

SAICA comments on the Consumer Protection Act Draft Enforcement Guidelines

	Regulation	Issue	Proposal
	Addition to Paragraph 1.1.5		
1.	<p>“Against whom can a complaint be lodged?” The complaint can be lodged against an individual, juristic person, partnership, trust, organ of state, an entity owned or directed by an organ of state, a person contracted or licensed by an organ of state to offer or supply any goods or services, or is a public private partnership in the ordinary course of business. It does not matter whether the respondent's principal office is situated outside the country. Thus the jurisdiction of the NCC is very broad.”</p>	<p>The list of persons does not reflect the intention of section 5(6)(a) of the Act. A complainant should also be able to lodge a complaint against a club, trade union, association, society or other collective, whether corporate or unincorporated, of persons voluntarily associated and organized for a common purpose or purposes as reflected in section 5(6)(a)</p>	<p>We recommend that the list of persons against whom a complaint can be lodged should be expanded to reflect the intention of section 5(6) (a) of the Act. A complainant should also be able to, in addition, lodge the complaint against a club, trade union, association, society or other collective, whether corporate or unincorporated, of persons voluntarily associated and organised for a common purpose or purposes as reflected in section 5(6)(a) as follows: <i>“(6) For greater certainty, the following arrangements must be regarded as a transaction between a supplier and consumer, within the meaning of this Act: (a)The supply of any goods or services in the ordinary course of business to any of its members by a club, trade union, association, society or other collective, whether corporate or unincorporated, of persons voluntarily associated and organised for a common purpose or purposes,”</i></p>
	Amendment to paragraph 1.1.6 (7)		
2.	<p>“Franchise transactions irrespective of the value of the transaction in so far as the following: - the solicitation of offers to enter a franchise agreement; - an offer by potential franchisor to enter into franchise agreement with potential franchisee; - a franchise agreement or supplementary agreement to a franchise agreement.”</p>	<p>The paragraph is not properly aligned with section 5(7) of the Act.</p>	<p>We recommend that the following bullet be inserted at the end of the paragraph. <u>“the supply of any goods or services to a franchisee in terms of a franchise agreement”</u></p>

	Regulation	Issue	Proposal
	Addition to paragraph 1.1.7		
3.	<p>“1.1.7 Types of matters that the NCC may not deal with</p> <p>The NCC cannot deal with transactions</p> <p>4) Which relates to Exempt goods or services”</p>	<p>The paragraph as it is, it is not aligned with to the National Credit Act no.34 of 2005</p>	<p>For consistency sake and in line with the reference to National Credit Act matters in subparagraph 7, the paragraph should include the following subparagraphs to reflect the provisions of the Act, under the definition of “services”.</p> <p><i>“7(a) That constitutes advice or intermediary services that is subject to regulation in terms of the Financial Advisory and Intermediary Services Act, No. 37 of 2002.</i></p> <p><i>7(b) That constitutes services regulated in terms of the Long-term Insurance Act, No. 52 of 1998, or the Short-term Insurance Act, No. 53 of 1998.”</i></p>
	Amendment to Paragraph 1.2.1(iii)		
4.	<p>“Notice of Non-Referral</p> <p>A non referral notice will be issued where the complaint is made more than three years after:</p> <p>(a) the act or omission that is the cause of the complaint; or</p> <p>(b) in the case of a course of conduct or continuing practice, the date that the conduct or practice ceased.”</p>		<p>The following wording is proposed to ensure certainty:</p> <p><i>“(a) <u>the date of</u> the act or omission....”</i></p>
	Amendment to paragraph 1.2.2.1 (ii)		
5.	<p>“The NCC may refer the complaint to:</p> <p>(ii) a provincial consumer protection authority legislation makes provision for a referral of matters to them.”</p>	<p>Subparagraph (ii) appears to reflect a cosmetic or grammatical error.</p>	<p>We recommend that the guideline be redrafted.</p>

	Regulation	Issue	Proposal
	Amendment to paragraph 5.3.2		
6.	<p>“5.3.2 Breach of Confidence It is an offence to disclose any personal or confidential information concerning the affairs of any person obtained</p> <ul style="list-style-type: none"> • in carrying out any function in terms of the Act; or • as a result of initiating a complaint or participating in any proceedings in terms of this Act. <p>However, this does not apply to information disclosed:</p> <ul style="list-style-type: none"> • for the purpose of the proper administration <i>or</i> enforcement of the Act; • for the purpose of the administration of justice; or • at the request of an inspector, entitled to receive the information.” 	Section 5.3.2. is open to potential abuse.	<p>It is proposed that the following words are inserted at the end of the section: <i>“This provision is subject to the provisions of section 5.3.1”</i> This insertion may prevent the disclosure of confidential information before the procedures are followed as prescribed by section 5.3.1.</p>