

CONSUMER PROTECTION BILL, 2014

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title and date of commencement.
2. Interpretation.
3. Application of Act
4. Threshold determination

PART II

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

5. Establishment of Consumer Protection Commission
6. Functions and Powers of Commission

PART III

FUNDAMENTAL CONSUMER RIGHTS

7. Right to the satisfaction of Basic Needs
8. Right to safety
9. Right to be informed / display of prices
10. Right to choose
11. Right to be heard
12. Right to redress
13. Right to Consumer Education
14. Right to information in plain and understandable language
15. Consumer's right to select suppliers
16. Consumer's right to cancel advance reservation, booking or order
17. Consumer's right to choose or examine goods
18. Consumer's right to safe, good and quality goods
19. Consumer's right to be heard and obtain redress

PART IV

CONTRACTUAL PROTECTION , UNFAIR CONTRACT TERMS AND RELIEF AGAINST UNFAIR
CONTRACTS

20. When consumer contract is unfair
21. When exercise or non-exercise of power is unfair
22. Relief against unfair consumer contracts

PART V

PROTECTION OF CONSUMER RIGHTS AND CONSUMER'S VOICE

23. Realisation of consumer rights
24. Enforcement of rights by consumer
25. Initiating complaint to commission
26. Accredited Consumer group may initiate action
27. Redress by Court.
28. Civil society support for Consumer's rights

PART VI

ENFORCEMENT OF ACT

29. Enforcement functions of Commission
30. Compliance notices
31. Objection to notices
32. Summons
33. Authority to enter and search under warrant
34. Powers to enter and search
35. Conduct of entry and search
36. Claims that information is confidential
37. Breach of confidence
38. Hindering administration of Act
39. Offences and Penalty
40. Administrative Fines
41. Vicarious Liability

PART VII
CONSUMER COURT

42. Administration of Part VI
43. Establishment and composition of labour court
44. Qualification for appointment as President of Consumer court
45. Assessors
46. Registrar of Consumer Court
47. Seal of Consumer Court
48. Functions, powers and jurisdiction of consumer court
49. Exercise of functions by consumer court
50. Procedure and evidence in the consumer court
51. Sitting of Consumer Court
52. Representation of parties
53. Contempt of Consumer Court
54. Effective date and enforcement of decisions of Consumer Court
55. Rescission or alteration by Consumer Court of its own decisions
56. Appeals to the Consumer Court generally
57. Appeals against decisions of Consumer Court

PART VII
FINANCIAL PROVISIONS

58. Funds of Commission
59. Investment of monies not immediately required by the Commission
60. Financial year of Commission
61. Accounts of Commission
62. Audit of Commission's accounts
63. Powers of Auditors

PART VIII
MISCELLANEOUS PROVISIONS RELATING TO COMMISSION

64. Minister may give policy directives
65. Reports of Commission
66. Chief Executive Officer and other employees of Commission
67. Exemption from Liability for Commission
68. Regulations

69. Transitional provisions

BILL

PREAMBLE

To promote a fair, efficient and transparent marketplace for consumers and business, to promote consumer rights to basic needs (food, shelter, health, education and clothing), to provide for improved standards of consumer information, to prohibit unfair competition, marketing and business practices, to promote responsible consumer behaviour, to provide relief to parties to consumer contracts where the contracts are unfair or contain unfair provisions or where the exercise or non-exercise of a power, right or discretion under such a contract is or would be unfair; to repeal the Consumer Contracts Act [*Chapter 8:03*], and to provide for matters incidental to or connected with the foregoing.

ENACTED by the President and the Parliament of Zimbabwe.

PART I

PRELIMINARY

1 Short title and date of commencement

- (1) This Act may be cited as the Consumer Protection Act [*Chapter 14:44*], 2014.
- (2) This Act shall come into operation on a date to be fixed by the President by Statutory Instrument.

2 Interpretation

In this Act—

“advertisement” means any direct or indirect visual oral communication transmitted by any medium, or any representation or reference written, inscribed, recorded, encoded upon or embedded within any medium, by means of which a person seeks to –

- (a) Bring to the attention of all or part of the public-
 - (i) the existence or identity of a supplier; or
 - (ii) the existence, nature, availability, properties or uses of any goods or services that are available for supply, or the conditions on, or price at, which any goods or services are available for supply;

(b) promote the supply of any goods or services; or

(c) promote any cause;

“agreement” means an arrangement or understanding between or among two or more parties that purports to establish a relationship in law between or among them;

“apply”, when used in relation to a trade description, price, notice or any similar form of information, means to emboss, impress, engrave, etch, print or weave into, work into or onto, annex or affix to, or incorporate within;

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

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

(a) a person to whom those particular goods or services are marketed in the ordinary course of the supplier’s business;

(b) a person who has entered into a transaction with a supplier in the ordinary course of the supplier’s business, unless the transaction is exempt from the application of this Act by section 3(2) or in terms of section 3(3); and

(c) if the context so requires or permits, a user of those particular goods or a recipient or beneficiary of those particular services, irrespective of whether that user, recipient or beneficiary was a party to a transaction concerning the supply of those particular goods or services;

“consumer agreement” means an agreement between a supplier and a consumer other than a franchise agreement;

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

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

(b) a contract of employment;

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

“consumer protection group” means an entity promoting the interests or protection of consumers ;

“complainant” means a consumer or any consumer association who or which, as the case may be, makes a complainant;

“complaint” means any allegation in writing or orally made by a complainant that-

(a) as a result of any unfair trade practice adopted by a supplier or trader, the complainant has suffered loss or damage;

(b) the goods or technology mentioned in the complaint had one or more defects; and

(c) the services mentioned in the complaint suffer from deficiency in any respect.

“court” means a Consumer Court established under this Act.

