

Grey areas, but shoppers will have help

The Consumer Protection Act will come into operation from 24 October 2010, 18 months from when it was signed into law by the president.

What the Labour Relations Act did for employees — revolutionising working relationships — the Consumer Protection Act (CPA) will do for consumers, the government says.

The act is designed to give consumers some protection against unscrupulous suppliers, and to help ensure the delivery of fair products or services at a fair price. Non-compliance with the provisions of the act can mean a hefty fine, a jail sentence, or both.

Similar legislation in the European Union has caught out operators of small businesses, who discovered in court that they could not claim to be consumers. The legal definition of a consumer in the EU's consumer protection legislation is limited to people, not businesses.

The South African version of the consumer protection legislation defines a consumer as a person or a franchisee.

The South African act has been widely criticised as being too vague in many key areas, which is great news for lawyers.

For example, telecoms supplier Spescom told small businesses to consider investing in phone recording equipment: "What businesses need to bear in mind is that the term consumer covers not only the man in the street, or the business-to-consumer side, but also the business-to-business aspect. After all, a business that engages with its supply chain is regarded as a consumer of that supply chain."

Unlike much legislation aimed at underpinning good corporate governance within large or listed organisations, the act applies to practically every transaction between a supplier and the consumer (or business) — even in small and micro enterprises. Considering that a large proportion of commerce within South Africa involves smaller businesses, the act will have a huge impact on the way South African suppliers do business.

The business-to-business aspect of the CPA highlights an important area of some of its requirements: the critical need for companies to keep accurate records. This is no easy task, as a large volume of telephone transactions now take place, and accurate record management is no longer as simple as filing a document or even saving an electronic copy. And to make matters worse, many small businesses rely solely on mobile phones for telephonic communication.

While there is technology available for voice recording, and even mobile voice recording, it has a hefty price tag.

And this is a serious issue for the owners of small businesses, who will be required by the new law to keep records of transactions completed via cellphone.

Terry Booyesen, the CEO of CGF Research Institute, which focuses on compliance, risk and corporate

governance, said: “Businesses large and small need to be prepared for the impact, not only of the CPA, but also the Competitions Act.

“If the company’s records, be these statutory and/or transactional records, are not in order, consumers and business-to-business customers will be well within their rights to take suppliers to task, which could place a severe financial burden on a business should their practices be found wanting.”

Source: Business Times

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