

# What does the Consumer Protection Act provide for?

The Consumer Protection Act (CPA), a 2008 Act, was recently published and will take effect during October 2010. The CPA is a major step forward and an extremely important development in the field of consumer protection. It will have a material impact on the relationship between consumers and businesses under the banner of consumer interest which is the driving force and overarching motive of the CPA. (E van Eeden A Guide to the Consumer Protection Act (LexusNexus: Durban 2009) at 24).

The CPA consists of 122 Sections, 7 Chapters and 2 Schedules that deal with various aspects relating to consumer protection transitional provisions and amendments to existing law, which include amendments to the National Credit Act of 2005 (NCA).

My intention with this article is to give an introduction and framework to the CPA, and I would like to highlight the most important sections of the Act.

The purpose of the Act is to promote and advance the social and economical welfare of consumers in South Africa. This phrase is also found verbatim in Section 3 of the NCA. The preamble to the CPA stresses the need for both a positive economical environment and an appropriate legal framework that entails the promotion of an environment that supports and strengthens a culture of consumer rights and responsibilities, business innovation and enhanced performance.

Section 1 of the CPA, containing definitions, sets out what is meant by consumer, which *inter alia* means a person to whom goods or services are marketed in the ordinary course of business, a person who has entered into a transaction with a supplier (a person who markets any goods or services) in the ordinary course of business and someone who is a user, recipient or beneficiary of those particular services. When dealing with the CPA it is of the utmost importance to constantly refer back to the definitions as various terms used throughout the Act have been specifically defined. Other important definitions that should be taken note of are the meanings attached to transaction, goods and services.

“Service” includes, inter alia, any work or undertaking performed by one person for the direct or indirect benefit of another, which includes the provisions of education and any banking services or related similar financial services except to the extent that any such service is regulated by the Financial Advisory and Intermediary Service Act 37 of 2002.

In terms of Section 5 of the CPA all transactions which occur within the Republic, unless exempted in terms of subsection 5, are included under the Act. The application incorporates the promotion of goods or services and is also applied to the supplier of any goods or services unless exempted.

In the subsequent articles I will deal with the following important Sections and give brief descriptions of what the Act provides for in respect of these concepts. A more comprehensive discussion within the scope of the first article is not possible. The following concepts will be discussed in the subsequent articles:

- The scope of application and exemptions of the Act;
- The right to select a supplier;
- The right to a cooling off period;
- Unsolicited goods or services;
- Contracts in plain and understandable language;
- Customer loyalty programs;
- Overselling and overbooking;
- Right to safe and good quality goods;
- And several others.

To conclude, it should be mentioned that this Act will affect all businesses within the Republic of South Africa, especially retailers, restaurants, farmers and any contracts in which any items or services are sold to a consumer, except those that are specifically exempted in terms of the Act. It is therefore of paramount importance that all businessmen and consumers are well equipped with the knowledge needed to comply with the provisions of the CPA.

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