“defect” means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under this Act or any other written law in relation to any goods;

“deficiency” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by this Act or under any written law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

“Failure” means the inability of the goods to perform in the intended manner or to the intended effect;

“goods” include—

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

“hazard” means a characteristic that –

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

“importer”, with respect to any particular goods, means a person who brings those goods, or causes them to be brought, from outside Zimbabwe into Zimbabwe, with the intention of making them available for supply in the ordinary course of business;

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

- (a) representing another person with respect to the actual or potential supply of any goods or services;
- (b) accepting possession of any goods or other property from a person for the purpose of offering the property for sale; or
- (c) offering to sell to a consumer, soliciting offers for or selling to a consumer any goods or property that belongs to a third person, or service to be supplied by a third person, but does not include a person whose activities as an intermediary are regulated in terms of any other legislation;

“juristic person” includes—

- (a) a body corporate;
- (b) a partnership or association; or

(c) a trust as defined in the Trust Deed;

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

“Minister” means the Minister of Industry and Commerce;

“price”, when used in relation to—

(a) a representation required to be displayed by section 23, includes any mark, notice or visual representation that may reasonably be inferred to indicate or express an association between any goods or services and the value of the consideration for which the supplier is willing to sell or supply those goods or services; or

(b) the consideration for any transaction, means the total amount paid or payable by the consumer to the supplier in terms of that transaction or agreement, including any amount that the supplier is required to impose, charge or collect in terms of any public regulation;

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

(a) grows, nurtures, harvests, mines, generates, refines, creates, manufactures or otherwise produces the goods within Zimbabwe, or causes any of those things to be done, with the intention of making them available for supply in the ordinary course of business; or

(b) by applying a personal or business name, trade mark, trade description or other visual representation on or in relation to the goods, has created or established a reasonable expectation that the person is a person contemplated in paragraph (a);

“prohibited conduct” means an act or 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;

“Registrar” means the Chief Registrar of Companies or a Registrar of Companies appointed in terms of section five of the Companies Act [*Chapter 24:03*];

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

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

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

“unsafe” means that, due to characteristic, failure, defect or hazard, particular goods present an extreme risk of personal injury or property damage to the consumer or to other persons.

3 Application of Act

(1) This Act applies to—

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

(2) This Act does not apply to any transaction—

- (a) in terms of which goods or services are promoted or supplied to the State;
- (b) in terms of which the consumer is a juristic person whose asset value or annual turnover, at the time of the transaction, equals or exceeds the threshold value determined by the Minister in terms of section 4;
- (c) if the transaction falls within an exemption granted by the Minister in terms of subsections (3) and (4);
- (d) pertaining to services to be supplied under an employment contract;

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

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

(4) When interpreting or applying this Act, the court or Council may consider—

- (a) appropriate foreign and international law;
- (b) appropriate international conventions, declarations or protocols relating to consumer protection; and any decision of a consumer court, in terms of this Act, to the extent that such a decision has not been set aside, reversed or overruled by the High Court, the Supreme Court of Appeal.

(5) No provision of this Act must be interpreted so as to preclude a consumer from exercising any rights afforded in terms of the common law.

4 Threshold Determination

(1) On the early effective date and subsequently at intervals of not more than five years, the Minister, by notice in the *Gazette*, determine a monetary threshold applicable to the size of the juristic person for the purposes of section 3 (2) (b).

The initial threshold determined by the Minister in terms of this section takes effect on the general effective date and each subsequent threshold takes effect six months after the date on which it is published in the *Gazette*.

PART II

ESTABLISHMENT, FUNCTIONS AND POWERS OF CONSUMER PROTECTION COMMISSION

5 Establishment of Consumer Protection Commission

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

(2) The operations of the Commission shall, subject to this Act, be controlled and managed by a Board to be known as the Consumer Protection Commission Board.

(3) The Board shall consist of the Chief Executive Officer and not less than seven and not more than twelve members who shall be appointed by the Minister after consultation with the President and in accordance with any directions as the President may give him or her, and of whom at least—

- (a) one member shall be a representative of Environmental Management Agency Council;
- (b) one member shall be a representative of the Farmers Association;
- (c) one member shall be a representative of the Ministry responsible for Industry and Commerce;
- (d) one member shall be a representative of the Competition and Tariff Commission;
- (e) one member shall be a representative of the Standards Association of Zimbabwe;
- (f) one member shall be a representative of Zimbabwe National Editors Forum;
- (g) one member shall be a legal practitioner registered as such in terms of the Legal Practitioners Act [*Chapter 27:07*];
- (h) three members shall be representatives of registered consumer organisations.

(4) In appointing the members of the Board, the Minister shall —

- (a) designate one member as Chairperson of the Commission and one member as vice-chairperson of the Commission;

Provided that the person appointed as Chairperson shall be one of the three representatives of registered consumer organisations.

- (b) endeavour to secure that at least half of the membership of the Board is made up of

women; and

(c) publish the names of persons appointed to the Board by notice in the *Gazette*.

(5) The provisions relating to the terms and conditions of office, vacation of office, filling of vacancies, meetings and procedures of the Board and other related matters are set out in the Schedule.

6 Functions and powers of Commission

The functions of the Commission are to —

- (a) co-ordinate and network consumer activities and liaise with consumer organisations and the competent authorities and agencies locally and outside Zimbabwe to protect consumer interests;
- (b) promote fair business practices;
- (c) protect consumers from unconscionable, unreasonable, unjust or otherwise improper trade practices; and deceptive, misleading, unfair or fraudulent conduct;
- (d) improve consumer awareness and information and encouraging responsible and informed consumer choice and behaviour;
- (e) promote consumer confidence, empowerment, and the development of a culture of consumer responsibility, through individual and group education, vigilance, advocacy and activism;
- (f) provide for a consistent, accessible and efficient system of consensual resolution of disputes arising from consumer transactions; and
- (g) provide for an accessible, consistent, harmonised, effective and efficient system of redress for consumers.
- (h) regulate the formation of some consumer protection bodies for specific sectors.
- (i) have oversight on sector specific bodies established under the Commission.

PART III

FUNDAMENTAL CONSUMER RIGHTS

7 Right to the satisfaction of Basic Needs

8 Right to Safety

9 Right to be informed / display or disclosure of prices of goods and services

10 Right to choose

11 Right to be heard

12 Right to redress

13 Right to Consumer Education

14 Right to information in plain and understandable language

(1) The producer of a notice, document or visual representation that is required, in terms of this Act or any other law, to be produced, provided or displayed to a consumer must produce, provide or display that notice, document or visual representation—

- (a) in the form prescribed in terms of this Act or any other legislation, if any, for that notice, document or visual representation; or
- (b) in plain language, if no form has been prescribed for that notice, document or visual representation.

(2) For the purposes of this Act, a notice, document or visual representation is in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the notice, document or visual representation is intended, with average literacy skills and minimal experience as a consumer of the relevant goods or services, could be expected to understand the content, significance and import of the notice, document or visual representation without undue effort, having regard to—

- (a) the context, comprehensiveness and consistency of the notice, document or visual representation;
- (b) the organisation, form and style of the notice, document or visual representation;
- (c) the vocabulary, usage and sentence structure of the notice, document or visual representation; and
- (d) the use of any illustrations, examples, headings or other aids to reading and understanding.

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

(4) Guidelines published in terms of subsection (3) may be published for public comment.

15 Consumer's right to select suppliers

A supplier must not require, as a condition of offering to supply or supplying any goods or services, or as a condition of entering into an agreement or transaction, that the consumer must —

- (a) purchase any other particular goods or services from that supplier;
- (b) enter into an additional agreement or transaction with the same supplier or a designated third party; or
- (c) agree to purchase any particular goods or services from a designated third party, unless the supplier—
 - (i) can show that the convenience to the consumer in having those goods or services bundled outweighs the limitation of the consumer's right to choice;

- (ii) can show that the bundling of those goods or services results in economic benefit for consumers; or
- (iii) offers bundled goods or services separately and at individual prices.

