

# Consumers! You have major rights

## What are they?

The new Consumer Protection Act makes South Africans some of the most protected consumers in the world. But the Act is of no use unless we know our rights and how to use them. **Kirsty Melville-Nieman** gives information on the Act, our rights as consumers and on how to lay a complaint.

**W**e are all familiar with this: you arrive at the bus terminal with your ticket and you are told that there is no space for you on the bus as they have over-booked. Or your cell phone contract rolls on for another two years without you even knowing that it was up for renewal. Your water and electricity are cut even though your payments are up to date.

Suppliers have taken advantage of consumers for years, but the good news is that this is all about to stop!

The Consumer Protection Act (CPA) is a very exciting piece of law. It came into being on 1 April this year and South African consumers are now among the most protected consumers in the world. But the Act is pointless if we don't understand it and know what our rights are.

So what does the Act mean for you?

### UNDERSTANDING TERMS

To understand the Act better, we need to first understand some of the terms that it uses:

#### **Supplier**

A supplier is a person or a business that markets, advertises or supplies

goods and/or services. A person is not a supplier if they are advertising or selling something not in the usual course of business. For example, if I decide to sell some of my old furniture through the newspaper classifieds, I would not be a supplier as I do not do this for a living.

#### **Consumer**

A consumer is firstly someone who has entered into a transaction with a supplier by purchasing goods and services from the supplier. Secondly, someone to whom particular goods and services have been marketed: for example, you are a consumer even if you just see the adverts for a product or service and you don't buy the product or service. And lastly, a consumer is someone who uses goods and services regardless of whether they paid for them. For example if a friend buys you a cell phone for your birthday, you are a consumer of that cell phone even though you didn't pay for it yourself.

### RIGHTS UNDER CPA

The Act reinforces some of the rights we as consumers already had and gives us new rights as the diagram on page 29 shows.

#### **Consumer rights**

- The *right of equality* is the right to be treated fairly and equally. No one may discriminate unfairly against you based on your race, gender, sexual orientation and so on.
- The *right to privacy* is the right not to be disturbed by direct marketers in the evenings, on weekends and public holidays and to refuse spam.
- The *right to choose* from a range of products and services, offered at competitive prices, with the assurance of satisfactory quality.
- The *right to disclosure* which means that consumers must be provided with the facts needed to make informed choices and to ensure their protection against dishonest or misleading advertising and labelling.
- The *right to fair and responsible marketing* which involves protection against bait marketing, negative option marketing and unwanted direct marketing.
- The *right to fair and honest dealing* protects the consumer against business practices such as over-selling and over-booking as well as fraudulent schemes and offers.



- The *right to fair, just and reasonable terms and conditions* gives protection against unfair, unreasonable or unjust contract terms and conditions.
- The *right to fair value, good quality and safe products and services*.

#### HOW WILL CPA AFFECT YOU?

Besides the rights that you have, the Act sets out various obligations and prohibitions for suppliers. This means that there are certain things that suppliers must do and certain things that they are not allowed to do.

Suppliers are not allowed to display goods without displaying a price for those goods. If more than two prices are displayed for the same item, the supplier is bound by the lower of the two prices. This means that they are only allowed to charge the lower price for the goods.

Suppliers are also not allowed to automatically renew a fixed-term

agreement. For example, they are not allowed to automatically roll on a cell phone contract without asking your permission.

Suppliers are now obligated to give you contracts in plain language – this means in easy to understand language. They are also obligated to provide you with a written record of a transaction such as a till slip.

From now on, if you accidentally break something in a shop, the shop owner may not charge you for the broken goods. As a consumer, you have the right to pick and choose from goods that are openly displayed. A shop keeper may only charge you for damaged goods if you broke them on purpose.

All goods now have an automatic warranty (guarantee) of six months. If anything goes wrong in this six month period, a supplier is obligated to refund the consumer, replace the goods or repair the goods. The choice is the consumer's.

If you decide to have the goods fixed, then you receive an

additional three month warranty on the goods. If, before these three months are up, the goods break again as a result of the same defect then a supplier has to replace the goods or give the consumer a refund. Suppliers are not allowed to only offer a consumer store credit – if a consumer demands a cash refund, a supplier is obligated to comply.

Suppliers often abuse lay-by purchases by selling goods set aside for a consumer at a set price and then later telling the consumer that they have to pay in more money for similar goods. The Act is now very strict on how a supplier will be penalised for violating a lay-by agreement. If a supplier cannot deliver the goods after a consumer has paid full price for them, the consumer can either choose an equivalent quantity of goods of a similar description and quality, or get a refund. If the supplier was responsible for the situation, they have to pay the consumer double the amount that was paid by the consumer.

If you, the consumer, decide to cancel a lay-by agreement, the supplier is entitled to charge a cancellation penalty but must refund you the balance of what you paid in.

