



JEWELLERY
COUNCIL
SOUTH
AFRICA

Consumer Protection Act Guidelines

Dear Members,

As you are aware, the Consumer Protection Act was implemented on 1 April 2011. Thankfully, jewellers operating under the Jewellery Council Code of Ethics and Conduct have very little to fear regarding the Act. The Act itself, in essence, aims to protect the consumer against exploitation and wishes to ensure an accessible and sustainable marketplace for consumer products and services.

It also promotes responsible consumer behaviour, which has a positive impact on us as an industry. One of the key new facilities established is the National Consumer Commission with the aim to resolve consumer concerns more cost effectively and time effectively than is currently possible through the Court System.

The Jewellery Council of SA is currently aligning our Code of Conduct to the Consumer Protection Act, and in so doing will provide our members with easy-to-follow practical guidelines, but we still require some clarity from the Commissioner on a few issues before we can finalise.

One of the key issues under the Consumer Protection Act is the education of the Consumer. For this purpose, the Jewellery Council has produced a **Consumer Education Brochure** – Credit Card Size. You are welcome to order these from our offices. It is only for members of the Jewellery Council and is available at a price per brochure.

In the interim, we include the following in relation to frequently asked questions on the Consumer Protection Act and to clarify some misunderstandings:

1. The Consumer Protection Act applies to:

- Every transaction occurring within SA
- Promotion and supply of goods and services in SA
- These are described in detail in the Act.

The Act excludes the following:

- Goods or services provided to government
- Some regulatory authorities
- Credit agreements under the National Credit Act
- Services under employment contracts
- Collective bargaining agreements (Labour)
- Bargaining Agreements (Labour)

2. Who is seen as a consumer?

This is important as consumers now include anyone that purchases from you, goods or services but also **include businesses with a turnover of less than R2 000 000 per annum** as well as the recipient of a product or the final user of the product not just the purchaser.

Any business with a turnover of more than R2 000 000 per annum falls outside the Consumer Protection Act.

This means that all wholesalers, precious metals and tools suppliers, etc, also need to look at the implications of the Act as it pertains to small companies purchasing from you.

3. Marketing your goods:

The key to marketing your goods is honesty and disclosure in an understandable language. You have to refrain from transgressing on the privacy rights of the consumer.

a. Understandable Language:

English is acceptable as an understandable language. The aim in providing any information or advertising is that the language use is easy to understand for the consumer.

b. Honesty:

i. Call it what it is.

As an example, you have to state if a stone is synthetic – you cannot refer to a sapphire if it is synthetic, you need to refer to a synthetic sapphire. The terminology used must be clear and understandable and not misleading to the consumer.

ii. Offer what you advertise.

If you advertise a special on a product, make sure you either have enough stock to service all customers, can obtain the stock for the customer at the same advertised price within a reasonable time or specify in your advertising how many pieces of the product is available.

c. Privacy of the consumer

This refers to **direct marketing**.

***direct marketing** means to approach a person, either in person or by mail or electronic communication, for the direct or indirect purpose of—*
(a) promoting or offering to supply, in the ordinary course of business, any goods or services to the person; or
(b) requesting the person to make a donation of any kind for any reason

Direct marketing is not serving a customer in your store. It is when **you go out to approach the customer**, for instance through telephone marketing, email promotions (bulk mail or spam), SMS promotions, etc.

If you use direct marketing methods to sell to the consumer, you need to ensure that you and the marketing agent you use do not interfere with consumer privacy.

Consumer privacy

i. Do not bother the consumer

The consumer has the right not to be bothered through direct marketing at inappropriate times (out of business hours, on public holidays, etc.)

ii. The consumer may opt out from marketing

The consumer must have the option not to receive direct marketing approaches. For this there is a list being created where consumers can list themselves if they wish not to be approached. The “do not contact” list will be managed by the Consumer Commissioner, but the system is not yet up and running.

In the interim, make sure that you give the consumer the option not to receive marketing from you by for instance adding an opt-out option to the bottom of your e-mails to be removed from the marketing lists.

At this point you can contact the Direct Marketing Association (<http://www.dmasa.org/>) for details of consumers who have opted out of direct marketing – not to be contacted.

If you are placing advertisements on television, radio, web-sites or in magazines – it is not considered direct marketing, it is only catalogue sales if the consumer can purchase or order directly from the advert.

