

**VAAL TRIANGLE INDEPENDENT RETAILERS' PERCEIVED
AWARENESS VERSUS ACTUAL KNOWLEDGE OF THE
CONSUMER PROTECTION ACT**

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DECLARATION

I, **P.J. van Schalkwyk** declare that

“Vaal Triangle Independent Retailers’ Perceived Awareness versus Actual Knowledge of the Consumer Protection Act” is my own work, has not been submitted for a degree previously, and that all the sources I have used or quoted have been indicated and acknowledged by means of complete references.

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To whom it may concern

This is to confirm that I, the undersigned, have language edited the completed research of P.J. van Schalkwyk for the Master of Commerce thesis entitled: *Vaal Triangle independent retailers' perceived awareness versus actual knowledge of the Consumer Protection Act.*

The responsibility of implementing the recommended language changes rests with the author of the thesis.

Yours truly,

Linda Scott

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ABSTRACT

VAAL TRIANGLE INDEPENDENT RETAILERS' PERCEIVED AWARENESS VERSUS ACTUAL KNOWLEDGE OF THE CONSUMER PROTECTION ACT

KEYWORDS – Consumer Protection Act, South Africa, Consumer Rights, Retailers, Knowledge, Awareness

Over the past two decades, South Africa has introduced several laws regulating business and providing protection to consumers. These include the Competition Act (89 of 1998), the Electronic Communications and Transactions Act (25 of 2002), the National Credit Act (34 of 2005), and the Consumer Protection Act (68 of 2008) (CPA). The CPA was implemented to conform to international best practice regarding consumer law, to replace the existing but outdated laws, and most importantly, to provide protection to vulnerable consumers (Department of Trade and Industry, 2004:14; Rampersad & Reddy, 2012:7407). The importance of protecting vulnerable consumers can be attributed to South Africa's history of discrimination and excluding the majority of the population from quality education and equal opportunities in the marketplace (Rampersad & Reddy, 2012:7407). However, the CPA is of small value to consumers if it is not generally known and applied; thus, consumers will continue to be at the mercy of retailers who very often do not have their best interests at heart. Therefore, this study was undertaken to measure the awareness and knowledge of the CPA among retailers. The research was done among small independent retailers located in shopping malls in the Vaal Triangle, South Africa. The study followed a quantitative approach, using a self-administered questionnaire to obtain a single cross-sectional sample.

From the data gathered, it is clear that most of the participants considered themselves well informed regarding consumer rights; 88 percent of the participants indicated that they are familiar with the nine consumer rights contained in the CPA. However, this

stands in stark contrast to the results obtained in the section measuring the actual knowledge of the CPA; only 49 percent of the participants managed to answer more than half of the questions correctly, and none answered more than 70 percent correctly. In addition, the participants seemed to score higher on those rights that existed before the CPA came into effect, and lower on the new rights introduced by the Act. This seems to indicate that retailers are not yet familiar with the Act; it is, therefore, unlikely that they do business in a manner that complies with the CPA, which robs consumers of the benefit and protection of the Act. Of the retailers who participated in this study, 72 percent said they believe the CPA is necessary to protect consumers. This would seem to indicate that it is the lack of knowledge rather than real resistance to the Act which is standing in the way of wider compliance. Therefore, steps should be taken with utmost urgency to educate and increase awareness of the Act, both among retailers and consumers.

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CHAPTER 1

INTRODUCTION TO THE STUDY

1.1 INTRODUCTION

As apartheid fell and sanctions were lifted, South Africa experienced doubled economic growth, a lower interest rate, diversification of the productive base, opportunities for foreign trade, and a general improvement in living standards (Nowak & Ricci, 2005:4). South Africans now enjoy protection of their basic rights such as the right to dignity, freedom of association, and freedom from discrimination. However, despite these rights, consumers in South Africa were still vulnerable because of the imbalance of power between the consumer and big businesses, as well as the government as a service provider (Rampersad & Reddy, 2012:7407). Social problems such as low literacy and high poverty levels made this worse, which prompted government to realise that existing laws in South Africa did not offer enough protection to consumers (Government Gazette, 2004:4).

After the fall of apartheid, South Africa became part of an increasingly open international market and had to adapt legislation reflecting this. This was firstly, because South Africa was no longer able to function independently from international best practices, and legislation had to be formulated and implemented to follow acceptable international practices. The second reason was that contract law, traditionally used to regulate business transactions, was based on the assumption that the parties have equal power to negotiate (Cockrell, 1997:26). In reality, this was not the case, because retailers have more power than consumers do and they use standard contracts that are not open to negotiation (Woker, 2010:218). Previous legislative measures were limited to enforcing contracts or payment of damages, and had different pieces legislation as sources (Van Huyssteen *et al.*, 2010:39). The different pieces of legislation were not co-ordinated, not known to consumers and did not provide adequate protection for consumers (Woker, 2010:219). Third, South African consumers often lack the knowledge and experience to negotiate fair contracts due to past discrimination, which leaves consumers vulnerable to exploitation, unethical marketing and unfair contracts (Rampersad & Reddy, 2012:7407). Thus, in an effort to codify the law and provide certainty as well as greater consumer protection, the

Consumer Protection Act (68 of 2008) (CPA) was promulgated. This Act influences the way of doing business by regulating every aspect of business activities from franchise agreements (Louw, 2011:32) to marketing (Kirby 2009:28). The CPA has also changed the very foundation on which the South African markets function, by codifying, and in some instances replacing, existing laws such as South African contract law (Rampersad & Reddy, 2012:7412). However, awareness and enforcement of the CPA remains a problem, and this prevents many consumers from reaping the full benefits the Act is supposed to provide (Knowler, 2012b).

This study seeks to investigate the perceived awareness, as well as actual knowledge, of the CPA amongst independent retailers, and how this Act has influenced their business activities. To this end, this study examined the rise of consumer movements globally, found comparative legislation in other countries, and looked at how this influenced the South African business environment. In addition, this study examines market practices before the formulation of the CPA, and the changes the Act caused in the business environment.

1.2 PROBLEM STATEMENT

The Consumer Protection Act (68 of 2008) (CPA) came into force on April 1, 2011. It codified several existing laws as well as introducing several new concepts into South African legislation. According to Van Eeden (2009:21), as early as 2009 businesses started preparing for the implementation of the Act by updating standard terms in their contracts, as well as demanding that upstream retailers be compliant to protect them from product liability. Since then the CPA has had far reaching consequences on the South African market place, from changing the regulatory framework governing franchise agreements (Louw, 2011:32), and the way companies are allowed to advertise their products (Kirby, 2009:28), to prescribing which name(s) a business may use (Strachan, 2012:15). It is critical that businesses ensure that they comply with legislation as soon as possible (Louw, 2011:32). The CPA has also brought about many benefits such as replacing a patchwork of laws, creating certainty in the marketplace, and setting certain uniform standards in the business environment (Van Eeden, 2009:24).

The public has warmly accepted the implementation of the CPA, as is reflected in the high volumes of complaints received by the regulatory authority (Anon., 2011b). The high volume of complaints received by the National Consumer Commission could buttress the fact that either consumers are beginning to exercise their rights as contained in the CPA, or that the populace and retailers do not have a good understanding of the CPA, hence the misunderstanding that has necessitated the complaints. According to the Parliamentary Monitoring Group (2011), since its establishment, the National Consumer Commission has received an average of 8 000 calls and more than 2 000 e-mails, faxes or letters per month through its call centres. The retailing sector received the highest number of complaints at 2 189, followed by the motor industry with 1 221, mobile and telecommunication 1 120, property, timeshare and financial 1 100, government and municipalities 450, fitness centres 237, travel and tourism 185, and education and medical services 110 (Anon., 2011b). Therefore, there is a need to investigate the retailers' knowledge and awareness of the CPA.

According to Knowler (2012a), smaller shops or retailers are often ignorant of the law, including the CPA, or wilfully choose to misrepresent consumer rights. In the past the principle of *ignorantia juris non excusat*; that is, ignorance of the law is no excuse, was applied in South Africa. This meant that every person was treated as though they had complete knowledge regarding the law and the consequences for not abiding to the law. This principle does not form part of South African law any more, as is evident in the appellate division comment on the principle in case of *S v De Blom* (1977). The comment captured in the head note at 514E-F held that:

At this stage of our legal development it must be accepted that the cliché that 'every person is presumed to know the law' has no ground for its existence and that the view that 'ignorance of the law is no excuse' is not legally applicable in the light of the present day concept of *mens rea* (literally meaning guilty mind is the intent to cause the outcome) in our law. But the approach that it can be expected of a person whom, in a modern State, wherein many facets of the acts and omissions of the legal subject are controlled by legal provisions, involves himself in a particular sphere, that he/she should keep himself informed of the legal

provisions which are applicable to that particular sphere, can be approved.

Although the principle that ignorance of the law is no excuse does not form part of the law anymore, an obligation still rests on an individual to familiarise himself/herself with the laws that are applicable in the business sphere. To this end, the aim of this study is to measure the perceived awareness of the CPA and the actual knowledge of selected aspects that are most relevant to independent retailers. Consequently, research questions will, firstly measure the awareness of the Act amongst independent retailers, second their attitude towards the Act, and lastly their knowledge of the Act will be ascertained, and if this knowledge of the Act has impacted on their daily practices in business.

1.3 STUDY OBJECTIVES

The following objectives have been formulated for the study:

1.3.1 Primary objectives

The main purpose of this study is to investigate the perceived awareness, attitude and actual knowledge of the CPA amongst independent retailers in the Vaal triangle.

1.3.2 Theoretical objectives

In order to achieve the primary objective, the following theoretical objectives are formulated for the study:

- Review the international literature on consumer rights
- Review the South African literature and legislation concerning consumer rights before the formulation of the CPA
- Conduct a literature review of the factors that influenced the formation of the CPA in South Africa
- Review the literature on the CPA in South Africa
- Review the literature about the awareness and effect of the CPA.

1.3.3 Empirical objectives

In accordance with the primary objective of the study, the following empirical objectives are formulated:

- Determine independent retailers' perceived awareness of the CPA
- Determine independent retailers' attitude towards the CPA
- Determine independent retailers' actual knowledge of selected aspects of the CPA.

1.4 RESEARCH DESIGN AND METHODOLOGY

This study comprises a literature review and an empirical study. The empirical portion of the study uses quantitative research, using the descriptive research design.

1.4.1 Literature review

A review of the South African literature will be conducted using sources such as textbooks, business journals, academic journals, reported court cases, legal journals and online academic databases.

1.4.2 Empirical study

Because this study is trying to gain understanding of retailers' knowledge, attitudes and perceptions, descriptive research will be used. This is because, as Bradley (2010:510) explains, descriptive research describes attitudes, beliefs or opinions, rather than explains causes. This study will employ a self-administered questionnaire survey to gather the required primary data. The empirical portion of this study comprises of the following methodology dimensions:

1.4.2.1 Target population

According to Malhotra (2010:372), the target population refers to the collection of elements or objects that possess the information sought by the researcher. Therefore, the target population for this study is defined as independent small retailers (excluding franchises) situated in malls in the Vaal Triangle, South Africa. Franchises were excluded because their policies and procedures are determined at the head-office and then implemented nationally. Thus, while the owner may manage the franchise

retailer, the owner is not involved in designing the policies that should reflect the requirements of the CPA.

The retail sector, as defined by Berman and Evans (2010:4), includes all businesses that sell goods and services to the final consumers for their personal, family or household use. Examples in the retail sector include clothing stores, restaurants and service providers such as hairdressers.

This study focuses on retailers that fit into the small business segment. According to the National Small Business Act (102 of 1996), a small business in the retail sector is a business that is independently owned, has a total asset value (including fixed assets) of less than R3 million, a yearly gross income of less than R19 million, and less than 50 employees. In addition, the National Small Business Amendment Bill (29 of 2004) adds that a small business is a separate and distinct business entity, managed by one or more owners.

As many businesses may be reluctant to divulge financial information due to its sensitivity, this study uses the number of employees as well as the requirement that the business must be managed by one or more of the owners to qualify participants.

1.4.2.2 Sampling frame

“A sampling frame is a list that includes every member of the population from which a sample is to be taken” (O’Leary, 2010:163). According to Malhotra (2010:373), it provides direction for determining which participants to include in the sample. The sampling frame will be a list of independent retailers situated in shopping malls in the Vaal Triangle, South Africa. The industry sectors covered in the sample include information technology, household goods, clothing and textiles, electronics, health and pharmaceuticals, food and beverages, leisure, and retail. As previously stated, the exclusions are franchises, chain stores and other national retailers. As such, the sampling frame for this study comprised of independent retailers drawn from the following shopping malls in the Vaal Triangle region, South Africa:

- Sanlam Centre - Vanderbijlpark
- Santrio Shopping Centre - Vanderbijlpark

- Sebokeng Plaza Phase II - Sebokeng
- Shoprite Centre - Vanderbijlpark
- Top Level Shopping Centre - Vanderbijlpark
- Vaalgate - Vanderbijlpark
- The Hangar - Vereeniging
- Markpark - Vereeniging
- River Square Centre - Three Rivers
- Tharina Centre - Vereeniging

1.4.2.1 Sample method

Following a single cross-sectional design, in which information is obtained from each sample only once (Malhotra, 2010:108), a census of independent retailers located in shopping malls in the Vaal Triangle, South Africa, was taken in April 2013. Mall management was approached for permission to administer the questionnaires, as well as for information on business volumes during the month, and a list of retailers in the shopping malls. This enabled times of low business volumes to be selected to administer the questionnaires. The owners or managers of the independent retailers were then approached and requested to complete the questionnaire.

1.4.2.2 Sample size

A census was conducted amongst independent stores found in the selected shopping malls. Although most of the retailers were part of a chain or franchise, 97 independent retailers were identified as being part of the target population.

1.4.2.3 Measuring instrument and data collection method

According to Malhotra (2010:211), information can be gathered through either observation, which involves recoding behavioural patterns, or the survey method, which uses a structured questionnaire given to the target population to gather specific information from participants. A self-administered, standardised questionnaire was used in this study because coding, analysis and interpretation of data are relatively easy. Zikmund (2003:158) defines a self-administered questionnaire as a survey in which the participant takes responsibility for reading and answering the questions. The questionnaire made use of fixed alternative questions that required participants to select the best alternative from the various options available. This made the

questionnaire simple to administer, and the data gathered reliable, since responses are limited to the options given (Malhotra, 2010:211).

1.4.2.4 Statistical analysis

The Statistical Package for Social Sciences (SPSS) Version 21.0 for Windows is used to analyse the captured data. The analysis of the empirical data sets is by the following statistical methods:

- Reliability and validity analysis
- Descriptive analysis.

1.5 ETHICAL CONSIDERATIONS

The research study complied with the ethical standards of academic research at the North-West University, which among other things will protect the identities and interests of participants, and confidentiality of information provided by the participants. Participation in the survey was voluntary. Information about business volumes was sought from the mall management to determine low business volumes times, so as not to inconvenience participants.

1.6 CHAPTER CLASSIFICATION

This section will discuss the chapter classification of the study

1.6.1 Chapter 1: Introduction and background to the study

This chapter encompasses the introduction and background to the research study. It includes an outline of the problem statement, the research objectives, and the research methodology used. The chapter concludes with the organisation and structure of the research study.

1.6.2 Chapter 2: Consumer protection movement

Chapter 2 includes a discussion on the consumer protection movement. This chapter also contains a detailed discussion of the Consumer Protection Act (68 of 2008), its history as well as its goals. The Consumer Protection Act (68 of 2008) is conceptualised from the international perspective down to the South African experience. The formulation and implementation as well as challenges and prospects facing the Consumer Protection Act (68 of 2008) are explored.

1.6.3 Chapter 3: Research design and methodology

This chapter discusses the target population, sampling frame and data collection method, as well as outlining the data analysis and statistical techniques employed in the study.

1.6.4 Chapter 4: Results and findings

Within this chapter, the research findings are analysed, interpreted and evaluated.

1.6.5 Chapter 5: Conclusions and recommendations

This chapter comprises of a review of the entire study and provides conclusions drawn from the study. This will be followed by recommendations emanating from the study and suggestions for further research.

CHAPTER 2

CONSUMER RIGHTS AND LEGISLATION

This chapter examines the historical background of the consumer rights movement, as well as consumer laws, from an international and South African context. This will be followed by a detailed examination of legislation that previously regulated the South African market, as well as the rationale behind the formulation of the Consumer Protection Act (68 of 2008). The final part of the chapter will examine the content of the Consumer Protection Act (68 of 2008) and its impact on businesses in South Africa.

2.1 CONSUMER MOVEMENT AND CONSUMER RIGHTS

Ghandi (cited in Patel, 2007) said, “a customer is the most important visitor on our premises. He is not dependent on us. We are dependent on him. He is not an interruption in our work - he is the purpose of it. We are not doing him a favour by serving him. He is doing us a favour by giving us the opportunity to serve him.” Similarly, in his 1962 speech, President Kennedy of the United States of America (cited in Hilton, 2005:6), reiterates the sentiment, “consumers by definition include us all ... they are the largest economic group ... affecting, and affected by almost every public and private economic decisions. Yet they are the only important group ... whose views are often not heard.” The above quotations from Ghandi and Kennedy demonstrate recognition of the importance of consumers, and that they are affected by all decisions in the market; however, since they are not effectively organised, they are, therefore, often unheard, neglected and taken advantage of by retailers who do not share the sentiments of Kennedy and Ghandi. This, together with a lack of efficient recourse, has often left consumers feeling frustrated.

Inevitably and in response to the dissatisfaction with unfair business practices, consumers eventually formed consumer movements to advocate for consumer rights, educate consumers and campaign for governments to provide greater consumer protection.

Dauses (1998:244) states that although consumer rights activists, government agencies and writers often portray consumers as simple minded, immature, easily tempted and easily misled by retailers, they are in truth diligent, sensible and cautious. In addition, according to the consumer sovereignty theory, in a perfect market, consumers determine what is produced, and market imperfections could be attributed to lack of information on the consumers' part (Meir, 1985:77). This can easily be overcome if consumers have access to sufficient information to make informed decisions (Meir, 1985:77). Therefore, if consumers are as diligent, sensible and cautious as Dauses (1998) argues, why are laws needed to protect consumers' rights, especially if they determine or influence what is being produced? The reason for this is found in the Draft Green Paper on the Consumer Policy Framework (Department of Trade & Industry, 2004:11), which states that while some economists argue that consumer protection is unnecessary, since consumers have a choice not to buy goods or services if the contract is not in their favour, this is based on an assumption of equal bargaining power as well as perfect and complete knowledge by both the buyer and seller. This never happens in reality, leading to unequal bargaining power. Unequal bargaining power is especially prevalent where a single company or retailer dominates local or national markets and there is no alternative available to consumers. South African consumers often lack the knowledge and experience to negotiate fair contracts due to past discrimination, which leaves consumers vulnerable to exploitation, unethical marketing and unfair contracts (Rampersad & Reddy, 2012:7407). Meir (1985:77) summarises the need for consumer protection by stating that because consumers are vulnerable, and the profit motives create incentives for retailers to supply goods and services, which are unsafe or of low quality, consumers need protection from such unethical behaviour.

The consumer rights movement, referred to as consumer activism or consumerism, is the biggest driving force for better legislation and more consumer protection. Gilbert (1999:417) defines consumer movement as "organised group pressure which has become a set of values held not only by the consumers of a company's products but also within the wider society." Similarly, Mann and Thornton (1978:253) add that consumer movement reflects the dissatisfaction among consumers with the relationship between consumers and retailers. Also, Larson and Lawson (2013:114) argue that the goal of the consumer movement is to bring about ideological change,

and this has influenced the general belief of scholars who reasoned that the common thread of consumer movement consists of organised citizens with the aims of improving consumer knowledge and rights (Jones *et al.*, 2005:35). Although scholars conceptualise consumer movement differently, there are common elements mentioned in the above definitions, which include, dissatisfaction with imperfect market conditions, an organised movement, as well as the goals of greater consumer protection and education. This study will use the definition given by Boshoff *et al.* (2007:354) that defines consumerism as, “a set of activities on the part of independent organizations, government, and business organizations, designed to protect the consumer.” This definition does not exclude measures taken by retailers and can be read to include all measures taken by all relevant stakeholders to protect consumers.

2.2 ORIGIN OF THE CONSUMER MOVEMENT

The foundation for the consumer rights movement was laid in the United States of America. It started when the National Consumers League was formed in 1899 to provide government and business with the consumer’s perspective on issues such as food, safety, child labour and minimum wages (Anon., 2009c). Nevertheless, it was *Your money's worth: a study in the waste of the consumer's dollar*, printed in 1927, written by Stuart Chase and Frederick J. Schlink, that made the general public aware of consumer rights and their importance, according to Mayer (1989:21). The authors allege that manufacturers did not follow safety specifications because they were more interested in selling products than meeting the needs of consumers. They argued that market forces alone are not producing a market, which serves consumers' best interests. Marketers were accused of using unfair practices such as misrepresenting the quality and utility of products, promoting unethical sales practices and adding non-functional styling for deceptive purposes, in order to coerce consumers (Mayer, 1989:21). The book was an answer to the deceptive marketing practices that were pervasive at the time (Mayer, 1989:21). The book proved very popular and the authors later founded Consumers’ Research, which tested products on consumers’ behalf, gave advice, and petitioned government for greater consumer protection (Silber, 1983:19). It was due to their continued efforts that the United States of America’s President Roosevelt enacted the Consumer Advisory Board in 1933, and the modern consumer movement was born (Warne, 1993:119).

