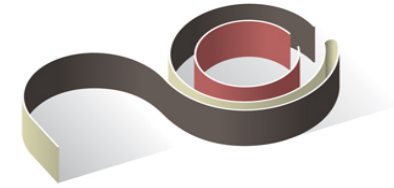


NATIONAL CONSUMER COMMISSION

THE CONSUMER PROTECTION ACT 68, 2008.

PENSION FUNDS LAWYERS ASSOCIATION
07 March 2011



NATIONAL CONSUMER COMMISSION

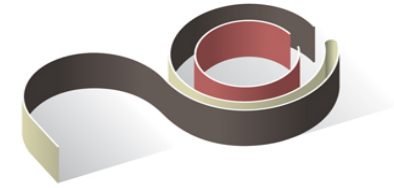
Objective of Presentation

To provide a brief overview of :

The **Consumer Protection Act and the National Consumer Commission**

and

Specific Provisions that have an **impact on Pension Funds**



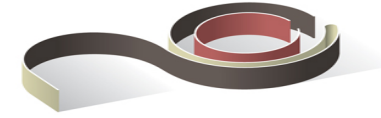
NATIONAL CONSUMER COMMISSION

Commissioner and Deputy Commissioner

Minister has appointed the **Commissioner** and the **Deputy Commissioner** in terms of Section 87 of the Act both on a five year contract

Structure in support of the Commission – Five Division

- Education, Compliance and Advocacy
- Enforcement and Investigations
- Legal Services
- Policy and research
- Corporate services

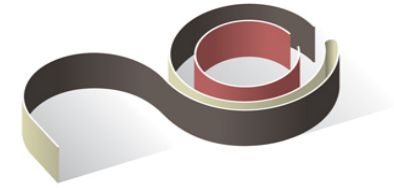


NATIONAL CONSUMER COMMISSION

Role of the NCC

The Commission has the responsibility to enforce the Act by –

- **Initiating** complaints on systemic issues affecting consumer generally;
- **Investigating** complaints referred by consumers, or any person entitled to do so by the Act;
- Issuing **compliance Notices** to entities investigated;
- Negotiating **settlement of complaints** where suppliers wants to settle the matter without referral to the Tribunal;
- Facilitating conclusion of **consent orders**;
- Referring matters to the **Tribunal for adjudication and to the Equality Court**
- Accreditation of **Industry Codes** and **Industry Ombud-schemes** –
- Accreditation of **ADR Agents**
- Accreditation of **Consumer Groups**
- Monitoring of Accredited Instructions
- Monitoring of Consumer Markets
- Conducting Research
- Develop and promote use of Codes of good Practice
- Ensuring Public awareness.

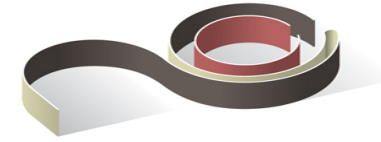


NATIONAL CONSUMER COMMISSION

Purpose of the Act

to **promote** and **advance** the **social and economic welfare** of consumers in South Africa by reducing or ameliorating any disadvantages experiences in accessing any supply of goods and services by consumers:

- **Low income persons** or persons comprising low income communities
- **Live in remote, isolated or low-density** population areas or communities
- **Minors, seniors** or other **similarly vulnerable** consumers or
- **Inability to read and comprehend** any agreement is limited by reasons of low literacy fluency in the language in which he agreement is presented.

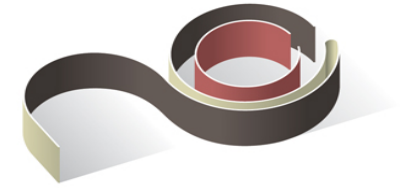


NATIONAL CONSUMER COMMISSION

Overview of the CPA

The Act has 7 chapters and 2 schedules

- **Chapter 1:** Interpretation, purpose, policy & application,
- **Chapter 2:** Fundamental Consumer Rights (equality, privacy, choice, disclosure, information, responsible marketing, honest dealing, fair value, accountability, good quality and safety,
- **Chapter 3:** Protection of consumer rights and consumer voice (right to be heard and obtain redress, investigations, redress by the courts, role of civil society)
- **Chapter 4:** Business names and Industry Codes of Conduct
- **Chapter 5:** National Consumer Protection Institutions (National and Provincial Cooperation, Establishment of National Consumer Commission, Functions of National Consumer Commission)
- **Chapter 6:** Enforcement of the Act (Enforcement by Commission, investigative powers, Offences & penalties
- **Chapter 7:** General Provisions
- **Schedule 1:** Consequential Amendments
- **Schedule 2:** Transitional Provisions