#### COMMON SITUATIONS

Below are some of the typical situations that you could find yourself in. Each scenario is divided into four sections: the situation; what the Act says; what you should do and who to complain to or seek help from.

##### ***Injury at a mall***

Maintenance work is underway at the shopping mall. The only sign you see is one that reads, 'Sorry for the inconvenience', so you assume that there is no danger. As you walk past some scaffolding, a plank falls down and injures you.

Section 49 of the Act: A supplier

must draw the consumer's attention in a manner that is likely to attract the attention of a consumer to any risk that could result in serious injury or death.

The consumer can submit a claim for medical costs to the management of the shopping mall, together with proof of your injuries and medical expenses.

If you ultimately have to lodge a claim in court for damages you will first need to obtain a notice from the Consumer Tribunal (Section 115).

### **Bait marketing**

You see an advert for a wide-screen television that is on sale. You start queuing outside the store at 4 am only to be told that the televisions never arrived and that you can choose a similar, but more expensive television.

Section 30 of the Act: A supplier may not advertise any particular goods or services as being available at a specified price in a manner that misleads consumers, especially if the advert says a certain number are available.

You can insist upon being supplied a comparable substitute television within a reasonable time and at the advertised cost.

If this does not bring about the desired result, you can refer the matter to an ombudsman or the Consumer Commission.

### **Food doesn't match the description**

You are eating dinner at a restaurant. You decide on a dish based on the description and picture that appears in the menu. When your meal arrives it looks nothing like the picture and the size is much smaller than what was advertised.

Section 41 of the Act: A supplier may not make any representation about the goods that is misleading or deceptive, or is likely to mislead or deceive a consumer.

You may require that the

restaurant replace your meal or refund you.

You should approach the restaurant manager and request a discount based on how much the meal fell short by. If your claim is not met, you can refer the matter to the Restaurant Association of South Africa, an ombudsman or the Consumer Commission.

### **Expiry and renewal of fixed-term agreements**

You receive a message informing you that your cell phone contract is up for renewal. You don't want to continue the contract, but you forgot to cancel it when you were supposed to. You are afraid that you may be bound for another two years.

Section 14(2) of the Act: A supplier must notify you between 40 and 80 business days before the expiry date of a fixed-term agreement. Unless you inform the supplier that you would like to terminate the contract, it will automatically be continued on a month-to-month basis.

You are entitled to give 20 business days' notice of your intention to cancel the contract in writing or in another recorded manner and form.

If you have a dispute with the supplier, you can refer the matter to an ombudsman or the Consumer Commission.

## **COMPLAINTS**

The Act will be enforced by the Consumer Commission created by the Act as well as the Consumer Tribunal and the courts. The Commission may receive complaints, investigate alleged prohibited conduct and offences, issue and enforce compliance notices and refer matters to the Tribunal if it believes that a person has engaged in prohibited conduct.

The Tribunal is the last resort for disputes within the structures created under the Act. It is an independent body responsible

for hearing and deciding on cases involving consumers and suppliers of goods and services. It is responsible for reviewing decisions made by the Consumer Commission. It may impose fines, but not order that you be compensated.

You, as a consumer, can play an important role in enforcing the Act. You can do this by using the wide range of options available to you if you have a complaint.

In terms of the Act, you are not required to approach the supplier with whom you have the complaint before going elsewhere, although it does make sense for you to do so. If the person you dealt with cannot sort out the problem, go to his or her supervisor or the supplier's customer care/complaints department. If the supplier is not able to resolve the complaint to your satisfaction, you may seek help from an industry body such as the Retail Motor Industry, a consumer body, the media or one of the internet-based complaint-handling businesses. <sup>18</sup>

**Important contact information**  
**Provincial Consumer Offices**  
**National Consumer Commission**  
**012 394 1436/1558/1076**  
**0860 266 786**  
**0861 515 229 (fax)**

PROVINCE	TELEPHONE	FAX
Eastern Cape	(040) 609 3050	(040) 609 3201
Free State	(051) 400 4852	(051) 400 9610
Gauteng	(011) 355 8006	(011) 355 8019
KwaZulu-Natal	(031) 310 5300	(031) 310 5416
Limpopo	(015) 293 8300	(015) 291 1336
North West	(018) 387 7872	(018) 392 5660
Northern Cape	(053) 839 4000	(053) 831 3669
Western Cape	0800 007 081	(021) 483 5872

*Kirsty Melville-Nieman is author of 'Know Your Consumer Rights' available from Exclusive Books, Top CDs in Pretoria and Fogarty's in Port Elizabeth at R90. She also runs workshops on the Consumer Protection Act. Visit [www.madeasy.co.za](http://www.madeasy.co.za).*