

CONSUMER AFFAIRS ACT

No. 4 of 1996

To provide for the investigation, prohibition and control of harmful business practices in the interest of the protection of consumers, and for that purpose to provide for the establishment of an Office for the Investigation of Harmful Business Practices and a Consumer Affairs Court; to repeal the North-West Consumer Affairs Act, 1984; and to provide for matters connected therewith. (English text signed by the Premier on 08 November 1996)

BE IT ENACTED by the Premier and the Legislature of the Province of the North-West as follows:

Definitions

1. In this Act, unless the context otherwise indicates

"arrangement" means an arrangement or undertaking negotiated and concluded by the office under section 9;

"business" means any business, undertaking or person -

- who offers, supplies or makes available any commodity; or
- who solicits, or to whom is supplied or made available, any investment;

"business practice" includes -

- (a) any agreement, accord or undertaking, whether legally enforceable or not, between two or more persons;
- (b) Any scheme, practice, or method of trading, including any method of marketing or distribution;
- (c) any advertising or type of advertising;
- (d) any act or omission on the part of any person, whether acting independently or in concert with any other person;. and
- (e) any situation arising out of the activities of any person or group of persons, but does not include a restrictive practice, acquisition or monopoly situation as defined in section 1 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979);

"commodity" means -

- (a) any property, whether corporeal or incorporeal and whether movable or immovable, including any make or brand of commodity;

- (b) any service, whether personal, professional or otherwise, including any storage, transportation, insurance or banking service;

"consumer" means a person -

(a) to whom any commodity is offered, supplied or made available;

(b) from whom is solicited, or who supplies or makes available, any investment;

"court" means the Consumer Affairs Court established under section 11;

"Department" means the Provincial Department of Finance and Economic Affairs.

"harmful business practice" means any business practice which, directly or indirectly, has or is likely to have the effect of prejudicing unreasonably or deceiving any consumer;

"Head" means the Head of the office appointed under section 2(2);

"investigating officer" means an investigating officer appointed under section 2(2);

"investment" means any money or other property, or any facility, intended for use in connection with any venture or scheme for the acquisition of gain, or purported to be so intended;

"office" means the Office for the Investigation of Harmful Business Practices

contemplated section 2;

"prescribed" means prescribed by regulation;

"regulation" means a regulation made under section 24;

"responsible Member" means the Member of the Executive Council-of the Province responsible for Finance and Economic Affairs.

"this Act" includes the regulations.

Establishment of Office for the Investigation of Harmful Business Practices

2.(I) There shall be established in accordance with the provisions of the laws governing the Public Service, in the Department, an office to be called the Office for the Investigation of Harmful Business Practices. -

(2) The functions of the office shall be performed by the officials appointed as investigating officers by the responsible Member under the supervision of the Head of the Office.

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

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

Functions of office

3 . The office shall -

(a) receive and investigate complaints of alleged harmful business practices which have been lodged with the office as contemplated in section 4, and dispose of such complaints in terms of this Act; and

(b) The responsible Member shall lay a copy of the annual report submitted in terms of subsection (1) upon the table in the Provincial Legislature within 14 days after its receipt if the Legislature is then sitting or, if the Legislature is not then sitting, within 14 days after the commencement of its next ensuing ordinary sitting.

Lodging of complaints with office

4. Any person aggrieved by an alleged harmful business practice or any other interested person may lay the matter in question before the Head in the manner prescribed in terms of this Act.

Investigation by office

5.(I) The office may, whether or not a complaint has been lodged in terms of section 4, institute such investigation as may be necessary into -

(a) any harmful business practice which there is reason to suspect exists or may come into existence;

(b) any business practice or type of business practice, in general or in relation to a particular commodity or investment or any kind of commodity or investment or a particular business or any class or type of business or a particular area, and which there is reason to suspect is commonly applied for the purposes of or in connection with the creation or maintenance of harmful business practices.

(2) If the responsible Member refers a matter contemplated in subsection (1) to the office, the office shall conduct an investigation into that matter.

(3) The office may by notice in the Provincial Gazette make known -

(a) any investigation which it is conducting; and -

(b) notify, that any person may, within a period specified in that notice, make written representations regarding the investigation to the office.