Not everybody welcomed the consumer movement. Cohen (2003:236), in her study of Post-World War II United States of America, found that with the Great Depression still fresh in peoples' minds, Americans were encouraged to buy and consume products in order to stimulate growth. This led to a form of consumerism, which held corporation and government to higher standards, while consumers indulged themselves without feeling any responsibility. During the depression of the 1930s, greater emphasis was placed on collective rights and the greater good of society; however, after the Second World War the emphasis shifted to serving the individual's interests (Cohen, 2003:9). Today the struggle is between protecting individual freedom and reducing social inequality on the one hand, and limiting government intervention as a tool of achieving those goals on the other (Henry, 2010:673).

However, consumer rights groups alone are not enough to protect consumers' rights; therefore, there is a need for legislation to back their activities. For example, Lufty (1988:80) alleged that while Japan had more than 4 325 consumer groups in 1988, Japan was five times more expensive than the United States of America, when comparing similar products produced in Japan, but sold both in Japan and the United States of America. According to Herbig and Palumba (1994:5), the reason for this, as well as the prevalence of many practices forbidden in Europe and the United States of America such as cartels and captive distribution networks, is that the Japanese government had not enacted strong consumer legislation at the time. They claim that this is because the Japanese government feared that strong consumer legislation might have a negative impact on any competitive advantage Japanese companies might have over international competitors. This in essence meant that producer power and not consumer power made the rules, as illustrated by the absence of the term 'Consumer Rights' in the Japanese Basic Act for the Protection of the Consumer (Herbig & Palumba, 1994:5).

2.3 INTERNATIONAL CONSUMER PROTECTION LAW

The first evidence of consumer rights can be found on the Code of Hammurabi, created almost 3 800 years ago by King Hammurabi of Babylon. This code contained 282 laws that dealt mostly with property law and criminal law in its ancient form, but it also contained several laws regulating contracts and commerce (Johns, 1987:49). For example, a builder is liable for the damage if a house or wall collapses due to the

builder's shoddy work. The Roman Empire also had several laws protecting consumers, for example protection against latent defects in the sale of a *res* or product (Otto, 2010:257).

Subsequent civilisations all had laws governing contracts and commerce. The first modern consumer laws were enacted during the early 19th century. Countries like the United States of America led the trend with laws such as the 1872 Criminal Fraud Statute and the establishment of the Interstate Commerce Commission, followed by the Pure Food and Drug Act of 1906 and the Meat inspection Act of 1907 (Meir, 1985:6).

In the second half of the twentieth century, this slow movement towards greater consumer protection began to gain momentum. On 16 March 1962, President Kennedy delivered a speech to Congress, in which he claimed,

if consumers are offered inferior products, if prices are exorbitant, if drugs are unsafe or worthless, if the consumer is unable to choose on an informed basis, then his dollar is wasted, his health and safety may be threatened, and the national interest suffers. On the other hand, increased efforts to make the best possible use of their incomes can contribute more to the well-being of most families than equivalent efforts to raise their incomes (cited in Peters & Woolley, 2013).

He added that government had a responsibility to protect consumers and to do this, legislative and administrative actions were required (cited in Peters & Woolley, 2013).

To this end, he outlined four consumer rights, which he considered important enough to warrant legal protection, these are:

- The right to safety – protection from goods and services, which are hazardous to the health and life of the consumer

- The right to be informed – protection from fraudulent, misleading or deceitful information, advertising and labelling, as well as access to information needed to make informed decisions
- The right to choose – access to a wide variety of goods and services at competitive prices, along with government protection from monopolies or other uncompetitive or unethical behaviour
- The right to be heard – the responsibility of government to consider consumer comments on matters that influence consumers when formulating policy, as well as expeditious treatment in administrative tribunals (cited in Hilton, 2005:6).

According to Mayer (2012:173), Kennedy did not stop at the speech but also created a Consumers Advisory Council to provide advice to the government on broad economic policy, protecting consumer needs, and improvements. Peters and Woolley (2013) concurs, and states that consequently, the 1963 budget included recommendations on how to improve the effectiveness of consumer protection. These included better funding for the Federal Drug Administration (FDA) to test the safety of food and drugs, changes in the automobile industry to bring down road accidents and air pollution, steps to provide financial protection to consumers, an overall increase in effective regulation by independent agencies, and consumer representation in government.

Likewise, in 1985 the United Nations (UN) endorsed the concept of consumer rights through the United Nations Guidelines for Consumer Protection. Although non-binding on UN members, it contributed to the advancement of the position of consumers around the world (Brown, 2011). The UN also expanded the four rights mentioned by Kennedy, by adding four more rights, which are:

- The right to satisfaction of basic needs such as clean water and food
- The right to redress or remedy for misrepresentation or low quality goods and unsatisfactory service
- The right to consumer education acquiring the knowledge and skills necessary to make informed decisions

- The right to a healthy environment to live and work in, which is neither threatening nor dangerous (Lampman & Robin, 1997:5).

These consumer rights were mainly influenced by, and in part derived from, different Bills of Rights such as the English Bill of Rights of 1689 and the United States Constitution of 1791. However, this did not automatically make them human rights. In fact, according to Deutch (1995:540), there is still some debate whether consumer rights should be regarded as human rights. Deutch (1995:540) concludes that consumer rights should be considered human rights, even though they are not globally regarded as such.

Most United Nations member states adopted one or more laws towards greater consumer protection during the latter half of the twentieth century. Among these, the United States of America introduced a variety of laws, at both federal and state level, as well as agencies to protect consumers, an examples of this is the Uniform Deceptive Trade Practices Act, which was adopted by states such as Delaware, Illinois, Maine and Nebraska (Dole, 1968:1101).

The European Union (EU), consisting of 28 member states located mainly in Europe, operates through supranational independent institutions and intergovernmental negotiated decisions (Anneli, 2005:204), and promotes consumer rights. According to EUR-Lex (Anon., 2013a), there are currently 815 Acts in force in the EU regarding consumer rights. Although countries within the EU may not necessarily have the same consumer rights, the EU law guarantees ten principles that should be the minimum level of consumer protection that countries within the EU must include in their law(s) (Telicka, 2004:2). These principles, according to Telicka (2004:2), are:

- Buy what you want, where you want
- If it does not work, send it back
- High safety standards for food and other consumer goods
- Know what you are eating
- Contracts should be fair to consumers
- Sometimes consumers can change their mind
- Making it easier to compare prices
- Consumer should not be misled

- Protection while you are on holiday
- Effective redress for cross-border disputes

These directives are binding on all EU members, although member states have a choice on how to implement and enforce them (Nanda, 1996:5). For instance, the United Kingdom initially used the law of contract to regulate consumer rights (Hawthorne, 1995:166). When existing laws proved insufficient they introduced the Unfair Contract Act 1977, which deals with exemption clauses. Later, in order to comply with EU Consumer Directive (Nanda, 1996:5), the United Kingdom introduced the Consumer Protection Act of 1987. The first part of the United Kingdom Consumer Protection Act deals with product liability, the second part empowers government to regulate the safety of consumer products, and the third makes giving misleading prices a criminal offence (Nelson-Jones & Stewart, 1987:5). The United Kingdom has since introduced several other pieces of legislation in line with EU directives. For example, the Data Protection Act 1998, which protects a consumer's rights to freedom and privacy in respect to processing personal data, and the Unfair Terms in Consumer Contracts Regulations 1999 which regulates the content of contracts between retailers and consumers.

However, some countries were not eager to adopt and promote greater consumer protection; this was particularly evident in the slow pace at which Africa in particular adopted consumer protection laws. This was largely because international corporations heavily influence African economies and lending institutions whose focus is on export (Brobeck, 1997:11). To attract investors, African countries were willing to tolerate unethical business practices such as dangerous or substandard goods and misleading marketing. Social problems such as extreme poverty, illiteracy, unstable employment, and the refugee crisis experienced by large parts of Africa (Brobeck, 1997:11) worsened this. With time, however, African countries began to formulate consumer protection laws in order to protect consumers' rights. An example is the Nigerian Consumer Protection Council Act of 2004, which predates the South African Consumer Protection Act (68 of 2008) by seven years since the South Africa CPA was only implemented during 2011. According to Bello *et al.* (2012:73), the factors that led to the creation of the Nigerian Consumer Protection Council Act include the sale of substandard goods and services to consumers, lack of access to

major manufacturers, and the fact that Nigerian consumers are largely complacent and uninformed about products. Inter-regional cooperation has also increased due to the creation of the Common Market for Eastern and Southern Africa (COMESA). COMESA focuses on regulating misleading representations, unconscionable conduct such as unfair contracts, and the safety of products, in order to establish a fair and effective regional competition law framework, and to bring business practices in line with international standards (Mashida, 2013).

2.4 SOUTH AFRICAN CONSUMER LAW

For years, the principle of *caveat emptor* (let the buyer beware) was one of the foundations of South African law, and consumers had little or no recourse once they concluded a valid contract (Woker, 2010:230). This lack of a strong consumer movement exacerbated this, according to the Department of Trade and Industry, (2004:7), which claims that the main reason for this is lack of funding. This created a void, which out of necessity, the media largely filled. Newspapers such as Beeld and Rapport have regular features in which they investigate consumer complaints. Online organisations such as HelloPeter.com also give consumers a chance to complain about retailers. Even after the implementation of the CPA, this remains an important resource for consumers. Although the retailers are given a chance to respond, their reactions are varied; some retailers choose to address the issues, while others choose to ignore the complaints (Knowler, 2013c).

Before the implementation of the CPA, South Africa mainly used the law of contract to regulate business contracts; this law was derived from Roman Dutch and English laws, as are the majority of South African laws (Hawthorne, 1995:166). According to Rampersad and Reddy (2012:7407) the court could be approached to enforce valid contracts, or claim for damages if contracts were broken. Thus, courts measured compliance with a contract and not the content of the contract. Traditionally, one of the main reasons for using contract law to regulate business transactions was the assumption that parties have equal power to negotiate, and that if a contract was to the detriment of one of the parties, he could not be forced into it (Cockrell, 1997:26).

To conclude a valid contract, six elements need to be present. These elements are:

- Agreement – where one party makes an offer and the other accepts it

- Performance and counter performance – one party provides a service or delivers goods, while the other party has to render payment of some type
- Intention – where both parties intend to abide by and fulfil the contract
- Capacity – where both parties are mentally capable and have the necessary authority to contract
- Genuine consent – where both parties agree to the contract of their own free will
- Legality – where all parts of the contract are legal and not against good morals or the values of society (Du Plessis *et al.*, 2010:14).

For a long time, it was felt that the requirement for these six elements of a contract offered sufficient protection to consumers, and that any further legislation will interfere with the principle of freedom of contract, based on the idea of individual autonomy and sanctity of contract (Hopkins, 2007:22). A second recourse available to consumers who felt wronged was through unjustified enrichment¹.

Contract law and other actions such as claims for unjustified enrichment, based on both English and Roman Dutch laws, offered insufficient protection to a large part of the population who were vulnerable to the actions of unscrupulous retailers (Hopkins, 2003:155), since the bargaining power was in favour of the retailer (Turpin, 1956:144). Therefore, it was necessary to develop legislation that set out basic rights as a single reference to provide certainty in the market place (Woker, 2010:217). South Africa did so by introducing several pieces of legislation.

The first was the Competition Act (89 of 1998), which led to the establishment of the Competition Commission and Competition Tribunal, responsible for the investigation of restrictive practices, abuse of dominant position, and mergers. The goal of the Competition Act (89 of 1998) was to remedy market failures, provide a framework for

¹ Eiselen and Pienaar (2005:3) defines unjustified enrichment as, “an obligation arising whenever one person’s estate has been increased at the expense of another person’s estate and sufficient legal ground for the retention of such an increase is lacking.”

regulating mergers, restriction of anti-competitive practices, and to encourage greater participation in the economy (Competition Act, 1998:4). A few years later, the National Credit Act (34 of 2005) followed. The National Credit Act (34 of 2005) deals largely with consumer credit and information made available by retailers to consumers. It curtails reckless credit granting and provides protection to indebted consumers from debt collection (National Credit Act, 2005:2). Below is a brief synopsis of the most important legislation on consumers' rights before the promulgation of the Consumer Protection Act (68 of 2008).

2.4.1 Competition Act (89 of 1998)

According to Visser (2004:54), the objective of the Competition Act (89 of 1998) is to maintain and promote competition. It does this by regulating the market to limit uncompetitive behaviour including mergers, cartels, restrictive practices and abuse of dominant market positions. It also makes provision for the establishment of a Competition Commission as an investigative body with national jurisdiction to investigate as well as approve mergers (Visser, 2004:54).

The Act distinguishes between horizontal and vertical restrictive practices. Visser (2004b:117) explains prohibited horizontal practices as an agreement between associated firms in horizontal relationships that effectively lessen competition in the marketplace, fix prices or trading conditions, or divide the market according to territory or consumers. Prohibited vertical practices are between retailers and their suppliers, which may give one retailer an unfair advantage over competitors, for example requiring one retailer to sell goods at a certain price while another retailer is allowed to sell at a cheaper price.

2.4.2 Electronic Communications and Transactions Act 25 of 2002

The goal of the Act is to facilitate and regulate electronic communications and transactions, promote access to electronic communications and transactions, and to prevent abuse of information systems (Coetzee, 2004:502).

One of the most important features is that it gives legal recognition to electronic communications. This means that emails and other electronic messages carry the same weight as other written forms of communication. It also requires certain e-service

providers to register with an accreditation authority to reduce the potential abuse of the system (Jacobs, 2004:558).

This Act contains several measures to protect consumers, *inter alia* it provides for a cooling off period for electronic transactions, the right to block unsolicited marketing, as well as full disclosure of retailer information. It is however of some concern that it differs from the Consumer Protection Act (68 of 2008) in related matters such as the length of the cooling off period (Burger & Timothy, 2010:34).

Finally, it provides a measure of protection against electronic crime by appointing cyber inspectors with powers to search and seize property under sanction of the court (Coetzee, 2004:507).

2.4.3 National Credit Act (34 of 2005)

Prior to 2005, a dysfunctional credit market existed based on the large number of problems in the consumer-credit market, including credit legislation that was outdated and not codified, the high cost of credit or lack of access to credit, vulnerable consumers being taken advantage of, reckless granting of credit, and unethical debt collection (Kelly-Louw, 2008:200).

To protect debtors and to enable the government to regulate credit givers effectively, the National Credit Act (34 of 2005) was enacted. The National Credit Act (34 of 2005) also creates the office of National Credit Regulator, tasked with receiving complaints, as well as investigating and reporting to government. The National Credit Act (34 of 2005) applies to all natural persons, regardless of the amount of debt, as opposed to other countries, most of which have certain requirements in terms of the amount of debt (Otto, 2010:271). One of the causes for these problems was the emergence of the micro-lending industry, which while initially unregulated, took advantage of loopholes in then existing legislation and lent money at extravagant rates (Kelly-Louw, 2008:200). The fact that consumers then often took new loans to pay old loans further aggravated the problem and caused many people to become over indebted, or in other words, become stuck in a situation where they are unable to repay their loans, while interest charged on those loans increased their obligations (Stoop, 2009:368).

Lastly, the Act places a responsibility on the National Credit Regulator to educate and empower consumers in order to protect them from unscrupulous credit providers (Stoop, 2009:374). One of the ways this is being done is through the requirement that credit providers now provide consumers with a breakdown of costs including fees, commissions, total interest, as well as the total amount to be repaid for the term the finance is given (Stoop, 2009:277).

2.5 CONSUMER PROTECTION ACT (68 OF 2008)

This section will discuss the reasons for the implementation of the Consumer Protection Act (68 of 2008)

2.5.1 Rationale behind the Consumer Protection Act (68 of 2008)

Owing to past discrimination based on race and gender, a huge disparity exists among South Africans. Discrimination was not only limited to the state but was also practised by the private sector, and the apartheid system “supported, encouraged and even demanded discrimination and unfair treatment of customers by business entities” (Rampersad & Reddy, 2012:7407). For this very reason, Newman (2010:735) argues that large parts of the population has very little experience with contracts and often sign agreements and make purchasing decisions, which are to their detriment. These vulnerable consumers clearly need to be protected, and since these inequities were a result of unjust legislation the state has a responsibility to address the injustices of the past (Rampersad & Reddy, 2012:7407).

According to the Department of Trade and Industry (2004:12), consumers are exposed to:

- Unfair and predatory marketing
- Lack of access to information
- Unfair contract terms
- Post-purchase harassment;
- Denial of fair settlement terms
- Unfriendly customer service.

Hence, the need to protect the consumers through the formulation of the Consumer Protection Act (68 of 2008), whose objectives include the creation of a fair and transparent market, providing a consistent, predictable and effective regulatory framework, providing access to effective redress for consumers and creating a legal framework that complies to international standards (Department of Trade and Industry, 2004:13).

In the Draft Green Paper on the Consumer Policy Framework, the former Minister of Trade and Industry, Mandisi Mpahlwa, states the reasons behind the formulation of the Act (Department of Trade and Industry, 2004:7). She says that consumer protection is part of an effective modern marketplace; it drives competitiveness and, thereby, increases performance and innovation. For the consumer it holds the benefits not only of addressing historical imbalances in the market but also in a legal framework, which can respond to new challenges and opportunities. Policies regarding competition, intellectual property and the environment are essential to ensure that markets operate to the benefit of consumers. Competitive markets give consumers access to better prices and quality goods, as well as a wider choice. Intellectual property rights protect consumers and producers from counterfeit and substandard goods, while environmental laws regulate unsustainable production and consumption patterns (Department of Trade and Industry, 2004:14). While most countries have developed comprehensive consumer rights legislation, South Africa has lagged behind. (Department of Trade and Industry, 2004:6)

The another reason for the formulation of the CPA, according to the Department of Trade and Industry (2004:6), was that the system of laws that protected the consumer before 2011 was outdated and based on the law of contract derived from English and Roman Dutch laws. The sources were also fragmented, as they were contained in several different pieces of legislation that did not always agree on relevant matters. Most of the legislation regulating the market was promulgated before the creation of the South African Constitution, consequently it was often unconstitutional. Therefore, South Africa had to follow the examples set by countries like the United States of America and United Kingdom, as well as the EU, by creating a single codification of consumer law that accords basic rights to consumers (Department of Trade and Industry, 2004:6).

The final reason the minister gave was that legislation alone was not enough. The legislation has to create enforcement mechanisms and the necessary supporting infrastructure. The courts have jurisdiction over all civil and criminal matters, including consumer laws, but consumer matters often compete with serious crime for attention. This is because of the limited capacity of the court compared to the massive number of crimes committed daily. This makes speedy conclusions impossible and often strips the law of its power to protect consumers. To address this easily, accessible and credible enforcement mechanisms have to be created to protect vulnerable consumers. Effective enforcement infrastructure may include access to advice, counselling, legal support, consumer education and dispute resolution. In South Africa, the responsibility for implementing those measures falls on both the national and provincial government. This is done through formal government institutions, non-profit organisations and paralegal associations (Department of Trade and Industry, 2004:6).

From the discussion above, it should be clear that the creation of the CPA was made necessary by a number of international and local issues; the most important being that South Africa had to follow the international trend of placing emphasis on consumer rights and consumer protection. Locally, South Africa had to compensate for a history that left many consumers uneducated and vulnerable.

2.5.2 Consumer Protection Act (68 of 2008)

The Consumer Protection Act (CPA) (68 of 2008) came into effect on April 1, 2011. As stated earlier, it replaces existing provisions from five Acts, including the Consumer Affairs (Unfair Business Practices) Act (7 of 1988); the Trade Practices Act (76 of 1976); the Sales and Service Matters Act (25 of 1964); the Price Control Act (25 of 1964); and the Merchandise Marks Act (17 of 1941).

The CPA states in its preamble that the law is enacted in order to:

- Promote and protect the economic interests of consumers

- Improve access to, and the quality of information that is necessary so that consumers are able to make informed choices according to their individual wishes and needs
- Protect consumers from hazards to their well-being and safety
- Develop effective means of redress for consumers
- Promote and provide for consumer education, including education concerning the social and economic effects of consumer choices
- Facilitate the freedom of consumers to associate, and form groups to advocate and promote, their common interests
- Promote consumer participation in decision-making processes concerning the marketplace and the interests of consumers (CPA, 2008:4).

In order to reach these goals, the CPA has nine core principles based on the Bill of Rights contained in the South African Constitution. These principles include the right of equality, privacy, fairness and safety, as well as dealing with unethical marketing practices. The Act also creates a National Consumer Commission and a position for a commissioner with a wide range of powers enforced by the CPA (Dewey, 2009:12).

