

Application of the CPA to municipalities

 By [Justine Krige](#)

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Included among the objects of the Consumer Protection Act, No. 68 of 2008 (CPA) are the imperatives to strengthen a culture of consumer rights as well as consumer-focused service delivery.



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It may, however, take some time before those rights are realised, particularly for those in South Africa who need its protection most.

Schedule 2 to the CPA (which provides for transitional arrangements) envisages the incremental implementation of the CPA. In other words, the legislature envisages a gradual process of the implementation of the rights of consumers under the CPA - including where consumers seek to exercise their rights against municipalities.

S2(3)(b) of Schedule 2 of the CPA which deals with transitional provisions states as follows:

"The Minister [which is a reference to the Minister of Trade and Industry], by notice published in the Gazette at least 20 business days before the date contemplated in sub-item (2), may -

(a) defer the effective date of any provision contemplated in that sub-item for a period of not more than six additional months, on the grounds that additional time is required for adequate preparation of the administrative systems necessary to ensure the efficient and effective implementation of that provision; or

(b) on request from the member of the Cabinet responsible for local government matters, defer until further notice the application of this Act to -

i. any particular municipality other than a high capacity municipality as defined in terms of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

ii. ...in its capacity as a supplier of any goods or services to consumers, on the grounds that additional time is required for adequate preparation of the administrative systems necessary to ensure that the municipality or organ of state can meet its obligations in terms of this Act efficiently and effectively."

Thus, these provisions enable the Minister (of his or her own volition or on request by a member of Cabinet) to defer the application of the CPA to any municipality other than a 'high capacity municipality' - which is a reference to a list of municipalities in or near areas of high economic growth.

These deferment provisions must be contrasted with obligations set out in s54 of the CPA:

"(1) When a supplier undertakes to perform any services for or on behalf of a consumer, the consumer has a right to -

- a. the timely performance and completion of those services, and timely notice of any unavoidable delay in the performance of the services;
- b. the performance of the services in a manner and quality that persons are generally entitled to expect;
- c. ...; and
- d. ..., having regard to the circumstances of the supply, and any specific criteria or conditions agreed between the supplier and the consumer before or during the performance of the services.

(2) If a supplier fails to perform a service to the standards contemplated in sub-section (1), the consumer may require the supplier to either -

- a. remedy any defect in the quality of the services performed or goods supplied; or
- b. refund to the consumer a reasonable portion of the price paid for the services performed and goods supplied, having regard to the extent of the failure."

In other words, where the Minister exercises his or her power in terms of s2(3)(b) of Schedule 2 to the CPA, the effect of this would be to bar residents of so-called lower-capacity municipalities from seeking redress under the CPA for unsatisfactory municipal services or non-delivery thereof.

Afriforum case

The issue of deferment and the Minister's powers in terms of Schedule 2 to the CPA arose in the matter of *Afriforum v Minister of Trade and Industry and Others* 2013 (4) SA 63 (GNP). In that case, Afriforum challenged two notices published by the Minister in terms of which the Minister exempted so-called 'medium' and 'low' capacity municipalities from certain provisions of the CPA.

The court ultimately found that the Minister had failed to conduct a proper assessment of lower and medium capacity municipalities in respect of which he sought to defer the application of the CPA to determine whether any of those municipalities were in fact administratively prepared for the application of the CPA.

Although the court was cautious to recognise the complexity of the municipal structures in South Africa, and the principle of deference to the policy decisions of the executive, it found that the Minister's failure to expressly set out in the two notices precisely which municipalities fell to be exempted (as opposed to the Minister's blanket listing of low and medium capacity municipalities) was irrational, thus rendering the notices unlawful.

In reaching its decision the court held that municipal services are at the centre of quality of life for all citizens, and their rights as consumers against municipalities, cannot be deferred in perpetuity in absence of an express legislative provision allowing it, and that the Minister could not defer basic human rights without being precise.

Failure to list municipalities

The court went on to note that the Minister would, with the information at his disposal, have been able to determine which services were lacking and which municipalities were incapable of complying with the CPA. The court noted that in light of this, the Minister's failure to list each municipality requiring deferment instead of exempting an entire category of municipalities was inexplicable, irrational and unlawful.

The court, accordingly, directed the Minister to publish a fresh notice listing every municipality requiring deferment. The case highlights the disjuncture which often exists between legislation and the practical implementation thereof. Often the legislature's noble intentions do not fit with practical reality, and can create problems when it comes time for the objects of legislation to be implemented.

This is a complex problem which the legislature, executive and the courts routinely confront in South Africa - particularly in relation to socio-economic rights. It is no different in the context of the CPA. It will be some time before consumers are able to hold low and medium capacity municipalities to the lofty standards set in the CPA.

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