report on its functions during the year ending including the activities as contemplated in subsection (1).

(3) The responsible Member of the Executive Council must table a copy of the annual report submitted in terms of subsection (1), to the Provincial Legislature within 14 days after receipt thereof.

Establishment of Consumer Tribunals

8.(1) The responsible Member of the Executive Council must, within 12 months after the coming into operation of the Act, by notice in the *Gazette*, establish one or more Consumer Tribunals for the Province.

(2) A Consumer Tribunal referred to in subsection (1) –

(a) is established for the area described in the notice; and

(b) has its seat at such place mentioned in the notice.

- (3) The responsible Member of the Executive Council may by notice in the *Gazette* –
- (a) amend the area for a Consumer Tribunal contemplated in subsection (2); or
 - (b) withdraw the notice contemplated in subsection (1) and abolish a Consumer Tribunal contemplated in subsection (1);

(4) The responsible Member of the Executive Council may, subject to section 10(1)(b), determine that, in relation to particular proceedings, a Consumer Tribunal sits at a place other than the seat of that Consumer Tribunal.

Objects of Consumer Tribunal

9. The objects of a Consumer Tribunal are –
- (a) to receive, hear and decide on any consumer matter; and
 - (b) to dispose of any consumer complaint or dispute.

Powers, duties and functions of Consumer Tribunal

- 10.(1) A Consumer Tribunal must –
- (a) receive, hear, consider and decide on any consumer complaint which is before it by virtue of proceedings contemplated in this Act;
 - (b) sit on such days and during such hours and at such place as the presiding officer or Chairperson, in consultation with the Consumer Protector, may determine;
 - (c) hold and resume sittings at such time and place throughout the areas of the Province as the presiding officer or the Consumer Protector may determine;
 - (d) apply the existing law of South Africa in the assessment of a consumer complaint or dispute;
 - (e) lay down the general principles to govern conflict resolution between consumers and business;
 - (f) order the Consumer Protector to record, in the list of adverse notations to be maintained and kept by the Office, the name of the business, the name of person conducting such business and the finding of a Consumer Tribunal in respect of subsection (2)(a), (b) and (c); and

(g) exercise any other powers and perform the functions and duties assigned to it in terms of this Act.

(2) A Consumer Tribunal may –

- (a) award costs, on the scale to be prescribed or in the amount determined by the Consumer Tribunal, against any person found liable to the consumer by virtue of any unlawful conduct, by conduct or omission in terms of this Act or under any existing law;
- (b) with regard to a consumer complaint relating to a hard bargain or conduct which the consumer rightly believes to be inequitable, unfair or grossly unreasonable, make a finding to that effect;
- (c) at the hearing of a consumer complaint, if it is satisfied that the complaint is lodged frivolously or vexatiously, award costs against such consumer; and
- (d) generally deal with all matters necessary or incidental to the performance of its functions in terms of this Act.

(3) The presiding officer of a Consumer Tribunal must as soon as practicable, after 31 March in each year, submit to the responsible Member of the Executive Council an annual report on the activities of the Consumer Tribunal.

(4) The report submitted to the responsible Member of the Executive Council in terms of subsection (3) must include a list of adverse notations contemplated in section 10(1)(f).

(5) The responsible Member of the Executive Council may require a Consumer Tribunal to submit additional reports to him or her as the responsible Member of the Executive Council may require from time to time.

(6) The responsible Member of the Executive Council must submit to the Provincial Legislature a copy of the annual report contemplated in subsection (3), within 14 days after its receipt.

Composition of Consumer Tribunal

11.(1) A Consumer Tribunal consists of –

- (a) six and not more than eight members appointed by the responsible Member of the Executive Council; and
- (b) the Chairperson, appointed in terms of section 12 of this Act.

(2) The membership contemplated in subsection (1) must include –

- (a) a Chairperson, who must be an admitted Attorney or Advocate or retired magistrate or law lecturer at a university with at least five years experience in the legal profession or the administration of justice;
- (b) a deputy Chairperson, who must also be an admitted Attorney or Advocate or retired magistrate or law lecturer at a university with at least three years experience in the legal profession or the administration of justice;
- (c) one person having knowledge and experience in the field of consumer advocacy, economics and commerce;
- (d) one person who has knowledge and experience in the consumer industry and not actively involved nor having financial interest therein, whether directly or indirectly;
- (e) one person as a secretary of the Consumer Tribunal to perform administrative work incidental to the functions of the Consumer Tribunal; and
- (f) one such other person to assist the secretary of the Consumer Tribunal as may be necessary.

(3) In appointing the members to a Consumer Tribunal, the responsible Member of the Executive Council must ensure that historic imbalances are addressed.

(4) The responsible Member of the Executive Council must, by notice in two newspapers circulating widely in the Province and using any other method designated to reach the greatest number of residents in the Province, invite persons or any interested parties within the Province to nominate candidates for appointment to a Consumer Tribunal.

(5) The notice contemplated in subsection (4), must specify –

- (a) the nomination procedure;
- (b) the requirements for nominations; and
- (c) the closing date for the nominations.

(6) The responsible Member of the Executive Council must consider all nominations submitted in response to the notice, and may appoint a selection panel consisting of no more than four senior departmental officials to review all the nominations and make recommendations to the responsible Member of the Executive Council regarding the candidates to a Consumer Tribunal.

(7) The responsible Member of the Executive Council must cause the names of the persons appointed to a Consumer Tribunal to be published in the *Gazette* and in at least two newspapers circulating in the Province, immediately after such persons have been notified, in writing, of their appointment to a Consumer Tribunal.

(8) The responsible Member of the Executive Council must, within two months after the appointment of members, provide the Portfolio Committee with the names of the appointed members including the term of their appointment.

(9) This section applies, with the necessary changes, to the filling of a vacancy on a Consumer Tribunal.

Disqualification from being appointed to Consumer Tribunal

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

- (a) is or becomes an unrehabilitated insolvent;
- (b) is or has been declared by the competent court to be of unsound mind;
- (c) is directly or indirectly interested in any contract with the Consumer Protector or Consumer Tribunal and fails to declare his or her interest and the nature thereof in a manner required by this Act;
- (d) a person is under curatorship;
- (e) has at any time been removed from an office of trust on account of misconduct involving theft or fraud;
- (f) has been convicted and sentenced to a term of imprisonment without the option of a fine, except that the responsible Member of the Executive Council may, upon such nominee disclosing full details of the offence in an affidavit, condone a conviction that is consistent with section 106(1)(e) of the Constitution:

Provided that a disqualification in terms of this subsection ends five years after the sentence has been completed;

(g) fails to disclose an interest in accordance with section 13 or attended or participated in the proceedings of a Consumer Tribunal while having an interest contemplated in the said section;

(h) is a public servant;

(i) is an office bearer;

(j) is not a citizen of the Republic; or

(k) is not resident in the Province.

Declaration of financial or other interests of members of Consumer Tribunal

13.(1) A person who has been nominated to serve on a Consumer Tribunal in terms of section 11 must, within 10 days of being nominated, submit a written declaration to the responsible Member of the Executive Council of all direct or indirect interests in any company, close corporation and of any other business interests.

(2) Any failure by a nominee to disclose financial and other interests in terms of subsection (1) disqualifies such nominee in terms of section 12 from being appointed to a Consumer Tribunal.

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

(4) Where a member of a Consumer Tribunal acquires interest in any company, close corporation or other business interests, at anytime during his or her tenure as a member of the Consumer Tribunal he or she must, within 10 days of the date of the acquisition of such an interest, submit a written declaration to the responsible Member of the Executive Council of such an interest.

(5) Any failure on the part of the member to disclose his or her interests as contemplated in subsections (3) and (4) results in the termination of appointment of such member in

terms of section 16(2).

Failure to declare financial or other interests by member of Consumer Tribunal

14.(1) A member of a Consumer Tribunal who fails to make a declaration envisaged in section 13 may, subject to subsection (2), be disqualified from remaining on the Consumer Tribunal.

(2) The responsible Member of the Executive Council, on becoming aware that a member of a Consumer Tribunal has failed to comply with the provisions of section 13, must investigate the matter and consider appropriate disciplinary action.

Term of office of member of Consumer Tribunal

15.(1) A member is appointed to serve on a Consumer Tribunal for a period of five years or such lesser period as the responsible Member of the Executive Council may determine.

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

Vacancies, removal from office and resignation of members of Consumer Tribunal

16.(1) A member of a Consumer Tribunal must vacate office if he or she becomes subject to a disqualification contemplated in section 12.

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

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

(4) Whenever a vacancy occurs on a Consumer Tribunal, the responsible Member of the Executive Council must, subject to section 11, appoint a person to fill such vacancy for the unexpired portion of the period of office of the member in whose place such person is appointed.

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

(6) In the event that the responsible Member of the Executive Council exercises his or her powers in terms of subsection (5), he or she may, notwithstanding the procedure for the appointment of the members of a Consumer Tribunal set out in section 11, but subject to subsections (2) and (3) of section 11, appoint persons to serve as members of a Consumer Tribunal on an interim basis: Provided that –

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

(b) the responsible Member of the Executive Council, must, subject to section 11, appoint the permanent members of the Consumer Tribunal within 90 days of the appointment contemplated in paragraph (a) of this subsection.

Temporary suspension of member of Consumer Tribunal

17.(1) The responsible Member of the Executive Council may, after applying the relevant rules of natural justice, suspend a member of a Consumer Tribunal on full remuneration if –

(a) the member is alleged to have committed a serious offence; and

(b) the responsible Member of the Executive Council reasonably believes that the presence of such member at the Consumer Tribunal might jeopardise any investigation and the enquiry into the alleged misconduct, or endanger the well-being or safety of any person or state property: Provided that a suspension of this nature is a precautionary measure which does not constitute a finding.

(2) If a member is suspended as a precautionary measure contemplated in subsection (1), the responsible Member of the Executive Council must hold the enquiry within 60 days from the effective date of such suspension.

Constitution of Consumer Tribunal

18.(1) Subject to subsection (4), the quorum of a Consumer Tribunal is three members.

(2) Except where otherwise provided, a decision of the majority of members of a Consumer Tribunal present is the decision of the Consumer Tribunal.

(3) A member of a Consumer Tribunal must recuse himself or herself from proceedings on the grounds of any interest or association likely to affect his or her impartial consideration of the matter, or which is likely to be seen to do so.

(4) If at any stage during the proceedings before a 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; and
- (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 remaining members.

(5) In the event that the proceedings continue before an even number of members and there is a split decision, the chairperson's decision is final.

Remuneration of members of Consumer Tribunal

19.(1)(a) A member of a Consumer Tribunal may be paid such remuneration and allowances as may be determined by the responsible Member of the Executive Council in consultation with the Member of the Executive Council for Finance.

(b) A member of a Consumer Tribunal who receives remuneration, allowances or other

benefits by virtue of his or her post or employment in –

- (i) the national government;
- (ii) a provincial government;
- (iii) a municipality; or
- (iv) a corporation, body or institution in which the national or a provincial government has a controlling interest,

and who continues to receive such remuneration, allowances or other benefits while serving as a member of a Consumer Tribunal, may only receive remuneration and allowances referred to in paragraph (a) to the extent required to place such member in the financial position he or she would have been were it not for such post or employment.

(2)(a) A member of a Consumer Tribunal and a person who has been co-opted to the Consumer Tribunal may, in respect of his or her functions as a member or co-opted member, receive reimbursement for reasonable actual subsistence and traveling expenses necessitated by the actual attendance of a meeting or duties of the Consumer Tribunal;

(b) The responsible Member of the Executive Council, in consultation with the Member of the Executive Council for Finance must determine procedures, including control measures, for the management, handling and processing of claims for subsistence and traveling expenses contemplated in paragraph (a).

Expert and other assistance to Consumer Tribunal

20.(1) A Consumer Tribunal may appoint such experts or other persons as service providers as it may deem necessary with a view to assist it in the exercise and performance of its powers, duties and functions.

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

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

Proceedings of Consumer Tribunal

21.(1) The proceedings before a Consumer Tribunal must –

- (a) be initiated by summons in the prescribed form which must be served on the person concerned in any manner as may be prescribed, which may include service outside the Province;
- (b) be open to the public;
- (c) be prosecuted by any person who must have been appointed by the Office;
- (d) allow any person who may be adversely affected by any proceedings to appear in person or be represented or assisted by an attorney or advocate or any other person; and
- (e) allow a person against who the proceedings are instituted or who may be affected by the proceedings or the decision to appear in person to be represented or assisted by an advocate, attorney or any other person.

(2) A Consumer Tribunal may direct that the public or any member thereof may not attend any proceedings of the Consumer Tribunal or portion thereof, if this is justified in the interest of –

- (a) the conduct of the proceedings or the consideration of the matter in question;
or
- (b) the protection of the privacy of any person alleged to be involved in any unfair business practices or has contravened the provisions of the Act or of the confidentiality of any information relating to that person.

(3) A Consumer Tribunal must keep the records of the proceedings.

(4) Any person who has an interest in any proceedings that have taken place, may in the prescribed manner, obtain copies of the record contemplated in subsection (3).

Summoning of witnesses and production of documents before Consumer Tribunal

22.(1) For the purpose of ascertaining any matter relating to proceedings before a Consumer Tribunal, a Consumer Tribunal may –

(a) by summons addressed to any person, including the person against whom a consumer complaint has been made, in the prescribed form under the hand of the secretary to the Consumer Tribunal, and served in the prescribed manner –

(i) subpoena such person to appear before the Consumer Tribunal at a time and place specified in such summons, to give evidence; and

(ii) order such person to produce any book, document or object in the possession or custody or under the control of such person and which may be reasonably necessary, material and relevant in connection with the proceedings before the Consumer Tribunal;

(b) order such person to take an oath or make an affirmation; and

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

(2) The oath or affirmation contemplated in subsection (1)(b) may be administered by any person qualified to administer an oath or accept an affirmation in terms of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963).

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

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

(b) refuses to take the oath or make an affirmation;

(c) refuses to answer, or to answer fully and satisfactorily to the best of his or her knowledge and belief any question lawfully put to him or her;

(d) fails to produce any book, document or object in his or her possession or custody or under his or her control, which he or she was required to produce; or

(e) makes a false statement before the Consumer Tribunal knowing such statement to be false or not knowing or believing it to be true.

(4) A person who has been summoned to appear in terms of this section may not be

entitled to refuse to answer any question or to produce any book, document or object on the ground that he or she would thereby be exposed to a criminal charge: Provided that, to the extent that such answer, book, document or article does expose the person concerned to a criminal charge, no evidence thereof may be admissible in any criminal proceedings against that person, except where that person stands trial on a charge contemplated in subsection (2)(c) to (e), or in section 319(3) of the Criminal Procedure Act, 1955 (Act No. 56 of 1955).

(5) A person who has attended the proceedings of a Consumer Tribunal as a witness is entitled to the prescribed witness fee.

CHAPTER 4 REALISATION AND PROTECTION OF CONSUMER RIGHTS

Part 1 General

Consumer rights

23.(1) Every consumer has a right –

- (a) to have access to basic goods and services such as adequate food, clothing, housing, health care, education, clean water and sanitation;
- (b) to safety from and protection against production processes, products and services that are dangerous to health or life;
- (c) to be informed of, and to be provided with, the facts needed to make informed choices and to be protected against dishonest or misleading advertising and labeling;
- (d) to choose from a range of products and services offered at competitive prices with an assurance of satisfactory quality;
- (e) to have his or her interests represented in the making and execution of government policy and the development of products and services;
- (f) to redress or to receive a fair settlement of just claims, including compensation for misrepresentation, or shoddy goods or services;
- (g) to education as a consumer and to acquire knowledge and skills needed to make informed and confident choices about goods and services, while being aware of basic consumer rights and responsibilities and how to act on them; and

(h) to live and work in a healthy environment that is not threatening to the well-being of present and future generations.

(2) The Office must take reasonable steps in ensuring that the rights contemplated in subsection (1) are realised by all consumers in the Province.

Realisation of consumer rights

24. Any of the following persons, may in the manner provided for in this Act, approach a Consumer Tribunal or the Consumer Protector where his or her rights in terms of this Act have been infringed, impaired or threatened or where any prohibited conduct has occurred or is occurring –

- (a) a person acting on his or her own behalf;
- (b) an authorised person acting on behalf of another person who cannot act in his or her own name;
- (c) a person acting as a member of, or in the interest of, a group or class of affected persons;
- (d) a person acting in the public interest, where the leave of the Consumer Protector or the Consumer Tribunal, as the case may be, has been granted for such person to act in the public interest; or
- (e) an association acting in the interest of its members.

Protection of consumer rights

25. If a consumer has exercised, asserted or sought to uphold any right set out in this Act or in an agreement or transaction with a supplier, the supplier may not, in response –

- (a) discriminate directly or indirectly against such consumer, compared to the supplier's treatment of any other consumer who has exercised, asserted or sought to uphold such a right;
- (b) penalise the consumer;
- (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, or terminate an agreement with the consumer.

Enforcement of rights by consumer

26.(1) A person contemplated in section 25 may seek to enforce any rights in terms of this Act or in terms of a transaction or agreement, or otherwise resolve a dispute with a supplier by –

- (a) referring the matter directly to the Consumer Protector;
- (b) referring the matter to a Consumer Tribunal, if such a direct referral is permitted by this Act in the case of the particular dispute; or
- (c) referring the matter to the applicable ombud with jurisdiction.

(2) Where the matter contemplated in subsection (1) does not concern a supplier contemplated in subsection (1)(c), a person contemplated in section 25 may seek to enforce any rights in terms of this Act or in terms of a transaction or agreement, or otherwise resolve a dispute with a supplier by –

- (a) referring the matter to the applicable industry ombud, accredited in terms of section 82(6) of the Consumer Protection Act, 2008 (Act No. 68 of 2008), if the supplier is subject to any such ombud;
- (b) referring the matter to another dispute resolution agent contemplated in section 70 of the Consumer Protection Act, 2008 (Act No. 68 of 2008);
- (c) filing a complaint with the Consumer Commission office in accordance with section 7 of the Consumer Protection Act, 2008 (Act No. 68 of 2008); or
- (d) approaching a Tribunal with jurisdiction over the matter, if all other remedies available to that person in terms of Consumer Protection Act, 2008 (Act No. 68 of 2008), has been exhausted.

*Part 2**Lodging and investigation of consumer complaints***Lodging complaint with Office of Consumer Protector**

27.(1) Any consumer may in the prescribed manner lodge a consumer complaint with the Office of the Consumer Protector.

(2) A consumer complaint contemplated in subsection (1) which is not in writing must be

reduced to writing by the Office.

(3) The Office may open a file or dossier concerning the consumer complaint and must maintain an index and filing system of consumer complaints.

Investigation procedure

28.(1) Upon receiving a consumer complaint in terms of this Act, the Consumer Protector must direct a person in the service of the Office of the Consumer Protector or an investigating officer, to investigate the complaint as quickly as practicable.

(2) The person or investigating officer referred to in subsection (1) must make a preliminary assessment of the consumer complaint as contemplated in this Act.

(3) The Office may not cause any person to be summoned for investigation until a preliminary assessment has been made of the consumer complaint.

(4) If, upon consideration of the preliminary assessment, the Consumer Protector is of the opinion that the consumer complaint may be more appropriately dealt with by another competent authority, he or she may at any time refer any investigation or aspect thereof to such other authority, including an authority in another province: Provided that the Office may at any time resume the investigation in relation to that matter.

Preliminary assessment of consumer complaint

29.(1) The Office of the Consumer Protector must make a preliminary assessment of the consumer complaint lodged in terms of section 27(1).

(2) The Office may at any time during its investigations, alter its preliminary assessment, *inter alia* in light of new evidence or law, and proceed according to an amended assessment.

(3) The Office must assess whether the consumer complaint lodged in terms of section 27(1), is being lodged by a *bona fide* consumer.

(4) The complainant bears the onus of establishing that he or she is a *bona fide* consumer.

(5) If the complainant contemplated in subsection (3) is not a *bona fide* consumer, the Office may not investigate the complaint.

(6) The Office must assess whether the consumer complaint against a business, or a person purporting to carry on business or a business practice, conveys the potential of criminal liability or civil liability.

Summoning and questioning of persons and production of books and documents

30.(1) For the purposes of an investigation contemplated in section 28(1) the Consumer Protector, or a person in the service of the Office of the Consumer Protector, authorised by the Consumer Protector, may –

(a) summon any person who is believed to –

- (i) be able to furnish any information on the subject of the investigation; or
- (ii) to have in his or her possession or under his or her control any book, document or other object relating to that subject,

to appear before a person in the service of the Office at a time and place specified in the summons, to be questioned or to produce that book, document or other object; and

(b) question that person, under oath or affirmation administered by the Consumer Protector or another person in the service of the Office of the Consumer Protector, authorised by the Consumer Protector, and examine or retain for further information or for safe custody such a book, document or other object.

(2) A summons referred to in subsection (1)(a) must –

- (a) be in the prescribed form citing the person summoned;
- (b) contain particulars of the matter in connection with which the person concerned is required to appear;
- (c) be signed by the Consumer Protector or another person in the service of the Office authorised by the Consumer Protector; and

(d) be served in the prescribed manner.

(3) A person appearing by virtue of subsection (1)(a) –

(a) may be assisted at the examination by any person of his or her choice; and,
(b) is entitled to receive from moneys appropriated by law for such purpose, as witness fees, an amount equal to the amount which he or she would have received as witness fees had he or she been summoned to attend criminal proceedings in the High Court held at the place mentioned in the summons in question.

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

(a) fails without sufficient cause to attend at the time and place specified in the summons, or to remain in attendance until the conclusion of the proceedings or until he or she has been excused from further attendance by the Consumer Protector; or
(b) refuses to take the oath or make an affirmation.

(5) A person questioned in terms of subsection (1), must answer each question truthfully and to the best of that persons ability, but the person is not obliged to answer any question if the answer is self-incriminating.

(6) No self-incriminating answer given or statement made to a person exercising any power in terms of this section is admissible as evidence against the person who gave the answer or made the statement in criminal proceedings, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in subsection (5), and then only to the extent that the answer or statement is relevant to prove the offence charged.

Appointment of investigators

31.(1) The Consumer Protector –

(a) may appoint any suitable employee of the Office or any other suitable person employed by the State, as an investigator; and

(b) must issue each investigator with a certificate in the prescribed form stating that the person has been appointed as an investigator in terms of this Act.

(2) When an investigator performs any function of an investigator in terms of this Act, the investigator –

(a) must be in possession of a certificate of appointment issued to that investigator in terms of subsection (1);

(b) must show that certificate to any person who –

(i) is affected by the investigator's actions in terms of this Act; and

(ii) requests to see the certificate; and

(c) has the powers of 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.

(3) The Consumer Protector may appoint or contract with any suitably qualified person as an investigator to conduct research, audits, inquiries or other investigations on behalf of the Consumer Protector.

(4) A person appointed in terms of subsection (3) is not an investigator as contemplated in subsection (1).

(5) Subject to the laws governing the public service, the Member of the Executive Council, in consultation with the Member of the Executive Council for Finance, may appoint persons in the service of the Office or any other suitable persons as investigating officers, who must be subject to the control and directions of the Consumer Protector.

(6) The Consumer Protector is deemed to have been appointed as an investigating officer.

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

(8) An investigating officer must, when performing any function in terms of this Act, have his or her certificate of appointment in his or her possession.

Search and seizure

32.(1) In order to obtain any information required by the Office of the Consumer Protector in relation to an investigation, an investigating officer may, subject to the provisions of this section, during office hours enter any premises on or in which any book, document or other object connected with that investigation is or is suspected to be, and may –

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

(2) Unless the owner or person in charge of the premises concerned has consented thereto in writing, an investigating officer may enter premises and exercise any power contemplated in subsection (1) only under a search warrant, which may only be issued by a magistrate or a judge if it appears from information given to the magistrate or judge on oath or solemn affirmation that there are reasonable grounds to suspect that a book, document or other object which may afford evidence for the investigation is on or in those premises.

(3) A search warrant contemplated in subsection (2) must –

- (a) authorise an investigating officer mentioned in the warrant to enter the

premises identified in the warrant for the purpose of exercising any power contemplated in subsection (1);

(b) be executed by day, unless the magistrate or judge specifically authorises the execution thereof by night; and

(c) be of force until it is executed, cancelled by a competent court, or a period of one week from the day of its issue expires, whichever occurs first.

(4) An investigating officer executing a search warrant under this section must, before such execution, upon demand by any person whose rights may be affected –

(a) show that person his or her certificate of appointment; and

(b) hand to that person a copy of the warrant.

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

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

(a) obstructs or hinders an investigating officer in the performance of his or her functions in terms of this section; or

(b) after enquiry having been made of him or her under subsection (1)(a), or having been requested for information or an explanation under subsection (1)(b) or (c), gives an answer or information or an explanation which is false or misleading, knowing it to be false or misleading.

Negotiation of arrangement to resolve consumer complaint

33.(1) The Office of the Consumer Protector may negotiate and conclude an arrangement with any person for –

(a) the discontinuance or avoidance of the business practice which gave rise to the consumer complaint;

(b) the reimbursement, with or without interest, to the affected consumer;

(c) the discontinuance or avoidance of any aspect of the business practice

which gave rise to the consumer complaint; or

(d) any other matter relating to the business practice which gave rise to the consumer complaint.

(2) An arrangement contemplated in subsection (1) –

(a) may be concluded at any time after the institution of an investigation, but before the making of an order by the High Court in terms of section 37;

(b) must be in writing and signed by the parties thereto; and,

(c) may be subject to confirmation by the High Court in accordance with section 37.

