

## **Consumer Protection Bill, 2024**

**To establish the Consumer Protection Authority of Namibia, to regulate consumer protection in Namibia, to provide for its powers, duties and functions, to specify the parameters of consumer protection, to establish the Consumer tribunal, and to provide for incidental matters.**

*(Introduced by the Minister of Industrialisation and Trade)*

### ARRANGEMENT OF SECTIONS

#### CHAPTER 1

#### INTRODUCTORY PROVISIONS

1. Definitions
2. Objects of Act

#### CHAPTER 2

#### NATIONAL CONSUMER PROTECTION AUTHORITY

##### PART 1

##### ESTABLISHMENT AND POWERS OF AUTHORITY

3. Establishment of Authority
4. Object of Authority
5. Powers of Authority

##### PART 2

##### GOVERNANCE OF AUTHORITY

6. Board of Directors of Authority
7. Functions of Board
8. Disqualification for appointment as member of Board
9. Term of office of members of Board
10. Vacation of office and filling of vacancies
11. Meetings and decisions of Board
12. Funds of Authority

13. Committees of Board
14. Allowance payable to members
15. Banking accounts
16. Financial year, accounts and audits
17. Annual report

PART 3  
PERSONNEL OF AUTHORITY

18. Appointment of Chief Executive Officer of Authority
19. Staff of Authority

CHAPTER 3  
CONSUMER ASSOCIATIONS

20. Support of Consumer Associations
21. Registration of consumer protection associations

CHAPTER 4  
CONCILIATION, MEDIATION AND CONSUMER PROTECTION TRIBUNAL

22. Establishment of Consumer Conciliation and Mediation Unit
23. Establishment of Consumer Protection Tribunal
24. Jurisdiction and power of Consumer Protection Tribunal
25. Institution of Proceedings before Tribunal
26. Seat of Tribunal
27. Oath of office
28. Summoning of witnesses
29. Contempt of Tribunal
30. Appeal to the High Court
31. Institution of Proceedings by Consumer Authority
32. Institution of Proceedings by registered association

CHAPTER 5  
CONSUMER RIGHTS AND GENERAL PROTECTIONS

PART 1  
FUNDAMENTAL RIGHTS

33. Consumer rights
34. Access to consumer market

35. Reasonable grounds for differential treatment in specific circumstances
36. Right to Return of Goods
37. Guarantee of Right of Public Participation
38. Plain Language
39. Parallel Sales and Contract Language
40. Implied Warranty of Merchantability
41. Implied Warranty of Fitness
42. Representations Creating Express Warranties
43. Disclaimer of Warranties Prohibited
44. Limitation of Consumer Remedies Prohibited

## PART 2

### MISLEADING OR DECEPTIVE CONDUCT

45. Misleading or deceptive conduct
46. Application of this Part to information providers
47. Unconscionable conduct
48. Unconscionable conduct in connection with goods or services
49. Matters court may have regard to for purposes of sections 49

## PART 3

### UNFAIR CONTRACT TERMS

50. Unfair terms of consumer contracts and small business contracts
51. Terms that define main subject matter of consumer contracts or small business contracts are unaffected
52. Standard form contracts
53. Contracts to which this Part does not apply

## CHAPTER 6

### SPECIFIC PROTECTIONS

#### PART 1

#### UNFAIR PRACTICES

##### False or misleading representations

54. False or misleading representations about goods or services
55. False or misleading representations about sale of land
56. Offering rebates, gifts and prizes
57. Bait advertising
58. Wrongly accepting payment

59. Application of provisions of this part to information providers

#### Unsolicited Supplies

60. Unsolicited cards  
61. Request for payment for unsolicited goods and services  
62. Liability of recipient for unsolicited goods  
63. Liability of recipient for unsolicited services  
64. Request for payment for unauthorised entries or advertisements  
65. Harassment and coercion

#### Pricing

66. Multiple pricing  
67. Single price to be specified in certain circumstances

## PART 2 CONSUMER TRANSACTIONS

#### Guarantees relating to the supply of goods

68. Guarantee as to title  
69. Guarantee as to undisturbed possession  
70. Guarantee as to undisclosed securities  
71. Guarantee as to acceptable quality  
72. Guarantee as to fitness for any disclosed purpose  
73. Guarantee relating to the supply of goods by description  
74. Guarantee relating to the supply of goods by sample or demonstration model  
75. Guarantee as to repairs and spare parts  
76. Guarantee as to express warranties

#### Guarantees relating to the supply of services

77. Guarantee as to due care and skill  
78. Guarantee as to fitness for particular purpose  
79. Guarantee as to reasonable time for supply  
80. Services to which this part does not apply

#### Guarantees not to be excluded by contract

81. Guarantees not to be excluded by contract  
82. Limitation of liability for failure to comply with guarantees

#### General provisions of this part

83. Contravention of industry codes  
84. Application of this part to supply of gas, electricity and telecommunications  
85. Display notices  
86. Conflict of laws

### Unsolicited consumer agreements

87. Meaning of unsolicited consumer agreement
88. Presumption that agreement are unsolicited consumer agreements
89. Meaning of dealer
90. Meaning of negotiation
91. Permitted hours for negotiating an unsolicited consumer agreement
92. Disclosing purpose and identity
93. Ceasing to negotiate on request
94. Informing person of termination period
95. Liability of suppliers for contraventions by dealers
96. Requirement to give document to the consumer
97. Requirement for all unsolicited consumer agreements
98. Additional requirements for unsolicited consumer agreements not negotiated by telephone
99. Requirements for amendments of unsolicited consumer agreements
100. Termination an unsolicited consumer agreement during the termination period
101. Effect of termination
102. Obligations of suppliers on termination
103. Obligations and rights of consumers on termination
104. Prohibition on supplies
105. Repayment of payments received after termination
106. Prohibition on recovering amounts after termination
107. Certain provisions of unsolicited consumer agreements void
108. Waiver of rights
109. Application of this Part to persons to whom rights of consumers and suppliers are assigned
110. Application of this Part to supplies to third parties
111. Effect of contravening this Part
112. Regulations may limit application of this part
113. Application of this part to certain conduct covered by the Companies Act

### Lay By Agreements

114. Lay by agreements must be in writing
115. Termination of lay by agreements by consumers
116. Termination of lay by agreements by suppliers
117. Effect of termination

### Gift cards

118. Meaning of gift cards

119. Gift cards to be redeemable for at least three years
120. When gift card ceases to be redeemable to appear prominently on gift card
121. Terms and Conditions not to allow post supply fees
122. Post supply fees not to be demanded or received
123. Certain terms and conditions of gift card void
124. Regulations may limit application of this part

General provisions of this part

125. Supplier must provide proof of transaction
126. Consumer may request an itemised bill
127. Prescribed requirements for warranties against defects
128. Repairers must comply with prescribed requirements

PART 3

SAFETY OF CONSUMER GOODS AND PRODUCT RELATED SERVICES

*Safety standards*

129. Making safety standards for consumer goods and related services
130. Declaring safety standards for consumer goods and product related services
131. Supplying consumer goods that do not comply with safety standards
132. Supplying product related services that do not comply with safety
133. Requirement to nominate a safety standard

*Bans on consumer goods and product related services*

134. Interim bans on consumer goods or product related services that will or may cause injury to any person
135. Ban period for interim bans
136. Interaction of multiple interim bans
137. Revocation of interim bans
138. Permanent bans on consumer goods or product related services
139. When permanent bans come into force
140. Revocation of permanent bans
141. Supplying consumer goods covered by a ban
142. Supplying product related services covered by ban

*Recall of consumer goods*

143. Compulsory recall of consumer goods
144. Contents of a recall notice
145. Obligations of a supplier in relation to a recall notice
146. Notification by persons who supply consumer goods outside Namibia if there is compulsory recall

147. Interaction of multiple recall notices
148. Compliance with recall notices
149. Notification requirement for a voluntary recall of consumer goods

*Safety warning notices*

150. Safety warning notices about consumer goods and product related services
151. Announcement of the results of investigation

Consumer goods, or product related services, associated with death or serious injury of illness

152. Suppliers to report consumer goods associated with the death or serious injury or illness of any person
153. Suppliers to report product related services associated with the death or serious injury or illness of any person
154. Confidentiality of notices given under this part

*General provisions of this part*

155. Liability under contract of insurance

PART 4  
INFORMATION STANDARDS

156. Making information standards for goods and services
157. Declaring information standards for goods and services
158. Supplying goods that do not comply with information standards
159. Supplying services that do not comply with information standards

PART 5  
LIABILITY OF MANUFACTURERS FOR GOODS WITH SAFETY DEFECTS

*Actions against manufacturers for goods with safety defects*

160. Liability for loss or damages suffered by injured individuals
161. Liability for loss or damages suffered by a person other than injured individual
162. Liability for loss or damages suffered by a person if other goods are destroyed or damaged
163. Liability for loss or damages suffered by a person if land, buildings or fixtures are destroyed or damaged
164. Defences to defective goods actions

*Defective goods actions*

165. Time for commencing defective goods actions
166. Liability joint and several

- 167. Survival of actions
- 168. No defective goods actions where workers' compensation law applies
- 169. Unidentified manufacturer
- 170. State liability for goods that are defective only because of compliance with State mandatory standards
- 171. Representative actions by the regulator

*General provisions of this part*

- 172. Application of all or any of this Part not to be excluded or modified

CHAPTER 7  
REGULATIONS

- 173. Prescribed regulations by Minister
- 174. Regulations by Consumer Authority

CHAPTER 8  
COMPLAINTS, INVESTIGATIONS, OFFENSES AND PENALTIES

PART 1  
COMPLAINTS AND INVESTIGATIONS

- 175. Lodging of complaints (enforcement of rights by consumer)
- 176. Investigation by Consumer Authority
- 177. Data Protection Practices
- 178. Disclosure notices, written notice, infringement notice, embargo notice, written undertaking acceptance and Civil investigation by Consumer Authority
- 179. Consumer Relief

PART 2  
OFFENCES AND PENALTIES

- 180. Offences related to unfair, deceptive, and abusive acts and practices
- 181. Offences in respect of functions of Authority
- 182. Penalties
- 183. Preference must be given to compensation for victims

CHAPTER 9  
REMEDIES

PART 1  
TRIBUNAL ORDERS



184. Various order Tribunal may make

## PART 2 DEFENCES

185. Defences relating to Publication of advertisement in the ordinary course of business

186. Defences relating to Supplying consumer goods and product related services for purpose of re-supply

## CHAPTER 10 GENERAL PROVISIONS

187. Application of Act

188. Repeal of Laws

189. Savings and transitional provisions

190. Short title

SCHEDULE                      Calculations of amount of penalties

**BE IT ENACTED** as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

## CHAPTER 1 INTRODUCTORY PROVISIONS

### **Definitions**

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

“abusive act” or “abusive practice” refers to –

- (a) a consumer’s lack of understanding of the material risks, costs, or conditions of a sale;
- (b) a consumer’s vulnerability that leads to an inability to protect his or her interests in a sale; or
- (b) a consumer’s reasonable reliance on a supplier who leads the consumer to believe that the supplier is acting in the best interests of the consumer.

“acquire” includes –

- (a) in relation to goods, acquire by way of purchase, exchange or taking on lease, on hire or on hire-purchase; and

(b) in relation to services, accept.

“adjusted turnover of a corporation during a period” means the sum of the values of all the supplies that the corporation, and any corporation related to the corporation, have made, or are likely to make, during the period.

“advertisement” means any audio or visual publicity, representation, endorsement, or pronouncement made by means of light, sound, smoke, gas, print, electronic media, internet, or website and includes any notice, circular, label, wrapper, invoice, or such other documents;

“affected person” in relation to goods means

- (a) a consumer who acquires the goods; or
- (b) a person who acquires the goods from the consumer (other than for the purpose of re supply); or
- (c) a person who derives title to the goods through or under the consumer.

“Authority” means the Consumer Protection Authority referred to in section 4;

“bargain price” means –

- (a) price that is stated in any advertisement to be a bargain price, reference to an ordinary price or otherwise; or
- (b) price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;
- (c) the permitting –
  - (i) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged, in the transaction as a whole;
  - (ii) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest, except such contest, lottery, game of chance or skill as may be prescribed;

- (iii) withholding from the participants of any scheme offering gifts, prizes or other items free of charge on its closure, the information about final results of the scheme;

“branch office” means –

- (a) any office or place of work described as a branch by the establishment; or
- (b) any establishment carrying on either the same or substantially the same activity carried on by the head office of the establishment;

“breach turnover period” of a corporation for an offence or an act or omission, means the longer of the following periods –

- (a) the period of 12 months ending at the end of the month in which –
  - (i) for an offence—the corporation ceased committing the offence, or was charged with the offence (whichever is earlier); or
  - (ii) for an act or omission—the act or omission ceased, or proceedings in relation to the act or omission were instituted (whichever is earlier);
- (b) the period ending at the same time as the period determined under paragraph (a) and starting –
  - (i) for an offence—at the beginning of the month in which the corporation committed, or began committing, the offence (as the case requires); or
  - (ii) for an act or omission—at the beginning of the month in which the act or omission occurred or began occurring (as the case requires).

“business” includes a business not carried on for profit.

“business day” bears the meaning ascribed to the terms in the Interpretation of Laws Proclamation, 1920 (Proclamation No. 37 of 1920)

“call on”, in relation to negotiating an unsolicited consumer agreement, does not include call by telephone

“complainant” means –

- (a) a consumer;
- (b) any voluntary consumer association registered under any law for the time being in force;
- (c) the Government;
- (d) the Consumer Authority;
- (e) one or more consumers, where there are numerous consumers having the same interest;
- (f) in case of death of a consumer, his legal heir or legal representative; or
- (g) in case of a consumer being a minor, his parent or legal guardian;

“complaint” means any allegation in writing, made by a complainant for obtaining any relief provided by or under this Act that –

- (a) an unfair contract or unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;
- (b) the goods bought by him or agreed to be bought by him suffer from one or more defects;
- (c) the services hired or availed of or agreed to be hired or availed of by him suffer from any deficiency;
- (d) a trader or a service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price –
  - (i) fixed by or under any law for the time being in force; or
  - (ii) displayed on the goods or any package containing such goods; or
  - (iii) displayed on the price list exhibited by him by or under any law for the time being in force; or
  - (iv) agreed between the parties;
  - (v) the goods, which are hazardous to life and safety when used, are being offered for sale to the public –
    - (aa) in contravention of standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;
    - (bb) where the trader knows that the goods so offered are unsafe to the public;
    - (cc) the services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by a person who provides any service and who knows it to be injurious to life and safety;

a claim for product liability action lies against the product manufacturer, product seller or product service provider, as the case may be.

“consumer” means any person who –

- (a) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
- (b) hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose or
- (c) is considered a small enterprise, as prescribed, and acquired the goods, or held himself or herself out as acquiring the goods or services for the purpose of resupply or resupply in trade or commerce.
- (d) for the purpose of using them up or transforming them, in trade or commerce in the course of a process of production or manufacture; or in the course of repairing or treating other goods or fixtures on land.

“commercial purpose” does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment or small enterprise as prescribed;

“buys any goods” and “hires or avails any services” includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing.

“Consumer Authority” means the Consumer Protection Authority established under section 4;

“Consumer dispute” means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint;

“consumer goods” means goods that are intended to be used, or are of a kind likely to be used, for personal, domestic or household use or consumption, and includes any such goods that have become fixtures since the time they were supplied if –

- (a) a recall notice for the goods has been issued; or
  - (a) a person has voluntarily taken action to recall the goods.

“consumer rights” includes –

- (a) the right to consumer awareness and education;
- (b) the right to be informed about the quality, quantity, potency, purity, standard, price, intermediaries, deliverers, installers and others of goods, products or services, as the case may be, so as to protect the consumer against unfair trade practices;
- (c) the right to safety and to fair and honest dealing in terms of Unconscionable conduct, False, misleading or deceptive representations, Fraudulent schemes and offers, Pyramid and related schemes
- (d) the right to choose including the examination of goods, the selection of suppliers, the delivery of goods or supply of service, the return goods, the cancellation of advance reservation, booking or order, the protection from unsolicited goods or services and to be assured, wherever possible, access to a variety of goods, products or services at competitive prices ;
- (e) the right to be protected against the marketing of goods, products or services which are hazardous to life and property and to fair and responsible marketing involving bait marketing, negative option marketing, direct marketing to consumers, catalogue marketing, trade coupons and similar promotions, customer loyalty programmes, promotional competitions, referral selling and others;
- (f) the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate fora;
- (g) the right to seek redressal against unfair trade practice or restrictive trade practices or unscrupulous exploitation of consumers; and
- (h) the right to a healthy environment through the protection from pollution of the environment and the promotion consumer of safer alternatives to toxic products;

- (i) the right to the satisfaction of basic needs.

“deceptive act” or “deceptive practice” is when the –

- (1) act or practice misleads or is likely to mislead the consumer;
- (2) consumer is acting reasonably for that person’s experience, education and circumstances; and
- (3) misleading act or practice is material to the sale;

“defect” means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods or product and the expression "defective" shall be construed accordingly;

“deficiency” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any 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 and includes –

- (a) any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and
- (b) deliberate withholding of relevant information by such person to the consumer;

“design” in relation to a product, means the intended or known physical and material characteristics of such product and includes any intended or known formulation or content of such product and the usual result of the intended manufacturing or other process used to produce such product;

“direct selling” means marketing, distribution and sale of goods or provision of services through a network of sellers, other than through a permanent retail location;

“discriminatory practices” means a trade practice which, without reasonable cause –

- (a) exclude a consumer from accessing goods or services offered by him; or
- (b) grant to a consumer exclusive access to goods or services offered by him; or

- (c) assign priority of supply of goods or services offered by him to a consumer; or
- (d) supply a different quality of goods or services to a consumer; or
- (e) target a consumer for exclusive, priority or preferential supply of goods or services; or
- (f) directly or indirectly treat a consumer differently from any other when –
  - (i) assessing the ability of the consumer to pay the cost, or otherwise meet the a proposed consumer agreement; or
  - (ii) deciding whether to enter into a consumer agreement, or to offer to enter into an agreement;
  - (iii) determining any aspect of the cost of a consumer agreement to a consumer;
  - (iv) interacting with a consumer in the course of displaying or demonstrating any goods; testing or fitting any goods; or negotiating the terms of a consumer agreement;
  - (v) selecting, preparing, packaging or delivering any goods to a consumer, or providing any services to a consumer;
  - (vi) proposing or agreeing the terms and conditions of a consumer agreement;
  - (vii) assessing or requiring compliance by a consumer with the terms of a consumer agreement;
  - (viii) exercising any of his rights under a consumer agreement in terms of this Act or any other consumer protection law;
  - (ix) determining whether to continue, enforce or seek judgment in respect of, or terminate, a consumer agreement;
  - (x) determining whether to lodge a civil suit before the Tribunal; or
  - (xi) determining whether to disclose, or disclosing, any personal information concerning the consumer.

“document” means any record of information and includes –

- (a) anything on which there is writing; and
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; and
- (d) a map, plan, drawing or photograph.



“e-commerce” means buying or selling of goods or services including digital products over digital or electronic network;

“electronic service provider” means a person who provides technologies or processes to enable a product seller to engage in advertising or selling goods or services to a consumer and includes any online market place or online auction sites;

“endorsement” in relation to an advertisement means –

- (a) any message, verbal statement, demonstration; or
- (b) depiction of the name, signature, likeness or other identifiable personal characteristics of an individual; or
- (c) depiction of the name or seal of any institution or organisation, which makes the consumer to believe that it reflects the opinion, finding or experience of the person making such endorsement;

“establishment” includes an advertising agency, commission agent, manufacturing, trading or any other commercial agency which carries on any business, trade or profession or any work in connection with or incidental or ancillary to any commercial activity, trade or profession, or such other class or classes of persons including public utility entities in the manner as may be prescribed;

“express warranty” means any material statement, affirmation of fact, promise or description relating to a product or service warranting that it conforms to such material statement, affirmation, promise or description and includes any sample or model of a product warranting that the whole of such product conforms to such sample or model and includes undertaking, assertion or representation that relates to –

- (a) the quality, state, condition, performance or characteristics of the goods; or
- (b) the provision of services that are or may at any time be required for the goods; or
- (c) the supply of parts that are or may at any time be required for the goods; or
- (d) the future availability of identical goods, or of goods constituting or forming part of a set of which the goods, in relation to which the undertaking, assertion or representation is given or made, form part; and

- (i) that is given or made in connection with the supply of the goods, or in connection with the promotion by any means of the supply or use of the goods; and
- (ii) the natural tendency of which is to induce persons to acquire the goods.

“goods” means a tangible item or article or every kind of movable property and includes "" which is the subject of trade or business, and includes –

- (a) food;
- (b) raw materials, colours, flavours, or chemicals used in the production of a thing
- (c) any medium on which anything is or may be written or encoded;
- (d) 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;
- (e) a legal interest in land or any other immovable property, other than an interest that falls within the definition of ‘service’ as defined in this section;
- (f) gas, water and electricity;
- (g) ships, aircraft and other vehicles;
- (h) animals, including fish;
- (i) minerals, trees and crops, whether on, under or attached to land or not;
- (j) computer software;
- (k) second hand goods; and
- (l) any component part of, or accessory to, goods

“harm” in relation to a product liability includes–

- (a) damage to any property, other than the product itself;
- (b) personal injury, illness or death;
- (c) mental agony or emotional distress attendant to personal injury or illness or damage to property; or
- (d) any loss of consortium or services or other loss resulting from a harm referred to in sub-clause (a) or sub-clause (b) or sub-clause (c),

but does not include any harm caused to a product itself or any damage to the property on account of breach of warranty conditions or any commercial or economic loss, including any direct, incidental or consequential loss relating thereto;

“industry code” means a code that regulates the conduct of participants in an industry towards other participants in the industry or towards consumers in the industry;

“injury” means any harm whatever illegally caused to any person, in body, mind or property;

“inspector” - means an officer designated under section 176 for the purpose of ensuring compliance with this Act

“involved” a person is involved, in a contravention of a provision of this Act or in conduct that constitutes such a contravention, if the person:

- (a) has aided, abetted, counselled or procured the contravention; or
- (b) has induced, whether by threats or promises or otherwise, the contravention; or
- (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
- (d) has conspired with others to effect the contravention.

“loan contract” means a contract under which a person in the course of a business carried on by that person provides or agrees to provide, whether on one or more occasions, credit to a consumer in one or more of the following ways:

- (a) by paying an amount to, or in accordance with the instructions of, the consumer;
- (b) by applying an amount in satisfaction or reduction of an amount owed to the person by the consumer;
- (c) by varying the terms of a contract under which money owed to the person by the consumer is payable;
- (d) by deferring an obligation of the consumer to pay an amount to the person;
- (e) by taking from the consumer a bill of exchange or other negotiable instrument on which the consumer (whether alone or with another person or other persons) is liable as drawer, acceptor or endorser.

“manufacturer” means a person who –

- (a) grows, extracts, produces, makes any goods or parts thereof; or
- (b) assembles any goods or parts thereof made by others; or

- (c) puts or causes to be put his own mark on any goods made by any other person;
- (d) holds himself or herself out to the public as the manufacturer of goods;

“mediation” means the process by which a mediator mediates the consumer disputes;

“mediator” means a mediator referred to in section 75;

"merchandise” means any goods and services as defined herein including real estate, insurance, or loans;

“minister” means the Minister responsible for trade

“misleading advertisement" in relation to any product or service, means an advertisement, which –

- (a) falsely describes such product or service; or
- (b) gives a false guarantee to, or is likely to mislead the consumers as to the nature, substance, quantity or quality of such product or service; or
- (c) conveys an express or implied representation which, if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice; or
- (d) deliberately conceals important information;

“Misleading trade practices” means a trade practice where a trader –

- (a) omits or conceals material information that a reasonable consumer needs to make an informed choice; or
- (b) provides false or misleading information to a consumer which may lead that consumer to make a choice that a reasonable consumer would not otherwise make;

Without limiting the generality of what constitutes a false, misleading or deceptive representation, the following are included as false, misleading or deceptive representations—

- (a) representation that the goods or services have sponsorship, approval, performance characteristics, accessories, uses, ingredients, benefits or qualities they do not have;
- (b) a representation that the person who is to supply the goods or services has sponsorship, approval, status, affiliation or connection the person does not have;

- (c) a representation that the goods or services are of a particular standard, quality, grade, style or model, if they are not;
- (d) a representation that the goods are new, or unused, if they are not or are reconditioned or reclaimed, but the reasonable use of goods to enable the person to service, prepare, test and deliver the goods does not result in the goods being deemed to be used for the purposes of this paragraph;
- (e) a representation that the goods have been used to an extent that is materially different from the fact;
- (f) a representation that the goods or services are available for a reason that does not exist;
- (h) a representation that the goods or services have been supplied in accordance with a previous representation, if they have not;
- (i) a representation that the goods or services or any part of them are available or can be delivered or performed when the person making the representation knows or ought to know they are not available or cannot be delivered or performed;
- (j) a representation that the goods or services or any part of them will be available or can be delivered or performed by a specified time when the person making the representation knows or ought to know they will not be available or cannot be delivered or performed by the specified time;
- (k) representation that a service, part, replacement or repair is needed or advisable, if it is not;
- (l) a representation that a specific price advantage exists, if it does not;
- (m) a representation that misrepresents the authority of a salesperson, representative, employee or agent to negotiate the final terms of the agreement;
- (n) a representation that the transaction involves or does not involve rights, remedies or obligations if the representation is false, misleading or deceptive;
- (o) a representation using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if such use or failure deceives or tends to deceive;
- (p) a representation that misrepresents the purpose or intent of any solicitation of or any communication with a consumer;
- (q) a representation that misrepresents the purpose of any charge or proposed charge;
- (r) a representation that misrepresents or exaggerates the benefits that are likely to flow to a consumer if the consumer helps a person obtain new or potential customers;
- (s) unconscionable representation.

“notification” means a notification published in the Government Gazette and the term "notify" shall be construed accordingly;

“person” includes –

- (a) a natural person;
- (b) a legal person;
- (c) a co-operative society;
- (d) an association of persons whether registered under the Societies Registration Act, or not;
- (e) any corporation, company or a body of individuals whether incorporated or not;
- (f) any artificial juridical person, not falling within any of the preceding sub-clauses;

“prescribe” means prescribed by regulations or rules made by the Minister or by the Authority;

“price” of goods or services means –

- (a) the amount paid or payable (including any charge of any description) for their acquisition; or
- (b) if such an amount is not specified because the acquisition is part only of a transaction for which a total amount is paid or payable –
  - (i) the lowest amount (including any charge of any description) for which the goods or services could reasonably have been acquired from the supplier at the time of the transaction or, if not from the supplier, from another supplier; or
  - (ii) if they could not reasonably have been acquired separately from another supplier, their value at the time of the transaction.