Since coming into effect in 2011, the CPA regulates the relationship between retailers and consumers in South Africa. The Act deals with the social responsibility of companies toward customers and consumers, ensuring that they receive safe products and services, are not misled by advertising and communication, and that they receive proper information about products and services (Du Toit *et al.*, 2007:172).

2.6 BRIEF SYNOPSIS OF SELECTED CPA PROVISIONS

This section will discuss some of the provisions of the CPA relevant to this study.

2.6.1 Right to equality in the consumer market and protection against discriminatory marketing practices

This right protects consumers from arbitrary discrimination and guarantees consumers equal access to goods and services. The closest comparable laws are the first right in the EU Consumer Protection Directive which states, “Buy what you want, where you want.” In the United States of America, the Equal Credit Opportunity Act (ECOA) prevents discrimination on basis of race, religion, gender or age (Telicka, 2004:2).

The first section of the CPA, Section 8, forbids retailers from limiting the consumers' access to goods and services (CPA, 2008:40). Accordingly, retailers may also not give special access, different prices or different quality goods to different customers. Customers may also not receive preferential treatment or priority when buying goods or services. Mncwango (2012:51) explains that when judgement of a consumer is based on the racial segment he/she belongs to, rather than the consumer's personal circumstances, this would not only be contrary to Section 8 of the CPA, but also against the Constitution of South Africa. This is very important when considering the history of discrimination against consumers based on race and gender (Rampersad & Reddy, 2012:7407).

However, this right is not absolute, and Section 9 of the CPA, which contains the exceptions listed, allows retailers to make a distinction between customers in certain circumstances (CPA, 2008:42). Retailers may still give discounts when customers buy in bulk if all customers would be eligible for the discount if they should purchase in the same quantities. Another reason for differentiating between customers is age, when a retailer decides not to serve a minor without parental consent, or when certain facilities are for the exclusive use of elderly customers (Mncwango, 2012:51). According to Section 10, should a retailer fail to follow these rules, a customer may approach the Equality Court who has jurisdiction over complaints about unfair discrimination. The Equality Court was created in terms of the Promotion of Equality and the Prevention of Unfair Discrimination Act (4 of 2000), and hears cases where complainants feel discriminated against based on race, gender, religion, disability or any of the reasons forbidden in the South African Constitution. According to Jacobs *et al.* (2010:310), there is a presumption that discrimination is unfair, unless it can be established that it is fair, either in terms of Section 9 of the CPA or the Constitution of South Africa.

2.6.2 Right to privacy

This is the shortest section of the CPA. It protects the consumer from unsolicited and unwanted marketing. Although some other countries also have legislation governing marketing practices, especially spam, South Africans enjoy greater protection than most other countries.

New Zealand has the Unsolicited Electronic Messages Act 2007 while Australia only regulates businesses that come under the Privacy Act 1988. The EU has the Directive on Privacy and Electronic Communications (2002/58/EC) that obligates member states to take positive steps towards preventing unsolicited electronic mail without the receiver's prior consent.

In South Africa, this provision gives the consumer the right to restrict unwanted direct marketing, as contained in Section 11 of the CPA. Kirby (2009:28) summarises this right as the right to refuse any approach or communication by a marketer, the right to ask a marketer to stop communication, and the right to block marketing communications pre-emptively. This can be done online at <https://www.nationaloptout.co.za>. If a consumer does not wish to opt out then the CPA still offers relief in the form of Section 12, which restricts the times that direct marketing agencies may contact people to certain times as published by the Minister of Trade and Industry in the Government Gazette (CPA, 2008:46). This only applies when the person is at home, which may be difficult for a marketer to determine if contact is made by cellular phone (Kirby, 2009:28)

2.6.3 Right to choose

This deals mainly with the consumer's right to choose, not refuse, or accept an offer or contract, or choose another retailer. It also gives consumers an opportunity to examine goods and compare prices. This right is highly regarded internationally, for example the right of consumers to change their minds in the EU Consumer Directive, as well as the right to choice in the Consumer Protection Act (COPRA) of 1986 in India (COPRA, 1986).

According to Section 13, consumers have the right to shop around, compare prices, and then choose where to buy (CPA, 2008:46). Retailers may not force consumers who use some of their services to accept bundled services they do not want. Furthermore, consumers cannot be forced to conclude contracts with third parties; in practise, this means that if a consumer buys a cellular phone, the seller cannot lock the cellular phone on a certain service network anymore, and consumers may decide which network they want. This even applies to legal proceedings; clients may choose

which advocate(s) will represent them, and lawyers are not allowed to force them to select a certain one (Annor & Strachan, 2011:41).

Consumers are not only allowed to shop around and change their minds, but according to Section 14, they also have the option to cancel a fixed-term contract such as long term gym contracts at any time after the contract has been signed (CPA, 2008:48). If this is done on or after the expiry date, the retailer may not charge a penalty fee. They may however charge a reasonable cancellation fee if this happens before the expiry date of the contract. What is reasonable will depend on various factors such as how much money the company stands to lose, and any costs they have incurred. This is one of the most important sections because it offers relief to consumers who were trapped in long-term contracts with unethical retailers. One of the biggest perpetrators is the time-share industry who would trap people in long-term holiday contracts and then fail to deliver the promised benefits because of loopholes created in their own contracts² (Anon. 2013b). However, Section 14 has also received a lot of criticism. The biggest problem being the limit of 2 years it places on the duration of contract when applied to lease contracts for fixed property. Business customers regularly sign long-term contracts, up to ten years, when leasing business property because of the value of staying in one location, but the CPA forbids this (Burchell, 2011:38).

Section 15 continues with the theme of consumer choice, requiring service retailers to request pre-authorisation for repairs or maintenance services (CPA, 2008:50). Consumers may request a free quotation beforehand and may refuse to pay for any additional work done that was not pre-authorised. This is considered necessary because of the market practise by retailers of making unauthorised repairs and then keeping the goods until the consumer has paid for the said repairs (Jacobs *et al.*, 2010:324).

Section 14 provides that a consumer may be liable to pay a penalty if he/she chooses to cancel a contract. However if the contract is the result of unsolicited marketing

² Due to the number of complaints the National Consumer Commission launched a large-scale investigation into this sector (Anon. 2013b).

then, according to Section 16, the consumer has a five day cooling off period, during which time he/she is allowed the option to cancel a contract without creating any obligation towards the seller (CPA, 2008:52). Direct marketing agencies must inform consumers of this right, and are required to return payments received for cancelled contracts within 15 business days of receiving the cancellation notice. According to Burger and Timothy (2010:34), this section is similar to Section 42 of the Electronic Communications and Transactions Act (25 of 2002), which contains a seven day cool off period if the transaction was initiated by electronic communication and includes services while the CPA only makes provisions for 5 days. Similarly, according to Section 17, advance reservations, bookings or orders may be cancelled, (CPA, 2008:52). Retailers are restricted to requesting a reasonable advance deposit, which must be returned if the booking or order is cancelled. However, they are allowed to impose a reasonable charge based on the circumstances. This does not apply to custom-made goods, in which case a consumer would lose the deposit (Jacobs *et al.*, 2010:324).

Consumers, who shop online or from catalogues, often purchase goods without the opportunity to inspect the goods. To protect them, Section 18 contains the right to inspect goods and request that they be exchanged if they are not satisfactory (CPA, 2008:54). This may be done if the goods are not the same as those offered, damaged, defective, or unsafe. Section 18 should be read with Section 19, which regulates how delivery of goods and services should be done, and the consumer's right to return them if he/she is not satisfied (CPA, 2008:54). Section 19 also requires delivery to be within a reasonable time, if it is not then the service may be considered unsolicited and the consumer does not have to pay. (Annor & Strachan, 2011:41) Section 20 lists the circumstances in which a consumer may return goods and request a refund. The retailer should refund the consumer in full if:

- The consumer returns unsolicited goods within the cool down period
- The consumer rejects goods in terms of Section 19
- If the consumer has refused delivery
- If the goods are returned within ten days because they proved unsuitable for the purpose for which they were purchased (CPA, 2008:56).

According to Burger and Timothy (2010:34), the retailer is entitled to charge the consumer a reasonable cost for any consumption, or to restore the goods to marketable condition.

Finally, Section 21 says that if a person receives unsolicited goods, he/she is under no obligation to pay for them (CPA, 2008:58). The retailer may recover them at the retailer's own cost if done so by mistake, but may not require the receiver to pay for anything, or obligate him to contract for any services with the retailer. This, together with Sections 11 and 12, means that privacy is not an ethereal right any more but a real right that can be enforced by the courts (Kirby 2009:29).

2.6.4 Right to disclosure of information

The right to information forms part of almost every piece of consumer legislation. Firstly, it requires retailers to give consumers information, and clearly written, easy to understand contracts. Second, it requires retailers to furnish information about the products they are selling, including ingredients, expiry date and country of origin. This is one of the rights mentioned in President Kennedy's speech (Hilton, 2005:6) and is also mentioned twice in the EU Consumer Directive, first as the right to know food ingredients and second, easily comparable prices (Telicka, 2004:2). Consumers can only use information they understand; therefore, Section 22 requires retailers to provide information in plain and understandable language (CPA, 2008:62). This section is also contained in Section 64 of the National Credit Act (34 of 2005). It also applies to contracts which consumers may demand be written in plain and easily understood language, as opposed to legalese. The reason for this is that many consumers are semi-literate and easily misled or deceived by complex wording. The other reason, according to Gouws (2010:79), is that many contracts are mass-produced and non-negotiable so that consumers have no option other than to compromise on their own best interest. According to Monty and Hurwitz (2012:58), to determine if the language usage is appropriate it has to be considered whom the contract or communication is intended for, and if the average, reasonable consumer with an average education and minimal experience will understand the document without undue effort. However, contracts and information are not all that consumers need to make decisions, therefore, Section 23 requires prices of goods and services to be displayed in full view of consumers. Consumers may also demand to see the unit

cost of goods and services to avoid any hidden costs (CPA, 2008:62). If goods or services are offered at special prices, then retailers are required to specify the duration for which those prices are valid. If there is more than one price indicated on a product then the consumer may demand to pay the lowest price. The price on the shelf is held to include any discounts, unless indicated otherwise (Jacobs *et al.*, 2010:332)

Determining which information must be made available is also regulated, Section 24 requires retailers to display labels and trade descriptions, as required by law, such as country of origin and expiry dates, which does not mislead consumers about the contents or goods attached to the products (CPA, 2008:66). Labels or trademarks may not be altered, amended, concealed, removed or defaced to mislead consumers. The presence of genetically modified ingredients must be disclosed, in compliance with international and South African laws and regulations. The aim of this section is threefold; firstly, to protect consumers, secondly to inform and educate consumers, and lastly, to give them a choice as to whether or not they wish to use products with certain ingredients, such as those in genetically-modified food (Davies & Baker, 2008:45). Should the goods be reconditioned, rebuilt or remade then the retailer has to indicate this clearly, according to Section 25 (CPA, 2008:66). If goods are sold without the approval or licence of the registered trademark owner, this must also be indicated.

Information is not limited to the product but also includes the transaction, and Section 26 regulates the consumer's right to sale records (CPA, 2008:68). Consumers have the right to demand a written record of every transaction or payment, as confirmation of purchases made or services rendered (Annor & Strachan, 2011:41). These records must contain:

- Retailers' full contact information, business name and registration numbers
- Name and description of goods
- Date/s on which the transaction/s took place
- Unit price of goods purchased
- Quantity of goods purchased
- Total price of transaction/s, including any applicable taxes (CPA, 2008:68).

2.6.5 Right to fair and responsible marketing

This part of the Act prohibits misleading or deceptive marketing. It is comparable to some part of the right to be informed as well as the EU's right not to be misled (Telicka, 2004:2). Section 29 forbids retailers from misleading consumers with the price, the nature, properties, advantages or use of goods or services advertised, if such representation does not accurately describe the qualities of a product (CPA, 2008:70). This means that retailers are no longer allowed to exaggerate the benefits of their products nor make claims that they cannot prove. Retailers are not only limited in the way they market products, but also in the way they do promotions. Section 30 deals with bait marketing, which is advertising goods when retailers have limited amounts of stock available to bait consumers into visiting a store and then buying goods or services other than those advertised. If there are only a limited amount available then it must be indicated in the marketing material, and retailers may not advertise promotional offers if they do not intend to fulfil them as offered (CPA, 2008:70).

Section 31 once again deals with the consumer's right to choose, and prohibits negative marketing, which happens when retailers require consumers to actively decline an offer to prevent a contract from coming into existence (CPA, 2008:72). For example, it is forbidden for cellular phone service providers to send a consumer an offer to add services to their contract, and requiring them to respond if they wish to prevent this. Section 32 requires a direct marketer to inform a consumer of the right to rescind a contract during the cool down period of five days after the sale, which is described in Section 16. It also defines any goods a direct marketer leaves with a client, without concluding a contract for them, as unsolicited goods, as defined in Section 21. This does not only include products and services but also donations (CPA, 2008:72).

Section 33 requires any retailer using catalogue marketing, in which the consumer is unable to inspect the goods before concluding the agreement, to include the following information in the offer to the consumer, information about the retailer, the offer, the retailer's policies, and procedures, as well as the manner in which complaints can be lodged (CPA, 2008:72).

Similar to Section 30, Section 34 regulates trade coupons and promotions. Retailers must not advertise promotional offers that they do not intend to honour, and promotional offers must be administrated and run honestly, and to the benefit of consumers (CPA, 2008:74). Section 35 regulates loyalty programmes and rewards (CPA, 2008:74). A loyalty reward is used to encourage a consumer to patronise a retailer, and because it may be exchanged for goods or services it is seen as a legal exchange medium (Jacobs *et al.*, 2010:341). Section 35 also determines that a retailer may not charge administrative fees for such programmes. Still dealing with promotional competitions Section 36, according to Taylor (2011:18), states that it is unlawful to mislead a person into believing he/she won a contest if none was held, or if there are undisclosed conditions attached to claiming the prize. Further, the promoter may not charge more than a reasonable entry fee if done by short messaging service (SMS). Strachan (2010:35) adds that this was done to simplify existing conditions as well as offer additional consumer protection. An example is bait marketing by retailers who attempt to ensnare consumers by falsely claiming a consumer might have won a prize, but he/she has to subscribe to a phone service in order to claim the prize (CPA, 2008:78).

Section 37 still deals with marketing but this time focusses on alternate work schemes such as work from home or on the internet schemes (CPA, 2008:82). Persons placing such advertisements may not overstate the benefits or availability of such work, and must include details such as the businesses name, the nature of the work, and full contact details; only in certain circumstance may a fee be charged. Section 38 forbids referral selling in which the consumer receives a rebate or commission on goods purchased if he/she assists the retailer in locating more customers (CPA, 2008:82). A retailer may still gather references from customers, but he/she is not allowed to exclude consumers who do not participate from receiving discounts or commissions (Jacobs *et al.*, 2010:345).

This right ends with Section 39, which provides protection to people lacking capacity to conclude a valid contract, and declares that all sales to persons lacking legal capacity are void or voidable by the buyer if the seller could reasonably have determined that the buyer lacked legal capacity (CPA, 2008:84).

2.6.6 Right to fair and honest dealing

This right deals mainly with false, misleading, deceptive or fraudulent schemes and representations, and is similar to the EU Consumer Directive that consumers should not be misled (Telicka, 2004:2). Section 40 deals with coercion: forcing consumers to enter into a contract contrary to their will. Retailers may not force consumers by using undue influence, pressure, duress, harassment, and unfair tactics or any other similar conduct when marketing, supplying, negotiating, collecting payments or recovering goods or services from consumers. Retailers are not permitted to take advantage of consumers who are unable to protect their own interests due to mental or physical disability or illiteracy. Such practices may also constitute a criminal action and may open the retailer to criminal complaints such as intimidation (CPA, 2008:84). According to Jacobs *et al.* (2010:347), it places an obligation on retailers to ensure consumers understand agreements, especially when they are more vulnerable due to disability, ignorance, illiteracy or inability to understand the contract.

Another growing problem dealt with in the CPA is pyramid schemes or network marketing. Section 43 strictly forbids pyramid schemes and chain letters in which compensation is derived from the contributions paid by new members, rather than from the sale of goods or services (CPA, 2008:90). According to Cobbett (2012), pyramid schemes are a big problem in South Africa due to consumers being misled easily, and because investigations may take years, investors are likely to lose all their money.

Consumers have the right to assume that a retailer is legally entitled to sell the goods that he/she has on offer according to Section 44 (CPA, 2008:92). However, a consumer who knowingly buys stolen goods is not protected. The police minister warned that, “In essence, the Act stipulates that any person who buys a stolen good is as guilty as the person who stole the goods; and harsher sentences will apply to both the buyer and the thief” (cited in Anon., 2012a). Thus, the CPA does not protect consumers when buying stolen goods, but rather protects innocent consumers when the seller makes a misrepresentation that he/she has the authority to sell goods when he/she does not.

Section 47 forbids the practice of overselling and overbooking (CPA, 2008:94). Retailers must not accept payment for any goods or services if they have no intention of supplying those goods or rendering those services as contracted. If they do so, consumers are entitled to a full refund, with interest from the date the payment was made until the full refund has been paid. Depending on the circumstances, the consumer may also be entitled to costs directly incidental to the breach by the retailer (Charter, 2011:21).

2.6.7 Right to fair, just and reasonable terms and conditions

This right requires that the content of a contract be fair to consumers and is similar to the EU directive requiring that a contract be fair. Courts can now be approached if consumers feel that a contract is to their detriment, not only to enforce valid contracts or claim for damages if contracts were broken (Rampersad & Reddy, 2012:7407)

Section 48 states that retailers may not market, supply or enter into a contract to supply goods or services at prices or terms that are unfair, unreasonable or unjust (CPA, 2008:96). Consumers may not be required to waive any rights, assume any obligations, or waive any liability of the retailers on terms that are unfair, unreasonable or unjust. To ensure that this is done, retailers must provide consumers with prior written notice of clauses in agreement(s) that constitute a risk or liability to consumers (Naude, 2010:515). This right has been the subject of controversy because, in some circumstances, it might clash with the principle of contractual freedom (Lewis, 2003:330). Furthermore, this right gives the courts the power to cancel agreements between retailers and consumers if they are not fair and just (CPA, 2008:96).

Section 49 requires advance and written notice to the consumer should certain terms and conditions require the consumer to assume any liability, obligation, or risk (Naude, 2010:516). For example, if a consumer insists on buying a dangerous product, he/she has to be notified of the risks associated with such product(s) in writing before accepting delivery. According to Section 50, to ensure that the contractual terms are fair, the Minister of Trade and Industry has the authority to require certain types of contracts to be in writing, as well as making a contract binding even if a consumer does not sign it (CPA, 2008:98). Some terms are prohibited

outright in Section 51 (Naude, 2010:515). Contracts are not valid if the terms and conditions:

- are contrary to the CPA or other legislation
- mislead or deceive consumers
- subject the consumer to fraudulent conduct
- deprive consumers of rights in terms of the CPA
- are an attempt by retailers to avoid their obligations or duties
- limit or exempt retailers of goods or services from liability in the case of loss, directly or indirectly attributable to the negligence of the retailer
- are an assumption of risk or liability by the consumer
- require the consumer to enter into supplementary agreements (CPA, 2008:100).

Finally, Section 52 gives the courts power to intercede if a contract between the consumer and retailer contravenes Section 40, 41 or 48 of the CPA or if the CPA does not offer a suitable remedy to a consumer (CPA, 2008:102). This section regulates the power of the courts by determining which order(s) a court may make, as well as factors to be considered to determine if a contract is unfair or unreasonable (Naude, 2010:515).

2.6.8 Right to fair value, good quality and safety

This right creates an implied warranty about safety and quality in any transaction. The right to safety was the first right mentioned by President Kennedy (Hilton, 2005:6). It also forms part of the EU Consumer Directive in the right to send defective goods back, and the high safety standards for food and consumer goods (Telicka, 2004:2). According to Section 53, the CPA applies, regardless whether goods are unsafe due to imperfections or faults, which were unintended but may cause harm, or through the inherent dangerous nature of goods such as poison (CPA, 2008:106).

Section 54 gives the consumers the right to demand quality service. Consumers are entitled to timely performance and notice of delays, and performance, in a manner and of quality, consumers may expect. In addition, consumers are entitled to expect goods that are safe, free of defects and suitable for their intended purpose (CPA, 2008:106).