Institution of proceedings after completion of investigation

34.(1) Upon completion of an investigation and subject to subsection (6), the Consumer Protector may institute proceedings in support of the consumer in the Consumer Tribunal if it has jurisdiction over the person alleged to be responsible for the business practice which gave rise to the consumer complaint.

(2) For purposes of such proceedings, the Consumer Protector is deemed to have *locus standi*.

(3) If, in the opinion of the Consumer Protector, a consumer complaint relating to a hard bargain or a question of equity raises a constitutional law issue, the Office may institute proceedings in support of the consumer in the High Court;

(4) For purposes of the proceedings contemplated in subsection (3), the Consumer Protector is deemed to have *locus standi* in such proceedings;

(5) Whenever the Office institutes proceedings in the Consumer Tribunal or in the High Court, the Consumer Protector is cited as First Plaintiff or First Applicant and the consumer is cited as Second Plaintiff or Second Applicant, as the case may be.

(6) The Consumer Protector must choose the appropriate forum in which to prosecute the matter by taking into account the provisions of this Act, with particular regard to the

expeditious completion of the litigation and effective redress for the consumer.

(7) When choosing the appropriate forum as contemplated in subsection (6), the Consumer Protector must take into account the costs of the litigation to the parties concerned and accordingly commence proceedings in the forum where costs would be the least onerous to a defendant.

(8) No proceedings may be instituted by the Consumer Protector unless the consumer –

- (a) signs a document in which the consumer confirms the veracity of the complaint and indemnifies the Consumer Protector; and
- (b) signs a document indemnifying the Office from the consequences of any false evidence which may be adduced by him or her.

Part 3
Adjudication and review of consumer complaints

Review panel

35.(1) If the Office of the Consumer Protector decides neither to institute proceedings nor to refer the matter to another authority nor to proceed before a Consumer Tribunal, the Consumer Protector must, in writing, notify the consumer and the person or business against whom the consumer complaint was lodged of such a decision together with the reasons therefor.

(2) The reasons for the decision contemplated in subsection (1) must accompany such notice contemplated in subsection (1).

(3) If the consumer is aggrieved by the decision of the Consumer Protector not to institute proceedings, the consumer may, within fourteen days of receipt of the decision, refer the decision for review to the Review Panel.

(4) The Review Panel referred to in subsection (1) must be situated at the Office.

(5) The Office must note the referral for a review and forthwith inform the responsible Member of the Executive Council of the need to convene a Review Panel.

(6) The responsible Member of the Executive Council must convene a Review Panel within fourteen days of the consumer seeking a review of the Consumer Protector's decision contemplated in sub-section (1).

(7) The Review Panel convened by the responsible Member of the Executive Council in terms of subsection (6), must be composed of an *ad hoc* committee of three persons with experience and knowledge of consumer matters.

(8) The persons contemplated in subsection (7), may be in the employ of the State but not employed in the Office.

(9) Subject to the laws governing the public service, a person appointed to the Review Panel who is not in the full-time service of the State must be appointed on such conditions and at such remuneration as may be prescribed by the responsible Member of the Executive Council, in consultation with the Member of the Executive Council responsible for Finance.

(10) Subject to the rules of natural justice, the Review Panel may consider the merits of the decision and any oral or written submissions, if any, by the consumer, the person or business against whom the consumer complaint was lodged and the Consumer Protector.

(11) The Review Panel may substitute its own decision for that of the Consumer Protector and order the Consumer Protector to institute proceedings or to confirm the decision of the Consumer Protector not to institute proceedings.

(12) The decision of the Review Panel taken in terms of subsection (11) is referred to as the review judgment.

(13) The review judgment contemplated in subsection (12) is final and binding on the consumer, the person or business against whom the consumer complaint was lodged and the Consumer Protector.

(14) The Review Panel must, in writing, inform the consumer, the person or business

against whom the consumer complaint was lodged and the Consumer Protector of the review judgment and must furnish each with a free copy of the review judgment.

Effect of review judgment

36. If the Review Panel orders the Consumer Protector to institute proceedings on behalf of a consumer, section 29 applies with the necessary changes required by the context.

CHAPTER 5 ARRANGEMENTS NEGOTIATED BY OFFICE OF CONSUMER PROTECTOR

Confirmation of arrangements negotiated by Office of Consumer Protector

37.(1) The Office may apply to the High Court for confirmation of an arrangement negotiated and concluded in terms of this Act.

(2) The High Court may, with due consideration of the interests of affected consumers and businesses and the parties concerned, issue an order –

- (a) confirming the arrangement;
- (b) confirming the arrangement with such amendments as may be agreed to by the parties concerned and subject to such conditions as the court may deem fit;
- (c) setting aside that arrangement if, after the parties involved in the arrangement have been given an opportunity to be heard, the court is satisfied that the arrangement will not ensure the discontinuance or avoidance of the business practice which gave rise to the consumer complaint.

(3) An order in terms of subsection (2) must be published in the *Gazette*.

CHAPTER 6 LAW ENFORCEMENT AND JUDICIAL PROCEEDINGS

Part 1 *Confidentiality, limitation of liability, waiver of benefits and civil remedies*

Confidentiality

38. No investigating officer or person in the service of the Office of the Consumer

Protector or performing duties for the Office may disclose any information acquired by him or her in the exercise or performance of any powers, functions or duties in terms of this Act, except –

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

Limitation of liability

39. No person, including the State, is liable in respect of anything done in good faith under this Act, save that the onus to establish good faith must be borne by such person or the State.

Waiver of benefits

40. Any agreement or contractual term purporting to exclude the provisions of this Act or to limit the application thereof is null and void.

Remedies

41. No provision of this Act may be construed as depriving any person of any civil remedy or right to institute any criminal prosecution.

Part 2 *Offences and penalties*

General offences

42.(1) A person is guilty of an offence if –

- (a) he or she as the owner or holder of any business or license to operate, allows an abuse of a consumer within his business premises;
- (b) he or she misrepresents himself or herself or any other person in the employ of such person in relation to goods or services, to the consumer.

(2) A member of a Consumer Tribunal, a member of staff, advisor, agent or other person

employed by or acting on behalf of the Consumer Tribunal is guilty of an offence if he or she directly or indirectly accepts any unauthorised fee or reward from any person in respect of or in connection with any service rendered or anything done or offered by the Consumer Tribunal.

(3) Any person is guilty of an offence if he or she, in respect of or in connection with any service rendered or anything done or offered by a Consumer Tribunal, bribes or attempts to bribe, or corruptly influences or attempts to corruptly influence, any member of staff or any adviser, agent or other person employed by or acting on behalf of the Consumer Tribunal.

(4) Any person who falsely claims that he or she is authorised to charge or collect fees on behalf of or by direction of a Consumer Tribunal is guilty of an offence.

Offences regarding hearing of Consumer Tribunal

43. A person who –

(a) fails to appear before a Consumer Tribunal on the date and at the time and place when called upon to do so in terms of section 22 without having appointed a person to so appear on his or her behalf;

(b) appears before a Consumer Tribunal in terms of section 22 but without the leave of the Chairperson fails to remain in attendance until the conclusion of the hearing or meeting;

(c) having in terms of section 22 been called upon to appear and give evidence, or to produce any book, plan or other document or article which such person may at the time have in his or her possession, fails or refuses to do so;

(d) having in terms of section 22 been required to give evidence, refuses to take the oath or make an affirmation; or

(e) wilfully disrupts a hearing or meeting of a Consumer Tribunal or wilfully hinders or obstructs a Consumer Tribunal or any member thereof in the performance of his or her functions,

is guilty of an offence.

Penalties**44.** Any person convicted of an offence –

- (a) in terms of section 42(2), (3) or (4), is liable to a fine or to imprisonment for a period not exceeding that determined by national legislation for corruption; or
- (b) in terms of sections 30(4), 32(6), 42(1) or 43, is liable to a fine or imprisonment for a period not exceeding 5 years, or both such fine and such imprisonment.

CHAPTER 7
GENERAL PROVISIONS

Regulations**45.(1)** The responsible Member of the Executive Council may make regulations regarding –

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

Executive Council deems it necessary or expedient to make regulations in order to achieve the objects of this Act.

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

Transitional arrangement

46. Any complaint lodged with the Consumer Business Unit of the Department made before the commencement of this Act in terms of any legislation whether repealed or amended, and the Regulations made in terms of that legislation, must be dispensed of and finalised in terms of this Act.

Short title and commencement

47.(1) This Act is called the KwaZulu-Natal Consumer Protection Act, 2010, and comes into operation on a date to be determined by the responsible Member of the Executive Council by notice in the *Gazette*.

(2) The responsible Member of the Executive Council may determine different dates for the coming into operation of different sections of this Act.

No. 26

14 November 2012

KWAZULU-NATAL WETSONTWERP OP VERBRUIKERSBESKERMING, 2010

Kennisgewing ooreenkomstig Reël 194 van die Staande Reëls van die KwaZulu-Natal Wetgewer

Kennisgewing geskied hiermee ooreenkomstig Reël 194 van die Staande Reëls van die KwaZulu-Natal Wetgewer dat die Kwazulu-Natal Wetsontwerp op Verbruikersbeskerming, 2010 soos hieronder uiteengesit, by die voorgemelde Wetgewer ingedien is en deur die Portfoliokomitee oor Ekonomiese Ontwikkeling en Toerisme orweeg sal word. Die publiek en ander belanghebbende groepe word uitgenooi om versoë oor die vermelde wetsontwerp in te dien, welke versoë gerig moet word aan:

Aandag: Mnr DN Dimba
Die Sekretaris
KwaZulu-Natal Legislature
Privaatsak X 9112
PIETERMARITZBURG
3200

Versoë moet haar nie later as 15 dae vanaf die datum van hierdie publikasie bereik nie.

N NAIDOO
Sekretaris van die KwaZulu-Natal Wetgewer

**KWAZULU-NATAL
WETSONTWERP OP VERBRUIKERSBESKERMING, 2010**

WETSONTWERP

Om voorsiening te maak vir die verwesenliking en beskerming van verbruikersregte in KwaZulu-Natal; om voorsiening te maak vir die instelling van die KwaZulu-Natal Kantoor van die Verbruikersbeskermer; om die oogmerke, bevoegdhede, pligte en funksies van die Kantoor van die Verbruikersbeskermer te bepaal; om voorsiening te maak vir die ondersoek van verbruikersklagtes; om voorsiening te maak vir vergoeding vir verbruikers; om voorsiening te maak vir verbruikeropvoeding en bewustheid van verbruikersregte en verantwoordelikhede; om voorsiening te maak vir die instelling van verbruikertribunale; om die oogmerke, bevoegdhede, pligte en funksies van verbruikertribunale te bepaal; en om voorsiening te maak vir aangeleenthede wat daarmee verband hou.

DAAR WORD soos volg deur die Wetgewer van die provinsie KwaZulu-Natal bepaal:–

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HOOFSTUK 1
OMSKRYWINGS**Omskrywings**

1. In hierdie Wet, tensy uit die konteks anders blyk, beteken –

“ampsdraer” –

- (a) 'n lid van die Nasionale Vergadering, die Nasionale Raad van Provinsies of die Kabinet;

- (b) 'n lid van 'n provinsiale wetgewer of uitvoerende raad van 'n provinsie;
- (c) 'n munisipale raadslid;
- (d) 'n diplomatieke verteenwoordiger van die Republiek wat nie 'n lid van die staatsdiens is nie;
- (e) 'n lid van die huis van tradisionele leiers; of
- (f) 'n nasionale of provinsiale ampsdraer van 'n politieke party, organisasie, liggaam, alliansie of beweging geregistreer ingevolge artikel 15 of 15A van die Wet op die Verkiesingskommissie, 1996 (Wet No. 51 van 1996);

“besigheid” –

- (a) die aanbied, verskaffing of beskikbaarmaking van enige kommoditeit; of
- (b) die uitnooding of ontvangs van enige belegging;

“Departement” die Departement in die Provinsiale Regering van KwaZulu-Natal verantwoordelik vir verbruikersake;

“Departementshoof” die mees senior beampte van die Departement in die Provinsiale Regering van KwaZulu-Natal verantwoordelik vir verbruikersake;

“diens” diens, soos omskryf in artikel 1 van die Wet op Verbruikerbeskerming, 2008 (Wet No. 68 van 2008);

“diensverskaffer” 'n persoon wat enige diens promoveer, verskaf of aanbied om te verskaf;

“fasiliteit” enige perseel, ruimte of toerusting ingestel om 'n besondere funksie te vervul, of waarby, waarin of waarop 'n besondere diens beskikbaar is;

“finansiële belang” eienaarskap van aandele in 'n maatskappy, 'n lid se belang in 'n beslote korporasie, 'n belang in 'n vennootskap en, ten opsigte van 'n besigheid of onderneming, enige belang wat die houer daarvan in staat stel om in die winste en inkomste van sodanige besigheid of onderneming te deel;

“**goedere**” goedere, soos omskryf in artikel 1 van die Wet op Verbruikerbeskerming, 2008 (Wet No. 68 van 2008);

“**Grondwet**” die Grondwet van die Republiek van Suid-Afrika, 1996;

“**hierdie Wet**” ook die regulasies;

“**hof**” enige hof bedoel in hoofstuk 8 van die Grondwet, buiten die Verbruikertribunaal;

“**Inkomstefonds**” die Provinsiale Inkomstefonds ingestel ingevolge artikel 226 van die Grondwet;

“**Kantoor**” die KwaZulu-Natal Kantoor van die Verbruikersbeskermer ingestel ingevolge artikel 5(1);

“**kleinhandelaar**” ten opsigte van sekere goedere, 'n persoon wat, in normale omstandighede, daardie goedere aan 'n verbruiker verskaf;

“**Koerant**” die amptelike *Provinsiale Koerant* van die provinsie KwaZulu-Natal;

“**Kommissie**” die Nasionale Verbruikerskommissie ingestel ingevolge artikel 85 van die Wet op Verbruikerbeskerming, 2008 (Wet No. 68 van 2008);

“**koöperatief**” 'n koöperatief soos omskryf in artikel 1 van die Wet op Koöperatiewe, 1981 (Wet No. 91 van 1981);

“**Lid van die Uitvoerende Raad vir finansies**” die Lid van die Uitvoerende Raad van die provinsie KwaZulu-Natal verantwoordelik vir finansies;

“**ombud met jurisdiksie**” 'n ombud met jurisdiksie, soos omskryf in artikel 1 van die Wet op Verbruikerbeskerming, 2008 (Wet No. 68 van 2008);

“**ondersoeker**” ‘n persoon aangestel ingevolge artikel 31(1)(a);

“**perseel**” grond, of enige gebou, struktuur, voertuig, skip, boot, vaartuig, lugvaartuig of houer;

“**persoon**” ‘n natuurlike of ‘n regspersoon, ‘n groep van sodanige persone of ‘n regspersoon, tensy die konteks ‘n teenstrydige betekenis aandui;

“**Portefeuljekomitee**” die Portefeuljekomitee van die Provinsiale Wetgewer verantwoordelik vir ekonomiese ontwikkeling en toerisme;

“**promoveer**” om –

(a) enige goedere of dienste in gewone omstandighede aan die publiek of ‘n deel van die publiek vir oorweging te adverteer, te vertoon of aan te bied om te verskaf;

(b) enige voorstelling te maak wat in gewone omstandighede redelikerwys gewilligheid kan aandui om enige goedere of dienste vir oorweging te verskaf; of

(c) gemoeid te wees met enige ander gedrag wat in gewone omstandighede redelikerwys vertolk kan word as ‘n aansporing of poging tot aansporing vir ‘n persoon om ‘n transaksie aan te gaan;

“**Provinsiale Wetgewer**” die Wetgewer van die provinsie KwaZulu-Natal soos bedoel in artikel 105 van die Grondwet en het die wetgewende outoriteit vir die provinsie soos bedoel in artikel 104(1) van die Grondwet;

“**provinsie**” die provinsie KwaZulu-Natal ingestel ingevolge artikel 103 van die Grondwet en “**provinsiale**” het ‘n ooreenstemmende betekenis;

“**prys**” ‘n prys, soos omskryf in artikel 1 van die Wet op Verbruikerbeskerming, 2008 (Wet No. 68 van 2008);

“**regulasies**” regulasies uitgevaardig ingevolge hierdie Wet;

“regulatoriese owerheid” ‘n staatsorgaan of entiteit ingestel ingevolge nasionale of provinsiale wetgewing verantwoordelik vir regulering van ‘n bedryf, of sektor van enige bedryf;

“respondent” ‘n persoon of firma teen wie ‘n klagte of aansoek ingevolge hierdie Wet geïnisieer is;

“staatsamptenaar” ‘n staatsamptenaar soos omskryf in artikel 1 van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994), met inbegrip van ‘n munisipale werknemer;

“transaksie” ‘n transaksie soos omskryf in artikel 1 van die Wet op Verbruikerbeskerming, 2008 (Wet No. 68 van 2008);

“Uitvoerende Raad” die Uitvoerende Raad van die provinsie KwaZulu-Natal soos bedoel in artikel 132 van die Grondwet;

“verantwoordelike lid van die Uitvoerende Raad” die Lid van die Uitvoerende Raad van die provinsie KwaZulu-Natal verantwoordelik vir verbruikersake;

“verbode gedrag” ‘n handeling of versuim teenstrydig met hierdie Wet;

“verbruiker” ‘n verbruiker soos omskryf in artikel 1 van die Wet op Verbruikerbeskerming, 2008 (Wet No. 68 van 2008);

“Verbruikersbeskermer” die persoon aangestel as hoof van die KwaZulu-Natal Kantoor van die Verbruikersbeskermer ingevolge artikel 5(3);

“verbruikersbeskermingsgroep” enige verbruikersbeskermingsgroep soos omskryf in artikel 1 van die Wet op Verbruikerbeskerming, 2008 (Wet No. 68 van 2008);

“Verbruikerstribunaal” ‘n verbruikerstribunaal ingestel vir die provinsie ingevolge artikel 8(1);

“**verskaf**” om te verskaf, soos omskryf in artikel 1 van die Wet op Verbruikerbeskerming, 2008 (Wet No. 68 van 2008);

“**verskaffer**” ’n persoon wat goedere of dienste bemark;

“**vertoon**” vertoon, soos omskryf in artikel 1 van die Wet op Verbruikerbeskerming, 2008 (Wet No. 68 van 2008); en

“**voorgeskryf**” deur regulasie voorgeskryf, en “**voorskryf**” het ’n ooreenstemmende betekenis.

HOOFSTUK 2 OOGMERKE VAN WET, VRYSTELLINGS EN FUNKSIES VAN VERANTWOORDELIKE LID VAN UITVOERENDE RAAD

Oogmerke van Wet

2. Die oogmerke van hierdie Wet is –

- (a) om voorsiening te maak vir ’n konsekwente, voorspelbare en doeltreffende regulatoriese raamwerk van verbruikersklagtes in die provinsie;
- (b) om voorsiening te maak vir meganismes om verbruikersvertroue te kweek;
- (c) om meganismes te voorsien vir die beskerming van verbruikers op alle terreine van die provinsie terwyl dit ook bevordering van werksverrigting en mededingendheid in die mark ten doel het;
- (d) om ’n soliede fondament te lê vir die gelykmaking van die ekonomiese speelveld tussen die historiese kwesbaarheid van verbruikers en die krag en invloed van besigheid;
- (e) om die sosiale ekonomiese welstand van verbruikers in die provinsie te bevorder; en
- (f) om voorsiening te maak vir ’n toeganklike, konsekwente, geharmoniseerde, affektiewe en doeltreffende vergoedingstelsel vir verbruikers in die provinsie.

Vrystellings

3. Hierdie Wet is nie van toepassing nie op –

- (a) 'n kantoor soos omskryf in artikel 1(1) van die Wet op Doeane en Aksyns, 1964 (Wet No. 91 van 1964), in die verrigting van sy of haar funksies;
- (b) 'n balju of enige beamppte van 'n hof wat ingevolge 'n hofbevel optree; of
- (c) 'n regter of landdros, wat ter verrigting van sy of haar funksies optree.

Funksies van verantwoordelike Lid van Uitvoerende Raad

4. Die verantwoordelike lid van die Uitvoerende Raad moet –

- (a) binne 12 maande na die inwerkingtreding van die Wet –
 - (i) 'n provinsiale beleid en norme en standaarde betreffende verbruikersaangeleenthede en -sake ontwikkel;
 - (ii) riglyne instel vir die bedryf van besigheid ten opsigte van verbruikersaangeleenthede en -sake in die provinsie;
- (b) waar nodig, 'n maatskaplike verantwoordelikeheidsprogram met betrekking tot verbruikerskwessies instel; en
- (c) sodanige ander funksies verrig as wat hom of haar ingevolge hierdie Wet opgelê is.

HOOFSUK 3

AGENTSKAPPE VIR VERBRUIKERSBESKERMING IN KWAZULU-NATAL

Instelling van KwaZulu-Natal Kantoor van Verbruikersbeskermer

5.(1) Onderhewig aan artikel 84 van die Wet op Verbruikerbeskerming, 2008 (Wet No. 68 van 2008), word 'n kantoor wat as die KwaZulu-Natal Kantoor van die Verbruikersbeskermer bekend sal staan, hiermee ingestel.

(2) Die Kantoor bedoel in subartikel (1) is nie 'n regspersoon nie.

(3) Die verantwoordelike lid van die Uitvoerende Raad moet, ingevolge die tersaaklike bepaling van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994), 'n verbruikersbeskermer as hoof van die Kantoor van die Verbruikersbeskermer aanstel op die vlak soos deur die verantwoordelike lid van die Uitvoerende Raad bepaal.

(4) Indien die Verbruikersbeskermer nie in staat is om sy of haar pligte om watter rede ook al na te kom nie, moet die verantwoordelike lid van die Uitvoerende Raad 'n persoon as Waarnemende Verbruikersbeskermer aanstel, hangende die aanstelling van 'n voltydse verbruikersbeskermer.

(5) Die administratiewe en sekretariële werk verbonde aan die verrigting van die Kantoor se funksies moet verrig word deur beamptes in die Departement wat vir sodanige doel deur die Departementshoof aangewys en aangestel is.

(6) Alle personeellede aangewys en aangestel om administratiewe en sekretariële bystand aan die Kantoor te verskaf soos bedoel in subartikel (5), is onderhewig aan die beheer en bestuur van die Verbruikersbeskermer.

(7) Die Kantoor kan die dienste gebruik van persone wat ooreenkomstig die bepalings van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994) vanaf die staatsdiens gesekondeer of oorgeplaas is.

(8) Waar die behoefte ontstaan, kan die Verbruikersbeskermer bygestaan word in die uitvoering en verrigting van sy of haar pligte en funksies, deur enige persoon of liggaam wie se dienste deur hom of haar bekom word op sodanige terme en voorwaardes en vir sodanige tydperk soos ooreengekom, vir die doel van die uitvoer van 'n bepaalde ondersoek namens die Verbruikersbeskermer.

(9) 'n Persoon vermeld in subartikel (8) kan –

- (a) na enige deel van die provinsie of Republiek gestuur word om 'n ondersoek bedoel in subartikel (8) uit te voer; en
- (b) sodanige besoldiging, toelae en uitgawes soos bepaal deur die verantwoordelike lid van die Uitvoerende Raad in oorleg met die Lid van die Uitvoerende Raad vir finansies betaal word.

Oogmerke van Kantoor van Verbruikersbeskermer

6. Die oogmerke van die Kantoor van die Verbruikersbeskermer is –

- (a) om die verskaffing van 'n konsekwente, voorspelbare en doeltreffende regulatoriese raamwerk van verbruikersklagtes in die provinsie te verseker;
- (b) om verbruikersvertroue in die provinsie te kweek;
- (c) om te verseker dat die meganismes verskaf om verbruikers ingevolge hierdie Wet te beskerm, in plek is;
- (d) om te verseker dat die fondament vir die gelykmaking van die ekonomiese speelveld tussen histories kwesbare verbruikers en besigheid in plek is;
- (e) om die bevordering van die sosiale ekonomiese welstand van verbruikers in die provinsie te verseker; en
- (f) om te verseker dat 'n toeganklike, konsekwente, geharmoniseerde, affektiewe en doeltreffende vergoedingstelsel vir verbruikers in die provinsie verskaf word.