“product related service” means a service for or relating to –

- (a) the installation of consumer goods of a particular kind; or
- (b) the maintenance, repair or cleaning of consumer goods of a particular kind; or
- (c) the assembly of consumer goods of a particular kind; or
- (d) the delivery of consumer goods of a particular kind;

“publish” in relation to an advertisement, means include in a publication intended for sale or public distribution (whether to the public generally or to a restricted class or number of persons) or for public display (including in an electronic form).

“product” means any article or goods or substance or raw material or any extended cycle of such product, which may be in gaseous, liquid, or solid state possessing intrinsic value which is capable of delivery either as wholly assembled or as a component part and is produced for introduction to trade or commerce, but does not include human tissues, blood, blood products and organs;

“product liability” means the responsibility of a product manufacturer or product seller, of any product or service, to compensate for any harm caused to a consumer by such defective product manufactured or sold or by deficiency in services relating thereto;

“product liability action” means a complaint filed by a person before the Consumer for claiming compensation for the harm caused to him;

“product manufacturer” means a person who –

- (a) makes any product or parts thereof; or
- (b) assembles parts thereof made by others; or
- (c) puts or causes to be put his own mark on any products made by any other person; or
- (d) makes a product and sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains such product or is otherwise involved in placing such product for commercial purpose; or
- (e) designs, produces, fabricates, constructs or re-manufactures any product before its sale; or
- (f) being a product seller of a product, is also a manufacturer of such product;

“product seller” in relation to a product means a person who, in the course of business, imports, sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains, or is otherwise involved in placing such product for commercial purpose and includes—

- (a) a manufacturer who is also a product seller; or
- (b) a service provider,

but does not include –

- (i) a seller of immovable property, unless such person is engaged in the sale of constructed house or in the construction of homes or flats;
- (ii) a provider of professional services in any transaction in which, the sale or use of a product is only incidental thereto, but furnishing of opinion, skill or services being the essence of such transaction;
- (iii) a person who –
  - (aa) acts only in a financial capacity with respect to the sale of the product;
  - (bb) is not a manufacturer, wholesaler, distributor, retailer, direct seller or an electronic service provider;
  - (cc) leases a product, without having a reasonable opportunity to inspect and discover defects in the product, under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor;

“product service provider” in relation to a product, means a person who provides any service in respect of such product;

“Public Enterprises Governance Act” means the Public Enterprises and Governance Act, 2019 (Act No. 1 of 2019)

“regulations” means the regulations made by the Minister, or as the case may be, the Consumer Authority; or other regulators

“regulator” means a body or any authority established under any other law to regulate industry or any part of industry

“relevant Minister” means a minister in charge of particular sector or industry

“restrictive trade practice” means a trade practice which tends to bring about manipulation of price or its conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions and includes –



- (a) delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price;
- (b) any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as condition precedent for buying, hiring or availing of other goods or services;

“safety defect in relation to goods” means goods have a safety defect if their safety is not such as persons generally are entitled to expect and –

- (a) in determining the extent of the safety of goods, regard is to be given to all relevant circumstances including:
  - (i) the manner in which, and the purposes for which, they have been marketed; and
  - (ii) their packaging; and
  - (iii) the use of any mark in relation to them; and
  - (iv) any instructions for, or warnings with respect to, doing, or refraining from doing, anything with or in relation to them; and
  - (v) what might reasonably be expected to be done with or in relation to them; and
  - (vi) the time when they were supplied by their manufacturer.
- (b) an inference that goods have a safety defect is not to be made only because of the fact that, after they were supplied by their manufacturer, safer goods of the same kind were supplied.
- (c) an inference that goods have a safety defect is not to be made only because –
  - (i) there was compliance with a Commonwealth mandatory standard for them; and
  - (ii) that standard was not the safest possible standard having regard to the latest state of scientific or technical knowledge when they were supplied by their manufacturer.

“sale” means the exchange, rent or hire of goods and services including its advertisement and promotion;

“serious injury or illness” means an acute physical injury or illness that requires medical or surgical treatment by, or under the supervision of, a medical practitioner or a nurse (whether or not in a hospital, clinic or similar place) but does not include –

- (a) an ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development); or
- (b) the recurrence, or aggravation, of such an ailment, disorder, defect or morbid condition.

“service” means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service and services includes –

- (a) any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges or facilities that are, or are to be, provided, granted or conferred in trade or commerce; and
- (b) without limiting paragraph (a), the rights, benefits, privileges or facilities that are, or are to be, provided, granted or conferred under –
  - (i) a contract for or in relation to the performance of work (including work of a professional nature), whether with or without the supply of goods; or
  - (ii) a contract for or in relation to the provision of, or the use or enjoyment of facilities for, amusement, entertainment, recreation or instruction; or
  - (iii) a contract for or in relation to the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction; or
  - (iv) a contract of insurance; or
  - (v) a contract between a banker and a customer of the banker entered into in the course of the carrying on by the banker of the business of banking; or
  - (vi) any contract for or in relation to the lending of money;

but does not include rights or benefits being the supply of goods or the performance of work under a contract of service.

“spurious goods” means such goods which are falsely claimed to be genuine;

“supply” means a person that offers goods and services for sale to consumers, by any means within the formal or informal market and when used as a verb includes –

- (a) in relation to goods, supply which includes resupply, by way of sale, exchange, lease, hire or hire-purchase ; and
- (b) in relation to services, provide, grant or confer;
- (c) and when used as a noun, has a corresponding meaning, and *supplied* and *supplier* have corresponding meanings;

“tied loan contract” means a loan contract entered into between a credit provider and a consumer where –

- (a) the credit provider knows, or ought reasonably to know, that the consumer enters into the loan contract wholly or partly for the purposes of payment for goods or services supplied by a supplier; and
- (b) at the time the loan contract is entered into the credit provider is a linked credit provider of the supplier;

“trade or commerce” means –

- (a) trade or commerce within Namibia; or
- (b) trade or commerce between Namibia and places outside Namibia;

and includes any business or professional activity, whether or not carried on for profit,.

“trader” in relation to any goods, means a person who sells or distributes any goods for sale and includes the manufacturer thereof, and where such goods are sold or distributed in package form, includes the packer thereof;

“UDAAP” principles means the prohibition of unfair, deceptive and abusive acts and practices

“unfair” is considered as such when –

- (1) it causes or is likely to cause injury of loss to consumers;
  - (2) consumers do not or are not likely to possess the capacity to avoid the injury or loss;
- and

- (3) the result of the act or practice is a significant imbalance in the rights of the consumer and the supplier to the detriment of the consumer;

“unfair contract” means a contract between a manufacturer or trader or service provider on one hand, and a consumer on the other, having such terms which cause significant change in the rights of such consumer, including the following:

- (a) requiring manifestly excessive security deposits to be given by a consumer for the performance of contractual obligations; or
- (b) imposing any penalty on the consumer, for the breach of contract thereof which is wholly disproportionate to the loss occurred due to such breach to the other party to the contract; or
- (c) refusing to accept early repayment of debts on payment of applicable penalty; or
- (d) entitling a party to the contract to terminate such contract unilaterally, without reasonable cause; or
- (e) permitting or has the effect of permitting one party to assign the contract to the detriment of the other party who is a consumer, without his consent; or
- (f) imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage;

“unfair trade practice” means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices namely:

- (a) making any statement, whether orally or in writing or by visible representation including by means of electronic record, which—
  - (i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;
  - (ii) falsely represents that the services are of a particular standard, quality or grade;
  - (iii) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;
  - (iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;
  - (v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;

- (vi) makes a false or misleading representation concerning the need for, or the usefulness of any goods or services;
- (vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof, provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;
- (viii) makes to the public a representation in a form that purports to be a warranty or guarantee of a product or of any goods or services; or a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;
- (ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;
- (x) gives false or misleading facts disparaging the goods, services or trade of another person. For the purposes of this sub-clause, a statement that is –
  - (A) expressed on an article offered or displayed for sale, or on its wrapper or container; or
  - (B) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or
  - (V) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public is considered to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;

- (b) permitting the publication of any advertisement, whether in any newspaper or otherwise, including by way of electronic record, for the sale or supply at a bargain price of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.
- (c) permitting
  - (i) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged, in the transaction as a whole;
  - (ii) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest, except such contest, lottery, game of chance or skill as may be prescribed;
  - (iii) withholding from the participants of any scheme offering gifts, prizes or other items free of charge on its closure, the information about final results of the scheme.
- (d) permitting the sale or supply of goods intended to be used, or are of a kind likely to be used by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by the competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;
- (e) permitting the hoarding or destruction of goods, or refusal to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services;
- (f) manufacturing of spurious goods or offering such goods for sale or adopting deceptive practices in the provision of services;

(g) not issuing bill or cash memo or receipt for the goods sold or services rendered in such manner as may be prescribed;

(h) refusing, after selling goods or rendering services, to take back or withdraw defective goods or to withdraw or discontinue deficient services and to refund the consideration thereof, if paid, within the period stipulated in the bill or cash memo or receipt or in the absence of such stipulation, within a period of thirty days;

(i) disclosing to other person any personal information given in confidence by the consumer unless such disclosure is made in accordance with the provisions of any law for the time being in force.

“unsolicited goods” means goods sent to a person without any request made by the person or on his or her behalf;

“unsolicited services” means supplied to a person; or services purported to have been supplied to a person which have not been supplied; without any request made by the person or on his or her behalf.

## **Object of this Act**

2. (1) The object of this Act is to enhance the welfare of consumers by establishing a legal framework for the achievement and maintenance of a consumer market which is accessible, fair, efficient, responsible, and sustainable for the benefit of consumers generally, and which provides adequate protection to consumers.

(2) The purpose of this Act is to protect consumers against unfair, deceptive and abusive acts and practices during the course of a sale in order to –

(i) obtain and maintain a fair balance of power during the course of a sale;

(ii) protect vulnerable consumers from unfair, deceptive and abuse acts and practices;

- (iii) provide an incentive for honesty and fair dealing by all suppliers;
  - (iv) promote efficiency and transparency, in the Namibian economy , in order to contribute to economic development;
  - (v) ensure accessible, transparent and efficient timeous redress for consumers who are subjected to unfair, deceptive and abusive acts and practices;
  - (vi) give effect to internationally recognized consumer rights;
  - (vii) implement measures to develop public awareness and consumer education;
  - (viii) protect the health and welfare of consumers;
  - (ix) facilitate the freedom of consumers to associate and form groups to advocate and promote their common interest.
- (3) The Act, inter alia, provides for –
- (a) the setting up of a National Consumer Authority with decentralisation capabilities, whose main objective will be to –
    - (i) promote and protect consumer rights;
    - (ii) promote consumer confidence, empowerment and the development of a culture of consumer responsibility, through individual and group education, vigilance, advocacy and activism;
    - (iii) investigate and issue enforcement or prohibition notices where this Act is being, or is likely to be, contravened; and
    - (iv) swear in information and conduct proceedings before the Consumer Tribunal in connection with breaches of this Act;



- (b) the setting up of a Consumer Conciliation and Mediation Unit within the Authority;
  - (c) the setting up of a Consumer Tribunal with a view to securing expeditious justice for consumers and traders;
  - (d) The promotion of a registered consumer association;
  - (e) the protection of consumers from discriminatory practices, unconscionable conducts, unfair practice and misleading display notices;
  - (f) the framework for unsolicited consumer agreements, lay by agreements, safety of consumer goods and product related services, as well as information standards;
  - (g) the prohibition on traders who charge unfair prices, or engage in unconscionable and other prohibited conducts or activities;
  - (h) the liability of manufacturers with respect to express warranties;
  - (i) terms to be implied in consumer agreements for the supply of goods and services, and the remedies in connection with such breaches;
  - (j) the prohibition against unfair terms in consumer agreements, and related matters;
  - (k) a system of penalty with respect to contravention of specified offences under certain consumer protection laws; and
  - (l) the framework for issuing public warnings notices, recall notices, injunctions, and for providing remedies, compensations, redress, and defences;
- (4) The Act, overall will –
- (a) institute adequate protection for Namibian consumers, including protecting vulnerable consumers from marketplace conduct that takes advantage of unsophisticated, less educated, or infirm consumers;

- (b) provide an incentive for honesty and fair dealing by all sellers;
- (c) encourage fair trade in order to ensure a competitive economy;
- (d) promote efficiency and transparency in the Namibian economy and marketplace which will increase economic development;
- (e) Mediate industry interactions between consumers, producers, suppliers and the public;
- (f) ensure that production and distribution patterns remain responsive to consumers' needs;
- (g) promote strong ethical conduct by private industry actors, to curb abusive, deceptive and unfair business practices;
- (h) develop the knowledge and skills necessary to understand the rights associated with consumers' spending and investment choices;
- (i) ensure accessible, transparent, and efficient redress for consumers; and
- (j) encourage both domestic and international consumers to invest and participate in the economic growth and prosperity of Namibia.

## Chapter 2

### NATIONAL CONSUMER PROTECTION AUTHORITY

#### PART 1

#### ESTABLISHMENT AND POWERS OF AUTHORITY

#### **Establishment of Authority**

3. (1) There is established a juristic body to be known as the National Consumer Protection Authority, which is independent, impartial, and subject to the Namibian Constitution and other laws, and must perform its functions without fear, favour or prejudice.

(2) The Minister must, by notification, announce with effect from such date as specified in that notification, the commencement of the Consumer Authority.

(3) The Authority has jurisdiction throughout Namibia.

### **Object of Authority**

4. The objects of the Authority is to further the provisions of this Act.

### **Power of Authority**

5. (1) In order to attain the objectives and to effectively perform its functions under this Act, and in addition to any other power conferred on it, The Authority must –

(a) protect, promote, and enforce the rights of consumers, and prevent violation of consumers rights under this Act;

(b) prevent unfair trade practices and ensure that no person engages in unfair trade practices;

(c) ensure that no false or misleading advertisements are made of any goods or services that contravene the provisions of this Act or any subsequent rules or regulations made under this Act;

(d) facilitate continuous monitoring and evaluation of enforcement mechanisms and advise the Minister, wherever necessary, on any enforcement mechanisms that should be introduced or established, and report annually when required, to the Minister on the implementation of this Act.

(2) Without prejudice to the generality of the provisions contained in subsection (1), the Authority may –

- (a) issue necessary guidelines to prevent unfair trade practices and protect consumers' interest;
- (b) inquire or cause an inquiry or investigation to be made into violations of consumer rights or unfair trade practices, either on its own account or on a complaint received;
- (c) intervene in any proceedings in the court of law, in respect of any allegation of violation of the provisions of this Act;
- (d) issue, in consultation with the relevant authorities, safety notices to alert consumers against dangerous or hazardous or unsafe goods or services;
- (e) ensure coordination with other Regulators by –
  - (i) liaising with relevant Ministries, Agencies, the Ombudsman, and sector regulators to ensure that the consumers are protected in all sectors of business;
  - (ii) designing mechanisms that will ensure continuous coordination and communication with sector regulators on consumer protection issues;
  - (iii) ensuring that sector regulators continuously promote consumer welfare and consumer protection in their respective sectors through coordination arrangements and consultations;
  - (iv) liaising with the other regulatory authorities on matters of common interest, monitor, and require necessary information from, exchange information with, and receive information from, any such authority pertaining to –
    - (aa) matters of common interest; or
    - (bb) a specific complaint or investigation;
  - (v) ensuring incorporation of consumer issue dispute resolution into the existing redress mechanisms;
  - (vi) negotiating agreements with any regulatory authority –

- (aa) to co-ordinate and harmonise the exercise of jurisdiction over consumer matters within the relevant industry or sector; and
    - (bb) to ensure the consistent application of the principles of this Act;
  - (vii) participating in the proceedings of any regulatory authority;
  - (viii) advising or receiving advice from, any regulatory authority; and
  - (ix) encouraging non-Governmental organisations and other institutions working in the field of consumer rights to cooperate and work with consumer protection agencies;
- (f) research and disseminate information involving –
  - (i) undertaking and promoting research in the field of consumer rights;
  - (ii) reviewing the matters relating to, and the factors inhibiting enjoyment of, consumer rights, including safeguards provided for the protection of consumers under any other law for the time being in force and recommend appropriate remedial measures for their effective implementation;
  - (iii) recommending adoption of international covenants and best international practices on consumer rights to ensure effective enforcement of consumer rights;
  - (iv) making available to the public general information in relation to matters affecting the interests of consumers;
- (g) encourage, educate and promote awareness on consumer rights by –
  - (i) prescribing by regulations the duty of the Authority to ensure consumer education and awareness, dissemination of information, law reform and research;
  - (ii) establishing multiannual consumer education programmes with the objective to ensure a high level of consumer protection, to empower

consumers and to place the consumer at the center of the market, within the framework of an overall strategy for smart, sustainable and inclusive growth.

- (iii) The Programme will do so by contributing to protecting the health, safety and the legal and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests, and supporting the integration of consumer interests into other policy areas.
  
- (iv) The Programme complements, supports and monitors the policies of other regulators and such consumer education programmes may include –
  - 1. supporting activities for training and informing consumers both at formal and informal levels;
  - 2. allowing or enabling consumer groups to disseminate or broadcast material on consumer issues;
  - 3. supporting the media in publishing, broadcasting and disseminating consumer material and providing them with the necessary skills, funds, equipment and facilities;
  - 4. providing information to all Namibian Consumers through workshops and seminars, pamphlets, electronically and in any other mode or manner as the Consumer Authority, in consultation with the various stakeholders, may determine and at regular intervals.
  - 5. facilitating the development and dissemination of special programmes for the benefit of illiterate, physically and mentally disabled and disadvantaged groups.
  - 6. building and improving access to the evidence base for policy-making in areas affecting consumers, for designing smart and targeted regulations and for detecting any market malfunctioning or changes in consumers' needs, providing a basis for the development of consumer policy, for the identification of the areas most problematic for consumers and for the integration of consumer interests into other Union policies;
  - 7. supporting through financing organisations and through capacity building for consumer organisations at national and local level, increasing transparency and stepping up exchanges of best practices and expertise;

8. enhancing the transparency of consumer markets and consumer information, ensuring consumers have comparable, reliable and easily accessible data, to help them compare not only prices, but also quality and sustainability of goods and services;
  9. enhancing consumer education as a life-long process, with a particular focus on vulnerable consumers,
  10. promoting institutions close to the citizens and active at local levels as their action is likely to have a more direct impact in areas such as consumer education, information, advice, and participation in the decision-making process; such institutions include local self-governments, local consumer organizations and other grassroots organizations,
  11. Sensitise and encourage, businesses to amend the relevant contracts/ agreements to allow the Consumer to resolve disputes through the consumer conciliation and mediation cell, or other alternative sectoral dispute resolution forum;
- (v) promoting consumer information and education, support to consumer organisations to improve consumers' education, information and awareness of their rights, to develop the evidence base for consumer policy, to train conciliators and, mediators and to provide support to consumer organisations, including taking into account the specific needs of vulnerable consumers;
- (vi) relying on effective communication strategy to effectively communicate with an identified target audience, to ensure that information reaches all relevant stakeholders, the media, and the consumers. The Communication shall be;
- (aa) factual and presented in plain language;
  - (bb) designed in a manner appropriate to its audience;
  - (cc) looked upon as involving a dialogue with others;
  - (dd) take on the developments and improvements in new technology and different channels; and
  - (ee) planned, coordinated, and evaluated

- (vii) prescribing by regulations the duty of the Authority to make specific industry codes to ensure consumer protection and developing, and promoting the voluntary use of, codes of practice in respect of –
  - (aa) use of plain language in documents;
  - (bb) a standardised or uniform means of presenting and communicating information;
  - (cc) alternative dispute resolution; or
  - (dd) any other matter to better achieve the purposes of this Act.
- (viii) fund the registered Consumer Protection Associations in the promotion of consumer protection rights; and
- (ix) perform any other functions that is necessary for the objectives of this Act or any other law, or by the Minister.

## PART 2

### GOVERNANCE OF AUTHORITY

#### **Board of directors of Authority**

- 6.** (1) The Authority is managed by a Board of directors which is responsible for the general policy, control and administration of the business and affairs of the Authority and exercising all powers, performing all functions, and doing all other acts that may be exercised and performed by the Authority under this Act.
- (2) The Board consists of the following seven members appointed by the Minister –
- (a) The Chief Executive Officer who is an *ex officio* member appointed in terms of section 19;
  - (b) a representative from the Ministry responsible for Trade; and



- (c) five persons with relevant qualifications and experience in law, banking, finance, commerce, sectoral regulators, retail, consumer affairs, or any other field relevant to the functions of the Board.
- (3) The Minister, must, as soon as possible after an appointment has been made, publish in the *Gazette* the names of the persons appointed as directors, and their dates of appointment.

### **Functions of Board**

7. (1) Subject to this Act, the Board must determine the general policies of the Authority and is responsible for the general administration of the Authority and any other functions as may be assigned to or conferred on the Board by this Act or any other law.
- (2) Without derogating from the generality of subsection (1), the Board must –
    - (a) approve the guidelines issued by the Authority;
    - (b) approve the budget of the Authority;
    - (c) approve the annual report of the Authority;
    - (d) determine the strategic direction of the Authority and its ultimate performance;
    - (e) render advice to the Minister on promotion and protection of the consumers' rights under this Act;
    - (f) advise the Minister on consumer education and information programmes and activities; and
    - (g) exercise such other functions as may be conferred upon it under this Act or any other enactment.

### **Disqualification for appointment as member of Board**

**8.** A person does not qualify for appointment as a member of the Board if that person –

- (a) is not a Namibian citizen or is not permanent resident in Namibia;
- (b) is a member of Parliament, in a local authority or regional council;
- (c) has been disqualified under any law dealing with companies to hold a position of a director of a company;
- (d) fails to disclose prior to his or her appointment that he or she has been convicted of any offence in terms of any law dealing with companies or insolvency;
- (e) is an unrehabilitated insolvent;
- (f) has been convicted of an offence in Namibia or elsewhere and sentenced to imprisonment without an option of a fine, or of an offence involving dishonesty in Namibia or elsewhere;
- (g) has under any law been declared by a competent court to be of unsound mind; and
- (h) is a staff member of the Authority.

#### **Term of office of members of Board**

**9.** A member of the Board –

- (a) holds office for a term of three years from the date of his or her appointment; and
- (b) is eligible for reappointment at the expiry of his or her term of office but may not hold office for more than two terms.

#### **Vacation of office and filling of vacancies**

**10.** (1) A member of the Board vacates his or her office, if the member –

- (a) becomes subject to a disqualification referred to in section 9;
  - (b) resigns from office by giving 30 days' written notice to the Minister;
  - (c) has been absent from three consecutive meetings of the Council without the written approval of the chairperson;
  - (d) ceases to be ordinarily resident in Namibia;
  - (e) becomes a staff member of the Authority; or
  - (f) is removed from office by the Minister under subsection (2).
- (2) The Minister may, by notice in writing, remove a member of the Council from office, if the Minister is reasonably satisfied, after having given that member an opportunity to be heard that the member –
- (a) is physically or mentally unfit or unable to effectively perform his or her functions as a member; or
  - (b) fails to comply with or contravenes the provisions of this Act.
- (3) If a member of the Council dies or vacates office, the vacancy is filled for the unexpired portion of the term of office of that member in the manner contemplated in section \_.

### **Meetings and decisions of Board**

- 11.** (1) The Minister must convene the first meeting of the Board to be held at a place and time determined by the Minister, and any subsequent meeting of the Board is to be held at a place and time as the chairperson may determine.
- (2) The Minister must appoint the chairperson and vice chairperson of the Board amongst the members of the Board.

- (3) The chairperson or, in the absence of the chairperson, the vice chairperson, presides at meetings of the Board.
- (4) If both the chairperson and the vice chairperson are absent from any meeting, the members present must elect a member to preside at that meeting, and that member may exercise all the powers and perform all the functions of the chairperson.
- (5) If the Board has determined the place and time of a meeting and such meeting cannot be held at that place and time, the chairperson must determine the place and time of the next meeting of the Board.
- (6) The chairperson –
  - (a) may, at any time, call a special meeting of the Board; and
  - (b) must, at the request in writing of the majority of the members, call a special meeting of the Board as soon as practical possible.
- (7) At any meeting of the Board –
  - (a) the majority of all the members of the Board forms a quorum;
  - (b) a decision of a majority of members present and voting at a meeting constitutes the decision of the Board; and
  - (c) if, there is an equality of votes, the person presiding at the meeting has a casting vote in addition to his or her deliberative vote.
- (8) A decision of the Board or an act performed on the authority of the Board is not invalid –
  - (a) by reason of a vacancy on the Board; or

- (b) by reason of the fact that a person who is not entitled to be present as a member was present when the decision was taken or the act was authorized,

if that decision was taken or the act was authorised by a majority of the members who were present and entitled to vote at that meeting.

- (9) The Board may –

- (a) invite any person with knowledge and expertise in a matter before the Board to attend a meeting of the Board or a committee and participate in the deliberations but has no right to vote; or

- (b) co-opt any person with knowledge and expertise in matters relevant to the powers and functions of the Board as member of the Board or committee and such co-opted member attends meetings and participates in the deliberations of any meeting but has no right to vote.

(10) The Board must keep accurate minutes of the proceedings of meetings of the Board and committees.

(11) As soon as possible after a meeting of the Board has taken place, the chairperson must cause a copy of the minutes of that meeting to be submitted to every member for scrutiny and possible corrections before approval at the next meeting.

## **Funds of Authority**

- 12.** (1) Funds of the Authority are consisted of –

- (a) money appropriated by Parliament for the purpose of the Board;

- (b) grants and donations received from any lawful sources;

- (c) penalties, required to cover the case administrative costs, as prescribed; and

(d) any other money accruing to the Board from any other lawful sources.

(2) The Board may invest such funds that are not immediately required for the performance of the functions of the Board under this Act.

(3) The Board must utilise its funds for defraying expenses incurred in connection with –

(a) the exercise of its powers and the performance of its functions; and

(b) the remunerations, allowances and service expenses payable by the Board,

but moneys received as donation are utilised in accordance with the requirement of such condition, if any, determined by the donor.