(4) The office may, for the purpose of an investigation, have regard to any investigation, finding or measure taken by the Business Practice Committee established by section 2 of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988), or the Minister of Trade and Industry in terms of that Act, or by any competent authority in another Province.

Summoning and questioning of persons and production of books and documents.

6. (1) For the purposes of an investigation, the Head or a person in the service of the office authorised by the Head may -

(a) summon any person who is believed to be able to furnish any information on the subject of the investigation or to have in his or her possession or 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;

(b) question that person, under oath or affirmation administered by the Head or another person in the service of the office 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) shall -

(a) be in the prescribed form;

(b) contain particulars of the matter in connection with which the person concerned is required to appear;

(c) be signed by the Head of the office or another person in the service of the office authorised by the Head;
and

(d) be served in the prescribed manner.

(3) A person appearing by virtue of subsection - (1) -

(a) may be assisted at the examination by any person of his or her choice;

(b) shall be entitled to the prescribed witness fees.

(4) A person shall be guilty of an offence if he or she, having been summoned 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;

(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 to the Head or other person in the service of the office designated by the Head, knowing such statement to be false or not knowing or believing it to be true.

(5) A person who has been summoned to appear in terms of this section shall 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 shall be admissible in any criminal proceedings against that person, except where that person stands trial on a charge contemplated in subsection (4) c) to (e), or in section 219 (3) of the Criminal Procedure Act, 1955 (Act No. 56 of 1955)

Search and seizure

7.(1) In order to obtain any information required by the office in relation to an

investigation, an investigating officer may, subject to the provisions of this section, 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 an explanation of any entry therein;

(d) seize, against the issue of a receipt, anything on or in the premises which has or might have a bearing on the investigation in question, if the investigating officer needs to retain it for further examination or for safe custody.

(2) Unless the owner or person in charge of the premises concerned has consented thereto in writing, an investigating officer shall enter premises and exercise any power contemplated in subsection (1), only under a search warrant, which may only be issued by the Consumer Affairs Court if it appears to that court from information that there are reasonable grounds to suspect -

(a) that a harmful business practice exists or may come into existence; and

(b) that a book, document or other object which may afford evidence of such harmful

business practice is on or in those premises.

(3) A search warrant contemplated in **subsection (2)** shall -

(a) authorize 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 court authorizes the execution thereof by night;

- be of force until it is executed, cancelled by the court, or a period of one month from the day of its issue expires, whichever occurs first.

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

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

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

(5) A person front whose possession or charge a book or document has been taken under

this section shall, 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) An investigating officer may without a warrant enter any premises in order to perform the acts referred to in subsection (1), if the person who is competent to do so consents in writing to such entry and the performance of those acts.

(7) A person shall be guilty of an offence if her or she -

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

in terms of this section;

(b) 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) (i) refuses to answer, or to answer fully and satisfactorily to the best of his or her knowledge and belief, such as enquiry or request for information; or (ii) . gives an answer or information or an explanation which is false or misleading.

(8) A person who has been summoned to appear in terms of this section shall not be entitled to refuse to answer any questioner to produce any book, document or object on the extent that such answer, book, document or article does expose the person concerned to a criminal charge, no evidence thereof shall be admissible in any criminal proceedings against that person, except where that person stand trial on a charge contemplated in subsection (6)(b), or in section 319 (3) of the Criminal Procedure Act, 1955 (Act No. 56 of 1955)

Negotiations of arrangements to discontinue harmful business practice

8.(1) The office may negotiate and conclude, with any person concerned, an arrangement for the discontinuance or avoidance of harmful business practise which exists or may come into existence and which is the subject of an investigation.,

(2) An arrangement -

(a). may be concluded at any time after the institution of an investigation, but before the making of a final order by the court;

(b). shall be subject to confirmation by the court in accordance with section 17.

Institution of proceedings after completion of investigation

9. Upon the completion of an investigation, the Head -

(a). shall furnish the responsible Member with a report on the findings of such investigation; and

- may institute proceedings in the court-

(i) against the person alleged to be responsible for the harmful business practice in question; or

(ii) generally, with a view to the prohibition of any practice or type of business practice, in general or in relation to a particular commodity or Investment or any kind of commodity or investment or a particular business or any type of business or particular area, and which is commonly applied for the purposes of or in connection with the creation or maintenance of harmful business practices.