Bevoegdhede, pligte en funksies van Kantoor van Verbruikersbeskermer

7.(1) Die Kantoor van die Verbruikersbeskermer moet –

- (a) verbruikersklagtes ooreenkomstig hierdie Wet ontvang en ondersoek;
- (b) die mediasie of konsiliasie fasiliteer van geskille wat ingevolge hierdie Wet tussen of onder verbruikers binne die provinsie, inwoners van die provinsie, of persone wat besigheid in die provinsie doen, ontstaan;
- (c) geskille bedoel in paragraaf (b) na die betrokke provinsiale Verbruikerstribunaal verwys;
- (d) aanbevelings aan die verantwoordelike lid van die Uitvoerende Raad maak en remediërende stappe doen ten opsigte van klagtes wat aan die Kantoor voorgelê word;
- (e) die verantwoordelike lid van die Uitvoerende Raad adviseer aangaande enige aangeleentheid wat deur die verantwoordelike lid van die Uitvoerende Raad na die Kantoor verwys word;
- (f) enige aangeleentheid wat direk of indirek met verbruikersaangeleenthede, sake of kwessies in die provinsie verband hou, ondersoek en aanbevelings aan die verantwoordelike lid van die Uitvoerende Raad maak;
- (g) die verantwoordelike lid van die Uitvoerende Raad adviseer aangaande die ontwikkeling van 'n maatskaplike verantwoordelikhedprogram gemik op die bevordering van die maatskaplike ekonomiese welstand van verbruikers in die provinsie;

(h) die verantwoordelike lid van die Uitvoerende Raad bystaan in die formulering van beleid en in die vasstelling van norme en standaarde in die provinsie, soos bedoel in artikel 4(a)(i) van hierdie Wet;

(i) met nasionale, provinsiale en internasionale belanghebbendes saamwerk en deelneem aan alle opvoedkundige programme gemik op die bevordering van bewustheid by die belanghebbendes in die verbruikersbedryf met betrekking tot die hantering van verbruikers;

(j) opvoedkundige programme gemik op die vermindering van misbruik en uitbuiting van verbruikers in die provinsie inisieer en daaraan deelneem;

(k) die verantwoordelike lid van die Uitvoerende Raad bystaan en adviseer aangaande die ontwikkeling van 'n program ten einde die oogmerke van die Wet soos uiteengesit in artikel 2 na te volg;

(l) binne die raamwerk van nasionale en provinsiale verbruikersbeleid, die verantwoordelike lid van die Uitvoerende Raad bystaan en adviseer met betrekking tot advisering en leiding aan –

(i) die belanghebbendes in die verbruikersbedryf, verbruikers en organisasies of instellings wie se aktiwiteite of doelwitte 'n impak het op of met verbruikersaangeleenthede, sake of kwessies in die provinsie verband hou; en

(ii) die besigheidseenheid binne die Departement verantwoordelik vir kleinbesigheidsontwikkeling, koöperatiewe, plaaslike ekonomiese ontwikkeling en ekonomiese bemagtiging, en soortgelyke besigheidseenhede binne ander departemente in die provinsie; en

(iii) besighede en verder verseker dat besighede aan die staande beleid en wetgewing betreffende verbruikers voldoen; en

(m) sodanige ander funksies verrig as wat ingevolge hierdie Wet aan hom toegewys is.

(2) Buiten die bevoegdhede, pligte en funksies bedoel in subartikel (1), moet die Kantoor, na 31 Maart van elke jaar, 'n jaarverslag oor sy funksies gedurende die jaar met inbegrip van die aktiwiteite soos bedoel in subartikel (1) aan die verantwoordelike lid van die Uitvoerende Raad voorlê.

(3) Die verantwoordelike lid van die Uitvoerende Raad moet 'n afskrif van die jaarverslag

wat ingevolge subartikel (1) voorgelê is, aan die Provinsiale Wetgewer ter tafel lê binne 14 dae na ontvangs daarvan.

Instelling van Verbruikerstribunale

8.(1) Die verantwoordelike lid van die Uitvoerende Raad moet, binne 12 maande na die inwerkingtreding van die Wet, deur middel van kennisgewing in die *Koerant*, een of meer Verbruikerstribunale vir die provinsie instel.

(2) Die Verbruikerstribunaal vermeld in subartikel (1) –

- (a) is ingestel vir die gebied wat in die kennisgewing beskryf word; en
- (b) het sy setel op sodanige plek soos in die kennisgewing vermeld.

(3) Die verantwoordelike lid van die Uitvoerende Raad kan deur middel van kennisgewing in die *Koerant* –

- (a) die gebied vir die Verbruikerstribunaal bedoel in subartikel (2) wysig; of
- (b) die kennisgewing bedoel in subartikel (1) onttrek en die Verbruikerstribunaal bedoel in subartikel (1) afskaf;

(4) Die verantwoordelike lid van die Uitvoerende Raad kan, onderhewig aan artikel 10(1)(b), bepaal dat die Verbruikerstribunaal, met betrekking tot bepaalde verrigtinge, by 'n ander plek as die setel van daardie Verbruikerstribunaal, gesetel is.

Oogmerke van Verbruikerstribunaal

9. Die oogmerke van die Verbruikerstribunaal is om –

- (a) enige verbruikersaak te ontvang, dit aan te hoor en daaroor te beslis; en
- (b) enige verbruikersklagte of geskil uit die weg te ruim.

Bevoegdhede, pligte en funksies van Verbruikerstribunaal

10.(1) Die Verbruikerstribunaal moet –

- (a) enige verbruikersklagte wat uit hoofde van verrigtinge bedoel in hierdie Wet voor hom dien, ontvang, aanhoor, oorweeg en daaroor beslis;

- (b) op sodanige dae en gedurende sodanige tye en op sodanige plek sit soos deur die voorsittende beampte of voorsitter, in oorleg met die Verbruikersbeskermer, bepaal;
- (c) sittings op sodanige tyd en plek dwarsdeur die gebiede van die provinsie hou en hervat soos deur die voorsittende beampte van die Verbruikersbeskermer bepaal;
- (d) die bestaande reg van Suid-Afrika toepas in die beoordeling van 'n verbruikersklagte of geskil;
- (e) die algemene beginsels om konflikoplossing tussen verbruikers en besigheid te bestuur, neerlê;
- (f) die Verbruikersbeskermer gelas om die naam van die besigheid, die naam van die persoon wat sodanige besigheid bedryf en die bevinding van die Verbruikerstribunaal ten opsigte van subartikel (2)(a), (b) en (c) te noteer in die lys van negatiewe inskrywings wat deur die Kantoor gehandhaaf en bygehou moet word; en
- (g) enige ander bevoegdhede uitvoer en die funksies verrig en pligte uitvoer wat ingevolge hierdie Wet aan hom toegewys is.

(2) Die Verbruikerstribunaal kan –

- (a) kostes toestaan, teen die voorgeskrewe skaal of tot die bedrag bepaal deur die Verbruikerstribunaal, teen enige persoon wat as aanspreeklik aan die verbruiker bevind is uit hoofde van enige wederregtelike gedrag, deur gedrag of versuim ingevolge hierdie Wet of kragtens enige bestaande wet;
- (b) met betrekking tot 'n verbruikersklagte wat betrekking het op 'n taai ooreenkoms of gedrag wat die verbruiker regtens glo dat dit onbillik, onregverdig of uiters onredelik is, 'n bevinding te dien effekte maak;
- (c) by die verhoor van 'n verbruikersklagte kostes teen sodanige verbruiker toestaan indien hy tevrede is dat die klagte beuselagtig of kwelsugtig ingedien is; en
- (d) oor die algemeen alle aangeleenthede wat nodig of verbonde is aan die verrigting van sy funksies ingevolge hierdie Wet hanteer.

(3) Die voorsittende beampte van die Verbruikerstribunaal moet so gou doenlik, na 31 Maart van elke jaar, 'n jaarverslag oor die aktiwiteite van die Verbruikerstribunaal aan die

verantwoordelike lid van die Uitvoerende Raad voorlê.

(4) Die verslag voorgelê aan die verantwoordelike lid van die Uitvoerende Raad ingevolge subartikel (3) moet 'n lys van negatiewe inskrywings bedoel in artikel 10(1)(f) insluit.

(5) Die verantwoordelike lid van die Uitvoerende Raad kan van die Verbruikerstribunaal vereis om bykomende verslae aan hom of haar voor te lê soos die verantwoordelike lid van die Uitvoerende Raad van tyd tot tyd mag vereis.

(6) Die verantwoordelike lid van die Uitvoerende Raad moet 'n afskrif van die jaarverslag bedoel in subartikel (3), binne 14 dae na ontvangs daarvan aan die Provinsiale Wetgewer voorlê.

Samestelling van Verbruikerstribunaal

11.(1) Die Verbruikerstribunaal bestaan uit –

- (a) ses en nie meer as agt lede aangestel deur die verantwoordelike lid van die Uitvoerende Raad; en
- (b) die voorsitter, aangestel ingevolge artikel 12 van hierdie Wet.

(2) Die lidmaatskap bedoel in subartikel (1) moet –

- (a) 'n voorsitter, wat 'n erkende prokureur of advokaat of afgetrede landdros of regsdosent by 'n universiteit moet wees met ten minste vyf jaar ondervinding in die regsprofessie of die regswese;
- (b) 'n adjunkvoorsitter, wat ook 'n erkende prokureur of advokaat of afgetrede landdros of regsdosent by 'n universiteit moet wees met ten minste drie jaar ondervinding in die regsprofessie of die regswese;
- (c) een persoon met kennis en ondervinding op die terrein van verbruikersadvokatuur, ekonomie en handel;
- (d) een persoon met kennis en ondervinding in die verbruikersbedryf en wat nie aktief betrokke is by of direkte of indirekte finansiële belang daarin het nie;
- (e) een persoon as 'n sekretaris van die Verbruikerstribunaal om administratiewe werk verbonde aan die funksies van die Verbruikerstribunaal te verrig; en

(f) een sodanige ander persoon om die sekretaris van die Verbruikerstribunaal by te staan soos nodig, insluit.

(3) By aanstelling van die lede op die Verbruikerstribunaal, moet die verantwoordelike lid van die Uitvoerende Raad verseker dat historiese ongelykhede aangespreek word.

(4) Die verantwoordelike lid van die Uitvoerende Raad moet, deur middel van kennisgewing in twee koerante met wye sirkulasie in die provinsie en deur enige ander metode te gebruik wat bestem is om die grootste aantal inwoners in die provinsie te bereik, persone of enige belanghebbende partye binne die provinsie uitnooi om kandidate te benoem vir aanstelling op die Verbruikerstribunaal.

(5) Die kennisgewing bedoel in subartikel (4), moet –

- (a) die benoemingsprosedure;
- (b) die vereistes vir benoemings; en
- (c) die sluitingsdatum vir die benoemings,

spesifiseer.

(6) Die verantwoordelike lid van die Uitvoerende Raad moet alle benoemings wat voorgelê word in reaksie op die kennisgewing oorweeg, en kan 'n keurpaneel aanstel bestaande uit nie meer nie as vier senior departementele beamptes om al die benoemings te hersien en aanbevelings rakende die kandidate vir die Verbruikerstribunaal aan die verantwoordelike lid van die Uitvoerende Raad te maak.

(7) Die verantwoordelike lid van die Uitvoerende Raad moet die name van die persone wat op die Verbruikerstribunaal aangestel word in die *Koerant* en in ten minste twee koerante met wye sirkulasie in die provinsie laat publiseer, onmiddellik nadat sodanige persone skriftelik van hul aanstelling op die Verbruikerstribunaal in kennis gestel is.

(8) Die verantwoordelike lid van die Uitvoerende Raad moet, binne twee maande na die aanstelling van lede, die Portefeuljekomitee voorsien van die name van die aangestelde lede met inbegrip van hul aanstellingstermyn.

(9) Hierdie artikel is, met die nodige veranderinge, van toepassing op die vul van 'n vakature op die Verbruikerstribunaal.

Onbevoegdheid vir aanstelling op Verbruikerstribunaal

12. 'n Persoon is onbevoeg vir aanstelling op die Verbruikerstribunaal of om op die Verbruikerstribunaal te bly, indien hy of sy –

- (a) 'n ongerehabiliteerde insolvent is of word;
- (b) deur 'n bevoegde hof geestelik siek verklaar is;
- (c) 'n direkte of indirekte belang in enige kontrak met die Verbruikersbeskermer of Verbruikerstribunaal het en versuim om sy of haar belang en die aard daarvan te verklaar soos deur hierdie Wet vereis;
- (d) 'n persoon onder kuratorskap is;
- (e) te eniger tyd uit 'n vertrouensamp verwyder is as gevolg van wangedrag wat diefstal of bedrog insluit;
- (f) skuldig bevind en gevangenisstraf opgelê is sonder die keuse van 'n boete, buiten dat die verantwoordelike lid van die Uitvoerende Raad 'n vonnis mag kondoneer, op 'n wyse wat ooreenstem met artikel 106(1)(e) van die Grondwet, indien sodanige benoemde volle besonderhede van die misdryf in 'n beëdigde verklaring verklaar. Met dien verstande dat onbevoegdheid ingevolge hierdie subartikel vyf jaar nadat die vonnis voltooi is, eindig;
- (g) versuim om 'n belang te verklaar ooreenkomstig artikel 13 of verrigtinge van die Verbruikerstribunaal bygewoon het of daaraan deelgeneem het terwyl hy of sy 'n belang het soos in die vermelde artikel bedoel;
- (h) 'n staatsdiensamptenaar is;
- (i) 'n openbare ampsdraer is;
- (j) nie 'n burger van die Republiek is nie; of
- (k) nie in die provinsie woonagtig is nie.

Verklaring van finansiële of ander belange van lede van Verbruikerstribunaal

13.(1) 'n Persoon wat benoem is om op die Verbruikerstribunaal te dien ingevolge artikel 11 moet, binne 10 dae na die benoeming, 'n skriftelike verklaring by die verantwoordelike lid van die Uitvoerende Raad indien van alle direkte of indirekte belange in enige

maatskappy, beslote korporasie en of enige ander besigheidsbelange.

(2) Enige versuim deur 'n benoemde om finansiële en ander belange ingevolge subartikel (1) te verklaar, maak sodanige benoemde ingevolge artikel 12 onbevoeg vir aanstelling op die Verbruikerstribunaal.

(3) Elke lid van die Verbruikerstribunaal moet, by ampstaanvaarding en aan die begin van elke finansiële jaar van die Verbruikerstribunaal, 'n skriftelike verklaring van sy of haar direkte of indirekte belang in enige maatskappy, beslote korporasie of ander besigheidsbelange aan die verantwoordelike lid van die Uitvoerende Raad voorlê.

(4) Indien 'n lid van die Verbruikerstribunaal te eniger tyd gedurende sy of haar ampstermyn as 'n lid van die Verbruikerstribunaal 'n belang in enige maatskappy, beslote korporasie of ander besigheidsbelange bekom, moet hy of sy binne 10 dae na die datum van verkryging van sodanige belang, 'n skriftelike verklaring van sodanige belang by die verantwoordelike lid van die Uitvoerende Raad indien.

(5) Enige versuim deur die lid om sy of haar belange soos bedoel in subartikels (3) en (4) te verklaar, lei tot die beëindiging van die aanstelling van sodanige lid ingevolge artikel 16(2).

Versuim om finansiële of ander belange van lid van Verbruikerstribunaal te verklaar

14.(1) 'n Lid van die Verbruikerstribunaal wat versuim om 'n verklaring beoog in artikel 13 te doen, kan, onderhewig aan subartikel (2), onbevoeg verklaar word om op die Verbruikerstribunaal te bly.

(2) Die verantwoordelike lid van die Uitvoerende Raad moet, wanneer hy of sy daarvan bewus raak dat 'n lid van die Verbruikerstribunaal versuim het om aan die bepalings van artikel 13 te voldoen, die aangeleentheid ondersoek en toepaslike dissiplinêre stappe oorweeg.

Ampstermyn van lid van Verbruikerstribunaal

15.(1) 'n Lid word op die Verbruikerstribunaal aangestel vir 'n tydperk van vyf jaar of vir sodanige korter tydperk soos deur die verantwoordelike lid van die Uitvoerende Raad bepaal.

(2) 'n Lid kan vir een bykomende termyn heraangestel word by die verstryking van sy of haar ampstermyn.

Vakatures, ontslag en bedanking uit amp van lede van Verbruikerstribunaal

16.(1) 'n Lid van die Verbruikerstribunaal moet sy of haar amp ontruim indien hy of sy onbevoeg raak soos in artikel 12 bedoel.

(2) Die verantwoordelike lid van die Uitvoerende Raad kan, nadat 'n geleentheid aan die lid gebied is om sy of haar saak te stel, die ampstermyn van sodanige lid te eniger tyd beëindig indien, na sy of haar mening, daar grondige, afdoende en regverdigbare redes is om dit te doen.

(3) 'n Lid kan uit sy of haar amp bedank deur nie minder nie as 30 dae skriftelike kennis aan die verantwoordelike lid van die Uitvoerende Raad te gee: Met dien verstande dat die verantwoordelike lid van die Uitvoerende Raad van die bedankingskennisgewing kan afsien.

(4) Wanneer 'n vakature op die Verbruikerstribunaal ontstaan, moet die verantwoordelike lid van die Uitvoerende Raad, onderhewig aan artikel 11, 'n persoon aanstel om sodanige vakature te vul vir die onverstreke gedeelte van die ampstermyn van die lid in wie se plek sodanige persoon aangestel is.

(5) Die verantwoordelike lid van die Uitvoerende Raad kan, onderhewig aan subartikel (2), die aanstelling van al of sommige van die lede van die Verbruikerstribunaal beëindig.

(6) In die geval dat die verantwoordelike lid van die Uitvoerende Raad sy of haar bevoeghede ingevolge subartikel (5) uitoefen, kan hy of sy, ondanks die prosedure vir

die aanstelling van die lede van die Drankowerheid soos in artikel 11 uiteengesit, maar onderhewig aan subartikels (2) en (3) van artikel 11, persone aanstel om as lede van die Verbruikerstribunaal op 'n tussentydse basis te dien: Met dien verstande dat –

- (a) die persone aangestel om die lede te vervang wie se aanstelling ingevolge subartikel (5) beëindig is, nie op die Verbruikerstribunaal mag aanbly vir 'n tydperk van meer as 90 dae na die datum van hul aanstelling nie; en
- (b) die verantwoordelike lid van die Uitvoerende Raad, moet, onderhewig aan artikel 11, die permanente lede van die Verbruikerstribunaal binne 90 dae na die aanstelling bedoel in paragraaf (a) van hierdie subartikel aanstel.

Tydlike skorsing van lid van Verbruikerstribunaal

17.(1) Die verantwoordelike lid van die Uitvoerende Raad kan, na toepassing van die tersaaklike reëls van natuurlike geregtigheid, 'n lid van die Verbruikerstribunaal met volle besoldiging skors indien –

- (a) die lid na bewering 'n ernstige misdryf gepleeg het; en
- (b) die verantwoordelike lid van die Uitvoerende Raad redelikerwys glo dat die teenwoordigheid van sodanige lid op die Verbruikerstribunaal enige ondersoek en navraag aangaande die beweerde wangedrag in gevaar mag stel, of die welstand of veiligheid van enige persoon of staatseiendom in gevaar mag plaas: Met dien verstande dat hierdie soort skorsing 'n voorsorgmaatreël is, wat nie 'n bevinding uitmaak nie.

(2) Indien 'n lid as voorsorgmaatreël geskors word soos bedoel in subartikel (1), moet die verantwoordelike lid van die Uitvoerende Raad die ondersoek binne 60 dae na die inwerkingtreedingsdatum van sodanige opskorting hou.

Grondwet van Verbruikerstribunaal

18.(1) Onderhewig aan subartikel (4), bestaan die kworum van die Verbruikerstribunaal uit drie lede.

(2) Tensy anders bepaal, is 'n beslissing van die meerderheid van die lede van die Verbruikerstribunaal teenwoordig, die beslissing van die Verbruikerstribunaal.

(3) 'n Lid van die Verbruikerstribunaal moet hom- of haarself onttrek van verrigtinge op grond van enige belang of assosiasie wat sy of haar onpartydige oorweging van die aangeleentheid mag beïnvloed, of wat as sodanig gesien kan word.

(4) Indien, op enige stadium gedurende die verrigtinge voor die Verbruikerstribunaal, –

- (a) die voorsitter onbevoeg raak om voor te sit of afwesig is, moet die verrigtinge van voor af begin;
- (b) enige ander lid onbevoeg raak om op te tree of afwesig is, moet die verrigtinge in die teenwoordigheid van die oorblywende lede voortgaan; en
- (c) twee of meer ander lede onbevoeg raak om op te tree of afwesig is, moet die verrigtinge van voor af begin tensy al die partye by die verrigtinge onvoorwaardelik, skriftelik, ooreenkom om die meerderheid van die oorblywende lede se beslissing te aanvaar.

(5) Indien die verrigtinge in die teenwoordigheid van 'n gelyke aantal lede voortgaan en daar 'n nie-eenstemmige beslissing is, is die voorsitter se beslissing finaal.

Besoldiging van lede van Verbruikerstribunaal

19.(1)(a) 'n Lid van die Verbruikerstribunaal kan sodanige besoldiging en toelaes betaal word soos deur die verantwoordelike lid van die Uitvoerende Raad in oorleg met die lid van die Uitvoerende Raad vir finansies bepaal.

(b) 'n Lid van die Verbruikerstribunaal wat besoldiging, toelae of ander voordele ontvang uit hoofde van sy of haar pos of werk by –

- (i) die nasionale regering;
- (ii) 'n provinsiale regering;
- (iii) 'n munisipaliteit; of
- (iv) 'n korporasie, liggaam of instelling waarin die nasionale of 'n provinsiale regering 'n beherende belang het,

en wat voortgaan om sodanige besoldiging, toelae of ander voordele te ontvang terwyl hy of sy as lid van die Verbruikerstribunaal dien, mag slegs besoldiging en toelae vermeld in paragraaf (a) ontvang tot die mate vereis om sodanige lid in die finansiële posisie te plaas waarin hy of sy sou wees indien dit nie vir sodanige pos of werk was nie.

- (2)(a) 'n Lid van die Verbruikerstribunaal en 'n persoon wat vir die Verbruikerstribunaal gekoöpteer is, kan met betrekking tot sy of haar funksies as 'n lid of gekoöpteerde lid, vergoeding ontvang vir redelike werklike reis-en-verblyf-uitgawes genoodsaak deur die werklike bywoning van 'n vergadering van die Verbruikerstribunaal;
- (b) Die verantwoordelike lid van die Uitvoerende Raad, in oorleg met die lid van die Uitvoerende Raad vir finansies, moet prosedures, met inbegrip van beheermaatreëls, bepaal vir die bestuur, hantering en verwerking van eise vir reis-en-verblyf-uitgawes soos bedoel in paragraaf (a).

Kundige en ander bystand aan Verbruikerstribunaal

20.(1) Die Verbruikerstribunaal kan sodanige kundiges of ander persone as diensleweraars aanstel soos nodig blyk te wees met die oog daarop om die Verbruikerstribunaal in die uitvoering en uitoefening van sy bevoegdhede, funksies en pligte by te staan.

(2) Die terme, voorwaardes en gelde wat op enige kundige of persoon aangestel kragtens subartikel(1), en die werk wat uitgevoer moet word of dienste wat gelewer moet word van toepassing is, sal deur die Verbruikerstribunaal bepaal word en ingesluit word in 'n geskrewe ooreenkoms wat vir daardie doel tussen die Verbruikerstribunaal en die betrokke kundige of persoon aangegaan is.

(3) Die kundiges of ander persone wat aangestel is kragtens subartikel (1) sal nie geregtig wees om te stem oor enige besluit wat deur die Verbruikerstribunaal geneem is nie.

Verrigtinge van Verbruikerstribunaal

21.(1) Die verrigtinge voor die Verbruikerstribunaal moet –

- (a) deur 'n dagvaarding ingestel word op die voorgeskrewe vorm wat op die betrokke persoon beteken moet word op enige wyse soos voorgeskryf, wat betekening buite die provinsie mag insluit;
- (b) oop wees vir die publiek;

(c) deur enige persoon wat deur die Kantoor aangestel moet wees, voortgesit word;

(d) enige persoon wat deur enige geregtelike stappe benadeel mag word, toelaat om persoonlik te verskyn of deur 'n prokureur of advokaat of enige ander persoon verteenwoordig of bygestaan te word; en

(e) 'n persoon teen wie die geregtelike stappe gedoen word of wat geraak mag word deur die geregtelike stappe of die besluit om persoonlik te verskyn, toelaat om deur 'n advokaat, prokureur of enige ander persoon verteenwoordig of bygestaan te word.

(2) Die Verbruikerstribunaal kan gelas dat die publiek of enige lid daarvan sekere verrigtinge van die Verbruikerstribunaal of 'n deel daarvan, nie mag bywoon nie, indien dit geregverdig is in die belang van –

(a) die uitvoer van die verrigtinge of die oorweging van die betrokke aangeleentheid; of

(b) die beskerming van die privaatheid van enige persoon wat na bewering betrokke is by enige onregverdige besigheidspraktyke of die bepalings van die Wet oortree het of van die vertroulikheid van enige inligting aangaande daardie persoon.

(3) Die Verbruikerstribunaal moet die rekords van die verrigtinge hou.

(4) Enige persoon wat 'n belang het in enige verrigtinge wat plaasgeneem het, kan op die voorgeskrewe wyse afskrifte van die rekord bedoel in subartikel (3) hou.

Dagvaarding van getuies en voorlê van dokumente aan Verbruikerstribunaal

22.(1) Vir die doel om enige aangeleentheid met betrekking tot verrigtinge voor die Verbruikerstribunaal vas te stel, kan die Verbruikerstribunaal –

(a) deur middel van 'n dagvaarding gerig aan enige persoon, met inbegrip van die persoon teen wie 'n verbruikersklagte ingedien is, in die voorgeskrewe vorm onder die hand van die sekretaris van die Verbruikerstribunaal, en op die voorgeskrewe wyse beteken, –

(i) sodanige persoon dagvaar om voor die Verbruikerstribunaal te verskyn

om getuienis te lewer op 'n tyd en plek vermeld in sodanige dagvaarding;
en

(ii) sodanige persoon gelas om enige boek, dokument of voorwerp in die besit of bewaring of onder die beheer van sodanige persoon is en wat redelikerwys nodig, wesenlik en tersaaklik mag wees in verband met die verrigtinge voor die Verbruikerstribunaal, te toon;

(b) sodanige persoon gelas om 'n eed of 'n plegtige verklaring af te lê; en

(c) sodanige persoon ondervra en enige boek, dokument of voorwerp ondersoek wat hy of sy vereis was om te toon.