(4) The Authority may, with the approval of the Minister, use the money of the Authority to fund the approved projects of registered Consumer Associations in terms of section 22.

### **Committees of Board**

**13.** (1) The Board may establish committees based on specific needs, priorities and functions of the Board to enable the Board to rapidly respond to emerging challenges and developments related to consumer protection. .

(2) The Board may with the approval of the Minister, by notice in the *Gazette* delegate specific powers in writing to any committee.

(3) The Board may decide whether a committee should operate on *ad hoc* or fixed period basis, and may dissolve or reconstitute a committee at any.

(4) A committee should consist of such members of the Board, and may include such other persons not being members of the Board, as the Board may appoint to the committee.

(5) A committee established under this section must consist of at least one member and such other person or persons as the Board may determine, and such committee may, with the approval of the Board, co-opt persons of special expertise to advise it in the performance of its functions, but such co-opted person is not entitled to vote at any such meeting.

(6) The Board must designate a member of the Board to be the chairperson of a committee.

(7) The Board is not divested or relieved of the power or function delegated or assigned to a committee.

(8) The Board, without any prejudice of a right, may at any time vary or set aside any decision made by a committee in the exercise of a power delegated to the committee.

### **Allowances payable to members**

**14.** (1) A member of –

(a) the Board; or

(b) a committee who is not a member of the Board, including a person invited by the Board to attend any of its meetings,

is entitled to payment of allowances as provided for in terms of the Public Enterprises Governance Act.

### **Banking accounts**

**15.** (1) The Authority must open and maintain a banking or savings account with any banking institution registered under the laws governing banking institutions in Namibia or the Post Office Savings Bank referred to in the Posts and Telecommunications Act, 1992 (Act No. 19 of 1992).

(2) The Authority must hold –

(a) a general account in which to be deposited –

- (i) all moneys received by the Board other than moneys referred to in paragraph (b) or (c); and
  - (ii) also all interest derived from the investment of moneys standing to the credit of any account referred to in this section;
- (b) a special account in respect of every special levy in which to be deposited –
- (i) all the special levy moneys concerned;
  - (ii) moneys accruing to that account from any other source;
- (c) a reserve account in which there shall be deposited –
- (i) all such moneys as the Minister may from time to time determine;
  - (ii) moneys accruing to that account from any other source.

(3) Moneys standing to the credit of the accounts of the Board and not required for immediate use or as a reasonable working balance shall be invested in such manner as the Minister may from time to time determine.

(4) The moneys in the accounts of the Board shall be under the control of the Board, which shall, subject to the directions of the Auditor-General, cause proper account to be kept of all moneys received or expended in respect of every account.

(5) The moneys in the general account, subject to the directions of the Minister, shall be utilized for achieving the objects of the Board, exercising its powers or performing its functions.

(6) The moneys in any special account shall, subject to the directions of the Minister, be utilized for the purposes for which the special levy concerned has been imposed.

(7) The moneys in the reserve account shall be utilized for such purposes as the Minister may on the recommendation of the board from time to time determine.



(8) The Minister may authorize the board to transfer moneys in any particular banking account of the board to any other such banking account.

### **Financial year, accounts, and audit**

**16.** (1) Financial year of the Board ends on 31 March in each year.

(2) Subject to Public Enterprises Governance Act, the Authority must –

(a) keep such books of account in accordance with generally accepted accounting practice as are necessary –

(i) to keep proper records of all monies received or expended by it and all its assets and liabilities and all its financial transactions;

(ii) to explain the transactions and financial position of the Board; and

(iii) to represent fairly the state of affairs and business of the Board;

(b) not later than three months after the end of each financial year submit such books of accounts, annual statement and balance sheet to be audited by a person registered as an accountant and auditor in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951).

(3) The auditor must submit a report on the audit to the chairperson of the Board for consideration and inclusion in the annual report of the Board.

(4) Any money of the Board which is not required for immediate use may be invested as the Board with the concurrence of the Minister may direct.

### **Annual report**

**17.** (1) As soon as possible after the end of each financial year the Chief Executive Officer must produce an annual report of the Board for the preceding financial year.

- (2) An annual report contains –
  - (a) a full description of the actions taken in the previous financial year in order to achieve the objects of this Act;
  - (b) recommendations for legislative and regulatory changes that are appropriate to address the condition of the new development in the teaching profession;
  - (c) audited balance sheet, an income statement and a cash-flow statement which is a true and correct reflection of the state of affairs of the Board as at the end of that financial year; and
  - (d) a report by the auditor who audited the accounts of the Board stating whether the report of the Board fairly represents the financial position and results obtained by the Board in accordance with generally accepted accounting practice.
- (3) The annual report is submitted to the Board which may make such amendments to the report as it thinks fit.
- (4) The Board must approve the annual report within six months from the end of the financial year to which the report relates.
- (5) After the Board approved the annual report, the chairperson must cause a copy of the report –
  - (a) to be submitted to every member of the Board;
  - (b) to be submitted to the Minister; and
  - (c) to lie open at the office of the Chief Commissioner for inspection by stakeholders and members of the public.

(6) The Minister must table the annual report in the National Assembly within 14 days of receipt thereof, if the Assembly is then in ordinary session or within 14 days of the commencement of the next ordinary session, if the Assembly is not in ordinary session.

PART 3  
PERSONNEL OF AUTHORITY

**Appointment of Chief Executive Officer of Authority**

**18.** (1) The Minister may appoint the Chief Executive Officer of the Authority on the recommendations of the Board.

(2) The Chief Executive Officer must be –

(a) suitably qualified and experienced; and

(b) a fit and proper person.

(3) The Minister may, by notification, make rules to provide for the qualifications for appointment, method of recruitment, procedure for appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of the service of the Chief Commissioner of the Authority.

**Staff of Authority**

**19.** (1) The Chief Executive Officer, in order to efficiently and effectively achieve the objects of the Authority, may appoint the staff members –

(a) below the level of management without the approval of the board;

(b) at management level subject to the approval of the Board.

(3) The board and the Minister may conclude an agreement whereby staff members in the public service whose duties relate to the functions of the authority are transferred to the authority under such conditions as are contained in the agreement.

## CHAPTER 3 CONSUMER ASSOCIATIONS

### **Support of Consumer Associations**

20. (1) The Authority may encourage the establishment and registration of consumer associations for the protection of consumers against unfair, deceptive and abusive acts and practices and to conduct social supervision over goods and services.

(2) The Authority must take account of the major role consumer associations in providing information and assistance to consumers about their rights, supporting consumers in consumer disputes, in particular with regard to access to appropriate dispute resolution mechanisms, and promoting consumer interests in the proper functioning of the market.

(3) The consumer associations mentioned in subsection (2) should have the capacity to enhance consumer protection and confidence by taking action on the ground and tailoring aid, information and education to the individual.

(4) The Consumer Authority may co-operate and support the following Consumer associations activities;

- (a) consumer advice and education activities and consumer related publication, research, market monitoring, surveillance, and reporting;
- (b) participate in the development of laws, regulations, rules, and mandatory standards related to consumer rights and interests;
- (c) refer and alert the Consumer Authority or any other relevant authority on unfair, deceptive and abusive acts and practices;
- (d) support consumers subjected to unfair, deceptive and abusive acts and practices to file complaints in accordance with this Act;

- (e) provide alternative dispute resolution through mediation or conciliation; and
- (f) participate in national and international associations, conferences or forums concerned with consumer protection matters.

### **Registration of consumer protection associations**

- 21.** (1) A consumer protection association may –
- (a) commence or take any action to protect the interests of a consumer individually, or of consumers collectively in any matter or before any forum contemplated in this Act and for which such association is empowered to do; and
  - (b) intervene in any matter before any forum contemplated in this Act;
- (2) In addition to any other authority set out in this Act, a registered consumer protection association may refer a complaint to the Authority in respect of any matter within the purposes of this Act.
- (3) Subject to this Act, a consumer protection association can only be registered if it –
- (a) is a non-governmental, non-profit-making, independent of industry, commercial and business or other conflicting interests, and has as its primary objectives and activities the promotion and protection of the health, safety, economic and legal interests of consumers in Namibia;
  - (b) functions predominantly to promote or represent the interests of all or a specific category of consumers generally;
  - (c) is committed to achieving the purposes of this Act; and

- (d) engages in or makes a realistic proposal to engage in, actions to promote and advance the consumer interests of persons contemplated in section 3(1)(b).
- (4) The Authority may impose reasonable conditions on the registration of a consumer protection association to further the purposes of this Act.
- (5) The Authority –
  - (a) must monitor the effectiveness of any registered consumer protection association relative to the purposes and policies of this Act;
  - (b) may reasonably require any registered consumer protection group to provide information necessary for the purposes of monitoring in terms of paragraph; and
  - (c) may award Grants to registered consumer organisations for the functioning of consumer organisations.
- (6) The Minister may, in consultation with the Authority, prescribe standards procedures and related matters for the Authority to follow in assessing whether an applicant for registration meets the requirements of this section.

## CHAPTER 4

### CONCILIATION, MEDIATION, AND CONSUMER PROTECTION TRIBUNAL

#### **Establishment of a Consumer Conciliation and Mediation Unit**

- 22.** (1) The Authority must by notice in the Gazette establish with effect from such date as it may specify in that notification, a Consumer Conciliation and Mediation Unit to be attached to the Consumer Authority.
- (2) The Consumer Authority, may, if it deems fit, decentralise its conciliation and mediation functions, in order to be accessible to all consumers' countrywide.

(3) A consumer Conciliation and Mediation Unit consist of such persons as may be prescribed.

(4) A consumer Conciliation and Mediation Unit must maintain –

(a) a panel of mediators; and

(b) any other information as may be prescribed.

(5) The regulations may set out rules relating to the conduct of a conciliation and mediation.

(6) All information in these proceedings are confidential and a person who discloses such information to a third party without the authorisation of the Unit commits an offence and is liable to a fine not exceeding [redacted] or imprisonment not exceeding a period of [redacted], or to both such fine and imprisonment.

(7) The parties shall not initiate any arbitral or judicial proceedings in respect of a matter which is the subject-matter of the mediation and also when such parties have expressly undertaken not to initiate any such proceeding.

(8) Where the parties agree to refer the matter to arbitration in terms of this Act, the arbitral award will be final and binding on the parties.

### **Establishment of Consumer Protection Tribunal**

**23.** (1) There is established a tribunal to be known as the Consumer Protection Tribunal .

(2) The Tribunal consists of three members, appointed by the Minister after consultation with the Minister responsible for Justice, of whom –

(a) one must be a person with legal qualifications and who has been practising law for a period of not less than five years, and who will be the chairperson; and

(b) two are persons who have skills, knowledge or experience in consumer protection matters, economical or financial matters.

(3) The Minister must, by regulation, prescribe the terms and conditions of appointment of members of the Tribunal, the remuneration to be paid to such members, the termination of such appointments and the filling of vacancies vacated by such members.

(4) Despite the provisions of this section, the judge-president of the court, at the request of the Minister, may, pending the appointment of members of the Tribunal as contemplated in subsection (2), designate one or more judges or acting judges of the court to exercise the powers and perform the functions and duties conferred on the Tribunal by this Act.

### **Jurisdiction and powers of Consumer Protection Tribunal**

**24.** (1) The Tribunal must –

- (a) Make rules relating to the procedures to be followed during proceedings before the Tribunal;
- (b) hear and determine any complaint lodged with it in terms of the provisions of this Act;
- (c) generally to inquire and adjudicate upon any matter which is required or permitted to be referred to it under any provision of this Act or any other law;
- (d) consider and give a decision on any application made to it in terms of any provision of this Act;
- (e) exercise such other jurisdiction as may be prescribed.

(2) Any decision, order or determination of the Tribunal may be executed as if it were a decision, order or a determination made by the court.

(3) The Chairperson or, in his absence, the Vice-chairperson, may, in respect of any matter which is due to be heard by the Tribunal, on application made to him by a party, sit alone for the purpose of making such orders, including an order in the nature of an injunction, as he



thinks fit, where he is of opinion that, for reasons of urgency and the likelihood of undue prejudice, it is necessary to do so pending the hearing of the matter.

### **Institution of Proceedings before Tribunal**

**25.** (1) **An applicant** (trader, a consumer, a registered association, or such other person as may be prescribed) may lodge **an application** before the Tribunal.

(1) An application in terms of subsection (1) must be lodged in such form and manner as prescribed.

(2) The proceedings of the Tribunal shall be conducted, as far as possible, in accordance with the procedural and evidential rules pertaining to a Magistrate Court.

### **Seat of Tribunal**

**26.** The seat of the Tribunal is Windhoek, but the functions of the Tribunal may be performed at any such place in Namibia as the chairperson of the Tribunal may determine.

### **Oath of office**

**27.** A member of the Tribunal appointed in terms of section 24 may not perform any function as such a member unless he or she has taken an oath or made an affirmation, which must be subscribed to by him or her, in the form as is prescribed.

### **Summoning of witnesses**

**28.** (1) A party to any proceedings before the Tribunal may summon the attendance of any witness in the manner provided for in the rules of the Tribunal.

(2) Any member of the Tribunal and any sitting person as an assessor in any proceedings before the Tribunal may put any question to any witness appearing before it.

(3) For purposes of this section, an oath or affirmation or return of service confirming that a person has been duly served, and that his or her reasonable expenses have been paid or offered to him or her, will constitute *prima facie* evidence of the service.

(4) The Tribunal may impose upon a person contravening this section, a fine not exceeding N\$5 000, or in default of payment, imprisonment for a term not exceeding 3 months or both such fine and imprisonment.

### **Contempt of Tribunal**

**29.** A person who –

- (a) wilfully fails to attend a sitting of the Tribunal on being required to do so;
- (b) refuses to take an oath or affirmation before the Tribunal or to answer fully and satisfactorily to the best of his or her knowledge and belief any question lawfully put to him or her in any proceedings before the Tribunal or to produce any book, record, document or thing when required to do so by the Tribunal;
- (c) knowingly gives false evidence or evidence which he knows to be misleading before the Tribunal; or
- (d) at any sitting of the Tribunal willfully –
  - (i) insults a member; or
  - (ii) interrupts the proceedings of the Tribunal,

commits an offence and on conviction is liable to a fine not exceeding **N\$ 5 000** or to imprisonment for a term not exceeding **3** months or to both such fine and such imprisonment.

### **Appeal to the High Court**

**30.** (1) Any party –

- (a) who is dissatisfied with a final decision of the Consumer Tribunal may appeal to the High Court.
- (b) wishing to appeal under paragraph (a) must, within 30 days of the date of the final decision of the Consumer Tribunal, give notice in writing of such appeal to the Consumer Tribunal and lodge his appeal with the Registrar of the High Court.

(2) An appeal under this section must be prosecuted in the manner provided for in respect of an appeal from the final judgment of a Magistrate Court.

### **Institution of proceedings by Consumer Authority**

**31.** (1) The Consumer Authority may, with the consent of a consumer, and with respect to any matter arising out of, or in connection with, a consumer agreement –

- (a) institute proceedings as it thinks necessary and conduct such proceedings before the Tribunal for or in the name of that consumer; and
- (b) where applicable, represent the consumer in appeal proceedings.

(2) No fees must be chargeable before the Tribunal on any proceedings commenced under subsection (1).

(3) In any proceedings under subsection (1) the Tribunal may not award costs against the Consumer Authority or a consumer.

### **Institution of Proceedings by a registered association**

**32.** (1) registered association may, with the consent of a consumer, and with respect to any matter arising out of, or in connection with, a consumer agreement –

- (a) institute such civil suit as it thinks necessary and conduct such suit before the Tribunal; and

- (b) where applicable, represent the consumer in appellate proceedings connected with such civil suit.
  
- (2) In any proceedings under subsection (1), the Tribunal or the High Court, as the case may be –
  - (a) may award costs against a registered association; but
  
  - (b) may not award costs against a consumer.
  
- (3) Where the Tribunal or High Court, as the case may be, awards costs against the registered association, the costs may be recovered in the same manner as if the costs had been awarded against the consumer.

CHAPTER 5  
CONSUMER RIGHTS AND GENERAL PROTECTIONS

PART 1  
FUNDAMENTAL RIGHTS

**Consumer rights**

- 33.** (1) A person may not in the selling of goods or services engage in conduct that –
- (a) affects consumer rights set out in this Act, or
  
  - (b) affects enforcement of rights by consumer set out in this Act.
- (2) 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) show that the bundling of those goods or services results in economic benefit for consumers;
  - (iii) or offers bundled goods or services separately and at individual prices.

(3) 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.

(4) 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.

### **Access to consumer market**

**34.** (1) Any sale to a consumer should not be conducted in contravention of article 10 of the Namibian Constitution and may further not –

- (a) exclude any person or category of persons from accessing any goods or services offered by the supplier;
- (b) grant any person or category of persons exclusive access to any goods or services offered by the supplier;
- (c) assign priority of supply of any goods or services offered by the supplier to any person or category of persons;

- (d) supply different quality of goods or services to any person or category of persons;
- (e) charge different prices for any goods or services to any persons or category of persons;
- (f) target particular communities, districts, populations or market segments for exclusive, priority or preferential supply of any goods or services; or
- (g) exclude a particular community, region, district, population or market segment from the supply of any goods or services offered by the supplier.

(2) A supplier must not directly or indirectly treat any consumer differently than any other, in a manner that constitutes unfair discrimination on one or more grounds set out in article 10 of the Namibian Constitution, when –

- (a) assessing the ability of the person to pay the cost, or otherwise meet the obligations, of a proposed transaction or agreement;
- (b) deciding whether to enter into a transaction or agreement, or to offer to enter into a transaction or agreement;
- (c) determining any aspect of the cost of a transaction or agreement to the consumer;
- (d) interacting with the consumer;
  - (i) in the supplier's place of business, or
  - (ii) in the course of displaying or demonstrating any goods, testing or fitting any goods, or negotiating the terms of a transaction or agreement;
- (e) selecting, preparing, packaging or delivering any goods for or to the consumer, or providing any services to the consumer;

- (f) proposing or agreeing to the terms and conditions of a transaction or agreement;
- (g) assessing or requiring compliance with the terms of a transaction or agreement;
- (h) determining whether to continue, enforce, seek judgment in respect of, or terminate a transaction or agreement; or

(3) Subsections (1) and (2) also apply in respect of a consumer that is an association or juristic person, to prohibit unfair discrimination against that association or juristic person based on the characteristics of any natural person who is a member, associate, owner, manager, employee, client or customer of that association or juristic person.

(4) Nothing in this section is intended to limit the authority of a court to consider any conduct between a supplier and a consumer that is not contemplated in this section.

#### **Reasonable grounds for differential treatment in specific circumstances**

**35.** (1) It is not a contravention of section 45 for a supplier to –

- (a) refuse to supply or provide access to any particular goods or services to a minor as defined in the Children’s Status Act of 2015, or to require the consent of a parent, guardian before supplying or providing access to any particular goods or services to an unemancipated minor –
  - (i) in accordance with any law or regulation; or
  - (ii) as a reasonable precaution to protect the health, welfare or safety of a minor;
- (b) as a reasonable precaution to protect the health, welfare or safety of a consumers;
- (c) as a reasonable precaution to protect the environment;
- (d) public security and national interest;

- (e) reasonably designate any facility or service, permanently, or from time to time, for the exclusive use of –
  - (i) minors as defined in the Child Care and Protection Act of 2015 generally;
  - (ii) minors who are above or below a specified age, or between specified ages; or
  - (iii) adults who have attained a specified age of at least 60 years;
  
- (f) advertise, offer or agree to supply, or supply, any goods or services at a discounted price solely on the basis that the consumer –
  - (i) is a minor who has not yet attained a specified age; or
  - (ii) is an adult who has attained a specified age of at least 60 years.
  - (iii) As a loyalty gratuity;
  
- (2) It is not a contravention of section 45 for a supplier to reasonably—
  - (a) provide and designate separate but substantially equivalent facilities for the exclusive use of persons of each gender provided that it is rationally connected to a predetermined objective; or
  - (b) offer to supply or provide access to a facility exclusively to persons of one gender provided that it is rationally connected to a predetermined objective.
  
- (3) It is not a contravention of section 45 for a supplier to market any goods or services in a manner that implies or expresses a preference for a particular group of consumers who are distinguishable from the general population on the basis of a ground of discrimination set out in section 10(2) of the Constitution, if the particular good or service are reasonably intended or designed to satisfy any specific needs or interests that are common to, or uniquely characteristic of, that particular group of consumers.



(4) Nothing in this section is intended to limit the authority of a court or Consumer Authority to –

- (a) assess the reasonableness of any conduct, to the extent contemplated in subsections (1)(b) or (c), (2) or (3), and determine whether any conduct not reasonably justified, as contemplated in those subsections, constitutes unfair, deceptive and abusive acts and practices or unfair discrimination within the meaning of the Constitution; or
- (b) determine whether any conduct contemplated in section 45 was fair in the circumstances of a particular transaction or the marketing of any particular goods or services, as the case may be.

### **Right to Return of Goods**

**36.** (1) a consumer has the right to return goods within prescribed business days from the day of sale or delivery without penalty at the consumers risk and expense, provided that the returned goods are in an acceptable condition.

(2) For purposes of this section, “acceptable condition” means that the goods are in substantially the same condition as of the time of sale and the goods are in the prescribed packaging if the goods were sold in packaging that must be opened by the consumer to access the goods.

(3) This section does not apply to the following –

- (a) goods that have been specially constructed or altered by the supplier at the request of the consumer; and
- (b) goods for which return of the product endangers public health.

(2) Upon return of the goods as contemplated above the supplier must provide a full refund to the consumer.

### **Guarantee of Right of Public Participation**

**37.** (1) Namibians have a right to engage in conduct or speech that is genuinely aimed in whole or in part at procuring favourable government action in aid of consumer protection.

(2) A plaintiff in a lawsuit alleging defamation or any civil liability arising from public participation in government consumer protection policy shall have the burden of proving that its legal action does not have the substantial effect of deterring public participation in government consumer protection policy.

(3) A defendant in such a legal action may demand a hearing to make this determination prior to any other substantive action in the lawsuit. If the court holds that the lawsuit has the substantial effect of deterring public participation in government consumer protection policy, the court shall dismiss the lawsuit and it may award to the defendant any relief that could be granted to the Consumer Authority under this Act.

### **Plain Language**

**38.** (1) Consumer contract terms drafted or adopted by a seller must be in plain, intelligible language.

(2) Where the meaning of a consumer contract term is ambiguous, the interpretation most favourable to the consumer will prevail.

### **Parallel Sales and Contract Language**

**39.** When a seller advertises in a particular language, or when the consumer and the seller negotiate the terms of a consumer contract primarily in a particular language, any written consumer contract offered or used by that supplier shall be in the particular language used in the advertisement or negotiation, unless the consumer clearly and unambiguously agrees to use a contract in another language understood by the consumer.

### **Implied Warranty of Merchantability**

**40.** Every consumer contract for the sale of goods must contain an implied warranty that the goods will be merchantable if the supplier engages in sales of goods of that kind. Goods to be merchantable must be at least such as –

- (a) pass without objection in the trade for goods of that kind;
- (b) are fit for the ordinary purposes for which such goods are used; and
- (c) conform to the promise or affirmations of fact made on the container or label, if any, or where applicable, the sales agent.

### **Implied Warranty of Fitness**

**41.** Where the supplier at the time of contracting has reason to know any particular purpose for which the goods are required and that the consumer is relying on the supplier's skill or judgment to select or furnish suitable merchandise, there is an implied warranty that the merchandise will be fit for such purpose.

### **Representations Creating Express Warranties**

**42.** (1) A seller creates an express warranty as to merchandise when the seller makes an affirmation of fact or promise to the consumer which relates to the merchandise, provides a description of the merchandise, or displays to or uses with the consumer any sample or model in the sale of the merchandise.

(2) An express warranty becomes part of the basis of the sale and constitutes a contractual term obligating the seller to provide merchandise that conforms to the affirmation of fact, promise, description, sample or model.

(3) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that the seller have a specific intention to make a warranty, but an affirmation merely of the value of the merchandise or a statement

purporting to be merely the seller's opinion or commendation of the goods does not create an express warranty.

### **Disclaimer of Warranties Prohibited**

**43.** No consumer contract shall contain a disclaimer of any express or implied warranty.

### **Limitation of Consumer Remedies Prohibited**

**44.** No consumer contract shall contain a term or purport in any way to limit a consumer's right to seek any remedy, to voice or file any complaint, or to pursue any available legal recourse in any available forum.

## **PART 2**

### **MISLEADING OR DECEPTIVE CONDUCT**

#### **Misleading or deceptive conduct**

**45.** (1) A person may not in the selling of goods or services engage in conduct that is misleading, misrepresenting or deceptive or is likely to mislead or deceive.

(2) Nothing in Part 1 of Chapter 6 (which is about unfair practices) limits by implication subsection

#### **Application of this Part to information providers**

**46.** (1) For the purposes of this section an "information provider" means a person who carries on a business of providing information.

(2) Without limiting subsection (2), each of the following is an information provider –

- (a) the holder of a licence granted under the Namibian Broadcasting Act 9 of 1991;
- (b) a person who is the provider of a broadcasting service under a licence under that Act; and
- (c) the Namibian Broadcasting Corporation.

(3) This Part does not apply to a publication of matter by an information provider if –

- (a) in any case—the information provider made the publication in the course of carrying on a business of providing information; or
  - (b) if the information provider is the Namibian Broadcasting Corporation, or the holder of a licence granted under the Namibian Broadcasting Act 9 of 1991—the publication was by way of a radio or television broadcast by the information provider.
- (4) Subsection (3) does not apply to a publication of an advertisement.

### **Unconscionable conduct**

**47.** (1) A person may not in the trade of goods or services engage in conduct that is unconscionable.

(3) This section does not apply to conduct that is prohibited by section 49.

### **Unconscionable conduct in connection with goods or services**

- 48.** (1) A person may not in trade or commerce, in connection with –
- (a) the supply or possible supply of goods or services to a person; or
  - (b) the acquisition or possible acquisition of goods or services from a person; engage in conduct that is unconscionable.

b. This section does not apply to conduct that is engaged in only because the person engaging in the conduct –

- (a) institutes legal proceedings in relation to the supply or possible supply, or in relation to the acquisition or possible acquisition; or
- (b) refers to arbitration a dispute or claim in relation to the supply or possible supply, or in relation to the acquisition or possible acquisition.

