GAUTENG
PROVINCIAL GOVERNMENT
REPUBLIC OF SOUTH AFRICA

GGT2030
GROWING GAUTENG TOGETHER

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GAUTENG CONSUMER AFFAIRS CONSUMER PROTECTION

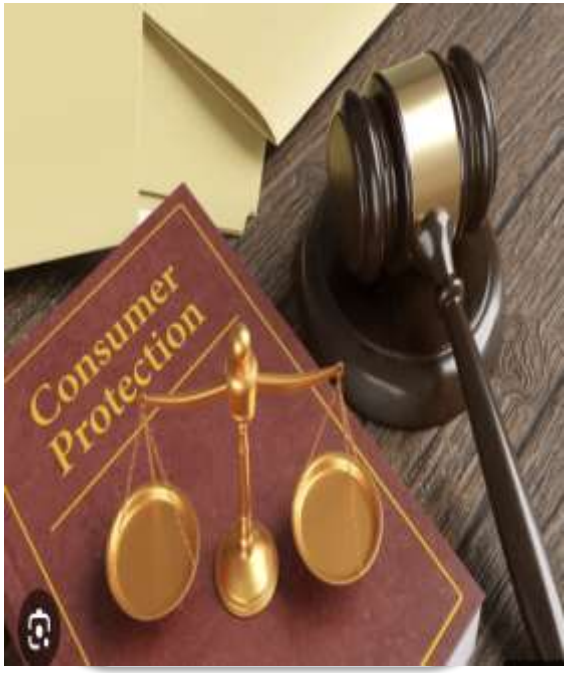
MSME support in the application of the consumer protection laws: understanding the consumer complaints process.

Practical guidance for MSMEs

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Does the CPA apply to my business/transaction: Key questions

- Who is the consumer?
- What is the transaction?
- Is the transaction within the scope of the CPA?
- Is the consumer a juristic person?
- Does the R2 million threshold apply?
- Are there exclusions?
- Does another law also regulate the transaction?



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WHY CPA COMPLIANCE MATTERS

- Protects consumers
- Reduces disputes and complaints
- Protects the business from enforcement action
- Builds trust and reputation
- Helps the business develop compliant processes

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CPA BASICS: PURPOSE, APPLICABILITY & DEFINITIONS

- The CPA aims to promote a fair, accessible and sustainable marketplace for consumer products and services.
- It establishes national norms and standards relating to consumer protection.

Key concepts:

- Consumer: a person to whom goods/services are marketed, who enters into transactions, a user, recipient or beneficiary of goods/receives services.
- Supplier: markets goods or services to consumers.
- Goods: anything marketed for human consumption (a list is prescribed in CPA).
- Service: includes work or undertaking performed by one person for the direct or indirect benefit of another (a list is prescribed in CPA).
- Transaction: agreement for the supply or potential supply of goods or services and the performance of any services at the direction of a consumer for consideration. (additional aspects prescribed in section 5(6) of the CPA)

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SMMES AND CONSUMER PROTECTION

- Businesses with annual turnover or asset value of up to R2 million qualifies as a consumer under the CPA.
- The manual is designed to equip SMMEs with practical knowledge to align their policies, terms and conditions with the CPA.
- Compliance should be built into everyday business processes, documents and consumer communications.



INTRODUCTION

- **Post 1994 take over** of functions of Consumer Council in 1996

- **Mandate** derived from:
  - **Constitution – Schedule 4, Part A** stipulates that consumer protection is a concurrent national and provincial legislative competency i.e. both these tiers of government can issue legislation to protect consumers ~ the **DTI and 9 provincial consumer affairs offices**
  - Consumer Affairs (Unfair Business Practices Act. Act No 71 of 1988 (**CAFCOM)**
  - Gauteng Consumer Affairs (Unfair Business Practices) Act 7 of 1996. (**GOCA)**
  - Consumer Protection Act no 68 of 2008. (**NCC and NCT**)

