



NATIONAL CONSUMER COMMISSION

a member of the dtic group

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### **EXPLANATORY NOTE 1/2023**

#### **1. INTRODUCTION**

- 1.1 The purpose of this explanatory note is to give guidance to consumers and other stakeholders on the remedy for a refund as provided in terms of section 20 versus the remedy for a refund as provided in terms of section 56 of the CPA.

#### **2. FACTUAL BACKGROUND**

- 2.1 In this explanatory note, the NCC will address various topics that are applicable to the remedy for a refund in terms of section 20 as opposed to refund in terms of section 56 of the CPA.
- 2.2 For purposes of this explanatory note, the consumer/stakeholder is required to refer to the sections or subsections of the CPA that are mentioned in this explanatory note.

#### **3. PRE-REQUISITES**

- 3.1 Section 20 and 56 of the CPA are two different sections that provides consumers with a remedy for refund of the purchase price but have different requirements that need to be complied with before a consumer can claim a refund.
- 3.2 When goods are returned in terms of section 56 (2) of the CPA and a refund is claimed, the consumer must first prove that such goods did not comply with the requirements and standards contemplated in section 55 (2) (a-d) of the CPA.

3.3 When goods are returned in terms of section 20 and a refund is claimed, the consumer must first prove that the said goods are goods supplied to the consumer under the circumstances mentioned in subsection 2 of section 20 of the CPA. However, there are exceptions in terms of subsection 3 where subsection 2 of section 20 does not apply.

#### 4. TIME PERIOD

4.1 When goods are returned in terms of section 56, such goods must be returned within 6 months after the delivery thereof to the consumer.

4.2 When goods are returned in terms of section 20, such goods must be returned within ten (10) days after the delivery thereof to the consumer.

#### 5. ELECTION.

5.1 Once the above requirements are satisfied/proved, if a consumer is exercising her/his rights to claim a refund in terms of section 56 (2) of the CPA, such consumer must inform the supplier, preferable in writing, whether he/she elects a refund or other remedies like repair or replacement.

5.2 Our courts have made it clear that the consumer **can only elect a refund** in terms of section 56 (2) if essential elements for a definition of a defect/ failure/hazard or unsafe are proved. The courts, including the Tribunal have given guidance of factors that needs to be considered in determining whether there was a defect/failure/hazard or unsafe as defined in section 53 of the CPA goes into the heart of the sale agreement. In our next explanatory note these factors will be addressed in detail. **For example**, a consumer cannot claim a refund if it is just defective lights that can be repaired at a very low cost or the car radio is not functioning as such malfunctioning does not affect the primary function of a vehicle.

5.3 In case where the consumer first elected the goods to be repaired, and further defects/failure or unsafe feature is discovered within three (3) months after the goods have been repaired, it is the supplier who now elects whether to replace

the goods or refund the purchase price and not the consumer. In such instance there is no option of repairing the goods, except if the consumer agrees thereto.

5.4 In terms of the return of goods in terms of section 20, the return of goods is coupled with a remedy for a refund only. There is no election of the remedy.

## 6. RISK AND EXPENSE

6.1 When goods are returned in terms of section 56, such goods are returned at the supplier's risk and expense.

6.2 Where goods are returned in terms of section 20, they are either returned at the risk and expense of the consumer or the supplier. Goods are returned at the risk and expense of the consumer if the consumer is returning goods that were bought because of direct marketing and within the cooling off period. If goods are returned in terms of section 20(2) (b-d) they are returned at the risk and expense of the supplier.

## 7. PENALTY

7.1 Where goods are returned in terms of section 56 and a refund is claimed by the consumer, such refund of the purchase price must be refunded to the consumer without any penalty i.e., the supplier cannot deduct any monies for usage or repackaging. Although the High Court of Appeal in **Motus Corporation and Another vs Wentzel, All SA 98 (SCA)**, concluded that deduction for usage has to be effected when making a refund in terms of section 56, the NCC is of the view that such decision is open for challenge or reconsideration, because of the explanation given above.

7.2 Section 20 is clear that deductions may be made by the supplier if the return of the vehicle is made in terms of section 20. Section 20(5) states that; "Upon *return of any goods in terms of this section*, the supplier must refund the consumer the price paid for the goods, less any amount that may be charged in terms of subsection (6). The words "in terms of this section" clearly exclude the return made in terms of section 56.

7.3 Even the wording of section 20 (1) of the CPA states that section 20 **does not substitute the right to return unsafe goods or defective goods, contemplated in section 56**, but its is an additional section that governs specific circumstances mentioned in subsection 2 of section 20, under which goods may be returned and refund made.

7.4 Where goods are returned in terms of section 20, the supplier is entitled to deduct any penalty that is allowed in terms of section 20 (6)

Dated and signed on this 7<sup>th</sup> day of February 2023.



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