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

(1) Subject to subsections (2) and (3), a consumer has the right to cancel any advance booking, reservation or order for any goods or services to be supplied.

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

- (a) require payment of a reasonable deposit in advance; and
- (b) impose a reasonable charge for cancellation of the order or reservation, subject to subsection (4).

(3) For the purposes of this section, a charge is unreasonable if it exceeds a fair amount in the circumstances, having regard to—

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

(4) A supplier may not impose any cancellation fee in respect of a booking, reservation or order if the consumer is unable to honour the booking, reservation or order because of the death or hospitalisation of the person for whom, or for whose benefit the booking, reservation or order was made.

17 Consumer's right to choose or examine goods

(1) Despite any statement or notice to the contrary, a consumer is not responsible for any loss or damage to any goods displayed by a supplier, unless the loss or damage results from action by the consumer amounting to gross negligence or recklessness, malicious behaviour or criminal conduct.

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

(3) If the consumer has agreed to purchase goods solely on the basis of a description or sample, or both, provided by the supplier, the goods delivered to the consumer must in all material respects and characteristics correspond to that which an ordinary alert consumer would have been entitled to expect based on the description or on a reasonable examination of the sample, as the case may be.

(4) If a supply of goods is by sample, as well as by description, it is not sufficient that any of the goods correspond with the sample if the goods do not also correspond with the description.

18 Consumer's right to safe, good quality goods

(1) Every consumer has a right to receive goods that—

- (a) are reasonably suitable for the purposes for which they are generally intended;
- (b) are of good quality, in good working order and free of any defects;
- (c) will be useable and durable for a reasonable period of time, having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply; and

(2) In addition to the right set out in subsection (1) (a), if a consumer has specifically informed the supplier of the particular purpose for which the consumer wishes to acquire any goods, or the use to which the consumer intends to apply those goods, and the supplier—

- (a) ordinarily offers to supply such goods; or
- (b) acts in a manner consistent with being knowledgeable about the use of those goods, the consumer has a right to expect that the goods are reasonably suitable for the specific purpose that the consumer has indicated.

(3) In determining whether any particular goods satisfied the requirements of subsection (1) or (2), all of the circumstances of the supply of those goods must be considered, including but not limited to—

- (a) the manner in which, and the purposes for which, the goods were marketed, packaged and displayed, the use of any trade description or mark, any instructions for, or warnings with respect to the use of the goods;
- (b) the range of things that might reasonably be anticipated to be done with or in relation to the goods; and
- (c) the time when the goods were produced and supplied.

(4) For greater certainty in applying subsection (3)—

- (a) it is irrelevant whether a product failure or defect was latent or patent, or whether it could have been detected by a consumer before taking delivery of the goods; and
- (b) a product failure or defect may not be inferred in respect of particular goods solely on the grounds that better goods have subsequently become available from the same or any other producer or supplier.

(5) Subsection (1)(a) and (b) do not apply to a transaction if the consumer—

- (a) has been expressly informed that particular goods were offered in a specific condition; and
- (b) has expressly agreed to accept the goods in that condition, or knowingly acted in a

manner consistent with accepting the goods in that condition.

19 Consumer's right to be heard and obtain redress

(1) 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 must not, in response—

- (a) discriminate directly or indirectly against that consumer, compared to the supplier's treatment of any other consumer who has not 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, suspend or terminate an agreement with the consumer.

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

- (a) directly or indirectly penalise another party to that agreement;
- (b) alter the terms or conditions of any other transaction or agreement with another party to the impugned agreement, except to the extent necessary to correct a similarly unlawful provision; or
- (c) take any action to accelerate, enforce, suspend or terminate another agreement with another party to the impugned agreement.

PART IV

UNFAIR CONTRACTS

20 When consumer contract is unfair

- (1) A court may find a consumer contract to be unfair for the purposes of this Act—
- (a) if the consumer contract as a whole results in an unreasonably unequal exchange of values or benefits; or
 - (b) if the consumer contract is unreasonably oppressive in all the circumstances; or
 - (c) if the consumer contract imposes obligations or liabilities on a party which are not reasonably necessary to protect the interests of any other party; or
 - (d) if the consumer contract excludes or limits the obligations or liabilities of a party to an extent that is not reasonably necessary to protect his interests; or
 - (i) if the consumer contract is contrary to commonly accepted standards of fair dealing; or
 - (ii) in the case of a written consumer contract if the contract is expressed in language not readily understood by a party.

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

- (a) it imposes onerous obligations on a party; or
- (b) it does not result in substantial or real benefit to a party; or
- (c) a party may have been able to conclude a similar contract with another person on more favourable terms or conditions.

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

21 When exercise or non-exercise of power is unfair

(1) A court may find the actual or anticipated exercise or non-exercise of a power, right or discretion under a consumer contract to be unfair for the purposes of this Act if—

- (a) in all the circumstances the result of such exercise or non-exercise is or would be unreasonably oppressive to the party affected by it; or
- (b) such exercise or non-exercise is not or would not be reasonably necessary to protect the interests of any party; or
- (c) such exercise or non-exercise is or would be contrary to commonly accepted standards of fair dealing.

(2) A court shall not find the actual or anticipated exercise or non-exercise of a power, right or discretion under a consumer contract to be unfair for the purposes of this Act solely because a party affected thereby suffers or may suffer a penalty or forfeiture or a loss or diminution of any right or benefit under the contract.

(3) In determining whether or not the actual or anticipated exercise or non-exercise of a power, right or discretion under a consumer contract is unfair for the purposes of this Act, a court shall have regard to the interests of both parties and in particular, shall take into account, where appropriate any precautions that might reasonably be expected to have been taken to protect the interests of the parties if the contract had been concluded on terms and conditions other than those on which it was concluded.

22 Relief against unfair consumer contracts

- (1) If a court is satisfied—
 - (a) in accordance with section 17, that any consumer contract is unfair; or
 - (b) in accordance with section 18, that any actual or reasonably anticipated exercise or non-exercise of a power, right or discretion under a consumer

contract is or would be unfair; or

(c) that any consumer contract contains a scheduled provision;

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

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

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

(2) A court may grant relief under this section—

(a) either on an application made to it for such relief or in the course of proceedings where any other relief is sought; and

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

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

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

(b) solely on the ground that a consumer contract contains a scheduled provision—

(i) if the contract was concluded before the provision concerned became a scheduled provision; or

(i) if the court having regard to the factors set out in section five, is satisfied that in all the circumstances the consumer contract is fair despite containing the scheduled provision; or

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

PART V

PROTECTION OF CONSUMER RIGHTS AND CONSUMERS' VOICE

23 Realisation of consumer rights

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

- (a) A 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, with leave of the court, as the case may be; and
- (e) an association acting in the interest of its members.

