



The South African Paint Manufacturing Association and Training Institute

CONSUMER PROTECTION ACT 68 OF 2008 SUMMARY

Introduction

The need for a holistic overview of consumer protection regime.

- No substantial review since 1989 (since the enactment of Unfair Business Practices Act in 1989)
- South Africa lagging behind International jurisdictions.
- Global and domestic environment has changed significantly
 - Opening up of markets and movement of people, goods and services across borders.
 - Growing middle class and new entrants into the market.
 - Growing incidents of scams and unfair practices.
 - Weak enforcement mechanisms and structures
 - Uneven and fragmented regulation across sectors.
 - Existing Legislation that is biased towards suppliers based on the buyer beware principle as well as criminal sanctions.
 - An outdated common law regime that is routinely not complied with and depends on private remedies through courts.

Lack of knowledge, information and redress.

- 85% of South African consumers, especially rural consumers, are not aware of their rights and 75% indicated that the courts were inaccessible.
- Consumer violations are prevalent with misleading and bait advertising, non honouring of guarantees, abuse of information, non disclosure, unfair contract terms and poor product quality accruing most frequently.
- Where consumers took action to complain 42% were refused assistance (65% in rural areas) and only 21% are aware of the various institutions that assist consumers (16% for provincial courts)
- Consumers prefer better disclosure, simpler administrative remedies in the form of replacements and refunds and accessible dispute resolution.
- An average of 60% of consumers do not complain when they experience problems because they do not know where to go or lack confidence in the system of consumer redress and enforcement.

Fragmented and outdated Legislation:

Legislative review of 70 pieces of legislation reveal that;

- 23 are administered by DTI, 8 by Health, 8 by Agriculture, 6 by Justice, 5 by Transport and the remaining by Environmental Affairs, Mineral and Energy, Water Affairs & Communications.
- Almost 50% predate 1994 with some going back as far as 1947.
- Laws dealing with finance, housing, justice and communications are mostly less than ten years old and therefore contain better consumer protection measures especially in the area of insurance and financial services, except banking.
- Laws that directly regulate consumer protection Consumer Affairs (Unfair Business Practices) Act, 1988, the Trade Practices Act, 1076 and the Sales and Services Matters Act 1964, are outdated.

Policy Objectives:

- To promote a fair, efficient and transparent market place for consumers and business.

- To provide a consistent, predicable and effective regulatory framework that fosters consumer confidence, but also recognises the developmental imperatives of the South African economy.
- To provide access to effective consumer redress for economic citizens.
- To promote better consumer service in the public and private sector.
- To harmonise our consumer protection framework with international best practice.

Policy Principles informing the Act.

- **Equity and accessibility:** The removal of discrimination and other barriers from the market place.
- **Market Integrity and transparency:** The removal of unethical or unscrupulous conduct from the marketplace. Better and simpler disclosure of information.
- **Competitiveness:** Improved and simpler disclosure and curbing of practices that limit consumer choice.
- **Business Innovation:** Meeting consumer demand and service excellence.
- **Consumer safety:** Quality, reliable goods and services that are safe for consumer health and life as well as for the environment.
- **Economic sustainability:** Efficiency in the provision and consumption of goods and services.
- **Regulatory and Institutional efficiency:** Well resourced, effective and efficient institutions and regulatory tools.
- **Empowerment of consumer and civil society:** Skilled, aware and well informed market participants.

PART A: Definitions and Interpretation:

The Act expands on the conventional definition of consumer by;

- Including users, beneficiaries or recipients of goods and services so as to extend redress to third parties especially with regards to product liability;
- Including franchisees who currently have very limited protection through a voluntary industry code of conduct.

The definition of supplier not limited to retailers but to any public or private entity that promotes or supplies goods or services to consumers.

PART B: Purpose and Policy of the Act:

To promote and advance the social and economic welfare of consumers in South Africa by:

- Establishing a legal framework for the achievement of a fair, accessible, responsible and sustainable market.
- Reducing any disadvantages experienced in accessing the supply of goods and services by low income, low literacy, rural and vulnerable consumers.
- Promoting fair business practices.
- Protecting consumers from unfair and deceptive conduct.
- Improving consumer awareness
- Providing for an accessible, efficient and effective scheme of redress.



PART C: Application:

The Act will apply to:

- Suppliers (For profit or non profit) that promote or supply goods or services to consumers across all sectors of the economy unless exempted.
- Government institutions or any entity contracted by the state to provide goods or services to consumers and
- Franchise offers, solicitations and agreements.
- Any business to business transaction subject to a threshold to be set through regulation.

The Act will not apply to:

- Instances where the state is the consumer
- Transactions exceeding a threshold value set by the Minister and where the goods or services are supplied to a person in the supply chain who in the ordinary course of business markets and goods for resale or applies or uses them to produce other goods
- Advisory Services regulated by FAIS and other financial services regulated by the short and long term insurance Acts.

