



The Consumer Protection Act

I know my rights. Do you know yours?



*You have rights as a consumer.
Understand them.
Enforce them.*



the dti
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REPUBLIC OF SOUTH AFRICA



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Disclaimer

This brochure is designed as an explanatory guide to the Consumer Protection Act, No. 68 of 2008. It is intended to serve as a reference tool for consumers and is not an exhaustive legal manual or a substitute for the Act. It does not supersede the Act in any way, shape or form.

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What is the Consumer Protection Act?

The Consumer Protection Act, No. 68 of 2008 was signed on 24 April 2009.

It aims to:

- Promote a fair, accessible and sustainable marketplace for consumer products and services;
- Establish national norms and standards to ensure consumer protection;
- Make provision for improved standards of consumer information, to prohibit certain unfair marketing and business practices;
- Promote responsible consumer behaviour;
- Promote a consistent legislative and enforcement framework, related to consumer transactions and agreements;
- Establish the National Consumer Commission; and
- Replace, in a new and simplified manner, existing provisions from five acts, including the Consumer Affairs (Unfair Business Practices) Act of 1988; Trade Practices Act of 1976; Sales and Service Matters Act of 1964; Price Control Act of 1964; and Merchandise Marks Act of 1941 (specifically Sections 2-13, and 16-17).

Who may lodge consumer complaints?

- An individual;
- An authorised person acting on behalf of another;
- A person acting as a member or in the interest of an affected group or class; or
- A person acting in the public interest (*amicus curiae*/leave of tribunal or court association, acting on the interests of its members).

The Consumer Protection Act applies to the following:

- Every transaction occurring within the Republic of South Africa;
- Promotion or supply of any goods and services occurring within the Republic; and
- Goods or services that are supplied or performed, in the Republic, in terms of transactions mentioned in the Act.

The Act is not applicable in respect of:

- Goods or services promoted or supplied to the state;
- Industry-wide exemption being granted to regulatory authorities;
- Credit agreements, in terms of the National Credit Act, but not goods or services;
- Services under employment contracts;
- Agreements giving effect to collective bargaining agreements; and
- Agreements giving effect to bargaining agreements (Section 213 of the Labour Relations Act).

The Consumer Protection Act has two (2) implementation dates:

1. Early effective date:

Twelve (12) months after signature (April 2010), Chapters 1 and 5, Section 120 (regulations) will become operational; and

2. General effective date:

Eighteen (18) months after signature (October 2010), all provisions of the Act will be applicable.

Who is a 'Consumer'?

Consumers are persons to whom goods or services are marketed, individuals who have entered into transactions with suppliers, users of particular goods or recipients/beneficiaries of services.

What are Consumer Rights?

The Bill of Rights enshrines the rights of all South Africans – including consumer rights. The Consumer Protection Act further outlines these key consumer rights, of which all South African consumers should be aware. These include the following:

1. Right to Equality in the Consumer Market and Protection Against Discriminatory Marketing Practices;
2. Right to Privacy;
3. Right to Choose;
4. Right to Disclosure of Information;
5. Right to Fair and Responsible Marketing;
6. Right to Fair and Honest Dealings;
7. Right to Fair, Just and Reasonable Terms and Conditions;
8. Right to Fair Value, Good Quality and Safety; and
9. Right to Accountability by Suppliers.

Right to Equality in the Consumer Market and Protection Against Discriminatory Marketing Practices

What does this mean for the ordinary consumer?

Your right to free and unlimited access to goods and services

- Suppliers are not permitted to limit access to goods and services.
- Suppliers are not permitted to prioritise any consumer groups over others when marketing, selling or distributing their goods and services.

Your right to high-quality goods and services

- Suppliers are not permitted to vary the *quality* of their goods and services in a discriminatory manner.
- Consumers have the right to query the inferior quality of goods and services.

Your right to fair pricing of goods and services

- Suppliers are not permitted to charge *unfair prices* for the same goods and services.
- Consumers should be treated equally, irrespective of gender, race, socio-economic status or geographic location.

Your right to lodge complaints

- The Equality Court has jurisdiction in respect of alleged contraventions:
 - Proceedings may be instituted before an Equality Court.
 - Consumer complaints may be filed with the National Consumer Commission (NCC), the latter of which is required to refer such complaints to the Equality Court, if they appear to be valid.

Right to Privacy

What does this mean for the ordinary consumer?

Your right to restrict unwanted direct marketing

- Consumers have the right to protect their privacy and confidentiality in respect of unwanted or unsolicited correspondence.
- Consumers have the right to refuse unwanted text messages, telephone calls, letters or 'spam' e-mail.

Your right to discontinue receipt of direct marketing at any time

- Consumers have the right to opt out of receiving unsolicited direct marketing services by blocking the relevant supplier/marketer.
- Consumers have the right to accept, restrict or refuse unwanted direct marketing.
- Companies and suppliers are not permitted to continue any unsolicited direct marketing of goods and services once consumers have opted not to receive such correspondence.

Right to Choose

What does this mean for the ordinary consumer?

Your right to select the supplier of your choice

- Consumers have the right to shop around for the best prices, goods and services.
- Consumers are not obliged to enter into additional agreements with suppliers from whom they purchased goods or services (bundling).
- Suppliers are not permitted to force consumers to enter into agreements with third parties, unless the suppliers can prove the benefits of these additional goods or services.

Your right to cancel or renew a fixed-term agreement

- Consumers have the right to cancel fixed-term agreements upon expiry of the contract period, without penalty or charge.
- Consumers are obliged to provide suppliers with 20 business days' notice, in writing or other recorded means, of cancellation of fixed-term agreements. Reasonable penalties may apply.
- Suppliers must extend fixed-term agreements on a month-to-month basis, if the consumers failed to request the cancellation of such agreements.
- Consumers may cancel fixed-term agreements at any time by giving the supplier 20 business days' written notice, provided that upon such cancellation, the consumers remain liable to the supplier for any amount owed to him/her in terms of the agreement, up to the date of cancellation.
- The supplier may impose a reasonable cancellation penalty with respect to any goods supplied or services rendered, and must credit the consumers with any amounts belonging to them upon cancellation.

Your right to request pre-authorisation for repairs or maintenance services

- Consumers have the right to request written cost estimates/quotations from suppliers, prior to the suppliers executing any repairs or maintenance services.
- Suppliers are not permitted to charge consumers for drawing up any cost estimates/quotations.
- Consumers have the right to pre-authorise or refuse any additional repairs or maintenance services.
- Consumers are not liable to pay for repairs or maintenance services done without their prior approval.
- Suppliers are not permitted to charge consumers for any diagnostic work/inspections required in compiling cost estimates/quotations unless there was prior agreement.

Your right to cancel direct marketing contracts within the cooling-off period

- Suppliers are required to include a 'cooling-off period' in direct marketing transactions – cooling-off periods generally span five (5) business days.
- Consumers have the right to cancel agreements within the cooling-off period, without providing reasons or incurring penalties for doing so.
- Suppliers are required to return payments received from consumers, within 15 business days of receiving the cancellation notice.

Your right to cancel advance reservations, bookings or orders

- Consumers have the right to cancel any advance reservations, bookings or orders.
- Suppliers are entitled to request a reasonable, advance deposit for reservations, bookings or orders, depending on the nature of the business and specific circumstances.
- Suppliers are entitled to impose a reasonable charge for the cancellation of reservations, bookings or orders, depending on the nature of the business and specific circumstances.