If the goods fail to adhere to these standards, retailers are required to repair any defect(s) in goods supplied, or refund the consumers a reasonable portion of the price paid for the services performed and goods supplied, in the event of these being sub-standard (Annor & Strachan, 2011:41). Section 55 continues by requiring that goods comply with the Standards Act (29 of 1993) or any other public regulation that is applicable to the specific type of product (CPA, 2008:106). The product must also be useable for its intended purpose as well as durable enough to last a reasonable period of time. This means that *voetsstoots* sales (sales in which the seller does not make the buyer aware of any hidden defects) are no longer allowed, and that defects should be pointed out by retailers before the sale is made to prevent the retailer being held liable for them (Naude, 2011: 342). If the retailer falsely warrants that the goods comply with the requirements and standards of being safe, and are of good quality and durable, then the consumer may return them within 6 months without penalty and at the retailer's expense, according to Section 56 (CPA, 2008:108). Retailers are also obliged to refund, repair or replace unsafe or defective goods. According to Naude (2011:249), this creates uncertainty and gives an unfair advantage to consumers, as many products are not designed or intended to last that long.

The CPA, however, goes further than just allowing the consumer to return dangerous or defective goods; it also forces retailers to recall faulty or dangerous goods, according to Section 60 (CPA, 2008:112). Anderson and Gold (2012:50) say this can be done either voluntarily, or when the Consumer Commission feels that there are reasonable grounds to believe that goods are unsafe or represent a risk to the public. If a retailer sells a product and it does cause damage, Section 61 holds the retailer is liable for the damages, even though it does not create an absolute no-fault liability based on non-compliance (Naude, 2011:346). Likewise, Katzew and Mushariwa (2012:1) argue that consumers now only have to prove a causal link between the damage and the defective product, as opposed to previously having to prove negligence on the part of the retailer.

Not only new products are protected; Section 57 creates a warranty on repaired goods (CPA, 2008:110). When a retailer repairs a product he/she must warrant every replacement part for a minimum time period of 3 months, or longer if specified. The

warranty, however, becomes void if the defects are caused by normal wear and tear or consumer misuse (Meiring 2011:15).

Section 58 once again deals with information and requires that retailers ensure warnings, trade descriptions and product instructions are printed on the packaging or products when products may potentially be dangerous (CPA, 2008:110). This must adequately warn and instruct consumers on how to use and maintain goods safely (Meiring, 2011:15). However, the responsibility of the retailers does not stop there, Section 59 places responsibility on retailers who sell goods, which much be disposed of in a certain way, to receive and safely dispose of such goods free of charge (CPA, 2008:110).

2.6.9 Right to accountability from retailers

This right creates an obligation on the part of retailers to care for consumers' goods and deposits left in their care. Section 62 regulates lay-by transactions (CPA, 2008:114). If consumers buy goods on lay-by and the retailer cannot deliver the goods then the retailer, at the discretion of the consumer, must supply an equivalent or superior product, or pay a full refund, plus. In circumstances in which the inability to supply the goods was not due to circumstances outside of the retailer's control then the retailer has to refund double the money the consumer paid (Jacobs *et al.*, 2010:391).

Section 63 and 64 applies to prepaid credits and services, setting the minimum amount of time they remain valid at three years (CPA, 2008:118). However, if a service provider wishes to terminate such an agreement, he/she has to give written notice of at least 40 days as well as refund consumers who are affected (Charter, 2011:21).

According to Section 65, retailers should take reasonable care of any property belonging consumers, and a disclaimer alone will not free them from liability for damage to such property anymore (CPA, 2008:118). On the other hand, if a consumer is in possession of a retailer's property such as containers or pallets, Section 66 gives the minister the authority to determine the maximum deposit a retailer may ask, as well as placing the duty on retailers to receive such containers or pallets and refund

deposits (CPA, 2008:120). Lastly, Section 67 states that after services or repairs, the person rendering the service must return to the owner the original parts that were removed and replaced (CPA, 2008:120). This would prevent retailers from, for example, replacing working part and then reselling those second hand parts.

2.7 PROCEDURE FOR COMPLAINTS ACCORDING TO THE CPA

The National Consumer Commission has received an average of 8 000 calls a month since its establishment (Anon., 2011b). A breakdown of complaints done during 2012 shows that 30 percent of complaints were about motor vehicles, 20 percent were about furniture and appliances, and housing received 15 percent, while the other sectors such as clothing, cellular phones and medical aids combined to make up the remaining 15 percent (Anon., 2012b). As with any law, the CPA and the rights embodied therein are of no effect or impact on the consumers if there are no enforcement mechanisms in place. Traditionally, courts such as the small claims court dealt with many consumer matters, but litigation is usually expensive, complex and time-consuming (Paleker, 2003:48), therefore, the CPA provides consumers with less costly and easier accessible forms of redress (Mupangavanhu, 2012:322). These mechanisms also entail empowering vulnerable consumers to understanding both their rights as well as the process to enforce them (Aronstam, 1979:233).

According to Section 5, the CPA does not always apply. Transactions are excluded in the following cases:

- When supplying goods or services to the State
- When the consumer is a juristic person whose asset value or annual turnover is more than or equal to the threshold value as determined by the minister in terms of Section 6
- Transactions that the minister has exempted in terms of Sections 5(3) and 5(4)
- Transactions that fall under the National Credit Act (34 of 2005), although the goods and services which are involved are not excluded from the application of the Act
- Employment transactions in which the employee renders a service to the employer; Transactions that are part of a collective bargaining

agreement in terms of the Labour Relations Act (66 of 1995) and the Constitution (1996)

- A collective agreement in terms of Section 213 of the Labour Relations Act (66 of 1995) (CPA, 2008:36).

It has to be determined if a person has standing to initiate a complaint. It is important to note, however, that both the customer who buys a product as well as the consumer, who uses the product, have certain rights and may institute an action in the event that they are not the same person. Section 4 states that the following persons have *locus standi* (right to institute an action) to approach a court, the tribunal or the commission:

- A person acting on his or her own behalf
- An authorised person acting on behalf of another person who cannot act in his or her own name
- A person acting as a member of a group or class of affected persons
- A person acting in the public interest with leave from the tribunal or court
- An association acting in the interest of all its members (membership of associations includes club memberships)

If the CPA does apply and the person may initiate a claim then the nature of the claim often dictates the most appropriate dispute resolution mechanism, this includes the value of the claim, complexity of the case, the number of complainants involved, willingness of the parties to find a solution, whether the cause was fraud, negligence or a misunderstanding, the time, money and effort the consumer or business is willing to spend, policy elements, and any cross-border elements involved (Mupangavanhu, 2012:322).

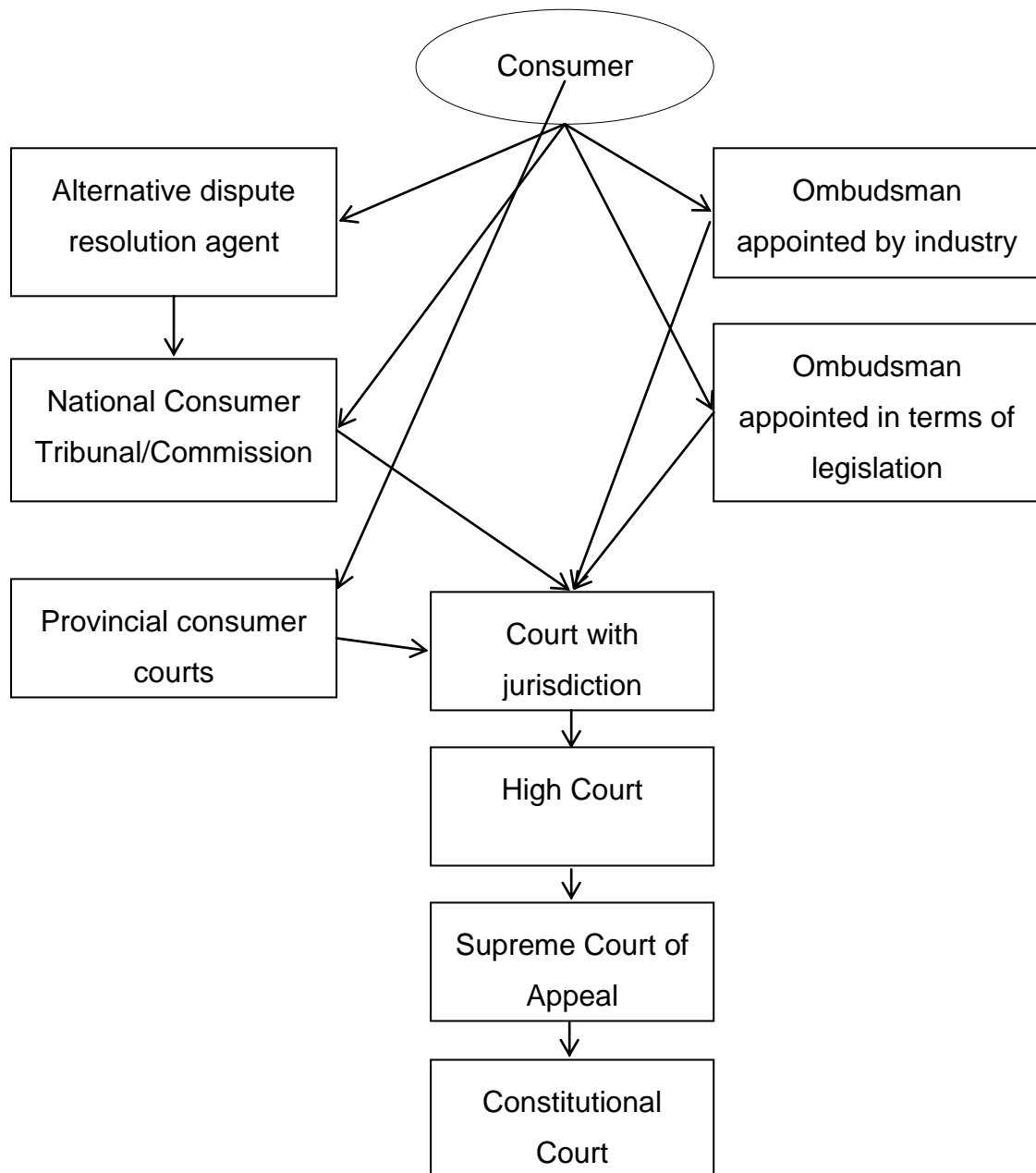
Consumers may lay a complaint if they feel a retailer has not treated them fairly in several ways. The first logical step is to contact the retailer and lay a complaint. According to Section 72, the National Consumer Commissioner will not investigate until a consumer has tried to resolve the dispute, either directly with the retailer, or through an industry ombudsman, should one exist. In Section 68, the CPA states that a retailer is not allowed to discriminate or penalise consumers who institute any action in accordance with a right contained in the CPA. If a retailer fails to address a complaint then the consumer may take the next step and contact a dispute resolution

agent or ombudsman³ who will attempt to resolve the dispute (Barnard & Van Heerden, 2011:135). Regardless which form alternative dispute resolution takes, it is usually more affordable and less time consuming than a court case (Paleker, 2003:48).

Should the dispute resolution agent or ombudsman fail to mediate the complaint, then such an agent may refer the matter to the National Consumer Commission. After investigation by the commission, the commission may refer a matter to either the Equality Court, the Consumer court or to the National Prosecuting Authority if they suspect a crime may have been committed (Barnard & Van Heerden, 2011:133). If a matter is referred to a consumer court then the consumer may apply to the National Consumer Tribunal based on convenience and the interest of justice (Barnard & Van Heerden, 2011:134).

For claims up to R12 000, a consumer may also lay a claim with a small claims court. Consumers may also choose to approach the relevant civil court directly to claim for damages as well as enforcement of their rights. If the applicable law is in conflict with any of the rights enshrined in the Bill of Rights, the constitutional court will be the final resort (Du Plessis, 2010:517).

³ Ombudsmen are independent agents from the industry that they regulate, employed to investigate complaints and mediate fair settlements and thus provide a quicker, cheaper and less formal form of redress than the courts (Melville, 2010:55). Examples are the Debt Collectors Council, Law Society, Advertising Standards Authority of South Africa, Credit Ombudsman and the Motor Industry Ombudsman.



Source: Adapted from the Consumer Protection Act (68 of 2008)

Figure 2.1 Enforcement procedures.

2.7.1 Institutions that may be approached for redress and their powers

The most important regulatory structure created by the CPA is the National Consumer Commission, which is similar to the National Consumer Tribunal created by the National Credit Act (34 of 2005). According to Section 74 of the CPA, the National Consumer Commission does not have prosecuting authority but may investigate, monitor, negotiate and propose a consent order to the National Consumer Tribunal or

the court if there is evidence of criminal conduct. It may also issue a compliance notice in terms of Section 73 if it believes a retailer has engaged in behaviour prohibited by the CPA. Should a retailer fail to comply, the commission may apply to the tribunal to impose a fine, or to the National Prosecuting Authority for criminal prosecution in accordance with Section 99 (Meiring, 2010:29).

The second regulatory body is the National Consumer Tribunal. The tribunal is mandated to promote the spirit and purpose of the Act, and may make innovative orders to realise consumers' rights according to Section 4. It can enforce consent orders by the National Consumer Commission, and may impose fines in terms of Section 112, currently not exceeding R1 000 000, for non-compliance (CPA, 2008:162). It is important to note that although the National Credit Act (34 of 2005) created the National Consumer Tribunal. The CPA also contains several sections, which regulate the tribunal (CPA, 2008:162).

Third, the provincial legislatures must enact a provincial consumer protection authority. This provincial authority may issue compliance notices to retailers that do business exclusively within that province, according to Section 84 (Du Plessis, 2010: 531).

Although the Equality Court was created prior to the CPA, the Equality Court may enforce Sections 8 and 9 of the CPA. The Equality Court has jurisdiction when there has been an unfair discrimination against a consumer, usually on the grounds of age, gender, religion, colour, disability or culture, as stated in Section 8 of the Act. It has to be noted that the Act allows consumers to be treated differently; for instance, where a retailer may refuse to serve a minor who orders alcohol; however, it should be reasonable and not amount to unfair discrimination as envisioned by the Act (Mncwango, 2012:51)

Civil courts retain jurisdiction for claims for damages, as well as the enforcement of rights, while the National Prosecuting Authority may institute criminal proceeding in a criminal court if a retailer is suspected of committing a crime (Barnard & Van Heerden, 2011:136).

2.8 IMPACT OF CPA ON THE MARKET

The CPA will have far-reaching consequences on the South African market place and the way business is done. From changing the regulatory framework governing franchise agreements (Louw, 2011:32), the way companies are allowed to advertise their products (Kirby 2009:28), to prescribing which names a business may use (Strachan, 2012:15), businesses have to ensure that they comply with legislation as soon as possible (Louw, 2011:32).

According to Lewis (2012), red tape regulations⁴ for business already costs the South African economy R78 billion a year and the World Bank placed South Africa 34th in “ease of doing business”. He added that legislation such as labour law, Black Economic Empowerment (BEE) requirements, and South African Revenue Service compliance certificates make it very difficult for small businesses to enter the market, and that in a country that struggles with high unemployment, more should be done to easy entry into the market for small businesses. Strachan (2011:18) argues that South African legislation regulating business is already onerous, and that the CPA will add another burden, which the consumer may ultimately have to bear, while “businesses can also expect more complaints and lengthy dispute resolution procedures”.

Certainly, the most visible impact of the CPA will be the regulation of business names. No longer will companies be allowed to trade as any name other than the registered business name. According to Strachan (2012:15), this requirement is not yet in force but businesses will now have to register their business names or change them if they are not able to register them. Should they fail to change or register them, they may be prosecuted in terms of the CPA or face trademark infringement suits if they use a name registered by another entity. Furthermore, Strachan (2012:15) adds that companies trading under the same name for more than a year before implementation of the provisions will be exempt.

The CPA has also introduced the concept of no-fault liability into South African legislation. No-fault liability occurs when retailers are held responsible for damage

⁴ Red tape is the legislation and regulations small businesses must comply with, aside from their usual business activities, and has created a hostile environment to small business, according to West (2013).

caused by their products even if they were not negligent (Neels, 2010:133). According to Section 38(c) of the Constitution of the Republic of South Africa (1996), consumers or groups of people whose rights have been infringed may approach a court for relief or damages. These two provisions read together may expose a retailer to huge claims, which might have adverse effects on a retailer's finances as well as image, and thus necessitates that retailers have sufficient liability insurance (Jacobs *et al.*, 2010:306). Katzew and Mushariwa (2008:15) support this by saying that while the aim of the legislation is to balance the interests of the consumers not to be harmed by the goods they purchase and the needs of retailers, the effect may be that the higher cost, due to insurance, is passed on to consumers while small businesses may be unable to continue trading.

According to the South African Property Owners' Association, the Act has far-reaching implications on the lease of immovable property (Anon., 2011a). The first reason is that lessees may cancel a long-term contract after 20 days' notice, which makes it extremely difficult for lessors to plan ahead. Second, because long-term leases are now limited to two years, lessees may hesitate to commit to a location if they are unsure if a landlord will continue their lease, and also a bank will not give credit to a consumer with only a two year lease agreement (Anon., 2011a). Furthermore, many retailers relied on standard contracts to do business in the past. These contracts were often difficult to understand and favoured retailers (Rampersad & Reddy, 2012:7407). According to Posthumus (2011:25), with the introduction of the CPA, this is no longer legal and retailers will have to rewrite contracts to be both easily understood and fair to consumers. Not all of the criticism comes from legal minds. Economists like Dawie Roodt of the Efficient Group also believes that the right of consumers to cancel a contract for "the slightest fault" may lead to huge job losses (cited in Cresswell, 2011).

According to consumer rights watchdog, Wendy Knowler, many retailers refuse to comply with the CPA and even wilfully deceive consumers as to their rights (Knowler, 2013b). To further compound the problem, the CPA is open to interpretation in many respects, which has led to retailers interpreting them in such a way as to favour the retailer at the expense of the consumer (Knowler, 2012a). For instance, certain cellular phone retailers choose to exclude certain sections of the CPA

and apply only those that are more lenient, claiming a cellular phone contract does not constitute a sale of a cellular phone. South African Airlines have chosen to ignore the CPA and a declaration by the consumer commissioner that they should refund consumers for cancelled bookings (Knowler, 2013b). This means that both enforcement and awareness remains a problem, and that retailers often act with impunity since the National Consumer Commission, which should investigate and enforce the CPA, is not up to the task, and even contacting them is a challenge (Knowler 2012b).

Compliance with the CPA requirements for marketing materials is very important to retailers since non-compliance may lead to civil liability, complaints to the privacy regulator or even criminal fines, according to Buys (2009:28). Among others, it would mean that a retailer would first have to ascertain whether a consumer has opted out of receiving unsolicited marketing before contacting them (CPA, 2011:46).

Even government is not safe from the CPA. The North Gauteng High Court set aside a government notice that low and medium capacity municipalities are excluded from the Act. This means that municipalities cannot charge consumers for services they do not receive (Anon., 2013a). Even E-toll may face legal action, since their terms and conditions were "excessively one-sided in favour of the retailer, and as such... not in line with the spirit of the Act" according to Consumer Commissioner, Mamodupi Mohlala (Anon., 2012c).

The CPA can only have its intended effect if it is applied, which very often does not happen. According to Knowler (2012a), smaller shops are often ignorant of the law, or wilfully choose to misrepresent their obligation, and in so doing deny consumers their rights. Jacobs *et al.* (2010:398) sum it up by saying that beyond the fact that retailers face an onerous task in implementing the provisions of the CPA as well as costs such as insurance and training staff, it will contribute to ending many of the exploitive practices in the market and retailers should, therefore, welcomed it.

2.9 CRITICISM AND RECOMMENDATIONS

According to the Government Gazette (2004:4), the CPA gives confidence to consumers, which in turn leads to better goods and services, as well as better distribution of goods, since it protects those who are most vulnerable.

The biggest benefit to the market is that it replaces fragmented and outdated consumer measures that form part of previous laws with a well-resourced and soundly structured framework. Furthermore, it departs from the traditional contract law by introducing the concept of fairness of contract and allowing consumers to terminate long-term contracts (Van Eeden, 2009:23).

According to Rampersad and Reddy (2012:7412), retailers had only to comply with the letter of the law in the past, meaning that retailers had to honour a contract but the court did not measure the content of the contract. They added that this has changed and there is now an emphasis on communication of the content and impact on the consumer in the CPA. Furthermore, the idea that agreements must be kept, regardless of the content, is a thing of the past with legislation now compensating for the weaker negotiating position of the consumer. Rampersad and Reddy (2012:7412) conclude that complying with the CPA may contribute to profitability and growth by enhancing consumer satisfaction and loyalty.

However, the formulation and implementation of the Act has not been without criticism and the broad range of criticism levelled at the Act is a cause for concern. The largest criticism is that the Act will be detrimental to business, and the second largest is that the CPA is biased and consumers are over-protected (Manyati, 2011:28), for example Section 56 of the CPA grants consumers six months in which to return broken or defective goods to be replaced or repaired. According to Naude (2011:249), this not only creates uncertainty but as many products are not designed or intended to last that long, “it is too unbalanced in favour of consumers and will unfairly affect retailers detrimentally”. Sharrock (2010:325) argues that certain provisions in the CPA need clarification, as the current definitions are very broad and, therefore, problematic. He further adds that there is uncertainty as to when a consumer may approach the court, and that needs to be resolved. Allison (2011) goes as far to

describe the Act as draconian, drafted in a clumsy manner, and that it has shifted the balance of power in favour of the consumer by a significant margin.