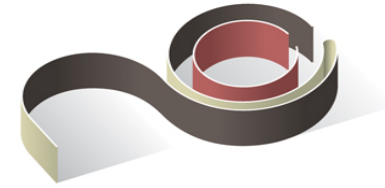


NATIONAL CONSUMER COMMISSION

Pension Funds, Administrator and Members

Three relevant chapters:

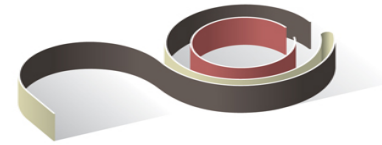
- Interpretation, purpose, realization and application of the Act (**Chapter 1**)
- Fundamental consumer rights (**Chapter 2**)
- Protection of consumer rights and Consumer voice (**Chapter 3**)



NATIONAL CONSUMER COMMISSION

Application of the Act

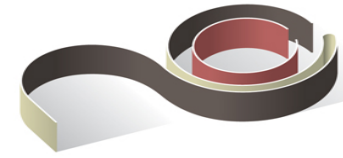
- **Every transaction** occurring within the Republic **unless it is exempted**
- Promotion of Goods or Services
- A consumer as a **juristic person** whose assets value or annual turn over, at the time of transacting is below **the threshold**.



NATIONAL CONSUMER COMMISSION

Definition of Consumer

- Person to whom goods and services are **marketed in the ordinary course of the supplier's business**
- A person who entered into a transaction with the supplier in the ordinary course of business , **unless the transaction is exempted**
- In the context permits , a **user of goods , recipient or beneficiary** whether or not they were party to the transaction or not
- **Juristic persons** whose asset value or annual turnover, at the time of the transaction is below the Threshold



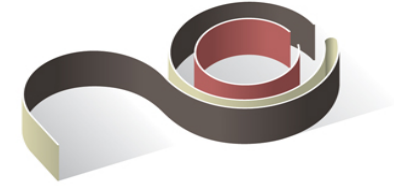
NATIONAL CONSUMER COMMISSION

Right to delivery of goods and services(Section 19 (2))

Implied condition of every transaction : a supplier of goods or services that is responsible to deliver the goods or perform the services on the **agreed date or time**, if any, or **otherwise within reasonable time after** concluding the transaction or agreement.

Right to Disclosure and information(Section 22)

The producer of a document must produce a document **in plain and understandable language**.



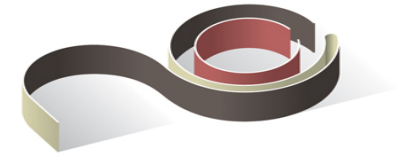
NATIONAL CONSUMER COMMISSION

Disclosure by Intermediaries (Section 27)

An **Intermediary** must **disclose prescribed information** to any person :

- whom the intermediary **solicit or agrees to represent** with respect to sale of any property or **service**, or
- from whom the intermediary **accept any property** for the purpose of offering it for sales any person from whom he solicits an offer or
- to whom the intermediary offer to **supply any service** to be performed by a third party, or any goods or property belonging to a third party.

The Intermediary must keep prescribed records of all relationships and transactions.

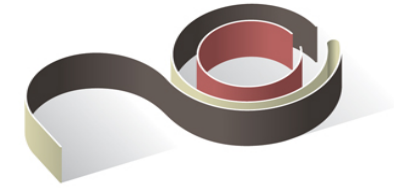


NATIONAL CONSUMER COMMISSION

Disclosure by Intermediaries (Section 27) cont.

Does not apply to :

- **Executors or Administrators of deceased estates**
- **Liquidator of an insolvent Estate**
- **Trustee i.r.o any trust property**



NATIONAL CONSUMER COMMISSION

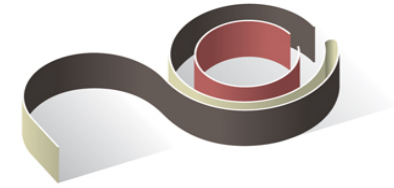
Unconscionable Conduct (Section 40)

Supplier or an agent of the supplier must not **use physical force ,coercion, undue influence, pressure, duress or harassment , unfair tactics or similar conduct**, in connection with any:

- **Marketing** of any goods or services
- **Supply** to any goods or services to consumer;
- **Negotiation, conclusion, execution or enforcement of an agreement** to supply any goods or services to consumers
- **Demand for collection**
- **Recovery** of any goods from a consumer

