

An Evaluation of Section 14 of the *Consumer Protection Act 68 of 2008*

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Abstract

This article analyses the effect of section 14 of the *Consumer Protection Act 68 of 2008 (CPA)* on fixed-term agreements. As a background, the need for consumer protection legislation is established by considering the underlying philosophy in the *United Nations Consumer Protection Guidelines*, which recognises that consumer protection is a basic right of all people. Consumer rights play an important role in the protection of consumers, and the fundamental rights of consumers will be highlighted, as well as the rights and protections provided to consumers in section 14 of the *CPA*. Then the aims and purposes of the *CPA* will be considered. These aims and purposes include promoting consumers' full participation in the economy, ensuring accessible, transparent and efficient redress to consumers when exploited, and effecting recognised international consumer rights. The paper will first investigate whether section 14 of the *CPA* effects the aims and purposes of the *Green Paper on the Consumer Policy Framework*, the *Constitution of the Republic of South Africa, 1996* and the preamble of the *CPA*. Thereafter the protection of the consumer provided under section 14 will be analysed, and it will be considered whether the consumer is sufficiently protected in section 14. Finally, it will be established whether the consumer is also effectively empowered under section 14 with effective rights and knowledge in line with the provisions of section 3(1)(f) of the *CPA*, which envisions the empowerment of consumers.

Keywords

Consumer; consumer rights; fixed-term agreement; *Consumer Protection Act 68 of 2008*; knowledge; effective legislation; empowered consumer; consumer confidence.

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1 Introduction

Consumer protection legislation aims to protect consumers and ensure fairness, accessibility and efficient redress for consumers.¹ Despite these admirable aims, consumer legislation that is not worded and phrased accurately could leave the consumer vulnerable and without effective redress. The consumer needs to be able to utilise effective rights and remedies in the relevant forums to enforce his or her rights,² whether these be common-law rights³ or statutory rights under the *Consumer Protection Act* 68 of 2008 (the *CPA*).⁴ It is critical to establish whether the *CPA* regulates the position of parties to fixed-term consumer agreements effectively to empower the consumer, as envisaged in section 3(1)(f) of the *CPA* – or whether section 14 of the *CPA* leaves the consumer vulnerable to exploitation and without adequate consumer empowerment rights and remedies.

This article reflects on the aims of consumer protection legislation and the *CPA* as a background to the discussion of section 14 thereof. Section 14 regulates so-called fixed-term agreements.⁵ In addition, it will be considered whether the section promotes the purposes of the *CPA*, and whether it is effective and empowers the consumer – aspects which are emphasised in other jurisdictions.⁶ Finally, it will be established whether the legislature has succeeded in implementing the admirable aims and purposes of the *CPA* in the provisions regulating fixed-term agreements.

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¹ Preamble and s 3 of the *Consumer Protection Act* 68 of 2008 (*CPA*); Sharrock 2010 *SA Merc LJ* 306; Woker 2019 *Stell LR* 99.

² These enforcement agencies have been criticised for not being effective. See Woker 2016 *SA Merc LJ* 21-48 for a discussion of dispute resolution, its challenges and recommendations; Koekemoer 2017 *JCP* 419-445; Naudé and Barnard *Enforcement* 570.

³ The common-law rights of the consumer are expressly retained by s 2(10) of the *CPA* and arguably, by implication, those of the supplier as well; see Sharrock *Business Transactions* 588; Lombard 2021b *THRHR* 332-333, 335. For the contrary view, see Tennant *Strict Product Liability* 187; Van Heerden and Barnard 2019 *THRHR* 462. Also see De Stadler and Du Plessis "Interpretation, Purpose and Application" 2-10 – 2-12; De Stadler and Naudé "Fundamental Consumer Rights" 56-6 – 56-9.

⁴ Hereafter the *CPA*.

⁵ Although s 14 of the *CPA* is captioned "[e]xpiry and renewal of fixed-term agreements", s 14 also deals with the cancellation or termination of fixed-term agreements.

⁶ For instance, the United Kingdom (UK) under the *Consumer Rights Act* 2015 and Singapore under the *Consumer Protection (Fair Trading) Act* 2003.

2 Background to consumer protection in South Africa

2.1 *The need for consumer protection legislation*

The need for international guidelines for consumer protection legislation dates back to the late 1970s when governments realised that consumer protection was essential to a healthy economy and the social development of a country.⁷ In 1979 the United Nations (UN)⁸ conducted a survey to establish the need for consumer protection. This involved the performance of research and the writing of reports, and the first version of the *UN Guidelines for Consumer Protection* was adopted in 1985.⁹ The philosophy underlying the *UN Guidelines* is that consumer protection is a basic right of all people. An important principle the UN emphasised was that the *UN Guidelines* would result in higher standards of living and social development,¹⁰ and that consumer protection is not a luxury but an essential requirement for developing countries and poor and disadvantaged societies.¹¹

The *CPA* came into effect on 31 March 2011. The preamble to the *CPA* provides the general policy and sphere of the Act, namely that apartheid and discriminatory legislation are recognised as being a burden and as having caused high levels of poverty, illiteracy and other socio-economic inequalities.¹² Therefore, there is a need to fulfil the rights of previously disadvantaged people, to promote their full participation in the economy as consumers, to protect consumers, to ensure accessible, transparent and efficient redress for exploited consumers and to give effect to internationally recognised consumer rights. It recognises that technological changes bring new benefits, opportunities and challenges, and further notes that it is desirable to promote a climate that supports and strengthens consumer rights and responsibilities, innovation and performance. Legislation must promote the economic interests of consumers, promote access to information, protect consumers from hazards, provide effective redress, educate consumers, promote consumer activism and the freedom to engage in it, and finally promote consumer participation in decision-making and consumer interest-related matters.¹³

⁷ Harland 1991 *JILI* 189.

⁸ The UN was founded after the Second World War to work towards international peace and security, to develop better diplomatic relations between nations, and to promote human rights, social progress and better living conditions. See UN date unknown <https://www.un.org/en/about-us/history-of-the-un>.

⁹ The UN adopted general guidelines for consumer protection on 9 April 1985. See UNCTAD *UN Guidelines for Consumer Protection* (hereafter the *UN Guidelines*).

¹⁰ *Charter of the United Nations* (1945) Art 55 1(3).

¹¹ Harland 1991 *JILI* 193.

¹² Reddy and Rampersad 2012 *African Journal of Business Management* 7407.

¹³ These general aims are described in more detail as part of the *CPA* in s 3.