(2) Die eed of plegtige verklaring bedoel in subartikel (1)(b) kan deur enige persoon afgeneem word wat ingevolge die Wet op Vrederegters en Kommissarisse van Ede, 1963 (Wet No. 16 van 1963) gekwalifiseer is om 'n eed af te neem of 'n plegtige verklaring te aanvaar.

(3) 'n Persoon is skuldig aan 'n misdryf indien hy of sy, nadat hy of sy ingevolge hierdie artikel gedagvaar is, –

(a) sonder voldoende rede versuim om aanwesig te wees op die tyd en plek vermeld in die dagvaarding, of om aanwesig te bly tot die afsluiting van die verrigtinge of totdat hy of sy deur die Verbruikerstribunaal verskoon is van verdere bywoning;

(b) weier om die eed of 'n plegtige verklaring af te lê;

(c) weier om enige vraag wat wettig aan hom of haar gestel word, te antwoord, of om volledig en bevredigend na die beste van sy of haar kennis en geloof te antwoord;

(d) versuim om enige boek, dokument of voorwerp in sy of haar besit of bewaring of onder sy of haar beheer, wat hy of sy vereis was om te toon, te toon; of

(e) 'n vals verklaring voor die Verbruikerstribunaal aflê, wetende dat sodanige verklaring vals is of nie weet of glo dat dit waar is nie.

(4) 'n Persoon wat ingevolge hierdie artikel gedagvaar is om te verskyn, mag nie daarop geregtig wees om te weier om enige vraag te antwoord of om enige boek, dokument of voorwerp te toon nie op die gronde dat hy of sy daardeur aan 'n kriminele aanklag blootgestel sou wees: Met dien verstande dat, tot die mate dat sodanige antwoord, boek,

dokument of item die betrokke persoon aan 'n kriminele aanklag blootstel, geen getuienis daarvan toelaatbaar mag wees in enige strafregtelike verrigtinge teen daardie persoon nie, buiten indien daardie persoon teregstaan op 'n aanklag bedoel in subartikel (2)(c) tot (e), of in artikel 319(3) van die Strafproseswet, 1955 (Wet No. 56 van 1955).

(5) 'n Persoon wat die verrigtinge van die Verbruikerstribunaal as 'n getuie bygewoon het, is op die voorgeskrewe getuiefooi geregtig.

HOOFSUK 4 VERWESENLIKING EN BESKERMING VAN VERBRUIKERSREGTE

Deel 1 Algemeen

Verbruikersregte

23.(1) Elke verbruiker het 'n reg –

- (a) om toegang te hê tot basiese goedere en dienste soos voldoende voedsel, klere, behuising, gesondheidsorg, onderrig, skoon water en sanitasie;
- (b) op veiligheid van en beskerming teen produksieprosesse, produkte en dienste wat gesondheids- of lewensgevaar inhou;
- (c) om ingelig en voorsien te word van die feite wat nodig is om ingeligte keuses te maak en om teen oneerlike of misleidende advertensie en etikettering beskerm te word;
- (d) om te kies uit 'n reeks produkte en dienste wat teen mededingende pryse aangebied word met die versekering van bevredigende kwaliteit;
- (e) dat sy of haar belange verteenwoordig word in die opstel en uitvoering van staatsbeleid en die ontwikkeling van produkte en dienste;
- (f) om 'n regverdige betaling van billike eise, insluitend kompensasie vir wanvoorstelling, of nagemaakte goedere of dienste te verhaal of te ontvang;
- (g) op onderrig as 'n verbruiker en om kennis en vaardighede benodig om ingeligte en vrymoedige keuses oor goedere en dienste te maak, te bekom terwyl hy of sy bewus is van basiese verbruikersregte en verantwoordelikhede en hoe om uitvoering daaraan te gee; en
- (h) in 'n gesonde omgewing te leef en te werk wat nie die welstand van huidige en toekomstige generasies bedreig nie.

(2) Die Kantoor moet redelike stappe doen om te verseker dat die regte bedoel in subartikel (1) deur alle verbruikers in die provinsie verwesenlik word.

Verwesenliking van verbruikersregte

24. Enigeen van die volgende persone kan op die wyse soos in hierdie Wet bepaal, die Verbruikerstribunaal of die Verbruikersbeskermer nader indien sy of haar regte ingevolge hierdie Wet geskend, aangetas of bedreig is of indien enige verbode gedrag plaasvind of plaasgevind het –

- (a) 'n persoon wat namens hom- of haarself optree;
- (b) 'n gemagtigde persoon wat namens 'n ander persoon optree wat nie in sy of haar eie naam kan optree nie;
- (c) 'n persoon wat as 'n lid van, of in die belang van, 'n groep of klas van persone wat geraak word, optree;
- (d) 'n persoon wat in die openbare belang optree, waar toestemming van die Verbruikersbeskermer of die Verbruikerstribunaal, na gelang van die geval, toegestaan is vir sodanige persoon om in openbare belang op te tree; of
- (e) 'n vereniging wat in die belang van sy lede optree.

Beskerming van verbruikersregte

25. Indien 'n verbruiker enige reg vermeld in hierdie Wet of in 'n ooreenkoms of transaksie met 'n verskaffer, uitgeoefen het, laat geld het of gepoog het om te handhaaf, mag die verskaffer nie, in reaksie daarop –

- (a) direk of indirek teen sodanige verbruiker diskrimineer, vergeleke met die verskaffer se behandeling van enige ander verbruiker wat sodanige reg uitgeoefen het, laat geld het of gepoog het om te handhaaf nie;
- (b) die verbruiker penaliseer nie;
- (c) die terme of voorwaardes van 'n transaksie of ooreenkoms met die verbruiker wysig of van voorneme wees om dit te wysig, tot nadeel van die verbruiker nie; of
- (d) enige stappe doen om 'n ooreenkoms met die verbruiker te versnel, af te dwing of te beëindig nie.

Toepassing van regte deur verbruiker

26.(1) 'n Persoon bedoel in artikel 25 kan poog om enige regte ingevolge hierdie Wet of ingevolge 'n transaksie of ooreenkoms toe te pas, of andersins 'n geskil met 'n verskaffer besleg deur –

- (a) die aangeleentheid direk na die Verbruikersbeskermer te verwys;
- (b) die aangeleentheid na die Verbruikerstribunaal te verwys, indien sodanige direkte verwysing deur hierdie Wet toegelaat word in geval van die besondere geskil; of
- (c) die aangeleentheid na die toepaslike ombud met jurisdiksie te verwys.

(2) Indien die aangeleentheid bedoel in subartikel (1) nie op 'n verskaffer bedoel in subartikel (1)(c) betrekking het nie, kan 'n persoon bedoel in artikel 25 poog om enige regte ingevolge hierdie Wet of ingevolge 'n transaksie of ooreenkoms toe te pas, of andersins 'n geskil met 'n verskaffer besleg deur –

- (a) die aangeleentheid na die toepaslike bedryfsombud, geakkrediteer ingevolge artikel 82(6) van die Wet op Verbruikerbeskerming, 2008 (Wet No. 68 van 2008), te verwys indien die verskaffer aan enige sodanige ombud onderworpe is;
- (b) die aangeleentheid na 'n ander geskilbeslegtingsinsagent bedoel in artikel 70 van die Wet op Verbruikerbeskerming, 2008 (Wet No. 68 van 2008) te verwys;
- (c) 'n klagte by die Verbruikerskommissie kantoor in te dien ooreenkomstig artikel 7 van die Wet op Verbruikerbeskerming, 2008 (Wet No. 68 van 2008); of
- (d) 'n tribunaal met jurisdiksie oor die aangeleentheid te nader, indien alle ander regsmeddele wat ingevolge Wet op Verbruikerbeskerming, 2008 (Wet No. 68 van 2008) tot daardie persoon se beskikking is, uitgeput is.

*Deel 2**Indien en ondersoek van verbruikersklagtes***Indien van klagte by Kantoor van Verbruikersbeskermer**

27.(1) Enige verbruiker kan op die voorgeskrewe wyse 'n verbruikersklagte by die Kantoor van die Verbruikersbeskermer indien.

(2) 'n Verbruikersklagte bedoel in subartikel (1) wat nie skriftelik is nie, moet deur die

Kantoor na skrif herlei word.

(3) Die Kantoor kan 'n lêer of dossier met betrekking tot die verbruikersklagte oopmaak en moet 'n indeks- en liasseringstelsel van verbruikersklagtes byhou.

Ondersoekprosedure

28.(1) By die ontvangs van 'n verbruikersklagte ingevolge hierdie Wet, moet die Verbruikersbeskermer 'n persoon in diens van die Kantoor van die Verbruikersbeskermer of 'n ondersoekbeampte gelas om die klagte so gou doenlik te ondersoek.

(2) Die persoon of ondersoekbeampte vermeld in subartikel (1) moet 'n voorlopige beoordeling van die verbruikersklagte soos in hierdie Wet bedoel, maak.

(3) Die Kantoor mag nie enige persoon vir ondersoek laat dagvaar voordat 'n voorlopige beoordeling van die verbruikersklagte gemaak is nie.

(4) Indien, by oorweging van die voorlopige beoordeling, die Verbruikersbeskermer van mening is dat die verbruikersklagte beter deur 'n ander bevoegde owerheid hanteer kan word, kan hy of sy te eniger tyd enige ondersoek of aspek daarvan na sodanige ander owerheid verwys, met inbegrip van 'n owerheid in 'n ander provinsie: Met dien verstande dat die Kantoor te eniger tyd die ondersoek met betrekking tot daardie aangeleentheid kan hervat.

Voorlopige beoordeling van verbruikersklagte

29.(1) Die Kantoor van die Verbruikersbeskermer moet 'n voorlopige beoordeling van die verbruikersklagte ingedien ingevolge artikel 27(1) maak.

(2) Die Kantoor kan te eniger tyd gedurende sy ondersoek sy voorlopige beoordeling wysig, onder andere in die lig van nuwe getuienis of wetsbepalings, en volgens 'n gewysigde beoordeling voortgaan.

(3) Die Kantoor moet beoordeel of die verbruikersklagte, ingedien ingevolge artikel 27(1), deur 'n *bona fide*-verbruiker ingedien word.

(4) Die onus rus op die klaer om vas te stel of hy of sy 'n *bona fide*-verbruiker is.

(5) Indien die klaer bedoel in subartikel (3) nie 'n *bona fide*-verbruiker is nie, mag die Kantoor nie die klagte ondersoek nie.

(6) Die Kantoor moet beoordeel of die verbruikersklagte teen 'n besigheid, of 'n persoon wat voorgee om 'n besigheid of 'n besigheidspraktyk te bedryf, die potensiaal van strafregtelike aanspreeklikheid of siviele aanspreeklikheid oordra.

Dagvaarding en ondervraging van persone en voorlê van boeke en dokumente

30.(1) Vir die doeleindes van 'n ondersoek bedoel in artikel 28(1) kan die Verbruikersbeskermer, of 'n persoon in diens van die Kantoor van die Verbruikersbeskermer, gemagtig deur die Verbruikersbeskermer, –

(a) enige persoon dagvaar wat vermoedelik –

(i) in staat is om enige inligting oor die onderwerp van die ondersoek te verskaf; of

(ii) enige boek, dokument of ander voorwerp met betrekking tot daardie onderwerp in sy of haar besit of onder sy of haar beheer het,

om voor 'n persoon in diens van die Kantoor te verskyn op 'n tyd en plek in die dagvaarding vermeld, om ondervra te word of om daardie boek, dokument of ander voorwerp te toon; en

(b) daardie persoon, onder eed of plegtige verklaring opgelê deur die Verbruikersbeskermer of 'n ander persoon in diens van die Kantoor van die Verbruikersbeskermer, gemagtig deur die Verbruikersbeskermer, ondervra, en sodanige boek, dokument of ander voorwerp ondersoek of vir verdere inligting of vir veilige bewaring hou.

(2) 'n Dagvaarding vermeld in subartikel (1)(a) moet –

(a) in die voorgeskrewe vorm wees en die persoon wat gedagvaar word, vermeld;

- (b) besonderhede bevat van die aangeleentheid ten opsigte waarvan daar van die betrokke persoon vereis word om te verskyn;
- (c) deur die Verbruikersbeskermer of 'n ander persoon in diens van die Kantoor gemagtig deur die Verbruikersbeskermer geteken wees; en
- (d) op die voorgeskrewe wyse beteken word.

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

- (a) kan by die ondersoek deur enige persoon van sy of haar keuse bygestaan word; en,
- (b) is daarop geregtig om 'n bedrag gelykstaande aan die bedrag wat hy of sy as getuiefooie sou ontvang het indien hy of sy gedagvaar is om strafregtelike verrigtinge in die Hooggeregshof by te woon, gehou op die plek vermeld in die betrokke dagvaarding, as getuiefooie te ontvang uit gelde wat regtens vir sodanige doel toegeken is.

(4) 'n Persoon is skuldig aan 'n misdryf indien hy of sy, nadat hy of sy ingevolge hierdie artikel gedagvaar is –

- (a) sonder voldoende rede versuim om aanwesig te wees op die tyd en plek vermeld in die dagvaarding, of om aanwesig te bly tot die afsluiting van die verrigtinge of totdat hy of sy deur die Verbruikersbeskermer verskoon is van verdere bywoning; of
- (b) weier om die eed of 'n plegtige verklaring af te lê.

(5) 'n Persoon wat ingevolge subartikel (1) ondervra word, moet elke vraag eerlik en na die beste van sy of haar vermoë beantwoord, maar die persoon is nie verplig om enige vraag te antwoord indien die antwoord selfbeskuldigend is nie.

(6) Geen selfbeskuldigende antwoord wat gegee is of verklaring afgelê aan 'n persoon wat enige bevoegdheid ingevolge hierdie artikel uitoefen, is toelaatbaar as getuienis teen die persoon wat die antwoord in strafregtelike verrigtinge gegee het of die verklaring afgelê het nie, buiten in strafregtelike verrigtinge vir meened of waarin daardie persoon is verhoor word vir 'n misdryf bedoel in subartikel (5), en dan slegs tot die mate dat die antwoord of verklaring tersaaklik is om die ten laste gelegde misdryf te bewys.

Aanstelling van ondersoekers**31.(1) Die Verbruikersbeskermer –**

- (a) kan enige geskikte werknemer van die Kantoor of enige ander geskikte persoon in diens van die staat as 'n ondersoeker aanstel; en
- (b) moet 'n sertifikaat in die voorgeskrewe vorm aan elke ondersoeker uitreik wat meld dat die persoon ingevolge hierdie Wet as 'n ondersoeker aangestel is.

(2) Wanneer 'n ondersoeker enige funksie van 'n ondersoeker ingevolge hierdie Wet verrig, moet die ondersoeker –

- (a) in besit wees van 'n aanstellingsertifikaat wat ingevolge subartikel (1) aan daardie ondersoeker uitgereik is;
- (b) daardie sertifikaat toon aan enige persoon wat –
 - (i) geraak word deur die ondersoeker se handeling ingevolge hierdie Wet; en
 - (ii) versoek om die sertifikaat te sien; en
- (c) die bevoegdhede van 'n vredesbeampte soos omskryf in artikel 1 van die Strafproseswet, 1977 (Wet No. 51 van 1977) hê, en kan hy of sy die bevoegdhede wat regtens aan 'n vredesbeampte verleen is, uitoefen.

(3) Die Verbruikersbeskermer kan enige toepaslik gekwalifiseerde persoon as 'n ondersoeker aanstel of kontrakteeur om navorsing, oudits, navrae of ander ondersoekes namens die Verbruikersbeskermer uit te voer.**(4) 'n Persoon aangestel ingevolge subartikel (3) is nie 'n ondersoeker soos bedoel in subartikel (1) nie.****(5) Onderhewig aan die wette wat die staatsdiens bestuur, kan die lid van die Uitvoerende Raad, in oorleg met die lid van die Uitvoerende Raad vir finansies, persone in diens van die Kantoor of enige ander geskikte persone as ondersoekbeamptes aanstel, wat onderworpe moet wees aan die beheer en bestuur van die Verbruikersbeskermer.**

(6) Die Verbruikersbeskermer word geag as aangestel as 'n ondersoekbeampte.

(7) 'n Ondersoekbeampte moet voorsien word van 'n aanstellingsertifikaat geteken deur of namens die Verbruikersbeskermer en waarin daar vermeld word dat hy of sy 'n ondersoekbeampte aangestel ingevolge hierdie Wet is.

(8) 'n Ondersoekbeampte moet, wanneer hy of sy enige funksie ingevolge hierdie Wet verrig, sy of haar aanstellingsertifikaat in sy of haar besit hê.

Deursoeking en beslaglegging

32.(1) Ten einde enige inligting vereis deur die Kantoor van die Verbruikersbeskermer met betrekking tot 'n ondersoek te bekom, kan 'n ondersoekbeampte, onderhewig aan die bepalings van hierdie artikel, gedurende kantoorure enige perseel betree waarop of waarin enige boek, dokument of ander voorwerp wat met daardie ondersoek verband hou, is of vermoedelik is, en kan –

- (a) daardie perseel inspekteer of deursoek, en daar sodanige navrae doen as wat nodig mag wees vir die doel om enige sodanige inligting te bekom;
- (b) enige voorwerp gevind op of in die perseel wat met die betrokke ondersoek verband hou of mag hou, ondersoek, en inligting aangaande daardie voorwerp van die eienaar of persoon in beheer van die perseel of van enige persoon in wie se besit of beheer daardie voorwerp is, versoek;
- (c) afskrifte van of uittreksels maak uit enige boek of dokument gevind op of in die perseel wat met die betrokke ondersoek verband hou of mag hou, en 'n verduideliking van enige inskrywing daarin van enige persoon wat vermoedelik die nodige inligting het, versoek; of
- (d) teen die uitreiking van 'n kwitansie, op enigiets op of in die perseel beslag lê wat met die betrokke ondersoek verband hou of redelikerwys mag hou, indien die ondersoekbeampte dit vir verdere ondersoek of vir veilige bewaring moet hou.

(2) Tensy die eienaar of persoon in beheer van die betrokke perseel skriftelik toestemming gegee het, mag 'n ondersoekbeampte slegs 'n perseel betree en enige bevoegdheid bedoel in subartikel (1) uitoefen kragtens 'n lasbrief vir deursoeking, wat slegs deur 'n landdros of 'n regter uitgereik mag word indien dit uit inligting wat aan die

landdros of regter gegee is onder eed of plegtige verklaring blyk dat daar redelike gronde bestaan om te vermoed dat 'n boek, dokument of ander voorwerp wat getuienis vir die ondersoek mag verskaf op of in daardie perseel is.

(3) 'n Lasbrief vir deursoeking bedoel in subartikel (2) moet –

- (a) 'n ondersoekbeampte vermeld in die lasbrief magtig om die perseel wat in die lasbrief aangewys is, te betree vir die doel om enige bevoegdheid bedoel in subartikel (1) uit te oefen;
- (b) in die dag uitgevoer word, tensy die landdros of regter spesifiek die nagtelike uitvoering daarvan magtig; en
- (c) van krag wees totdat dit uitgevoer word, deur 'n bevoegde hof gekanselleer word, of 'n tydperk van een week vanaf die dag van uitreiking daarvan verstryk, wat ook al eerste plaasvind.

(4) 'n Onderzoekbeampte wat 'n lasbrief vir deursoeking kragtens hierdie artikel uitvoer, moet, voor sodanige uitvoering, indien enige persoon wie se regte beïnvloed mag word, dit vereis –

- (a) sy of haar aanstellingsertifikaat aan daardie persoon toon; en
- (b) 'n afskrif van die lasbrief aan daardie persoon oorhandig.

(5) 'n Persoon uit wie se besit of beheer 'n boek of dokument kragtens hierdie artikel geneem is, moet, so lank as wat dit in die besit of beheer van die betrokke ondersoekbeampte of van die Kantoor is, op versoek toegelaat word om afskrifte daarvan te maak of om uittreksels daarvan te neem op enige redelike tyd op sy of haar eie koste en onder die toesig van daardie ondersoekbeampte of 'n persoon in diens van die Kantoor.

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

- (a) 'n ondersoekbeampte dwarsboom of belemmer in die verrigting van sy of haar funksies ingevolge hierdie artikel; of
- (b) nadat 'n navraag aan hom of haar gerig is kragtens subartikel (1)(a), of inligting of 'n verduideliking kragtens subartikel (1)(b) of (c) van hom of haar versoek is, 'n antwoord of inligting of 'n verduideliking gee wat vals of misleidend is, wetend dat dit vals of misleidend is.

Bedinging van skikking om verbruikersklagte op te los

33.(1) Die Kantoor van die Verbruikersbeskermer kan 'n ooreenkoms met enige persoon beding en sluit vir –

- (a) die staking of vermyding van die besigheidspraktyk wat tot die verbruikersklagte aanleiding gegee het;
- (b) die vergoeding, met of sonder belang, aan die verbruiker wat geraak is;
- (c) die staking of vermyding van enige aspek van die besigheidspraktyk wat tot die verbruikersklagte aanleiding gegee het; of
- (d) enige ander aangeleentheid ten opsigte van die besigheidspraktyk wat tot die verbruikersklagte aanleiding gegee het.

(2) 'n Skikking bedoel in subartikel (1) –

- (a) kan te eniger tyd na die instelling van 'n ondersoek aangegaan word, maar voor die uitreik van 'n bevel deur die Hooggeregshof ingevolge artikel 37;
- (b) moet skriftelik wees en deur die betrokke partye onderteken wees; en,
- (c) kan onderhewig wees aan bevestiging deur die Hooggeregshof ooreenkomstig artikel 37.

Instelling van geregtelike stappe na voltooiing van ondersoek

34.(1) By voltooiing van 'n ondersoek en onderhewig aan subartikel (6), kan die Verbruikersbeskermer geregtelike stappe instel ter ondersteuning van die verbruiker in die Verbruikerstribunaal indien hy jurisdiksie het oor die persoon wat na bewering verantwoordelik is vir die besigheidspraktyk wat tot die verbruikersklagte aanleiding gegee het.

(2) Vir die doeleindes van sodanige geregtelike stappe, word die Verbruikersbeskermer geag om *locus standi* te hê.

(3) Indien 'n verbruikersklagte ten opsigte van 'n taai ooreenkoms of 'n billikheidskwessie na die Verbruikersbeskermer se mening 'n grondwetlike regs-kwessie opper, kan die Kantoor geregtelike stappe ter ondersteuning van die verbruiker in die Hooggeregshof

instel;

(4) Vir die doeleindes van die verrigtinge bedoel in subartikel (3), word die Verbruikersbeskermer geag om *locus standi* in sodanige verrigtinge te hê;

(5) Wanneer die Kantoor geregtelike stappe in die Verbruikerstribunaal of in die Hooggeregshof instel, word die Verbruikersbeskermer gesiteer as Eerste Eiser of Eerste Applikant en die verbruiker gesiteer as Tweede Eiser of Tweede Applikant, na gelang van die geval.

(6) Die Verbruikersbeskermer moet die toepaslike forum kies waarin die aangeleentheid vervolgd moet word deur die bepalings van hierdie Wet in ag te neem, veral ten opsigte van die vlot afhandeling van die litigasie en doeltreffende vergoeding vir die verbruiker.

(7) Wanneer die toepaslike forum gekies word soos bedoel in subartikel (6), moet die Verbruikersbeskermer die kostes van die litigasie vir die betrokke partye in ag neem en dienooreenkomstig geregtelike stappe in werking stel in die forum waar kostes die minste knellend vir 'n verweerder sal wees.

(8) Geen geregtelike stappe mag deur die Verbruikersbeskermer ingestel word nie, tensy die verbruiker –

- (a) 'n dokument teken waarin die verbruiker die geloofwaardigheid van die klagte bevestig en die Verbruikersbeskermer vrywaar; en
- (b) 'n dokument teken wat die Kantoor vrywaar van die gevolge van enige vals getuienis wat deur hom of haar aangebied mag word.

Deel 3
Beregting en hersiening van verbruikersklagtes

Hersieningspaneel

35.(1) Indien die Kantoor van die Verbruikersbeskermer besluit om nie geregtelike stappe in te stel of die aangeleentheid na 'n ander owerheid te verwys of om voor die Verbruikerstribunaal voort te gaan nie, moet die Verbruikersbeskermer die verbruiker en die persoon of besigheid teen wie die verbruikersklagte ingedien is, skriftelik van sodanige besluit in kennis stel tesame met die redes daarvoor.

(2) Die redes vir die beslissing bedoel in subartikel (1) moet sodanige kennisgewing bedoel in subartikel (1) vergesel.

(3) Indien die verbruiker benadeel word deur die beslissing van die Verbruikersbeskermer om nie geregtelike stappe in te stel nie, kan die verbruiker, binne veertien dae na ontvangs van die beslissing, die beslissing vir hersiening na die Hersieningspaneel verwys.

(4) Die Hersieningspaneel vermeld in subartikel (1) moet by die Kantoor geleë wees.

(5) Die Kantoor moet die verwysing vir 'n hersiening noteer en die verantwoordelike lid van die Uitvoerende Raad onverwyld inlig oor die behoefte om die Hersieningspaneel byeen te roep.

(6) Die verantwoordelike lid van die Uitvoerende Raad moet die Hersieningspaneel byeenroep binne veertien dae nadat die verbruiker 'n hersiening van die Verbruikersbeskermer se beslissing bedoel in sub-artikel (1) versoek het.