**Matters court may have regard to for purposes of section 49**

**49.** (1) Without limiting the matters to which the court may have regard for the purpose of determining whether a person (the supplier) has contravened section 21 in connection with the supply or possible supply of goods or services to a person (the customer), the court may have regard to –

- (a) the relative strengths of the bargaining positions of the supplier and the customer;
- (b) whether, as a result of conduct engaged in by the supplier, the customer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier;
- (c) whether the customer was able to understand any documents relating to the supply or possible supply of the goods or services;
- (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the customer or a person acting on behalf of the customer by the supplier or a person acting on behalf of the supplier in relation to the supply or possible supply of the goods or services;
- (e) the amount for which, and the circumstances under which, the customer could have acquired identical or equivalent goods or services from a person other than the supplier;
- (f) the extent to which the supplier's conduct towards the customer was consistent with the supplier's conduct in similar transactions between the supplier and other like customers;
- (g) the requirements of any applicable industry code;

- (h) the requirements of any other industry code, if the customer acted on the reasonable belief that the supplier would comply with that code;
- (i) the extent to which the supplier unreasonably failed to disclose to the customer:
  - (i) any intended conduct of the supplier that might affect the interests of the customer; and
  - (ii) any risks to the customer arising from the supplier's intended conduct (being risks that the supplier should have foreseen would not be apparent to the customer);
- (j) if there is a contract between the supplier and the customer for the supply of the goods or services –
  - (i) the extent to which the supplier was willing to negotiate the terms and conditions of the contract with the customer;
  - (ii) the terms and conditions of the contract;
  - (iii) the conduct of the supplier and the customer in complying with the terms and conditions of the contract; and
  - (iv) any conduct that the supplier or the customer engaged in, in connection with their commercial relationship, after they entered into the contract;
- (k) without limiting paragraph (j), whether the supplier has a contractual right to vary unilaterally a term or condition of a contract between the supplier and the customer for the supply of the goods or services; and
- (l) the extent to which the supplier and the customer acted in good faith.
- (2) Without limiting the matters to which the court may have regard for the purpose of determining whether a person (the acquirer) has contravened section 21 in connection with the acquisition or possible acquisition of goods or services from a person (the supplier), the court may have regard to –
  - (a) the relative strengths of the bargaining positions of the acquirer and the supplier;

- (b) whether, as a result of conduct engaged in by the acquirer, the supplier was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the acquirer;
- (c) whether the supplier was able to understand any documents relating to the acquisition or possible acquisition of the goods or services;
- (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the supplier or a person acting on behalf of the supplier by the acquirer or a person acting on behalf of the acquirer in relation to the acquisition or possible acquisition of the goods or services;
- (e) the amount for which, and the circumstances in which, the supplier could have supplied identical or equivalent goods or services to a person other than the acquirer;
- (f) the extent to which the acquirer's conduct towards the supplier was consistent with the acquirer's conduct in similar transactions between the acquirer and other like suppliers;
- (g) the requirements of any applicable industry code;
- (h) the requirements of any other industry code, if the supplier acted on the reasonable belief that the acquirer would comply with that code;
- (i) the extent to which the acquirer unreasonably failed to disclose to the supplier –
  - (i) any intended conduct of the acquirer that might affect the interests of the supplier; and
  - (ii) any risks to the supplier arising from the acquirer's intended conduct (being risks that the acquirer should have foreseen would not be apparent to the supplier);
- (j) if there is a contract between the acquirer and the supplier for the acquisition of the goods or services –



- (i) the extent to which the acquirer was willing to negotiate the terms and conditions of the contract with the supplier;
  - (ii) the terms and conditions of the contract;
  - (iii) the conduct of the acquirer and the supplier in complying with the terms and conditions of the contract; and
  - (iv) any conduct that the acquirer or the supplier engaged in, in connection with their commercial relationship, after they entered into the contract;
- (k) without limiting paragraph (j), whether the acquirer has a contractual right to vary unilaterally a term or condition of a contract between the acquirer and the supplier for the acquisition of the goods or services; and
- (l) the extent to which the acquirer and the supplier acted in good faith.

### PART 3

#### UNFAIR CONTRACT TERMS

##### **Unfair terms of consumer contracts and small business contracts**

**50.** (1) For the purpose of this section, a consumer contract is a contract for a supply of goods or services; or a sale or grant of an interest in land to an individual whose acquisition of the goods, services or interest is wholly or predominantly for personal, domestic or household use or consumption.

- (2) For the purpose of this section, a contract is a small business contract if –
- (a) the contract is for a supply of goods or services, or a sale or grant of an interest in land;

(b) at the time the contract is entered into, at least one party to the contract is defined as a small business as prescribed; and

(c) either of the following applies –

(i) the upfront price payable under the contract does not exceed the prescribed amount;

(ii) the contract has a duration of more than as prescribed and the upfront price payable under the contract does not exceed the prescribed value.

(3) For the purpose of this section, a term of a consumer contract or small business contract is unfair if –

(a) it would cause a significant imbalance in the parties' rights and obligations arising under the contract;

(b) it is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term; and

(c) it would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied on.

(4) For the purposes of subsection, a term is transparent if the term is –

(a) expressed in reasonably plain language;

(b) legible;

(c) presented clearly; and

(d) readily available to any party affected by the term.

(5) In determining whether a term of a contract is unfair under subsection (3), a court may take into account such matters as it thinks relevant, but must take into account the following –

(a) the extent to which the term is transparent; and

(b) the contract as a whole.

(6) For the purposes of subsection (3)(b), a term of a contract is presumed not to be reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term, unless that party proves otherwise.

(7) A term of a consumer contract or small business contract is void if –

(a) the term is unfair; and

(b) the contract is a standard form contract.

(8) The contract continues to bind the parties if it is capable of operating without the unfair term.

(9) Without limiting subsection (3), the following are examples of the kinds of terms of a consumer contract or small business contract that may be unfair –

(a) a term that permits, or has the effect of permitting, one party (but not another party) to avoid or limit performance of the contract;

(b) a term that permits, or has the effect of permitting, one party (but not another party) to terminate the contract;

(c) a term that penalises, or has the effect of penalising, one party (but not another party) for a breach or termination of the contract;

(d) a term that permits, or has the effect of permitting, one party (but not another party) to vary the terms of the contract;

(e) a term that permits, or has the effect of permitting, one party (but not another party) to renew or not renew the contract;

(f) a term that permits, or has the effect of permitting, one party to vary the upfront price payable under the contract without the right of another party to terminate the contract;

- (g) a term that permits, or has the effect of permitting, one party unilaterally to vary the characteristics of the goods or services to be supplied, or the interest in land to be sold or granted, under the contract;
- (h) a term that permits, or has the effect of permitting, one party unilaterally to determine whether the contract has been breached or to interpret its meaning;
- (i) a term that limits, or has the effect of limiting, one party's vicarious liability for its agents;
- (j) a term that permits, or has the effect of permitting, one party to assign the contract to the detriment of another party without that other party's consent;
- (k) a term that limits, or has the effect of limiting, one party's right to sue another party;
- (l) a term that limits, or has the effect of limiting, the evidence one party can adduce in proceedings relating to the contract;
- (m) a term that imposes, or has the effect of imposing, the evidential burden on one party in proceedings relating to the contract;
- (n) a term of a kind, or a term that has an effect of a kind, prescribed by the regulations;
- (o) a practice of –
  - (i) making any statement, whether orally or in writing or by visible representation including by means of electronic record, which –
    - (aa) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;
    - (bb) falsely represents that the services are of a particular standard, quality or grade;
    - (cc) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;

- (dd) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;
- (ee) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;
- (ff) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;
- (gg) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any good that is not based on an adequate or proper test, provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence will lie on the person raising such defence;
- (hh) makes to the public a representation in a form that purports to be –
  - (aa) a warranty or guarantee of a product or of any goods or services; or
  - (ab) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result,

if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

- (ii) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been

sold or services have been provided by the person by whom or on whose behalf the representation is made;

(jj) gives false or misleading facts disparaging the goods, services or trade of another person. For the purposes of this sub-clause, a statement that is –

(aa) expressed on an article offered or displayed for sale, or on its wrapper or container;

(ab) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or

(ac) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public, shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;

(ii) permitting the publication of any advertisement, whether in any newspaper or otherwise, including by way of electronic record, for the sale or supply at a bargain price of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement. For the purpose of this sub-clause, "bargain price" means –

(aa) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise; or

- (bb) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;
- (iii) permitting –
  - (aa) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged, in the transaction as a whole;
  - (bb) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest, except such contest, lottery, game of chance or skill as may be prescribed;
  - (cc) withholding from the participants of any scheme offering gifts, prizes or other items free of charge on its closure, the information about final results of the scheme. For the purpose of this subitem, the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are within a reasonable time published, prominently in the same newspaper in which the scheme was originally advertised;
- (iv) permitting the sale or supply of goods intended to be used, or are of a kind likely to be used by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by the competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;
- (v) permitting the hoarding or destruction of goods, or refusal to sell the goods or to make them available for sale or to provide any service, if

such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services;

- (vi) manufacturing of spurious goods or offering such goods for sale or adopting deceptive practices in the provision of services;
- (vii) not issuing bill or cash memo or receipt for the goods sold or services rendered in such manner as may be prescribed;
- (x) refusing, after selling goods or rendering services, to take back or withdraw defective goods or to withdraw or discontinue deficient services and to refund the consideration thereof, if paid, within the period stipulated in the bill or cash memo or receipt or in the absence of such stipulation, within a period of thirty days;
- (xi) disclosing to other person any personal information given in confidence by the consumer unless such disclosure is made in accordance with the provisions of any law for the time being in force;
- (xii) transmitting commercial E-mail without the consent of consumers, or unless a vendor has an existing relationship with a consumer; and
- (xiii) not providing security of payment and personal information.

**Terms that define main subject matter of consumer contracts or small business contracts are unaffected**

**51.** (1) Section 51 does not apply to a term of a consumer contract or small business contract to the extent, but only to the extent, that the term –

- (a) defines the main subject matter of the contract; or
  - (b) sets the upfront price payable under the contract; or
  - (c) is a term required, or expressly permitted, by a law of Namibia.
- (2) The upfront price payable under a contract is the consideration that –



- (a) is provided, or is to be provided, for the supply, sale or grant under the contract; and
- (b) is disclosed at or before the time the contract is entered into,

but does not include any other consideration that is contingent on the occurrence or non occurrence of a particular event.

### **Standard form contracts**

**52.** (1) If a party to a proceeding alleges that a contract is a standard form contract, it is presumed to be a standard form contract unless another party to the proceeding proves otherwise.

- (2) In determining whether a contract is a standard form contract, a court may take into account such matters as it thinks relevant, but must take into account the following –
  - (a) whether one of the parties has all or most of the bargaining power relating to the transaction;
  - (b) whether the contract was prepared by one party before any discussion relating to the transaction occurred between the parties;
  - (c) whether another party was, in effect, required either to accept or reject the terms of the contract (other than the terms referred to in section 52(1)) in the form in which they were presented;
  - (d) whether another party was given an effective opportunity to negotiate the terms of the contract that were not the terms referred to in section 52(1);
  - (e) whether the terms of the contract (other than the terms referred to in section 52(1)) take into account the specific characteristics of another party or the particular transaction;
  - (f) any other matter prescribed by the regulations.

### **Contracts to which this Part does not apply**

- 53.** (1) This Part does not apply to –

- (a) a contract of marine salvage or towage; or
- (b) a charterparty of a ship; or
- (c) a contract for the carriage of goods by ship.

(2) Without limiting subsection (1)(c), the reference in that subsection to a contract for the carriage of goods by ship includes a reference to any contract covered by a sea carriage document.

(3) This Part does not apply to a contract that is the constitution of a company, managed investment scheme or other kind of body.

(4) This Part does not apply to a small business contract to which a prescribed law of Namibia applies.

## CHAPTER 6 SPECIFIC PROTECTIONS

### PART 1 UNFAIR PRACTICES

#### **False or misleading representations**

##### **False or misleading representations about goods or services**

**54.** (1) A person may not in trade or commerce in connection with the supply or possible supply of goods or services or the sale or grant, or the possible sale or grant, of an interest in land or in connection with the promotion by any means of the supply or use of goods or services –

- (a) make a false or misleading representation that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use;

- (b) make a false or misleading representation that services are of a particular standard, quality, value or grade;
- (c) make a false or misleading representation that goods are new;
- (d) make a false or misleading representation that a particular person has agreed to acquire goods or services;
- (e) make a false or misleading representation that purports to be a testimonial by any person relating to goods or services;
- (f) make a false or misleading representation concerning –
  - (i) a testimonial by any person; or
  - (ii) a representation that purports to be such a testimonial;  
relating to goods or services;
- (g) make a false or misleading representation that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits;
- (h) make a false or misleading representation that the person making the representation has a sponsorship, approval or affiliation;
- (i) make a false or misleading representation with respect to the price of goods or services;
- (j) make a false or misleading representation concerning the availability of facilities for the repair of goods or of spare parts for goods;
- (k) make a false or misleading representation concerning the place of origin of goods;

- (l) make a false or misleading representation concerning the need for any goods or services;
- (m) make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy (including a guarantee under Part 2 of Chapter 6); or
- (n) make a false or misleading representation concerning a requirement to pay for a contractual right that –
  - (i) is wholly or partly equivalent to any condition, warranty, guarantee, right or remedy (including a guarantee under Part 2 of Chapter 6); and
  - (ii) a person has under a law of the State.

(2) For the purposes of applying subsection (1) in relation to a proceeding concerning a representation of a kind referred to in subsection (1), the representation is taken to be misleading unless evidence is adduced to the contrary.

(3) A person may not in trade or commerce, engage in conduct that is misleading to the public as to –

- (a) the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of any goods; and
- (b) the nature, the characteristics, the suitability for their purpose or the quantity of any services.

(4) A person may not in trade or commerce, make a representation that –

- (a) is false or misleading in a material particular; and
- (b) concerns the profitability, risk or any other material aspect of any business activity that the person has represented as one that can be, or can be to a considerable extent, carried on at or from a person's place of residence.

(5) A person must not, in trade or commerce, make a representation that –

- (a) is false or misleading in a material particular; and
- (b) concerns the profitability, risk or any other material aspect of any business activity –
  - (i) that the person invites (whether by advertisement or otherwise) other persons to engage or participate in, or to offer or apply to engage or participate in; and
  - (ii) that requires the performance of work by other persons, or the investment of money by other persons and the performance by them of work associated with the investment.

**False or misleading representations about sale of land**

**55.** (1) A person must not, in trade or commerce, in connection with the sale or grant, or the possible sale or grant, of an interest in land or in connection with the promotion by any means of the sale or grant of an interest in land –

- (a) make a false or misleading representation that the person making the representation has a sponsorship, approval or affiliation;
- (b) make a false or misleading representation concerning the nature of the interest in the land;
- (c) make a false or misleading representation concerning the price payable for the land;
- (d) make a false or misleading representation concerning the location of the land;
- (e) make a false or misleading representation concerning the characteristics of the land;
- (f) make a false or misleading representation concerning the use to which the land is capable of being put or may lawfully be put; or
- (g) make a false or misleading representation concerning the existence or availability of facilities associated with the land.

- (2) This section does not affect the application of any other provision of Part 2 of Chapter 5 (about misleading or deceptive conduct) or this Part in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

### **Offering rebates, gifts, prizes**

**56.** (1) A person may not in trade or commerce, offer any rebate, gift, prize or other free item with the intention of not providing it, or of not providing it as offered, in connection with –

- (a) the supply or possible supply of goods or services;
- (b) the promotion by any means of the supply or use of goods or services;
- (c) the sale or grant, or the possible sale or grant, of an interest in land; or
- (d) the promotion by any means of the sale or grant of an interest in land.

(2) Where a person offers any rebate, gift, prize or other free item in connection with –

- (a) the supply or possible supply of goods or services;
- (b) the promotion by any means of the supply or use of goods or services;
- (c) the sale or grant, or the possible sale or grant, of an interest in land; or
- (d) the promotion by any means of the sale or grant of an interest in land;

the person must, within the time specified in the offer or (if no such time is specified) within a reasonable time after making the offer, provide the rebate, gift, prize or other free item in accordance with the offer.

(3) Subsection (2) does not apply if –

(a) the person's failure to provide the rebate, gift, prize or other free item in accordance with the offer was due to the act or omission of another person, or to some other cause beyond the person's control; and

- (b) the person took reasonable steps and exercised due diligence to avoid the failure.
- (4) Subsection (2) does not apply to an offer that the person makes to another person

if –

- (a) the person offers to the other person a different rebate, gift, prize or other free item as a replacement which is of proportional value; and
- (b) the other person agrees to receive the different rebate, gift, prize or other free item.

(5) This section does not affect the application of any other provision of this Act in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

### **Bait advertising**

**57.** (1) A person may not in trade or commerce, advertise goods or services for supply at a specified price if –

(a) there are reasonable grounds for believing that the person will not be able to offer for supply those goods or services at that price for a period that is, and in quantities that are, reasonable, having regard to –

- (i) the nature of the market in which the person carries on business; and
- (ii) the nature of the advertisement which must include any limitation on the quantity of goods or services offered; and

(b) the person is aware or ought reasonably to be aware of those grounds.

(2) A person who, in trade or commerce, advertises goods or services for supply at a specified price must offer such goods or services for supply at that price for a period that is, and in quantities that are reasonable having regard to –

the nature of the market in which the person carries on business; and

- (b) the nature of the advertisement.

### **Wrongly accepting payment**

**58.** (1) A person may not in trade or commerce, accept payment or other consideration for goods or services if, at the time of the acceptance, the person intends not to supply the goods or services.

(2) A person may not in trade or commerce, accept payment or other consideration for goods or services if, at the time of the acceptance, the person intends to supply goods or services materially different from the goods or services in respect of which the payment or other consideration is accepted.

(3) A person may not in trade or commerce, accept payment or other consideration for goods or services if, at the time of the acceptance –

- (a) there are reasonable grounds for believing that the person will not be able to supply the goods or services –

- (i) within the period specified by or on behalf of the person at or before the time the payment or other consideration was accepted; or

- (ii) if no period is specified at or before that time—within a reasonable time; and

- (b) the person is aware or ought reasonably to be aware of those grounds.

(4) A person who, in trade or commerce, accepts payment or other consideration for goods or services must supply all the goods or services –

- (a) within the period specified by or on behalf of the person at or before the time the payment or other consideration was accepted; or

- (b) if no period is specified at or before that time within a reasonable time.

(5) Subsection (4) does not apply if –



- (a) the person's failure to supply all the goods or services within the period, or within a reasonable time, was due to the act or omission of another person, or to some other cause beyond the person's control; and
  - (b) the person took reasonable steps and exercised due diligence to avoid the failure.
- (6) Subsection (4) does not apply if –
- (a) the person offers to supply different goods or services as a replacement to the person (the customer) to whom the original supply was to be made; and
  - (b) the customer agrees to receive the different goods or services.
- (7) Subsections (1), (2), (3) and (4) apply whether or not the payment or other consideration that the person accepted represents the whole or a part of the payment or other consideration for the supply of the goods or services.

### **Application of provisions of this part to information providers**

**59.** (1) Sections 55, and 56 do not apply to a publication of matter by an information provider if –

- (a) in any case—the information provider made the publication in the course of carrying on a business of providing information; or
  - (b) if the information provider is the Namibian Broadcasting Corporation, or the holder of a licence granted under the Broadcasting Services Act 1992—the publication was by way of a radio or television broadcast by the information provider.
- (2) Subsection (1) does not apply to a publication of an advertisement.

### **Unsolicited supplies**

#### **Unsolicited cards**

**60.** (1) For the purposes of this section, a credit card is an article that is one or more of the following –

- (a) an article of a kind commonly known as a credit card;
- (b) a similar article intended for use in obtaining cash, goods or services on credit;  
and
- (c) an article of a kind that persons carrying on business commonly issue to their customers, or prospective customers, for use in obtaining goods or services from those persons on credit,

and includes an article that may be used as an article referred to in paragraph (a), (b) or (c).

- (2) For the purposes of this section, a debit card is –
  - (a) an article intended for use by a person in obtaining access to an account that is held by the person for the purpose of withdrawing or depositing cash or obtaining goods or services; or
  - (b) an article that may be used as an article referred to in paragraph (a).
- (3) A person may not send a credit card, or an article that may be used as a credit card, to another person except –
  - (a) pursuant to a written request by the person who will be under a liability to the person who issued the card or article in respect of the use of the card or article; or
  - (b) in renewal or replacement of, or in substitution for –
    - (i) a card or article of the same kind previously sent to the other person pursuant to a written request by the person who was under a liability, to the person who issued the card previously so sent, in respect of the use of that card; or
    - (ii) a card or article of the same kind previously sent to the other person and used for a purpose for which it was intended to be used.

(4) Subsection (3) does not apply unless the card or article is sent by or on behalf of the person who issued it.

(5) A person must not take any action that enables another person who has a credit card to use the card as a debit card, except in accordance with the other person's written request.

(6) A person must not take any action that enables another person who has a debit card to use the card as a credit card, except in accordance with the other person's written request.

### **Request for payment for unsolicited goods or services**

**61.** (1) A person may not in trade or commerce request payment from another person for unsolicited goods and services unless the person has reasonable cause to believe that there is a right to the payment.

(2) A person may not in trade or commerce request payment from another person for unsolicited services unless the person has reasonable cause to believe that there is a right to the payment.

(3) A person may not, in trade or commerce, send to another person an invoice or other document that –

(a) states the amount of a payment, or sets out the charge, for unsolicited goods or unsolicited services; and

(b) does not contain a warning statement that complies with the requirements set out in the regulations,

unless the person has reasonable cause to believe that there is a right to the payment or charge.

(4) In a proceeding against a person in relation to a contravention of this section, the person bears the onus of proving that the person had reasonable cause to believe that there was a right to the payment or charge.

## **Liability of recipient for unsolicited goods**

**62.** (1) If a person, in trade or commerce, supplies unsolicited goods to another person, the other person –

- (a) is not liable to make any payment for the goods; and
- (b) is not liable for loss of or damage to the goods, other than loss or damage resulting from the other person doing a wilful and unlawful act in relation to the goods during the recovery period.

(2) If a person sends, in trade or commerce, unsolicited goods to another person –

- (a) neither the sender nor any person claiming under the sender is entitled, after the end of the recovery period, to take action for the recovery of the goods from the other person; and
- (b) at the end of the recovery period, the goods become the property of the other person freed and discharged from all liens and charges of any description.

(3) Subsection (2) does not apply to or in relation to unsolicited goods sent to a person if –

- (a) the person has, at any time during the recovery period, unreasonably refused to permit the sender or the owner of the goods to take possession of the goods;
- (b) the sender or the owner of the goods has within the recovery period taken possession of the goods; or
- (c) the goods were received by the person in circumstances in which the person knew, or might reasonably be expected to have known, that the goods were not intended for him or her.

(4) The recovery period is whichever of the following periods ends first –

- (a) the period as prescribed starting on the day after the day on which the person received the goods;
  - (b) if the person who receives the unsolicited goods gives notice with respect to the goods to the supplier or sender in accordance with subsection (5).
- (5) A notice under subsection (4)(b) –
- (a) must be in writing;
  - (b) must state the name and address of the person who received the goods;
  - (c) must state the address at which possession may be taken of the goods, if it is not the address of the person; and
  - (d) must contain a statement to the effect that the goods are unsolicited goods.

### **Liability of recipient for unsolicited services**

**63.** If a person, in trade or commerce, supplies, or purports to supply but does not supply, unsolicited services to another person, the other person –

- (a) is not liable to make any payment for the services; and
- (b) is not liable for loss or damage as a result of the supply or purported supply of the services.

### **Request for payment for unauthorised entries or advertisements**

**64.** (1) A person may not request payment from another person of a charge for placing, in a publication, an entry or advertisement relating to –

- (a) the other person; or
- (b) the other person's profession, business, trade or occupation,

unless the person knows, or has reasonable cause to believe, that the other person authorised the placing of the entry or advertisement.

- (2) A person must not send to another person an invoice or other document that –
  - (a) states the amount of a payment, or sets out the charge, for placing, in a publication, an entry or advertisement relating to –
    - (i) the other person; or
    - (ii) the other person's profession, business, trade or occupation; and
  - (b) does not contain a warning statement that complies with the requirements set out in the regulations,

unless the person knows, or has reasonable cause to believe, that the other person authorised the placing of the entry or advertisement.

(3) Subsections (1) and (2) do not apply to an entry or advertisement that is placed in a publication published by a person who is –

- (a) the publisher of a publication that has an audited circulation of a prescribed number of copies or more per week, as confirmed by the most recent audit of the publication by a body specified in the regulations;
  - (b) a corporation related to such a publisher;
  - (c) an authority of Namibia; or
  - (d) a person specified in the regulations.
- (4) A person –
- (a) is not liable to make any payment to another person; and

- (b) is entitled to recover by action in a court against another person any payment made by the person to the other person,

in full or part satisfaction of a charge for placing, in a publication, an entry or advertisement, unless the person authorised the placing of the entry or advertisement.

(5) A person is not taken for the purposes of this section to have authorised the placing of the entry or advertisement, unless –

- (a) a document authorising the placing of the entry or advertisement has been signed by the person or by another person authorised by him or her;
  - (b) a copy of the document has been given to the person before the right to payment of a charge for the placing of the entry or advertisement is asserted; and
  - (c) the document specifies –
    - (i) the name and address of the person publishing the entry or advertisement;
    - (ii) particulars of the entry or advertisement; and
    - (iii) the amount of the charge for the placing of the entry or advertisement, or the basis on which the charge is, or is to be, calculated.
- (4) In a proceeding against a person in relation to a contravention of this section, the person bears the onus of proving that the person knew or had reasonable cause to believe that the person against whom a right to payment was asserted had authorised the placing of the entry or advertisement.

### **Harassment and coercion**

**65.** (1) A person may not use physical force, or undue influence or coercion, in connection with –

- (a) the supply or possible supply of goods or services;
- (b) the payment for goods or services;

- (c) the sale or grant, or the possible sale or grant, of an interest in land; or
- (d) the payment for an interest in land.

(2) Subsections (1)(c) and (d) do not affect the application of any other provision of Part 2 of Chapter 5 or this Part in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

## **Pricing**

### **Multiple pricing**

**66.** (1) A person in trade or commerce, may not supply goods if the goods have more than one displayed price.

(2) Where for purposes of subsection (1) more than one price is displayed, the lowest price will prevail.