The *CPA* covers consumer transactions that do not fall within the scope of either the *National Credit Act (NCA)*¹⁴ or the financial sector laws.¹⁵ Depending on the parties involved, the legal nature of the agreement and the applicable legislation, if any, consumer contracts may be divided into three main categories:¹⁶ First there are consumer transactions that fall within the scope of the *CPA* – for example, a 24-month agreement to purchase a cell phone coupled with a service agreement with a service provider.¹⁷ Second there are transactions covered by the *NCA* such as personal loans and bonds. Finally there are common-law transactions not covered by the abovementioned Acts that are pure common-law transactions, like an agreement to enter into a partnership, or a contract to purchase immovable property. These are covered by the common law and the *Alienation of Land Act*,¹⁸ the *Transfer Duty Act*,¹⁹ the *Deeds Registries Act*²⁰ and other relevant applicable provincial ordinances and local authority regulations.

Even though the *CPA* and the *NCA* apply to the first two classes of consumer agreements mentioned above,²¹ the common law still forms the basis of all these agreements, although other legislation regulates such agreements.²²

¹⁴ *National Credit Act* 34 of 2005 (hereafter the *NCA*).

¹⁵ Section 10 the *Financial Sector Regulation Act* 9 of 2017 (hereafter the *FSRA*) provides that the *CPA* does not apply to "a function, act, transaction, financial product or financial service that is subject to the *National Payment System Act* 78 of 1998 or a financial sector law, and which is regulated by the Financial Sector Conduct Authority in terms of a financial sector law" or "the Reserve Bank, the Prudential Authority, the Financial Sector Conduct Authority, the Prudential Committee, the Executive Committee, the Chief Executive Officer, the Commissioner or a Deputy Commissioner". See Vessio "Twin Peaks" 113 for a detailed discussion of the exclusion of the *CPA* by s 10 of the *FSRA*.

¹⁶ Eiselen and Naudé "Introduction and Overview of the Consumer Protection Act" Introduction 2.

¹⁷ Certain transactions are covered by both the *CPA* and the *NCA* – for example, when a consumer purchases a car with a service agreement included and obtains finance to pay the purchase price. The credit agreement is regulated under the *NCA*, while the *CPA* regulates the car (the goods) and the service agreement (the services). See the definitions of "goods" and "services" in s 1 of the *CPA*. Also see Stoop 2014 *THRHR* 135-144.

¹⁸ *Alienation of Land Act* 68 of 1981.

¹⁹ *Transfer Duty Act* 40 of 1949.

²⁰ *Deeds Registries Act* 47 of 1937.

²¹ First, consumer transactions that fall within the scope of the *CPA* – for example, a 24-month agreement to purchase a cell phone coupled with a service agreement by a service provider. Second, transactions covered by the *NCA*, such as personal loans and bonds.

²² Eiselen and Naudé "Introduction and Overview of the Consumer Protection Act" Introduction 2.

2.2 Consumer rights²³

Commentators regard Chapter 2 of the *CPA*, which sets out the fundamental consumer rights, as controversial because of the provisions regulating contract terms, the notices to consumers, the limitation on the maximum duration of fixed-term agreements, the need for written contracts in certain instances, and the fact that the content of certain agreements is prescribed, amongst other matters.²⁴ The consumer rights referred to in chapter 2 of the *CPA* are: the right to equality,²⁵ the right to privacy,²⁶ the right to choose,²⁷ the right to disclosure and information,²⁸ the right to fair and responsible marketing,²⁹ the right to fair and honest dealing,³⁰ the right to fair, just and reasonable terms and conditions,³¹ the right to fair value, good quality and safety,³² and the supplier's accountability to consumers. These rights align with the seven rights in the *UN Guidelines* for consumer protection.³³

Section 14 regulates fixed-term contracts and is apparently aimed specifically at long-term, unreasonable gym contracts.³⁴ However, many other agreements are regulated by the section, such as mobile phone contracts, car lease contracts and service contracts, to name but a few.³⁵

²³ Naudé 2018 *JCP* 414 notes that these rights are those recognised by the *UN Guidelines*. For a detailed discussion of the fundamental rights of consumers, see Jacobs, Stoop and Van Niekerk 2010 *PELJ* 302-398.

²⁴ For more information on this aspect, see Jacobs, Stoop and Van Niekerk 2010 *PELJ* 302; Du Preez 2009 *TSAR* 75-76.

²⁵ Chapter 2 Part A ss 8-10 of the *CPA*. The right to equality is related to the right to human dignity as set out in s 1(a) of the *Constitution of the Republic of South Africa, 1996* (the *Constitution*). See Eiselen "Fundamental Consumer Rights" 8-3 – 8-4 for a discussion. This right aims to prevent unfair discrimination.

²⁶ Chapter 2 Part B ss 11 and 12 of the *CPA*.

²⁷ Chapter 2 Part C para 13 of the *CPA*. This right affects s 14, as the consumer has the right to choose which supplier he or she wants to contract with; he or she can, for instance, also choose what the duration of the agreement will be – up to a maximum duration of 24 months, of course.

²⁸ Chapter 2 Part D paras 22-28 of the *CPA*. This right affects the consumer in a fixed-term agreement, as all relevant information and financial information has to be disclosed to him or her. This right is affected by the plain language requirement in s 22.

²⁹ Chapter 2 Part E paras 29-39 of the *CPA*.

³⁰ Section 3(1)(d) and Chapter 2 Part F ss 40-47 of the *CPA*.

³¹ Chapter 2, Part G, ss 48-52 of the *CPA*. Also see Naudé 2009 *SALJ* 505-536.

³² Chapter 2, Part H, s 53-61 of the *CPA*. For a full discussion of these rights, see Jacobs, Stoop and Van Niekerk 2010 *PELJ* 318-389; Van Eeden and Barnard *Consumer Protection* 381-398; Naudé 2011 *SA Merc LJ* 336-351; Tennant *Strict Product Liability* on good quality and safety, especially 124-158.

³³ Sharrock *Business Transactions* 587. Also see the *UN Guidelines* in Ch 2 para 2.6.

³⁴ Woker 2010 *Obiter* 217, 224 and fn 33. For a detailed analysis of s 14 of the *CPA*, see Lombard *Regulation of Fixed-term Contracts* 90-176.