Establishment of Consumer Affairs Court

10.(I) The responsible member shall by notice in the Provincial Gazette, establish a Consumer Affairs Court for the Province.

(2) The seat of the Court shall be Mmabatho.

(3) The responsible Member may by notice in the Government Gazette determine other seats for the Court.

Composition of court

11.(I) A court shall consists of three or five persons appointed by the responsible Member, namely-

(a) a chairperson, who shall be-

(i) a retired judge of the Supreme Court, or

(ii) an attorney, advocate, retired magistrate or lecturer in law at a university,

with not less than ten years cumulative experience in one or more such capacities;

(b) two or four additional members, of whom, half shall be appointed on the ground of having knowledge of or experience in economics, industry or commerce.

(2) The responsible Member may appoint an alternate member for every member of the court.

(3) To enable the responsible Member to make the appointments contemplated in subsections (1) and (2) the responsible Member shall cause a notice to be published in the Provincial Gazette inviting interested persons to submit within a specified period, which shall not be shorter than one month after such publication, nominations for such appointments.

(4) A member and alternate member of the court shall, before assuming office, make and subscribe an oath or solemn affirmation in the prescribed form before the responsible member.

(5) A member and alternate member of the court shall be appointed for such -period and paid such remuneration and allowances as the responsible Member may determine, and different remuneration and allowances may be determined in respect of different members and alternate members.

Persons disqualified from being members of court

12.(1) No person shall be appointed or remain a member or alternate member of a court if such person is-

(a) a public servant; or

(b) a member of Parliament, any provincial legislature or local authority, or any council, commission or house of traditional leaders established in terms of the constitution.

Functions, powers and duties of court

13.(1) A court shall(a) hear, consider and make a decision on any matter which is before the court by virtue of proceedings instituted as contemplated in section 9(b); (b) where applicable, exercise the powers and perform the functions and duties contemplated in sections 15 to 20.

(2) The responsible Member shall, subject to the laws governing the public service,

appoint-

- (a) a clerk of the court to perform the administrative work incidental to the functions of the court; and

(b) such other persons to assist the clerk of the court as may be necessary.

Proceedings of court

14. (1) Proceedings before a court shall except in case contemplated in section 9(b)(ii) and 16, be initiated by summons in the prescribed form which shall be served on the person concerned in the prescribed manner.

(2) All proceedings of the court shall, subject to the provisions of subsection (3), be opened to the public.

(3) A court may direct that the public or any member thereof may not attend any proceedings of the court or any portion thereof, if this is justified in the interests of-

(a) the conduct of the proceedings or the consideration of the matter in question; or

(b) the protection of the privacy of any person alleged to be involved in the harmful business practice in question or of the confidentiality of any information relating to that person.

(4) Proceedings before a court shall be prosecuted by the office, who may be represented or assisted by an advocate, attorney or other person approved by the responsible member.

(5) A person summoned under subsection (1) may be represented by an advocate, attorney or any other person.

(6) A decision of the majority of members of a court shall, subject to the provisions of subsection (7) be the decision of the court.

(7) Any question of law arising for decision before a court and any question as to whether or not a matter is a question of law, shall be decided by the chairperson of the court.

Summoning of witnesses and production of documents

15.(I) For the purpose of ascertaining any matter relating to proceedings before a court,
the court may-

(a) by summons addressed to any person in the prescribed form under the hand of the clerk to the court, and served in the prescribed manner, require such person to appear before the court at a time and place specified in such summons, to give evidence and 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 those proceedings;

(b) require such person to take an oath or make an affirmation, and

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

(2) A person shall be 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 court from further attendance;

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

(c) refuses to answer, or to answer fully and satisfactory 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;

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

(3) A person who has been summoned to appear in terms of this section shall not be entitled to refuse to answer any question 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 shall 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 3 19(3) of the Criminal Procedure Act, 195 5 (Act No. 56 of 1955).

(4) A person who has attended the proceedings of a court as a witness shall be entitled to the prescribed witness fee.