(3) For purposes of this section, a displayed price for goods means a price for the goods, or any representation that may reasonably be inferred to be a representation of a price for the goods that –

- (a) is annexed or affixed to, or is written, printed, stamped or located on, or otherwise applied to, the goods or any covering, label, reel or thing used in connection with the goods;
- (b) is used in connection with the goods or anything on which the goods are mounted for display or exposed for supply;
- (c) is determined on the basis of anything encoded on or in relation to the goods; or
- (d) is published in relation to the goods in a catalogue available to the public if –



- (i) a time is specified in the catalogue or publication of a similar nature as the time after which the goods will not be sold at that price and that time has not passed; or
  - (ii) in any other case—the catalogue or publication of a similar nature may reasonably be regarded as not out of date; or
- (e) is in any other way represented in a manner from which it may reasonably be inferred that the price or representation is applicable to the goods,

and includes such a price or representation that is partly obscured by another such price or representation that is written, stamped or located partly over that price or representation.

- (3) If –
- (a) a price or representation is included in a catalogue ; and
  - (b) the catalogue is expressed to apply only to goods supplied at a specified location, or in a specified region,

the price or representation is taken, for the purposes of subsection (2)(d), not to have been made in relation to supply of the goods at a different location, or in a different region, as the case may be.

- (4) Despite subsection (2), a price or representation is not a displayed price for goods if –
- (a) the price or representation is wholly obscured by another such price or representation that is written, stamped or located wholly over that price or representation; or
  - (b) the price or representation –
    - (i) is expressed as a price per unit of mass, volume, length or other unit of measure; and

- (ii) is presented as an alternative means of expressing the price for supply of the goods that is a displayed price for the goods;
  - (c) the price or representation is expressed as an amount in a currency other than Namibian currency; or
  - (d) the price or representation is expressed in a way that is unlikely to be interpreted as an amount of Namibian currency.
- (5) Despite subsection (2)(d), a displayed price for goods that is a displayed price ceases to be a displayed price for the goods if –
- (a) the displayed price is retracted; and
  - (b) the retraction is published in a manner that has at least a similar circulation or audience as the catalogue or advertisement.

### **Single price to be specified in certain circumstances**

**67.** (1) A person may not in trade or commerce, in connection with the supply, promotion or possible supply, to another person of goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption make a representation with respect to an amount that, if paid, would constitute only a part of the consideration for the supply of the goods or services unless the person also specifies, in a prominent way and as a single figure, the single price for the goods or services.

(2) A person is not required to include, in the single price for goods, a charge that is payable in relation to delivering the goods from the supplier to the other person.

- (3) If for purposes of subsection (2) –
- (a) the person does not include in the single price a charge that is payable in relation to delivery of the goods from the supplier to the other person; and

- (b) the person knows, at the time of the representation, the minimum amount of a charge in relation to delivering the goods from the supplier to the other person that must be paid by the other person,

the person may not make the representation referred to in subsection (1) unless the person also specifies that minimum amount.

- (4) Subsection (1) does not apply if –
  - (a) the representation is made exclusively to a body corporate;
  - (b) the representation is in a class of representations prescribed by the regulations; and
  - (c) the conditions (if any) prescribed by the regulations in relation to representations in that class have been complied with.
- (5) For the purposes of subsection (1), the person is taken not to have specified a single price for the goods or services in a prominent way unless the single price is at least as prominent as the most prominent of the parts of the consideration for the supply.
- (6) Prominent display of a single price does not apply in relation to services to be supplied under a contract if the –
  - (a) contract provides for the supply of the services for the term of the contract;
  - (b) contract provides for periodic payments for the services to be made during the term of the contract; and
  - (c) contract also provides for the supply of goods—the goods are directly related to the supply of the services.
- (7) The single price is the minimum quantifiable consideration for the supply of the goods or services at the time of the representation, including each of the following amounts (if any) that is quantifiable at that time –

- (a) a charge of any description payable to the person making the representation by another person unless –
  - (i) the charge is payable at the option of the other person; and
  - (ii) at or before the time of the representation, the other person has either deselected the charge or not expressly requested that the charge be applied;
- (b) the amount which reflects any tax, duty, fee, levy or charge imposed on the person making the representation in relation to the supply; and
- (c) any amount paid or payable by the person making the representation in relation to the supply with respect to any tax, duty, fee, levy or charge if –
  - (i) the amount is paid or payable under an agreement or arrangement made under a law of Namibia; and
  - (ii) the tax, duty, fee, levy or charge would have otherwise been payable by another person in relation to the supply.

## PART 2

### CONSUMER TRANSACTIONS

#### **Guarantees relating to the supply of goods**

##### **Guarantee as to title**

**68.** (1) If a person supplies goods to a consumer there is a guarantee that the consumer will have a right to ownership of the goods.

(2) Subsection (1) does not apply to a supply (a supply of limited title) if an intention that the supplier of the goods should transfer only such title as the supplier, or another person, may have –

- (a) appears from the contract for the supply; or
  - (c) is to be inferred from the circumstances of that contract.
- (3) This section does not apply if the supply is a supply by way of hire or lease.

### **Guarantee as to undisturbed possession**

**69.** (1) If –

- (a) a person (the supplier) supplies goods to a consumer; and
- (b) the supply is not a supply of limited title,

there is a guarantee that the consumer has the right to undisturbed possession of the goods.

(2) Subsection (1) does not apply to the extent that the consumer's undisturbed possession of the goods may be lawfully disturbed by a person who is entitled to the benefit of any security, charge or encumbrance disclosed to the consumer before the consumer agreed to the supply.

(3) If –

- (a) a person (the supplier) supplies goods to a consumer; and
- (b) the supply is a supply of limited title,

there is a guarantee that the following persons will not disturb the consumer's possession of the goods –

- (i) the supplier;
- (ii) if the parties to the contract for the supply intend that the supplier should transfer only such title as another person may have—that other person; and
- (iii) anyone claiming through or under the supplier or that other person (otherwise than under a security, charge or encumbrance disclosed to the consumer before the consumer agreed to the supply).

(4) This section applies to a supply by way of hire or lease only for the period of the hire or lease.

#### **Guarantee as to undisclosed securities**

**70.** (1) If –

- (a) a person (the supplier) supplies goods to a consumer; and
- (b) the supply is not a supply of limited title,

there is a guarantee that –

- (c) the goods are free from any security, charge or encumbrance:
  - (i) that was not disclosed to the consumer, in writing, before the consumer agreed to the supply; or
  - (ii) that was not created by or with the express consent of the consumer; and
- (d) the goods will remain free from such a security, charge or encumbrance until the time when the property in the goods passes to the consumer.

(2) A supplier does not fail to comply with the guarantee only because of the existence of a floating charge over the supplier's assets unless and until the charge becomes fixed and enforceable by the person to whom the charge is given.

(3) If –

(a) a person (the supplier) supplies goods to a consumer; and

(c) the supply is a supply of limited title,

there is a guarantee that all securities, charges or encumbrances known to the supplier, and not known to the consumer, were disclosed to the consumer before the consumer agreed to the supply.

(4) This section does not apply if the supply is a supply by way of hire or lease.

### **Guarantee as to acceptable quality**

**71.** (1) If –

(a) a person supplies, in trade or commerce, goods to a consumer; and

(b) the supply does not occur by way of sale by auction;

there is a guarantee that the goods are of acceptable quality.

(2) Goods are of acceptable quality if they are as:

(a) fit for all the purposes for which goods of that kind are commonly supplied;

and

(b) acceptable in appearance and finish; and

(c) free from defects; and

(d) safe; and

(e) durable;

as a reasonable consumer fully acquainted with the state and condition of the goods (including any hidden defects of the goods), would regard as acceptable having regard to the matters in subsection (3).

- (3) The matters for the purposes of subsection (2) are:
  - (a) the nature of the goods; and
  - (b) the price of the goods (if relevant); and
  - (c) any statements made about the goods on any packaging or label on the goods;and
  - (d) any representation made about the goods by the supplier or manufacturer of the goods; and
  - (e) any other relevant circumstances relating to the supply of the goods.

(4) If:

- (a) goods supplied to a consumer are not of acceptable quality; and
- (b) the only reason or reasons why they are not of acceptable quality were specifically drawn to the consumer's attention before the consumer agreed to the supply;

the goods are taken to be of acceptable quality.

(5) If:

- (a) goods are displayed for sale or hire; and
- (b) the goods would not be of acceptable quality if they were supplied to a consumer;

the reason or reasons why they are not of acceptable quality are taken, for the purposes of subsection (4), to have been specifically drawn to a consumer's attention if those reasons were disclosed on a written notice that was displayed with the goods and that was transparent.

(6) Goods do not fail to be of acceptable quality if:

- (a) the consumer to whom they are supplied causes them to become of unacceptable quality, or fails to take reasonable steps to prevent them from becoming of unacceptable quality; and
- (b) they are damaged by abnormal use.

(7) Goods do not fail to be of acceptable quality if:

- (a) the consumer acquiring the goods examines them before the consumer agrees to the supply of the goods; and
- (b) the examination ought reasonably to have revealed that the goods were not of acceptable quality.

### **Guarantee as to fitness for any disclosed purpose**

**72.** (1) If:



(a) a person (the supplier) supplies, in trade or commerce, goods to a consumer;  
and

(b) the supply does not occur by way of sale by auction;  
there is a guarantee that the goods are reasonably fit for any disclosed purpose, and for any purpose for which the supplier represents that they are reasonably fit.

(2) A disclosed purpose is a particular purpose, whether or not that purpose is a purpose for which the goods are commonly supplied, for which the goods are being acquired by the consumer and that –

(a) the consumer makes known, expressly or by implication to –

(i) the supplier; or

(ii) a person by whom any prior negotiations or arrangements in relation to the acquisition of the goods were conducted or made; or

(b) the consumer makes known to the manufacturer of the goods either directly or through the supplier or the person referred to in paragraph (a)(ii).

(3) This section does not apply if the circumstances show that the consumer did not rely on, or that it was unreasonable for the consumer to rely on, the skill or judgment of the supplier, the person referred to in subsection (2)(a)(ii) or the manufacturer, as the case may be.

### **Guarantee relating to the supply of goods by description**

**73.** (1) If –

(a) a person supplies, in trade or commerce, goods by description to a consumer;  
and

(b) the supply does not occur by way of sale by auction;

there is a guarantee that the goods correspond with the description.

(2) A supply of goods is not prevented from being a supply by description only because, having been exposed for sale or hire, they are selected by the consumer.

(3) If goods are supplied by description as well as by reference to a sample or demonstration model, the guarantees in this section and in section 57 both apply.

### **Guarantees relating to the supply of goods by sample or demonstration model**

- 74.** (1) If –
- (a) a person supplies, in trade or commerce, goods to a consumer by reference to a sample or demonstration model; and
  - (b) the supply does not occur by way of sale by auction;  
there is a guarantee that:
  - (c) the goods correspond with the sample or demonstration model in quality, state or condition; and
  - (d) if the goods are supplied by reference to a sample—the consumer will have a reasonable opportunity to compare the goods with the sample; and
  - (e) the goods are free from any defect that:
    - (i) would not be apparent on reasonable examination of the sample or demonstration model; and
    - (ii) would cause the goods not to be of acceptable quality.
- (2) If goods are supplied by reference to a sample or demonstration model as well as by description, the guarantees in section 56 and in this section both apply.

### **Guarantee as to repairs and spare parts**

- 75.** (1) If –
- (a) a person supplies, in trade or commerce, goods to a consumer; and
  - (b) the supply does not occur by way of sale by auction;

there is a guarantee that the manufacturer of the goods will take reasonable action to ensure that facilities for the repair of the goods, and parts for the goods, are reasonably available for a reasonable period after the goods are supplied.

(2) This section does not apply if the manufacturer took reasonable action to ensure that the consumer would be given written notice, at or before the time when the consumer agrees to the supply of the goods that –

- (a) facilities for the repair of the goods would not be available or would not be available after a specified period; or
- (b) parts for the goods would not be available or would not be available after a specified period.

### **Guarantee as to express warranties**

**76.** (1) If –

- (a) a person supplies, in trade or commerce, goods to a consumer; and
- (b) the supply does not occur by way of sale by auction;

there is a guarantee that the manufacturer of the goods will comply with any express warranty given or made by the manufacturer in relation to the goods.

(2) If –

- (a) a person supplies, in trade or commerce, goods to a consumer; and
- (b) the supply does not occur by way of sale by auction;

there is a guarantee that the supplier will comply with any express warranty given or made by the supplier in relation to the goods.

### **Guarantees relating to the supply of services**

#### **Guarantee as to due care and skill**

**77.** If a person supplies, in trade or commerce, services to a consumer, there is a guarantee that the services will be rendered with due care and skill.

#### **Guarantees as to fitness for a particular purpose**

**78.** If:

- (a) a person (the supplier) supplies, in trade or commerce, services to a consumer; and

(b) the consumer, expressly or by implication, makes known to the supplier any particular purpose for which the services are being acquired by the consumer; there is a guarantee that the services, and any product resulting from the services, will be reasonably fit for that purpose.

(2) If:

(a) a person (the supplier) supplies, in trade or commerce, services to a consumer; and

(b) the consumer makes known expressly or by implication to:

(i) the supplier; or

(ii) a person by whom any prior negotiations or arrangements in relation to the acquisition of the services were conducted or made;

the result that the consumer wishes the services to achieve there is a guarantee that the services, and any product resulting from the services, will be of such a nature, and quality, state or condition, that they might reasonably be expected to achieve that result.

(3) This section does not apply if the circumstances show that the consumer did not rely on, or that it was unreasonable for the consumer to rely on, the skill or judgment of the supplier.

(4) This section does not apply to a supply of services of a professional nature by a qualified architect or engineer.

### **Guarantee as to reasonable time for supply**

**79.** If –

(a) a person (the supplier) supplies, in trade or commerce, services to a consumer; and

(b) the time within which the services are to be supplied is not fixed by the contract for the supply of the services; or

(d) is not to be determined in a manner agreed to by the consumer and supplier;

there is a guarantee that the services will be supplied within a reasonable time.

### **Services to which this part does not apply**

**80.** (1) This part does not apply to services that are, or are to be, supplied under –

- (a) a contract for or in relation to the transportation or storage of goods for the purposes of a business, trade, profession or occupation carried on or engaged in by the person for whom the goods are transported or stored; or
- (b) a contract of insurance.

(2) To avoid doubt, subsection (1)(a) does not apply if the consignee of the goods is not carrying on or engaged in a business, trade, profession or occupation in relation to the goods.

### **Guarantees not to be excluded by contract**

#### **Guarantees not to be excluded by contract**

**81.** (1) A term of a contract (including a term that is not set out in the contract but is incorporated in the contract by another term of the contract) is void to the extent that the term purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying –

- (a) the application of all or any of the provisions of this part;
- (b) the exercise of a right conferred by such a provision; or
- (c) any liability of a person for a failure to comply with a guarantee that applies under this part to a supply of goods or services.

(2) A term of a contract is not taken, for the purposes of this section, to exclude, restrict or modify the application of a provision of this part unless the term does so expressly or is inconsistent with the provision.

## **Limitation of liability for failures to comply with guarantees**

**82.** (1) A term of a contract for the supply by a person of goods other than goods of a kind ordinarily acquired for personal, domestic or household use or consumption is not void under section 64 merely because the term limits the person's liability for failure to comply with a guarantee (other than a guarantee under section 69, 70 or 71) to one or more of the following:

- (a) the replacement of the goods or the supply of equivalent goods;
- (b) the repair of the goods;
- (c) the payment of the cost of replacing the goods or of acquiring equivalent goods;
- (d) the payment of the cost of having the goods repaired.

(2) A term of a contract for the supply by a person of services other than services of a kind ordinarily acquired for personal, domestic or household use or consumption is not void under section 64 merely because the term limits the person's liability for failure to comply with a guarantee to the –

- (a) supplying of the services again; or
- (b) payment of the cost of having the services supplied again.

(3) This section does not apply in relation to a term of a contract if the person to whom the goods or services were supplied establishes that it is not fair or reasonable for the person who supplied the goods or services to rely on that term of the contract.

(4) In determining for the purposes of subsection (3) whether or not reliance on a term of a contract is fair or reasonable, a court is to have regard to all the circumstances of the case, and in particular to the following matters:

- (a) the strength of the bargaining positions of the person who supplied the goods or services and the person to whom the goods or services were supplied (the buyer) relative to each other, taking into account, among other things, the availability of equivalent goods or services and suitable alternative sources of supply;
- (b) whether the buyer received an inducement to agree to the term or, in agreeing to the term, had an opportunity of acquiring the goods or services or equivalent

goods or services from any source of supply under a contract that did not include that term;

- (c) whether the buyer knew or ought reasonably to have known of the existence and extent of the term (having regard, among other things, to any custom of the trade and any previous course of dealing between the parties);
- (d) in the case of the supply of goods, whether the goods were manufactured, processed or adapted to the special order of the buyer.

### **General provisions of this part**

#### **Contravention of industry codes**

**83.** A corporation may not, in trade or commerce, contravene an applicable industry code.

#### **Application of this part to supply of gas, electricity and telecommunications**

**84.** (1) This part does not apply to a supply if the supply is a supply of –

- (a) a kind specified in the regulations; and
- (b) a supply of gas, electricity or a telecommunications service.

(2) A telecommunications service is a service for carrying communications by means of guided or unguided electromagnetic energy or both.

#### **Display notices**

**85.** (1) The Minister may, by notification, determine, that persons (the suppliers) who make supplies, or supplies of a specified kind, to which guarantees apply under this part are required to display, in accordance with the determination, a notice that meets the requirements of the determination.

(2) A supplier who makes a supply to a consumer to which a guarantee applies under this part, and to which such a determination relates, must ensure that a notice that meets those requirements is, in accordance with the determination –

- (a) if the consumer takes delivery of the goods or services at the supplier's premises displayed at those premises; or
- (b) otherwise drawn to the consumer's attention before the consumer agrees to the supply of the goods.

(3) Without limiting subsection (1), a determination under that subsection may do all or any of the following:

- (a) require the notice to include specified information about the application of all or any of the provisions of this part and parts on Remedies relating to guarantees of chapter 9;
- (b) specify where the notice must be displayed;
- (b) specify how the notice must be drawn to the attention of consumers;
- (c) specify requirements as to the form of the notice.

### **Conflict of laws**

**86.** If –

- (a) the proper law of a contract for the supply of goods or services to a consumer would be the law of Namibia but for a term of the contract that provides otherwise; or



- (b) a contract for the supply of goods or services to a consumer contains a term that purports to substitute, or has the effect of substituting, the provisions of the law of a country other than Namibia for all or any of the provisions of this part;

the provisions of this part apply in relation to the supply under the contract despite that term.

## **Unsolicited consumer agreements**

### **Meaning of unsolicited consumer agreement**

- 87.** (1) An agreement is an unsolicited consumer agreement if –
- (a) it is for the supply, in trade or commerce, of goods or services to a consumer; and
  - (b) it is made as a result of negotiations between a dealer and the consumer –
    - (i) in each other's presence at a place other than the business or trade premises of the supplier of the goods or services; or
    - (ii) by telephone;

whether or not they are the only negotiations that precede the making of the agreement; and

- (c) the consumer did not invite the dealer to come to that place, or to make a telephone call, for the purposes of entering into negotiations relating to the supply of those goods or services (whether or not the consumer made such an invitation in relation to a different supply); and
- (d) the total price paid or payable by the consumer under the agreement –
  - (i) is not ascertainable at the time the agreement is made; or
  - (ii) if it is ascertainable at that time—is more than \$100 or such other amount prescribed by the regulations.

(2) To avoid doubt, a place mentioned in subsection (1) (b) (i) may be a public place, and need not be a place the dealer cannot enter without the consumer's consent or invitation.

(3) The consumer is not taken, for the purposes of subsection (1) (c), to have invited the dealer to come to that place, or to make a telephone call, merely because the consumer has

–

- (a) given his or her name or contact details other than for the predominant purpose of entering into negotiations relating to the supply of the goods or services referred to in subsection (1) (c); or
- (b) contacted the dealer in connection with an unsuccessful attempt by the dealer to contact the consumer.

(4) An invitation merely to quote a price for a supply is not taken, for the purposes of subsection (1) (c), to be an invitation to enter into negotiations for a supply.

(5) An agreement is also an unsolicited consumer agreement if it is an agreement of a kind that the regulations provide are unsolicited consumer agreements.

(6) However, despite subsections (1) and (5), an agreement is not an unsolicited consumer agreement if it is an agreement of a kind that the regulations provide are not unsolicited consumer agreements.

### **Presumption that agreements are unsolicited consumer agreements**

**88.** (1) In a proceeding relating to a contravention or possible contravention of this part (other than a criminal proceeding), an agreement is presumed to be an unsolicited consumer agreement if –

- (a) a party to the proceeding alleges that the agreement is an unsolicited consumer agreement; and
- (b) no other party to the proceeding proves that the agreement is not an unsolicited consumer agreement.

(2) In a proceeding relating to a contravention or possible contravention of this part (other than a criminal proceeding), it is presumed that a proposed agreement would be an unsolicited consumer agreement if it were made if –

- (a) a party to the proceeding alleges that the proposed agreement would be an unsolicited consumer agreement if it were made; and
- (b) no other party to the proceeding proves that the proposed agreement would not be an unsolicited consumer agreement if it were made.

### **Meaning of dealer**

**89.** A dealer is a person who, in trade or commerce –

- (a) enters into negotiations with a consumer with a view to making an agreement for the supply of goods or services to the consumer; or
- (b) calls on, or telephones, a consumer for the purpose of entering into such negotiations;

whether or not that person is, or is to be, the supplier of the goods or services.

### **Meaning of negotiation**

**90.** A negotiation, in relation to an agreement or a proposed agreement, includes any discussion or dealing directed towards the making of the agreement or proposed agreement (whether or not the terms of the agreement or proposed agreement are open to any discussion or dealing).

### **Permitted hours for negotiating an unsolicited consumer agreement**

**91.** (1) A dealer must not call on a person for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose –

- (a) at any time on a Sunday or a public holiday; or

- (b) before 9 am on any other day; or
- (c) after 6 pm on any other day (or after 5 pm if the other day is a Saturday) or
- (d) on prescribed days and times.

(2) Subsection (1) does not apply if the dealer calls on the person in accordance with consent that –

- (a) was given by the person to the dealer or a person acting on the dealer's behalf; and
- (b) was not given in the presence of the dealer or a person acting on the dealer's behalf.

### **Disclosing purpose and identity**

**92.** A dealer who calls on a person for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose, must, as soon as practicable and in any event before starting to negotiate –

- (a) clearly advise the person that the dealer's purpose is to seek the person's agreement to a supply of the goods or services concerned; and
- (b) clearly advise the person that the dealer is obliged to leave the premises immediately on request; and
- (c) provide to the person such information relating to the dealer's identity as is prescribed by the regulations.

### **Ceasing to negotiate on request**

**93.** (1) A dealer who calls on a person at any premises for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose, must leave the premises immediately on the request of –

- (a) the occupier of the premises, or any person acting with the actual or apparent authority of the occupier; or
- (b) the person (the prospective consumer) with whom the negotiations are being conducted.

(2) If the prospective consumer makes such a request, the dealer must not contact the prospective consumer for the purpose of negotiating an unsolicited consumer agreement

(or for an incidental or related purpose) for at least 30 days after the prospective consumer makes the request.

(3) If the dealer is not, or is not to be, the supplier of the goods or services to which the negotiations relate –

- (a) subsection (2) applies to that supplier, and any person acting on behalf of that supplier, in the same way that it applies to the dealer; but
- (b) subsection (2) does not apply to the dealer contacting the prospective customer in relation to a supply by another supplier.

### **Informing person of termination period**

94. A dealer must not make an unsolicited consumer agreement with a person unless

–

- (a) before the agreement is made, the person is given information as to the following:
  - (i) the person's right to terminate the agreement during the termination period;
  - (ii) the way in which the person may exercise that right;
  - (iii) such other matters as are prescribed by the regulations; and
- (b) if the agreement is made in the presence of both the dealer and the person—the person is given the information in writing; and
- (c) if the agreement is made by telephone—the person is given the information by telephone, and is subsequently given the information in writing; and
- (d) the form in which, and the way in which, the person is given the information complies with any other requirements prescribed by the regulations.

### **Liability of suppliers for contraventions by dealers**

95. If –

- (a) a dealer contravenes a provision of this part in relation to an unsolicited consumer agreement; and
- (b) the dealer is not, or is not to be, the supplier of the goods or services to which the agreement relates;

the supplier of the goods or services is also taken to have contravened that provision in relation to the agreement.

### **Requirement to give document to the consumer**

**96.** (1) If an unsolicited consumer agreement was not negotiated by telephone, the dealer who negotiated the agreement must give a copy of the agreement to the consumer under the agreement immediately after the consumer signs the agreement.

(2) If an unsolicited consumer agreement was negotiated by telephone, the dealer who negotiated the agreement must, within 5 business days after the agreement was made or such longer period agreed by the parties, give to the consumer under the agreement –

- (a) personally; or
- (b) by post; or
- (c) electronic communication, provided the consumer consents;

a document (the agreement document) evidencing the agreement.

(3) An unsolicited consumer agreement was negotiated by telephone if the negotiations that resulted in the making of the agreement took place by telephone (whether or not other negotiations preceded the making of the agreement).

### **Requirements for all unsolicited consumer agreements**

**97.** The supplier under an unsolicited consumer agreement must ensure that the agreement, or (if the agreement was negotiated by telephone) the agreement document, complies with the following requirements:

- (a) it must set out in full all the terms of the agreement including –

- (i) the total consideration to be paid or provided by the consumer under the agreement or, if the total consideration is not ascertainable at the time the agreement is made, the way in which it is to be calculated; and
  - (ii) any postal or delivery charges to be paid by the consumer;
- (b) its front page must include a notice that –
  - (i) conspicuously and prominently informs the consumer of the consumer's right to terminate the agreement; and
  - (ii) conspicuously and prominently sets out any other information prescribed by the regulations; and
  - (iii) complies with any other requirements prescribed by the regulations;
- (c) it must be accompanied by a notice that –
  - (i) may be used by the consumer to terminate the agreement; and
  - (ii) complies with any requirements prescribed by the regulations;
- (d) it must conspicuously and prominently set out in full –
  - (i) the supplier's name; and registration numbers; and
  - (ii) the supplier's business address or, if the supplier does not have a business address, the supplier's residential address; and
  - (iii) if the supplier has an email address, the supplier's email address; and
  - (iv) if the supplier has a fax number, the supplier's fax number;
- (e) it must be printed clearly or typewritten (apart from any amendments to the printed or typewritten form, which may be handwritten);
- (f) it must be transparent.