(2) In any matter brought before the court in terms of this Act—

- (a) the court must develop the common law as necessary to improve the realisation and enjoyment of consumer rights generally, and in particular by persons contemplated in section 20 (1)(b); and
- (b) the court, as the case may be, must—
 - (i) promote the spirit and purposes of this Act; and
 - (ii) make appropriate orders to give practical effect to the consumer's right of access to redress, including, but not limited to any order provided for in this Act; and any innovative order that better advances, protects, promotes and assures the realisation by consumers of their rights in terms of this Act.

(3) If any provision of this Act, read in its context, can reasonably be construed to have more than one meaning, the court must prefer the meaning that best promotes the spirit and purposes of this Act, and will best improve the realisation and enjoyment of consumer rights generally and in particular by persons contemplated in section 20(1) (b).

(4) To the extent consistent with advancing the purposes and policies of this Act, the Consumer Court or the court must interpret any standard form, contract or other document prepared or published by or on behalf of a supplier, or required by this Act to be produced by a supplier, to the benefit of the consumer—

- (a) so that any ambiguity that allows for more than one reasonable interpretation of a part of such a document is resolved to the benefit of the consumer; and
- (b) so that any restriction, limitation, exclusion or deprivation of a consumer's legal rights set out in such a document or notice is limited to the extent that a reasonable person would ordinarily contemplate or expect, having regard to—
 - (i) the content of the document;
 - (ii) the manner and form in which the document was prepared and presented; and
 - (iii) the circumstances of the transaction or agreement.

(5) In any dealings with a consumer in the ordinary course of business, a person must not—

- (a) engage in any conduct contrary to, or calculated to frustrate or defeat the purposes and policy of, this Act;

- (b) engage in any conduct that is unconscionable, misleading or deceptive, or that is reasonably likely to mislead or deceive; or
- (c) make any representation about a supplier or any goods or services, or a related matter, unless the person has reasonable grounds for believing that the representation is true.

24 Enforcement of rights by consumer

A person contemplated in section 20 (1) may seek to enforce any right in terms of this Act or in terms of a transaction or agreement, or otherwise resolve any dispute with a supplier, by—

- (a) referring the matter directly to the court, if such a direct referral is permitted by this Act in the case of the particular dispute; or
- (b) filing a complaint with the Commission.

25 Initiating complaint to Commission

(1) Any person may file a complaint concerning a matter with the Commission in the prescribed manner and form, alleging that a person has acted in a manner inconsistent with this Act.

(2) The Commission may directly initiate a complaint concerning any alleged prohibited conduct on its own motion, or—

- (a) when directed to do so by the Minister; or
- (b) on the request of—
 - (i) a consumer protection organisation; or
 - (ii) another regulatory authority.

26 Accredited consumer protection group may initiate actions

(1) An accredited consumer protection group may—

- (a) commence or undertake any act to protect the interests of a consumer individually, or of consumers collectively, in any matter or before any forum contemplated in this Act; and
- (b) intervene in any matter before any forum contemplated in this Act, if the interests of consumers represented by that group are not otherwise adequately represented in that forum.

(2) In addition to any other authority set out in this Act, an accredited consumer protection group may direct a generally stated concern or complaint to the Commission in respect of any matter within the purposes of this Act.

(3) The Commission may accredit a consumer protection group if that person or association—

- (a) functions predominantly to promote or represent the interests of all or a specific category of consumers generally;
- (b) is committed to achieving the purposes of this Act; and

(c) engages in, or makes a realistic proposal to engage in, actions to promote and advance the consumer interests of persons contemplated in section 20(1)(b).

(4) The Commission may impose reasonable conditions on the accreditation of a consumer protection group to further the purposes of this Act.

(5) The Commission—

(a) must monitor the effectiveness of any accredited consumer protection group relative to the purposes and policies of this Act; and

(b) may reasonably require any accredited consumer protection group to provide information necessary for the purposes of monitoring in terms of paragraph (a).

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

27 Redress by court

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

(a) order a supplier to alter or discontinue any conduct that is inconsistent with this Act;

(b) make any order specifically contemplated in this Act; and

(c) award damages against a supplier for collective injury to all or a class of consumers generally, to be paid on any terms or conditions that the court considers just and equitable and suitable to achieve the purposes of this Act.

(2) This Act does not diminish any right of the consumer or the supplier—

(a) to recover interest or special damages in any case where by law interest or special damages may be recoverable; or

(b) to recover money paid if the consideration for the payment of it has failed.

28 Civil society support for consumer's rights

The Commission may co-operate with, facilitate or otherwise support any of the following activities carried out by a consumer protection group:

(a) Consumer advice and education activities and consumer-related publications;

(b) research, market monitoring, surveillance and reporting;

(c) promotion of consumer rights and advocacy of consumer interests;

(d) representation of consumers, either specifically or generally, in court;

(e) alternative dispute resolution through mediation or conciliation; and

(f) participation in national and international associations, conferences or forums concerned with consumer protection matters.

PART VI

ENFORCEMENT OF ACT

29 Enforcement functions of Commission

The Commission is responsible to enforce this Act by—

- (a) promoting informal resolution of any dispute arising in terms of this Act between a consumer and a supplier, but is not responsible to intervene in or directly adjudicate any such dispute;
- (b) receiving complaints concerning alleged prohibited conduct or offences, and dealing with those complaints;
- (c) monitoring—
 - (i) the consumer market to ensure that prohibited conduct and offences are prevented, or detected and prosecuted; and
 - (ii) the effectiveness of accredited consumer groups, industry codes and alternative dispute resolution schemes, service delivery to consumers by organs of state, and any regulatory authority exercising jurisdiction over consumer matters within a particular industry or sector;
- (d) investigating and evaluating alleged prohibited conduct and offences;
- (e) issuing and enforcing compliance notices;
- (f) negotiating and concluding undertakings and consent orders;
- (g) referring to the Competition Commission any concerns regarding market share, anti-competitive behaviour or conduct that may be prohibited in terms of the Competition Act, [Chapter 14:28]; and
- (h) referring matters to the court, and appearing before the court, as permitted or required by this Act.

30 Compliance notices

(1) Subject to subsection (2), the Commission may issue a compliance notice in the prescribed form to a person or association of persons whom the Commission on reasonable grounds believes has engaged in prohibited conduct.

