

Beware of the Consumer Protection Act..... coming to a court near you!

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The introduction of the National Credit Act (NCA), in respect of which I conduct several workshops throughout KZN, was the first radical as well as a major development in favour of consumer protection in keeping with the imprimatur inherent and prescribed under the Constitution of the Republic of South Africa. The NCA created the first regulatory framework through the National Credit Regulator, which is responsible for monitoring compliance with the NCA and for educating consumers about their rights. The NCA is designed to improve transparency; prohibit unfair contract terms and practices; and prohibit anti-competitive practices.

In the wake of the NCA comes the Consumer Protection Act 68 of 2008 which has become law since 29 April 2009 and although the CPA only becomes operational on 29 October 2010 it is imperative that practitioners become well versed before then because of its implications vis-à-vis the organized legal profession!

Beware because the CPA gives the consumer more muscle! Also because the CPA amends certain operational provisions of the NCA in the sense that it now provides a double edged sword to the consumer.

With consumers becoming ever more vigilant and 'militant', a caveat is necessary especially for attorneys that the CPA substantially alters the concepts such as "strict liability or the no-fault" principle and so manufacturers, suppliers and retailers are advised to sit up and pay attention to product liability issues.

The Preamble to the CPA eloquently sets out the purposes of this Act, namely to promote and advance the social and economic welfare of consumers in South Africa by establishing a legal framework for the achievement and maintenance of a consumer market that is fair, accessible, efficient, sustainable and responsible for the benefit of consumers generally.

Supported by the National Credit Act and the Competition Act the emphasis under the CPA to protect the public by holding big businesses strictly liable something that the common law could not do. As Lutrek submits the CPA is intended to protect consumers across the board 'from exploitation of any kind and will provide them with simplified redress mechanisms as no-fault or strict liability is introduced.'

Non-compliant businesses must beware for the CPA provides for fines up to R1 000 000-00 or 10% of turnover, whichever is higher. Furthermore, it permits class actions on behalf of groups of consumers.