(7) Die Hersieningspaneel wat ingevolge subartikel (6) deur die verantwoordelike lid van die Uitvoerende Raad byeengeroep word, moet uit 'n *ad hoc*-komitee van drie persone met ondervinding en kennis van verbruikersaangeleenthede bestaan.

(8) Die persone bedoel in subartikel (7), mag in diens van die staat wees, maar nie by die Kantoor in diens wees nie.

(9) Onderhewig aan die wette wat die staatsdiens bestuur, moet 'n persoon wat op die Hersieningspaneel aangestel is, wat nie in die voltydse diens van die staat is nie, op sodanige voorwaardes en teen sodanige besoldiging aangestel word soos voorgeskryf deur die verantwoordelike lid van die Uitvoerende Raad, in oorleg met die lid van die Uitvoerende Raad verantwoordelik vir finansies.

(10) Onderhewig aan die reëls van natuurlike geregtigheid, kan die Hersieningspaneel die meriete van die beslissing oorweeg en enige verbale of skriftelike voorleggings,

indien enige, deur die verbruiker, die persoon of besigheid teen wie die verbruikersklagte ingedien is en die Verbruikersbeskermer.

(11) Die Hersieningspaneel kan sy eie beslissing deur dié van die Verbruikersbeskermer vervang en die Verbruikersbeskermer gelas om geregtelike stappe in te stel of om die Verbruikersbeskermer se beslissing om nie geregtelike stappe in te stel nie, te bevestig.

(12) Daar word na die beslissing van die Hersieningspaneel, geneem ingevolge subartikel (11), verwys as die hersieningsuitspraak.

(13) Die hersieningsuitspraak bedoel in subartikel (12) is finaal en bindend vir die verbruiker, die persoon of besigheid teen wie die verbruikersklagte ingedien is en die Verbruikersbeskermer.

(14) Die Hersieningspaneel moet die verbruiker, die persoon of besigheid teen wie die verbruikersklagte ingedien is en die Verbruikersbeskermer skriftelik oor die hersieningsuitspraak inlig en 'n gratis afskrif van die hersieningsuitspraak aan elkeen verskaf.

Uitwerking van hersieningsuitspraak

36. Indien die Hersieningspaneel die Verbruikersbeskermer gelas om verrigtinge namens 'n verbruiker in te stel, is artikel 29 van toepassing met die nodige veranderinge wat deur die konteks vereis word.

HOOFSTUK 5 SKIKKINGS BEDING DEUR KANTOOR VAN VERBRUIKERSBESKERMER

Bevestiging van skikkings beding deur Kantoor van Verbruikersbeskermer

37.(1) Die Kantoor kan by die Hooggeregshof aansoek doen om bevestiging van 'n skikking wat ingevolge hierdie Wet beding en gesluit is.

(2) Die Hooggeregshof kan, met behoorlike inagneming van die belang van verbruikers en besighede wat geraak is en die betrokke partye, 'n bevel uitreik wat –

- (a) die skikking bevestig;
- (b) die skikking bevestig met sodanige wysigings soos ooreengekom deur die betrokke partye en onderhewig aan sodanige voorwaardes as wat die hof nodig ag;
- (c) daardie skikking tersyde stel indien, nadat die partye betrokke by die skikking die geleentheid gebied is om gehoor te word, die hof tevrede is dat die skikking nie die staking of vermyding van die besigheidspraktyk wat tot die verbruikersklagte aanleiding gegee het, sal verseker nie.

(3) 'n Bevel ingevolge subartikel (2) moet in die *Koerant* gepubliseer word.

HOOFSTUK 6 WETSTOEPASSING EN GEREGTELIKE VERRIGTINGE

Deel 1

Vertroulikheid, beperking van aanspreeklikheid, afstanddoening van voordele en siviele regsmiddele

Vertroulikheid

38. Geen ondersoekbeampte of persoon in diens van die Kantoor van die Verbruikersbeskermer of wat pligte vir die Kantoor uitvoer, mag enige inligting openbaar wat deur hom of haar bekom is in die uitoefening, verrigting of uitvoering van enige bevoegdheids, funksies of pligte ingevolge hierdie Wet nie, buiten –

- (a) soverre dit nodig mag wees vir die doel van die deeglike en behoorlike uitoefening, verrigting of uitvoering van enige bevoegdheid, funksie of plig ingevolge hierdie Wet; of
- (b) op die bevel van 'n geregshof.

Beperking van aanspreeklikheid

39. Geen persoon, met inbegrip van die staat, is aanspreeklik ten opsigte van enigiets wat ter goeder trou kragtens hierdie Wet gedoen is nie, buiten dat die onus om goeder trou te bepaal, op sodanige persoon of die staat rus.

Afstanddoening van voordele

40. Enige ooreenkoms of kontraktuele term wat behels om die bepalings van hierdie Wet uit te sluit of om die toepassing daarvan te beperk, is van nul en gener waarde.

Regsmiddele

41. Geen bepaling van hierdie Wet kan vertolk word as dat dit enige persoon ontnem van enige siviele regsmiddel of reg om strafregtelike vervolging in te stel nie.

Deel 2
Misdrywe en strawwe

Algemene misdrywe

42.(1) 'n Persoon is skuldig aan 'n misdryf indien –

- (a) hy of sy as die eienaar of houer van enige besigheid of lisensie om te bedryf, misbruik van 'n verbruiker binne sy of haar besigheidperseel toelaat;
- (b) hy of sy hom- of haarself of enige ander persoon in diens van sodanige persoon met betrekking tot goedere of dienste, aan die verbruiker wanvoorstel.

(2) 'n Lid van die Verbruikerstribunaal, 'n personeellid, adviseur, agent of ander persoon in diens van of wat namens die Verbruikerstribunaal optree, is skuldig aan 'n misdryf indien hy of sy direk of indirek enige ongemagtigde fooi of beloning van enige persoon aanvaar met betrekking tot of in verband met enige diens wat gelewer is of enigiets wat deur die Verbruikerstribunaal gedoen of aangebied word.

(3) Enige persoon is skuldig aan 'n misdryf indien hy of sy, met betrekking tot of in verband met enige diens wat gelewer is of enigiets wat deur die Verbruikerstribunaal gedoen of aangebied word, enige personeellid of enige adviseur, agent of ander persoon in diens van of wat namens die Verbruikerstribunaal optree, omkoop of poog om om te koop, of korrup beïnvloed of poog om korrup te beïnvloed.

(4) Enige persoon wat valslik beweert dat hy of sy gemagtig is om fooie namens of op bevel van die Verbruikerstribunaal te hef of in te samel, is skuldig aan 'n misdryf.

Misdrywe rakende verhoor van Verbruikerstribunaal**43. 'n Persoon wat –**

- (a) versuim om voor die Verbruikerstribunaal te verskyn op die datum, tyd en plek wanneer daar van hom of haar ingevolge artikel 22 vereis word om dit te doen sonder om 'n persoon aan te stel om namens hom of haar te verskyn;
- (b) voor die Verbruikerstribunaal verskyn ingevolge artikel 22, maar sonder die voorsitter se toestemming versuim om aanwesig te bly tot die afsluiting van die verhoor of vergadering;
- (c) opgeroep is om ingevolge artikel 22 te verskyn en getuienis te lewer, of om enige boek, plan of ander dokument of artikel te toon wat sodanige persoon op daardie tyd in sy of haar besit mag hê, versuim of weier om dit te doen;
- (d) ingevolge artikel 22 vereis word om getuienis te lewer, weier om die eed of 'n plegtige verklaring af te lê; of
- (e) opsetlik 'n verhoor of vergadering van die Verbruikerstribunaal ontwrig of die Verbruikerstribunaal of enige lid daarvan in die verrigting van sy of haar funksies opsetlik dwarsboom of belemmer,

is skuldig aan 'n misdryf.

Strawwe**44. Enige persoon wat skuldig bevind is aan 'n misdryf –**

- (a) ingevolge artikel 42(2), (3) of (4), stel hom- of haarself bloot aan 'n boete of gevangenisstraf vir 'n tydperk wat nie daardie tydperk bepaal deur nasionale wetgewing vir korrupsie oorskry nie; of
- (b) ingevolge artikel 30(4), 32(6), 42(1) of 43, stel hom- of haarself bloot aan 'n boete of gevangenisstraf vir 'n tydperk wat nie vyf jaar oorskry nie, of aan beide sodanige boete en sodanige gevangenisstraf.

**HOOFSTUK 7
ALGEMENE BEPALINGS****Regulasies**

45.(1) Die verantwoordelike lid van die Uitvoerende Raad kan regulasies uitvaardig

rakende –

- (a) enige aangeleentheid wat ingevolge hierdie Wet vereis word of toegelaat word om voor te skryf;
- (b) enige betaling en bedrag van enige fooie betaalbaar ingevolge hierdie Wet;
- (c) die wyse waarop, en die dae waarop, indien van toepassing, enige aansoek ingevolge hierdie Wet gedoen of ingedien kan of moet word;
- (d) die wyse en vorm van diens, aflewering of versending van enige dagvaarding, kennisgewing of ander dokument wat ingevolge hierdie Wet beteken, afgelewer of versend moet word;
- (e) die wyse en vorm van die publikasie van kennisgewing of ander dokument wat ingevolge hierdie Wet gepubliseer moet word;
- (f) die vorm, inhoud en grootte, indien van toepassing, van enige kennisgewing, kommunikasie of ander dokument wat ingevolge hierdie Wet uitgereik, afgelewer, beteken, gegee of gepubliseer moet word;
- (g) tydperke, of die verlenging van tydperke, wat ingevolge hierdie Wet voorgeskryf moet word;
- (h) die besonderhede van die perseel ingevolge waarvan die klagte ingedien word;
- (i) die tarief van getuiefooie betaalbaar by appèl of hersieningsverrigtinge;
- (j) die vorm en wyse waarop 'n klagte aan die Kantoor van die Verbruikersbeskermer voorgelê moet word;
- (j) prosedure wat gevolg moet word vir die hantering van 'n besigheidsentiteit waarvan gevind is dat hy die bepalings van hierdie Wet oorskry het; en
- (k) in die algemeen, enige aangeleentheid ten opsigte waarvan die verantwoordelike lid van die Uitvoerende Raad dit nodig of gerade ag om regulasies uit te vaardig ten einde die oogmerke van hierdie Wet te bereik.

(2) Enige regulasie rakende fooi of gelde wat betaal moet word, moet deur die verantwoordelike lid van die Uitvoerende Raad in oorleg met die Lid van die Uitvoerende Raad vir finansies uitgevaardig word.

Oorgangsreëling

46. Enige klagte ingedien by die Verbruikersbesigheidseenheid van die Departement

voor die inwerkingtreding van hierdie Wet ingevolge enige wetgewing, hetsy herroep of gewysig, en die regulasies wat ingevolge daardie wetgewing uitgevaardig is, moet van afgesien word en ingevolge hierdie Wet gefinaliseer word.

Kort titel en inwerkingtreding

47.(1) Hierdie Wet word genoem die KwaZulu-Natal Wet op Verbruikerbeskerming, 2010, en tree in werking op 'n datum wat deur die verantwoordelike lid van die Uitvoerende Raad deur middel van kennisgewing in die *Koerant* bepaal sal word.

(2) Die verantwoordelike lid van die Uitvoerende Raad kan verskillende datums vir die inwerkingtreding van verskillende artikels van hierdie Wet bepaal.

No. 26

14 kuLwezi 2012

UMTHETHOSIVIVINYO WOKUVIKELA ABATHENGI WAKWAZULU-NATALI, 2010

Isaziso ngokuhambisana noMthetho 194 weMithetho Emileyo yeSishayamthetho saKwaZulu-Natali

Ngalokhu kunikezwa isaziso ngokuhambisana noMthetho 194 weMithetho Emileyo yeSishayamthetho sesiFundazwe maqondana nokuthi Umthethosivivinyo WokuVikela abaThengi WaKwaZulu-Natali, 2010, njengoba uchazwe ngezansi, sewethuliwe eSishayamthethweni esibalulwe ngenhla futhi uzocutshungulwa yiKomidi Lezokuthuthukiswa Komnotho Nezokuvakasha. Umphakathi kanye nabanye abanentshisekelo bayamenywa ukuba balethe izethulo ezimayelana nalo Mthethosivivinyo, okumele ziqondiswe ku -:

Mnu. DN Dimba
UNobhala
ISishayamthetho saKwaZulu-Natali
Isikhwama Seposi X 9112
Pietermaritzburg
3200

ukuze zifinyelele kuye zingakapheli izinsuku eziyi-15 kusukela ngosuku okushicilelwe ngalo lesi saziso

N. NAIDOO
UNobhala weSishayamthetho saKwaZulu-Natali

**UMTHETHOSISIVINYO WOKUVIKELA ABATHENGI
WAKWAZULU-NATALI, 2010**

UMTHETHOSIVIVINYO

Wokuhlinzekela ukuqinisekiswa nokuvikelwa kwamalungelo abathengi KwaZulu-Natali; wokuhlinzekela ukusungulwa kweHhovisi loMvikeli wabaThengi KwaZulu-Natali; wokunquma izinhloso, amandla, amajoka nemisebenzi yeHhovisi loMvikeli wabaThengi; wokuhlinzekela ukuphenywa kwezikhalo zabathengi; wokuhlinzekela ukunxeshezela kwabathengi; wokuhlinzekela ukufundisa nokuqwashisa ngamalungelo namajoka abathengi; wokuhlinzekela ukusungulwa kweziGungu zabaThengi; wokunquma izinhloso, amandla, amajoka nemisebenzi yeziGungu zabaThengi; kanye nokuhlinzekela okunye okuphatelene nalokho.

MAWUMISWE yisiShayamthetho sesiFundazwe saKwaZulu-Natali, kanje: -

UKUHLELEKA KWEZIGABA

Isigaba

ISAHLUKO 1 IZINCAZELO

1. Izincazelo

ISAHLUKO 2 IZINHLOSO ZOMTHETHO, OKUKHULULIWE KANYE NEMISEBENZI YELUNGU LOMKHANDLU OPHETHE

2. Izinhloso zoMthetho

3. Abakhululiwe eMthethweni

4. Imisebenzi yeLungu loMkhandlu oPhethe

ISAHLUKO 3 IZINHLANGANO ZOKUVIKELWA KWABATHENGI KWAZULU-NATALI

5. Ukusungulwa kweHhovisi loMvikeli wabaThengi laKwaZulu-Natali

6. Izinhloso zeHhovisi loMvikeli wabaThengi laKwaZulu-Natali

7. Amandla, amajoka nemisebenzi yeHhovisi loMvikeli wabaThengi

8. Ukusungulwa kweziGungu zabaThengi

9. Izinhloso zesiGungu sabaThengi

10. Amandla, amajoka nemisebenzi yesiGungu sabaThengi

11. Ukwakheka kwesiGungu sabaThengi

12. Ukuhoxiswa ekuqokelweni esiGungwini sabaThengi
13. Ukudalula ukuhlomula ngokwezezimali nokunye ukuhlomula kwamalungu esiGungu sabaThengi
14. Ukwehluleka ukudalula ukuhlomula kwezezimali nokunye ukuhlomula kwamalungu esiGungu sabaThengi
15. Isikhathi sokuba sesikhundleni samalungu esiGungu sabaThengi
16. Izikhala, ukuxoshwa nokwesula kwamalungu esiGungu sabaThengi
17. Ukumiswa okwesikhashana kwelungu lesiGungu sabaThengi
18. Ukwakheka kwesiGungu sabaThengi
19. Ukuholelwa kwamalungu esiGungu sabaThengi
20. Usizo longoti nolunye usizo esiGungwini sabaThengi
21. Izinhlelo zesiGungu sabaThengi
22. Ukubizelwa esigcawini kofakazi nokukhishwa kwemibhalo phambi kwesiGungu sabaThengi

ISAPHLUKO 4
UKUQINISEKISWA NOKUVIKELWA KWAMALUNGELO ABATHENGI

*Ingxenye 1
Okwejwayelekile*

23. Amalungelo abathengi
24. Ukuqinisekiswa kwamalungelo abathengi
25. Ukuvikelwa kwamalungelo abathengi
26. Ukusetshenziswa kwamalungelo umthengi

*Ingxenye 2
Ukufakwa nokuphenywa kwezikhalo zabathengi*

27. Ukufakwa kwesikhalo eHhovisi loMvikeli wabathengi
28. Inqubo yophenyo
29. Ukubhekwa okokuqala kwesikhalo somthengi
30. Ukubizelwa esigcawini nokuphekwa ngemibuzo kwabantu nokukhishwa kwezincwadi nemibhalo
31. Ukuqokwa kwabaphenyi
32. Ukusesha nokushaqwa kwempahla
33. Izingxoxo zezinhlelo zokuxazulula isikhalo somthengi
34. Ukuqalwa kwezinhlelo ezilandela ukuphothulwa kophenyo

*INgxenye 3**Ukwehlulelwa nokubuyekezwa kwesikhalo somthengi*

35. Ithimba lokubuyekeza
36. Ukusebenza kwesinqumo sokubuyekeza

ISAPHLUKO 5

- IZINHLELO EZIBEKWE ETAFULENI IHHOVISI LOMVIKELI WABATHENGI
37. Ukuqinisekiswa kwezinhlelo ezibekwe etafuleni iHhovisi loMvikeli wabaThengi

ISAPHLUKO 6

UKUSEBENZA KOMTHETHO NENQUBO YOKWAHLULELA

*INgxenye 1**Ubumfihlo, imikhawulo yokubophezeleka, ukutholakala kwemihlomulo nezinye izindlela zokulungisa*

38. Ubumfihlo
39. Imikhawulo yokubophezeleka
40. Ukutholakala lwemihlomulo
41. Izindlela zokulungisa

*INgxenye 2**Amacala nezigwebo*

42. Amacala ejwayelekile
43. Amacala mayelana nezigcawu zeziGungu zabaThengi
44. Izigwebo

ISAPHLUKO 7

IZINHLENGEKO EZEJWAYELEKILE

45. Imithethonqubo
46. Izinhleنگeko zesikhashana
47. Isihloko esifingqiwe nokuqala kokusebenza komthetho

ISAPHLUKO 1

IZINCAZELO

Izincazelo

1. Kulo Mthetho, ngaphandle uma ingqikithi isho okwehlukile –

“**ibhizinisi**” kushiwo –

- (a) ukunikeza, ukuhlinzeka noma ukwenza kutholakale noma isiphi

isidingo sokuphila; noma

(b) ukufuna noma ukuthola noma iyiphi imali engenayo;

“iKhomishana” kushiwo iKhomishana yabaThengi kaZwelonke esungulwe ngokwesigaba 85 soMthetho wokuVikela abaThengi, 2008 (uMthetho No. 68 ka 2008);

“uMthethosisekelo” kushiwo uMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika, 1996;

“imiphilandawonye” kushiwo imiphilandawonye njengoba ichazwe esigabeni 1 soMthetho wemiPhilandawonye, 1981 (uMthetho No. 91 ka 1981);

“umthengi” kushiwo umthengi njengoba echazwe esigabeni 1 soMthetho wokuVikela abaThengi, 2008 (uMthetho No. 68 ka 2008);

“uMvikeli wabaThengi” kushiwo umuntu oqokwe njengenhloko yeHhovisi loMvikeli wabaThengi KwaZulu-Natali ngokwesigaba 5(3);

“uhlaka lokuvikelwa kwabathengi” kushiwo noma iluphi uhlaka lokuvikelwa kwabathengi njengoba kuchazwe esigabeni 1 soMthetho wokuVikela abaThengi, 2008 (uMthetho No. 68 ka 2008);

“isiGungu sabaThengi” kushiwo isigungu sabathengi esisungulelwe isiFundazwe ngokwesigaba 8(1);

“inkantolo” kushiwo noma iyiphi inkantolo ehlongozwe kwisahluko 8 soMthethosisekelo, ngaphandle kwesiGungu sabaThengi;

“uMnyango” kushiwo umnyango kuHulumeni wesiFundazwe saKwaZulu-Natali obhekele ezabathengi;

“ukukhangisa” kushiwo ukukhangisa, njengoba kuchazwe esigabeni 1 soMthetho wokuVikela abaThengi, 2008 (uMthetho No. 68 ka 2008);

“uMkhandlu oPhethe” kushiwo uMkhandlu oPhethe esiFundazweni saKwaZulu-Natali njengoba kuhlangozwe esigabeni 132 soMthethosisekelo;

“ingqalasizinda” kushiwo noma isiphi isakhiwo, indawo noma okwakhelwe ukufeza umsebenzi othile, noma lapho kutholakala khona izidingo ezithile;

“ukuhlomula ngokwezezimali” kushiwo ubunikazi bamasheya enkampanini, ukuhlomula kwelungu ebhizinisini elihlanganyele futhi, mayelana nebhizinisi noma umsebenzi owenziwayo, noma ikuphi ukuhlomula okwenza ohlomulayo athole inzalo nenzuzo kulelo bhizinisi noma kulowo msebenzi;

“iGazethi” kushiwo iGazethi esemthethweni yesiFundazwe saKwaZulu-Natali;

“izimpahla” kushiwo izimpahla, njengoba kuchazwe esigabeni 1 soMthetho wokuVikela abaThengi, 2008 (uMthetho No. 68 ka 2008);

“iNhloko yoMnyango” kushiwo isikhulu esiphezulu somnyango kuHulumeni wesiFundazwe saKwaZulu-Natali obhekele ezabathengi;

“umphenyi” kushiwo umuntu oqokwe ngokwesigaba 31(1)(a);

“iLungu loMkhandlu oPhethe elibhekele ezeziMali” kushiwo iLungu loMkhandlu oPhethe esiFundazweni saKwaZulu-Natali elibhekele ezezimali;

“iHhovisi” kushiwo iHhovisi loMvikeli wabaThengi laKwaZulu-Natali elisungulwe ngokwesigaba 5(1);

“isikhulu sezepolitiki” kushiwo –

- (a) ilungu lePhalamende likaZwelonke, loMkhandlu kaZwelonke weziFundazwe noma leKhabhinethi;
- (b) ilungu lesishayamthetho sesifundazwe noma loMkhandlu oPhethe wesiFundazwe;
- (c) ikhansela likamasipala;

(d) omele iRiphabhulikhi kwamanye amazwe ongelona ilungu labasebenzi bakahulumeni;

(e) ilungu lendlu yabaholi bomdabu; noma

(f) isikhulu, kuzwelonke noma esifundazweni, seqembu lezepolitiki, senhlangano, somgwamanda, sombimbi, noma seqembu elibhaliswe ngokwesigaba 15 noma 15A soMthetho weKhomishana yoKhetho, 1996 (uMthetho No. 51 ka 1996);

“umxazululi onamandla okulawula” kushiwo umxazululi onamandla okulawula, njengoba echazwe esigabeni 1 soMthetho wokuVikela abaThengi, 2008 (uMthetho No. 68 ka 2008);

“umuntu” kushiwo umuntu qobo noma umuntu ngokomthetho, iqembu labantu noma umgwamanda ohlanganyele, ngaphandle uma ingqikithi isho okwehlukile kunencazelo efanayo;

“iKomidi lemiSebenzi lesiShayamthetho” kushiwo iKomidi lemiSebenzi lesiShayamthetho sesiFundazwe elibhekele ezokuthuthukiswa komnotho nezokuvakasha;

“izakhiwo” kushiwo umhlaba, nanoma isiphi isakhiwo, uhlaka, okunamasondo, umkhumbi, ibhanoyi noma okokufaka impahla;

“okunqunyiwe” kushiwo okunqunywe umthethonqubo, futhi igama **“ukunquma”** linencazelo efanayo;

“inani” kushiwo inani njengoba kuchazwe esigabeni 1 soMthetho wokuVikela abaThengi, 2008 (uMthetho No. 68 ka 2008);

“ukuziphatha okungavunyelwe” kushiwo ukwenza noma ukungenzi into ethile okushayisanayo nalo Mthetho;

“ukugqugquzela” kushiwo –

(a) ukukhangisa, ukuveza obala noma ukuthembisa ukuhlinzeka noma

iyiphi impahla noma umsebenzi njengengxenywe yebhizinisi, emphakathini wonke noma emphakathini othile ukuze ukubone;

(b) ukwenza izethulo njengengxenywe yebhizinisi ezingabonakala njengokukhangisa ngokuhlinzeka noma iyiphi impahla noma imisebenzi ukuze kubonakale; noma

(c) ukwenza noma ikuphi njengengxenywe yebhizinisi okungathathwa njengokunxenxa noma njengemizamo yokunxenxa umuntu ukuba kudayiselwane naye;

“isiFundazwe” kushiwo isifundazwe saKwaZulu-Natali esisungulwe ngokwesigaba 103 soMthethosisekelo futhi igama **“okwesifundazwe”** linencazelo efanayo;

“isiShayamthetho sesiFundazwe” kushiwo isiShayamthetho sesiFundazwe saKwaZulu-Natali esihlongozwe esigabeni 105 soMthethosisekelo futhi esinamandla okushaya imithetho esiFundazweni njengoba kuhlongozwe esigabeni 104(1) soMthethosisekelo;

“umsebenzi kahulumeni” kushiwo umsebenzi kahulumeni njengoba kuchazwe esigabeni 1 soMthetho wemiSebenzi kaHulumeni, 1994 (iSimemezelo No. 103 sika 1994), futhi kubandakanya umsebenzi kamasipala;

“imithethonqubo” kushiwo imithethonqubo eyakhiwe ngokwalo Mthetho;

“umaziphathe olawulayo” kushiwo uhlaka lombuso noma uphiko olwakhiwe ngokomthetho kazwelonke noma wesifundazwe olubhekele ukulawula imboni, noma umkhakha wanoma iyiphi imboni;

“ummangalelwa” kushiwo umuntu noma inkampani emangalelwayo ngokwalo Mthetho;

“iLungu loMkhandlu oPhethe” kushiwo iLungu loMkhandlu oPhethe esiFundazweni saKwaZulu-Natali elibhekele ezabathengi;

“**umdayisi**” mayelana nezimpahla ezithile, kushiwo umuntu, ngokuqhuba ibhizinisi, ohlinzeka lezo zimpahla kumthengi;

“**isiKhwama seNgeniso**” kushiwo isikhwama seNgeniso sesiFundazwe esisungulwe ngokwesigaba 226 soMthethosisekelo;

“**umsebenzi**” kushiwo umsebenzi, njengoba kuchazwe esigabeni 1 soMthetho wokuVikela abaThengi, 2008 (uMthetho No. 68 ka 2008);

“**ohlinzeka ngomsebenzi**” kushiwo umuntu ogqugquzela, ohlinzeka noma ofuna ukuhlinzeka nganoma imuphi umsebenzi;

“**umhlinzeki**” kushiwo umuntu okhangisa noma iyiphi impahla noma imisebenzi;

“**ukuhlinzeka**” kushiwo ukuhlinzeka, njengoba kuchazwe esigabeni 1 soMthetho wokuVikela abaThengi, 2008 (uMthetho No. 68 ka 2008);

“**Io Mthetho**” kubandakanya nemithethonqubo; futhi

“**ukudayiselana**” kushiwo ukudayiselana njengoba kuchazwe esigabeni 1 soMthetho wokuVikela abaThengi, 2008 (uMthetho No. 68 ka 2008).