(2) Before issuing a notice in terms of subsection (1) to a regulated entity, the Commission must consult with the regulatory authority that issued a licence to that regulated entity.

(3) A compliance notice contemplated in subsection (1) must set out—

- (a) the person or association to whom the notice applies;
- (b) the provision of this Act that has not been complied with;
- (c) details of the nature and extent of the non-compliance;
- (d) any steps that are required to be taken and the period within which those steps must be taken; and
- (e) any penalty that may be imposed in terms of this Act if those steps are not taken.

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

- (a) it is set aside by the Consumer Court, or a court upon a review of a Consumer Court decision concerning the notice; or
- (b) the Commission issues a compliance certificate contemplated in subsection (5).

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

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

- (a) apply to the Consumer Court for the imposition of an administrative fine; or
- (b) refer the matter to the National Prosecuting Authority for prosecution as an offence in terms of section 39,

but may not do both in respect of any particular compliance notice.

31 Objection to notices

(1) Any person issued with a notice in terms of section 27 may apply to the Consumer Court in the prescribed manner and form to review that notice within—

- (a) 15 business days after receiving that notice; or
- (b) such longer period as may be allowed by the Consumer Court on good cause shown.

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

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

32 Summons

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

- (a) to appear before the Commission, or before an inspector or independent investigator, to be questioned at a time and place specified in the summons; or
- (b) to deliver or produce to the Commission, or to an inspector or independent investigator, any book, document or other object referred to in paragraph (a) at a time and place specified in the summons.

(2) A summons contemplated in subsection (1)—

- (a) must be signed by the Commissioner, or by an employee of the Commission designated by the Commissioner; and
- (b) may be served in the same manner as a subpoena in a criminal case issued by the magistrate's court.

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

- (a) interrogate and administer an oath to, or accept an affirmation from, the person named in the summons; and
- (b) retain any such book, document or other object for examination, for a period not exceeding two months, or such longer period as the Consumer Court, on application and good cause shown, may allow.

(4) A person questioned by the Commission or by an inspector or investigator conducting an investigation must answer each question truthfully and to the best of that person's ability, but—

- (a) a person is not obliged to answer any question if the answer is self incriminating; and
- (b) the person asking the questions must inform that person of the right set out in paragraph (a).

(5) No self-incriminating answer given or statement made by any person to the Commission, or an inspector or investigator exercising powers in terms of this Act, will be admissible as evidence against that person in criminal proceedings against that person instituted in any court, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in section 34(1) or 35(2)(d), and then only to the extent that the answer or statement is relevant to prove the offence charged.

33 Authority to enter and search under warrant

(1) A judge of the High Court or a magistrate may issue a warrant to enter and

search any premises that are within the jurisdiction of that judge or magistrate if, from information on oath or affirmation, there are reasonable grounds to believe that—

- (a) a contravention of this Act has taken place, is taking place, or is likely to take place on or in those premises; or
- (b) anything connected with an investigation in terms of this Act is in the possession of, or under the control of, a person who is on or in those premises.

(2) A warrant to enter and search may be issued at any time and must specifically—

- (a) identify the premises that may be entered and searched; and
- (b) authorise an inspector or a police officer to enter and search the premises and to do anything listed in section 34.

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

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

(4) A warrant to enter and search may be executed only during the day, unless the

judge, regional magistrate or magistrate who issued it authorises that it may be executed at night at a time that is reasonable in the circumstances.

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

(6) Immediately before commencing with the execution of a warrant, a person

executing that warrant must either—

- (a) if the owner, or person in control, of the premises to be searched is present—
 - (i) provide identification to that person and explain to that person the authority by which the warrant is being executed; and
 - (ii) hand a copy of the warrant to that person or to the person named in it; or
- (b) if none of those persons is present, affix a copy of the warrant to the premises in a prominent and visible place.

34 Powers to enter and search

(1) A person who is authorised under section 33 to enter and search premises

may—

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

(2) Section 29(5) applies equally to an answer given or statement made to an inspector or police officer in terms of this section.

(3) An inspector authorised to conduct an entry and search in terms of section 33 may be accompanied and assisted by a police officer.

35 Conduct of entry and search

(1) A person who enters and searches any premises under section 34 must conduct the entry and search with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy.

(2) During any search under section 34(1)(c), only a female inspector or police officer may search a female person, and only a male inspector or police officer may search a male person.

(3) A person who enters and searches premises under section 34, before questioning anyone, must—

- (a) advise that person of the right to be assisted at the time by a Legal Practitioner; and
- (b) allow that person to exercise that right.

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

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

(5) During a search, a person may refuse to permit the inspection or removal of an article or document on the grounds that it contains privileged information.

(6) If the owner or person in control of an article or document refuses in terms of subsection (5) to give that article or document to the person conducting the search, the person conducting the search may request the registrar or sheriff of the High Court that has jurisdiction to attach and remove the article or document for safe custody until that court determines whether or not the information is privileged.

(7) A police officer who is authorised to enter and search premises under section 30, or who is assisting an inspector who is authorised to enter and search premises under section 31, may overcome resistance to the entry and search by using as much force as is reasonably required, including breaking a door or window of the premises.

(8) Before using force in terms of subsection (6), a police officer must audibly demand admission and must announce the purpose of the entry, unless it is reasonable to believe that doing so may induce someone to destroy or dispose of an article or document that is the object of the search.

(9) The Commission may compensate anyone who suffers damage because of a forced entry during a search when no one responsible for the premises was present.

36 Claims that information is confidential

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

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

(3) The Commission, Consumer Court, inspector or investigator, as the case may be, must—

- (a) consider any claim made in terms of subsection (1); and

(b) notify the claimant whether or not the information contemplated in subsection (1) will be treated as if it had been determined to be confidential.

(4) When making any ruling, decision or order in terms of this Act, the Commission or Consumer Court may take into account any information that has been the subject of a claim in terms of subsection (1).

(5) If any reasons for a decision in terms of this Act would reveal any information that has been the subject of a claim in terms of subsection (1), the Commission or Consumer Court, as the case may be, must provide a copy of the proposed reasons to the party claiming confidentiality at least five business days before publishing those reasons.

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

37 Breach of confidence

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

- (a) in carrying out any function in terms of this Act; or
- (b) as a result of initiating a complaint or participating in any proceedings in terms of this Act.

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

- (a) for the purpose of the proper administration or enforcement of this Act;
- (b) for the purpose of the administration of justice; or
- (c) at the request of an inspector, regulatory authority or Consumer Court entitled to receive the information.

38 Hindering administration of Act

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

(2) A person commits an offence if that person, having been summoned—

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

(3) A person commits an offence if that person, having been sworn in or having made an affirmation—

- (a) fails to answer any question fully and to the best of his or her ability; or
- (b) gives false evidence, knowing or believing it to be false.