³⁵ De Stadler and Eiselen "Fundamental Consumer Rights" 14-5. Note that banks registered in terms of the *Banks Act* 94 of 1990, the *Mutual Banks Act* 124 of 1993 and the *Co-operative Banks Act* 40 of 2007 are exempt in line with s 5(4) of the *CPA*

Section 14(1) provides that the provisions of the section do not apply to contracts between juristic persons, irrespective of their size.³⁶ This means that where a smaller juristic person contracts as a consumer³⁷ with a supplier who is also a juristic person, the smaller juristic person will not be protected by the provisions of section 14.³⁸

Section 14 purports to protect consumers in an unequal bargaining position against exploitation by suppliers who draft unilateral, unreasonable and unfair "take-it-or-leave-it" agreements for an unreasonably long term.³⁹ The section provides for a maximum duration of these contracts to protect the consumer from being bound to an unreasonably long contract.⁴⁰ It also provides that the consumer may cancel the agreement at any time during the fixed term without a reason, and it limits the amounts that the supplier can claim as compensation for an early cancellation. Section 14 serves, among others, the purposes expressed in section 3(1)(c) and (d), which are to promote fair business practices and protect consumers from improper trade practices and unfair conduct that misleads them.

Section 14 forms part of the fundamental right of the consumer to select suppliers, as it falls under Chapter 2 Part C of the *CPA*.⁴¹ The main provisions of the section⁴²

- limit the duration of fixed-term agreements,⁴³
- prohibit the automatic renewal of fixed-term contracts,⁴⁴

from the provisions of s 14 of the *CPA*. Also see Gen N 532 in GG 34399 of 27 June 2011.

³⁶ The *CPA* applies to small juristic persons, with an annual turnover or asset value lower than the threshold value set under s 5(2)(b) of the *CPA*.

³⁷ Where the juristic person's asset value or annual turnover is below the threshold value stipulated in terms of s 6, and it is regarded as a consumer in terms of the definition in s 1 of the *CPA*.

³⁸ Note the wide description of juristic person in s 1 of the *CPA*, which includes a body corporate, a partnership or association, and a trust as defined in the *Trust Property Control Act 57* of 1988.

³⁹ For a discussion of standard-form contracts, see Aronstam *Freedom of Contract* 16-20; Kessler 1943 *Colum L Rev* 629-642; Patterson 1919-1920 *HLR* 222; Rakoff 1983 *HLR* 1173-1284; Slawson 1984 *U Pitt L Rev* 21-74; Ahdieh 2006 *Mich L Rev* 1034; Gluck 1979 *ICLQ* 73; Barnes 2007 *Wash L Rev* 234-235. For a discussion of standard-form contracts and its implications for the *CPA*, see Lombard *Regulation of Fixed-term Contracts* 27-32.

⁴⁰ Woker 2010 *Obiter* 224, fn 33.

⁴¹ Sections 13 to 21 of the *CPA*.

⁴² See De Stadler and Eiselen "Fundamental Consumer Rights" 14-3 – 14-4.

⁴³ Section 14(2)(a) of the *CPA*.

⁴⁴ Section 14(2)(d) of the *CPA*.

- entitle consumers to terminate the agreement on the termination date,⁴⁵ or
- entitle consumers to terminate the contract on 20 days' notice at any time during the contract term,⁴⁶
- entitle suppliers to a reasonable cancellation penalty when the consumers give 20 days' notice at any time during the contract term,⁴⁷
- oblige suppliers to give consumers notice of the termination date of the agreement,⁴⁸ and
- prohibit the unilateral amendment of the terms and conditions of the agreement.⁴⁹

2.3 Section 14 of the CPA

2.3.1 The interpretation of the CPA

Section 3 builds on the preamble to the CPA and sets out the Act's purposes that dictate how the CPA will be implemented and interpreted.⁵⁰ Section 3 is significant because in terms of section 2 one has to interpret the CPA in a way that effects the purposes set out in section 3.⁵¹ Section 2 provides other factors that may be considered when interpreting or applying the CPA, such as relevant foreign law; relevant international conventions, declarations or protocols on consumer protection and decisions of the consumer court, ombud or arbitrator not set aside by superior courts.⁵² In addition, when adjudicating the provisions of the CPA courts must consider section 4(2)(a), which provides that courts and tribunals must develop the common law. Other aspects courts and tribunals must regard when interpreting the CPA are the promotion of the spirit and purposes of the CPA,⁵³ the provision on the interpretation of ambiguity,⁵⁴ and the realisation of the rights of vulnerable consumers as described in section 3(1)(b) in the

⁴⁵ Section 14(2)(b)(i) of the CPA.

⁴⁶ Section 14(2)(b)(i) of the CPA.

⁴⁷ Section 14(3) of the CPA, read with reg 5(2) of GN R293 in GG 34180 of 1 April 2011 (the *CPA Regulations*).

⁴⁸ Section 14(2)(c) of the CPA.

⁴⁹ Section 14(2)(c) of the CPA.

⁵⁰ Du Preez 2009 *TSAR* 65 remarks that the purpose of the CPA is significant, as s 3 provides that the CPA must be interpreted to effect these purposes. Also see Jacobs, Stoop and Van Niekerk 2010 *PELJ* 305; Delpont 2014 *Obiter* 74.

⁵¹ Section 2(1) of the CPA. De Stadler and Du Plessis "Interpretation, Purpose and Application" 2-3.

⁵² Section 2(2)(a)-(c) of the CPA.

⁵³ Section 4(2)(b)(i) of the CPA.

⁵⁴ Section 4(3) of the CPA.

case of ambiguities. Because of the aforementioned factors, the *CPA* is not interpreted only by using the traditional rules of legal interpretation, which involve interpretation based on the normal grammatical meaning of words.⁵⁵ It should be emphasised that the *CPA* must promote consumer confidence and empowerment, and develop a culture of consumer responsibility.⁵⁶ The National Consumer Commission is responsible for the effective realisation of the purposes of the *CPA* and the enjoyment of consumer rights.⁵⁷

Section 4(4) also relates to the interpretation of the *CPA* by the National Consumer Tribunal or courts and sets strict rules for courts and tribunals to interpret standard forms, contracts and other documents prepared by the supplier, or on behalf of the supplier. This section provides that, to the extent consistent with advancing the purposes and policies of the *CPA*, all standard-form contracts and contracts prepared by or on behalf of the supplier must be interpreted by the National Consumer Tribunal or court to benefit the consumer where there are ambiguities and where consumers' rights are restricted or limited.⁵⁸ Section 4(4)(b) further provides that the court or tribunal should also consider how the documents were prepared and presented to the consumer, and the circumstances of the contract.⁵⁹ Because of the duty of courts or the National Consumer Tribunal to interpret documentation to the benefit of the consumer, section 4(4) could potentially lead to uncertainty and unpredictability, as the court or tribunal will have to be led by the documentation and circumstances in each case. However, section 4(4)(b)(iii) implies that the parole evidence rule does not apply where the circumstances of the transaction or agreement have to be considered when a court or the National Consumer Tribunal interprets any document, standard form or contract, thereby indirectly empowering the consumer, as the consumer can rely on extrinsic evidence to prove his or her case – a definite advantage.⁶⁰

2.3.2 *Fixed-term agreements*

To understand the impact of the provision on the expiry and renewal of fixed-term contracts, section 14 of the *CPA* will be quoted in full.