BACKGROUND

- Consumer Protection Act 68 of 2008 was signed by President on 24 April 2010

- CPA covers the entire transaction life cycle :

✓ Promotion

✓ Marketing, pricing, labeling and display

✓ Selling, delivery, installation

✓ Repair and maintenance

✓ Product liability

APPLICATION OF THE ACT

Act not applicable:

- Goods/services promoted or supplied to the state;
- Consumer is a juristic person (threshold R2 Mil);
- Industry-wide exemption granted to regulatory authority;
- Credit agreements dealt with i.t.o. NCA but CPA applies to the goods or services;
- Services under employment contract;
- Agreements giving effect to collective bargaining agreement;
- Agreements giving effect to bargaining agreement i.t.o. sec 213 of LRA;

FUNDAMENTAL CONSUMER RIGHTS

(1) THE RIGHT OF EQUALITY IN THE CONSUMER MARKET.

Your right to:

- ✓ **free and unlimited access to goods and services.**
- ✓ **high quality goods and services.**
- ✓ **fair pricing of good and services.**
- ✓ **All Consumers to be treated equally.**

The supplier must not :

- ✓ **Exclude, grant exclusive, assign priority;**
- ✓ **Supply a different quality of goods/services;**
- ✓ **Charge different prices to different categories of consumers**

(Section 9 of Constitution or Chapter 2 of the Promotion of Equality & Prevention of Unfair Discrimination Act).

Any contravention of the above, the matter will be forwarded to the equality court for adjudication.

FUNDAMENTAL CONSUMER RIGHTS

(2) THE RIGHT TO PRIVACY

- **Your right to:**

✓ **restrict unwanted direct marketing.**

✓ **Your right to discontinue receipt of direct marketing at any time.**

The direct marketer /supplier must not :

✓ **Contact consumers for direct marketing purposes on :**

✓ ***Sundays;* or**

✓ ***Public holidays*; or**

✓ **Outside hours of 09h00 to 12h00 on *Saturdays* or**

✓ **Outside hours of 08h00 to 19h00 on *weekdays.***

To "OPT OUT" - The Consumer may contact the Direct Marketing Association of SA : Tel no: 0861 362 362 Fax no: 011 362 1198

To report junk sms's - The Consumer may contact Wireless Application Service Providers SA (WASPA) :*Tel no: 011 476 7710*

FUNDAMENTAL CONSUMER RIGHTS

(3) THE RIGHT TO CHOOSE.

Your right to:

- ✓ select supplier of your choice
- ✓ cancel or renew a fixed term agreement.
- ✓ request pre- authorisation for repairs or maintenance services
- ✓ cancel direct marketing contracts within a cooling- off periods
- ✓ cancel advance reservations, bookings or orders
- ✓ choose or examine goods, even after purchase and delivery
- ✓ return goods and seek redress for unsatisfactory services
- ✓ return and not pay for unsolicited goods or services

FUNDAMENTAL CONSUMER RIGHTS

(4) THE RIGHT TO DISCLOSURE OF INFORMATION.

Your right to:

- ✓ information in plain and understandable language
- ✓ disclosure of prices of goods and services
- ✓ product labelling and trade description
- ✓ clear disclosure of reconditioned or grey market goods
- ✓ sales records
- ✓ disclosure by intermediaries
- ✓ identification of deliverers, installers and others

FUNDAMENTAL CONSUMER RIGHTS

(6) THE RIGHT TO FAIR AND HONEST DEALING.

Your right to protection against:

- ✓ **unconscionable conduct**
- ✓ **false, misleading or deceptive representations**
- ✓ **fraudulent schemes and offers**
- ✓ **pyramid and related schemes**

Your right to assume that suppliers are entitled to sell goods

- ✓ **Procedures for sales by auction**
- ✓ **Your right to changes, deferrals and waivers, and substitution of goods**
- ✓ **overselling and overbooking**

FUNDAMENTAL CONSUMER RIGHTS

(5) THE RIGHT TO FAIR AND RESPONSIBLE MARKETING.

