



4 April 2011

**Your ref: NCC/GN/0002**

**Via email [pmoilwa@thedti.gov.za](mailto:pmoilwa@thedti.gov.za)**

The National Commissioner  
National Consumer Commission  
c/o Ms Prudence Moilwa  
P O Box 30251  
SUNNYSIDE  
0132

Dear Madam

**DRAFT GUIDELINES FOR THE DEVELOPMENT OF INDUSTRY CODES OF CONDUCT FOR ACCREDITATION IN TERMS OF PROVISIONS OF SECTION 82 OF THE CONSUMER PROTECTION ACT, 2008**

We refer you to paragraph 4.5 – 4.8 of Government Gazette No: 34087 dated March 8, 2011.

The suggested introduction of mediation before disputants proceed to adjudication to settle disputes under the Consumer Protection Act 62 of 2008 is to be welcomed. However, the proposed Regulation has in our view missed the point as to what mediation is about. To provide for “balance of probabilities”, “admissibility of documents”, “expert evidence” etc. is to use the language and techniques of litigation and not mediation. The role of the mediator is to create an atmosphere in which the disputants are empowered to reach a settlement which accommodates their needs. It is all about problem solving and one of the key factors is that mediation is flexible. There are no rigid procedures such as are provided for in the Rules of Court.

In order to create a conducive atmosphere, the parties need to be assured by the mediator that what is discussed during the mediation is confidential and without prejudice. If they wish to refer to outside parties such as experts, the way forward would be to invite the expert to participate in the mediation and discuss the issues rather than give evidence. In other words, attempt to solve the problem as a problem not to have a solution imposed by an adjudicator.

The Law Society of South Africa brings together the Black Lawyers Association, the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces and the National Association of Democratic Lawyers in representing the attorneys' profession in South Africa.

If the Regulation stands as is, the procedure will be no different from Court procedure.

Our concern is that a very positive idea will certainly be lost if the Regulation is not fundamentally changed to allow for true mediation.

We trust that these comments may be of some assistance and would be happy to elaborate if called upon to do so.

Yours faithfully



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**Professional Affairs Manager**

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