Or

In addition to any conduct contemplated above, supplier must not knowingly **take advantage** of the fact that a consumer was substantially unable to protect the consumer's own interests because of **physical or mental disability, illiteracy, ignorance, inability to understand the language of an agreement**, or any other similar factor



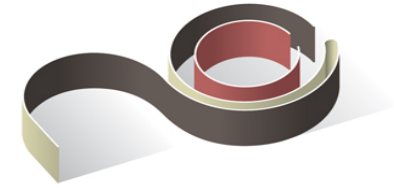
NATIONAL CONSUMER COMMISSION

False , Misleading and Deceptive Representation (Section 41)

In relation to any goods or services, the supplier **must not by words or conduct-**

- Directly or indirectly express or imply a **false or misleading or deceptive representation** concerning a **material fact** to a consumer;
- **Use exaggeration, ambiguity or innuendo** as to the material facts, or **fail to disclose material fact** if that failure amount to a deception; or
- **Fail to correct an apparent misapprehension** on part of a consumer amounting to false, misleading or deceptive representation

A person acting on behalf of the supplier must not falsely represent that a person has any **sponsorship, approval or affiliation**.



NATIONAL CONSUMER COMMISSION

Unfair , Unreasonable or Unjust Contract Terms (Section 48)

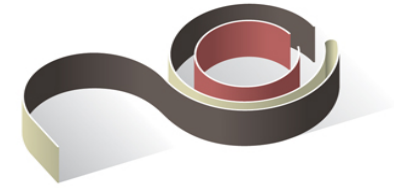
A supply must not offer to supply or enter into an agreement to supply, any goods or services.

- At a **price** that **is unfair, unreasonable or unjust** or
- On **terms** that are **unfair, unreasonable or unjust**
- **Marketing** of any goods or services, or negotiate, enter into or **administer a transaction** or agreement for supply of goods or services, in a manner that is unfair, unreasonable or unjust

Without limiting the generality of the subsection (1) above a transaction, agreement,
a

term or condition of a transaction or agreement is unfair or unreasonable or unjust if:

- **Is excessively one sided** in favor of any person other than a consumer
- The terms of the transaction or agreement are so **adverse** to the consumer as to be **inequitable**.

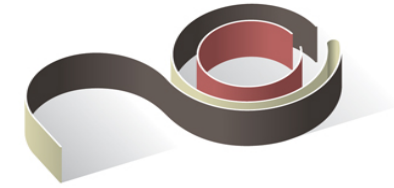


NATIONAL CONSUMER COMMISSION

Supplier's Accountability to Consumers (section 65)

when a supplier has possession of any **pre-payment, deposit, membership fee money or any other property** belonging to consumer
the supplier:

- Must not **treat that property** as being the property of the supplier,
- Must exercise a **degree of care, diligence** and **skill that can reasonably be expected** of a person responsible for managing any property belonging to another person, and
- **Is liable** to the owner of the property for any loss resulting from a failure to comply with the above paragraphs



NATIONAL CONSUMER COMMISSION

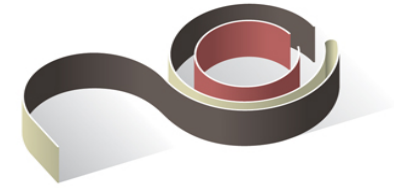
Alternative Dispute Resolution (Section 70(1)a)

A consumer may seek to resolve any dispute in respect of a transaction or agreement with a supplier by referring the matter to a **dispute resolution agent** who may be :

- An **Ombud-Scheme** with jurisdiction if the supplier is subject to that jurisdiction,
- An **Industry Ombud** accredited i.t.o Section 82
- **Person or entity providing conciliation, mediation or arbitration** services to assist in the resolution of disputes , other than an Ombud-scheme with jurisdiction or an accredited Industry Ombud.

If a dispute resolution agent **conclude** that there is **no reasonable probability** of the parties resolving their dispute through the process provided for, **the agent may terminate by notice** to the parties, where after the party who referred the matter to the agent may file a complaint with Commission

Relations with other Regulatory Authorities (Section 97)



NATIONAL CONSUMER COMMISSION

Commission may negotiate agreements with any regulatory authority to:

- co-ordinate and harmonize the exercise of jurisdiction over consumer matters within the relevant industry or sector and
- to ensure the consistent application of the principles of this Act.

Commission may Participate in the proceedings of any regulatory authority and advise or receive advise from any regulatory authority .

THANK YOU