ISAHLUKO 2 IZINHLOSO ZOMTHETHO, ABAKHULULIWE KANYE NEMISEBENZI YELUNGU LOMKHANDLU OPHETHE

Izinhloso soMthetho

2. Izinhloso zalo Mthetho –

- (a) ukuhlinzekela uhlaka olungaguquki, olwazekayo futhi olusebenzayo lokulawula izikhalo zabathengi esiFundazweni;
- (b) ukuhlinzekela izinhlelo zokugqugquzela ukuzethemba kwabathengi;
- (c) ukuhlinzeka ngezinhlelo zokuvikelwa kwabathengi kuzo zonke izindawo esiFundazweni ngakolunye uhlangothi kugqugquzelwa ukusebenza nokuncintisana kwezokudayisa;

- (d) ukwakha isisekelo sokulinganisa amathuba akhona kwezomnotho phakathi kwabathengi abebekade bengenakho ukuhlonipheka phambilini kanjalo namandla nokusebenza kwebhizinisi;
- (e) ukugqugquzela nokuqhubela phambili isimo esihle kwezomnotho kubathengi esiFundazweni; kanye
- (f) nokuhlinzekela uhlelo olutholakala kalula, olungashintshi, olusebenzayo futhi olusheshayo lokubhekana nezabathengi esiFundazweni.

Abakhululiwe eMthethweni

3. Lo Mthetho awusebenzi –

- (a) esikhulwini njengoba kuchazwe esigabeni 1(1) soMthetho wokuyiNqubo noKwenziwayo, 1964 (uMthetho No. 91 ka 1964), uma senza imisebenzi yaso;
- (b) kwisithunywa senkantolo nakunoma iliphi iphoyisa lenkantolo elenza umsebenzi walo ngokomyalelo wenkantolo; kanye
- (c) nasejajini noma emantshini, eyenza umsebenzi wayo.

Imisebenzi yeLungu loMkhandlu oPhethe

4. ILungu loMkhandlu oPhethe kumele –

- (a) ezinyangeni eziyi-12 ngemuva kokuqala kokusebenza kwalo Mthetho, –
 - (i) lakhe inqubomgomo yesifundazwe nezindlela namazinga amayelana nezindaba ezithinta abathengi;
 - (ii) lakhe futhi libeke imikhombandlela yokusebenzisana mayelana nezindaba ezithinta abathengi esiFundazweni;
- (b) uma kunesidingo, lakhe uhlelo lokubhekelela umphakathi mayelana nezindaba ezithinta abathengi; futhi
- (c) lenze eminye imisebenzi njengoba lingajutshwa ukuba liyenze ngokwalo Mthetho.

ISAHLUKO 3 IZINHLANGANO ZOKUVIKELWA KWABATHENGI KWAZULU-NATALI

Ukusungulwa kweHhovisi loMvikeli wabaThengi kwaZulu-Natali

5.(1) Kuncike kwisigaba 84 soMthetho wokuVikela abathengi, 2008 (uMthetho No. 68 ka 2008), ngalokhu kusungulwa ihhovisi elizokwaziwa ngeHhovisi loMvikeli wabathengi.

(2) IHhovisi elihlongozwe kwisigatshana (1) aliyena umuntu ngokomthetho.

(3) ILungu loMkhandlu oPhethe kumele, ngokwezinhlinzeko ezifanele zoMthetho wemiSebenzi kaHulumeni, 1994 (iSimemezelo No. 103 sika 1994), liqoke uMvikeli wabathengi njengenhloko yeHhovisi loMvikeli wabathengi ezingeni elinqunywe iLungu loMkhandlu oPhethe.

(4) Uma uMvikeli wabathengi engakwazi ukwenza imisebenzi yakhe ngenxa yanoma isiphi isizathu, iLungu loMkhandlu oPhethe kumele liqoke umuntu ozokuba yiBamba loMvikeli wabathengi kuze kuqokwe uMvikeli wabathengi ozosebenza ngokugcwele.

(5) Imisebenzi yezokuphatha neyobubhalane ehambisana namajoka eHhovisi kumele yenziwe abasebenzi boMnyango abaqokelwe ukwenza leyo misebenzi yiNhloko yoMnyango.

(6) Bonke abasebenzi abajutshwe ukwenza imisebenzi yezokuphatha neyobubhalane eHhovisi njengoba kuhlangozwe esigatshaneni (5), bayolawulwa futhi bayalelwe uMvikeli wabathengi.

(7) IHhovisi lingasebenzisa usizo lwabantu abasiselwe noma abadluliselwe kulona besuka kuhulumeni ngokuhambisana nezinhlinzeko zoMthetho wemiSebenzi kaHulumeni, 1994 (iSimemezelo No. 103 sika 1994).

(8) Uma kuvela isidingo, uMvikeli wabathengi, lapho enza imisebenzi namajoka akhe, angasizwa inoma imuphi umuntu noma umgwamanda ngaphansi kwemibandela ethile futhi isikhathi esithile okungavunyelwana ngaso, ngezinhloso zokuthi kuqhutshwe uphenyo oluthile egameni loMvikeli wabathengi.

(9) Umuntu okukhulunywe ngaye kwisigatshana (8) –

(a) angathunyelwa kunoma iyiphi ingxenye yesiFundazwe noma yeRiphabhulikhi ukuba ayoqhuba uphenyo oluhlongozwe kwisigatshana (8); futhi

(b) angakhokhelwa iholo, izibonelelo nezindleko njengoba kunganquma iLungu loMkhandlu oPhethe ngokubonisana neLungu loMkhandlu oPhethe elibhekele ezeziMali.

Izinhloso zeHhovisi loMvikeli wabaThengi

6. Izinhloso zeHhovisi loMvikeli wabaThengi –

- (a) ukuqinisekisa ukuhlinzekwa kohlaka lwezikhalo zomphakathi ezingaguquki futhi ezaziwayo esiFundazweni;
- (b) ukugxilisa ukuzethemba kubathengi esiFundazweni;
- (c) ukuqinisekisa ukuthi izinhlelo ezihlinzekiwe ukuvikela abathengi ngokwalo Mthetho ziyasetshenziswa;
- (d) ukuqinisekisa ukuthi kwakhiwa isisekelo sokwenza kube nokulingana endimeni yezomnotho phakathi kwabathengi ababencishwe amathuba phambilini kanye namabhizinisi;
- (e) ukuqinisekisa ukugqugquzelwa kanye nokusimamiswa kwezomnotho kubathengi esiFundazweni; kanye
- (f) nokuqinisekisa ukuthi abathengi esiFundazweni bahlinzekwa ngohlelo lokubabhekelela olutholakala kalula, olungashintshi, oluwusizo, olusheshayo nolusebenzayo.

Amandla, amajoka nemisebenzi yeHhovisi loMvikeli wabaThengi

7.(1) IHhovisi loMvikeli wabaThengi kumele –

- (a) lemukele futhi liphenye izikhalo zabathengi ngokuhambisana nalo Mthetho;
- (b) lihlinzekele ukuxazululwa noma ukulungiswa kwezinkinga ezivela ngokwalo Mthetho phakathi kwabathengi kwabathengi, kwabanikazi bezindawo, noma kwabantu abaqhuba amabhizinisi, esiFundazweni;
- (c) ledlulisele izinkinga ezihlongozwe endimeni (b) esiGungwini sabaThengi esifanele esiFundazweni;
- (d) lenze izincomo kwiLungu loMkhandlu oPhethe futhi lithathe izinyathelo ezifanele zokusombulula isikhalo esifakwe eHhovisi;
- (e) leluleke iLungu loMkhandlu oPhethe nganoma iluphi idaba oludluliselwe eHhovisi yiLungu loMkhandlu oPhethe;

- (f) liphenye futhi lenze izincomo eLungwini loMkhandlu oPhethe mayelana nanoma iluphi udaba oluthintana ngqo noma ngandlela thile nezinto noma nezindaba ezithinta abathengi esiFundazweni;
- (g) leluleke iLungu oMkhandlu oPhethe mayelana nokusungulwa kwezinhlelo zokusiza umphakathi okuhloswe ngazo ukugqugquzela kanye nokuthuthukisa izimo zezomnotho kubathengi esiFundazweni;
- (h) lise iLungu loMkhandlu oPhethe ekwakheni inqubomgomo nasekusunguleni izindlela namazinga esifundazweni, njengoba kuhlangozwe esigabeni 4(a)(i) salo Mthetho;
- (i) lihlanganyele nezinye izinhlaka ezibambe iqhaza kuzwelonke, esifundazweni nasemhlabeni jikelele futhi libambe iqhaza ezihlelweni zezemfundo okuhloswe ngazo ukuqwashisa abathintekayo embonini yezokuthengiselana mayelana nokuphathwa kwabathengi;
- (j) liqale futhi libambe iqhaza ezinhlelweni okuhloswe ngazo ukwehlisa izinga lokuhlukunyezwa nokuxhashazwa kwabathengi esiFundazweni;
- (k) lise futhi leluleke iLungu loMkhandlu oPhethe ngokusungula uhlelo lokufezekisa izinhloso zoMthetho ezibekwe esigabeni 2;
- (l) lisebenzise uhlaka lwezinqubomgomo zabathengi zesifundazwe nezikazwelonke, ukusiza nokweluleka iLungu loMkhandlu oPhethe mayelana nokweluleka nokulawula –
- (i) ababambe iqhaza embonini yezokuthengiselana, abathengi kanye nezinhlangano noma nezikhungo ezimisebenzi yazo noma ezizinhloso zazo zinomthelela noma ziyahambisana nezindaba zabathengi esiFundazweni; kanye
 - (ii) nophiko lwezamabhizinisi ngaphakathi eMnyangweni olubhekele ukuthuthukiswa kwawo wonke amabhizinisi amancane, imiphilandawonye, ukuthuthukiswa nokusimamiswa komnotho womphakathi, nezinye izinhlaka ezithi azifane nalo kweminye iminyango esiFundazweni; kanye
 - (iii) namabhizinisi kanye nokuqinisekisa ukuthi amabhizinisi ayahambisana nezinqubomgomo nemithetho ekhona emayelana nabathengi; futhi
- (m) lenze eminye imisebenzi njengoba lingajutshwa ngokwalo Mthetho.

(2) Ngaphezu kwamandla, kwamajoka noma kwemisebenzi ehlongozwe esigatshaneni (1), iHhovisi kumele, ngemuva komhla zingama-31 kuNdasa wonyaka ngamunye, lithumele kwiLungu loMkhandlu oPhethe, umbiko wonyaka ngemisebenzi yalo yonyaka wonke kubandakanya imisebenzi ehlongozwe kwisigatshana (1).

(3) ILungu loMkhandlu oPhethe kumele lethule ikhophi yombiko wonyaka elithunyelelwe wona ngokwesigatshana (1), kwisiShayamthetho sesiFundazwe ezinsukwini eziyi-14 liwutholile.

Ukusungulwa kweziGungu zabaThengi

8.(1) ILungu loMkhandlu oPhethe kumele, ezinyangeni eziyi-12 ngemuva kokuqala kokusebenza kwalo Mthetho, ngesaziso kwiGazethi, lisungule isiGungu noma iziGungu zabaThengi zesiFundazwe.

(2) IsiGungu sabaThengi okukhulunywe ngaso esigatshaneni (1) –

- (a) sakhelwe indawo ebalulwe kwisaziso; futhi
- (b) siyohlala kuleyo ndawo ebalulwe kwisaziso.

(3) ILungu loMkhandlu oPhethe, ngesaziso kwiGazethi –

- (a) lingachibiyela indawo yesiGungu sabaThengi esihlongozwe kwisigatshana (2); noma
- (b) lingahoxisa isaziso esihlongozwe kwisigatshana (1) futhi lihlakaze isiGungu sabaThengi esihlongozwe kwisigatshana (1);

(4) ILungu loMkhandlu oPhethe, kuncike kwisigaba 10(1)(b), linganquma ukuthi, mayelana nezinhlelo ezithile, isiGungu sabaThengi sihlale kwenye indawo ngaphandle kwendawo yaso isiGungu sabaThengi.

Izinhloso zesiGungu sabaThengi

9. Izinhloso zesiGungu sabaThengi –

- (a) ukwamukela, ukulalela nokunquma nganoma iluphi udaba oluthinta abathengi; kanye

(b) nokuphatha noma iziphi izikhalo noma izihibe ezithinta abathengi.

Amandla, amajoka nemisebenzi yesiGungu sabaThengi

10.(1) IsiGungu sabaThengi kumele –

- (a) semukele, silalele, sicubungule bese sinquma nganoma isiphi isikhalo sabathengi esilethwe kusona ukuze sibhekane naso njengoba kuhlangozwe kulo Mthetho;
- (b) sihlale ngalezo zinsuku nangalawo mahora nakuleyo ndawo eyonqunywa isikhulu esengamele noma uSihlalo, ngokubonisana noMvikeli wabaThengi;
- (c) sibambe futhi sinqube imihlangano ngezikhathi nasezindaweni eziyonqunywa isikhulu esengamele noma uMvikeli wabaThengi kuzo zonke izindawo zesiFundazwe;
- (d) sisebenzise imithetho ekhona eNingizimu Afrika uma sesicubungula izikhalo noma izihibe ezimayelana nabathengi;
- (e) sibeke imigomo eyejwayelekile eyosetshenziswa ukuxazulula ukungaboni ngasolinye phakathi kwabathengi namabhizinisi;
- (f) siyalele uMvikeli wabaThengi ukuba aqophe, ohlwini lwamabhizinisi angenzi ngendlela egculisayo, igama lebhizinisi, igama lomnikazi webhizinisi kanye nemiphumela etholwe uMvikeli wabaThengi mayelana nesigatshana (2)(a), (b) no (c); futhi
- (g) sisebenzise noma imaphi amandla aso futhi senze imisebenzi esijutshelwe yona ngokwalo Mthetho.

(2) IsiGungu sabaThengi –

- (a) singakhokhisa izindleko, ngezinga eliyonqunywa noma ngesamba esinqunywe isiGungu sabaThengi, noma imuphi umuntu otholakala enecala lokwenza ngendlela engafanelekile kumthengi, ngesenzo esishayisanayo noma esingalandeli lo Mthetho noma eminye imithetho ekhona;
- (b) mayelana nesikhalo somthengi esiphathelene nokudayiselana noma nokuziphatha umthengi akubona kuchemile, kunokwenzelela noma kungenasidingo, singaphenya mayelana nalokho;
- (c) ecaleni elimayelana nesikhalo somthengi, uma sinelisekile ukuthi isikhalo siwumdlalo nje noma singukuchitha isikhathi, singakhokhisa umthengi izindleko

zecal; futhi

(d) singabhekana nanoma iluphi udaba oludingekile noma olunokuthintana nokwenza kwaso imisebenzi yaso ngokwalo Mthetho.

(3) Isikhulu esongamele sesiGungu sabaThengi kumele ngokushesha, ngemuva komhla zingama-31 kuNdasa wonyaka ngamunye, sithumele kwiLungu loMkhandlu oPhethe umbiko wonyaka ngemisebenzi yesiGungu sabaThengi.

(4) Umbiko othunyelelwe iLungu loMkhandlu oPhethe ngokwesigatshana (3) kumele ubandakanye uhlu lwezigameko ezingezinhle oluhlongozwe esigabeni 10(1)(f).

(5) ILungu loMkhandlu oPhethe lingacela ukuba isiGungu sabaThengi silethe eminye imibiko kulona njengeLungu loMkhandlu oPhethe izikhathi ngezikhathi.

(6) ILungu loMkhandlu oPhethe kumele lihambise kwisiShayamthetho sesiFundazwe ikhophi yombiko wonyaka ohlongozwe kwisigatshana (3), ezinsukwini eziyi-14 liwutholile.

Ukwakheka kwesiGungu sabaThengi

11.(1) IsiGungu sabaThengi sakhiwe –

(a) amalungu aphakathi kwayisithupha nayisishiyagalombili aqokwe iLungu loMkhandlu oPhethe; kanye

(b) noSihlalo, oqokwe ngokwesigaba 12 salo Mthetho.

(2) Ubulungu obuhlongozwe esigatshaneni (1) kumele kubandakanye –

(a) uSihlalo, okumele kube nguMmeli ogogodile noma uMmeli wasemaJajini noma imantshi eseyathatha umhlalaphansi noma uthisha wezomthetho enyuvesi onesipiliyoni seminyaka okungenani emihlanu esebenza ngomthetho noma kwezobulungiswa;

(b) usekela kaSihlalo, okumele kube nguMmeli ogogodile noma uMmeli wasemaJajini noma imantshi eseyathatha umhlalaphansi noma uthisha wezomthetho enyuvesi onesipiliyoni seminyaka okungenani emithathu esebenza ngomthetho noma kwezobulungiswa;

- (c) umuntu oyedwa onolwazi nesipiliyoni emkhakheni wezabathengi, wezomnotho nakwezokudayisa;
- (d) umuntu oyedwa onolwazi nesipiliyoni emkhakheni wezabathengi kodwa ongangene kuwona futhi ongahlomuli kwezezimali, okungaba ukuhlomula ngqo noma ngandlela thile;
- (e) umuntu oyedwa njengonobhala wesiGungu sabaThengi ukuze enze imisebenzi yezokuphatha ehambisana nemizebenzi yesiGungu sabaThengi; kanye
- (f) nomunye umuntu oyedwa ozosiza unobhala wesiGungu sabaThengi njengoba kungadingeka.

(3) Ekuqokeni amalungu esiGungu sabaThengi, iLungu loMkhandlu oPhethe kumele liqinisekise ukuthi kubhekelelwa ukungalingani kwaphambilini.

(4) ILungu loMkhandlu oPhethe kumele, ngesaziso emaphephandabeni amabili atholakala kuso sonke isifundazwe nangokusebenzisa indlela engakwazi ukufinyelela kubantu abaningi esiFundazweni, ameme abantu noma izinhlango ezinentshisekelo esiFundazweni ukuba ziphakamise abantu abazoqokelwa kwisiGungu sabaThengi.

(5) Isaziso esihlongozwe kwisigatshana (4), kumele sicacise –

- (a) inqubo yokuphakamisa;
- (b) okudingekayo kwabaphakanyiswayo; kanye
- (c) nosuku lokuvalwa kweziphakamiso.

(6) ILungu loMkhandlu oPhethe kumele licubungule zonke iziphakamiso ezilethiwe eziphendula isaziso, futhi lingaqoka ithimba elakhiwe izikhulu zomnyango ezingeqile kwezine ukubuyekeza zonke iziphakamiso futhi lenze izincomo kwiLungu loMkhandlu oPhethe mayelana nabaphakanyiselwe kwisiGungu sabaThengi.

(7) ILungu loMkhandlu oPhethe kumele lishicilele amagama abantu abaqokelwe esiGungwini sabaThengi kwiGazethi nasemaphephandabeni okungenani amabili atholakala esifundazweni, ngokushesha ngemuva kokuba labo bantu sebazisiwe, ngezincwadi, mayelana nokuqokelwa kwabo esiGungwini sabaThengi.

(8) ILungu loMkhandlu oPhethe kumele, ezinyangeni ezimbili ngemuva kokuqoka amalungu, lihlinzeke iKomidi lemiSebenzi lesiShayamthetho ngamagama amalungu aqokiwe kubandakanya nesikhathi sawo sokuba sezikhundleni.

(9) Lesi sigaba sisebenza nezinguquko ezifanele uma kugcwaliswa isikhala somsebenzi esiGungwini sabaThengi.

Ukuhoxiswa ekuqokelweni esiGungwini sabaThengi

12. Umuntu uyahoxiswa ekuqokelweni esiGungwini sabaThengi noma ekuqhubekeni nokusebenza esiGungwini sabaThengi uma –

- (a) ecwile noma ecwila ezikweletini ngokungenakuhlengeka;
- (b) emenyezalwe inkantolo yomthetho njengongaphilile engqondweni
- (c) ehlomla ngqo noma ngendlela thile esivumelwaneni somsebenzi noMvikeli wabaThengi noma nesiGungu sabaThengi futhi ehluleka ukudalula lokho kuhlomula kwakhe nohlobo lwakho ngendlela edingeka kulo Mthetho;
- (d) engaphansi kokuphathelwa izinto zakhe umthetho;
- (e) eke waxoshwa esikhundleni ngenxa yokuziphatha budlabha okubandakanya ukuntshontsha noma ukukhwabanisa;
- (f) eke watholakala enecala futhi wagwetshwa ukubhadla ejele ngaphandle kokubonelelwa ngenhlawulo, ngaphandle kokuthi, iLungu loMkhandlu oPhethe, uma lowo ophakanyisiwe edalula yonke imininingwane yecala ngencwadi efungelwe, lingahoxisa lokho ngokuhambisana nesigaba 106(1)(e) soMthethosisekelo: Kuncike ekutheni ukuhoxiswa ngokwalesi sigatshana kuyaphela ngemuva kweminyaka emihlanu kuphothulwe isigwebo;
- (g) ehluleka ukudalula ukuhlomula anakho ngokuhambisana nesigaba 13 noma uma ethamele noma ebambe iqhaza emhlanganweni yesiGungu sabaThengi ngenkathi ehlomla njengoba kuhlangozwe kulesi sigaba;
- (h) esebenza ngaphansi kukahulumeni;
- (i) eyisikhulu sezepolitiki;
- (j) engesona isakhamuzi sakwiRiphabhulikhi; noma
- (k) engahlali esiFundazweni.

Ukudalulwa kokuhlomula ngokwezezimali nokunye ukuhlomula kwamalungu esiGungu sabaThengi

13.(1) Umuntu ophakanyiselwe ukusebenza esiGungwini sabaThengi ngokwesigaba 11 kumele, ezinsukwini eziyi-10 ephakanyisiwe, athumele incwadi yokudalula ukuhlomula ngokwezezimali noma okunye ukuhlomula anakho kunoma iyiphi inkampani, umphilandawonye nanoma ikuphi okunye ukuhlomula anakho kwezamabhizinisi, kwiLungu loMkhandlu oPhethe.

(2) Noma ikuphi ukwehluleka kwelungu ukudalula ukuhlomula ngokwezezimali noma okunye ukuhlomula elinakho ngokwesigatshana (1) kuyalihoxisa lelo lungu ngokwesigaba 12 ukuba liqokelwe esiGungwini sabaThengi.

(3) Noma iliphi ilungu lesiGungu sabaThengi kumele, uma lingena esikhundleni futhi ekuqaleni konyaka ngamunye wezimali wesiGungu sabaThengi, lilethe incwadi yokudalula ukuhlomula ngqo noma ngandlela thile elinakho kunoma iyiphi inkampani, umphilandawonye noma ibhizinisi kwiLungu loMkhandlu oPhethe.

(4) Uma ilungu lesiGungu sabaThengi liqala ukuhlomula kunoma iyiphi inkampani, umphilandawonye noma ibhizinisi, nganoma isiphi isikhathi ngesikhathi lisesesikhundleni njengelungu lesigungu sabaThengi kumele, zingapheli izinsuku eziyishumi liqalile ukuhlomula, lilethe incwadi yokudalula lokho kuhlomula kwiLungu loMkhandlu oPhethe.

(5) Noma ikuphi ukwehluleka kwelungu ukudalula ukuhlomula kwalo njengoba kulongozwe kwisigatshana (3) no (4) kuyoholela ekuhoxisweni kwalelo lungu ekutheni liqokwe ngokwesigaba 16(2).

Ukwehluleka kwelungu lesiGungu sabaThengi ukudalula ukuhlomula ngokwezezimali noma okunye ukuhlomula

14.(1) Ilungu lesiGungu sabaThengi elehluleka ukudalula njengoba kuvezwe esigabeni 13, kuncike kwisigatshana (2), lingahoxiswa ekutheni liqhubeke nokuba sesiGungwini sabaThengi.