39 Offences and Penalties

(1) Any person convicted of an offence in terms of this Act is liable—

- (a) in the case of a contravention of section 34 (1), to a fine not exceeding level 14 or to imprisonment for a period not exceeding 2 years, or to both such fine and such imprisonment; or
- (b) in any other case, to a fine not exceeding level eight or to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment.

(2) Despite anything to the contrary contained in any other law, a Magistrate's Court has jurisdiction to impose any penalty provided for in subsection (1).

40 Administrative fines

(1) The Consumer Court may impose an administrative fine in respect of prohibited or required conduct.

(2) An administrative fine imposed in terms of this Act shall not exceed level five.

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

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

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

41 Vicarious liability

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

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

PART VII

CONSUMER COURT

42 Administration of Part VI

In this Part "responsible Minister" means (except in section 45(1)(b), where reference to the responsible Minister is to the Minister as defined in section 2) the Minister responsible for justice or any other Minister to whom the President may, from time to time, assign the administration of this Part.

43 Establishment and composition of Consumer Court

(1) There is hereby established a court, to be known as the Consumer Court, which shall be a special court for the purposes of enforcing consumer rights and a court of record.

(2) The Consumer Court shall consist of—

- (a) the Senior President of the Consumer Court and such number of Presidents of the Consumer Court as the President may consider necessary after consultation with the Judicial Service Commission; and

(b) subject to subsection (1) of section 45, such assessors as are provided for in this Act.

(3) A person referred to in paragraph (a) of subsection (1) shall be appointed on such terms and conditions, including terms and conditions relating to the payment of salary, allowances and pension benefits, as the President, on the recommendation of the Judicial Service Commission, may fix.

(4) Assessors shall be chosen in terms of section 45 whenever required, from the list prepared in terms of section eight-six.

44 Qualification for appointment as President of Consumer Court

A person shall not be qualified for appointment as a President of the Consumer Court unless he—

- (a) is a former judge of the Supreme Court or the High Court; or
- (b) is qualified to be judge of the High Court; or
- (c) has been a magistrate in Zimbabwe for not less than seven years.

45 Assessors

(1) The Senior President of the Consumer Court, in consultation with the Minister and the responsible Minister shall prepare a list of the names of not less than ten persons who have knowledge or experience in consumer matters and who may appropriately be appointed as assessors of the Consumer Court.

(2) The Senior President of the Consumer Court may, in consultation with the responsible Minister, add or remove the name of any person from any list drawn up in terms of subsection (1).

(3) Before entering upon his duties for the first time, an assessor shall take an oath before the Senior President of then Consumer Court that he will faithfully perform his duties as a member of the Consumer Court.

(4) An assessor shall be paid such remuneration and allowances as the responsible Minister, with the consent of the Minister responsible for finance, may fix.

46 Registrar of Consumer Court

(1) There shall be a registrar of the Consumer Court whose office shall be a public office and form part of the Public Service.

(2) The registrar of the Consumer Court shall be responsible for—

- (a) filing applications, references, appeals, records and other documents lodged with the Consumer Court; and
- (b) safeguarding the records of the Consumer Court; and
- (c) notifying parties of the dates and times at which matters are set down for hearing by the Consumer Court; and
- (d) performing such other functions as may be prescribed or as may be necessary for the proper functioning of the Consumer Court.

(3) In the performance of his functions as registrar of the Consumer Court, the registrar of the Consumer Court shall be subject to the directions of the Senior President of the Consumer Court.

47 Seal of Consumer Court

(1) The Consumer Court shall have and use as occasion may require a seal in a design approved from time to time by the President.

(2) The registrar of the Consumer court shall have custody of the seal of the Consumer Court.

48 Functions, powers and jurisdiction of Consumer Court

(1) The Consumer Court shall exercise the following functions—

- (a) hearing and determining applications and appeals in terms of this Act or any other enactment; and
- (b) hearing and determining matters referred to it by the Minister in terms of this Act; and
- (c) exercise the same powers of review as would be exercisable by the High Court in respect of consumer matters;
- (d) doing such other things as may be assigned to it in terms of this Act or any other enactment.

(2) In the exercise of its functions, the Consumer Court may in the case of an appeal—

- (i) conduct a hearing into the matter or decide it on the record; or
- (ii) confirm, vary, reverse or set aside the decision, order or action that is appealed against, or substitute its own decision or order.

49 Exercise of functions by Consumer Court

(1) The functions of the Consumer Court may be exercised by one or more Presidents sitting by themselves or with one or more assessors chosen from the list prepared in terms of section 42(1).

(2) Subject to subsection (3), all questions that fall to be decided by the Consumer Court sitting with more than one member shall be decided by a majority of the members:

Provided that—

- (i) where the opinions of the members of the Consumer Court are equally divided on any question, the decision of the person presiding over the Consumer Court shall be the decision of the Consumer Court;
- (ii) no assessor shall have a voice in the decision of—
 - A. any question of law; or
 - B. any question as to whether a matter for decision is a question of fact or of law; or
 - C. any question as to the admissibility of evidence.

(3) Subject to this Part, the Presidents of the Consumer Court may make rules for the Court providing for—

- (a) the practice, procedure and rules of evidence to be followed, including the determination of any preliminary point in any proceedings;
- (b) the service of notices and other documents required for the purpose of any proceedings;
- (c) the forms to be used for the purpose of any proceedings;
- (d) the fees to be paid in respect of the service or examination of documents and the doing of any other thing by the registrar of the Consumer Court or any officer of the Consumer Court in connection with any proceedings;
- (e) the tariff of fees which may be charged by legal practitioners or a registered organisations in respect of any matter relating to the Consumer Court;
- (f) allowances and other payments to witnesses summoned to give evidence or to produce any book or document in any proceedings;
- (g) any other matter which the Presidents of the Consumer Court consider should be provided

for in rules in order to ensure or facilitate the proper dispatch and conduct of the business of the Consumer Court:

Provided that in any case not covered by the rules referred to in this subsection, the Consumer Court shall act in such manner as it considers best fitted to do substantial justice and effect and carry out the objects of this Act, and for that purpose the Consumer Court may give instructions on the course to be pursued which shall be binding on the parties to the proceedings.

(4) Rules in terms of subsection (3) shall not have effect until they have been approved by the Chief Justice and the responsible Minister.

50 Procedure and evidence in the Consumer Court

(1) The Consumer Court shall not be bound by the strict rules of evidence, and the court may ascertain any relevant fact by any means which the presiding officer thinks fit and which is not unfair or unjust to either party.

(2) Evidence may be adduced orally or in writing in any proceedings in the Consumer Court, at the discretion of the presiding officer.