Your right to protection against:

- ✓ bait marketing
- ✓ negative option marketing
- ✓ direct marketing
- ✓ catalogue marketing
- ✓ trade coupons and similar promotions
- ✓ customer loyalty programs

FUNDAMENTAL CONSUMER RIGHTS

(7) THE RIGHT TO FAIR, JUST AND REASONABLE TERMS AND CONDITIONS

Your right to :

- ✓ **protection against unfair, unreasonable or unjust contract terms**
- ✓ **obtain notice for certain terms and conditions**
- ✓ **obtain free copies of agreements**
- ✓ **refuse prohibited transactions, agreements and terms or conditions**

FUNDAMENTAL CONSUMER RIGHTS

(8) THE RIGHT TO FAIR VALUE, GOOD QUALITY AND SAFETY

Your right to:

- ✓ demand quality service
- ✓ safe, good quality goods
- ✓ implied warranty of quality
- ✓ a warranty on repaired goods
- ✓ receive warnings on the fact and nature of risks
- ✓ recovery and safe disposal of designated products or components
- ✓ have products monitored for safety and/ or recalled
- ✓ claim damages for injuries caused by defective/unsafe goods

FUNDAMENTAL CONSUMER RIGHTS

(9) THE RIGHT ACCOUNTABILITY FROM SUPPLIERS

Your right to protection :

- ✓ **in lay-bye agreements**
- ✓ **In prepaid certificates, credits and vouchers access to prepaid services and service facilities.**

INVESTIGATION PROCESS

- **Contact consumer within 48hrs**
  - Attain clarity on relevant facts and issues stated in the complaint form
  - Determine if any contraventions of the Consumer Protection Act and/or Unfair Business Practices Act are present
  - Possibility of referral to relevant authority for matters outside the scope of the office, as per s7(5) or Unfair Business Practices Act

- **First letter to supplier**
  - Supplier is notified in writing of the complaint from the consumer
  - Supplier may resolve matter with the consumer or provide a written response to the office within 5days

- **Second letter to supplier**
  - If supplier has failed to respond or resolve the matter after receiving the first letter, then a second letter is sent
  - Notice of investigation is attached
  - Supplier must respond in writing with their version or offer to resolve the matter

INVESTIGATION PROCESS cont.

- **Correspondence between all parties**
  - Communication is sent back and forth between our office, the consumer and the supplier or supplier's representatives until the matter is resolved.
  - The matter is targeted to be resolved within 90days but in some cases correspondence between the parties may lead to delays

- **Physical inspection**
  - Where supplier did not forward a response or correspondence has reached an impasse, investigator makes use of S10 of the Unfair Business Practice Act which allows for physical inspections to be conducted and grants powers to search and seize provided one has consent from the supplier or an order from the consumer court.

- **Mediation**
  - Where the matter is still not resolved after inspection the supplier may be served with summons to appear at our offices in terms of Section 8
  - Section 11 allows for arrangements to be negotiated and entered into at any point during the investigation process prior to the matter being heard at the consumer court.

INVESTIGATION PROCESS cont.

- **Mediation continued..**
  - A mediation meeting is thus held when the supplier has been summoned.
  - If the partied agree on terms of resolution, a settlement agreement is drafted and signed by both parties.
  - The settlement agreement is forwarded to court for it to be affirmed as an order of court.

- **Investigation report**
  - Should the matter remain unresolved, a detailed investigation report is drafted.
  - The investigation report is forwarded to the Consumer Protector to make a decision on whether or not to institute action at the Consumer Court, as per s12 of the Unfair Business Practices Act.
  - Consumer Protector may direct for investigation to continue should there be an area that may be been overlooked, close the matter should there be no violation of the CPA or provincial legislation or commence the process for the matter to be heard at the consumer court.