(2) ILungu loMkhandlu oPhethe, uma lithola ukuthi ilungu lesiGungu sabaThengi lehlulekile ukulandela izinhlinzeko zesigaba 13, kumele liphenye ngalokho bese lithatha izinyathelo zokuqondisa izigwegwe ezifanele.

Isikhathi sokuba sesikhundleni selungu lesiGungu sabaThengi

15.(1) Ilungu liqokelwa ukusebenza kwisiGungu sabaThengi iminyaka eyisihlanu noma ngaphansi njengoba kunganquma iLungu loMkhandlu oPhethe.

(2) Ilungu lingakwazi ukuthi libuye liqokelwe elinye ihlandla.

Izikhala zomsebenzi, ukuxoshwa nokwesula kwamalungu esiGungu sabaThengi

16.(1) Ilungu lesiGungu sabaThengi kumele lihoxe esikhundleni salo uma lihoxiswa njengoba kuhlongozwe kwisigaba 12.

(2) ILungu loMkhandlu oPhethe, ngemuva kokunikeza ilungu ithuba nokubeka uhlangothi lwalo, lingaxosha lelo lungu nganoma isiphi isikhathi, uma, ngokubona kwalo, kunezizathu ezibambekayo nezifanele zokwenze njalo.

(3) Ilungu lingesula esikhundleni ngokuthi linikeze iLungu loMkhandlu oPhethe incwadi yesaziso sezinsuku ezingekho ngaphansi kwama-30: Kuncike ekutheni iLungu loMkhandlu oPhethe lingasichitha leso saziso sokwesula.

(4) Noma inini uma kuvela isikhala somsebenzi kwisiGungu sabaThengi, iLungu loMkhandlu oPhethe kumele, kuncike kwisigaba 11, liqoke umuntu ozovala leso sikhala kuleso sikhathi esisasele selungu elishiyayo.

(5) ILungu loMkhandlu oPhethe, kuncike kwisigatshana (2), lingaxosha amalungu athile noma wonke amalungu esiGungu sabaThengi.

(6) Uma iLungu loMkhandlu oPhethe lisebenzisa amandla alo ngokwesigatshana (5), uma lenqena ukulandela inqubo yokuqokwa kwamalungu esiGungu sabaThengi ebekwe esigabeni 11, kodwa ngokulandela izigatshana (2) no (3) zesigaba 11, lingaqoka abantu

abazosebenza njengamalungu esiGungu sabaThengi okwesikhashana: Kuncike ekutheni –

(a) abantu abaqokelwa ukungena ezikhundleni zamalungu axoshiwe ngokwesigatshana (5), ngeke baqhubeke nokuba sesiGungwini sabaThengi isikhathi esingaphezu kwezinsuku ezingama-90 kusukela osukwini lokuqokwa kwabo; futhi

(b) iLungu loMkhandlu oPhethe, kuncike kwisigatshana 11, kumele liqoke amalungu azosebenza ngokugcwele njengamalungu esiGungu sabaThengi zingakapheli izinsuku ezingama-90 emva kokuqokwa okuhlongozwe endimeni (a) yalesi sigatshana.

Ukumiswa isikhashana kwelungu lesiGungu sabaThengi

17.(1) ILungu loMkhandlu oPhethe, ngemuva kokusebenzisa imithetho efanele yezobulungiswa, lingamisa ilungu lesiGungu sabaThengi libe lihora ngokugcwele uma –

(a) kunezinsolo zokuthi ilungu lenze icala elibucayi; futhi

(b) iLungu loMkhandlu oPhethe likholwa ukuthi ukuba khona kwalelo lungu esiGungwini sabaThengi kungaphazamisa uphenyo mayelana nalezo zinsolo zokuphula umthetho, noma kungabeka engozini izimpilo noma ukuphepha komuntu othile noma kwempahla kahulumeni: Kuncike ekutheni ukumiswa kwalolu hlobo kuyisenzo sokuqinisekisa ukuthi konke kuqhubeka kahle futhi akuphathelene nemiphumela yophenyo.

(2) Uma ilungu limisiwe ngenhloso yokuqhuba kahle uphenyo njengoba kuhlongozwe kwisigatshana (1), iLungu loMkhandlu oPhethe kumele libize isigcawu secala ezinsukwini ezingama-60 kusukela lelo lungu limisiwe.

Ukwakheka kwesiGungu sabaThengi

18.(1) Kuncike kwisigatshana (4), isibalo sabangabamba umhlangano wesiGungu sabaThengi ngamalungu amathathu.

(2) Ngaphandle uma kuhlinzekiwe, isinqumo seningi lamalungu esiGungu sabaThengi yisona sinqumo sesiGungu sabaThengi.

(3) Ilungu lesiGungu sabaThengi kumele lizihoxise lona emhlanganweni uma linokuthinteka noma ukubandakanyeka elinakho odabeni oludingidwayo okungenzeka kulithikameze ekutheni lithathe isinqumo esifanele ngodaba, noma okungenzeka kubonakale kanjalo.

(4) Uma kunoma isiphi isigaba somhlangano wesiGungu sabaThengi –

- (a) usihlalo ehluleka ukuqhubeka nokuba usihlalo noma engekho, kumele umhlangano uqalwe phansi;
- (b) noma iliphi ilungu lihluleka ukuqhubeka noma lingekho, umhlangano kumele uqhutshwe amalungu asele; futhi
- (c) amalungu amabili noma ngaphezulu ehluleka ukuqhubeka noma engekho, umhlangano kumele uqalwe phansi ngaphandle uma bonke ababambe iqhaza bevumelana ngokubhala phansi ukuthi bayasemukela isinqumo seningi lamalungu asele.

(5) Uma umhlangano uqhubeka bese kuba nokulingana kwamavoti esinqumweni esithile, usihlalo uyothatha isinqumo esingujuqu.

Ukukhokhelwa kwamalungu esiGungu sabaThengi

19.(1)(a) Ilungu lesiGungu sabaThengi lingakhokhelwa lelo holo nezibonelelo njengoba kunganquma iLungu loMkhandlu oPhethe ngokubonisana neLungu loMkhandlu oPhethe elibhekele ezezimali.

(b) Ilungu lesiGungu sabaThengi elithola iholo, izibonelelo noma eminye imihlomulo ngenxa yomsebenzi noma yokuqashwa kwalo –

- (i) kuhulumeni kazwelonke;
- (ii) kuhulumeni wesifundazwe;
- (iii) kumasipala; noma
- (iv) kwinhlangano, kumgwamanda noma esikhungweni esilawulwa uhulumeni kazwelonke noma wesifundazwe,

futhi eliqhubekayo nokuthola lawo maholo, lezo zibonelelo noma eminye imihlomulo ngenkathi lisebenza njengelungu lesiGungu sabaThengi, liyothola kuphela iholo nezibonelelo okukhulunywe ngakho endimeni (a) ngendlela edingekile ukuze ilungu libe

sesimweni sezezimali ebelivele lizokuba kusona ukube belingaqashiwe noma belingasebenzi.

(2)(a) ILungu lesiGungu sabaThengi kanye nomuntu owengeziwe esiGungwini sabaThengi, mayelana nemisebenzi yakhe njengelungu noma njengelungu elengeziwe, angathola inkokhelo mayelana nezindleko zokuhamba ngokomsebenzi ezidingekayo ukuze ahambele imihlangano noma enze imisebenzi yesiGungu sabaThengi.

(b) ILungu loMkhandlu oPhethe, ngokubonisana neLungu loMkhandlu oPhethe elibhekele ezezimali kumele linqume izinqubo, kubandakanya izilinganiso, zokulawulwa, zokuphathwa nezokwenziwa kwezicelo zokuthola izimali zezibonelelo zokuhamba ngokomsebenzi njengoba kuhlangozwe endimeni (a).

Usizo longoti nolunye usizo olunikezwa isiGungu sabaThengi

20.(1) IsiGungu sabaThengi singaqoka ongoti noma abanye abantu abahlinzeka ngemisebenzi ethile esingabona befanele ukuthi basize isiGungu sabaThengi ukuze sisebenzise amandla aso, senze imisebenzi sifeze namajoka aso.

(2) Imigomo, imibandela, nezimali ezikhokhelwa noma imuphi ungoti noma umuntu oqokwe ngokwesigatshana (1), kanye nomsebenzi ozokwenziwa noma usizo oluzonikezelwa kumele kunqunywe isiGungu sabaThengi, futhi kumele kubhalwe encwadini yesivumelwano okungenwe kusona mayelana nalokho phakathi kwesiGungu sabaThengi nalowo ngoti noma nalowo muntu.

(3) Ongoti noma abanye abantu abaqokwe ngokwesigatshana (1) angeke bavote kunoma isiphi isinquno esithathwa isiGungu sabaThengi.

Amacala esiGungwini sabaThengi

21.(1) Amacala athethwa yisiGungu sabaThengi kumele –

- (a) aqalwe ngokuthi kukhishwe amasamanisi ngefomu elinqunyiwe abhekiswe kumuntu othintekayo nganoma iyiphi indlela njengoba kunganqunywa, okungabandakanya ukuthi akhishelwe umuntu ongaphandle kwiFundazwe;
- (b) avuleleke emphakathini;
- (c) ashushiswe yinoma imuphi umuntu okumele ukuthi aqokwe iHhovisi;

- (d) avumele noma imuphi umuntu okungenzeka ngandlela thile athinteke mayelana necala ukuba azivelele yena mathupha noma amelwe noma asizwe ummeli noma ummeli wasemajajini nanoma imuphi omunye umuntu; futhi
- (e) avumele umuntu othweswe amacala noma othintekayo emacaleni noma esinqunweni secala ukuba azivelele yena mathupha noma amelwe noma asizwe ummeli, ummeli wasemajajini noma omunye umuntu.

(2) IsiGungu sabaThengi singayalela umphakathi noma elinye lamalungu aso ukuba lingasihambeli isigcawu secala elisesiGungwini sabaThengi noma ingxenye yalo, uma sikholelwa ekutheni lokho kungaphazamisa –

- (a) ukuqhutshwa kwecala noma ukucutshungulwa kwalolo daba; noma
- (b) ukuvikeleka kobumfihlo bomuntu osolwa ngokubandakanyeka ezenzweni ezingemukelekile noma owephule izinhlinzeko zoMthetho noma zobumfihlo banoma iluphi ulwazi olumayelana nalowo muntu.

(3) IsiGungu sabaThengi kumele sigcine amarekhodi ecala.

(4) Noma imuphi umuntu othintekayo ecaleni ebeliqukwa, angathola amakhophi amarekhodi ahlangozwe esigatshaneni (3) ngendlela enqunyiwe.

Ukubizelwa esigcawini kofakazi kanye nokukhishwa kwamadokodo phambi kwesiGungu sabaThengi

22.(1) Ukuze kucaciswe mayelana nanoma iluphi udaba oluphathelele necala eliqukwa yisiGungu sabaThengi, isiGungu sabaThengi –

- (a) ngesamanisi elibhekiswe kunoma imuphi umuntu, kubandakanya lowo muntu okubhekiswe kuye isikhalo somthengi, ngefomu elinqunyiwe ngesandla sikanobhala wesiGungu sabaThengi futhi sathunyelwa ngendlela enqunyiwe, kumele –
 - (i) sibizele lowomuntu phambi kwesiGungu sabaThengi ngesikhathi nasendaweni ebhalwe kulelo samanisi, ukuze azonikeza ubufakazi; futhi
 - (ii) siyalele lowo muntu ukuba aveze noma iziphi izincwadi, imibhalo noma izinto ezikuyena noma azigcinile noma ezilawulwa yilowo muntu futhi okubonakala ukuthi zingadingeka, zibalulekile futhi ziwusizo

ekuqulweni kwecala phambi kwesiGungu sabaThengi;

(b) singayalela lowo muntu ukuthi enze isifungo noma enze isiqinisekiso; futhi

(c) siphonse lowo muntu imibuzo futhi sihlole noma iyiphi incwadi, umbhalo noma into evezwe ilowo muntu.

(2) Isifungo noma isiqinisekiso esihlongozwe kwisigatshana (1)(b) singenziwa inoma imuphi umuntu ogunyaziwe ukwenzisa isifungo noma ukwamukela isiqinisekiso ngokoMthetho wezobuLungiswa mayelana nabaSebenzi bezoMthetho noKhomishana beziFungo, 1963 (uMthetho No. 16 ka 1963).

(3) Umuntu uyotholakala enecala uma, ngemuva kokuba esenikezwe isamanisi ngokwalesi sigaba –

(a) ehluleka ngaphandle kwesizathu esifanele ukuvela endaweni nangesikhathi esinqunywe kwisamanisi, noma ukuqhubeka nokuba khona kuze kuphothulwe icala noma kuze kube uhoxiswa yisiGungu sabaThengi ukuqhubeka nokuza ecaleni;

(b) enqaba ukwenza isifungo noma isiqinisekiso;

(c) enqaba ukuphendula, noma ukuphendula ngokugcwele nangokwenelisayo noma ngokolwazi lwakhe nokukholelwa kwakhe kunoma imuphi umbuzo aphonswa wona ngokusemthethweni;

(d) ehluleka ukuveza noma iyiphi incwadi, umbhalo noma into ethile ekuyena, ayigcinile noma elawulwa nguyena, okudingeka ukuthi ayibeke obala; noma

(e) enza isitatimende esingamanga ngaphambi kwesiGungu sabaThengi azi ukuthi leso sitatimende singamanga noma engazi futhi engakholwa ukuthi siyiqiniso.

(4) Umuntu obizelwe esigcawini ngokwalesi sigaba angangaba nalo ilungelo lokunqaba ukuphendula noma imuphi umbuzo ngokwalesi sigaba noma ukuveza noma iyiphi incwadi, umbhalo noma into ethile ngesizathu sokuthi ngalokho uyobe esezifaka ecaleni: Kuncike ekutheni, uma leyo mpendulo, leyo ncwadi, lowo mbhalo noma leyo nto ethile ingenza ukuthi lowo muntu azithole esebhekene namacala, abukho ubufakazi balokho okuyovumeleka kunoma iliphi icala elimayelana nalowo muntu, ngaphandle uma lowo muntu ebhekene necala elihlongozwe kwisigatshana (2)(c) kuya ku (e), noma esigabeni 319(3) soMthetho weNqubo yamaCala obuGebengu, 1955 (uMthetho No. 56 ka 1955).

(5) Umuntu ovele esigcawini sesiGungu sabaThengi njengofakazi unelungelo lokuthola izimali ezinqunyiwe ezikhokhelwa ofakazi.

**ISAPHLUKO 4
UKUQINISEKISWA NOKUVIKELWA KWAMALUNGELO ABATHENGI**

*INgxenye 1
Okwejwayelekile*

Amalungelo abathengi

23.(1) Noma imuphi umthengi unelungelo –

- (a) lokuthola izimpahla nezidingo ezibalulekile njengokudla okwanele, izingubo, indlu yokuhlala, ukunakekelwa kwezempilo, imfundo, amanzi ahlanzekile kanye nokuthuthwa kwendle;
- (b) lokuphepha nokuvikeleka ezinhlelweni zokukhiqiza noma emikhiqizweni engabeka engcupheni impilo yakhe;
- (c) lokwaziswa, nokuhlinzekwa ngamaqiniso adingekayo ukuze athathe izinqumo eziphusile futhi avikelwe ekudukisweni ngezikhangiso namagama empahla akhohlisayo;
- (d) lokukhetha ezimpahleni ezahlukahlukene nasemisebenzini ehlinzekwa ngamanani ashiyanayo ngesiqinisekiso sezinga elifanele lempahla;
- (e) lokuthi amelwe uma kwakhiwa noma kusetshenzisa izinqubomgomo zikahulumeni nalapho kwakhiwa impahla noma kuhlinzekwa izidingo;
- (f) lokuthi akhokhelwe noma kulungiswe ngendlela isikhalo sakhe, kubandakanya ukunxeshazelwa uma kungenziwanga ngendlela abefuna ngayo, noma uma enikezwe impahla noma izidingo ezishodayo;
- (g) lokufundiswa njengomthengi nelokuthola ulwazi namakhono adingekayo ukuze akwazi ukuzithathela izinqumo ezifanele neziphusile mayelana nempahla kanye nezidingo, ngesikhathi esifanayo azi ngamalungelo abathengi nokuthi asetshenziswa kanjani; kanye
- (h) nelokuhlala nokusebenza endaweni ephephile engabeki engcupheni izimpilo zabantu kanye nezezizukulwane ezizayo.

(2) IHhovisi kumele lithathe izinyathelo ezifanele zokuqinisekisa ukuthi amalungelo

ahlongozwe kwisigatshana (1) ayaziwa yibo bonke abathengi esiFundazweni.

Ukuqinisekiswa kwamalungelo abathengi

24. Noma imuphi kulaba bantu abalandelayo, ngendlela ehlinzekwe kulo Mthetho, angaya esiGungwini sabaThengi noma kuMvikeli wabaThengi uma amalungelo akhe ngokwalo Mthetho ephuliwe, ekhinyabeziwe noma esengozini noma uma kwenzeke noma isiphi isigameko esingavumelekile:

- (a) umuntu oziyela yena ngokwakhe;
- (b) umuntu ogunyaziwe oya egameni lomunye umuntu ongeke wakwazi ukuziyela yena;
- (c) umuntu oyilungu noma okhuluma egameni leqembu noma labantu abathile abakhinyabezekile;
- (d) umuntu okhuluma egameni lomphakathi, uma lowo muntu egunyazwe uMvikeli wabaThengi noma isiGungu sabaThengi, njengoba kungaba njalo ukuthi akhulume egameni lomphakathi; noma
- (e) inhlango ekhulumela amalungu ayo.

Ukuvikelwa kwamalungelo abathengi

25. Uma umthengi esebenzise, enze noma efune ukusebenzisa noma iliphi ilungelo elibekwe kulo Mthetho noma esivumelwaneni sokudayiselana nomdayisi, umdayisi akumele, ngenxa yalokho –

- (a) acwase ngqo noma ngandlela thile lowo mthengi, uma kuqhathaniswa nendlela lowo mdayisi aphatha ngayo noma imuphi omunye umthengi osebenzisa, owenza noma ofuna ukusebenzisa lelo lungelo;
- (b) ahlawulise umthengi;
- (c) ashintshe noma azame ukushintsha, imigomo nemibandela yokudayiselana nomthengi, ngendlela ezocindezela umthengi; noma
- (d) athathe noma isiphi isinyathelo sokusheshisa, sokusebenzisa noma sokuqeda isivumelwano nomthengi.

Ukusetshenziswa kwamalungelo omthengi

26.(1) Umuntu ohlongozwe esigabeni 25 angazama ukusebenzisa noma imaphi amalungelo ngokwalo Mthetho noma ngokwesivumelwano sokudayiselana, noma azame ukuxazulula ukungaboni ngasolinye nomdayisi ngokuthi –

- (a) adlulisele udaba kuMvikeli wabaThengi;
- (b) adlulisele udaba esiGungwini sabaThengi, uma ukulidlulisela kuvumelekile ngokwalo Mthetho uma kuba nokungaboni ngasolinye; noma
- (c) adlulisele udaba kumxazululi onamandla okulucubungula.

(2) Uma udaba oluhlongozwe esigatshaneni (1) lungamthinti umdayisi ohlongozwe esigatshaneni (1)(c), umuntu ohlongozwe esigabeni 25 angazama ukusebenzisa noma imaphi amalungelo ngokwalo Mthetho noma ngokwesivumelwano sokudayiselana, noma azame ukuxazulula ukungaboni ngasolinye ngokuthi –

- (a) adlulisele udaba kumxazululi wakuleyo mboni, ogunyazwe ngokwesigaba 82(6) soMthetho wokuVikelwa kwabaThengi, 2008 (uMthetho No. 68 ka 2008), uma umdayisi enaye umxazululi walolo hlobo;
- (b) adlulisele udaba kwi-ejenti yokuxazululwa kwezinkinga ehlongozwe esigabeni 70 soMthetho wokuVikelwa kwabaThengi, 2008 (uMthetho No. 68 k 2008);
- (c) afake isikhalo ehhovisi leKhomishana yabaThengi ngokuhambisana nesigaba 7 soMthetho wokuVikelwa kwabaThengi, 2008 (uMthetho No. 68 ka 2008); noma
- (d) aye esiGungwini esinamandla okulawula kulolo daba, uma isiphunzile yonke imizamo ekhona yokulungisa lolo daba ngokoMthetho wokuVikelwa kwabaThengi, 2008 (uMthetho No. 68 ka 2008).

*INgxenye 2**Ukufaka isikhalo nokuphenywa kwesikhalo somthengi***Ukufaka isikhalo eHhovisi loMvikeli wabaThengi**

27.(1) Noma imuphi umthengi angafaka isikhalo eHhovisi loMvikeli wabaThengi ngendlela enqunyiwe.

(2) Isikhalo somthengi esihlongozwe kwisigatshana (1) esingabhaliwe phansi kumele sibhalwe phansi iHhovisi.

(3) IHhovisi lingavula ifayela noma idokodo elimayelana nesikhalo somthengi futhi kumele ligcine uhlu kanye nohlelo lokugcina amafayela ezikhalo zabathengi.

Inqubo yokuphenya

28.(1) Uma esethole isikhalo somthengi ngokwalo Mthetho, uMvikeli wabaThengi kumele ayalele umuntu osebenza ngaphakathi eHhovisi loMvikeli wabaThengi noma umphenyi, ukuba aphenye ngesikhalo ngokushesha.

(2) Umuntu noma umphenyi okukhulunywe ngaye kwisigatshana (1) kumele ahlole kuqala isikhalo somthengi njengoba kuhlongozwe kulo Mthetho.

(3) IHhovisi angeke libizele umuntu esigcawini ukuba azophenywa singakahlolisiswa kuqala isikhalo somthengi.

(4) Uma, ngenkathi kusahlolisiswa kuqala isikhalo, uMvikeli wabaThengi ebona ukuthi isikhalo somthengi singaxazululwa kagcono omunye umaziphathe, nganoma isiphi isikhathi angadlulisela noma iluphi uphenyo noma ingxenye yalo kulowo maziphathe kubandakanya umaziphathe okwesinye isifundazwe: Kuncike ekutheni iHhovisi noma inini lingaqhubeka nophenyo mayelana nalolo daba.

Ukuhlolisiswa kuqala kwesikhalo somthengi

29.(1) IHhovisi loMvikeli wabaThengi kumele lihlole kuqala isikhalo somthengi esifakwe ngokwesigaba 27(1).

(2) IHhovisi lingashintsha ukuhlola kwalo noma inini ngenkathi lisenza uphenyo, mhlawumbe okungaba yingenxa yokuthola ubufakazi obusha noma ngenxa yomthetho, futhi liqhubeke ngokulandela ukuhlola osekuchitshiyelwe.

(3) IHhovisi kumele lihlole ukuthi isikhalo somthengi esifakwe ngokwesigaba 27(1), sifakwe yilowo mthengi okhalazayo ngqo.

(4) Okhalazayo uyena okumele adalule ukuthi uyena ngqo ongumthengi okhalazayo.

(5) Uma ofake isikhalo njengoba kuhlangezwe kwisigatshana (3) kungeyena umthengi ngqo, iHhovisi angeke lisiphenye isikhalo.

(6) IHhovisi kumele lihlole ukuthi isikhalo somthengi esibhekiswe ebhizinisini, noma kumuntu othi uqhuba ibhizinisi noma imisebenzi yamabhizinisi, sisezingeni lokuba yicala lobugebengu noma lingaba yisikhalo esejwayelekile.

Ukubizelwa esigcawini nokuphekwa ngemibuzo kwabantu nokukhishwa kwezincwadi nemibhalo

30.(1) Ngenhloso yokuphenya njengoba kuhlangezwe esigabeni 28(1) uMvikeli wabaThengi, noma umuntu osebenzela iHhovisi loMvikeli wabaThengi, ogunyazwe uMvikeli wabaThengi, –

(a) angabizeka esigcawini noma imuphi umuntu akholwa ukuthi –

- (i) uzokwazi ukunikeza noma iluphi ulwazi mayelana nophenyo; noma
- (ii) ugcine noma uphethe noma iyiphi incwadi, umbhalo noma into ethile ephathelene nalolo daba,

ukuze avele phambi komuntu osebenzela iHhovisi ngesikhathi nasendaweni echazwe kwisamanisi, ukuze aphekwe ngemibuzo noma aveze leyo ncwadi, lowo mbhalo noma leyo nto; futhi

(b) angapheka ngemibuzo lowo muntu, ngaphansi kwesifungo noma kwesiqinisekiso esingenziwa uMvikeli wabaThengi noma omunye umuntu osebenza eHhovisi loMvikeli wabaThengi, ogunyazwe uMvikeli wabaThengi, futhi ahlole noma agcine lezo zincwadi, mibhalo noma lezo zinto ukuze kutholakale olunye ulwazi noma ukuze ziphephe.

(2) Isamanisi okukhulunywe ngalo kwisigatshana (1)(a) kumele –

- (a) libe kwifomu elinqunyiwe eliveza umuntu obizelwe esigcawini;
- (b) liqukathe imininingwane yodaba lowo muntu abizelwe ukuzophendula ngalo;
- (c) lisayinwe uMvikeli wabaThengi noma omunye umuntu osebenzela iHhovisi ogunyazwe uMvikeli wabaThengi; futhi
- (d) lithunyelwe ngendlela enqunyiwe.