⁵⁵ De Stadler and Du Plessis "Interpretation, Purpose and Application" 2-2 – 2-4; Jacobs, Stoop and Van Niekerk 2010 *PELJ* 305; also see Delpont 2014 *Obiter* 65-69; Du Preez 2009 *TSAR* 65; Van Heerden and Barnard 2019 *THRHR* 444, 449-450, 461; Sharrock 2010 *SA Merc LJ* 299; *Eskom Holdings v Halstead-Cleak* 2017 1 SA 333 (SCA) (hereafter the *Eskom* case); *Transcend Residential Property Fund Limited v Mati* 2018 4 SA 515 (WCC) (hereafter the *Mati* case).

⁵⁶ Section 3(1)(f) of the *CPA*.

⁵⁷ Section 3(2) of the *CPA*. This aspect will not be discussed as it falls outside the scope of this article.

⁵⁸ Section 4(4)(a)-(b) of the *CPA*. The *contra proferentem* principle is now statutorily entrenched to protect the consumer who is in a lesser bargaining position.

⁵⁹ Section 4(4)(b) of the *CPA*.

⁶⁰ Lombard 2021 *PELJ* 1-27.

Section 14. Expiry and renewal of fixed-term agreements

- (1) This section does not apply to transactions between juristic persons regardless of their annual turnover or asset value.
- (2) If a consumer agreement is for a fixed term –
 - (a) that term must not exceed the maximum period, if any, prescribed in terms of subsection (4) with respect to that category of consumer agreement;
 - (b) despite any provision of the consumer agreement to the contrary –
 - (i) the consumer may cancel the agreement –
 - (aa) upon the expiry of its term, without penalty or charge, but subject to subsection (3) (a); or
 - (bb) at any other time, by giving the supplier 20 business days' notice in writing of other recorded manner and form, subject to subsection (3) (a) and (b); or
 - (ii) the supplier may cancel the agreement 20 business days after having given written notice to the consumer of a material failure by the consumer to comply with the agreement, unless the consumer has rectified the failure within that time;
 - (c) of not more than 80, not less than 40, business days before the expiry date of the fixed-term consumer agreement, the supplier must notify the consumer in writing or any other recordable form, of the impending expiry date, including a notice of-
 - (i) any material changes that would apply if the agreement is to be renewed or may otherwise continue beyond the expiry date; and
 - (ii) the options available to the consumer in terms of paragraph (d); and
 - (d) on the expiry of the fixed-term of the consumer agreement, it will be automatically continued on a month-to month basis, subject to any material changes of which the supplier has given notice, as contemplated in paragraph (c), unless the consumer expressly –
 - (i) directs the supplier to terminate the agreement on the expiry date; or
 - (ii) agrees to a renewal of the agreement for a further fixed-term.
- (3) Upon cancellation of a consumer agreement as contemplated in subsection (1)(b)–⁶¹

⁶¹ Subsection (3) contains an error as it refers to the cancellation in terms of subsection 1(b), while it should refer to subsection 2(b).

- (a) the consumer remains liable to the supplier for any amounts owed to the supplier in terms of that agreement up to the date of cancellation; and
 - (b) the supplier –
 - (i) may impose a reasonable cancellation penalty with respect to any goods supplied, services provided, or discounts granted, to the consumer in contemplation of the agreement enduring for its intended fixed term, if any; and
 - (ii) must credit the consumer with any amount that remains the property of the consumer as of the date of cancellation, as prescribed in terms of subsection (4).
- (4) The Minister may, by notice in the Government Gazette, prescribe –
- (a) the maximum duration for fixed-term consumer agreements, generally, or for specified categories of such agreements;
 - (b) the manner and form of providing notices to the consumer in terms of subsection (2)(c);
 - (c) the manner, form and basis for determining the reasonableness of credits and charges contemplated in subsection (3); and
 - (d) other incidental matters as required to provide for the proper administration of this section.

The phrase "fixed-term agreements" is not defined in the *CPA*. Section 14 applies to agreements that are valid for a fixed term, such as a contract for the delivery of a specific service for a period of 12 months. Section 14(2)(a) provides that the term should not exceed the period of 24 months prescribed by the Minister of Trade and Industry (as it was known) under section 14(4)(a) by notice in the Gazette.⁶² Therefore, fixed-term agreements may not be entered into for a period of more than 24 months. It is submitted that certain types of agreements that do not have a fixed term could present difficulties, for instance a life-long lease, sales of immovable property⁶³ under the *Alienation of Land Act* 68 of 1981, or time-share agreements for an indefinite period, because they could currently qualify as fixed-term agreements under the *CPA* as these agreements fall under the definition of "consumer agreements" in section 1 of the *CPA*, and "fixed-term agreements" are not defined.⁶⁴

⁶² Regulation 5 of the *CPA Regulations*.

⁶³ Bear in mind that Ch I of the *Alienation of Land Act* 68 of 1981 applies to all alienations of immovable property and, depending on the duration of the agreement, Ch II of the *Alienation of Land Act* could also apply to the contract. Also bear in mind that, depending on the exact wording of the agreement and the conditions regarding the payment of the purchase price, such an agreement could also qualify as a credit agreement under s 8 of the *NCA*.

⁶⁴ See Delpont 2014 *Obiter* 60-80.

2.3.3 Section 14(2)

Section 14(2)(b)(i)(aa) provides that a consumer may cancel the agreement upon expiry thereof. In terms of section 14(2)(b)(i)(bb), the consumer may cancel the agreement at any other time by giving the supplier 20 business days' notice. The notice in section 14(2)(b)(i)(bb) must be given in writing, or in any other "recorded manner and form". When the consumer cancels the agreement, he or she will be liable for the amount owed to the date of cancellation and the supplier can impose a reasonable cancellation penalty and must credit the consumer with amounts remaining on the property of the consumer at the date of cancellation.⁶⁵ Section 14 does not provide a reciprocal right for the supplier to cancel a fixed-term agreement at any time; only a consumer obtains the right under section 14(2)(b)(i)(bb) to cancel at any time. A supplier will, therefore, be bound to the full term of a fixed-term agreement under the *CPA*.