Purchases done from web-sites and catalogues are not considered direct marketing and does not have a cool off period, but the consumer still has the right to return goods as described in point 5 excluding 5a.

d. No discrimination in marketing

You cannot exclude any consumer from any offer or advertise an offer exclusively to one or another group of consumer. Any consumer must have equal access to the products and must be charged the same pricing for products or services.

e. Direct Marketing

During direct marketing, you must inform the consumer of their right to return goods within the cool off period of 5 business days.

Make sure that your product description is accurate on catalogues and web-sites. Very often, a picture of a piece of jewellery in a catalogue or on a web-site can be misleading in terms of size. Ensure the physical dimensions of the product are included to ensure that the consumer is properly informed regarding the purchase.

Ensure that your order forms allow for the consumer to sign off on the specifications of the product they choose such as ring size, alloy, etc.

When doing a sale from a Web-site, Catalogue or Direct Marketing, you as supplier must inform the consumer of the following before finalising the sale:

- The supplier’s name and licence or registration number, if any;
- The address of the supplier’s physical business premises and related contact details;
- the sales record information discussed in point 6;

- the currency in which amounts under the agreement are payable;
- the supplier's delivery arrangements, including—
 - the identity of the shipper;
 - the mode of transportation; and
 - the place of delivery to the consumer;
- the supplier's cancellation, return, exchange and refund policies, if any
- the manner and form in which a complaint may be lodged

4. Selling your goods.

Price fair and equally. Everyone must pay the same and a consumer may not be exploited with unfair pricing. Be clear on what you charge for a product and do not force a consumer into a purchase they do not want. Inform the consumer properly in terms of product choices.

a. Fair Pricing

It is extremely difficult in the Jewellery Industry to provide a guideline on how to price your goods. Each product is different and each retail venue has different costs and services. The main focus is that you price your goods in a way that when challenged, you can provide a reasonable explanation for the pricing of goods. As an example, motor vehicles in South Africa are more expensive than our neighbouring countries because of additional taxation, legal requirements, etc.

b. The same price goes for everyone

No matter who buys from you, they have to pay the same price. You are not allowed to add to or discount prices based on any reasons to consumers. If you give bulk discounts, all consumers must receive the same bulk discounts under the same circumstances. It is important to note that commissions paid to, for instance, tour operators may not be added to the price you charge the consumer.

c. Do not discriminate against a consumer in any way

Every consumer should be treated equally. No service, preference, etc can be given to anyone based on race, socio-economic standing or geographical location.

d. Every product must have a price

Each product must have a price attached or with the product or at the very least a code attached that clearly relates to a physical price list. The price on the product is what the consumer pays. Generally, if you price incorrectly it will be for your cost. You will have to sell at the wrong price. There is a very limited exception made where you will not have to sell at the wrong price, namely where the mistake is so huge that it is totally unbelievable, but it may be difficult to prove.

e. Second Hand, restored or grey products

You have to clearly state if a product is a refurbished – a reconditioned product, second hand product or grey product.

Grey products are products imported without the permission of the brand owner and / or local agent of the brand owner.

With grey products, each product must be clearly labelled as a grey product in legible font and the consumer's attention must be drawn to the following:

- The product – especially branded product – is imported without the consent of the agent and as such will not be supported by the local agents of the product.

f. Discounts on prices

If a supplier does a sale referring to a discount in terms of % - example 30% off sale, the display price on the product must:

- i. display the original price before the discount **or**
- ii. display two prices indicating the price prior to the discount as well as the price after the specific discount and the price after the specific discount must be accurate in terms of the % discount.

g. Referrals

You cannot put referral of new consumers or consumer details as a basis or condition for giving any discount or concluding any transaction.

h. The consumer only pays for what the consumer wants

You cannot force the consumer to buy an additional product (bundled) in order to buy the original product at a better price. If you are bundling products, it must also be available separately or you need to clearly demonstrate that it is to the consumer's advantage to take the product as is.

unless the supplier—

- (i) can show that the convenience to the consumer in having those goods or services bundled outweighs the limitation of the consumer's right to choice;*
- (ii) can show that the bundling of those goods or services results in economic benefit for consumers; or*
- (iii) offers bundled goods or services separately and at individual prices*

i. The consumer cannot be forced into any additional commitment

You cannot expect the consumer to use a specific additional service or service provider when purchasing goods from you. As an example, you cannot force a consumer to take insurance from a specific insurance provider when the consumer purchases a product from you.

j. Cool off periods

This is often confused with warranty returns. The cool off period only refers to a sale where the consumer concluded the purchase **via direct marketing** and **did not have the opportunity to examine the goods before purchasing**.

