



EXPLANATORY NOTE 8 OF 2023

Date: 12 December 2023

The right to lodge a complaint on behalf of consumers in terms of the Consumer Protection Act.

1. PURPOSE.

The purpose of this explanatory note is to guide consumers, their representatives, and NCC officials on who has the right to lodge a complaint with the National Consumer Commission. This will be done by thoroughly interpreting the provisions of the Consumer Protection Act (CPA) and case law. It is aimed at consumers who are not juristic persons.

2. FACTUAL BACKGROUND.

2.1 The Commission has noticed a trend whereby consumers' legal representatives lodge complaints on behalf of consumers. The explanatory note seeks to guide consumers, their representatives, and NCC officials on whether they have the *locus standi* (the right) to file complaints with the NCC on behalf of consumers or not, and what should happen before a complaint is lodged with the Commission.

2.2 This will be achieved by looking into the definition of a consumer and section 4 of the CPA on who may lodge a complaint with the NCC.

3. PROVISIONS OF THE CPA

The right to lodge a complaint on behalf of consumers in terms of the Consumer Protection Act.

3.1 The Consumer Protection Act defines a consumer as

- (a) a person to whom those particular goods or services are marketed in the ordinary course of the supplier's business;
- (b) a person who has entered into a transaction with a supplier in the ordinary; course of the supplier's business, unless the transaction is exempt from the application of this Act by section 5(2) or in terms of section 5(3);
- (c) if the context so requires or permits, a user of those particular goods or a recipient or beneficiary of those particular services, irrespective of whether that user, recipient, or beneficiary was a party to a transaction concerning the supply of those particular goods or services; and
- (d) a franchisee in terms of a franchise agreement, to the extent applicable in terms of section 5(6)(b) to (e);¹

4. **WHO MAY LODGE A COMPLAINT WITH THE NCC?**

4.1 Section 4 of the CPA state clearly persons who may approach the National Consumer Tribunal for the enforcement of the provisions of the CPA. Therefore, section 4 stipulates the following:

“Any of the following persons may, in the manner provided for in this Act, approach a court, the Tribunal, or the Commission alleging that a consumer’s rights in terms of this Act have been infringed, impaired or threatened, or that prohibited conduct has occurred or is occurring:

- (a) A person acting on his or her behalf;*
- (b) an authorised person acting on behalf of another person who cannot act in his or her name;*
- (c) a person acting as a member of, or in the interest of, a group or class of affected persons;*
- (d) a person acting in the public interest, with leave of the Tribunal or court, as the case may be; and*

¹ See section 1 of the CPA

(e) an association acting in the interest of its members.

5. EXPLANATORY NOTE

- 3.1 Consumers as defined in terms of the CPA have the primary responsibility to lodge a complaint in their capacity. Therefore, the complaint form must be signed by the consumer.
- 3.2. A complaint may be logged on behalf of a consumer only if a consumer cannot act in his/her name. This includes minors, incapacitated due to illness, and cannot understand what she is he is doing, etc.
- 3.2 When a complaint is lodged by another person other than the complainant himself, the representative must state the reasons why the complainant cannot lodge a complaint in his/her name and provide evidence and proof thereof must accompany the complaint form.
- 3.3. The CPA does not make provision for a complaint to be signed by the consumer's legal representative, irrespective of whether there is a power of attorney, where the consumer can act on his/her own.
- 3.4. The person who is assisting the consumer to complete the complaint form can complete such complaint form in his/ her hand but the consumer who is not incapacitated must sign the said complaint form and not the person who is assisting the consumer.

For non-binding legal opinions or advisories, email us at Advisory@thencc.org.za.

Author: Ms. Ntsako Minkey Ngobeni
Legal Advisor at the NCC