Urgent temporary orders prohibiting harmful business practices

16 (1) A court may, if it is satisfied from information placed before by the office that circumstances relating to a particular matter which is the subject of an investigation render that matter urgent in that irreparable prejudice would be caused if the matter were only to be dealt with by the court at proceedings in due course, issue a temporary order -

(a) prohibiting any person mentioned in the order from performing any act connected

with the harmful business practice in question;

(b) attaching any money or other property, whether movable or immovable, which is

held by any person;

(c) authorising an investigating officer or person in the service of the office to take any action specified in the order that may be necessary to prevent the harmful business practice in question.

(2) A temporary order contemplated in subsection (1)

(a) may be amended or withdrawn by the court on application by the office or by a person affected thereby on good cause shown; and

(b) shall unless it is withdrawn, remain in force until the final determination by the court of the matter at proceedings in due course.

(3) An order in terms of subsection (1) and any amendment or withdrawal thereof in terms of subsection (2)(a), shall be made known by notice in the Provincial Gazette.

Confirmation of arrangements negotiated by office

17.(I) The office shall apply to the court for confirmation of an arrangement concluded by it as contemplated in section 8.

(2) The court may, after the person concerned has been given an opportunity to be heard,

issues an order-

(a) confirming the arrangement with such modifications, if any, as may be agreed to by the person concerned and subject to such conditions as may be agreed to by that person as the court may on the application of the office deem-fit, or

(b) setting aside the arrangement, if it is satisfied that the arrangement will not ensure the discontinuance or avoidance of the harmful business practice in question.

Order by court prohibiting harmful business practice

18. (1) If a court is satisfied that a harmful business practice exists or may come into existence, and has not confirmed an arrangement as contemplated in section 17(2)(a), the court may issue such order as may be necessary to ensure the discontinuance or prevention of the harmful business practice in question, and such order may, without

prejudice to the generality of the afore going, direct-

(a) any person concerned in the harmful business practice to take such action, including steps for the dissolution of any body, corporate or unincorporated, or the severance of any connection or form of association between two or more persons including such bodies as may be necessary to ensure the discontinuance or prevention of the harmful business practice;

(b) any person who is or was party to an agreement, understanding or omission, or who users or has used any advertising or type of advertising, or applied or has applied a scheme, practice or method of trading, including any method of marketing or distribution, or commits or has committed an act, or bring or has brought about a situation, or has or had any interest in a business or type of business or derives or derived any income from a business or type of business which is connected with the said harmful business practice and which may be specified in the order to-

(i) terminate or cease to be a party to that agreement understanding or omission.

(ii) refrain from using that advertising or type of advertising;

(iii) refrain from applying that scheme, practice or method of trading;

(vi) cease to commit that act or to bring about that situation;

(v) refrain from at any time-

(aa) becoming a party to any agreement, understanding or omission; bb) using any type of advertising; (cc) applying any scheme practice or method of trading, or (dd) committing any act or bringing about the court is satisfied is likely of

a nature specified in the order and which the court is satisfied is likely to be applied for the purposes of or in connection with the creation or maintenance of any harmful business practice; (vii) refrain from any time obtaining any interest in or deriving any income from a business or type of business specified in the order; and

(c) if money was accepted from consumers and it is considered necessary by the court to limit or prevent financial losses by those consumers, appoint a curator to exercise the powers and perform the functions and duties contemplated in section 19.

(2) An order of the court in terms of subsection (1)

(a) shall be made known by notice in the Provincial Gazette, and

(b) may be made known in any other matter, including a notice in a newspaper or-
magazine or on the radio or television.

Functions of curator appointed by court

19.(I) A curator appointed under section 18(1)(a) shall, subject to the provisions of this section, realize the assets of the person involved in the harmful business practice in question and distribute them among the consumers concerned, and take control of and manage the whole or any part of the business of such a person.

(2) The powers and duties of the curator shall be determined by the court, which may give
directions -

(a) regarding any security which the curator shall furnish for the proper performance of his or her duties; and

(b) concerning the performance by such curator of his or her duties and functions, or the management of the affairs of the person concerned, or any other matter incidental thereto, as may be deemed necessary.