According to Section 14, contracts may now be cancelled at any time with 20 days notice, which is at odds with long-term contracts that may specify certain terms (CPA, 2008:48). However, contract law is not the only law that is substantially different from the CPA. The more recent Electronic Communications and Transactions Act (25 of 2002) clashes with the CPA when it provides for a seven day cooling off period, while the CPA only provides for a five day period in which a consumer may reconsider a purchase. Burger and Timothy (2010:34) argue that the Electronic Communications and Transactions Act (25 of 2002) have a broader application than the CPA, and the two laws are, thus not mutually exclusive.

Several hurdles also lie in the enforcement. An order of a consumer court has the same effect as if made by the tribunal. Du Plessis (2010:531) argues that the enforcement and execution of these orders remain unaddressed. For instance, due to the Gauteng provincial legislature's negligence in providing for the execution of orders made by the consumer courts, consumers have no alternative but to approach courts for relief, the very situation that the CPA tried to alleviate (Du Plessis, 2010:531). According to Du Plessis (2010:522), this was illustrated in the case *S v P L Mhlongo*, in which the defendant was prosecuted for contempt of court for refusing to carry out the consumer court's orders since provincial legislation does not provide for enforcement and execution.

However Gowar (2011:536) expresses the hope that since the CPA instructs courts to use a purposive method of interpretation (meaning that courts have to take into account what the CPA tries to achieve rather than the actual words used) the limitations can be overcome to protect consumers to the fullest extent of the law.

2.10 THEORETICAL FRAMEWORK

Any study concerning market decisions and knowledge has to start with the consumer sovereignty theory that says, in a perfect market consumers would determine what is produced, and market imperfections could be attributed to lack of information or knowledge on the consumers' part (Meir, 1985:77). In the light of Knowler's (2013b)

statement that many people do not know or understand the CPA, the consumer sovereignty theory could be expanded to state that market imperfections could be attributed to lack of knowledge on the part of both the consumer and the retailer, which will largely affect their attitude. According to Ajzen's theory of planned behaviour, knowledge shapes attitudes and beliefs (Ishak & Zabil, 2012:109); therefore, lack of knowledge by both the consumers and marketers will lead to an imperfect market situation, where anything goes.

Ishak and Zabil (2012:108), while substantiating further, hold that lack of knowledge regarding consumer rights negates the power consumers have to defend themselves against unscrupulous retailers; therefore, it is necessary to investigate the links between knowledge, awareness and behaviour. This is relevant because decisions and actions are influenced by knowledge and lack of knowledge (McEachern & Warnaby, 2008:426). According to Altman (2010:395), behaviour may also be a reflection of "misleading or incomplete information, or poor education", which leads to inefficiencies.

Ishak & Zabil, (2012:111) studied the effect of consumer awareness and knowledge on behaviour, and found no significant correlation between consumers' knowledge and actions without the presence of awareness when applying the theory of planned behaviour. They ascribe this to the fact that a consumer with good knowledge may lack the conscience to act on such knowledge, while a consumer with awareness but lacking specific knowledge may possess the internal drive to do so. Similarly, in their study of the effects of objective and subjective knowledge of consumers, Aertsens *et al.* (2010:1356) also made an important distinction between objective and subjective knowledge. They define subjective knowledge as what an individual perceives he or she knows, or self-rated knowledge, while objective knowledge is what a person actually knows. Aertsens *et al.* (2010:1356) found that there is a link between higher levels of objective and subjective knowledge and a more positive attitude towards a product.

Consequently, this study will examine the connection between perceived awareness and real knowledge among retailers, and how this affects attitude and actions. These

construct may be compared to objective and subjective knowledge or knowledge and awareness as used by Aertsens *et al.* (2010:1356) and Ishak & Zabil, (2012:111).

CHAPTER 3

RESEARCH METHODOLOGY

3.1 INTRODUCTION

This chapter focuses on the methods used in the empirical objectives of this study. The empirical objectives were to determine the perceived awareness, attitude and actual knowledge of the CPA among small independent retailers in the Vaal Triangle, South Africa. It describes the methods used to collect information, explains why those methods were selected, as well as provides the parameters of the study. This includes the design and administration of the questionnaire, as well as the interpretation of the information gleaned from it.

This study falls under the discipline for marketing research. The United Kingdom Chartered Institute of Marketing (cited in Bradley, 2010:4) defines marketing research as “the management process responsible for identifying, anticipating, and satisfying customer requirements profitably.” To identify, anticipate and satisfy consumer needs effectively, marketers need certain data, and to obtain the relevant data, marketing research is done. According to Cant *et al.* (2008:3), marketing research is a systematic and objective process of planning, gathering, analysing and reporting data, which can be used to identify and define opportunities and problems as well as evaluate marketing options and monitor performance.

In accordance with the primary objective of the study, the following empirical objectives are formulated:

- Determine independent retailers’ perceived awareness of the CPA
- Determine independent retailers’ attitude towards the CPA
- Determine independent retailers’ actual knowledge of selected aspects of the CPA.

3.2 RESEARCH DESIGN

Cant *et al.* (2008:3) identifies certain guidelines for gathering marketing information:

- Carefully planned and executed the research
- Clearly state and describe the purpose
- Developed the design in advance

- Clearly specify the data requirements of the research process
- Decided on the mode of analysis in advance
- Conduct the research in a scientific manner
- The research should be unbiased
- Emotions should not affect the research.

In order to ensure that these guidelines are followed, a research design is followed, which helps to provide a master plan and specifies the methods and procedures to collect and analyse information (Zikmund, 2003:55).

Kent (1993:5) argues that there are three types of research designs, namely descriptive research, exploratory research and causal research. According to Bradley (2010:510), descriptive research describes market situations, attitudes, beliefs or opinions rather than explaining the causes of such situations or opinions. Likewise, Malhotra (2010:106) says that descriptive research is a form of conclusive research used to describe characteristics, estimate the prevalence of behaviour, determine perceptions, determine association between variables and make predictions. Descriptive research can be divided into longitudinal research as well as cross-sectional designs, which can be divided further into single cross-sectional designs and multiple cross-sectional designs (Malhotra, 2010:103). Longitudinal research is done over a period of time with a fixed population in the sample, as opposed to cross-sectional or multiple cross-sectional designs, where information is obtained from each sample only once (Malhotra, 2010:108). Bradley (2010:38) states that exploratory research attempts to throw light on an area to provide greater understanding of the problem or opportunity. On the other hand, Malhotra (2010:103) states that exploratory research is flexible and unstructured and findings should be regarded as tentative; thus, leading to conclusive research. Causal research determines the cause and effect relationship between variables by manipulating one or more of those variables and then measuring the effect on the dependent variable (Malhotra, 2010:104).

This study used a descriptive research design utilising a single cross-sectional approach based on a six point Likert scale, as these scales are proven to be effective in measuring attitudes and perceptions in self-administered questionnaires (Churchill & Iacobucci, 2005:264).

3.3 RESEARCH APPROACH

Bradley (2010:513) describes the different approaches to research as qualitative, which describes the depth and breadth of an attitude, belief or opinion and employs interviews, focus groups and observation, and quantitative which measures size or numbers using tools such as questionnaires and mechanical measuring devices. Malhotra (2010:171) adds that qualitative research is unstructured, exploratory and based on smaller samples in order to provide insight, whilst quantitative research seeks to quantify data and applies some form of statistical analysis. Quantitative research was used in this study because it lent itself to statistical analysis of large numbers of representative cases (Malhotra, 2010:171).

3.4 SAMPLING STRATEGY

This section will discuss the sampling strategy used in this study.

3.4.1 Target population

According to Malhotra (2010:372), the target population refers to the collection of elements or objects that possess the information sought by the researcher. Therefore, the target population for this study is defined as independent small retailers (excluding franchises) situated in malls in the Vaal Triangle, South Africa. Franchises were excluded because their head office determines their policies and procedures, which are then implemented nationally. So, while the owner may manage the franchise retailer, he or she is not involved in designing the policies that should reflect the requirements of the CPA.

The retail sector, as defined by Berman and Evans (2010:4), includes all businesses that sell goods and services to the final consumers for their personal, family or household use. Examples in the retail sector include clothing stores, restaurants and service providers such as hairdressers. This study will focus on retailers that fit into the small business segment. According to the National Small Business Act (1996), a small business in the retail sector is a business that is independently owned, has a total asset value (including fixed assets) of less than R3 million, a yearly gross income of less than R19 million and less than 50 employees (National Small Business Act, 1996). In addition, the National Small Business Amendment Bill (2004:2) adds that a

small business is a separate and distinct business entity, managed by one or more owners.

As many businesses may be reluctant to divulge financial information, due to its sensitivity, this study uses the number of employees as well as the requirement that the business must be managed by one or more of the owners to qualify as a participant.

3.4.2 Sampling frame

“A sampling frame is a list that includes every member of the population from which a sample is to be taken” (O’Leary, 2010:163). According to Malhotra (2010:373), it provides direction for determining which participants to include in the sample.

The sampling frame will be a list of independent retailers situated in shopping malls in the Vaal Triangle, South Africa. The industry sectors that will be covered in the sample include telecommunications, media, information technology, household goods, clothing and textiles, electronics, health and pharmaceuticals, food and beverages, leisure, and retail. As previously stated, franchises, chain stores and other national retailers were excluded. As such, the sampling frame for this study comprised of independent retailers drawn from the following shopping malls in the Vaal Triangle region, South Africa:

- Sanlam Centre - Vanderbijlpark
- Santrio Shopping Centre - Vanderbijlpark
- Sebokeng Plaza Phase II - Sebokeng
- Shoprite Centre - Vanderbijlpark
- Top Level Shopping Centre - Vanderbijlpark
- Vaalgate - Vanderbijlpark
- The Hangar - Vereeniging
- Markpark - Vereeniging
- River Square Centre - Three Rivers
- Tharina Centre - Vereeniging

3.4.3 Sample method

Following a single cross-sectional design in which information is obtained from each sample only once (Malhotra, 2010:108); a census of independent retailers located in shopping malls in the Vaal Triangle, South Africa was taken in April 2013. The malls' management were approached for permission to administer the questionnaires, as well as for information on business volumes during the month, and a list of retailers in the shopping malls. This enabled times of low business volumes to be selected to administer the questionnaires. The owners or managers were then approached and it was requested that they complete the questionnaire.

3.4.4 Sample size

A census was done amongst independent stores found in the selected shopping malls. Although most of the retailers were part of a chain or franchise, 97 independent retailers were identified as being part of the target population.

3.5 DATA COLLECTION

This section will discuss the methods of data collection used in this study.

3.5.1 Measuring instrument and data collection method

According to Malhotra (2010:211), information can either be gathered through observation, which involves recoding behavioural patterns, or the survey method, which uses a structured questionnaire given to the target population to gather specific information from participants. The study used a self-administered, standardised questionnaire because coding, analysis and interpretation of data are relatively easy (Malhotra 2010:211). Zikmund (2003:158) defines a self-administered questionnaire as a survey in which the participant takes responsibility for reading and answering the questions. The questionnaire made use of fixed alternative questions that required participants to select the best alternative from the various options available. This made the questionnaire simple to administer, and the data gathered reliable, since responses are limited to the options given (Malhotra, 2010:211).

3.5.2 Questionnaire format

According to Zikmund (2003:250), a researcher must consider relevance and accuracy when developing a questionnaire. He further states that a researcher must decide

between open-ended questions in which participants must answer in their own words, and fixed-alternative questions in which the participants must choose the most relevant option. For this study, a Likert scale was used which, according to Bradley (2010:511), is used to determine strength of agreement. A Likert scale was selected because it is easy to construct and administer because participants find it easy to use (Malhotra, 2010:309).

3.5.3 Questionnaire layout

The questionnaire is divided into four sections. Section A deals with demographical information and includes screening questions to ensure all participants are part of the target population. Section B measures perceived knowledge of the CPA on a six point Likert scale. Section C determines the small retailers' attitude towards the CPA. This is done using a seven point Likert scale, which provides a neutral option for participants who have not yet read the CPA, and thus have not formed an opinion yet. Lastly, Section D deals with actual knowledge of the CPA. This section consists of 20 questions measured on a three point Likert scale. The questions were adapted from the CPA.

3.5.4 Pilot testing of questionnaire

According to Bradley (2010:211), a pilot test should be done before the real survey to ensure that a questionnaire is working in the way it is intended and that participants understand the questions. For the pilot test, a mall in Potchefstroom was approached for permission to conduct the test. After obtaining permission, the independent retailers were approached, and the questionnaire was administered. Only nine of the potential participants were willing to participate, of which three did not complete their questionnaires. The pilot study was then enlarged to include independent retailers outside of the mall. Only 40 percent of retailers who were approached were willing to complete the questionnaire. The most frequent reason retailers gave for being unable to participate was that they did not have time. Several retailers also stated that they were unable to understand the questionnaire written in English, since it is not their first language and their understanding of English is limited. It has to be pointed out that several of the retailers who were not willing to participate claimed that they have not heard of the CPA, which may have been the reason they were unwilling to

participate in the survey. As result of the pilot testing, Section D was reduced to 20 questions, as many participants had complained that the questionnaire was too long.

3.5.5 Administration of the questionnaire

The administration of the questionnaire started on 25 June 2013, and was completed by the end of July 2013. The respective management of the identified malls were contacted and asked for permission after the goal of the study was explained to them. The independent retailers in the malls were then approached and asked to complete the questionnaire. It was explained that participation was voluntary and that they would remain anonymous, to allay any fears that they may be reprimanded for not knowing the law.

3.6 DATA PREPARATION

According to Malhotra (2010:453) the steps of data preparation are:

- Preparing a preliminary plan of the data analysis
- Questionnaire checking
- Editing
- Coding
- Transcribing
- Data cleaning
- Statistically adjusting the data
- Selecting a data analysis strategy.

3.6.1 Editing

According to Bradley (2010:314), editing ensures that answers are complete, accurate and suitable. Any questionnaires that are incomplete, inaccurate or unsuitable can be returned to the participant, completed by the researcher, used as is, or discarded.

During the editing stage, questionnaires were discarded if they were incomplete or did not fall into the target population of small independent retailers with less than 50 employees.

3.6.2 Coding

Coding is the process of converting raw data into symbols and groups (Iacobucci & Churchill, 2010:351). This enables complex meanings to be broken down by assigning a code, usually a number (Bradley, 2010:314). Malhotra (2010:454) adds that when the questionnaire is structured, the answers can be pre-coded because codes are assigned to all possible answers before the fieldwork is done. The questionnaires used in this study were pre-coded with each response having been assigned a specific number ranging from one to six for Section B, one to seven for Section C and one to three for Section D.

Table 3.1: Coding information

Type of data	Variable	Question number
Demographic data	A1 – A5	Section A, Items 1 – 5
Perceived awareness	B1 – B10	Section B, Items 1 – 10
Attitude	C1 – C10	Section C, Items 1 – 10
Actual knowledge	D1 – D20	Section D, Items 1 – 20

3.6.3 Transcription

Transcribing is the act of reading the coded data into the computer (Malhotra, 2010:459). In this study, it was done manually.

3.6.4 Data cleaning

Data cleaning consists of consistency checks for data that are out of range, logically inconsistent or have extreme values and treatment of missing responses (Malhotra 2010:461). Malhotra (2010:461) added that missing responses could be substituted with a neutral option or an imputed response, or deleted either case-wise or pair-wise. In this study, missing responses were treated as an ‘unsure’ or ‘don’t know’ answer.

3.7 STATISTICAL ANALYSIS

Data analysis for this study was conducted using the Statistical Package for Social Sciences (SPSS), version 21 for Microsoft Windows.

3.7.1 Measures of variability

Variability measures the dispersion of the data. This can be done in four ways:

- Range, which measures the spread of the data or the difference between the smallest and largest value
- Interquartile range, which measures the difference between the 75th and 25th percentile
- Variance, which is the mean squared deviation from the mean; the bigger the scatter of data points the larger the variance. Standard deviation is square root of the variance.
- Coefficient of variation, which is the “ratio of the standard deviation to the mean expressed as a percentage” (Malhotra, 2010:487).

In this study the standard deviation was used to measure dispersion from the mean in the responses to Section D.

3.7.2 Reliability

Reliability refers to the consistency of results in repeated measurements. It can be determined by test-retest reliability or internal consistency reliability (Malhotra, 2010:318). If the split-half coefficient is less than 0.6, it generally indicates the internal consistency reliability is insufficient (Malhotra, 2010:319). In this study, the internal consistency reliability of Section B and C were tested by means of the Cronbach alpha technique to determine whether the scale used was reliable.

3.7.3 Correlation

Product moment correlation was used to determine the strength of association between two variables and whether the correlation is linear or straight line (Malhotra, 2010:562). The Pearson correlation coefficient was used to determine the covariance between the selected variables, and since it varies between minus one and one, minus one indicates a negative relationship, while zero and one indicate a

positive relationship (Malhotra, 2010:563). A two-tailed test was used in combination with the Pearson correlation to determine the statistical significance of the correlation between perceived awareness, attitude and actual knowledge. This was done in order to compare the findings of this study to the findings of two previous studies. These are: *The influence of subjective and objective knowledge on attitude, motivations and consumption of organic food* by Aertsen *et al.* (2010), and *Impact of consumer awareness and knowledge to consumer effective behaviour* by Ishak and Zabil (2012).

CHAPTER 4

ANALYSIS AND INTERPRETATION OF THE EMPIRICAL FINDINGS

4.1 INTRODUCTION

This chapter reports on the findings of the empirical part of the study. Section 4.2 states the empirical objectives. Section 4.3 analyses the demographics of the participants, while Section 4.4 examines the perceived awareness of the participants, Section 4.5 the participants' attitudes and Section 4.6 their actual knowledge of the CPA. Section 4.7 reports on the reliability of Section B and C in the questionnaire, while Section 4.8 examines the correlation between the different measuring instruments and compares them to the findings from other similar studies.

4.2 RESEARCH OBJECTIVES

The aim of this study is to determine small independent retailers' perceived awareness, attitude and actual knowledge of the CPA.

4.3 DEMOGRAPHICS

Section A contains questions regarding the demographics of the participants. This was used to make sure retailers who participated were indeed small independent retailers and not part of a chain or franchise. A total of 97 small independent retailers located in the Vaal Triangle were identified and approached during June and July 2013. These retailers were distributed between ten shopping malls in the Vaal Triangle, South Africa:

- Sanlam Centre - Vanderbijlpark
- Sanrio Shopping Centre - Vanderbijlpark
- Sebokeng Plaza Phase II - Sebokeng
- Shoprite Centre - Vanderbijlpark
- Top Level Shopping Centre - Vanderbijlpark
- Vaalgate - Vanderbijlpark
- The Hangar - Vereeniging
- Markpark - Vereeniging
- River Square Centre - Three Rivers
- Tharina Centre - Vereeniging

All but one of the shopping malls gave permission for the study to be conducted. Of the 97 retailers approached, only 48 were willing to participate in the study. However, four of the potential participants, never completed their questionnaires, and one participant spoiled a questionnaire by repeatedly choosing more than one option for each answer. The three main reasons retailers gave for being unwilling to participate was, firstly that they did not have time, second they claimed to be completely unaware of the existence of the CPA, and third, many of the retailers were unable to understand and complete the questionnaire due to their limited understanding of the English language.

4.3.1 Type of business entity

Although partnerships proved an unpopular type of business, the distribution between the other types of business was rather close. The percentage of retailers registered as close corporations will most likely dwindle in future as the Companies Act (71 of 2008) does away with close corporations and only makes provisions for companies to be registered after the commencement of the Companies Act.