However, under section 14(2)(b)(ii) a supplier, on the material failure of the consumer to perform, can cancel the agreement, also on 20 business days' notice if the consumer remains in default after the notice.⁶⁶ There is no reciprocal statutory right provided to the consumer, so the consumer does not have a statutory right to cancel the agreement on the material failure of the supplier to perform.⁶⁷ If the consumer cancels the agreement in terms of section 14(2)(b)(i)(bb) for whatever reason, the consumer under section 14(3)(a) remains liable to the supplier for any amount up to the date of cancellation, and the supplier may under section 14(3)(b) impose a reasonable cancellation penalty for the goods or services supplied or discount granted under a fixed-term agreement. However, if the consumer cancels the agreement in terms of section 14(2)(b)(i)(bb) because of a material failure by the supplier, the consumer will still be liable for any amounts up to cancellation and will be liable for the cancellation penalty in section 14(3)(b)(i) even if the supplier did not comply materially with the agreement. For instance, if the consumer cancels the agreement because he or she never received the cell phone, or he or she did but his or her service was never activated, he or she would remain liable for the cancellation penalty since section 14(2)(b)(ii) affords only the supplier a statutory right to cancel the agreement based on the material failure of the consumer. The consumer is not afforded a corresponding right. It is therefore clear that the proverbial sword and shield are provided to the supplier, but the consumer (the primary focus of the legislature in this

⁶⁵ Section 14(3) of the *CPA*.

⁶⁶ This provision can cause constant frustration in the case of lease agreements where the supplier will have to give notice every month if and when the consumer does not pay. See Delpont 2014 *Obiter* 74-75; Steyn 2014 *De Rebus* 25-26; Lombard 2021a *THRHR* 162.

⁶⁷ No section in the *CPA* covers this event.

legislation) has neither, when cancelling as a result of material or other failure by the supplier. This eventuality is not covered by any section in the *CPA*, and therefore the consumer will have to rely on his or her common-law rights.

Under the common law the consumer could have based his or her cancellation of the agreement on the malperformance thereof, without any payments or penalties.⁶⁸ This remedy will still be available to the consumer as a result of section 2(10), which retains the consumer's common-law rights. However, in order to use his or her common-law remedies, the consumer may approach a court to enforce his or her common-law rights only after he or she has exhausted all the prescribed steps in terms of section 69(d) of the *CPA*,⁶⁹ unless the consumer bases his or her claim on unfairness.⁷⁰ This would be a time-consuming and costly exercise for the consumer. It is therefore unfortunate that section 14(2)(b) effectively protects a supplier better than a consumer in the event of material failure; and that a consumer enjoys less protection in the event of material failure by the supplier in terms of the *CPA* than under the common law.⁷¹

Clearly the consumer has only limited cancellation rights or remedies in terms of section 14(2)(b) (upon expiry or upon giving the prescribed notice). In fact, this section disadvantages the consumer and works to the sole advantage of the supplier, as the consumer is bound for another 20 days, and in addition remains liable for payments up to the date of the cancellation, despite the material non-performance by the supplier. The intention of the *CPA*, as reflected and deduced from the *Green Paper on the Consumer Policy Framework*,⁷² the preamble to the *CPA*, the *Constitution* and the *UN Guidelines* is primarily to protect consumers because of their inferior bargaining position and potential vulnerability. The intention is not to protect suppliers, although section 14(2)(b) unfortunately

⁶⁸ Repudiation is of English origin. See De Wet and Van Wyk *Kontraktereg* 168; Van Huyssteen *et al Contract* 408-409. For the requirements of repudiation, see Van Huyssteen *et al Contract* 412-414; Hutchison and Pretorius *Law of Contract* 297-298; *Micaren Exel Petroleum Wholesaler (Pty) Ltd v Stella Quick Shop (Pty) Ltd* (471/2019) [2020] ZASCA 61 (9 June 2020).

⁶⁹ Section 69(d) of the *CPA* provides that "approaching a court with jurisdiction over the matter, if all other remedies available to that person in terms of national legislation have been exhausted". Also see Lombard 2021b *THRHR* 318-335 for a full discussion.

⁷⁰ Section 52 of the *CPA*; *Takealot Online (RF) (Pty) Ltd and Driveconsortium Hatfield (Pty) Ltd* (7348/2021) [2021] ZAWCHC 280 (11 October 2021); see Van Heerden and Barnard 2011 *JICLT* 131-136 discussing redress for consumers in terms of the *CPA*. Also see the *obiter* remarks on s 69 of the *CPA* in *Motus Corporation (Pty) Ltd v Wentzel* 2021 3 All SA 98 (SCA) paras 26 and 27.

⁷¹ Lombard 2021b *THRHR* 318-335.

⁷² Gen N 1957 in GG 26774 of 9 September 2004 (*Draft Green Paper on the Consumer Policy Framework*).

has the effect of protecting the supplier to a greater extent than the consumer regarding cancellation on the malperformance of the supplier.

In the United Kingdom of Great Britain and Northern Ireland,⁷³ section 28(6) of the *Consumer Rights Act 2015*,⁷⁴ which regulates the delivery of goods, provides that the consumer may terminate the agreement when the supplier has not delivered the goods or services in accordance with the contract.⁷⁵ This provision effectively empowers the consumer – and provides an express remedy that the consumer can use to enforce his or her rights. A similar provision in the *CPA* would have benefitted the consumer under the circumstances in section 14(2)(b)(i)(bb) and 14(3).

In terms of section 14(2)(c) the supplier must give the consumer notice of expiry of the fixed-term agreement, including notice of a material change to the agreement if the agreement is extended beyond 24 months' duration. The notice must also include the options available to the consumer in terms of section 14(1)(d).⁷⁶ This notice must be given not less than 40 and not more than 80 business days before the agreement's expiry date.⁷⁷ The notice must inform the consumer that he or she is entitled to cancel the agreement on the expiry date, or that he or she is entitled to renew the agreement for a further fixed period. Section 14(2)(d) of the *CPA* provides that if the consumer does not cancel the agreement or enter into a new agreement for a further fixed period, the existing contract will continue on a month-to-month basis. Because the *CPA* is silent on when exactly the consumer has to cancel or renew the agreement, the consumer has until the expiry date to exercise his or her choice.

The purpose of the month-to-month renewal referred to above is to prevent the automatic renewal of the contract for a further fixed term, which could

⁷³ Hereinafter referred to as the UK.

⁷⁴ *Consumer Rights Act 2015* (the *CRA*).