The consumer has the right to cancel these sales without cost to the consumer within a 5 business day period in writing or another recorded manner and form and any money paid by the consumer must be returned to the consumer within 15 business days.

*A consumer may rescind a transaction resulting from **any direct marketing** without reason or penalty, by notice to the supplier in writing, or another recorded manner and form, within five business days after the later of the date on which—*

- (a) the transaction or agreement was concluded; or*
- (b) the goods that were the subject of the transaction were delivered to the consumer.*

k. Lay Byes

- All the instalments paid by the consumer remains the property of the consumer until the consumer receives the goods
- The goods are at the risk of the supplier until the consumer receives it

If for some reason you cannot supply the goods ordered to the consumer you have to provide an equal or better product or refund the consumer:

- The full amount with interest if the product is no longer available due to circumstances beyond the control of the supplier, or:
- Double the amount if the product is not available due to your own doing.

You can charge a cancellation penalty – usually no more than 1% if:

- The agreement is cancelled by the consumer or if the consumer fails to complete the payments within 60 days after the agreed term, if you have informed the consumer of this penalty before the consumer agreed to the purchase. The rest of the money paid by the consumer must be refunded.
- You cannot charge a cancellation penalty if the consumer cancelled because of hospitalisation or death.

I. Ensure a well informed purchase

The consumer should be educated about the product they are purchasing. Full disclosure is the best approach but mainly any information that could be helpful or has any material financial affect on the price of the product. It is also important to advise the consumer regarding the responsibility to care for the product. As previously advised, **you can use the Retail Reference Guide as well as the Consumer Education Brochure for this purpose.**

You MUST inform the consumer if the product is 2nd hand / reconditioned.

5. The right to return goods:

It does not apply in general to products sold in store, only to products ordered online, from catalogues, through direct marketing, by fax or postal order, specially ordered by the consumer or where the consumer was misled in terms of the purpose or function of the product.

You can also not return a product simply because there is now a better option on the market.

This is **not a blanket arrangement to allow a customer to return products**. There are specific conditions under which a consumer may return products for a refund. A consumer may return a product and the consumer may choose to be refunded if the supplier delivered:

- a. goods to the consumer in terms of an agreement arising out of direct marketing, and the consumer has rescinded that agreement during the cooling-off period
Refer to the paragraph under direct marketing
- b. goods that **the consumer did not have an opportunity to examine before delivery** (Web-site marketing and sales, catalogue sales delivered, etc), and the consumer has rejected delivery of those goods for any of the following reasons:
 - i. The consumer is not satisfied that the goods are of a type and quality reasonably acceptable under the original agreement between the supplier and the consumer
 - ii. A special product was ordered and the product does not reasonable conform to the material specifications of the order. (Does not match the sample and description)
- c. a mixture of goods, and the consumer has refused delivery of any of those goods, only if some or all of the goods are not in accordance with the agreement with the consumer.

- d. goods intended to satisfy a particular purpose communicated to the supplier and the supplier agreed that it understands the purpose and that the goods will be able to serve the purpose, and within 10 business days after delivery to the consumer, the goods have been found to be unsuitable for that particular purpose
In the jewellery industry, the only purpose for jewellery is adornment and in the case of a watch, to tell time. Jewellery cannot be guaranteed to perform any other purpose.

The consumer may only return the goods if:

- a. The products have not been changed, altered (altered here does not pertain to a product resized for a consumer) or damaged in any way.
If the product has been damaged or physically changed by the consumer, the consumer cannot return the goods for a refund.
- b. The goods must be in the original packaging
A full refund is only given if the goods are still in the original packaging. If:
- i. The product was removed used and replaced in the original packaging but it is still in the original condition, the supplier can charge a reasonable amount necessary to restore the product to its state prior to sale.

6. Sales Records

As a supplier you must provide a written record of every transaction to the consumer. It must include as a minimum the following information:

- a. The suppliers full name, or registered business name and VAT registration number (if the supplier has one)
- b. The address of the premises at which or from which the goods or services were supplied
- c. The date on which the transaction occurred
- d. The name or description of the product supplied or ordered
- e. The unit price of the product or service
- f. The quantity of the product or services
- g. The total price of the transaction before tax
- h. The total price of the transaction including tax.