Table 4.1: Type of business

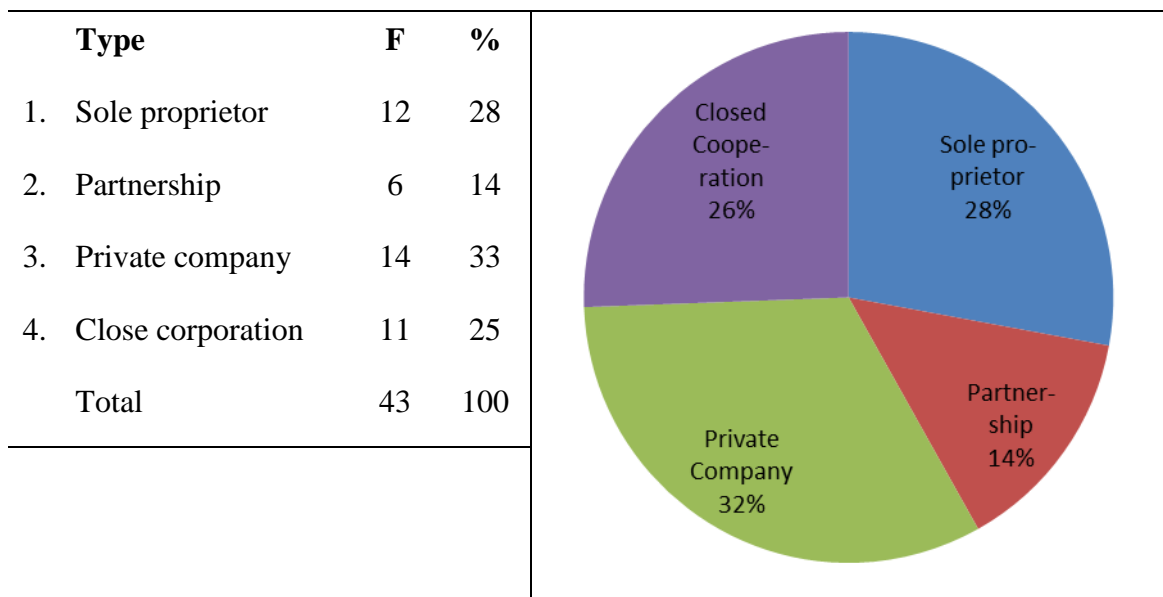


Figure: 4.1 Type of business

4.3.2 Participants' type of industry

Clothing, food, toys and hobbies, and electronics accounted for 62 percent of the participants. This is not an accurate reflection of the composition of retailers in malls,

but rather due to the dominance of franchises and chains in certain industries. For example, all of the malls visited contained jewellery stores but most belonged to chains such as American Swiss and Natal Wholesale Jewellers (NWJ). Most of the sport and outdoor gear retailers also belong to chains such as Sportsman’s Warehouse or Cape Union Mart. The number of respondents who did not indicate an industry mostly fell in the service industry, for which no provision was made.

Table 4.2: Participants’ type of industry

	Industry	F	%
1.	Home, décor, interior and furniture	1	2
2.	Clothing	7	16
3.	Jewellery and accessories	2	5
4.	Food	7	16
5.	Hair, health and beauty	4	10
6.	Books, cards, gifts and stationary	1	2
7.	Toys, education and hobbies	6	14
8.	Sport, outdoor and gear	1	2
9.	Audio, electronic, PC, cell phones and photo	7	16
10.	Hardware, DIY and construction.	2	5
11.	Missing	5	12
	TOTAL	43	100

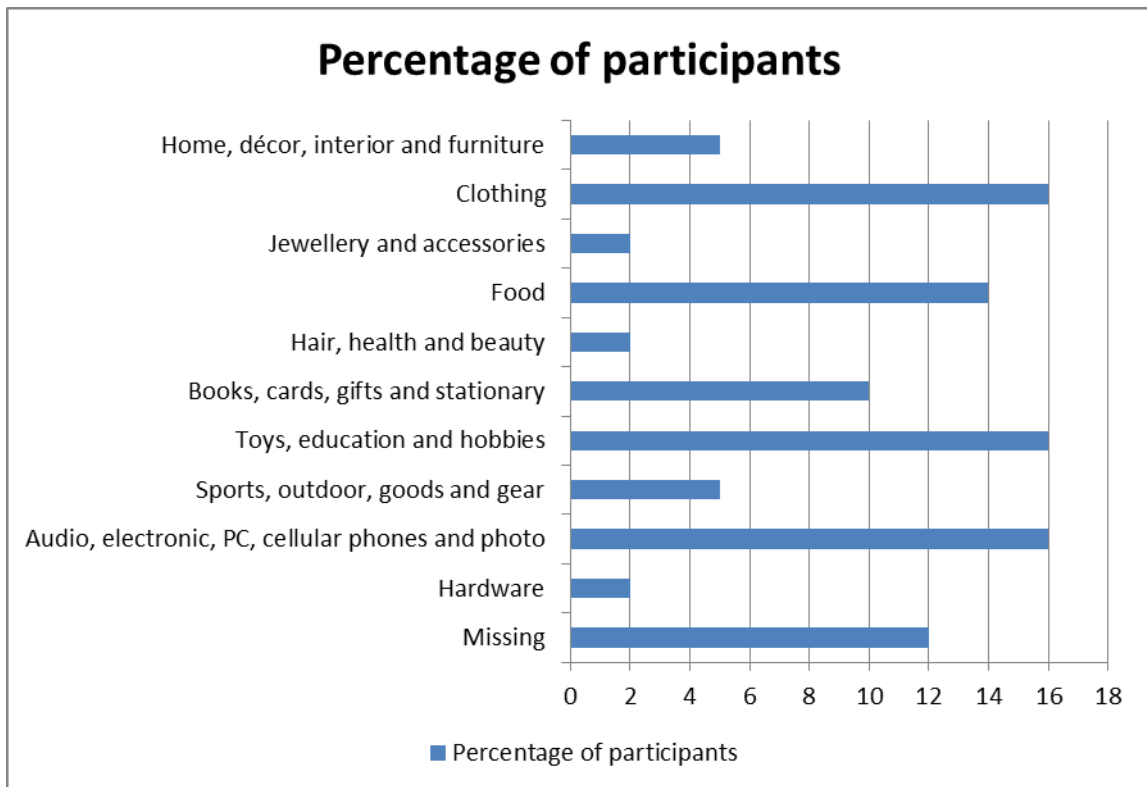


Figure 4.2: Participants' type of industry

4.3.3 Number of years in existence

According to Kgosana (2013), five out of seven small businesses in South Africa fail in the first year compared to the international average of one out of two failing. To further compound the problem, only 2.3 percent of South Africans own a business older than 3.5 years, once again illustrating how high the failure rate of businesses is in South Africa (Anon., 2009a). The findings of this study, however, contradict the above assertions. While only 9 percent of the participants were new businesses, 26 percent were businesses that were three to five years old and 19 percent were businesses six to ten years old. The reasons for this may include that small retailers tend to survive longer in malls due to more traffic, because of better location, as well as the backing of professional mall management (Smith, 2005). South Africans are also less likely to start a new business, with only eight out of ten South Africans owning a business that is less than 3.5 years old, compared to the international average in low-middle-income countries of 13 (Kgosana, 2013). This may be because South African business confidence slumped to a ten-year low due to inflation expectations and the weaker Rand (Anon., 2013c).

Table 4.3: Number of years in existence

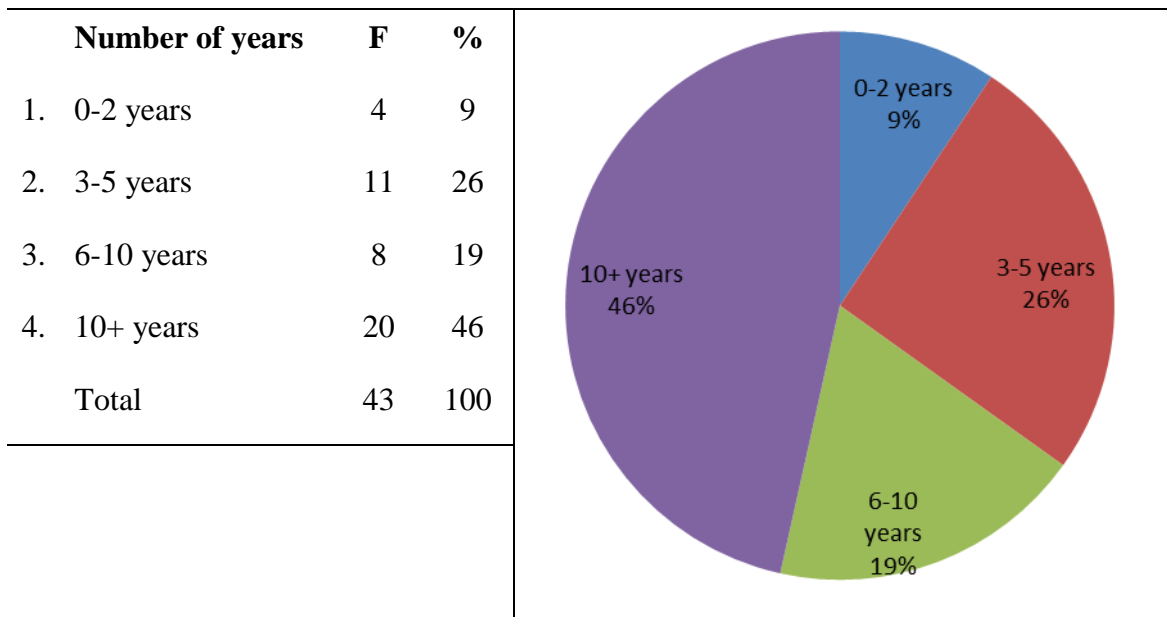


Figure 4.3: Number of years in existence

4.3.4 Highest qualification of manager/owner

51 percent of the owners or managers of the retailers who participated only had grade 12 or less, while 26 percent had a diploma and another 23 percent had a degree or post-graduate degree. The reason for the high number of participants without a tertiary education may be that people who lack tertiary education are forced to become entrepreneurs due to the low demand for unskilled and semi-skilled labour in South Africa.

Table 4.4: Highest qualification of the owner or manager

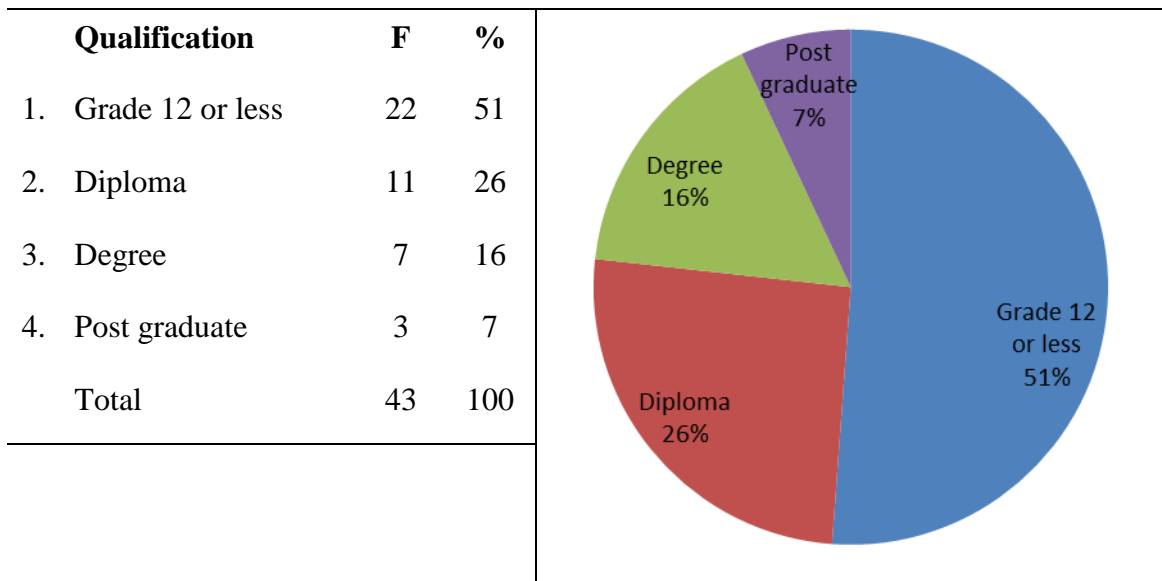


Figure 4.4: Highest qualification of owner or manager

4.3.5 Number of employees

77 percent of the respondents were small retailers with less than four employees. Most often, the owner managed the shop with the assistance of only one or two employees. The majority of retailers who employed five or more people were in the food industry, the employees being kitchen staff and waiters.

Table 4.5: Number of employees

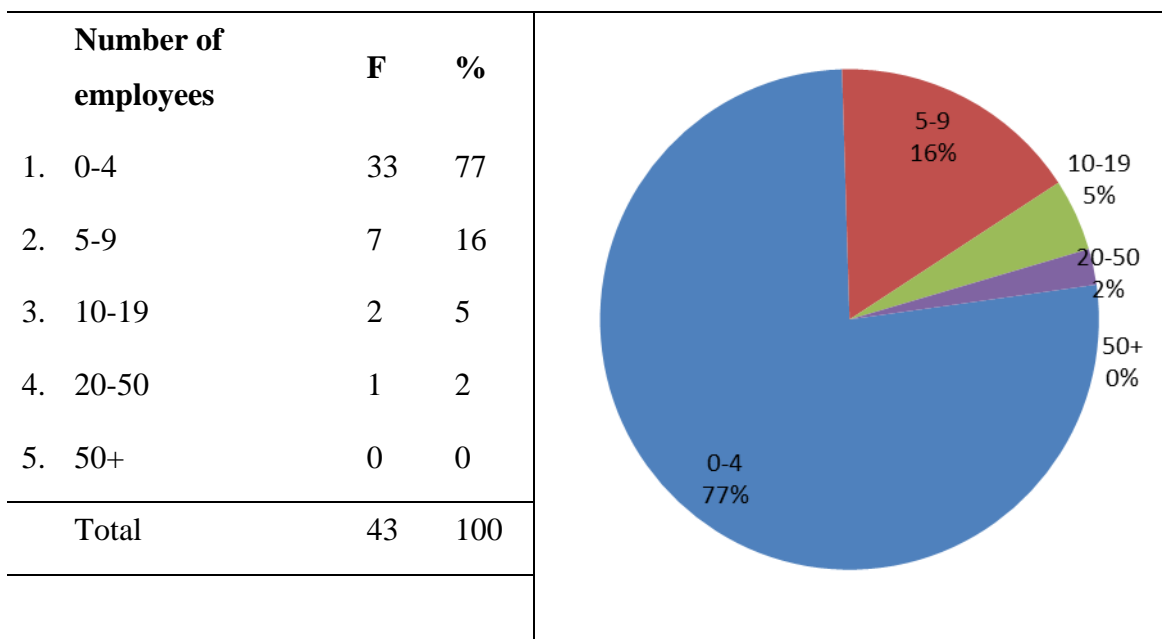


Figure 4.5: Number of employees

4.4 PERCEIVED AWARENESS

Perceived awareness was measured in Section B on a six point Likert scale ranging from strongly disagrees at one to strongly agree at six, using ten different statements. These statements were based on the different rights found in the CPA. Table 4.6 gives the percentage responses of the participants to the different questions.

Table 4.6: Perceived awareness of the CPA

		Strongly Disagree	Disagree	Slightly Disagree	Slightly Agree	Agree	Strongly Agree	Total
B1	I consider myself to be knowledgeable concerning consumer rights in general.	0	2.3	7	20.9	46.5	23.3	100
B2	I consider myself to be knowledgeable concerning the consumer's right to protection against discriminatory marketing practices.	2.3	4.7	7	23.3	39.5	23.3	100
B3	I consider myself to be knowledgeable concerning the consumer's right to privacy.	0	4.7	4.7	14	46.5	30.2	100
B4	I consider myself to be knowledgeable concerning the consumer's right to choose.	2.3	2.3	7	7	58.1	23.3	100
B5	I consider myself to be knowledgeable concerning the consumer's right to disclosure of information.	0	2.3	4.7	11.6	53.5	27.9	100
B6	I consider myself to be knowledgeable concerning the consumer's right to fair and responsible marketing.	7	2.3	2.3	7	58.1	23.3	100
B7	I consider myself to be knowledgeable concerning the consumer's right to fair and honest dealing.	7	2.3	0	4.7	58.1	27.9	100
B8	I consider myself to be knowledgeable concerning the consumer's right to fair, just and reasonable terms and conditions	7	2.3	4.7	3.9	55.8	20.9	100
B9	I consider myself to be knowledgeable concerning the consumer's right to fair value, good quality and safety.	4.7	4.7	0	4.7	48.8	37.8	100
B10	I consider myself to be knowledgeable concerning the consumer's right to accountability from retailers.	7	7	2.3	14	41.9	27.9	100

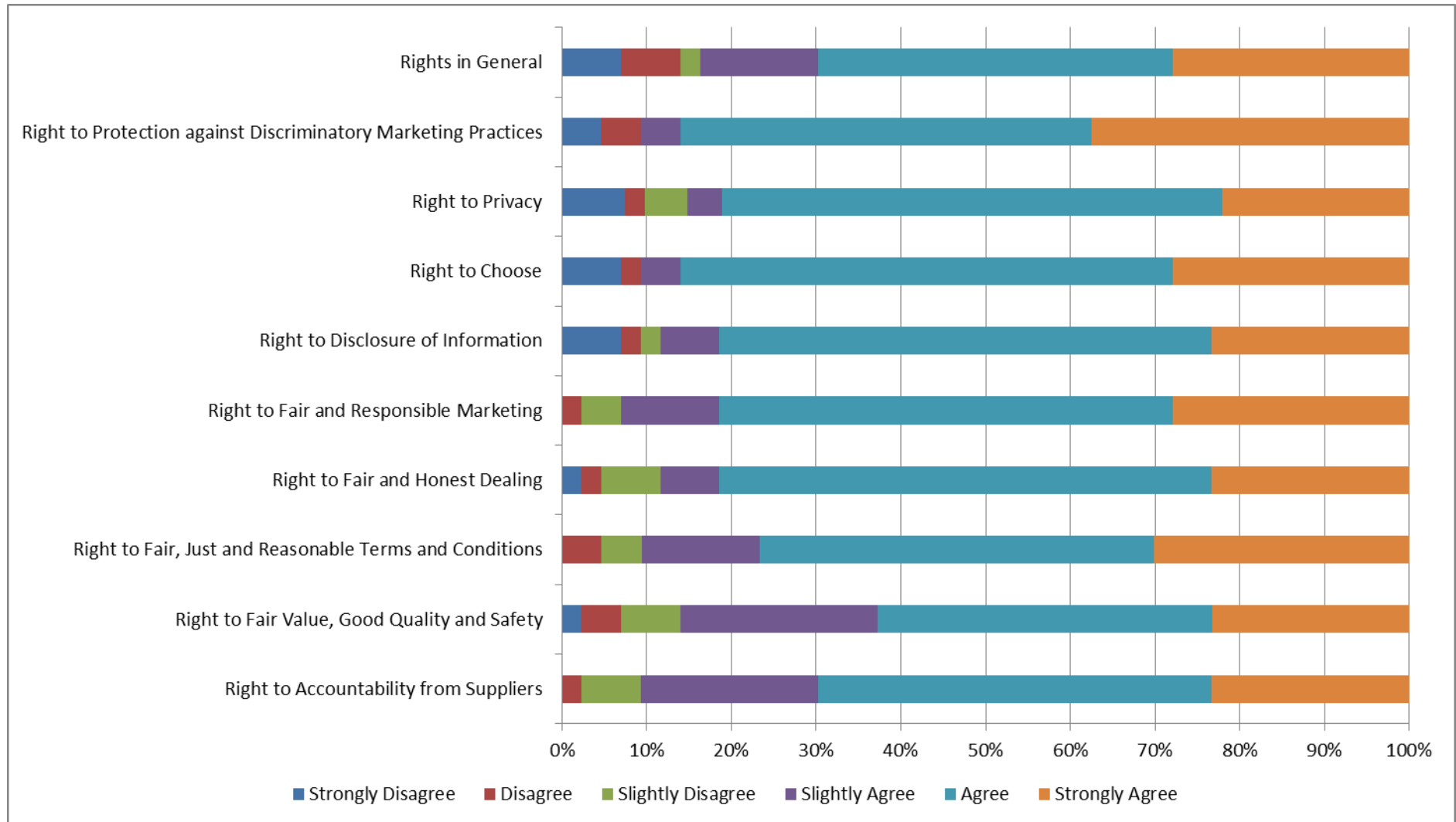


Figure 4.6: Perceived awareness of the Consumer Protection Act

As seen in Table 4.6, on average 88 percent of the participants agreed that they consider themselves knowledgeable regarding consumer rights. The highest scoring question was B7, where 92 percent of participants agreed that they were knowledgeable on the right to fair and honest dealings. The lowest scoring question was B10, where 84 percent of participants agreed that they understood the right to accountability from retailers. Thus, there was only an eight percent difference between the highest and lowest scoring questions. This indicates that retailers have confidence in their own knowledge of consumer rights and they should be able to conduct business within the legal constraints placed on them. The accuracy of this perceived awareness of the CPA by retailers was tested and compared against their actual knowledge of the CPA contained in Section D of the questionnaire. See Section 4.8 for findings.

4.5 ATTITUDE TOWARDS THE CPA

Section C attempts to measure both the attitude towards the Act, as well as any positive steps taken by retailers towards compliance with the CPA. Answers were measured on a seven point Likert scale ranging from strongly disagrees at one to strongly agree at six, with an option for unsure marked seven. Table 4.7 gives the percentage responses of the participants to the different questions, followed by a brief summary of the answers to each of the questions in Section C.