OFFENCES AND PENALTIES

What enforcement tools:

- ✓ Summons & Warrants (enter and search) issued by judge or magistrate.

Offences

- ✓ Obstruction of the admin of the act
- ✓ Defeating the ends of consumer justice (contempt, bribery, defamation, interruptions)

Fines: 12 months or fine, magistrate court can still impose any sentences

Administrative Fine

- ✓ An administrative fine of 10% of annual turnover during preceding financial year or R1 million – whichever is the greater.
- ✓ However, note that the Tribunal may make other orders to remedy, e.g. advertisement to retract/ educate/ inform.

Determining factors:

- ✓ Nature, duration, gravity, extent of damage
- ✓ Behaviour of respondent
- ✓ Market circumstances and level of profit
- ✓ Level of co-operation and previous convictions

GOCA SERVICES

Services offered by the Gauteng Office of Consumer Affairs (GOCA) include:

- **Consumer education campaigns & outreach programs**
- **Investigation of Complaints**
- **Compliance Monitoring**
- **SMME training**
- **Referral of complaints to statutory regulators, ombudsmen or the Tribunal**

STATUTORY REGULATORS

- **Referrals to Regulatory bodies:**
  - **National Credit Regulator(NCR) (Tel: 0860 627 627)**
  - **The Financial Sector Conduct Authority(Tel : 0800 110 443)**
  - **Council For Medical Schemes(CMS): (Tel: 012 431 0500)**
  - **Independent Communications Authority of SA (ICASA): (Tel 011566 3000)**
  - **National Energy Regulator of South Africa(NERSA): for energy related complaints, e.g. electricity matters: (Tel 012 401 4600)**
  - **Broad casting Complaints Commission of SA: (Tel : 011 325 5755)**
  - **Competition Commission: (Tel : 012 394 3200)**
  - **National Consumer Commission: (Tel: 0860 266 786)**
  - **Estate Agency Affairs Board(Tel :011 731 5600)**
  - **National Regulator for Compulsory Specifications: (Tel : 012 428 7911)**
  - **National Home Builders Registration Council (Tel :011 804 1062)**
  - **Council for Debt Collectors (Tel : 012 804 9808)**

OMBUDSMEN

Referrals to Ombudsmen:

- **Ombudsman for Banking Service: (Tel: 0860 800 900)**
- **National Financial Ombud Scheme South Africa (Tel: 0860 800 900)**
- **Financial Advisory and Intermediate Services(Tel : 012 470 9080)**
- **Ombudsman for Credit Information(Tel 0861 662 837)**
- **Press Ombudsman (Tel: 011 484 3618)**
- **Motor Industry Ombudsman (Tel 012 841 2945)**
- **Advertising Standards Authority (Tel :011 781 2006)**
- **Health Professions Council of South Africa (Tel: 0860 113 334)**
- **Gauteng Rental Housing Tribunal (Tel no: 630 5035)**

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GAUTENG OFFICE OF CONSUMER AFFAIRS — CONTACT DETAILS

OFFICE CONTACT DETAILS

Gauteng Office of Consumer Affairs

Consumer complaints:
011 355 8006

Email:
consumer@gauteng.gov.za

Head Office:
Ground Floor, Matlotlo House
56 Eloff Street, Johannesburg

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GAUTENG OFFICE OF CONSUMER AFFAIRS — CONTACT DETAILS

OFFICE CONTACT DETAILS

Gauteng Office of Consumer Affairs

Regional Offices:

Ekurhuleni
Golden Heights Building
6th Floor, Cnr Park Victoria Street Germiston
Contact number: 011 355 8110

Sedibeng
Unit 1 Building , 28 Market Avenue
Building, Vereeniging
50 Park Street, Randfontein
Contact number: 011 982 5313

Tshwane
Cnr Pretorius and Central
Towers,
Pretoria
Contact number: 012 317 1980

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QUESTION SESSION

Questions & discussion

Thank you