7. Cancellations of orders

A consumer has the right to cancel an order placed by the consumer before taking possession of the goods.

In this case, unless the order was cancelled due to the death or hospitalisation of the consumer or the person for whom the order was intended, it is acceptable to charge a reasonable cancellation fee. This would relate to the costs reasonably incurred to procure the product for the consumer.

This does not pertain to special order goods. If a product is specially designed and manufactured to a consumer's specifications and the product meet the specifications as agreed, the consumer does not have the right to arbitrarily cancel the order.

In a case of a cancellation of special order goods, the supplier has the right to charge the consumer any losses suffered in the process. **It must be made clear to the consumer when ordering the goods that the supplier will recover all costs from the consumer on special order goods prior to the sale.**

8. Warranty of quality

This is often misunderstood. It does not give the consumer the right to return a product just because they don't want it anymore. It ensures that a minimum quality guarantee of 6 months is put in place for consumers against very specific eventualities.

Any warranty is void if the consumer subjects the product or parts thereof to abuse or misuse and does not apply to ordinary wear and tear in terms of the responsible use of the goods.

As example, the consumer cannot claim a warranty for goods damaged by the consumer nor expect the supplier to provide a warranty against normal wear and tear (such as the plating of a product wearing off)

A consumer cannot claim the right to return goods under a warranty simply because there is a better option now on the market.

NB: The implied warranty binds the producer, importer, distributor and retailer.

Except if the goods were altered by one of the parties in the chain contrary to instructions.

NB: The implied warranty is a minimum warranty. If you have a normal warranty on a watch of 1 year, the implied warranty extends the 1 year warranty and it becomes a 1 year and 6 month warranty. The initial 6 months will be according to the Act and the remainder according to the supplier's conditions of warranty.

Goods may be returned at the suppliers risk for repair, replacement or refund in full, dependant on the consumer's choice, if:

- a. **The goods are not suitable for the purpose for which they are generally intended** (adornment or to tell time)
- b. **The goods are not of good quality, in good working order and free of defects.**
It is important to inform the consumer of the specific condition of what you are selling. For instance, a flaw in a diamond is not a reason to return the goods if the consumer was made aware of the flaw before the sale was completed.
- c. **The goods do not last under normal conditions for the proper use of the goods**
It is important to inform the consumer of the proper use and care for the goods. **The consumer education brochure** may help with this.
- d. **The goods do not comply with the normal standards**
Example, an 18ct ring contains less than 75% gold.
- e. **If the goods were repaired by the supplier** and the product has a similar problem or additional problems within 3 months after the repair, the product must be replaced or refunded in full.

9. Repairs and warranties on repairs

a. Quote before repairing

- i. **A warranty repair as per the warranty listed above is free of charge** to the consumer, unless the damage to the product was caused by the consumer not following the instructions for proper use or through accident by the consumer.
- ii. **You cannot charge a consumer for providing a quote to repair a product unless you have informed the consumer prior to the quoting process how much the quote will cost and the consumer has agreed to this in writing.**
- iii. **The consumer must agree to the quote – preferably in writing**
If a repair is done without the consumer agreeing to the quote, the consumer does not have to pay for the repair.
- iv. **Inform the consumer of any changes**
Inform the consumer before proceeding if the cost of a repair or the duration of the repair changes. The consumer must agree to additional costs, if not, the consumer does not have to pay the additional costs.

b. Warranty on repaired goods

Any warranty is void if the consumer subjects the product or parts thereof to abuse or misuse and does not apply to ordinary wear and tear in terms of the responsible use of the goods.

As example, the consumer cannot claim a warranty for goods damaged by the consumer nor expect the supplier to provide a warranty against normal wear and tear (such as the plating of a product wearing off)

i. Implied warranty on repairs – labour and parts – is 3 months

ii. The repair warranty runs in parallel (at the same time) as the implied warranty of quality, not in addition to.

c. Return of components

In terms of repairs, the Act requires the supplier to return components removed during repairs to the consumer.

In the case of precious metal products, this would be illegal under the current Precious Metals Act. It is suggested that we continue with the current practice of discount to the consumer based on precious metal value retained.