**Additional requirements for unsolicited consumer agreements not negotiated by telephone**

**98.** The supplier under an unsolicited consumer agreement that was not negotiated by telephone must ensure that, in addition to complying with the requirements of section 79, the agreement complies with the following requirements –

- (a) the agreement must be signed by the consumer under the agreement;

- (b) if the agreement is signed by a person on the supplier's behalf—the agreement must state that the person is acting on the supplier's behalf, and must set out in full:
  - (i) the person's name; and
  - (ii) the person's business address (not being a post box) or, if the person does not have a business address, the person's residential address; and
  - (iii) if the person has an email address—the person's email address.

### **Requirements for amendments of unsolicited consumer agreements**

**99.** The supplier, under an unsolicited consumer agreement, must ensure that any amendments to the agreement are signed by both parties to the agreement.

### **Terminating an unsolicited consumer agreement during the termination period**

**100.** (1) The consumer under an unsolicited consumer agreement may, during the period provided under subsection (3), terminate the agreement by indicating in an oral or written notice to the supplier under the agreement, an intention to terminate the agreement.

- (2) A right of termination under this section may be exercised –
  - (a) despite affirmation of the agreement by the consumer; and
  - (b) even though the agreement has been fully executed.

(3) The period during which the consumer may terminate the agreement is whichever of the following periods is the longest –

- (a) if the agreement was not negotiated by telephone, the period starting on the day on which the agreement was made and ending at the end of the tenth business day after the day on which the agreement was made;
- (b) if the agreement was negotiated by telephone, the period starting on the day on which the agreement was made and ending at the end of the tenth business day after the day on which the consumer was given the agreement document relating to the agreement;



- (c) if one or more of sections 92 (permitted hours for negotiating an unsolicited consumer agreement), 93 (disclosing purpose and identity) and 94 (ceasing to negotiate on request) were contravened in relation to the agreement –
    - (i) if the agreement was not negotiated by telephone—the period starting on the day on which the agreement was made and ending at the end of the period of 3 months starting on the day after the day on which the agreement was made; or
    - (ii) if the agreement was negotiated by telephone—the period starting on the day on which the agreement was made and ending at the end of the period of 3 months starting on the day after the day on which the consumer was given the agreement document relating to the agreement;
  - (d) if one or more of section 95 (informing consumer of termination period), a provision of sections 96, 97, 98, 99 (requirements for unsolicited consumer agreements) and section 86 (prohibition on supplies etc.) were contravened in relation to the agreement –
    - (i) if the agreement was not negotiated by telephone, the period starting on the day on which the agreement was made and ending at the end of the period of 6 months starting on the day after the day on which the agreement was made; or
    - (ii) if the agreement was negotiated by telephone, the period starting on the day on which the agreement was made and ending at the end of the period of 6 months starting on the day after the day on which the consumer was given the agreement document relating to the agreement;such other period as the agreement provides.
- 
- (4) If the notice under subsection (1) is written, it may be given –
    - (a) by delivering it personally to the supplier; or
    - (b) by delivering it, or sending it by post, in an envelope addressed to the supplier, to the supplier’s address referred to in section 98 (d) (iv); or
    - (c) if the supplier has an email address—by sending it to the supplier’s email address referred to in section 98 (d) (v); or
    - (d) if the supplier has a fax number—by faxing it to the supplier’s fax number referred to in section 98 (d) (vi).

(5) A notice under subsection (1) sent by post to a supplier is taken to have been given to the supplier at the time of posting.

(6) There are no requirements relating to the form or content of a notice under subsection (1).

### **Effect of termination**

**101.** (1) If an unsolicited consumer agreement is terminated in accordance with section 101 –

- (a) the agreement is taken to have been rescinded by mutual consent; and
- (b) any related contract or instrument is void.

(2) A related contract or instrument, in relation to an unsolicited consumer agreement is –

- (a) any contract of guarantee or indemnity that is related to the agreement; or
- (b) any instrument related to the agreement that creates a mortgage or charge in favour of the supplier under the contract or the dealer in relation to the contract (or a person nominated by the supplier or dealer); or
- (c) any contract or instrument (other than an instrument of a kind referred to in paragraph (b)) that is collateral or related to the agreement;

but does not include a tied continuing credit contract or a tied loan contract).

(3) The termination of an unsolicited consumer agreement has effect for the purposes of section 82 and this section even if –

- (a) the supplier under the agreement has not received the notice of termination; or
- (b) the goods or services supplied under the agreement have been wholly or partly consumed or used.

### **Obligations of suppliers on termination**

**102.** If an unsolicited consumer agreement is terminated in accordance with section 101, the supplier under the agreement must immediately upon being notified of the termination

return or refund to the consumer under the agreement any consideration (or the value of any consideration) that the consumer gave under the agreement or a related contract or instrument.

### **Obligations and rights of consumers on termination**

**103.** If an unsolicited consumer agreement is terminated in accordance with section 101, the consumer under the agreement must within a reasonable time –

- (a) return to the supplier under the agreement any goods –
  - (i) that have been received from the supplier under the agreement; and
  - (ii) that the consumer has not already consumed; or
- (c) notify the supplier of the place where the supplier may collect the goods.

(2) The goods become the property of the consumer freed and discharged from all liens and charges of any description if –

- (a) the consumer gives notice to the supplier under subsection (1) (b); and
- (b) the supplier does not collect the goods within 30 days after the termination of the contract.

(3) If –

- (a) the agreement is terminated in accordance with section 101 after the end of –
  - (i) where the agreement was not negotiated by telephone, the period starting on the day on which the agreement was made and ending at the end of the tenth business day after the day on which the agreement was made; or
  - (ii) where the agreement was negotiated by telephone, the period starting on the day on which the agreement was made and ending at the end of the tenth business day after the day on which the consumer was given the agreement document relating to the agreement; and
- (b) the consumer returns the goods to the supplier, or the supplier collects the goods, under this section; and
- (c) the consumer has failed to take reasonable care of the goods;

the consumer is liable to pay compensation to the supplier for the damage to, or depreciation in the value of, the goods.

(4) The compensation is recoverable in a court of competent jurisdiction.

(5) However, the consumer is not liable for any such damage or depreciation attributable to normal use of the goods or to circumstances beyond the consumer's control.

(6) If –

(a) an unsolicited consumer agreement is terminated in accordance with section 101 after the end of –

(i) if the agreement was not negotiated by telephone—the period starting on the day on which the agreement was made and ending at the end of the tenth business day after the day on which the agreement was made; or

(ii) if the agreement was negotiated by telephone—the period starting on the day on which the agreement was made and ending at the end of the tenth business day after the day on which the consumer was given the agreement document relating to the agreement; and

(c) prior to the termination, but after the end of that period, a service was supplied under the agreement;

the termination does not affect any liability of the consumer under the agreement to provide consideration for the service.

### **Prohibition on supplies**

**104.** The supplier under an unsolicited consumer agreement may not –

(a) supply to the consumer under the agreement the goods or services to be supplied under the agreement; or

(b) accept any payment or any other consideration in connection with those goods or services; or

(c) require any payment, or any other consideration, in connection with those goods or services;

during –

- (d) if the agreement was not negotiated by telephone, the period starting on the day on which the agreement was made and ending at the end of the tenth business day after the day on which the agreement was made; or
- (e) if the agreement was negotiated by telephone, the period starting on the day on which the agreement was made and ending at the end of the tenth business day after the day on which the consumer was given the agreement document relating to the agreement.

(2) If the supplier supplies goods to the consumer in contravention of this section, the consumer has the same rights in relation to the goods as if the goods were unsolicited goods.

(3) If the supplier supplies services to the consumer in contravention of this section, the consumer has the same rights in relation to the services as if the services were unsolicited services.

### **Repayment of payments received after termination**

**105.** If an unsolicited consumer agreement is terminated in accordance with section 101, the supplier under the agreement must immediately refund to the consumer under the agreement any payment –

- (a) that the consumer, or a person acting on the consumer's behalf, makes to the supplier after the termination; and
- (b) that purports to be made under the agreement or a related contract or instrument.

### **Prohibition on recovering amounts after termination**

**106.** (1) If an unsolicited consumer agreement is terminated in accordance with section 82, a person may not –

- (a) bring or assert an intention to bring legal proceedings against the consumer; or
  - (b) take or assert an intention to take any other action against the consumer; in relation to an amount alleged to be payable, under the agreement or a related contract or instrument, by the consumer under the agreement.
- (2) Subsection (1) does not apply to –
- (a) bringing or asserting an intention to bring legal proceedings against the consumer; or

- (b) taking or asserting an intention to take any other action against the consumer;

to enforce a liability under section 104(3), or a liability of a kind referred to in section 104(6).

(2) If an unsolicited consumer agreement is terminated in accordance with section 82, a person may not, for the purpose of recovering an amount alleged to be payable, under the agreement or a related contract or instrument, by the consumer under the agreement –

- (a) place the consumer's name, or cause the consumer's name to be placed, on a list of defaulters or debtors; or
- (b) assert an intention to place the consumer's name, or cause the consumer's name to be placed, on such a list.

(3) Without limiting Chapter 9 on remedies, an injunction granted under that Chapter may require a person responsible for keeping a list of defaulters or debtors on which the consumer's name has been wrongly placed to remove the name from that list.

### **Certain provisions of unsolicited consumer agreements void**

**107.** A provision (however described) of an unsolicited consumer agreement is void if it has the effect of, or purports to have the effect of –

- (a) excluding, limiting, modifying or restricting a right of the consumer under the agreement to terminate the agreement under this part; or
- (b) otherwise excluding, limiting, modifying or restricting the effect or operation of this part; or
- (c) making a dispute relating to the agreement, or to a supply to which the agreement relates, justiciable by a court by which the dispute would not otherwise be justiciable.

(2) The supplier under an unsolicited consumer agreement must ensure that the agreement does not include, or purport to include, a provision (however described) that is, or would be, void because of subsection (1).

(3) The supplier under an unsolicited consumer agreement must not attempt to enforce or rely on a provision (however described) that is void because of subsection (1).

### **Waiver of rights**

**108.** (1) The consumer under an unsolicited consumer agreement is not competent to waive any right conferred by this part.

(2) The supplier under the unsolicited consumer agreement may not induce or attempt to induce the consumer to waive any right conferred by this part.

### **Application of this part to persons to whom rights of consumers and suppliers are assigned**

**109.** This part applies in relation to a person to whom the rights of a consumer (the original consumer) under a contract for the supply of goods or services are assigned or transferred, or pass by operation of law, (whether from the original consumer or from another person) as if the person were the original consumer.

(2) This part applies in relation to a person to whom the rights of a supplier (the original supplier) under a contract for the supply of goods or services are assigned or transferred, or pass by operation of law, (whether from the original supplier or from another person) as if the person were the original supplier.

### **Application of this part to supplies to third parties**

**110.** This part applies in relation to a contract for the supply of goods or services to a consumer (the original consumer) on the order of another person as if the other person were also the consumer.

### **Effect of contravening this part**

**111.** (1) The supplier under an unsolicited consumer agreement cannot enforce the agreement against the consumer under the agreement if a provision of this part (other than section 85) has been contravened in relation to the agreement.

(2) This section does not prevent any action being taken under this Act in relation to the contravention.

### **Regulations may limit the application of this part**

**112.** This part (other than section 73) does not apply, or provisions of this part (other than section 73) that are specified in the regulations do not apply, to or in relation to –

- (a) circumstances of a kind specified in the regulations; or
- (b) agreements of a kind specified in the regulations; or
- (c) the conduct of businesses of a kind specified in the regulations.

### **Application of this part to certain conduct covered by the Companies Act**

**113.** This part does not apply in relation to conduct allowed under the Companies Act.

## **Lay by agreements**

### **Lay by agreements must be in writing**

**114.** (1) A supplier of goods who is a party to a lay by agreement must ensure that –

- (a) the agreement is in writing; and
- (b) a copy of the agreement is given to the consumer to whom the goods are, or are to be, supplied.

(2) A supplier of goods who is a party to a lay by agreement must ensure that the agreement is transparent.



(3) A lay by agreement is an agreement between a supplier of goods and a consumer for the supply, in trade or commerce, of the goods on terms (whether express or implied) which provide that –

- (a) the goods will not be delivered to the consumer until the total price of the goods has been paid; and
- (b) the price of the goods is to be paid by –
  - (i) 3 or more instalments; or
  - (ii) if the agreement specifies that it is a lay by agreement—2 or more instalments.

(4) For the purposes of subsection (3) (b), any deposit paid by the consumer for the goods is taken to be an instalment.

### **Termination of lay by agreements by consumers**

**115.** (1) A consumer who is party to a lay by agreement may terminate the agreement at any time before the goods to which the agreement relates are delivered to the consumer under the agreement.

(2) A supplier of goods who is a party to a lay by agreement must ensure that the agreement does not require the consumer to pay a charge (a termination charge) for the termination of the agreement unless –

- (a) the agreement is terminated by the consumer; and
- (b) the supplier has not breached the agreement.

(3) A supplier of goods who is a party to a lay by agreement must ensure that, if the agreement provides that a termination charge is payable, the amount of the charge is not more than the supplier's reasonable costs in relation to the agreement.

### **Termination of lay by agreements by suppliers**

**116.** (1) A supplier of goods who is a party to a lay by agreement must not terminate the agreement unless –

- (a) the consumer who is a party to the agreement breached a term of the agreement;  
or
- (b) the supplier is no longer engaged in trade or commerce; or
- (c) the goods to which the agreement relates are no longer available.

### **Effect of termination**

**117.** (1) If a lay by agreement is terminated by a party to the agreement, the supplier must refund to the consumer all the amounts paid by the consumer under the agreement other than any termination charge that is payable under the agreement.

(2) The supplier is entitled to recover any unpaid termination charge from the consumer as a debt if the amounts paid by the consumer under the lay by agreement are not enough to cover the charge.

(3) If a lay by agreement is terminated by a party to the agreement, the supplier is not entitled to damages, or to enforce any other remedy, in relation to that termination except as provided for by this section.

### **Gift cards**

#### **Meaning of gift card**

- 118.** A gift card is –
- (a) an article (whether in physical or electronic form) that –
    - (i) is of a kind that is commonly known as a gift card or gift voucher; and
    - (ii) is redeemable for goods or services; or
  - (b) an article of a kind specified in regulations made for the purposes of this paragraph;

but does not include an article of a kind specified in the regulations.

#### **Gift cards to be redeemable for at least three years**

**119.** (1) A person must not, in trade or commerce, supply a gift card to a consumer if the day that the gift card ceases to be redeemable is earlier than 3 years after the day of that supply.

(2) If—

- (a) a gift card is, in trade or commerce, supplied to a consumer; and
- (b) the day that the gift card ceases to be redeemable is earlier than 3 years after the day of that supply;

the day that the gift card ceases to be redeemable is taken to be 3 years after the day of that supply.

(3) Subsection (2) does not affect a person’s liability for an alleged contravention of subsection (1) or section 121.

### **When gift card ceases to be redeemable to appear prominently on gift card**

**120.** A person may not, in trade or commerce, supply a gift card to a consumer if one of the following does not appear prominently on the gift card:

- (a) the date the gift card ceases to be redeemable;
- (b) the month and year the gift card ceases to be redeemable;
- (c) the date the gift card is supplied and a statement that identifies the period during which the gift card is redeemable;
- (d) the month and year the gift card is supplied and a statement that identifies the period during which the gift card is redeemable;
- (e) the words “no expiry date” or words to that effect.

### **Terms and conditions not to allow post supply fees**

**121.** (1) A person may not, in trade or commerce, supply a gift card to a consumer if the terms or conditions (however described) of the gift card allow or require the payment of a post supply fee in relation to the gift card.

(2) A post supply fee is a fee or charge payable in relation to a gift card after it is supplied to a consumer, other than a fee or charge of a kind specified in the regulations.

### **Post supply fees not to be demanded or received**

**122.** A person may not, in trade or commerce, demand or receive payment of a post supply fee in relation to a gift card.

### **Certain terms and conditions of gift card void**

**123.** (1) A term or condition (however described) of a gift card is void if it has the effect of, or purports to have the effect of –

- (a) allowing or requiring the payment of a post supply fee in relation to the gift card; or
- (b) reducing the period that the gift card ceases to be redeemable to a period that ends earlier than 3 years after the day the gift card is supplied to a consumer.

(2) The supplier of a gift card must ensure that the terms or conditions (however described) of the gift card do not include, or purport to include, a term or condition that is, or would be, void because of subsection (1).

(3) This section does not affect a person's liability for an alleged contravention of

–

- (a) section 120(1);
- (b) section 121;
- (c) section 122(1);
- (d) section 123;
- (e) section 120;
- (f) section 121;
- (g) section 122; or
- (h) section 123.

### **Regulations may limit application of this part**

**124.** The regulations may provide that some or all of the provisions of this part do not apply to or in relation to –

- (a) gift cards of a kind prescribed by the regulations; or
- (b) persons of a kind prescribed by the regulations; or
- (c) gift cards supplied in circumstances prescribed by the regulations.

### **General provisions of this part**

#### **Supplier must provide proof of transaction**

**125.** (1) If –

- (a) a person (the supplier), in trade or commerce, supplies goods or services to a consumer; and
- (b) the total price of the goods or services is over the amount as prescribed;

the supplier must give the consumer a proof of transaction as soon as practicable after the goods or services are so supplied.

(2) If –

- (a) a person (the supplier), in trade or commerce, supplies goods or services to a consumer; and
- (b) the total price of the goods or services is less than the amount as prescribed;

the consumer may request a proof of transaction from the supplier as soon as practicable after the goods or services are so supplied.

(3) If a request is made under subsection (2), the supplier must give the proof of the transaction within 7 days after the request is made.

(4) A proof of transaction for a supply of goods or services to a consumer is a document that –

- (a) identifies the supplier of the goods or services; and
- (b) states the date of the supply; and

- (e) states the goods or services supplied to the consumer; and
- (f) states the price of the goods or services.
- (g) a confirmation or receipt number provided for a telephone or internet transaction.

(5) The supplier must ensure that the proof of transaction given under subsection (1) or (3) is transparent.

### **Consumer may request an itemised bill**

**126.** (1) If a person (the supplier), in trade or commerce, supplies services to a consumer, the consumer may request that the supplier give the consumer an itemised bill that

–

- (a) specifies how the price of the services was calculated; and
  - (b) includes, if applicable, the number of hours of labour that related to the supply of the services and the hourly rate for that labour; and
  - (c) includes, if applicable, a list of the materials used to supply the services and the amount charged for those materials.
- (2) The request under subsection (1) must be made within 30 days after –
- (a) the services are supplied; or
  - (b) the consumer receives a bill or account from the supplier for the supply of the services;

whichever occurs later.

(3) The supplier must give the consumer the itemised bill within 7 days after the request is made.

(4) The supplier must not charge the consumer for the itemised bill.

(5) The supplier must ensure that the itemised bill is transparent.

### **Prescribed requirements for warranties against defects**

**127.** (1) The regulations may prescribe requirements relating to the form and content of warranties against defects.

(2) A person must not, in connection with the supply, in trade or commerce, of goods or services to a consumer –

- (a) give to the consumer a document that evidences a warranty against defects that does not comply with the requirements prescribed for the purposes of subsection (1); or
- (b) represent directly to the consumer that the goods or services are goods or services to which such a warranty against defects relates.

(3) A warranty against defects is a representation communicated to a consumer in connection with the supply of goods or services, at or about the time of supply, to the effect that a person will (unconditionally or on specified conditions) –

- (a) repair or replace the goods or part of them; or
- (b) provide again or rectify the services or part of them; or
- (c) wholly or partly recompense the consumer;

if the goods or services or part of them are defective, and includes any document by which such a representation is evidenced.

### **Repairers must comply with prescribed requirements**

**128.** (1) The regulations may prescribe requirements relating to the form and content of notices to be given relating to the repair of goods supplied to a consumer.

(2) A person (the repairer) must not, in trade or commerce, accept from another person goods that the other person acquired as a consumer if the repairer–

- (a) accepts the goods for the purpose of repairing them; and
- (b) does not give to the other person a notice that complies with the requirements prescribed for the purposes of subsection (1).

## **Part 3**

### **Safety of consumer goods and product related services**

#### **Safety standards**

## **Making safety standards for consumer goods and product related services**

**129.** (1) The Minister may, by written notice in the *Gazette*, make a safety standard for one or both of the following:

- (a) consumer goods of a particular kind;
- (b) product related services of a particular kind.

(2) A safety standard for consumer goods of a particular kind may consist of such requirements about the following matters as are reasonably necessary to prevent or reduce risk of injury to any person –

- (a) the performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of consumer goods of that kind;
- (b) the testing of consumer goods of that kind during, or after the completion of, manufacture or processing;
- (c) the form and content of markings, warnings or instructions to accompany consumer goods of that kind.

(3) A safety standard for product related services of a particular kind may consist of such requirements about the following matters as are reasonably necessary to prevent or reduce risk of injury to any person:

- (a) the manner in which services of that kind are supplied (including, but not limited to, the method of supply);
- (b) the skills or qualifications of persons who supply such services;
- (c) the materials used in supplying such services;
- (d) the testing of such services;
- (e) the form and content of warnings, instructions or other information about such services.

## **Declaring safety standards for consumer goods and product related services**

**130.** (1) The Minister may, by notice in the *Gazette*, declare that the following is a safety standard for consumer goods, or product related services, of a kind specified in the instrument –



- (a) a particular standard, or a particular part of a standard, prepared or approved by Standards Namibia or by an association prescribed by the regulations;
- (b) such a standard, or such a part of a standard, with additions or variations specified in the notice.

(2) The Minister must not declare under subsection (1) that a standard, or a part of a standard, referred to in that subsection is a safety standard for –

- (a) consumer goods of a particular kind; or
- (b) product related services of a particular kind;

if that standard or part is inconsistent with a safety standard for those goods or services that is in force and that was made under section 130(1).

### **Supplying consumer goods that do not comply with safety standards**

**131.** (1) A person may not, in trade or commerce, supply consumer goods of a particular kind if –

- (a) a safety standard for consumer goods of that kind is in force; and
- (b) those goods do not comply with the standard.

(2) A person may not, in trade or commerce, offer for supply (other than for export) consumer goods the supply of which is prohibited by subsection (1).

(3) A person may not, in or for the purposes of trade or commerce, manufacture, possess or have control of consumer goods the supply of which is prohibited by subsection (1).

(4) In a proceeding under Part 1 of Chapter 8 in relation to a contravention of subsection (3), it is a defence if the defendant proves that the defendant's manufacture, possession or control of the goods was not for the purpose of supplying the goods (other than for export).

(5) A person may not, in trade or commerce, export consumer goods the supply of which is prohibited by subsection (1) unless –

- (a) the person applies, in writing, to the Minister for an approval to export those goods; and
- (b) The Minister gives such an approval by written notice given to the person.

(6) If the Minister gives an approval under subsection (5), he must cause a statement setting out particulars of the approval to be tabled in the Parliament within a reasonable period after the approval is given.

- (7) If –
  - (a) a person supplies consumer goods in contravention of this section; and
  - (b) another person suffers loss or damage because –
    - (i) of a defect in, or a dangerous characteristic of, the goods; or
    - (ii) of a reasonably foreseeable use (including a misuse) of the goods; or
    - (iii) contrary to the safety standard, he or she was not provided with particular information in relation to the goods; and
  - (d) the other person would not have suffered the loss or damage if the goods had complied with the safety standard;

the other person is taken, for the purposes of this Act, to have suffered the loss or damage because of that supply.

### **Supplying product related services that do not comply with safety standards**

**132.** (1) A person may not, in trade or commerce, supply product related services of a particular kind if –

- (a) a safety standard for services of that kind is in force; and
- (b) those services do not comply with the standard.

(2) A person may not, in trade or commerce, offer for supply product related services the supply of which is prohibited by subsection (1).

- (3) If –
  - (a) a person supplies product related services in contravention of this section; and
  - (b) another person suffers loss or damage –

- (i) because of defect in, or a dangerous characteristic of, consumer goods that results from the services being supplied; or
  - (ii) because of a reasonably foreseeable use (including a misuse) of consumer goods that results from the services being supplied; or
  - (iii) because, contrary to the safety standard, he or she was not provided with particular information in relation to the services; and
- (d) the other person would not have suffered the loss or damage if the services had complied with the safety standard;

the other person is taken, for the purposes of this Act, to have suffered the loss or damage because of that supply.

### **Requirement to nominate a safety standard**

- 133.** If –
- (a) a safety standard for consumer goods of a particular kind is in force; and
  - (b) the standard specifies, as alternative methods of complying with the standard (or part of the standard), 2 or more sets of requirements relating to goods of that kind; and
  - (c) the regulator gives to a supplier of goods of that kind a written request that the supplier nominate which of those sets of requirements the supplier intends to comply with as the supplier's method of complying with the standard;

the supplier must, within the period specified in the request, give to the regulator a written notice specifying which of those sets of requirements the supplier intends to comply with as the supplier's method of complying with the standard.

### **Bans on consumer goods and product related services**

#### **Interim bans on consumer goods or product related services that will or may cause injury to any person**

**134.** The relevant Minister may, by notice published in the *Gazette*, impose an interim ban on consumer goods of a particular kind if –

- (a) it appears to the relevant Minister that –
  - (i) consumer goods of that kind will or may cause injury to any person; or
  - (ii) a reasonably foreseeable use (including a misuse) of consumer goods of that kind will or may cause injury to any person; or
- (b) another relevant Minister has imposed, under paragraph (a), an interim ban –
  - (i) on consumer goods of the same kind; or
  - (ii) on consumer goods of a kind that includes those goods;

and that ban is still in force.

(2) The relevant Minister may, by notice published in the *Gazette*, impose an interim ban on product related services of a particular kind if –

- (a) it appears to the relevant Minister that –
  - (i) as a result of services of that kind being supplied, consumer goods of a particular kind will or may cause injury to any person; or
  - (ii) a reasonably foreseeable use (including a misuse) of consumer goods of a particular kind, to which such services relate, will or may cause injury to any person as a result of such services being supplied; or
- (b) another relevant Minister has imposed, under paragraph (a), an interim ban:
  - (i) on product related services of the same kind; or
  - (ii) on product related services that include those services;

and that ban is still in force.