Table 4.7: Attitudes towards the CPA

	Strongly Disagree	Disagree	Slightly Disagree	Slightly Agree	Agree	Strongly Agree	Unsure	Total
The government has done enough to promote awareness of the Consumer Protection Act.	11.6	16.3	20.9	25.6	7	11.6	7	100
I have studied the Consumer Protection Act.	14	18.6	11.6	32.6	9.3	4.7	9.3	100
I have taken steps to bring my business practices in line with the Consumer Protection Act.	4.7	7	7	4.7	46.5	14	16.3	100
All my employees know the Consumer Protection Act.	9.3	7	16.3	11.6	27.9	16.3	11.6	100
The Consumer Protection Act is fair towards retailers.	4.7	14	4.7	18.6	32.6	16.3	14	100
The Consumer Protection Act is fair towards customers.	2.3	11.6	4.7	18.6	32.6	16.3	14	100
Customers can use the Consumer Protection Act to cheat retailers.	4.7	20.9	2.3	18.6	30.2	2.3	20.9	100
Some retailers still do not fully apply the Consumer Protection Act.	4.7	9.3	4.7	9.3	41.9	11.6	18.6	100
The Consumer Protection Act is necessary to protect consumers.	4.7	4.7	4.7	4.7	60.5	11.6	18.6	100
There are some parts of the Consumer Protection Act I do not agree with.	0	4.7	4.7	18.6	32.6	11.6	27.9	100

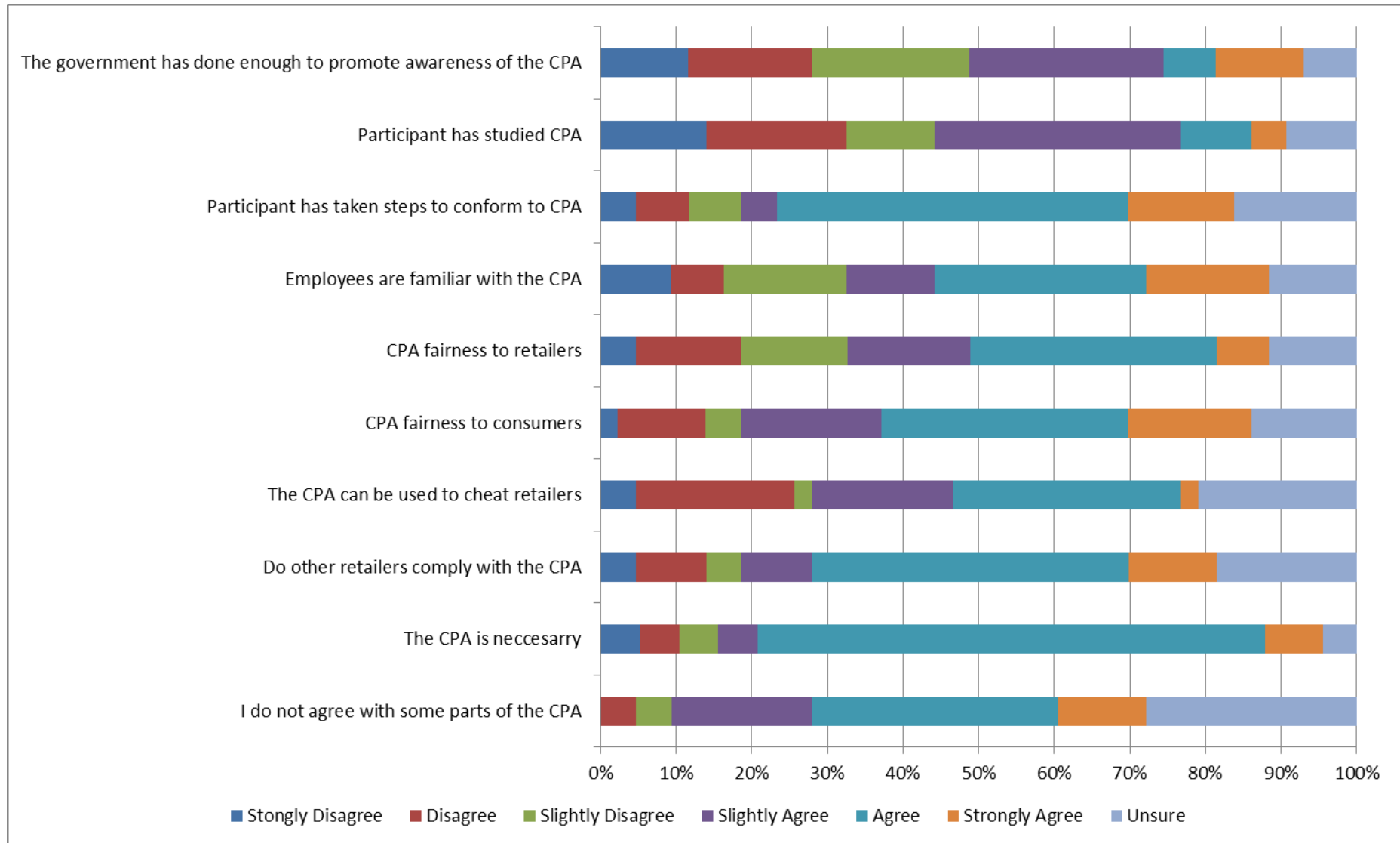


Figure 4.7: Attitudes towards the CPA

4.5.1 Question 1: The government has done enough to promote awareness of the Consumer Protection Act

As seen in Table 4.7, 49 percent of the participants stated that the government has not taken sufficient steps to make retailers and consumers aware of the CPA, while 44 percent said that the government has done enough, and seven percent were unsure. The reason for this may be that although many of the participants have heard about the CPA, the source had not been government or official publications but rather secondary sources such as articles published in newspapers and journals. The 44 percent who agreed may indicate that only some of the participants were informed about the CPA by the awareness campaigns held by the Department of Trade and Industry (Anon, 2011c).

4.5.2 Question 2: I have studied the Consumer Protection Act

44 percent of the participants said that they have not studied the CPA, while 45 percent have studied it. While there are several text books and articles in industry journals available concerning the CPA, these textbooks and journals are not always easily available and can be expensive. The easiest way to access the CPA is by using online sources, but not all South Africans have regular internet access (Anon., 2012d). Thus, the reason that only 45 percent of participants have studied the CPA may be because many of the participants find it easier to access secondary sources such as newspapers and magazines instead of finding and reading the Act itself.

4.5.3 Question3: I have taken steps to bring my business practices in line with the Consumer Protection Act

65 percent of the participants said that they have taken steps to bring their business practices in line with the CPA. This would seem to indicate that retailers are willing to comply with the legislation. However, since only 45 percent of the participants have read the CPA (see question C2) it is doubtful if 65 percent of the participants have truly taken steps to implement the CPA since they would not have possessed the necessary knowledge to do so.

4.5.4 Question 4: All my employees know the Consumer Protection Act

56 percent of the participants claim that their staff members are familiar with the CPA, thus, they should be able to conduct business accordingly. However, once again it should be considered that only 45 percent (see question C2) of owners and managers have read the CPA, and the claim that 56 percent have studied it may be an overestimate.

4.5.5 Question 5: The Consumer Protection Act is fair towards retailers

Only 56 percent of the participants felt that the CPA is fair towards retailers. This may indicate that there are still some reservations concerning the CPA among retailers. If compared to the 67 percent who feel the CPA is fair towards consumers, it may indicate that retailers feel that the Act is biased towards consumers. This may be due to the fact that consumers have up to six months to return defective goods, according to Section 56 of the CPA (2008), or the fact that retailers may be held liable for damage caused by products they sold, even if they were not negligent (Neels, 2010:133).

4.5.6 Question 6: The Consumer Protection Act is fair towards customers

67 percent of the participants felt that the CPA is fair towards consumers. Since the participants are not only retailers, but also consumers in their own right, this may indicate that the participants do value the added protection the CPA gives them as consumers.

4.5.7 Question 7: Customers can use the Consumer Protection Act to cheat retailers

51 percent of the participants felt that the CPA can be abused and that consumers are able to cheat retailers. Since many of the retailers have not read the CPA, this may be based on hearsay or speculation on the retailers' part, or may be because the consumer no longer needs to prove negligence to be successful in a complaint against a retailer (Neels, 2010:133).

4.5.8 Question 8: Some retailers still do not fully apply the Consumer Protection Act

According to 63 percent of the participants, many retailers are still not applying the CPA. This stands in contrast with the claim of 65 percent of participants that they have taken steps to comply to the CPA. This may possibly indicate that the steps taken by retailers are ineffective and have not yet made a difference in the marketplace.

4.5.9 Question 9: The Consumer Protection Act is necessary to protect consumers

72 percent of the participants indicated that they feel the CPA is necessary to regulate the South African market. This may indicate that the participants recognise the need for consumer protection in the business environment once characterised by unethical practices.

4.5.10 Question 10: There are some parts of the Consumer Protection Act I do not agree with.

63 percent of the participants said that there are parts of the CPA they do not agree with. There are several parts of the CPA that have been criticised on legal grounds as well as economic grounds. For example, Section 56 of the Act states that consumers have up to six months to exchange defective goods if they so choose. Motor industry representatives claim that replacing defective cars instead of repairing the defects would destroy the motor industry and this is not financially viable (Knowler, 2013d). Since such a large number of the participants are not familiar with the CPA, it is difficult to judge whether the participants' reservations about the CPA is based on actual knowledge as opposed to hearsay.

4.6 ACTUAL KNOWLEDGE

Section D tested retailers' actual knowledge concerning the CPA. This was done with a three point Likert scale with options for agree, don't know or disagree. Incorrect answers as well as don't know answers were counted as incorrect. The test was conducted using 20 questions based on the nine consumer rights contained in the CPA, with an average of two questions per right. The results of the individual questions, given in percentages, are contained in Figure 4.8 and Table 4.8, while the total scores of the participants are contained in Figure 4.9.

Table 4.8: Actual knowledge of the CPA

		Correct	Incorrect	Total
D1	The retailer may not give preferential treatment to certain groups or customers.	55.8	44.2	100
D2	Customers are allowed to tell retailers not to send them marketing material.	79.1	20.9	100
D3	Retailers may require customers to take bundled products.	25.6	74.4	100
D4	A customer may cancel a 2 year contract at any time.	32.6	67.4	100
D5	If a customer does not authorize repairs he still has to pay for them.	58.1	41.9	100
D6	If a person receives goods he did not order he may keep them without paying for them.	9.3	90.7	100
D7	Contracts must be in easily understood language.	90.7	9.3	100
D8	If two prices are displayed then the customer may choose to pay the lower price.	72.1	27.9	100
D9	A retailer using direct marketing must inform a customer that he has 5 days to change his mind after signing.	67.4	32.6	100
D10	A retailer may offer a customer a discount for referring other customers.	16.3	83.7	100
D11	A retailer may use exaggeration when marketing his products.	58.1	41.9	100
D12	Unfair contracts are valid if both parties agree to the terms.	39.5	60.5	100
D13	Customers do not have to accept products if delivery is late and the retailer did not give the customer advance notice of the delay	67.4	32.6	100
D14	Voetstoots clauses in contracts are allowed.	23.3	76.7	100
D15	Customers have up to 6 months depending on the product to return unsafe or broken products	27.9	72.1	100
D16	If a retailer repairs a product he has to give 3 months guarantee on the repair.	67.4	32.6	100
D17	Retailers are not responsible for damage caused by goods they supplied.	46.5	53.5	100
D18	If a lay-bye is cancelled the retailer does not need to return the full deposit.	30.2	69.8	100
D19	If a retailer has placed a disclaimer he does not remain responsible for a customer's property in his care.	18.6	81.4	100
D20	If a retailer repairs a product he may keep the parts replaced.	44.2	55.8	100

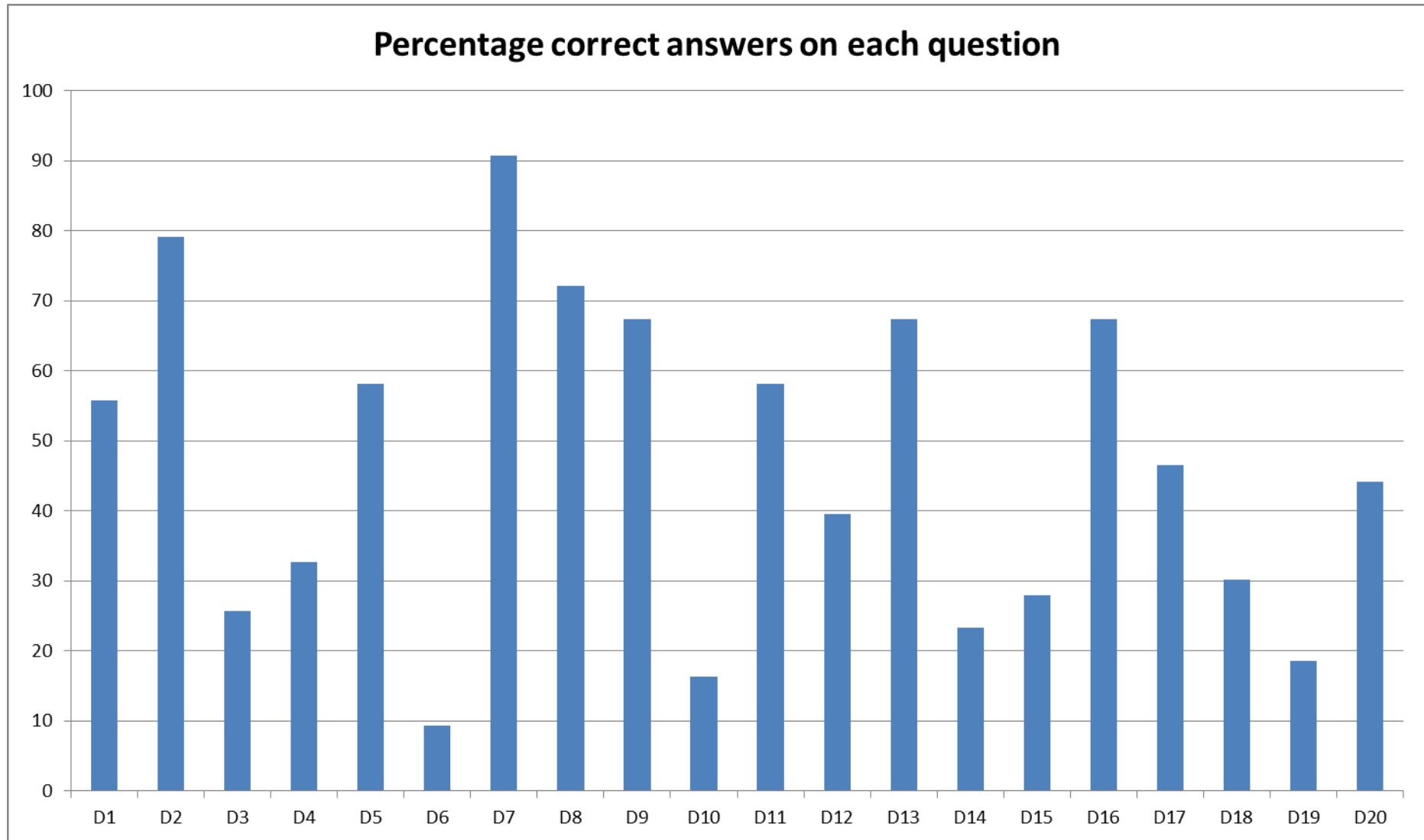


Figure 4.8: Percentage correct answers on each question

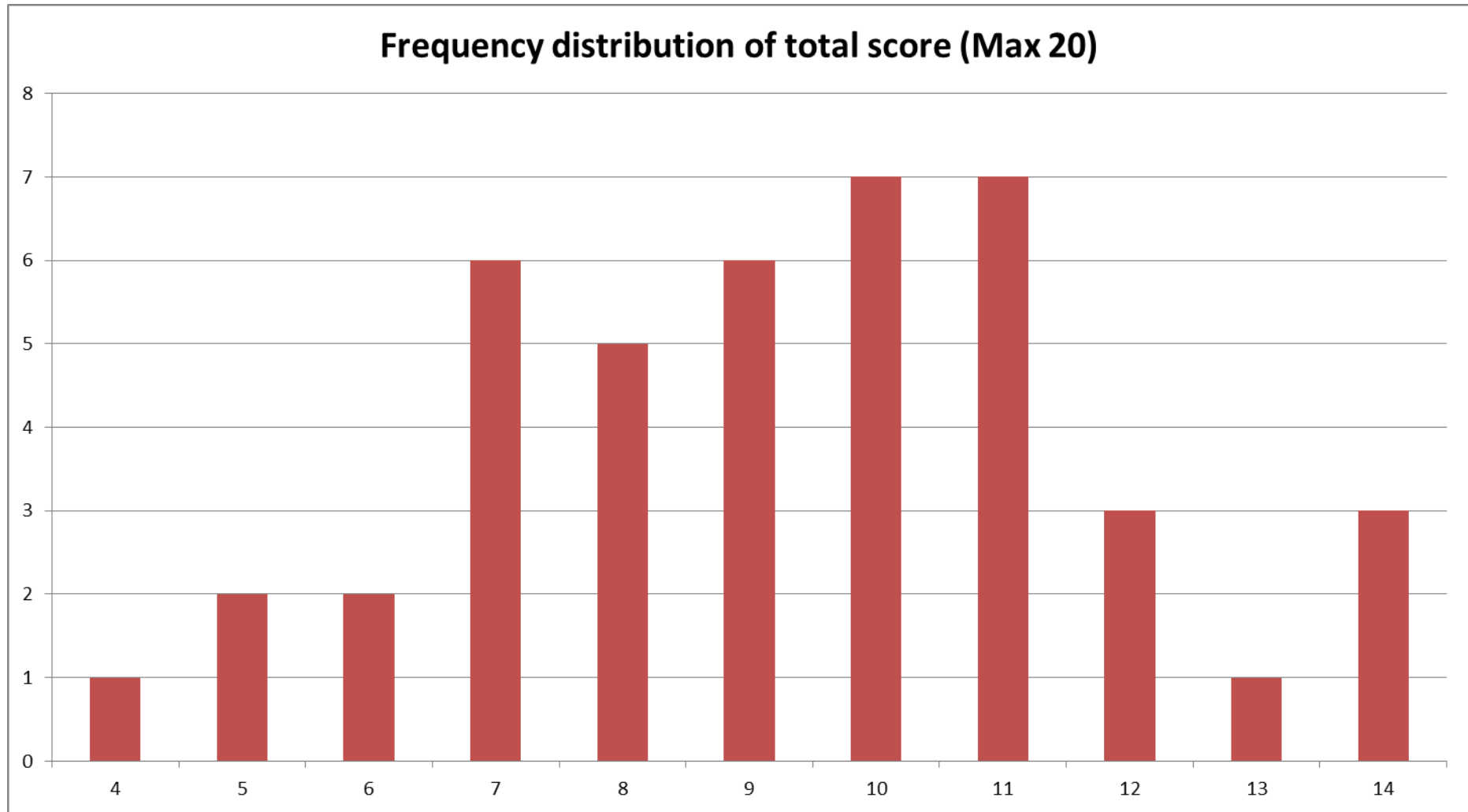


Table 4.9: Standard deviation

	N	Minimum	Maximum	Mean	Std. Deviation
	Statistic	Statistic	Statistic	Statistic	Statistic
D1	43	1.0	3.0	1.581	.7314
D2	43	1.0	3.0	1.349	.7199
D3	43	1.0	3.0	1.814	.8239
D4	43	1.0	3.0	2.047	.8438
D5	43	1.0	3.0	2.372	.8172
D6	43	1.0	3.0	2.674	.6444
D7	43	1.0	3.0	1.163	.5314
D8	43	1.0	3.0	1.465	.7973
D9	43	1.0	3.0	1.419	.6631
D10	43	1.0	3.0	1.442	.7654
D11	43	1.0	3.0	2.256	.9282
D12	43	1.0	3.0	2.070	.8562
D13	43	1.0	3.0	1.512	.7980
D14	43	1.0	3.0	1.767	.8117
D15	43	1.0	3.0	2.209	.8607
D16	43	1.0	3.0	1.442	.7004
D17	43	1.0	3.0	2.140	.8886
D18	43	1.0	3.0	1.791	.8880
D19	43	1.0	3.0	1.744	.7589
D20	43	1.0	3.0	2.047	.9246
D_Tot	43	4.0	14.0	9.302	2.4547
Valid N (listwise)	43				

As shown in Table 4.8, the mean percentage of correct answers was 46 percent, with a dispersion of between nine percent and 90 percent, as seen in Figure 4.9. 91 percent of the participants understood that contracts must be in easily understandable language, 79 percent of the participants understood that customers may refuse marketing material, and 72 percent of the participants understood that customers may choose to pay the lower price if two prices are displayed on a product. Some of these rights existed before the CPA came into existence, as they could be found in both common law as well as legislation such as the Consumer Affairs (Unfair Business Practices) Act of 1988; Trade Practices Act of 1976; Sales and Service Matters Act of 1964; Price Control Act of 1964; and Merchandise Marks Act of 1941, and it is debatable whether participants' knowledge of these rights are due to actual knowledge of the CPA or rather the result of retail experience and common knowledge. On the other hand, looking at the questions with a lower average score, many retailers still are unaware of the changes brought about by the CPA. For example, 67 percent of the participants still believe that consumers may be trapped in long-term contracts without the right to renege on such a contract, and 77 percent of the participants believe that goods may be sold 'voetstoots' or as is, regardless of hidden defects. 91 percent of the participants were also unaware that consumers do not have to pay for unsolicited goods and 84 percent were unaware that network marketing is now illegal.