⁷⁵ Section 28(3) read with s 28(6) of the *CRA*. S 28(6) provides that: "If the circumstances are that –

(a) the trader has refused to deliver the goods,

(b) delivery of the goods at the agreed time or within the agreed period is essential taking into account all the relevant circumstances at the time the contract was entered into, or

(c) the consumer told the trader before the contract was entered into that delivery in accordance with subsection (3), or at the agreed time or within the agreed period, was essential, then the consumer may treat the contract as at an end."

⁷⁶ Section 14(2)(c) of the *CPA*. The supplier should inform the consumer that the contract will continue on a month-to-month basis upon expiry unless the consumer expressly terminates the agreement, and the supplier should explain that the consumer also has the option to renew the contract for a further fixed term.

⁷⁷ There is a problem with the formulation of this section, as the section contained in the *CPA* implies that the duration of the agreement must be more than 40 days and not less than 80 days – these periods, however, most likely refer to the notice period. See De Stadler and Eiselen "Fundamental Consumer Rights" 14-9 – 14-11 for a discussion of this aspect and for the requirements of the notice itself.

possibly disadvantage the consumer. Section 14(2)(d) also enables the consumer to extend the agreement if he or she chooses.⁷⁸

There is no explanation or definition of a "material change" in section 14(2)(d), and commentators regard this as unfortunate.⁷⁹ Any term could potentially amount to a material change for the consumer, not necessarily only changes to the *essentialia* of the agreement. Furthermore, notifying consumers of all changes from time to time, however insignificant, could lead to an overload of notices and result in consumers not paying sufficient attention to notices.⁸⁰ Suppliers have to decide which changes are material in order to notify consumers. Failure to notify consumers in terms of section 14(2)(d) is not dealt with in the *CPA*, but if the supplier fails to adhere to the notice requirements this could affect the validity of the fixed-term agreement in theory. In practice, however, the agreement will probably continue on a month-to-month basis.⁸¹

2.3.4 Section 14(3)

When a consumer cancels an agreement in terms of section 14(2), subsection (3) provides a remedy to the supplier. Not only can the supplier claim any amounts owed by the consumer up to the date of cancellation, but he or she can also impose a cancellation penalty on the consumer in contemplation of the agreement enduring for its agreed fixed-term, subject to the amounts prescribed in terms of subsection (4).⁸² No formula or sliding scale is provided for this penalty – which, of course, does not provide the consumer with sufficient information to make an informed choice, consequently not empowering him or her.

2.3.5 Section 14(4)

Section 14(4)(a) provides that the Minister may prescribe the maximum duration for fixed-term agreements. Regulation 5 of the *CPA Regulations*⁸³ provides that these agreements may not exceed 24 months unless a longer period is expressly agreed upon, and the supplier has the responsibility to show that such a longer period holds a demonstrable financial advantage for the consumer.⁸⁴ This is of course an administrative burden on the supplier, as the supplier would probably either have to compile an annexure

⁷⁸ See Hutchison and Pretorius *Law of Contract* 381, where they explain that this was common practice before the *CPA*.

⁷⁹ De Stadler and Eiselen "Fundamental Consumer Rights" 14-10.

⁸⁰ De Stadler and Eiselen "Fundamental Consumer Rights" 14-10.

⁸¹ De Stadler and Eiselen "Fundamental Consumer Rights" 14-9 – 14-11.

⁸² There was a prescribed percentage of 10% in the *Consumer Protection Bill* [B19-2008] which was not included in the *CPA*.

⁸³ Regulation 5(1)(a) of the *CPA Regulations*.

⁸⁴ De Stadler and Eiselen "Fundamental Consumer Rights" 14-6 – 14-7. Also see regs 5(1)(b) and (c) of the *CPA Regulations* – although neither of these currently applies.

to the agreement or include a clause in the agreement to substantiate the alleged demonstrable benefit. There are arguments that the proof of discounts to the consumer for a contract with a duration of more than 24 months, which the consumer would otherwise not have been entitled to, could be a demonstrable financial benefit.⁸⁵ If the term agreed upon in a fixed-term agreement is longer than 24 months, the effect in practice would probably be that the term would be reduced to 24 months.⁸⁶ However, this aspect has not been addressed by the legislature.

Regulation 5 does not state at what stage the supplier has to prove this: during negotiations, when the contract is concluded, after conclusion, or when a dispute arises? Does the supplier have to enter into an additional agreement with the consumer with the consumer's financial statements attached to prove this, does he make an affidavit, or is a mere statement to that effect, written or oral, sufficient? One can hardly imagine that a corporation such as a cell phone services provider would have the time or capacity to fulfil this burden of proof at any time. The regulation is therefore highly impractical, if not impossible to adhere to, especially in standard-form contracts that are obviously not negotiated individually. Also, bear in mind that the court or tribunal must prefer the interpretation and meaning of the specific section of the *CPA* that it is adjudicating on that best promotes the spirit and purposes of the *CPA*, and best improves the realisation and enjoyment of consumer rights, particularly where vulnerable consumers referenced in section 3(1)(b) are concerned.⁸⁷ In practice this has the further implication that different requirements (and interpretations of legislative provisions) could then apply in different circumstances, depending on the aims and purposes of section 4(3) that deals with the interpretation of the section, and the benefit of the consumer in the particular instance. This certainly does not contribute to predictability and legal certainty and therefore detracts value from the knowledge and power of the consumer to make informed choices.

In addition, for argument's sake, if a supplier grants specific discounts to the consumer and attaches a declaration to this effect to a contract for a term longer than 24 months, the consumer could still give 20 days' notice at any time without a valid reason. This would leave the supplier in a position where the contract has been cancelled prematurely and in addition he or she has not been able to obtain the normal remuneration for the contract while it lasted, as he or she provided a discounted rate in the hope of securing a longer-term contract. In such a case the supplier would have to rely on the

⁸⁵ De Stadler and Eiselen "Fundamental Consumer Rights" 14-6 – 14-7.

⁸⁶ De Stadler and Eiselen "Fundamental Consumer Rights" 14-7. Also see ss 51(1)(b)(iii), 51(3), and 52(4) of the *CPA*; Delpont 2014 *Obiter* 74; reg 5(1) of the *CPA Regulations*.