(3) The parties or their representatives to any proceedings in the Consumer Court shall be entitled to question or cross-examine each other or any witness.

(4) It shall be the responsibility of the presiding officer to ascertain the facts in any proceedings in the Consumer Court, and for that purpose he or she may—

- (a) call any party or his or her representative;
- (b) question or cross-examine any party or his or her representative or witness; and
- (c) put any question to a party or his or her representative or witness which is suggested to him or her by any party.

51 Sittings of Consumer Court

The Consumer Court shall sit at such places and at such times as may be prescribed or as the Senior President of the Consumer Court may direct.

52 Representation of parties

A party to a matter before the Consumer Court may appear in person or be represented and appear by—

- (a) a legal practitioner registered in terms of the Legal Practitioners Act [*Chapter 27:07*]; or
- (b) an official or employee of a registered consumer organisation.

53 Contempt of Consumer Court

(1) If any person, at a sitting of the Consumer Court, wilfully insults any member of the Court or wilfully interrupts the proceedings of the Court or otherwise wilfully disturbs the peace or order of the proceedings, the member presiding may order the person to be removed and detained in custody until the rising of the Court.

(2) Any person referred to in subsection (1) shall be guilty of an offence and liable, in addition to any removal and detention in terms of that subsection, to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

54 Effective date and enforcement of decisions of Consumer Court

(1) The Consumer Court may fix the date from which any decision, order or determination made by it shall operate, which date may be an earlier or later date than the date of the decision, order or determination.

(2) The President of the Consumer Court who made the decision, order or determination shall submit sufficient certified copies of it to the registrar of the Consumer Court to enable the registrar to furnish a copy to each of the parties affected by it.

(3) Any party to whom a decision, order or determination relates may submit for registration the copy of it furnished to him in terms of subsection (2) to the court of any magistrate which would have had jurisdiction to make the order had the matter been determined by it, or, if the decision, order or determination exceeds the jurisdiction of any magistrates court, the High Court.

(4) Where a decision, order or determination has been registered in terms of subsection (3) it shall have the effect, for purposes of enforcement, of a civil judgment of the appropriate court.

(5) If any order which has been registered in terms of subsection (4) has been rescinded or altered by the Consumer Court in terms of section 52, the clerk or registrar of the court concerned shall make the appropriate adjustment in his register.

55 Rescission or alteration by Consumer Court of its own decisions

(1) Subject to this section, the Consumer Court may, on application, rescind or vary any determination or order—

- (a) which it made in the absence of the party against whom it was made; or
- (b) which the Consumer Court is satisfied is void or was obtained by fraud or a mistake common to the parties; or
- (c) in order to correct any patent error.

(2) The Consumer Court shall not exercise the powers conferred by subsection (1)—

- (a) except upon notice to all the parties affected by the determination or order concerned; or
- (b) in respect of any determination or order which is the subject of a pending appeal or review.

(3) Where an application has been made to the Consumer Court to rescind or vary any determination or order in terms of subsection (1), the Consumer Court may direct that—

- (a) the determination or order shall be carried into execution; or
- (b) execution of the determination or order shall be suspended pending the decision upon the application;

upon such terms as the Consumer Court may fix as to security for the due performance of the determination or order or any variation thereof.

56 Appeals to the Consumer Court generally

(1) An appeal in terms of this Act may address the merits of the determination or decision appealed against.

(2) An appeal in terms of subsection (1) shall not have the effect of suspending the determination or decision appealed against.

(3) Pending the determination of an appeal the Consumer Court may make such interim determination in the matter as the justice of the case requires.

57 Appeals against decisions of Consumer Court

(1) An appeal on a question of law only shall lie to the Supreme Court from any decision of the Consumer Court.

(2) Any party wishing to appeal from any decision of the Consumer Court on a question of law in terms of subsection (1) shall seek leave from the President who made the decision to appeal that decision.

(3) If the President refuses leave to appeal in terms of subsection (2), the party may seek leave from the judge of the Supreme Court to appeal.

PART VII

FINANCIAL PROVISIONS

58 Funds of Commission

(1) The Chief Executive Officer shall, subject to the constitution drawn up for the regulation of the fund in terms of section 30 of the Audit Office Act [*Chapter 22:18*], establish the Consumer Protection Fund.

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

(3) The Consumer Protection fund shall consist of —

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

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

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

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

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

59 Investment of monies not immediately required by the Commission

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

60 Financial year of Commission

The financial year of the Commission shall be the period of twelve months ending on the 31 December in each year or such other date as the Minister may prescribe by notice in a Statutory Instrument.

61 Accounts of Commission

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

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

62 Audit of Commission's accounts

(1) Subject to the Public Finance Management Act [*Chapter 22:19*] (No. 12 of 2009), the Commission shall appoint as auditors one or more persons who are registered as public auditors in terms of the Public Accountants and Auditors Act [*Chapter 27:12*].

(2) The accounts kept by the Commission in terms of section 58 (1) shall be examined by the auditors.

(3) The auditors shall make a report to the Board, which in turn will make a report to the Minister on the statement of accounts prepared in terms of section 58 (2) and such report shall state whether or not in their opinion the statement of accounts gives a true and fair view of the Commission's affairs.

(4) In addition to the report referred to in subsection (3), the Minister may require the Board to obtain from its auditors such other reports, statement or explanations in connection with the Commission's operations, funds and property as the Minister may consider expedient, and the Board shall forthwith comply with any such requirement.

63 Powers of auditors

(1) An auditor referred to in section 59(1) shall be entitled at all reasonable times to require to be produced to him or her all accounts and other records relating to such accounts which are kept by the Commission or its agents and to require from any member of the Board or employee or agent of the Commission such information and explanation as in the auditor's opinion are necessary for the purposes of his or her audit.

(2) Any member of the Board or employee or agent of the Commission who fails without just cause to comply with a requirement of an auditor in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

PART VIII

MISCELLANEOUS PROVISIONS RELATING TO COMMISSION

64 Minister may give policy directions

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

(2) The Board shall take all necessary steps to comply with any direction given to it in terms of subsection (1).

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

65 Reports of Commission

(1) In addition to any report which the Commission is required to submit to the Minister in terms of this Act or the Public Finance Management Act [*Chapter 22:19*] (No. 12 of 2009), the Commission —

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

in regard to the operations and property of the Commissioner.

(2) The Minister shall, within six months of the end of the Commission's financial year, lay before Parliament a report submitted to him or her by the Commission in terms of subsection (1), together with the statement of accounts and auditor's report for the preceding financial year of the Commission referred to in sections 59 and 60.

66 Chief Executive Officer and other employees of Commission

(1) For the better exercise of the functions of the Commission, the Board shall, in consultation with the Minister, appoint a person to be the Chief Executive Officer of the Commission, on such terms and conditions as the Board, with the approval of the Minister, may fix.