The totals revealed that 51 percent of participants answered more than half of the questions incorrectly, and 49 percent of the participants answered more than ten questions correctly, but none managed to answer more than 14 questions correctly. This indicates that most retailers are either unfamiliar with the CPA or have only a cursory knowledge of the Act. This seems to be at odds with the fact that 88 percent of participants agreed that they are familiar with consumer rights, but is in line with the fact that only 45 percent of the participants have studied the CPA.

The reason that many of the participants overestimated their awareness of the CPA may possibly be attributed to the Dunning-Kruger effect. The Dunning-Kruger effect proposes that people who are unfamiliar with a subject tend to overestimate their own level of skill until they are exposed to training for that skill (Dunning & Kruger, 1999:121). In their study, Dunning and Kruger (1999:134) found that people who are incompetent on a subject consistently overestimated their test performance and ability,

while people who are competent accurately estimate their rank. According to Ehrlinger *et al.* (2008), this may be due to poor performers failing to take cognisance of negative feedback.

4.7 RELIABILITY OF THE CONSTRUCTS

In this study, internal consistency in the form of Cronbach’s alpha was used to test Sections B and C for reliability. According to Malhotra (2012:319), a coefficient of above 0.6 is satisfactory. Both of the constructs were well above 0.6, and were thus deemed reliable.

Table 4.10: Reliability measures.

Factor measured	Number of items	Cronbach’s alpha
Perceived awareness	10	0.947
Attitude	10	0.746

4.8 CORRELATION BETWEEN PERCEIVED AWARENESS, ATTITUDE AND ACTUAL KNOWLEDGE

Aertsens *et al.* (2010:1354) studied the effects of subjective knowledge and objective knowledge on consumer attitudes. They found that there is a positive but not a very strong correlation between objective and subjective knowledge, while both objective and subjective knowledge is related to a more positive attitude (Aertsens *et al.*, 2010:1373). They also found that subjective knowledge has a greater influence than objective knowledge on behaviour in the form of consumption, which they suggest might be because self-confidence is an aspect of subjective knowledge (Aertsens *et al.*, 2010:1374). Ishak and Zabil (2012:108) examined the relationship between awareness, knowledge and behaviour in consumers, and proposed that both awareness and knowledge determined behaviour. They found that while awareness has a more significant impact on behaviour, knowledge is a poor driving force and is generally unable to motivate consumers into upholding their rights (Ishak & Zabil, 2012:113). This study examined perceived awareness, actual knowledge and attitude of the CPA, as shown in Table 4.10. A Pearson correlation coefficient was computed to assess the relationship between perceived awareness and attitude, as well as between actual knowledge and attitude. There was a positive correlation between perceived

awareness and attitude, $r = 0.421^*$, $p = 0.005$. No correlation was found between actual knowledge and attitude, $r = -0.111$, $p = 0.481$. However, this does support the findings of both Aertsens *et al.* (2010:1354), and Ishak and Zabil (2012:108) that perceived awareness or subjective knowledge has a greater correlation towards attitude and behaviour than actual or objective knowledge.

Table 4.11: Correlation between perceived awareness, attitude and actual knowledge

N = 43	Perceived Awareness	Attitude	Actual Knowledge
Perceived Awareness			
Pearson's correlation	1	0.421	0.259
Significance		0.005	0.094
Attitude			
Pearson's correlation	0.421	1	-0.111
Significance	0.005		0.481
Actual Knowledge			
Pearson's correlation	0.259	-0.111	1
Significance	0.094	0.481	
*Significant at the 0.05 level (2-tailed)			

CHAPTER 5

RECOMMENDATIONS AND CONCLUSION

5.1 INTRODUCTION

In order to make effective recommendations, the essential elements of the previous chapters have to be examined.

Chapter 1 introduced the reasons behind the implementation of the CPA, followed by the problem statement, which indicated why it was important to determine the awareness of retailers to the CPA. Chapter 1 also introduced the theoretical and empirical objectives of this study and provided an overview of the research design and methodology.

Chapter 2 contains the literature review, which focused on exploring the history of consumer activism and consumer legislation, both internationally and in South Africa. Attention was also given to the rationale behind the formulation of the CPA, the content of the CPA, the effects it has had on the market, and criticisms towards the Act.

The following chapter, Chapter 3, analysed the research methodology laid out for the empirical portion of this study. This included the research objectives, research design, data collection and statistical analysis.

Chapter 4 reported on the statistical analysis of the data collected in accordance with empirical objectives formulated in Chapter 1, and this chapter offers a brief summary of the research findings, stating the main findings of the study and offering valuable recommendations to both policymakers and retailers.

5.2 SUMMARY

Although consumer rights faced slow initial growth and considerable resistance, they have since grown considerably, to the point that they are now internationally recognised (Mayer, 1989:21; Cohen, 2003:236; Warne, 1993:119). In South Africa, as in many other developing countries with a diverse consumer base and varying literacy levels, many consumers are unaware of their rights. Thus, protection of consumer

rights is a high priority for government, according to the former Minister of Trade and Industry, Mandisi Mpahlwa (Department of Trade and Industry, 2004:6). The three most effective ways to protect customers are, firstly to formulate effective consumer protection legislation that will regulate the market. Second, by educating consumers about their rights, as well as the products and retailers available to them, and third by providing an effective system or mechanism of redress for the consumer that has been wronged, as regulations will be incomplete without effective regulatory mechanisms (Jones *et al.*, 2005:35; Peters, 2013; Mupangavanhu, 2012:322). In the past, most of the consumer rights education focused on the consumers with the reasoning that only informed consumers can take advantage of their rights (Meir, 1985:77). It created an environment in which consumers were frequently better informed than retailers, who were often unaware and non-compliant with consumer legislation (Knowler, 2013b). This is confirmed by Figure 4.9, which shows that on average, participants could only answer 46 percent of the questions in the questionnaire correctly, regarding the content of the CPA.

5.3 GENERAL FINDINGS

This section will discuss the general findings from this study.

5.3.1 Independent retailers' perceived awareness of the CPA

The first empirical objective set out in Chapter 1 was to determine the perceived awareness of the CPA among small independent retailers in the Vaal Triangle, South Africa. This was done using ten questions, asking the participants to rate their perceived awareness of the nine rights contained in the CPA. Table 4.6 shows the participants' responses. On average, 88 percent of the participants responded positively by indicating that they either slightly agree, agree or strongly agree that they are knowledgeable about the rights contained in the CPA. This shows that most of the participants had confidence in their own abilities. They may not consider it necessary to study the CPA as they may have felt they are already knowledgeable concerning consumer rights. As discussed in section 5.2.2 and 5.2.3, all of the participants overestimated their own knowledge of the Act.

5.3.2 Independent retailers' attitude towards the CPA

The second empirical objective was to determine the attitude of small independent retailers in the Vaal Triangle, South Africa, towards the CPA. This was done using ten questions that tested not only the participants' attitude towards the CPA, but also tried to establish whether they had taken any step(s) towards implementing the provisions contained in the Act. Table 4.7 shows the participants' responses. The results show that 62 percent of the participants did not agree with some sections of the CPA, while 51 percent of the participants felt that the Act could be used to cheat retailers. This negative sentiment towards the CPA may have been due to the introduction of new concepts such as the no-fault liability, meaning that retailers may be held responsible even if there was no negligence on their part (Neels, 2010:133), and the more consumer-orientated requirements such as the six month guarantee on goods (Naude, 2011:249).

Furthermore, while 65 percent of the participants claimed to have taken positive steps to conform to the CPA, only 47 percent of the participants had actually taken time to study the CPA. This excluded secondary sources such as newspaper articles, legal opinions, business journals and legal text books from which the participants may also have gained information on the CPA. 72 percent of the participants did, however, agree that the CPA is necessary, even if they did not agree with all the provisions contained therein. The reasons that retailers recognise the need for CPA may include that in codifying consumer rights, the Act has created certainty, which was previously lacking in the South African market environment (Van Eeden, 2009:23). In addition, the Act addresses the vulnerability of consumer from which the retailers, as ultimate consumers themselves will also benefit (Department of Trade and Industry, 2004:11).

5.3.3 Independent retailers' actual knowledge of selected aspects of the CPA

The third empirical objective formulated in Chapter 1 was to determine the actual knowledge of the CPA by small independent retailers in the Vaal Triangle, South Africa. 20 questions, adapted from the CPA, were used to test the participants' actual knowledge. Table 4.8 provides the responses for the individual questions. Although 90 percent of the respondents knew that a contract must be written in easily understandable language, only nine percent knew that a consumer does not have to

pay for unsolicited goods. Participants scored higher on questions based on rights that were part of legislation before the CPA came into effect. For example, 72 percent of the participants knew that a consumer is entitled to pay the lower price if two prices are displayed, and 67 percent knew that there is a five-day cool-off period on unsolicited sales. Participants scored a lower percentage on questions based on new rights created by the CPA, only 32 percent knew the consumer may opt-out of long-term contracts, and 23 percent knew of the duty on retailers to disclose hidden defects to consumers. On average, participants only answered nine out of 20 questions correctly, indicating that retailers were not yet familiar or comfortable with the CPA. These low scores were contrary to the participants' perceived awareness of consumer rights. The reasons for this may include that, because the participants are unfamiliar with the CPA, they overestimate their own abilities. This is called the Dunning-Kruger effect, which proposes that people who are unfamiliar with a subject tend to overestimate their own level of skill until they are exposed to training for that skill (Dunning & Kruger, 1999:121). A second reason may be that they overestimate their awareness, based on their knowledge of consumer rights before the CPA came into effect.

5.4 RECOMMENDATIONS

The following recommendations are based on the literature review in Chapter 2, along with the empirical findings in Chapter 4, regarding the perceived awareness, attitude and actual knowledge of small independent retailers in the Vaal Triangle, South Africa.

5.4.1 Possible steps to increase awareness of the CPA

Great emphasis has been placed on consumer education, both locally and internationally. Both the consumer rights movement as well as government have driven this. Several international consumer rights organisations also campaign for greater consumer awareness, for example International Consumer Rights Day (Anon., 2012e). Educating consumers alone is, however, not enough. Retailers also have to be made aware of both consumer rights as well as retailers' responsibilities towards consumer. In this regard, the government has an important part to play in increasing retailers' awareness of the CPA. This can be done through the extension of existing

consumer right awareness campaigns, as well as with the use of public service announcements in the media, including radio, newspapers and television.

An obligation rests on the retailer to comply with and be knowledgeable about the laws that are applicable in the business sphere. Thus, once a retailer becomes aware of the CPA, the retailer should take the necessary steps to become familiar with the Act and to comply with the directives of the Act. This can be done by studying the CPA, studying one of the many textbooks that discuss the Act holistically or specific provisions of the Act, or by retaining the services of a lawyer or other informed person to act as an advisor towards bringing the retailer in line with the current law. This is not limited to the CPA, but also includes other legislation such as the Credit Act and the relevant labour laws. This will protect not only consumers and employees, but will also protect retailers from penalties.

However, even if retailers are willing to study and comply with the CPA, they must first be able to access and understand the Act. The CPA states that contracts should be in easily understood language; the reason being, many of the consumers are either semi-literate or have very little experience with contracts (Newman, 2010:735). It is ironic then that the CPA itself is not written in easily understandable language, and is only available in English. This poses a serious problem not only for retailers, but also for consumers. How will people who are either semi-literate or not skilled in English be able to comply with the CPA if they are unable to read and understand the Act? Therefore, it is recommended that the government should publish information regarding the CPA in all the official languages, namely English, Afrikaans, isiZulu, isiXhosa, Setswana, Xitsonga, Sesotho, siSwati, Sesotho sa Leboa, TshiVenda and isiNdebele language. This will make the Act more accessible to both consumers and retailers who will otherwise remain ignorant of their rights and responsibilities.

5.4.2 Enforcement of consumer rights

As mention in Chapter 2, the creation of consumer rights is of little value if there are no enforcement mechanisms. Currently there is a high volume of consumer complaints, but the response rate to such complaints is rather low (Knowler 2012b). This may be in part because the provincial governments have not created the relevant

structures to deal with the complaints yet, or because the existing structures are unable to deal with the sheer volume of complaints. Therefore, government should ensure the creation and access to resources needed by the relevant structures to enforce the rights contained in the CPA effectively.

5.5 LIMITATIONS AND FUTURE RESEARCH OPPORTUNITIES

This study measured the perceived awareness, attitude and actual knowledge of small independent retailers in the Vaal Triangle, South Africa. However, this study has certain limitations, which may be the focus of future research.

Firstly, the study was confined to small independent retailers in the Vaal Triangle. As such, no data was taken from larger independent retailers or from franchises and chain retailers. These types of retailers make up a sizeable part of the retail sector; therefore, the data contained in this study only represent a small part of the total retail sector. In addition, participants were only selected from small independent retailers in the Vaal Triangle, South Africa. Results may vary in other regions of the country. Secondly, this study only measured the participants' knowledge of the CPA, and not other Acts such as the National Credit Act (34 of 2005), which also regulates the way retailers do business.

Lastly, this study also excluded consumers, who are regarded as key stakeholders in the marketing industry. Since consumer awareness is also essential for the CPA to be effective, it may also be of benefit for a comparative study to be conducted in order to measure awareness and knowledge of the CPA among consumers, as against retailers.

5.6 CONTRIBUTIONS OF THE STUDY

The CPA is relatively new to the South African market, and the findings of this study established that although retailers feel that there is the need for the CPA, many retailers are yet to familiarise themselves with the Act. The effect of this has been that few retailers have fully complied with directives from the Act, that the consumer must be informed of hidden defects, or that goods sold are under a six-month guarantee. For South Africa to create an internationally competitive marketplace it is not enough to introduce new legislation(s), these legislation(s) have to be

implemented and enforced. Therefore, the first step towards greater implementation would be education of both the consumers and retailers.

5.7 CONCLUDING REMARKS

Consumer rights, like human rights, have gained increased importance over the last few decades (Deutch, 1995:540). South Africa, once known for its dismal record of human rights, has caught up with the rest of the world by introducing, firstly a very liberal Constitution (Anon., 2009b), and subsequently several pieces of legislation, such as the CPA, in order to protect and empower its citizens. The CPA was implemented to protect consumers from unethical business practices, prevent misleading marketing, and to educate consumers to help them to make informed decisions. Since no piece of legislation functions independently, the success of the CPA depends on the consumers, government agencies, and retailers for implementing the Act, complying with the Act, and seeking redress when rights are infringed.

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APPENDIX A

VAAL TRIANGLE INDEPENDENT RETAILERS' PERCEIVED AWARENESS VERSUS ACTUAL KNOWLEDGE OF THE CONSUMER PROTECTION ACT

Dear Respondent

My name is Schalk van Schalkwyk. I am registered as a full-time student for a Masters degree in Marketing Management at the North-West University (Vaal Triangle Campus), and I am currently working towards my dissertation under the supervision of Dr U. Akpojivi.

The purpose of this study is to investigate awareness, attitude and knowledge of the Consumer Protection Act among independent retailers.

Please take a few minutes to assist me and complete the attached questionnaire. It should not take you longer than 20 minutes to complete. All responses are confidential and will merely be outlined in the form of statistical data in the analysis. All data will only be used for research purposes.

Thank you for your important contribution towards this study.

PJ van Schalkwyk

North-West University

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Questionnaire

Section A: Demographical information

Please mark each question with a cross (X) in the appropriate box.

A1	Type of business entity		Sole proprietor	Partnership	Private company	Closed Cooperation	
A2	Industry		Home, Decor, Interior & Furniture	Clothing	Jewellery and accessories	Food	
	Hair, health and beauty	Books, cards, gifts and stationary	Toys, education and hobbies	Sport, outdoor, goods and gear	Audio, electronic, PC, cell phones and photo	Hardware	
A3	Number of years in existence		0-2 years	3-5 years	6-10 years	10+ years	
A4	Highest qualification of manager/owner		Grade 12 or less	Diploma	Degree	Post graduate degree	
A5	Number of employees		0-4	5-9	10-19	20-50	51+

Section B: Questionnaire

Please indicate the extent to which you agree or disagree with each of the following statements using a cross (X) in the appropriate block where 1= Strongly disagree and 6= Strongly agree.

		Strongly disagree	Disagree	Slightly disagree	Slightly agree	Agree	Strongly agree
B1	I consider myself to be knowledgeable concerning consumer rights in general	1	2	3	4	5	6
B2	I consider myself to be knowledgeable concerning the consumer's right to Protection against Discriminatory Marketing Practices	1	2	3	4	5	6
B3	I consider myself to be knowledgeable concerning the consumer's Right to Privacy	1	2	3	4	5	6
B4	I consider myself to be knowledgeable concerning the consumer's Right to Choose	1	2	3	4	5	6
B5	I consider myself to be knowledgeable concerning the consumer's Right to Disclosure of Information	1	2	3	4	5	6
B6	I consider myself to be knowledgeable concerning the consumer's Right to Fair and Responsible Marketing	1	2	3	4	5	6
B7	I consider myself to be knowledgeable concerning the consumer's Right to Fair and Honest Dealing	1	2	3	4	5	6
B8	I consider myself to be knowledgeable concerning the consumer's Right to Fair, Just and Reasonable Terms and Conditions	1	2	3	4	5	6
B9	I consider myself to be knowledgeable concerning the consumer's Right to Fair Value, Good Quality and Safety	1	2	3	4	5	6
B10	I consider myself to be knowledgeable concerning the consumer's Right to Accountability from Retailers	1	2	3	4	5	6

Section C: Questionnaire

Please indicate the extent to which you agree or disagree with each of the following statements using a cross (X) in the appropriate block where 1= Strongly disagree and 6= Strongly agree.

		Strongly disagree	Disagree	Slightly disagree	Slightly agree	Agree	Strongly agree	Unsure
C1	The government has done enough to promote awareness of the Consumer Protection Act.	1	2	3	4	5	6	7
C2	I have studied the Consumer Protection Act.	1	2	3	4	5	6	7
C3	I have taken steps to bring my business practices in line with the Consumer Protection Act.	1	2	3	4	5	6	7
C4	Most of my employees know the Consumer Protection Act.	1	2	3	4	5	6	7
C5	The Consumer Protection Act is fair towards retailers.	1	2	3	4	5	6	7

		Strongly disagree	Disagree	Slightly disagree	Slightly agree	Agree	Strongly agree	Unsure
C6	The Consumer Protection Act is fair towards customers.	1	2	3	4	5	6	7
C7	Customers can use the Consumer Protection Act to cheat retailers.	1	2	3	4	5	6	7
C8	Some retailers still do not fully apply the Consumer Protection Act.	1	2	3	4	5	6	7
C9	The Consumer Protection Act is necessary to protect consumers.	1	2	3	4	5	6	7
B10	There are some part of the Consumer Protection Act I do not agree with.	1	2	3	4	5	6	7

Section D: Questionnaire

This section pertains to your actual knowledge of the Consumer Protection Act. Please indicate the extent to which you agree or disagree with each of the following statements using a cross (X) where 1= Agree, 2= Don't know and 3= Disagree in the corresponding box..

		Agree	Don't know	Disagree
D1	The retailer may not give preferential treatment to certain groups or customers.	1	2	3
D2	Customers are allowed to tell retailers not to send them marketing material.	1	2	3
D3	Retailers may require customers to take bundled products.	1	2	3
D4	A customer may cancel a 2 year contract at any time.	1	2	3
D5	If a customer does not authorize repairs he still has to pay for them.	1	2	3
D6	If a person receives goods he did not order he may keep them without paying for them.	1	2	3
D7	Contracts must be in easily understood language.	1	2	3
D8	If two prices are displayed then the customer may choose to pay the lower price.	1	2	3
D9	A retailer using direct marketing must inform a customer he has 5 days to change his mind after signing.	1	2	3
D10	A retailer may offer a customer a discount for referring other customers.	1	2	3
D11	A retailer may use exaggeration when marketing his products.	1	2	3
D12	Unfair contracts are valid if both parties agree to the terms.	1	2	3
D13	Customers do not have to accept products if delivery is late and the retailer did not	1	2	3

		Agree	Don't know	Disagree
	give the customer advance notice of the delay.			
D14	Voetstoots clauses in contracts are allowed.	1	2	3
D15	Customers have up to 6 months depending on the product to return unsafe or broken products	1	2	3
D16	If a retailer repairs a product he has to give 3 months guarantee on the repair.	1	2	3
D17	Retailers are not responsible for damage caused by goods they supplied.	1	2	3
D18	If a lay-bye is cancelled the retailer does not need to return the full deposit.	1	2	3
D19	If a retailer has placed a disclaimer he does not remain responsible for a customer's property in his care.	1	2	3
D20	If a retailer repairs a product he may keep the parts he has replaced.	1	2	3
D21	Retailers do not need to provide consumers with prior written notice of clauses in agreements that may constitute a potential risk or liability to consumers.	1	2	3

Do you have any comments to add about the Consumer Protection Act? Please specify:

Thank you very much for your participation!