⁸⁷ Section 4(3) of the *CPA*.

factors provided in regulation 5(2) to establish a reasonable cancellation penalty.⁸⁸

Section 14 is silent on the consequences of non-compliance with the 24-month maximum period, although the duration of the contract would probably be reduced to 24 months, instead of being void, in circumstances where there is no demonstrable benefit to the consumer.⁸⁹

2.3.6 Regulation 5

Regulation 5 currently provides the following guidelines to determine the reasonableness of the penalties levied by the supplier in terms of section 14(2)(b)(i)(bb) read in conjunction with section 14(3)(b)(i). A discussion of the calculation and the establishment of the reasonableness, or not, of the penalty falls outside the scope of this article, but the factors listed in regulation 5 will be mentioned, followed by a brief general overview.⁹⁰ The factors listed in regulation 5 are:

- the amount the consumer owes the supplier up to the date of cancellation,
- the value of the transaction until cancellation,
- the value of the goods that the consumer will retain after cancellation,
- the value of the goods the consumer will return to the supplier after cancellation,
- the initially agreed-upon duration of the agreement,
- the losses suffered or benefits accrued because of the agreement,
- the nature of the services or goods reserved or booked,
- the period of notice given by the consumer,

⁸⁸ For an example of a decision where reg 5 was used to calculate a reasonable cancellation penalty, see, for instance, Complaint 201506-000377 dated 25 January 2016 before Melville (Gym-complaint example). Also see Complaint No 201602-0005932 dated 7 March 2016, again before Melville.

⁸⁹ See De Stadler and Eiselen "Fundamental Consumer Rights" 14-7.

⁹⁰ A Consumer Goods and Services Ombud decision where this was adjudicated is Complaint 201506-000377 dated 25 January 2016 before Melville (Gym-complaint example). Also see Complaint No 201602-0005932 7 March 2016, again before Melville.

- the reasonable possibility that a diligent supplier could find an alternative consumer for the goods between the cancellation notice and the cancellation of the reservation,
- the general practice in the relevant market sector.

In principle all of these factors could play a role when a fixed-term agreement is cancelled and it is almost impossible for the consumer or the supplier to anticipate the outcome of a decision or calculation in terms of section 14(2)(b)(i)(bb) read in conjunction with section 14(3)(b)(i) and regulation 5.

It is submitted that a solution to this problem could be to add a section to the *CPA* or the Regulations that provides a formula for calculating the penalty, with very strict guidelines on how these are to be calculated. In addition, this calculation or formula would have to be provided or agreed upon in writing by the consumer when entering into the agreement. For instance, a provision might be that the penalty will be calculated as follows: 10% of the total amount owed by the consumer for the remainder of the fixed-term period. If a consumer therefore cancels the agreement after two months into a contract for R500 per month for 24 months, the penalty amount will be R1 100. If he or she cancels after 22 months, the penalty will be R100. This calculation would also be fair to the supplier, compensating him or her for losing the protection of the maxim *pacta servanda sunt* on a sliding scale. It would also be easy for the consumer to calculate, so allowing him or her to know exactly what amount will be charged as a penalty. In this way the consumer would have certainty about the extent of his or her liability prior to his or her decision to cancel the agreement. Without a formula to calculate the penalty, the consumer is left vulnerable and without proactive rights, as he or she cannot even calculate the amount owed to the supplier. Of course, this argument is also true for the supplier.

3 Remarks on the effectiveness of section 14 and the empowerment of consumers

When the aims in section 3(1) of the *CPA* are read and analysed, they are similar in one respect. They create the impression that the legislature merely protects the consumer and does not provide the consumer with effective rights to take action against suppliers who are in default.⁹¹ The consumer has no choice but to play a passive and dependent role. He or she is not effectively empowered by being provided with substantial rights and

⁹¹ Du Preez 2009 *TSAR* 63; Woker 2016 *SA Merc LJ* 21 n 1, where she mentions that in the South African regime the consumer is the most protected in the world. Also see Christie and MacFarlane *Law of Contract* 14-15, where there is a warning against adopting a paternalistic approach.

remedies that he or she can actively use to enforce his or her rights.⁹² For instance, he or she cannot even cancel the agreement without being liable for a reasonable cancellation penalty when cancelling because of the default by the supplier. The most helpful wording in this regard is in section 3(1)(f), which states that the consumer's empowerment must be promoted. However, section 3 does not elucidate such consumer empowerment rights, and exactly how these rights will be achieved, unlike in the financial and credit industries where the Financial Sector Conduct Authority (FSCA) and the National Credit Regulator have education responsibilities with the aim of promoting financial literacy.⁹³

Satisfactory consumer literacy entails the possession of a combination of awareness, knowledge, skill, attitude and an ability to behave in such a way as to be able to make sound decisions and ultimately achieve individual well-being. The *CPA* needs to go one step further in order to truly empower consumers and provide consumers⁹⁴ with effective rights and powers as set out in section 3. Adequate consumer literacy and financial skills will ultimately contribute to the independence and empowerment of consumers and benefit the community at large.⁹⁵ Responsibilisation, literacy and financial literacy are not attained overnight and will be a continuous and long-term project, but ultimately, along with an effectively worded *CPA* that provides effective powers, rights, remedies and enforcement agencies, it is the only way to attain informed, independent, responsible and empowered consumers. Along with the protection and effective empowerment of consumers, this should be a priority.⁹⁶

In the UK the main consumer legislation is the *Consumer Rights Act* (the *CRA*), which distinguishes between consumer protection and consumer rights.⁹⁷ Andrews⁹⁸ contends that the main difference lies in the way rights, on the one hand, and protections, on the other, are enforced. A right implies that the consumer has full freedom to enforce his or her right or claim where and when he or she chooses, the consumer is not obliged to obtain consent

⁹² See Du Preez 2009 *TSAR* 63.

⁹³ Pearson, Stoop and Kelly-Louw 2017 *PELJ* 1, 21, 25 and 40.

⁹⁴ Especially the vulnerable consumers envisaged in s 3(1)(b) of the *CPA*.

⁹⁵ See the Financial Sector Conduct Authority (FSCA), previously the Financial Services Board (FSB), survey and investigation into financial literacy in South Africa: FSCA date unknown <https://www.fsca.co.za/Documents/FSCA%20THREE-YEAR%20ROLLING%20FINANCIAL%20EDUCATION%20PLAN%2c%202024-2027.pdf>.

⁹⁶ Financial literacy depends on the disclosure of information. See the article by Pearson, Stoop and Kelly-Louw on this aspect for more information, as a full discussion on information, financial literacy, etc., falls outside the scope of this article. Pearson, Stoop and Kelly-Louw 2017 *PELJ* 1-55; Zokaityte 2016 *CMLJ* 405-413. The other side of the coin is that the consumer has a social responsibility to inform him- or herself and become literate regarding consumer empowerment rights and legislation.

⁹⁷ Andrews *Enforcement* 1.