(3) A curator who is not in the full time serve of the State shall out of the funds of the person involved in the harmful business practice, in respect of the services rendered by him or her, be paid such remuneration as the responsible Member, with the concurrence of the chairperson of the court, may determine: Provided that if the funds of the person involved in the harmful business practice sure insufficient to adequately compensate the curator, the curator shall be paid f rom provincial funds such further remuneration and allowances as the responsible Member may determine.

(4) A court may empower the curator, subject to any condition which the court may impose, to-

(a)suspend or restrict, as from the date of his or appointment as curator or any subsequent date, the right of creditors of the person involved in the harmful business practice to claim or receive any money owing to them by that person;

(b) make payments, transfer property or take steps for the transfer of property to any

creditor of the person involved in the harmful business practice at such time, in such order and in such manner as the curator may deem fit; (c)cancel any agreement between the person involved in the harmful

business practice and any other party. Provided that where the agreement so cancelled is a lease of movable or immovable property entered into by the person involved in the harmful business practice prior to the appointment of a curator, a claim for damages in respect of such cancellation may be instituted against that person after the expiration of one year as from the date of such cancellation unless the court grants permission that such claim may be instituted before the expiry of such period; (d) enter into agreements on behalf of the person involved in the harmful business practice;

(e) convene from time to time, in such manner as he may deem fit, a meeting of creditors of the person involved in the harmful business practice, for the purpose of

establishing the nature and extent of the indebtedness -of that person to such creditors and for consultation with such creditors in so far as the curator deems it necessary; (f) negotiate with any creditor of the person involved in the harmful business practice with a view to the final settlement of the affairs of such creditor against that person; (g) make and carry out, on the course of the management by the curator of the affairs of the person involved in the harmful business practice, any decision which in terms of the provisions of the Companies Act, 1973 (Act NO. 61 of 1973), would have been required to be made by way of a special resolution contemplated in section 199 of that Act, and

(h) dispose by public auction, tender or negotiation of any asset of the person involved in the harmful business practice, including-

(i) any advance or loan; or

(ii) any asset approval for the disposal of Which is necessary in terms of section

228 of the Companies Act, 1973.

(5) The Court may at any time, amend or withdraw any power granted under subsection(4).

(6) At the appointment of a curator -

(a) the management of the business or affairs of the person involved in the harmful

business practice shall vest in the curator, subject to the supervision of the court. and any other person vested with the management of the affairs of that person shall be divested thereof, and

(b the curator shall recover and take possession of all the assets of the person involved in the harmful business practice.

(7) A curator shall act in the best interests of the clients, debtors and creditors of the person placed under curatorship.

(8) The curator shall report to the court on his or her administration of the affairs of the person involved in the harmful business practice, and shall at the request of the court provide any other information out in that request.

. 1 (9) The curator shall keep proper record of the steps taken by him or her in the performance of his or her functions and of the reasons why such steps were taken.

Declaration of certain business practices to be unlawful

20.(I) If a court, pursuant to proceedings instituted in the court in terms of section 9(b)(ii), is satisfied that it is in the public interest that any particular business practice or type of business practice which was the subject of the proceedings in question should be declared to be unlawful, it may-

(a) declare to be unlawful the business practice or type of business practice concerned, either generally or in respect of a particular area, depending upon whether the investigation was of a general nature or was undertaken in relation to a particular area.

(b) prohibit any person from catering in to or being or continuing to be a party to an agreement, arrangement or understanding, or from using advertising, or from applying a scheme, practice or method of trading or from committing an act or from bringing about a situation which was the subject of the proceedings, either wholly or to extent specified by the court, or subject to a condition or exemption so specified or to an exception contemplated in subsection(3); (C) regulate any business practice or type of business practice which was the subject of the proceedings by prescribing conditions or requirements which must be complied with in respect thereof

(2) A notice under subsection (1) may at anytime on application by the Head after further investigation by the office be withdrawn by the court or be amended by it in such manner as may be fitting-.

(3) The court may, on application by any person and after hearing the Head of the Office, grant exemption from a provision, condition or requirement contemplated in subsection (1), to such extent and for such period and subject to such conditions as may be specified in the exception.