Exemptions:

Limited or general exemptions may be granted under the following circumstances:

- On application by a regulatory authority
- If the provisions of the CPB overlap or duplicate an existing law or treaty, international law, convention or protocol that SA has accented to;
- If the provisions of the other law ensures consumer protection as well as the CPB.
- If the applicant accepts the conditions of exemption set by the Minister in order to achieve the purpose of the CPB.
- New set of rights based on internationally accepted and UN adopted consumer rights:

Part A: Right of equality to consumer market:

- Prohibit any form of unfair discrimination in the line of the Equity Act and the Constitution. The Equity Court has jurisdiction to adjudicate cases on referral from the Consumer Commission.

Part B: Right to privacy:

- Limits unfettered use of consumer's personal information for unsolicited direct marketing campaigns by requiring all direct marketers to provide consumers with an "Opt out" option for unsolicited marketing communications. Consumers can also register a pre-emptive block on a register to be operated by government or industry.

Part C: Right to choose:

- Prohibits automatic renewal of fixed term agreements
- Requires quotes for maintenance and repair services
- Provides a 5 day cooling off for direct marketing
- Provides for right to return goods and receive refunds within 15 days

Part D: Disclosure and Information:

Facilitates access to simple and transparent contracts and improves disclosure by;

- Giving consumers the right to information in plain and understandable language.
- Requiring the compulsory display of prices and provision of transaction Records.
- Requiring product labels and trade descriptions not to be misleading.

Part E: Fair and responsible advertising, marketing and promotion:

- Prohibits unfair marketing practices (bait, referral, negative option)
- Regulates promotional competitions.
- Sets standards for customer loyalty programs.

Part F Fair and honest dealings.

- Prohibits false, misleading and deceptive representations:
- Prohibits overselling and overbooking.
- Prohibits unconscionable conduct.

Part G: Right to fair, just and reasonable terms and conditions.

- Prohibits unfair, unreasonable or unjust contract terms.
- Requires consumers to be given free copies of contracts.
- Outlaws unilateral changes to contracts
- Outlaws certain types of agreements (Minors, negative options etc.)
- Outlaws any form of contracting out.

Part H: Right to fair value, good quality and safety.

Facilitates access to quality services, safe goods and services and redress by:

- Providing statutory warranties for safety and quality.
- Introducing a general product safety monitoring and recall regime.
- Extending strict liability to retailers for illness, injury, damage to property and details as a result of defective goods or improper labelling.

PROTECTION OF CONSUMER RIGHTS AND CONSUMER'S VOICE

Part A: Consumer's right to be heard and obtain redress

- Prevents suppliers from discriminating, intimidating or penalising consumers who seek to enforce their rights.
- Provides for various access points for consumers to lodge complaints (accredited ombudsman, provincial structures, the Commission and Tribunal.
- Provides for alternative dispute resolution and for agreements reached through this process to be recorded as consent orders that can be confirmed by the courts.
- Consumers can at all times approach the Commission, which can refer to the relevant institutions.

Part B: Commission Investigations.

- Commission provided with power to engage in proactive and reactive investigations.
- Commission can negotiate consent orders that may include the award of damages to a complainant.
- Introduces a system of administrative enforcement through compliance orders.

Part C: Redress by the courts:

- Courts have the power to order suppliers to alter any conduct that is inconsistent with the Act.
- Award damages against a supplier for collective injury to all or a class of consumers and also decide on the just and equitable distribution of such damages.

Part D: Support of Consumer Protection Groups.

- Provides for the Commission to co-operate with, facilitate or support various activities by consumer protection groups (education, research, market monitoring, advocacy and alternate dispute resolution.)
- Provides for accredited consumer groups to take up matters on behalf of consumers through the Commission, Tribunal and the Courts. They can also initiate complaints.
- Consumer groups have to meet specified criteria in order to be accredited and the Commission plays a monitoring role.



BUSINESS NAMES AND INDUSTRY CODES OF CONDUCT:

Part A: Business names.

- Repeals the business Names Act and incorporates its provisions into CPB.
- It decriminalises some of the conduct related to Business names;
- It provides for trading as names to be registered with CIPRO

Part B: Industry Codes of Conduct:

Recognises self regulation and gives it statutory backing by;

- Providing for the Minister, on the advice of the Commission, Minister can prescribe, approve or withdraw an industry code.
- Accrediting dispute resolution schemes like Ombudsman. This excludes those already accredited in terms of FISOS Act.
- Providing the Commission with monitoring and evaluating powers in relation to the effectiveness of industry dispute resolution schemes and codes of conduct.

OFFENCES AND PENALTIES

- Decriminalizes conduct and deals with it through a system of administrative enforcement through compliance notices.
- Introduces administrative penalties through Consumer Tribunal
- The courts can impose penalties for offenses and have sole jurisdiction over contractual issues.

INCREMENTAL EFFECT OF THIS ACT.

- Chapters 1 & 5 of this Act, section 120 and any other provision authorising the Minister to make regulations, and this schedule, each take effect one year after the President signs the act on (24 April 2010)
- Any provision of this Act not contemplated in sub-item (1) takes effect on the date that is 18 months after the date on which this Act was signed by the President (24 October 2010)

Further Extension:

The Minister, by notice may defer the

- The effective date of any provision for a period of no more than 6 additional, months.
- On the grounds that;
 1. Additional time is required for adequate preparation of the administrative systems necessary to ensure the efficient and effective implementation.
 2. On request by Minister responsible for local government or any state organ.