⁹⁸ Andrews *Enforcement* 1.

to institute the claim, and the claim is not subject to prior approval.⁹⁹ The existence of protection, on the other hand, does not inevitably imply the existence of a right, and may, for instance, imply that a regulatory body can or must take action. The consumer does not necessarily benefit directly from this action by a regulatory body, although he or she may, in the longer term, benefit indirectly from action taken by the regulatory body. Therefore, the main difference lies therein that a right effectively empowers a consumer.¹⁰⁰ Protection typically implies that the consumer takes a more passive role.

Internationally, in an attempt to empower the consumer to a greater degree the United Nations proposed that consumer law and competition law be fused to a greater extent to the mutual benefit of both consumer law and competition law, and to improve the bargaining position of the consumer,¹⁰¹ which of course would result in improved empowerment. The rationale for adopting an aligned approach between these two fields of law is that competition law on the one hand works from the level of industry and manufacturing downwards towards the consumer to improve competition, thereby ensuring competitive prices, a better quality of goods, innovation and the provision of a variety of services and goods to the consumer, thus playing an important socio-economic role and benefiting the consumer,¹⁰² whereas on the other hand consumer law works from the level of the consumer upwards towards suppliers, distributors, importers and industry, and ideally leads to knowledgeable and confident empowered consumers.¹⁰³ It is submitted that the position of the consumer in South Africa has improved considerably with the provisions of section 14(2)(b)(i), which form an exception to the principle of *pacta sunt servanda*. However, there are still many uncertainties regarding section 14, as discussed above, and it is submitted that South Africa should follow the examples of international jurisdictions by continuously addressing consumer concerns

⁹⁹ Andrews *Enforcement* 1.

¹⁰⁰ Although the wording of the *CRA* in the UK empowers the consumer to a large extent, there are also problems in the UK with effective enforcement. See Cook 2018 <https://www.ft.com/content/510b5344-279b-11e8-b27e-cc62a39d57a0>.

¹⁰¹ See the *UN Guidelines*.

¹⁰² European Commission date unknown https://competition-policy.ec.europa.eu/about/what-competition-policy/why-competition-policy-important-consumers_en; MacCulloch "The Consumer and Competition Law" 242; Ucaryilmaz 2021 *Athens Law Journal* 189-190.

¹⁰³ Department for Business, Energy and Industrial Strategy <https://www.gov.uk/government/consultations/reforming-competition-and-consumer-policy/outcome/reforming-competition-and-consumer-policy-government-response>; Averitt and Lande 1997 *Antitrust LJ* 713-756; Albors-Llorens 2014 *YEL* 163-193; Conway 2023 <https://researchbriefings.files.parliament.uk/documents/CBP-9796/CBP-9796.pdf>; Madill and Mexis 2009 *Competition Policy Newsletter* 27-28.

and by actively empowering the consumer even further with consumer rights – and not mere protections.¹⁰⁴

4 Conclusion

Section 14 of the *CPA* represents a significant legislative effort to regulate fixed-term consumer agreements and to promote fairness, transparency, and consumer empowerment. However, this evaluation has revealed that while the section reflects the broader aims of the *CPA* - such as protecting vulnerable consumers and promoting equitable market practices - it falls short in several key respects.

The asymmetry in cancellation rights between consumers and suppliers, the absence of a clear statutory remedy for consumers in cases of supplier non-performance,¹⁰⁵ and the lack of a transparent formula for calculating cancellation penalties all contribute to a legislative framework that inadequately empowers consumers.¹⁰⁶ These shortcomings undermine the *CPA*'s stated objective of fostering informed,¹⁰⁷ confident and proactive consumer participation in the economy.¹⁰⁸ Moreover, the interpretive flexibility granted to courts and tribunals, while intended to benefit consumers, may inadvertently lead to unpredictability and legal uncertainty.¹⁰⁹ This further complicates the consumer's ability to make informed decisions and assert his or her rights effectively.¹¹⁰

Legislative reform is necessary to align section 14 more closely with the transformative goals of the *CPA*. Such reform should include the introduction of reciprocal cancellation rights, statutory definitions of "fixed-term agreement"¹¹¹ and "material change",¹¹² and a clear, accessible formula for the calculation of penalties. These amendments would not only enhance legal certainty but also promote genuine consumer empowerment

¹⁰⁴ *Andrews Enforcement 1*.

¹⁰⁵ See the discussion under heading 2.3.3 above.

¹⁰⁶ See the discussions under headings 2.3.4 and 2.3.6 above.

¹⁰⁷ The preamble states that the *CPA* aims to "improve access to, and the quality of, information that is necessary so that consumers are able to make informed choices" and also "promote and provide consumer education".

¹⁰⁸ Woker 2019 *Stell LR* 97-115. There is also room for improvement regarding consumers' access to redress and the effective enforcement of consumer law; however, these aspects fall outside the scope of this article.

¹⁰⁹ See the discussion under heading 2.3.6 above.

¹¹⁰ See s 3(1)(f) of the *CPA*. However, and as this does not fall within the scope of this article and will therefore not be discussed in detail, it should be mentioned that the most important measure to effect the empowerment of consumers is to effect literacy by way of a sound and effective education system at grassroots level that delivers educated and well-informed consumers.

¹¹¹ See the discussion under heading 2.3.2 above.

¹¹² See the discussion under heading 2.3.3 above.

- moving beyond mere protection to the active enablement of consumer rights.

Ultimately, the effectiveness of consumer protection legislation must be measured not only by its protective mechanisms but by its capacity to equip consumers with the tools, knowledge, and confidence to assert their rights. In its current form section 14 provides a foundation for such empowerment, but it requires refinement to fully realise the transformative vision of the CPA.

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List of Abbreviations

Antitrust LJ	Antitrust Law Journal
CMLJ	Capital Markets Law Journal
Colum L Rev	Columbia Law Review
CPA	Consumer Protection Act 68 of 2008
CRA	Consumer Rights Act 2015
FSCA	Financial Sector Conduct Authority
FSRA	Financial Sector Regulation Act 9 of 2017
HLR	Harvard Law Review
ICLQ	International and Comparative Law Quarterly
JCP	Journal of Consumer Policy
JICLT	Journal of International Commercial Law and Technology
JILI	Journal of the Indian Law Institute
Mich L Rev	Michigan Law Review
NCA	National Credit Act 34 of 2005
PELJ	Potchefstroom Electronic Law Journal
SALJ	South African Law Journal
SA Merc LJ	South African Mercantile Law Journal
Stell LR	Stellenbosch Law Review
THRHR	Tydskrif vir Hedendaagse Romeins-Hollandse Reg
TSAR	Tydskrif vir die Suid-Afrikaanse Reg
UK	United Kingdom
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
U Pitt L Rev	University of Pittsburgh Law Review

Wash L Rev
YEL

Washington Law Review
Yearbook of European Law