

**FUNDAMENTAL CONSUMER RIGHTS UNDER THE *CONSUMER PROTECTION*
ACT 68 OF 2008: A CRITICAL OVERVIEW AND ANALYSIS**

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Summary

South Africa was in need of a comprehensive framework of legislation, policies and government authorities to regulate consumer-supplier interaction. The *Consumer Protection Act* 68 of 2008, which was signed by the President of the Republic of South Africa on 29 April 2009 and published in the *Government Gazette* on 29 April 2009, now provides an extensive framework for consumer protection and aims to develop, enhance and protect the rights of consumers and to eliminate unethical suppliers and improper business practices. Certain areas of the common law regarding consumer rights have been codified by the Act and certain unfair business practices that were previously unregulated are now governed by the Act. The Act has a wide field of application. It applies to every transaction occurring within South Africa for the supply of goods or services or the promotion of goods or services and the goods or services themselves, unless the transaction is exempted from the application of the Act. The Act also specifically regulates aspects of franchise agreements. In terms of the Act, consumers obtain several new rights and some existing rights are broadened and reinforced. These rights are: the right to equality in the consumer market; privacy; choice; disclosure and information; fair and responsible marketing; fair and honest dealing; fair, just and reasonable terms and conditions; and fair value, good quality and safety. The last right in terms of the Act deals with a supplier's accountability to consumers. The authors critically analyse and discuss these rights. It is clear that the Act is written in favour of the consumer.

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Various provisions of the Act make inroads into the common-law position to strengthen the position of the consumer *vis-à-vis* the supplier and suppliers are undoubtedly facing an onerous task to prepare to comply, and eventually attempt to comply, with the Act. Although the Act has its own interpretation clause, which provides that it must be interpreted in a manner that gives effect to the purposes of the Act, the Act poses many uncertainties and interpretational and practical challenges. Many questions are therefore raised, some of which remain unanswered. These questions illustrate some of the uncertainties concerning the scope and possible interpretation of the fundamental consumer rights.

Keywords

Contract law; consumer protection; consumer rights; equality; privacy; choice; disclosure and information; fair and responsible marketing; fair and honest dealing; fair or unfair contract terms; fair value; quality and safety; product liability.