

# CONSUMER LAW

## Plain language: what exactly is contemplated by the Consumer Protection Act?

As part of normal business suppliers will enter into various contracts with their customers, most commonly sale contracts, whether by way of cash or installment sale, each of which comes with various terms and conditions. In most cases these contracts suffer from a common flaw and that is that they are drafted by experts with primarily the protection of the supplier in mind and as a result the wording of such contracts is usually littered with verbosity and legalese. Enter section 22 of the Consumer Protection Act 68 of 2008 (the CPA) and changes this status quo . attempts to at least.

Section 22 of the CPA, simply put, requires that a document intended for use by a supplier to communicate with consumers must be drafted in plain language. This is very significant if one considers that in most instances consumers often sign documents without reading them as their general perception is that these documents are drafted by experts who understand the contents better than the very consumer it is meant to communicate to. Furthermore, certain consumers believe that they are unlikely to understand the contents of these documents, or even worse, that they cannot object to any of the terms and conditions contained in such documents. The problem with this is that these consumers require the product being sold or service being rendered and are therefore likely to accept the terms and conditions that they simply do not comprehend the meaning of.

For this reason the Legislature has inserted section 22 in the CPA. What this effectively does is require suppliers to reconsider their written communication to consumers of their products or services to ensure that they are in plain language that can be easily understood by their consumers. What this means is that the standard that should be applied by the relevant supplier is to ask itself . what type of consumer do I deal with on a regular basis i.e. what is their general level of education, would my average consumer be able to comprehend the contents of the document with which they are concerned?



The answer to these questions is likely to vary according to the type of business that a supplier is concerned with. By way of illustration if you are in the business of selling legal services to sophisticated corporate clients you can expect that such clients would be in a position to comprehend e.g. a service contract which is drafted in legal jargon as these contracts are generally considered over a period of time by sophisticated clients in coming to a decision as to whether or not they wish to utilise the services of a particular law firm. However, if your business operates in the micro-lending space to indigent clients you should reasonably expect that a significant proportion of your clients may not have a level of education that would enable them to understand terms such as compound interest, jointly and severally liable+ therefore when drafting e.g. a loan contract which is intended to be concluded by the supplier and such clients care should be taken by the supplier to ensure that the manner in which the contract is drafted is such that it is likely to be easily understood by the counter-party, being the indigent client.



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## CONSUMER PROTECTION

**“FAILURE TO COMPLY WITH SECTION 22 OF THE CPA MAY RESULT IN THE OFFENDING SUPPLIER BEING FINED 10% OF ITS ANNUAL TURNOVER DURING THE PRECEDING FINANCIAL YEAR OR R1 000 000.”**



Tyrone Maseko, consumer law attorney at T Maseko Attorneys

Although section 22 of the CPA may not be a welcome change to some suppliers who may be disgruntled because they now have to review and amend their communication and other documents related to trade with their customers or potential customers (possibly at great cost), it is critical to the proper functioning of the trade process and the contractual principle that parties to a contract must be of the same mind when entering into a contract. Therefore this provision is intended to ensure the protection of both the supplier and the customer as, if section 22 of the CPA is complied with, there is very little scope at a later stage for any party to the contract to argue that at the time that the contract was entered into they did not understand particular provisions or understood such provisions differently and therefore that particular provision in the contract (or the entire contract for that matter) should be set aside. A situation that to date is responsible for many commercial disputes and results in costly litigation which could have been avoided had the proper steps been followed at the time of entering into the contract.

The efficacy of section 22 of the CPA will depend on the willingness of suppliers to be proactive in complying with the CPA (and the enforcement of the CPA by the Consumer Commission). However, suppliers must understand that there is a stick that comes with the CPA and it is a heavy one. Failure to comply with section 22 of the CPA may result in the offending supplier being fined up to 10% of its annual turnover during the preceding financial year or R1 000 000.



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