

[A Year Of The Consumer Protection Act: Q&A With Adv. Neville Melville](#)

by [Mongezi Mtati](#)

From April of 2011, the Consumer Protection Act was made into a piece of legislation. Most entrepreneurs and small businesses were not made wary of how it would affect them, and what it could mean for business. Advocate Neville Melville, who was involved in the consultative process of the act and has written a book about it, watched its developments closely.

Now that it's a year since the act was made into a law, I asked Advocate Melville how it benefits small businesses and what you need to know as an entrepreneur and consumer.

Advocate Melville, how did the Consumer Protection Act change how small business operate?

The biggest change to small businesses is the fact that if they have assets or an annual turnover of under R2 million, they are protected by the Act and are deemed consumers. This means that while they are still bound by the requirements of the Act as suppliers, any suppliers that they deal with have to treat them as consumers and respect their consumer rights.

The Act regulates the activities of suppliers and creates rights for consumers. The other big change is that it is no longer a case of buyer beware but seller beware.

Under the Act, businesses may now be held liable for defective products on a "no-fault" basis, which means that they should have good liability insurance in place.

Rules regarding refunds have changed and now consumers have the right to choose whether they want a refund, repair or replacement. This means that businesses will need to ensure that their contracts with suppliers cover returns, so that they don't lose out financially.

How can small businesses with little to no budget ensure their compliancy?

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Scan the CPA to see which areas affect their business and then ensure they comply. Businesses that already operate honestly and fairly have little to fear. The major areas likely to impact on most businesses are:

- Disclose price and any potential hazard or defect
- Honest advertizing (only make claims you can prove).
- Keep your promises: deliver what you said, when you said you would.
- All Agreements and notices in plain language
- Sell only quality, safe goods that will serve the purposes for which they are intended.
- Provide quality service in good time.
- Get CPA dedicated insurance cover.

I believe that the Consumer Protection Council isn't set up to be a person's first port of call. Where should we, as consumers, turn to before turning to the CPC (Consumer Protection Centre)?

The customer should start at the help desk / centralized complaint department of the business and escalate to an ombud if there is one or the National Consumer Commission.

When a customer complains about a product or service, what is the process before that case goes to court?

In order to take a matter to court, it must have been considered by the commission and then the National Consumer Tribunal must issue a certificate to say the conduct complained of is a contravention of the CPA.

How does the law affect service v/s commodity based businesses?

The main section regarding services is Section 54, which enables a consumer to demand quality service. There are numerous sections that relate to goods, dealing with delivery and returns (Sections 18-21) quality (Section 55-56), warranties (Sections 56-57) and liability for damages caused by defective goods (Section 61).

Section 56 of the act is about “Implied warranty of quality”, what does that mean in industries that offer services such as PR, advertising and marketing whose success and failure are measured over time?

The Section 56 implied warranty of quality related to goods, not services. It entitles a consumer to return goods, WITHOUT PENALTY, within 6 months of delivery if they are defective or not suitable for the purpose for which they are generally intended and claim an exchange, repair or refund (consumer’s choice).

What are the three most common themes and questions that come up in your trainings?

1. Q : Who gets the administrative fines?

A: They go to government, towards general expenditure.

2. Q: Will the government be able to enforce the CPA?

A: The NCC has had some reversals in the Tribunal but has disposed of a significant number of cases. In practice, the CPA is enforced by large retailers and auditors.

3. Q: What is the worst that can happen if I get it wrong?

A: An administrative fine, imprisonment or reputational damage.

Have there been any interesting cases with regards to the act and its practicality, over the past year?

Some of the principles that have been laid down by the Tribunal in respect of matters emanating from the Commission:

- The Municipal billing system is not a service in terms of the Act.
- The Commission must investigate a matter before issuing a compliance notice.
- The CPA does not apply to contracts entered into before it came into effect (with provisos).

What are the top five things that entrepreneurs should know about the act?

1. Some sections of the Act apply to the entire supply chain, even if they have no direct dealing with consumers.
2. Administrative fines up to R1 million may be imposed.
3. A supplier may be liable to the end user even if that person was not their customer.
4. A supplier may not exclude liability for gross negligence, physical injury or death.
5. It is not necessary for a consumer to prove negligence on the part of the supplier in a claim for damages caused by defective goods.

What rights and recourse do we have if a company (e.g. Blackberry) goes under and your phone is a Blackberry on contract for two years, and it breaks?

In terms of Section 56, you can sue the retailer producer, importer or distributor.

In instances where they come up with new contracts for clients, what should businesses include to protect themselves?

They need to ensure the contracts comply with the CPA and the regulations (some things must be included and others may not be). In general, the contracts must be even handed and fair. There is limited scope for exclusion clauses.

Where can I date readers get your book?

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Advocate Neville Melville is a specialist in consumer matters. He served as Ombudsman for Banking Services for seven years, during which time he participated in the consultative processes that led up to the promulgation of the Consumer Protection Act. He now acts as a company director, legal, management and Consumer Protection Act consultant, trainer and implementer. He is the author of the best-selling Consumer Protection Act Made Easy.

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