(4) The provisions of section 18(2) shall mutatis mutandis apply in relation to an order, withdrawal, amendment or exemption contemplated in this section.

Giving of notice to competent authorities of harmful business practices and offences

21. (1) The Head shall, if there is reason to suspect that a harmful business practice which is or was the subject of an investigation by the office, exists or may come into existence elsewhere in the Republic than in the Province, furnish the Business Practice Committee established by section 2 of the Harmful Business Practices Act, 1988 (Act NO. 71 of 1988), and any competence authority in the province concerned with particulars of the business practice in question and any relevant information relating thereto which became known in the course of investigations by the office or of proceedings before the court.

(2) The Head shall, if there is reason at any time during or after the completion of an investigation estimation to suspect that there has been or is being committed, or that an attempt has been or is being made to commit

-

(a) an offence, notify the Attorney General concerned accordingly; (b) serious economic offence as defined in the Investigation of Serious Economic Offences Act, 1991 (Act No. 117 of 1991), lay the matter in question before the Director of the Office for Serious Economic Offences in the manner provided in section 4 of that Act

Confidentiality

22. No investigating officer, person in the service of the office, member of the court, or person contemplated in section 13(2) shall 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 duly in terms of this Act; or (b) on the order of a court of law.

Regulations

23.(I) The responsible Member may, with the concurrence of a committee of the Provincial Legislature with responsibility for consumer-affairs and after consultation with the chairperson of the court, make regulations relating to-

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

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

(3) The provisions of subsection (2) shall not apply in respect of any regulation which, after the provisions of that subsection have been complied with, has been amended by the responsible Member after consultation with the chairperson of the court in consequence of comments or representations by the board in pursuance of such compliance.

Offences in relation to prohibited business practices

24. Any person who contravenes or fails to comply with an order of court which has been made known by notice in the Provincial Gazette shall be guilty of an offence.

Penalties

25. Any person who is convicted of an offence in terms of this Act shall be liable, in the case of an offence referred to in -

(a) section 24, to a fine not exceeding R200 000 or imprisonment for a period not exceeding five years or to both that fine and that imprisonment.

(b) Any other provision of this Act, to a fine not exceeding RI 00 000 or to imprisonment for a period not exceeding 12 months or to both that fine and that imprisonment.

State bound

26. This Act shall bind the State, except in so far as criminal liability is concerned.

Civil remedies not excluded.

27. No provision of this Act shall be construed as depriving any person ~ of any civil remedy.

Repeal of Laws and Transitional Clauses

28.(I) (a) The North-West Consumer Affairs Act, 1984 (Act 34 of 1984 - hereinafter referred to as the Principal Act) is, subject to the provisions of subsections (1b), (2) (3) and (4) of this section, repealed. -

(b) The repeal of the Principal Act by subsection (a) of this section, shall in law be deemed to have the effect of dissolving the North-West Consumer Council established in terms of section 4 of that Act.

(2) (a) The North-West Provincial Government shall subject to paragraph (b) of this subsection, for all purpose in law be the legal successor to the North-West Consumer Council in relation to all immovable or movable property, transactions, agreements, contracts, proceedings, matters which prior to the commencement of this Act, were purchased, concluded, brought, performed or done by the North-West Council.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, the North-West Government shall not be the legal successor in relation to any employment contracts or any employment relationships or any matter arising from the employment of personnel by the North-West Consumer Council.

(c) Any consumer complaint received and not disposed of in terms of the Principal Act immediately prior to the date of commencement of this Act, shall be deemed to be a complaint submitted to the office under this Act and shall be deal with accordingly.

(3) The reserve and other financial accounts established in terms of the Principal Act shall, from the date of dissolution, be under the control of the sub-accounting officer responsible for the North-West Provincial Department of Finance and Economic Affairs, who shall cause proper records and books of account to be kept of all monies received, accrued and expended until such time as the monies have been transferred to the North-West Revenue Fund.

(4) The dissolution shall come into operation on a date determined by the responsible Member in the Provincial Gazette.

Short title

29. This Act shall be called the Consumer Affairs (Harmful Business Practices) Act, 1996 and shall be deemed to have come into effect on 1 November 1996.