### **Ban period for interim bans**

**135.** (1) An interim ban imposed by a relevant Minister is in force during the period (the ban period) that –

- (a) starts on the day (the start day) specified in the notice imposing the ban; and
- (b) subject to this part, ends at the end of 60 days after the start day.

(2) Before the ban period for the interim ban ends, the responsible Minister may, by written notice published on the internet, extend the ban period for the ban by a period of up to 30 days.

- (3) If –
  - (a) the ban period for the interim ban is extended under subsection (2); and
  - (b) the extended ban period for the ban has not ended; and

the responsible Minister may, in writing, request the Minister to extend the extended ban period for the ban.

(4) If a request is made under subsection (3), the Minister may, by written notice published on the internet, extend the extended ban period for the interim ban by a further period of up to 30 days.

- (5) If –
  - (a) a request is made under subsection (3); and
  - (b) the Minister has not made a decision on the request immediately before the extended ban period for the interim ban is to end;

the Minister is taken to have decided to extend the extended ban period for the ban by a further period of 30 days.

- (6) If –
  - (a) the period for the interim ban is extended under subsection (2); and
  - (b) the extended period for the ban has not ended;

the Minister may, by written notice published on the internet, extend the extended ban period for the interim ban by a further period of up to 30 days.

### **Interaction of multiple interim bans**

- 136.** If –
- (a) an interim ban (the original ban) on consumer goods of a particular kind (the banned goods) is imposed by a responsible Minister other than the Minister; and
  - (b) while the original ban is in force, the Minister imposes an interim ban –
    - (i) on the banned goods; or
    - (ii) on consumer goods of a kind that includes the banned goods;

the original ban, to the extent that it is a ban on the banned goods, ceases to be in force immediately before the Minister ban comes into force.

- (2) If –
  - (a) an interim ban (the original ban) on product related services of a particular kind (the banned services) is imposed by a responsible Minister other than the Minister; and
  - (b) while the original ban is in force, the Minister imposes an interim ban –
    - (i) on the banned services; or
    - (ii) on product related services of a kind that includes the banned services;

the original ban, to the extent that it is a ban on the banned services, ceases to be in force immediately before the Minister ban comes into force.

### **Revocation of interim bans**

- 137.** If a responsible Minister imposes an interim ban –
- (a) the responsible Minister may, by notice published in the *Gazette*, revoke the ban at any time; and
  - (b) the ban ceases to be in force on the day specified by the responsible Minister in the notice.

### **Permanent bans on consumer goods or product related services**

**138.** The Minister may, by notice published in the *Gazette*,, impose a permanent ban on consumer goods of a particular kind if –

- (a) one or more interim bans on consumer goods of that kind (the banned goods), or on consumer goods of a kind that include the banned goods, are in force; or
- (b) it appears to the Minister that –
  - (i) consumer goods of that kind will or may cause injury to any person; or
  - (ii) a reasonably foreseeable use (including a misuse) of consumer goods of that kind will or may cause injury to any person.

(2) The Minister may, by notice published in the *Gazette*, impose a permanent ban on product related services of a particular kind if –

- (a) one or more interim bans on product related services of that kind (the banned services), or on product related services of a kind that include the banned services, are in force; or
- (b) it appears to the Minister that –
  - (i) as a result of services of that kind being supplied, consumer goods of a particular kind will or may cause injury to any person; or
  - (ii) a reasonably foreseeable use (including a misuse) of consumer goods of a particular kind, to which such services relate, will or may cause injury to any person as a result of such services being supplied.

### **When permanent bans come into force**

**139.** A permanent ban comes into force on the day specified by the Minister in the instrument imposing the ban.

### **Revocation of permanent bans**

- 140.** If the Minister imposes a permanent ban –
- (a) the Minister may, by notice published in the *Gazette*, revoke the ban at any time; and
  - (b) the ban ceases to be in force on the day specified by the Minister in the notice.

### **Supplying consumer goods covered by a ban**

**141.** (1) A person may not, in trade or commerce, supply consumer goods of a particular kind if –

- (a) an interim ban on consumer goods of that kind is in force in the place where the supply occurs; or
- (b) a permanent ban on consumer goods of that kind is in force.

(2) A person must not, in trade or commerce, offer for supply (other than for export) consumer goods the supply of which is prohibited by subsection (1).

(3) A person must not, in or for the purposes of trade or commerce, manufacture, possess or have control of consumer goods the supply of which is prohibited by subsection (1).

(4) In a proceeding under Chapter 9 in relation to a contravention of subsection (3), it is a defence if the defendant proves that the defendant's manufacture, possession or control of the goods was not for the purpose of supplying the goods (other than for export).

(5) A person may not, in trade or commerce, export consumer goods the supply of which is prohibited by subsection (1) unless –

- (a) the person applies, in writing, to the Minister for an approval to export those goods; and
- (b) the Minister gives such an approval by written notice given to the person.

(6) If the Minister gives an approval under subsection (5), he or she must cause a statement setting out particulars of the approval to be tabled in each House of the Parliament within 7 sitting days of that House after the approval is given.

(7) If –

- (a) a person supplies consumer goods in contravention of subsection (1); and
- (b) another person suffers loss or damage because of a –
  - (i) defect in, or a dangerous characteristic of, the goods; or
  - (ii) reasonably foreseeable use (including a misuse) of the goods;

the other person is taken, for the purposes of this Act, to have suffered the loss or damage because of that supply.

### **Supplying product related services covered by a ban**

**142.** A person may not, in trade or commerce, supply product related services of a particular kind if –



- (a) an interim ban on services of that kind is in force in the place where the supply occurs; or
- (b) a permanent ban on services of that kind is in force.

(2) A person must not, in trade or commerce, offer for supply product related services the supply of which is prohibited by subsection (1).

- (3) If –
  - (a) a person supplies product related services in contravention of subsection (1); and
  - (b) another person suffers loss or damage because of a –
    - (i) defect in, or a dangerous characteristic of, consumer goods that results from the services being supplied; or
    - (ii) reasonably foreseeable use (including a misuse) of consumer goods that results from the services being supplied;

the other person is taken, for the purposes of this Bill, to have suffered the loss or damage because of that supply.

### **Recall of consumer goods**

#### **Compulsory recall of consumer goods**

**143.** A responsible Minister may, by notice published in the *Gazette*, issue a recall notice for consumer goods of a particular kind if –

- (a) a person, in trade or commerce, supplies consumer goods of that kind; and
- (b) any of the following applies –
  - (i) it appears to the responsible Minister that such goods will or may cause injury to any person;
  - (ii) it appears to the responsible Minister that a reasonably foreseeable use (including a misuse) of such goods will or may cause injury to any person;
  - (iii) a safety standard for such goods is in force and the goods do not comply with the standard;
  - (iv) an interim ban, or a permanent ban, on such goods is in force; and

(e) it appears to the responsible Minister that one or more suppliers of such goods have not taken satisfactory action to prevent those goods causing injury to any person.

(2) It is not necessary for the purposes of subsection (1) (c) for the responsible Minister to know the identities of any of the suppliers of the consumer goods of that kind.

(3) A recall notice for consumer goods may be issued under subsection (1) even if the consumer goods have become fixtures since the time they were supplied.

### **Contents of a recall notice**

**144.** A recall notice for the consumer goods may require one or more suppliers of the goods, or (if no such supplier is known to the responsible Minister who issued the notice) the Consumer Authorities, to take one or more of the following actions:

- (a) recall the goods;
- (b) disclose to the public, or to a class of persons specified in the notice, one or more of the following:
  - (i) the nature of a defect in, or a dangerous characteristic of, the goods as identified in the notice;
  - (ii) the circumstances as identified in the notice in which a reasonably foreseeable use or misuse of the goods is dangerous;
  - (iii) procedures as specified in the notice for disposing of the goods;
- (c) if the identities of any of those suppliers are known to the responsible Minister—inform the public, or a class of persons specified in the notice, that the supplier undertakes to do whichever of the following the supplier thinks is appropriate –
  - (i) unless the notice identifies a dangerous characteristic of the goods—repair the goods;
  - (ii) replace the goods;
  - (iii) refund to a person to whom the goods were supplied (whether by the supplier or by another person) the price of the goods.

(2) The recall notice may specify the –

- (a) manner in which the action required to be taken by the notice must be taken; and
- (b) period within which the action must be taken.

(3) If the recall notice requires the regulator to take action to recall the consumer goods, the responsible Minister may specify in the notice that the regulator must retain, destroy or otherwise dispose of the goods.

(4) If the recall notice requires a supplier of the consumer goods to take action of a kind referred to in subsection (1) (c), the responsible Minister may specify in the notice that if

—

- (a) the supplier undertakes to refund the price of the goods; and
- (b) a period of more than 12 months has elapsed since a person (whether or not the person to whom the refund is to be made) acquired the goods from the supplier;

the amount of a refund may be reduced by the supplier by an amount calculated in a manner specified in the notice that is attributable to the use which a person has had of the goods.

### **Obligations of a supplier in relation to a recall notice**

**145.** (1) This section applies if a recall notice for consumer goods requires a supplier to take action of a kind referred to in section 143(1)(c).

(2) If the supplier undertakes to repair the consumer goods, the supplier must cause the goods to be repaired so that —

- (a) any defect in the goods identified in the recall notice is remedied; and
- (b) if a safety standard for the goods is in force that the goods comply with that standard.

(3) If the supplier undertakes to replace the consumer goods, the supplier must replace the goods with similar consumer goods which —

- (a) if a defect in, or a dangerous characteristic of, the goods to be replaced was identified in the recall notice—do not contain that defect or have that characteristic; and

- (b) if a safety standard for the goods to be replaced is in force—comply with that standard.
  
- (4) If the supplier undertakes to—
  - (a) repair the consumer goods; or
  - (b) replace the consumer goods;

the cost of the repair or replacement, including any necessary transportation costs, must be paid by the supplier.

### **Notification by persons who supply consumer goods outside Namibia if there is compulsory recall**

**146.** (1) If consumer goods of a particular kind are recalled as required by a recall notice, a person who has supplied or supplies those consumer goods to a person outside Namibia must give the person outside Namibia a written notice that complies with subsection (2).

- (2) The notice given under subsection (1) must –
  - (a) state that the consumer goods are subject to recall; and
  - (b) if the consumer goods contain a defect or have a dangerous characteristic, set out the nature of that defect or characteristic; and
  - (c) if a reasonably foreseeable use or misuse of the consumer goods is dangerous, set out the circumstances of that use or misuse; and
  - (d) if the consumer goods do not comply with a safety standard for such goods that is in force, set out the nature of the non compliance; and
  - (e) if an interim ban, or a permanent ban, on the consumer goods is in force, state that fact.

(3) The notice under subsection (1) must be given as soon as practicable after the supply of the consumer goods to the person outside Namibia.

(4) A person who is required to give a notice under subsection (1) must, within 10 days after giving the notice, give a copy of the notice to the responsible Minister who issued the recall notice.

## **Interaction of multiple recall notices**

- 147.** If –
- (a) a recall notice (the original recall notice) for consumer goods of a particular kind (the recalled goods) is issued by a responsible Minister; and
  - (b) while the original recall notice is in force, the Minister issues a recall notice (the Governmental recall notice) –
    - (i) for the recalled goods; or
    - (ii) for consumer goods of a kind that includes the recalled goods;

the original recall notice, to the extent that it relates to the recalled goods, ceases to be in force immediately before the Governmental recall notice is issued.

## **Compliance with recall notices**

- 148.** (1) If –
- (a) a recall notice for consumer goods is in force; and
  - (b) the notice requires a person (other than the regulator) to do one or more things; the person must comply with the notice.
- (2) If a recall notice for consumer goods is in force, a person must not, in trade or commerce –
- (a) if the notice identifies a defect in, or a dangerous characteristic of, the consumer goods—supply consumer goods of the kind to which the notice relates which contain that defect or have that characteristic; or
  - (b) in any other case—supply consumer goods of the kind to which the notice relates.
- (3) If –
- (a) a person contravenes subsection (1) or (2) in relation to consumer goods; and
  - (b) another person suffers loss or damage because—
    - (i) of a defect in, or a dangerous characteristic of, the goods; or
    - (ii) of a reasonably foreseeable use (including a misuse) of the goods; or

- (iii) contrary to the recall notice, the other person was not provided with particular information in relation to the goods;

the other person is taken, for the purposes of this Act, to have suffered the loss or damage because of the contravention.

### **Notification requirements for a voluntary recall of consumer goods**

**149.** (1) This section applies if a person voluntarily takes action to recall consumer goods of a particular kind (including consumer goods that have become fixtures since being supplied) because –

- (a) the consumer goods will or may cause injury to any other person; or
- (b) a reasonably foreseeable use (including a misuse) of the consumer goods will or may cause injury to any other person; or
- (c) a safety standard for the consumer goods is in force and they do not, or it is likely that they do not, comply with the standard; or
- (d) an interim ban, or a permanent ban, on the consumer goods is in force.

(2) The person must, within 2 days after taking the action, give the responsible Minister a written notice that complies with subsection (7).

(3) The responsible Minister may publish a copy of the notice on the internet.

(4) A person who has supplied or supplies consumer goods of that kind to another person outside Namibia must give the other person a written notice that complies with subsection (7).

(5) The notice under subsection (4) must be given as soon as practicable after the supply of the consumer goods to the person outside Namibia.

(6) A person who is required to give a notice under subsection (4) must, within 10 days after giving the notice, give a copy of the notice to the responsible Minister.

(7) A notice given under subsection (2) or (4) must –

- (a) state that the consumer goods are subject to recall; and
- (b) if the consumer goods contain a defect or have a dangerous characteristic, set out the nature of that defect or characteristic; and
- (c) if a reasonably foreseeable use or misuse of the consumer goods is dangerous—set out the circumstances of that use or misuse; and
- (d) if the consumer goods do not, or it is likely that they do not, comply with a safety standard for the goods that is in force—set out the nature of the non compliance or likely non compliance; and
- (e) if an interim ban, or a permanent ban, on the consumer goods is in force—state that fact.

### **Safety warning notices**

#### **Safety warning notices about consumer goods and product related services**

**150.** (1) A responsible Minister may by written notice in the *Gazette*, issue a notice containing one or both of the following:

- (a) a statement that consumer goods of a kind specified in the notice are under investigation to determine whether:
  - (i) those goods will or may cause injury to any person; or
  - (ii) a reasonably foreseeable use (including a misuse) of those goods will or may cause injury to any person;
- (b) a warning of possible risks involved in the use of consumer goods of a kind specified in the notice.

(2) The relevant Minister may publish on the internet a written notice containing one or both of the following:

- (a) a statement that product related services of a kind specified in the notice are under investigation to determine whether:
  - (i) consumer goods of a particular kind will or may cause injury to any person as a result of services of that kind being supplied; or
  - (ii) a reasonably foreseeable use (including a misuse) of consumer goods of a particular kind, to which such services relate, will or may cause injury to any person as a result of such services being supplied;

- (c) a warning of possible risks involved in the supply of product related services of a kind specified in the notice.

### **Announcement of the results of an investigation**

- 151.** (1) If –
- (a) an investigation of consumer goods, or product related services, specified in a notice under section 149(1) or (2) has been completed; and
  - (b) none of the following have been published or issued in relation to those goods or services a –
    - (i) proposed ban notice under section 151 of this Act;
    - (ii) proposed recall notice under section 152 of that Act;
  - (iii) a notice under section 152(1) or (2) of that Act;

the relevant Minister who issued the notice under section 149(1) or (2) must, as soon as practicable after the completion of the investigation, announce, by written notice published on the internet, the results of the investigation.

- (2) The relevant Minister may announce in a notice published under subsection (1) of this section –
- (a) whether any action under this Part is proposed to be taken in relation to the consumer goods or product related services; and
  - (b) if it is proposed to take any such action—what action is proposed to be taken.

### **Consumer goods, or product related services, associated with death or serious injury or illness**

#### **Suppliers to report consumer goods associated with the death or serious injury or illness of any person**

- 152.** If –
- (a) a person (the supplier), in trade or commerce, supplies consumer goods; and



- (b) the supplier becomes aware of the death or serious injury or illness of any person and –
  - (i) considers that the death or serious injury or illness was caused, or may have been caused, by the use or foreseeable misuse of the consumer goods; or
  - (ii) becomes aware that a person other than the supplier considers that the death or serious injury or illness was caused, or may have been caused, by the use or foreseeable misuse of the consumer goods;

the supplier must, within 2 days of becoming so aware, give the responsible Minister a written notice that complies with subsection (5).

- (2) Subsection (1) does not apply if –
  - (a) it is clear that the death or serious injury or illness was not caused by the use or foreseeable misuse of the consumer goods; or
  - (b) it is very unlikely that the death or serious injury or illness was caused by the use or foreseeable misuse of the consumer goods; or
  - (c) the supplier, or another person, is required to notify the death or serious injury or illness in accordance with a law of Namibia; or
  - (d) the supplier, or another person, is required to notify the death or serious injury or illness in accordance with an industry code of practice that:
    - (i) applies to the supplier or other person; and
    - (ii) is specified in the regulations.

(3) Subsection (1) applies whether or not the consumer goods were being used before or at the time the death or serious injury or illness occurred.

(4) Without limiting subsection (1), the ways in which the supplier may become aware as mentioned in subsection (1) (b) include receiving the relevant information from any of the following:

- (a) a consumer;
- (b) a person who re supplies the consumer goods;
- (c) a repairer or insurer of the goods;
- (d) an industry organisation or consumer organisation.

- (5) The notice must –
  - (a) identify the consumer goods; and
  - (b) include information about the following matters to the extent that it is known by the supplier at the time the notice is given –
    - (i) when, and in what quantities, the consumer goods were manufactured in Namibia, supplied in Namibia, imported into Namibia or exported from Namibia;
    - (ii) the circumstances in which the death or serious injury or illness occurred;
    - (iii) the nature of any serious injury or illness suffered by any person;
    - (iv) any action that the supplier has taken, or is intending to take, in relation to the consumer goods.
  
- (6) The giving of the notice under subsection (1) is not to be taken for any purpose to be an admission by the supplier of any liability in relation to the –
  - (a) consumer goods; or
  - (b) death or serious injury or illness of any person.

**Suppliers to report product related services associated with the death or serious injury or illness of any person**

- 153.** (1) If –
- (a) a person (the supplier), in trade or commerce, supplies product related services; and
  - (b) the supplier becomes aware of the death or serious injury or illness of any person and –
    - (i) considers that the death or serious injury or illness was caused, or may have been caused, by the use or foreseeable misuse of the consumer goods to which the services relate; or
    - (ii) becomes aware that a person other than the supplier considers that the death or serious injury or illness was caused, or may have been caused,

by the use or foreseeable misuse of the consumer goods to which the services relate;

the supplier must, within 2 days of becoming so aware, give the responsible Minister a written notice that complies with subsection (5).

- f
- (2) Subsection (1) does not apply if –
    - (a) it is clear that the death or serious injury or illness was not caused by the use or foreseeable misuse of the consumer goods to which the services relate; or
    - (b) it is very unlikely that the death or serious injury or illness was caused by the use or foreseeable misuse of the consumer goods to which the services relate; or
    - (c) the supplier, or another person, is required to notify the death or serious injury or illness in accordance with a law of Namibia,; or
    - (d) the supplier, or another person, has notified the death or serious injury or illness in accordance with an industry code of practice that –
      - (i) applies to the supplier or other person; and
      - (ii) is specified in the regulations.

(3) Subsection (1) applies whether or not consumer goods to which the product related services relate were being used before or at the time the death or serious injury or illness occurred.

(4) Without limiting subsection (1), the ways in which the supplier may become aware as mentioned in subsection (1) (b) include receiving the relevant information from any of the following:

- (a) a consumer;
- (b) a person who re supplies the product related services;
- (c) an insurer of the services;
- (d) an industry organisation or consumer organisation.

(5) The notice must –

- (a) identify the product related services and the consumer goods to which the services relate; and

- (b) include information about the following matters to the extent that it is known by the supplier at the time the notice is given –
  - (i) when the services have been supplied;
  - (ii) the circumstances in which the death or serious injury or illness occurred;
  - (iii) the nature of any serious injury or illness suffered by any person;
  - (iv) any action that the supplier has taken, or is intending to take, in relation to the services.
- (6) The giving of the notice under subsection (1) is not to be taken for any purpose to be an admission by the supplier of any liability in relation to the –
  - (a) product related services; or
  - (b) consumer goods to which the services relate; or
  - (c) death or serious injury or illness of any person.

### **Confidentiality of notices given under this part**

- 154.** (1) A person may not disclose to any other person a notice given under this part, or any part of or information contained in such a notice, unless the person who gave the notice has consented to the notice, or that part or information, not being treated as confidential.
- (2) This section does not apply if –
    - (a) the disclosure is made by the responsible Minister to:
      - (i) another Minister; or
      - (ii) the regulator; or
      - (iii) an associate regulator; or
    - (b) the disclosure is made by the President of Namibia and the President of Namibia considers that the disclosure is in the public interest; or
    - (c) the disclosure is made by a member of the staff of the regulator, or an associate regulator, in the performance of his or her duties as such a member of staff, and is made –
      - (i) to another member of the staff of the regulator or associate regulator; or
      - (ii) if the person making the disclosure is a member of the staff of the regulator, to an associate regulator; or
      - (iii) if the person making the disclosure is a member of the staff of an associate regulator, to the regulator or another associate regulator; or

- (d) the disclosure is required or authorised by or under law; or
- (e) the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty.

(3) This section also does not apply if the disclosure is made by a member of the staff of the regulator, or an associate regulator, in the performance of his or her duties as such a member of staff, and is made because it is reasonably necessary to protect public safety to –

- (a) any other agency within the meaning of the Access to Information Act of 2022;

or

- (b) the Prosecutor General; or
- (d) a foreign government body (within the meaning of the Consumer Protection Act).

### **General provisions of this part**

#### **Liability under a contract of insurance**

**155.** If –

- (a) a contract of insurance between an insurer and a person relates to –
  - (i) the recall of consumer goods that are supplied by the person, or which the person proposes to supply; or
  - (ii) the liability of the person with respect to possible defects in such consumer goods; and
- (b) the person gives information relating to any such consumer goods to –
  - (i) a responsible Minister; or
  - (ii) the regulator; or
  - (iii) a person appointed or engaged under the Public Service Act, or under a corresponding law; or
  - (iv) an officer of an authority of Namibia;

the liability of the insurer under the contract is not affected only because the person gave the information.

### **Part 4**

#### **Information standards**

##### **Making information standards for goods and services**

**156.** (1) The Minister may, by written notice published on the internet, make an information standard for one or both of the following:

- (a) goods of a particular kind;
- (b) services of a particular kind.

(2) Without limiting subsection (1), an information standard for goods or services of a particular kind may –

- (a) make provision in relation to the content of information about goods or services of that kind; or
- (b) require the provision of specified information about goods or services of that kind; or
- (c) provide for the manner or form in which such information is to be provided; or
- (d) provide that such information is not to be provided in a specified manner or form; or
- (e) provide that information of a specified kind is not to be provided about goods or services of that kind; or
- (f) assign a meaning to specified information about goods or services.

### **Declaring information standards for goods and services**

**157.** (1) The Minister may, by written notice published on the internet, declare that the following is an information standard for goods or services of a kind specified in the instrument –

- (a) a particular standard, or a particular part of a standard, prepared or approved by Standards Namibia or by an association prescribed by the regulations;
- (b) such a standard, or such a part of a standard, with additions or variations specified in the notice.

(2) The Minister must not declare under subsection (1) that a standard, or a part of a standard, referred to in that subsection is an information standard for –

- (a) goods of a particular kind; or
- (b) services of a particular kind;

if that standard or part is inconsistent with an information standard for those goods or services that is in force and was made under section 134(1).

### **Supplying goods that do not comply with information standards**

**158.** (1) A person may not, in trade or commerce, supply goods of a particular kind if –

- (a) an information standard for goods of that kind is in force; and
- (b) the person has not complied with that standard.

(2) A person may not, in trade or commerce, offer for supply goods the supply of which is prohibited by subsection (1).

(3) A person may not, in or for the purposes of trade or commerce, manufacture, possess or have control of goods the supply of which is prohibited by subsection (1).

(4) In a proceeding under Chapter 9 on (remedies) in relation to a contravention of subsection (3), it is a defence if the defendant proves that the defendant's manufacture, possession or control of the goods was not for the purpose of supplying the goods.

(5) Subsections (1), (2) and (3) do not apply to goods that are intended to be used outside Namibia.

(6) Unless the contrary is established, it is presumed, for the purposes of this section, that goods are intended to be used outside Namibia if either of the following is applied to the goods:

- (a) a statement that the goods are for export only;
- (b) a statement indicating, by the use of words authorised by the regulations to be used for the purposes of this subsection, that the goods are intended to be used outside Namibia.

(7) Without limiting subsection (6), a statement may, for the purposes of that subsection, be applied to goods by being –

- (a) woven in, impressed on, worked into or annexed or affixed to the goods; or

- (b) applied to a covering, label, reel or thing in or with which the goods are supplied.
  
- (8) If –
  - (a) a person (the supplier) supplies goods in contravention of subsection (1), (2) or (3); and
  - (b) another person suffers loss or damage because, contrary to the information standard, he or she was not provided with particular information in relation to the goods; and
  - (c) the other person would not have suffered the loss or damage if the supplier had complied with the information standard;

the other person is taken, for the purposes of this Act, to have suffered the loss or damage because of that supply.

### **Supplying services that do not comply with information standards**

**159.** (1) A person may not, in trade or commerce, supply services of a particular kind if:

- (a) an information standard for services of that kind is in force; and
- (b) the person has not complied with that standard.

(2) A person may not, in trade or commerce, offer for supply services the supply of which is prohibited by subsection (1).

- (3) If –
  - (a) a person (the supplier) supplies services in contravention of subsection (1) or (2); and
  - (b) another person suffers loss or damage because, contrary to the information standard, he or she was not provided with particular information in relation to the services; and
  - (c) the other person would not have suffered the loss or damage if the supplier had complied with the information standard;



the other person is taken, for the purposes of this Act, to have suffered the loss or damage because of that supply.