(2) The Board shall terminate the appointment of the Chief Executive Officer if he or she would be required in terms of paragraph 4(b) or (c) of the Schedule to vacate his or her office had that paragraph and paragraph 3(1)(a), (b) and (c), and sub-paragraph (2) of that paragraph, applied to him or her.

(3) The Board shall not terminate the services of the Chief Executive Officer on a ground other than one referred to in subparagraph (2) without the approval of the Minister.

(4) The Board shall employ such persons in addition to the Chief Executive Officer as it considers expedient for the better exercise of the functions of the Council.

(5) Subject to the general control of the Board, the Chief Executive Officer shall be responsible for—

- (a) managing the operations and property of the Commission;

(b) supervising and controlling the activities of the employees of the Commission in the course of their employment.

(6) The Board may assign to the Chief Executive Officer such of the functions of the Board as the Board thinks fit:

Provided that the Board shall not assign to the Chief Executive Officer any duty that has been assigned to the chairperson of the Board.

(7) Any assignment of functions in terms of subsection (6) may be made either generally or specially and subject to such reservations, restrictions and exceptions as the Board may determine, and may be revoked by the Board at any time.

(8) The Chief Executive Officer shall have the right to attend meetings of the Board and, except in the case of any discussion relating to the terms and conditions of his or her appointment, to take part in the proceedings of the Board as if he or she were a member, but shall not have a vote on any question before the Board.

67 Exemption from liability for Commission

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

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

68 Regulations

(1) The Minister may make regulations providing for all matters which by this Act are required or permitted to be prescribed or which in his or her opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act. Subject to the Act, the Council may, with the concurrence of the Minister, make regulations providing for the conditions of service of the members of the Commission.

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

- (a) any matter, which by this Act is required or permitted to be prescribed;
- (b) the monies payable to the Commission in terms of section 65 above; and
- (c) any other matter the regulations of which are necessary or expedient to give effect to the provisions of this Act.

69 Transitional provisions

(1) Any body established by law, which performs functions similar to those of the Commission shall continue to perform such functions until—

- (a) the body is abolished; or
- (b) its functions are changed by law; or
- (c) the body is registered for performance of such functions by the Commission.

(2) No body referred to in subsection (1) shall be abolished nor shall its functions be changed until the Commission and the body have jointly examined the implications of such abolition or change and made recommendations to the Minister.

FIRST SCHEDULE

PROVISIONS APPLICABLE TO BOARD

Paragraphs

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

Interpretation in Schedule

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

Terms of office and conditions of service of members

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

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

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

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

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

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

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

Disqualifications for appointment as member

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

- (a) is not a citizen of Zimbabwe; or
- (b) has, in terms of a law in force in any country—
 - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
 - (ii) made an assignment to, or arrangement or composition with, his or her creditors which has not been rescinded or set aside; or
- (c) has, immediately preceding the date of his or her proposed appointment, been convicted—
 - (i) in Zimbabwe, of an offence involving dishonesty; or
 - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would constitute an offence;

and sentenced to a term of imprisonment imposed without the option of a fine.

(2) A person who is—

- (a) a member of Parliament; or
- (b) a member of two or more other statutory bodies;

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

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

Chairperson and vice-chairperson of Board

4(1) The Minister shall designate one of the appointed members to be chairperson and the other to be vice chairperson of the Board.

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

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

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

Vacation of office by member

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

- (a) three months after the date upon which he or she gives notice in writing to the Minister of his or her intention to resign, or on the expiry of such other period of notice as he or she and the Minister may agree; or
- (b) on the date he or she begins to serve a sentence of imprisonment imposed without the option of a fine—
 - (i) in Zimbabwe, in respect of an offence involving dishonesty; or
 - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would constitute an offence; or
- (c) if he or she becomes disqualified in terms of paragraph 2 (1) (a), (b) or (c) or in terms of subparagraph (2) of that paragraph, to hold office as a member; or
- (d) if he or she is required in terms of paragraph 3 to vacate his or her office.

Dismissal or suspension of members

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

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

(2) The Minister, may suspend a member—

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

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

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

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

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

Filling of vacancies on Board

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

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

Meetings and procedure of Board

8(1) The Board shall hold its first meeting on such date and at such place as the Minister may fix, being not more than three months after the fixed date, and thereafter the Board shall meet for the dispatch of business as often as is necessary or expedient and, subject to this paragraph, may adjourn, close and otherwise regulate its meetings and procedure as it thinks fit:

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

(2) The chairperson of the Board —

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

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

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

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

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

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

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

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

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

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

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

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

Committees of Commissioners

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

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

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

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

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

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

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

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

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

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

Remuneration and expenses of members of Commission and members of committees

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

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

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

Validity of decisions and acts of Commission

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

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

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

Minutes of proceedings of Commission and committees

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

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

Members to disclose certain connections and interests

13(1) In this section—

“relative” in relation a member means the Member's spouse, child, parent, brother or sister;

(2) Subject to subsection (4) —

- (a) if a member—

- (i) knowingly acquires or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Board; or
- (ii) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the members private interest coming or appearing to come into conflict with his functions as member; or
- (iii) knows or has reason to believe that a relative of his—
 - A. has acquired or holds direct or indirect interest in any matter that is under consideration by the Board; or
 - B. owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the members private interest coming or appearing to come into conflict with his functions as member;

or

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

the Member shall forthwith disclose the facts to the Board.

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

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

SECOND SCHEDULE

SCHEDULED PROVISIONS

1. Any provision (commonly known as a “*voetstoots* provision”) whereby the seller or supplier of goods other than used goods, excludes or limits his liability for latent defects in the goods.
2. Any provision whereby the seller or supplier of goods or services excludes or limits the liability which he would otherwise incur under any law for loss or damage caused by his negligence.
3. Any provision whereby the seller or supplier of goods or services excludes or limits his liability unless a claim is brought against him within a period which is shorter than would otherwise be permitted under any law regulating such claims.
4. Any provision whereby the seller or supplier of goods excludes or limits his liability in the event that the goods do not conform with any description or sample given in respect of the goods.
5. Any provision which denies or limits the right of the purchaser of any goods to require the seller or supplier—
 - (a) to reimburse the purchaser for the whole of the price or amount paid in respect of the goods; or
 - (b) to replace the goods; or
 - (c) to repair the goods at the expense of the seller or supplier; or
 - (d) to reduce the price or amount payable in respect of the goods;
 in the event that the goods are not supplied in conformity with the consumer contract or are not fit for the purpose for which they are sold or supplied.
6. Any provision imposing a burden of proof of any matter on the purchaser or user of any goods or services where the burden would otherwise lie on another party to the contract.

