



# THE CONSUMER PROTECTION ACT

WHAT YOU NEED TO KNOW



YOUR ATTORNEY - YOUR TRUSTED ADVISOR



What follows is a brief overview of the Consumer Protection Act (CPA). You should not rely solely on the content of this brochure, but rather seek the advice of your attorney. The CPA covers numerous other issues not mentioned in this summary.

The CPA establishes the National Consumer Commission which enforces the provisions of the CPA.

#### Who does the CPA protect?

The CPA protects all individual persons and small businesses with assets and turnover of less than R2 million.

It protects juristic persons, such as companies, with assets and turnover of more than R2 million only in limited circumstances.

#### What does the CPA regulate?

The CPA regulates the promotion of, and transactions relating to goods and services as well as the goods and services themselves.

#### 'Goods' include

- anything marketed for human consumption;
- a tangible object including any medium on which anything is or may be written or encoded;
- any literature, music, photograph, motion picture, game, information, data, software, code or other intangible product written or encoded on any medium, or a licence to use any such intangible product; and
- a legal interest in land or any other immovable property.

#### 'Services' include

- any work or undertaking performed by one person for the direct or indirect benefit of another;
- the provision of any education, information, advice or consultation;
- any banking services, or related or similar financial services, or the undertaking, underwriting or assumption of any risk by one person on behalf of another;
- the transportation of an individual or any goods

- and the provision of any accommodation or sustenance; and
- other similar services.

#### Cancellation of advance bookings, orders and reservations

Consumers have the right to cancel a reservation or pre-booking for any goods or services and to cancel any order for any goods or services – except for special order goods – and subject to a reasonable cancellation fee.

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

Consumers may cancel a fixed-term agreement at any time, provided written notice is given to the supplier at least 20 business days prior to the intended date of cancellation.

Where the consumer prematurely cancels the agreement, the consumer remains liable to the supplier for any amounts owed to the supplier in terms of that agreement up to the date of cancellation and the supplier may impose a reasonable cancellation penalty.

#### Quotes and estimates

Customers must be given an estimate for repairs, maintenance work or any other diagnostic work, unless they do not require an estimate.

The supplier may not charge for the estimate unless the charge was disclosed to the consumer and the consumer subsequently accepted the charge.

#### The right to quality service

Where a supplier undertakes to perform any services for or on behalf of a consumer, the consumer has the right to the timely performance and completion of those services.

The rendering of the services must be in a manner and of a quality that consumers are generally entitled to expect.

#### No-fault liability

The CPA imposes no-fault liability on producers,

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importers, distributors or retailers jointly and severally in the supply chain. They must supply safe goods and will be liable in respect of harm caused due to product failure, defective or hazardous goods, irrespective that such harm may not be caused by them.

There are limited statutory defences available to them.

#### **Mandatory three-month warranty on repaired goods**

Repairs and maintenance work are subject to a mandatory three-month warranty period. This three-month period is calculated from the date of installation of the new or reconditioned part.

#### **Right to return goods not of a good quality**

A consumer is entitled to return unsafe or defective goods, including goods that are not of a good quality.

This right is enforceable for a period of six months calculated from the date of the delivery of the goods to the consumer.

Where the goods are returned, the consumer does so without penalty and at the supplier's risk and expense.

#### **Unsolicited goods or services**

A consumer who receives unsolicited goods or services is not obliged to pay for such goods or services.

Goods or services are 'unsolicited' if the consumer did not implicitly or expressly request the goods or services.

The only exception is where the consumer has an agreement with the supplier that goods or services shall be supplied from time to time without further approval or request. However, in this case, any goods or services that materially differ from those agreed on will be regarded to be unsolicited.

#### **Right to cancel a transaction or agreement arising from direct marketing**

'Direct marketing' means approaching someone (in person or by mail or electronic communication – phone, fax, SMS, email, etc) to try to sell goods or services to that person or to ask him/her to make a donation.

Where a transaction resulted from direct marketing, the consumer may cancel the transaction without reason or penalty.

To do so, the consumer must give written notice to the supplier of his/her intention to cancel the transaction in question.

This notice must be given within five business days of the transaction or agreement being concluded or within five business days of the goods having been delivered to the consumer, whichever is later.

#### **Marketing standards for goods and services**

Goods or services must not be promoted in a misleading, fraudulent or deceptive manner.

A manufacturer, producer, importer, distributor or supplier may not promote or supply goods or services that are unlawful.

The promotion of goods or services must be done in a manner that does not violate the dignity of any person or is based on a ground of unfair discrimination.

You can approach the National Consumer Commission via walk-in, e-mail, fax or telephone.

However, your attorney can advise you whether you have a valid complaint in terms of the Consumer Protection Act and can assist you to lodge a complaint or to enforce your rights as a consumer.



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