## **Part 5**

### **Liability of manufacturers for goods with safety defects**

#### **Actions against manufacturers for goods with safety defects**

#### **Liability for loss or damage suffered by an injured individual**

- 160.** (1) A manufacturer of goods is liable to compensate an individual if –
- (a) the manufacturer supplies the goods in trade or commerce; and
  - (b) the goods have a safety defect; and
  - (c) the individual suffers injuries because of the safety defect.

(2) The individual may recover, by action against the manufacturer, the amount of the loss or damage suffered by the individual.

(3) If the individual dies because of the injuries, a law of a Namibia about liability in respect of the death of individuals applies as if the –

- (a) action were an action under the law of Namibia for damages in respect of the injuries; and
- (b) safety defect were the manufacturer's wrongful act, neglect or default.

#### **Liability for loss or damage suffered by a person other than an injured individual**

- 161.** (1) A manufacturer of goods is liable to compensate a person if –
- (a) the manufacturer supplies the goods in trade or commerce; and
  - (b) the goods have a safety defect; and
  - (c) an individual (other than the person) suffers injuries because of the safety defect; and
  - (d) the person suffers loss or damage because of –
    - (i) the injuries; or

- (ii) if the individual dies because of the injuries—the individual’s death; and
- (d) the loss or damage does not come about because of a business or professional relationship between the person and the individual.

(2) The person may recover, by action against the manufacturer, the amount of the loss or damage suffered by the person.

**Liability for loss or damage suffered by a person if other goods are destroyed or damaged**

- 162.** (1) A manufacturer of goods is liable to compensate a person if –
- (a) the manufacturer supplies the goods in trade or commerce; and
  - (b) the goods have a safety defect; and
  - (c) other goods of a kind ordinarily acquired for personal, domestic or household use or consumption are destroyed or damaged because of the safety defect; and
  - (d) the person used or consumed, or intended to use or consume, the destroyed or damaged goods for personal, domestic or household use or consumption; and
  - (e) the person suffers loss or damage as a result of the destruction or damage.

(2) The person may recover, by action against the manufacturer, the amount of the loss or damage suffered by the person.

**Liability for loss or damage suffered by a person if land, buildings or fixtures are destroyed or damaged**

- 163.** (1) A manufacturer of goods is liable to compensate a person if –
- (a) the manufacturer supplies the goods in trade or commerce; and
  - (b) the goods have a safety defect; and
  - (c) land, buildings or fixtures are destroyed or damaged because of the safety defect; and
  - (d) the land, buildings or fixtures are ordinarily acquired for private use; and
  - (e) the person used, or intended to use, the land, buildings or fixtures for private use; and
  - (f) the person suffers loss or damage as a result of the destruction or damage.

(2) The person may recover, by action against the manufacturer, the amount of the loss or damage suffered by the person.

### **Defences to defective goods actions**

- 164.** In a defective goods action, it is a defence if it is established that –
- (a) the safety defect in the goods that is alleged to have caused the loss or damage did not exist in –
    - (i) the case of electricity, at the time at which the electricity was generated, being a time before it was transmitted or distributed; or
    - (ii) any other case, at the time when the goods were supplied by their actual manufacturer; or
  - (b) the goods had that safety defect only because there was compliance with a mandatory standard for them; or
  - (c) the state of scientific or technical knowledge at the time when the goods were supplied by their manufacturer was not such as to enable that safety defect to be discovered; or
  - (d) if the goods that had that safety defect were comprised in other goods, that safety defect is attributable only to –
    - (i) the design of the other goods; or
    - (ii) the markings on or accompanying the other goods; or
    - (iii) the instructions or warnings given by the manufacturer of the other goods.

### **Defective goods actions**

#### **Time for commencing defective goods actions**

**165.** Subject to subsection (2), a person may commence a defective goods action at any time within 3 years after the time the person became aware, or ought reasonably to have become aware, of all of the following the:

- (a) alleged loss or damage;
- (b) safety defect of the goods;
- (c) identity of the person who manufactured the goods.

(2) A defective goods action must be commenced within 10 years of the supply by the manufacturer of the goods to which the action relates.

### **Liability joint and several**

**166.** If two or more persons are liable under this part on actions against manufacturers for goods with safety defects, for the same loss or damage, they are jointly and severally liable.

### **Survival of actions**

**167.** A law of a Namibia about the survival of causes of action vested in persons who die applies to actions under this part on actions against manufacturers for goods with safety defects.

### **No defective goods action where workers' compensation law applies**

**168.** This part on actions against manufacturers for goods with safety defects, does not apply to a loss or damage in respect of which an amount has been, or could be, recovered under a law of Namibia that –

- (a) relates to workers' compensation; or
- (b) gives effect to an international agreement.

### **Unidentified manufacturer**

**169.** (1) A person who –

- (a) wishes to institute a defective goods action; but
- (b) does not know who is the manufacturer of the goods to which the action would relate;

may, by written notice given to a supplier, or each supplier, of the goods who is known to the person, request the supplier or suppliers to give the person particulars identifying the manufacturer of the goods, or the supplier of the goods to the supplier requested.

(2) If, 30 days after the person made the request or requests, the person still does not know who is the manufacturer of the goods, then each supplier –

- (a) to whom the request was made; and
- (b) who did not comply with the request;

is taken, for the purposes of the defective goods liability action (but not for the purposes of section 163(c)), to be the manufacturer of the goods.

### **State liability for goods that are defective only because of compliance with State mandatory standard**

**170.** (1) If a person (however described) against whom a defective goods action is brought raises the defence that the goods had the alleged safety defect only because there was compliance with a Government mandatory standard for the goods, the person must, as soon as practicable after raising that defence, give the State –

- (a) a prescribed notice of the action and of that defence; and
- (b) a copy of the person's defence in the action.

(2) The giving of the notice and defence makes the State a defendant in the action.

(3) If, in the action, the court finds that the person (the plaintiff) by whom the action is brought would, but for the defence referred to in subsection (1), have succeeded against the person (other than the State) against which the action is brought, then –

- (a) the State, and not the person (other than the State) against which the action is brought, is liable to pay the plaintiff for the amount of the loss or damage caused by the safety defect; and
- (b) the court is to enter judgment against the State for that amount; and
- (c) the court may make such orders for costs as the court considers just.

### **Representative actions by the regulator**

**171.** (1) The regulator may, by application, commence a defective goods action on behalf of one or more persons identified in the application who have suffered the loss or damage in relation to which the action is commenced.

(2) The regulator may only make the application if it has obtained the written consent of the person, or each of the persons, on whose behalf the application is being made.

### **General provisions of this part**

#### **Application of all or any provisions of this Part not to be excluded or modified**

**172.** (1) Any term of a contract (including a term that is not set out in the contract but is incorporated in the contract by another term) that purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying, any of the following is void:

- (a) the application of all or any of the provisions of this Part;
- (b) the exercise of a right conferred by any of those provisions;
- (c) any liability under any of those provisions.

(2) A term of a contract is not taken to exclude, restrict or modify the application of a provision of this Part unless the term does so expressly or is inconsistent with that provision.

## **Chapter 7**

### **REGULATIONS**

#### **Prescribed regulations by the Minister**

**173.** (1) In addition to any power conferred on the Minister in this Act to make regulations, the Minister may make, after consultation with the Consumer Authority, any regulations on any matter that may be prescribed and to any matter that is reasonably necessary or expedient to be prescribed to achieve the objects of this Act.

(2) The Minister may, with the concurrence of the responsible line Minister, in addition to the provisions of Chapters 5 and 6, make regulations which provides for specific protections for specific sectoral or general issues and any matter that is reasonably necessary or expedient to be prescribed to achieve the objects of this Act.

## **Regulations by Consumer Authority**

**174.** (1) The Consumer Authority may, with the concurrence of the Minister, make regulations –

- (a) identifying specific acts and practices deemed unfair, deceptive, or abusive;
- (b) prescribing the procedures to be used in resolving consumer disputes in terms of this Act;
- (c) prescribing the procedures for investigations in terms of this Act;
- (d) prescribing the procedures for conciliations and mediations;
- (e) prescribing when data obtained by the Consumer Authority is confidential and inaccessible to the public;
- (f) related to industry codes and best practices to ensure consumer protection;
- (g) relating to subjects for which this Act specifically authorises rulemaking; and
- (h) relating to any other matter which is required or permitted to be prescribed by regulations under this Act, or considered necessary or expedient by the Consumer Authority in order to achieve the objects of this Act.

## **Chapter 8**

### **COMPLAINTS, INVESTIGATIONS, OFFENCES AND PENALTIES**

#### **Part 1**

#### **Complaints and Investigations**

#### **Lodging of complaint (enforcement of rights by consumer)**

**175.** A consumer 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) filing a complaint with the Consumer Authority in the prescribed manner and form; or
- (b) referring the matter to the conciliation and mediation unit of the Consumer Authority; or
- (c) referring the matter to another alternative dispute resolution agent contemplated who may be a person or entity providing conciliation, mediation, or arbitration

services to assist in the resolution of consumer disputes, other than a regulator with jurisdiction, or an accredited industry regulator; or

- (d) referring the matter to the applicable industry regulator, if the supplier is subject to any such regulator; or
- (e) referring the matter through dispute resolution mechanisms designed by the Ombudsman through the Ombudsman Act, 1990 as per Article 90 of the Namibian Constitution; or
- (f) applying to the consumer tribunal with jurisdiction over the matter.

(2) If the conciliation and mediation unit of the Consumer Authority or the alternative dispute resolution agent concludes that there is no reasonable probability of the parties resolving their dispute through the process provided for, the mediator or agent may terminate the process by notice to the parties, whereafter the party who referred the matter to the agent may file a complaint with the Consumer Authority.

(3) If the conciliation and mediation unit or an alternative dispute resolution agent has resolved, or assisted parties in resolving their dispute, the mediator or agent may –

- (a) record the resolution of that dispute in the form of an order, and
- (b) if the parties to the dispute consent to that order, submit it to the Consumer Authority to transfer to the Consumer Tribunal to be made a consent order, in terms of its rules.

(4) With the consent of a complainant, a consent order confirmed in terms of subsection (3) (b) may include an award of damages to that complainant.

(5) Whenever the Consumer Authority determines that a supplier has engaged in an unfair, deceptive and abusive act or practice that affected more than one consumer, the Consumer Authority must initiate an investigation.

### **Investigation by Consumer Authority**

**176.** (1) Upon initiating or receiving a complaint in terms of this Act, the Consumer Authority may –



- (a) issue a notice of non-referral to the complainant in the prescribed form, if the complaint –
  - (i) appears to be frivolous or vexatious;
  - (ii) does not allege any facts which, if true, would constitute grounds for a remedy under this Act; or
  - (iii) is prevented, in terms of another section of this Act, from being referred to the Consumer Tribunal;
- (b) refer the complaint to the conciliation and mediation unit of the Consumer Authority or to an alternative dispute resolution agent, for the purposes of assisting the parties to attempt to resolve the dispute, unless the parties have previously and unsuccessfully attempted to resolve the dispute in that manner;
- (c) refer the complaint to another regulatory authority with jurisdiction over the matter for investigation; or
- (d) direct inspectors to investigate the complaint as quickly as practicable, in any other case.

### **Data Protection Practices**

**177.** (1) All information submitted to the Consumer Authority or acquired in the course of a lawful undertaking in performance of this Act shall be treated as private, confidential and or privileged and may only be made available to third parties –

- (a) with the written consent of the parties to the complaint;
- (b) when it is in the public interest;
- (c) to prevent health and safety hazards;
- (d) when it will aid the enforcement of this Act and support the purpose of this Act;
- (e) when the information is publicly available from other sources.

(2) Documents filed with the Tribunal as part of enforcement actions instituted in the court by the Consumer Authority, shall be public records made easily accessible to members of the public subject to a prescribed fee.

**Disclosure notice, Written notice, Infringement notice, Embargo notice, Written undertaking acceptance and Civil investigation by Consumer Authority**

**178. (1)** The Consumer Authority may give a disclosure notice to a person (the notice recipient) if the person giving the notice has reason to believe –

- (a) that the notice recipient is capable of giving information, producing documents or giving evidence in relation to the supply, or possible supply, in trade or commerce, of consumer goods or product related services of a particular kind as specified in the notice; and;
- (b) That –
  - (i) consumer goods of that kind will or may cause injury to any person; or
  - (ii) a reasonably foreseeable use (including a misuse) of consumer goods of that kind will or may cause injury to any person;
  - (iii) as a result of services of that kind being supplied, consumer goods of a particular kind will or may cause injury to any person; or
  - (iv) a foreseeable use (including a misuse) of consumer goods of a particular kind, to which such services relate, will or may cause injury to any person as a result of such services being supplied.

(2) The Consumer Authority may accept a written undertaking given by a person for the purposes of this section in connection with a matter in relation to which the regulator has a power or function under this Act.

(3) The Consumer Authority may give the person who made the claim or representation a written notice that requires the person to do one or more of the following:

- (a) give information and produce documents to the Consumer Authority that could be capable of substantiating or supporting the claim or representation;
- (b) if the claim or representation relates to a supply, or possible supply, of goods or services by the person or another person, give information and/or produce documents to the Consumer Authority that could be capable of substantiating –
  - (i) the quantities in which; and
  - (ii) the period for which;

the person or other person is or will be able to make such a supply (whether or not the claim or representation relates to those quantities or that period);

- (e) give information and/or produce documents to the regulator that are of a kind specified in the notice;

within the prescribed period after the notice is given to the person who made the claim or representation.

(4) If the Consumer Authority has reasonable grounds to believe that a person has contravened an infringement notice provision, the Consumer Authority may issue an infringement notice to the person and the Minister may prescribe the contents of that infringement notice.

(5) The Consumer Authority may after conducting investigations issue to the public a written warning notice about the conduct of a person if –

- (a) the Consumer Authority has reasonable grounds to suspect that the conduct may constitute a contravention of a provision of this Act; and
- (b) the Consumer Authority is satisfied that a person has suffered, or is likely to suffer, detriment as a result of the conduct; and
- (c) the Consumer Authority is satisfied that it is in the public interest to issue the notice.

(6) An inspector who enters premises under a search warrant may give an embargo notice to the occupier of the premises in the prescribed form.

(7) Conditions for issuing, and treating, disclosure notice, written undertaking, a written notice, infringement notice, written warning notice, embargo notice, search warrant, and investigation must be prescribed.

(8) The Consumer Authority may institute proceedings in the Tribunal for violations of this Act and the Tribunal may make the following order–

- (a) declaring any conduct of a supplier an unfair, deceptive and abusive act and practice;

- (b) barring a supplier from engaging in such conduct in the future, including an order for interim relief if such an order is needed to prevent irreparable injury to any consumer or the public;
- (c) ordering relief to consumers as provided by this Act ;
- (d) imposing a penalty as provided by this Act;
- (e) awarding the costs of the investigation and action, including reasonable attorney's fees, be paid to the Consumer Authority ; and
- (f) granting any other lawful order in that matter as required which is in line with the objectives of this Act.

### **Consumer Relief**

179. (1) Whenever an inquiry in respect of a complaint, investigation or mediation order pursuant to this act establish that the conduct of a supplier constitutes an unfair, deceptive and abusive acts and practices a consumer or any other aggrieved party will be entitled to relief in terms of this section.

(2) The amount of consumer relief shall be more than the amount needed to provide full or partial restitution to the consumer of any loss or injury from the sale, or the amount needed to recover any revenue or gain to the supplier for any unfair, deceptive and abusive acts and practices.

(3) In addition to or alternatively to an award of monetary relief, an order for the rescission or reformation of consumer contracts, or an award for the return of goods, real estate or other property may be made.

(4) If the Consumer Authority or court determines that consumer relief provides full restitution to the consumer of any loss or injury from the sale, the Consumer Authority or court must issue a declaration that the complaint is finally and fully settled as a precondition for the consumer relief.

(5) The Consumer Authority may at any time, during or after an investigation under chapter 8, enter into an agreement of settlement with a supplier which can also be proposed as a court order. A consent agreement may contain any of the remedies in this Act.

## **Part 2**

### **Offences and Penalties**

#### **Offences related to unfair, deceptive, and abusive acts and practices**

**180.** (1) A person commits an offence if the person, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services –

- (a) has contravened any of the following provisions:
  - (i) a provision of Chapter 5 (which is about consumer rights and general protections );
  - (ii) a provision of Chapter 6 (which is about specific protections);
- (b) has attempted to contravene such a provision; or
- (c) has aided, abetted, counselled, or procured a person to contravene such a provision; or
- (d) has induced, or attempted to induce, a person, whether by threats or promises or otherwise, to contravene such a provision; or
- (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
- (f) has conspired with others to contravene such a provision;

(2) If a juristic person is liable as a seller for violations of this Act, an officer, owner or parent company of the juristic person is jointly and severally liable for the violations of the Act if that officer, owner or parent company knew or should have known about the conduct violating the Act and either substantially participated in the conduct or had authority over the conduct and allowed the conduct to occur.

(3) A person who provides substantial assistance or support to any seller when that person knows or should know that the seller is engaged in any act or practice that violates the Act is joint and severally liable for the violations of the Act.

#### **Offences in respect of functions of Authority**

- 181.** (1) A person commits an offence if the person –
- (a) obstructs an authorised officer of the Consumer Authority in the performance of his functions under this Act or any other law;
  - (b) without reasonable cause, fails or refuses to give to an authorised officer such information as he or she may reasonably require in the performance of his or her functions under this Act or any other law.
- (2) A person commits an offence if the person –
- (a) without lawful authority –
    - (i) breaks, tampers with or damages a seal affixed as prescribed;
    - (ii) removes any article to which a seal has been affixed as prescribed; or
  - (b) when served with a notice in terms of section 176–
    - (i) fails without reasonable cause to comply with the notice; or
    - (ii) furnishes information which he or she knows is false in a material particular; or
- commits an offence and is liable on conviction to a fine not exceeding N\$ 50 000 or to imprisonment

## **Penalties**

**182.** (1) If the Tribunal is satisfied that a person has committed an offence under section 178, the court may order the person to pay to the Consumer Authority, such penalty, in respect of each offence by the person to which this section applies, as the Tribunal determines to be appropriate.

- (2) In determining the appropriate penalty, the Tribunal must have regard to all relevant matters including –
- (a) the nature and extent of the act or omission and of any loss or damage suffered as a result of the act or omission; and
  - (b) the circumstances in which the act or omission took place; and
  - (c) whether the person has previously been found by a court in proceedings under section 178 or this section to have engaged in any similar conduct.
  - (d) the number of consumers affected by the supplier's conduct and the length of time during which the violations occurred;

- (e) the culpability of the supplier;
- (f) whether the violations constitute a significant breach of the public trust;
- (g) whether consumer relief and other payments required of the supplier exceed the gain of the supplier from the violations so as to adequately punish the conduct;
- (h) whether a penalty is necessary to deter other similarly situated suppliers and ensure a fair market for all suppliers not engaging in similar conduct; and
- (i) whether the penalty amount fairly reflects the severity, gravity and market significance of the violations.

(3) The penalty payable under subsection (1) is not to exceed the amount worked out using the table in the Schedule.

(4) For the purposes of items 1, 2, 10, 12 and 14 in the Schedule, the amounts are determined as follows:

- (a) **NS\$2,500,000;** of items 1, 2, 10, 12 and 14 in the Schedule
- (b) if the court can determine the value of the benefit that the corporation, and any corporation related to the corporation, have obtained directly or indirectly and that is reasonably attributable to the act or omission, three times the value of that benefit;
- (c) if the court cannot determine the value of that benefit, 30% of the corporation adjusted turnover during the breach turnover period for the act or omission.

(5) If conduct constitutes a contravention of two or more provisions referred to in subsection (1) (a) –

- (a) a proceeding may be instituted under this Act against a person in relation to the contravention of any one or more of the provisions; but
- (b) a person is not liable to more than one pecuniary penalty under this section in respect of the same conduct.

(6) An order imposing a pecuniary penalty, including a pecuniary penalty arising from a consent agreement confirmed as an order of the Tribunal in accordance with this section, has the effect of, and may be executed as if it were a civil judgment granted by the Magistrate Court.

(7) The Tribunal may order that a penalty under this chapter may be payable to the Consumer Authority, and shall be retained by the Consumer Authority, in consultation with the

Minister with the concurrence of the Minister responsible for Finance and for any such purpose as may be determined by the Consumer Authority.

(8) Proceedings for an order under section 73 against a person in relation to a consumer protection breach are stayed if –

- (a) criminal proceedings are started or have already been started against the person for an offence; and
- (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the consumer protection breach.

the proceedings for the order may be resumed if the person is not convicted of the offence.

(9) Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a consumer protection breach regardless of whether an order under section 73 has been made against the person in respect of the breach.

(10) Evidence of information given, or evidence of the production of documents, by an individual is not admissible in criminal proceedings against the individual if –

- (a) the individual previously gave the evidence or produced the documents in proceedings for an order under section 73 against the individual in relation to a consumer protection breach (whether or not the order was made); and
- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the consumer protection breach.

### **Preference must be given to compensation for victims**

**183.** (1) If the Tribunal considers that –

- (a) it is appropriate to order a person (the defendant) to pay a pecuniary penalty under section 73; and
- (b) it is appropriate to order the defendant to pay compensation to a person who has suffered loss or damage as result of that contravention or conduct; and



- (c) the defendant does not have sufficient financial resources to pay both the pecuniary penalty and the compensation;

the court must give preference to making an order for compensation.

## **Chapter 9**

### **REMEDIES**

#### **Various orders Tribunal may make**

**184.** (1) The tribunal may grant the following remedial orders:

- (a) Interdicts;
- (b) Damages;
- (c) Non punitive orders;
- (d) Compensatory orders;
- (e) Declaratory orders; and
- (f) Costs orders.

(2) Despite subsection (1), the Tribunal is entitled to grant any other order which a Magistrate is entitled to grant.

(3) The Minister may prescribe the requirements to be met for an order in terms of this subsection (1).

## **Part 4**

### **Defences**

#### **Defences in relating to Publication of advertisement in the ordinary course of business**

**185.** (1) This section applies to a proceeding under this Part in relation to a contravention of a provision of Chapters 5, and 6, if the contravention was committed by the publication of an advertisement.

- (2) In the proceeding, it is a defence if the defendant proves that –
  - (a) the defendant is a person whose business it is to publish or arrange for the publication of advertisements; and
  - (b) the defendant received the advertisement for publication in the ordinary course of business; and
  - (c) the defendant did not know, and had no reason to suspect, that its publication would amount to a contravention of such a provision.

**Defences in relating to Supplying consumer goods and product related services for the purpose of re-supply**

**186.** (1) This section applies to a proceeding under this Part in relation to a contravention of a provision of Chapters 5, 6; committed by –

- (a) the supplying of consumer goods and supplying of product related services that did not comply with a safety standard for such goods or services; or
  - (b) the supplying of consumer goods and supplying of product related services by a supplier who did not comply with an information standard for such goods or services.
- (2) In the proceeding, it is a defence if the defendant proves that –
- (a) the consumer goods or services were acquired by the defendant for the purpose of re supply; and
  - (b) the consumer goods or services were so acquired from a person who carried on in Namibia a business of supplying such goods or services otherwise than as the agent of a person outside Namibia; and
    - (i) either –
      - (aa) the defendant did not know, and could not with reasonable diligence have ascertained, that the consumer goods or services did not comply with that safety standard, or that the defendant had not complied with that information standard, as the case may be; or
      - (bb) the defendant relied in good faith on a representation by the person from whom the defendant acquired the goods or services

that there was no safety standard or information standard, as the case may be, for such consumer goods or services.

## Chapter 10

### GENERAL PROVISIONS

#### Application of Act

**187.** (1) Save as otherwise expressly provided by the Minister, by notice in the *Gazette* this Act applies to all goods and services.

(2) This Act applies to the exchange of goods, services and merchandise including its advertisement and promotion as available for sale to any consumers by a supplier

(3) This Act binds the State in so far as the State engages in (trade or business for the production, supply or distribution of goods or the provision of any service), selling of merchandise.

(4) If there is an inconsistency between any provision of this Act and a provision of any other Act, the provisions of both Acts apply concurrently to the extent that it is possible to apply and comply with both Acts; or if concurrent application or compliance is not possible, the provision that extends the greater protection to a consumer prevails.

#### Repeal of laws

**188.**

#### Savings and transitional provisions

**189.** *To be researched and added in any.*

## Short title

**190.** (1) This Act is called the Consumer Protection Act and comes into operation on a date specified by the Minister by notice in the Gazette.

### SCHEDULE

#### Calculation of amount of penalties

<b>Item</b>	<b>For each offence to which this section applies that relates to</b>	<b>If the person is a corporation, the pecuniary penalty is not to exceed</b>	<b>If the person is not a corporation—the pecuniary penalty is not to exceed</b>
1.	A provision on unconscionable conduct	The greater of the amounts mentioned in subsection (182-4)	N\$ 500 000
2.	A provision on unfair practices (other than section Multiple pricing)	The greater of the amounts mentioned in subsection (182-4)	N\$ 500 000
3.	A provision on multiple pricing	N\$ 5 000.00	N\$ 1 000
4.	A provision on Display notices	N\$ 50 000	N\$ 10 000
5.	A provision on Unsolicited consumer agreements (other than section on Obligations and rights of consumers on termination)	N\$ 50 000	N\$ 10 000
6.	A provision on Lay by agreements	N\$ 30 000	N\$ 6 000
7.	A provision on Gift cards	N\$ 30 000	N\$ 6 000
8.	A provision on proof of transaction and itemised bill	N\$ 15 000	N\$ 3000
9.	A provision on warranties against defects	N\$ 50 000	N\$ 10000
10.	A provision on safety standards and compliance with interim bans and permanent bans	The greater of the amounts mentioned in subsection (182-4)	N\$ 500 000
11.	A provision on notification by persons who supply consumer goods outside Namibia if there is compulsory recall	N\$ 16 500	N\$ 3 300
12.	A provision on compliance with recall notices	The greater of the amounts mentioned in subsection (182-4)	N\$ 500,000

13.	Notification requirements for a voluntary recall of consumer goods or suppliers to report consumer goods or product related services associated with the death or serious injury or illness of any person	N\$ 16 500	N\$ 3 300
14.	Supplying etc. goods or services that do not comply with information standards	The greater of the amounts mentioned in subsection (182-4)	N\$ 500 000
15.	Compliance with substantiation notices	N\$ 16 500	N\$ 3 300
16.	False or misleading information	N\$ 27 500	N\$ 5 500

---