(3) Umuntu ovela esigcawini ngenxa yesigatshana (1)(a) –

- (a) angasizwa ngenkathi ephekwa ngemibuzo umuntu angazikhethela yena; futhi
- (b) unelungelo lokuthola izimali ezabelwe leyo nhloso ngokomthetho, njengezimali ezikhokhelwa ofakazi, imali elingana nemali etholwa ofakazi noma etholwa abantu abangofakazi eNkantolo ePhakeme etholakala kuleyo ndawo abizelwe kuyona.

(4) Umuntu uyothweswa icala uma, ngenkathi ebizelwe esigcawini ngokwalesi sigaba –

- (a) ehluleka ngaphandle kwezizathu ezizwakalayo ukuza endaweni nangesikhathi esinqunywe kwisamanisi, noma ehluleka ukuqhubeka nokuba kuleyo ndawo kuze kuphothulwe icala, noma kuze kube uhoxiswa uMvikeli wabaThengi ukuqhubeka nokuba lapho; noma
- (b) enqaba ukwenza isifungo noma isiqinisekiso.

(5) Umuntu ophekwa ngemibuzo ngokwesigatshana (1), kumele aphendule umbuzo ngamunye ngokwethembeka nangayo yonke indlela angakwazi ngayo, kodwa umuntu akaphoqiwe ukuphendula noma imuphi umbuzo uma impendulo izocindezela yena.

(6) Akukho mpendulo noma sitatimende esinokuzicindezela esenziwe kumuntu owenza umsebenzi wakhe ngokwalesi sigaba esiyothathwa njengobufakazi obucindezela umuntu othe leyo mpendulo noma lesi sitatimende ecaleni, ngaphandle uma kuyicala lokukhuluma okungelona iqiniso ngaphansi kwesifungo noma kuyicala elihlongozwe kwisigatshana (5), futhi kuyosetshenziswa ingxenye yempendulo noma yesitatimende ehambisanayo necala elisetifuleni.

Ukuqokwa kwabaphenyi

31.(1) UMvikeli wabaThengi –

- (a) angaqoka noma imuphi umsebenzi ofanelekile eHhovisi nanoma imuphi omunye umuntu ofanelekile oqashwe uMbuso, njengomphenyi; futhi
- (b) kumele anikeze umphenyi ngamunye isitifiketi ngendlela enqunyiwe esishoyo ukuthi lowo muntu uqokwe njengomphenyi ngokwalo Mthetho.

(2) Uma umphenyi enza noma imuphi umsebenzi womphenyi ngokwalo Mthetho,

umphenyi –

(a) kumele abe nesitifiketi sokuqokwa esikhishelwe lowo mphenyi ngokwesigatshana (1);

(b) kumele aveze isitifiketi kunoma imuphi umuntu –

(i) othintekayo ezenzweni zomphenyi ngokwalo Mthetho; futhi

(ii) ocela ukubona sitifiketi; futhi

(c) unamandla alingana nawephoyisa lomthetho njengoba kuchazwe esigabeni 1 soMthetho weNqubo yamaCala, 1977 (uMthetho No. 51 ka 1977), futhi angasebenzisa ngokusemthethweni lawo mandla alingana nawephoyisa lomthetho.

(3) UMvikeli wabaThengi angaqoka noma aqashe okwesikhashana noma imuphi umuntu ofanelekile njengomphenyi ozokwenza ucwaningo, acubungule amabhuku, aseshe noma enze olunye uphenyo egameni loMvikeli wabaThengi.

(4) Umuntu oqokwe ngokwesigatshana (3) akayena umphenyi njengoba kuhlangozwe esigatshaneni (1).

(5) Kuncike emithethweni elawula imisebenzi kahulumeni, iLungu loMkhandlu oPhethe, ngokubonisana neLungu loMkhandlu oPhethe elibhekele ezezimali, lingaqoka abantu abasebenzela ihhovisi nanoma ibaphi abanye abantu abafanelekile njengabaphenyi, okumele balawulwe futhi bayalelwe uMvikeli wabaThengi.

(6) UMvikeli wabaThengi uthathwa njengomuntu oqokwe njengomphenyi.

(7) Umphenyi kumele ahlinzekwe ngesitifiketi sokuqokwa esisayinwe egameni loMvikeli wabaThengi futhi esishoyo ukuthi ungumphenyi oqokwe ngokwalo Mthetho.

(8) Umphenyi kumele, uma esenza noma imuphi umsebenzi wakhe ngokwalo Mthetho, aphaathe isitifiketi sokuqokwa kwakhe.

Ukusesha nokushaqwa kwempahla

32.(1) Ukuze kutholakale noma iluphi ulwazi oludingwa iHhovisi loMvikeli wabaThengi

mayelana nophenyo, umphenyi, kuncike ezinhlinzekweni zalesi sigaba futhi ngezikhathi zokusebenza, angangena kunoma isiphi isakhiwo lapho kugcinwe khona noma kusolakala ukuthi kugcinwe khona incwadi, umbhalo noma into ethile ephathelene nalolo phenyo, futhi –

- (a) angahlola noma aseshe lezo zakhiwo, futhi abuze uma kudingeka ukuze athole noma iluphi ulwazi;
- (b) angahlola noma yini etholakale esakhiweni okungenzeka ihlobane nophenyo olwenziwayo futhi acele kumuntu olawula isakhiwo noma kumuntu ongumnikazi waleyo nto, ulwazi mayelana naleyo nto;
- (c) angenza amakhophi noma athathe noma iyiphi incwadi noma umbhalo otholakale esakhiweni okungenzeka kuhlobane nophenyo olwenziwayo, futhi acele kunoma imuphi umuntu okusolakala ukuthi unolwazi oludingekayo, ukuba achaze njengoba kungadingeka; noma
- (d) angashaqa noma iyiphi into esesakhiweni ewusizo noma okungenzeka ibe usizo ophenyweni olwenziwayo bese ekhipha irisidi yalokho, uma umphenyi edinga ukuyigcina leyo nto ukuze aphinde ayihlolisise noma ayigcine ndaweni ephephile.

(2) Ngaphandle uma umnikazi noma umuntu ophethe esakhiweni ekhiphe imvume ebhalwe phansi, umphenyi angangena esakhiweni futhi angasebenzisa amandla akhe ahlangozwe kwisigatshana (1) kuphela uma enencwadi emgunyaza ukwenze njalo, engakhishwa kuphela imantshi noma ijaji uma idingeka ngokolwazi olunikezwe imantshi noma ijaji ngesifungo noma ngesiqinisekiso sokuthi kunezizathu ezizwakalayo zokusola ukuthi leyo ncwadi, lowo mbhalo noma leyo nto equkethe ubufakazi ophenyweni ikuleso sakhiwo.

(3) Imvume yokusesha ehlongozwe kwisigatshana (2) kumele –

- (a) igunyaze umphenyi obhalwe kuyona ukuba angene esakhiweni esibhalwe kuleyo mvume ukuze enze umsebenzi wakhe njengoba kuhlongozwe kwisigatshana (1);
- (b) ifezekiswe emini, ngaphandle uma imantshi noma ijaji likubeke kwacaca ukuthi kumele kwenziwe ebusuku; futhi
- (c) kuqhubeka nokwenziwa kuze kufezekiswe, kuze kumiswe inkantolo efanele, noma isikhathi esingangesonto kusukela osukwini okugcina ngalo, noma ikuphi

okufika kuqala.

(4) Umphenyi owenza umsebenzi wakhe ngokwemvume yokusesha ebekwe kulesi sigaba, ngaphambi kokuqala ukwenza lowo msebenzi wokusesha, futhi uma kucela umuntu okungase kuphazamiseke amalungeo akhe, kumele –

- (a) akhombise lowo muntu isitifiketi sokuqokwa kwakhe; futhi
- (b) anikeze lowo muntu ikhophi yemvume yokusesha.

(5) Umuntu okuthathwe kuyena incwadi noma umbhalo ngokwalesi sigaba, uma leyo ncwadi noma lowo mbhalo usagcinwe umphenyi, kumele avunyelwe uma ecela ukwenza amakhophi noma ukuthatha okuthile kuwona nganoma isiphi isikhathi esifanele ngezindleko zakhe futhi eqashwe umphenyi noma umuntu osebenzela iHhovisi.

(6) Umuntu uyotholakala enecala uma –

- (a) ephazamisa noma efihlela umphenyi owenza umsebenzi wakhe ngokwalesi sigaba; noma
- (b) ngemuva kokuphenywa ngokwesigatshana (1)(a), noma kucelwe kuye ulwazi noma incazelo ngokwesigatshana (1)(b) noma (c), enikezela ngempendulo noma ngencazelo engamanga noma edukisayo, ebe azi kamhlophe ukuthi ingamanga noma iyadukisa.

Ukuxoxisana ngezihlelo zokuxazulula isikhalo somthengi

33.(1) IHhovisi loMvikeli wabaThengi lingaxoxisana futhi lifike esivumelwaneni nanoma imuphi umuntu ukuze –

- (a) kumiswe noma kugwenywe izenzo zebhizinisi eziholele esikhalweni somthengi;
- (b) kunxeshezwe, sekuhlangene nenzalo noma kungahlangene nenzalo, umthengi ohlukumezekile;
- (c) kumiswe noma kugwenywe noma iziphi izenzo zebhizinisi eziholele esikhalweni somthengi; noma
- (d) kugwenywe noma iluphi udaba oluphathelele nomsebenzi webhizinisi oluholele esikhalweni somthengi.

(2) Isivumelwano esihlongozwe kwisigatshana (1) –

- (a) singenziwa noma inini ngemuva kokuqalwa kophenyo, kodwa ngaphambi kokuthi iNkantolo ePhakeme ithathe isinqumo ngokwesigaba 37;
- (b) kumele sibhalwe phansi sisayinwe izinhlangothi ezithintekayo; futhi
- (c) kungalindeleka ukuba siqinisekiswe iNkantolo ePhakeme ngokuhambisana nesigaba 37.

Ukufaka icala ngemuva kokuphothulwa kophenyo

34.(1) Uma sekuphothulwe uphenyo futhi ngokuncike kwisigatshana (6), uMvikeli wabaThengi angafaka icala elekelela umthengi esiGungwini sabaThengi uma sinawo amandla okulawula kulowo muntu osolwa ngezenzo ebhizinisini eziholele esikhalweni somthengi.

(2) Ngezinhloso zecala, uMvikeli wabaThengi uthathwa njengonamandla okukhalaza.

(3) Uma, ngokubona koMvikeli wabaThengi, isikhalo somthengi siphathelene nesivumelwano okungafinyelelwanga kuso noma nezinto eziphathelene nokulingana kwezomthetho ngokuhambisana noMthethosisekelo, iHhovisi lingafaka icala leseke umthengi eNkantolo ePhakeme.

(4) Ngezinhloso zecala elihlongozwe kwisigatshana (3), uMvikeli wabaThengi uthathwa njengonamandla okukhalaza kulelo cala.

(5) Noma inini uma iHhovisi libeka amacala esiGungwini sabaThengi noma eNkantolo ePhakeme, uMvikeli woMphakathi uthathwa njengoMmangali wokuQala bese kuthi umthengi athathwe njengoMmangali wesiBili kulelo cala, njengoba kungaba njalo.

(6) UMvikeli wabaThengi kumele akhethe isigungu esifanele esizoshushisa lolo daba ngokubhekelela kuqala izinhlinzeko zalo Mthetho, ebhekelela ikakhulukazi ukuma kanye nemiphumela elindelekile yecala nokuthi umthengi aneliseke.

(7) Uma esekhetha isigungu esifanele njengoba kuhlangozwe kwisigatshana (6), uMvikeli wabaThengi kumele abhekelele izindleko zecala ezinhlangothini ezithintekayo

aqhube icala kuleso sigungu esinezindleko ezincane kummangalelwa.

(8) Akukho cala eliyofakwa uMvikeli woMphakathi uma umthengi –

(a) engakasayini incwadi lapho yena umthengi evuma ubukhona besikhalazo futhi eqinisekisa kuMvikeli woMphakathi; futhi

(b) engakasayini incwadi eqinisekisa iHhovisi emayelana nemibandela yanoma ibuphi ubufakazi obungamanga obungalethwa uyena.

Ingxenye 3

Ukwehlulelwa nokubuyezwa kwezikhalo zabathengi

Ithimba okubuyezwa

35.(1) Uma iHhovisi loMvikeli wabaThengi linquma ukungafaki cala noma ukungaludluliseli udaba komunye amaziphathe noma ukungaludingidi phambi kwesiGungu sabaThengi, uMvikeli wabaThengi kumele azise umthengi kanye nomuntu noma nebhizinisi obekufakwe ngalo isikhalo mayelana naleso sinqumo kanjalo nezizathu zaso.

(2) Izizathu zesinqumo esihlongozwe kwisigatshana (1) kumele zihambisane nesaziso esihlongozwe kwisigatshana (1).

(3) Uma umthengi engenelisekile ngesinqumo soMvikeli woMphakathi sokungafaki icala, umthengi angadlulisela lesi sinqumo eThimbeni lokuBuyezwa ezinsukwini eziyishumi nane ethole lesi sinqumo.

(4) IThimba lokuBuyezwa okukhulunywe ngalo kwisigatshana (1) kumele libe seHhovisi.

(5) IHhovisi kumele likhombise ukuthi lazisiwe ngokubuyezwa kwesinqumo bese lazisa iLungu loMkhandlu oPhethe ngesidingo sokuthi kubizwe iThimba lokuBuyezwa.

(6) ILungu loMkhandlu oPhethe kumele libize iThimba lokuBuyezwa ezinsukwini eziyishumi nane kusukela osukwini umthengi acele ngalo ukuba kubuyezwe isinqumo soMvikeli wabaThengi esihlongozwe esigatshaneni (1).

(7) IThimba lokuBuyezwa elibizwe iLungu loMkhandlu oPhethe ngokwesigatshana (6),

kumele lakhiwe ikomidi elakhelwe lokho elibunjwe abantu abathathu abanesipiliyoni nolwazi ezintweni ezithinta abathengi.

(8) Abantu abahlongozwe esigatshaneni (7), bangaqashwa uHulumeni kodwa kungabi abaqashwe iHhovisi.

(9) Kuncike emithethweni elawula imisebenzi kahulumeni, umuntu oqokelwe kwiThimba lokuBuyekeza ongasebenzi ngokugcwele kuHulumeni kumele aqokwe ngaphansi kwemibandela futhi aholelwe ngendlela enganqunywa iLungu loMkhandlu oPhethe ngokubonisana neLungu loMkhandlu oPhethe elibhekele ezezimali.

(10) Kuncike emithethweni ejwayelekile yezobulungiswa, iThimba okuBuyekeza lingabheka izizathu zesinqumo neminye imibiko ebhaliwe noma eshiwo ngomlomo, uma ikhona, yomthengi, yomuntu noma yebhizinisi okukhalazwa ngalo kuMvikeli wabaThengi.

(11) IThimba lokuBuyekeza lingabeka esalo isinqumo esikhundleni sesinqumo soMvikeli wabaThengi futhi liyalele uMvikeli wabaThengi ukuthi afake icala noma liqinisekise isinqumo soMvikeli wabaThengi sokuthi lingafakwa icala.

(12) Isinqumo seThimba lokuBuyekeza esithathwe ngokwesigatshana (11) sithathwa njengesinqumo esibuyekeziwe.

(13) Isinqumo esibuyekeziwe esihlongozwe kwisigatshana (12) singujuqu futhi sibophezela umthengi, umuntu noma ibhizinisi okukhalazwa ngalo kanjalo noMvikeli wabaThengi.

(14) IThimba lokuBuyekeza kumele, ngencwadi, lazise umthengi, umuntu noma ibhizinisi okukhalazwa ngalo kanjalo noMvikeli wabaThengi ngesinqumo esibuyekeziwe futhi kumele libanikeze bonke ikhophi yamahhala yesinqumo esibuyekeziwe.

Ukusebenza kwesinqumo esibuyekeziwe

36. Uma iThimba lokuBuyekeza liyalela uMvikeli wabaThengi ukuba avule icala egameni

lomthengi, isigaba 29 sisebenza nezinguquko ezidingekayo ngokuhambisana nalokho.

**ISAHLUKO 5
IZINHLELO EZIBEKWA ETAFULENI IHHOVISI OMVIKELI WABATHENGI**

Ukuqinisekiswa kwezinhlelo ezibekwe etafuleni iHhovisi loMvikeli wabaThengi

37.(1) IHhovisi lingafaka isicelo eNkantolo ePhakeme sokuthi kuqinisekise izinhlelo ezibekwe etafuleni futhi kavunyelwana ngazo ngokwalo Mthetho.

(2) INkantolo ePhakeme, ngokubhekelela ukweneliseka komthengi nokwamabhizinisi nezinhlangothi ezithintekayo, ingakhipha umyalelo –

- (a) wokuqinisekisa lezo zinhlelo;
- (b) wokuqinisekisa izinhlelo ezihambisana nezichibiyelo izinhlangothi ezithintekayo ezingavumelana ngazo nangaphansi kwemibandela engabekwa yinkantolo;
- (c) wokuthi kubekwe eceleni lezo zinhlelo uma, ngemuva kokuba izinhlangothi ezithintekayo sezinikeziwe ithuba lokubeka udaba lwazo, inkantolo inelisekile ukuthi izinhlelo angeke ziqinisekise ukuthi izenzo zebhizinisi eziqubule isikhalo somthengi angeke ziphele noma zigwemeke.

(3) Umyalelo ngokwesigatshana (2) kumele ushicilelwe kwiGazethi.

**ISAHLUKO 6
UKUSEBENZA KOMTHETHO NENQUBO YOKWAHLULELA**

INgxenye 1

Ubumfihlo, imikhawulo yokubophezeleka, ukutholakala kwemihlomulo nezinye izixazululo

Ubumfihlo

38. Akukho mphenyi noma umuntu osebenzela iHhovisi loMvikeli wabaThengi noma owenza imisebenzi yeHhovisi ongadalula noma iluphi ulwazi alutholile ngenkathi enza imisebenzi, esebenzisa amandla noma efeza amajoka angokwalo Mthetho, ngaphandle uma –

- (a) kungadingeka ukuze enze ngendlela imisebenzi, asebenzise amandla noma afeze kahle amajoka akhe ngokwalo Mthetho; noma

(b) kungumyalelo wenkantolo yomthetho.

Imikhawulo yokubophezeleka

39. Akekho umuntu, kubandakanya noMbuso, obophezelekile ezintweni ezenziwa ngokuvumelana ngokwalo Mthetho, kulele ekutheni isivumelwano esenziwe ngokuzwana kumele sisuke kulowo muntu noma kuMbuso.

Ukunganakwa kwalo Mthetho

40. Noma isiphi isivumelwano noma ukubonisana okuhlose ukushiya ngaphandle izinhlinzeko zalo Mthetho noma ukungasebenzisi izinhlinzeko zawo kuyothathwa njengokungekho emthethweni nokungasebenzi.

Izixazululo

41. Akukho nhlinzeko yalo Mthetho engathathwa njengevimbela noma imuphi umuntu isixazululo odabeni lwakhe noma elungelweni lokufaka noma iliphi icala.

INgxenye 2 Amacala nezigwebo

Amacala ejwayelekile

42.(1) Umuntu uyothweswa icala uma –

- (a) yena njengomnikazi webhizinisi noma njengomnikazi welayisensi yebhizinisi, evumela ukuhlukunyezwa kwabathengi ebhizinisini lakhe;
- (b) ekhohlisa umthengi mayelana naye uqobo noma mayelana nomunye umuntu oqashwe uyena mayelana nezimpahla noma nezidingo.

(2) Ilungu lesiGungu sabaThengi, ilungu labasebenzi, umeluleki, i-ejenti noma omunye umuntu oqashwe noma osebenza egameni lesiGungu sabaThengi uyothweswa icala uma emukela ngqo noma ngandlela thile inkokhelo noma umvuzo ongagunyaziwe kunoma imuphi umuntu mayelana noma maqondana nemisebenzi noma ngezinye izinto ezenziwe noma ezihlinzekwe isiGungu sabaThengi.

(3) Noma imuphi umuntu uyotholakala enecala uma, mayelana nemisebenzi eyenziwe yisiGungu sabaThengi, egwaza noma ezama ukugwaza, noma ekhohlakalisa noma ezama ukukhohlakalisa, noma iliphi ilungu labasebenzi noma umeluleki, noma i-ejenti noma omunye umuntu oqashwe noma osebenza egameni lesiGungu sabaThengi.

(4) Noma imuphi umuntu oqamba amanga athi ugunyazwe ukuba abize noma aqoqe izimali egameni noma ngomyalelo wesiGungu sabaThengi uyothweswa icala.

Amacala mayelana nezigcawu zesiGungu sabaThengi

43. Umuntu –

(a) ohluleka ukuvela phambi kwesiGungu sabaThengi ngosuku nesikhathi abizwe ukuba avele ngaso ngokwesigaba 22 ngaphandle kokuthi aqoke umuntu ozovela egameni lakhe;

(b) ovela phambi kwesiGungu sabaThengi ngokwesigaba 22 kodwa ngaphandle komyalelo kaSihlalo ohlulekayo ukuqhubeka nokuba khona kuze kuphothulwe isigcawu noma umhlangano;

(c) ngokwesigaba 22 obizekwe ukuba ezokwethula ubufakazi, noma aveze noma iyiphi incwadi, isu noma omunye umbhalo noma into lowo muntu ekuyena, ohlulekayo noma owenqabayo ukwenze njalo;

(d) ngokwesigaba 22 ocelwe ukuba anikeze ubufakazi, owenqabayo ukufunga noma ukwenza isiqinisekiso; noma

(e) ophazamisa ngamabomu ukuthethwa kwecala noma umhlangano wesiGungu sabaThengi noma ofihlela noma okhinyabeza isiGungu sabaThengi noma ilungu laso ekutheni lenze imisebenzi yalo,

uyothweswa icala.

Izigwebo

44. Noma imuphi umuntu otholakala enecala –

(a) ngokwesigaba 42(2), (3) noma (4), uyohlawuliswa noma abhadle ejele isikhathi esingeqile kuleso esinqunywe umthetho kazwelonke mayelana namacala enkohlakalo; noma

(b) ngokwesigaba 30(4), 32(6), 42(1) noma 43, uyohlawuliswa noma abhadle ejele iminyaka engeqile kwemihlanu, noma kokubili isigwebo nenhlawulo.

ISAHLUKO 7 IZINHLINZEKO EZEJWAYELEKILE

Imithethonqubo

45.(1) ILungu loMkhandlu oPhethe lingenza imithethonqubo mayelana –

- (a) nanoma iluphi udaba ngokwalo mthetho oludingekayo noma olugunyaziwe ukuba lwenziwe;
- (b) nokukhokhwa kwanoma iziphi izimali okumele zikhokhwe ngokwalo Mthetho;
- (c) nendlela, nezinsuku, uma zikhona, okumele kufakwe ngazo noma isiphi isicelo ngokwalo Mthetho;
- (d) nendlela yokusebenza, ngokuthunyelwa noma ngokuhanjiswa kwesamanisi, kwesaziso noma kwenye incwadi okudingeka ukuba ithunyelwe ihanjiswe noma idluliselwe ngokwalo Mthetho;
- (e) nendlela yokushicilelwa kwesaziso noma komunye umbhalo okudingeka ukuba ushicilelwe ngokwalo Mthetho;
- (f) nefomu, nendikimba kanye nobukhulu, uma kudingeka, kwanoma isiphi isaziso, incwadi noma omunye umbhalo okudingeka ukuba ukhishwe, uhanjiswe, udluliselwe, unikezelwe noma ushicilelwe ngokwalo Mthetho;
- (g) nezikhathi, noma nokwelulwa kwezikhathi, okunqunywe ngokwalo Mthetho;
- (h) neminingwane yezakhiwo okufakwe isikhalo mayelana nazo;
- (i) nezintela zezimali ezikhokhelwa ofakazi ngokubela emacaleni noma ekubuyekezweni kwamacala;
- (j) nendlela okumele kuthunyelwe ngayo isikhalo eHhovisi loMvikeli wabaThengi;
- (j) nenqubo okumele ilandelwe ekubhekaneni namabhizinisi okutholakale ukuthi ashayisene nezinhlinzeko zalo Mthetho; kanye
- (k) nokubhekana nanoma iluphi udaba, ngokujwayelekile, iLungu loMkhandlu oPhethe elibona lufanele noma ludingeka ukuba kwenziwe imithethonqubo ukuze kufezwe izinhloso zalo Mthetho.

(2) Noma imuphi umthethonqubo mayelana nezimali okumele zikhokhwe kumele wenziwe iLungu oMkhandlu oPhethe ngokubonisana neLungu loMkhandlu oPhethe

elibhekele ezezimali.

Izinhlinzeko zesikhashana

46. Noma isiphi isikhalo esifakwe oPhikweni lwezamaBhizinisi loMnyango esifakwe ngaphambi kokuqala kokusebenza kwalo Mthetho ngokwanoma imuphi omunye umthetho okungaba osuchithiwe noma osuchitshiyelwe, nemithethonqubo eyakhiwe ngokwaleyo mithetho, kumele sikhishwe ukuze senziwe ngokwalo Mthetho.

Isihloko esifingqiwe nokuqala kokusebenza komthetho

47.(1) Lo Mthetho ubizwa ngoMthetho wokuVikela abaThengi waKwaZulu-Natali, 2010, futhi uyoqala ukusebenza ngosuku oluyonqunywa iLungu loMkhandlu oPhethe ngesaziso kwiGazethi.

(2) ILungu loMkhandlu Phethe linganquma izinsuku ezahlukene zokuqala kokusebenza kwezigaba ezahlukene zalo Mthetho.
